

**[ORAL ARGUMENT NOT YET SCHEDULED]**

**No. 17-1059**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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OGLALA SIOUX TRIBE,

Petitioner,

v.

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

Respondents.

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PETITION FOR REVIEW OF FINAL ORDER OF THE UNITED STATES  
NUCLEAR REGULATORY COMMISSION

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**INITIAL OPENING BRIEF OF PETITIONER  
OGLALA SIOUX TRIBE**

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## **CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES AND RULE 26.1 DISCLOSURE**

Pursuant to D.C. Circuit Rules 15(c)(3), 26.1 and 28(a)(1), 32 counsel for Petitioner certifies as follows:

### **1. Parties, Intervenor, and Amici Curiae**

The parties to this Petition for Review are Petitioner Oglala Sioux Tribe and Respondents United States Nuclear Regulatory Commission (“NRC” or “Commission”) and the United States of America. Powertech (USA), Inc. has intervened. There are no Amici.

### **RULE 26.1 DISCLOSURE STATEMENT**

Petitioner Oglala Sioux Tribe is a sovereign government. It has no parent corporations and issues no stock or shares.

### **2. Rulings Under Review**

Petitioner seeks review of the Nuclear Regulatory Commission’s (“Commission”) December 23, 2016 Memorandum and Order in *In the Matter of Powertech (USA), Inc.* (Dewey-Burdock In Situ Uranium Recovery Facility), Docket No. 40-9075-MLA, CLI-16-20 (December 23, 2016), which in turn affirmed several decisions of the Atomic Safety Licensing Board and NRC Staff – *e.g., In the Matter of Powertech (USA), Inc.* (Dewey-Burdock In-Situ Uranium Recovery Facility), LPB-10-16, 72 NRC 361 (2010); *In the Matter of Powertech*

(USA), Inc. (Dewey-Burdock In-Situ Uranium Recovery Facility), LBP-13-9, 78 NRC 37 (2013); *In the Matter of Powertech (USA), Inc.* (Dewey-Burdock In-Situ Uranium Recovery Facility), LBP-14-5, 79 NRC 377 (2014); *In the Matter of Powertech (USA), Inc.* (Dewey-Burdock In-Situ Recovery Facility), Order Removing Temporary Stay and Denying Motions for Stay of Materials License Number SUA-1600) (May 20, 2014); *In the Matter of Powertech (USA), Inc.* (Dewey-Burdock In-Situ Uranium Recovery Facility), LBP-15-16, 81 NRC 618 (2015); the Commission's January, 2014 Final Environmental Impact Statement ("EIS") for the Dewey-Burdock In-Situ Recovery Project in Custer and Fall River Counties, South Dakota, as amended; the April 8, 2014 Record of Decision for the project; and the April 8, 2014 Materials License No. SUA-1600, Docket No. 040-09075.

### **3. Related Cases**

Petitioner is not aware of any related cases.

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## **GLOSSARY**

ACHP	Advisory Council on Historic Preservation
AEA	Atomic Energy Act
APA	Administrative Procedure Act
ASLB or Board	Atomic Safety Licensing Board
FSEIS	Final Supplemental Environmental Impact Statement
ISL	In situ leach
NRC or Commission	Nuclear Regulatory Commission
NRC Staff	Nuclear Regulatory Commission Staff
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
Powertech	Powertech (USA), Inc.
PA	Programmatic Agreement
ROD	Record of Decision

## **STATEMENT OF JURISDICTION**

Jurisdiction in this case is based on the Commission's December 23, 2016 Memorandum and Order affirming decisions of the ASLB. CLI-16-20, 84 NRC \_\_\_. JA\_\_\_. The underlying decisions, in turn, found violations of NRC Staff's review of cultural resource impacts under the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321, *et seq.*, and the NRC Staff's consultation under the National Historic Preservation Act ("NHPA"), 54 U.S.C. §§ 300101, *et seq.*, yet left the license in place as fully active and effective and rejected the Tribe's challenges to several aspects of the NRC Staff's NEPA compliance related to the analysis of environmental impacts of and mitigation proposals for the mine project. Thus, included in the Tribe's Petition to Review to this Court are challenges the Commission's decision to uphold the 2014 FSEIS(JA\_\_) and ROD(JA\_\_) for the Dewey-Burdock Project, as well as the April 8, 2014 License (No. SUA-1600)(JA\_\_).

The Commission's decisions are reviewable under 42 U.S.C. § 2239(b), 28 U.S.C. § 2342(4), 5 U.S.C. § 702, and Federal Appellate Rule 15. This Petition was timely filed on February 21, 2017. See 28 U.S.C. § 2344.

## **STATEMENT OF ISSUES**

1. Whether the Commission erred in upholding the grant of an effective license to conduct uranium mining and processing operations and possess and dispose of

radioactive processing wastes despite finding violations and lack of compliance with both the cultural resource impacts analysis required by NEPA and the government to government consultation required by the NHPA.

2. Whether the Commission erred in affirming an effective license, ROD, and FEIS that failed to include a reviewable plan for, or analysis of direct, indirect, and cumulative impacts of the storage, transport, and disposal of radioactive processing wastes.

3. Whether the Commission erred in affirming an effective license, ROD, and FEIS that failed to present an adequate analysis of the impacts and effects associated with the thousands of abandoned boreholes on ground water quality or the ability of the applicant to successfully identify and abandon thousands of boreholes, nor how these efforts would be undertaken and accomplished.

4. Whether the Commission erred in affirming an effective license, ROD, and FEIS that failed to adequately assess baseline water quality conditions, and deferred the collection of monitoring data to the future.

5. Whether the Commission erred in affirming an effective license, ROD, and FEIS that failed to include an adequate analysis of mitigation measure and their effectiveness for impacts to the cultural, historical, and religious sites of the Oglala Sioux Tribe as well as unreviewed plans to mitigate other impacts to the environment.



6. Whether the Commission erred in affirming an effective license and ROD based on a FEIS despite finding a failure to conduct lawful scoping process, thereby limiting the input from the affected public and the analysis of other federal agencies.

7. Whether, as asserted in the NRC's Motion to Dismiss filed with this Court on March 17, 2017, this Court lacks jurisdiction for lack of a final action as contemplated by the Hobbs Act, 28 U.S.C. § 2342.

### **STATUTES AND REGULATIONS**

The pertinent provisions of the Atomic Energy Act, 42 U.S.C. §§ 2011, *et seq.*, and implementing regulations, the NHPA, 54 U.S.C. §§ 300101, *et seq.*, and pertinent implementing regulations, the NEPA, 42 U.S.C. §§ 4321, *et seq.*, and pertinent implementing regulations, and Hobbs Act, 28 U.S.C. § 2342, are set forth in the Addendum.

### **STATEMENT OF THE CASE**

This case concerns the proposed Dewey-Burdock in situ leach ("ISL") uranium mine project in the Black Hills of South Dakota. The project lands are within the traditional aboriginal territory of the Oglala Sioux Tribe ("Tribe"), and included in the 1851 Fort Laramie Treaty and the 1868 Fort Laramie Treaty (15 Stat., 635). A significant number of cultural, historic, and archaeological resources have been identified in the Project area, including burial sites. FSEIS at

3-76 to 3-83. JA\_\_\_. The Tribe has not had a meaningful opportunity to participate in the assessment or determination of the significance of the identified sites, development of mitigation measures that might be employed, nor had the opportunity to identify additional sites that may warrant evaluation or listing. The Applicant and NRC have entered into a Programmatic Agreement regarding analysis and evaluation of historic, cultural, and archaeological sites, but have not included the Tribe in this Agreement. JA\_\_\_.

The Tribe also owns lands near the proposed project, leased for domestic, agricultural, water development, conservation, and other purposes. The Tribe derives benefit and value, economically and otherwise, from its lands, and has a strong interest in ensuring that these lands and waters remain in an unpolluted state. The Tribe brings this Petition for Review because the project poses serious threats to the Tribe's cultural, historic, economic, and conservation interests.

Throughout the administrative process, the Tribe's primary concerns have consistently been the lack of compliance with NEPA, the NHPA, and NRC regulations regarding protection of the Tribe's cultural and historic resources, and the lack of information necessary to determine the hydrogeology and geochemistry of the site and therefore protect groundwater from mining contamination. The latter includes the lack of a defensible baseline ground water characterization or a thorough review of the natural and manmade interconnections between aquifers in

the area that may allow for cross-contamination with the aquifers slated for chemical mining.

Powertech proposes to mine uranium directly from the local aquifers using a process that involves injecting oxidized liquid mining fluid into an aquifer containing uranium deposits. The mining fluids are pumped under pressure through the ore zone, and the uranium and other heavy metals dissolve into the aquifer. The metal-bearing groundwater is then pumped back to the surface, where the uranium is separated out, processed into “yellowcake,” and shipped to other facilities to be enriched for use as reactor fuel. After the uranium is removed, a portion of the fluid is recharged with oxygen and carbon dioxide and re-injected into the ore zone to repeat the cycle.

The long-term track record of ISL mine sites in the United States is replete with examples of failure to accurately predict groundwater dynamics, especially with respect to prevention of horizontal or vertical leakage, (called “excursions”) and the inability to restore ground water to pre-mining conditions, as required. These impacts have occurred despite the repeated assurances from prospective mine operators that ISL mining is a safe and even benign activity. The recent factual record demonstrates that these projects are not benign, and that grounds for serious concerns exist concerning proper regulation of ISL mining.

The U.S. Geological Survey has confirmed that “[t]o date, no remediation of an ISR operation in the United States has successfully returned the aquifer to baseline conditions.” Otton, J.K., Hall, S., *In-situ recovery uranium mining in the United States: Overview of production and remediation issues* (Abstract), U.S. Geological Survey, 2009, IAEA-CN-175/87ISL. JA\_\_\_. This report goes on to state that “[o]ften at the end of monitoring, contaminants continue to increase by reoxidation and resolubilization of species reduced during remediation; slow contaminant movement from low to high permeability zones; and slow desorption of contaminants adsorbed to various mineral phases.” *Id.* See also Hall, Susan, *Groundwater Restoration at Uranium In-Situ Recovery Mines, South Texas Coastal Plain*, U.S.G.S. Open-File Report 2009–1143 (2009) at 30. JA\_\_\_.

The NRC Staff routinely allows for reductions in ground water standards away from baseline water quality. Thus, all the available evidence shows that all NRC-regulated ISL mining has resulted in degradation of ground water quality over the long-term. The question then becomes one of how much ground water degradation the NRC will allow, and how far the resulting contamination will spread.

The U.S. EPA has expressed substantial concerns with respect to the integrity of the ISL process in the West. March 3, 2010 Letter from Carol Rushin, Acting Regional Administrator, Region 8, U.S. EPA to Michael Lesar, Chief,

Rulemaking and Directives Branch, NRC. JA\_\_\_. EPA cites the failure of NRC to “evaluate the potential effects that non-attainment of baseline groundwater restoration would have on surrounding [underground sources of drinking water].” Among the primary concerns raised related to ground water are the frequent relaxation of groundwater restoration standards and a lack of sufficient discussion of the causes of groundwater contamination outside the designated mining area at ISL sites. *Id.* at 4-5. JA\_\_\_.

The FSEIS prepared for the Dewey-Burdock project held the opportunity for NRC Staff to address these long-standing problems. However, as discussed herein, the agency failed to do so. Instead of conducting the required NEPA process, the agency dispensed with the critically important scoping exercise, neglected to analyze impacts from the creation, transportation and disposal of radioactive wastes, deferred the collection of defensible baseline data and demonstrations of the ability to contain mining contamination until future non-NEPA processes, and failed to provide the required detail for environmental impact mitigation.

## **STATEMENT OF FACTS**

### **A. Factual and Procedural Background**

#### **1. Powertech’s License Application and Tribe’s Petition to Intervene**

After its first combined source material and uranium processing license application was determined to be incomplete, Powertech resubmitted its

application on August 10, 2009. JA\_\_\_. On January 5, 2010, NRC Staff issued a notice providing interested and affected parties an opportunity to request a hearing on the application. 75 Fed.Reg. 467. On March 8 and 9, 2010, multiple local affected citizens petitioned to intervene in the NRC licensing proceedings raising multiple legal and factual issues (called “contentions”) with the application. JA\_\_\_. On March 18, 2010, NRC issued a notice announcing the establishment of an ASLB panel, made up of three administrative law judges, to preside over the administrative licensing process. 75 Fed.Reg. 13141.

On April 6, 2010, the Oglala Sioux Tribe also timely petitioned to intervene in the NRC licensing proceedings raising multiple legal and factual contentions. JA\_\_\_. On August 5, 2010, the ASLB issued an Order (LPB-10-16, 72 NRC 361), granting the Tribe’s petition to intervene and found several, but not all, of the Tribe’s contentions admissible over the objections of NRC Staff and Powertech. JA\_\_\_. Specifically, the ASLB admitted the Tribe’s contentions alleging failure to comply with NEPA and the NHPA regarding: impacts to historic and cultural resources (Contentions 1A and 1B), protection of groundwater quality (Contention 2), establishment of baseline hydrogeologic conditions (Contention 3), and assessment of groundwater quantity impacts (Contention 4). JA\_\_\_.

## **2. NRC Staff NEPA Process and ASLB Proceedings**

On November 26, 2012, NRC issued a notice of the availability of the Draft SEIS for the Dewey-Burdock Project for public comment. 77 Fed.Reg. 70486. On January 10, 2013, the Tribe submitted timely comments on the Draft SEIS (JA\_\_\_) and on January 25, 2013, the Tribe filed timely requests to admit several new or amended contentions in the licensing proceeding. JA\_\_\_.

On July 22, 2013, the ASLB issued an Order (LBP-13-9, 78 NRC 37) granting the admission of three new NEPA-based contentions to the proceeding, over the objections of NRC Staff and Powertech. JA\_\_\_. Specifically, the ASLB admitted the Tribe's contentions alleging the lack of analysis of: mitigation measures (Contention 6), connected actions (Contention 9), and Endangered Species Act consultation (Contentions 14A/B). The ASLB refused to allow any hearing on the alleged failure to review the impacts associated with the disposal of radioactive waste (known as "11e2 byproduct material"). JA\_\_\_.

On January 29, 2014, NRC issued a notice of the availability of the Final SEIS for public comment. 79 Fed.Reg. 5468. Based on the FSEIS, on March 17, 2014, the Tribe submitted a request to admit new and amended contentions. JA\_\_\_. On April 28, 2014, the ASLB issued an Order (LPB-14-5, 79 NRC 377) allowing the previously admitted contentions to "migrate" from the DSEIS to the FSEIS. JA\_\_\_.

On April 8, 2014, despite the admitted contentions and prior to the administrative hearing, NRC Staff issued Powertech NRC License No. SUA-1600 (JA\_\_) based on a ROD released the same day. JA\_\_. Included in the ROD was a Programmatic Agreement (“PA”), which NRC Staff asserted was the culmination of its NHPA Section 106 Tribal Consultation process. JA\_\_. The PA purported to resolve all issues related to the core NHPA Section 106 Tribal Consultation requirements of identifying of cultural resources at the site, evaluating those resources for eligibility of those resources for the National Register of Historic Places, and all mitigation for impacts to any such resources at the proposed mine site. Id. Not a single Tribe signed on to the PA, and the PA was adopted over the strong objections of the Tribes, who asserted that it was wholly inadequate to satisfy NRC Staff’s NHPA Section 106 consultation obligations. JA\_\_.

On April 14, 2014, the Tribe submitted a Motion to Stay the Effectiveness of Powertech’s license. JA\_\_. On May 20, 2014, after conducting telephonic oral argument, the ASLB issued an Order denying a stay of the effectiveness of License No. SUA-1600, finding that the Tribe could not meet the high burden of showing immediate irreparable harm necessary to uphold a stay. JA\_\_.

In preparation for the evidentiary hearing scheduled to commence on August 19, 2014, all parties submitted statements of position outlining their legal and factual arguments regarding all admitted contentions. JA\_\_. On August 1,



2014, the ASLB denied the Tribe's motion to conduct any cross examination of Powertech's witnesses. JA\_\_.

On August 16, 2014, prior to the hearing, the Tribe filed a motion to compel production of certain identified documents, including borehole data referenced in a Powertech press release dated July 16, 2014 (JA\_\_) and Powertech's electronic mail message to the Licensing Board dated August 7, 2014. JA\_\_.

On August 19-21, 2014, the ASLB held an evidentiary hearing in Rapid City, South Dakota, taking testimony from each of the parties' expert witnesses. JA\_\_. At the conclusion of the hearing, the ASLB ruled from the bench that the withheld borehole log data should be disclosed by Powertech. JA\_\_. By December 9, 2014, the Tribe, Powertech, and NRC Staff had submitted all supplemental testimony and exhibits regarding the post-hearing data disclosures.

On January 9, 2015 and January 29, 2015, all parties submitted final merits briefs and responses. JA\_\_. These filings closed the administrative filings.

### **3. ASLB Ruling on the Merits and Petitions for Review**

On April 30, 2015, the ASLB issued its merits ruling (LBP-15-16, 81 NRC 618). JA\_\_. The ASLB found violations of NEPA in the failure to competently review the environmental impacts to Sioux cultural resources – largely because no competent survey had been conducted – and violations of the NHPA Section 106 government-to-government consultation requirements. Despite these violations of

federal law, and over the objections of the Tribe, the ASLB left the license in place and effective.

On May 26, 2015, all four parties to the administrative proceeding (NRC Staff, Tribe, Powertech, local citizens) filed NRC petitions for review. On December 23, 2016, the three sitting members of the NRC issued a final ruling on the petitions for review (CLI-16-20, slip.op.). JA\_\_\_. Notably, the Commission split in its decision, with Commissioner Baran dissenting on the legality of leaving the license in place given the NEPA and NHPA violations, and Commissioner Svinicki dissenting on the finding of any NEPA and NHPA violations.

**B. Background on NEPA Requirements**

NEPA is an action-forcing statute applicable to all federal agencies. Its sweeping commitment is to “prevent or eliminate damage to the environment and biosphere by focusing government and public attention on the environmental effects of proposed agency action.” *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989). The statute requires “that the agency will inform the public that it has indeed considered environmental concerns in its decision-making process.” *Baltimore Gas and Electric Company v. NRDC*, 462 U.S. 87, 97 (1983).

In a NEPA document, the government must disclose and take a “hard look” at the foreseeable environmental consequences of its decision. *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976).

Closely related to NEPA's "hard look" mandate, NEPA prohibits reliance upon conclusions or assumptions that are not supported by scientific or objective data. "Unsubstantiated determinations or claims lacking in specificity can be fatal for an [environmental study] .... Such documents must not only reflect the agency's thoughtful and probing reflection of the possible impacts associated with the proposed project, but also provide the reviewing court with the necessary factual specificity to conduct its review." *Committee to Preserve Boomer Lake Park v. Dept. of Transportation*, 4 F.3d 1543, 1553 (10<sup>th</sup> Cir. 1993).

NEPA's implementing regulations require agencies to "insure the professional integrity, including scientific integrity of the discussions and analysis...." 40 C.F.R. § 1502.24 (Methodology and Scientific Accuracy). Further, where data is not presented in the NEPA document, the agency must justify not requiring that data to be obtained. 40 C.F.R. § 1502.22.

The CEQ regulations require that: "NEPA procedures must ensure that environmental information is available to public officials and citizens **before** decisions are made and **before** actions are taken." 40 C.F.R. § 1500.1(b)(emphasis added). The statutory prohibition against taking agency action before NEPA compliance applies to NRC decisionmaking. 42 U.S.C. § 4332(2)(C) *cited by New York v. NRC*, 681 F.3d 471, 476 (D.C. Cir. 2012).

To meet these requirements “an agency must set forth a reasoned explanation for its decision and cannot simply assert that its decision will have an insignificant effect on the environment.” *Marble Mountain Audubon Society v. Rice*, 914 F.2d 179, 182 (9<sup>th</sup> Cir. 1990), *citing Jones v. Gordon*, 792 F.2d 821 (9<sup>th</sup> Cir. 1986).

A federal agency may not simply claim that it lacks sufficient information to assess the impacts of its actions. Rather, “[a] conclusory statement unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind not only fails to crystallize the issues, but affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.” *Seattle Audubon Society v. Moseley*, 798 F. Supp. 1473, 1479 (W.D. Wash. 1992), *aff’d* 998 F.2d (9<sup>th</sup> Cir. 1993).

NEPA requires that mitigation measures be reviewed in the NEPA process. “[O]mission of a reasonably complete discussion of possible mitigation measures would undermine the ‘action forcing’ function of NEPA. Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 353 (1989), *accord New York v. NRC*, 681 F.3d 471, 476 (D.C. Cir. 2012).

NEPA regulations require that an EIS: (1) “include appropriate mitigation measures not already included in the proposed action or alternatives,” 40 C.F.R. § 1502.14(f); and (2) “include discussions of: . . . Means to mitigate adverse environmental impacts (if not already covered under 1502.14(f)).” 40 C.F.R. § 1502.16(h).

NEPA requires that all relevant information necessary for an agency to demonstrate compliance with NEPA be included in an environmental impact statement, and not in additional documents outside of the public comment and review procedures applicable to that environmental impact statement. See, *Massachusetts v. Watt*, 716 F.2d 946, 951 (1<sup>st</sup> Cir. 1983) (“[U]nless a document has been publicly circulated and available for public comment, it does not satisfy NEPA’s EIS requirements.”); *Village of False Pass v. Watt*, 565 F. Supp. 1123, 1141 (D. Alaska 1983), *aff’d sub nom Village of False Pass v. Clark*, 735 F.2d 605 (9<sup>th</sup> Cir. 1984) (“The adequacy of the environmental impact statement itself is to be judged solely by the information contained in that document. Documents not incorporated in the environmental impact statement by reference or contained in a supplemental environmental impact statement cannot be used to bolster an inadequate discussion in the environmental impact statement.”); *Dubois v. U.S. Dept. of Agriculture*, 102F.3d1273, 1287 (1<sup>st</sup> Cir. 1996), *cert. denied sub nom. Loon Mountain Recreation Corp. v. Dubois*, 117S. Ct.2510 (1997)(“Even the

existence of supportive studies and memoranda contained in the administrative record but not incorporated in the EIS cannot ‘bring into compliance with NEPA an EIS that by itself is inadequate.’ . . . Because of the importance of NEPA's procedural and informational aspects, if the agency fails to properly circulate the required issues for review by interested parties, then the EIS is insufficient even if the agency's actual decision was informed and well-reasoned.”); *Grazing Fields Farm v. Goldschmidt*, 626 F.2d 1068, 1072 (1<sup>st</sup> Cir.1980) (same).

**C. Background on NHPA Standards**

The federal courts have addressed the strict mandates of the NHPA:

Under the NHPA, a federal agency must make a reasonable and good faith effort to identify historic properties, 36 C.F.R. § 800.4(b); determine whether identified properties are eligible for listing on the National Register based on criteria in 36 C.F.R. § 60.4; assess the effects of the undertaking on any eligible historic properties found, 36 C.F.R. §§ 800.4(c), 800.5, 800.9(a); determine whether the effect will be adverse, 36 C.F.R. §§ 800.5(c), 800.9(b); and avoid or mitigate any adverse effects, 36 C.F.R. §§ 800.8[c], 800.9(c). The [federal agency] must confer with the State Historic Preservation Officer (“SHPO”) and seek the approval of the Advisory Council on Historic Preservation (“Council”).

*Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 805 (9<sup>th</sup> Cir. 1999).

See also 36 C.F.R. § 800.8(c)(1)(v)(agency must “[d]evelop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA.”)

The Advisory Council on Historic Preservation (“ACHP”) determines the methods for compliance with the NHPA’s requirements. See *National Center for Preservation Law v. Landrieu*, 496 F. Supp. 716, 742 (D.S.C.), *aff’d per curiam*, 635 F.2d 324 (4<sup>th</sup> Cir. 1980). The ACHP’s regulations “govern the implementation of Section 106,” not only for the Council itself, but for all other federal agencies. Id.

NHPA § 106 requires federal agencies, prior to approving any undertaking,” such as this Project, to “take into account the effect of the undertaking on any district, site, building, structure or object that is included in or eligible for inclusion in the National Register.” 54 U.S.C. § 302909. Section 106 applies to properties already listed in the National Register, as well as those properties that may be eligible for listing. See *Pueblo of Sandia v. United States*, 50 F.3d 856, 859 (10<sup>th</sup> Cir. 1995).

If an undertaking is the type that “may affect” an eligible site, the agency must make a reasonable and good faith effort to seek information from consulting parties, other members of the public, and Native American tribes to identify historic properties. 36 C.F.R. § 800.4(d)(2). See also *Pueblo of Sandia*, 50 F.3d at 859-863 (agency failed to make reasonable and good faith effort to identify historic properties).

The NHPA also requires that federal agencies consult with any “Indian tribe ... that attaches religious and cultural significance” to the sites. 54 U.S.C. § 302706(b). Consultation must provide the tribe “a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking’s effects on such properties, and participate in the resolution of adverse effects.” 36 C.F.R. § 800.2(c)(2)(ii).

Apart from requiring that an affected tribe be involved in the identification and evaluation of historic properties, the NHPA requires that “[t]he agency official shall ensure that the section 106 process is initiated early in the undertaking’s planning, so that a broad range of alternatives may be considered during the planning process for the undertaking.” 36 C.F.R. § 800.1(c). The ACHP has published guidance specifically on this point, reiterating that consultation must begin at the earliest possible time in an agency’s consideration of an undertaking, framing such early engagement with the Tribe as an issue of respect for tribal sovereignty. ACHP, *Consultation with Indian Tribes in the Section 106 Review Process: A Handbook* (November 2008), at 3, 7, 12, and 29. JA\_\_.

Regarding respect for tribal sovereignty, the NHPA requires that consultation with Indian tribes “recognize the government-to-government



relationship between the Federal Government and Indian tribes.” 36 C.F.R. § 800.2(c)(2)(ii)(C). See also Presidential Executive Memorandum entitled “Government-to-Government Relations with Native American Tribal Governments” (April 29, 1994), 59 Fed.Reg. 22951, and Presidential Executive Order 13007, “Indian Sacred Sites” (May 24, 1996), 61 Fed.Reg. 26771. The federal courts echo this principle in mandating all federal agencies to fully implement the federal government’s trust responsibility. See *Nance v. EPA*, 645 F.2d 701, 711 (9<sup>th</sup> Cir. 1981) (“any Federal Government action is subject to the United States’ fiduciary responsibilities toward the Indian tribes”).

NRC Staff is not entitled to deference to an agency interpretation of an ambiguous statutory provision involving Indian affairs. In the usual circumstance, “[t]he governing canon of construction requires that ‘statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.’ This departure from the [normal deference to agencies] arises from the fact that the rule of liberally construing statutes to the benefit of the Indians arises not from the ordinary exegesis, but ‘from principles of equitable obligations and normative rules of behavior,’ applicable to the trust relationship between the United States and the Native American people.” *California Valley Miwok Tribe v. United States*, 515 F.3d 1262 (D.C. Cir. 2008) *quoting* *Albuquerque Indian Rights v. Lujan*, 930 F.2d 49, 59 (D.C. Cir. 1991); *Cobell v. Norton*, 240 F.3d 1081, 1101

(D.C. Cir. 2001)(quoting *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766, (1985)).

### **SUMMARY OF ARGUMENT**

The Commission violated NEPA and the NHPA in issuing an active and effective license to Powertech despite finding the FSEIS and ROD violate NEPA and the NHPA. Second, the Commission erred in refusing to allow a hearing on the Tribe's contention that the FSEIS failed to adequately analyze the storage, transportation, and disposal of radioactive wastes – and the FSEIS in fact failed to adequately analyze the same as required by NEPA, relying instead on a license condition simply requiring disposal to occur in compliance with applicable laws. Third, the Commission erred in finding the FSEIS adequately assessed the impacts and risks associated with thousands of historic abandoned bore holes and geologic faults in the project area – again substituting a mere license condition requiring the licensee to attempt to locate and seal the boreholes instead of the analysis required by NEPA. Fourth, the Commission violated NEPA and AEA regulations in failing to require the collection of admittedly necessary baseline water quality data, deferring that collection and analysis instead to a post-license and post-NEPA review. Fifth, the Commission violated NEPA by failing to require an adequate discussion of mitigation measures and their effectiveness in the FSEIS for impacts to cultural sites as well as the environment. Sixth, the Commission violated NEPA

in excusing the failure of NRC Staff to conduct a scoping process prior to the completion of the FSEIS, which resulted in the inability of the Tribe to influence the process as contemplated by NEPA. Lastly, the Commission's December 23, 2016 Order is a final action as contemplated by the Hobbs Act, and is properly subject to this Court's jurisdiction.

### **STANDING**

The Oglala Sioux Tribe is a federally-recognized Indian Tribe, located on the Pine Ridge Reservation. The Oglala Sioux Tribe is a body politic comprised of approximately 41,000 citizens, with territory of over 4,700 square miles in southwestern South Dakota. The Oglala Sioux Tribe is the freely and democratically-elected government of the Oglala Sioux people, with a governing body duly recognized by the Secretary of Interior. The Oglala Sioux Tribe is the successor in interest to the Oglala Band of the Teton Division of the Sioux Nation, and is a protectorate nation of the United States of America. The Oglala Band reorganized in 1936 as the "Oglala Sioux Tribe of the Pine Ridge Indian Reservation" under section 16 of the Indian Reorganization Act of June 18, 1934, ch. 576, 48 Stat. 987, 25 U.S.C. § 476, and enjoys all of the rights and privileges guaranteed under its existing treaties with the United States in accordance with 25 U.S.C. § 478b.

The Oglala Sioux Tribe has Article III standing in light of the risks the Dewey-Burdock Project poses to its members, as set forth in the Declaration of Trina Lone Hill, Oglala Sioux Tribal Historic Preservation Officer (filed with this Court March 24, 2017; Doc. #1667830 (Docketing Statement)) which testifies to the Tribe's interest in protecting its cultural and historical resources, along with its lands, natural resources, economic prosperity, and the health, safety, welfare of the tribal members as well as the public. A favorable decision from this Court will redress these injuries caused by the Project. *See Sierra Club & La. Envtl. Action Network v. EPA*, 755 F.3d 968, 973 (D.C. Cir. 2014) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

### **ARGUMENT**

#### **A. The Nuclear Regulatory Commission Cannot Leave a License in Place in the Face of NEPA and NHPA Violations**

The ASLB, as affirmed by the NRC, found that the FSEIS “has not adequately addressed the environmental effects of the Dewey-Burdock project on Native American cultural, religious, and historic resources, and the required meaningful consultation between the Oglala Sioux Tribe and the NRC Staff has not taken place.” LPB-15-16, 81 NRC 618, 657, *affirmed by* CLI-16-20 (slip.op.). Despite this finding of violations and a lack of compliance with both NEPA and the NHPA, the NRC nevertheless allowed the ROD and the license itself to stand. Granting a license despite the agency's admitted violation of NEPA and NHPA

finds no basis in law and was forcefully challenged in Commissioner Baran's dissent:

the agency did not have an adequate environmental analysis at the time it decided whether to issue the license. In fact, the deficiencies in the NEPA analysis remain unaddressed today, and therefore the Staff still cannot make an adequately informed decision on whether to issue the license. The Staff's licensing decision was based on (and continues to rest on) an inadequate environmental review. As a result, the Staff has not complied with NEPA.

CLI-16-20 (slip.op.) at 66 (Baran dissent at \*1). JA\_\_.

On judicial review, the NEPA violation is governed by the APA, which provides that the reviewing court shall "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). The D.C. Circuit recognizes this plain language and confirms that vacatur is the "standard remedy" for a NEPA violation. *Pub. Employees for Env'tl. Responsibility v. U.S. Fish & Wildlife Serv.*, 189 F. Supp. 3d 1, 2 (D.D.C. 2016) (quoting *Humane Soc'y of U.S. v. Johanns*, 520 F. Supp. 2d 8, 37 (D.D.C. 2007)). Here, the administrative adjudication confirmed NEPA and NHPA violations but left the license in place, a result that must be held unlawful and set aside. 5 U.S.C. § 706(2)(A). "[B]oth the Supreme Court and the D.C. Circuit Court have held that remand, along with vacatur, is the presumptively appropriate remedy for a violation of the APA." *Sierra Club v. Van Antwerp*, 719 F.Supp.2d 77, 78 (D.D.C. 2010) citing *Monsanto Co. v. Geerston Seed Farms*, 561 U.S. 139 (2010).

Allowing the agency to bypass its NEPA and NHPA violations is contrary to the statutory requirements that compliance precede and inform the agency action, which here, is the license to conduct operations and possess/dispose of 11e2 byproduct material. *Id.* Here, the Commission exercised review over this important issue, but declined to ensure that its programs maintain compliance with its NEPA/NHPA mandates before issuing a license to carry out processing and mining of uranium that pose grave threats to the environment and the Tribe's interests.

NHPA Section 106 specifically requires that the NRC “shall, ... **prior to the issuance of any license**, ... take into account the effect of the undertaking....” 54 U.S.C. § 306108(emphasis added). Similarly, “[u]nder NEPA, each federal agency must prepare an Environmental Impact Statement (‘EIS’) **before taking** a ‘major Federal action[] significantly affecting the quality of the human environment.’ 42 U.S.C. § 4332(2)(C).” *New York v. NRC*, 681 F.3d 471, 476 (D.C. Cir. 2012), *accord*, 40 C.F.R. § 1500.1(b)(“NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.”).

Given that the Commission confirmed the failure to comply with NEPA and the NHPA regarding consideration of impacts to cultural and historical resources of the Oglala Sioux Tribe, the proper remedy is to vacate the decision and remand

back to the agency for further proceedings necessary to achieve compliance. See *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012).

**B. Failure to Address Impacts Associated with Creation and Transport of Radioactive Waste**

The Commission upheld in summary fashion the ASLB's rejection of consideration of the Tribe's contention that NRC Staff failed to analyze the impacts of creation, storage, transport, and disposal of radioactive waste. CLI-16-20 (slip.op.) at 13-14. JA\_\_\_. The Tribe raised this issue three separate times, only to have the Board side-step the issue each time. Id. Under applicable regulations, the Board must admit a contention where an intervenor provides (a) "a specific statement of the issue of law or fact to be raised," (b) an explanation as to how "the issue raised . . . is within the scope of the proceeding," and (c) "sufficient information to show that a genuine dispute exists . . . ." 10 C.F.R. § 2.309(f)(1). The Commission upheld the ASLB's ruling that the Tribe failed to "substantively dispute the analysis of impacts" in the FSEIS. CLI-16-20 (slip.op.) at 13. However, the Commission failed to review or cite any of the Tribe's filings, which do provide a "substantive" dispute. As such, the Commission's ruling is without basis in, and contrary to, the record. See Tribe's contention pleadings. JA\_\_\_. One proper remedy would be a remand for the NRC to consider this issue. However, this Court should take up the issue, as it is a matter of law that does not require the development of a factual record.

The FSEIS designates the White Mesa Uranium Mill near the White Mesa Ute Community in Utah as the site for disposal of more than 300 cubic yards of radioactive 11e2 byproduct wastes generated annually by at the proposed Powertech facility and other ISL facilities in the region. FSEIS at 2-53. JA\_\_.

However, the White Mesa Mill is not licensed to receive or dispose of Powertech's radioactive wastes. The license does not authorize Powertech to dispose of solid 11e2 byproduct Material at White Mesa. No NRC NEPA document addresses the cumulative impact or alternatives to using the White Mesa Mill as the disposal facility for the radioactive wastes.

The FSEIS fails to provide a meaningful review of foreseeable impacts of the wastes by merely stating that permanent disposal will occur in conformance with applicable laws, but without analysis of the applicable criteria of regulations applicable to 11e2 byproduct material disposal. FSEIS at 2-53. JA\_\_. This failure to analyze the creation, storage, transport, and disposal of radioactive waste violates NEPA and implementing regulations. *New York v. NRC*, 681 F.3d 471, 476 (D.C. Cir. 2012), *accord*, 40 C.F.R. § 1500.1(b).

Instead, NRC must ensure that the impacts and alternatives of creation, storage, and disposal of radioactive wastes are fully analyzed and addressed. Permanent disposal of solid 11e2 byproduct material is a central feature of the modern Uranium Mill Tailings Radiation Control Act licensing regime under



which Powertech seeks to operate its ISL facility. 10 C.F.R. Part 40, Appendix A. Nowhere do NRC regulations or NEPA allow reliance on the mere assertion that 11e2 byproduct materials will be handled in accordance with applicable law without further analysis. The opposite is required by federal law: the FSEIS firmly identifies the White Mesa Mill as the repository for its waste, and the FSEIS must analyze all impacts and alternatives involved with disposing of wastes created at an ISL facility, including the permanent disposal of 11e2 byproduct materials generated at the facility. The FSEIS reveals that Powertech proposes to create and store 11e2 byproduct materials on site for an indefinite period, with no disposal license, and no analysis of the impacts or alternatives to shipment and disposal at White Mesa. FSEIS at 3-116, 4-237. JA\_\_.

The relevant regulations applicable to new uranium processing operations state in plain language:

***Every applicant for a license to possess and use source material in conjunction with uranium or thorium milling, or byproduct material at sites formerly associated with such milling, is required by the provisions of § 40.31(h) to include in a license application proposed specifications relating to milling operations and the disposition of tailings or wastes resulting from such milling activities.***

10 C.F.R. Part 40 Appendix A (emphasis added). This regulation and NEPA require NRC to ensure that the specific proposal include plans for disposition of tailings and wastes. However, the FSEIS confirms that the White Mesa mill lacks

a license from Utah to accept and dispose of the wastes created by the draft license or other NRC-licensed ISL facilities in the region. FSEIS at 3-116. JA\_\_.

Interstate transportation impacts across the Intermountain West are recognized, but are dismissed without specific analysis asserted on the naked assertion that impacts of shipping yellowcake to Tennessee in sealed containers poses the same risks as shipping 11e2 byproduct materials across the Intermountain West, for disposal at White Mesa. FSEIS at 4-22. JA\_\_. The FSEIS presents no information on the type of containers that would be required for the shipments to White Mesa and no corresponding information on the moisture content of the 11e2 byproduct materials or the anticipated decommissioning wastes. FSEIS at 4-22. JA\_\_.

Ongoing NRC problems with delaying waste disposal decisions until after wastes are created should confirm that NEPA analysis and UMTRCA licensing cannot reasonably wait until a later time to be determined after the waste-generated activity is licensed. See *New York v. NRC*, 681 F.3d 471, 483 (D.C. Cir. 2012)(rejecting NRC attempts to avoid NEPA analysis of permanent disposal options).

NEPA regulations specifically require the agency to review all direct, indirect, and cumulative impacts related to the activity under review. 40 C.F.R. §§1502.16, 1508.8, 1508.25(c). Direct effects are caused by the action and occur

at the same time and place as the proposed project. §1508.8(a). Indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. §1508.8(b). Types of impacts include “effects on natural resources and on the components, structures, and functioning of affected ecosystems,” as well as “aesthetic, historic, cultural, economic, social or health [effects].” Id. Cumulative effects are defined as:

[T]he impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. §1508.7.

Federal courts have rejected the argument that an EIS for a mining operation did not have to fully review the impacts from off-site ore processing and transportation. In *South Fork Band Council of W. Shoshone of Nev. v. Dep’t of the Interior*, 588 F.3d 718, 725 (9th Cir. 2009), the Ninth Circuit found that an EIS violated NEPA in reviewing and approving a mining plan because it failed to evaluate the environmental impacts of transporting and processing the ore at an off-site facility. “The air quality impacts associated with transport and off-site processing of the five million tons of refractory ore are prime examples of indirect effects that NEPA requires be considered.” Id.

In another decision considering a challenge to federal approval of mineral leasing and mining, the court required an agency to look at the impacts from the proposed mill that would process ore from mines/leases, despite the fact that the proposed mill would be on private lands and despite the fact that the mill was not directly associated with the mines/leases being proposed and was not included in the lease/mining proposals. *Colorado Environmental Coalition v. Office of Legacy Management*, 819 F.Supp.2d 1193, 1212 (D. Colo. 2011). Similarly, here, the agency's failure to analyze the impacts from the processing and transportation of the ore from the Dewey-Burdock site violates NEPA.

**C. The FSEIS Fails to Adequately Analyze the Groundwater Quality Impacts Associated with the Thousands of Abandoned Boreholes and Faults at the Site.**

The Commission upheld the Board's finding of a NEPA deficiency regarding hydrogeological information, but excused this violation based on a new license condition added to cure this deficiency. See CLI-16-20 (slip.op.)(Baran Dissent) at 66, FN2. Thus, instead of conducting the required NEPA analysis, the agency relies on a license condition requiring the applicant to submit adequate hydrogeologic data – but only **after** the NEPA process is completed, after a license is issued, and with no chance for any public review. See e.g., FSEIS at E-51 (“The commenter is correct in stating that wellfield hydrogeologic data packages will not be made available for public review. However, by license condition, all wellfield

data packages must be submitted to NRC for review prior to operating each wellfield (NRC, 2013b). . . . Text was revised in SEIS Section 2.1.1.1.2.3.4 to clarify NRC license conditions with respect to review and approval of wellfield data packages at the proposed Dewey-Burdock ISR Project.”). JA\_\_\_. This approach violates NEPA – the lack (and deferral of collection and review to a later date) of necessary data and analysis to ensure a credible and NEPA and NRC regulation-compliant review of impacts to groundwater.

This approach to collect data later also violates 10 C.F.R. Appendix A, Criteria 5G(2), which specifically requires:

The information gathered on boreholes must include both geologic and geophysical logs in **sufficient number and degree of sophistication to allow determining significant discontinuities, fractures, and channeled deposits of high hydraulic conductivity.**

10 C.F.R. Appendix A, Criteria 5G(2)(emphasis added).

This issue is addressed head-on by the Tribe’s expert witness, Dr. Moran, who provided expert testimony on the significant contradictory evidence in the application and the FSEIS, including numerous potential pathways for groundwater conductivity, including inter-fingering sediments, fractures and faults, breccia pipes and/or collapse structures, and the 4000 to 6000 unidentified exploration boreholes present at the mine site. Exhibit OST-001, at 18-22. JA\_\_\_. Regarding the poor condition of the historic boreholes, the Tribe’s expert Dr. LaGarry’s review demonstrates: 140 open, uncased holes; 16 previously cased,

redrilled open holes; 4 records of artesian water; 13 records of holes plugged with wooden fenceposts; 6 records of holes plugged with broken steel; 12 records of faults within or beside drilled holes; and 1 drawing of 2 faults and a sink hole within a drilled transect. Exhibit OST-029 (Written Supplemental Testimony of Dr. Hannan LaGarry) at 2. JA\_\_.

The live testimony during the administrative hearing also demonstrates that the FSEIS fails to demonstrate an ability to contain the mining fluid. Applicant witness Mr. Lawrence readily admitted that to ensure containment of the fluid, the operator would need for the Fuson Shale to be relatively impermeable. August 20, 2014 Transcript at p. 1047, lines 20-23. JA\_\_. However, as observed by Administrative Judge Barnett, “[i]nterpretations of both the 1979 and 2008 pumping test results were found to be consistent with a leaky confined aquifer model. ... Based on the results of the numerical model, the Applicant concluded that vertical leakage through the Fuson shale is caused by improperly installed wells or improperly abandoned boreholes. So it does appear in the FSEIS that it acknowledges that it is leaky, whether it is coming from boreholes or whatever else, it is leaky.” Id. at p. 1050, line 18 to p. 1051, line 5. JA\_\_. In response, NRC Staff witness Mr. Prikryl responded: “Yes, that’s correct.” Id. at p. 1051, line 8. Applicant witness Mr. Lawrence also agreed: “Yes, there were certainly conditions that demonstrated communication.” Id. at 1051, lines 15-16. JA\_\_.

Critically, however, Mr. Lawrence then admitted that the required additional analysis would occur “outside of the FSEIS.” Id. at p. 1052, lines 6-8. JA\_\_\_. This critical admission demonstrates that, although impermeability of the Fuson shale is critical to effective fluid migration, the Fuson shale is leaking, and all additional review of that significant problem was deferred until after the NEPA process.

Instead of conducting the scientific review necessary to determine the hydrogeology conditions of the area, the FSEIS simply proposes to allow the applicant to collect this information in the future, after NEPA is complete and after a license is issued, through a so-called Safety and Environmental Review Panel (SERP). FSEIS at 2-18. JA\_\_\_. Notably, this post-NEPA SERP review is not just a confirmation of information already in existence – rather:

The wellfield hydrogeologic data package will describe the wellfield, including (i) production and injection well patterns and location of monitor wells; (ii) documentation of wellfield geology (e.g., geologic cross sections and isopach maps of production zone sand and overlying and underlying confining units); (iii) pumping test results; (iv) sufficient information to demonstrate that perimeter production zone monitor wells adequately communicate with the production zone; and (v) data and statistical methods used to compute Commission-approved background water quality....

Id. JA\_\_\_.

Such a scheme violates the public disclosure and “hard look” impact review requirements of NEPA, which requires such basic information to be presented and analyzed in the FSEIS. The promised analysis will be conducted in the future, outside NEPA process, and cannot excuse an FSEIS that does not contain

admittedly necessary information. *South Fork Band Council v. Dept. of Interior*, 588 F.3d 718, 726 (9<sup>th</sup> Cir. 2009). The FSEIS provides no information even on where the mysterious leaking boreholes are, or why the applicant and NRC Staff could not have conducted available analyses or find and plug the boreholes, rerun the test and demonstrate the ability to retain confinement.

Upon further questioning by Administrative Judge Barnett, the applicant witness Mr. Demuth admitted that the applicant's test data did show a lack of sufficient confinement at least in portions of the project area "where we have a well which is completed in both zones and allows it to communicate." *Id.* at p. 1054, lines 11-13. JA\_\_\_. In that case, Mr. Demuth states, "there may be one or two unplugged exploration boreholes which are identified in the application. So in that area, the wellfield, any wellfield test is going to have to be examined very carefully." *Id.* at 1054, lines 12-17. JA\_\_\_. Thus, sufficient study has not been completed to demonstrate the ability to contain the mining fluids, but rather a later, post-NEPA, detailed scientific review will be necessary to "examine" this issue "very carefully." NEPA requires more. Where such serious questions exist as to such fundamental issues as the ability to contain mining fluids, those issues must be explored and resolved in the FSEIS.

Similarly, testimony given by Dr. LaGarry at the hearing demonstrated that the analysis in the FSEIS failed to account for faults and fractures in the geology at



the site which could cause similar leaky conditions as have been confirmed in the confining layers at the site. See August 20, 2014 Transcript at p. 1065 line 7 to p. 1067, line 10. JA\_\_\_. The TVA report also demonstrates faults and fractures are prevalent in the area. Exhibit OST-009 at 60. JA\_\_\_. See also, August 20, 2014 Transcript at p. 1074, line 4 to p. 1077, line 23 (JA\_\_\_)(Dr. LaGarry discussing the commonly overlooked faults and fractures in the area).

Together, the testimony, admissions, TVA report (Exhibit OST-009)(JA\_\_\_), USGS report (Exhibit NRC-081)(JA\_\_\_), and USGS-derived Gott map (Exhibit APP-015(f))(JA\_\_\_), all show faults, fractures, and collapsed breccia pipes in the immediate area of the proposed project. Yet, the FSEIS fails to take the requisite “hard look” by not including any actual physical surveys to confirm or deny the presence of these geological features – especially considering the applicant’s pump tests proving leaky confining layers.

#### **D. Failure to Adequately Analyze Water Quality Baseline**

In its Partial Initial Decision dated April 30, 2015, the ASLB ruled in favor of NRC Staff and Powertech that the FSEIS presents an adequate analysis of baseline water quality conditions at the site. JA\_\_\_. This determination was upheld by the Commission. CLI-16-20. This ruling constitutes an error of law in that the Board misapplied NEPA and Commission precedent in *Hydro Resources, Inc.*, CLI-06-1, 63 NRC 1, 6 (2006) by following, without detailed analysis, the

ruling of another ASLB panel in *Strata Energy, Inc.*, LBP-15-3, 80 NRC \_\_\_\_ (Jan. 23, 2015).

NEPA requires the agency to fully “describe the environment of the areas to be affected or created by the alternatives under consideration.” 40 C.F.R.

§1502.15. The establishment of the baseline conditions of the affected environment is a fundamental requirement of the NEPA process:

Establishing appropriate baseline conditions is critical to any NEPA analysis. “Without establishing the baseline conditions which exist ... before [a project] begins, there is simply no way to determine what effect the [project] will have on the environment and, consequently, no way to comply with NEPA.” *Half Moon Bay Fishermans’ Mktg. Ass’n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988).

*Great Basin Resource Watch v. BLM*, 844 F.3d 1095, 1101 (9<sup>th</sup> Cir. 2016)(EIS for mining project failed to obtain adequate baseline air quality data). “[W]ithout [baseline] data, an agency cannot carefully consider information about significant environment impacts. Thus, the agency fail[s] to consider an important aspect of the problem, resulting in an arbitrary and capricious decision.” *Northern Plains v. Surf. Transp. Brd.*, 668 F.3d 1067, 1085 (9<sup>th</sup> Cir. 2011).

Here, the ASLB failed to properly interpret NEPA’s requirement that adequate baseline data be provided and misapplied the *Hydro Resources, Inc.* and *Strata* results to render ineffective both 10 C.F.R. § 51.45(b) requiring a scientifically defensible analysis of baseline water quality, and 10 C.F.R. Part 40,

Appendix A, Criterion 5, requiring “complete” baseline data. The Board instead followed the NRC Staff and Powertech arguments that NEPA and the regulatory provisions can be effectively supplanted by the post-licensing establishment of “pre-operational” background quality associated with 10 C.F.R. Part 40, Appendix A, Criterion 7. See 81 NRC at 665-66.

The ASLB erred by endorsing the concept that baseline water quality can be established by “collection of groundwater quality data in a staggered manner” after the licensing process is complete and outside of the NEPA review. Id. at 665. In agreeing with the NRC Staff and Powertech, the Board also adopted the NRC Staff’s unsupportable legal position that “the EIS is sufficient as long as it adequately describes the process by which the monitoring data will be obtained” in the future. Id. at 661. While additional data gathering in the future under Criterion 7 may be allowable under the NRC regulations, it is only proper for purpose of “confirming” the already “complete” baseline data required to be included as part of the application and analyzed in the NEPA document as per Criterion 5. See Id. at 665, quoting *Hydro Resources, Inc.*, 63 NRC at 6. Establishing the baseline water quality after licensing violates NEPA and NRC regulations.

Lastly, the ASLB, as affirmed by the Commission, abused its discretion by ignoring the Tribe’s argument that NRC Staff’s reliance on NRC Regulatory Guide

4.14 is unsupportable in the context of ISR mining. See 81 NRC at 665-66. NRC Regulatory Guide 4.14 is an outdated document, created in 1980, and applicable by its own terms only to conventional uranium mills. See Exhibit NRC-074. JA\_\_.

NRC Staff applied the Guide to establish only a 2 kilometer boundary for collecting baseline water quality. The ASLB accepted this 2 kilometer limit despite unrebutted evidence in the record that the 2 kilometer radioactive plume “rule” is inapplicable to and unreliable in the context of ISL. 81 NRC at 664, *quoting* Exh. NRC-076 (recognizing that “uranium plumes...[e]xceed roughly 2km in length only in special cases e.g. where in situ leaching has been carried out.”).

The Board also conceded that despite unsupported assertions by NRC Staff witnesses that 2 kilometers is sufficient for ISL sites, it “was unable to find a specific mention of a 2 kilometer radius” in the NRC Staff exhibits. Id. at 664, n. 284. As such, the Board’s finding that NRC Staff properly relied on 35-year old, pre-UMTRCA, conventional milling guidance for setting 2 kilometer limits on baseline water quality data collection is not supported by the record.

Importantly, the ASLB expressly recognized the ambiguity and lack of clarity presented by the regulations and staff guidance with respect to these matters. Id. at 659. The Board also wrestled with the lack of clarity as to how the 10 C.F.R. Part 40, Appendix A Criteria is meant to apply to ISL operations. Id. at 637. Similarly, the Board noted with emphasis the fact that key terms such as

“baseline” and “background” are not defined with any precision in the 10 C.F.R. Part 40 regulations or Appendix A, nor in NRC Regulatory Guide 4.14. *Id.* at 659.

### **E. Failure to Adequately Review Mitigation Measures**

The review of NEPA compliance is limited to the NEPA document – here the FSEIS – which is the means to meet NEPA’s twin aims: 1) to satisfy the agency’s “the obligation to consider every significant aspect of the environmental impact of a proposed action [;and, 2) to] ensure that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process.” *Baltimore Gas & Elec. Co. v. Nat’l Res. Def. Coun., Inc.*, 462 U.S. 87, 97 (1983) (internal citations and quotation marks omitted). Where the Court finds that the mitigation analysis within the FSEIS is inadequate, the inquiry into the legal sufficiency of the NEPA document is complete. *Id.*

In order to inform the public and decisionmakers, NEPA mitigation regulations requires that NEPA documents: (1) “include appropriate mitigation measures not already included in the proposed action or alternatives,” 40 C.F.R. § 1502.14(f); and (2) “include discussions of: . . . Means to mitigate adverse environmental impacts (if not already covered under 1502.14(f)).” 40 C.F.R. § 1502.16(h). NEPA regulations define “mitigation” as a way to avoid, minimize, rectify, or compensate for the impact of a potentially harmful action. 40 C.F.R. §§ 1508.20(a)-(e). “[O]mission of a reasonably complete discussion of possible

mitigation measures would undermine the ‘action-forcing’ function of NEPA.

Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects.” *Robertson*, 490 U.S. 332, 353 (1989)(emphasis supplied).

The FSEIS does not provide a “reasonably complete discussion” of mitigation, but rather mere mentions and snippets related to mitigation. These “snippets do not constitute real analysis.” *Natural Resources Defense Council, Inc. v. Hodel*, 865 F.2d 288, 299 (D.C. Cir. 1988) (mere mention that protected species may be exposed to risks of oil spills did not provide lawful NEPA analysis).

Although perfection is not required, the incomplete and cursory mention of mitigation in the FSEIS does not meet the NEPA mandate. Among other things, “Congress authorizes and directs that, to the fullest extent possible [...] all agencies of the Federal Government shall [...] include in [...] a detailed statement by the responsible official on[...] any adverse environmental effects which cannot be avoided should the proposal be implemented.” 42 U.S.C. § 4332(2)(C)(ii) *cited by Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351-2 (1989).

Reliance on a future, as yet-unsubmitted, mitigation to prevent/mitigate adverse impacts to these resources also violates NRC duties under NEPA. NEPA, and NRC implementing regulations, require full review of these impacts as part of the public review process – something which has not occurred here.

As the D.C. Circuit explained, “whether the analysis is generic or site-by-site, it must be thorough and comprehensive.” [...] Thus, the NRC must produce a comprehensive and thorough NEPA analysis of all NEPA issues [...], including mitigation [...], and if the issue is not covered in a generic EIS it must be covered in the site-specific NEPA document.

*In re Calvert Cliffs 3 Nuclear Project, LLC*, (Calvert Cliffs Nuclear Power Plant, Unit 3), LBP-12-18, 76 NRC 127, 178 (2012) *discussing New York v. NRC*, 681 F.3d at 480-81. NRC precedent confirms the duty to examine mitigation of impacts (including with respect to “environmental justice” communities) in NEPA documents.

We expect NRC EISs, and presiding officers in adjudications, to inquire whether a proposed project has disparate impacts on “environmental justice” communities and whether and how those impacts may be mitigated.

*In Re Hydro Resources*, 53 N.R.C. 31, 64 (NRC 2001) (emphasis supplied) *citing Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 106-110 (1998)(remanding for consideration of mitigation measures).

As stated by NRC Staff Counsel during the hearing with respect to the ongoing creation of mitigation after the publication of the FSEIS, “I don't see how the Staff could have evaluated something that did not exist until after – until seven months after it finalized the EIS.” August 19, 2014 Transcript at p. 917, lines 20-23 (Mr. Clark). JA\_\_\_. Similarly, it is impossible for NRC Staff to have evaluated still-developing mitigation disclosed by the applicant after the hearing closed and never discussed or analyzed in the FSEIS. Exhibit OST-028 (10/7/2014 letter

confirming “programmatic agreement” resources “currently being developed” and estimating “treatment plan should be complete by or before the end of 2014.”)(JA\_\_); OST-027 (10/10/2014 U.S. FWS email requesting additional information on eagles and completion date of Avian Plan)(JA\_\_); OST-024 (Eagle take permit request)(JA\_\_); OST-023 (Draft Avian Plan)(JA\_\_); OST-022 (7/8/2014 BLM letter requesting information on mitigation plans)(JA\_\_).

Applicant counsel’s assertions confirm the deficiency in the FSEIS in arguing that “mitigation plans are permitted to be developed after license issuance per the Hydro Resources case....” August 21, 2014 Transcript at p. 1210, lines 2-3 (Mr. Pugsley). JA\_\_. Applicant’s counsel then listed the as-yet developed mitigation relied upon in the FSEIS, such as “post-license issuance pump tests and hydrologic wellfield packages” (*id.* at lines 9-10) and “continuing consultation [...] to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties.” *Id.* at p. 1210, line 25 to p.1211 line 3. JA\_\_.

Applicant witness Ms. McKee confirmed the lack of any of this necessary analysis in the FSEIS:

Reference to the plans are in numerous locations in the FSEIS. The plan is not finalized. It is a draft plan at this time. It is still being collaboratively developed with the state and federal agencies and it’s being tweaked. The format and content of the draft plan has been changed just over the course of the last few months. But the plan will be finalized and approved by the



South Dakota Department of Environment and Natural Resources and Game and Fish as a permit condition before any construction begins.

Id. at p.1253, lines 10-20. JA\_\_\_. Thus, instead of analysis in the FSEIS, the mitigation plans are to be developed later, outside of the NEPA process.

Compounding the vague description of mitigation, the FSEIS does not contain evaluation of the effectiveness of potential mitigation measures and therefore does not meet NRC's NEPA duties. *South Fork Band Council v. Dep't of Interior*, 588 F.3d 718, 726 (9<sup>th</sup> Cir. 2009); *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1381 (9<sup>th</sup> Cir. 1998) (disapproving an EIS that lacked such an assessment). NEPA requires that all agencies fully review whether the mitigation of mineral development activities will be effective. See *South Fork Band Council*, 588 F.3d 718, 728 (9<sup>th</sup> Cir. 2009).

The Supreme Court recognizes that the purpose of the mitigation analysis is to evaluate whether anticipated environmental impacts can be avoided, as is required by NEPA's plain language. *Robertson*, 490 U.S. at 351-52 (citing 42 U.S.C. § 4332(C)(ii)). A NEPA analysis of mitigation without evaluation of effectiveness is useless determining which impacts cannot be avoided. *South Fork Band Council*, 588 F.3d 718, 726 (9<sup>th</sup> Cir. 2009). For the same reason, the FSEIS must provide evidence of effectiveness, which in the present case would reveal reliance on untested mitigation measures that are not likely to eliminate impacts of the project:

[T]he Court holds that the Corps' reliance on mitigation measures that were unsupported by any evidence in the record cannot be given deference under NEPA. The Court remands to the Corps for further findings on cumulative impacts, impacts to ranchlands, and the efficacy of mitigation measures.

*Wyoming Outdoor Council v. U.S. Army Corps of Eng'rs*, 351 F. Supp. 2d 1232, 1238 (D. Wyo. 2005).

The need to document effectiveness in the FEIS is particularly appropriate where, as here, the effectiveness of mitigation is challenged in the comments. See Exhibit OST-011 (JA\_\_\_). “The comments submitted by [plaintiff] also call into question the efficacy of the mitigation measures and rely on several scientific studies. In the face of such concerns, it is difficult for this Court to see how the [agency's] reliance on mitigation is supported by substantial evidence in the record.” *Wyoming Outdoor Council*, 351 F. Supp. 2d at 1251, n. 8.

Instead of presenting well-developed mitigation plans and analyzing their effectiveness in eliminating impacts, the FSEIS simply lists and mentions mitigation measures, both in Chapter 6 and throughout the document, and asserts that they may be successful in eliminating or substantially reducing the Project's adverse impacts. The Court must review the FSEIS as the best evidence and may not simply “defer to the [agency's] bald assertions that mitigation will be successful.” Id. at 1252. Mitigation must be “supported by ...substantial evidence in the record.” Id. Without the necessary analysis in the environmental document, the FSEIS “was arbitrary and capricious in relying on mitigation to conclude that

there would be no significant impact to [environmental resources].” Id. Where the FSEIS does not contain scientific evidence or analysis to support those claims, the FSEIS is noncompliant with NEPA.

The FSEIS’ disclosure and analysis of impacts is untenable where the mitigation analysis consists largely, if not exclusively, of a list of plans to be developed later, outside the NEPA process. FSEIS at 6-1 through 6-19. JA\_\_.

For instance, regarding cultural resources impacts, the FSEIS concedes that consultation was not complete upon the conclusion of the NEPA process, including the lack a signed Programmatic Agreement, which is supposed to describe mitigation measures, and is subject to considerable controversy and objection by the Tribes. See FSEIS at 3-94 (“At this time, consultation on the evaluation and effects determination of historic properties is ongoing with all consulting parties, including interested tribes. The outcome of this consultation effort will be included in the programmatic agreement.”)(JA\_\_); “Mitigation measures identified in the licensee’s management plan or site specific Memorandum of Agreement (MOA) or Programmatic Agreement (PA) could reduce an adverse impact to a historic or cultural resource by reducing the adverse effect on a historic property. (NRC, 2009a).” FSEIS at 4-157. JA\_\_. See also, FSEIS at 1-16, 1-22, 5-47, 5-48 (JA\_\_); FEIS at E-190, E-197(all expressly relying on as-of-yet uncompleted PA, with as-of-yet undersigned and unreviewed future plans to mitigate

impacts)(JA\_\_\_). Compare, Exhibit NRC-0016 (letters from Oglala Sioux Tribe President Brewer and Standing Rock Sioux Tribe)(JA\_\_\_).

Instead of providing a reasonably complete NEPA discussion of mitigation and providing an analysis of the effectiveness of those mitigation measures, the FSEIS repeatedly refers to various commitments by the applicant to mitigate impacts by submitting plans in the future as a result of license conditions imposed by NRC Staff. These future plans encompass mitigation for a broad scope of impacts, including such basic elements as requiring the applicant to conduct hydrogeological characterization and aquifer pumping tests in each wellfield to examine the hydraulic integrity of the Fuson Shale, which separates the Chilson and Fall River aquifers; a commitment from the applicant to locating unknown boreholes or wells identified through aquifer pump testing, and committing to plugging and abandoning historical wells and exploration holes, holes drilled by the applicant and any wells that fail mechanical integrity tests. FSEIS at E-135 to 136. JA\_\_\_.

However, no discussion or analysis is provided to explain how an applicant might go about identifying abandoned holes or analyzing the effectiveness of long-after-the-fact plugging and abandonment, nor is any discussion given to what methodology or effectiveness criteria accompanies the pump tests or monitoring well systems. Similar gaps in the analysis exist in the failure in the FSEIS to

assess its plan to review groundwater restoration only for a period of 12 months. FSEIS at 2-40. JA\_\_\_. There is no support of basis for this time period, nor any discussion of the basis or effectiveness of such a time period. Further, no alternative time periods were analyzed.

Other proposed groundwater impact mitigation that lacks reasonably complete NEPA review and analysis as to effectiveness include a proposed, but unevaluated, monitoring well network for the Fall River aquifer in the Burdock area for those wellfields in which the Chilson aquifer is in the production zone in order to “address uncertainties in confining properties of the Fuson Shale” because leakage may occur through the Fuson Shale and “draw-down induced migration of radiological contaminants from abandoned open pit mines in the Burdock area.” FSEIS at E-135 to 136. JA\_\_\_. Despite having none of this information or plans developed, the FSEIS nevertheless concludes that the risks of this type of contamination are “expected to be small.” FSEIS at E-136. JA\_\_\_. Such unsubstantiated conclusions based on unsubmitted, unreviewed, and even undeveloped mitigation plans are not allowable under NEPA.

The same problems exist where the FSEIS lacks sufficient detail and simply requires plans to be submitted in the future to address other impacts, including air impacts (FSEIS at E-163 to 164)(JA\_\_\_), land disposal of radioactive waste (FSEIS at E-56)(JA\_\_\_), wildlife protections (FSEIS at E-158 to 159) (conceding that the

applicant is still in the process of “actively working on an avian monitoring and mitigation plan.”)(JA\_\_\_), and “BMPs” for storm water control (see August 21, 2014 Transcript at p. 1273, line 20 to p. 1278, line 24 for extensive discussion on the lack of any detail on “BMP’s” in the FSEIS)(JA\_\_\_). For the most part, these mitigation measures are simply plans to make plans at some point in the future – outside of the NEPA process and shielded from public review or comment. Such assurances, without any details as to the mitigation to be proposed and without evaluation of how effective these restorations efforts are expected to be, do not satisfy NEPA.

#### **F. Failure to Conduct Scoping**

In its July 22, 2013 Memorandum and Order (LBP-13-09, 78 NRC 37), the ASLB found inadmissible the Tribe’s proposed Contention 8 asserting NRC Staff failed to conduct NEPA’s mandatory scoping process. 78 NRC at 74-75. Specifically, the Board ruled that 10 C.F.R. § 51.26(d) applies and when a supplement to an EIS is prepared, “NRC staff need not conduct a scoping process,” and that scoping meetings on the Generic Environmental Impact Statement (GEIS) satisfied NEPA’s scoping requirement. Id. at 75.

The Commission overruled the Board’s ruling. CLI-16-20. JA\_\_\_. The Commission recognized that the exception contained in 10 C.F.R. § 51.26(d) does not apply to site-specific EISs, such as the one at issue here, simply because NRC

Staff labels it as a “supplement.” The Commission referenced the NRC Office of Inspector General (OIG)’s Audit Report titled “Audit of NRC’s Compliance With 10 CFR Part 51 Relative to Environmental Impact Statements” OIG-13-A-20 (August 20, 2013). JA\_\_\_. The OIG’s Audit Report concluded, with specific reference to the Dewey-Burdock project, that “NRC did not fully comply with the scoping regulations because of incorrect understanding of the regulations related to scoping for EISs that tier off of a generic EIS.” OIG-13-A-20 at 24. JA\_\_\_. The OIG Audit identifies the specific error NRC Staff commits as “refer[ring] to the tiered site-specific EIS as a ‘supplement’ to the generic EIS, leading to the belief that the exception in 10 C.F.R. 51.26(d) applies to tiered EISs.” Id. The Audit Report discusses this issue in depth, illuminating the substantial policy issues and the resulting limited scope of NEPA analysis. Id. at 17-26. JA\_\_\_.

Although it overruled the ASLB’s ruling, the Commission nevertheless found the lack of a scoping process harmless error. CLI-16-20 (slip.op.) at 20-21.

However, the Commission ignored the Tribe’s identification of the concrete consequences of having forsaken site-specific scoping, which denied the Tribe the opportunity, among other things, to provide input to help define the proposed action, identify significant issues to be analyzed in depth, provide input on alternatives that NRC Staff proposed to eliminate from study, and ensure that other environmental review and consultation requirements related to the proposed action

be prepared concurrently and integrated with the DSEIS. 10 C.F.R. § 51.29(a)(1)-(5). The failure to conduct scoping also denied the Tribe the benefit of 10 C.F.R. § 51.29(b), which requires that NRC Staff “will prepare a concise summary of the determinations and conclusions reached, including the significant issue identified, and will send a copy to each participant in the scoping process.” In this case, no such summary was prepared.

The illegally truncated scoping process deprived the Tribe of the opportunity to present its concerns at the proper time (“as soon as practicable”)(§ 51.29(a)) and to have significant issues identified and addressed when NRC Staff created the scope of the NEPA process.

The Commission’s disregard for these consequences is unsupportable under NEPA. While some public meetings were conducted during the NEPA process, none of them gave the Tribe (or the public) the required influence over the direction of the NEPA process at its inception.

**G. The NRC’s Ruling Was A Final Agency Action Subject to This Court’s Jurisdiction**

The Commission’s Final Order (CLI-16-20) affirmed a prior decision of the ASLB issued on April 30, 2015. 81 NRC 618. The Board found that the FEIS, ROD, and License were issued and the License made effective without compliance with federal law. The Commission’s Order finalized the issuance of the fully effective license to Powertech despite the admitted lack of compliance with both



NEPA as to the survey for, and analysis of impacts to, the Tribe's cultural resources present at the proposed mine site, and the NHPA as to the failure to conduct lawful government to government consultation on the impacts, and mitigation of impacts, for cultural resources.

The "Hobbs Act governs review of '[any] final order entered in any proceeding of the kind specified in subsection (a) [of section 2239].'" *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 733 (1985) *quoting* 42 U.S.C. § 2239(a)(1). "Subsection (a) proceedings are those 'for the granting, suspending, revoking, or amending of any license.'" *Id.* Review here is sought for orders filed in a "subsection(a)" proceeding, including a final order by staff granting a fully operative license, final orders by the ASLB refusing to hear contentions, a final order of the Commission that upheld the grant of the license and allowed the license to remain effective despite upholding the ASLB's adjudicated finding that NRC failed to meet its NEPA and NHPA duties.

In its previously filed Motion, the government focused on the fact that the Commission's December 2016 adjudicatory decision (CLI-16-20) directed NRC Staff to conduct further narrow investigations on a subset of issues raised by the Tribe's Petition. The Commission imposed no deadline to complete these investigations. According to the Commission, this means that no part of the Order is final and thus cannot be challenged, even though the order affirms the grant of

the license allowing uranium mining, processing, and radioactive waste disposal. The NRC position would effectively preclude Hobbs Act review of an effective license indefinitely, even where NRC adjudications twice confirmed the License was granted without compliance with applicable federal laws.

Without judicial review, NRC Staff is allowed an indefinite period to prepare *post hoc* rationalization to support an effective license the NRC confirmed was issued without NHPA/NEPA compliance, a result precluded by controlling authority cited by Commissioner Baran. CLI-16-20 (slip.op.) at 66, FN 1 (dissent) *citing Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). This Circuit has recently rejected *the create waste now, analyze disposal later* approach in reviewing the waste confidence rule. *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012)(holding the “Commission did not calculate the environmental effects of failing to secure permanent storage”).

This case is therefore properly filed under the Hobbs Act where NRC Staff granted a license and then the ASLB and Commission both issued orders finding the NRC Staff had violated NEPA and NHPA yet left the license to process uranium and create waste as remaining valid and effective. The Tribe maintains that because the December 2016 Order is final as to the grant of the license, it thereby gives rise to Hobbs Act review.

The Order affirmed the agency's issuance of the license to Powertech, which is immediately effective and allows Powertech to begin certain on-the-ground operations. As held by this Circuit, the issuance of a permit or license by the NRC authorizing operations qualifies as a "final order" subject to the review:

The court has jurisdiction over 'all final orders of the [NRC] made reviewable by Section 2239 of title 42.' 28 U.S.C. § 2342 (Hobbs Act). Section 2239(a) permits review of '[a]ny final order' entered by the NRC in any proceeding 'for the granting, suspending, revoking, or amending of any license.'

*City of Benton v. NRC*, 136 F.3d 824, 825 (D.C. Cir. 1998). This is despite that some additional proceedings remain before the agency. See *Blue Ridge Environmental Defense League v. NRC*, 668 F.3d 747, 757 (D.C. Cir. 2012) ("order issued during ongoing administrative proceedings is reviewable ... if, for example, it authorizes a plant operator to operate at full power pending further review by the Commission"), *citing Massachusetts v. NRC*, 924 F.2d 311, 322 (D.C. Cir. 1991).<sup>1</sup> Here, Hobbs Act finality of the NRC Order is confirmed where the Commission refused to suspend the granting of the license or otherwise limit authorizations in Powertech's license, despite the Tribe's specific appeal argument on this point

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<sup>1</sup> Although these cases deal with the "immediate effectiveness" of permits for nuclear reactors, the focus on whether NRC has authorized on-the-ground operations, which the Commission's Order does here, is the critical determination for finality.

(See Oglala Sioux Tribe Petition for Review at 18-19)(JA\_\_\_), and over Commissioner Baran's dissent.

Also, the fact that the Commission ordered staff to conduct additional administrative review related to a subset of issues raised by the Tribe – the acknowledged failure of NRC staff to comply with NEPA and the NHPA in issuing the license to Powertech – does not mean that the Commission's Order is not final and reviewable. Rather, the NRC Order resolved once and for all a number of issues and contentions raised by the Tribe. No further administrative review will occur on these issues.

Moreover, the NRC has finalized its environmental impact statement in this case and “since the final EIS already has been published, [judicial] review will not disrupt the process of adjudication.” *Env'tl. Law & Policy Ctr. v. United States NRC*, 470 F.3d 676, 681 (7<sup>th</sup> Cir. 2006). “Consequently, the order is final and appealable under 28 U.S.C. § 2342.” *Id.*

Thus, the NRC Order satisfies the Supreme Court's two-part test for “final agency action” under the APA and the Hobbs Act. “First, the action must mark the consummation of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 177-178 (1997).

In *Army Corps of Engineers v. Hawkes*, 136 S.Ct. 1807 (2016), the Court held the finality test is met when an agency determines the rights and obligations of property owners under the Clean Water Act despite that the final permit, or permit denial, had yet to be issued. The CWA determination consummated the decisionmaking process because the agency conducted “extensive factfinding” and “ruled definitively” that the property had the “physical and hydrological characteristics” of jurisdictional waters and thus was subject to regulation under the CWA. *Id.* at 1813. The Court additionally held that, despite the fact that the final permit had yet to be issued and further administrative proceedings would occur, the agency’s determination that the property was subject to the CWA “gives rise to ‘direct and appreciable legal consequences,’ thereby satisfying the second prong of *Bennett*.” *Id.* at 1814.

The finality of the NRC Order in this case is even more pronounced than in *Bennett* and *Hawkes*. The Commission made detailed and specific factual and legal findings regarding the Tribe’s contentions, rejecting all but two, and affirmed as a final decision of the Commission the issuance of a license to Powertech that remains in full force and effect.

Although some limited NRC staff work remains, there is no question that the Commission’s Order marks the end of the administrative process for a number of issues. “Normally in an adjudication a final order is one that disposes of all issues

as to all parties.” *NRDC v. NRC*, 680 F.2d 810, 815 (D.C. Cir. 1982). Yet that is not the case when a license has been issued. “[A] final order in a licensing proceeding under (42 U.S.C.) § 2239(a) would be an order granting or denying a license.” *Id.*

Importantly, a fundamental legal contention by the Tribe – that the agency cannot issue a license when it admits that the Final EIS issued as support for the license decision violates NEPA and the NHPA – is also final and will not be subject to any further Commission ruling.<sup>2</sup> There is no question that the Commission’s final ruling on this critical issue, and the resulting affirmance of the issuance of the license “gives rise to direct and appreciable legal consequences” to both Powertech and the Tribe, *Hawkes*, 136 S.Ct. at 1814, as it authorizes Powertech to commence on-the-ground operations – to the detriment of the Tribe’s interests in, and uses of, the affected lands.

### **CONCLUSION**

Based on the foregoing, the Oglala Sioux Tribe respectfully requests the Court grant this Petition for Review, vacate the Final SEIS, Record of Decision,

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<sup>2</sup> The fact agency staff was ordered to conduct further reviews to support issuance of the license does not change this issue, as the Commission’s decision to validate the license, despite an inadequate and illegal EIS, will not be revisited by the Commission.

and License for Powertech's Dewey-Burdock Project, and remand this matter to the Commission to comply with its statutory duties.

Respectfully submitted,

/s/ Jeffrey C. Parsons

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Filed this 27<sup>th</sup> day of June, 2017.

**CERTIFICATE OF COMPLIANCE PURSUANT TO FED. R. APP. P.**  
**32(a)(7)(C)**

I hereby certify that the foregoing Initial Opening Brief for Petitioner Oglala Sioux Tribe contains 12,996 words excluding the parts of the brief exempted by the Federal Appellate and Circuit Rules.

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**CERTIFICATE OF SERVICE**

I, Jeffrey C. Parsons, hereby certify that the foregoing Initial Opening Brief for Petitioner Oglala Sioux Tribe and accompanying Addendum was served on all counsel of record in case number 17-1059 through the electronic filing system (CM/ECF) of the U.S. Court of Appeals for the District of Columbia Circuit.

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**No. 17-1059**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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OGLALA SIOUX TRIBE,

Petitioner,

v.

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

Respondents.

---

PETITION FOR REVIEW OF FINAL ORDER OF THE UNITED STATES  
NUCLEAR REGULATORY COMMISSION

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**INITIAL OPENING BRIEF OF PETITIONER  
OGLALA SIOUX TRIBE  
ADDENDUM**

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Cornell Law School

U.S. Code › Title 28 › Part VI › Chapter 158 › § 2342

## 28 U.S. Code § 2342 - Jurisdiction of court of appeals

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has 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 Communication Commission made reviewable by section 402(a) of title 47;

(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 Commission 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.

Jurisdiction is invoked by filing a petition as provided by section 2344 of this title.

(Added Pub. L. 89–554, § 4(e), Sept. 6, 1966, 80 Stat. 622; amended Pub. L. 93–584, § 4, Jan. 2, 1975, 88 Stat. 1917; Pub. L. 95–454, title II, § 206, Oct. 13, 1978, 92 Stat. 1144; Pub. L. 96–454, § 8(b)(2), Oct. 15, 1980, 94 Stat. 2021; Pub. L. 97–164, title I, § 137, Apr. 2, 1982, 96 Stat. 41; Pub. L. 98–554, title II, § 227(a)(4), Oct. 30, 1984, 98 Stat. 2852; Pub. L. 99–336, § 5(a), June 19, 1986, 100 Stat. 638; Pub. L. 100–430, § 11(a), Sept. 13, 1988, 102 Stat. 1635; Pub. L. 102–365, § 5(c)(2), Sept. 3, 1992, 106 Stat. 975; Pub. L. 103–272, § 5(h), July 5, 1994, 108 Stat. 1375; Pub. L. 104–88, title III, § 305(d)(5)–(8), Dec. 29, 1995, 109 Stat. 945; Pub. L. 104–287, § 6(f)(2), Oct. 11, 1996, 110 Stat. 3399; Pub. L. 109–59, title IV, § 4125(a), Aug. 10, 2005, 119 Stat. 1738; Pub. L. 109–304, § 17(f)(3), Oct. 6, 2006, 120 Stat. 1708.)

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## ATOMIC ENERGY ACT OF 1954<sup>1</sup>

[As Amended Through P.L. 114–92, Enacted November 25, 2015]

An Act for the development and control of atomic energy.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### ATOMIC ENERGY ACT OF 1954

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<sup>1</sup>This Act consists of the Act of August 1, 1946, ch. 724, as amended by the Act of Aug. 30, 1954, ch. 1073 (68 stat. 921) and by subsequent amendments. The Act appears generally in the United States Code at 42 U.S.C. 2011 et seq. Bracketed notes are used at the end of each section for the convenience of the reader to indicate the United States Code citation.

<sup>2</sup>Bracketed material does not appear in the table of contents of the Atomic Energy Act of 1954, but has been included for the convenience of the reader. The items relating to repealed sections 21, 22, 26, 27, 52, and 201 through 207 and chapters 22 through 26 were not stricken by the laws that repealed such sections or chapters, but the items have been presented here in a different form for the convenience of the reader.

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<sup>3</sup>The bracketed material is in the section heading as amended by section 10 of P.L. 87-206 (75 Stat. 477). There was no conforming amendment made to the table of sections.



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<sup>4</sup>Section 3173(a) of Public Law 107-314 (116 Stat. 2743) inserts after section 234B a new section 234C. There was no conforming amendment made to add a new item for this section to the table of sections.

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## TITLE I—ATOMIC ENERGY

## CHAPTER 1. DECLARATION, FINDINGS, AND PURPOSE

SECTION 1. 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 that—

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.

[42 U.S.C. 2011]

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

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

[b. Repealed by Pub. L. 88-489, § 1, 78 Stat. 602, Aug. 26, 1964.]

c. 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

<sup>5</sup> Section 3116(a)(1) of Public Law 104-134 (110 Stat. 1321-349) repealed chapters 22 through 26.

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**Sec. 3****ATOMIC ENERGY ACT OF 1954****6**

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.

f. The necessity for protection against possible interstate damage occurring from the operation of facilities for the production or utilization of source or special nuclear material places the operation of those facilities in interstate commerce for the purposes of this Act.

g. Funds of the United States may be provided for the development and use of atomic energy under conditions which will provide for the common defense and security and promote the general welfare.

【h. Repealed by Pub. L. 88-489, § 2, 78 Stat. 602, Aug. 26, 1964.】

i. In order to protect the public and to encourage the development of the atomic energy industry, in the interest of the general welfare and of the common defense and security, the United States may make funds available for a portion of the damages suffered by the public from nuclear incidents, and may limit the liability of those persons liable for such losses.

【42 U.S.C. 2012】

SEC. 3. PURPOSE.—It is the purpose of this Act to effectuate the policies set forth above by providing for—

a. a program of conducting, assisting, and fostering research and development in order to encourage maximum scientific and industrial progress;

b. a program for the dissemination of unclassified scientific and technical information and for the control, dissemination, and declassification of Restricted Data, subject to appropriate safeguards, so as to encourage scientific and industrial progress;

c. a program for Government control of the possession, use, and production of atomic energy and special nuclear material whether owned by the Government or others, so directed as to make the maximum contribution to the common defense and security and the national welfare, and to provide continued assurance of the Government's ability to enter into and enforce agreements with nations or groups of nations for the control of special nuclear materials and atomic weapons;

d. a program to encourage widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security and with the health and safety of the public;

e. a program of international cooperation to promote the common defense and security and to make available to cooperating nations the benefits of peaceful applications of atomic energy as widely as expanding technology and considerations of the common defense and security will permit; and

December 21, 2015

As Amended Through P.L. 114-92, Enacted November 25, 2015

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## ATOMIC ENERGY ACT OF 1954

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f. a program of administration which will be consistent with the foregoing policies and programs, with international arrangements, and with agreements for cooperation, which will enable the Congress to be currently informed so as to take further legislative action as may be appropriate.

[42 U.S.C. 2013]

## CHAPTER 2. DEFINITIONS

SEC. 11. DEFINITION.—The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this Act:

a. The term “agency of the United States” means the executive branch of the United States, or any Government agency, or the legislative branch of the United States, or any agency, committee, commission, office, or other establishment in the legislative branch, or the judicial branch of the United States, or any office, agency, committee, commission, or other establishment in the judicial branch.

b. The term “agreement for cooperation” means any agreement with another nation or regional defense organization authorized or permitted by sections 54, 57, 64, 82, 91c., 103, 104, or 144, and made pursuant to section 123.

c. The term “atomic energy” means all forms of energy released in the course of nuclear fission or nuclear transformation.

d. The term “atomic weapon” means any device utilizing atomic energy, exclusive of the means for transporting or propelling the device (where such means is a separable and divisible part of the device), the principal purpose of which is for use as, or for development of, a weapon, a weapon prototype, or a weapon test device.

e. The term “byproduct material” means—

(1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content;

(3)(A) any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after the date of enactment of this paragraph for use for a commercial, medical, or research activity; or

(B) any material that—

(i) has been made radioactive by use of a particle accelerator; and

(ii) is produced, extracted, or converted after extraction, before, on, or after the date of enactment of this paragraph for use for a commercial, medical, or research activity; and

(4) any discrete source of naturally occurring radioactive material, other than source material, that—

(A) the Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and

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the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(B) before, on, or after the date of enactment of this paragraph is extracted or converted after extraction for use in a commercial, medical, or research activity.

f. The term “Commission” means the Atomic Energy Commission.<sup>6</sup>

g. The term “common defense and security” means the common defense and security of the United States.

h. The term “defense information” means any information in any category determined by any Government agency authorized to classify information, as being information respecting, relating to, or affecting the national defense.

i. The term “design” means (1) specifications, plans, drawings, blueprints, and other items of like nature; (2) the information contained therein; or (3) the research and development data pertinent to the information contained therein.

j. The term “extraordinary nuclear occurrence” means any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement in amounts offsite, or causing radiation levels offsite, which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, determines to be substantial, and which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, determines has resulted or will probably result in substantial damages to persons offsite or property offsite. Any determination by the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, that such an event has, or has not, occurred shall be final and conclusive, and no other official or any court shall have power or jurisdiction to review any such determination. The Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, shall establish criteria in writing setting forth the basis upon which such determination shall be made. As used in this subsection, “offsite” means away from “the location” or the “contract location” as defined in the applicable Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, indemnity agreement, entered into pursuant to section 170.

k. The term “financial protection” means the ability to respond in damages for public liability and to meet the costs of investigating and defending claims and settling suits for such damages.

l. The term “Government agency” means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division,

<sup>6</sup>The Atomic Energy Commission was abolished and all functions were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 104 and 201 of the Energy Reorganization Act of 1974, Pub. L. 93-438. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 301(a) and 703 of the Department of Energy Organization Act, Pub. L. 95-91.

For transfer of certain functions from the Nuclear Regulatory Commission to the Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585.

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service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

m. The term “indemnitor” means (1) any insurer with respect to his obligations under a policy of insurance furnished as proof of financial protection; (2) any licensee, contractor or other person who is obligated under any other form of financial protection, with respect to such obligations; and (3) the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, with respect to any obligation undertaken by it in an indemnity agreement entered into pursuant to section 170.

n. The term “international arrangement” means any international agreement hereafter approved by the Congress or any treaty during the time such agreement or treaty is in full force and effect, but does not include any agreement for cooperation.

o. The term “Energy Committees” means the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives.

p. The term “licensed activity” means an activity licensed pursuant to this Act and covered by the provisions of section 170 a.

q. The term “nuclear incident” means any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: *Provided, however,* That as the term is used in section 170 l., it shall include any such occurrence outside the United States: *And provided further,* That as the term is used in section 170 d., it shall include any such occurrence outside the United States if such occurrence involves source, special nuclear, or byproduct material owned by, and used by or under contract with, the United States: *And provided further,* That as the term is used in section 170 c., it shall include any such occurrence outside both the United States and any other nation if such occurrence arises out of or results from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material licensed pursuant to chapters 6, 7, 8, and 10 of this Act, which is used on connection with the operation of a licensed stationary production or utilization facility or which moves outside the territorial limits of the United States in transit from one person licensed by the Nuclear Regulatory Commission to another person licensed by the Nuclear Regulatory Commission.

r. The term “operator” means any individual who manipulates the controls of a utilization or production facility.

s. The term “person” means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission, any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

t. The term “person indemnified” means (1) with respect to a nuclear incident occurring within the United States or outside the United States as the term is used in section 170 c., and with re-

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spect to any nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship Savannah, the person with whom an indemnity agreement is executed or who is required to maintain financial protection, and any other person who may be liable for public liability or (2) with respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Secretary of Energy or any project to which indemnification under the provisions of section 170 d., has been extended or under any subcontract, purchase order, or other agreement, of any tier, under any such contract or project.

u. The term “produce,” when used in relation to special nuclear material, means (1) to manufacture, make, produce, or refine special nuclear material; (2) to separate special nuclear material from other substances in which such material may be contained; or (3) to make or to produce new special nuclear material.

v. The term “production facility” means (1) any equipment or device determined by rule of the Commission to be capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission. Except with respect to the export of a uranium enrichment production facility,<sup>7</sup> such term as used in chapters 10 and 16 shall not include any equipment or device (or important component part especially designed for such equipment or device) capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

w. The term “public liability” means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or a precautionary evacuation), except: (i) claims under State or Federal workmen’s compensation acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs; (ii) claims arising out of an act of war; and (iii) whenever used in subsections a., c., and k. of section 170, claims for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the licensed activity where the nuclear incident occurs. “Public liability” also includes damage to property of persons indemnified: *Provided*, That such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.

<sup>7</sup> Section 3116(b) of Public Law 104–134 (110 Stat. 1321–349) amended this section by striking out “or the construction and operation of a uranium enrichment facility using Atomic Vapor Laser Isotope Separation technology”. It should have struck out “or the construction and operation of a uranium enrichment production facility using Atomic Vapor Laser Isotope Separation technology”. The word “production” was omitted in the original amendment. This amendment was executed to the probable intent of the Congress.

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x. The term “research and development” means (1) theoretical analysis, exploration, or experimentation; or (2) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

y. The term “Restricted Data” means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142.

z. The term “source material” means (1) uranium, thorium, or any other material which is determined by the Commission pursuant to the provisions of section 61 to be source material; or (2) ores containing one or more of the foregoing materials, in such concentration as the Commission may by regulation determine from time to time.

aa. The term “special nuclear material” means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51, determines to be special nuclear material, but does not include source material; or (2) any material artificially<sup>8</sup> enriched by any of the foregoing, but does not include source material.

bb. The term “United States” when used in a geographical sense includes all Territories and possessions of the United States, the Canal Zone and Puerto Rico.

cc. The term “utilization facility” means (1) any equipment or device, except an atomic weapon, determined by rule of the Commission to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any important component part especially designed for such equipment or device as determined by the Commission.

dd. The terms “high-level radioactive waste” and “spent nuclear fuel” have the meanings given such terms in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

ee. The term “transuranic waste” means material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and that are in concentrations greater than 10 nanocuries per gram, or in such other concentrations as the Nuclear Regulatory Commission may prescribe to protect the public health and safety.

ff. The term “nuclear waste activities”, as used in section 170, means activities subject to an agreement of indemnification under subsection d. of such section, that the Secretary of Energy is authorized to undertake, under this Act or any other law, involving the storage, handling, transportation, treatment, or disposal of, or

<sup>8</sup> So in law. Probably should be “artificially”.



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research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, including (but not limited to) activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96–164 (93 Stat. 1265).

gg. The term “precautionary evacuation” means an evacuation of the public within a specified area near a nuclear facility, or the transportation route in the case of an accident involving transportation of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste to or from a production or utilization facility, if the evacuation is—

(1) the result of any event that is not classified as a nuclear incident but that poses imminent danger of bodily injury or property damage from the radiological properties of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste, and causes an evacuation; and

(2) initiated by an official of a State or a political subdivision of a State, who is authorized by State law to initiate such an evacuation and who reasonably determined that such an evacuation was necessary to protect the public health and safety.

hh. The term “public liability action”, as used in section 170, means any suit asserting public liability. A public liability action shall be deemed to be an action arising under section 170, and the substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section.

jj.<sup>9</sup> LEGAL COSTS.—As used in section 170, the term “legal costs” means the costs incurred by a plaintiff or a defendant in initiating, prosecuting, investigating, settling, or defending claims or suits for damage arising under such section.

[42 U.S.C. 2014]

**CHAPTER 3. ORGANIZATION**

【Sec. 21. Atomic Energy Commission.—Repealed by Pub. L. 93–438, § 104(a), 88 Stat. 1237, Oct. 11, 1974.】

[42 U.S.C. 2031]

【Sec. 22. Members.—Repealed by Pub. L. 93–438, § 104(a), 88 Stat. 1237, Oct. 11, 1974.】

[42 U.S.C. 2032]

SEC. 23. OFFICE.—The principal office of the Commission shall be in or near the District of Columbia, but the Commission or any duly authorized representative may exercise any or all of its powers in any place; however, the Commission shall maintain an office for the service of process and papers within the District of Columbia.

[42 U.S.C. 2033]

<sup>9</sup>No subsection ii. in original.

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SEC. 24. GENERAL MANAGER, DEPUTY AND ASSISTANT GENERAL MANAGERS.—There is hereby established with<sup>10</sup> the Commission—

a. a General Manager, who shall be the chief executive officer of the Commission, and who shall discharge such of the administrative and executive functions of the Commission as the Commission may direct. The General Manager shall be appointed by the Commission, shall serve at the pleasure of the Commission, and shall be removable by the Commission.

b. a Deputy General Manager, who shall act in the stead of the General Manager during his absence when so directed by the General Manager, and who shall perform such other administrative and executive functions as the General Manager shall direct. The Deputy General Manager shall be appointed by the General Manager with the approval of the Commission, shall serve at the pleasure of the General Manager, and shall be removable by the General Manager.

c. Assistant General Managers, or their equivalents (not to exceed a total of three positions), who shall perform such administrative and executive functions as the General Manager shall direct. They shall be appointed by the General Manager with the approval of the Commission, shall serve at the pleasure of the General Manager, and shall be removable by the General Manager.

[42 U.S.C. 2034]

SEC. 25. DIVISIONS, OFFICES, AND POSITIONS.—There is hereby established within the Commission—

a. a Division of Military Application and such other program divisions (not to exceed ten in number) as the Commission may determine to be necessary to the discharge of its responsibilities, including a division or divisions the primary responsibilities of which include the development and application of civilian uses of atomic energy. The Division of Military Application shall be under the direction of an Assistant General Manager for Military Application, who shall be appointed by the Commission and shall be an active commissioned officer of the Armed Forces serving in general or flag officer rank or grade, as appropriate. Each other program division shall be under the direction of a Director who shall be appointed by the Commission. The Commission shall require each such division to exercise such of the Commission's administrative and executive powers as the Commission may determine;

b. an Office of the General Counsel under the direction of the General Counsel who shall be appointed by the Commission; and

c. an Inspection Division under the direction of a Director who shall be appointed by the Commission. The Inspection Division shall be responsible for gathering information to show whether or not the contractors, licensees, and officers and employees of the Commission are complying with the provisions of this Act (except those provisions for which the Federal Bu-

<sup>10</sup>So in law. Probably should be "within".

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reau of Investigation is responsible) and the appropriate rules and regulations of the Commission;

d. such other executive management positions (not to exceed six in number) as the Commission may determine to be necessary to the discharge of its responsibilities. Such positions shall be established by the General Manager with the approval of the Commission. They shall be appointed by the General Manager with the approval of the Commission, shall serve at the pleasure of the General Manager, and shall be removable by the General Manager.

[42 U.S.C. 2035]

[SEC. 26. GENERAL ADVISORY COMMITTEE.—Repealed by Pub. L. 95–91, § 709(c)(1), 91 Stat. 608, Aug. 4, 1977.]

[42 U.S.C. 2036]

[SEC. 27. MILITARY LIAISON COMMITTEE.—Repealed by Pub. L. 99–691, § 3137(c), 100 Stat. 4066, Nov. 14, 1986.]

[42 U.S.C. 2037]

SEC. 28. APPOINTMENT OF ARMY, NAVY, OR AIR FORCE OFFICERS.—Notwithstanding the provisions of any other law, the officer of the Army, Navy, or Air Force serving as Assistant General Manager for Military Application shall serve without prejudice to his commissioned status as such officer. Any such officer serving as Assistant General Manager for Military Application shall receive in addition to his pay and allowances, including special and incentive pays, for which pay and allowances the Commission shall reimburse his service, an amount equal to the difference between such pay and allowances, including special and incentive pays, and the compensation established for this position. Notwithstanding the provisions of any other law, any active or retired officer of the Army, Navy, or Air Force may serve as Chairman of the Military Liaison Committee without prejudice to his active or retired status as such officer. Any such active officer serving as Chairman of the Military Liaison Committee shall receive, in addition to his pay and allowances, including special and incentive pays, an amount equal to the difference between such pay and allowances, including special and incentive pays, and the compensation fixed for such Chairman. Any such retired officer serving as Chairman of the Military Liaison Committee shall receive the compensation fixed for such Chairman and his retired pay<sup>11</sup>.

[42 U.S.C. 2038]

SEC. 29. ADVISORY COMMITTEE ON REACTOR SAFEGUARDS.—There is hereby established an Advisory Committee on Reactor Safeguards consisting of a maximum of fifteen members appointed by the Commission for terms of four years each. The Committee shall review safety studies and facility license applications referred

<sup>11</sup>Section 201 of the Dual Compensation Act was codified as section 5532 of title 5, United States Code, by Public Law 89–554 (80 Stat. 378).

Section 7(b) of Public Law 89–554 (80 Stat. 631) provides as follows:

“(b) A reference to a law replaced by sections 1–6 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.”

Section 5532 was subsequently repealed by section 651(a)(1) of Public Law 106–65 (113 Stat. 664).

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to it and shall make reports thereon, shall advise the Commission with regard to the hazards of proposed or existing reactor facilities and the adequacy of proposed reactor safety standards, and shall perform such other duties as the Commission may request. One member shall be designated by the Committee as its Chairman. The members of the Committee shall receive a per diem compensation for each day spent in meetings or conferences, or other work of the Committee, and all members shall receive their necessary traveling or other expenses while engaged in the work of the Committee. The provisions of section 163 shall be applicable to the Committee.

[42 U.S.C. 2039]

## CHAPTER 4. RESEARCH

## SEC. 31. RESEARCH ASSISTANCE.—

a. The Commission is directed to exercise its powers in such manner as to insure the continued conduct of research and development and training activities in the fields specified below, by private or public institutions or persons, and to assist in the acquisition of an ever-expanding fund of theoretical and practical knowledge in such fields. To this end the Commission is authorized and directed to make arrangements (including contracts, agreements, and loans) for the conduct of research and development activities relating to—

- (1) nuclear processes;
- (2) the theory and production of atomic energy, including processes, materials, and devices related to such production;
- (3) utilization of special nuclear material and radioactive material for medical, biological, agricultural, health, or military purposes;
- (4) utilization of special nuclear material, atomic energy, and radioactive material and processes entailed in the utilization or production of atomic energy or such material for all other purposes, including industrial or commercial uses, the generation of usable energy, and the demonstration of advances in the commercial or industrial application of atomic energy; and
- (5) the protection of health and the promotion of safety during research and production activities.

b. GRANTS AND CONTRIBUTIONS.—The Commission is authorized—

- (1) to make grants and contributions to the cost of construction and operation of reactors and other facilities and other equipment to colleges, universities, hospitals, and eleemosynary or charitable institutions for the conduct of educational and training activities relating to the fields in subsection a; and
- (2) to provide grants, loans, cooperative agreements, contracts, and equipment to institutions of higher education (as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) to support courses, studies, training, curricula, and disciplines pertaining to nuclear safety, security, or environmental protection, or any other field that the Commission

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determines to be critical to the regulatory mission of the Commission.

c. The Commission may (1) make arrangements pursuant to this section, without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable; (2) make partial and advance payments under such arrangements; and (3) make available for use in connection therewith such of its equipment and facilities as it may deem desirable.

d. The arrangements made pursuant to this section shall contain such provisions (1) to protect health, (2) to minimize danger to life or property, and (3) to require the reporting and to permit the inspection of work performed thereunder, as the Commission may determine. No such arrangement shall contain any provisions or conditions which prevent the dissemination of scientific or technical information, except to the extent such dissemination is prohibited by law.

【42 U.S.C. 2051】

SEC. 32. RESEARCH BY THE COMMISSION.—The Commission is authorized and directed to conduct, through its own facilities, activities and studies of the types specified in section 31.

【42 U.S.C 2052】

SEC. 33. RESEARCH FOR OTHERS.—Where the Commission finds private facilities or laboratories are inadequate to the purpose, it is authorized to conduct for other persons, through its own facilities, such of those activities and studies of the types specified in section 31 as it deems appropriate to the development of atomic energy. To the extent the Commission determines that private facilities or laboratories are inadequate to the purpose, and that the Commission's facilities, or scientific or technical resources have the potential of lending significant assistance to other persons in the fields of protection of public health and safety, the Commission may also assist other persons in these fields by conducting for such persons, through the Commission's own facilities, research and development or training activities and studies. The Commission is authorized to determine and make such charges as in its discretion may be desirable for the conduct of the activities and studies referred to in this section.

【42 U.S.C. 2053】

## CHAPTER 5. PRODUCTION OF SPECIAL NUCLEAR MATERIAL

SEC. 41. OWNERSHIP AND OPERATION OF PRODUCTION FACILITIES.—

a. OWNERSHIP OF PRODUCTION FACILITIES.—The Commission, as agent of and on behalf of the United States, shall be the exclusive owner of all production facilities other than facilities which (1) are useful in the conduct of research and development activities in the fields specified in section 31, and do not, in the opinion of the Commission, have a potential production rate adequate to enable the user of such facilities to

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produce within a reasonable period of time a sufficient quantity of special nuclear material to produce an atomic weapon; (2) are licensed by the Commission under this title; or (3) are owned by the United States Enrichment Corporation<sup>12</sup>.

b. OPERATION OF THE COMMISSION'S PRODUCTION FACILITIES.—The Commission is authorized and directed to produce or to provide for the production of special nuclear material in its own production facilities. To the extent deemed necessary, the Commission is authorized to make, or to continue in effect, contracts with persons obligating them to produce special nuclear material in facilities owned by the Commission. The Commission is also authorized to enter into research and development contracts authorizing the contractor to produce special nuclear material in facilities owned by the Commission to the extent that the production of such special nuclear material may be incident to the conduct of research and development activities under such contracts. Any contract entered into under this section shall contain provisions (1) prohibiting the contractor from subcontracting any part of the work he is obligated to perform under the contract, except as authorized by the Commission; and (2) obligating the contractor (A) to make such reports pertaining to activities under the contract to the Commission as the Commission may require, (B) to submit to inspection by employees of the Commission of all such activities, and (C) to comply with all safety and security regulations which may be prescribed by the Commission. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under such contracts.

c. OPERATION OF OTHER PRODUCTION FACILITIES.—Special nuclear material may be produced in the facilities which under this section are not required to be owned by the Commission.

[42 U.S.C. 2061]

SEC. 42. IRRADIATION OF MATERIALS.—The Commission and persons lawfully producing or utilizing special nuclear material are authorized to expose materials of any kind to the radiation incident to the processes of producing or utilizing special nuclear material.

[42 U.S.C. 2062]

SEC. 43. ACQUISITION OF PRODUCTION FACILITIES.—The Commission is authorized to purchase any interest in facilities for the production of special nuclear materials, or in real property on which such facilities are located, without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by

<sup>12</sup> Pursuant to section 3116(e) of the United States Enrichment Corporation Privatization Act, following the privatization date [July 28, 1998], all references in the Atomic Energy Act of 1954 to the United States Enrichment Corporation shall be deemed to be references to the private corporation.



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the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under contracts for such purposes. The Commission is further authorized to requisition, condemn, or otherwise acquire any interest in such production facilities, or to condemn or otherwise acquire such real property, and just compensation shall be made therefor.

[42 U.S.C. 2063]

SEC. 44. DISPOSITION OF ENERGY.—If energy is produced at production facilities of the Commission or is produced in experimental utilization facilities of the Commission, such energy may be used by the Commission, or transferred to other Government agencies, or sold to publicly, cooperatively, or privately owned utilities or users at reasonable and nondiscriminatory prices. If the energy produced is electric energy, the price shall be subject to regulation by the appropriate agency having jurisdiction. In contracting for the disposal of such energy, the Commission shall give preference and priority to public bodies and cooperatives or to privately owned utilities providing electric utility services to high cost areas not being served by public bodies or cooperatives. Nothing in this Act shall be construed to authorize the Commission to engage in the sale or distribution of energy for commercial use except such energy as may be produced by the Commission incident to the operation of research and development facilities of the Commission, or of production facilities of the Commission.

[42 U.S.C. 2064]

## CHAPTER 6. SPECIAL NUCLEAR MATERIAL

SEC. 51. SPECIAL NUCLEAR MATERIAL.—The Commission may determine from time to time that other material is special nuclear material in addition to that specified in the definition as special nuclear material. Before making any such determination, the Commission must find that such material is capable of releasing substantial quantities of atomic energy and must find that the determination that such material is special nuclear material is in the interest of the common defense and security, and the President must have expressly assented in writing to the determination. The Commission's determination, together with the assent of the President, shall be submitted to the Energy Committees and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment for more than three days) before the determination of the Commission may become effective: *Provided, however,* That the Energy Committees, after having received such determination, may by resolution in writing, waive the conditions of or all or any portion of such thirty-day period.

[42 U.S.C. 2071]

[SEC. 52. GOVERNMENT OWNERSHIP OF ALL SPECIAL NUCLEAR MATERIAL.—Repealed by Pub. L. 88–489, § 4, 78 Stat. 603, Aug. 26, 1964.]

[42 U.S.C. 2072]

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SEC. 53. DOMESTIC DISTRIBUTION OF SPECIAL NUCLEAR MATERIAL.—

a. The Commission is authorized (i) to issue licenses to transfer or receive in interstate commerce, transfer, deliver, acquire, possess, own, receive possession of or title to, import, or export under the terms of an agreement for cooperation arranged pursuant to section 123, special nuclear material, (ii) to make special nuclear material available for the period of the license, and (iii) to distribute special nuclear material within the United States to qualified applicants requesting such material—

(1) for the conduct of research and development activities of the types specified in section 31;

(2) for use in the conduct of research and development activities or in medical therapy under a license issued pursuant to section 104;

(3) for use under a license issued pursuant to section 103;

(4) for such other uses as the Commission determines to be appropriate to carry out the purposes of this Act.

b. The Commission shall establish, by rule, minimum criteria for the issuance of specific or general licenses for the distribution of special nuclear material depending upon the degree of importance to the common defense and security or to the health and safety of the public of—

(1) the physical characteristics of the special nuclear material to be distributed;

(2) the quantities of special nuclear material to be distributed; and

(3) the intended use of the special nuclear material to be distributed.

c.(1) The Commission may distribute special nuclear material licensed under this section by sale, lease, lease with option to buy, or grant: *Provided, however,* That unless otherwise authorized by law, the Commission shall not after December 31, 1970, distribute special nuclear material except by sale to any person who possesses or operates a utilization facility under a license issued pursuant to section 103 or 104 b. for use in the course of activities under such license; nor shall the Commission permit any such person after June 30, 1973, to continue leasing for use in the course of such activities special nuclear material previously leased to such person by the Commission.

(2) The Commission shall establish reasonable sales prices for the special nuclear material licensed and distributed by sale under this section. Such sales prices shall be established on a nondiscriminatory basis which, in the opinion of the Commission, will provide reasonable compensation to the Government for such special nuclear material.

(3) The Commission is authorized to enter into agreements with licensees for such period of time as the Commission may deem necessary or desirable to distribute to such licensees such quantities of special nuclear material as may be necessary for the conduct of the licensed activity. In such agreements, the Commission may agree to repurchase any special nuclear material licensed and distributed by sale which is not consumed in the course of the licensed activity, or any uranium remaining after irradiation of such

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special nuclear material, at a repurchase price not to exceed the Commission's sale price for comparable special nuclear material or uranium in effect at the time of delivery of such material to the Commission.

(4) The Commission may make a reasonable charge, determined pursuant to this section, for the use of special nuclear material licensed and distributed by lease under subsection 53 a. (1), (2) or (4) and shall make a reasonable charge determined pursuant to this section for the use of special nuclear material licensed and distributed by lease under subsection 53 a. (3). The Commission shall establish criteria in writing for the determination of whether special nuclear material will be distributed by grant and for the determination of whether a charge will be made for the use of special nuclear material licensed and distributed by lease under subsection 53 a. (1), (2) or (4), considering, among other things, whether the licensee is a nonprofit or eleemosynary institution and the purposes for which the special nuclear material will be used.

d. In determining the reasonable charge to be made by the Commission for the use of special nuclear material distributed by lease to licensees of utilization or production facilities licensed pursuant to section 103 or 104, in addition to consideration of the cost thereof, the Commission shall take into consideration—

- (1) the use to be made of the special nuclear material;
- (2) the extent to which the use of the special nuclear material will advance the development of the peaceful uses of atomic energy;
- (3) the energy value of the special nuclear material in the particular use for which the license is issued;
- (4) whether the special nuclear material is to be used in facilities licensed pursuant to section 103 or 104. In this respect, the Commission shall, insofar as practicable, make uniform, nondiscriminatory charges for the use of special nuclear material distributed to facilities licensed pursuant to section 103; and
- (5) with respect to special nuclear material consumed in a facility licensed pursuant to section 103, the Commission shall make a further charge equivalent to the sale price for similar special nuclear material established by the Commission in accordance with subsection 53 c. (2), and the Commission may make such a charge with respect to such material consumed in a facility licensed pursuant to section 104.

e. Each license issued pursuant to this section shall contain and be subject to the following conditions—

[(1) Repealed by Pub. L. 88-489, § 8, 78 Stat. 604, Aug. 26, 1964.]

(2) no right to the special nuclear material shall be conferred by the license except as defined by the license;

(3) neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of this Act;

(4) all special nuclear material shall be subject to the right of recapture or control reserved by section 108 and to all other provisions of this Act;

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(5) no special nuclear material may be used in any utilization or production facility except in accordance with the provisions of this Act;

(6) special nuclear material shall be distributed only on terms, as may be established by rule of the Commission, such that no user will be permitted to construct an atomic weapon;

(7) special nuclear material shall be distributed only pursuant to such safety standards as may be established by rule of the Commission to protect health and to minimize danger to life or property; and

(8) except to the extent that the indemnification and limitation of liability provisions of section 170 apply, the licensee will hold the United States and the Commission harmless from any damages resulting from the use or possession of special nuclear material by the licensee.

f. The Commission is directed to distribute within the United States sufficient special nuclear material to permit the conduct of widespread independent research and development activities to the maximum extent practicable. In the event that applications for special nuclear material exceed the amount available for distribution, preference shall be given to those activities which are most likely, in the opinion of the Commission, to contribute to basic research, to the development of peacetime uses of atomic energy, or to the economic and military strength of the Nation.

[42 U.S.C. 2073]

SEC. 54. FOREIGN DISTRIBUTION OF SPECIAL NUCLEAR MATERIAL.—a. The Commission is authorized to cooperate with any nation or group of nations by distributing special nuclear material and to distribute such special nuclear material, pursuant to the terms of an agreement for cooperation to which such nation or group of nations is a party and which is made in accordance with section 123. Unless hereafter otherwise authorized by law the Commission shall be compensated for special nuclear material so distributed at not less than the Commission's published charges applicable to the domestic distribution of such material, except that the Commission to assist and encourage research on peaceful uses or for medical therapy may so distribute without charge during any calendar year only a quantity of such material which at the time of transfer does not exceed in value \$10,000 in the case of one nation or \$50,000 in the case of any group of nations. The Commission may distribute to the International Atomic Energy Agency, or to any group of nations, only such amounts of special nuclear materials and for such period of time as are authorized by Congress: *Provided, however,* That, (i) notwithstanding this provision, the Commission is hereby authorized, subject to the provisions of section 123, to distribute to the Agency five thousand kilograms of contained uranium-235, five hundred grams of uranium-233, and three kilograms of plutonium, together with the amounts of special nuclear material which will match in amount the sum of all quantities of special nuclear materials made available by all other members of the Agency to June 1, 1960; and (ii) notwithstanding the foregoing provisions of this subsection, the Commission may distribute to the International Atomic Energy Agency, or to any group

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of nations, such other amounts of special nuclear materials and for such other periods of time as are established in writing by the Commission: *Provided, however,* That before they are established by the Commission pursuant to this subdivision (ii), such proposed amounts and periods shall be submitted to the Congress and referred to the Energy Committees and a period of sixty days shall elapse while Congress is in session (in computing such sixty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days): *And provided further,* That any such proposed amounts and periods shall not become effective if during such sixty-day period the Congress passes a concurrent resolution stating in substance that it does not favor the proposed action: *And provided further,* That prior to the elapse of the first thirty days of any such sixty-day period the Energy Committees shall submit to their respective houses reports of their views and recommendations respecting the proposed amounts and periods and an accompanying proposed concurrent resolution stating in substance that the Congress favors, or does not favor, as the case may be, the proposed amounts or periods. The Commission may agree to repurchase any special nuclear material distributed under a sale arrangement pursuant to this subsection which is not consumed in the course of the activities conducted in accordance with the agreement for cooperation, or any uranium remaining after irradiation of such special nuclear material, at a repurchase price not to exceed the Commission's sale price for comparable special nuclear material or uranium in effect at the time of delivery of such material to the Commission. The Commission may also agree to purchase, consistent with and within the period of the agreement for cooperation, special nuclear material produced in a nuclear reactor located outside the United States through the use of special nuclear material which was leased or sold pursuant to this subsection. Under any such agreement the Commission shall purchase only such material as is delivered to the Commission during any period when there is in effect a guaranteed purchase price for the same material produced in a nuclear reactor by a person licensed under section 104, established by the Commission pursuant to section 56, and the price to be paid shall be the price so established by the Commission and in effect for the same material delivered to the Commission.

b. Notwithstanding the provisions of sections 123, 124, and 125, the Commission is authorized to distribute to any person outside the United States (1) plutonium containing 80 per centum or more by weight of plutonium-238, and (2) other special nuclear material when it has, in accordance with subsection 57 d., exempted certain classes or quantities of such other special nuclear material or kinds of uses or users thereof from the requirements for a license set forth in this chapter. Unless hereafter otherwise authorized by law, the Commission shall be compensated for special nuclear material so distributed at not less than the Commission's published charges applicable to the domestic distribution of such material. The Commission shall not distribute any plutonium containing 80 per centum or more by weight of plutonium-238 to any person under this subsection if, in its opinion, such distribution would be inimical to the common defense and security. The Com-

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mission may require such reports regarding the use of material distributed pursuant to the provisions of this subsection as it deems necessary.

c. The Commission is authorized to license or otherwise permit others to distribute special nuclear material to any person outside the United States under the same conditions, except as to charges, as would be applicable if the material were distributed by the Commission.

d. The authority to distribute special nuclear material under this section other than under an export license granted by the Nuclear Regulatory Commission shall extend only to the following small quantities of special nuclear material (in no event more than five hundred grams per year of the uranium isotope 233, the uranium isotope 235, or plutonium contained in special nuclear material to any recipient):

(1) which are contained in laboratory samples, medical devices, or monitoring or other instruments; or

(2) the distribution of which is needed to deal with an emergency situation in which time is of the essence.

e. The authority in this section to commit United States funds for any activities pursuant to any subsequent arrangement under section 131 a. (2) (E) shall be subject to the requirements of section 131.

【42 U.S.C. 2074】

SEC. 55. ACQUISITION.—The Commission is authorized, to the extent it deems necessary to effectuate the provisions of this Act, to purchase without regard to the limitations in section 54 or any guaranteed purchase prices established pursuant to section 56, and to take, requisition, condemn, or otherwise acquire any special nuclear material or any interest therein. Any contract of purchase made under this section may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under contracts for such purposes. Just compensation shall be made for any right, property, or interest in property taken, requisitioned, or condemned under this section.<sup>13</sup>*Providing*,<sup>14</sup>That the authority in this section to commit United States funds for any activities pursuant to any subsequent arrangement under section 131 a. (2) (E) shall be subject to the requirements of section 131.

【42 U.S.C. 2075】

SEC. 56. GUARANTEED PURCHASE PRICES.—The Commission shall establish guaranteed purchase prices for plutonium produced in a nuclear reactor by a person licensed under section 104 and delivered to the Commission before January 1, 1971. The Commission shall also establish for such periods of time as it may deem necessary but not to exceed ten years as to any such period, guaranteed purchase prices for uranium enriched in the isotope 233 pro-

<sup>13</sup>So in law. Period probably should be a colon.

<sup>14</sup>So in law. “*Providing*” probably should be “*Provided*”.

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duced in a nuclear reactor by a person licensed under section 103 or section 104 and delivered to the Commission within the period of the guarantee. Guaranteed purchase prices established under the authority of this section shall not exceed the Commission's determination of the estimated value of plutonium or uranium enriched in the isotope 233 as fuel in nuclear reactors, and such prices shall be established on a nondiscriminatory basis: *Provided*, That the Commission is authorized to establish such guaranteed purchase prices only for such plutonium or uranium enriched in the isotope 233 as the Commission shall determine is produced through the use of special nuclear material which was leased or sold by the Commission pursuant to section 53.

[42 U.S.C. 2076]

## SEC. 57. PROHIBITION.—

a. Unless authorized by a general or specific license issued by the Commission, which the Commission is authorized to issue pursuant to section 53, no person may transfer or receive in interstate commerce, transfer, deliver, acquire, own, possess, receive possession of or title to, or import into or export from the United States any special nuclear materials.

b. It shall be unlawful for any person to directly or indirectly engage or participate in the development or production of any special nuclear material outside of the United States except (1) as specifically authorized under an agreement for cooperation made pursuant to section 123, including a specific authorization in a subsequent arrangement under section 131 of this Act, or (2) upon authorization by the Secretary of Energy after a determination that such activity will not be inimical to the interest of the United States: *Provided*, That any such determination by the Secretary of Energy shall be made only with the concurrence of the Department of State and after consultation with the Nuclear Regulatory Commission, the Department of Commerce, and the Department of Defense. The Secretary of Energy shall, within ninety days after the enactment of the Nuclear Non-Proliferation Act of 1978,<sup>15</sup> establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of State, Defense, and Commerce, and the Nuclear Regulatory Commission for the consideration of requests for authorization under this subsection. Such procedures shall include, at a minimum, explicit direction on the handling of such requests, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an interagency coordinating authority to monitor the processing of such requests, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's

<sup>15</sup> The date of enactment was March 10, 1978.



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needs at the beginning of the process. Potentially controversial requests should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurances or evidentiary showings, for the decision required under this subsection. The processing of any request proposed and filed as of the date of enactment of the Nuclear Non-Proliferation Act of 1978<sup>15</sup> shall not be delayed pending the development and establishment of procedures to implement the requirements of this subsection. Any trade secrets or proprietary information submitted by any person seeking an authorization under this subsection shall be afforded the maximum degree of protection allowable by law: *Provided further*, That the export of component parts as defined in subsection 11 v. (2) or 11 cc. (2) shall be governed by sections 109 and 126 of this Act: *Provided further*, That notwithstanding subsection 402(d) of the Department of Energy Organization Act (Public Law 95–91), the Secretary of Energy and not the Federal Energy Regulatory Commission, shall have sole jurisdiction within the Department of Energy over any matter arising from any function of the Secretary of Energy in this section, section 54 d., section 64, or section 111 b.

c. The Commission shall not—

(1) distribute any special nuclear material to any person for a use which is not under the jurisdiction of the United States except pursuant to the provisions of section 54; or

(2) distribute any special nuclear material or issue a license pursuant to section 53 to any person within the United States if the Commission finds that the distribution of such special nuclear material or the issuance of such license would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public.

d. The Commission is authorized to establish classes of special nuclear material and to exempt certain classes or quantities of special nuclear material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of special nuclear material or such kinds of uses or users would not be inimical to the common defense and security and would not constitute an unreasonable risk to the health and safety of the public.

e. Special nuclear material, as defined in section 11, produced in facilities licensed under section 103 or 104 may not be transferred, reprocessed, used, or otherwise made available by any instrumentality of the United States or any other person for nuclear explosive purposes.

[42 U.S.C. 2077]

SEC. 58. REVIEW.—Before the Commission establishes any guaranteed purchase price or guaranteed purchase price period in accordance with the provisions of section 56, or establishes any criteria for the waiver of any charge for the use of special nuclear material licensed and distributed under section 53, the proposed guaranteed purchase price, guaranteed purchase price period, or cri-

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teria for the waiver of such charge shall be submitted to the Energy Committees and a period of forty-five days shall elapse while Congress is in session (in computing such forty-five days there shall be excluded the days in which either House is not in session because of adjournment for more than three days): *Provided, however*, That the Energy Committees, after having received the proposed guaranteed purchase price, guaranteed purchase price period, or criteria for the waiver of such charge, may by resolution in writing waive the conditions of, or all or any portion of, such forty-five day period.

[42 U.S.C. 2078]

## CHAPTER 7. SOURCE MATERIAL

SEC. 61. SOURCE MATERIAL.—The Commission may determine from time to time that other material is source material in addition to those specified in the definition of source material. Before making such determination, the Commission must find that such material is essential to the production of special nuclear material and must find that the determination that such material is source material is in the interest of the common defense and security, and the President must have expressly assented in writing to the determination. The Commission's determination, together with the assent of the President, shall be submitted to the Energy Committees and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days) before the determination of the Commission may become effective: *Provided, however*, That the Energy Committees, after having received such determination, may by resolution in writing waive the conditions of or all or any portion of such thirty-day period.

[42 U.S.C. 2091]

SEC. 62. LICENSE FOR TRANSFERS REQUIRED.—Unless authorized by a general or specific license issued by the Commission, which the Commission is hereby authorized to issue, no person may transfer or receive in interstate commerce, transfer, deliver, receive possession of or title to, or import into or export from the United States any source material after removal from its place of deposit in nature, except that licenses shall not be required for quantities of source material which, in the opinion of the Commission, are unimportant.

[42 U.S.C. 2092]

## SEC. 63. DOMESTIC DISTRIBUTION OF SOURCE MATERIAL.—

a. The Commission is authorized to issue licenses for and to distribute source material within the United States to qualified applicants requesting such material—

(1) for the conduct of research and development activities of the types specified in section 31;

(2) for use in the conduct of research and development activities or in medical therapy under a license issued pursuant to section 104;

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(3) for use under a license issued pursuant to section 103;  
or

(4) for any other use approved by the Commission as an aid to science or industry.

b. The Commission shall establish, by rule, minimum criteria for the issuance of specific or general licenses for the distribution of source material depending upon the degree of importance to the common defense and security or to the health and safety of the public of—

(1) the physical characteristics of the source material to be distributed;

(2) the quantities of source material to be distributed; and

(3) the intended use of the source material to be distributed.

c. The Commission may make a reasonable charge determined pursuant to subsection 161 m. for the source material licensed and distributed under subsection 63 a. (1), subsection 63 a. (2), or subsection 63 a. (4), and shall make a reasonable charge determined pursuant to subsection 161 m., for the source material licensed and distributed under subsection 63 a. (3). The Commission shall establish criteria in writing for the determination of whether a charge will be made for the source material licensed and distributed under subsection 63 a. (1), subsection 63 a. (2), or subsection 63 a. (4), considering, among other things, whether the licensee is a non-profit or eleemosynary institution and the purposes for which the source material will be used.

【42 U.S.C. 2093】

SEC. 64. FOREIGN DISTRIBUTION OF SOURCE MATERIAL.—The Commission is authorized to cooperate with any nation by distributing source material and to distribute source material pursuant to the terms of an agreement for cooperation to which such nation is a party and which is made in accordance with section 123. The Commission is also authorized to distribute source material outside of the United States upon a determination by the Commission that such activity will not be inimical to the interests of the United States. The authority to distribute source material under this section other than under an export license granted by the Nuclear Regulatory Commission shall in no case extend to quantities of source material in excess of three metric tons per year per recipient.

【42 U.S.C. 2094】

SEC. 65. REPORTING.—The Commission is authorized to issue such rules, regulations, or orders requiring reports of ownership, possession, extraction, refining, shipment, or other handling of source material as it may deem necessary, except that such reports shall not be required with respect to (a) any source material prior to removal from its place of deposit in nature, or (b) quantities of source material which in the opinion of the Commission are unimportant or the reporting of which will discourage independent prospecting for new deposits.

【42 U.S.C. 2095】

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SEC. 66. ACQUISITION.—The Commission is authorized and directed, to the extent it deems necessary to effectuate the provisions of this Act—

- a. to purchase, take, requisition, condemn, or otherwise acquire supplies of source material;
- b. to purchase, condemn, or otherwise acquire any interest in real property containing deposits of source material; and
- c. to purchase, condemn, or otherwise acquire rights to enter upon any real property deemed by the Commission to have possibilities of containing deposits of source material in order to conduct prospecting and exploratory operations for such deposits.

Any purchase made under this section may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advanced payments may be made under contracts for such purposes. The Commission may establish guaranteed prices for all source material delivered to it within a specified time. Just compensation shall be made for any right, property, or interest in property taken, requisitioned, condemned, or otherwise acquired under this section.

【42 U.S.C. 2096】

SEC. 67. OPERATIONS ON LANDS BELONGING TO THE UNITED STATES.—The Commission is authorized, to the extent it deems necessary to effectuate the provisions of this Act, to issue leases or permits for prospecting for, exploration for, mining of, or removal of deposits of source material in lands belonging to the United States: *Provided, however,* That notwithstanding any other provisions of law, such leases or permits may be issued for lands administered for national park, monument, and wildlife purposes only when the President by Executive Order declares that the requirements of the common defense and security make such action necessary.

【42 U.S.C. 2097】

SEC. 68. PUBLIC AND ACQUIRED LANDS.—

a. No individual corporation, partnership, or association, which had any part, directly or indirectly, in the development of the atomic energy program, may benefit by any location, entry, or settlement upon the public domain made after such individual, corporation, partnership, or association took part in such project, if such individual, corporation, partnership, or association, by reason of having had such part in the development of the atomic energy program, acquired confidential official information as to the existence of deposits of such uranium, thorium, or other materials in the specific lands upon which such location, entry, or settlement is made, and subsequent to the date of the enactment of this Act made such location, entry, or settlement or caused the same to be made for his, or its, or their benefit.

b. Any reservation of radioactive mineral substances, fissionable materials, or source material, together with the right to enter upon the land and prospect for, mine, and remove the same, in-

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serted pursuant to Executive Order 9613 of September 13, 1945, Executive Order 9701 of March 4, 1946, the Atomic Energy Act of 1946, or Executive Order 9908 of December 5, 1947, in any patent, conveyance, lease, permit, or other authorization or instrument disposing of any interest in public or acquired lands of the United States, is hereby released, remised, and quitclaimed to the person or persons entitled upon the date of this Act under the grant from the United States or successive grants to the ownership, occupancy, or use of the land under applicable Federal or State laws: *Provided, however,* That in cases where any such reservation on acquired lands of the United States has been heretofore released, remised, or quitclaimed subsequent to August 12, 1954, in reliance upon authority deemed to have been contained in the Atomic Energy Act of 1946, as amended, or the Atomic Energy Act of 1954, as heretofore amended, the same shall be valid and effective in all respects to the same extent as if public lands and not acquired lands had been involved. The foregoing release shall be subject to any rights which may have been granted by the United States pursuant to any such reservation, but the releasees shall be subrogated to the rights of the United States.

c. Notwithstanding the provisions of the Atomic Energy Act of 1946, as amended, and particularly section 5(b)(7) thereof, or the provisions of the Act of August 12, 1953 (67 Stat. 539), and particularly section 3 thereof any mining claim, heretofore located under the mining laws of the United States, for or based upon a discovery of a mineral deposit which is a source material and which, except for the possible contrary construction of said Atomic Energy Act, would have been locatable under such mining laws, shall, insofar as adversely affected by such possible contrary construction, be valid and effective, in all respects to the same extent as if said mineral deposit were a locatable mineral deposit other than a source material.

[42 U.S.C. 2098]

SEC. 69. PROHIBITION.—The Commission shall not license any person to transfer or deliver, receive possession of or title to, or import into or export from the United States any source material if, in the opinion of the Commission, the issuance of a license to such person for such purpose would be inimical to the common defense and security or the health and safety of the public.

[42 U.S.C. 2099]

## CHAPTER 8. BYPRODUCT MATERIAL

## SEC. 81. DOMESTIC DISTRIBUTION.—

a. IN GENERAL.—No person may transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, own, possess, import, or export any byproduct material, except to the extent authorized by this section, section 82 or section 84. The Commission is authorized to issue general or specific licenses to applicants seeking to use byproduct material for research or development purposes, for medical therapy, industrial uses, agricultural uses, or such other useful applications as may be developed. The Commission may distribute, sell, loan, or lease such byproduct material as it owns to qualified applicants with or without charge: *Provided,*

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*however*, That, for byproduct material to be distributed by the Commission for a charge, the Commission shall establish prices on such equitable basis as, in the opinion of the Commission, (a) will provide reasonable compensation to the Government for such material, (b) will not discourage the use of such material or the development of sources of supply of such material independent of the Commission, and (c) will encourage research and development. In distributing such material, the Commission shall give preference to applicants proposing to use such material either in the conduct of research and development or in medical therapy. The Commission shall not permit the distribution of any byproduct material to any licensee, and shall recall or order the recall of any distributed material from any licensee, who is not equipped to observe or who fails to observe such safety standards to protect health as may be established by the Commission or who uses such material in violation of law or regulation of the Commission or in a manner other than as disclosed in the application therefor or approved by the Commission. The Commission is authorized to establish classes of byproduct material and to exempt certain classes or quantities of material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of such material or such kinds of uses or users will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public.

## b. REQUIREMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), byproduct material, as defined in paragraphs (3) and (4) of section 11 e., may only be transferred to and disposed of in a disposal facility that—

(A) is adequate to protect public health and safety;

and

(B)(i) is licensed by the Commission; or

(ii) is licensed by a State that has entered into an agreement with the Commission under section 274 b., if the licensing requirements of the State are compatible with the licensing requirements of the Commission.

(2) EFFECT OF SUBSECTION.—Nothing in this subsection affects the authority of any entity to dispose of byproduct material, as defined in paragraphs (3) and (4) of section 11 e., at a disposal facility in accordance with any Federal or State solid or hazardous waste law, including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

c. TREATMENT AS LOW-LEVEL RADIOACTIVE WASTE.—Byproduct material, as defined in paragraphs (3) and (4) of section 11 e., disposed of under this section shall not be considered to be low-level radioactive waste for the purposes of—

(1) section 2 of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b); or

(2) carrying out a compact that is—

(A) entered into in accordance with that Act (42 U.S.C. 2021b et seq.); and

(B) approved by Congress.

■42 U.S.C. 2111■

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## SEC. 82. FOREIGN DISTRIBUTION OF BYPRODUCT MATERIAL.—

a. The Commission is authorized to cooperate with any nation by distributing byproduct material, and to distribute byproduct material, pursuant to the terms of an agreement for cooperation to which such nation is party and which is made in accordance with section 123.

b. The Commission is also authorized to distribute byproduct material to any person outside the United States upon application therefor by such person and demand such charge for such material as would be charged for the material if it were distributed within the United States: *Provided, however*, That the Commission shall not distribute any such material to any person under this section if, in its opinion, such distribution would be inimical to the common defense and security: *And provided further*, That the Commission may require such reports regarding the use of material distributed pursuant to the provisions of this section as it deems necessary.

c. The Commission is authorized to license others to distribute byproduct material to any person outside the United States under the same conditions, except as to charges, as would be applicable if the material were distributed by the Commission.

[42 U.S.C. 2112]

## SEC. 83. OWNERSHIP AND CUSTODY OF CERTAIN BYPRODUCT MATERIAL AND DISPOSAL SITES.—

a. Any license issued or renewed after the effective date of this section<sup>16</sup> under section 62 or section 81 for any activity which results in the production of any byproduct material, as defined in section 11 e. (2), shall contain such terms and conditions as the Commission determines to be necessary to assure that, prior to termination of such license—

(1) the licensee will comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission for sites (A) at which ores were processed primarily for their source material content and (B) at which such byproduct material is deposited, and

(2) ownership of any byproduct material, as defined in section 11 e. (2), which resulted from such licensed activity shall be transferred to (A) the United States or (B) in the State in which such activity occurred if such State exercises the option under subsection b. (1) to acquire land used for the disposal of byproduct material.

Any license which is in effect on the effective date of this section<sup>16</sup> and which is subsequently terminated without renewal shall comply with paragraphs (1) and (2) upon termination.

(b)(1)(A)<sup>17</sup> The Commission shall require by rule, regulation, or order that prior to the termination of any license which is issued after the effective date of this section<sup>16</sup>, title to the land, including any interests therein (other than land owned by the United States or by a State) which is used for the disposal of any byproduct material, as defined by section 11 e. (2), pursuant to such license shall be transferred to—

(i) the United States, or

<sup>16</sup>The effective date was 3 years after Nov. 8, 1978. See Pub. L. 95-604, § 202(b).

<sup>17</sup>So in law. Probably should be “b. (1)(A)”.

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(ii) the State in which such land is located, at the option of such State, unless the Commission determines prior to such termination that transfer of title to such land and such byproduct material is not necessary or desirable to protect the public health, safety, or welfare or to minimize or eliminate danger to life or property. Such determination shall be made in accordance with section 181 of this Act. Notwithstanding any other provision of law or any such determination, such property and materials shall be maintained pursuant to a license issued by the Commission pursuant to section 81 of this Act in such manner as will protect the public health, safety, and the environment.

(B) If the Commission determines by order that use of the surface or subsurface estates, or both, of the land transferred to the United States or to a State under subparagraph (A) would not endanger the public health, safety, welfare, or environment, the Commission, pursuant to such regulations as it may prescribe, shall permit the use of the surface or subsurface estates, or both, of such land in a manner consistent with the provisions of this section. If the Commission permits such use of such land, it shall provide the person who transferred such land with the right of first refusal with respect to such use of such land.

(2) If transfer to the United States of title to such byproduct material and such land is required under this section, the Secretary of Energy or any Federal agency designated by the President shall, following the Commission's determination of compliance under subsection c., assume title and custody of such byproduct material and land transferred as provided in this subsection. Such Secretary or Federal agency shall maintain such material and land in such manner as will protect the public health and safety and the environment. Such custody may be transferred to another officer or instrumentality of the United States only upon approval of the President.

(3) If transfer to a State of title to such byproduct material is required in accordance with this subsection, such State shall, following the Commission's determination of compliance under subsection d., assume title and custody of such byproduct material and land transferred as provided in this subsection. Such State shall maintain such material and land in such manner as will protect the public health, safety, and the environment.

(4) In the case of any such license under section 62, which was in effect on the effective date of this section,<sup>16</sup> the Commission may require, before the termination of such license, such transfer of land and interests therein (as described in paragraph (1) of this subsection) to the United States or a State in which such land is located, at the option of such State, as may be necessary to protect the public health, welfare, and the environment from any effects associated with such byproduct material. In exercising the authority of this paragraph, the Commission shall take into consideration the status of the ownership of such land and interests therein and the ability of the licensee to transfer title and custody thereof to the United States or a State.

(5) The Commission may, pursuant to a license, or by rule or order, require the Secretary or other Federal agency or State hav-

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ing custody of such property and materials to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety and such other actions as the Commission deems necessary to comply with the standard promulgated pursuant to section 84 of this Act. The Secretary or such other Federal agency is authorized to carry out maintenance, monitoring, and emergency measures, but shall take no other action pursuant to such license, rule or order, with respect to such property and materials unless expressly authorized by Congress after the date of enactment of this Act.<sup>18</sup>

(6) The transfer of title to land or byproduct materials, as defined in section 11 e. (2), to a State or the United States pursuant to this subsection shall not relieve any licensee of liability for any fraudulent or negligent acts done prior to such transfer.

(7) Material and land transferred to the United States or a State in accordance with this subsection shall be transferred without cost to the United States or a State (other than administrative and legal costs incurred in carrying out such transfer). Subject to the provisions of paragraph (1)(B) of this subsection, the United States or a State shall not transfer title to material or property acquired under this subsection to any person, unless such transfer is in the same manner as provided under section 104(h) of the Uranium Mill Tailings Radiation Control Act of 1978.

(8) The provisions of this subsection respecting transfer of title and custody to land shall not apply in the case of lands held in trust by the United States for any Indian tribe or lands owned by such Indian tribe subject to a restriction against alienation imposed by the United States. In the case of such lands which are used for the disposal of byproduct material, as defined in section 11 e. (2), the licensee shall be required to enter into such arrangements with the Commission as may be appropriate to assure the long-term maintenance and monitoring of such lands by the United States.

c. Upon termination on<sup>19</sup> any license to which this section applies, the Commission shall determine whether or not the licensee has complied with all applicable standards and requirements under such license.

[42 U.S.C. 2113]

SEC. 84. AUTHORITIES OF COMMISSION RESPECTING CERTAIN BYPRODUCT MATERIAL.—

a. The Commission shall insure that the management of any byproduct material, as defined in section 11 e. (2), is carried out in such manner as—

(1) the Commission deems appropriate to protect the public health and safety and the environment from radiological and nonradiological hazards associated with the processing and with the possession and transfer of such material, taking into account the risk to the public health, safety, and the environment, with due consideration of the economic costs and such

<sup>18</sup>The date of enactment probably refers to Nov. 8, 1978.

<sup>19</sup>So in law. Probably should be “of”.

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other factors as the Commission determines to be appropriate,,<sup>20</sup>

(2) conforms with applicable general standards promulgated by the Administrator of the Environmental Protection Agency under section 275, and

(3) conforms to general requirements established by the Commission, with the concurrence of the Administrator, which are, to the maximum extent practicable, at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material regulated by the Administrator under the Solid Waste Disposal Act, as amended.

b. In carrying out its authority under this section, the Commission is authorized to—

(1) by rule, regulation, or order require persons, officers, or instrumentalities exempted from licensing under section 81 of this Act to conduct monitoring, perform remedial work, and to comply with such other measures as it may deem necessary or desirable to protect health or to minimize danger to life or property, and in connection with the disposal or storage of such byproduct material; and

(2) make such studies and inspections and to conduct such monitoring as may be necessary.

Any violation by any person other than the United States or any officer or employee of the United States or a State of any rule, regulation, or order or licensing provision, of the Commission established under this section or section 83 shall be subject to a civil penalty in the same manner and in the same amount as violations subject to a civil penalty under section 234. Nothing in this section affects any authority of the Commission under any other provision of this Act.

c. In the case of 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 11 e. (2), a licensee may propose alternatives to specific requirements adopted and enforced by the Commission under this Act. Such alternative proposals may take into account local or regional conditions including geology, topography, hydrology and meteorology. The Commission may treat such alternatives as satisfying Commission requirements if 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 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.

[42 U.S.C. 2114]

<sup>20</sup>Two commas in original.

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## CHAPTER 9. MILITARY APPLICATION OF ATOMIC ENERGY

## SEC. 91. AUTHORITY.—

a. The Commission is authorized to—

(1) conduct experiments and do research and development work in the military application of atomic energy;

(2) engage in the production of atomic weapons, or atomic weapon parts, except that such activities shall be carried on only to the extent that the express consent and direction of the President of the United States has been obtained, which consent and direction shall be obtained at least once each year;

(3) provide for safe storage, processing, transportation, and disposal of hazardous waste (including radioactive waste) resulting from nuclear materials production, weapons production and surveillance programs, and naval nuclear propulsion programs;

(4) carry out research on and development of technologies needed for the effective negotiation and verification of international agreements on control of special nuclear materials and nuclear weapons; and

(5) under applicable law (other than this paragraph) and consistent with other missions of the Department of Energy, make transfers of federally owned or originated technology to State and local governments, private industry, and universities or other nonprofit organizations so that the prospects for commercialization of such technology are enhanced.

b. The President from time to time may direct the Commission (1) to deliver such quantities of special nuclear material or atomic weapons to the Department of Defense for such use as he deems necessary in the interest of national defense, or (2) to authorize the Department of Defense to manufacture, produce, or acquire any atomic weapon or utilization facility for military purposes: *Provided, however,* That such authorization shall not extend to the production of special nuclear material other than that incidental to the operation of such utilization facilities.

c. The President may authorize the Commission or the Department of Defense, with the assistance of the other, to cooperate with another nation, and, notwithstanding the provisions of section 57, 62, or 81, to transfer by sale, lease, or loan to that nation, in accordance with terms and conditions of a program approved by the President—

(1) nonnuclear parts of atomic weapons provided that such nation has made substantial progress in the development of atomic weapons, and other nonnuclear parts of atomic weapons systems involving Restricted Data provided that such transfer will not contribute significantly to that nation's atomic weapon design, development, or fabrication capability; for the purpose of improving that nation's state of training and operational readiness;

(2) utilization facilities for military applications; and

(3) source, byproduct, or special nuclear material for research on, development of, production of, or use in utilization facilities for military applications; and

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(4) source, byproduct, or special nuclear material for research on, development of, or use in atomic weapons: *Provided, however,* That the transfer of such material to that nation is necessary to improve its atomic weapon design, development, or fabrication capability: *And provided further,* That such nation has substantial progress in the development of atomic weapons,

whenever the President determines that the proposed cooperation and each proposed transfer arrangement for the nonnuclear parts of atomic weapons and atomic weapons systems, utilization facilities or source, byproduct, or special nuclear material will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123: *And provided further,* That if an agreement for cooperation arranged pursuant to this subsection provides for transfer of utilization facilities for military applications the Commission, or the Department of Defense with respect to cooperation it has been authorized to undertake, may authorize any person to transfer such utilization facilities for military applications in accordance with the terms and conditions of this subsection and of the agreement for cooperation.

[42 U.S.C. 2121]

SEC. 92. PROHIBITION.—a. It shall be unlawful, except as provided in section 91, for any person, inside or outside of the United States, to knowingly<sup>21</sup> participate in the development of, manufacture, produce, transfer, acquire, receive, possess, import, export, or use, or possess and threaten to use, any atomic weapon. Nothing in this section shall be deemed to modify the provisions of subsection 31 a. or section 101.

b. Conduct prohibited by subsection a. is within the jurisdiction of the United States if—

(1) the offense occurs in or affects interstate or foreign commerce; the offense occurs outside of the United States and is committed by a national of the United States;

(2) the offense is committed against a national of the United States while the national is outside the United States;

(3) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

(4) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.

<sup>21</sup>The amendment made by section 6904(a)(2) of Public Law 108–458 (118 Stat. 3771) to insert “knowingly” after “for any person to” was carried out by inserting such word after “United States, to” to reflect the probable intent of Congress. Section 6803(b)(1) of such Public Law (118 Stat. 3768) amended this section by inserting “, inside or outside of the United States,” after “for any person”.

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[42 U.S.C. 2122]

[SEC. 93. REPEALED P.L. 106-65, § 3294(E)(1)(A), OCT. 5, 1999, 113 STAT. 970.]

[42 U.S.C. 2122a]

## CHAPTER 10. ATOMIC ENERGY LICENSES

SEC. 101. LICENSE REQUIRED.—It shall be unlawful, except as provided in section 91, for any person within the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export any utilization or production facility except under and in accordance with a license issued by the Commission pursuant to section 103 or 104.

[42 U.S.C. 2131]

SEC. 102. UTILIZATION AND PRODUCTION FACILITIES FOR INDUSTRIAL OR COMMERCIAL PURPOSES.—

a. Except as provided in subsections b. and c., or otherwise specifically authorized by law, any license hereafter issued for a utilization or production facility for industrial or commercial purposes shall be issued pursuant to section 103.

b. Any license hereafter issued for a utilization or production facility for industrial or commercial purposes, the construction or operation of which was licensed pursuant to subsection 104 b. prior to enactment into law of this subsection, shall be issued under subsection 104 b.

c. Any license for a utilization or production facility for industrial or commercial purposes constructed or operated under an arrangement with the Commission entered into under the Cooperative Power Reactor Demonstration Program shall, except as otherwise specifically required by applicable law, be issued under subsection 104 b.

[42 U.S.C. 2132]

SEC. 103. COMMERCIAL LICENSES.—

a. The Commission is authorized to issue licenses to persons applying therefor to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of an agreement for cooperation arranged pursuant to section 123, utilization or production facilities for industrial or commercial purposes. Such licenses shall be issued in accordance with the provisions of chapter 16 and subject to such conditions as the Commission may by rule or regulation establish to effectuate the purposes and provisions of this Act.

b. The Commission shall issue such licenses on a non-exclusive basis to persons applying therefor (1) whose proposed activities will serve a useful purpose proportionate to the quantities of special nuclear material or source material to be utilized; (2) who are equipped to observe and who agree to observe such safety standards to protect health and to minimize danger to life or property as the Commission may by rule establish; and (3) who agree to make available to the Commission such technical information and data concerning activities under such licenses as the Commission may determine necessary to promote the common defense and secu-

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urity and to protect the health and safety of the public. All such information may be used by the Commission only for the purposes of the common defense and security and to protect the health and safety of the public.

c. Each such license shall be issued for a specified period, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding forty years from the authorization to commence operations, and may be renewed upon the expiration of such period.

d. No license under this section may be given to any person or activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 123, or except under the provisions of section 109. No license may be issued to an alien or any any<sup>22</sup> corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

f.<sup>23</sup> Each license issued for a utilization facility under this section or section 104 b. shall require as a condition thereof that in case of any accident which could result in an unplanned release of quantities of fission products in excess of allowable limits for normal operation established by the Commission, the licensee shall immediately so notify the Commission. Violation of the condition prescribed by this subsection may, in the Commission's discretion, constitute grounds for license revocation. In accordance with section 187 of this Act, the Commission shall promptly amend each license for a utilization facility issued under this section or section 104 b. which is in effect on the date of enactment of this subsection<sup>24</sup> to include the provisions required under this subsection.

[42 U.S.C. 2133]

**SEC. 104. MEDICAL THERAPY AND RESEARCH AND DEVELOPMENT.—**

a. The Commission is authorized to issue licenses to persons applying therefor for utilization facilities for use in medical therapy. In issuing such licenses the Commission is directed to permit the widest amount of effective medical therapy possible with the amount of special nuclear material available for such purposes and to impose the minimum amount of regulation consistent with its obligations under this Act to promote the common defense and security and to protect the health and safety of the public.

b. As provided for in subsection 102 b. or 102 c., or where specifically authorized by law, the Commission is authorized to issue licenses under this subsection to persons applying therefor for utilization and production facilities for industrial and commercial purposes. In issuing licenses under this subsection, the Commission

<sup>22</sup> So in law.

<sup>23</sup> No subsection e. in original.

<sup>24</sup> The date of enactment was June 30, 1980.

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shall impose the minimum amount of such regulations and terms of license as will permit the Commission to fulfill its obligations under this Act.

c. The Commission is authorized to issue licenses to persons applying therefor for utilization and production facilities useful in the conduct of research and development activities of the types specified in section 31 and which are not facilities of the type specified in subsection 104 b. The Commission is directed to impose only such minimum amount of regulation of the licensee as the Commission finds will permit the Commission to fulfill its obligations under this Act to promote the common defense and security and to protect the health and safety of the public and will permit the conduct of widespread and diverse research and development.

d. No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 123 or except under the provisions of section 109. No license may be issued to any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

[42 U.S.C. 2134]

SEC. 105. ANTITRUST PROVISIONS.—

a. Nothing contained in this Act shall relieve any person from the operation of the following Acts, as amended, “An Act to protect trade and commerce against unlawful restraints and monopolies” approved July second, eighteen hundred and ninety; sections seventy-three to seventy-six, inclusive, of an Act entitled “An Act to reduce taxation, mission, to define its powers and duties, and for other purposes” approved August twenty-seven, eighteen hundred and ninety-four; “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes” approved October fifteen, nineteen hundred and fourteen; and “An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes” approved September twenty-six, nineteen hundred and fourteen. In the event a licensee is found by a court of competent jurisdiction, either in an original action in that court or in a proceeding to enforce or review the findings or orders of any Government agency having jurisdiction under the laws in the conduct of the licensed activity, the Commission may suspend, revoke, or take such other action as it may deem necessary with respect to any license issued by the Commission under the provisions of this Act.

b. The Commission shall report promptly to the Attorney General any information it may have with respect to any utilization or special nuclear material or atomic energy which appears to violate or to tend toward the violation of any of the foregoing Acts, or to restrict free competition in private enterprise.

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c.(1) The Commission shall promptly transmit to the Attorney General a copy of any license application provided for in paragraph (2) of this subsection, and a copy of any written request provided for in paragraph (3) of this subsection; and the Attorney General shall, within a reasonable time, but in no event to exceed 180 days after receiving a copy of such application or written request, render such advice to the Commission as he determines to be appropriate in regard to the finding to be made by the Commission pursuant to paragraph (5) of this subsection. Such advice shall include an explanatory statement as to the reasons or basis therefor.

(2) Paragraph (1) of this subsection shall apply to an application for a license to construct or operate a utilization or production facility under section 103: *Provided, however,* That paragraph (1) shall not apply to an application for a license to operate a utilization or production facility for which a construction permit was issued under section 103 unless the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission under this subsection in connection with the construction permit for the facility.

(3) With respect to any Commission permit for the construction of a utilization or production facility issued pursuant to subsection 104 b. prior to the enactment into law of this subsection,<sup>25</sup> any person who intervened or who sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdiction basis for such determination shall have the right, upon a written request to the Commission, to obtain an antitrust review under this section of the application for an operating license. Such written request shall be made within 25 days after the date of initial Commission publication in the Federal Register of notice of the filing of an application for an operating license for the facility or the date of enactment into law of this subsection,<sup>25</sup> whichever is later.

(4) Upon the request of the Attorney General, the Commission shall furnish or cause to be furnished such information as the Attorney General determines to be appropriate for the advice called for in paragraph (1) of this subsection.

(5) Promptly upon receipt of the Attorney General's advice, the Commission shall publish the advice in the Federal Register. Where the Attorney General advises that there may be adverse antitrust aspects and recommends that there be a hearing, the Attorney General or his designee may participate as a party in the proceedings thereafter held by the Commission on such licensing matter in connection with the subject matter of his advice. The Commission shall give due consideration to the advice received from the Attorney General and to such evidence as may be provided during the proceedings in connection with such subject matter, and shall make a finding as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws as specified in subsection 105 a.

<sup>25</sup> The date of enactment was Dec. 19, 1970.

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(6) In the event the Commission's findings under paragraph (5) is in the affirmative, the Commission shall also consider, in determining whether the license should be issued or continued, such other factors, including the need for power in the affected area, as the Commission in its judgment deems necessary to protect the public interest. On the basis of its findings, the Commission shall have the authority to issue or continue a license as applied for, to refuse to issue a license, to rescind a license or amend it, and to issue a license with such conditions as it deems appropriate.

(7) The Commission, with the approval of the Attorney General, may except from any of the requirements of this subsection such classes or types of licenses as the Commission may determine would not significantly affect the applicant's activities under the antitrust laws as specified in subsection 105 a.

(8) With respect to any application for a construction permit on file at the time of enactment into law of this subsection,<sup>25</sup> which permit would be for issuance under section 103, and with respect to any application for an operating license in connection with which a written request for an antitrust review is made as provided for in paragraph (3), the Commission, after consultation with the Attorney General, may, upon determination that such action is necessary in the public interest to avoid unnecessary delay, establish by rule or order periods for Commission notification and receipt of advice differing from those set forth above and may issue a construction permit or operating license in advance of consideration of and findings with respect to the matters covered in this subsection: *Provided*, That any construction permit or operating license so issued shall contain such conditions as the Commission deems appropriate to assure that any subsequent findings and orders of the Commission with respect to such matters will be given full force and effect.

(9) **APPLICABILITY.**—This subsection does not apply to an application for a license to construct or operate a utilization facility or production facility under section 103 or 104 b. that is filed on or after the date of enactment of this paragraph.

[42 U.S.C. 2135]

**SEC. 106. CLASSES OF FACILITIES.**—The Commission may—

a. group the facilities licensed either under section 103 or under section 104 into classes which may include either production or utilization facilities or both, upon the basis of the similarity of operating and technical characteristics of the facilities;

b. define the various activities to be carried on at each such class of facility.<sup>26</sup>

c. designate the amounts of special nuclear material available for use by each such facility.

[42 U.S.C. 2136]

**SEC. 107. OPERATORS' LICENSES.**—The Commission shall—

a. prescribe uniform conditions for licensing individuals as operators of any of the various classes of production and utilization facilities licensed in this Act;

<sup>26</sup>Period in original. Probably should be “; and”.



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- b. determine the qualifications of such individuals;
- c. issue licenses to such individuals in such form as the Commission may prescribe; and
- d. suspend such licenses for violations of any provision of this Act or any rule or regulation issued thereunder whenever the Commission deems such action desirable.

[42 U.S.C. 2137]

SEC. 108. WAR OR NATIONAL EMERGENCY.—Whenever the Congress declares that a state of war or national emergency exists, the Commission is authorized to suspend any licenses granted under this Act if in its judgment such action is necessary to the common defense and security. The Commission is authorized during such period, if the Commission finds it necessary to the common defense and security, to order the recapture of any special nuclear material or to order the operation of any facility licensed under section 103 or 104, and is authorized to order the entry into any plant or facility in order to recapture such material, or to operate such facility. Just compensation shall be paid for any damages caused by the recapture of any special nuclear material or by the operation of any such facility.

[42 U.S.C. 2138]

## SEC. 109. COMPONENT AND OTHER PARTS OF FACILITIES.—

a. With respect to those utilization and production facilities which are so determined by the Commission pursuant to subsection 11 v. (2) or 11 cc. (2) the Commission may issue general licenses for domestic activities required to be licensed under section 101, if the Commission determines in writing that such general licensing will not constitute an unreasonable risk to the common defense and security.

b. After consulting with the Secretaries of State, Energy, and Commerce, the Commission is authorized and directed to determine which component parts as defined in subsection 11 v. (2) or 11 cc. (2) and which other items or substances are especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes. Except as provided in section 126 b. (2), no such component, substance, or item which is so determined by the Commission shall be exported unless the Commission issues a general or specific license for its export after finding, based on a reasonable judgment of the assurances provided and other information available to the Federal Government, including the Commission, that the following criteria or their equivalent are met: (1) IAEA safeguards as required by Article III (2) of the Treaty will be applied with respect to such component, substance, or item; (2) no such component, substance, or item will be used for any nuclear explosive device or for research on or development of any nuclear explosive device; and (3) no such component, substance, or item will be retransferred to the jurisdiction of any other nation or group of nations unless the prior consent of the United States is obtained for such retransfer; and after determining in writing that the issuance of each such general or specific license or category of licenses will not be inimical to the common defense and security: *Provided*, That a specific license shall not be required for an export

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pursuant to this section if the component, item or substance is covered by a facility license issued pursuant to section 126 of this Act.

c. The Commission shall not issue an export license under the authority of subsection b. if it is advised by the executive branch, in accordance with the procedures established under subsection 126 a., that the export would be inimical to the common defense and security of the United States.

[42 U.S.C. 2139]

SEC. 110. EXCLUSIONS.—Nothing in this chapter shall be deemed—

a. to require a license for (1) the processing, fabricating, or refining of special nuclear material, or the separation of special nuclear material, or the separation of special nuclear material from other substances, under contract with and for the account of the Commission; or (2) the construction or operation of facilities under contract with and for the account of the Commission; or

b. to require a license for the manufacture, production, or acquisition by the Department of Defense of any utilization facility authorized pursuant to section 91, or for the use of such facility by the Department of Defense or a contractor thereof.

[42 U.S.C. 2140]

SEC. 111. [Licensing by Nuclear Regulatory Commission of Distribution of Certain Materials by Department of Energy.—]<sup>27</sup> a. The Nuclear Regulatory Commission is authorized to license the distribution of special nuclear material, source material, and byproduct material by the Department of Energy pursuant to section 54, 64, and 82 of this Act, respectively, in accordance with the same procedures established by law for the export licensing of such material by any person: *Provided*, That nothing in this section shall require the licensing of the distribution of byproduct material by the Department of Energy under section 82 of this Act.

b. The Department of Energy shall not distribute any special nuclear material or source material under section 54 or 64 of this Act other than under an export license issued by the Nuclear Regulatory Commission until (1) the Department has obtained the concurrence of the Department of State and has consulted with the Nuclear Regulatory Commission and the Department of Defense under mutually agreed procedures which shall be established within not more than ninety days after the date of enactment of this provision<sup>28</sup> and (2) the Department finds based on a reasonable judgment of the assurances provided and the information available to the United States Government, that the criteria in section 127 of this Act or their equivalent and any applicable criteria in subsection 128 are met, and that the proposed distribution would not be inimical to the common defense and security.

[42 U.S.C. 2141]

SEC. 112. DOMESTIC MEDICAL ISOTOPE PRODUCTION.—

<sup>27</sup>No section heading in original.

<sup>28</sup>The date of enactment was March 10, 1978.



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a. The Commission may issue a license, or grant an amendment to an existing license, for the use in the United States of highly enriched uranium as a target for medical isotope production in a nuclear reactor, only if, in addition to any other requirement of this Act—

(1) the Commission determines that—

(A) there is no alternative medical isotope production target that can be used in that reactor; and

(B) the proposed recipient of the medical isotope production target has provided assurances that, whenever an alternative medical isotope production target can be used in that reactor, it will use that alternative in lieu of highly enriched uranium; and

(2) the Secretary of Energy has certified that the United States Government is actively supporting the development of an alternative medical isotope production target that can be used in that reactor.

b. As used in this section—

(1) the term “alternative medical isotope production target” means a nuclear reactor target which is enriched to less than 20 percent of the isotope U-235;

(2) a target “can be used” in a nuclear research or test reactor if—

(A) the target has been qualified by the Reduced Enrichment Research and Test Reactor Program of the Department of Energy; and

(B) use of the target will permit the large majority of ongoing and planned experiments and medical isotope production to be conducted in the reactor without a large percentage increase in the total cost of operating the reactor;

(3) the term “highly enriched uranium” means uranium enriched to 20 percent or more in the isotope U-235; and

(4) the term “medical isotope” includes molybdenum-99, iodine-131, xenon-133, and other radioactive materials used to produce a radiopharmaceutical for diagnostic or therapeutic procedures or for research and development.

【42 U.S.C. 2142】

## CHAPTER 11. INTERNATIONAL ACTIVITIES

SEC. 121. EFFECT OF INTERNATIONAL ARRANGEMENTS.—Any provision of this Act or any action of the Commission to the extent and during the time that it conflicts with the provisions of any international arrangement made after the date of enactment of this Act shall be deemed to be of no force or effect.

【42 U.S.C. 2151】

SEC. 122. POLICIES CONTAINED IN INTERNATIONAL ARRANGEMENTS.—In the performance of its functions under this Act, the Commission shall give maximum effect to the policies contained in any international arrangement made after the date of enactment of this Act.

【42 U.S.C. 2152】

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SEC. 123. COOPERATION WITH OTHER NATIONS.—No cooperation with any nation, group of nations or regional defense organization pursuant to section 53, 54 a., 57, 64, 82, 91, 103, 104, or 144 shall be undertaken until—

a. the proposed agreement for cooperation has been submitted to the President, which proposed arrangement shall include the terms, conditions, duration, nature, and scope of the cooperation; and shall include the following requirements:

(1) a guaranty by the cooperating party that safeguards as set forth in the agreement for cooperation will be maintained with respect to all nuclear materials and equipment transferred pursuant thereto, and with respect to all special nuclear material used in or produced through the use of such nuclear materials and equipment, so long as the material or equipment remains under the jurisdiction or control of the cooperating party, irrespective of the duration of other provisions in the agreement or whether the agreement is terminated or suspended for any reason;

(2) in the case of non-nuclear-weapon states, a requirement, as a condition of continued United States nuclear supply under the agreement for cooperation, that IAEA safeguards be maintained with respect to all nuclear materials in all peaceful nuclear activities within the territory of such state, under its jurisdiction, or carried out under its control anywhere;

(3) except in the case of those agreements for cooperation arranged pursuant to subsection 91 c., a guaranty by the cooperating party that no nuclear materials and equipment or sensitive nuclear technology to be transferred pursuant to such agreement, and no special nuclear material produced through the use of any nuclear materials and equipment or sensitive nuclear technology transferred pursuant to such agreement, will be used for any nuclear explosive device, or for research on or development of any nuclear explosive device, or for any other military purpose;

(4) except in the case of those agreements for cooperation arranged pursuant to subsection 91 c. and agreements for cooperation with nuclear-weapon states, a stipulation that the United States shall have the right to require the return of any nuclear materials and equipment transferred pursuant thereto and any special nuclear material produced through the use thereof if the cooperating party detonates a nuclear explosive device or terminates or abrogates an agreement providing for IAEA safeguards;

(5) a guaranty by the cooperating party that any material or any Restricted Data transferred pursuant to the agreement for cooperation and, except in the case of agreements arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d., any production or utilization facility transferred pursuant to the agreement

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for cooperation or any special nuclear material produced through the use of any such facility or through the use of any material transferred pursuant to the agreement, will not be transferred to unauthorized persons or beyond the jurisdiction or control of the cooperating party without the consent of the United States;

(6) a guaranty by the cooperating party that adequate physical security will be maintained with respect to any nuclear material transferred pursuant to such agreement and with respect to any special nuclear material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to such agreement;

(7) except in the case of agreements for cooperation arranged pursuant to subsection 91 c., 144 b. 144 c., or 144 d., a guaranty by the cooperating party that no material transferred pursuant to the agreement for cooperation and no material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to the agreement for cooperation will be reprocessed, enriched or (in the case of plutonium, uranium 233, or uranium enriched to greater than twenty percent in the isotope 235, or other nuclear materials which have been irradiated) otherwise altered in form or content without the prior approval of the United States;

(8) except in the case of agreements for cooperation arranged pursuant to subsection 91 c., 144 b. 144 c., or 144 d., a guaranty by the cooperating party that no plutonium, no uranium 233, and no uranium enriched to greater than twenty percent in the isotope 235, transferred pursuant to the agreement for cooperation, or recovered from any source or special nuclear material so transferred or from any source or special nuclear material used in any production facility or utilization facility transferred pursuant to the agreement for cooperation, will be stored in any facility that has not been approved in advance by the United States; and

(9) except in the case of agreements for cooperation arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d., a guaranty by the cooperating party that any special nuclear material, production facility, or utilization facility produced or constructed under the jurisdiction of the cooperating party by or through the use of any sensitive nuclear technology transferred pursuant to such agreement for cooperation will be subject to all the requirements specified in this subsection.

The President may exempt a proposed agreement for cooperation (except an agreement arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d.) from any of the requirements of the foregoing sentence if he determines that

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inclusion of any such requirement would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security. Except in the case of those agreements for cooperation arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d., any proposed agreement for cooperation shall be negotiated by the Secretary of State, with the technical assistance and concurrence of the Secretary of Energy; and after consultation with the Commission shall be submitted to the President jointly by the Secretary of State and the Secretary of Energy accompanied by the views and recommendations of the Secretary of State, the Secretary of Energy, and the Nuclear Regulatory Commission. The Secretary of State shall also provide to the President an unclassified Nuclear Proliferation Assessment Statement (A) which shall analyze the consistency of the text of the proposed agreement for cooperation with all the requirements of this Act, with specific attention to whether the proposed agreement is consistent with each of the criteria set forth in this subsection, and (B) regarding the adequacy of the safeguards and other control mechanisms and the peaceful use assurances contained in the agreement for cooperation to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose. Each Nuclear Proliferation Assessment Statement prepared pursuant to this Act shall be accompanied by a classified annex, prepared in consultation with the Director of Central Intelligence, summarizing relevant classified information. In the case of those agreements for cooperation arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d., any proposed agreement for cooperation shall be submitted to the President by the Secretary of Energy or, in the case of those agreements for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 d. which are to be implemented by the Department of Defense, by the Secretary of Defense;

b. the President has submitted text of the proposed agreement for cooperation (except an agreement arranged pursuant to section 91 c., 144 b., 144 c., or 144 d.), together with the accompanying unclassified Nuclear Proliferation Assessment Statement, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, the President has consulted with such Committees for a period of not less than thirty days of continuous session (as defined in section 130 g. of this Act) concerning the consistency of the terms of the proposed agreement with all the requirements of this Act, and the President has approved and authorized the execution of the proposed agreement for cooperation and has made a determination in writing that the performance of the proposed agreement will promote, and will not constitute an unreasonable risk to, the common defense and security;

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c. the proposed agreement for cooperation (if not an agreement subject to subsection d.) together with the approval and determination of the President, has been submitted to the Committee on Foreign Affairs of the House of Representatives<sup>29</sup> and the Committee on Foreign Relations of the Senate for a period of thirty days of continuous session (as defined in subsection 130 g.): *Provided, however,* That these committees, after having received such agreement for cooperation, may by resolution in writing waive the conditions of all or any portion of such thirty-day period; and

d. the proposed agreement for cooperation (if arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d., or if entailing implementation of section 53, 54 a., 103, or 104 in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith) has been submitted to the Congress, together with the approval and determination of the President, for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act) and referred to the Committee on Foreign Affairs of the House of Representatives<sup>30</sup> and the Committee on Foreign Relations of the Senate, and in addition, in the case of a proposed agreement for cooperation arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d., the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate, but such proposed agreement for cooperation shall not become effective if during such sixty-day period the Congress adopts, and there is enacted, a joint resolution stating in substance that the Congress does not favor the proposed agreement for cooperation: *Provided,* That the sixty-day period shall not begin until a Nuclear Proliferation Assessment Statement prepared by the Secretary of State, and any annexes thereto, when required by subsection 123 a., have been submitted to the Congress: *Provided further,* That an agreement for cooperation exempted by the President pursuant to subsection a. from any requirement contained in that subsection, or an agreement exempted pursuant to section 104(a)(1) of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006, shall not become effective unless the Congress adopts, and there is enacted, a joint resolution stating that the Congress does favor such agreement. During the sixty-day period the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate shall each hold hearings on the proposed agreement for cooperation and submit a report to

<sup>29</sup>The name of the Committee on Foreign Affairs was changed to the Committee on International Relations at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186).

<sup>30</sup>The name of the Committee on Foreign Affairs was changed to the Committee on International Relations at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186).

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their respective bodies recommending whether it should be approved or disapproved. Any such proposed agreement for cooperation shall be considered pursuant to the procedures set forth in section 130 i. of this Act.

Following submission of a proposed agreement for cooperation (except an agreement for cooperation arranged pursuant to subsection 91 c., 144 b., 144 c., or 144 d.) to the Committee on Foreign Affairs of the House of Representatives<sup>30</sup> and the Committee on Foreign Relations of the Senate, the Nuclear Regulatory Commission, the Department of State, the Department of Energy, and the Department of Defense shall, upon the request of either of those committees, promptly furnish to those committees their views as to whether the safeguards and other controls contained therein provide an adequate framework to ensure that any exports as contemplated by such agreement will not be inimical to or constitute an unreasonable risk to the common defense and security.

If, after the date of enactment of the Nuclear Non-Proliferation Act of 1978,<sup>31</sup> the Congress fails to disapprove a proposed agreement for cooperation which exempts the recipient nation from the requirement set forth in subsection 123 a. (2), such failure to act shall constitute a failure to adopt a resolution of disapproval pursuant to subsection 128 b. (3) for purposes of the Commission's consideration of applications and requests under section 126 a. (2) and there shall be no congressional review pursuant to section 128 of any subsequent license or authorization with respect to that state until the first such license or authorization which is issued after twelve months from the elapse of the sixty-day period in which the agreement for cooperation in question is reviewed by the Congress.

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

[42 U.S.C. 2153]

SEC. 124. INTERNATIONAL ATOMIC POOL.—The President is authorized to enter into an international arrangement with a group of nations providing for international cooperation in the non-military applications of atomic energy and he may thereafter cooperate with that group of nations pursuant to sections 54 a., 57, 64, 82, 103, 104, or 144 a.: *Provided, however,* That the cooperation is undertaken pursuant to an agreement for cooperation entered into in accordance with section 123.

[42 U.S.C. 2154]

SEC. 125. COOPERATION WITH BERLIN.—The President may authorize the Commission to enter into agreements for cooperation with the Federal Republic of Germany in accordance with section 123, on behalf of Berlin, which for the purposes of this Act com-

<sup>31</sup>The date of enactment was March 10, 1978.



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prises those areas over which the Berlin Senate exercises jurisdiction (the United States, British, and French sectors) and the Commission may thereafter cooperate with Berlin pursuant to sections 54 a., 57, 64, 82, 103, or 104: *Provided*, That the guaranties required by section 123 shall be made by Berlin with the approval of the allied commandants.

[42 U.S.C. 2153]

## SEC. 126. EXPORT LICENSING PROCEDURES.—

a. No license may be issued by the Nuclear Regulatory Commission (the “Commission”) for the export of any production or utilization facility, or any source material or special nuclear material, including distributions of any material by the Department of Energy under section 54, 64, or 82, for which a license is required or requested, and no exemption from any requirement for such an export license may be granted by the Commission, as the case may be, until—

(1) the Commission has been notified by the Secretary of State that it is the judgment of the executive branch that the proposed export or exemption will not be inimical to the common defense and security, or that any export in the category to which the proposed export belongs would not be inimical to the common defense and security because it lacks significance for nuclear explosive purposes. The Secretary of State shall, within ninety days after the enactment of this section,<sup>32</sup> establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of Energy, Defense, and Commerce, and the Nuclear Regulatory Commission, for the preparation of the executive branch judgment on export applications under this section. Such procedures shall include, at a minimum, explicit direction on the handling of such applications, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an inter-agency coordinating authority to monitor the processing of such applications, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending applications, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency’s needs at the beginning of the process. Potentially controversial applications should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can<sup>33</sup> be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurances or evidentiary showings, for the decisions required under this section. The processing of any export application proposed and filed as of the date of enact-

<sup>32</sup>The date of enactment was March 10, 1978.

<sup>33</sup>So in law. Probably should be “can”.

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ment of this section<sup>32</sup> shall not be delayed pending the development and establishment of procedures to implement the requirements of this section. The executive branch judgment shall be completed in not more than sixty days from receipt of the application or request, unless the Secretary of State in his discretion specifically authorizes additional time for consideration of the application or request because it is in the national interest to allow such additional time. The Secretary shall notify the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives<sup>34</sup> of any such authorization. In submitting any such judgment, the Secretary of State shall specifically address the extent to which the export criteria then in effect are met and the extent to which the cooperating party has adhered to the provisions of the applicable agreement for cooperation. In the event he considers it warranted, the Secretary may also address the following additional factors, among others:

(A) whether issuing the license or granting the exemption will materially advance the non-proliferation policy of the United States by encouraging the recipient nation to adhere to the Treaty, or to participate in the undertakings contemplated by section 403 or 404(a) of the Nuclear Non-Proliferation Act of 1978;

(B) whether failure to issue the license or grant the exemption would otherwise be seriously prejudicial to the non-proliferation objectives of the United States; and

(C) whether the recipient nation or group of nations has agreed that conditions substantially identical to the export criteria set forth in section 127 of this Act will be applied by another nuclear supplier nation or group of nations to the proposed United States export, and whether, in the Secretary's judgment those conditions will be implemented in a manner acceptable to the United States.

The Secretary of State shall provide appropriate data and recommendations, subject to requests for additional data and recommendations, as required by the Commission or the Secretary of Energy, as the case may be; and

(2) the Commission finds, based on a reasonable judgment of the assurances provided and other information available to the Federal Government, including the Commission, that the criteria in section 127 of this Act or their equivalent, and any other applicable statutory requirements, are met: *Provided*, That continued cooperation under an agreement for cooperation as authorized in accordance with section 124 of this Act shall not be prevented by failure to meet the provisions of paragraph (4) or (5) of section 127 for a period of thirty days after enactment of this section,<sup>35</sup> and for a period of twenty-three months thereafter if the Secretary of State notifies the Commission that the nation or group of nations bound by the relevant agreement has agreed to negotiations as called for in

<sup>34</sup>The name of the Committee on Foreign Affairs was changed to the Committee on International Relations at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186).

<sup>35</sup>The date of enactment was March 10, 1978.



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section 404(a) of the Nuclear Non-Proliferation Act of 1978; however, nothing in this subsection shall be deemed to relinquish any rights which the United States may have under agreements for cooperation in force on the date of enactment of this section<sup>35</sup>: *Provided, further*, That if, upon the expiration of such twenty-four month period, the President determines that failure to continue cooperation with any group of nations which has been exempted pursuant to the above proviso from the provisions of paragraph (4) or (5) of section 127 of this Act, but which has not yet agreed to comply with those provisions would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security, he may, after notifying the Congress of his determination, extend by Executive order the duration of the above proviso for a period of twelve months, and may further extend the duration of such proviso by one year increments annually thereafter if he again makes such determination and so notifies the Congress. In the event that the Committee on Foreign Affairs of the House of Representatives<sup>36</sup> or the Committee on Foreign Relations of the Senate reports a joint resolution to take any action with respect to any such extension, such joint resolution will be considered in the House or Senate, as the case may be, under procedures identical to those provided for the consideration of resolutions pursuant to section 130 of this Act: *And additionally provided*, That the Commission is authorized to (A) make a single finding under this subsection for more than a single application or request, where the applications or requests involve exports to the same country, in the same general time frame, of similar significance for nuclear explosive purposes and under reasonably similar circumstances and (B) make a finding under this subsection that there is no material changed circumstance associated with a new application or request from those existing at the time of the last application or request for an export to the same country, where the prior application or request was approved by the Commission using all applicable procedures of this section, and such finding of no material changed circumstance shall be deemed to satisfy the requirement of this paragraph for findings of the Commission. The decision not to make any such finding in lieu of the findings which would otherwise be required to be made under this paragraph shall not be subject to judicial review: *And provided further*, That nothing contained in this section is intended to require the Commission independently to conduct or prohibit the Commission from independently conducting country or site specific visitations in the Commission's consideration of the application of IAEA safeguards.

b.(1) Timely consideration shall be given by the Commission to requests for export licenses and exemptions and such requests shall be granted upon a determination that all applicable statutory requirements have been met.

<sup>36</sup>The name of the Committee on Foreign Affairs was changed to the Committee on International Relations at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186).

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(2) If, after receiving the executive branch judgment that the issuance of a proposed export license will not be inimical to the common defense and security, the Commission does not issue the proposed license on a timely basis because it is unable to make the statutory determinations required under this Act, the Commission shall publicly issue its decision to that effect, and shall submit the license application to the President. The Commission's decision shall include an explanation of the basis for the decision and any dissenting or separate views. If, after receiving the proposed license application and reviewing the Commission's decision, the President determines that withholding the proposed export would be seriously prejudicial to the achievement of United States non-proliferation objectives, or would otherwise jeopardize the common defense and security, the proposed export may be authorized by Executive order: *Provided*, That prior to any such export, the President shall submit the Executive order, together with his explanation of why, in light of the Commission's decision, the export should nonetheless be made, to the Congress for a period of sixty days of continuous session (as defined in subsection 130 g.) and shall be referred to the Committee on Foreign Affairs of the House of Representatives<sup>37</sup> and the Committee on Foreign Relations of the Senate, but any such proposed export shall not occur if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the proposed export. Any such Executive order shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions: *And provided further*, That the procedures established pursuant to subsection (b) of section 304 of the Nuclear Non-Proliferation Act of 1978 shall provide that the Commission shall immediately initiate review of any application for a license under this section and to the maximum extent feasible shall expeditiously process the application concurrently with the executive branch reviews, while awaiting the final executive branch judgment. In initiating its review, the Commission may identify a set of concerns and requests for information associated with the projected issuance of such license and shall transmit such concerns and requests to the executive branch which shall address such concerns and requests in its written communications with the Commission. Such procedures shall also provide that if the Commission has not completed action on the application within sixty days after the receipt of an executive branch judgment that the proposed export or exemption is not inimical to the common defense and security or that any export in the category to which the proposed export belongs would not be inimical to the common defense and security because it lacks significance for nuclear explosive purposes, the Commission shall inform the applicant in writing of the reason for delay and provide follow-up reports as appropriate. If the Commission has not completed action by the end of an additional sixty days (a total of one hundred and twenty days from receipt of the executive branch judgment), the President may authorize the proposed export by Executive order, upon a finding that further delay would be excessive

<sup>37</sup>The name of the Committee on Foreign Affairs was changed to the Committee on International Relations at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186).

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and upon making the findings required for such Presidential authorizations under this subsection, and subject to the Congressional review procedures set forth herein. However, if the Commission has commenced procedures for public participation regarding the proposed export under regulations promulgated pursuant to subsection (b) of section 304 of the Nuclear Non-Proliferation Act of 1978, or—within sixty days after receipt of the executive branch judgment on the proposed export—the Commission has identified and transmitted to the executive branch a set of additional concerns or requests for information, the President may not authorize the proposed export until sixty days after public proceedings are completed or sixty days after a full executive branch response to the Commission's additional concerns or requests has been made consistent with subsection a. (1) of this section: *Provided further*, That nothing in this section shall affect the right of the Commission to obtain data and recommendations from the Secretary of State at any time as provided in subsection a. (1) of this section.

c. In the event that the House of Representatives or the Senate passes a joint resolution which would adopt one or more additional export criteria, or would modify any existing export criteria under this Act, any such joint resolution shall be referred in the other House to the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives,<sup>38</sup> as the case may be, and shall be considered by the other House under applicable procedures provided for the consideration of resolutions pursuant to section 130 of this Act.

[42 U.S.C. 2155]

SEC. 127. CRITERIA GOVERNING UNITED STATES NUCLEAR EXPORTS.—

The United States adopts the following criteria which, in addition to other requirements of law, will govern exports for peaceful nuclear uses from the United States of source material, special nuclear material, production or utilization facilities, and any sensitive nuclear technology:

(1) IAEA safeguards as required by Article III(2) of the Treaty will be applied with respect to any such material or facilities proposed to be exported, to any such material or facilities previously exported and subject to the applicable agreement for cooperation, and to any special nuclear material used in or produced through the use thereof.

(2) No such material, facilities, or sensitive nuclear technology proposed to be exported or previously exported and subject to the applicable agreement for cooperation, and no special nuclear material produced through the use of such materials, facilities, or sensitive nuclear technology, will be used for any nuclear explosive device or for research on or development of any nuclear explosive device.

(3) Adequate physical security measures will be maintained with respect to such material or facilities proposed to be exported and to any special nuclear material used in or pro-

<sup>38</sup>The name of the Committee on Foreign Affairs was changed to the Committee on International Relations at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186).

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duced through the use thereof. Following the effective date of any regulations promulgated by the Commission pursuant to section 304(d) of the Nuclear Non-Proliferation Act of 1978, physical security measures shall be deemed adequate if such measures provide a level of protection equivalent to that required by the applicable regulations.

(4) No such materials, facilities, or sensitive nuclear technology proposed to be exported, and no special nuclear material produced through the use of such material, will be retransferred to the jurisdiction of any other nation or group of nations unless the prior approval of the United States is obtained for such retransfer. In addition to other requirements of law, the United States may approve such retransfer only if the nation or group of nations designated to receive such retransfer agrees that it shall be subject to the conditions required by this section.

(5) No such material proposed to be exported and no special nuclear material produced through the use of such material will be reprocessed, and no irradiated fuel elements containing such material removed from a reactor shall be altered in form or content, unless the prior approval of the United States is obtained for such reprocessing or alteration.

(6) No such sensitive nuclear technology shall be exported unless the foregoing conditions shall be applied to any nuclear material or equipment which is produced or constructed under the jurisdiction of the recipient nation or group of nations by or through the use of any such exported sensitive nuclear technology.

[42 U.S.C. 2156]

SEC. 128. ADDITIONAL EXPORT CRITERION AND PROCEDURES.—

a.(1) As a condition of continued United States export of source material, special nuclear material, production or utilization facilities, and any sensitive nuclear technology to non-nuclear-weapon states, no such export shall be made unless IAEA safeguards are maintained with respect to all peaceful nuclear activities in, under the jurisdiction of, or carried out under the control of such state at the time of the export.

(2) The President shall seek to achieve adherence to the foregoing criterion by recipient non-nuclear-weapon states.

b. The criterion set forth in subsection a. shall be applied as an export criterion with respect to any application for the export of materials, facilities, or technology specified in subsection a. which is filed after eighteen months from the date of enactment of this section,<sup>39</sup> or for any such application under which the first export would occur at least twenty-four months after the date of enactment of this section,<sup>39</sup> except as provided in the following paragraphs:

(1) if the Commission or the Department of Energy, as the case may be, is notified that the President has determined that failure to approve an export to which this subsection applies because such criterion has not yet been met would be seriously

<sup>39</sup>The date of enactment was March 10, 1978.

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prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security, the license or authorization may be issued subject to other applicable requirements of law: *Provided*, That no such export of any production or utilization facility or of any source or special nuclear material (intended for use as fuel in any production or utilization facility) which has been licensed or authorized pursuant to this subsection shall be made to any non-nuclear-weapon state which has failed to meet such criterion until the first such license or authorization with respect to such state is submitted to the Congress (together with a detailed assessment of the reasons underlying the President's determination, the judgment of the executive branch required under section 126 of this Act, and any Commission opinion and views) for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act) and referred to the Committee on Foreign Affairs of the House of Representatives<sup>40</sup> and the Committee on Foreign Relations of the Senate, but such export shall not occur if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that the Congress does not favor the proposed export. Any such license or authorization shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions.

(2) If the Congress adopts a resolution of disapproval pursuant to paragraph (1), no further export of materials, facilities, or technology specified in subsection a. shall be permitted for the remainder of that Congress, unless such state meets the criterion or the President notifies the Congress that he has determined that significant progress has been made in achieving adherence to such criterion by such state or that United States foreign policy interests dictate reconsideration and the Congress, pursuant to the procedure of paragraph (1), does not adopt a concurrent resolution stating in substance that it disagrees with the President's determination.

(3) If the Congress does not adopt a resolution of disapproval with respect to a license or authorization submitted pursuant to paragraph (1), the criterion set forth in subsection a. shall not be applied as an export criterion with respect to exports of materials, facilities and technology specified in subsection a. to that state: *Provided*, That the first license or authorization with respect to that state which is issued pursuant to this paragraph after twelve months from the elapse of the sixty-day period specified in paragraph (1), and the first such license or authorization which is issued after each twelve-month period thereafter, shall be submitted to the Congress for review pursuant to the procedures specified in paragraph (1): *Provided further*.<sup>41</sup> That if the Congress adopts a resolution of disapproval during any review period provided for by this para-

<sup>40</sup>The name of the Committee on Foreign Affairs was changed to the Committee on International Relations at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186).

<sup>41</sup>Period in original. Probably should be comma.



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graph, the provisions of paragraph (2) shall apply with respect to further exports to such state.

[42 U.S.C. 2157]

SEC. 129. CONDUCT RESULTING IN TERMINATION OF NUCLEAR EXPORTS.—

a. No nuclear materials and equipment or sensitive nuclear technology shall be exported to—

(1) any non-nuclear-weapon state that is found by the President to have, at any time after the effective date of this section,<sup>42</sup>

(A) detonated a nuclear explosive device; or

(B) terminated or abrogated IAEA safeguards; or

(C) materially violated an IAEA safeguards agreement; or

(D) engaged in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such activities; or

(2) any nation or group of nations that is found by the President to have, at any time after the effective date of this section,<sup>43</sup>

(A) materially violated an agreement for cooperation with the United States, or, with respect to material or equipment not supplied under an agreement for cooperation, materially violated the terms under which such material or equipment was supplied or the terms of any commitments obtained with respect thereto pursuant to section 402(a) of the Nuclear Non-Proliferation Act of 1978; or

(B) assisted, encouraged, or induced any non-nuclear-weapon state to engage in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such assistance, encouragement, or inducement; or

(C) entered into an agreement after the date of enactment of this section<sup>43</sup> for the transfer of reprocessing equipment, materials, or technology to the sovereign control of a non-nuclear-weapon state except in connection with an international fuel cycle evaluation in which the United States is a participant or pursuant to a subsequent international agreement or understanding to which the United States subscribes;

unless the President determines that cessation of such exports would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security: *Provided*, That prior to the effective date of any such determination, the President's determination, together with a report containing the reasons for his determination, shall be sub-

<sup>42</sup>The effective date was March 10, 1978.

<sup>43</sup>The date of enactment was March 10, 1978.

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mitted to the Congress and referred to the Committee on Foreign Affairs of the House of Representatives<sup>44</sup> and the Committee on Foreign Relations of the Senate for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act), but any such determination shall not become effective if during such sixty-day period the Congress adopts, and there is enacted, a joint resolution stating in substance that it does not favor the determination. Any such determination shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions.

b.(1) Notwithstanding any other provision of law, including specifically section 121 of this Act, and except as provided in paragraphs (2) and (3), no nuclear materials and equipment or sensitive nuclear technology, including items and assistance authorized by section 57 b. of this Act and regulated under part 810 of title 10, Code of Federal Regulations, and nuclear-related items on the Commerce Control List maintained under part 774 of title 15 of the Code of Federal Regulations, shall be exported or reexported, or transferred or retransferred whether directly or indirectly, and no Federal agency shall issue any license, approval, or authorization for the export or reexport, or transfer, or retransfer, whether directly or indirectly, of these items or assistance (as defined in this paragraph) to any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities (specifically including any country the government of which has been determined by the Secretary of State under section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)), section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)) to have repeatedly provided support for acts of international terrorism).

(2) This subsection shall not apply to exports, reexports, transfers, or retransfers of radiation monitoring technologies, surveillance equipment, seals, cameras, tamper-indication devices, nuclear detectors, monitoring systems, or equipment necessary to safely store, transport, or remove hazardous materials, whether such items, services, or information are regulated by the Department of Energy, the Department of Commerce, or the Commission, except to the extent that such technologies, equipment, seals, cameras, devices, detectors, or systems are available for use in the design or construction of nuclear reactors or nuclear weapons.

(3) The President may waive the application of paragraph (1) to a country if the President determines and certifies to Congress that the waiver will not result in any increased risk that the country receiving the waiver will acquire nuclear weapons, nuclear reactors, or any materials or components of nuclear weapons and—

(A) the government of such country has not within the preceding 12-month period willfully aided or abetted the international proliferation of nuclear explosive devices to individuals or groups or willfully aided and abetted an individual or groups in acquiring unsafeguarded nuclear materials;

<sup>44</sup>The name of the Committee on Foreign Affairs was changed to the Committee on International Relations at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186).

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(B) in the judgment of the President, the government of such country has provided adequate, verifiable assurances that it will cease its support for acts of international terrorism;

(C) the waiver of that paragraph is in the vital national security interest of the United States; or

(D) such a waiver is essential to prevent or respond to a serious radiological hazard in the country receiving the waiver that may or does threaten public health and safety.

[42 U.S.C. 2158]

SEC. 130. CONGRESSIONAL REVIEW PROCEDURES.—

a. Not later than forty-five days of continuous session of Congress after the date of transmittal to the Congress of any submission of the President required by subsection 126 a. (2), 126 b. (2), 128 b., 129, 131 a. (3), or 131 f. (1)(A) of this Act, the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives,<sup>44</sup> shall each submit a report to its respective House on its views and recommendations respecting such Presidential submission together with a resolution, as defined in subsection f., stating in substance that the Congress approves or disapproves such submission, as the case may be: *Provided*, That if any such committee has not reported such a resolution at the end of such forty-five day period, such committee shall be deemed to be discharged from further consideration of such submission. If no such resolution has been reported at the end of such period, the first resolution, as defined in subsection f., which is introduced within five days thereafter within such House shall be placed on the appropriate calendar of such House.

b. When the relevant committee of committees have reported such a resolution (or have been discharged from further consideration of such a resolution pursuant to subsection a.) or when a resolution has been introduced and placed on the appropriate calendar pursuant to subsection a., as the case may be, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

c. Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to a motion to postpone, or a motion to recommit the resolution, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to shall not be in order. No amendment to any concurrent resolution pursuant to the procedures of this section is in order except as provided in subsection d.

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d. Immediately following (1) the conclusion of the debate on such concurrent resolution, (2) a single quorum call at the conclusion of debate if requested in accordance with the rules of the appropriate House, and (3) the consideration of an amendment introduced by the Majority Leader or his designee to insert the phrase, "does not" in lieu of the word "does" if the resolution under consideration is a concurrent resolution of approval, the vote on final approval of the resolution shall occur.

e. Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to such a resolution shall be decided without debate.

f. For the purposes of subsections a. through e. of this section, the term "resolution" means a concurrent resolution of the Congress, the matter after the resolving clause of which is as follows: "That the Congress (does or does not) favor the transmitted to the Congress by the President on, ", the blank spaces therein to be appropriately filled, and the affirmative or negative phrase within the parenthetical to be appropriately selected.

g.(1) Except as provided in paragraph (2), for the purposes of this section—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(2) For purposes of this section insofar as it applies to section 123—

(A) continuity of session is broken only by an adjournment of Congress sine die at the end of a Congress; and

(B) the days on which either House is not in session because of an adjournment of more than three days are excluded in the computation of any period of time in which Congress is in continuous session.

h. This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by subsection f. of this section; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

i.(1) For the purposes of this subsection, the term "joint resolution" means—

(A) for an agreement for cooperation pursuant to section 123 of this Act, a joint resolution, the matter after the resolving clause of which is as follows: "That the Congress (does or does not) favor the proposed agreement for cooperation transmitted to the Congress by the President on \_\_\_\_\_."

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(B) for a determination under section 129 of this Act, a joint resolution, the matter after the resolving clause of which is as follows: "That the Congress does not favor the determination transmitted to the Congress by the President on \_\_\_\_\_", or

(C) for a subsequent arrangement under section 201 of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act, a joint resolution, the matter after the resolving clause of which is as follows: "That the Congress does not favor the subsequent arrangement to the Agreement for Cooperation Between the Government of the United States of America and the Government of India Concerning Peaceful Uses of Nuclear Energy that was transmitted to Congress by the President on September 10, 2008.", with the date of the transmission of the proposed agreement for cooperation inserted in the blank, and the affirmative or negative phrase within the parenthetical appropriately selected.

(2) On the day on which a proposed agreement for cooperation is submitted to the House of Representatives and the Senate under section 123 d., a joint resolution with respect to such agreement for cooperation shall be introduced (by request) in the House by the chairman of the Committee on Foreign Affairs, for himself and the ranking minority member of the Committee, or by Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement for cooperation is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

(3) All joint resolutions introduced in the House of Representatives shall be referred to the appropriate committee or committees, and all joint resolutions introduced in the Senate shall be referred to the Committee on Foreign Relations and in addition, in the case of a proposed agreement for cooperation arranged pursuant to section 91 c., 144 b., or 144 c., the Committee on Armed Services.

(4) If the committee of either House to which a joint resolution has been referred has not reported it at the end of 45 days after its introduction (or in the case of a joint resolution related to a subsequent arrangement under section 201 of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act, 15 days after its introduction), the committee shall be discharged from further consideration of the joint resolution or of any other joint resolution introduced with respect to the same matter; except that, in the case of a joint resolution which has been referred to more than one committee, if before the end of that 45-day period (or in the case of a joint resolution related to a subsequent arrangement under section 201 of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act, 15-day period) one such committee has reported the joint resolution, any other committee to which the joint resolution was referred shall be discharged from further consideration of the joint resolu-

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tion or of any other joint resolution introduced with respect to the same matter.

(5) A joint resolution under this subsection shall be considered in the Senate in accordance with the provisions of section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and passage of joint resolutions reported or discharged pursuant to the provisions of this subsection, it shall be in order for the Committee on Rules of the House of Representatives to present for consideration a resolution of the House of Representatives providing procedures for the immediate consideration of a joint resolution under this subsection which may be similar, if applicable, to the procedures set forth in section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976.

(6) In the case of a joint resolution described in paragraph (1), if prior to the passage by one House of a joint resolution of that House, that House receives a joint resolution with respect to the same matter from the other House, then—

(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(B) the vote on final passage shall be on the joint resolution of the other House.

[42 U.S.C. 2159]

SEC. 131. SUBSEQUENT ARRANGEMENTS.—

a.(1) Prior to entering into any proposed subsequent arrangement under an agreement for cooperation (other than an agreement for cooperation arranged pursuant to subsection 91 c., 144 b., or 144 c. of this Act), the Secretary of Energy shall obtain the concurrence of the Secretary of State and shall consult with the Commission, and the Secretary of Defense: *Provided*, That the Secretary of State shall have the leading role in any negotiations of a policy nature pertaining to any proposed subsequent arrangement regarding arrangements for the storage or disposition of irradiated fuel elements or approvals for the transfer, for which prior approval is required under an agreement for cooperation, by a recipient of source or special nuclear material, production or utilization facilities, or nuclear technology. Notice of any proposed subsequent arrangement shall be published in the Federal Register, together with the written determination of the Secretary of Energy that such arrangement will not be inimical to the common defense and security, and such proposed subsequent arrangement shall not take effect before fifteen days after publication. Whenever the Secretary of State is required to prepare a Nuclear Proliferation Assessment Statement pursuant to paragraph (2) of this subsection, notice of the proposed subsequent arrangement which is the subject of the requirement to prepare a Nuclear Proliferation Assessment Statement shall not be published until after the receipt by the Secretary of Energy of such Statement or the expiration of the time authorized by subsection c. for the preparation of such Statement, whichever occurs first.

(2) If in the view of the Secretary of State, Secretary of Energy, Secretary of Defense, or the Commission a proposed subsequent arrangement might significantly contribute to proliferation, the Sec-

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retary of State, in consultation with such Secretary or the Commission, shall prepare an unclassified Nuclear Proliferation Assessment Statement with regard to such proposed subsequent arrangement regarding the adequacy of the safeguards and other control mechanisms and the application of the peaceful use assurances of the relevant agreement to ensure that assistance to be furnished pursuant to the subsequent arrangement will not be used to further any military or nuclear explosive purpose. For the purposes of this section, the term "subsequent arrangements" means arrangements entered into by any agency or department of the United States Government with respect to cooperation with any nation or group of nations (but not purely private or domestic arrangements) involving—

(A) contracts for the furnishing of nuclear materials and equipment;

(B) approvals for the transfer, for which prior approval is required under an agreement for cooperation, by a recipient of any source or special nuclear material, production or utilization facility, or nuclear technology;

(C) authorization for the distribution of nuclear materials and equipment pursuant to this Act which is not subject to the procedures set forth in section 111 b., section 126, or section 109 b.;

(D) arrangements for physical security;

(E) arrangements for the storage or disposition of irradiated fuel elements;

(F) arrangements for the application of safeguards with respect to nuclear materials and equipment; or

(G) any other arrangement which the President finds to be important from the standpoint of preventing proliferation.

(3) The United States will give timely consideration to all requests for prior approval, when required by this Act, for the reprocessing of material proposed to be exported, previously exported and subject to the applicable agreement for cooperation, or special nuclear material produced through the use of such material or a production or utilization facility transferred pursuant to such agreement for cooperation, or to the altering of irradiated fuel elements containing such material, and additionally, to the maximum extent feasible, will attempt to expedite such consideration when the terms and conditions for such actions are set forth in such agreement for cooperation or in some other international agreement executed by the United States and subject to congressional review procedures comparable to those set forth in section 123 of this Act.

(4) All other statutory requirements under other sections of this Act for the approval or conduct of any arrangement subject to this subsection shall continue to apply and any other such requirements for prior approval or conditions for entering such arrangements shall also be satisfied before the arrangement takes effect pursuant to subsection a. (1).

b. With regard to any special nuclear material exported by the United States or produced through the use of any nuclear materials and equipment or sensitive nuclear technology exported by the United States—

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(1) the Secretary of Energy may not enter into any subsequent arrangement for the retransfer of any such material to a third country for reprocessing, for the reprocessing of any such material, or for the subsequent retransfer of any plutonium in quantities greater than 500 grams resulting from the reprocessing of any such material, until he has provided the Committee on Foreign Affairs of the House of Representatives<sup>45</sup> and the Committee on Foreign Relations of the Senate with a report containing his reasons for entering into such arrangement and a period of 15 days of continuous session (as defined in subsection 130 g. of this Act) has elapsed: *Provided, however,* That if in the view of the President an emergency exists due to unforeseen circumstances requiring immediate entry into a subsequent arrangement, such period shall consist of fifteen calendar days;

(2) the Secretary of Energy may not enter into any subsequent arrangement for the reprocessing of any such material in a facility which has not processed power reactor fuel assemblies or been the subject of a subsequent arrangement therefor prior to the date of enactment of the Nuclear Non-Proliferation Act of 1978<sup>46</sup> or for subsequent retransfer to a non-nuclear-weapon state of any plutonium in quantities greater than 500 grams resulting from such reprocessing, unless in his judgment, and that of the Secretary of State, such reprocessing or retransfer will not result in a significant increase of the risk of proliferation beyond that which exists at the time that approval is requested. Among all the factors in making this judgment, foremost consideration will be given to whether or not the reprocessing or retransfer will take place under conditions that will ensure timely warning to the United States of any diversion well in advance of the time at which the non-nuclear-weapon state could transform the diverted material into a nuclear explosive device; and

(3) the Secretary of Energy shall attempt to ensure, in entering into any subsequent arrangement for the reprocessing of any such material in any facility that has processed power reactor fuel assemblies or been the subject of a subsequent arrangement therefor prior to the date of enactment of the Nuclear Non-Proliferation Act of 1978,<sup>46</sup> or for the subsequent retransfer to any non-nuclear-weapon state of any plutonium in quantities greater than 500 grams resulting from such reprocessing, that such reprocessing or retransfer shall take place under conditions comparable to those which in his view, and that of the Secretary of State, satisfy the standards set forth in paragraph (2).

c. The Secretary of Energy shall, within ninety days after the enactment of this section, establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of State, Defense, and Commerce and the Nuclear Regulatory Commission for the consideration of requests for subsequent arrangements under this section. Such procedures shall include, at a minimum, explicit direction on the han-

<sup>45</sup>The name of the Committee on Foreign Affairs was changed to the Committee on International Relations at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186).

<sup>46</sup>The date of enactment was March 10, 1978.



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ding of such requests, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an inter-agency coordinating authority to monitor the processing of such requests, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial requests should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurance or evidentiary showings, for the decisions required under this section. Further, such procedures shall specify that if he intends to prepare a Nuclear Proliferation Assessment Statement, the Secretary of State shall so declare in his response to the Department of Energy. If the Secretary of State declares that he intends to prepare such a Statement, he shall do so within sixty days of his receipt of a copy of the proposed subsequent arrangement (during which time the Secretary of Energy may not enter into the subsequent arrangement), unless pursuant to the Secretary of State's request, the President waives the sixty-day requirement and notifies the Committee on Foreign Affairs of the House of Representatives<sup>47</sup> and the Committee on Foreign Relations of the Senate of such waiver and the justification therefor. The processing of any subsequent arrangement proposed and filed as of the date of enactment of this section<sup>48</sup> shall not be delayed pending the development and establishment of procedures to implement the requirements of this section.

d. Nothing in this section is intended to prohibit, permanently or unconditionally, the reprocessing of spent fuel owned by a foreign nation which fuel has been supplied by the United States, to preclude the United States from full participation in the International Nuclear Fuel Cycle Evaluation provided for in section 105 of the Nuclear Non-Proliferation Act of 1978; to in any way limit the presentation or consideration in that evaluation of any nuclear fuel cycle by the United States or any other participation; nor to prejudice open and objective consideration of the results of the evaluation.

e. Notwithstanding subsection 402(d) of the Department of Energy Organization Act (Public Law 95-91), the Secretary of Energy, and not the Federal Energy Regulatory Commission, shall have sole jurisdiction within the Department of Energy over any matter arising from any function of the Secretary of Energy in this section.

f.(1) With regard to any subsequent arrangement under subsection a. (2) (E) (for the storage or disposition of irradiated fuel

<sup>47</sup>The name of the Committee on Foreign Affairs was changed to the Committee on International Relations at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186).

<sup>48</sup>The date of enactment was March 10, 1978.

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elements), where such arrangement involves a direct or indirect commitment of the United States for the storage or other disposition, interim or permanent, of any foreign spent nuclear fuel in the United States, the Secretary of Energy may not enter into any such subsequent arrangements, unless:

(A)(i) Such commitment of the United States has been submitted to the Congress for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act) and has been referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, but any such commitment shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the commitment, any such commitment to be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submissions; or (ii) if the President has submitted a detailed generic plan for such disposition or storage in the United States to the Congress for a period of sixty days of continuous session (as defined in subsection 130 g. of this Act), which plan has been referred to the Committee on Foreign Affairs of the House of Representatives<sup>47</sup> and the Committee on Foreign Relations of the Senate and has not been disapproved during such sixty-day period by the adoption of a concurrent resolution stating in substance that Congress does not favor the plan; and the commitment is subject to the terms of an effective plan. Any such plan shall be considered pursuant to the procedures set forth in section 130 of this Act for the consideration of Presidential submission;

(B) The Secretary of Energy has complied with subsection a.; and

(C) The Secretary of Energy has complied, or in the arrangement will comply with all other statutory requirements of this Act, under sections 54 and 55 and any other applicable sections, and any other requirements of law.

(2) Subsection<sup>49</sup> (1) shall not apply to the storage or other disposition in the United States of limited quantities of foreign spent nuclear fuel if the President determines that (A) a commitment under section 54 or 55 of this Act of the United States for storage or other disposition of such limited quantities in the United States is required by an emergency situation, (B) it is in the national interest to take such immediate action, and (C) he notifies the Committees on Foreign Affairs and Science, Space, and Technology of the House of Representatives<sup>50</sup> and the Committees on Foreign Relations and Energy and Natural Resources of the Senate of the determination and action, with a detailed explanation and justification thereof, as soon as possible.

(3) Any plan submitted by the President under subsection f. (1) shall include a detailed discussion, with detailed information, and

<sup>49</sup> So in law. Probably should be "paragraph".

<sup>50</sup> The name of the Committee on Foreign Affairs was changed to the Committee on International Relations at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186). The name of the Committee Science, Space, and Technology was changed to the Committee on Science at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 187).

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any supporting documentation thereof, relating to policy objectives, technical description, geographic information, cost data and justifications, legal and regulatory considerations, environmental impact information and any related international agreements, arrangements or understandings.

(4) For the purposes of this subsection, the term “foreign spent nuclear fuel” shall include any nuclear fuel irradiated in any nuclear power reactor located outside of the United States and operated by any foreign legal entity, government or nongovernment, regardless of the legal ownership or other control of the fuel or the reactor and regardless of the origin or licensing of the fuel or reactor, but not including fuel irradiated in a research reactor.

【42 U.S.C. 2160】

SEC. 132. AUTHORITY TO SUSPEND NUCLEAR COOPERATION WITH NATIONS WHICH HAVE NOT RATIFIED THE CONVENTION ON THE PHYSICAL SECURITY OF NUCLEAR MATERIAL.—

The President may suspend nuclear cooperation under this Act with any nation or group of nations which has not ratified the Convention on the Physical Security of Nuclear Material.

【42 U.S.C. 2160b】

SEC. 133. CONSULTATION WITH THE DEPARTMENT OF DEFENSE CONCERNING CERTAIN EXPORTS AND SUBSEQUENT ARRANGEMENTS.—

a. In addition to other applicable requirements—

(1) a license may be issued by the Nuclear Regulatory Commission under this Act for the export of special nuclear material described in subsection b.; and

(2) approval may be granted by the Secretary of Energy under section 131 of this Act for the transfer of special nuclear material described in subsection b.;

only after the Secretary of Defense has been consulted on whether the physical protection of that material during the export or transfer will be adequate to deter theft, sabotage, and other acts of international terrorism which would result in the diversion of that material. If, in the view of the Secretary of Defense based on all available intelligence information, the export or transfer might be subject to a genuine terrorist threat, the Secretary shall provide to the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, his written assessment of the risk and a description of the actions the Secretary of Defense considers necessary to upgrade physical protection measures.

b. Subsection a. applies to the export or transfer of more than 2 kilograms of plutonium or more than 20 kilograms<sup>51</sup> of uranium enriched to more than 20 percent in the isotope 233 or the isotope 235.

【42 U.S.C. 2160c】

<sup>51</sup>Section 829 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (P.L. 103–236) amended section 133 b. of the Atomic Energy Act of 1954 by striking “20 kilograms” and inserting “5 kilograms”.

Section 851 of (P.L. 103–236) provides that on “the date of enactment of the first Foreign Relations Authorization Act that is enacted after the enactment of this Act, the provisions of parts A and B of this title shall cease to be effective, the amendments made by those parts shall be repealed, and any provision of law repealed by those parts shall be reenacted.”



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## SEC. 134. FURTHER RESTRICTIONS ON EXPORTS.—

a. IN GENERAL.—Except as provided in subsection b., the Commission may issue a license for the export of highly enriched uranium to be used as a fuel or target in a nuclear research or test reactor only if, in addition to any other requirement of this Act, the Commission determines that—

(1) there is no alternative nuclear reactor fuel or target enriched in the isotope 235 to a lesser percent than the proposed export, that can be used in that reactor;

(2) the proposed recipient of that uranium has provided assurances that, whenever an alternative nuclear reactor fuel or target can be used in that reactor, it will use that alternative in lieu of highly enriched uranium; and

(3) the United States Government is actively developing an alternative nuclear reactor fuel or target that can be used in that reactor.

## b. MEDICAL ISOTOPE PRODUCTION.—

## (1) DEFINITIONS.—In this subsection:

(A) HIGHLY ENRICHED URANIUM.—The term “highly enriched uranium” means uranium enriched to include concentration of U-235 above 20 percent.

(B) MEDICAL ISOTOPE.—The term “medical isotope” includes Molybdenum 99, Iodine 131, Xenon 133, and other radioactive materials used to produce a radiopharmaceutical for diagnostic, therapeutic procedures or for research and development.

(C) RADIOPHARMACEUTICAL.—The term “radiopharmaceutical” means a radioactive isotope that—

(i) contains byproduct material combined with chemical or biological material; and

(ii) is designed to accumulate temporarily in a part of the body for therapeutic purposes or for enabling the production of a useful image for use in a diagnosis of a medical condition.

(D) RECIPIENT COUNTRY.—The term “recipient country” means Canada, Belgium, France, Germany, and the Netherlands.

(2) LICENSES.—The Commission may issue a license authorizing the export (including shipment to and use at intermediate and ultimate consignees specified in the license) to a recipient country of highly enriched uranium for medical isotope production if, in addition to any other requirements of this Act (except subsection a.), the Commission determines that—

(A) a recipient country that supplies an assurance letter to the United States Government in connection with the consideration by the Commission of the export license application has informed the United States Government that any intermediate consignees and the ultimate consignee specified in the application are required to use the highly enriched uranium solely to produce medical isotopes; and

(B) the highly enriched uranium for medical isotope production will be irradiated only in a reactor in a recipient country that—

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- (i) uses an alternative nuclear reactor fuel; or
- (ii) is the subject of an agreement with the United States Government to convert to an alternative nuclear reactor fuel when alternative nuclear reactor fuel can be used in the reactor.

(3) REVIEW OF PHYSICAL PROTECTION REQUIREMENTS.—

(A) IN GENERAL.—The Commission shall review the adequacy of physical protection requirements that, as of the date of an application under paragraph (2), are applicable to the transportation and storage of highly enriched uranium for medical isotope production or control of residual material after irradiation and extraction of medical isotopes.

(B) IMPOSITION OF ADDITIONAL REQUIREMENTS.—If the Commission determines that additional physical protection requirements are necessary (including a limit on the quantity of highly enriched uranium that may be contained in a single shipment), the Commission shall impose such requirements as license conditions or through other appropriate means.

(4) FIRST REPORT TO CONGRESS.—

(A) NAS STUDY.—The Secretary shall enter into an arrangement with the National Academy of Sciences to conduct a study to determine—

(i) the feasibility of procuring supplies of medical isotopes from commercial sources that do not use highly enriched uranium;

(ii) the current and projected demand and availability of medical isotopes in regular current domestic use;

(iii) the progress that is being made by the Department of Energy and others to eliminate all use of highly enriched uranium in reactor fuel, reactor targets, and medical isotope production facilities; and

(iv) the potential cost differential in medical isotope production in the reactors and target processing facilities if the products were derived from production systems that do not involve fuels and targets with highly enriched uranium.

(B) FEASIBILITY.—For the purpose of this subsection, the use of low enriched uranium to produce medical isotopes shall be determined to be feasible if—

(i) low enriched uranium targets have been developed and demonstrated for use in the reactors and target processing facilities that produce significant quantities of medical isotopes to serve United States needs for such isotopes;

(ii) sufficient quantities of medical isotopes are available from low enriched uranium targets and fuel to meet United States domestic needs; and

(iii) the average anticipated total cost increase from production of medical isotopes in such facilities without use of highly enriched uranium is less than 10 percent.

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(C) REPORT BY THE SECRETARY.—Not later than 5 years after the date of enactment of the Energy Policy Act of 2005, the Secretary shall submit to Congress a report that—

(i) contains the findings of the National Academy of Sciences made in the study under subparagraph (A); and

(ii) discloses the existence of any commitments from commercial producers to provide domestic requirements for medical isotopes without use of highly enriched uranium consistent with the feasibility criteria described in subparagraph (B) not later than the date that is 4 years after the date of submission of the report.

(5) SECOND REPORT TO CONGRESS.—If the study of the National Academy of Sciences determines under paragraph (4)(A)(i) that the procurement of supplies of medical isotopes from commercial sources that do not use highly enriched uranium is feasible, but the Secretary is unable to report the existence of commitments under paragraph (4)(C)(ii), not later than the date that is 6 years after the date of enactment of the Energy Policy Act of 2005, the Secretary shall submit to Congress a report that describes options for developing domestic supplies of medical isotopes in quantities that are adequate to meet domestic demand without the use of highly enriched uranium consistent with the cost increase described in paragraph (4)(B)(iii).

(6) CERTIFICATION.—At such time as commercial facilities that do not use highly enriched uranium are capable of meeting domestic requirements for medical isotopes, within the cost increase described in paragraph (4)(B)(iii) and without impairing the reliable supply of medical isotopes for domestic utilization, the Secretary shall submit to Congress a certification to that effect.

(7) SUNSET PROVISION.—After the Secretary submits a certification under paragraph (6), the Commission shall, by rule, terminate its review of export license applications under this subsection.

c. MEDICAL PRODUCTION LICENSE SUNSET.—Effective 7 years after the date of enactment of the American Medical Isotopes Production Act of 2012, the Commission may not issue a license for the export of highly enriched uranium from the United States for the purposes of medical isotope production.

d. MEDICAL PRODUCTION LICENSE EXTENSION.—The period referred to in subsection c. may be extended for no more than 6 years if, no earlier than 6 years after the date of enactment of the American Medical Isotopes Production Act of 2012, the Secretary of Energy certifies to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate that—

(1) there is insufficient global supply of molybdenum-99 produced without the use of highly enriched uranium available to satisfy the domestic United States market; and

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(2) the export of United States-origin highly enriched uranium for the purposes of medical isotope production is the most effective temporary means to increase the supply of molybdenum-99 to the domestic United States market.

e. PUBLIC NOTICE.—To ensure public review and comment, the development of the certification described in subsection d. shall be carried out through announcement in the Federal Register.

f. JOINT CERTIFICATION.—

(1) IN GENERAL.—In accordance with paragraph (2), the ban on the export of highly enriched uranium for purposes of medical isotope production referred to in subsections c. and d. shall not go into effect unless the Secretary of Energy and the Secretary of Health and Human Services have jointly certified that—

(A) there is a sufficient supply of molybdenum-99 produced without the use of highly enriched uranium available to meet the needs of patients in the United States; and

(B) it is not necessary to export United States-origin highly enriched uranium for the purposes of medical isotope production in order to meet United States patient needs.

(2) TIME OF CERTIFICATION.—The joint certification under paragraph (1) shall be made not later than 7 years after the date of enactment of the American Medical Isotopes Production Act of 2012, except that, if the period referred to in subsection c. is extended under subsection d., the 7-year deadline under this paragraph shall be extended by a period equal to the period of such extension under subsection d.

g. SUSPENSION OF MEDICAL PRODUCTION LICENSE.—At any time after the restriction of export licenses provided for in subsection c. becomes effective, if there is a critical shortage in the supply of molybdenum-99 available to satisfy the domestic United States medical isotope needs, the restriction of export licenses may be suspended for a period of no more than 12 months, if—

(1) the Secretary of Energy certifies to the Congress that the export of United States-origin highly enriched uranium for the purposes of medical isotope production is the only effective temporary means to increase the supply of molybdenum-99 necessary to meet United States medical isotope needs during that period; and

(2) the Congress enacts a Joint Resolution approving the temporary suspension of the restriction of export licenses.

h. DEFINITIONS.—As used in this section—

(1) the term “alternative nuclear reactor fuel or target” means a nuclear reactor fuel or target which is enriched to less than 20 percent in the isotope U-235;

(2) the term “highly enriched uranium” means uranium enriched to 20 percent or more in the isotope U-235;

(3) a fuel or target “can be used” in a nuclear research or test reactor if—

(A) the fuel or target has been qualified by the Reduced Enrichment Research and Test Reactor Program of the Department of Energy; and

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(B) use of the fuel or target will permit the large majority of ongoing and planned experiments and medical isotope production to be conducted in the reactor without a large percentage increase in the total cost of operating the reactor; and

(4) the term “medical isotope” includes molybdenum-99, iodine-131, xenon-133, and other radioactive materials used to produce a radiopharmaceutical for diagnostic or therapeutic procedures or for research and development.

[42 U.S.C. 2160d]

**SEC. 135. CONGRESSIONAL REVIEW AND OVERSIGHT OF AGREEMENTS WITH IRAN.**

(a) TRANSMISSION TO CONGRESS OF NUCLEAR AGREEMENTS WITH IRAN AND VERIFICATION ASSESSMENT WITH RESPECT TO SUCH AGREEMENTS.—

(1) TRANSMISSION OF AGREEMENTS.—Not later than 5 calendar days after reaching an agreement with Iran relating to the nuclear program of Iran, the President shall transmit to the appropriate congressional committees and leadership—

(A) the agreement, as defined in subsection (h)(1), including all related materials and annexes;

(B) a verification assessment report of the Secretary of State prepared under paragraph (2) with respect to the agreement; and

(C) a certification that—

(i) the agreement includes the appropriate terms, conditions, and duration of the agreement’s requirements with respect to Iran’s nuclear activities and provisions describing any sanctions to be waived, suspended, or otherwise reduced by the United States, and any other nation or entity, including the United Nations; and

(ii) the President determines the agreement meets United States non-proliferation objectives, does not jeopardize the common defense and security, provides an adequate framework to ensure that Iran’s nuclear activities permitted thereunder will not be inimical to or constitute an unreasonable risk to the common defense and security, and ensures that Iran’s nuclear activities permitted thereunder will not be used to further any nuclear-related military or nuclear explosive purpose, including for any research on or development of any nuclear explosive device or any other nuclear-related military purpose.

(2) VERIFICATION ASSESSMENT REPORT.—

(A) IN GENERAL.—The Secretary of State shall prepare, with respect to an agreement described in paragraph (1), a report assessing—

(i) the extent to which the Secretary will be able to verify that Iran is complying with its obligations and commitments under the agreement;

(ii) the adequacy of the safeguards and other control mechanisms and other assurances contained in

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the agreement with respect to Iran's nuclear program to ensure Iran's activities permitted thereunder will not be used to further any nuclear-related military or nuclear explosive purpose, including for any research on or development of any nuclear explosive device or any other nuclear-related military purpose; and

(iii) the capacity and capability of the International Atomic Energy Agency to effectively implement the verification regime required by or related to the agreement, including whether the International Atomic Energy Agency will have sufficient access to investigate suspicious sites or allegations of covert nuclear-related activities and whether it has the required funding, manpower, and authority to undertake the verification regime required by or related to the agreement.

(B) ASSUMPTIONS.—In preparing a report under subparagraph (A) with respect to an agreement described in paragraph (1), the Secretary shall assume that Iran could—

(i) use all measures not expressly prohibited by the agreement to conceal activities that violate its obligations and commitments under the agreement; and

(ii) alter or deviate from standard practices in order to impede efforts to verify that Iran is complying with those obligations and commitments.

(C) CLASSIFIED ANNEX.—A report under subparagraph (A) shall be transmitted in unclassified form, but shall include a classified annex prepared in consultation with the Director of National Intelligence, summarizing relevant classified information.

(3) EXCEPTION.—

(A) IN GENERAL.—Neither the requirements of subparagraphs (B) and (C) of paragraph (1), nor subsections (b) through (g) of this section, shall apply to an agreement described in subsection (h)(5) or to the EU-Iran Joint Statement made on April 2, 2015.

(B) ADDITIONAL REQUIREMENT.—Notwithstanding subparagraph (A), any agreement as defined in subsection (h)(1) and any related materials, whether concluded before or after the date of the enactment of this section, shall not be subject to the exception in subparagraph (A).

(b) PERIOD FOR REVIEW BY CONGRESS OF NUCLEAR AGREEMENTS WITH IRAN.—

(1) IN GENERAL.—During the 30-calendar day period following transmittal by the President of an agreement pursuant to subsection (a), the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives shall, as appropriate, hold hearings and briefings and otherwise obtain information in order to fully review such agreement.

(2) EXCEPTION.—The period for congressional review under paragraph (1) shall be 60 calendar days if an agreement, including all materials required to be transmitted to Congress

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pursuant to subsection (a)(1), is transmitted pursuant to subsection (a) between July 10, 2015, and September 7, 2015.

(3) LIMITATION ON ACTIONS DURING INITIAL CONGRESSIONAL REVIEW PERIOD.—Notwithstanding any other provision of law, except as provided in paragraph (6), prior to and during the period for transmission of an agreement in subsection (a)(1) and during the period for congressional review provided in paragraph (1), including any additional period as applicable under the exception provided in paragraph (2), the President may not waive, suspend, reduce, provide relief from, or otherwise limit the application of statutory sanctions with respect to Iran under any provision of law or refrain from applying any such sanctions pursuant to an agreement described in subsection (a).

(4) LIMITATION ON ACTIONS DURING PRESIDENTIAL CONSIDERATION OF A JOINT RESOLUTION OF DISAPPROVAL.—Notwithstanding any other provision of law, except as provided in paragraph (6), if a joint resolution of disapproval described in subsection (c)(2)(B) passes both Houses of Congress, the President may not waive, suspend, reduce, provide relief from, or otherwise limit the application of statutory sanctions with respect to Iran under any provision of law or refrain from applying any such sanctions pursuant to an agreement described in subsection (a) for a period of 12 calendar days following the date of such passage.

(5) LIMITATION ON ACTIONS DURING CONGRESSIONAL RECONSIDERATION OF A JOINT RESOLUTION OF DISAPPROVAL.—Notwithstanding any other provision of law, except as provided in paragraph (6), if a joint resolution of disapproval described in subsection (c)(2)(B) passes both Houses of Congress, and the President vetoes such joint resolution, the President may not waive, suspend, reduce, provide relief from, or otherwise limit the application of statutory sanctions with respect to Iran under any provision of law or refrain from applying any such sanctions pursuant to an agreement described in subsection (a) for a period of 10 calendar days following the date of the President's veto.

(6) EXCEPTION.—The prohibitions under paragraphs (3) through (5) do not apply to any new deferral, waiver, or other suspension of statutory sanctions pursuant to the Joint Plan of Action if that deferral, waiver, or other suspension is made—

(A) consistent with the law in effect on the date of the enactment of the Iran Nuclear Agreement Review Act of 2015; and

(B) not later than 45 calendar days before the transmission by the President of an agreement, assessment report, and certification under subsection (a).

(7) DEFINITION.—In the House of Representatives, for purposes of this subsection, the terms “transmittal,” “transmitted,” and “transmission” mean transmittal, transmitted, and transmission, respectively, to the Speaker of the House of Representatives.

(c) EFFECT OF CONGRESSIONAL ACTION WITH RESPECT TO NUCLEAR AGREEMENTS WITH IRAN.—

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(1) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) the sanctions regime imposed on Iran by Congress is primarily responsible for bringing Iran to the table to negotiate on its nuclear program;

(B) these negotiations are a critically important matter of national security and foreign policy for the United States and its closest allies;

(C) this section does not require a vote by Congress for the agreement to commence;

(D) this section provides for congressional review, including, as appropriate, for approval, disapproval, or no action on statutory sanctions relief under an agreement; and

(E) even though the agreement may commence, because the sanctions regime was imposed by Congress and only Congress can permanently modify or eliminate that regime, it is critically important that Congress have the opportunity, in an orderly and deliberative manner, to consider and, as appropriate, take action affecting the statutory sanctions regime imposed by Congress.

(2) IN GENERAL.—Notwithstanding any other provision of law, action involving any measure of statutory sanctions relief by the United States pursuant to an agreement subject to subsection (a) or the Joint Plan of Action—

(A) may be taken, consistent with existing statutory requirements for such action, if, during the period for review provided in subsection (b), there is enacted a joint resolution stating in substance that the Congress does favor the agreement;

(B) may not be taken if, during the period for review provided in subsection (b), there is enacted a joint resolution stating in substance that the Congress does not favor the agreement; or

(C) may be taken, consistent with existing statutory requirements for such action, if, following the period for review provided in subsection (b), there is not enacted any such joint resolution.

(3) DEFINITION.—For the purposes of this subsection, the phrase “action involving any measure of statutory sanctions relief by the United States” shall include waiver, suspension, reduction, or other effort to provide relief from, or otherwise limit the application of statutory sanctions with respect to, Iran under any provision of law or any other effort to refrain from applying any such sanctions.

(d) CONGRESSIONAL OVERSIGHT OF IRANIAN COMPLIANCE WITH NUCLEAR AGREEMENTS.—

(1) IN GENERAL.—The President shall keep the appropriate congressional committees and leadership fully and currently informed of all aspects of Iranian compliance with respect to an agreement subject to subsection (a).

(2) POTENTIALLY SIGNIFICANT BREACHES AND COMPLIANCE INCIDENTS.—The President shall, within 10 calendar days of receiving credible and accurate information relating to a potentially significant breach or compliance incident by Iran with re-

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spect to an agreement subject to subsection (a), submit such information to the appropriate congressional committees and leadership.

(3) MATERIAL BREACH REPORT.—Not later than 30 calendar days after submitting information about a potentially significant breach or compliance incident pursuant to paragraph (2), the President shall make a determination whether such potentially significant breach or compliance issue constitutes a material breach and, if there is such a material breach, whether Iran has cured such material breach, and shall submit to the appropriate congressional committees and leadership such determination, accompanied by, as appropriate, a report on the action or failure to act by Iran that led to the material breach, actions necessary for Iran to cure the breach, and the status of Iran's efforts to cure the breach.

(4) SEMI-ANNUAL REPORT.—Not later than 180 calendar days after entering into an agreement described in subsection (a), and not less frequently than once every 180 calendar days thereafter, the President shall submit to the appropriate congressional committees and leadership a report on Iran's nuclear program and the compliance of Iran with the agreement during the period covered by the report, including the following elements:

(A) Any action or failure to act by Iran that breached the agreement or is in noncompliance with the terms of the agreement.

(B) Any delay by Iran of more than one week in providing inspectors access to facilities, people, and documents in Iran as required by the agreement.

(C) Any progress made by Iran to resolve concerns by the International Atomic Energy Agency about possible military dimensions of Iran's nuclear program.

(D) Any procurement by Iran of materials in violation of the agreement or which could otherwise significantly advance Iran's ability to obtain a nuclear weapon.

(E) Any centrifuge research and development conducted by Iran that—

(i) is not in compliance with the agreement; or

(ii) may substantially reduce the breakout time of acquisition of a nuclear weapon by Iran, if deployed.

(F) Any diversion by Iran of uranium, carbon-fiber, or other materials for use in Iran's nuclear program in violation of the agreement.

(G) Any covert nuclear activities undertaken by Iran, including any covert nuclear weapons-related or covert fissile material activities or research and development.

(H) An assessment of whether any Iranian financial institutions are engaged in money laundering or terrorist finance activities, including names of specific financial institutions if applicable.

(I) Iran's advances in its ballistic missile program, including developments related to its long-range and intercontinental ballistic missile programs.

(J) An assessment of—

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(i) whether Iran directly supported, financed, planned, or carried out an act of terrorism against the United States or a United States person anywhere in the world;

(ii) whether, and the extent to which, Iran supported acts of terrorism, including acts of terrorism against the United States or a United States person anywhere in the world;

(iii) all actions, including in international fora, being taken by the United States to stop, counter, and condemn acts by Iran to directly or indirectly carry out acts of terrorism against the United States and United States persons;

(iv) the impact on the national security of the United States and the safety of United States citizens as a result of any Iranian actions reported under this paragraph; and

(v) all of the sanctions relief provided to Iran, pursuant to the agreement, and a description of the relationship between each sanction waived, suspended, or deferred and Iran's nuclear weapon's program.

(K) An assessment of whether violations of internationally recognized human rights in Iran have changed, increased, or decreased, as compared to the prior 180-day period.

(5) ADDITIONAL REPORTS AND INFORMATION.—

(A) AGENCY REPORTS.—Following submission of an agreement pursuant to subsection (a) to the appropriate congressional committees and leadership, the Department of State, the Department of Energy, and the Department of Defense shall, upon the request of any of those committees or leadership, promptly furnish to those committees or leadership their views as to whether the safeguards and other controls contained in the agreement with respect to Iran's nuclear program provide an adequate framework to ensure that Iran's activities permitted thereunder will not be inimical to or constitute an unreasonable risk to the common defense and security.

(B) PROVISION OF INFORMATION ON NUCLEAR INITIATIVES WITH IRAN.—The President shall keep the appropriate congressional committees and leadership fully and currently informed of any initiative or negotiations with Iran relating to Iran's nuclear program, including any new or amended agreement.

(6) COMPLIANCE CERTIFICATION.—After the review period provided in subsection (b), the President shall, not less than every 90 calendar days—

(A) determine whether the President is able to certify that—

(i) Iran is transparently, verifiably, and fully implementing the agreement, including all related technical or additional agreements;

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(ii) Iran has not committed a material breach with respect to the agreement or, if Iran has committed a material breach, Iran has cured the material breach;

(iii) Iran has not taken any action, including covert activities, that could significantly advance its nuclear weapons program; and

(iv) suspension of sanctions related to Iran pursuant to the agreement is—

(I) appropriate and proportionate to the specific and verifiable measures taken by Iran with respect to terminating its illicit nuclear program; and

(II) vital to the national security interests of the United States; and

(B) if the President determines he is able to make the certification described in subparagraph (A), make such certification to the appropriate congressional committees and leadership.

(7) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) United States sanctions on Iran for terrorism, human rights abuses, and ballistic missiles will remain in place under an agreement, as defined in subsection (h)(1);

(B) issues not addressed by an agreement on the nuclear program of Iran, including fair and appropriate compensation for Americans who were terrorized and subjected to torture while held in captivity for 444 days after the seizure of the United States Embassy in Tehran, Iran, in 1979 and their families, the freedom of Americans held in Iran, the human rights abuses of the Government of Iran against its own people, and the continued support of terrorism worldwide by the Government of Iran, are matters critical to ensure justice and the national security of the United States, and should be expeditiously addressed;

(C) the President should determine the agreement in no way compromises the commitment of the United States to Israel's security, nor its support for Israel's right to exist; and

(D) in order to responsibly implement any long-term agreement reached between the P5+1 countries and Iran, it is critically important that Congress have the opportunity to review any agreement and, as necessary, take action to modify the statutory sanctions regime imposed by Congress.

(e) EXPEDITED CONSIDERATION OF LEGISLATION.—

(1) INITIATION.—

(A) IN GENERAL.—In the event the President does not submit a certification pursuant to subsection (d)(6) during each 90-day period following the review period provided in subsection (b), or submits a determination pursuant to subsection (d)(3) that Iran has materially breached an agreement subject to subsection (a) and the material breach has not been cured, qualifying legislation intro-

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duced within 60 calendar days of such event shall be entitled to expedited consideration pursuant to this subsection.

(B) DEFINITION.—In the House of Representatives, for purposes of this paragraph, the terms “submit” and “submits” mean submit and submits, respectively, to the Speaker of the House of Representatives.

(2) QUALIFYING LEGISLATION DEFINED.—For purposes of this subsection, the term “qualifying legislation” means only a bill of either House of Congress—

(A) the title of which is as follows: “A bill reinstating statutory sanctions imposed with respect to Iran.”; and

(B) the matter after the enacting clause of which is: “Any statutory sanctions imposed with respect to Iran pursuant to \_\_\_\_\_ that were waived, suspended, reduced, or otherwise relieved pursuant to an agreement submitted pursuant to section 135(a) of the Atomic Energy Act of 1954 are hereby reinstated and any action by the United States Government to facilitate the release of funds or assets to Iran pursuant to such agreement, or provide any further waiver, suspension, reduction, or other relief pursuant to such agreement is hereby prohibited.”, with the blank space being filled in with the law or laws under which sanctions are to be reinstated.

(3) INTRODUCTION.—During the 60-calendar day period provided for in paragraph (1), qualifying legislation may be introduced—

(A) in the House of Representatives, by the majority leader or the minority leader; and

(B) in the Senate, by the majority leader (or the majority leader’s designee) or the minority leader (or the minority leader’s designee).

(4) FLOOR CONSIDERATION IN HOUSE OF REPRESENTATIVES.—

(A) REPORTING AND DISCHARGE.—If a committee of the House to which qualifying legislation has been referred has not reported such qualifying legislation within 10 legislative days after the date of referral, that committee shall be discharged from further consideration thereof.

(B) PROCEEDING TO CONSIDERATION.—Beginning on the third legislative day after each committee to which qualifying legislation has been referred reports it to the House or has been discharged from further consideration thereof, it shall be in order to move to proceed to consider the qualifying legislation in the House. All points of order against the motion are waived. Such a motion shall not be in order after the House has disposed of a motion to proceed on the qualifying legislation with regard to the same agreement. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. The motion shall not be debatable. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(C) CONSIDERATION.—The qualifying legislation shall be considered as read. All points of order against the quali-

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fyng legislation and against its consideration are waived. The previous question shall be considered as ordered on the qualifying legislation to final passage without intervening motion except two hours of debate equally divided and controlled by the sponsor of the qualifying legislation (or a designee) and an opponent. A motion to reconsider the vote on passage of the qualifying legislation shall not be in order.

(5) CONSIDERATION IN THE SENATE.—

(A) COMMITTEE REFERRAL.—Qualifying legislation introduced in the Senate shall be referred to the Committee on Foreign Relations.

(B) REPORTING AND DISCHARGE.—If the Committee on Foreign Relations has not reported such qualifying legislation within 10 session days after the date of referral of such legislation, that committee shall be discharged from further consideration of such legislation and the qualifying legislation shall be placed on the appropriate calendar.

(C) PROCEEDING TO CONSIDERATION.—Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time after the committee authorized to consider qualifying legislation reports it to the Senate or has been discharged from its consideration (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of qualifying legislation, and all points of order against qualifying legislation (and against consideration of the qualifying legislation) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the qualifying legislation is agreed to, the qualifying legislation shall remain the unfinished business until disposed of.

(D) DEBATE.—Debate on qualifying legislation, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion to further limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the qualifying legislation is not in order.

(E) VOTE ON PASSAGE.—The vote on passage shall occur immediately following the conclusion of the debate on the qualifying legislation and a single quorum call at the conclusion of the debate, if requested in accordance with the rules of the Senate.

(F) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to qualifying legislation shall be decided without debate.

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(G) CONSIDERATION OF VETO MESSAGES.—Debate in the Senate of any veto message with respect to qualifying legislation, including all debatable motions and appeals in connection with such qualifying legislation, shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(6) RULES RELATING TO SENATE AND HOUSE OF REPRESENTATIVES.—

(A) COORDINATION WITH ACTION BY OTHER HOUSE.—If, before the passage by one House of qualifying legislation of that House, that House receives qualifying legislation from the other House, then the following procedures shall apply:

(i) The qualifying legislation of the other House shall not be referred to a committee.

(ii) With respect to qualifying legislation of the House receiving the legislation—

(I) the procedure in that House shall be the same as if no qualifying legislation had been received from the other House; but

(II) the vote on passage shall be on the qualifying legislation of the other House.

(B) TREATMENT OF A BILL OF OTHER HOUSE.—If one House fails to introduce qualifying legislation under this section, the qualifying legislation of the other House shall be entitled to expedited floor procedures under this section.

(C) TREATMENT OF COMPANION MEASURES.—If, following passage of the qualifying legislation in the Senate, the Senate then receives a companion measure from the House of Representatives, the companion measure shall not be debatable.

(D) APPLICATION TO REVENUE MEASURES.—The provisions of this paragraph shall not apply in the House of Representatives to qualifying legislation which is a revenue measure.

(f) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—Subsection (e) is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of legislation described in those sections, and supersede other rules only to the extent that they are inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(g) RULES OF CONSTRUCTION.—Nothing in the section shall be construed as—

(1) modifying, or having any other impact on, the President's authority to negotiate, enter into, or implement appro-

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appropriate executive agreements, other than the restrictions on implementation of the agreements specifically covered by this section;

(2) allowing any new waiver, suspension, reduction, or other relief from statutory sanctions with respect to Iran under any provision of law, or allowing the President to refrain from applying any such sanctions pursuant to an agreement described in subsection (a) during the period for review provided in subsection (b);

(3) revoking or terminating any statutory sanctions imposed on Iran; or

(4) authorizing the use of military force against Iran.

(h) DEFINITIONS.—In this section:

(1) AGREEMENT.—The term “agreement” means an agreement related to the nuclear program of Iran that includes the United States, commits the United States to take action, or pursuant to which the United States commits or otherwise agrees to take action, regardless of the form it takes, whether a political commitment or otherwise, and regardless of whether it is legally binding or not, including any joint comprehensive plan of action entered into or made between Iran and any other parties, and any additional materials related thereto, including annexes, appendices, codicils, side agreements, implementing materials, documents, and guidance, technical or other understandings, and any related agreements, whether entered into or implemented prior to the agreement or to be entered into or implemented in the future.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means the Committee on Finance, the Committee on Banking, Housing, and Urban Affairs, the Select Committee on Intelligence, and the Committee on Foreign Relations of the Senate and the Committee on Ways and Means, the Committee on Financial Services, the Permanent Select Committee on Intelligence, and the Committee on Foreign Affairs of the House of Representatives.

(3) APPROPRIATE CONGRESSIONAL COMMITTEES AND LEADERSHIP.—The term “appropriate congressional committees and leadership” means the Committee on Finance, the Committee on Banking, Housing, and Urban Affairs, the Select Committee on Intelligence, and the Committee on Foreign Relations, and the Majority and Minority Leaders of the Senate and the Committee on Ways and Means, the Committee on Financial Services, the Permanent Select Committee on Intelligence, and the Committee on Foreign Affairs, and the Speaker, Majority Leader, and Minority Leader of the House of Representatives.

(4) IRANIAN FINANCIAL INSTITUTION.—The term “Iranian financial institution” has the meaning given the term in section 104A(d) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8513b(d)).

(5) JOINT PLAN OF ACTION.—The term “Joint Plan of Action” means the Joint Plan of Action, signed at Geneva November 24, 2013, by Iran and by France, Germany, the Russian Federation, the People’s Republic of China, the United Kingdom, and the United States, and all implementing materials

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and agreements related to the Joint Plan of Action, including the technical understandings reached on January 12, 2014, the extension thereto agreed to on July 18, 2014, the extension agreed to on November 24, 2014, and any materially identical extension that is agreed to on or after the date of the enactment of the Iran Nuclear Agreement Review Act of 2015.

(6) EU-IRAN JOINT STATEMENT.—The term “EU-Iran Joint Statement” means only the Joint Statement by EU High Representative Federica Mogherini and Iranian Foreign Minister Javad Zarif made on April 2, 2015, at Lausanne, Switzerland.

(7) MATERIAL BREACH.—The term “material breach” means, with respect to an agreement described in subsection (a), any breach of the agreement, or in the case of non-binding commitments, any failure to perform those commitments, that substantially—

(A) benefits Iran’s nuclear program;

(B) decreases the amount of time required by Iran to achieve a nuclear weapon; or

(C) deviates from or undermines the purposes of such agreement.

(8) NONCOMPLIANCE DEFINED.—The term “noncompliance” means any departure from the terms of an agreement described in subsection (a) that is not a material breach.

(9) P5+1 COUNTRIES.—The term “P5+1 countries” means the United States, France, the Russian Federation, the People’s Republic of China, the United Kingdom, and Germany.

(10) UNITED STATES PERSON.—The term “United States person” has the meaning given that term in section 101 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8511).

[42 U.S.C. 2160e]

## CHAPTER 12. CONTROL OF INFORMATION

SEC. 141. POLICY.—It shall be the policy of the Commission to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. Consistent with such policy, the Commission shall be guided by the following principles:

a. Until effective and enforceable international safeguards against the use of atomic energy for destructive purposes have been established by an international arrangement, there shall be no exchange of Restricted Data with other nations except as authorized by section 144; and

b. The dissemination of scientific and technical information relating to atomic energy should be permitted and encouraged so as to provide that free interchange of ideas and criticism which is essential to scientific and industrial progress and public understanding and to enlarge the fund of technical information.

[42 U.S.C. 2161]

SEC. 142. CLASSIFICATION AND DECLASSIFICATION OF RESTRICTED DATA.—

a. The Commission shall from time to time determine the data, within the definition of Restricted Data, which can be published

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without undue risk of the common defense and security and shall thereupon cause such data to be declassified and removed from the category of Restricted Data.

b. The Commission shall maintain a continuous review of Restricted Data and of any Classification Guides issued for the guidance of those in the atomic energy program with respect to the areas of Restricted Data which have been declassified in order to determine which information may be declassified and removed from the category of Restricted Data without undue risk to the common defense and security.

c. In the case of Restricted Data which the Commission and the Department of Defense jointly determine to relate primarily to the military utilization of atomic weapons, the determination that such data may be published without constituting an unreasonable risk to the common defense and security shall be made by the Commission and the Department of Defense jointly, and if the Commission and the Department of Defense do not agree, the determination shall be made by the President.

d.(1) The Commission shall remove from the Restricted Data category such data as the Commission and the Department of Defense jointly determine relates primarily to the military utilization of atomic weapons and which the Commission and Department of Defense jointly determine can be adequately safeguarded as defense information: *Provided, however,* That no such data so removed from the Restricted Data category shall be transmitted or otherwise made available to any nation or regional defense organization, while such data remains defense information, except pursuant to an agreement for cooperation entered into in accordance with subsection b. or d. of section 144.

(2) The Commission may restore to the Restricted Data category any information related to the design of nuclear weapons removed under paragraph (1) if the Commission and the Department of Defense jointly determine that—

(A) the programmatic requirements that caused the information to be removed from the Restricted Data category are no longer applicable or have diminished;

(B) the information would be more appropriately protected as Restricted Data; and

(C) restoring the information to the Restricted Data category is in the interest of national security.

(3) In carrying out paragraph (2), information related to the design of nuclear weapons shall be restored to the Restricted Data category in accordance with regulations prescribed for purposes of such paragraph.

e.(1) The Commission shall remove from the Restricted Data category such information concerning the atomic energy programs of other nations as the Commission and the Director of National Intelligence jointly determine to be necessary to carry out the provisions of section 102(d) of the National Security Act of 1947, as amended, and can be adequately safeguarded as defense information.

(2) The Commission may restore to the Restricted Data category any information concerning atomic energy programs of other

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nations removed under paragraph (1) if the Commission and the Director of National Intelligence jointly determine that—

(A) the programmatic requirements that caused the information to be removed from the Restricted Data category are no longer applicable or have diminished;

(B) the information would be more appropriately protected as Restricted Data; and

(C) restoring the information to the Restricted Data category is in the interest of national security.

(3) In carrying out paragraph (2), information concerning atomic energy programs of other nations shall be restored to the Restricted Data category in accordance with regulations prescribed for purposes of such paragraph.

[42 U.S.C. 2162]

SEC. 143. DEPARTMENT OF DEFENSE PARTICIPATION.—The Commission may authorize any of its employees, or employees of any contractor, prospective contractor, licensee or prospective licensee of the Commission or any other person authorized access to Restricted Data by the Commission under subsections 145 b. and 145 c. to permit any employee of an agency of the Department of Defense or of its contractors, or any member of the Armed Forces to have access to Restricted Data required in the performance of his duties and so certified by the head of the appropriate agency of the Department of Defense or his designee: *Provided, however,* That the head of the appropriate agency of the Department of Defense or his designee has determined, in accordance with the established personnel security procedures and standards of such agency, that permitting the member or employee to have access to such Restricted Data will not endanger the common defense and security: *And provided further,* That the Secretary of Defense finds that the established personnel and other security procedures and standards of such agency are adequate and in reasonable conformity to the standards established by the Commission under section 145.

[42 U.S.C. 2163]

SEC. 144. INTERNATIONAL COOPERATION.—

a. The President may authorize the Commission to cooperate with another nation and to communicate to that nation Restricted Data on—

(1) refining, purification, and subsequent treatment of source material;

(2) civilian reactor development;

(3) production of special nuclear material;

(4) health and safety;

(5) industrial and other applications of atomic energy for peaceful purposes; and

(6) research and development relating to the foregoing:

*Provided, however,* That no such cooperation shall involve the communication of Restricted Data relating to the design or fabrication of atomic weapons: *And provided further,* That the cooperation is undertaken pursuant to an agreement for cooperation entered into

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in accordance with section 123, or is undertaken pursuant to an agreement existing on the effective date of this Act.<sup>52</sup>

b. The President may authorize the Department of Defense, with the assistance of the Commission, to cooperate with another nation or with a regional defense organization to which the United States is a party, and to communicate to that nation or organization such Restricted Data (including design information) as is necessary to—

- (1) the development of defense plans;
- (2) the training of personnel in the employment of and defense against atomic weapons and other military applications of atomic energy;
- (3) the evaluation of the capabilities of potential enemies in the employment of atomic weapons and other military applications of atomic energy; and
- (4) the development of compatible delivery systems for atomic weapons;

whenever the President determines that the proposed cooperation and the proposed communication of the Restricted Data will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation or organization is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123.

c. In addition to the cooperation authorized in subsections 144 a. and 144 b., the President may authorize the Commission, with the assistance of the Department of Defense, to cooperate with another nation and—

- (1) to exchange with that nation Restricted Data concerning atomic weapons: *Provided,* That communication of such Restricted Data to that nation is necessary to improve its atomic weapon design, development, or fabrication capability and provided that nation has made substantial progress in the development of atomic weapons; and

- (2) to communicate or exchange with that nation Restricted Data concerning research, development, or design, of military reactors,

whenever the President determines that the proposed cooperation and the communication of the proposed Restricted Data will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123.

d.(1) In addition to the cooperation authorized in subsections a., b., and c., the President may, upon making a determination described in paragraph (2), authorize the Department of Energy, with the assistance of the Department of Defense, to cooperate with an-

<sup>52</sup>The effective date was Aug. 30, 1954.

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other nation to communicate to that nation such Restricted Data, and the President may, upon making such determination, authorize the Department of Defense, with the assistance of the Department of Energy, to cooperate with another nation to communicate to that nation such data removed from the Restricted Data category under section 142, as is necessary for—

(A) the support of a program for the control of and accounting for fissile material and other weapons material;

(B) the support of the control of and accounting for atomic weapons;

(C) the verification of a treaty; and

(D) the establishment of international standards for the classification of data on atomic weapons, data on fissile material, and related data.

(2) A determination referred to in paragraph (1) is a determination that the proposed cooperation and proposed communication referred to in that paragraph—

(A) will promote the common defense and security interests of the United States and the nation concerned; and

(B) will not constitute an unreasonable risk to such common defense and security interests.

(3) Cooperation under this subsection shall be undertaken pursuant to an agreement for cooperation entered into in accordance with section 123.

e. The President may authorize any agency of the United States to communicate in accordance with the terms and conditions of an agreement for cooperation arranged pursuant to subsection 144 a., b., c., or d., such Restricted Data as is determined to be transmissible under the agreement for cooperation involved.

[42 U.S.C. 2164]

SEC. 145. RESTRICTIONS.—

a. No arrangement shall be made under section 31, no contract shall be made or continued in effect under section 41, and no license shall be issued under section 103 or 104, unless the person with whom such arrangement is made, the contractor or prospective contractor, or the prospective licensee agrees in writing not to permit any individual to have access to Restricted Data until the Civil Service Commission<sup>53</sup> shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

b. Except as authorized by the Commission or the General Manager upon a determination by the Commission or General Manager that such action is clearly consistent with the national interest, no individual shall be employed by the Commission nor shall the Commission permit any individual to have access to Restricted Data until the Civil Service Commission<sup>53</sup> shall have made an investigation and report to the Commission on the character, as-

<sup>53</sup> Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055.



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sociations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

c. In lieu of the investigation and report to be made by the Civil Service Commission<sup>53</sup> pursuant to subsection b. of this section, the Commission may accept an investigation and report on the character, associations, and loyalty of an individual made by another Government agency which conducts personnel security investigations, provided that a security clearance has been granted to such individual by another Government agency based on such investigation and report.

d. In the event an investigation made pursuant to subsection a. and b. of this section develops any data reflecting that the individual who is the subject of the investigation is of questionable loyalty, the Civil Service Commission<sup>53</sup> shall refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation, the results of which shall be furnished to the Civil Service Commission<sup>53</sup> for its information and appropriate action.

e.(1) If the President deems it to be in the national interest he may from time to time determine that investigations of any group or class which are required by subsections a., b., and c. of this section be made by the Federal Bureau of Investigation.

(2) In the case of an individual employed in a program known as a Special Access Program, any investigation required by subsections a., b., and c. of this section shall be made by the Federal Bureau of Investigation.

f.(1) Notwithstanding the provisions of subsections a., b., and c. of this section, but subject to subsection e. of this section, a majority of the members of the Commission may direct that an investigation required by such provisions on an individual described in paragraph (2) be carried out by the Federal Bureau of Investigation rather than by the Civil Service Commission.

(2) An individual described in this paragraph is an individual who is employed—

(A) in a program certified by a majority of the members of the Commission to be of a high degree of importance or sensitivity; or

(B) in any other specific position certified by a majority of the members of the Commission to be of a high degree of importance or sensitivity.

g. The Commission shall establish standards and specifications in writing as to the scope and extent of investigations, the reports of which will be utilized by the Commission in making the determination, pursuant to subsections a., b., and c., of this section, that permitting a person access to restricted data will not endanger the common defense and security. Such standards and specifications shall be based on the location and class or kind of work to be done, and shall, among other considerations, take into account the degree of importance to the common defense and security of the restricted data to which access will be permitted.

h. Whenever the Congress declares that a state of war exists, or in the event of a national disaster due to enemy attack, the Commission is authorized during the state of war or period of na-



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tional disaster due to enemy attack to employ individuals and to permit individuals access to Restricted Data pending the investigation report, and determination required by section 145 b., to the extent that and so long as the Commission finds that such action is required to prevent impairment of its activities in furtherance of the common defense and security.

[42 U.S.C. 2165]

## SEC. 146. GENERAL PROVISIONS.—

a. Sections 141 to 145, inclusive, shall not exclude the applicable provisions of any other laws, except that no Government agency shall take any action under such other laws inconsistent with the provisions of those sections.

b. The Commission shall have no power to control or restrict the dissemination of information other than as granted by this or any other law.

[42 U.S.C. 2166]

## SEC. 147. SAFEGUARDS INFORMATION.—

a. In addition to any other authority or requirement regarding protection from disclosure of information, and subject to subsection (b)(3) of section 552 of title 5 of the United States Code, the Commission shall prescribe such regulations, after notice and opportunity for public comment, or issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information which specifically identifies a licensee's or applicant's detailed—

(1) control and accounting procedures or security measures (including security plans, procedures, and equipment) for the physical protection of special nuclear material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security;

(2) security measures (including security plans, procedures, and equipment) for the physical protection of source material or byproduct material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security; or

(3) security measures (including security plans, procedures, and equipment) for the physical protection of and the location of certain plant equipment vital to the safety of production or utilization facilities involving nuclear materials covered by paragraphs (1) and (2)<sup>54</sup>

if the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility. The Commission shall exercise the authority of this subsection—

(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security, and

<sup>54</sup> So in law. Probably should be followed by a semicolon.

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(B) upon a determination that the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility.

Nothing in this Act shall authorize the Commission to prohibit the public disclosure of information pertaining to the routes and quantities of shipments of source material, by-product material, high level nuclear waste, or irradiated nuclear reactor fuel. Any person, whether or not a licensee of the Commission, who violates any regulation adopted under this section shall be subject to the civil monetary penalties of section 234 of this Act. Nothing in this section shall be construed to authorize the withholding of information from the duly authorized committees of the Congress.

b. For the purposes of section 223 of this Act, any regulations or orders prescribed or issued by the Commission under this section shall also be deemed to be prescribed or issued under section 161 b. of this Act.

c. Any determination by the Commission concerning the applicability of this section shall be subject to judicial review pursuant to subsection (a)(4)(B) of section 552 of title 5 of the United States Code.

d. Upon prescribing or issuing any regulation or order under subsection a. of this section, the Commission shall submit to Congress a report that:

(1) specifically identifies the type of information the Commission intends to protect from disclosure under the regulation or order;

(2) specifically states the Commission's justification for determining that unauthorized disclosure of the information to be protected from disclosure under the regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility, as specified under subsection (a) of this section; and

(3) provides justification, including proposed alternative regulations or orders, that the regulation or order applies only the minimum restrictions needed to protect the health and safety of the public or the common defense and security.

e. In addition to the reports required under subsection d. of this section, the Commission shall submit to Congress on a quarterly basis a report detailing the Commission's application during that period of every regulation or order prescribed or issued under this section. In particular, the report shall:

(1) identify any information protected from disclosure pursuant to such regulation or order;

(2) specifically state the Commission's justification for determining that unauthorized disclosure of the information protected from disclosure under such regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, di-

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version or sabotage of such material or such facility, as specified under subsection a. of this section; and

(3) provide justification that the Commission has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security.

【42 U.S.C. 2167】

SEC. 148. PROHIBITION AGAINST THE DISSEMINATION OF CERTAIN UNCLASSIFIED INFORMATION.—

a.(1) In addition to any other authority or requirement regarding protection from dissemination of information, and subject to section 552(b)(3) of title 5, United States Code, the Secretary of Energy (hereinafter in this section referred to as the “Secretary”), with respect to atomic energy defense programs, shall prescribe such regulations, after notice and opportunity for public comment thereon, or issue such orders as may be necessary to prohibit the unauthorized dissemination of unclassified information pertaining to—

(A) the design of production facilities or utilization facilities;

(B) security measures (including security plans, procedures, and equipment) for the physical protection of (i) production or utilization facilities, (ii) nuclear material contained in such facilities, or (iii) nuclear material in transit; or

(C) the design, manufacture, or utilization of any atomic weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category by the Secretary (or the head of the predecessor agency of the Department of Energy) pursuant to section 142.

(2) The Secretary may prescribe regulations or issue orders under paragraph (1) to prohibit the dissemination of any information described in such paragraph only if and to the extent that the Secretary determines that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of (A) illegal production of nuclear weapons, or (B) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

(3) In making a determination under paragraph (2), the Secretary may consider what the likelihood of an illegal production, theft, diversion, or sabotage referred to in such paragraph would be if the information proposed to be prohibited from dissemination under this section were at no time available for dissemination.

(4) The Secretary shall exercise his authority under this subsection to prohibit the dissemination of any information described in subsection a. (1)—

(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security; and

(B) upon a determination that the unauthorized dissemination of such information could reasonably be expected to re-

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sult in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of (i) illegal production of nuclear weapons, or (ii) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

(5) Nothing in this section shall be construed to authorize the Secretary to authorize the withholding of information from the appropriate committees of the Congress.

b.(1) Any person who violates any regulation or order of the Secretary issued under this section with respect to the unauthorized dissemination of information shall be subject to a civil penalty, to be imposed by the Secretary, of not to exceed \$100,000 for each such violation. The Secretary may compromise, mitigate, or remit any penalty imposed under this subsection.

(2) The provisions of subsections b. and c. of section 234 of this Act shall be applicable with respect to the imposition of civil penalties by the Secretary under this section in the same manner that such provisions are applicable to the imposition of civil penalties by the Commission under subsection a. of such section.

c. For the purposes of section 223 of this Act, any regulation prescribed or order issued by the Secretary under this section shall also be deemed to be prescribed or issued under section 161 b. of this Act.

d. Any determination by the Secretary concerning the applicability of this section shall be subject to judicial review pursuant to section 552(a)(4)(B) of title 5, United States Code.

[42 U.S.C. 2168]

SEC. 149. FINGERPRINTING FOR CRIMINAL HISTORY RECORD CHECKS.—

a.(1)(A)(i) The Commission shall require each individual or entity described in clause (ii) to fingerprint each individual described in subparagraph (B) before the individual described in subparagraph (B) is permitted access under subparagraph (B).

(ii) The individuals and entities referred to in clause (i) are individuals and entities that, on or before the date on which an individual is permitted access under subparagraph (B)—

(I) are licensed or certified to engage in an activity subject to regulation by the Commission;

(II) have filed an application for a license or certificate to engage in an activity subject to regulation by the Commission; or

(III) have notified the Commission in writing of an intent to file an application for licensing, certification, permitting, or approval of a product or activity subject to regulation by the Commission.

(B) The Commission shall require to be fingerprinted any individual who—

(i) is permitted unescorted access to—

(I) a utilization facility; or

(II) radioactive material or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and

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- safety or the common defense and security as to warrant fingerprinting and background checks; or
- (ii) is permitted access to safeguards information under section 147.
- (2) All fingerprints obtained by an individual or entity as required in paragraph (1) shall be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check.
- (3) The costs of an identification or records check under paragraph (2) shall be paid by the individual or entity required to conduct the fingerprinting under paragraph (1)(A).
- (4) Notwithstanding any other provision of law—
- (A) the Attorney General may provide any result of an identification or records check under paragraph (2) to the Commission; and
- (B) the Commission, in accordance with regulations prescribed under this section, may provide the results to the individual or entity required to conduct the fingerprinting under paragraph (1)(A).
- b. The Commission, by rule, may relieve persons from the obligations imposed by this section, upon specified terms, conditions, and periods, if the Commission finds that such action is consistent with its obligations to promote the common defense and security and to protect the health and safety of the public.
- c. For purposes of administering this section, the Commission shall prescribe requirements—
- (1) to implement procedures for the taking of fingerprints;
- (2) to establish the conditions for use of information received from the Attorney General, in order—
- (A) to limit the dissemination of such information;
- (B) to ensure that such information is used solely for the purpose of determining whether an individual shall be permitted unescorted access to a utilization facility, radioactive material, or other property described in subsection a.(1)(B) or shall be permitted access to safeguards information under section 147;
- (C) to ensure that no final determination may be made solely on the basis of information provided under this section involving—
- (i) an arrest more than 1 year old for which there is no information of the disposition of the case; or
- (ii) an arrest that resulted in dismissal of the charge or an acquittal; and
- (D) to protect individuals subject to fingerprinting under this section from misuse of the criminal history records; and
- (3) to provide each individual subject to fingerprinting under this section with the right to complete, correct, and explain information contained in the criminal history records prior to any final adverse determination.
- d. The Commission may require a person or individual to conduct fingerprinting under subsection a.(1) by authorizing or requiring the use of any alternative biometric method for identification that has been approved by—

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- (1) the Attorney General; and
- (2) the Commission, by regulation.
- e.(1) The Commission may establish and collect fees to process fingerprints and criminal history records under this section.
- (2) Notwithstanding section 3302(b) of title 31, United States Code, and to the extent approved in appropriation Acts—
  - (A) a portion of the amounts collected under this subsection in any fiscal year may be retained and used by the Commission to carry out this section; and
  - (B) the remaining portion of the amounts collected under this subsection in such fiscal year may be transferred periodically to the Attorney General and used by the Attorney General to carry out this section.
- (3) Any amount made available for use under paragraph (2) shall remain available until expended.

[42 U.S.C. 2169]

**CHAPTER 13. PATENTS AND INVENTIONS****SEC. 151. INVENTIONS RELATING TO ATOMIC WEAPONS, AND FILING OF REPORTS.—**

a. No patent shall hereafter be granted for any invention or discovery which is useful solely in the utilization of special nuclear material or atomic energy in an atomic weapon. Any patent granted for any such invention or discovery is hereby revoked, and just compensation shall be made therefor.

b. No patent hereafter granted shall confer any rights with respect to any invention or discovery to the extent that such invention or discovery is used in the utilization of special nuclear material or atomic energy in atomic weapons. Any rights conferred by any patent heretofore granted for any invention or discovery are hereby revoked to the extent that such invention or discovery is so used, and just compensation shall be made therefor.

c. Any person who has made or hereafter makes any invention or discovery useful in the production or utilization of special nuclear material or atomic energy, shall file with the Commission a report containing a complete description thereof unless such invention or discovery is described in an application for a patent filed with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office by such person within the time required for the filing of such report. The report covering any such invention or discovery shall be filed on or before the one hundred and eightieth day after such person first discovers or first has reason to believe that such invention or discovery is useful in such production or utilization.

d. The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office shall notify the Commission of all applications for patents heretofore or hereafter filed which, in his opinion, disclose inventions or discoveries required to be reported under subsection 151 c., and shall provide the Commission access to all such applications.

e. Reports filed pursuant to subsection c. of this section, and applications to which access is provided under subsection d. of this section, shall be kept in confidence by the Commission, and no in-

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formation concerning the same given without authority of the inventor or owner unless necessary to carry out the provisions of any Act of Congress or in such special circumstances as may be determined by the Commission.

[42 U.S.C. 2181]

SEC. 152. INVENTIONS MADE OR CONCEIVED DURING COMMISSION CONTRACTS.—Any invention or discovery, useful in the production or utilization of special nuclear material or atomic energy, made or conceived in the course of or under any contract, subcontract, or arrangement entered into with or for the benefit of the Commission, regardless of whether the contract, subcontract, or arrangement involved the expenditure of funds by the Commission, shall be vested in, and be the property of, the Commission, except that the Commission may waive its claim to any such invention or discovery under such circumstances as the Commission may deem appropriate, consistent with the policy of this section. No patent for any invention or discovery, useful in the production or utilization of special nuclear material or atomic energy, shall be issued unless the applicant files with the application, or within thirty days after request therefor by the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (unless the Commission advises the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office that its rights have been determined and that accordingly no statement is necessary) a statement under oath setting forth the full facts surrounding the making or conception of the invention or discovery described in the application and whether the invention or discovery was made or conceived in the course of or under any contract, subcontract, or arrangement entered into with or for the benefit of the Commission, regardless of whether the contract, subcontract, or arrangement involved the expenditure of funds by the Commission. The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office shall as soon as the application is otherwise in condition for allowance forward copies of the application and the statement to the Commission.

The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office may proceed with the application and issue the patent to the applicant (if the invention or discovery is otherwise patentable) unless the Commission, within 90 days after receipt of copies of the application and statement, directs the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office to issue the patent to the Commission (if the invention or discovery is otherwise patentable) to be held by the Commission as the agent of and on behalf of the United States.

If the Commission files such a direction with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and if the applicant's statement claims, and the applicant still believes, that the invention or discovery was not made or conceived in the course of or under any contract, subcontract or arrangement entered into with or for the benefit of the Commission entitling the Commission to

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the title to the application or the patent the applicant may, within 30 days after notification of the filing of such a direction, request a hearing before the Board of Patent Appeals and Interferences. The Board shall have the power to hear and determine whether the Commission was entitled to the direction filed with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office. The Board shall follow the rules and procedures established for interference cases and an appeal may be taken by either the applicant or the Commission from the final order of the Board to the United States Court of Appeals for the Federal Circuit in accordance with the procedures governing the appeals from the Board of Patent Appeals and Interferences.

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【Note: Section 7(d)(1) of Public Law 112–29 provides for amendments to the third undesignated paragraph. Subsection (e) of section 7 of such Public Law provides: “[t]he amendments made by this section shall take effect upon the expiration of the 1-year period beginning on the date of the enactment of this Act [September 16, 2012] and shall apply to proceedings commenced on or after that effective date...”. Upon such date, the third undesignated paragraph reads as follows:】

*If the Commission files such a direction with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and if the applicant’s statement claims, and the applicant still believes, that the invention or discovery was not made or conceived in the course of or under any contract, subcontract or arrangement entered into with or for the benefit of the Commission entitling the Commission to the title to the application or the patent the applicant may, within 30 days after notification of the filing of such a direction, request a hearing before the Patent Trial and Appeal Board. The Board shall have the power to hear and determine whether the Commission was entitled to the direction filed with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office. The Board shall follow the rules and procedures established for interference and derivation cases and an appeal may be taken by either the applicant or the Commission from the final order of the Board to the United States Court of Appeals for the Federal Circuit in accordance with the procedures governing the appeals from the Patent Trial and Appeal Board.*

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If the statement filed by the applicant should thereafter be found to contain false material statements any notification by the Commission that it has no objections to the issuance of a patent to the applicant shall not be deemed in any respect to constitute a waiver of the provisions of this section or of any applicable civil or criminal statute, and the Commission may have the title to the patent transferred to the Commission on the records of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office in accordance with the provisions of this section. A determination of rights by the Commission pursuant to a contractual provision or other arrangement prior

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to the request of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office for the statement, shall be final in the absence of false material statements or nondisclosure of material facts by the applicant.

[42 U.S.C. 2182]

SEC. 153. NONMILITARY UTILIZATION.—

a. The Commission may, after giving the patent owner an opportunity for a hearing, declare any patent to be affected with the public interest if (1) the invention or discovery covered by the patent is of primary importance in the production or utilization of special nuclear material or atomic energy; and (2) the licensing of such invention or discovery under this section is of primary importance to effectuate the policies and purposes of this Act.

b. Whenever any patent has been declared affected with the public interest, pursuant to subsection 153 a.—

(1) the Commission is hereby licensed to use the invention or discovery covered by such patent in performing any of its powers under this Act; and

(2) any person may apply to the Commission for a non-exclusive patent license to use the invention or discovery covered by such patent, and the Commission shall grant such patent license to the extent that it finds that the use of the invention or discovery is of primary importance to the conduct of an activity by such person authorized under this Act.

c. Any person—

(1) who has made application to the Commission for a license under sections 53, 62, 63, 81, 103, or 104, or a permit or lease under section 67;

(2) to whom such license, permit, or lease has been issued by the Commission;

(3) who is authorized to conduct such activities as such applicant is conducting or proposes to conduct under a general license issued by the Commission under sections 62 or 81; or

(4) whose activities or proposed activities are authorized under section 31,

may at any time make application to the Commission for a patent license for the use of an invention or discovery useful in the production or utilization of special nuclear material or atomic energy covered by a patent. Each such application shall set forth the nature and purpose of the use which the applicant intends to make of the patent license, the steps taken by the applicant to obtain a patent license from the owner of the patent, and a statement of the effects, as estimated by the applicant, on the authorized activities which will result from failure to obtain such patent license and which will result from the granting of such patent license.

d. Whenever any person has made an application to the Commission for a patent license pursuant to subsection 153 c.—

(1) the Commission, within 30 days after the filing of such application, shall make available to the owner of the patent all of the information contained in such application, and shall notify the owner of the patent of the time and place at which a hearing will be held by the Commission;

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(2) the Commission shall hold a hearing within 60 days after the filing of such application at a time and place designated by the Commission; and

(3) in the event an applicant applies for two or more patent licenses, the Commission may, in its discretion, order the consolidation of such applications, and if the patents are owned by more than one owner, such owners may be made parties to one hearing.

e. If, after any hearing conducted pursuant to subsection 153 d., the Commission finds that—

(1) the invention or discovery covered by the patent is of primary importance in the production or utilization of special nuclear material or atomic energy;

(2) the licensing of such invention or discovery is of primary importance to the conduct of the activities of the applicant;

(3) the activities to which the patent license are proposed to be applied by such applicant are of primary importance to the furtherance of policies and purposes of this Act; and

(4) such applicant cannot otherwise obtain a patent license from the owner of the patent on terms which the Commission deems to be reasonable for the intended use of the patent to be made by such applicant,

the Commission shall license the applicant to use the invention or discovery covered by the patent for the purposes stated in such application on terms deemed equitable by the Commission and generally not less fair than those granted by the patentee or by the Commission to similar licensees for comparable use.

f. The Commission shall not grant any patent license pursuant to subsection 153 e. for any other purpose than that stated in the application. Nor shall the Commission grant any patent license to any other applicant for a patent license on the same patent without an application being made by such applicant pursuant to subsection 153 c., and without separate notification and hearing as provided in subsection 153 d., and without a separate finding as provided in subsection 153 e.

g. The owner of the patent affected by a declaration or a finding made by the Commission pursuant to subsection 153 b. or 153 e. shall be entitled to a reasonable royalty fee from the licensee for any use of an invention or discovery license by this section. Such royalty fee may be agreed upon by such owner and the patent licensee, or in the absence of such agreement shall be determined for each patent license by the Commission pursuant to subsection 157 c.

h. The provisions of this section shall apply to any patent the application for which shall have been filed before September 1, 1979.

【42 U.S.C. 2183】

SEC. 154. INJUNCTIONS.—No court shall have jurisdiction or power to stay, restrain, or otherwise enjoin the use of any invention or discovery by a patent licensee, to the extent that such use is licensed by subsection 153 b. or 153 e. If, in any action against such patent licensee, the court shall determine that the defendant

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is exercising such license, the measure of damages shall be the royalty fee determined pursuant to subsection 157 c., together with such costs, interest, and reasonable attorney's fees as may be fixed by the court. If no royalty fee has been determined, the court shall stay the proceeding until the royalty fee is determined pursuant to subsection 157 c. If any such patent licensee shall fail to pay such royalty fee, the patentee may bring an action in any court of competent jurisdiction for such royalty fee, together with such costs, interest, and reasonable attorney's fees as may be fixed by the court.

[42 U.S.C. 2184]

SEC. 155. PRIOR ART.—In connection with applications for patents covered by this Chapter, the fact that the invention or discovery was known or used before shall be a bar to the patenting of such invention or discovery even though such prior knowledge or use was under secrecy within the atomic energy program of the United States.

[42 U.S.C. 2185]

SEC. 156. COMMISSION PATENT LICENSES.—The Commission shall establish standard specifications upon which it may grant a patent license to use any patent declared to be affected with the public interest pursuant to subsection 153 a. Such a patent license shall not waive any of the other provisions of this Act.

[42 U.S.C. 2186]

SEC. 157. COMPENSATION, AWARDS, AND ROYALTIES.—

a. PATENT COMPENSATION BOARD.—The Commission shall designate a Patent Compensation Board to consider applications under this section. The members of the Board shall receive a per diem compensation for each day spent in meetings or conferences, and all members shall receive their necessary traveling or other expenses while engaged in the work of the Board. The members of the Board may serve as such without regard to the provisions of sections 281, 283, or 284, of Title 18 of the United States Code,<sup>55</sup> except in so far as such sections may prohibit any such member from receiving compensation in respect of any particular matter which directly involves the Commission or in which the Commission is directly interested.

b. ELIGIBILITY.—

(1) Any owner of a patent licensed under section 158 or subsections 153 b. or 153 e., or any patent licensee thereunder may make application to the Commission for the determination of a reasonable royalty fee in accordance with such procedures as the Commission by regulation may establish.

(2) Any person seeking to obtain the just compensation provided in section 151 shall make application therefor to the Commission in accordance with such procedures as the Commission may by regulation establish.

(3) Any person making any invention or discovery useful in the production or utilization of special nuclear material or atomic en-

<sup>55</sup> Sections 281, 283, and 284 of title 18 were repealed by Pub. L. 87-849, §2, Oct. 23, 1962, 76 Stat. 1126, except as sections 281 and 283 apply to retired officers of the Armed Forces of the United States, and were supplanted by sections 203, 205, and 207, respectively, of title 18, United States Code.

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ergy, who is not entitled to compensation or a royalty therefor under this Act and who has complied with the provisions of section 151 c. hereof may make application to the Commission for, and the Commission may grant, an award. The Commission may also, upon the recommendation of the General Advisory Committee, and with the approval of the President, grant an award for any especially meritorious contribution to the development, use, or control of atomic energy.

## c. STANDARDS.—

(1) In determining a reasonable royalty fee as provided for in subsections 153 b. or 153 e., the Commission shall take into consideration (A) the advice of the Patent Compensation Board; (B) any defense, general or special, that might be pleaded by a defendant in an action for infringement; (C) the extent to which, if any, such patent was developed through federally financed research; and (D) the degree of utility, novelty, and importance of the invention or discovery, and may consider the cost to the owner of the patent of developing such invention or discovery or acquiring such patent.

(2) In determining what constitutes just compensation as provided for in section 151, or in determining the amount of any award under subsection 157 b. (3), the Commission shall take into account the considerations set forth in subsection 157 c. (1) and the actual use of such invention or discovery. Such compensation may be paid by the Commission in periodic payments or in a lump sum.

d. PERIOD OF LIMITATIONS.—Every application under this section shall be barred unless filed within six years after the date on which first accrues the right to such reasonable royalty fee, just compensation, or award for which such application is filed.

[42 U.S.C. 2187]

SEC. 158. MONOPOLISTIC USE OF PATENTS.—Whenever the owner of any patent hereafter granted for any invention or discovery of primary use in the utilization or production or special nuclear material or atomic energy is found by a court of competent jurisdiction to have intentionally used such patent in a manner so as to violate any of the antitrust laws specified in subsection 105 a., there may be included in the judgment of the court, in its discretion and in addition to any other lawful sanctions, a requirement that such owner license such patent to any other licensee of the Commission who demonstrates a need therefor. If the court, at its discretion, deems that such licensee shall pay a reasonable royalty to the owner of the patent, the reasonable royalty shall be determined in accordance with section 157.

[42 U.S.C. 2188]

SEC. 159. FEDERALLY FINANCED RESEARCH.—Nothing in this Act shall affect the right of the Commission to require that patents granted on inventions made or conceived during the course of federally financed research or operations, be assigned to the United States.

[42 U.S.C. 2189]

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SEC. 160. SAVING CLAUSE.—Any patent application on which a patent was denied by the United States Patent Office<sup>56</sup> under sections 11(a)(1), 11(a)(2), or 11(b) of the Atomic Energy Act of 1946, and which is not prohibited by section 151 or section 155 of this Act may be reinstated upon application to the Commissioner of Patents<sup>57</sup> within one year after enactment of this Act and shall then be deemed to have been continuously pending since its original filing date: *Provided, however,* That no patent issued upon any patent application so reinstated shall in any way furnish a basis of claim against the Government of the United States.

[42 U.S.C. 2190]

## CHAPTER 14. GENERAL AUTHORITY

SEC. 161. GENERAL PROVISIONS.—In the performance of its functions the Commission is authorized to—

a. establish advisory boards to advise with and make recommendations to the Commission on legislation, policies, administration, research, and and<sup>58</sup> other matters, provided that the Commission issues regulations setting forth the scope, procedure, and limitations of the authority of each such board;

b. establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property; in addition, the Commission shall prescribe such regulations or orders as may be necessary or desirable to promote the Nation's common defense and security with regard to control, ownership, or possession of any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235;

c. make such studies and investigations, obtain such information, and hold such meetings or hearings as the Commission may deem necessary or proper assist it in exercising any authority provided in this Act, or in the administration or enforcement of this Act, or any regulations or orders issued thereunder. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpoena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States;

d. appoint and fix the compensation of such officers and employees as may be necessary to carry out the functions of the Commission. Such officers and employees shall be appointed in accordance with the civil-service laws and their com-

<sup>56</sup>Section 3 of Pub. L. 93–596 deemed references in all laws to “Patent Office” to mean “Patent and Trademark Office”.

<sup>57</sup>Section 3 of Pub. L. 93–596 deemed references in all laws to “Commissioner of Patents” to mean “Commissioner of Patents and Trademarks”.

<sup>58</sup>So in law.



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pensation fixed in accordance with the Classification Act of 1949,<sup>59</sup> as amended, except that, to the extent the Commission deems such action necessary to the discharge of its responsibilities, personnel may be employed and their compensation fixed without regard to such laws: *Provided, however,* That no officer or employee (except such officers and employees whose compensation is fixed by law, and scientific and technical personnel up to a limit of the highest rate of grade 18 of the General Schedule of the Classification Act of 1949,<sup>59</sup> as amended) whose position would be subject to the Classification Act of 1949,<sup>59</sup> as amended, if such Act were applicable to such position, shall be paid a salary at a rate in excess of the rate payable under such Act for positions of equivalent difficulty or responsibility. Such rates of compensation may be adopted by the Commission as may be authorized by the Classification Act of 1949,<sup>59</sup> as amended, as of the same date such rates are authorized for positions subject to such Act. The Commission shall make adequate provision for administrative review of any determination to dismiss any employee;

e. acquire such material, property, equipment, and facilities, establish or construct such buildings and facilities, and modify such buildings and facilities from time to time, as it may deem necessary, and construct, acquire, provide, or arrange for such facilities and services (at project sites where such facilities and services are not available) for the housing, health, safety, welfare, and recreation of personnel employed by the Commission as it may deem necessary, subject to the provisions of section 174: *Provided, however,* That in the communities owned by the Commission, the Commission is authorized to grant privileges, leases, and permits upon adjusted terms which (at the time of the initial grant of any privilege grant, lease, or permit, or renewal thereof, or in order to avoid inequities or undue hardship prior to the sale by the United States of property affected by such grant) are fair and reasonable to responsible persons to operate commercial businesses without advertising and without advertising<sup>60</sup> and without securing competitive bids, but taking into consideration, in addition to the price, and among other things (1) the quality and type of services required by the residents of the community, (2) the experience of each concession applicant in the community and its surrounding area, (3) the ability of the concession applicant to meet the needs of the community, and (4) the contribution the concession applicant has made or will make to the other activities and general welfare of the community;

f. with the consent of the agency concerned, utilize or employ the services or personnel of any Government agency or any State or local government, or voluntary or uncompensated personnel, to perform such functions on its behalf as may appear desirable;

g. acquire, purchase, lease, and hold real and personal property, including patents, as agent of and on behalf of the

<sup>59</sup>The Classification Act of 1949 has been codified as chapter 51, and subchapter III of chapter 53, of title 5, United States Code.

<sup>60</sup>So in law. The phrase "and without advertising" probably should be deleted.



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United States, subject to the provisions of section 174, and to sell, lease, grant, and dispose of such real and personal property as provided in this Act;

h. consider in a single application one or more of the activities for which a license is required by this Act, combine in a single license one or more of such activities, and permit the applicant or licensee to incorporate by reference pertinent information already filed with the Commission;

i. prescribe such regulations or orders as it may deem necessary (1) to protect Restricted Data received by any person in connection with any activity authorized pursuant to this Act, (2) to guard against the loss or diversion of any special nuclear material acquired by any person pursuant to section 53 or produced by any person in connection with any activity authorized pursuant to this Act, to prevent any use or disposition thereof which the Commission may determine to be inimical to the common defense and security, including regulations or orders designating activities, involving quantities of special nuclear material which in the opinion of the Commission are important to the common defense and security, that may be conducted only by persons whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to conduct the activity will not be inimical to the common defense and security, (3) to govern any activity authorized pursuant to this Act, including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property, and (4) to ensure that sufficient funds will be available for the decommissioning of any production or utilization facility licensed under section 103 or 104 b., including standards and restrictions governing the control, maintenance, use, and disbursement by any former licensee under this Act that has control over any fund for the decommissioning of the facility;

j. without regard to the provisions of the Federal Property and Administrative Services Act of 1949, as amended, except section 207 of that Act, or any other law, make such disposition as it may deem desirable of (1) radioactive materials, and (2) any other property, the special disposition of which is, in the opinion of the Commission, in the interest of the national security: *Provided, however,* That the property furnished to licensees in accordance with the provisions of subsection 161 m. shall not be deemed to be property disposed of by the Commission pursuant to this subsection;

k. authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties. The Commission may also authorize such of those employees of its contractors and subcontractors (at any tier) engaged in the protection of property under the jurisdiction of the United States and located at facilities owned by or contracted to the United States or being transported to or from

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such facilities as it deems necessary in the interests of the common defense and security to carry firearms while in the discharge of their official duties. A person authorized to carry firearms under this subsection may, while in the performance of, and in connection with, official duties, make arrests without warrant for any offense against the United States committed in that person's presence or for any felony cognizable under the laws of the United States if that person has reasonable grounds to believe that the individual to be arrested has committed or is committing such felony. An employee of a contractor or subcontractor authorized to carry firearms under this subsection may make such arrests only when the individual to be arrested is within, or in direct flight from, the area of such offense. A person granted authority to make arrests by this subsection may exercise that authority only in the enforcement of (1) laws regarding the property of the United States in the custody of the Department of Energy, the Nuclear Regulatory Commission, or a contractor of the Department of Energy or Nuclear Regulatory Commission, or (2) any provision of this Act that may subject an offender to a fine, imprisonment, or both. The arrest authority conferred by this subsection is in addition to any arrest authority under other laws. The Secretary, with the approval of the Attorney General, shall issue guidelines to implement this subsection;

[l. Repealed by Pub. L. 87-456, § 303(c), 76 Stat. 78, May 24, 1962.]

m. enter into agreements with persons licensed under Section 103, 104, 53 a. (4), or 63 a. (4) for such periods of time as the Commission may deem necessary or desirable (1) to provide for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct, or other material or special nuclear material owned by or made available to such licensees and which is utilized or produced in the conduct of the licensed activity, and (2) to sell, lease, or otherwise make available to such licensees such quantities of source or byproduct material, and other material not defined as special nuclear material pursuant to this Act, as may be necessary for the conduct of the licensed activity: *Provided, however,* That any such agreement may be canceled by the licensee at any time upon payment of such reasonable cancellation charges as may be agreed upon by the licensee and the Commission: *And provided further,* That the Commission shall establish prices to be paid by licensees for material or services to be furnished by the Commission pursuant to this subsection, which prices shall be established on such a nondiscriminatory basis as, in the opinion of the Commission, will provide reasonable compensation to the Government for such material or services and will not discourage the development of sources of supply independent of the Commission;

n. delegate to the General Manager or other officers of the Commission any of those functions assigned to it under this Act except those specified in sections 51, 57 b., 61, 108, 123, 145 b. (with respect to the determination of those persons to

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whom the Commission may reveal Restricted Data in the national interest), 145 f., and 161 a.;

o. require by rule, regulation, or order, such reports, and the keeping of such records with respect to, and to provide for such inspections of, activities and studies of types specified in section 31 and of activities under licenses issued pursuant to sections 53, 63, 81, 103, and 104, as may be necessary to effectuate the purposes of this Act, including section 105; and

p. make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this Act.

q. The Commission is authorized and empowered, under such terms and conditions as are deemed advisable by it, to grant easements for rights-of-way over, across, in, an upon acquired lands under its jurisdiction and control, and public lands permanently withdrawn or reserved for the use of the Commission, to any State, political subdivision thereof, or municipality, or to any individual, partnership, or corporation of any State, Territory, or possession of the United States, for (a) railroad tracks; (b) oil pipe lines; (c) substations for electric power transmission lines, telephone lines, and telegraph lines, and pumping stations for gas, water, sewer, and oil pipe lines; (d) canals; (e) ditches; (f) flumes; (g) tunnels; (h) dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other fish-cultural improvements; (i) roads and streets; and (j) for any other purpose or purposes deemed advisable by the Commission: *Provided*, That such rights-of-way shall be granted only upon a finding by the Commission that the same will not be incompatible with the public interest: *Provided further*, That such rights-of-way shall not include any more land than is reasonably necessary for the purpose for which granted: *And provided further*, That all or any part of such rights-of-way may be annulled and forfeited by the Commission for failure to comply with the terms and conditions of any grant hereunder or for nonuse for a period of two consecutive years or abandonment of rights granted under authority hereof. Copies of all instruments granting easements over public lands pursuant to this section shall be furnished to the Secretary of the Interior.

r. Under such regulations and for such periods and at such prices the Commission may prescribe, the Commission may sell or contract to sell to purchasers within Commission-owned communities or in the immediate vicinity of the Commission community, as the case may be, any of the following utilities and related services, if it is determined that they are not available from another local source and that the sale is in the interest of the national defense or in the public interest:

- (1) Electric power.
- (2) Steam.
- (3) Compressed air.
- (4) Water.
- (5) Sewage and garbage disposal.
- (6) Natural, manufactured, or mixed gas.
- (7) Ice.

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(8) Mechanical refrigeration.

(9) Telephone service.

Proceeds of sales under this subsection shall be credited to the appropriation currently available for the supply of that utility or service. To meet local needs the commission may make minor expansions and extensions of any distributing system or facility within or in the immediate vicinity of a Commission-owned community through which a utility or service is furnished under this subsection.

s. establish a plan for a succession of authority which will assure the continuity of direction of the Commission's operations in the event of a national disaster due to enemy activity. Notwithstanding any other provision of this Act, the person or persons succeeding to command in the event of disaster in accordance with the plan established pursuant to this subsection shall be vested with all of the authority of the Commission: *Provided*, That any such succession to authority, and vesting of authority shall be effective only in the event and as long as a quorum of three or more members of the Commission is unable to convene and exercise direction during the disaster period: *Provided further*, That the disaster period includes the period when attack on the United States is imminent and the post-attack period necessary to reestablish normal lines of command;

t. enter into contracts for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct or other material, or special nuclear material, in accordance with and within the period of an agreement for cooperation while comparable services are available to persons licensed under section 103 or 104: *Provided*, That the prices for services under such contracts shall be no less than the prices currently charged by the Commission pursuant to section 161 m.;

u.(1) enter into contracts for such periods of time as the Commission may deem necessary or desirable, but not to exceed five years from the date of execution of the contract, for the purchase or acquisition of reactor services or services related to or required by the operation of reactors;

(2)(A) enter into contracts for such periods of time as the Commission may deem necessary or desirable for the purchase or acquisition of any supplies, equipment, materials, or services required by the Commission whenever the Commission determines that: (i) it is advantageous to the Government to make such purchase or acquisition from commercial sources; (ii) the furnishing of such supplies, equipment, materials, or services will require the construction or acquisition of special facilities by the vendors or suppliers thereof; (iii) the amortization chargeable to the Commission constitutes an appreciable portion of the cost of contract performance, excluding cost of materials; and (iv) the contract for such period is more advantageous to the Government than a similar contract not executed under the authority of this subsection. Such contracts shall be entered into for periods not to exceed five years each from the date of initial delivery of such supplies, equipment,

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materials, or services or ten years from the date of execution of the contracts excluding periods of renewal under option.

(B) In entering into such contracts the Commission shall be guided by the following principles: (i) the percentage of the total cost of special facilities devoted to contract performance and chargeable to the Commission should not exceed the ratio between the period of contract deliveries and the anticipated useful life of such special facilities; (ii) the desirability of obtaining options to renew the contract for reasonable periods at prices not to include charges for special facilities already amortized; and (iii) the desirability of reserving in the Commission the right to take title to the special facilities under appropriate circumstances; and

(3) include in contracts made under this subsection provisions which limit the obligation of funds to estimated annual deliveries and services and the unamortized balance of such amounts due for special facilities as the parties shall agree is chargeable to the performance of the contract. Any appropriation available at the time of termination or thereafter made available to the Commission for operating expenses shall be available for payment of such costs which may arise from termination as the contract may provide. The term "special facilities" as used in this subsection means any land, any depreciable buildings, structures, utilities, machinery, equipment, and fixtures necessary for the production or furnishing of such supplies, equipment, materials, or services and not available to the vendors or suppliers for the performance of the contract.

v. provide services in support of the United States Enrichment Corporation<sup>61</sup>, except that the Secretary of Energy shall annually collect payments and other charges from the Corporation sufficient to ensure recovery of the costs (excluding depreciation and imputed interest on original plant investments in the Department's gaseous diffusion plants and costs under section 1403(d)) incurred by the Department of Energy after the date of the enactment of the Energy Policy Act of 1992<sup>62</sup> in performing such services;

w. prescribe and collect from any other Government agency, which applies to the Commission for, or is issued by the Commission, a license or certificate, any fee, charge, or price which it may require, in accordance with the provisions of section 9701 of title 31 of the United States Code<sup>63</sup> or any other law.

x. Establish by rule, regulation, or order, after public notice, and in accordance with the requirements of section 181 of this Act, such standards and instructions as the Commission may deem necessary or desirable to ensure—

(1) that an adequate bond, surety, or other final arrangement (as determined by the Commission) will be pro-

<sup>61</sup>Pursuant to section 3116(e) of the United States Enrichment Corporation Privatization Act, following the privatization date [July 28, 1998], all references in the Atomic Energy Act of 1954 to the United States Enrichment Corporation shall be deemed to be references to the private corporation.

<sup>62</sup>The date of enactment was Oct. 24, 1992.

<sup>63</sup>Prior section 483a of title 31, United States Code, has been codified as section 9701 of such title.



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vided, before termination of any license for byproduct material as defined in section 11 e. (2), by a licensee to permit the completion of all requirements established by the Commission for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with byproduct material as so defined, and

(2) that—

(A) in the case of any such license issued or renewed after the date of the enactment of this subsection,<sup>64</sup> the need for long-term maintenance and monitoring of such sites, structures and equipment of termination of such license will be minimized, and, to the maximum extent practicable, eliminated; and

(B) in the case of each license for such material (whether in effect on the date of the enactment of this section<sup>64</sup> or issued or renewed thereafter), if the Commission determines that any such long-term maintenance and monitoring is necessary, the licensee, before termination of any license for byproduct material is defined in section 11 e. (2), will make available such bonding, surety, or other financial arrangements as may be necessary to assure such long-term maintenance and monitoring.

Such standards and instructions promulgated by the Commission pursuant to this subsection shall take into account, as determined by the Commission, so as to avoid unnecessary duplication and expense, performance bonds or other financial arrangements which are required by other Federal agencies or State agencies and/or other local governing bodies for such decommissioning, decontamination, and reclamation and long-term maintenance and monitoring except that nothing in this paragraph shall be construed to require that the Commission accept such bonds or arrangements if the commission determines that such bonds or arrangements are not adequate to carry out subparagraphs (1) and (2) of this subsection.

[42 U.S.C. 2201]

**SEC. 161A. USE OF FIREARMS BY SECURITY PERSONNEL.**

a. DEFINITIONS.—In this section, the terms “handgun”, “rifle”, “shotgun”, “firearm”, “ammunition”, “machinegun”, “short-barreled shotgun”, and “short-barreled rifle” have the meanings given the terms in section 921(a) of title 18, United States Code.

b. AUTHORIZATION.—Notwithstanding subsections (a)(4), (a)(5), (b)(2), (b)(4), and (o) of section 922 of title 18, United States Code, section 925(d)(3) of title 18, United States Code, section 5844 of the Internal Revenue Code of 1986, and any law (including regulations) of a State or a political subdivision of a State that prohibits the transfer, receipt, possession, transportation, importation, or use of a handgun, a rifle, a shotgun, a short-barreled shotgun, a short-barreled rifle, a machinegun, a semiautomatic assault weapon, ammunition for any such gun or weapon, or a large capacity ammunition feeding device, in carrying out the duties of the Commission,

<sup>64</sup> The date of enactment was Nov. 8, 1978.

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the Commission may authorize the security personnel of any licensee or certificate holder of the Commission (including an employee of a contractor of such a licensee or certificate holder) to transfer, receive, possess, transport, import, and use 1 or more such guns, weapons, ammunition, or devices, if the Commission determines that—

(1) the authorization is necessary to the discharge of the official duties of the security personnel; and

(2) the security personnel—

(A) are not otherwise prohibited from possessing or receiving a firearm under Federal or State laws relating to possession of firearms by a certain category of persons;

(B) have successfully completed any requirement under this section for training in the use of firearms and tactical maneuvers;

(C) are engaged in the protection of—

(i) a facility owned or operated by a licensee or certificate holder of the Commission that is designated by the Commission; or

(ii) radioactive material or other property owned or possessed by a licensee or certificate holder of the Commission, or that is being transported to or from a facility owned or operated by such a licensee or certificate holder, and that has been determined by the Commission to be of significance to the common defense and security or public health and safety; and

(D) are discharging the official duties of the security personnel in transferring, receiving, possessing, transporting, or importing the weapons, ammunition, or devices.

c. **BACKGROUND CHECKS.**—A person that receives, possesses, transports, imports, or uses a weapon, ammunition, or a device under subsection (b) shall be subject to a background check by the Attorney General, based on fingerprints and including a background check under section 103(b) of the Brady Handgun Violence Prevention Act (Public Law 103–159; 18 U.S.C. 922 note) to determine whether the person is prohibited from possessing or receiving a firearm under Federal or State law.

d. **EFFECTIVE DATE.**—This section takes effect on the date on which guidelines are issued by the Commission, with the approval of the Attorney General, to carry out this section.

[42 U.S.C. 2201a]

**SEC. 162. CONTRACTS.**—The President may, in advance, exempt any specification of the Commission in a particular matter from the provisions of law relating to contracts whenever he determines that such action is essential in the interest of the common defense and security.

[42 U.S.C. 2202]

**SEC. 163. ADVISORY COMMITTEES.**—The members of the General Advisory committee established pursuant to section 26<sup>65</sup> and the members of advisory boards established pursuant to section 161 a. may serve as such without regard to the provisions of sec-

<sup>65</sup>Section 26 was repealed by Pub. L. 95–91, title VII, § 709(e)(1), Aug. 4, 1977, 91 Stat. 608.



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tions 281, 283, or 284 of Title 18 of the United States Code,<sup>66</sup> except insofar as such sections may prohibit any such member from receiving compensation from a source other than a nonprofit educational institution in respect of any particular matter which directly involves the Commission or in which the Commission is directly interested.

[42 U.S.C. 2203]

SEC. 164. ELECTRIC UTILITY CONTRACTS.—The Commission is authorized in connection with the construction or operation of the Oak Ridge, Paducah, and Portsmouth installations of the Commission, without regard to section 3679 of the Revised Statutes,<sup>67</sup> as amended, to enter into new contracts or modify or confirm existing contracts to provide for electric utility services for periods not exceeding twenty-five years, and such contracts shall be subject to termination by the Commission upon payment of cancellation costs as provided in such contracts, and any appropriation presently or hereafter made available to the Commission shall be available for the payment of such cancellation costs. Any such cancellation payments shall be taken into consideration in determination of the rate to be charged in the event the Commission or any other agency of the Federal Government shall purchase electric utility services from the contractor subsequent to the cancellation and during the life of the original contract. The authority of the Commission under this section to enter into new contracts or modify or confirm existing contracts to provide for electric utility services includes, in case such electric utility services are to be furnished to the commission by the Tennessee Valley Authority, authority to contract with any person to furnish electric utility services to the Tennessee Valley Authority in replacement thereof. Any contract hereafter entered into by the Commission pursuant to this section shall be submitted to the Energy Committees and a period of thirty days shall elapse while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of adjournment for more than three days) before the contract of the Commission shall become effective: *Provided, however,* That the Energy Committees, after having received the proposed contract, may by resolution in writing, waive the conditions of or all or any portion of such thirty-day period.

[42 U.S.C. 2204]

## SEC. 165. CONTRACT PRACTICES.—

a. In carrying out the purposes of this Act the Commission shall not use the cost-plus-percentage-of-cost system of contracting.

b. No contract entered into under the authority of this Act shall provide, and no contract entered into under the authority of the Atomic Energy Act of 1946, as amended, shall be modified or amended after the date of enactment of this Act to provide, for direct payment or direct reimbursement by the Commission of any

<sup>66</sup> Sections 281, 283 and 284 of title 18 were repealed by Pub. L. 87-849, § 2, Oct. 23, 1962, 76 Stat. 1126, except as sections 281 and 283 apply to retired officers of the Armed Forces of the United States, and were supplanted by sections 203, 205, and 207, respectively, of title 18, United States Code.

<sup>67</sup> Section 3679 of the Revised Statutes has been codified as sections 1341, 1342, 1349-1351, and subchapter II of chapter 15, of title 31, United States Code.

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Federal income taxes on behalf of any contractor performing such contract for profit.

【42 U.S.C. 2205】

SEC. 166. COMPTROLLER GENERAL AUDIT.—No moneys appropriated for the purposes of this Act shall be available for payments under any contract with the Commission, negotiated without advertising, except contracts with any foreign government or any agency thereof and contracts with foreign producers, unless such contract includes a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of, and involving transactions related to such contracts or subcontracts: *Provided, however,* That no moneys so appropriated shall be available for payment under such contract which includes any provision precluding an audit by the General Accounting Office of any transaction under such contract: *And provided further,* That nothing in this section shall preclude the earlier disposal of contractor and subcontractor records in accordance with records disposal schedules agreed upon between the Commission and the General Accounting Office.

【42 U.S.C. 2206】

SEC. 167. CLAIMS SETTLEMENTS.—The Commission, acting on behalf of the United States, is authorized to consider, ascertain, adjust, determine, settle, and pay, any claim for money damage of \$5,000 or less against the United States for bodily injury, death, or damage to or loss of real or personal property resulting from any detonation, explosion, or radiation produced in the conduct of any program undertaken by the Commission involving the detonation of an explosive device, where such claim is presented to the Commission in writing within one year after the accident or incident out of which the claim arises: *Provided, however,* That the damage to or loss of property, or bodily injury or death, shall not have been caused in whole or in part by any negligence or wrongful act on the part of the claimant, his agents, or employees. Any such settlement under the authority of this section shall be final and conclusive for all purposes, notwithstanding any other provision of law to the contrary. If the Commission considers that a claim in excess of \$5,000 is meritorious and would otherwise be covered by this section, the Commission may report the facts and circumstances thereof to the Congress for its consideration.

【42 U.S.C. 2207】

SEC. 168. PAYMENTS IN LIEU OF TAXES.—In order to render financial assistance to those States and localities in which the activities of the Commission are carried on, and in which the Commission has acquired property previously subject to State and local taxation, the Commission is authorized to make payments to State and local governments in lieu of property taxes. Such payments may be in the amounts, at the times, and upon the terms the Commission deems appropriate, but the Commission shall be guided by the policy of not making payments in excess of the taxes which

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would have been payable for such property in the condition in which it was acquired, except in cases where special burdens have been cast upon the State or local government by activities of the Commission, the Manhattan Engineer District or their agents. In any such case, any benefit accruing to the State or local government by reason of such activities shall be considered in determining the amount of the payment.

[42 U.S.C. 2208]

SEC. 169. NO SUBSIDY.—No funds of the Commission shall be employed in the construction or operation of facilities licensed under section 103 or 104 except under contract or other arrangement entered into pursuant to section 31.

[42 U.S.C. 2209]

SEC. 170. INDEMNIFICATION AND LIMITATION OF LIABILITY.—<sup>68</sup>

a. REQUIREMENT OF FINANCIAL PROTECTION FOR LICENSEES.—Each license issued under section 103 or 104 and each construction permit issued under section 185 shall, and each license issued under section 53, 63, or 81 may, for the public purposes cited in section 2 i. have as a condition of the license a requirement that the licensee have and maintain financial protection of such type and in such amounts as the Nuclear Regulatory Commission (in this section referred to as the “Commission”) in the exercise of its licensing and regulatory authority and responsibility shall require in accordance with subsection b. to cover public liability claims. Whenever such financial protection is required it may be a further condition of the license that the licensee execute and maintain an indemnification agreement in accordance with subsection c. The Commission may require, as a further condition of issuing a license, that an applicant waive any immunity from public liability conferred by Federal or State law.

b. AMOUNT AND TYPE OF FINANCIAL PROTECTION FOR LICENSEES.—(1) The amount of primary financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: (A) the cost and terms of private insurance, (B) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and (C) the nature and purpose of the licensed activity: *Provided*, That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of primary financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources (excluding the amount of private liability insurance available under the industry retrospective rating plan required in this subsection). Such primary financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such measures and shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe. The Commission shall require licensees

<sup>68</sup>This section is commonly referred to as the Price-Anderson Act.

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that are required to have and maintain primary financial protection equal to the maximum amount of liability insurance available from private sources to maintain, in addition to such primary financial protection, private liability insurance available under an industry retrospective rating plan providing for premium charges deferred in whole or major part until public liability from a nuclear incident exceeds or appears likely to exceed the level of the primary financial protection required of the licensee involved in the nuclear incident: *Provided*, That such insurance is available to, and required of, all of the licensees of such facilities without regard to the manner in which they obtain other types or amounts of such primary financial protection: *And provided further*: That the maximum amount of the standard deferred premium that may be charged a licensee following any nuclear incident under such a plan shall not be more than \$95,800,000 (subject to adjustment for inflation under subsection t.), but not more than \$15,000,000 in any 1 year (subject to adjustment for inflation under subsection t.), for each facility for which such licensee is required to maintain the maximum amount of primary financial protection: *And provided further*, That the amount which may be charged a licensee following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims and costs (excluding legal costs subject to subsection o. (1)(D), payment of which has not been authorized under such subsection) arising out of the nuclear incident. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this Act shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission.

(2)(A) The Commission may, on a case by case basis, assess annual deferred premium amounts less than the standard annual deferred premium amount assessed under paragraph (1)—

(i) for any facility, if more than one nuclear incident occurs in any one calendar year; or

(ii) for any licensee licensed to operate more than one facility, if the Commission determines that the financial impact of assessing the standard annual deferred premium amount under paragraph (1) would result in undue financial hardship to such licensee or the ratepayers of such licensee.

(B) In the event that the Commission assesses a lesser annual deferred premium amount under subparagraph (A), the Commission shall require payment of the difference between the standard annual deferred premium assessment under paragraph (1) and any such lesser annual deferred premium assessment within a reasonable period of time, with interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the date that the standard annual deferred premium assessment under paragraph (1) would become due.

(3) The Commission shall establish such requirements as are necessary to assure availability of funds to meet any assessment of deferred premiums within a reasonable time when due, and may provide reinsurance or shall otherwise guarantee the payment of such premiums in the event it appears that the amount of such

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premiums will not be available on a timely basis through the resources of private industry and insurance. Any agreement by the Commission with a licensee or indemnitor to guarantee the payment of deferred premiums may contain such terms as the Commission deems appropriate to carry out the purposes of this section and to assure reimbursement to the Commission for its payments made due to the failure of such licensee or indemnitor to meet any of its obligations arising under or in connection with financial protection required under this subsection including without limitation terms creating liens upon the licensed facility and the revenues derived therefrom or any other property or revenues of such licensee to secure such reimbursement and consent to the automatic revocation of any license.

(4)(A) In the event that the funds available to pay valid claims in any year are insufficient as a result of the limitation on the amount of deferred premiums that may be required of a licensee in any year under paragraph (1) or (2), or the Commission is required to make reinsurance or guaranteed payments under paragraph (3), the Commission shall, in order to advance the necessary funds—

(i) request the Congress to appropriate sufficient funds to satisfy such payments; or

(ii) to the extent approved in appropriation Acts, issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Commission and the Secretary of the Treasury.

(B) Except for funds appropriated for purposes of making reinsurance or guaranteed payments under paragraph (3), any funds appropriated under subparagraph (A)(i) shall be repaid to the general fund of the United States Treasury from amounts made available by standard deferred premium assessments, with interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the date that the funds appropriated under such subparagraph are made available.

(C) Except for funds appropriated for purposes of making reinsurance or guaranteed payments under paragraph (3), redemption of obligations issued under subparagraph (A)(ii) shall be made by the Commission from amounts made available by standard deferred premium assessments. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury by taking into consideration the average market yield on outstanding marketable obligations to the United States of comparable maturities during the months preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such chapter are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by the Secretary of the Treasury under

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this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(5)(A) For purposes of this section only, the Commission shall consider a combination of facilities described in subparagraph (B) to be a single facility having a rated capacity of 100,000 electrical kilowatts or more.

(B) A combination of facilities referred to in subparagraph (A) is two or more facilities located at a single site, each of which has a rated capacity of 100,000 electrical kilowatts or more but not more than 300,000 electrical kilowatts, with a combined rated capacity of not more than 1,300,000 electrical kilowatts.

c. INDEMNIFICATION OF LICENSEES BY NUCLEAR REGULATORY COMMISSION.—The Commission shall, with respect to licenses issued between August 30, 1954, and December 31, 2025, for which it requires financial protection of less than \$560,000,000, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed \$500,000,000, excluding costs of investigating and settling claims and defending suits for damage: *Provided, however*, That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed \$60,000,000. Such a contract of indemnification shall cover public liability arising out of or in connection with the licensed activity. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and December 31, 2025, the requirements of this subsection shall apply to any license issued for such facility subsequent to December 31, 2025.

d. INDEMNIFICATION OF CONTRACTORS BY DEPARTMENT OF ENERGY.—(1)(A) In addition to any other authority the Secretary of Energy (in this section referred to as the “Secretary”) may have, the Secretary shall, until December 31, 2025, enter into agreements of indemnification under this subsection with any person who may conduct activities under a contract with the Department of Energy that involve the risk of public liability and that are not subject to financial protection requirements under subsection b. or agreements of indemnification under subsection c. or k.

(B)(i)(I) Beginning 60 days after the date of enactment of the Price-Anderson Amendments Act of 1988,<sup>69</sup> agreements of indemnification under subparagraph (A) shall be the exclusive means of indemnification for public liability arising from activities described in such subparagraph, including activities conducted under a contract that contains an indemnification clause under Public Law 85–804 entered into between August 1, 1987, and the date of enactment of the Price-Anderson Amendments Act of 1988.<sup>69</sup>

(II) The Secretary may incorporate in agreements of indemnification under subparagraph (A) the provisions relating to the waiver of any issue or defense as to charitable or governmental immunity authorized in subsection n. (1) to be incorporated in agree-

<sup>69</sup>The date of enactment was Aug. 20, 1988.

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ments of indemnification. Any such provisions incorporated under this subclause shall apply to any nuclear incident arising out of nuclear waste activities subject to an agreement of indemnification under subparagraph (A).

(ii) Public liability arising out of nuclear waste activities subject to an agreement of indemnification under subparagraph (A) that are funded by the Nuclear Waste Fund established in section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222) shall be compensated from the Nuclear Waste Fund in an amount not to exceed the maximum amount of financial protection required of licensees under subsection b.

(2) In an agreement of indemnification entered into under paragraph (1), the Secretary—

(A) may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity; and

(B) shall indemnify the persons indemnified against such liability above the amount of the financial protection required, in the amount of \$10,000,000,000 (subject to adjustment for inflation under subsection t.), in the aggregate, for all persons indemnified in connection with the contract and for each nuclear incident, including such legal costs of the contractor as are approved by the Secretary.

(3) All agreements of indemnification under which the Department of Energy (or its predecessor agencies) may be required to indemnify any person under this section shall be deemed to be amended, on the date of enactment of the Price-Anderson Amendments Act of 2005, to reflect the amount of indemnity for public liability and any applicable financial protection required of the contractor under this subsection.

(4) Financial protection under paragraph (2) and indemnification under paragraph (1) shall be the exclusive means of financial protection and indemnification under this section for any Department of Energy demonstration reactor licensed by the Commission under section 202 of the energy Reorganization Act of 1974 (42 U.S.C. 5842).

(5) In the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Secretary under this subsection shall not exceed \$500,000,000.

(6) The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Secretary.

(7) A contractor with whom an agreement of indemnification has been executed under paragraph (1)(A) and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this subsection, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.

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e. LIMITATION ON AGGREGATE PUBLIC LIABILITY.—(1) The aggregate public liability for a single nuclear incident of persons indemnified, including such legal costs as are authorized to be paid under subsection o. (1)(D), shall not exceed—

(A) in the case of facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the maximum amount of financial protection required of such facilities under subsection b. (plus any surcharge assessed under subsection o. (1)(E));

(B) in the case of contractors with whom the Secretary has entered into an agreement of indemnification under subsection d., the amount of indemnity and financial protection that may be required under paragraph (2) of subsection d.; and

(C) in the case of all licensees of the Commission required to maintain financial protection under this section—

(i) \$500,000,000, together with the amount of financial protection required of the licensee; or

(ii) if the amount of financial protection required of the licensee exceeds \$60,000,000, \$560,000,000 or the amount of financial protection required of the licensee, whichever amount is more.

(2) In the event of a nuclear incident involving damages in excess of the amount of aggregate public liability under paragraph (1), the Congress will thoroughly review the particular incident in accordance with the procedures set forth in section 170 i. and will in accordance with such procedures, take whatever action is determined to be necessary (including approval of appropriate compensation plans and appropriation of funds) to provide full and prompt compensation to the public for all public liability claims resulting from a disaster of such magnitude.

(3) No provision of paragraph (1) may be construed to preclude the Congress from enacting a revenue measure, applicable to licensees of the Commission required to maintain financial protection pursuant to section b., to fund any action undertaken pursuant to paragraph (2).

(4) With respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection d. is applicable, such aggregate public liability shall not exceed the amount of \$500,000,000, together with the amount of financial protection required of the contractor.

f. COLLECTION OF FEES BY NUCLEAR REGULATORY COMMISSION.—The Commission or the Secretary, as appropriate, is authorized to collect a fee from all persons with whom an indemnification agreement is executed under this section. This fee shall be \$30 per year per thousand kilowatts of thermal energy capacity for facilities licensed under section 103: *Provided*, That the Commission or the Secretary, as appropriate, is authorized to reduce the fee for such facilities in reasonable relation to increases in financial protection required above a level of \$60,000,000. For facilities licensed under section 104, and for construction permits under section 185, the Commission is authorized to reduce the fee set forth above. The Commission shall establish criteria in writing for determination of the fee for facilities licensed under section 104, taking into consid-

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eration such factors as (1) the type, size, and location of facility involved, and other factors pertaining to the hazard, and (2) the nature and purpose of the facility. For other licenses, the Commission shall collect such nominal fees as it deems appropriate. No fee under this subsection shall be less than \$100 per year.

g. USE OF SERVICES OF PRIVATE INSURERS.—In administering the provisions of this section, the Commission or the Secretary, as appropriate, shall use, to the maximum extent practicable, the facilities and services of private insurance organizations, and the Commission or the Secretary, as appropriate, may contract to pay a reasonable compensation for such services. Any contract made under the provisions of this subsection may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5), as amended, upon a showing by the Commission or the Secretary, as appropriate, that advertising is not reasonably practicable and advance payments may be made.

h. CONDITIONS OF AGREEMENTS OF INDEMNIFICATION.—The agreement of indemnification may contain such terms as the Commission or the Secretary, as appropriate, deems appropriate to carry out the purposes of this section. Such agreement shall provide that, when the Commission or the Secretary, as appropriate, makes a determination that the United States will probably be required to make indemnity payments under this section, the Commission or the Secretary, as appropriate, shall collaborate with any person indemnified and may approve the payment of any claim under the agreement of indemnification, appear through the Attorney General on behalf of the person indemnified, take charge of such action, and settle or defend any such action. The Commission or the Secretary, as appropriate, shall have final authority on behalf of the United States to settle or approve the settlement of any such claim on a fair and reasonable basis with due regard for the purposes of this Act. Such settlement shall not include expenses in connection with the claim incurred by the person indemnified.

i. COMPENSATION PLANS.—(1) After any nuclear incident involving damages that are likely to exceed the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection e. (1), the Secretary or the Commission<sup>70</sup>, as appropriate, shall—

(A) make a survey of the causes and extent of damage; and

(B) expeditiously submit a report setting forth the results of such survey to the Congress, to the Representatives of the affected districts, to the Senators of the affected States, and (except for information that will cause serious damage to the national defense of the United States) to the public, to the parties involved, and to the courts.

(2) Not later than 90 days after any determination by a court, pursuant to subsection o., that the public liability from a single nuclear incident may exceed the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection e. (1) the President shall submit to the Congress—

(A) an estimate of the aggregate dollar value of personal injuries and property damage that arises from the nuclear inci-

<sup>70</sup>So in law. Probably should be "Commission".

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dent and exceeds the amount of aggregate public liability under subsection e. (1);

(B) recommendations for additional sources of funds to pay claims exceeding the applicable amount of aggregate public liability under subparagraph (A), (B), or (C) of subsection e. (1), which recommendations shall consider a broad range of possible sources of funds (including possible revenue measures on the sector of the economy, or on any other class, to which such revenue measures might be applied);

(C) 1 or more compensation plans, that either individually or collectively shall provide for full and prompt compensation for all valid claims and contain a recommendation or recommendations as to the relief to be provided, including any recommendations that funds be allocated or set aside for the payment of claims that may arise as a result of latent injuries that may not be discovered until a later date; and

(D) any additional legislative authorities necessary to implement such compensation plan or plans.

(3)(A) Any compensation plan transmitted to the Congress pursuant to paragraph (2) shall bear an identification number and shall be transmitted to both Houses of Congress on the same day and to each House while it is in session.

(B) The provisions of paragraphs (4) through (6) shall apply with respect to consideration in the Senate of any compensation plan transmitted to the Senate pursuant to paragraph (2).

(4) No such compensation plan may be considered approved for purposes of subsection 170 e. (2) unless between the date of transmittal and the end of the first period of sixty calendar days of continuous session of Congress after the date on which such action is transmitted to the Senate, the Senate passes a resolution described in paragraph 6<sup>71</sup> of this subsection.

(5) For the purpose of paragraph (4) of this subsection—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the sixty-day calendar period.

(6)(A) This paragraph is enacted—

(i) as an exercise of the rulemaking power of the Senate and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions described by subparagraph (B) and it supersedes other rules only to the extent that it is inconsistent therewith; and

(ii) with full recognition of the constitutional right of the Senate to change the rules at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(B) For purposes of this paragraph, the term “resolution” means only a joint resolution of the Congress the matter after the resolving clause of which is as follows: “That the approves the com-

<sup>71</sup>So in law. Probably should be “(6)”.

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compensation plan numbered submitted to the Congress on, 19.”, the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one compensation plan.

(C) A resolution once introduced with respect to a compensation plan shall immediately be referred to a committee (and all resolutions with respect to the same compensation plan shall be referred to the same committee) by the President of the Senate.

(D)(i) If the committee of the Senate to which a resolution with respect to a compensation plan has been referred has not reported it at the end of twenty calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration with respect to such compensation plan which has been referred to the committee.

(ii) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same compensation plan), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(iii) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same compensation plan.

(E)(i) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(ii) Debate on the resolution referred to in clause (i) of this subparagraph shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(F)(i) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution or motions to proceed to the consideration of other business, shall be decided without debate.

(ii) Appeals from the decision of the Chair relating to the application of the rules of the Senate to the procedures relating to a resolution shall be decided without debate.

j. CONTRACTS IN ADVANCE OF APPROPRIATIONS.—In administering the provisions of this section, the Commission or the Secretary, as appropriate, may make contracts in advance of appro-

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priations and incur obligations without regard to sections 1341, 1342, 1349, 1350, and 1351, and subchapter II of chapter 15, of title 31, United States Code.

k. EXEMPTION FROM FINANCIAL PROTECTION REQUIREMENT FOR NONPROFIT EDUCATIONAL INSTITUTIONS.—With respect to any license issued pursuant to section 53, 63, 81, 104 a., or 104 c. for the conduct of educational activities to a person found by the Commission to be a nonprofit educational institution, the Commission shall exempt such licensee from the financial protection requirement of subsection a. With respect to licenses issued between August 30, 1954, and December 31, 2025, for which the Commission grants such exemption:

(1) the Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interests may appear, from public liability in excess of \$250,000 arising from nuclear incidents. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed \$500,000,000, including such legal costs of the licensee as are approved by the Commission;

(2) such contracts of indemnification shall cover public liability arising out of or in connection with the licensed activity; and shall include damage to property of persons indemnified, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs; and

(3) such contracts of indemnification, when entered into with a licensee having immunity from public liability because it is a State agency, shall provide also that the Commission shall make payments under the contract on account of activities of the licensee in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a State agency.

Any licensee may waive an exemption to which it is entitled under this subsection. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and December 31, 2025, the requirements of this subsection shall apply to any license issued for such facility subsequent to December 31, 2025.

(1)<sup>72</sup> PRESIDENTIAL COMMISSION ON CATASTROPHIC NUCLEAR ACCIDENTS.—(1) Not later than 90 days after the date of the enactment of the Price-Anderson Amendments Act of 1988,<sup>73</sup> the President shall establish a commission (in this subsection referred to as the “study commission”) in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) to study means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate public liability under subsection e. (1).

(2)(A) The study commission shall consist of not less than 7 and not more than 11 members, who—

(i) shall be appointed by the President; and

(ii) shall be representative of a broad range of views and interests.

<sup>72</sup>So in law. Probably should be “1.”

<sup>73</sup>The date of enactment was Aug. 20, 1988.



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(B) The members of the study commission shall be appointed in a manner that ensures that not more than a mere majority of the members are of the same political party.

(C) Each member of the study commission shall hold office until the termination of the study commission, but may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(D) Any vacancy in the study commission shall be filled in the manner in which the original appointment was made.

(E) The President shall designate one of the members of the study commission as chairperson, to serve at the pleasure of the President.

(3) The study commission shall conduct a comprehensive study of appropriate means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate public liability under subsection e. (1), and shall submit to the Congress a final report setting forth—

(A) recommendations for any changes in the laws and rules governing the liability or civil procedures that are necessary for the equitable, prompt, and efficient resolution and payment of all valid damage claims, including the advisability of adjudicating public liability claims through an administrative agency instead of the judicial system;

(B) recommendations for any standards or procedures that are necessary to establish priorities for the hearing, resolution, and payment of claims when awards are likely to exceed the amount of funds available within a specific time period; and

(C) recommendations for any special standards or procedures necessary to decide and pay claims for latent injuries caused by the nuclear incident.

(4)(A) The chairperson of the study commission may appoint and fix the compensation of a staff of such persons as may be necessary to discharge the responsibilities of the study commission, subject to the applicable provisions of the Federal Advisory Committee Act (5 U.S.C. App.) and title 5, United States Code.

(B) To the extent permitted by law and requested by the chairperson of the study commission, the Administrator of General Services shall provide the study commission with necessary administrative services, facilities, and support on a reimbursable basis.

(C) The Attorney General, the Secretary of Health and Human Services, and the Director of the Federal Emergency Management Agency shall, to the extent permitted by law and subject to the availability of funds, provide the study commission with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the study commission.

(D) The study commission may request any Executive agency to furnish such information, advice, or assistance as it determines to be necessary to carry out its functions. Each such agency is directed, to the extent permitted by law, to furnish such information, advice or assistance upon request by the chairperson of the study commission.

(E) Each member of the study commission may receive compensation at the maximum rate prescribed by the Federal Advisory

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Committee Act (5 U.S.C. App.) for each day such member is engaged in the work of the study commission. Each member may also receive travel expenses, including per diem in lieu of subsistence under sections 5702 and 5703 of title 5, United States Code.

(F) The functions of the President under the Federal Advisory Committee Act (5 U.S.C. App.) that are applicable to the study commission, except the function of reporting annually to the Congress, shall be performed by the Administrator of General Services.

(5) The final report required in paragraph (3) shall be submitted to the Congress not later than the expiration of the 2-year period beginning on the date of the enactment of the Price-Anderson Amendments Act of 1988.<sup>74</sup>

(6) The study commission shall terminate upon the expiration of the 2-month period beginning on the date on which the final report required in paragraph (3) is submitted.

m. COORDINATED PROCEDURES FOR PROMPT SETTLEMENT OF CLAIMS AND EMERGENCY ASSISTANCE.—The Commission or the Secretary, as appropriate, is authorized to enter into agreements with other indemnitors to establish coordinated procedures for the prompt handling, investigation, and settlement of claims for public liability. The Commission or the Secretary, as appropriate, and other indemnitors may make payments to, or for the aid of, claimants for the purpose of providing immediate assistance following a nuclear incident. Any funds appropriated to the Commission or the Secretary, as appropriate, shall be available for such payments. Such payments may be made without securing releases, shall not constitute an admission of the liability of any person indemnified or of any indemnitor, and shall operate as a satisfaction to the extent thereof of any final settlement or judgment.

n. WAIVER OF DEFENSES AND JUDICIAL PROCEDURES.—(1) With respect to any extraordinary nuclear occurrence to which an insurance policy or contract furnished as proof of financial protection or an indemnity agreement applies and which—

(A) arises out of or results from or occurs in the course of the construction, possession, or operation of a production or utilization facility,

(B) arises out of or results from or occurs in the course of transportation of source material, byproduct material, or special nuclear material to or from a production or utilization facility,

(C) during the course of the contract activity arises out of or results from the possession, operation, or use by a Department of Energy contractor or subcontractor of a device utilizing special nuclear material or byproduct material,

(D) arises out of, results from, or occurs in the course of, the construction, possession, or operation of any facility licensed under section 53, 63, or 81, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection a.,

(E) arises out of, results from, or occurs in the course of, transportation of source material, byproduct material, or spe-

<sup>74</sup>The date of enactment was Aug. 20, 1988.



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cial nuclear material to or from any facility licensed under section 53, 63, or 81, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection a., or

(F) arises out of, results from, or occurs in the course of nuclear waste activities.<sup>75</sup>

the Commission or the Secretary, as appropriate, may incorporate provisions in indemnity agreements with licensees and contractors under this section, and may require provisions to be incorporated in insurance policies or contracts furnished as proof of financial protection, which waive (i) any issue or defense as to conduct of the claimant or fault of persons indemnified, (ii) any issue or defense as to charitable or governmental immunity, and (iii) any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. When so incorporated, such waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified. Such waivers shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages, nor shall such waivers apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant. The waivers authorized in this subsection shall, as to indemnitors, be effective only with respect to those obligations set forth in the insurance policies or the contracts furnished as proof of financial protection and in the indemnity agreements. Such waivers shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the terms of insurance policies or contracts furnished as proof of financial protection, or indemnity agreements, and (ii) the limit of liability provisions of subsection e.

(2) With respect to any public liability action arising out of or resulting from a nuclear incident, the United States district court in the district where the nuclear incident takes place, or in the case of a nuclear incident taking place outside the United States, the United States District Court for the District of Columbia, shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy. Upon motion of the defendant or of the Commission or the Secretary, as appropriate, any such action pending in any State court (including any such action pending on the date of the enactment of the Price-Anderson Amendments Act of 1988)<sup>76</sup> or United States district court shall be removed or transferred to the United States district court having venue under this subsection. Process of such district court shall be effective throughout the United States. In any action that is or becomes removable pursuant to this paragraph, a petition for removal shall be

<sup>75</sup>So in law. Probably should be a comma.

<sup>76</sup>The date of enactment was Aug. 20, 1988.

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filed within the period provided in section 1446 of title 28, United States Code, or within the 30-day period beginning on the date of the enactment of the Price-Anderson Amendments Act of 1988,<sup>76</sup> whichever occurs later.

(3)(A) Following any nuclear incident, the chief judge of the United States district court having jurisdiction under paragraph (2) with respect to public liability actions (or the judicial council of the judicial circuit in which the nuclear incident occurs) may appoint a special caseload management panel (in this paragraph referred to as the “management panel”) to coordinate and assign (but not necessarily hear themselves) cases arising out of the nuclear incident, if—

(i) a court, acting pursuant to subsection o., determines that the aggregate amount of public liability is likely to exceed the amount of primary financial protection available under subsection b. (or an equivalent amount in the case of a contractor indemnified under subsection d.); or

(ii) the chief judge of the United States district court (or the judicial council of the judicial circuit) determines that cases arising out of the nuclear incident will have an unusual impact on the work of the court.

(B)(i) Each management panel shall consist only of members who are United States district judges or circuit judges.

(ii) Members of a management panel may include any United States district judge or circuit judge of another district court or court of appeals, if the chief judge of such other district court or court of appeals consents to such assignment.

(C) It shall be the function of each management panel—

(i) to consolidate related or similar claims for hearing or trial;

(ii) to establish priorities for the handling of different classes of cases;

(iii) to assign cases to a particular judge or special master;

(iv) to appoint special masters to hear particular types of cases, or particular elements or procedural steps of cases;

(v) to promulgate special rules of court, not inconsistent with the Federal Rules of Civil Procedure, to expedite cases or allow more equitable consideration of claims;

(vi) to implement such other measures, consistent with existing law and the Federal Rules of Civil Procedure, as will encourage the equitable, prompt, and efficient resolution of cases arising out of the nuclear incident; and

(vii) to assemble and submit to the President such data, available to the court, as may be useful in estimating the aggregate damages from the nuclear incident.

o. PLAN FOR DISTRIBUTION OF FUNDS.—(1) Whenever the United States district court in the district where a nuclear incident occurs, or the United States District Court for the District of Columbia in case of a nuclear incident occurring outside the United States, determines upon the petition of any indemnitor or other interested person that public liability from a single nuclear incident may exceed the limit of liability under the applicable limit of liability under subparagraph (A), (B), or (C) of subsection e. (1):

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(A) Total payments made by or for all indemnitors as a result of such nuclear incident shall not exceed 15 per centum of such limit of liability without the prior approval of such court;

(B) The court shall not authorize payments in excess of 15 per centum of such limit of liability unless the court determines that such payments are or will be in accordance with a plan of distribution which has been approved by the court or such payments are not likely to prejudice the subsequent adoption and implementation by the court of a plan of distribution pursuant to subparagraph (C); and

(C) The Commission or the Secretary, as appropriate, shall, and any other indemnitor or other interested person may, submit to such district court a plan for the disposition of pending claims and for the distribution of remaining funds available. Such a plan shall include an allocation of appropriate amounts for personal injury claims, property damage claims, and possible latent injury claims which may not be discovered until a later time. Such court shall have all power necessary to approve, disapprove, or modify plans proposed, or to adopt another plan; and to determine the proportionate share of funds available for each claimant. The Commission or the Secretary as appropriate, any other indemnitor, and any person indemnified shall be entitled to such orders as may be appropriate to implement and enforce the provisions of this section, including orders limiting the liability of the persons indemnified, orders approving or modifying the plan, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, and orders permitting partial payments to be made before final determination of the total claims. The orders of such court shall be effective throughout the United States and shall include establishment of priorities between claimants and classes of claims, as necessary to insure the most equitable allocation of available funds.

(D) A court may authorize payment of only such legal costs as are permitted under paragraph (2) from the amount of financial protection required by subsection b.

(E) If the sum of public liability claims and legal costs authorized under paragraph (2) arising from any nuclear incident exceeds the maximum amount of financial protection required under subsection b., any licensee required to pay a standard deferred premium under subsection b. (1) shall, in addition to such deferred premium, be charged such an amount as is necessary to pay a pro rata share of such claims and costs, but in no case more than 5 percent of the maximum amount of such standard deferred premium described in such subsection.

(2) A court may authorize the payment of legal costs under paragraph (1)(D) only if the person requesting such payment has—

(A) submitted to the court the amount of such payment requested; and

(B) demonstrated to the court—

- (i) that such costs are reasonable and equitable; and
- (ii) that such person has—

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- (I) litigated in good faith;
- (II) avoided unnecessary duplication of effort with that of other parties similarly situated;
- (III) not made frivolous claims or defenses; and
- (IV) not attempted to unreasonably delay the prompt settlement or adjudication of such claims.

p. REPORTS TO CONGRESS.—The Commission and the Secretary shall submit to the Congress by December 31, 2021, detailed reports concerning the need for continuation or modification of the provisions of this section, taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors, and shall include recommendations as to the repeal or modification of any of the provisions of this section.

q. LIMITATION ON AWARDING OF PRECAUTIONARY EVACUATION COST.—No court may award costs of a precautionary evacuation unless such costs constitute a public liability.

r. LIMITATION ON LIABILITY OF LESSORS.—No person under a bona fide lease of any utilization or production facility (or part thereof or undivided interest therein) shall be liable by reason of an interest as lessor of such production or utilization facility, for any legal liability arising out of or resulting from a nuclear incident resulting from such facility, unless such facility is in the actual possession and control of such person at the time of the nuclear incident giving rise to such legal liability.

s. LIMITATION ON PUNITIVE DAMAGES.—No court may award punitive damages in any action with respect to a nuclear incident or precautionary evacuation against a person on behalf of whom the United States is obligated to make payments under an agreement of indemnification covering such incident or evacuation.

t. INFLATION ADJUSTMENT.—(1) The Commission shall adjust the amount of the maximum total and annual standard deferred premium under subsection b. (1) not less than once during each 5-year period following August 20, 2003, in accordance with the aggregate percentage change in the Consumer Price Index since—

(A) August 20, 2003, in the case of the first adjustment under this subsection; or

(B) the previous adjustment under this subsection.

(2) The Secretary shall adjust the amount of indemnification provided under an agreement of indemnification under subsection d. not less than once during each 5-year period following July 1, 2003, in accordance with the aggregate percentage change in the Consumer Price Index since—

(A) that date, in the case of the first adjustment under this paragraph; or

(B) the previous adjustment under this paragraph.

(3) For purposes of this subsection, the term “Consumer Price Index” means the Consumer Price Index for all urban consumers published by the Secretary of Labor.

【42 U.S.C. 2210】

SEC. 170A. CONFLICTS OF INTEREST RELATING TO CONTRACTS AND OTHER ARRANGEMENTS.—

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a. The Commission shall, by rule, require any person proposing to enter into a contract, agreement, or other arrangement, whether by competitive bid or negotiation, under this Act or any other law administered by it for the conduct of research, development, evaluation activities, or for technical and management support services, to provide the Commission, prior to entering into any such contract, agreement, or arrangement, with all relevant information, as determined by the Commission, bearing on whether that person has a possible conflict of interest with respect to—

(1) being able to render impartial, technically sound, or objective assistance or advice in light of other activities or relationships with other persons, or

(2) being given an unfair competitive advantage. Such person shall insure, in accordance with regulations prescribed by the Commission, compliance with this section by any subcontractor (other than a supply subcontractor) of such person in the case of any subcontract for more than \$10,000.

b. EVALUATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Nuclear Regulatory Commission shall not enter into any such contract agreement or arrangement unless it finds, after evaluating all information provided under subsection a. and any other information otherwise available to the Commission that—

(A) it is unlikely that a conflict of interest would exist, or

(B) such conflict has been avoided after appropriate conditions have been included in such contract, agreement, or arrangement; except that if the Commission determines that such conflict of interests exists and that such conflict of interest cannot be avoided by including appropriate conditions therein, the Commission may enter into such contract, agreement, or arrangement, if the Commission determines that it is in the best interests of the United States to do so and includes appropriate conditions in such contract, agreement, or arrangement to mitigate such conflict.

(2) NUCLEAR REGULATORY COMMISSION.—Notwithstanding any conflict of interest, the Nuclear Regulatory Commission may enter into a contract, agreement, or arrangement with the Department of Energy or the operator of a Department of Energy facility, if the Nuclear Regulatory Commission determines that—

(A) the conflict of interest cannot be mitigated; and

(B) adequate justification exists to proceed without mitigation of the conflict of interest.

c. The Commission shall publish rules for the implementation of this section, in accordance with section 553 of title 5, United States Code (without regard to subsection (a)(2) thereof) as soon as practicable after the date of the enactment of this section,<sup>77</sup> but in no event later than 120 days after such date.

[42 U.S.C. 2210a]

SEC. 170B. URANIUM SUPPLY.—

<sup>77</sup>The date of enactment was Nov. 6, 1978.

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a. The Secretary of Energy shall monitor and for the years 1983 to 1992 report annually to the Congress and to the President a determination of the viability of the domestic uranium mining and milling industry and shall establish by rule, after public notice and in accordance with the requirements of section 181 of this Act, within 9 months of enactment of this section, specific criteria which shall be assessed in the annual reports on the domestic uranium industry's viability. The Secretary of Energy is authorized to issue regulations providing for the collection of such information as the Secretary of Energy deems necessary to carry out the monitoring and reporting requirements of this section.

b. Upon a satisfactory showing to the Secretary of Energy by any person that any information, or portion thereof obtained under this section, would, if made public, divulge proprietary information of such person, the Secretary shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18, United States Code.

c. The criteria referred to in subsection a. shall also include, but not be limited to—

(1) an assessment of whether executed contracts or options for source material or special nuclear material will result in greater than 37½ percent of actual or projected domestic uranium requirements for any two-consecutive-year period being supplied by source material or special nuclear material from foreign sources;

(2) projections of uranium requirements and inventories of domestic utilities for a 10 year period;

(3) present and probable future use of the domestic market by foreign imports;

(4) whether domestic economic reserves can supply all future needs for a future 10 year period;

(5) present and projected domestic uranium exploration expenditures and plans;

(6) present and projected employment and capital investment in the uranium industry;

(7) the level of domestic uranium production capacity sufficient to meet projected domestic nuclear power needs for a 10 year period; and

(8) a projection of domestic uranium production and uranium price levels which will be in effect under various assumptions with respect to imports.

d. The Secretary or <sup>78</sup>Energy, at any time, may determine on the basis of the monitoring and annual reports required under this section that source material or special nuclear material from foreign sources is being imported in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the United States uranium mining and milling industry. Based on that determination, the United States Trade Representative shall request that the United States International Trade Commission initiate an investigation under section 201 of the Trade Act of 1974 (19 U.S.C. 2251).

<sup>78</sup>So in law. Probably should be "of".



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e.(1) If, during the period 1982 to 1992, the Secretary of Energy determines that executed contracts or options for source material or special nuclear material from foreign sources for use in utilization facilities within or under the jurisdiction of the United States represent greater than 37½ percent of actual or projected domestic uranium requirements for any two-consecutive-year period, or if the Secretary of Energy determines the level of contracts or options involving source material and special nuclear material from foreign sources may threaten to impair the national security, the Secretary of Energy shall request the Secretary of Commerce to initiate under section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862) an investigation to determine the effects on the national security of imports of source material and special nuclear material. The Secretary of Energy shall cooperate fully with the Secretary of Commerce in carrying out such an investigation and shall make available to the Secretary of Commerce the findings that lead to this request and such other information that will assist the Secretary of Commerce in the conduct of the investigation.

(2) The Secretary of Commerce shall, in the conduct of any investigation requested by the Secretary of Energy pursuant to this section, take into account any information made available by the Secretary of Energy, including information regarding the impact on national security of projected or executed contracts or options for source material or special nuclear material from foreign sources or whether domestic production capacity is sufficient to supply projected national security requirements.

(3) No sooner than 3 years following completion of any investigation by the Secretary of Commerce under paragraph (1), if no recommendation has been made pursuant to such study for trade adjustments to assist or protect domestic uranium production, the Secretary of Energy may initiate a request for another such investigation by the Secretary of Commerce.

[42 U.S.C. 2210b]

**SEC. 170C. ELIMINATION OF PENSION OFFSET FOR CERTAIN REHIRED FEDERAL RETIREES.**

a. IN GENERAL.—The Commission may waive the application of section 8344 or 8468 of title 5, United States Code, on a case-by-case basis for employment of an annuitant—

(1) in a position of the Commission for which there is exceptional difficulty in recruiting or retaining a qualified employee; or

(2) when a temporary emergency hiring need exists.

b. PROCEDURES.—The Commission shall prescribe procedures for the exercise of authority under this section, including—

(1) criteria for any exercise of authority; and

(2) procedures for a delegation of authority.

c. EFFECT OF WAIVER.—An employee as to whom a waiver under this section is in effect shall not be considered an employee for purposes of subchapter II of chapter 83, or chapter 84, of title 5, United States Code.

[42 U.S.C. 2210c]

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**SEC. 170D. SECURITY EVALUATIONS.**

a. **SECURITY RESPONSE EVALUATIONS.**—Not less often than once every 3 years, the Commission shall conduct security evaluations at each licensed facility that is part of a class of licensed facilities, as the Commission considers to be appropriate, to assess the ability of a private security force of a licensed facility to defend against any applicable design basis threat.

b. **FORCE-ON-FORCE EXERCISES.**—(1) The security evaluations shall include force-on-force exercises.

(2) The force-on-force exercises shall, to the maximum extent practicable, simulate security threats in accordance with any design basis threat applicable to a facility.

(3) In conducting a security evaluation, the Commission shall mitigate any potential conflict of interest that could influence the results of a force-on-force exercise, as the Commission determines to be necessary and appropriate.

c. **ACTION BY LICENSEES.**—The Commission shall ensure that an affected licensee corrects those material defects in performance that adversely affect the ability of a private security force at that facility to defend against any applicable design basis threat.

d. **FACILITIES UNDER HEIGHTENED THREAT LEVELS.**—The Commission may suspend a security evaluation under this section if the Commission determines that the evaluation would compromise security at a nuclear facility under a heightened threat level.

e. **REPORT.**—Not less often than once each year, the Commission shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report, in classified form and unclassified form, that describes the results of each security response evaluation conducted and any relevant corrective action taken by a licensee during the previous year.

[42 U.S.C. 2210d]

**SEC. 170E. DESIGN BASIS THREAT RULEMAKING.**

a. **RULEMAKING.**—The Commission shall—

(1) not later than 90 days after the date of enactment of this section, initiate a rulemaking proceeding, including notice and opportunity for public comment, to be completed not later than 18 months after that date, to revise the design basis threats of the Commission; or

(2) not later than 18 months after the date of enactment of this section, complete any ongoing rulemaking to revise the design basis threats.

b. **FACTORS.**—When conducting its rulemaking, the Commission shall consider the following, but not be limited to—

(1) the events of September 11, 2001;

(2) an assessment of physical, cyber, biochemical, and other terrorist threats;

(3) the potential for attack on facilities by multiple coordinated teams of a large number of individuals;

(4) the potential for assistance in an attack from several persons employed at the facility;

(5) the potential for suicide attacks;

(6) the potential for water-based and air-based threats;

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- (7) the potential use of explosive devices of considerable size and other modern weaponry;
- (8) the potential for attacks by persons with a sophisticated knowledge of facility operations;
- (9) the potential for fires, especially fires of long duration;
- (10) the potential for attacks on spent fuel shipments by multiple coordinated teams of a large number of individuals;
- (11) the adequacy of planning to protect the public health and safety at and around nuclear facilities, as appropriate, in the event of a terrorist attack against a nuclear facility; and
- (12) the potential for theft and diversion of nuclear materials from such facilities.

[42 U.S.C. 2210e]

**SEC. 170F. RECRUITMENT TOOLS.**

The Commission may purchase promotional items of nominal value for use in the recruitment of individuals for employment.

[42 U.S.C. 2210f]

**SEC. 170G. EXPENSES AUTHORIZED TO BE PAID BY THE COMMISSION.**

The Commission may—

- (1) pay transportation, lodging, and subsistence expenses of employees who—

- (A) assist scientific, professional, administrative, or technical employees of the Commission; and

- (B) are students in good standing at an institution of higher education (as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) pursuing courses related to the field in which the students are employed by the Commission; and

- (2) pay the costs of health and medical services furnished, pursuant to an agreement between the Commission and the Department of State, to employees of the Commission and dependents of the employees serving in foreign countries.

[42 U.S.C. 2210g]

**SEC. 170H. RADIATION SOURCE PROTECTION.**

a. DEFINITIONS.—In this section:

- (1) CODE OF CONDUCT.—The term “Code of Conduct” means the code entitled the “Code of Conduct on the Safety and Security of Radioactive Sources”, approved by the Board of Governors of the International Atomic Energy Agency and dated September 8, 2003.

- (2) RADIATION SOURCE.—The term “radiation source” means—

- (A) a Category 1 Source or a Category 2 Source, as defined in the Code of Conduct; and

- (B) any other material that poses a threat such that the material is subject to this section, as determined by the Commission, by regulation, other than spent nuclear fuel and special nuclear materials.

b. COMMISSION APPROVAL.—Not later than 180 days after the date of enactment of this section, the Commission shall issue regulations prohibiting a person from—

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(1) exporting a radiation source, unless the Commission has specifically determined under section 57 or 82, consistent with the Code of Conduct, with respect to the exportation, that—

(A) the recipient of the radiation source may receive and possess the radiation source under the laws and regulations of the country of the recipient;

(B) the recipient country has the appropriate technical and administrative capability, resources, and regulatory structure to ensure that the radiation source will be managed in a safe and secure manner; and

(C) before the date on which the radiation source is shipped—

(i) a notification has been provided to the recipient country; and

(ii) a notification has been received from the recipient country;

as the Commission determines to be appropriate;

(2) importing a radiation source, unless the Commission has determined, with respect to the importation, that—

(A) the proposed recipient is authorized by law to receive the radiation source; and

(B) the shipment will be made in accordance with any applicable Federal or State law or regulation; and

(3) selling or otherwise transferring ownership of a radiation source, unless the Commission—

(A) has determined that the licensee has verified that the proposed recipient is authorized under law to receive the radiation source; and

(B) has required that the transfer shall be made in accordance with any applicable Federal or State law or regulation.

c. TRACKING SYSTEM.—(1)(A) Not later than 1 year after the date of enactment of this section, the Commission shall issue regulations establishing a mandatory tracking system for radiation sources in the United States.

(B) In establishing the tracking system under subparagraph (A), the Commission shall coordinate with the Secretary of Transportation to ensure compatibility, to the maximum extent practicable, between the tracking system and any system established by the Secretary of Transportation to track the shipment of radiation sources.

(2) The tracking system under paragraph (1) shall—

(A) enable the identification of each radiation source by serial number or other unique identifier;

(B) require reporting within 7 days of any change of possession of a radiation source;

(C) require reporting within 24 hours of any loss of control of, or accountability for, a radiation source; and

(D) provide for reporting under subparagraphs (B) and (C) through a secure Internet connection.

d. PENALTY.—A violation of a regulation issued under subsection a. or b. shall be punishable by a civil penalty not to exceed \$1,000,000.

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e. NATIONAL ACADEMY OF SCIENCES STUDY.—(1) Not later than 60 days after the date of enactment of this section, the Commission shall enter into an arrangement with the National Academy of Sciences under which the National Academy of Sciences shall conduct a study of industrial, research, and commercial uses for radiation sources.

(2) The study under paragraph (1) shall include a review of uses of radiation sources in existence on the date on which the study is conducted, including an identification of any industrial or other process that—

(A) uses a radiation source that could be replaced with an economically and technically equivalent (or improved) process that does not require the use of a radiation source; or

(B) may be used with a radiation source that would pose a lower risk to public health and safety in the event of an accident or attack involving the radiation source.

(3) Not later than 2 years after the date of enactment of this section, the Commission shall submit to Congress the results of the study under paragraph (1).

f. TASK FORCE ON RADIATION SOURCE PROTECTION AND SECURITY.—(1) There is established a task force on radiation source protection and security (referred to in this section as the “task force”).

(2)(A) The chairperson of the task force shall be the Chairperson of the Commission (or a designee).

(B) The membership of the task force shall consist of the following:

- (i) The Secretary of Homeland Security (or a designee).
- (ii) The Secretary of Defense (or a designee).
- (iii) The Secretary of Energy (or a designee).
- (iv) The Secretary of Transportation (or a designee).
- (v) The Attorney General (or a designee).
- (vi) The Secretary of State (or a designee).
- (vii) The Director of National Intelligence (or a designee).
- (viii) The Director of the Central Intelligence Agency (or a designee).
- (ix) The Director of the Federal Emergency Management Agency (or a designee).
- (x) The Director of the Federal Bureau of Investigation (or a designee).
- (xi) The Administrator of the Environmental Protection Agency (or a designee).

(3)(A) The task force, in consultation with Federal, State, and local agencies, the Conference of Radiation Control Program Directors, and the Organization of Agreement States, and after public notice and an opportunity for comment, shall evaluate, and provide recommendations relating to, the security of radiation sources in the United States from potential terrorist threats, including acts of sabotage, theft, or use of a radiation source in a radiological dispersal device.

(B) Not later than 1 year after the date of enactment of this section, and not less than once every 4 years thereafter, the task force shall submit to Congress and the President a report, in unclassified form with a classified annex if necessary, providing rec-

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ommendations, including recommendations for appropriate regulatory and legislative changes, for—

(i) a list of additional radiation sources that should be required to be secured under this Act, based on the potential attractiveness of the sources to terrorists and the extent of the threat to public health and safety of the sources, taking into consideration—

(I) radiation source radioactivity levels;

(II) radioactive half-life of a radiation source;

(III) dispersability;

(IV) chemical and material form;

(V) for radioactive materials with a medical use, the availability of the sources to physicians and patients for medical treatment; and

(VI) any other factor that the Chairperson of the Commission determines to be appropriate;

(ii) the establishment of, or modifications to, a national system for recovery of lost or stolen radiation sources;

(iii) the storage of radiation sources that are not used in a safe and secure manner as of the date on which the report is submitted;

(iv) modifications to the national tracking system for radiation sources;

(v) the establishment of, or modifications to, a national system (including user fees and other methods) to provide for the proper disposal of radiation sources secured under this Act;

(vi) modifications to export controls on radiation sources to ensure that foreign recipients of radiation sources are able and willing to adequately control radiation sources from the United States;

(vii)(I) any alternative technologies available as of the date on which the report is submitted that may perform some or all of the functions performed by devices or processes that employ radiation sources; and

(II) the establishment of appropriate regulations and incentives for the replacement of the devices and processes described in subclause (I)—

(aa) with alternative technologies in order to reduce the number of radiation sources in the United States; or

(bb) with radiation sources that would pose a lower risk to public health and safety in the event of an accident or attack involving the radiation source; and

(viii) the creation of, or modifications to, procedures for improving the security of use, transportation, and storage of radiation sources, including—

(I) periodic audits or inspections by the Commission to ensure that radiation sources are properly secured and can be fully accounted for;

(II) evaluation of the security measures by the Commission;

(III) increased fines for violations of Commission regulations relating to security and safety measures applicable to licensees that possess radiation sources;

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(IV) criminal and security background checks for certain individuals with access to radiation sources (including individuals involved with transporting radiation sources);

(V) requirements for effective and timely exchanges of information relating to the results of criminal and security background checks between the Commission and any State with which the Commission has entered into an agreement under section 274 b.;

(VI) assurances of the physical security of facilities that contain radiation sources (including facilities used to temporarily store radiation sources being transported); and

(VII) the screening of shipments to facilities that the Commission determines to be particularly at risk for sabotage of radiation sources to ensure that the shipments do not contain explosives.

g. ACTION BY COMMISSION.—Not later than 60 days after the date of receipt by Congress and the President of a report under subsection f.(3)(B), the Commission, in accordance with the recommendations of the task force, shall—

(1) take any action the Commission determines to be appropriate, including revising the system of the Commission for licensing radiation sources; and

(2) ensure that States that have entered into agreements with the Commission under section 274 b. take similar action in a timely manner.

[42 U.S.C. 2210h]

**SEC. 170I. SECURE TRANSFER OF NUCLEAR MATERIALS.**

a. The Commission shall establish a system to ensure that materials described in subsection b., when transferred or received in the United States by any party pursuant to an import or export license issued pursuant to this Act, are accompanied by a manifest describing the type and amount of materials being transferred or received. Each individual receiving or accompanying the transfer of such materials shall be subject to a security background check conducted by appropriate Federal entities.

b. Except as otherwise provided by the Commission by regulation, the materials referred to in subsection a. are byproduct materials, source materials, special nuclear materials, high-level radioactive waste, spent nuclear fuel, transuranic waste, and low-level radioactive waste (as defined in section 2(16) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(16))).

[42 U.S.C. 2210i]

**CHAPTER 15. COMPENSATION FOR PRIVATE PROPERTY  
ACQUIRED**

SEC. 171. JUST COMPENSATION.—The United States shall make just compensation for any property or interests therein taken or requisitioned pursuant to sections 43, 55, 66, and 108. Except in case of real property or any interest therein, the Commission shall determine and pay such just 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,

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and shall be entitled to sue the United States in the United States Claims Court<sup>79</sup>, or in any district court of the United States for the district in which such claimant is a resident in the manner provided by section 1346 of Title 28 of the United States Code to recover such further sum as added to said 75 per centum will constitute just compensation.

[42 U.S.C. 2221]

SEC. 172. CONDEMNATION OF REAL PROPERTY.—Proceedings for condemnation shall be instituted pursuant to the provisions of the Act approved August 1, 1888, as amended, and section 1403 of Title 28 of the United States Code. The Act approved February 26, 1931, as amended, shall be applicable to any such proceedings.

[42 U.S.C. 2222]

SEC. 173. 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 Claims Court 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 of the United States Code to recover such further sum as added to such 75 per centum will constitute just compensation.

[42 U.S.C. 2223]

SEC. 174. ATTORNEY GENERAL APPROVAL OF TITLE.—All real property acquired under this Act shall be subject to the provisions of section 355 of the Revised Statutes, as amended: *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 Act 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.

[42 U.S.C. 2224]

#### CHAPTER 16. JUDICIAL REVIEW AND ADMINISTRATIVE PROCEDURE

SEC. 181. GENERAL.—The provisions of the Administrative Procedure Act (Public Law 404, Seventy-ninth Congress, approved June 11, 1946)<sup>80</sup> shall apply to all agency action taken under this Act, and the terms “agency” and “agency action” shall have the meaning specified in the Administrative Procedure Act:<sup>81</sup>*Provided, however*, That in the case of agency proceedings or actions which involve Restricted Data, defense information, safeguards informa-

<sup>79</sup>The United States Claims Court was designated as the United States Court of Federal Claims by section 902 of the Federal Courts Administration Act of 1992 (Pub. L. 102-572; 106 Stat. 4516), enacted on Oct. 29, 1992.

<sup>80</sup>The Administrative Procedure Act has been codified as subchapter II of chapter 5, and chapter 7, of title 5, United States Code.

<sup>81</sup>These terms are now defined in section 551 of title 5, United States Code.



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tion protected from disclosure under the authority of section 147 or information protected from dissemination under the authority of section 148, 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 148 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 148 were not involved.

[42 U.S.C. 2231]

## SEC. 182. LICENSE APPLICATIONS.—

a. 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 103 and 104 shall be made under oath or affirmation. The Commission may require any other applications or statements to be made under oath or affirmation.

b. The Advisory Committee on Reactor Safeguards shall review each application under section 103 or section 104 b. for a construction permit or an operating license for a facility, any application under section 104 c. for a construction permit or an operating license for a testing facility, any application under section 104 a. or c. 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 103 or 104 a., b., or c. 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.

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c. The Commission shall not issue any license under section 103 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. The Commission, in issuing any license for a utilization or production facility for the generation of commercial power under section 103, 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.

[42 U.S.C. 2232]

SEC. 183. TERMS OF LICENSES.—Each license shall be in such form and contain such terms and conditions as the Commission may, by rule or regulation, prescribe to effectuate the provisions of this Act, including the following provisions:

[a. Repealed by Pub. L. 88-489, § 18, 78 Stat. 607, Aug. 26, 1964.]

b. No right to the special nuclear material shall be conferred by the license except as defined by the license.

c. Neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of this Act.

d. Every license issued under this Act shall be subject to the right of recapture or control reserved by section 108, and to all of the other provisions of this Act, now or hereafter in effect and to all valid rules and regulations of the Commission.

[42 U.S.C. 2233]

SEC. 184. INALIENABILITY OF LICENSES.—No license granted hereunder and no right to utilize or produce special nuclear material granted hereby shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this Act, and shall give its consent in writing. The Commission may give such consent to the creation of a mortgage, pledge, or other lien upon any facility or special nuclear material, owned or thereafter acquired by a licensee, or upon any leasehold or other interest in such facility, and the rights of the creditors so secured may thereafter be enforced by any court subject to rules and regulations established by the Commission to protect public health and safety and promote the common defense and security.

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[42 U.S.C. 2234]

SEC. 185. CONSTRUCTION PERMITS AND OPERATING LICENSES.—  
82 a. <sup>83</sup> All applicants for licenses to construct or modify production or utilization facilities shall, if the application is otherwise acceptable to the Commission, be initially granted a construction permit. The construction permit shall state the earliest and latest dates for the completion of the construction or modification. Unless the construction or modification of the facility is completed by the completion date, the construction permit shall expire, and all rights thereunder be forfeited, unless upon good cause shown, the Commission extends the completion date. Upon the completion of the construction or modification of the facility, upon the filing of any additional information needed to bring the original application up to date, and upon finding that the facility authorized has been constructed and will operate in conformity with the application as amended and in conformity with the provisions of this Act and of the rules and regulations of the Commission, and in the absence of any good cause being shown to the Commission why the granting of a license would not be in accordance with the provisions of this Act, the Commission shall thereupon issue a license to the applicant. For all other purposes of this Act, a construction permit is deemed to be a “license.”

b. <sup>84</sup> After holding a public hearing under section 189 a. (1)(A), the Commission shall issue to the applicant a combined construction and operating license if the application contains sufficient information to support the issuance of a combined license and the Commission determines that there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of this Act, and the Commission’s rules and regulations. The Commission shall identify within the combined license the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of this Act, and the Commission’s rules and regulations. Following issuance of the combined license, the Commission shall ensure that the prescribed inspections, tests, and analyses are performed and, prior to operation of the facility, shall find that the prescribed acceptance criteria are met. Any finding made under this subsection shall not require a hearing except as provided in section 189 a. (1)(B).

[42 U.S.C. 2235]

<sup>82</sup>The phrase “and Operating Licenses” in the section heading for section 185 appears in initial caps and lowercase in the enacted law; however, this version reflects the proper capitalization.

<sup>83</sup>No indentation in original.

<sup>84</sup>Section 2801 of Pub. L. 102–486 (106 Stat. 3120) enacted on Oct. 24, 1992, added this subsection.

Section 2806 of Pub. L. 102–486 (106 Stat. 3121; 42 U.S.C. 2235 note) provides as follows:

**“SEC. 2806. EFFECT ON PENDING PROCEEDINGS.**

“Sections 185 b. and 189 a. (1)(B) of the Atomic Energy Act of 1954, as added by sections 2801 and 2802 of this Act, shall apply to all proceedings involving a combined license for which an application was filed after May 8, 1991, under such sections.”

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## SEC. 186. REVOCATION.—

a. Any license may be revoked for any material false statement in the application or any statement of fact required under section 182, or because of conditions revealed by such application or statement of fact or any report, record, or inspection or other means which would warrant the Commission to refuse to grant a license on an original application, or for failure to construct or operate a facility in accordance with the terms of the construction permit or license or the technical specifications in the application, or for violation of, or failure to observe any of the terms and provisions of this Act or of any regulation of the Commission.

b. The Commission shall follow the provisions of section 9(b) of the Administrative Procedure Act<sup>85</sup> in revoking any license.

c. Upon revocation of the license, the Commission may immediately retake possession of all special nuclear material held by the licensee. In cases found by the Commission to be of extreme importance to the national defense and security or to the health and safety of the public, the Commission may recapture any special nuclear material held by the licensee or may enter upon and operate the facility prior to any of the procedures provided under the Administrative Procedure Act.<sup>86</sup> Just compensation shall be paid for the use of the facility.

[42 U.S.C. 2236]

SEC. 187. MODIFICATION OF LICENSE.—The terms and conditions of all licenses shall be subject to amendment, revision, or modification, by reason of amendments of this Act or by reason of rules and regulations issued in accordance with the terms of this Act.

[42 U.S.C. 2237]

SEC. 188. CONTINUED OPERATION OF FACILITIES.—Whenever the Commission finds that the public convenience and necessity or the production program of the Commission requires continued operation of a production facility or utilization facility the license for which has been revoked pursuant to section 186, the Commission may, after consultation with the appropriate regulatory agency, State or Federal, having jurisdiction, order that possession be taken of and such facility be operated for such period of time as the public convenience and necessity or the production program of the Commission may, in the judgment of the Commission, require, or until a license for the operation of the facility shall become effective. Just compensation shall be paid for the use of the facility.

[42 U.S.C. 2238]

## SEC. 189. HEARINGS AND JUDICIAL REVIEW.—

a.(1)(A) In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licenses, and in any proceeding for the payment of

<sup>85</sup> Section 9(b) of the Administrative Procedure Act has been codified as section 558(c) of title 5, United States Code.

<sup>86</sup> The Administrative Procedure Act has been codified as subchapter II of chapter 5, and chapter 7, of title 5, United States Code.

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compensation, an award or royalties under sections 153, 157, 186 c., or 188, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. The Commission shall hold a hearing after thirty days' notice and publication once in the Federal Register, on each application under section 103 or 104 b. for a construction permit for a facility, and on any application under section 104 c. for a construction permit for a testing facility. In cases where such a construction permit has been issued following the holding of such a hearing, the Commission may, in the absence of a request therefor by any person whose interest may be affected, issue an operating license or an amendment to a construction permit or an amendment to an operating license without a hearing, but upon thirty days' notice and publication once in the Federal Register of its intent to do so. The Commission may dispense with such thirty days' notice and publication with respect to any application for an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration.

(B)(i)<sup>87</sup> Not less than 180 days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined construction permit and operating license under section 185 b., the Commission shall publish in the Federal Register notice of intended operation. That notice shall provide that any person whose interest may be affected by operation of the plant, may within 60 days request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license.

(ii) A request for hearing under clause (i) shall show, *prima facie*, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and the specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

(iii) After receiving a request for a hearing under clause (i), the Commission expeditiously shall either deny or grant the request. If the request is granted, the Commission shall determine, after considering petitioners' *prima facie* showing and any answers thereto, whether during a period of interim operation, there will be reasonable assurance of adequate protection of the public health and safety. If the Commission determines that there is such reasonable assurance, it shall allow operation during an interim period under the combined license.

(iv) The Commission, in its discretion, shall determine appropriate hearing procedures, whether informal or formal adjudica-

<sup>87</sup>Section 2802 of Pub. L. 102-486 (106 Stat. 3120) enacted on Oct. 24, 1992, added this subparagraph.

Section 2806 of Pub. L. 102-486 (106 Stat. 3121; 42 U.S.C. 2235 note) provides as follows:

**"SEC. 2806. EFFECT ON PENDING PROCEEDINGS.**

"Sections 185 b. and 189 a. (1)(B) of the Atomic Energy Act of 1954, as added by sections 2801 and 2802 of this Act, shall apply to all proceedings involving a combined license for which an application was filed after May 8, 1991, under such sections."

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tory, for any hearing under clause (i), and shall state its reasons therefor.

(v) The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 180 days of the publication of the notice provided by clause (i) or the anticipated date for initial loading of fuel into the reactor, whichever is later. Commencement of operation under a combined license is not subject to subparagraph (A).

(2)(A) The Commission may issue and make immediately effective any amendment to an operating license or any amendment to a combined construction and operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this Act.

(B) The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment.

(C) The Commission shall, during the ninety-day period following the effective date of this paragraph,<sup>88</sup> promulgate regulations establishing (i) standards for determining whether any amendment to an operating license or any amendment to a combined construction and operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located.

b. The following Commission actions shall be subject to judicial review in the manner prescribed in chapter 158 of title 28, United States Code, and chapter 7 of title 5, United States Code:

(1) Any final order entered in any proceeding of the kind specified in subsection (a).

(2) Any final order allowing or prohibiting a facility to begin operating under a combined construction and operating license.

(3) Any final order establishing by regulation standards to govern the Department of Energy's gaseous diffusion uranium enrichment plants, including any such facilities leased to a corporation established under the USEC Privatization Act.

<sup>88</sup> The effective date was Jan. 4, 1983.

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(4) Any final determination under section 1701(c) relating to whether the gaseous diffusion plants, including any such facilities leased to a corporation established under the USEC Privatization Act, are in compliance with the Commission's standards governing the gaseous diffusion plants and all applicable laws.

【42 U.S.C. 2239】

SEC. 190. LICENSEE INCIDENT REPORTS.—No report by any licensee of any incident arising out of or in connection with a licensed activity made pursuant to any requirement of the Commission shall be admitted as evidence in any suit or action for damages growing out of any matter mentioned in such report.

【42 U.S.C. 2240】

SEC. 191. ATOMIC SAFETY AND LICENSING BOARD.—

a. Notwithstanding the provisions of sections 7(a) and 8(a) of the Administrative Procedure Act,<sup>89</sup> the Commission is authorized to establish one or more atomic safety and licensing boards, each comprised of three members, one of whom shall be qualified in the conduct of administrative proceedings and two of whom shall have such technical or other qualifications as the Commission deems appropriate to the issues to be decided, to conduct such hearings as the Commission may direct and make such intermediate or final decisions as the Commission may authorize with respect to the granting, suspending, revoking or amending of any license or authorization under the provisions of this Act, any other provision of law, or any regulation of the Commission issued thereunder. The Commission may delegate to a board such other regulatory functions as the Commission deems appropriate. The Commission may appoint a panel of qualified persons from which board members may be selected.

b. Board members may be appointed by the Commission from private life, or designated from the staff of the Commission or other Federal agency. Board members appointed from private life shall receive a per diem compensation for each day spent in meetings or conferences, and all members shall receive their necessary traveling or other expenses while engaged in the work of a board. The provisions of section 163 shall be applicable to board members appointed from private life.

【42 U.S.C. 2241】

SEC. 192. TEMPORARY OPERATING LICENSE.—

a. In any proceeding upon an application for an operating license for a utilization facility required to be licensed under section 103 or 104 b. of this Act, in which a hearing is otherwise required pursuant to section 189 a., the applicant may petition the Commission for a temporary operating license for such facility authorizing fuel loading, testing, and operation at a specific power level to be determined by the Commission, pending final action by the Commission on the application. The initial petition for a temporary operating license for each such facility, and any temporary operating

<sup>89</sup>Sections 7(a) and 8(a) of the Administrative Procedure Act have been codified as sections 556(b) and 557(b) of title 5, United States Code.



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license issued for such facility based upon the initial petition, shall be limited to power levels not to exceed 5 percent of rated full thermal power. Following issuance by the Commission of the temporary operating license for each such facility, the licensee may file petitions with the Commission to amend the license to allow facility operation in staged increases at specific power levels, to be determined by the Commission, exceeding 5 percent of rated full thermal power. The initial petition for a temporary operating license for each such facility may be filed at any time after the filing of: (1) the report of the Advisory Committee on Reactor Safeguards required by section 182 b.; (2) the filing of the initial Safety Evaluation Report by the Nuclear Regulatory Commission staff and the Nuclear Regulatory Commission staff's first supplement to the report prepared in response to the report of the Advisory Committee on Reactor Safeguards for the facility; (3) the Nuclear Regulatory Commission staff's final detailed statement on the environmental impact of the facility prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and (4) a State, local, or utility emergency preparedness plan for the facility. Petitions for the issuance of a temporary operating license, or for an amendment to such a license allowing operation at a specific power level greater than that authorized in the initial temporary operating license, shall be accompanied by an affidavit or affidavits setting forth the specific facts upon which the petitioner relies to justify issuance of the temporary operating license or the amendment thereto. The Commission shall publish notice of each such petition in the Federal Register and in such trade or news publications as the Commission deems appropriate to give reasonable notice to persons who might have a potential interest in the grant of such temporary operating license or amendment thereto. Any person may file affidavits or statements in support of, or in opposition to, the petition within thirty days after the publication of such notice in the Federal Register.

b. With respect to any petition filed pursuant to subsection a. of this section, the Commission may issue a temporary operating license, or amend the license to authorize temporary operation at each specific power level greater than that authorized in the initial temporary operating license, as determined by the Commission, upon finding that—

(1) in all respects other than the conduct or completion of any required hearing, the requirements of law are met;

(2) in accordance with such requirements, there is reasonable assurance that operation of the facility during the period of the temporary operating license in accordance with its terms and conditions will provide adequate protection to the public health and safety and the environment during the period of temporary operation; and

(3) denial of such temporary operating license will result in delay between the date on which construction of the facility is sufficiently completed, in the judgment of the Commission, to permit issuance of the temporary operating license, and the date when such facility would otherwise receive a final operating license pursuant to this Act.

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The temporary operating license shall become effective upon issuance and shall contain such terms and conditions as the Commission may deem necessary, including the duration of the license and any provision for the extension thereof. Any final order authorizing the issuance or amendment of any temporary operating license pursuant to this section shall recite with specificity the facts and reasons justifying the findings under this subsection, and shall be transmitted upon such issuance to the Committees on Natural Resources and on<sup>90</sup> Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate. The final order of the Commission with respect to the issuance or amendment of a temporary operating license shall be subject to judicial review pursuant to chapter 158 of title 28, United States Code. The requirements of section 189 a. of this Act with respect to the issuance or amendment of facility licenses shall not apply to the issuance or amendment of a temporary operating license under this section.

c. Any hearing on the application for the final operating license for a facility required pursuant to section 189 a. shall be concluded as promptly as practicable. The Commission shall suspend the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license with due diligence. Issuance of a temporary operating license under subsection b. of this section shall be without prejudice to the right of any party to raise any issue in a hearing required pursuant to section 189 a.; and failure to assert any ground for denial or limitation of a temporary operating license shall not bar the assertion of such ground in connection with the issuance of a subsequent final operating license. Any party to a hearing required pursuant to section 189 a. on the final operating license for a facility for which a temporary operating license has been issued under subsection b., and any member of the Atomic Safety and Licensing Board conducting such hearing, shall promptly notify the Commission of any information indicating that the terms and conditions of the temporary operating license are not being met, or that such terms and conditions are not sufficient to comply with the provisions of paragraph (2) of subsection b.

d. The Commission is authorized and directed to adopt such administrative remedies as the Commission deems appropriate to minimize the need for issuance of temporary operating licenses pursuant to this section.

e. The authority to issue new temporary operating licenses under this section shall expire on December 31, 1983.

[42 U.S.C. 2242]

**SEC. 193. LICENSING OF URANIUM ENRICHMENT FACILITIES.****(a) ENVIRONMENTAL IMPACT STATEMENT.—**

(1) MAJOR FEDERAL ACTION.—The issuance of a license under sections 53 and 63 for the construction and operation of any uranium enrichment facility shall be considered a major Federal action significantly affecting the quality of the human

<sup>90</sup>The name of the Committee on Natural Resources was changed to the Committee on Resources at the beginning of the 104th Congress by section 1(a) of P.L. 104-14 (109 Stat. 186).

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environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) TIMING.—An environmental impact statement prepared under paragraph (1) shall be prepared before the hearing on the issuance of a license for the construction and operation of a uranium enrichment facility is completed.

(b) ADJUDICATORY HEARING.—

(1) IN GENERAL.—The Commission shall conduct a single adjudicatory hearing on the record with regard to the licensing of the construction and operation of a uranium enrichment facility under sections 53 and 63.

(2) TIMING.—Such hearing shall be completed and a decision issued before the issuance of a license for such construction and operation.

(3) SINGLE PROCEEDING.—No further Commission licensing action shall be required to authorize operation.

(c) INSPECTION AND OPERATION.—Prior to commencement of operation of a uranium enrichment facility licensed hereunder, the Commission shall verify through inspection that the facility has been constructed in accordance with the requirements of the license for construction and operation. The Commission shall publish notice of the inspection results in the Federal Register.

(d) INSURANCE AND DECOMMISSIONING.—

(1) The Commission shall require, as a condition of the issuance of a license under sections 53 and 63 for a uranium enrichment facility, that the licensee have and maintain liability insurance of such type and in such amounts as the Commission judges appropriate to cover liability claims arising out of any occurrence within the United States, causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of chemical compounds containing source or special nuclear material.

(2) The Commission shall require, as a condition for the issuance of a license under sections 53 and 63 for a uranium enrichment facility, that the licensee provide adequate assurance of the availability of funds for the decommissioning (including decontamination) of such facility using funding mechanisms that may include, but are not necessarily limited to, the following:

(A) Prepayment (in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities).

(B) Surety (in the form of a surety or performance bond, letter of credit, or line of credit), insurance, or other guarantee (including parent company guarantee) method.

(C) External sinking fund in which deposits are made at least annually.

(e) NO PRICE-ANDERSON COVERAGE.—Section 170 of this Act shall not apply to any license under section 53 or 63 for a uranium

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enrichment facility constructed after the date of enactment of this section.<sup>91</sup>

(f) LIMITATION.—No license or certificate of compliance may be issued to the United States Enrichment Corporation<sup>92</sup> or its successor under this section or sections 53, 63, or 1701, if the Commission determines that—

(1) the Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or

(2) the issuance of such a license or certificate of compliance would be inimical to—

(A) the common defense and security of the United States; or

(B) the maintenance of a reliable and economical domestic source of enrichment services.

[42 U.S.C. 2243]

【CHAPTER 17. JOINT COMMITTEE ON ATOMIC ENERGY

【Chapter 17, consisting of §§ 201–207, was repealed by § 302 a. of the Atomic Energy Act of 1954, as added by Pub. L. 95–110, § 1, 91 Stat. 84, Sept. 20, 1977.】

【42 U.S.C. 2251–2257】

CHAPTER 18. ENFORCEMENT<sup>93</sup>

SEC. 221. GENERAL PROVISIONS.—

a. To protect against the unlawful dissemination of Restricted Data and to safeguard facilities, equipment, materials, and other property of the Commission, the President shall have authority to utilize the services of any Government agency to the extent he may deem necessary or desirable.

b. The Federal Bureau of Investigation of the Department of Justice shall investigate all alleged or suspected criminal violations of this Act.

c. No action shall be brought against any individual or person for any violation under this Act unless and until the Attorney General of the United States has advised the Commission with respect to such action and no such action shall be commenced except by the Attorney General of the United States: *Provided, however,* That nothing in this subsection shall be construed as applying to administrative action taken by the Commission.

【42 U.S.C. 2271】

SEC. 222. VIOLATION OF SPECIFIC SECTIONS.—a. Whoever willfully violates, attempts to violate, or conspires to violate, any provision of sections 57 or 101, or whoever unlawfully interferes, attempts to interfere, or conspires to interfere with any recapture or entry under section 108 shall, upon conviction thereof, be punished by a fine of not more than \$10,000 or by imprisonment for not more

<sup>91</sup>The date of enactment was Nov. 15, 1990.

<sup>92</sup>Pursuant to section 3116(e) of the United States Enrichment Corporation Privatization Act, following the privatization date [July 28, 1998], all references in the Atomic Energy Act of 1954 to the United States Enrichment Corporation shall be deemed to be references to the private corporation.

<sup>93</sup>See also sections 3559 and 3571 of title 18, United States Code, regarding fines for criminal offenses.

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than ten years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation shall, upon conviction thereof, be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$20,000 or both.

b. Any person who violates, or attempts or conspires to violate, section 92 shall be fined not more than \$2,000,000 and sentenced to a term of imprisonment not less than 25 years or to imprisonment for life. Any person who, in the course of a violation of section 92, uses, attempts or conspires to use, or possesses and threatens to use, any atomic weapon shall be fined not more than \$2,000,000 and imprisoned for not less than 30 years or imprisoned for life. If the death of another results from a person's violation of section 92, the person shall be fined not more than \$2,000,000 and punished by imprisonment for life.

【42 U.S.C. 2272】

SEC. 223. VIOLATION OF SECTIONS GENERALLY.—a. Whoever willfully violates, attempts to violate, or conspires to violate, any provision of this Act for which no criminal penalty is specifically provided or of any regulation or order prescribed or issued under section 65 or subsections 161 b., i., or o. shall, upon conviction thereof, be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation, shall, upon conviction thereof, be punished by a fine of not more than \$20,000 or by imprisonment for not more than twenty years, or both.

b. Any individual director, officer, or employee of a firm constructing, or supplying the components of any utilization facility required to be licensed under section 103 or 104 b. of this Act who by act or omission, in connection with such construction or supply, knowingly and willfully violates or causes to be violated, any section of this Act, any rule, regulation, or order issued thereunder, or any license condition, which violation results, or if undetected could have resulted, in a significant impairment of a basic component of such a facility shall, upon conviction, be subject to a fine of not more than \$25,000 for each day of violation, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after a first conviction under this subsection, punishment shall be a fine of not more than \$50,000 per day of violation, or imprisonment for not more than two years, or both. For the purposes of this subsection, the term “basic component” means a facility structure, system, component or part thereof necessary to assure—

- (1) the integrity of the reactor coolant pressure boundary,
- (2) the capability to shut-down the facility and maintain it in a safe shut-down condition, or
- (3) the capability to prevent or mitigate the consequences of accidents which could result in an unplanned offsite release of quantities of fission products in excess of the limits established by the Commission.

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The provisions of this subsection shall be prominently posted at each site where a utilization facility required to be licensed under section 103 or 104 b. of this Act is under construction and on the premises of each plant where components for such a facility are fabricated.

c. Any individual director, officer or employee of a person indemnified under an agreement of indemnification under section 170 d. (or of a subcontractor or supplier thereto) who, by act or omission, knowingly and willfully violates or causes to be violated any section of this Act or any applicable nuclear safety-related rule, regulation or order issued thereunder by the Secretary of Energy (or expressly incorporated by reference by the Secretary for purposes of nuclear safety, except any rule, regulation, or order issued by the Secretary of Transportation), which violation results in or, if undetected, would have resulted in a nuclear incident as defined in subsection 11 q. shall, upon conviction, notwithstanding section 3571 of title 18, United States Code, be subject to a fine of not more than \$25,000, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after the first conviction under this subsection, notwithstanding section 3571 of title 18, United States Code, punishment shall be a fine of not more than \$50,000, or imprisonment for not more than five years, or both.

[42 U.S.C. 2273]

SEC. 224. COMMUNICATION OF RESTRICTED DATA.—Whoever, lawfully or unlawfully, having possession of, access to, control over, or being entrusted with any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating Restricted Data—

a. communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with intent to injure the United States or with intent to secure an advantage to any foreign nation, upon conviction thereof, shall be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$100,000 or both;

b. communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with reason to believe such data will be utilized to injure the United States or to secure an advantage to any foreign nation, shall, upon conviction, be punished by a fine of not more than \$50,000 or imprisonment for not more than ten years, or both.

[42 U.S.C. 2274]

SEC. 225. RECEIPT OF RESTRICTED DATA.—Whoever, with intent to injure the United States or with intent to secure an advantage to any foreign nation, acquires, or attempts or conspires to acquire any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating Restricted Data shall, upon conviction thereof, be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$100,000 or both.

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[42 U.S.C. 2275]

SEC. 226. TAMPERING WITH RESTRICTED DATA.—Whoever, with intent to injure the United States or with intent to secure an advantage to any foreign nation, removes, conceals, tampers with, alters, mutilates, or destroys any document, writing, sketch, photograph, plan, model, instrument, appliance, or note involving or incorporating Restricted Data and used by any individual or person in connection with the production of special nuclear material, or research or development relating to atomic energy, conducted by the United States, or financed in whole or in part by Federal funds, or conducted with the aid of special nuclear material, shall be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$20,000 or both.

[42 U.S.C. 2276]

SEC. 227. DISCLOSURE OF RESTRICTED DATA.—Whoever, being or having been an employee or member of the Commission, a member of the Armed Forces, an employee of any agency of the United States, or being or having been a contractor of the Commission or of an agency of the United States, or being or having been an employee of a contractor of the Commission or of an agency of the United States, or being or having been a licensee of the Commission, or being or having been an employee of a licensee of the Commission, knowingly communicates, or whoever conspires to communicate or to receive, any Restricted Data, knowing or having reason to believe that such data is Restricted Data, to any person not authorized to receive Restricted Data pursuant to the provisions of this Act or under rule or regulation of the Commission issued pursuant thereto, knowing or having reason to believe such person is not so authorized to receive Restricted Data shall, upon conviction thereof, be punishable by a fine of not more than \$12,500.

[42 U.S.C. 2277]

SEC. 228. STATUTE OF LIMITATIONS.—Except for a capital offense, no individual or person shall be prosecuted, tried, or punished for any offense prescribed or defined in sections 224 to 226, inclusive, of this Act, unless the indictment is found or the information is instituted within ten years next after such offense shall have been committed.

[42 U.S.C. 2278]

**SEC. 229. TRESPASS ON COMMISSION INSTALLATIONS.**

a.(1) The Commission is authorized to issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapons, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property, into or upon any facility, installation, or real property subject to the jurisdiction, administration, in the custody of the Commission, or subject to the licensing authority of the Commission or certification by the Commission under this Act or any other Act.

(2) Every such regulation of the Commission shall be posted conspicuously at the location involved.

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b. Whoever shall willfully violate any regulation of the Commission issued pursuant to subsection a. shall, upon conviction thereof, be punishable by a fine of not more than \$1,000.

c. Whoever shall willfully violate any regulation of the Commission issued pursuant to subsection a. with respect to any installation or other property which is enclosed by a fence, wall, floor, roof, or other structural barrier shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed \$5,000 or to imprisonment for not more than one year, or both.

[42 U.S.C. 2278a]

SEC. 230. PHOTOGRAPHING, ETC., OF COMMISSION INSTALLATIONS.—It shall be an offense, punishable by a fine of not more than \$1,000 or imprisonment for not more than one year, or both—

(1) to make any photograph, sketch, picture, drawing, map or graphical representation, while present on property subject to the jurisdiction, administration or in the custody of the Commission, of any installations or equipment designated by the President as requiring protection against the general dissemination of information relative thereto, in the interest of the common defense and security, without first obtaining the permission of the Commission, and promptly submitting the product obtained to the Commission for inspection or such other action as may be deemed necessary; or

(2) to use or permit the use of an aircraft or any contrivance used, or designed for navigation or flight in air, for the purpose of making a photograph, sketch, picture, drawing, map or graphical representation of any installation or equipment designated by the President as provided in the preceding paragraph, unless authorized by the Commission.

[42 U.S.C. 2278b]

SEC. 231. OTHER LAWS.—Sections 224 to 230 shall not exclude the applicable provisions of any other laws.

[42 U.S.C. 2279]

SEC. 232. INJUNCTION PROCEEDINGS.—Whenever in the judgment of the Commission any person has engaged or is about to be engaged in any acts or practices which constitute or will constitute a violation of any provision of this Act, or any regulation or order issued thereunder, the Attorney General on behalf of the United States may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Commission that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order may be granted.

[42 U.S.C. 2280]

SEC. 233. CONTEMPT PROCEEDINGS.—In case of failure or refusal to obey a subpoena served upon any person pursuant to subsection 161 c., the district court for any district in which such person is found or resides or transacts business, upon application by the Attorney General on behalf of the United States, shall have ju-

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risdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both, in accordance with the subpoena; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

【42 U.S.C. 2281】

SEC. 234. CIVIL MONETARY PENALTIES FOR VIOLATIONS OF LICENSING REQUIREMENTS.—

a. Any person who (1) violates any licensing or certification provision of section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, 109, or 1701 or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license or certification issued thereunder, or (2) commits any violation for which a license may be revoked under section 186, shall be subject to a civil penalty, to be imposed by the Commission, of not to exceed \$100,000 for each such violation. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The Commission shall have the power to compromise, mitigate, or remit such penalties.

b. Whenever the Commission has reason to believe that a person has become subject to the imposition of a civil penalty under the provisions of this section, it shall notify such person in writing (1) setting forth the date, facts, and nature of each act or omission with which the person is charged, (2) specifically identifying the particular provision or provisions of the section, rule, regulation, order, or license involved in the violation, and (3) advising of each penalty which the Commission proposes to impose and its amount. Such written notice shall be sent by registered or certified mail by the Commission to the last known address of such person. The person so notified shall be granted an opportunity to show in writing, within such reasonable period as the Commission shall by regulation prescribe, why such penalty should not be imposed. The notice shall also advise such person that upon failure to pay the civil penalty subsequently determined by the Commission, if any, the penalty may be collected by civil action.

c. On the request of the Commission, the Attorney General is authorized to institute a civil action to collect a penalty imposed pursuant to this section. The Attorney General shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred to him for collection.

【42 U.S.C. 2282】

SEC. 234A. CIVIL MONETARY PENALTIES FOR VIOLATIONS OF DEPARTMENT OF ENERGY SAFETY REGULATIONS.—a.<sup>94</sup> Any person who has entered into an agreement of indemnification under subsection 170 d.<sup>95</sup> (or any subcontractor or supplier thereto) who violates (or whose employee violates) any applicable rule, regulation or order related to nuclear safety prescribed or issued by the Secretary of Energy pursuant to this Act (or expressly incorporated by reference by the Secretary for purposes of nuclear safety, except any rule, regulation, or order issued by the Secretary of Transportation) shall be subject to a civil penalty of not to exceed \$100,000

<sup>94</sup> Indentation style so in law.

<sup>95</sup> So in law. Probably should be "section 170 d."

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for each such violation. If any violation under this subsection is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

b.(1) The Secretary shall have the power to compromise, modify or remit, with or without conditions, such civil penalties and to prescribe regulations as he may deem necessary to implement this section.

(2) In determining the amount of any civil penalty under this subsection, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

c.(1) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within thirty days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within thirty calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within sixty calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the election under paragraph (1).

(B) If the civil penalty has not been paid within sixty calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with consent of the Secretary.

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(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

d.(1) Notwithstanding subsection a., in the case of any not-for-profit contractor, subcontractor, or supplier, the total amount of civil penalties paid under subsection a. may not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under the contract under which the violation occurs.

(2) For purposes of this section, the term "not-for-profit" means that no part of the net earnings of the contractor, subcontractor, or supplier inures to the benefit of any natural person or for-profit artificial person.

【42 U.S.C. 2282a】

SEC. 234B. CIVIL MONETARY PENALTIES FOR VIOLATIONS OF DEPARTMENT OF ENERGY REGULATIONS REGARDING SECURITY OF CLASSIFIED OR SENSITIVE INFORMATION OR DATA.—

a. Any person who has entered into a contract or agreement with the Department of Energy, or a subcontract or subagreement thereto, and who violates (or whose employee violates) any applicable rule, regulation, or order prescribed or otherwise issued by the Secretary pursuant to this Act relating to the safeguarding or security of Restricted Data or other classified or sensitive information shall be subject to a civil penalty of not to exceed \$100,000 for each such violation.

b. The Secretary shall include in each contract with a contractor of the Department provisions which provide an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or contractor employee of any rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified or sensitive information. The provisions shall specify various degrees of violations and the amount of the reduction attributable to each degree of violation.

c. The powers and limitations applicable to the assessment of civil penalties under section 234A, except for subsection d. of that section, shall apply to the assessment of civil penalties under this section.

d. In the case of an entity specified in subsection d. of section 234A—

(1) the assessment of any civil penalty under subsection a. against that entity may not be made until the entity enters into a new contract with the Department of Energy or an extension of a current contract with the Department; and

(2) the total amount of civil penalties under subsection a. in a fiscal year may not exceed the total amount of fees paid by the Department of Energy to that entity in that fiscal year.

【42 U.S.C. 2282b】

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**SEC. 234C. WORKER HEALTH AND SAFETY RULES FOR DEPARTMENT OF ENERGY NUCLEAR FACILITIES.****a. REGULATIONS REQUIRED.—**

(1) **IN GENERAL.**—The Secretary shall promulgate regulations for industrial and construction health and safety at Department of Energy facilities that are operated by contractors covered by agreements of indemnification under section 170 d. of the Atomic Energy Act of 1954, after public notice and opportunity for comment under section 553 of title 5, United States Code (commonly known as the “Administrative Procedure Act”). Such regulations shall, subject to paragraph (3), provide a level of protection for workers at such facilities that is substantially equivalent to the level of protection currently provided to such workers at such facilities.

(2) **APPLICABILITY.**—The regulations promulgated under paragraph (1) shall not apply to any facility that is a component of, or any activity conducted under, the Naval Nuclear Propulsion Program provided for under Executive Order No. 12344, dated February 1, 1982 (42 U.S.C. 7158 note) (as in force pursuant to section 1634 of the Department of Defense Authorization Act, 1985 (Public Law 98–525; 42 U.S.C. 7158 note)).

(3) **FLEXIBILITY.**—In promulgating the regulations under paragraph (1), the Secretary shall include flexibility—

(A) to tailor implementation of such regulations to reflect activities and hazards associated with a particular work environment;

(B) to take into account special circumstances at a facility that is, or is expected to be, permanently closed and that is expected to be demolished, or title to which is expected to be transferred to another entity for reuse; and

(C) to achieve national security missions of the Department of Energy in an efficient and timely manner.

(4) **NO EFFECT ON HEALTH AND SAFETY ENFORCEMENT.**—This subsection does not diminish or otherwise affect the enforcement or the application of any other law, regulation, order, or contractual obligation relating to worker health and safety.

**b. CIVIL PENALTIES.—**

(1) **IN GENERAL.**—A person (or any subcontractor or supplier of the person) who has entered into an agreement of indemnification under section 170 d. (or any subcontractor or supplier of the person) that violates (or is the employer of a person that violates) any regulation promulgated under subsection a. shall be subject to a civil penalty of not more than \$70,000 for each such violation.

(2) **CONTINUING VIOLATIONS.**—If any violation under this subsection is a continuing violation, each day of the violation shall constitute a separate violation for the purpose of computing the civil penalty under paragraph (1).

**c. CONTRACT PENALTIES.—**

(1) **IN GENERAL.**—The Secretary shall include in each contract with a contractor of the Department who has entered into an agreement of indemnification under section 170 d. provi-

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sions that provide an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or contractor employee of any regulation promulgated under subsection a.

(2) CONTENTS.—The provisions shall specify various degrees of violations and the amount of the reduction attributable to each degree of violation.

d. COORDINATION OF PENALTIES.—

(1) CHOICE OF PENALTIES.—For any violation by a person of a regulation promulgated under subsection a., the Secretary shall pursue either civil penalties under subsection b. or contract penalties under subsection c., but not both.

(2) MAXIMUM AMOUNT.—In the case of an entity described in subsection d. of section 234A, the total amount of civil penalties under subsection b. and contract penalties under subsection c. in a fiscal year may not exceed the total amount of fees paid by the Department of Energy to that entity in that fiscal year.

(3) COORDINATION WITH SECTION 234A.—The Secretary shall ensure that a contractor of the Department is not penalized both under this section and under section 234A for the same violation.

【42 U.S.C. 2282c】

SEC. 235.<sup>96</sup> PROTECTION OF NUCLEAR INSPECTORS.—

a. Whoever kills any person who performs any inspections which—

(1) are related to any activity or facility licensed by the Commission, and

(2) are carried out to satisfy requirements under this Act or under any other Federal law governing the safety of utilization facilities required to be licensed under section 103 or 104 b., or the safety of radioactive materials,

shall be punished as provided under sections 1111 and 1112 of title 18, United States Code. The preceding sentence shall be applicable only if such person is killed while engaged in the performance of such inspection duties or on account of the performance of such duties.

b. Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person who performs inspections as described under subsection a. of this section, while such person is engaged in such inspection duties or on account of the performance of such duties, shall be punished as provided under section 111 of title 18, United States Code.

【42 U.S.C. 2283】

SEC. 236. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.—

a. Any person who knowingly destroys or causes physical damage to—

(1) any production facility or utilization facility licensed under this Act;

<sup>96</sup>Section 202(a) of Pub. L. 96-295 added new section 235 at the end of chapter 18. Section 204(a) of Pub. L. 96-295 added section 236 after section 234. Section 236 was placed after section 235 in this compilation to reflect the probable intent of Congress.



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(2) any nuclear waste treatment, storage, or disposal facility licensed under this Act;

(3) any nuclear fuel for a utilization facility licensed under this Act, or any spent nuclear fuel from such a facility;

(4) any uranium enrichment, uranium conversion, or nuclear fuel fabrication facility licensed or certified by the Nuclear Regulatory Commission;

(5) any production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, uranium conversion, or nuclear fuel fabrication facility subject to licensing or certification under this Act during construction of the facility, if the destruction or damage caused or attempted to be caused could adversely affect public health and safety during the operation of the facility;

(6) any primary facility or backup facility from which a radiological emergency preparedness alert and warning system is activated; or

(7) any radioactive material or other property subject to regulation by the Commission that, before the date of the offense, the Commission determines, by order or regulation published in the Federal Register, is of significance to the public health and safety or to common defense and security;

or attempts or conspires to do such an act, shall be fined not more than \$10,000 or imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.

b. Any person who knowingly causes an interruption of normal operation of any such facility through the unauthorized use of or tampering with the machinery, components, or controls of any such facility, or attempts or conspires to do such an act, shall be fined not more than \$10,000 or imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.

【42 U.S.C 2284】

## CHAPTER 19. MISCELLANEOUS

SEC. 241. TRANSFER OF PROPERTY.—Nothing in this Act shall be deemed to repeal, modify, amend, or alter the provisions of section 9(a) of the Atomic Energy Act of 1946, as heretofore amended.<sup>97</sup>

【42 U.S.C 2015】

<sup>97</sup> Section 9(a) of the Atomic Energy Act of 1946 provided that:

“The President shall direct the transfer to the Commission of all interests owned by the United States or any Government agency in the following property:

“(1) All fissionable material; all atomic weapons and parts thereof; all facilities, equipment, and materials for the processing, production, or utilization of fissionable material or atomic energy; all processes and technical information of any kind, and the source thereof (including data, drawings, specifications, patents, patent applications, and other sources) relating to the processing, production, or utilization of fissionable material or atomic energy; and all contracts, agreements, leases, patents, applications for patents, inventions and discoveries (whether patented or unpatented), and other rights of any kind concerning any such items;

“(2) All facilities, equipment, and materials, devoted primarily to atomic energy research and development; and

“(3) Such other property owned by or in the custody or control of the Manhattan Engineer District or other Government agencies as the President may determine.”.



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**SEC. 242. COLD STANDBY.**

The Secretary is authorized to expend such funds as may be necessary for the purposes of maintaining enrichment capability at the Portsmouth, Ohio, facility.

[42 U.S.C 2015a]

**SEC. 243. SCHOLARSHIP AND FELLOWSHIP PROGRAM.**

a. **SCHOLARSHIP PROGRAM.**—To enable students to study, for at least 1 academic semester or equivalent term, science, engineering, or another field of study that the Commission determines is in a critical skill area related to the regulatory mission of the Commission, the Commission may carry out a program to—

(1) award scholarships to undergraduate students who—

(A) are United States citizens; and

(B) enter into an agreement under subsection c. to be employed by the Commission in the area of study for which the scholarship is awarded.

b. **FELLOWSHIP PROGRAM.**—To enable students to pursue education in science, engineering, or another field of study that the Commission determines is in a critical skill area related to its regulatory mission, in a graduate or professional degree program offered by an institution of higher education in the United States, the Commission may carry out a program to—

(1) award fellowships to graduate students who—

(A) are United States citizens; and

(B) enter into an agreement under subsection c. to be employed by the Commission in the area of study for which the fellowship is awarded.

c. **REQUIREMENTS.**—

(1) **IN GENERAL.**—As a condition of receiving a scholarship or fellowship under subsection a. or b., a recipient of the scholarship or fellowship shall enter into an agreement with the Commission under which, in return for the assistance, the recipient shall—

(A) maintain satisfactory academic progress in the studies of the recipient, as determined by criteria established by the Commission;

(B) agree that failure to maintain satisfactory academic progress shall constitute grounds on which the Commission may terminate the assistance;

(C) on completion of the academic course of study in connection with which the assistance was provided, and in accordance with criteria established by the Commission, engage in employment by the Commission for a period specified by the Commission, that shall be not less than 1 time and not more than 3 times the period for which the assistance was provided; and

(D) if the recipient fails to meet the requirements of subparagraph (A), (B), or (C), reimburse the United States Government for—

(i) the entire amount of the assistance provided the recipient under the scholarship or fellowship; and

(ii) interest at a rate determined by the Commission.

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(2) **WAIVER OR SUSPENSION.**—The Commission may establish criteria for the partial or total waiver or suspension of any obligation of service or payment incurred by a recipient of a scholarship or fellowship under this section.

d. **COMPETITIVE PROCESS.**—Recipients of scholarships or fellowships under this section shall be selected through a competitive process primarily on the basis of academic merit and such other criteria as the Commission may establish, with consideration given to financial need and the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a, 1885b).

e. **DIRECT APPOINTMENT.**—The Commission may appoint directly, with no further competition, public notice, or consideration of any other potential candidate, an individual who has—

(1) received a scholarship or fellowship awarded by the Commission under this section; and

(2) completed the academic program for which the scholarship or fellowship was awarded.

[42 U.S.C 2015b]

**SEC. 244. PARTNERSHIP PROGRAM WITH INSTITUTIONS OF HIGHER EDUCATION.**

a. **DEFINITIONS.**—In this section:

(1) **HISPANIC-SERVING INSTITUTION.**—The term “Hispanic-serving institution” has the meaning given the term in section 502(a) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)).

(2) **HISTORICALLY BLACK COLLEGE AND UNIVERSITY.**—The term “historically Black college or university” has the meaning given the term “part B institution” in section 322 of the Higher Education Act of 1965 (20 U.S.C. 1061).

(3) **TRIBAL COLLEGE.**—The term “Tribal college” has the meaning given the term “tribally controlled college or university” in section 2(a) of the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801(a)).

b. **PARTNERSHIP PROGRAM.**—The Commission may establish and participate in activities relating to research, mentoring, instruction, and training with institutions of higher education, including Hispanic-serving institutions, historically Black colleges or universities, and Tribal colleges, to strengthen the capacity of the institutions—

(1) to educate and train students (including present or potential employees of the Commission); and

(2) to conduct research in the field of science, engineering, or law, or any other field that the Commission determines is important to the work of the Commission.

[42 U.S.C 2015c]

【Sec. 251. Report to Congress.—Repealed by section 3152(a)(1) of P.L. 105–85, Nov. 18, 1997, 111 Stat. 2041.】

**SEC. 261. APPROPRIATIONS.**—

a. No appropriation shall be made to the Commission, nor shall the Commission waive charges for the use of materials under the

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Cooperative Power Reactor Demonstration Program, unless previously authorized by legislation enacted by the Congress.

b. Any Act appropriating funds to the Commission may appropriate specified portions thereof to be accounted for upon the certification of the Commission only.

c. Notwithstanding the provisions of subsection a., funds are hereby authorized to be appropriated for the restoration or replacement of any plant or facility destroyed or otherwise seriously damaged, and the Commission is authorized to use available funds for such purposes.

d. Funds authorized to be appropriated for any construction project to be used in connection with the development or production of special nuclear material or atomic weapons may be used to start another construction project not otherwise authorized if the substituted 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 logistic 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.

[42 U.S.C 2017]

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 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.

[42 U.S.C 2018]

SEC. 272. APPLICABILITY OF FEDERAL POWER ACT.—Every licensee under this Act who holds a license from the Commission for a utilization or production facility for the generation of commercial electric energy under section 103 and who transmits such electric energy in interstate commerce or sells it at wholesale in interstate commerce shall be subject to the regulatory provisions of the Federal Power Act.

[42 U.S.C 2019]

SEC. 273. 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.

[42 U.S.C 2020]

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## SEC. 274. COOPERATION WITH STATES.—

## a. 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 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.

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 11 e.).

(2) Source materials.

(3) 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;

(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

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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 by-product material, as defined in section 11 e. (2). 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 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 respects compatible with the Commission's program for the 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.

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.

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.

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

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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 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.

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 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.

j.(1) 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 of its agreement with the State and reassert the licensing and regulatory authority vested in it under this Act, if the Commission finds that (1) 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 ensure compliance with the provisions of this section.

(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 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

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

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.

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 161 b. or i. to 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 161 i., 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.

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.

o. In the licensing and regulation of byproduct material, as defined in section 11 e. (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—

(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

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evidence 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 on the radiological and non-radiological 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 ground water 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 11 e. (2); and

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

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 83 b. 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 161 x. 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. 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 11 e. (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 stringent

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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.

【42 U.S.C. 2021】

SEC. 275. HEALTH AND ENVIRONMENTAL STANDARDS FOR URANIUM MILL TAILINGS.—

a. As soon as practicable, but not later than October 1, 1982, 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. The Administrator may periodically revise any standard promulgated pursuant to this subsection. 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.

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, standards of general application for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with the processing and with the possession, transfer, and disposal of byproduct material, as defined in section 11 e. (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. If the Administrator fails to promulgate standards in final form under this subsection by October 1, 1983, the authority of the Administrator to promulgate such standards shall terminate, and the Commission may take actions under this Act without regard to any provision of this Act requiring such actions to comply

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with, or be taken in accordance with, standards promulgated by the Administrator. In any such case, the Commission shall promulgate, and from time to time revise, any such standards of general application which the Commission deems necessary to carry out its responsibilities in the conduct of its licensing activities under this Act. Requirements established by the Commission under this Act with respect to byproduct material as defined in section 11 e. (2) shall conform to such standards. Any requirements adopted by the Commission respecting such byproduct material before promulgation by the Commission of such standards shall be amended as the Commission deems necessary to conform to such standards in the same manner as provided in subsection f. (3) Nothing in this subsection shall be construed to prohibit or suspend the implementation or enforcement by the Commission of any requirement of the Commission respecting byproduct material as defined in section 11 e. (2) pending promulgation by the Commission of any such standard of general application. 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.<sup>98</sup>

(2) Such generally applicable standards promulgated pursuant to this subsection for nonradiological hazards shall provide for the protection of human health and the environment consistent with the standards required under subtitle C of the Solid Waste Disposal Act, as amended, which are applicable to such hazards: *Provided, however,* That no permit issued by the Administrator is required under this Act or the Solid Waste Disposal Act, as amended, for the processing, possession, transfer, or disposal of byproduct material, as defined in section 11 e. (2) of this Act. The Administrator may periodically revise any standard promulgated pursuant to this subsection. Within three years after such revision of any such standard, the Commission and any State permitted to exercise authority under section 274 b. (2) shall apply such revised standard in the case of any license for byproduct material as defined in section 11 e. (2) or any revision thereof.

c.(1) Before the promulgation of any rule pursuant to this section, the Administrator shall publish the proposed rule in the Federal Register, together with a statement of the research, analysis, and other available information in support of such proposed rule, and provide a period of public comment of at least thirty days for written comments thereon and an opportunity, after such comment period and after public notice, for any interested person to present oral data, views, and arguments at a public hearing. There shall be a transcript of any such hearing. The Administrator shall consult with the Commission and the Secretary of Energy before promulgation of any such rule.

(2) Judicial review of any rule promulgated under this section may be obtained by any interested person only upon such person filing a petition for review within sixty days after such promulgation in the United States court of appeals for the Federal judicial

<sup>98</sup>Sections 22 and 18(a) of Pub. L. 97-415 both added material at the end of paragraph (1). The order was not specified.

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circuit in which such persons resides or has his principal place of business. A copy of the petition shall be forthwith transmitted by the clerk of court to the Administrator. The Administrator thereupon shall file in the court the written submissions to, and transcript of, the written or oral proceedings on which such rule was based as provided in section 2112 of title 28, United States Code. The court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided in such chapter. The judgment of the court affirming, modifying, or setting aside, in whole or in part, any such rule shall be final, subject to judicial review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(3) Any rule promulgated under this section shall not take effect earlier than sixty calendar days after such promulgation.

d. Implementation and enforcement of the standards promulgated pursuant to subsection b. of this section shall be the responsibility of the Commission in the conduct of its licensing activities under this Act. States exercising authority pursuant to section 274 b. (2) of this Act shall implement and enforce such standards in accordance with subsection o. of such section.

e. Nothing in this Act applicable to byproduct material, as defined in section 11 e. (2) of this Act, shall affect the authority of the Administrator under the Clean Air Act of 1970, as amended, or the Federal Water Pollution Control Act, as amended.

f.(1) Prior to January 1, 1983, the Commission shall not implement or enforce the provisions of the Uranium Mill Licensing Requirements published as final rules at 45 Federal Register 65521 to 65538 on October 3, 1980 (hereinafter in this subsection referred to as the "October 3 regulations"). After December 31, 1982, the Commission is authorized to implement and enforce the provisions of such October 3 regulations (and any subsequent modifications or additions to such regulations which may be adopted by the Commission), except as otherwise provided in paragraphs (2) and (3) of this subsection.

(2) Following the proposal by the Administrator of standards under subsection b., the Commission shall review the October 3 regulations and, not later than 90 days after the date of such proposal, suspend implementation and enforcement of any provision of such regulations which the Commission determines after notice and opportunity for public comment to require a major action or major commitment by licensees which would be unnecessary if—

(A) the standards proposed by the Administrator are promulgated in final form without modification, and

(B) the Commission's requirements are modified to conform to such standards.

Such suspension shall terminate on the earlier of April 1, 1984 or the date on which the Commission amends the October 3 regulations to conform to final standards promulgated by the Administrator under subsection b. During the period of such suspension, the Commission shall continue to regulate by product material (as defined in section 11 e. (2)) under this Act on a licensee-by-licensee basis as the Commission deems necessary to protect public health, safety, and the environment.

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(3) Not later than 6 months after the date on which the Administrator promulgates final standards pursuant to subsection b. of this section, the Commission shall, after notice and opportunity for public comment, amend the October 3 regulations, and adopt such modifications, as the Commission deems necessary to conform to such final standards of the Administrator.

(4) Nothing in this subsection may be construed as affecting the authority or responsibility of the Commission under section 84 to promulgate regulations to protect the public health and safety and the environment.

[42 U.S.C. 2022]

**SEC. 276. STATE AUTHORITY TO REGULATE RADIATION BELOW LEVEL OF REGULATORY CONCERN OF NUCLEAR REGULATORY COMMISSION.<sup>99</sup>**

(a) IN GENERAL.—No provision of this Act, or of the Low-Level Radioactive Waste Policy Act, may be construed to prohibit or otherwise restrict the authority of any State to regulate, on the basis of radiological hazard, the disposal or off-site incineration of low-level radioactive waste, if the Nuclear Regulatory Commission, after the date of the enactment of the Energy Policy Act of 1992<sup>100</sup> exempts such waste from regulation.

(b) RELATION TO OTHER STATE AUTHORITY.—This section may not be construed to imply preemption of existing State authority. Except as expressly provided in subsection (a), this section may not be construed to confer on any State any additional authority to regulate activities licensed by the Nuclear Regulatory Commission.

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

(1) The term “low-level radioactive waste” means radioactive material classified by the Nuclear Regulatory Commission as low-level radioactive waste on the date of the enactment of the Energy Policy Act of 1992.<sup>101</sup>

(2) The term “off-site incineration” means any incineration of radioactive materials at a facility that is located off the site where such materials were generated.

(3) The term “State” means each of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

[42 U.S.C. 2023]

**SEC. 281. SEPARABILITY.**—If any provision of this Act or the application of such provision to any person or circumstances, is held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[42 U.S.C. 2012 note]

<sup>99</sup> Section 2901(a) of Pub. L. 102-486 (106 Stat. 3122) enacted on Oct. 24, 1992, added this section 276. Section 2901(b) of that Public Law provides as follows:

“(b) REVOCATION OF RELATED NRC POLICY STATEMENTS.—The policy statements of the Nuclear Regulatory Commission published in the Federal Register on July 3, 1990 (55 Fed. Reg. 27522) and August 29, 1986 (51 Fed. Reg. 30839), relating to radioactive waste below regulatory concern, shall have no effect after the date of the enactment of this Act.”.

<sup>100</sup> The date of enactment was Oct. 24, 1992.

<sup>101</sup> The date of enactment was Oct. 24, 1992.



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SEC. 291. SHORT TITLE.—This Act may be cited as the “Atomic Energy Act of 1954.”

CHAPTER 20. JOINT COMMITTEE ON ATOMIC ENERGY  
ABOLISHED; FUNCTIONS AND RESPONSIBILITIES REAS-  
SIGNED

SEC. 301. JOINT COMMITTEE ON ATOMIC ENERGY ABOLISHED.—

a. The Joint Committee on Atomic Energy is abolished.

b. Any reference in any rule, resolution, or order of the Senate or the House of Representatives or in any law, regulation, or Executive order to the Joint Committee on Atomic Energy shall, on and after the date of enactment of this section,<sup>102</sup> be considered as referring to the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the subject matter of such reference.

c. All records, data, charts, and files of the Joint Committee on Atomic Energy are transferred to the committees of the Senate and House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the subject matters to which such records, data, charts, and files relate. In the event that any record, data, chart, or file shall be within the jurisdiction of more than one committee, duplicate copies shall be provided upon request.

[42 U.S.C. 2258]

SEC. 302. TRANSFERS OF CERTAIN FUNCTIONS OF THE JOINT COMMITTEE ON ATOMIC ENERGY AND CONFORMING AMENDMENTS TO CERTAIN OTHER LAWS.—

a. Effective on the date of enactment of this section,<sup>102</sup> chapter 17 of this Act is repealed.

b. Section 103 of the Atomic Energy Community Act of 1955, as amended, is repealed.

c. Section 3 of the Congressional Budget and Impoundment Control Act of 1974 is amended by—

(1) striking the subsection designation “(a)”; and

(2) repealing subsection (b).

d. Section 252(a)(3) of the Legislative Reorganization Act of 1970 is repealed.

SEC. 303. INFORMATION AND ASSISTANCE TO CONGRESSIONAL COMMITTEES.—

a. The Secretary of Energy and the Nuclear Regulatory Commission shall keep the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the functions of the Secretary or the Commission, fully and currently informed with respect to the activities of the Secretary and the Commission.

b. The Department of Defense and Department of State shall keep the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over national security considerations of nuclear energy, fully and currently informed with respect to such matters within the Department of Defense and Department of State relating to na-

<sup>102</sup>The date of enactment was Sept. 20, 1977.

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tional security considerations of nuclear technology which are within the jurisdiction of such committees.

c. Any Government agency shall furnish any information requested by the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the development, utilization, or application of nuclear energy, with respect to the activities or responsibilities of such agency in the field of nuclear energy which are within the jurisdiction of such committees.

d. The committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the development, utilization, or application of nuclear energy, are authorized to utilize the services, information, facilities, and personnel of any Government agency which has activities or responsibilities in the field of nuclear energy which are within the jurisdiction of such committees: *Provided, however,* That any utilization of personnel by such committees shall be on a reimbursable basis and shall require, with respect to committees of the Senate, the prior written consent of the Committee on Rules and Administration, and with respect to committees of the House of Representatives, the prior written consent of the Committee on House Oversight.

[42 U.S.C. 2259]

CHAPTER 21. DEFENSE NUCLEAR FACILITIES SAFETY  
BOARD

SEC. 311. ESTABLISHMENT.

(a) ESTABLISHMENT.—There is hereby established an independent establishment in the executive branch, to be known as the “Defense Nuclear Facilities Safety Board” (hereafter in this chapter referred to as the “Board”).

(b) MEMBERSHIP.—(1) The Board shall be composed of five members appointed from civilian life by the President, by and with the advice and consent of the Senate, from among United States citizens who are respected experts in the field of nuclear safety with a demonstrated competence and knowledge relevant to the independent investigative and oversight functions of the Board. Not more than three members of the Board shall be of the same political party.

(2) Any vacancy in the membership of the Board shall be filled in the same manner in which the original appointment was made.

(3) No member of the Board may be an employee of, or have any significant financial relationship with, the Department of Energy or any contractor of the Department of Energy.

(c) CHAIRMAN, VICE CHAIRMAN, AND MEMBERS.—(1) The President shall designate a Chairman and Vice Chairman of the Board from among members of the Board.

(2) In accordance with paragraphs (5), (6), and (7), the Chairman shall be the chief executive officer of the Board and, subject to such policies as the Board may establish, shall exercise the functions of the Board with respect to—

(A) the appointment and supervision of employees of the Board;

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(B) the organization of any administrative units established by the Board; and

(C) the use and expenditure of funds.

(3) The Chairman may delegate any of the functions under this paragraph to any other member or to any appropriate officer of the Board.

(4) The Vice Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman or in case of a vacancy in the office of Chairman.

(5) Each member of the Board, including the Chairman and Vice Chairman, shall—

(A) have equal responsibility and authority in establishing decisions and determining actions of the Board;

(B) have full access to all information relating to the performance of the Board's functions, powers, and mission; and

(C) have one vote.

(6) In carrying out paragraph (5)(B), the Chairman may not withhold from any member of the Board any information that is made available to the Chairman regarding the Board's functions, powers, and mission (including with respect to the management and evaluation of employees of the Board).

(7)(A) The Chairman, subject to the approval of the Board, shall appoint the senior employees described in subparagraph (C).

(B) The Chairman, subject to the approval of the Board, may remove a senior employee described in subparagraph (C).

(C) The senior employees described in this subparagraph are the following senior employees of the Board:

(i) The senior employee responsible for budgetary and general administration matters.

(ii) The general counsel.

(iii) The senior employee responsible for technical matters.

(d) TERMS.—(1) Except as provided under paragraph (2), the members of the Board shall serve for terms of five years. Members of the Board may be reappointed.

(2) Of the members first appointed—

(A) one shall be appointed for a term of one year;

(B) one shall be appointed for a term of two years;

(C) one shall be appointed for a term of three years;

(D) one shall be appointed for a term of four years; and

(E) one shall be appointed for a term of five years,

as designated by the President at the time of appointment.

(3) Any member appointed to fill a vacancy occurring before the expiration of the term of office for which such member's predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of that member's term until a successor has taken office.

(e) QUORUM.—Three members of the Board shall constitute a quorum, but a lesser number may hold hearings.

[42 U.S.C. 2286]

#### SEC. 312. MISSION AND FUNCTIONS OF THE BOARD.

(a) MISSION.—The mission of the Board shall be to provide independent analysis, advice, and recommendations to the Secretary of Energy to inform the Secretary, in the role of the Sec-

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retary as operator and regulator of the defense nuclear facilities of the Department of Energy, in providing adequate protection of public health and safety at such defense nuclear facilities.

(b) FUNCTIONS.—The Board shall perform the following functions:

(1) REVIEW AND EVALUATION OF STANDARDS.—The Board shall review and evaluate the content and implementation of the standards relating to the design, construction, operation, and decommissioning of defense nuclear facilities of the Department of Energy (including all applicable Department of Energy orders, regulations, and requirements) at each Department of Energy defense nuclear facility. The Board shall recommend to the Secretary of Energy those specific measures that should be adopted to ensure that public health and safety are adequately protected. The Board shall include in its recommendations necessary changes in the content and implementation of such standards, as well as matters on which additional data or additional research is needed.

(2) INVESTIGATIONS.—(A) The Board shall investigate any event or practice at a Department of Energy defense nuclear facility which the Board determines has adversely affected, or may adversely affect, public health and safety.

(B) The purpose of any Board investigation under subparagraph (A) shall be—

(i) to determine whether the Secretary of Energy is adequately implementing the standards described in paragraph (1) of the Department of Energy (including all applicable Department of Energy orders, regulations, and requirements) at the facility;

(ii) to ascertain information concerning the circumstances of such event or practice and its implications for such standards;

(iii) to determine whether such event or practice is related to other events or practices at other Department of Energy defense nuclear facilities; and

(iv) to provide to the Secretary of Energy such recommendations for changes in such standards or the implementation of such standards (including Department of Energy orders, regulations, and requirements) and such recommendations relating to data or research needs as may be prudent or necessary.

(3) ANALYSIS OF DESIGN AND OPERATIONAL DATA.—The Board shall have access to and may systematically analyze design and operational data, including safety analysis reports, from any Department of Energy defense nuclear facility.

(4) REVIEW OF FACILITY DESIGN AND CONSTRUCTION.—The Board shall review the design of a new Department of Energy defense nuclear facility before construction of such facility begins and shall recommend to the Secretary, within a reasonable time, such modifications of the design as the Board considers necessary to ensure adequate protection of public health and safety. During the construction of any such facility, the Board shall periodically review and monitor the construction and shall submit to the Secretary, within a reasonable time,

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such recommendations relating to the construction of that facility as the Board considers necessary to ensure adequate protection of public health and safety. An action of the Board, or a failure to act, under this paragraph may not delay or prevent the Secretary of Energy from carrying out the construction of such a facility.

(5) RECOMMENDATIONS.—The Board shall make such recommendations to the Secretary of Energy with respect to Department of Energy defense nuclear facilities, including operations of such facilities, standards, and research needs, as the Board determines are necessary to ensure adequate protection of public health and safety. In making its recommendations the Board shall consider, and specifically assess risk (whenever sufficient data exists), the technical and economic feasibility of implementing the recommended measures.

(c) EXCLUDED FUNCTIONS.—The functions of the Board under this chapter do not include functions relating to the safety of atomic weapons. However, the Board shall have access to any information on atomic weapons that is within the Department of Energy and is necessary to carry out the functions of the Board.

[42 U.S.C. 2286a]

#### SEC. 313. POWERS OF BOARD.

(a) HEARINGS.—(1) The Board or a member authorized by the Board may, for the purpose of carrying out this chapter, hold such hearings and sit and act at such times and places, and require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such evidence as the Board or an authorized member may find advisable.

(2)(A) Subpoenas may be issued only under the signature of the Chairman or any member of the Board designated by him and shall be served by any person designated by the Chairman, any member, or any person as otherwise provided by law. The attendance of witnesses and the production of evidence may be required from any place in the United States at any designated place of hearing in the United States.

(B) Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

(C) If a person issued a subpoena under paragraph (1) refuses to obey such subpoena or is guilty of contumacy, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may (upon application by the Board) order such person to appear before the Board to produce evidence or to give testimony relating to the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt of the court.

(D) The subpoenas of the Board shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(E) All process of any court to which application may be made under this section may be served in the judicial district in which the person required to be served resides or may be found.

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(b) STAFF.—(1) The Board may, for the purpose of performing its responsibilities under this chapter—

(A) in accordance with section 311(c)(7), hire such staff as it considers necessary to perform the functions of the Board, including such scientific and technical personnel as the Board may determine necessary, but not more than the equivalent of 150 full-time employees<sup>1</sup>; and

(B) procure the temporary and intermittent services of experts and consultants to the extent authorized by section 3109(b) of title 5, United States Code, at rates the Board determines to be reasonable.

(2) The authority and requirements provided in section 161 d. with respect to officers and employees of the Commission shall apply with respect to scientific and technical personnel hired under paragraph (1)(A).

(c) REGULATIONS.—The Board may prescribe regulations to carry out the responsibilities of the Board under this chapter.

(d) REPORTING REQUIREMENTS.—The Board may establish reporting requirements for the Secretary of Energy which shall be binding upon the Secretary. The information which the Board may require the Secretary of Energy to report under this subsection may include any information designated as classified information, or any information designated as safeguards information and protected from disclosure under section 147 or 148 of this Act.

(e) USE OF GOVERNMENT FACILITIES, ETC.—The Board may, for the purpose of carrying out its responsibilities under this chapter, use any facility, contractor, or employee of any other department or agency of the Federal Government with the consent of and under appropriate support arrangements with the head of such department or agency and, in the case of a contractor, with the consent of the contractor.

(f) ASSISTANCE FROM CERTAIN AGENCIES OF THE FEDERAL GOVERNMENT.—With the consent of and under appropriate support arrangements with the Nuclear Regulatory Commission, the Board may obtain the advice and recommendations of the staff of the Commission on matters relating to the Board's responsibilities and may obtain the advice and recommendations of the Advisory Committee on Reactor Safeguards on such matters.

(g) ASSISTANCE FROM ORGANIZATIONS OUTSIDE THE FEDERAL GOVERNMENT.—Notwithstanding any other provision of law relating to the use of competitive procedures, the Board may enter into an agreement with the National Research Council of the National Academy of Sciences or any other appropriate group or organization of experts outside the Federal Government chosen by the Board to assist the Board in carrying out its responsibilities under this chapter.

(h) RESIDENT INSPECTORS.—The Board may assign staff to be stationed at any Department of Energy defense nuclear facility to carry out the functions of the Board.

<sup>1</sup>Effective on October 1, 2015, section 3203(a) of Public Law 113-291 amends section 313(b)(1)(A) of this Act by striking "150 full-time employees" and inserting "130 full-time employees".

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(i) SPECIAL STUDIES.—The Board may conduct special studies pertaining to adequate protection of public health and safety at any Department of Energy defense nuclear facility.

(j) EVALUATION OF INFORMATION.—The Board may evaluate information received from the scientific and industrial communities, and from the interested public, with respect to—

(1) events or practices at any Department of Energy defense nuclear facility; or

(2) suggestions for specific measures to improve the content of standards described in section 312(b)(1), the implementation of such standards, or research relating to such standards at Department of Energy defense nuclear facilities.

[42 U.S.C. 2286b]

**SEC. 314. RESPONSIBILITIES OF THE SECRETARY OF ENERGY.**

(a) COOPERATION.—The Secretary of Energy shall fully cooperate with the Board and provide the Board with ready access to such facilities, personnel, and information as the Board considers necessary to carry out its responsibilities under this chapter. Each contractor operating a Department of Energy defense nuclear facility under a contract awarded by the Secretary shall, to the extent provided in such contract or otherwise with the contractor's consent, fully cooperate with the Board and provide the Board with ready access to such facilities, personnel, and information of the contractor as the Board considers necessary to carry out its responsibilities under this chapter.

(b) ACCESS TO INFORMATION.—The Secretary of Energy may deny access to information provided to the Board to any person who—

(1) has not been granted an appropriate security clearance or access authorization by the Secretary of Energy; or

(2) does not need such access in connection with the duties of such person.

[42 U.S.C. 2286c]

**SEC. 315. BOARD RECOMMENDATIONS.**

(a) SUBMISSION OF RECOMMENDATIONS.—(1) Subject to subsections (h) and (i), not later than 30 days before the date on which the Board transmits a recommendation to the Secretary of Energy under section 312, the Board shall transmit to the Secretary in writing a draft of such recommendation and any related findings, supporting data, and analyses to ensure the Secretary is adequately informed of a formal recommendation and to provide the Secretary an opportunity to provide input to the Board before such recommendation is finalized.

(2) The Secretary may provide to the Board comments on a draft recommendation transmitted by the Board under paragraph (1) by not later than 30 days after the date on which the Secretary receives the draft recommendation. The Board may grant, upon request by the Secretary, additional time for the Secretary to transmit comments to the Board.

(3) After the period of time in which the Secretary may provide comments under paragraph (2) elapses, the Board may transmit a final recommendation to the Secretary.

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(b) PUBLIC AVAILABILITY AND COMMENT.—Subject to subsections (h) and (i), after the Secretary of Energy receives a recommendation from the Board under subsection (a)(3), the Board shall promptly make available to the public such recommendation and any related correspondence from the Secretary by—

(1) providing such recommendation and correspondence to the public in the regional public reading rooms of the Department of Energy; and

(2) publishing in the Federal Register—

(A) such recommendation and correspondence; and

(B) a request for the submission to the Board of public comments on such recommendation that provides interested persons with 30 days after the date of the publication in which to submit comments, data, views, or arguments to the Board concerning the recommendation.

(c) RESPONSE BY SECRETARY.—(1) The Secretary of Energy shall transmit to the Board, in writing, a statement on whether the Secretary accepts or rejects, in whole or in part, the recommendations submitted to him by the Board under section 312, a description of the actions to be taken in response to the recommendations, and his views on such recommendations. The Secretary of Energy shall transmit his response to the Board within 45 days after the date of the publication, under subsection (b), of the notice with respect to such recommendations or within such additional period, not to exceed 45 days, as the Board may grant.

(2) At the same time as the Secretary of Energy transmits his response to the Board under paragraph (1), the Secretary, subject to subsection (i), shall publish such response, together with a request for public comment on his response, in the Federal Register.

(3) Interested persons shall have 30 days after the date of the publication of the Secretary of Energy's response in which to submit comments, data, views, or arguments to the Board concerning the Secretary's response.

(4) The Board may hold hearings for the purpose of obtaining public comments on its recommendations and the Secretary of Energy's response.

(d) PROVISION OF INFORMATION TO SECRETARY.—The Board shall furnish the Secretary of Energy with copies of all comments, data, views, and arguments submitted to it under subsection (b) or (c).

(e) FINAL DECISION.—If the Secretary of Energy, in a response under subsection (c)(1), rejects (in whole or part) any recommendation made by the Board under section 312, the Board shall either reaffirm its original recommendation or make a revised recommendation and shall notify the Secretary of its action. Within 30 days after receiving the notice of the Board's action under this subsection, the Secretary shall consider the Board's action and make a final decision on whether to implement all or part of the Board's recommendations. Subject to subsection (i), the Secretary shall publish the final decision and the reasoning for such decision in the Federal Register and shall transmit to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appro-

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priations, and Energy and Natural Resources of the Senate a written report containing that decision and reasoning.

(f) IMPLEMENTATION PLAN.—The Secretary of Energy shall prepare a plan for the implementation of each Board recommendation, or part of a recommendation, that is accepted by the Secretary in his final decision. The Secretary shall transmit the implementation plan to the Board within 90 days after the date of the publication of the Secretary's final decision on such recommendation in the Federal Register. The Secretary may have an additional 45 days to transmit the plan if the Secretary submits to the Board and to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate a notification setting forth the reasons for the delay and describing the actions the Secretary is taking to prepare an implementation plan under this subsection. The Secretary may implement any such recommendation (or part of any such recommendation) before, on, or after the date on which the Secretary transmits the implementation plan to the Board under this subsection.

(g) IMPLEMENTATION.—(1) Subject to paragraph (2), not later than one year after the date on which the Secretary of Energy transmits an implementation plan with respect to a recommendation (or part thereof) under subsection (f), the Secretary shall carry out and complete the implementation plan. If complete implementation of the plan takes more than 1 year, the Secretary of Energy shall submit a report to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate setting forth the reasons for the delay and when implementation will be completed.

(2) If the Secretary of Energy determines that the implementation of a Board recommendation (or part thereof) is impracticable because of budgetary considerations, or that the implementation would affect the Secretary's ability to meet the annual nuclear weapons stockpile requirements established pursuant to section 91 of this Act, the Secretary shall submit to the President and to such committees a report containing the recommendation and the Secretary's determination.

(h) IMMINENT OR SEVERE THREAT.—(1) In any case in which the Board determines that a recommendation submitted to the Secretary of Energy under section 312 relates to an imminent or severe threat to public health and safety, the Board and the Secretary of Energy shall proceed under this subsection in lieu of subsections (a) through (e).

(2) At the same time that the Board transmits a recommendation relating to an imminent or severe threat to the Secretary of Energy, the Board shall also transmit the recommendation to the President and for information purposes to the Secretary of Defense. The Secretary of Energy shall submit his recommendation to the President. The President shall review the Secretary of Energy's recommendation and shall make the decision concerning acceptance or rejection of the Board's recommendation.

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(3) After receipt by the President of the recommendation from the Board under this subsection, the Board promptly shall make such recommendation available to the public and shall transmit such recommendation to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate. The President shall promptly notify such committees of his decision and the reasons for that decision.

(i) **LIMITATION.**—Notwithstanding any other provision of this section, the requirements to make information available to the public under this section—

(1) shall not apply in the case of information that is classified; and

(2) shall be subject to the orders and regulations issued by the Secretary of Energy under sections 147 and 148 of this Act to prohibit dissemination of certain information.

[42 U.S.C. 2286d]

**SEC. 316. REPORTS.**

(a) **BOARD REPORT.**—(1) The Board shall submit to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate each year, at the same time that the President submits the budget to Congress pursuant to section 1105(a) of title 31, United States Code, a written report concerning its activities under this chapter, including all recommendations made by the Board, during the year preceding the year in which the report is submitted. The Board may also issue periodic unclassified reports on matters within the Board's responsibilities.

(2) The annual report under paragraph (1) shall include an assessment of—

(A) the improvements in the safety of Department of Energy defense nuclear facilities during the period covered by the report;

(B) the improvements in the safety of Department of Energy defense nuclear facilities resulting from actions taken by the Board or taken on the basis of the activities of the Board; and

(C) the outstanding safety problems, if any, of Department of Energy defense nuclear facilities.<sup>103</sup>

(b) **DOE REPORT.**—The Secretary of Energy shall submit to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate each year, at the same time that the President submits the budget to Congress pursuant to section 1105(a) of title 31, United States Code, a written report concerning the activities of the Department of Energy under this chapter during the year preceding the year in which the report is submitted.

<sup>103</sup>See also subsections (c) and (d) of section 1441 of Pub. L. 100-456 (102 Stat. 2084; 42 U.S.C. 2286e note) enacted Sept. 29, 1988, regarding additional requirements for first and fifth annual reports.

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[42 U.S.C. 2286e]

**SEC. 317. JUDICIAL REVIEW.**

Chapter 7 of title 5, United States Code, shall apply to the activities of the Board under this chapter.

[42 U.S.C. 2286f]

**SEC. 318. DEFINITION.**

As used in this chapter, the term "Department of Energy defense nuclear facility" means any of the following:

(1) A production facility or utilization facility (as defined in section 11 of this Act) that is under the control or jurisdiction of the Secretary of Energy and that is operated for national security purposes, but the term does not include—

(A) any facility or activity covered by Executive Order No. 12344, dated February 1, 1982, pertaining to the Naval nuclear propulsion program;

(B) any facility or activity involved with the transportation of nuclear explosives or nuclear material;

(C) any facility that does not conduct atomic energy defense activities; or

(D) any facility owned by the United States Enrichment Corporation<sup>104</sup>.

(2) A nuclear waste storage facility under the control or jurisdiction of the Secretary of Energy, but the term does not include a facility developed pursuant to the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) and licensed by the Nuclear Regulatory Commission.

[42 U.S.C. 2286g]

**SEC. 319. CONTRACT AUTHORITY SUBJECT TO APPROPRIATIONS.**

The authority of the Board to enter into contracts under this chapter is effective only to the extent that appropriations (including transfers of appropriations) are provided in advance for such purpose.

[42 U.S.C. 2286h]

**SEC. 320. TRANSMITTAL OF CERTAIN INFORMATION TO CONGRESS.**

Whenever the Board submits or transmits to the President or the Director of the Office of Management and Budget any legislative recommendation, or any statement or information in preparation of a report to be submitted to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate pursuant to section 316(a), the Board shall submit at the same time a copy thereof to such committees.

[42 U.S.C. 2286h-1]

<sup>104</sup> Pursuant to section 3116(e) of the United States Enrichment Corporation Privatization Act, following the privatization date [July 28, 1998], all references in the Atomic Energy Act of 1954 to the United States Enrichment Corporation shall be deemed to be references to the private corporation.

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**Sec. 321****ATOMIC ENERGY ACT OF 1954****182****SEC. 321. ANNUAL AUTHORIZATION OF APPROPRIATIONS.**

Authorizations of appropriations for the Board for fiscal years beginning after fiscal year 1989 shall be provided annually in authorization Acts.

【42 U.S.C. 2286i】

**SEC. 322. INSPECTOR GENERAL.**

(a) IN GENERAL.—The Inspector General of the Nuclear Regulatory Commission shall serve as the Inspector General of the Board, in accordance with the Inspector General Act of 1978 (5 U.S.C. App.).

(b) BUDGET.—In the budget materials submitted to the President by the Board in connection with the submission to Congress, pursuant to section 1105 of title 31, United States Code, of the budget for each fiscal year, the Board shall ensure that a separate, dedicated procurement line item is designated for the services of an Inspector General under subsection (a).

【42 U.S.C. 2286k】

## **TITLE II—UNITED STATES ENRICHMENT CORPORATION<sup>105</sup>**

### **CHAPTER 27—LICENSING AND REGULATION OF URANIUM ENRICHMENT FACILITIES**

**SEC. 1701. GASEOUS DIFFUSION FACILITIES.**

(a) ISSUANCE OF STANDARDS.—Within 2 years after the date of the enactment of this title,<sup>106</sup> the Nuclear Regulatory Commission shall establish by regulation such standards as are necessary to govern the gaseous diffusion uranium enrichment facilities of the Department in order to protect the public health and safety from radiological hazard and provide for the common defense and security. Regulations promulgated pursuant to this subsection shall, among other things, require that adequate safeguards (within the meaning of section 147) are in place.

(b) ANNUAL REPORT.—

(1) IN GENERAL.—Not later than the date on which a certificate of compliance is issued under subsection (c), the Nuclear Regulatory Commission, in consultation with the Department and the Environmental Protection Agency, shall report to the Congress on the status of health, safety, and environmental conditions at the gaseous diffusion uranium enrichment facilities of the Department.

(2) REQUIRED DETERMINATION.—Such report shall include a determination regarding whether the gaseous diffusion uranium enrichment facilities of the Department are in compliance with the standards established under subsection (a) and all applicable laws.

(c) CERTIFICATION PROCESS.—

<sup>105</sup>Section 3116(a)(1) of Public Law 104-134 (110 Stat. 1321-349) provides for the repeal of chapters 22 through 26 of the Atomic Energy Act of 1954.

<sup>106</sup>The date of enactment was Oct. 24, 1992.

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(1) ESTABLISHMENT.—The Nuclear Regulatory Commission shall establish a certification process to ensure that the Corporation complies with standards established under subsection (a).

(2) PERIODIC APPLICATION FOR CERTIFICATE OF COMPLIANCE.—The Corporation shall apply to the Nuclear Regulatory Commission for a certificate of compliance under paragraph (1) periodically, as determined by the Commission, but not less than every 5 years. The Commission shall review any such application and any determination made under subsection (b)(2) shall be based on the results of any such review.

(3) TREATMENT OF CERTIFICATE OF COMPLIANCE.—The requirement for a certificate of compliance under paragraph (1) shall be in lieu of any requirement for a license for any gaseous diffusion facility of the Department leased by the Corporation.

(4) NRC REVIEW.—

(A) IN GENERAL.—The Nuclear Regulatory Commission, in consultation with the Environmental Protection Agency, shall review the operations of the Corporation with respect to any gaseous diffusion uranium enrichment facilities of the Department leased by the Corporation to ensure that public health and safety are adequately protected.

(B) ACCESS TO FACILITIES AND INFORMATION.—The Corporation and the Department shall cooperate fully with the Nuclear Regulatory Commission and the Environmental Protection Agency and shall provide the Nuclear Regulatory Commission and the Environmental Protection Agency with the ready access to the facilities, personnel, and information the Nuclear Regulatory Commission and the Environmental Protection Agency consider necessary to carry out their responsibilities under this subsection. A contractor operating a Corporation facility for the Corporation shall provide the Nuclear Regulatory Commission and the Environmental Protection Agency with ready access to the facilities, personnel, and information of the contractor as the Nuclear Regulatory Commission and the Environmental Protection Agency consider necessary to carry out their responsibilities under this subsection.

(C) LIMITATION.—The Nuclear Regulatory Commission shall limit its finding under subsection (b)(2) to a determination of whether the facilities are in compliance with the standards established under subsection (a).

(d) REQUIREMENT FOR OPERATION.—The gaseous diffusion uranium enrichment facilities of the Department may not be operated by the Corporation unless the Nuclear Regulatory Commission, in consultation with the Environmental Protection Agency, makes a determination of compliance under subsection (b) or approves a plan prepared by the Department for achieving compliance required under subsection (b).

[42 U.S.C. 2297f]

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**Sec. 1702****ATOMIC ENERGY ACT OF 1954****184****SEC. 1702. LICENSING OF OTHER TECHNOLOGIES.**

(a) **IN GENERAL.**—Corporation facilities using alternative technologies for uranium enrichment, including AVLIS, shall be licensed under sections 53, 63, and 193.

(b) **COSTS FOR DECONTAMINATION AND DECOMMISSIONING.**—The Corporation shall provide for the costs of decontamination and decommissioning of any Corporation facilities described in subsection (a) in accordance with the requirements of the amendments made by section 5 of the Solar, Wind, Waste, and Geothermal Power Production Act of 1990.

[42 U.S.C. 2297f-1]

**SEC. 1703. REGULATION OF RESTRICTED DATA.**

The Corporation shall be subject to this Act with respect to the use of, or access to, Restricted Data to the same extent as any private corporation.

[42 U.S.C. 2297f-2]

**CHAPTER 28—DECONTAMINATION AND  
DECOMMISSIONING****SEC. 1801. URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND.**

(a) **ESTABLISHMENT.**—There is established in the Treasury of the United States an account to be known as the Uranium Enrichment Decontamination and Decommissioning Fund (referred to in this chapter as the “Fund”). The Fund, and any amounts deposited in it, including any interest earned thereon, shall be available to the Secretary subject to appropriations for the exclusive purpose of carrying out this chapter.<sup>107</sup>

(b) **ADMINISTRATION.**—

(1) **IN GENERAL.**—The Secretary of the Treasury shall hold the Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Fund during the preceding fiscal year.

(2) **INVESTMENTS.**—The Secretary of the Treasury shall invest amounts contained within the Fund in obligations of the United States—

(A) having maturities determined by the Secretary of the Treasury to be appropriate for what the Department determines to be the needs of the Fund; and

(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to these obligations.

[42 U.S.C. 2297g]

**SEC. 1802. DEPOSITS.**

(a) **AMOUNT.**—The Fund shall consist of deposits in the amount of \$518,233,333 per fiscal year (to be annually adjusted for inflation beginning on the date of the enactment of the Energy Policy Act

<sup>107</sup> See also the Energy Policy Act of 1992, Pub. L. 102-486, § 1003(b), which appears in this compilation.

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of 1992 using the Consumer Price Index for all-urban consumers published by the Department of Labor) as provided in this section.

(b) SOURCE.—Deposits described in subsection (a) shall be from the following sources:

(1) Sums collected pursuant to subsection (c).

(2) Appropriations made pursuant to subsection (d).

(c) SPECIAL ASSESSMENT.—The Secretary shall collect a special assessment from domestic utilities. The total amount collected for a fiscal year shall not exceed \$150,000,000 (to be annually adjusted for inflation using the Consumer Price Index for all-urban consumers published by the Department of Labor). The amount collected from each utility pursuant to this subsection for a fiscal year shall be in the same ratio to the amount required under subsection (a) to be deposited for such fiscal year as the total amount of separative work units such utility has purchased from the Department of Energy for the purpose of commercial electricity generation, before the date of the enactment of this title,<sup>108</sup> bears to the total amount of separative work units purchased from the Department of Energy for all purposes (including units purchased or produced for defense purposes) before the date of the enactment of this title.<sup>108</sup> For purposes of this subsection—

(1) a utility shall be considered to have purchased a separative work unit from the Department if such separative work unit was produced by the Department, but purchased by the utility from another source; and

(2) a utility shall not be considered to have purchased a separative work unit from the Department if such separative work unit was purchased by the utility, but sold to another source.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund, for the period encompassing 15 years after the date of the enactment of this title,<sup>108</sup> such sums as are necessary to ensure that the amount required under subsection (a) is deposited for each fiscal year.

(e) TERMINATION OF ASSESSMENTS.—The collection of amounts under subsection (c) shall cease after the earlier of—

(1) 15 years after the date of the enactment of this title;<sup>108</sup>

or

(2) the collection of \$2,250,000,000 (to be annually adjusted for inflation using the Consumer Price Index for all-urban consumers published by the Department of Labor) under such subsection.

(f) CONTINUATION OF DEPOSITS.—Except as provided in subsection (e), deposits shall continue to be made into the Fund under subsection (d) for the period specified in such subsection.

(g) TREATMENT OF ASSESSMENT.—Any special assessment levied under this section on domestic utilities for the decontamination and decommissioning of the Department's gaseous diffusion enrichment facilities shall be deemed a necessary and reasonable current cost of fuel and shall be fully recoverable in rates in all jurisdictions in the same manner as the utility's other fuel cost.

【42 U.S.C. 2297g–1】

<sup>108</sup>The date of enactment was Oct. 24, 1992.



F:\COMP\NUKE\ATOMIC ENERGY ACT OF 1954.XML

**Sec. 1803****ATOMIC ENERGY ACT OF 1954****186****SEC. 1803. DEPARTMENT FACILITIES.**

(a) **STUDY BY NATIONAL ACADEMY OF SCIENCES.**—The National Academy of Sciences shall conduct a study and provide recommendations for reducing costs associated with decontamination and decommissioning, and shall report its findings to the Congress within 3 years after the date of the enactment of this title.<sup>108</sup> Such report shall include a determination of the decontamination and decommissioning required for each facility, shall identify alternative methods, using different technologies, shall include site-specific surveys of the actual contamination, and shall provide estimated costs of those activities.

(b) **PAYMENT OF DECONTAMINATION AND DECOMMISSIONING COSTS.**—The costs of all decontamination and decommissioning activities of the Department shall be paid from the Fund until such time as the Secretary certifies and the Congress concurs, by law, that such activities are complete.

(c) **PAYMENT OF REMEDIAL ACTION COSTS.**—The annual cost of remedial action at the Department's gaseous diffusion facilities shall be paid from the Fund to the extent the amount available in the Fund is sufficient. To the extent the amount in the Fund is insufficient, the Department shall be responsible for the cost of remedial action. No provision of this title may be construed to relieve in any way the responsibility or liability of the Department for remedial action under applicable Federal and State laws and regulations.

[42 U.S.C. 2297g-2]

**SEC. 1804. EMPLOYEE PROVISIONS.**

All laborers and mechanics employed by contractors or subcontractors in the performance of decontamination or decommissioning of uranium enrichment facilities of the Department shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a et seq.). The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176, 64 Stat. 1267) and the Act of June 13, 1934 (40 U.S.C. 276c). This section may not be construed to require the contracting out of activities associated with the decontamination or decommissioning of uranium enrichment facilities.

[42 U.S.C. 2297g-3]

**SEC. 1805. REPORTS TO CONGRESS.**

Within 3 years after the date of the enactment of this title,<sup>108</sup> and at least once every 3 years thereafter, the Secretary shall report to the Congress on progress under this chapter. The 5th report submitted under this section shall contain recommendations of the Secretary for the reauthorization of the program and Fund under this title.

[42 U.S.C. 2297g-4]

December 21, 2015

As Amended Through P.L. 114-92, Enacted November 25, 2015

# The National Environmental Policy Act of 1969, as amended

(Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "National Environmental Policy Act of 1969."

## Purpose

**Sec. 2 [42 USC § 4321].** The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

## TITLE I

### CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

**Sec. 101 [42 USC § 4331].**

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consist with other essential

considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

**Sec. 102 [42 USC § 4332].** The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall --

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative

uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

**Sec. 103 [42 USC § 4333].** All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

**Sec. 104 [42 USC § 4334].** Nothing in section 102 [42 USC § 4332] or 103 [42 USC § 4333] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

**Sec. 105 [42 USC § 4335].** The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

## **TITLE II**

### **COUNCIL ON ENVIRONMENTAL QUALITY**

**Sec. 201 [42 USC § 4341].** The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements

of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

**Sec. 202 [42 USC § 4342].** There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

**Sec. 203 [42 USC § 4343].**

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

**Sec. 204 [42 USC § 4344].** It shall be the duty and function of the Council --

1. to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC § 4341] of this title;
2. to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;
3. to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;



4. to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;
5. to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;
6. to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;
7. to report at least once each year to the President on the state and condition of the environment; and
8. to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

**Sec. 205 [42 USC § 4345].** In exercising its powers, functions, and duties under this Act, the Council shall --

1. consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and
2. utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

**Sec. 206 [42 USC § 4346].** Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates [5 USC § 5313]. The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates [5 USC § 5315].

**Sec. 207 [42 USC § 4346a].** The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

**Sec. 208 [42 USC § 4346b].** The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

**Sec. 209 [42 USC § 4347].** There are authorized to be appropriated to carry out the provisions of this chapter not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal

year 1971, and \$1,000,000 for each fiscal year thereafter.

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**The National Historic Preservation Act**  
**As amended through December 19, 2014**  
**and Codified in Title 54 of the United States Code**

[The National Historic Preservation Act ("Act") became law on October 15, 1966, Public Law 89-665, and was codified in title 16 of the United States Code. Various amendments followed through the years. On December 19, 2014, Public Law 13-287 moved the Act's provisions from title 16 of the United States Code to title 54, with minimal and non-substantive changes to the text of the Act and a re-ordering of some of its provisions. This document shows the provisions of the Act as they now appear in title 54 of the United States Code.

The Act's name (the "National Historic Preservation Act") is found in the notes of the very first section of title 54. 54 U.S.C. § 100101 note. While Public Law 13-287 did not repeal the Act's findings, for editorial reasons those findings were not included in the text of title 54. The findings are still current law. However, rather than citing to the U.S. Code, when referring to the findings one may cite to: "Section 1 of the National Historic Preservation Act, Pub. L. No. 89-665, as amended by Pub. L. No. 96-515." For ease of use, this document reproduces the text of those findings before proceeding to the title 54 text.

Finally, the attachment at the end of this document attempts to assist those preservation stakeholders who for many years have referred to the Act's various provisions according to the section numbers used in the 1966 public law and subsequent amendments ("old sections"). The attachment cross-references each of the old sections to the corresponding outdated title 16 legal cite and current title 54 legal cite.]

**Section 1 of the National Historic Preservation Act, Pub. L. No. 89-665, as amended by Pub. L. No. 96-515:**

... (b) The Congress finds and declares that—

- (1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;
- (2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;
- (3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;
- (4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;
- (5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;
- (6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and
- (7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments

and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

## **Title 54 of the United States Code**

### **Subtitle III—National Preservation Programs**

#### **Division A—Historic Preservation**

#### **Subdivision 1—General Provisions**

### **Chapter 3001—Policy**

Sec.

300101. Policy

#### **54 U.S.C. § 300101. Policy**

It is the policy of the Federal Government, in cooperation with other nations and in partnership with States, local governments, Indian tribes, Native Hawaiian organizations, and private organizations and individuals, to—

- (1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our historic property can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;
- (2) provide leadership in the preservation of the historic property of the United States and of the international community of nations and in the administration of the national preservation program;
- (3) administer federally owned, administered, or controlled historic property in a spirit of stewardship for the inspiration and benefit of present and future generations;
- (4) contribute to the preservation of nonfederally owned historic property and give maximum encouragement to organizations and individuals undertaking preservation by private means;
- (5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and
- (6) assist State and local governments, Indian tribes and Native Hawaiian organizations, and the National Trust to expand and accelerate their historic preservation programs and activities.

### **Chapter 3003—Definitions**

Sec.

300301. Agency.

300302. Certified local government.

300303. Council.

300304. Cultural park.

300305. Historic conservation district.

300306. Historic Preservation Fund.

300307. Historic preservation review commission.

300308. Historic property.

300309. Indian tribe.

300310. Local government.

300311. National Register.  
300312. National Trust.  
300313. Native Hawaiian.  
300314. Native Hawaiian organization.  
300315. Preservation or historic preservation.  
300316. Secretary.  
300317. State.  
300318. State historic preservation review board.  
300319. Tribal land.  
300320. Undertaking.  
300321. World Heritage Convention.

#### **§ 300301. Agency**

In this division, the term “agency” has the meaning given the term in section 551 of title 5.

#### **§ 300302. Certified local government**

In this division, the term “certified local government” means a local government whose local historic preservation program is certified pursuant to chapter 3025 of this title.

#### **§ 300303. Council**

In this division, the term “Council” means the Advisory Council on Historic Preservation established by section 304101 of this title.

#### **§ 300304. Cultural park**

In this division, the term “cultural park” means a definable area that—

- (A) is distinguished by historic property, prehistoric property, and land related to that property; and
- (B) constitutes an interpretive, educational, and recreational resource for the public at large.

#### **§ 300305. Historic conservation district**

In this division, the term “historic conservation district” means an area that contains—

- (1) historic property;
- (2) buildings having similar or related architectural characteristics;
- (3) cultural cohesiveness; or
- (4) any combination of features described in paragraphs (1) to (3).

#### **§ 300306. Historic Preservation Fund**

In this division, the term “Historic Preservation Fund” means the Historic Preservation Fund established under section 303101 of this title.

#### **§ 300307. Historic preservation review commission**

In this division, the term “historic preservation review commission” means a board, council, commission, or other similar collegial body—

(1) that is established by State or local legislation as provided in section 302503(a)(2) of this title; and

(2) the members of which are appointed by the chief elected official of a jurisdiction (unless State or local law provides for appointment by another official) from among—

(A) professionals in the disciplines of architecture, history, architectural history, planning, prehistoric and historic archeology, folklore, cultural anthropology, curation, conservation, and landscape architecture, or related disciplines, to the extent that those professionals are available in the community; and

(B) other individuals who have demonstrated special interest, experience, or knowledge in history, architecture, or related disciplines and will provide for an adequate and qualified commission.

#### **§ 300308. Historic property**

In this division, the term “historic property” means any prehistoric or historic district, site, building, structure, or object included on, or eligible for inclusion on, the National Register, including artifacts, records, and material remains relating to the district, site, building, structure, or object.

#### **§ 300309. Indian tribe**

In this division, the term “Indian tribe” means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation (as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

#### **§ 300310. Local government**

In this division, the term “local government” means a city, county, township, municipality, or borough, or any other general purpose political subdivision of any State.

#### **§ 300311. National Register**

In this division, the term “National Register” means the National Register of Historic Places maintained under chapter 3021 of this title.

#### **§ 300312. National Trust**

In this division, the term “National Trust” means the National Trust for Historic Preservation in the United States established under section 312102 of this title.

#### **§ 300313. Native Hawaiian**

In this division, the term “Native Hawaiian” means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes Hawaii.



**§ 300314. Native Hawaiian organization**

(a) IN GENERAL.—In this division, the term “Native Hawaiian organization” means any organization that—

- (1) serves and represents the interests of Native Hawaiians;
- (2) has as a primary and stated purpose the provision of services to Native Hawaiians; and
- (3) has demonstrated expertise in aspects of historic preservation that are culturally significant to Native Hawaiians.

(b) INCLUSIONS.—In this division, the term “Native Hawaiian organization” includes the Office of Hawaiian Affairs of Hawaii and Hui Malama I Na Kupuna O Hawai’i Nei, an organization incorporated under the laws of the State of Hawaii.

**§ 300315. Preservation or historic preservation**

In this division, the term “preservation” or “historic preservation” includes—

- (1) identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, and conservation;
- (2) education and training regarding the foregoing activities; or
- (3) any combination of the foregoing activities.

**§ 300316. Secretary**

In this division, the term “Secretary” means the Secretary acting through the Director.

**§ 300317. State**

In this division, the term “State” means—

- (1) a State, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands; and
- (2) the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

**§ 300318. State historic preservation review board**

In this division, the term “State historic preservation review board” means a board, council, commission, or other similar collegial body established as provided in section 302301(2) of this title—

- (1) the members of which are appointed by the State Historic Preservation Officer (unless otherwise provided for by State law);
- (2) a majority of the members of which are professionals qualified in history, prehistoric and historic archeology, architectural history, architecture, folklore, cultural anthropology, curation, conservation, landscape architecture, and related disciplines; and

(3) that has the authority to—

- (A) review National Register nominations and appeals from nominations;
- (B) review appropriate documentation submitted in conjunction with the Historic Preservation Fund;
- (C) provide general advice and guidance to the State Historic Preservation Officer; and
- (D) perform such other duties as may be appropriate.

#### **§ 300319. Tribal land**

In this division, the term “tribal land” means—

- (1) all land within the exterior boundaries of any Indian reservation; and
- (2) all dependent Indian communities.

#### **§ 300320. Undertaking**

In this division, the term “undertaking” means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including—

- (1) those carried out by or on behalf of the Federal agency;
- (2) those carried out with Federal financial assistance;
- (3) those requiring a Federal permit, license, or approval; and
- (4) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

#### **§ 300321. World Heritage Convention**

In this division, the term “World Heritage Convention” means the Convention concerning the Protection of the World Cultural and Natural Heritage, done at Paris November 23, 1972 (27 UST 37).

## **Subdivision 2—Historic Preservation Program**

### **Chapter 3021—National Register of Historic Places**

Sec.

302101. Maintenance by Secretary.

302102. Inclusion of properties on National Register.

302103. Criteria and regulations relating to National Register, National Historic Landmarks, and World Heritage List.

302104. Nominations for inclusion on National Register.

302105. Owner participation in nomination process.

302106. Retention of name.

302107. Regulations.

302108. Review of threats to historic property.

**§ 302101. Maintenance by Secretary**

The Secretary may expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture.

**§ 302102. Inclusion of properties on National Register**

(a) IN GENERAL.—A property that meets the criteria for National Historic Landmarks established pursuant to section 302103 of this title shall be designated as a National Historic Landmark and included on the National Register, subject to the requirements of section 302107 of this title.

(b) HISTORIC PROPERTY ON NATIONAL REGISTER ON DECEMBER 12, 1980.—All historic property included on the National Register on December 12, 1980, shall be deemed to be included on the National Register as of their initial listing for purposes of this division.

(c) HISTORIC PROPERTY LISTED IN FEDERAL REGISTER OF FEBRUARY 6, 1979, OR PRIOR TO DECEMBER 12, 1980, AS NATIONAL HISTORIC LANDMARKS.—All historic property listed in the Federal Register of February 6, 1979, or prior to December 12, 1980, as National Historic Landmarks are declared by Congress to be National Historic Landmarks of national historic significance as of their initial listing in the Federal Register for purposes of this division and chapter 3201 of this title, except that in the case of a National Historic Landmark district for which no boundaries had been established as of December 12, 1980, boundaries shall first be published in the Federal Register.

**§ 302103. Criteria and regulations relating to National Register, National Historic Landmarks, and World Heritage List**

The Secretary, in consultation with national historical and archeological associations, shall—

(1) establish criteria for properties to be included on the National Register and criteria for National Historic Landmarks; and

(2) promulgate regulations for—

(A) nominating properties for inclusion on, and removal from, the National Register and the recommendation of properties by certified local governments;

(B) designating properties as National Historic Landmarks and removing that designation;

(C) considering appeals from recommendations, nominations, removals, and designations (or any failure or refusal by a nominating authority to nominate or designate);

(D) nominating historic property for inclusion in the World Heritage List in accordance with the World Heritage Convention;

(E) making determinations of eligibility of properties for inclusion on the National Register; and

(F) notifying the owner of a property, any appropriate local governments, and the general public, when the property is being considered for inclusion on the National

Register, for designation as a National Historic Landmark, or for nomination to the World Heritage List.

**§ 302104. Nominations for inclusion on National Register**

(a) **NOMINATION BY STATE.**—Subject to the requirements of section 302107 of this title, any State that is carrying out a program approved under chapter 3023 shall nominate to the Secretary property that meets the criteria promulgated under section 302103 of this title for inclusion on the National Register. Subject to section 302107 of this title, any property nominated under this subsection or under section 306102 of this title shall be included on the National Register on the date that is 45 days after receipt by the Secretary of the nomination and the necessary documentation, unless the Secretary disapproves the nomination within the 45-day period or unless an appeal is filed under subsection (c).

(b) **NOMINATION BY PERSON OR LOCAL GOVERNMENT.**—Subject to the requirements of section 302107 of this title, the Secretary may accept a nomination directly from any person or local government for inclusion of a property on the National Register only if the property is located in a State where there is no program approved under chapter 3023 of this title. The Secretary may include on the National Register any property for which such a nomination is made if the Secretary determines that the property is eligible in accordance with the regulations promulgated under section 302103 of this title. The determination shall be made within 90 days from the date of the nomination unless the nomination is appealed under subsection (c).

(c) **APPEAL.**—Any person or local government may appeal to the Secretary—

(1) a nomination of any property for inclusion on the National Register; and

(2) the failure of a nominating authority to nominate a property in accordance with this chapter.

**§ 302105. Owner participation in nomination process**

(a) **REGULATIONS.**—The Secretary shall promulgate regulations requiring that before any property may be included on the National Register or designated as a National Historic Landmark, the owner of the property, or a majority of the owners of the individual properties within a district in the case of a historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property for inclusion or designation. The regulations shall include provisions to carry out this section in the case of multiple ownership of a single property.

(b) **WHEN PROPERTY SHALL NOT BE INCLUDED ON NATIONAL REGISTER OR DESIGNATED AS NATIONAL HISTORIC LANDMARK.**—If the owner of any privately owned property, or a majority of the owners of privately owned properties within the district in the case of a historic district, object to inclusion or designation, the property shall not be included on the National Register or designated as a National Historic Landmark until the objection is withdrawn.

(c) **REVIEW BY SECRETARY.**—The Secretary shall review the nomination of the property when an objection has been made and shall determine whether or not the property is eligible for inclusion or designation. If the Secretary determines that the property is eligible for inclusion or designation, the Secretary shall inform the Advisory Council on Historic Preservation, the appropriate State Historic Preservation Officer, the appropriate chief elected local official, and the owner or owners of the property of the Secretary's determination.

**§ 302106. Retention of name**

Notwithstanding section 43(c) of the Act of July 5, 1946 (known as the Trademark Act of 1946) (15 U.S.C. 1125(c)), buildings and structures on or eligible for inclusion on the National Register (either individually or as part of a historic district), or designated as an individual landmark or as a contributing building in a historic district by a unit of State or local government, may retain the name historically associated with the building or structure.

**§ 302107. Regulations**

The Secretary shall promulgate regulations—

- (1) ensuring that significant prehistoric and historic artifacts, and associated records, subject to subchapter I of chapter 3061, chapter 3125, or the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.) are deposited in an institution with adequate long-term curatorial capabilities;
- (2) establishing a uniform process and standards for documenting historic property by public agencies and private parties for purposes of incorporation into, or complementing, the national historical architectural and engineering records in the Library of Congress; and
- (3) certifying local governments, in accordance with sections 302502 and 302503 of this title, and for the transfer of funds pursuant to section 302902(c)(4) of this title.

**§ 302108. Review of threats to historic property**

At least once every 4 years, the Secretary, in consultation with the Council and with State Historic Preservation Officers, shall review significant threats to historic property to—

- (1) determine the kinds of historic property that may be threatened;
- (2) ascertain the causes of the threats; and
- (3) develop and submit to the President and Congress recommendations for appropriate action.

**Chapter 3023—State Historic Preservation Programs**

Sec.

302301. Regulations.

302302. Program evaluation.

302303. Responsibilities of State Historic Preservation Officer.

302304. Contracts and cooperative agreements.

**§ 302301. Regulations**

The Secretary, in consultation with the National Conference of State Historic Preservation Officers and the National Trust, shall promulgate regulations for State Historic Preservation Programs. The regulations shall provide that a State program submitted to the Secretary under this chapter shall be approved by the Secretary if the Secretary determines that the program provides for—

- (1) the designation and appointment by the chief elected official of the State of a State Historic Preservation Officer to administer the program in accordance with section 302303 of this title and for the employment or appointment by the officer of such professionally qualified staff as may be necessary for those purposes;

(2) an adequate and qualified State historic preservation review board designated by the State Historic Preservation Officer unless otherwise provided for by State law; and

(3) adequate public participation in the State Historic Preservation Program, including the process of recommending properties for nomination to the National Register.

#### **§ 302302. Program evaluation**

(a) WHEN EVALUATION SHOULD OCCUR.—Periodically, but not less than every 4 years after the approval of any State program under section 302301 of this title, the Secretary, in consultation with the Council on the appropriate provisions of this division, and in cooperation with the State Historic Preservation Officer, shall evaluate the program to determine whether it is consistent with this division.

(b) DISAPPROVAL OF PROGRAM.—If, at any time, the Secretary determines that a major aspect of a State program is not consistent with this division, the Secretary shall disapprove the program and suspend in whole or in part any contracts or cooperative agreements with the State and the State Historic Preservation Officer under this division, until the program is consistent with this division, unless the Secretary determines that the program will be made consistent with this division within a reasonable period of time.

(c) OVERSIGHT.—The Secretary, in consultation with State Historic Preservation Officers, shall establish oversight methods to ensure State program consistency and quality without imposing undue review burdens on State Historic Preservation Officers.

(d) STATE FISCAL AUDIT AND MANAGEMENT SYSTEM.—

(1) SUBSTITUTION FOR COMPARABLE FEDERAL SYSTEMS.—At the discretion of the Secretary, a State system of fiscal audit and management may be substituted for comparable Federal systems so long as the State system—

(A) establishes and maintains substantially similar accountability standards; and

(B) provides for independent professional peer review.

(2) FISCAL AUDITS AND REVIEW BY SECRETARY.—The Secretary—

(A) may conduct periodic fiscal audits of State programs approved under this subdivision as needed; and

(B) shall ensure that the programs meet applicable accountability standards.

#### **§ 302303. Responsibilities of State Historic Preservation Officer**

(a) IN GENERAL.—It shall be the responsibility of the State Historic Preservation Officer to administer the State Historic Preservation Program.

(b) PARTICULAR RESPONSIBILITIES.—It shall be the responsibility of the State Historic Preservation Officer to—

(1) in cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic property and maintain inventories of the property;



- (2) identify and nominate eligible property to the National Register and otherwise administer applications for listing historic property on the National Register;
- (3) prepare and implement a comprehensive statewide historic preservation plan;
- (4) administer the State program of Federal assistance for historic preservation within the State;
- (5) advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;
- (6) cooperate with the Secretary, the Council, other Federal and State agencies, local governments, and private organizations and individuals to ensure that historic property is taken into consideration at all levels of planning and development;
- (7) provide public information, education, and training and technical assistance in historic preservation;
- (8) cooperate with local governments in the development of local historic preservation programs and assist local governments in becoming certified pursuant to chapter 3025;
- (9) consult with appropriate Federal agencies in accordance with this division on—
  - (A) Federal undertakings that may affect historic property; and
  - (B) the content and sufficiency of any plans developed to protect, manage, or reduce or mitigate harm to that property; and
- (10) advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for Federal assistance.

#### **§ 302304. Contracts and cooperative agreements**

(a) STATE.—A State may carry out all or any part of its responsibilities under this chapter by contract or cooperative agreement with a qualified nonprofit organization or educational institution.

(b) SECRETARY.—

(1) IN GENERAL.—

(A) AUTHORITY TO ASSIST SECRETARY.—Subject to paragraphs (3) and (4), the Secretary may enter into contracts or cooperative agreements with a State Historic Preservation Officer for any State authorizing the Officer to assist the Secretary in carrying out one or more of the following responsibilities within that State:

- (i) Identification and preservation of historic property.
- (ii) Determination of the eligibility of property for listing on the National Register.
- (iii) Preparation of nominations for inclusion on the National Register.
- (iv) Maintenance of historical and archeological data bases.

(v) Evaluation of eligibility for Federal preservation incentives.

(B) AUTHORITY TO MAINTAIN NATIONAL REGISTER.— Nothing in subparagraph (A) shall be construed to provide that any State Historic Preservation Officer or any other person other than the Secretary shall have the authority to maintain the National Register for properties in any State.

(2) REQUIREMENTS.—The Secretary may enter into a contract or cooperative agreement under paragraph (1) only if—

(A) the State Historic Preservation Officer has requested the additional responsibility;

(B) the Secretary has approved the State historic preservation program pursuant to sections 302301 and 302302 of this title;

(C) the State Historic Preservation Officer agrees to carry out the additional responsibility in a timely and efficient manner acceptable to the Secretary and the Secretary determines that the Officer is fully capable of carrying out the responsibility in that manner;

(D) the State Historic Preservation Officer agrees to permit the Secretary to review and revise, as appropriate in the discretion of the Secretary, decisions made by the Officer pursuant to the contract or cooperative agreement; and

(E) the Secretary and the State Historic Preservation Officer agree on the terms of additional financial assistance to the State, if there is to be any, for the costs of carrying out that responsibility.

(3) ESTABLISH CONDITIONS AND CRITERIA.—For each significant program area under the Secretary's authority, the Secretary shall establish specific conditions and criteria essential for the assumption by a State Historic Preservation Officer of the Secretary's duties in each of those programs.

(4) PRESERVATION PROGRAMS AND ACTIVITIES NOT DIMINISHED.— Nothing in this chapter shall have the effect of diminishing the preservation programs and activities of the Service.

## **Chapter 3025—Certification of Local Governments**

Sec.

302501. Definitions.

302502. Certification as part of State program.

302503. Requirements for certification.

302504. Participation of certified local governments in National Register nominations.

302505. Eligibility and responsibility of certified local government.

### **§ 302501. Definitions**

In this chapter:

(1) DESIGNATION.—The term “designation” means the identification and registration of property for protection that meets criteria established by a State or locality for significant historic property within the jurisdiction of a local government.

(2) PROTECTION.—The term “protection” means protection by means of a local review process under State or local law for proposed demolition of, changes to, or other action that may affect historic property designated pursuant to this chapter.

#### **§ 302502. Certification as part of State program**

Any State program approved under this subdivision shall provide a mechanism for the certification by the State Historic Preservation Officer of local governments to carry out the purposes of this division and provide for the transfer, in accordance with section 302902(c)(4) of this title, of a portion of the grants received by the States under this division, to those local governments.

#### **§ 302503. Requirements for certification**

(a) APPROVED STATE PROGRAM.—Any local government shall be certified to participate under this section if the applicable State Historic Preservation Officer, and the Secretary, certify that the local government—

- (1) enforces appropriate State or local legislation for the designation and protection of historic property;
- (2) has established an adequate and qualified historic preservation review commission by State or local legislation;
- (3) maintains a system for the survey and inventory of historic property that furthers the purposes of chapter 3023;
- (4) provides for adequate public participation in the local historic preservation program, including the process of recommending properties for nomination to the National Register; and
- (5) satisfactorily performs the responsibilities delegated to it under this division.

(b) NO APPROVED STATE PROGRAM.—Where there is no State program approved under sections 302301 and 302302 of this title, a local government may be certified by the Secretary if the Secretary determines that the local government meets the requirements of subsection (a). The Secretary may make grants to the local government certified under this subsection for purposes of this subdivision.

#### **§ 302504. Participation of certified local governments in National Register nominations**

(a) NOTICE.—Before a property within the jurisdiction of a certified local government may be considered by a State to be nominated to the Secretary for inclusion on the National Register, the State Historic Preservation Officer shall notify the owner, the applicable chief local elected official, and the local historic preservation commission.

(b) REPORT.—The local historic preservation commission, after reasonable opportunity for public comment, shall prepare a report as to whether the property, in the Commission’s opinion, meets the criteria of the National Register. Within 60 days of notice from the State Historic Preservation Officer, the chief local elected official shall transmit the report of the commission and the recommendation of the local official to the State Historic Preservation Officer.

(c) RECOMMENDATION.—

- (1) PROPERTY NOMINATED TO NATIONAL REGISTER.—Except as provided in paragraph (2), after receipt of the report and recommendation, or if no report and recommendation are received

within 60 days, the State shall make the nomination pursuant to section 302104 of this title. The State may expedite the process with the concurrence of the certified local government.

(2) PROPERTY NOT NOMINATED TO NATIONAL REGISTER.—If both the commission and the chief local elected official recommend that a property not be nominated to the National Register, the State Historic Preservation Officer shall take no further action, unless, within 30 days of the receipt of the recommendation by the State Historic Preservation Officer, an appeal is filed with the State. If an appeal is filed, the State shall follow the procedures for making a nomination pursuant to section 302104 of this title. Any report and recommendations made under this section shall be included with any nomination submitted by the State to the Secretary.

#### **§ 302505. Eligibility and responsibility of certified local government**

Any local government—

(1) that is certified under this chapter shall be eligible for funds under section 302902(c)(4) of this title; and

(2) that is certified, or making efforts to become certified, under this chapter shall carry out any responsibilities delegated to it in accordance with such terms and conditions as the Secretary considers necessary or advisable.

### **Chapter 3027—Historic Preservation Programs and Authorities for Indian Tribes and Native Hawaiian Organizations**

Sec.

302701. Program to assist Indian tribes in preserving historic property.

302702. Indian tribe to assume functions of State Historic Preservation Officer.

302703. Apportionment of grant funds.

302704. Contracts and cooperative agreements.

302705. Agreement for review under tribal historic preservation regulations.

302706. Eligibility for inclusion on National Register.

#### **§ 302701. Program to assist Indian tribes in preserving historic property**

(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program and promulgate regulations to assist Indian tribes in preserving their historic property.

(b) COMMUNICATION AND COOPERATION.—The Secretary shall foster communication and cooperation between Indian tribes and State Historic Preservation Officers in the administration of the national historic preservation program to—

(1) ensure that all types of historic property and all public interests in historic property are given due consideration; and

(2) encourage coordination among Indian tribes, State Historic Preservation Officers, and Federal agencies in historic preservation planning and in the identification, evaluation, protection, and interpretation of historic property.

(c) TRIBAL VALUES.—The program under subsection (a) shall be developed in a manner to ensure that tribal values are taken into account to the extent feasible. The Secretary may waive or modify requirements of this subdivision to conform to the cultural setting of tribal heritage preservation goals and objectives.

(d) SCOPE OF TRIBAL PROGRAMS.—The tribal programs implemented by specific tribal organizations may vary in scope, as determined by each Indian tribe's chief governing authority.

(e) CONSULTATION.—The Secretary shall consult with Indian tribes, other Federal agencies, State Historic Preservations Officers, and other interested parties concerning the program under subsection (a).

#### **§ 302702. Indian tribe to assume functions of State Historic Preservation Officer**

An Indian tribe may assume all or any part of the functions of a State Historic Preservation Officer in accordance with sections 302302 and 302303 of this title, with respect to tribal land, as those responsibilities may be modified for tribal programs through regulations issued by the Secretary, if—

- (1) the Indian tribe's chief governing authority so requests;
- (2) the Indian tribe designates a tribal preservation official to administer the tribal historic preservation program, through appointment by the Indian tribe's chief governing authority or as a tribal ordinance may otherwise provide;
- (3) the tribal preservation official provides the Secretary with a plan describing how the functions the tribal preservation official proposes to assume will be carried out;
- (4) the Secretary determines, after consulting with the Indian tribe, the appropriate State Historic Preservation Officer, the Council (if the Indian tribe proposes to assume the functions of the State Historic Preservation Officer with respect to review of undertakings under section 306108 of this title), and other Indian tribes, if any, whose tribal or aboriginal land may be affected by conduct of the tribal preservation program, that—
  - (A) the tribal preservation program is fully capable of carrying out the functions specified in the plan provided under paragraph (3);
  - (B) the plan defines the remaining responsibilities of the Secretary and the State Historic Preservation Officer; and
  - (C) the plan provides, with respect to properties neither owned by a member of the Indian tribe nor held in trust by the Secretary for the benefit of the Indian tribe, at the request of the owner of the properties, that the State Historic Preservation Officer, in addition to the tribal preservation official, may exercise the historic preservation responsibilities in accordance with sections 302302 and 302303 of this title; and
- (5) based on satisfaction of the conditions stated in paragraphs (1), (2), (3), and (4), the Secretary approves the plan.

#### **§ 302703. Apportionment of grant funds**

In consultation with interested Indian tribes, other Native American organizations, and affected State Historic Preservation Officers, the Secretary shall establish and implement procedures for carrying out section 302902(c)(1)(A) of this title with respect to tribal programs that assume responsibilities under section 302702 of this title.

#### **§ 302704. Contracts and cooperative agreements**

At the request of an Indian tribe whose preservation program has been approved to assume functions and responsibilities pursuant to section 302702 of this title, the Secretary shall enter into a contract or

cooperative agreement with the Indian tribe permitting the assumption by the Indian tribe of any part of the responsibilities described in section 302304(b) of this title on tribal land, if—

- (1) the Secretary and the Indian tribe agree on additional financial assistance, if any, to the Indian tribe for the costs of carrying out those authorities;
- (2) the Secretary finds that the tribal historic preservation program has been demonstrated to be sufficient to carry out the contract or cooperative agreement and this division; and
- (3) the contract or cooperative agreement specifies the continuing responsibilities of the Secretary or of the appropriate State Historic Preservation Officers and provides for appropriate participation by—
  - (A) the Indian tribe's traditional cultural authorities;
  - (B) representatives of other Indian tribes whose traditional land is under the jurisdiction of the Indian tribe assuming responsibilities; and
  - (C) the interested public.

**§ 302705. Agreement for review under tribal historic preservation regulations**

The Council may enter into an agreement with an Indian tribe to permit undertakings on tribal land to be reviewed under tribal historic preservation regulations in place of review under regulations promulgated by the Council to govern compliance with section 306108 of this title, if the Council, after consultation with the Indian tribe and appropriate State Historic Preservation Officers, determines that the tribal preservation regulations will afford historic property consideration equivalent to that afforded by the Council's regulations.

**§ 302706. Eligibility for inclusion on National Register**

- (a) IN GENERAL.—Property of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.
- (b) CONSULTATION.—In carrying out its responsibilities under section 306108 of this title, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to property described in subsection (a).
- (c) HAWAII.—In carrying out responsibilities under section 302303 of this title, the State Historic Preservation Officer for Hawaii shall—

- (1) consult with Native Hawaiian organizations in assessing the cultural significance of any property in determining whether to nominate the property to the National Register;
- (2) consult with Native Hawaiian organizations in developing the cultural component of a preservation program or plan for the property; and
- (3) enter into a memorandum of understanding or agreement with Native Hawaiian organizations for the assessment of the cultural significance of a property in determining whether to nominate the property to the National Register and to carry out the cultural component of the preservation program or plan.

## Chapter 3029—Grants

Sec.

302901. Awarding of grants and availability of grant funds.

302902. Grants to States.

302903. Grants to National Trust.

302904. Direct grants for the preservation of properties included on National Register.

302905. Religious property.

302906. Grants and loans to Indian tribes and nonprofit organizations representing ethnic or minority groups.

302907. Grants to Indian tribes and Native Hawaiian organizations.

302908. Grants to the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

302909. Prohibited use of grant amounts.

302910. Recordkeeping.

### § 302901. Awarding of grants and availability of grant funds

(a) IN GENERAL.—No grant may be made under this division unless application for the grant is submitted to the Secretary in accordance with regulations and procedures prescribed by the Secretary.

(b) GRANT NOT TREATED AS TAXABLE INCOME.—No grant made pursuant to this division shall be treated as taxable income for purposes of the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.).

(c) AVAILABILITY.—The Secretary shall make funding available to individual States and the National Trust as soon as practicable after execution of a grant agreement. For purposes of administration, grants to individual States and the National Trust each shall be deemed to be one grant and shall be administered by the Service as one grant.

### § 302902. Grants to States

(a) IN GENERAL.—The Secretary shall administer a program of matching grants to the States for the purposes of carrying out this division.

(b) CONDITIONS.—

(1) IN GENERAL.—No grant may be made under this division—

(A) unless the application is in accordance with the comprehensive statewide historic preservation plan that has been approved by the Secretary after considering its relationship to the comprehensive statewide outdoor recreation plan prepared pursuant to chapter 2003 of this title;

(B) unless the grantee has agreed to make reports, in such form and containing such information, as the Secretary may from time to time require;

(C) unless the grantee has agreed to assume, after completion of the project, the total cost of the continued maintenance, repair, and administration of the property in a manner satisfactory to the Secretary; or

(D) until the grantee has complied with such further terms and conditions as the Secretary may consider necessary or advisable.

(2) WAIVER.—The Secretary may waive the requirements of subparagraphs (A) and (C) of paragraph (1) for any grant under this division to the National Trust.

(3) AMOUNT LIMITATION.—



(A) IN GENERAL.—No grant may be made under this division for more than 60 percent of the aggregate costs of carrying out projects and programs under the administrative control of the State Historic Preservation Officer as specified in section 302303 of this title in any one fiscal year.

(B) SOURCE OF STATE SHARE OF COSTS.—Except as permitted by other law, the State share of the costs referred to in subparagraph (A) shall be contributed by non-Federal sources.

(4) RESTRICTION ON USE OF REAL PROPERTY TO MEET NONFEDERAL SHARE OF COST OF PROJECT.—No State shall be permitted to utilize the value of real property obtained before October 15, 1966, in meeting the non-Federal share of the cost of a project for which a grant is made under this division.

(c) APPORTIONMENT OF GRANT AMOUNTS.—

(1) BASES FOR APPORTIONMENT.—The amounts appropriated and made available for grants to the States—

(A) for the purposes of this division shall be apportioned among the States by the Secretary on the basis of needs as determined by the Secretary; and

(B) for projects and programs under this division for each fiscal year shall be apportioned among the States as the Secretary determines to be appropriate.

(2) NOTIFICATION.—The Secretary shall notify each State of its apportionment under paragraph (1)(B) within 30 days after the date of enactment of legislation appropriating funds under this division.

(3) REAPPORTIONMENT.—Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which the notification is given or during the 2 fiscal years after that fiscal year shall be reapportioned by the Secretary in accordance with paragraph (1)(B). The Secretary shall analyze and revise as necessary the method of apportionment. The method and any revision shall be published by the Secretary in the Federal Register.

(4) TRANSFER OF FUNDS TO CERTIFIED LOCAL GOVERNMENTS.— Not less than 10 percent of the annual apportionment distributed by the Secretary to each State for the purposes of carrying out this division shall be transferred by the State, pursuant to the requirements of this division, to certified local governments for historic preservation projects or programs of the certified local governments. In any year in which the total annual apportionment to the States exceeds \$65,000,000, 50 percent of the excess shall also be transferred by the States to certified local governments.

(5) GUIDELINES FOR USE AND DISTRIBUTION OF FUNDS TO CERTIFIED LOCAL GOVERNMENTS.— The Secretary shall establish guidelines for the use and distribution of funds under paragraph (4) to ensure that no certified local government receives a disproportionate share of the funds available, and may include a maximum or minimum limitation on the amount of funds distributed to any single certified local government. The guidelines shall not limit the ability of any State to distribute more than 10 percent of its annual apportionment under paragraph (4), nor shall the Secretary require any State to exceed the 10 percent minimum distribution to certified local governments.

(d) ADMINISTRATIVE COSTS.—The total direct and indirect administrative costs charged for carrying out State projects and programs shall not exceed 25 percent of the aggregate costs (except in the case of a grant to the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau).

**§ 302903. Grants to National Trust**

(a) SECRETARY OF THE INTERIOR.—The Secretary may administer grants to the National Trust consistent with the purposes of its charter and this division.

(b) SECRETARY OF HOUSING AND URBAN DEVELOPMENT.—The Secretary of Housing and Urban Development may make grants to the National Trust, on terms and conditions and in amounts (not exceeding \$90,000 with respect to any one structure) as the Secretary of Housing and Urban Development considers appropriate, to cover the costs incurred by the National Trust in renovating or restoring structures that the National Trust considers to be of historic or architectural value and that the National Trust has accepted and will maintain (after the renovation or restoration) for historic purposes.

**§ 302904. Direct grants for the preservation of properties included on National Register**

(a) ADMINISTRATION OF PROGRAM.—The Secretary shall administer a program of direct grants for the preservation of properties included on the National Register.

(b) AVAILABLE AMOUNT.—Funds to support the program annually shall not exceed 10 percent of the amount appropriated annually for the Historic Preservation Fund.

(c) USES OF GRANTS.—

(1) IN GENERAL.—Grants under this section may be made by the Secretary, in consultation with the appropriate State Historic Preservation Officer—

(A) for the preservation of—

(i) National Historic Landmarks that are threatened with demolition or impairment; and

(ii) historic property of World Heritage significance;

(B) for demonstration projects that will provide information concerning professional methods and techniques having application to historic property;

(C) for the training and development of skilled labor in trades and crafts, and in analysis and curation, relating to historic preservation; and

(D) to assist individuals or small businesses within any historic district included on the National Register to remain within the district.

(2) LIMIT ON CERTAIN GRANTS.—A grant may be made under subparagraph (A) or (D) of paragraph (1) only to the extent that the project cannot be carried out in as effective a manner through the use of an insured loan under section 303901 of this title.

**§ 302905. Religious property**

(a) IN GENERAL.—Grants may be made under this chapter for the preservation, stabilization, restoration, or rehabilitation of religious property listed on the National Register if the purpose of the grant—

(1) is secular;

(2) does not promote religion; and

(3) seeks to protect qualities that are historically significant.

(b) EFFECT OF SECTION.—Nothing in this section shall be construed to authorize the use of any funds made available under this subdivision for the acquisition of any religious property listed on the National Register.

**§ 302906. Grants and loans to Indian tribes and nonprofit organizations representing ethnic or minority groups**

The Secretary may, in consultation with the appropriate State Historic Preservation Officer, make grants or loans or both under this subdivision to Indian tribes and to nonprofit organizations representing ethnic or minority groups for the preservation of their cultural heritage.

**§ 302907. Grants to Indian tribes and Native Hawaiian organizations**

The Secretary shall administer a program of direct grants to Indian tribes and Native Hawaiian organizations for the purpose of carrying out this division as it pertains to Indian tribes and Native Hawaiian organizations. Matching fund requirements may be modified. Federal funds available to an Indian tribe or Native Hawaiian organization may be used as matching funds for the purposes of the Indian tribe's or Native Hawaiian organization's conducting its responsibilities pursuant to this subdivision.

**§ 302908. Grants to the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau**

(a) IN GENERAL.—As part of the program of matching grant assistance from the Historic Preservation Fund to States, the Secretary shall administer a program of direct grants to the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau in furtherance of the Compact of Free Association between the United States and the Federated States of Micronesia and the Marshall Islands, approved by the Compact of Free Association Act of 1985 (48 U.S.C. 1901 et seq., 2001 et seq.), and the Compact of Free Association between the United States and Palau, approved by the Joint Resolution entitled "Joint Resolution to approve the 'Compact of Free Association' between the United States and Government of Palau, and for other purposes" (48 U.S.C. 1931 et seq.) or any successor enactment.

(b) GOAL OF PROGRAM.—The goal of the program shall be to establish historic and cultural preservation programs that meet the unique needs of each of those nations so that at the termination of the compacts the programs shall be firmly established.

(c) BASIS OF ALLOCATING AMOUNTS.—The amounts to be made available under this subsection shall be allocated by the Secretary on the basis of needs as determined by the Secretary.

(d) WAIVERS AND MODIFICATIONS.—The Secretary may waive or modify the requirements of this subdivision to conform to the cultural setting of those nations. Matching funds may be waived or modified.

**§ 302909. Prohibited use of grant amounts**

No part of any grant made under this subdivision shall be used to compensate any person intervening in any proceeding under this division.

**§ 302910. Recordkeeping**

A recipient of assistance under this division shall keep—

(1) such records as the Secretary shall prescribe, including records that fully disclose—

(A) the disposition by the recipient of the proceeds of the assistance;

(B) the total cost of the project or undertaking in connection with which the assistance is given or used; and

(C) the amount and nature of that portion of the cost of the project or undertaking supplied by other sources; and

(2) such other records as will facilitate an effective audit.

**Chapter 3031—Historic Preservation Fund**

Sec.

303101. Establishment.

303102. Content.

303103. Use and availability.

**§ 303101. Establishment**

To carry out this division (except chapter 3041) and chapter 3121, there is established in the Treasury the Historic Preservation Fund.

**§ 303102. Contents**

For each of fiscal years 2012 to 2015, \$150,000,000 shall be deposited in the Historic Preservation Fund from revenues due and payable to the United States under section 9 of the Outer Continental Shelf Lands Act (43 U.S.C. 1338), section 7433(b) of title 10, or both, notwithstanding any provision of law that those proceeds shall be credited to miscellaneous receipts of the Treasury.

**§ 303103. Use and availability**

Amounts in the Historic Preservation Fund shall be used only to carry out this division and shall be available for expenditure only when appropriated by Congress. Any amount not appropriated shall remain available in the Historic Preservation Fund until appropriated for those purposes. Appropriations made pursuant to this section may be made without fiscal year limitation.

**Chapters 3033 Through 3037—Reserved****Chapter 3039—Miscellaneous**

Sec.

303901. Loan insurance program for preservation of property included on National Register.

303902. Training in, and dissemination of information concerning, professional methods and techniques for preservation of historic property.

303903. Preservation education and training program.

**§ 303901. Loan insurance program for preservation of property included on National Register**

(a) ESTABLISHMENT.—The Secretary shall establish and maintain a program by which the Secretary may, on application of a private lender, insure loans (including loans made in accordance with a mortgage) made by the lender to finance any project for the preservation of a property included on the National Register.

(b) LOAN QUALIFICATIONS.—A loan may be insured under this section if—

(1) the loan is made by a private lender approved by the Secretary as financially sound and able to service the loan properly;

(2) the amount of the loan, and interest rate charged with respect to the loan, do not exceed the amount and rate established by the Secretary by regulation;

(3) the Secretary has consulted the appropriate State Historic Preservation Officer concerning the preservation of the historic property;

(4) the Secretary has determined that the loan is adequately secured and there is reasonable assurance of repayment;

(5) the repayment period of the loan does not exceed the lesser of 40 years or the expected life of the asset financed;

(6) the amount insured with respect to the loan does not exceed 90 percent of the loss sustained by the lender with respect to the loan; and

(7) the loan, the borrower, and the historic property to be preserved meet such other terms and conditions as may be prescribed by the Secretary by regulation, especially terms and conditions relating to the nature and quality of the preservation work.

(c) CONSULTATION.—The Secretary shall consult with the Secretary of the Treasury regarding the interest rate of loans insured under this section.

(d) LIMITATION ON AMOUNT OF UNPAID PRINCIPAL BALANCE OF LOANS.—The aggregate unpaid principal balance of loans insured under this section may not exceed the amount that has been deposited in the Historic Preservation Fund but which has not been appropriated for any purpose.

(e) INSURANCE CONTRACTS.—Any contract of insurance executed by the Secretary under this section may be assignable, shall be an obligation supported by the full faith and credit of the United States, and shall be incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

(f) CONDITIONS AND METHODS OF PAYMENT AS RESULT OF LOSS.— The Secretary shall specify, by regulation and in each contract entered into under this section, the conditions and method of payment to a private lender as a result of losses incurred by the lender on any loan insured under this section.

(g) PROTECTION OF FINANCIAL INTERESTS OF FEDERAL GOVERNMENT.— In entering into any contract to insure a loan under this section, the Secretary shall take steps to ensure adequate protection of the financial interests of the Federal Government. The Secretary may—

(1) in connection with any foreclosure proceeding, obtain, on behalf of the Federal Government, the historic property securing a loan insured under this section; and

(2) operate or lease the historic property for such period as may be necessary to protect the interest of the Federal Government and to carry out subsection (h).

**(h) CONVEYANCE TO GOVERNMENTAL OR NONGOVERNMENTAL ENTITY OF PROPERTY ACQUIRED BY FORECLOSURE.—**

(1) **ATTEMPT TO CONVEY TO ENSURE PROPERTY'S PRESERVATION AND USE.**—In any case in which historic property is obtained pursuant to subsection (g), the Secretary shall attempt to convey the property to any governmental or nongovernmental entity under conditions that will ensure the property's continued preservation and use. If, after a reasonable time, the Secretary, in consultation with the Council, determines that there is no feasible and prudent means to convey the property and to ensure its continued preservation and use, the Secretary may convey the property at the fair market value of its interest in the property to any entity without restriction.

(2) **DISPOSITION OF FUNDS.**—Any funds obtained by the Secretary in connection with the conveyance of any historic property pursuant to paragraph (1) shall be deposited in the Historic Preservation Fund and shall remain available in the Historic Preservation Fund until appropriated by Congress to carry out this division.

(i) **ASSESSMENT OF FEES IN CONNECTION WITH INSURING LOANS.**— The Secretary may assess appropriate and reasonable fees in connection with insuring loans under this section. The fees shall be deposited in the Historic Preservation Fund and shall remain available in the Historic Preservation Fund until appropriated by Congress to carry out this division.

(j) **TREATMENT OF LOANS AS NON-FEDERAL FUNDS.**—Notwithstanding any other provision of law, any loan insured under this section shall be treated as non-Federal funds for the purposes of satisfying any requirement of any other provision of law under which Federal funds to be used for any project or activity are conditioned on the use of non-Federal funds by the recipient for payment of any portion of the costs of the project or activity.

(k) **INELIGIBILITY OF DEBT OBLIGATION FOR PURCHASE OR COMMITMENT TO PURCHASE BY, OR SALE OR ISSUANCE TO, FEDERAL FINANCING BANK.**—No debt obligation that is made or committed to be made, or that is insured or committed to be insured, by the Secretary under this section shall be eligible for purchase by, or commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

**§ 303902. Training in, and dissemination of information concerning, professional methods and techniques for preservation of historic property**

The Secretary shall develop and make available to Federal agencies, State and local governments, private organizations and individuals, and other nations and international organizations pursuant to the World Heritage Convention, training in, and information concerning, professional methods and techniques for the preservation of historic property and for the administration of the historic preservation program at the Federal, State, and local level. The Secretary shall also develop mechanisms to provide information concerning historic preservation to the general public including students.

**§ 303903. Preservation education and training program**

The Secretary, in consultation with the Council and other appropriate Federal, tribal, Native Hawaiian, and non-Federal organizations, shall develop and implement a comprehensive preservation education and training program. The program shall include—

- (1) standards and increased preservation training opportunities for Federal workers involved in preservation-related functions;
- (2) preservation training opportunities for other Federal, State, tribal and local government workers, and students;
- (3) technical or financial assistance, or both, to historically black colleges and universities, to tribal colleges, and to colleges with a high enrollment of Native Americans or Native Hawaiians, to establish preservation training and degree programs; and
- (4) where appropriate, coordination with the National Center for Preservation Technology and Training of—
  - (A) distribution of information on preservation technologies;
  - (B) provision of training and skill development in trades, crafts, and disciplines related to historic preservation in Federal training and development programs; and
  - (C) support for research, analysis, conservation, curation, interpretation, and display related to preservation.

**Subdivision 3—Advisory Council on Historic Preservation****Chapter 3041—Advisory Council on Historic Preservation**

Sec.

304101. Establishment; vacancies.

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304110. Report by Secretary to Council.

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**§ 304101. Establishment; vacancies**

(a) ESTABLISHMENT.—There is established as an independent agency of the United States Government an Advisory Council on Historic Preservation, which shall be composed of the following members:

- (1) A Chairman appointed by the President selected from the general public.
- (2) The Secretary.



(3) The Architect of the Capitol.

(4) The Secretary of Agriculture and the heads of 7 other agencies of the United States (other than the Department of the Interior), the activities of which affect historic preservation, designated by the President.

(5) One Governor appointed by the President.

(6) One mayor appointed by the President.

(7) The President of the National Conference of State Historic Preservation Officers.

(8) The Chairman of the National Trust.

(9) Four experts in the field of historic preservation appointed by the President from architecture, history, archeology, and other appropriate disciplines.

(10) Three members from the general public, appointed by the President.

(11) One member of an Indian tribe or Native Hawaiian organization who represents the interests of the Indian tribe or Native Hawaiian organization of which he or she is a member, appointed by the President.

(b) DESIGNATION OF SUBSTITUTES.—Each member of the Council specified in paragraphs (2) to (5), (7), and (8) of subsection (a) may designate another officer of the department, agency, or organization to serve on the Council instead of the member, except that, in the case of paragraphs (2) and (4), no officer other than an Assistant Secretary or an officer having major department wide or agency-wide responsibilities may be designated.

(c) TERM OF OFFICE.—Each member of the Council appointed under paragraphs (1) and (9) to (11) of subsection (a) shall serve for a term of 4 years from the expiration of the term of the member's predecessor. The members appointed under paragraphs (5) and (6) shall serve for the term of their elected office but not in excess of 4 years. An appointed member may not serve more than 2 terms. An appointed member whose term has expired shall serve until that member's successor has been appointed.

(d) VACANCIES.—A vacancy in the Council shall not affect its powers, but shall be filled, not later than 60 days after the vacancy commences, in the same manner as the original appointment (and for the balance of the unexpired term).

(e) DESIGNATION OF VICE CHAIRMAN.—The President shall designate a Vice Chairman from the members appointed under paragraph (5), (6), (9), or (10) of subsection (a). The Vice Chairman may act in place of the Chairman during the absence or disability of the Chairman or when the office is vacant.

(f) QUORUM.—Twelve members of the Council shall constitute a quorum.

#### **§ 304102. Duties of Council**

(a) DUTIES.—The Council shall—

(1) advise the President and Congress on matters relating to historic preservation, recommend measures to coordinate activities of Federal, State, and local agencies and private institutions

and individuals relating to historic preservation, and advise on the dissemination of information pertaining to those activities;

(2) encourage, in cooperation with the National Trust and appropriate private agencies, public interest and participation in historic preservation;

(3) recommend the conduct of studies in such areas as—

(A) the adequacy of legislative and administrative statutes and regulations pertaining to historic preservation activities of State and local governments; and

(B) the effects of tax policies at all levels of government on historic preservation;

(4) advise as to guidelines for the assistance of State and local governments in drafting legislation relating to historic preservation;

(5) encourage, in cooperation with appropriate public and private agencies and institutions, training and education in the field of historic preservation;

(6) review the policies and programs of Federal agencies and recommend to Federal agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under this division; and

(7) inform and educate Federal agencies, State and local governments, Indian tribes, other nations and international organizations and private groups and individuals as to the Council's authorized activities.

(b) ANNUAL REPORT.—The Council annually shall submit to the President a comprehensive report of its activities and the results of its studies and shall from time to time submit additional and special reports as it deems advisable. Each report shall propose legislative enactments and other actions as, in the judgment of the Council, are necessary and appropriate to carry out its recommendations and shall provide the Council's assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of Federal agencies, State and local governments, and the private sector in carrying out this division.

#### **§ 304103. Cooperation between Council and instrumentalities of executive branch of Federal Government**

The Council may secure directly from any Federal agency information, suggestions, estimates, and statistics for the purpose of this chapter. Each Federal agency may furnish information, suggestions, estimates, and statistics to the extent permitted by law and within available funds.

#### **§ 304104. Compensation of members of Council**

The members of the Council specified in paragraphs (2), (3), and (4) of section 304101(a) of this title shall serve without additional compensation. The other members of the Council shall receive \$100 per diem when engaged in the performance of the duties of the Council. All members of the Council shall receive reimbursement for necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Council.

#### **§ 304105. Administration**

(a) EXECUTIVE DIRECTOR.—There shall be an Executive Director of the Council who shall be appointed by the Chairman with the concurrence of the Council in the competitive service at a rate within the General

Schedule, in the competitive service at a rate that may exceed the rate prescribed for the highest rate established for grade 15 of the General Schedule under section 5332 of title 5, or in the Senior Executive Service under section 3393 of title 5. The Executive Director shall report directly to the Council and perform such functions and duties as the Council may prescribe.

(b) GENERAL COUNSEL AND APPOINTMENT OF OTHER ATTORNEYS.—

(1) GENERAL COUNSEL.—The Council shall have a General Counsel, who shall be appointed by the Executive Director. The General Counsel shall report directly to the Executive Director and serve as the Council's legal advisor.

(2) APPOINTMENT OF OTHER ATTORNEYS.—The Executive Director shall appoint other attorneys as may be necessary to—

(A) assist the General Counsel;

(B) represent the Council in court when appropriate, including enforcement of agreements with Federal agencies to which the Council is a party;

(C) assist the Department of Justice in handling litigation concerning the Council in court; and

(D) perform such other legal duties and functions as the Executive Director and the Council may direct.

(c) APPOINTMENT AND COMPENSATION OF OFFICERS AND EMPLOYEES.—The Executive Director of the Council may appoint and fix the compensation of officers and employees in the competitive service who are necessary to perform the functions of the Council at rates not to exceed that prescribed for the highest rate for grade 15 of the General Schedule under section 5332 of title 5. The Executive Director, with the concurrence of the Chairman, may appoint and fix the compensation of not to exceed 5 employees in the competitive service at rates that exceed that prescribed for the highest rate established for grade 15 of the General Schedule under section 5332 of title 5 or in the Senior Executive Service under section 3393 of title 5.

(d) APPOINTMENT AND COMPENSATION OF ADDITIONAL PERSONNEL.— The Executive Director may appoint and fix the compensation of such additional personnel as may be necessary to carry out the Council's duties, without regard to the civil service laws and chapter 51 and subchapter III of chapter 53 of title 5.

(e) EXPERT AND CONSULTANT SERVICES.—The Executive Director may procure expert and consultant services in accordance with section 3109 of title 5.

(f) FINANCIAL AND ADMINISTRATIVE SERVICES.—

(1) SERVICES TO BE PROVIDED BY SECRETARY, AGENCY, OR PRIVATE ENTITY.—Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall be provided the Council by the Secretary or, at the discretion of the Council, another agency or private entity that reaches an agreement with the Council, for which payments shall be made in advance, or by reimbursement, from funds of the Council in such amounts as may be agreed on by the Chairman of the Council and the head of the agency or the authorized representative of the private entity that will provide the services.

(2) FEDERAL AGENCY REGULATIONS RELATING TO COLLECTION APPLY.—When a Federal agency affords those services, the regulations of that agency under section 5514(b) of title 5 for the collection of indebtedness of personnel resulting from erroneous payments shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of that agency under sections 1513(d) and 1514 of title 31 for the administrative control of funds shall apply to appropriations of the Council. The Council shall not be required to prescribe those regulations.

(g) FUNDS, PERSONNEL, FACILITIES, AND SERVICES.—

(1) PROVIDED BY FEDERAL AGENCY.—Any Federal agency may provide the Council, with or without reimbursement as may be agreed on by the Chairman and the agency, with such funds, personnel, facilities, and services under its jurisdiction and control as may be needed by the Council to carry out its duties, to the extent that the funds, personnel, facilities, and services are requested by the Council and are otherwise available for that purpose. Any funds provided to the Council pursuant to this subsection shall be obligated by the end of the fiscal year following the fiscal year in which the funds are received by the Council.

(2) OBTAINING ADDITIONAL PROPERTY, FACILITIES, AND SERVICES AND RECEIVING DONATIONS OF MONEY.—To the extent of available appropriations, the Council may obtain by purchase, rental, donation, or otherwise additional property, facilities, and services as may be needed to carry out its duties and may receive donations of money for that purpose. The Executive Director may accept, hold, use, expend, and administer the property, facilities, services, and money for the purposes of this division.

(h) RIGHTS, BENEFITS, AND PRIVILEGES OF TRANSFERRED EMPLOYEES.—Any employee in the competitive service of the United States transferred to the Council under section 207 of the National Historic Preservation Act (Public Law 89–665) retains all the rights, benefits, and privileges pertaining to the competitive service held prior to the transfer.

(i) EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.—The Council is exempt from the Federal Advisory Committee Act (5 U.S.C. App.).

(j) PROVISIONS THAT GOVERN OPERATIONS OF COUNCIL.—Subchapter II of chapter 5 and chapter 7 of title 5 shall govern the operations of the Council.

**§ 304106. International Centre for the Study of the Preservation and Restoration of Cultural Property**

(a) AUTHORIZATION OF PARTICIPATION.—The participation of the United States as a member in the International Centre for the Study of the Preservation and Restoration of Cultural Property is authorized.

(b) OFFICIAL DELEGATION.—The Council shall recommend to the Secretary of State, after consultation with the Smithsonian Institution and other public and private organizations concerned with the technical problems of preservation, the members of the official delegation that will participate in the activities of the international Centre for the Study of the Preservation and Restoration of Cultural Property on behalf of the United States. The Secretary of State shall appoint the members of the official delegation from the persons recommended to the Secretary of State by the Council.

**§ 304107. Transmittal of legislative recommendations, testimony, or comments to any officer or agency of the United States prior to submission to Congress**

No officer or agency of the United States shall have any authority to require the Council to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the

United States for approval, comments, or review, prior to the submission of the recommendations, testimony, or comments to Congress. When the Council voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Council shall include a description of the actions in its legislative recommendations, testimony, or comments on legislation that it transmits to Congress.

#### **§ 304108. Regulations, procedures, and guidelines**

(a) IN GENERAL.—The Council may promulgate regulations as it considers necessary to govern the implementation of section 306108 of this title in its entirety.

(b) PARTICIPATION BY LOCAL GOVERNMENTS.—The Council shall by regulation establish such procedures as may be necessary to provide for participation by local governments in proceedings and other actions taken by the Council with respect to undertakings referred to in section 306108 of this title that affect the local governments.

(c) EXEMPTION FOR FEDERAL PROGRAMS OR UNDERTAKINGS.—The Council, with the concurrence of the Secretary, shall promulgate regulations or guidelines, as appropriate, under which Federal programs or undertakings may be exempted from any or all of the requirements of this division when the exemption is determined to be consistent with the purposes of this division, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic property.

#### **§ 304109. Budget submission**

(a) TIME AND MANNER OF SUBMISSION.—The Council shall submit its budget annually as a related agency of the Department of the Interior.

(b) TRANSMITTAL OF COPIES TO CONGRESSIONAL COMMITTEES.— Whenever the Council submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the Committee on Natural Resources and Committee on Appropriations of the House of Representatives and the Committee on Energy and Natural Resources and Committee on Appropriations of the Senate.

#### **§ 304110. Report by Secretary to Council**

To assist the Council in discharging its responsibilities under this division, the Secretary at the request of the Chairman shall provide a report to the Council detailing the significance of any historic property, describing the effects of any proposed undertaking on the affected property, and recommending measures to avoid, minimize, or mitigate adverse effects.

#### **§ 304111. Reimbursements from State and local agencies**

Subject to applicable conflict of interest laws, the Council may receive reimbursements from State and local agencies and others pursuant to agreements executed in furtherance of this division.

#### **§ 304112. Effectiveness of Federal grant and assistance programs**

(a) COOPERATIVE AGREEMENTS.—The Council may enter into a cooperative agreement with any Federal agency that administers a grant or assistance program for the purpose of improving the effectiveness of the administration of the program in meeting the purposes and policies of this division. The cooperative agreement may include provisions that modify the selection criteria for a grant or assistance program to further the purposes of this division or that allow the Council to participate in the selection of recipients, if those provisions are not inconsistent with the grant or assistance program's statutory authorization and purpose.

(b) REVIEW OF GRANT AND ASSISTANCE PROGRAMS.—The Council may—

- (1) review the operation of any Federal grant or assistance program to evaluate the effectiveness of the program in meeting the purposes and policies of this division;
- (2) make recommendations to the head of any Federal agency that administers the program to further the consistency of the program with the purposes and policies of this division and to improve its effectiveness in carrying out those purposes and policies; and
- (3) make recommendations to the President and Congress regarding the effectiveness of Federal grant and assistance programs in meeting the purposes and policies of this division, including recommendations with regard to appropriate funding levels.

## **Subdivision 4—Other Organizations and Programs**

### **Chapter 3051—Historic Light Station Preservation**

Sec.

305101. Definitions.

305102. Duties of Secretary in providing a national historic light station program.

305103. Selection of eligible entity and conveyance of historic light stations.

305104. Terms of conveyance.

305105. Description of property.

305106. Historic light station sales.

#### **§ 305101. Definitions**

In this chapter:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of General Services.

(2) ELIGIBLE ENTITY.—The term “eligible entity” means—

(A) any department or agency of the Federal Government; or

(B) any department or agency of the State in which a historic light station is located, the local government of the community in which a historic light station is located, a nonprofit corporation, an educational agency, or a community development organization that—

(i) has agreed to comply with the conditions set forth in section 305104 of this title and to have the conditions recorded with the deed of title to the historic light station; and

(ii) is financially able to maintain the historic light station in accordance with the conditions set forth in section 305104 of this title.

(3) FEDERAL AID TO NAVIGATION.—

(A) IN GENERAL.—The term “Federal aid to navigation” means any device, operated and maintained by the United States, external to a vessel or aircraft, intended to assist a navigator to determine position or safe course, or to warn of dangers or obstructions to navigation.

(B) INCLUSIONS.—The term “Federal aid to navigation” includes a light, lens, lantern, antenna, sound signal, camera, sensor, piece of electronic navigation equipment, power source, or other piece of equipment associated with a device described in subparagraph (A).

(4) HISTORIC LIGHT STATION.—The term “historic light station” includes the light tower, lighthouse, keeper’s dwelling, garages, storage sheds, oil house, fog signal building, boat house, barn, pumphouse, tramhouse support structures, piers, walkways, underlying and appurtenant land and related real property and improvements associated with a historic light station that is a historic property.

#### **§ 305102. Duties of Secretary in providing a national historic light station program**

To provide a national historic light station program, the Secretary shall—

- (1) collect and disseminate information concerning historic light stations;
- (2) foster educational programs relating to the history, practice, and contribution to society of historic light stations;
- (3) sponsor or conduct research and study into the history of light stations;
- (4) maintain a listing of historic light stations; and
- (5) assess the effectiveness of the program established by this chapter regarding the conveyance of historic light stations.

#### **§ 305103. Selection of eligible entity and conveyance of historic light stations**

(a) PROCESS AND POLICIES.—The Secretary and the Administrator shall maintain a process and policies for identifying, and selecting, an eligible entity to which a historic light station could be conveyed for education, park, recreation, cultural, or historic preservation purposes, and to monitor the use of the light station by the eligible entity.

(b) APPLICATION REVIEW.—

(1) IN GENERAL.—The Secretary shall—

(A) review all applications for the conveyance of a historic light station, when the agency with administrative jurisdiction over the historic light station has determined the property to be excess property (as that term is defined in section 102 of title 40); and

(B) forward to the Administrator a single approved application for the conveyance of the historic light station.

(2) CONSULTATION.—When selecting an eligible entity, the Secretary shall consult with the State Historic Preservation Officer of the State in which the historic light station is located.



(c) CONVEYANCE OR SALE OF HISTORIC LIGHT STATIONS.—

(1) CONVEYANCE BY ADMINISTRATOR.—Except as provided in paragraph (2), after the Secretary's selection of an eligible entity, the Administrator shall convey, by quitclaim deed, without consideration, all right, title, and interest of the United States in and to a historic light station, subject to the conditions set forth in section 305104 of this title. The conveyance of a historic light station under this chapter shall not be subject to the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.) or section 416(d) of the Coast Guard Authorization Act of 1998 (Public Law 105–383, 14 U.S.C. 93 note).

(2) HISTORIC LIGHT STATION LOCATED WITHIN A SYSTEM UNIT OR A REFUGE WITHIN NATIONAL WILDLIFE REFUGE SYSTEM.—

(A) APPROVAL OF SECRETARY REQUIRED.—A historic light station located within the exterior boundaries of a System unit or a refuge within the National Wildlife Refuge System shall be conveyed or sold only with the approval of the Secretary.

(B) CONDITIONS OF CONVEYANCE.—If the Secretary approves the conveyance of a historic light station described in subparagraph (A), the conveyance shall be subject to the conditions set forth in section 305104 of this title and any other terms or conditions that the Secretary considers necessary to protect the resources of the System unit or wildlife refuge.

(C) CONDITIONS OF SALE.—If the Secretary approves the sale of a historic light station described in subparagraph (A), the sale shall be subject to the conditions set forth in paragraphs (1) to (4) and (8) of subsection (a), and subsection (b), of section 305104 of this title and any other terms or conditions that the Secretary considers necessary to protect the resources of the System unit or wildlife refuge.

(D) COOPERATIVE AGREEMENTS.—The Secretary is encouraged to enter into cooperative agreements with appropriate eligible entities with respect to historic light stations described in subparagraph (A), as provided in this division, to the extent that the cooperative agreements are consistent with the Secretary's responsibilities to manage and administer the System unit or wildlife refuge.

**§ 305104. Terms of conveyance**

(a) IN GENERAL.—The conveyance of a historic light station shall be made subject to any conditions, including the reservation of easements and other rights on behalf of the United States, that the Administrator considers necessary to ensure that—

(1) the Federal aids to navigation located at the historic light station in operation on the date of conveyance remain the personal property of the United States and continue to be operated and maintained by the United States for as long as needed for navigational purposes;

(2) there is reserved to the United States the right to remove, replace, or install any Federal aid to navigation located at the historic light station as may be necessary for navigational purposes;

(3) the eligible entity to which the historic light station is conveyed shall not interfere or allow interference in any manner with any Federal aid to navigation or hinder activities required for the operation and maintenance of any Federal aid to navigation without the express written permission of the head of the agency responsible for maintaining the Federal aid to navigation;

(4) (A) the eligible entity to which the historic light station is conveyed shall, at its own cost and expense, use and maintain the historic light station in accordance with this division, the Secretary of the Interior's Standards for the Treatment of Historic Properties contained in part 68 of title 36, Code of Federal Regulations, and other applicable laws; and

(B) any proposed changes to the historic light station shall be reviewed and approved by the Secretary in consultation with the State Historic Preservation Officer of the State in which the historic light station is located, for consistency with section 800.5(a)(2)(vii) of title 36, Code of Federal Regulations and the Secretary's Standards for Rehabilitation contained in section 67.7 of title 36, Code of Federal Regulations;

(5) the eligible entity to which the historic light station is conveyed shall make the historic light station available for education, park, recreation, cultural, or historic preservation purposes for the general public at reasonable times and under reasonable conditions;

(6) the eligible entity to which the historic light station is conveyed shall not sell, convey, assign, exchange, or encumber the historic light station, any part of the historic light station, or any associated historic artifact conveyed to the eligible entity in conjunction with the historic light station conveyance, including any lens or lantern, unless the sale, conveyance, assignment, exchange, or encumbrance is approved by the Secretary;

(7) the eligible entity to which the historic light station is conveyed shall not conduct any commercial activity at the historic light station, at any part of the historic light station, or in connection with any associated historic artifact conveyed to the eligible entity in conjunction with the historic light station conveyance, in any manner, unless the commercial activity is approved by the Secretary; and

(8) the United States shall have the right, at any time, to enter the historic light station without notice, for purposes of operating, maintaining, and inspecting any aid to navigation and for the purpose of ensuring compliance with this section, to the extent that it is not possible to provide advance notice.

(b) MAINTENANCE OF AID TO NAVIGATION.—Any eligible entity to which a historic light station is conveyed shall not be required to maintain any Federal aid to navigation associated with a historic light station, except any private aid to navigation permitted to the eligible entity under section 83 of title 14.

(c) REVERSION.—In addition to any term or condition established pursuant to this section, the conveyance of a historic light station shall include a condition that the historic light station, or any associated historic artifact conveyed to the eligible entity in conjunction with the historic light station conveyance, including any lens or lantern, at the option of the Administrator, shall revert to the United States and be placed under the administrative control of the Administrator, if—

(1) the historic light station, any part of the historic light station, or any associated historic artifact ceases to be available for education, park, recreation, cultural, or historic preservation purposes for the general public at reasonable times and under reasonable conditions that shall be set forth in the eligible entity's application;

(2) the historic light station or any part of the historic light station ceases to be maintained in a manner that ensures its present or future use as a site for a Federal aid to navigation;

(3) the historic light station, any part of the historic light station, or any associated historic artifact ceases to be maintained in compliance with this division, the Secretary of the Interior's

Standards for the Treatment of Historic Properties contained in part 68 of title 36, Code of Federal Regulations, and other applicable laws;

(4) the eligible entity to which the historic light station is conveyed sells, conveys, assigns, exchanges, or encumbers the historic light station, any part of the historic light fixture, or any associated historic artifact, without approval of the Secretary;

(5) the eligible entity to which the historic light station is conveyed conducts any commercial activity at the historic light station, at any part of the historic light station, or in conjunction with any associated historic artifact, without approval of the Secretary; or

(6) at least 30 days before the reversion, the Administrator provides written notice to the owner that the historic light station or any part of the historic light station is needed for national security purposes.

(d) LIGHT STATIONS ORIGINALLY CONVEYED UNDER OTHER AUTHORITY.—On receiving notice of an executed or intended conveyance by an owner that received from the Federal Government under authority other than this division a historic light station in which the United States retains a reversionary or other interest and that is conveying it to another person by sale, gift, or any other manner, the Secretary shall review the terms of the executed or proposed conveyance to ensure that any new owner is capable of or is complying with any and all conditions of the original conveyance. The Secretary may require the parties to the conveyance and relevant Federal agencies to provide information as is necessary to complete the review. If the Secretary determines that the new owner has not complied or is unable to comply with those conditions, the Secretary shall immediately advise the Administrator, who shall invoke any reversionary interest or take other action as may be necessary to protect the interests of the United States.

#### **§ 305105. Description of property**

(a) IN GENERAL.—The Administrator shall prepare the legal description of any historic light station conveyed under this chapter. The Administrator, in consultation with the Secretary of Homeland Security and the Secretary, may retain all right, title, and interest of the United States in and to any historical artifact, including any lens or lantern, that is associated with the historic light station and located at the historic light station at the time of conveyance. Wherever possible, the historical artifacts should be used in interpreting the historic light station. In cases where there is no method for preserving lenses and other artifacts and equipment in situ, priority should be given to preservation or museum entities most closely associated with the historic light station, if they meet loan requirements.

(b) ARTIFACTS.—Artifacts associated with, but not located at, a historic light station at the time of conveyance shall remain the property of the United States under the administrative control of the Secretary of Homeland Security.

(c) COVENANTS.—All conditions placed with the quitclaim deed of title to the historic light station shall be construed as covenants running with the land.

(d) SUBMERGED LAND.—No submerged land shall be conveyed under this chapter.

**§ 305106. Historic light station sales****(a) IN GENERAL.—**

(1) **WHEN SALE MAY OCCUR.**—If no applicant is approved for the conveyance of a historic light station pursuant to sections 305101 through 305105 of this title, the historic light station shall be offered for sale.

(2) **TERMS OF SALE.**—Terms of the sales—

(A) shall be developed by the Administrator; and

(B) shall be consistent with the requirements of paragraphs (1) to (4) and (8) of subsection (a), and subsection (b), of section 305104 of this title.

(3) **COVENANTS TO BE INCLUDED IN CONVEYANCE DOCUMENTS.**— Conveyance documents shall include all necessary covenants to protect the historical integrity of the historic light station and ensure that any Federal aid to navigation located at the historic light station is operated and maintained by the United States for as long as needed for that purpose.

**(b) NET SALE PROCEEDS.—**

(1) **DISPOSITION AND USE OF FUNDS.**—Net sale proceeds from the disposal of a historic light station—

(A) located on public domain land shall be transferred to the National Maritime Heritage Grants Program established under chapter 3087 in the Department of the Interior; and

(B) under the administrative control of the Secretary of Homeland Security—

(i) shall be credited to the Coast Guard's Operating Expenses appropriation account; and

(ii) shall be available for obligation and expenditure for the maintenance of light stations remaining under the administrative control of the Secretary of Homeland Security.

(2) **AVAILABILITY OF FUNDS.**—The funds referred to in paragraph (1)(B) shall remain available until expended and shall be available in addition to funds available in the Coast Guard's Operating Expense appropriation for that purpose.

**Chapter 3053—National Center for Preservation Technology and Training**

Sec.

305301. Definitions.

305302. National Center for Preservation Technology and Training.

305303. Preservation Technology and Training Board.

305304. Preservation grants.

305305. General provisions.

305306. Service preservation centers and offices.

**§ 305301. Definitions**

In this chapter:

(1) BOARD.—The term “Board” means the Preservation Technology and Training Board established pursuant to section 305303 of this title.

(2) CENTER.—The term “Center” means the National Center for Preservation Technology and Training established pursuant to section 305302 of this title.

**§ 305302. National Center for Preservation Technology and Training**

(a) ESTABLISHMENT.—There is established within the Department of the Interior a National Center for Preservation Technology and Training. The Center shall be located at Northwestern State University of Louisiana in Natchitoches, Louisiana.

(b) PURPOSES.—The purposes of the Center shall be to—

(1) develop and distribute preservation and conservation skills and technologies for the identification, evaluation, conservation, and interpretation of historic property;

(2) develop and facilitate training for Federal, State, and local resource preservation professionals, cultural resource managers, maintenance personnel, and others working in the preservation field;

(3) take steps to apply preservation technology benefits from ongoing research by other agencies and institutions;

(4) facilitate the transfer of preservation technology among Federal agencies, State and local governments, universities, international organizations, and the private sector; and

(5) cooperate with related international organizations including the International Council on Monuments and Sites, the International Center for the Study of Preservation and Restoration of Cultural Property, and the International Council on Museums.

(c) PROGRAMS.—The purposes shall be carried out through research, professional training, technical assistance, and programs for public awareness, and through a program of grants established under section 305304 of this title.

(d) EXECUTIVE DIRECTOR.—The Center shall be headed by an Executive Director with demonstrated expertise in historic preservation appointed by the Secretary with advice of the Board.

(e) ASSISTANCE FROM SECRETARY.—The Secretary shall provide the Center assistance in obtaining such personnel, equipment, and facilities as may be needed by the Center to carry out its activities.

**§ 305303. Preservation Technology and Training Board**

(a) ESTABLISHMENT.—There is established a Preservation Technology and Training Board.

(b) DUTIES.—The Board shall—

(1) provide leadership, policy advice, and professional oversight to the Center;

(2) advise the Secretary on priorities and the allocation of grants among the activities of the Center; and

(3) submit an annual report to the President and Congress.

(c) MEMBERSHIP.—The Board shall be comprised of—

(1) the Secretary;

(2) 6 members appointed by the Secretary, who shall represent appropriate Federal, State, and local agencies, State and local historic preservation commissions, and other public and international organizations; and

(3) 6 members appointed by the Secretary on the basis of outstanding professional qualifications, who represent major organizations in the fields of archeology, architecture, conservation, curation, engineering, history, historic preservation, landscape architecture, planning, or preservation education.

#### **§ 305304. Preservation grants**

(a) IN GENERAL.—The Secretary, in consultation with the Board, shall provide preservation technology and training grants to eligible applicants with a demonstrated institutional capability and commitment to the purposes of the Center, in order to ensure an effective and efficient system of research, information distribution, and skills training in all the related historic preservation fields.

(b) GRANT REQUIREMENTS.—

(1) ALLOCATION.—Grants provided under this section shall be allocated in such a fashion as to reflect the diversity of the historic preservation fields and shall be geographically distributed.

(2) LIMIT ON AMOUNT A RECIPIENT MAY RECEIVE.—No grant recipient may receive more than 10 percent of the grants allocated under this section within any year.

(3) LIMIT ON ADMINISTRATIVE COSTS.—The total administrative costs, direct and indirect, charged for carrying out grants under this section may not exceed 25 percent of the aggregate costs.

(c) ELIGIBLE APPLICANTS.—Eligible applicants may include—

(1) Federal and non-Federal laboratories;

(2) accredited museums;

(3) universities;

(4) nonprofit organizations;

(5) System units and offices and Cooperative Park Study Units of the System;

(6) State Historic Preservation Offices;

(7) tribal preservation offices; and

(8) Native Hawaiian organizations.

(d) STANDARDS AND METHODS.—Grants shall be awarded in accordance with accepted professional standards and methods, including peer review of projects.

#### **§ 305305. General provisions**

(a) ACCEPTANCE OF GRANTS AND TRANSFERS.—The Center may accept—

(1) grants and donations from private individuals, groups, organizations, corporations, foundations, and other entities; and

(2) transfers of funds from other Federal agencies.

(b) CONTRACTS AND COOPERATIVE AGREEMENTS.—Subject to appropriations, the Center may enter into contracts and cooperative agreements with Federal, State, local, and tribal governments, Native Hawaiian organizations, educational institutions, and other public entities to carry out the Center's responsibilities under this chapter.

(c) ADDITIONAL FUNDS.—Funds appropriated for the Center shall be in addition to funds appropriated for Service programs, centers, and offices in existence on October 30, 1992.

#### **§ 305306. Service preservation centers and offices**

To improve the use of existing Service resources, the Secretary shall fully utilize and further develop the Service preservation (including conservation) centers and regional offices. The Secretary shall improve the coordination of the centers and offices within the Service, and shall, where appropriate, coordinate their activities with the Center and with other appropriate parties.

### **Chapter 3055—National Building Museum**

Sec.

305501. Definitions.

305502. Cooperative agreement to operate museum.

305503. Activities and functions.

305504. Matching grants to Committee.

305505. Annual report.

#### **§ 305501. Definitions**

In this chapter:

(1) BUILDING ARTS.—The term “building arts” includes all practical and scholarly aspects of prehistoric, historic, and contemporary architecture, archeology, construction, building technology and skills, landscape architecture, preservation and conservation, building and construction, engineering, urban and community design and renewal, city and regional planning, and related professions, skills, trades, and crafts.

(2) COMMITTEE.—The term “Committee” means the Committee for a National Museum of the Building Arts, Incorporated, a nonprofit corporation organized and existing under the laws of the District of Columbia, or its successor.



**§ 305502. Cooperative agreement to operate museum**

To provide a national center to commemorate and encourage the building arts and to preserve and maintain a nationally significant building that exemplifies the great achievements of the building arts in the United States, the Secretary and the Administrator of General Services shall enter into a cooperative agreement with the Committee for the operation of a National Building Museum in the Federal building located in the block bounded by Fourth Street, Fifth Street, F Street, and G Street, Northwest in Washington, District of Columbia. The cooperative agreement shall include provisions that—

- (1) make the site available to the Committee without charge;
- (2) provide, subject to available appropriations, such maintenance, security, information, janitorial, and other services as may be necessary to ensure the preservation and operation of the site; and
- (3) prescribe reasonable terms and conditions by which the Committee can fulfill its responsibilities under this division.

**§ 305503. Activities and functions**

The National Building Museum shall—

- (1) collect and disseminate information concerning the building arts, including the establishment of a national reference center for current and historic documents, publications, and research relating to the building arts;
- (2) foster educational programs relating to the history, practice, and contribution to society of the building arts, including promotion of imaginative educational approaches to enhance understanding and appreciation of all facets of the building arts;
- (3) publicly display temporary and permanent exhibits illustrating, interpreting and demonstrating the building arts;
- (4) sponsor or conduct research and study into the history of the building arts and their role in shaping our civilization; and
- (5) encourage contributions to the building arts.

**§ 305504. Matching grants to Committee**

The Secretary shall provide matching grants to the Committee for its programs related to historic preservation. The Committee shall match the grants in such a manner and with such funds and services as shall be satisfactory to the Secretary, except that not more than \$500,000 may be provided to the Committee in any one fiscal year.

**§ 305505. Annual report**

The Committee shall submit an annual report to the Secretary and the Administrator of General Services concerning its activities under this chapter and shall provide the Secretary and the Administrator of General Services with such other information as the Secretary may consider necessary or advisable.

## Subdivision 5—Federal Agency Historic Preservation Responsibilities

### Chapter 3061—Program Responsibilities and Authorities

#### Subchapter I—In General

##### Sec.

- 306101. Assumption of responsibility for preservation of historic property.
- 306102. Preservation program.
- 306103. Recordation of historic property prior to alteration or demolition.
- 306104. Agency Preservation Officer.
- 306105. Agency programs and projects.
- 306106. Review of plans of transferees of surplus federally owned historic property.
- 306107. Planning and actions to minimize harm to National Historic Landmarks.
- 306108. Effect of undertaking on historic property.
- 306109. Costs of preservation as eligible project costs.
- 306110. Annual preservation awards program.
- 306111. Environmental impact statement.
- 306112. Waiver of provisions in event of natural disaster or imminent threat to national security.
- 306113. Anticipatory demolition.
- 306114. Documentation of decisions respecting undertakings.

#### Subchapter II—Lease, Exchange, or Management of Historic Property

- 306121. Lease or exchange.
- 306122. Contracts for management of historic property.

#### Subchapter III—Protection and Preservation of Resources

- 306131. Standards and guidelines.

### Subchapter I—In General

#### § 306101. Assumption of responsibility for preservation of historic property

##### (a) IN GENERAL.—

(1) AGENCY HEAD RESPONSIBILITY.—The head of each Federal agency shall assume responsibility for the preservation of historic property that is owned or controlled by the agency.

(2) USE OF AVAILABLE HISTORIC PROPERTY.—Prior to acquiring, constructing, or leasing a building for purposes of carrying out agency responsibilities, a Federal agency shall use, to the maximum extent feasible, historic property available to the agency, in accordance with Executive Order No. 13006 (40 U.S.C. 3306 note).

(3) NECESSARY PRESERVATION.—Each Federal agency shall undertake, consistent with the preservation of historic property, the mission of the agency, and the professional standards established pursuant to subsection (c), any preservation as may be necessary to carry out this chapter.

(b) GUIDELINES FOR FEDERAL AGENCY RESPONSIBILITY FOR AGENCY-OWNED HISTORIC PROPERTY.—In consultation with the Council, the Secretary shall promulgate guidelines for Federal agency responsibilities under this subchapter (except section 306108).

(c) PROFESSIONAL STANDARDS FOR PRESERVATION OF FEDERALLY OWNED OR CONTROLLED HISTORIC PROPERTY.—The Secretary shall establish, in consultation with the Secretary of Agriculture, the Secretary of Defense, the Smithsonian Institution, and the Administrator of General Services, professional standards for the preservation of historic property in Federal ownership or control.

**§ 306102. Preservation program**

(a) ESTABLISHMENT.—Each Federal agency shall establish (except for programs or undertakings exempted pursuant to section 304108(c) of this title), in consultation with the Secretary, a preservation program for the identification, evaluation, and nomination to the National Register, and protection, of historic property.

(b) REQUIREMENTS.—The program shall ensure that—

- (1) historic property under the jurisdiction or control of the agency is identified, evaluated, and nominated to the National Register;
  - (2) historic property under the jurisdiction or control of the agency is managed and maintained in a way that considers the preservation of their historic, archeological, architectural, and cultural values in compliance with section 306108 of this title and gives special consideration to the preservation of those values in the case of property designated as having national significance;
  - (3) the preservation of property not under the jurisdiction or control of the agency but potentially affected by agency actions is given full consideration in planning;
  - (4) the agency's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and the private sector; and
  - (5) the agency's procedures for compliance with section 306108 of this title—
    - (A) are consistent with regulations promulgated by the Council pursuant to section 304108(a) and (b) of this title;
    - (B) provide a process for the identification and evaluation of historic property for listing on the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on historic property will be considered; and
- (c) provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3(c) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(c)).

**§ 306103. Recordation of historic property prior to alteration or demolition**

Each Federal agency shall initiate measures to ensure that where, as a result of Federal action or assistance carried out by the agency, a historic property is to be substantially altered or demolished—

- (1) timely steps are taken to make or have made appropriate records; and
- (2) the records are deposited, in accordance with section 302107 of this title, in the Library of Congress or with such other appropriate agency as the Secretary may designate, for future use and reference.

**§ 306104. Agency Preservation Officer**

The head of each Federal agency (except an agency that is exempted under section 304108(c) of this title) shall designate a qualified official as the agency's Preservation Officer who shall be responsible for coordinating the agency's activities under this division. Each Preservation Officer may, to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under section 306101(c) of this title.

**§ 306105. Agency programs and projects**

Consistent with the agency's missions and mandates, each Federal agency shall carry out agency programs and projects (including those under which any Federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this division and give consideration to programs and projects that will further the purposes of this division.

**§ 306106. Review of plans of transferees of surplus federally owned historic property**

The Secretary shall review and approve the plans of transferees of surplus federally owned historic property not later than 90 days after receipt of the plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced.

**§ 306107. Planning and actions to minimize harm to National Historic Landmarks**

Prior to the approval of any Federal undertaking that may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall to the maximum extent possible undertake such planning and actions as may be necessary to minimize harm to the landmark. The head of the Federal agency shall afford the Council a reasonable opportunity to comment with regard to the undertaking.

**§ 306108. Effect of undertaking on historic property**

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property. The head of the Federal agency shall afford the Council a reasonable opportunity to comment with regard to the undertaking.

**§ 306109. Costs of preservation as eligible project costs**

A Federal agency may include the costs of preservation activities of the agency under this division as eligible project costs in all undertakings of the agency or assisted by the agency. The eligible project costs may include amounts paid by a Federal agency to a State to be used in carrying out the preservation responsibilities of the Federal agency under this division, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of the license or permit.

**§ 306110. Annual preservation awards program**

The Secretary shall establish an annual preservation awards program under which the Secretary may make monetary awards in amounts of not to exceed \$1,000 and provide citations for special achievement to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic property. The program may include the issuance of annual awards by the President to any citizen of the United States recommended for the award by the Secretary.

**§ 306111. Environmental impact statement**

Nothing in this division shall be construed to—

(1) require the preparation of an environmental impact statement where the statement would not otherwise be required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

(2) provide any exemption from any requirement respecting the preparation of an environmental impact statement under that Act.

**§ 306112. Waiver of provisions in event of natural disaster or imminent threat to national security**

The Secretary shall promulgate regulations under which the requirements of this subchapter (except section 306108) may be waived in whole or in part in the event of a major natural disaster or an imminent threat to national security.

**§ 306113. Anticipatory demolition**

Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant that, with intent to avoid the requirements of section 306108 of this title, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed the significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting the assistance despite the adverse effect created or permitted by the applicant.

**§ 306114. Documentation of decisions respecting undertakings**

With respect to any undertaking subject to section 306108 of this title that adversely affects any historic property for which a Federal agency has not entered into an agreement pursuant to regulations issued by the Council, the head of the agency shall document any decision made pursuant to section 306108 of this title. The head of the agency may not delegate the responsibility to document a decision pursuant to this section. Where an agreement pursuant to regulations issued by the Council has been executed with respect to an undertaking, the agreement shall govern the undertaking and all of its parts.

**Subchapter II—Lease, Exchange, or Management of Historic Property****§ 306121. Lease or exchange**

(a) **AUTHORITY TO LEASE OR EXCHANGE.**—Notwithstanding any other provision of law, each Federal agency, after consultation with the Council—

(1) shall, to the extent practicable, establish and implement alternatives (including adaptive use) for historic property that is not needed for current or projected agency purposes; and

(2) may lease historic property owned by the agency to any person or organization, or exchange any property owned by the agency with comparable historic property, if the agency head determines that the lease or exchange will adequately ensure the preservation of the historic property.

(b) PROCEEDS OF LEASE.—Notwithstanding any other provision of law, the proceeds of a lease under subsection (a) may be retained by the agency entering into the lease and used to defray the costs of administration, maintenance, repair, and related expenses incurred by the agency with respect to that property or other property that is on the National Register that is owned by, or are under the jurisdiction or control of, the agency. Any surplus proceeds from the leases shall be deposited in the Treasury at the end of the 2d fiscal year following the fiscal year in which the proceeds are received.

#### **§ 306122. Contracts for management of historic property**

The head of any Federal agency having responsibility for the management of any historic property may, after consultation with the Council, enter into a contract for the management of the property. The contract shall contain terms and conditions that the head of the agency considers necessary or appropriate to protect the interests of the United States and ensure adequate preservation of the historic property.

### **Subchapter III—Protection and Preservation of Resources**

#### **§ 306131. Standards and guidelines**

(a) STANDARDS.—

(1) IN GENERAL.—Each Federal agency that is responsible for the protection of historic property (including archeological property) pursuant to this division or any other law shall ensure that—

(A) all actions taken by employees or contractors of the agency meet professional standards under regulations developed by the Secretary in consultation with the Council, other affected agencies, and the appropriate professional societies of archeology, architecture, conservation, history, landscape architecture, and planning;

(B) agency personnel or contractors responsible for historic property meet qualification standards established by the Office of Personnel Management in consultation with the Secretary and appropriate professional societies of archeology, architecture, conservation, curation, history, landscape architecture, and planning; and

(C) records and other data, including data produced by historical research and archeological surveys and excavations, are permanently maintained in appropriate databases and made available to potential users pursuant to such regulations as the Secretary shall promulgate.

(2) CONSIDERATIONS.—The standards referred to in paragraph (1)(B) shall consider the particular skills and expertise needed for the preservation of historic property and shall be equivalent requirements for the disciplines involved.

(3) REVISION.—The Office of Management and Budget shall revise qualification standards for the disciplines involved.

(b) GUIDELINES.—To promote the preservation of historic property eligible for listing on the National Register, the Secretary shall, in consultation with the Council, promulgate guidelines to ensure that Federal, State, and tribal historic preservation programs subject to this division include plans to—

- (1) provide information to the owners of historic property (including architectural, curatorial, and archeological property) with demonstrated or likely research significance, about the need for protection of the historic property, and the available means of protection;
- (2) encourage owners to preserve historic property intact and in place and offer the owners of historic property information on the tax and grant assistance available for the donation of the historic property or of a preservation easement of the historic property;
- (3) encourage the protection of Native American cultural items (within the meaning of section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001)) and of property of religious or cultural importance to Indian tribes, Native Hawaiian organizations, or other Native American groups; and
- (4) encourage owners that are undertaking archeological excavations to—
  - (A) conduct excavations and analyses that meet standards for federally-sponsored excavations established by the Secretary;
  - (B) donate or lend artifacts of research significance to an appropriate research institution;
  - (C) allow access to artifacts for research purposes; and
  - (D) prior to excavating or disposing of a Native American cultural item in which an Indian tribe or Native Hawaiian organization may have an interest under subparagraph (B) or (C) of section 3(a)(2) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(a)(2)(B), (C)), give notice to and consult with the Indian tribe or Native Hawaiian organization.

## **Subdivision 6—Miscellaneous**

### **Chapter 3071—Miscellaneous**

Sec.

307101. World Heritage Convention.

307102. Effective date of regulations.

307103. Access to information.

307104. Inapplicability of division to White House, Supreme Court building, or United States Capitol.

307105. Attorney's fees and costs to prevailing parties in civil actions.

307106. Authorization for expenditure of appropriated funds.

307107. Donations and bequests of money, personal property, and less than fee interests in historic property.

307108. Privately donated funds.

#### **§ 307101. World Heritage Convention**

- (a) **AUTHORITY OF SECRETARY.**—In carrying out this section, the Secretary of the Interior may act directly or through an appropriate officer in the Department of the Interior.
- (b) **PARTICIPATION BY UNITED STATES.**—The Secretary shall direct and coordinate participation by the United States in the World Heritage Convention in cooperation with the Secretary of State, the Smithsonian Institution, and the Council. Whenever possible, expenditures incurred in carrying out activities in cooperation with other nations and international organizations shall be paid for in such excess currency of the country or area where the expense is incurred as may be available to the United States.



(c) **NOMINATION OF PROPERTY TO WORLD HERITAGE COMMITTEE.**— The Secretary shall periodically nominate property that the Secretary determines is of international significance to the World Heritage Committee on behalf of the United States. No property may be nominated unless it has previously been determined to be of national significance. Each nomination shall include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment (including restrictive covenants, easements, or other forms of protection). Before making any nomination, the Secretary shall notify the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(d) **NOMINATION OF NON-FEDERAL PROPERTY TO WORLD HERITAGE COMMITTEE REQUIRES WRITTEN CONCURRENCE OF OWNER.**—No non-Federal property may be nominated by the Secretary to the World Heritage Committee for inclusion on the World Heritage List unless the owner of the property concurs in the nomination in writing.

(e) **CONSIDERATION OF UNDERTAKING ON PROPERTY.**—Prior to the approval of any undertaking outside the United States that may directly and adversely affect a property that is on the World Heritage List or on the applicable country's equivalent of the National Register, the head of a Federal agency having direct or indirect jurisdiction over the undertaking shall take into account the effect of the undertaking on the property for purposes of avoiding or mitigating any adverse effect.

#### **§ 307102. Effective date of regulations**

(a) **PUBLICATION IN FEDERAL REGISTER.**—No final regulation of the Secretary shall become effective prior to the expiration of 30 calendar days after it is published in the Federal Register during which either or both Houses of Congress are in session.

(b) **DISAPPROVAL OF REGULATION BY RESOLUTION OF CONGRESS.**— The regulation shall not become effective if, within 90 calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the regulation promulgated by the Secretary dealing with the matter of , which regulation was transmitted to Congress on , " the blank spaces in the resolution being appropriately filled.

(c) **FAILURE OF CONGRESS TO ADOPT RESOLUTION OF DISAPPROVAL OF REGULATION.**—If at the end of 60 calendar days of continuous session of Congress after the date of promulgation of a regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the regulation, and neither House has adopted such a resolution, the regulation may go into effect immediately. If, within the 60 calendar days, a committee has reported or been discharged from further consideration of such a resolution, the regulation may go into effect not sooner than 90 calendar days of continuous session of Congress after its promulgation unless disapproved as provided for.

(d) **SESSIONS OF CONGRESS.**—For purposes of this section—

(1) continuity of session is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of 60 and 90 calendar days of continuous session of Congress.

(e) **CONGRESSIONAL INACTION OR REJECTION OF RESOLUTION OF DISAPPROVAL NOT DEEMED APPROVAL OF REGULATION.**—Congressional inaction on or rejection of a resolution of disapproval shall not be deemed an expression of approval of the regulation.

**§ 307103. Access to information**

(a) **AUTHORITY TO WITHHOLD FROM DISCLOSURE.**—The head of a Federal agency, or other public official receiving grant assistance pursuant to this division, after consultation with the Secretary, shall withhold from disclosure to the public information about the location, character, or ownership of a historic property if the Secretary and the agency determine that disclosure may—

- (1) cause a significant invasion of privacy;
- (2) risk harm to the historic property; or
- (3) impede the use of a traditional religious site by practitioners.

(b) **ACCESS DETERMINATION.**—When the head of a Federal agency or other public official determines that information should be withheld from the public pursuant to subsection (a), the Secretary, in consultation with the Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this division.

(c) **CONSULTATION WITH COUNCIL.**—When information described in subsection (a) has been developed in the course of an agency's compliance with section 306107 or 306108 of this title, the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b).

**§ 307104. Inapplicability of division to White House, Supreme Court building, or United States Capitol**

Nothing in this division applies to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds.

**§ 307105. Attorney's fees and costs to prevailing parties in civil actions**

In any civil action brought in any United States district court by any interested person to enforce this division, if the person substantially prevails in the action, the court may award attorney's fees, expert witness fees, and other costs of participating in the civil action, as the court considers reasonable.

**§ 307106. Authorization for expenditure of appropriated funds**

Where appropriate, each Federal agency may expend funds appropriated for its authorized programs for the purposes of activities carried out pursuant to this division, except to the extent that appropriations legislation expressly provides otherwise.

**§ 307107. Donations and bequests of money, personal property, and less than fee interests in historic property**

(a) **MONEY AND PERSONAL PROPERTY.**—The Secretary may accept donations and bequests of money and personal property for the purposes of this division and shall hold, use, expend, and administer the money and personal property for those purposes.

(b) **LESS THAN FEE INTEREST IN HISTORIC PROPERTY.**—The Secretary may accept gifts or donations of less than fee interests in any historic property where the acceptance of an interest will facilitate the conservation or preservation of the historic property. Nothing in this section or in any provision of this division shall be construed to affect or impair any other authority of the Secretary under other provision of law to accept or acquire any property for conservation or preservation or for any other purpose.

**§ 307108. Privately donated funds**

(a) PROJECTS FOR WHICH FUNDS MAY BE USED.—In furtherance of the purposes of this division, the Secretary may accept the donation of funds that may be expended by the Secretary for projects to acquire, restore, preserve, or recover data from any property included on the National Register, as long as the project is owned by a State, any unit of local government, or any nonprofit entity.

(b) CONSIDERATION OF FACTORS RESPECTING EXPENDITURE OF FUNDS.—

(1) IN GENERAL.—In expending the funds, the Secretary shall give due consideration to—

- (A) the national significance of the project;
- (B) its historical value to the community;
- (C) the imminence of its destruction or loss; and
- (D) the expressed intentions of the donor.

(2) FUNDS AVAILABLE WITHOUT REGARD TO MATCHING REQUIREMENTS.—Funds expended under this subsection shall be made available without regard to the matching requirements established by sections 302901 and 302902(b) of this title, but the recipient of the funds shall be permitted to utilize them to match any grants from the Historic Preservation Fund.

(c) TRANSFER OF UNOBLIGATED FUNDS.—The Secretary may transfer unobligated funds previously donated to the Secretary for the purposes of the Service, with the consent of the donor, and any funds so transferred shall be used or expended in accordance with this division.

Old Section Name	Old Title 16 Legal Cite	Current Title 54 Legal Cite
<b>Section 1</b>	16 U.S.C. 470(a)	54 U.S.C. 100101 note. It provides the short title: the "National Historic Preservation Act."
	16 U.S.C. 470(b)	Not repealed but omitted from the text of title 54. It provides findings for the National Historic Preservation Act. It is still valid law and may be cited as: Section 1 of the National Historic Preservation Act, Pub. L. No. 89-665, as amended by Pub. L. No. 96-515.
<b>Section 2</b>	16 U.S.C. 470-1	54 U.S.C. 300101
<b>Section 101</b>	16 U.S.C. 470a(a)(1)(A) (1st sentence)	54 U.S.C. 302101
	16 U.S.C. 470a(a)(1)(A) (last sentence)	54 U.S.C. 302106
	16 U.S.C. 470a(a)(1)(B)	54 U.S.C. 302102
	16 U.S.C. 470a(a)(2)	54 U.S.C. 302103
	16 U.S.C. 470a(a)(3) through (5)	54 U.S.C. 302104
	16 U.S.C. 470a(a)(6)	54 U.S.C. 302105
	16 U.S.C. 470a(a)(7)	54 U.S.C. 302107
	16 U.S.C. 470a(a)(8)	54 U.S.C. 302108
	16 U.S.C. 470a(b)(1)	54 U.S.C. 302301
	16 U.S.C. 470a(b)(2)	54 U.S.C. 302302
	16 U.S.C. 470a(b)(3)	54 U.S.C. 302303
	16 U.S.C. 470a(b)(4)	54 U.S.C. 302304
	16 U.S.C. 470a(b)(5)	Repealed as obsolete. It provided that any State historic preservation program in effect under prior authority of law could be treated as an approved program for purposes of 16 U.S.C. 470a(b) until the earlier of the date on which the Secretary approved a program submitted by the State under 16 U.S.C. 470a(b) or 3 years after December 12, 1992.
	16 U.S.C. 470a(b)(6)	54 U.S.C. 302304
	16 U.S.C. 470a(c)(1) (1st sentence)	54 U.S.C. 302502
	16 U.S.C. 470a(c)(1) (2d, last sentences)	54 U.S.C. 302503
	16 U.S.C. 470a(c)(2)	54 U.S.C. 302504
	16 U.S.C. 470a(c)(3)	54 U.S.C. 302505
	16 U.S.C. 470a(c)(4)	54 U.S.C. 302501
	16 U.S.C. 470a(d)(1)	54 U.S.C. 302701
	16 U.S.C. 470a(d)(2)	54 U.S.C. 302702
	16 U.S.C. 470a(d)(3)	54 U.S.C. 302703
	16 U.S.C. 470a(d)(4)	54 U.S.C. 302704
	16 U.S.C. 470a(d)(5)	54 U.S.C. 302705
	16 U.S.C. 470a(d)(6)	54 U.S.C. 302706
	16 U.S.C. 470a(e)(1)	54 U.S.C. 302902
	16 U.S.C. 470a(e)(2)	54 U.S.C. 302903
	16 U.S.C. 470a(e)(3)(A)	54 U.S.C. 302904
	16 U.S.C. 470a(e)(3)(B)	54 U.S.C. 302906
	16 U.S.C. 470a(e)(3)(C)	54 U.S.C. 302904
	16 U.S.C. 470a(e)(4)	54 U.S.C. 302905
	16 U.S.C. 470a(e)(5)	54 U.S.C. 302907
	16 U.S.C. 470a(e)(6)	54 U.S.C. 302908
	16 U.S.C. 470a(f)	54 U.S.C. 302909
	16 U.S.C. 470a(g), (h)	54 U.S.C. 306101
	16 U.S.C. 470a(i)	54 U.S.C. 303902
	16 U.S.C. 470a(j)	54 U.S.C. 303903
<b>Section 102</b>	16 U.S.C. 470b(a) (1st sentence paragraph (1))	54 U.S.C. 302901
	16 U.S.C. 470b(a) (1st sentence paragraphs (2) through (6))	54 U.S.C. 302902
	16 U.S.C. 470b(a) (2d sentence)	54 U.S.C. 302902
	16 U.S.C. 470b(a) (last sentence)	54 U.S.C. 302901
	16 U.S.C. 470b(b)	54 U.S.C. 302902
	16 U.S.C. 470b(c)	Previously repealed.
	16 U.S.C. 470b(d) (relating to remaining cost of project)	54 U.S.C. 302902
	16 U.S.C. 470b(d) (relating to availability)	54 U.S.C. 302901

	16 U.S.C. 470b(e)	54 U.S.C. 302902
<b>Section 103</b>	16 U.S.C. 470c	54 U.S.C. 302902
<b>Section 104</b>	16 U.S.C. 470d	54 U.S.C. 303901
<b>Section 105</b>	16 U.S.C. 470e	54 U.S.C. 302910
<b>Section 106</b>	16 U.S.C. 470f	54 U.S.C. 306108
<b>Section 107</b>	16 U.S.C. 470g	54 U.S.C. 307104
<b>Section 108</b>	16 U.S.C. 470h (1st paragraph)	54 U.S.C. 303101
	16 U.S.C. 470h (last paragraph 1st sentence)	54 U.S.C. 303102
	16 U.S.C. 470h (last paragraph last sentence)	54 U.S.C. 303103
<b>Section 109</b>	16 U.S.C. 470h-1	54 U.S.C. 307108
<b>Section 110</b>	16 U.S.C. 470h-2(a)(1)	54 U.S.C. 306101
	16 U.S.C. 470h-2(a)(2)	54 U.S.C. 306102
	16 U.S.C. 470h-2(b)	54 U.S.C. 306103
	16 U.S.C. 470h-2(c)	54 U.S.C. 306104
	16 U.S.C. 470h-2(d)	54 U.S.C. 306105
	16 U.S.C. 470h-2(e)	54 U.S.C. 306106
	16 U.S.C. 470h-2(f)	54 U.S.C. 306107
	16 U.S.C. 470h-2(g)	54 U.S.C. 306109
	16 U.S.C. 470h-2(h)	54 U.S.C. 306110
	16 U.S.C. 470h-2(i)	54 U.S.C. 306111
	16 U.S.C. 470h-2(j)	54 U.S.C. 306112
	16 U.S.C. 470h-2(k)	54 U.S.C. 306113
	16 U.S.C. 470h-2(l)	54 U.S.C. 306114
<b>Section 111</b>	16 U.S.C. 470h-3(a), (b)	54 U.S.C. 306121
	16 U.S.C. 470h-3(c)	54 U.S.C. 306122
<b>Section 112</b>	16 U.S.C. 470h-4	54 U.S.C. 306131
<b>Section 113 (Repealed)</b>	16 U.S.C. 470h-5	Repealed as obsolete. It provided that the Secretary study the suitability and feasibility of alternatives for controlling illegal interstate and international traffic in antiquities and not later than 18 months after October 30, 1992, submit to Congress a report detailing the Secretary's findings and recommendations from the study.
<b>Section 201</b>	16 U.S.C. 470i	54 U.S.C. 304101
<b>Section 202</b>	16 U.S.C. 470j	54 U.S.C. 304102
<b>Section 203</b>	16 U.S.C. 470k	54 U.S.C. 304103
<b>Section 204</b>	16 U.S.C. 470l	54 U.S.C. 304104
<b>Section 205</b>	16 U.S.C. 470m	54 U.S.C. 304105
<b>Section 206</b>	16 U.S.C. 470n	54 U.S.C. 304106
<b>Section 207 (Repealed)</b>	16 U.S.C. 470o	Repealed as obsolete. It provided that personnel, property, records, and unexpended balances of funds be transferred by the Department of the Interior to the Advisory Council on Historic Preservation within 60 days of the effective date of Public Law 94-422, which was approved on September 28, 1976.
<b>Section 208</b>	16 U.S.C. 470p	54 U.S.C. 304105
<b>Section 209</b>	16 U.S.C. 470q	54 U.S.C. 304105
<b>Section 210</b>	16 U.S.C. 470r	54 U.S.C. 304107
<b>Section 211</b>	16 U.S.C. 470s	54 U.S.C. 304108
<b>Section 212</b>	16 U.S.C. 470t(a) (1st sentence)	54 U.S.C. 304109
	16 U.S.C. 470t(a) (last sentence)	Repealed as unnecessary. It authorized to be appropriated amounts necessary to carry out this part.
	16 U.S.C. 470t(b)	54 U.S.C. 304109
<b>Section 213</b>	16 U.S.C. 470u	54 U.S.C. 304110
<b>Section 214</b>	16 U.S.C. 470v	54 U.S.C. 304108
<b>Section 215</b>	16 U.S.C. 470v-1	54 U.S.C. 304111
<b>Section 216</b>	16 U.S.C. 470v-2	54 U.S.C. 304112
<b>Section 301</b>	16 U.S.C. 470w(1)	54 U.S.C. 300301
	16 U.S.C. 470w(2)	54 U.S.C. 300317
	16 U.S.C. 470w(3)	54 U.S.C. 300310

	16 U.S.C. 470w(4)	54 U.S.C. 300309
	16 U.S.C. 470w(5)	54 U.S.C. 300308
	16 U.S.C. 470w(6)	54 U.S.C. 300311
	16 U.S.C. 470w(7)	54 U.S.C. 300320
	16 U.S.C. 470w(8)	54 U.S.C. 300315
	16 U.S.C. 470w(9)	54 U.S.C. 300304
	16 U.S.C. 470w(10)	54 U.S.C. 300305
	16 U.S.C. 470w(11)	54 U.S.C. 300316
	16 U.S.C. 470w(12)	54 U.S.C. 300318
	16 U.S.C. 470w(13)	54 U.S.C. 300307
	16 U.S.C. 470w(14)	54 U.S.C. 300319
	16 U.S.C. 470w(15)	54 U.S.C. 300302
	16 U.S.C. 470w(16)	54 U.S.C. 300303
	16 U.S.C. 470w(17)	54 U.S.C. 300313
	16 U.S.C. 470w(18)	54 U.S.C. 300314
<b>Section 302</b>	16 U.S.C. 470w-1	54 U.S.C. 307106
<b>Section 303</b>	16 U.S.C. 470w-2	54 U.S.C. 307107
<b>Section 304</b>	16 U.S.C. 470w-3	54 U.S.C. 307103
<b>Section 305</b>	16 U.S.C. 470w-4	54 U.S.C. 307105
<b>Section 306</b>	16 U.S.C. 470w-5(a) (1st sentence)	54 U.S.C. 305502
	16 U.S.C. 470w-5(a) (last sentence)	54 U.S.C. 305503
	16 U.S.C. 470w-5(b)	54 U.S.C. 305502
	16 U.S.C. 470w-5(c)	54 U.S.C. 305504
	16 U.S.C. 470w-5(d)	Repealed as obsolete. It provided for the renovation of the site on which the National Museum for the Building Arts is located.
	16 U.S.C. 470w-5(e)	54 U.S.C. 305505
	16 U.S.C. 470w-5(f)	54 U.S.C. 305501
<b>Section 307</b>	16 U.S.C. 470w-6	54 U.S.C. 307102
<b>Section 308</b>	16 U.S.C. 470w-7(a)	54 U.S.C. 305102
	16 U.S.C. 470w-7(b)	54 U.S.C. 305103
	16 U.S.C. 470w-7(c)	54 U.S.C. 305104
	16 U.S.C. 470w-7(d)	54 U.S.C. 305105
	16 U.S.C. 470w-7(e)	54 U.S.C. 305101
<b>Section 309</b>	16 U.S.C. 470w-8	54 U.S.C. 305106
<b>Section 401</b>	16 U.S.C. 470x	Not repealed but omitted from the text of title 54. It provides the following findings regarding the National Center for Preservation Technology and Training provisions: "The Congress finds and declares that, given the complexity of technical problems encountered in preserving historic properties and the lack of adequate distribution of technical information to preserve such properties, a national initiative to coordinate and promote research, distribute information, and provide training about preservation skills and technologies would be beneficial." It may be cited as Pub. L. No. 102-175, title XL, § 4022, 106 Stat. 4765 (1992).
<b>Section 402</b>	16 U.S.C. 470x-1	54 U.S.C. 305301
<b>Section 403</b>	16 U.S.C. 470x-2	54 U.S.C. 305302
<b>Section 404</b>	16 U.S.C. 470x-3	54 U.S.C. 305303
<b>Section 405</b>	16 U.S.C. 470x-4	54 U.S.C. 305304
<b>Section 406</b>	16 U.S.C. 470x-5	54 U.S.C. 305305
<b>Section 407</b>	16 U.S.C. 470x-6	54 U.S.C. 305306

<b>Section 401*</b>	16 U.S.C. 470a-1	54 U.S.C. 307101 (a) through (d). * = These are legislative provisions that were enacted to codify requirements of the World Heritage Convention, and were included among the National Historic Preservation Act Amendments of 1980. However, they were not technically part of the National Historic Preservation Act. Their "Section 401" and "Section 402" numbering in the first column refers to their section numbers under the public law that enacted the 1980 amendments, rather than their numbering for the National Historic Preservation Act itself. However, their "old section" names are included since, particularly in the case of "Section 402," below, those are section names that have been popularly used by practitioners.
<b>Section 402*</b>	16 U.S.C. 470a-2	54 U.S.C. 307101 (e). See "*" notes, above. This is the section that imposes requirements similar to "Section 106" regarding projects outside the United States.



# PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

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**Authority:** Atomic Energy Act of 1954, secs. 62, 63, 64, 65, 69, 81, 83, 84, 122, 161, 181, 182, 183, 184, 186, 187, 193, 223, 234, 274, 275 (42 U.S.C. 2092, 2093, 2094, 2095, 2099, 2111, 2113, 2114, 2152, 2201, 2231, 2232, 2233, 2234, 2236, 2237, 2243, 2273, 2282, 2021, 2022); Energy

Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Uranium Mill Tailings Radiation Control Act of 1978, sec. 104 (42 U.S.C. 7914); 44 U.S.C. 3504 note.

**Source:** 26 FR 284, Jan. 14, 1961, unless otherwise noted.

[72 FR 63973, Nov. 14, 2007; 73 FR 63570, Oct. 24, 2008; 76 FR 35568, Jun. 17, 2011; 76 FR 69122, Nov. 8, 2011; 76 FR 78805, Dec. 20, 2011; 77 FR 39906, Jul. 6, 2012; 78 FR 32340, May 29, 2013; 80 FR 54234, Sep. 9, 2015]

## General Provisions



TOP

### § 40.1 Purpose.

(a) The regulations in this part establish procedures and criteria for the issuance of licenses to receive title to, receive, possess, use, transfer, or deliver source and byproduct materials, as defined in this part, and establish and provide for the terms and conditions upon which the Commission will issue such licenses. (Additional requirements applicable to natural and depleted uranium at enrichment facilities are set forth in § 70.22 of this chapter.) These regulations also provide for the disposal of byproduct material and for the long-term care and custody of byproduct material and residual radioactive material. The regulations in this part also establish certain requirements for the physical protection of import, export, and transient shipments of natural uranium. (Additional requirements applicable to the import and export of natural uranium are set forth in part 110 of this chapter.)

(b) The regulations contained in this part are issued under the Atomic Energy Act of 1954, as amended (68 Stat. 919), title II of the Energy Reorganization Act of 1974, as amended (88 Stat. 1242), and titles I and II of the Uranium Mill Tailings Radiation Control Act of 1978, as amended (42 U.S.C. 7901).

[55 FR 45597, Oct. 30, 1990, as amended at 56 FR 55997, Oct. 31, 1991]

### § 40.2 Scope.

Except as provided in §§ 40.11 to 40.14, inclusive, the regulations in this part apply to all persons in the United States. This part also gives notice to all persons who knowingly provide to any licensee, applicant, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 40.10.

[56 FR 40689, Aug. 15, 1991]

### § 40.2a Coverage of inactive tailings sites.

(a) Prior to the completion of the remedial action, the Commission will not require a license pursuant to 10 CFR chapter I for possession of residual radioactive materials as defined in this part that are located at a site where milling operations are no longer active, if the site is covered by the remedial action program of title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. The Commission will exert its regulatory role in remedial actions primarily through concurrence and consultation in the execution of the remedial action pursuant to title I of the Uranium Mill Tailings

Radiation Control Act of 1978, as amended. After remedial actions are completed, the Commission will license the long-term care of sites, where residual radioactive materials are disposed, under the requirements set out in § 40.27.

(b) The Commission will regulate byproduct material as defined in this part that is located at a site where milling operations are no longer active, if such site is not covered by the remedial action program of title I of the Uranium Mill Tailings Radiation Control Act of 1978. The criteria in appendix A of this part will be applied to such sites.

[45 FR 65531, Oct. 3, 1980, as amended at 55 FR 45598, Oct. 30, 1990]

## § 40.3 License requirements.

A person subject to the regulations in this part may not receive title to, own, receive, possess, use, transfer, provide for long-term care, deliver or dispose of byproduct material or residual radioactive material as defined in this part or any source material after removal from its place of deposit in nature, unless authorized in a specific or general license issued by the Commission under the regulations in this part.

[55 FR 45598, Oct. 30, 1990]

## § 40.4 Definitions.

*Act* means the Atomic Energy Act of 1954 (68 Stat. 919), including any amendments thereto;

*Agreement State* means any State with which the Atomic Energy Commission or the Nuclear Regulatory Commission has entered into an effective agreement under subsection 274b. of the Atomic Energy Act of 1954, as amended.

*Alert* means events may occur, are in progress, or have occurred that could lead to a release of radioactive material but that the release is not expected to require a response by offsite response organizations to protect persons offsite.

*Byproduct Material* means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by such solution extraction operations do not constitute "byproduct material" within this definition.

With the exception of "byproduct material" as defined in section 11e. of the Act, other terms defined in section 11 of the Act shall have the same meaning when used in the regulations in this part.

*Commencement of construction* means taking any action defined as "construction" or any other activity at the site of a facility subject to the regulations in this part that has a reasonable nexus to:

- (1) Radiological health and safety; or
- (2) Common defense and security.

*Commission* means the Nuclear Regulatory Commission or its duly authorized representatives.

*Construction* means the installation of wells associated with radiological operations (e.g., production, injection, or monitoring well networks associated with in-situ recovery or other facilities), the installation of foundations, or in-place assembly, erection, fabrication, or testing for any structure, system, or component of a facility or activity subject to the regulations in this part that are related to radiological safety or security. The term "construction" does not include:

- (1) Changes for temporary use of the land for public recreational purposes;
- (2) Site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;
- (3) Preparation of the site for construction of the facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;
- (4) Erection of fences and other access control measures that are not related to the safe use of, or security of, radiological materials subject to this part;
- (5) Excavation;
- (6) Erection of support buildings (e.g., construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;
- (7) Building of service facilities (e.g., paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines);
- (8) Procurement or fabrication of components or portions of the proposed facility occurring at other than the final, in-place location at the facility; or
- (9) Taking any other action that has no reasonable nexus to:
  - (i) Radiological health and safety, or
  - (ii) Common defense and security.

*Corporation* means the United States Enrichment Corporation (USEC), or its successor, a Corporation that is authorized by statute to lease the gaseous diffusion enrichment plants in Paducah, Kentucky, and Piketon, Ohio, from the Department of Energy, or any person authorized to operate one or both of the gaseous diffusion plants, or other facilities, pursuant to a plan for the privatization of USEC that is approved by the President.

*Decommission* means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits—

- (1) Release of the property for unrestricted use and termination of the license; or

(2) Release of the property under restricted conditions and termination of the license.

*Department and Department of Energy* means the Department of Energy established by the Department of Energy Organization Act (Pub. L. 95-91, 91 Stat. 565, 42 U.S.C. 7101 et seq.) to the extent that the Department, or its duly authorized representatives, exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104 (b), (c) and (d) of the Energy Reorganization Act of 1974 (Pub. L. 93-438, 88 Stat. 1233 at 1237, 42 U.S.C. 5814) and retransferred to the Secretary of Energy pursuant to section 301(a) of the Department of Energy Organization Act (Pub. L. 95-91, 91 Stat. 565 at 577-578, 42 U.S.C. 7151).

*Depleted uranium* means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

*Effective kilogram* means (1) for the source material uranium in which the uranium isotope uranium-235 is greater than 0.005 (0.5 weight percent) of the total uranium present: 10,000 kilograms, and (2) for any other source material: 20,000 kilograms.

*Foreign obligations* means the commitments entered into by the U.S. Government under Atomic Energy Act (AEA) section 123 agreements for cooperation in the peaceful uses of atomic energy. Imports and exports of material or equipment pursuant to such agreements are subject to these commitments, which in some cases involve an exchange of information on imports, exports, retransfers with foreign governments, peaceful end-use assurances, and other conditions placed on the transfer of the material or equipment. The U.S. Government informs the licensee of obligations attached to material.

*Government agency* means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

*License*, except where otherwise specified, means a license issued pursuant to the regulations in this part.

*Persons* means: (1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission or the Department of Energy except that the Department of Energy shall be considered a person within the meaning of the regulations in this part to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission pursuant to section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244) and the Uranium Mill Tailings Radiation Control Act of 1978 (92 Stat. 3021), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent or agency of the foregoing.

*Pharmacist* means an individual registered by a state or territory of the United States, the District of Columbia or the Commonwealth of Puerto Rico to compound and dispense drugs, prescriptions and poisons.



*Physician* means a medical doctor or doctor of osteopathy licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to prescribe drugs in the practice of medicine.

*Principal activities*, as used in this part, means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

*Reconciliation* means the process of evaluating and comparing licensee reports required under this part to the projected material balances generated by the Nuclear Materials Management and Safeguards System. This process is considered complete when the licensee resolves any differences between the reported and projected balances, including those listed for foreign obligated materials.

*Residual radioactive material* means: (1) Waste (which the Secretary of Energy determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and (2) other waste (which the Secretary of Energy determines to be radioactive) at a processing site which relates to such processing, including any residual stock of unprocessed ores or low-grade materials. This term is used only with respect to materials at sites subject to remediation under title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended.

*Site area emergency* means events may occur, are in progress, or have occurred that could lead to a significant release of radioactive material and that could require a response by offsite response organizations to protect persons offsite.

*Source Material* means: (1) Uranium or thorium, or any combination thereof, in any physical or chemical form or (2) ores which contain by weight one-twentieth of one percent (0.05%) or more of: (i) Uranium, (ii) thorium or (iii) any combination thereof. Source material does not include special nuclear material.

*Special nuclear material* means: (1) Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51 of the Act, determines to be special nuclear material; or (2) any material artificially enriched by any of the foregoing.

*Transient shipment* means a shipment of nuclear material, originating and terminating in foreign countries, on a vessel or aircraft that stops at a United States port.

*United States*, when used in a geographical sense, includes Puerto Rico and all territories and possessions of the United States.

*Unrefined and unprocessed ore* means ore in its natural form prior to any processing, such as grinding, roasting or beneficiating, or refining. Processing does not include sieving or encapsulation of ore or preparation of samples for laboratory analysis.

*Uranium enrichment facility* means:

(1) Any facility used for separating the isotopes of uranium or enriching uranium in the isotope 235, except laboratory scale facilities designed or used for experimental or analytical purposes only; or

(2) Any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235.

*Uranium Milling* means any activity that results in the production of byproduct material as defined in this part.

[26 FR 284, Jan. 14, 1961; 73 FR 32461, Jun. 9, 2008; 76 FR 56963, Sep. 15, 2011; 78 FR 32338, May 29, 2013]

Editorial Note: For Federal Register citations affecting § 40.4, see the List of CFR Sections [Affected](#) in the Finding Aids section.

## § 40.5 Communications.

(a) Unless otherwise specified or covered under the regional licensing program as provided in paragraph (b) of this section, any communication or report concerning the regulations in this part and any application filed under these regulations may be submitted to the Commission as follows:

(1) By mail addressed: ATTN: Document Control Desk, Director, Office of Office of Nuclear Material Safety and Safeguards, or Director, Office of Nuclear Security, or Director, Office of Nuclear Security and Incident Response, as appropriate, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

(2) By hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland.

(3) Where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD-ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at <http://www.nrc.gov/site-help/e-submittals.html>; by e-mail to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov); or by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

(b) The Commission has delegated to the four Regional Administrators licensing authority for selected parts of its decentralized licensing program for nuclear materials as described in paragraph (b)(1) of this section. Any communication, report, or application covered under this licensing program must be submitted to the appropriate Regional Administrator. The administrators' jurisdictions and mailing addresses are listed in paragraph (b)(2) of this section.

(1) The delegated licensing program includes authority to issue, renew, amend, cancel, modify, suspend, or revoke licenses for nuclear materials issued pursuant to 10 CFR parts 30 through 36, 39, 40, and 70 to all persons for academic, medical, and industrial uses, with the following exceptions:

(i) Activities in the fuel cycle and special nuclear material in quantities sufficient to constitute a critical mass in any room or area. This exception does not apply to license modifications relating to termination of special nuclear material licenses that authorize possession of larger quantities when the case is referred for action from NRC's Headquarters to the Regional Administrators.

(ii) Health and safety design review of sealed sources and devices and approval, for licensing purposes, of sealed sources and devices.

(iii) Processing of source material for extracting of metallic compounds (including Zirconium, Hafnium, Tantalum, Titanium, Niobium, etc.).

(iv) Distribution of products containing radioactive material under §§ 32.11 through 32.30 and 40.52 of this chapter to persons exempt from licensing requirements.

(v) New uses or techniques for use of byproduct, source, or special nuclear material.

(vi) Uranium enrichment facilities.

(2) *Submissions.* (i) *Region I.* The regional licensing program involves all Federal facilities in the region and non-Federal licensees in the following Region I non-Agreement States and the District of Columbia: Connecticut, Delaware, and Vermont. All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region I, Nuclear Material Section B, Region I, 2100 Renaissance Boulevard, Suite 100, King of Prussia, PA 19406–2713; where email is appropriate it should be addressed to *RidsRgn1MailCenter.Resource@nrc.gov*.

(ii) *Region II.* The regional licensing program involves all Federal facilities in the region and non-Federal licensees in the following Region II non-Agreement States and territories: West Virginia, Puerto Rico, and the Virgin Islands. All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment, renewal, or termination request of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region I, Nuclear Material Section B, Region I, 2100 Renaissance Boulevard, Suite 100, King of Prussia, PA 19406–2713; where email is appropriate it should be addressed to *RidsRgn1MailCenter.Resource@nrc.gov*.

(iii) *Region III.* (A) The regional licensing program for mining and milling involves all Federal facilities in the region, and non-Federal licensees in the Region III non-Agreement States of Indiana, Michigan, Missouri and Region III Agreement States of Minnesota, Wisconsin, and Iowa. All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment, renewal, or termination request of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region III, Material Licensing Section, 2443 Warrenville Road, Suite 210, Lisle, IL 60532–4352; where e-mail is appropriate it should be addressed to *RidsRgn3MailCenter.Resource@nrc.gov*.

(B) Otherwise, the regional licensing program involves all Federal facilities in the region and non-Federal licensees in the following Region III non-Agreement States: Indiana, Michigan, and Missouri. All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment, or renewal of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region III, Material Licensing Section, 2443 Warrenville Road, Suite 210, Lisle, IL 60532–4352; where e-mail is appropriate it should be addressed to *RidsRgn3MailCenter.Resource@nrc.gov*. Outside of this jurisdiction, concerning the licensing program involving mining and milling, the Agreement States of Illinois and Ohio should be contacted.

(iv) *Region IV*. (A) The regional licensing program for mining and milling involves all Federal facilities in the region, and non-Federal licensees in the Region IV non-Agreement States and territory of Alaska, Hawaii, Idaho, Montana, South Dakota, Wyoming and Guam and Region IV Agreement States of Oregon, California, Nevada, New Mexico, Louisiana, Mississippi, Arkansas, Oklahoma, Kansas, Nebraska, and North Dakota. All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region IV, Division of Nuclear Materials Safety, 1600 E. Lamar Blvd., Arlington, TX 76011–4511; where email is appropriate, it should be addressed to *RidsRgn4MailCenter@nrc.gov*.

(B) Otherwise, the regional licensing program involves all Federal facilities in the region and non-Federal licensees in the following Region IV non-Agreement States and territory: Alaska, Hawaii, Idaho, Montana, South Dakota, Wyoming, and Guam. All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region IV, Division of Nuclear Materials Safety, 1600 E. Lamar Blvd., Arlington, TX 76011–4511; where email is appropriate, it should be addressed to *RidsRgn4MailCenter@nrc.gov*.

[48 FR 16031, Apr. 14, 1983, as amended at 49 FR 19631, May 9, 1984; 49 FR 47824, Dec. 7, 1984; 50 FR 14694, Apr. 15, 1985; 51 FR 36001, Oct. 8, 1986; 52 FR 8241, Mar. 17, 1987; 52 FR 38392, Oct. 16, 1987; 52 FR 48093, Dec. 18, 1987; 53 FR 3862, Feb. 10, 1988; 53 FR 43420, Oct. 27, 1988; 57 FR 18390, Apr. 30, 1992; 58 FR 7736, Feb. 9, 1993; 58 FR 64111, Dec. 6, 1993; 59 FR 17466, Apr. 13, 1994; 60 FR 24551, May 9, 1995; 62 FR 22880, Apr. 28, 1997; 68 FR 58806, Oct. 10, 2003; 70 FR 69421, Nov. 16, 2005; 71 FR 15011, Mar. 27, 2006; 72 FR 33386, Jun. 18, 2007; 73 FR 5720, Jan. 31, 2008; 74 FR 62681, Dec. 1, 2009; 75 FR 21980, Apr. 27, 2010; 75 FR 73943, Nov. 30, 2010; 76 FR 72085, Nov. 22, 2011; 77 FR 39906, Jul. 6, 2012; 77 FR 43696, Jul. 25, 2012; 78 FR 32338, May 29, 2013; 79 FR 75740, Dec. 19, 2014; 80 FR 74979, Dec. 1, 2015]

## § 40.6 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

## § 40.7 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of this section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraphs (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) Each specific licensee, each applicant for a specific license, and each general licensee subject to part 19 shall prominently post the revision of NRC Form 3, "Notice to Employees", referenced in 10 CFR 19.11(c).

(2) The posting of NRC Form 3 must be at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

(3) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter, via email to [Forms.Resource@nrc.gov](mailto:Forms.Resource@nrc.gov), or by visiting the NRC's online library at <http://www.nrc.gov/reading-rm/doc-collections/forms/>.

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

[58 FR 52409, Oct. 8, 1993, as amended at 60 FR 24551, May 9, 1995; 61 FR 6765, Feb. 22, 1996; 68 FR 58806, Oct. 10, 2003; 72 FR 63973, Nov. 14, 2007; 79 FR 66603, Nov. 10, 2014]

## **§ 40.8 Information collection requirements: OMB approval.**

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150-0020.

(b) The approved information collection requirements contained in this part appear in §§ 40.9, 40.22, 40.23, 40.25, 40.26, 40.27, 40.31, 40.34, 40.35, 40.36, 40.41, 40.42, 40.43, 40.44, 40.51, 40.52, 40.53, 40.54, 40.55, 40.60, 40.61, 40.64, 40.65, 40.66, 40.67, and appendix A to this part.

(c) This Part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In §§ 40.31, 40.43, 40.44, and appendix A, NRC Form 313 is approved under control number 3150-0120.

(2) In § 40.31, DOC/NRC Forms AP-1, AP-A, and associated forms are approved under control numbers 0694-0135.

(3) In § 40.31, Forms N-71 and associated forms are approved under control number 3150-0056.



(4) In § 40.42, NRC Form 314 is approved under control number 3150–0028.

(5) In § 40.64, DOE/NRC Form 741 is approved under control number 3150–0003.

(6) In §§ 40.25 and 40.35, NRC Form 244 is approved under control number 3150–0031.

[49 FR 19626, May 9, 1984, as amended at 56 FR 40768, Aug. 16, 1991; 58 FR 68731, Dec. 29, 1993; 62 FR 52187, Oct. 6, 1997; 73 FR 78604, Dec. 23, 2008; 77 FR 39906, Jul. 6, 2012; 78 FR 32338, May 29, 2013]

## **§ 40.9 Completeness and accuracy of information.**

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or undating requirements.

[52 FR 49371, Dec. 31, 1987]

## **§ 40.10 Deliberate misconduct.**

(a) Any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:



(1) Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.

[63 FR 1896, Jan. 13, 1998]

## Exemptions

### **§ 40.11 Persons using source material under certain Department of Energy and Nuclear Regulatory Commission contracts.**

Except to the extent that Department facilities or activities of the types subject to licensing pursuant to section 202 of the Energy Reorganization Act of 1974 or the Uranium Mill Tailings Radiation Control Act of 1978 are involved, any prime contractor of the Department is exempt from the requirements for a license set forth in sections 62, 63, and 64 of the Act and from the regulations in this part to the extent that such contractor, under his prime contract with the Department, receives, possesses, uses, transfers or delivers source material for: (a) The performance of work for the Department at a United States Government-owned or controlled site, including the transportation of source material to or from such site and the performance of contract services during temporary interruptions of such transportation; (b) research in, or development, manufacture, storage, testing or transportation of, atomic weapons or components thereof; or (c) the use or operation of nuclear reactors or other nuclear devices in a United States Government-owned vehicle or vessel. In addition to the foregoing exemptions, and subject to the requirement for licensing of Department facilities and activities pursuant to section 202 of the Energy Reorganization Act of 1974 or the Uranium Mill Tailings Radiation Control Act of 1980, any prime contractor or subcontractor of the Department or the Commission is exempt from the requirements for a license set forth in sections 62, 63, and 64 of the Act and from the regulations in this part to the extent that such prime contractor or subcontractor receives, possesses, uses, transfers or delivers source material under his prime contract or subcontract when the Commission determines that the exemption of the prime contractor or subcontractor is authorized by law; and that, under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety.

[40 FR 8787, Mar. 3, 1975, as amended at 43 FR 6923, Feb. 17, 1978; 45 FR 65531, Oct. 3, 1980]

### **§ 40.12 Carriers.**

(a) Except as specified in paragraph (b) of this section, common and contract carriers, freight forwarders, warehousemen, and the U.S. Postal Service are exempt from the regulations in this part and the requirements for a license set forth in section 62 of the Act to the extent that they transport or store source material in the regular course of the carriage for another or storage incident thereto.

(b) The exemption in paragraph (a) of this section does not apply to a person who possesses a transient shipment (as defined in § 40.4(r)), an import shipment, or an export shipment of natural uranium in an amount exceeding 500 kilograms, unless the shipment is in the form of ore or ore residue.

[52 FR 9651, Mar. 26, 1987]

## § 40.13 Unimportant quantities of source material.

(a) Any person is exempt from the regulations in this part and from the requirements for a license set forth in section 62 of the Act to the extent that such person receives, possesses, uses, transfers or delivers source material in any chemical mixture, compound, solution, or alloy in which the source material is by weight less than one-twentieth of 1 percent (0.05 percent) of the mixture, compound, solution or alloy. The exemption contained in this paragraph does not apply to Australian-obligated source material, nor does it include byproduct materials as defined in this part.

(b) Any person is exempt from the regulations in this part and from the requirements for a license set forth in section 62 of the act to the extent that such person receives, possesses, uses, or transfers unrefined and unprocessed ore containing source material; provided, that, except as authorized in a specific license, such person shall not refine or process such ore.

(c) Any person is exempt from the requirements for a license set forth in section 62 of the Act and from the regulations in this part and parts 19, 20, and 21 of this chapter to the extent that such person receives, possesses, uses, or transfers:

(1) Any quantities of thorium contained in (i) incandescent gas mantles, (ii) vacuum tubes, (iii) welding rods, (iv) electric lamps for illuminating purposes: *Provided*, That each lamp does not contain more than 50 milligrams of thorium, (v) germicidal lamps, sunlamps, and lamps for outdoor or industrial lighting: *Provided*, That each lamp does not contain more than 2 grams of thorium, (vi) rare earth metals and compounds, mixtures, and products containing not more than 0.25 percent by weight thorium, uranium, or any combination of these, or (vii) personnel neutron dosimeters: *Provided*, That each dosimeter does not contain more than 50 milligrams of thorium.

(2) Source material contained in the following products:

(i) Glazed ceramic tableware manufactured before August 27, 2013, provided that the glaze contains not more than 20 percent by weight source material;

(ii) Piezoelectric ceramic containing not more than 2 percent by weight source material;

(iii) Glassware containing not more than 2 percent by weight source material or, for glassware manufactured before August 27, 2013, 10 percent by weight source material; but not including commercially manufactured glass brick, pane glass, ceramic tile, or other glass or ceramic used in construction;

(iv) Glass enamel or glass enamel frit containing not more than 10 percent by weight source material imported or ordered for importation into the United States, or initially distributed by manufacturers in the United States, before July 25, 1983.<sup>1</sup>

(3) Photographic film, negatives, and prints containing uranium or thorium;

(4) Any finished product or part fabricated of, or containing tungsten or magnesium-thorium alloys, provided that the thorium content of the alloy does not exceed 4 percent by weight and that the exemption contained in this subparagraph shall not be deemed to authorize the chemical, physical or metallurgical treatment or processing of any such product or part; and

(5) Uranium contained in counterweights installed in aircraft, rockets, projectiles, and missiles, or stored or handled in connection with installation or removal of such counterweights: *Provided*, That:

(i) Each counterweight has been impressed with the following legend clearly legible through any plating or other covering: "Depleted Uranium";<sup>2</sup>

(ii) Each counterweight is durably and legibly labeled or marked with the identification of the manufacturer, and the statement: "Unauthorized Alterations Prohibited";<sup>2</sup> and

(iii) The exemption contained in this paragraph shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of any such counterweights other than repair or restoration of any plating or other covering.

(iv) Consistent with § 40.56, the counterweights are not manufactured for a military purpose using Australian-obligated source material.

(6) Natural or depleted uranium metal used as shielding constituting part of any shipping container: *Provided*, That:

(i) The shipping container is conspicuously and legibly impressed with the legend "CAUTION—RADIOACTIVE SHIELDING—URANIUM"; and

(ii) The uranium metal is encased in mild steel or equally fire resistant metal of minimum wall thickness of one-eighth inch (3.2 mm).

(7) Thorium or uranium contained in or on finished optical lenses and mirrors, provided that each lens or mirror does not contain more than 10 percent by weight thorium or uranium or, for lenses manufactured before August 27, 2013, 30 percent by weight of thorium; and that the exemption contained in this paragraph does not authorize either:

(i) The shaping, grinding or polishing of such lens or mirror or manufacturing processes other than the assembly of such lens or mirror into optical systems and devices without any alteration of the lens or mirror; or

(ii) The receipt, possession, use, or transfer of uranium or thorium contained in contact lenses, or in spectacles, or in eyepieces in binoculars or other optical instruments.

(8) Thorium contained in any finished aircraft engine part containing nickel-thoria alloy, *Provided*, That:

(i) The thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide); and

(ii) The thorium content in the nickel-thoria alloy does not exceed 4 percent by weight.

(9) The exemptions in this paragraph (c) do not authorize the manufacture of any of the products described.

(10) No person may initially transfer for sale or distribution a product containing source material to persons exempt under this paragraph (c), or equivalent regulations of an Agreement State, unless authorized by a license issued under § 40.52 to initially transfer such products for sale or distribution.

(i) Persons initially distributing source material in products covered by the exemptions in this paragraph (c) before August 27, 2013, without specific authorization may continue such distribution for 1 year beyond this date. Initial distribution may also be continued until the Commission takes final action on a pending application for license or license amendment to specifically authorize distribution submitted no later than 1 year beyond this date.

(ii) Persons authorized to manufacture, process, or produce these materials or products containing source material by an Agreement State, and persons who import finished products or parts, for sale or distribution must be authorized by a license issued under § 40.52 for distribution only and are exempt from the requirements of parts 19 and 20 of this chapter, and § 40.32(b) and (c).

[26 FR 284, Jan. 14, 1961; 76 FR 69122, Nov. 8, 2011; 76 FR 78805, Dec. 20, 2011; 78 FR 32338, May 29, 2013]

Editorial Note: For Federal Register citations affecting § 40.13, see the List of CFR Sections [Affected](#) in the Finding Aids section.

<sup>1</sup> On July 25, 1983, the exemption of glass enamel or glass enamel frit was suspended. The exemption was eliminated on September 11, 1984.

<sup>2</sup> The requirements specified in paragraphs (c)(5)(i) and (ii) of this section need not be met by counterweights manufactured prior to Dec. 31, 1969, provided that such counterweights were manufactured under a specific license issued by the Atomic Energy Commission and were impressed with the legend required by § 40.13(c)(5)(ii) in effect on June 30, 1969.

## § 40.14 Specific exemptions.

(a) The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulation in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

(b) [Reserved]

(c) The Department of Energy is exempt from the requirements of this part to the extent that its activities are subject to the requirements of part 60 or 63 of this chapter.

(d) Except as specifically provided in part 61 of this chapter any licensee is exempt from the requirements of this part to the extent that its activities are subject to the requirements of part 61 of this chapter.

[37 FR 5747, Mar. 21, 1972, as amended at 39 FR 26279, July 18, 1974; 40 FR 8787, Mar. 3, 1975; 45 FR 65531, Oct. 3, 1980; 46 FR 13979, Feb. 25, 1981; 47 FR 57481, Dec. 27, 1982; 66 FR 55790, Nov. 2, 2001]

## General Licenses

## **§ 40.20 Types of licenses.**

(a) Licenses for source material and byproduct material are of two types: general and specific. Licenses for long-term care and custody of residual radioactive material at disposal sites are general licenses. The general licenses provided in this part are effective without the filing of applications with the Commission or the issuance of licensing documents to particular persons. Specific licenses are issued to named persons upon applications filed pursuant to the regulations in this part.

(b) Section 40.27 contains a general license applicable for custody and long-term care of residual radioactive material at uranium mill tailings disposal sites remediated under title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended.

(c) Section 40.28 contains a general license applicable for custody and long-term care of byproduct material at uranium or thorium mill tailings disposal sites under title II of the Uranium Mill Tailings Radiation Control Act of 1978, as amended.

[55 FR 45598, Oct. 30, 1990]

## **§ 40.21 General license to receive title to source or byproduct material.**

A general license is hereby issued authorizing the receipt of title to source or byproduct material, as defined in this part, without regard to quantity. This general license does not authorize any person to receive, possess, deliver, use, or transfer source or byproduct material.

[45 FR 65531, Oct. 3, 1980]

## **§ 40.22 Small quantities of source material.**

(a) A general license is hereby issued authorizing commercial and industrial firms; research, educational, and medical institutions; and Federal, State, and local government agencies to receive, possess, use, and transfer uranium and thorium, in their natural isotopic concentrations and in the form of depleted uranium, for research, development, educational, commercial, or operational purposes in the following forms and quantities:

(1) No more than 1.5 kg (3.3 lb) of uranium and thorium in dispersible forms (e.g., gaseous, liquid, powder, etc.) at any one time. Any material processed by the general licensee that alters the chemical or physical form of the material containing source material must be accounted for as a dispersible form. A person authorized to possess, use, and transfer source material under this paragraph may not receive more than a total of 7 kg (15.4 lb) of uranium and thorium in any one calendar year. Persons possessing source material in excess of these limits as of August 27, 2013, may continue to possess up to 7 kg (15.4 lb) of uranium and thorium at any one time for one year beyond this date, or until the Commission takes final action on a pending application submitted on or before August 27, 2014, for a specific license for such material; and receive up to 70 kg (154 lb) of uranium or thorium in any one calendar year until December 31, 2014, or until the Commission takes final action on a pending application submitted on or before August 27, 2014, for a specific license for such material; and

(2) No more than a total of 7 kg (15.4 lb) of uranium and thorium at any one time. A person authorized to possess, use, and transfer source material under this paragraph may not receive more than a total of 70 kg (154 lb) of uranium and thorium in any one calendar year. A person may not alter the chemical or physical form of the source material possessed under this paragraph unless it is accounted for under the limits of paragraph (a)(1) of this section; or

(3) No more than 7 kg (15.4 lb) of uranium, removed during the treatment of drinking water, at any one time. A person may not remove more than 70 kg (154 lb) of uranium from drinking water during a calendar year under this paragraph; or

(4) No more than 7 kg (15.4 lb) of uranium and thorium at laboratories for the purpose of determining the concentration of uranium and thorium contained within the material being analyzed at any one time. A person authorized to possess, use, and transfer source material under this paragraph may not receive more than a total of 70 kg (154 lb) of source material in any one calendar year.

(b) Any person who receives, possesses, uses, or transfers source material in accordance with the general license in paragraph (a) of this section:

(1) Is prohibited from administering source material, or the radiation therefrom, either externally or internally, to human beings except as may be authorized by the NRC in a specific license.

(2) Shall not abandon such source material. Source material may be disposed of as follows:

(i) A cumulative total of 0.5 kg (1.1 lb) of source material in a solid, non-dispersible form may be transferred each calendar year, by a person authorized to receive, possess, use, and transfer source material under this general license to persons receiving the material for permanent disposal. The recipient of source material transferred under the provisions of this paragraph is exempt from the requirements to obtain a license under this part to the extent the source material is permanently disposed. This provision does not apply to any person who is in possession of source material under a specific license issued under this chapter; or

(ii) In accordance with § 20.2001 of this chapter.

(3) Is subject to the provisions in §§ 40.1 through 40.10, 40.41(a) through (e), 40.46, 40.51, 40.56, 40.60 through 40.63, 40.71, and 40.81.

(4) Shall respond to written requests from the NRC to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the person cannot provide the requested information within the allotted time, the person shall, within that same time period, request a longer period to supply the information by providing the Director of the Office of Nuclear Material Safety and Safeguards, using an appropriate method listed in § 40.5(a), a written justification for the request;

(5) Shall not export such source material except in accordance with part 110 of this chapter.

(c) Any person who receives, possesses, uses, or transfers source material in accordance with paragraph (a) of this section shall conduct activities so as to minimize contamination of the facility and the environment. When activities involving such source material are permanently ceased at any site, if evidence of significant contamination is identified, the general licensee shall notify the Director of the Office of Nuclear Material Safety and Safeguards by an appropriate method listed in § 40.5(a) about such contamination and may consult with the NRC as to the appropriateness of



sampling and restoration activities to ensure that any contamination or residual source material remaining at the site where source material was used under this general license is not likely to result in exposures that exceed the limits in § 20.1402 of this chapter.

(d) Any person who receives, possesses, uses, or transfers source material in accordance with the general license granted in paragraph (a) of this section is exempt from the provisions of parts 19, 20, and 21 of this chapter to the extent that such receipt, possession, use, and transfer are within the terms of this general license, except that such person shall comply with the provisions of §§ 20.1402 and 20.2001 of this chapter to the extent necessary to meet the provisions of paragraphs (b)(2) and (c) of this section. However, this exemption does not apply to any person who also holds a specific license issued under this chapter.

(e) No person may initially transfer or distribute source material to persons generally licensed under paragraph (a)(1) or (2) of this section, or equivalent regulations of an Agreement State, unless authorized by a specific license issued in accordance with § 40.54 or equivalent provisions of an Agreement State. This prohibition does not apply to analytical laboratories returning processed samples to the client who initially provided the sample. Initial distribution of source material to persons generally licensed by paragraph (a) of this section before August 27, 2013, without specific authorization may continue for 1 year beyond this date. Distribution may also be continued until the Commission takes final action on a pending application for license or license amendment to specifically authorize distribution submitted on or before August 27, 2014.

[26 FR 284, Jan. 14, 1961, as amended at 38 FR 22221, Aug. 17, 1973; 42 FR 28896, June 6, 1977; 45 FR 55420, Aug. 20, 1980; 78 FR 32339, May 29, 2013; 79 FR 75740, Dec. 19, 2014]

## **§ 40.23 General license for carriers of transient shipments of natural uranium other than in the form of ore or ore residue.**

(a) A general license is hereby issued to any person to possess a transient shipment of natural uranium, other than in the form of ore or ore residue, in amounts exceeding 500 kilograms.

(b)(1) Persons generally licensed under paragraph (a) of this section, who plan to carry a transient shipment with scheduled stops at a United States port, shall notify the Director, Division of Security Policy, Office of Nuclear Security and Incident Response, using an appropriate method listed in § 40.5. The notification must be in writing and must be received at least 10 days before transport of the shipment commences at the shipping facility.

(2) The notification must include the following information:

- (i) Location of all scheduled stops in United States territory;
- (ii) Arrival and departure times for all scheduled stops in United States territory;
- (iii) The type of transport vehicle;
- (iv) A physical description of the shipment;
- (v) The numbers and types of containers;



- (vi) The name and telephone number of the carrier's representatives at each stopover location in the United States territory;
- (vii) A listing of the modes of shipments, transfer points, and routes to be used;
- (viii) The estimated date and time that shipment will commence and that each nation (other than the United States) along the route is scheduled to be entered;
- (ix) For shipment between countries that are not party to the Convention on the Physical Protection of Nuclear Material (i.e., not listed in appendix F to part 73 of this chapter), a certification that arrangements have been made to notify the Director, Division of Security Policy when the shipment is received at the destination facility.
- (c) Persons generally licensed under this section making unscheduled stops at United States ports, immediately after the decision to make an unscheduled stop, shall provide to the Director, Division of Security Policy the information required under paragraph (b) of this section.
- (d) A licensee who needs to amend a notification may do so by telephoning the Division of Security Policy at (301) 415-6828.

[52 FR 9651, Mar. 26, 1987, as amended at 53 FR 4110, Feb. 12, 1988; 60 FR 24551, May 9, 1995; 68 FR 58807, Oct. 10, 2003; 74 FR 62681, Dec. 1, 2009]

## **§ 40.24 [Reserved]**

## **§ 40.25 General license for use of certain industrial products or devices.**

- (a) A general license is hereby issued to receive, acquire, possess, use, or transfer, in accordance with the provisions of paragraphs (b), (c), (d), and (e) of this section, depleted uranium contained in industrial products or devices for the purpose of providing a concentrated mass in a small volume of the product or device.
- (b) The general license in paragraph (a) of this section applies only to industrial products or devices which have been manufactured or initially transferred in accordance with a specific license issued pursuant to § 40.34 (a) of this part or in accordance with a specific license issued by an Agreement State which authorizes manufacture of the products or devices for distribution to persons generally licensed by the Agreement State.
- (c)(1) Persons who receive, acquire, possess, or use depleted uranium pursuant to the general license established by paragraph (a) of this section shall file NRC Form 244, "Registration Certificate—Use of Depleted Uranium Under General License," with the Director, Office of Nuclear Material Safety and Safeguards, by an appropriate method listed in § 40.5, with a copy to the appropriate NRC Regional Administrator. The form shall be submitted within 30 days after the first receipt or acquisition of such depleted uranium. The registrant shall furnish on NRC Form 244 the following information and such other information as may be required by that form:

- (i) Name and address of the registrant;

(ii) A statement that the registrant has developed and will maintain procedures designed to establish physical control over the depleted uranium described in paragraph (a) of this section and designed to prevent transfer of such depleted uranium in any form, including metal scrap, to persons not authorized to receive the depleted uranium; and

(iii) Name and/or title, address, and telephone number of the individual duly authorized to act for and on behalf of the registrant in supervising the procedures identified in paragraph (c)(1)(ii) of this section.

(2) The registrant possessing or using depleted uranium under the general license established by paragraph (a) of this section shall report in writing to the Director, Office of Nuclear Material Safety and Safeguards, with a copy to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D of part 20 of this chapter, any changes in information furnished by him in the NRC Form 244 "Registration Certificate—Use of Depleted Uranium Under General License." The report shall be submitted within 30 days after the effective date of such change.

(d) A person who receives, acquires, possesses, or uses depleted uranium pursuant to the general license established by paragraph (a) of this section:

(1) Shall not introduce such depleted uranium, in any form, into a chemical, physical, or metallurgical treatment or process, except a treatment or process for repair or restoration of any plating or other covering of the depleted uranium.

(2) Shall not abandon such depleted uranium.

(3) Shall transfer or dispose of such depleted uranium only by transfer in accordance with the provisions of § 40.51 of this part. In the case where the transferee receives the depleted uranium pursuant to the general license established by paragraph (a) of this section, the transferor shall furnish the transferee a copy of this section and a copy of Form NRC 244. In the case where the transferee receives the depleted uranium pursuant to a general license contained in an Agreement State's regulation equivalent to this section, the transferor shall furnish the transferee a copy of this section and a copy of Form NRC 244 accompanied by a note explaining that use of the product or device is regulated by the Agreement State under requirements substantially the same as those in this section.

(4) Within 30 days of any transfer, shall report in writing to the Director, Office of Nuclear Material Safety and Safeguards, with a copy to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D of part 20 of this chapter, the name and address of the person receiving the source material pursuant to such transfer.

(e) Any person receiving, acquiring, possessing, using, or transferring depleted uranium pursuant to the general license established by paragraph (a) of this section is exempt from the requirements of parts 19, 20 and 21 of this chapter with respect to the depleted uranium covered by that general license.

[41 FR 53331, Dec. 6, 1976, as amended at 42 FR 28896, June 6, 1977; 43 FR 6923, Feb. 17, 1978; 43 FR 52202, Nov. 9, 1978; 52 FR 31611, Aug. 21, 1987; 60 FR 24551, May 9, 1995; 68 FR 58807, Oct. 10, 2003; 73 FR 5720, Jan. 31, 2008; 79 FR 75740, Dec. 19, 2014]

## **§ 40.26 General license for possession and storage of byproduct material as defined in this part.**

(a) A general license is hereby issued to receive title to, own, or possess byproduct material as defined in this part without regard to form or quantity.

(b) The general license in paragraph (a) of this section applies only: In the case of licensees of the Commission, where activities that result in the production of byproduct material are authorized under a specific license issued by the Commission pursuant to this part, to byproduct material possessed or stored at an authorized disposal containment area or transported incident to such authorized activity: Provided, That authority to receive title to, own, or possess byproduct material under this general license shall terminate when the specific license for source material expires, is renewed, or is amended to include a specific license for byproduct material as defined in this part.

(c) The general license in paragraph (a) of this section is subject to:

(1) The provisions of parts 19, 20, 21, and §§ 40.1, 40.2a, 40.3, 40.4, 40.5, 40.6, 40.41, 40.46, 40.60, 40.61, 40.62, 40.63, 40.65, 40.71, and 40.81 of part 40 of this chapter; and

(2) The documentation of daily inspections of tailings or waste retention systems and the immediate notification of the appropriate NRC regional office as indicated in appendix D to part 20 of this chapter, or the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of any failure in a tailings or waste retention system that results in a release of tailings or waste into unrestricted areas, or of any unusual conditions (conditions not contemplated in the design of the retention system) that if not corrected could lead to failure of the system and result in a release of tailings or waste into unrestricted areas; and any additional requirements the Commission may by order deem necessary. The licensee shall retain this documentation of each daily inspection as a record for three years after each inspection is documented.

(d) The general license in paragraph (a) of this section shall expire nine months from the effective date of this subparagraph unless an applicable licensee has submitted, pursuant to the provisions of § 40.31 of this part, an application for license renewal or amendment which includes a detailed program for meeting the technical and financial criteria contained in appendix A of this part.

[44 FR 50014, Aug. 24, 1979, as amended at 45 FR 12377, Feb. 26, 1980; 45 FR 65531, Oct. 3, 1980; 53 FR 19248, May 27, 1988; 56 FR 40768, Aug. 16, 1991; 73 FR 5720, Jan. 31, 2008; 79 FR 75740, Dec. 19, 2014]

## **§ 40.27 General license for custody and long-term care of residual radioactive material disposal sites.**

(a) A general license is issued for the custody of and long-term care, including monitoring, maintenance, and emergency measures necessary to protect public health and safety and other actions necessary to comply with the standards promulgated under section 275(a) of the Atomic Energy Act of 1954, as amended, for disposal sites under title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. The license is available only to the Department of Energy, or another Federal agency designated by the President to provide long-term care. The purpose of this general

license is to ensure that uranium mill tailings disposal sites will be cared for in such a manner as to protect the public health, safety, and the environment after remedial action has been completed.

(b) The general license in paragraph (a) of this section becomes effective when the Commission accepts a site Long-Term Surveillance Plan (LTSP) that meets the requirements of this section, and when the Commission concurs with the Department of Energy's determination of completion of remedial action at each disposal site. There is no termination of this general license. The LTSP may incorporate by reference information contained in documents previously submitted to the Commission if the references to the individual incorporated documents are clear and specific. Each LTSP must include—

(1) A legal description of the disposal site to be licensed, including documentation on whether land and interests are owned by the United States or an Indian Tribe. If the site is on Indian land, then, as specified in the Uranium Mill Tailings Radiation Control Act of 1978, as amended, the Indian Tribe and any person holding any interest in the land shall execute a waiver releasing the United States of any liability or claim by the Tribe or person concerning or arising from the remedial action and holding the United States harmless against any claim arising out of the performance of the remedial action;

(2) A detailed description, which can be in the form of a reference, of the final disposal site conditions, including existing groundwater characterization and any necessary groundwater protection activities or strategies. This description must be detailed enough so that future inspectors will have a baseline to determine changes to the site and when these changes are serious enough to require maintenance or repairs. If the disposal site has continuing aquifer restoration requirements, then the licensing process will be completed in two steps. The first step includes all items other than groundwater restoration. Groundwater monitoring, which would be addressed in the LTSP, may still be required in this first step to assess performance of the tailings disposal units. When the Commission concurs with the completion of groundwater restoration, the licensee shall assess the need to modify the LTSP and report results to the Commission. If the proposed modifications meet the requirements of this section, the LTSP will be considered suitable to accommodate the second step.

(3) A description of the long-term surveillance program, including proposed inspection frequency and reporting to the Commission (as specified in appendix A, criterion 12 of this part), frequency and extent of groundwater monitoring if required, appropriate constituent concentration limits for groundwater, inspection personnel qualifications, inspection procedures, recordkeeping and quality assurance procedures;

(4) The criteria for follow-up inspections in response to observations from routine inspections or extreme natural events; and

(5) The criteria for instituting maintenance or emergency measures.

(c) The long-term care agency under the general license established by paragraph (a) of this section shall—

(1) Implement the LTSP as described in paragraph (b) of this section;

(2) Care for the disposal site in accordance with the provisions of the LTSP;

(3) Notify the Commission of any changes to the LTSP; the changes may not conflict with the requirements of this section;

(4) Guarantee permanent right-of-entry to Commission representatives for the purpose of periodic site inspections; and

(5) Notify the Commission prior to undertaking any significant construction, actions, or repairs related to the disposal site, even if the action is required by a State or another Federal agency.

(d) As specified in the Uranium Mill Tailings Radiation Control Act of 1978, as amended, the Secretary of the Interior, with the concurrence of the Secretary of Energy and the Commission, may sell or lease any subsurface mineral rights associated with land on which residual radioactive materials are disposed. In such cases, the Commission shall grant a license permitting use of the land if it finds that the use will not disturb the residual radioactive materials or that the residual radioactive materials will be restored to a safe and environmentally sound condition if they are disturbed by the use.

(e) The general license in paragraph (a) of this section is exempt from parts 19, 20, and 21 of this chapter, unless significant construction, actions, or repairs are required. If these types of actions are to be undertaken, the licensee shall explain to the Commission which requirements from these parts apply for the actions and comply with the appropriate requirements.

[55 FR 45598, Oct. 30, 1990; 80 FR 74979, Dec. 1, 2015; 81 FR 86909, Dec. 2, 2016]

## **§ 40.28 General license for custody and long-term care of uranium or thorium byproduct materials disposal sites.**

(a) A general license is issued for the custody of and long-term care, including monitoring, maintenance, and emergency measures necessary to protect the public health and safety and other actions necessary to comply with the standards in this part for uranium or thorium mill tailings sites closed under title II of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. The licensee will be the Department of Energy, another Federal agency designated by the President, or a State where the disposal site is located. The purpose of this general license is to ensure that uranium and thorium mill tailings disposal sites will be cared for in such a manner as to protect the public health, safety, and the environment after closure.

(b) The general license in paragraph (a) of this section becomes effective when the Commission terminates, or concurs in an Agreement State's termination of, the current specific license and a site Long-Term Surveillance Plan (LTSP) meeting the requirements of this section has been accepted by the Commission. There is no termination of this general license. If the LTSP has not been formally received by the NRC prior to termination of the current specific license, the Commission may issue a specific order to the intended custodial agency to ensure continued control and surveillance of the disposal site to protect the public health, safety, and the environment. The Commission will not unnecessarily delay the termination of the specific license solely on the basis that an acceptable LTSP has not been received. The LTSP may incorporate by reference information contained in documents previously submitted to the Commission if the references to the individual incorporated documents are clear and specific. Each LTSP must include—

- (1) A legal description of the disposal site to be transferred (unless transfer is exempted under provisions of the Atomic Energy Act, § 83(b)(1)(A)) and licensed;
  - (2) A detailed description, which can be in the form of a reference of the final disposal site conditions, including existing groundwater characterization. This description must be detailed enough so that future inspectors will have a baseline to determine changes to the site and when these changes are serious enough to require maintenance or repairs;
  - (3) A description of the long-term surveillance program, including proposed inspection frequency and reporting to the Commission (as specified in appendix A, Criterion 12 of this part), frequency and extent of groundwater monitoring if required, appropriate constituent concentration limits for groundwater, inspection personnel qualifications, inspection procedures, recordkeeping and quality assurance procedures;
  - (4) The criteria for follow-up inspections in response to observations from routine inspections or extreme natural events; and
  - (5) The criteria for instituting maintenance or emergency measures.
- (c) The long-term care agency who has a general license established by paragraph (a) of this section shall—
- (1) Implement the LTSP as described in paragraph (b) of this section;
  - (2) Care for the disposal site in accordance with the provisions of the LTSP;
  - (3) Notify the Commission of any changes to the LTSP; the changes may not conflict with the requirements of this section;
  - (4) Guarantee permanent right-of-entry to Commission representatives for the purpose of periodic site inspections; and
  - (5) Notify the Commission prior to undertaking any significant construction, actions, or repairs related to the disposal site, even if the action is required by a State or another Federal agency.
- (d) Upon application, the Commission may issue a specific license, as specified in the Uranium Mill Tailings Radiation Control Act of 1978, as amended, permitting the use of surface and/or subsurface estates transferred to the United States or a State. Although an application may be received from any person, if permission is granted, the person who transferred the land to DOE or the State shall receive the right of first refusal with respect to this use of the land. The application must demonstrate that—
- (1) The proposed action does not endanger the public health, safety, welfare, or the environment;
  - (2) Whether the proposed action is of a temporary or permanent nature, the site would be maintained and/or restored to meet requirements in appendix A of this part for closed sites; and
  - (3) Adequate financial arrangements are in place to ensure that the byproduct materials will not be disturbed, or if disturbed that the applicant is able to restore the site to a safe and environmentally sound condition.



(e) The general license in paragraph (a) of this section is exempt from parts 19, 20, and 21 of this chapter, unless significant construction, actions, or repairs are required. If these types of actions are to be undertaken, the licensee shall explain to the Commission which requirements from these parts apply for the actions and comply with the appropriate requirements.

(f) In cases where the Commission determines that transfer of title of land used for disposal of any byproduct materials to the United States or any appropriate State is not necessary to protect the public health, safety or welfare or to minimize or eliminate danger to life or property (Atomic Energy Act, § 83(b)(1)(A)), the Commission will consider specific modifications of the custodial agency's LTSP provisions on a case-by-case basis.

[55 FR 45599, Oct. 30, 1990; 81 FR 86909, Dec. 2, 2016]

## License Applications

### § 40.31 Application for specific licenses.

(a) A person may file an application for specific license on NRC Form 313, "Application for Material License," in accordance with the instructions in § 40.5 of this chapter. Information contained in previous applications, statements or reports filed with the Commission may be incorporated by reference provided that the reference is clear and specific.

(b) The Commission may at any time after the filing of the original application, and before the expiration of the license, require further 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 or a person duly authorized to act for and on his behalf.

(c) Applications and documents submitted to the Commission in connection with applications will be made available for public inspection in accordance with the provisions of the regulations contained in parts 2 and 9 of this chapter.

(d) An application for a license filed pursuant to the regulations in this part will be considered also as an application for licenses authorizing other activities for which licenses are required by the Act: *Provided*, That the application specifies the additional activities for which licenses are requested and complies with regulations of the Commission as to applications for such licenses.

(e) Each application for a source material license, other than a license exempted from part 170 of this chapter, shall be accompanied by the fee prescribed in § 170.31 of this chapter. No fee will be required to accompany an application for renewal or amendment of a license, except as provided in § 170.31 of this chapter.

(f) An application for a license to possess and use source material for uranium milling, production of uranium hexafluoride, or for the conduct of any other activity which the Commission has determined pursuant to subpart A of part 51 of this chapter will significantly affect the quality of the environment shall be filed at least 9 months prior to commencement of construction of the plant or facility in which the activity will be conducted and shall be accompanied by any Environmental Report required pursuant to subpart A of part 51 of this chapter.



(g) An applicant for a license to possess and use source material, or the recipient of such a license shall report information to the Commission as follows:

(1) In response to a written request by the Commission, a uranium or thorium processing plant, and any other applicant for a license to possess and use source material, shall submit facility information described in § 75.10 of this chapter on Form N-71 and associated forms and site information on DOC/NRC Form AP-A, and associated forms;

(2) As required by the Additional Protocol, a uranium or thorium processing plant, and any other applicant for a license to possess and use source material, shall submit location information described in § 75.11 of this chapter on DOC/NRC Form AP-1 and associated forms; shall permit verification of this information by the International Atomic Energy Agency (IAEA); and shall take other actions as may be necessary to implement the US/IAEA Safeguards Agreement, as described in Part 75 of this chapter; or

(3) As required by the Additional Protocol, an ore processing plant or a facility using or storing ore concentrates or other impure source materials shall submit the information described in § 75.11 of this chapter, as appropriate, on DOC/NRC Form AP-1 and associated forms; shall permit verification of this information by the International Atomic Energy Agency (IAEA); and shall take other actions as may be necessary to implement the US/IAEA Safeguards Agreement, as described in Part 75 of this chapter.

(h) An application for a license to receive, possess, and use source material for uranium or thorium milling or byproduct material, as defined in this part, at sites formerly associated with such milling shall contain proposed written specifications relating to milling operations and the disposition of the byproduct material to achieve the requirements and objectives set forth in appendix A of this part. Each application must clearly demonstrate how the requirements and objectives set forth in appendix A of this part have been addressed. Failure to clearly demonstrate how the requirements and objectives in appendix A have been addressed shall be grounds for refusing to accept an application.

(i) As provided by § 40.36, certain applications for specific licenses filed under this part must contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning. In the case of renewal applications submitted before July 27, 1990, this submittal may follow the renewal application but must be submitted on or before July 27, 1990.

(j)(1) Each application to possess uranium hexafluoride in excess of 50 kilograms in a single container or 1000 kilograms total must contain either:

(i) An evaluation showing that the maximum intake of uranium by a member of the public due to a release would not exceed 2 milligrams; or

(ii) An emergency plan for responding to the radiological hazards of an accidental release of source material and to any associated chemical hazards directly incident thereto.

(2) One or more of the following factors may be used to support an evaluation submitted under paragraph (j)(1)(i) of this section:

(i) All or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(ii) Facility design or engineered safety features in the facility would reduce the amount of the release; or

(iii) Other factors appropriate for the specific facility.

(3) An emergency plan submitted under paragraph (j)(1)(ii) of this section must include the following:

(i) Facility description. A brief description of the licensee's facility and area near the site.

(ii) Types of accidents. An identification of each type of accident for which protective actions may be needed.

(iii) Classification of accidents. A classification system for classifying accidents as alerts or site area emergencies.

(iv) Detection of accidents. Identification of the means of detecting each type of radioactive materials accident in a timely manner.

(v) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(vi) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(vii) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the NRC; also responsibilities for developing, maintaining, and updating the plan.

(viii) Notification and coordination. A commitment to and a brief description of the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the NRC operations center immediately after notification of the offsite response organizations and not later than one hour after the licensee declares an emergency.<sup>1</sup>

(ix) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to offsite response organizations and to the NRC.

(x) Training. A brief description of the frequency, performance objectives and plans for the training that the licensee will provide workers on how to respond to an emergency including any special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site, including the use of team training for such scenarios.

(xi) Safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident.

(xii) Exercises. Provisions for conducting quarterly communications checks with offsite response organizations and biennial onsite exercises to test response to simulated emergencies. Quarterly communications checks with offsite response organizations must include the check and update of all necessary telephone numbers. The licensee shall invite offsite response organizations to participate in the biennial exercises. Participation of offsite response organizations in biennial exercises although recommended is not required. Exercises must use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques must be corrected.

(xiii) Hazardous chemicals. A certification that the application has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, title III, Pub. L. 99-499, if applicable to the applicant's activities at the proposed place of the use of the source material.

(4) The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the NRC. The licensee shall provide any comments received within the 60 days to the NRC with the emergency plan.

(k) A license application for a uranium enrichment facility must be accompanied by an Environmental Report required under subpart A of part 51 of this chapter.

(l) A license application that involves the use of source material in a uranium enrichment facility must include the applicant's provisions for liability insurance.

(m) Each applicant for a license for the possession of source material at a facility for the production or conversion of uranium hexafluoride shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.22 of this chapter, as applicable. Each applicant for a license for source material shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

[26 FR 284, Jan. 14, 1961, as amended at 31 FR 4669, Mar. 19, 1966; 34 FR 19546, Dec. 11, 1969; 36 FR 145, Jan. 6, 1971; 37 FR 5748, Mar. 21, 1972; 46 FR 13497, Feb. 23, 1981; 49 FR 9403, Mar. 12, 1984; 49 FR 19626, May 9, 1984; 49 FR 21699, May 23, 1984; 49 FR 27924, July 9, 1984; 53 FR 24047, June 27, 1988; 54 FR 14061, Apr. 7, 1989; 57 FR 18390, Apr. 30, 1992; 68 FR 58807, Oct. 10, 2003; 73 FR 78604, Dec. 23, 2008; 73 FR 63570, Oct. 24, 2008]

<sup>1</sup> These reporting requirements do not supersede or release licensees of complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99-499 or other state or federal reporting requirements.

## **§ 40.32 General requirements for issuance of specific licenses.**

An application for a specific license will be approved if:

- (a) The application is for a purpose authorized by the Act; and
- (b) The applicant is qualified by reason of training and experience to use the source material for the purpose requested in such manner as to protect health and minimize danger to life or property; and
- (c) The applicant's proposed equipment, facilities and procedures are adequate to protect health and minimize danger to life or property; and
- (d) The issuance of the license will not be inimical to the common defense and security or to the health and safety of the public; and
- (e) In the case of an application for a license for a uranium enrichment facility, or for a license to possess and use source and byproduct material for uranium milling, production of uranium hexafluoride, or for the conduct of any other activity which the NRC determines will significantly affect the quality of the environment, the Director, Office of Nuclear Material Safety and Safeguards or his/her designee, before commencement of construction, on the basis of information filed and evaluations made pursuant to subpart A of part 51 of this chapter, has concluded, after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of construction prior to this conclusion is grounds for denial of a license to possess and use source and byproduct material in the plant or facility. Commencement of construction as defined in § 40.4 may include non-construction activities if the activity has a reasonable nexus to radiological safety and security.
- (f) The applicant satisfies any applicable special requirements contained in §§ 40.34, 40.52, and 40.54.
- (g) If the proposed activity involves use of source material in a uranium enrichment facility, the applicant has satisfied the applicable provisions of part 140 of this chapter.

[26 FR 284, Jan. 14, 1961, as amended at 36 FR 12731, July 7, 1971; 40 FR 8787, Mar. 3, 1975; 41 FR 53332, Dec. 6, 1976; 43 FR 6924, Feb. 17, 1978; 49 FR 9403, Mar. 12, 1984; 57 FR 18390, Apr. 30, 1992; 73 FR 5721, Jan. 31, 2008; 76 FR 56964, Sep. 15, 2011; 78 FR 32340, May 29, 2013; 79 FR 75740, Dec. 19, 2014]

### **§ 40.33 Issuance of a license for a uranium enrichment facility.**

- (a) The Commission will hold a hearing pursuant to 10 CFR part 2, subparts A, G, and I, on each application with regard to the licensing of the construction and operation of a uranium enrichment facility. The Commission will publish public notice of the hearing in the Federal Register at least 30 days before the hearing.
- (b) A license for a uranium enrichment facility may not be issued before the hearing is completed and a decision issued on the application.

[57 FR 18391, Apr. 30, 1992]

## **§ 40.34 Special requirements for issuance of specific licenses.**

(a) An application for a specific license to manufacture industrial products and devices containing depleted uranium, or to initially transfer such products or devices, for use pursuant to § 40.25 of this part or equivalent regulations of an Agreement State, will be approved if:

(1) The applicant satisfies the general requirements specified in § 40.32;

(2) The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses, and potential hazards of the industrial product or device to provide reasonable assurance that possession, use, or transfer of the depleted uranium in the product or device is not likely to cause any individual to receive in 1 year a radiation dose in excess of 10 percent of the annual limits specified in § 20.1201(a) of this chapter; and

(3) The applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(b) In the case of an industrial product or device whose unique benefits are questionable, the Commission will approve an application for a specific license under this paragraph only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(c) The Commission may deny an applicant for a specific license under this paragraph if the end uses of the industrial product or device cannot be reasonably foreseen.

[41 FR 53332, Dec. 6, 1976, as amended at 43 FR 6924, Feb. 17, 1978; 58 FR 67661, Dec. 22, 1993; 59 FR 41643, Aug. 15, 1994]

## **§ 40.35 Conditions of specific licenses issued pursuant to § 40.34.**

Each person licensed pursuant to § 40.34 shall:

(a) Maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

(b) Label or mark each unit to: (1) Identify the manufacturer or initial transferor of the product or device and the number of the license under which the product or device was manufactured or initially transferred, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and (2) state that the receipt, possession, use, and transfer of the product or device are subject to a general license or the equivalent and the regulations of the U.S. NRC or of an Agreement State;

(c) Assure that the depleted uranium before being installed in each product or device has been impressed with the following legend clearly legible through any plating or other covering: "Depleted Uranium";

(d)(1) Furnish a copy of the general license contained in § 40.25 and a copy of Form NRC 244 to each person to whom he transfers source material in a product or device for use pursuant to the general license contained in § 40.25; or

(2) Furnish a copy of the general license contained in the Agreement State's regulation equivalent to § 40.25 and a copy of the Agreement State's certificate, or alternately, furnish a copy of the general license contained in § 40.25 and a copy of Form NRC 244 to each person to whom he transfers source material in a product or device for use pursuant to the general license of an Agreement State. If a copy of the general license in § 40.25 and a copy of Form NRC 244 are furnished to such person, they shall be accompanied by a note explaining that use of the product or device is regulated by the Agreement State under requirements substantially the same as those in § 40.25; and

(e)(1) Report to the Director, Office of Nuclear Material Safety and Safeguards, by an appropriate method listed in § 40.5, all transfers of industrial products or devices to persons for use under the general license in § 40.25. Such report shall identify each general licensee by name and address, an individual by name and/or position who may constitute a point of contact between the Commission and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within 30 days after the end of each calendar quarter in which such a product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under § 40.25 during the reporting period, the report shall so indicate;

(2) Report to the responsible Agreement State Agency all transfers of industrial products or devices to persons for use under the general license in the Agreement State's regulation equivalent to § 40.25. Such report shall identify each general licensee by name and address, an individual by name and/or position who may constitute a point of contact between the Agency and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within 30 days after the end of each calendar quarter in which such product or device is transferred to the generally licensed person. If no transfers have been made to a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State Agency;

(3) Keep records showing the name, address, and a point of contact for each general license to whom he or she transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in § 40.25 or equivalent regulations of an Agreement State. The records must be retained for three years from the date of transfer and must show the date of each transfer, the quantity of depleted uranium in each product or device transferred, and compliance with the report requirements of this section.

(f) Licensees required to submit emergency plans by § 40.31(i) shall follow the emergency plan approved by the Commission. The licensee may change the plan without Commission approval if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the change to the Director, Office of Nuclear Material Safety and Safeguards, by an appropriate method listed in § 40.5, and to affected offsite response organizations, within six months after the change is made. Proposed changes that decrease the effectiveness of the approved emergency plan may not be implemented without application to and prior approval by the Commission.

[41 FR 53332, Dec. 6, 1976, as amended at 43 FR 6924, Feb. 17, 1978; 52 FR 31611, Aug. 21, 1987; 53 FR 19248, May 27, 1988; 54 FR 14062, Apr. 7, 1989; 68 FR 58807, Oct. 10, 2003; 73 FR 5721, Jan. 31, 2008; 79 FR 75740, Dec. 19, 2014]



## **§ 40.36 Financial assurance and recordkeeping for decommissioning.**

Except for licenses authorizing the receipt, possession, and use of source material for uranium or thorium milling, or byproduct material at sites formerly associated with such milling, for which financial assurance requirements are set forth in appendix A of this part, criteria for providing financial assurance for decommissioning are as follows:

(a) Each applicant for a specific license authorizing the possession and use of more than 100 mCi of source material in a readily dispersible form shall submit a decommissioning funding plan as described in paragraph (d) of this section.

(b) Each applicant for a specific license authorizing possession and use of quantities of source material greater than 10 mCi but less than or equal to 100 mCi in a readily dispersible form shall either—

(1) Submit a decommissioning funding plan as described in paragraph (d) of this section; or

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount of \$225,000 by June 2, 2005 using one of the methods described in paragraph (e) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section must be submitted to NRC prior to receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to NRC, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section.

(c)(1) Each holder of a specific license issued on or after July 27, 1990, which is covered by paragraph (a) or (b) of this section, shall provide financial assurance for decommissioning in accordance with the criteria set forth in this section.

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit a decommissioning funding plan as described in paragraph (d) of this section or a certification of financial assurance for decommissioning in an amount at least equal to \$1,125,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal. Licensees required to submit the \$1,125,000 amount must do so by December 2, 2004.

(3) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (b) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan, as described in paragraph (d) of this section, or a certification of financial assurance for decommissioning in accordance with the criteria set forth in this section.

(4) Any licensee who has submitted an application before July 27, 1990, for renewal of license in accordance with § 40.43 shall provide financial assurance for decommissioning in accordance with



paragraphs (a) and (b) of this section. This assurance must be submitted when this rule becomes effective November 24, 1995.

(5) If, in surveys made under 10 CFR 20.1501(a), residual radioactivity in the facility and environment, including the subsurface, is detected at levels that would, if left uncorrected, prevent the site from meeting the 10 CFR 20.1402 criteria for unrestricted use, the licensee must submit a decommissioning funding plan within one year of when the survey is completed.

(d)(1) Each decommissioning funding plan must be submitted for review and approval and must contain—

(i) A detailed cost estimate for decommissioning, in an amount reflecting:

(A) The cost of an independent contractor to perform all decommissioning activities;

(B) The cost of meeting the 10 CFR 20.1402 criteria for unrestricted use, provided that, if the applicant or licensee can demonstrate its ability to meet the provisions of 10 CFR 20.1403, the cost estimate may be based on meeting the 10 CFR 20.1403 criteria;

(C) The volume of onsite subsurface material containing residual radioactivity that will require remediation; and

(D) An adequate contingency factor.

(ii) Identification of and justification for using the key assumptions contained in the DCE;

(iii) A description of the method of assuring funds for decommissioning from paragraph (e) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility;

(iv) A certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning; and

(v) A signed original, or if permitted, a copy, of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section (unless a previously submitted and accepted financial instrument continues to cover the cost estimate for decommissioning).

(2) At the time of license renewal and at intervals not to exceed 3 years, the decommissioning funding plan must be resubmitted with adjustments as necessary to account for changes in costs and the extent of contamination. If the amount of financial assurance will be adjusted downward, this can not be done until the updated decommissioning funding plan is approved. The decommissioning funding plan must update the information submitted with the original or prior approved plan, and must specifically consider the effect of the following events on decommissioning costs:

(i) Spills of radioactive material producing additional residual radioactivity in onsite subsurface material;

(ii) Waste inventory increasing above the amount previously estimated;

(iii) Waste disposal costs increasing above the amount previously estimated;

- (iv) Facility modifications;
- (v) Changes in authorized possession limits;
- (vi) Actual remediation costs that exceed the previous cost estimate;
- (vii) Onsite disposal; and
- (viii) Use of a settling pond.

(e) The financial instrument must include the licensee's name, license number, and docket number; and the name, address, and other contact information of the issuer, and, if a trust is used, the trustee. When any of the foregoing information changes, the licensee must, within 30 days, submit financial instruments reflecting such changes. The financial instrument submitted must be a signed original or signed original duplicate, except where a copy is specifically permitted. Financial assurance for decommissioning must be provided by one or more of the following methods:

(1) *Prepayment.* Prepayment is the deposit before the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment must be made into a trust account, and the trustee and the trust must be acceptable to the Commission.

(2) *A surety method, insurance, or other guarantee method.* These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, or letter of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A to part 30 of this chapter. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix C to part 30 of this chapter. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in appendix D to part 30 of this chapter. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in appendix E to part 30 of this chapter. Except for an external sinking fund, a parent company guarantee or guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this section. A guarantee by the applicant or licensee may not be used in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

(i) The surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the Commission, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Commission within 30 days after receipt of notification of cancellation.

(ii) The surety method or insurance must be payable to a trust established for decommissioning costs. The trustee and trust must be acceptable to the Commission. An acceptable trustee includes an

appropriate State or Federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(iii) The surety method or insurance must remain in effect until the Commission has terminated the license.

(3) *An external sinking fund in which deposits are made at least annually, coupled with a surety method, insurance, or other guarantee method, the value of which may decrease by the amount being accumulated in the sinking fund.* An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund must be in the form of a trust. If the other guarantee method is used, no surety or insurance may be combined with the external sinking fund. The surety, insurance, or other guarantee provisions must be as stated in paragraph (e)(2) of this section.

(4) In the case of Federal, State, or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on paragraph (b) of this section, and indicating that funds for decommissioning will be obtained when necessary.

(5) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

(f) Each person licensed under this part shall keep records of information important to the decommissioning of a facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with § 40.41(b) licensees shall transfer all records described in this paragraph to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records important to the decommissioning of a facility are kept for other purposes, reference to these records and their locations may be used. Information the Commission considers important to decommissioning consists of—

(1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations.

(2) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(3) Except for areas containing depleted uranium used only for shielding or as penetrators in unused munitions, a list contained in a single document and updated every 2 years, of the following:

(i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.1003;

- (ii) All areas outside of restricted areas that require documentation under § 40.36(f)(1);
  - (iii) All areas outside of restricted areas where current and previous wastes have been buried as documented under 10 CFR 20.2108; and
  - (iv) All areas outside of restricted areas that contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in 10 CFR part 20, subpart E, or apply for approval for disposal under 10 CFR 20.2002.
- (4) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.
- (g) In providing financial assurance under this section, each licensee must use the financial assurance funds only for decommissioning activities and each licensee must monitor the balance of funds held to account for market variations. The licensee must replenish the funds, and report such actions to the NRC, as follows:
- (1) If, at the end of a calendar quarter, the fund balance is below the amount necessary to cover the cost of decommissioning, but is not below 75 percent of the cost, the licensee must increase the balance to cover the cost, and must do so within 30 days after the end of the calendar quarter.
  - (2) If, at any time, the fund balance falls below 75 percent of the amount necessary to cover the cost of decommissioning, the licensee must increase the balance to cover the cost, and must do so within 30 days of the occurrence.
  - (3) Within 30 days of taking the actions required by paragraph (g)(1) or (g)(2) of this section, the licensee must provide a written report of such actions to the Director, Office of Nuclear Material Safety and Safeguards, and state the new balance of the fund.

[53 FR 24047, Jun. 27, 1988, as amended at 58 FR 39633, Jul. 26, 1993; 58 FR 67661, Dec. 22, 1993; 58 FR 68731, Dec. 29, 1993; 59 FR 1618, Jan. 12, 1994; 60 FR 38238, July 26, 1995; 61 FR 24674, May 16, 1996; 62 FR 39090, Jul. 21, 1997; 63 FR 29543, Jun. 1, 1998; 68 FR 57336, Oct. 3, 2003; 76 FR 35568 Jun. 17, 2011; 78 FR 34247, Jun. 7, 2013; 78 FR 75450, Dec. 12, 2013; 79 FR 75740, Dec. 19, 2014]

## **§ 40.38 Ineligibility of certain applicants.**

A license may not be issued to the Corporation if the Commission determines that:

- (a) The Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or
- (b) The issuance of such a license would be inimical to--
  - (1) The common defense and security of the United States; or
  - (2) The maintenance of a reliable and economical domestic source of enrichment services.

[62 FR 6669, Feb. 12, 1997]

## Licenses

### § 40.41 Terms and conditions of licenses.

(a) Each license issued pursuant to the regulations in this part shall be subject to all the provisions of the act, now or hereafter in effect, and to all rules, regulations and orders of the Commission.

(b) Neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of the Act.

(c) Each person licensed by the Commission pursuant to the regulations in this part shall confine his possession and use of source or byproduct material to the locations and purposes authorized in the license. Except as otherwise provided in the license, a license issued pursuant to the regulations in this part shall carry with it the right to receive, possess, and use source or byproduct material. Preparation for shipment and transport of source or byproduct material shall be in accordance with the provisions of part 71 of this chapter.

(d) Each license issued pursuant to the regulations in this part shall be deemed to contain the provisions set forth in sections 183b.-d., of the Act, whether or not said provisions are expressly set forth in the license.

(e) The Commission may incorporate in any license at the time of issuance, or thereafter, by appropriate rule, regulation or order, such additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of source or byproduct material as it deems appropriate or necessary in order to:

(1) Promote the common defense and security;

(2) Protect health or to minimize danger of life or property;

(3) Protect restricted data;

(4) Require such reports and the keeping of such records, and to provide for such inspections of activities under the license as may be necessary or appropriate to effectuate the purposes of the act and regulations thereunder.

(f)(1) Each licensee shall notify the appropriate NRC Regional Administrator, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of title 11 (Bankruptcy) of the United States Code by or against:

(i) The licensee;

(ii) An entity (as that term is defined in 11 U.S.C. 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or

(iii) An affiliate (as that term is defined in 11 U.S.C. 101(2)) of the licensee.

(2) This notification must indicate:

(i) The bankruptcy court in which the petition for bankruptcy was filed; and

(ii) The date of the filing of the petition.

(g) No person may commence operation of a uranium enrichment facility until the Commission verifies through inspection that the facility has been constructed in accordance with the requirements of the license. The Commission shall publish notice of the inspection results in the Federal Register.

(h) Each licensee shall ensure that Safeguards Information is protected against unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

[26 FR 284, Jan. 14, 1961, as amended at 31 FR 15145, Dec. 2, 1966; 45 FR 65531, Oct. 3, 1980; 48 FR 32328, July 15, 1983; 52 FR 1295, Jan. 12, 1987; 57 FR 18391, Apr. 30, 1992; 73 FR 63571, Oct. 24, 2008]

## **§ 40.42 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.**

(a) Each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under § 40.43 not less than 30 days before the expiration date stated in the existing license. If an application for renewal has been filed at least 30 days before the expiration date stated in the existing license, the existing license expires at the end of the day on which the Commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(b) Each specific license revoked by the Commission expires at the end of the day on the date of the Commission's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by Commission Order.

(c) Each specific license continues in effect, beyond the expiration date if necessary, with respect to possession of source material until the Commission notifies the licensee in writing that the license is terminated. During this time, the licensee shall—

(1) Limit actions involving source material to those related to decommissioning; and

(2) Continue to control entry to restricted areas until they are suitable for release in accordance with NRC requirements;

(d) Within 60 days of the occurrence of any of the following, consistent with the administrative directions in § 40.5, each licensee shall provide notification to the NRC in writing and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity, so that the building or outdoor area is suitable for release in accordance with NRC requirements, or submit within 12 months of notification a decommissioning plan, if required by paragraph (g)(1) of this section, and begin decommissioning upon approval of that plan if—

(1) The license has expired pursuant to paragraph (a) or (b) of this section; or

(2) The licensee has decided to permanently cease principal activities, as defined in this part, at the entire site or in any separate building or outdoor area; or



(3) No principal activities under the license have been conducted for a period of 24 months; or

(4) No principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements.

(e) Coincident with the notification required by paragraph (d) of this section, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to § 40.36 in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to paragraph (g)(4)(v) of this section.

(1) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so when this rule becomes effective November 24, 1995.

(2) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the Commission.

(f) The Commission may grant a request to delay or postpone initiation of the decommissioning process if the Commission determines that such relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to paragraph (d) of this section. The schedule for decommissioning set forth in paragraph (d) of this section may not commence until the Commission has made a determination on the request.

(g)(1) A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the Commission and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(i) Procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(ii) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(iii) Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(iv) Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(2) The Commission may approve an alternate schedule for submittal of a decommissioning plan required pursuant to paragraph (d) of this section if the Commission determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(3) The procedures listed in paragraph (g)(1) of this section may not be carried out prior to approval of the decommissioning plan.



(4) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(i) A description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(ii) A description of planned decommissioning activities;

(iii) A description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(iv) A description of the planned final radiation survey; and

(v) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning.

(vi) For decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in paragraph (i) of this section.

(5) The proposed decommissioning plan will be approved by the Commission if the information therein demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

(h)(1) Except as provided in paragraph (i) of this section, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(2) Except as provided in paragraph (i) of this section, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(i) The Commission may approve a request for an alternate schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the Commission determines that the alternative is warranted by consideration of the following:

(1) Whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(2) Whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

(3) Whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(4) Whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(5) Other site-specific factors which the Commission may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, groundwater

treatment activities, monitored natural groundwater restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(j) As the final step in decommissioning, the licensee shall—

(1) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed NRC Form 314 or equivalent information; and

(2) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR part 20, subpart E or, for uranium milling (uranium and thorium recovery) facilities, Criterion 6(6) of Appendix A to this part. The licensee shall, as appropriate—

(i) Report levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters removable and fixed for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(ii) Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(k) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the Commission determines that:

(1) Source material has been properly disposed;

(2) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(3)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR part 20, subpart E; or for uranium milling (uranium and thorium recovery) facilities, Criterion 6(6) of Appendix A to this part;

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in 10 CFR part 20, subpart E.

(4) Records required by § 40.61(d) and (f) have been received.

(l) Specific licenses for uranium and thorium milling are exempt from paragraphs (d)(4), (g) and (h) of this section with respect to reclamation of tailings impoundments and/or waste disposal areas.

[59 FR 36035, July 15, 1994, as amended at 60 FR 38239, July 26, 1995; 61 FR 1114, Jan. 16, 1996; 61 FR 24674, May 16, 1996; 61 FR 29637, June 12, 1996; 62 FR 39090, July 21, 1997; 66 FR 64738, Dec. 14, 2001; 68 FR 75390, Dec. 31, 2003; 73 FR 42673, Jul. 23, 2008; 81 FR 86909, Dec. 2, 2016]

## **§ 40.43 Renewal of licenses.**

Application for renewal of a specific license must be filed on NRC Form 313 and in accordance with § 40.31.

[59 FR 36037, July 15, 1994, as amended at 61 FR 1114, Jan. 16, 1996; 62 FR 52187, Oct. 6, 1997; 75 FR 73943, Nov. 30, 2010]

## **§ 40.44 Amendment of licenses at request of licensee.**

Applications for amendment of a license shall be filed on NRC Form 313 in accordance with § 40.31 and shall specify the respects in which the licensee desires the license to be amended and the grounds for such amendment.

[49 FR 19627, May 9, 1984, as amended at 56 FR 40768, Aug. 16, 1991]

## **§ 40.45 Commission action on applications to renew or amend.**

In considering an application by a licensee to renew or amend his license the Commission will apply the applicable criteria set forth in § 40.32.

[26 FR 284, Jan. 14, 1961, as amended at 43 FR 6924, Feb. 17, 1978]

## **§ 40.46 Inalienability of licenses.**

(a) No license issued or granted pursuant to the regulations in this part shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall after securing full information, find that the transfer is in accordance with the provisions of this act, and shall give its consent in writing.

(b) An application for transfer of license must include:

(1) The identity, technical and financial qualifications of the proposed transferee; and

(2) Financial assurance for decommissioning information required by § 40.36 or Appendix A to this part, as applicable.

[76 FR 35569 Jun. 17, 2011]

## **Transfer of Source Material**

### **§ 40.51 Transfer of source or byproduct material.**

(a) No licensee shall transfer source or byproduct material except as authorized pursuant to this section.

(b) Except as otherwise provided in his license and subject to the provisions of paragraphs (c) and (d) of this section, any licensee may transfer source or byproduct material:

(1) To the Department of Energy;

- (2) To the agency in any Agreement State which regulates radioactive materials pursuant to an agreement with the Commission or the Atomic Energy Commission under section 274 of the Act;
  - (3) To any person exempt from the licensing requirements of the Act and regulations in this part, to the extent permitted under such exemption;
  - (4) To any person in an Agreement State subject to the jurisdiction of that State who has been exempted from the licensing requirements and regulations of that State, to the extent permitted under such exemptions;
  - (5) To any person authorized to receive such source or byproduct material under terms of a specific license or a general license or their equivalents issued by the Commission or an Agreement State;
  - (6) To any person abroad pursuant to an export license issued under part 110 of this chapter; or
  - (7) As otherwise authorized by the commission in writing.
- (c) Before transferring source or byproduct material to a specific licensee of the Commission or an Agreement State or to a general licensee who is required to register with the Commission or with an Agreement State prior to receipt of the source or byproduct material, the licensee transferring the material shall verify that the transferee's license authorizes receipt of the type, form, and quantity of source or byproduct material to be transferred.
- (d) The following methods for the verification required by paragraph (c) of this section are acceptable:
- (1) The transferor may have in his possession, and read, a current copy of the transferee's specific license or registration certificate;
  - (2) The transferor may have in his possession a written certification by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of source or byproduct material to be transferred, specifying the license or registration certification number, issuing agency and expiration date;
  - (3) For emergency shipments the transferor may accept oral certification by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of source or byproduct material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date: *Provided*, That the oral certification is confirmed in writing within 10 days;
  - (4) The transferor may obtain other sources of information compiled by a reporting service from official records of the Commission or the licensing agency of an Agreement State as to the identity of licensees and the scope and expiration dates of licenses and registrations; or
  - (5) When none of the methods of verification described in paragraphs (d)(1) to (4) of this section are readily available or when a transferor desires to verify that information received by one of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the Commission or the licensing agency of an Agreement State that the transferee is licensed to receive the source or byproduct material.

[45 FR 65532, Oct. 3, 1980]

## **§ 40.52 Certain items containing source material; requirements for license to apply or initially transfer.**

An application for a specific license to apply source material to, incorporate source material into, manufacture, process, or produce the products specified in § 40.13(c) or to initially transfer for sale or distribution any products containing source material for use under § 40.13(c) or equivalent provisions of an Agreement State will be approved if:

- (a) The applicant satisfies the general requirements specified in § 40.32. However, the requirements of § 40.32(b) and (c) do not apply to an application for a license to transfer products manufactured, processed, or produced in accordance with a license issued by an Agreement State or to the import of finished products or parts.
- (b) The applicant submits sufficient information regarding the product pertinent to the evaluation of the potential radiation exposures, including:
  - (1) Chemical and physical form and maximum quantity of source material in each product;
  - (2) Details of construction and design of each product, if applicable. For coated lenses, this must include a description of manufacturing methods that will ensure that the coatings are unlikely to be removed under the conditions expected to be encountered during handling and use;
  - (3) For products with applicable quantity or concentration limits, quality control procedures to be followed in the fabrication of production lots of the product and the quality control standards the product will be required to meet;
  - (4) The proposed method of labeling or marking each unit, and/or its container with the identification of the manufacturer or initial transferor of the product and the source material in the product; and
  - (5) The means of providing radiation safety precautions and instructions relating to handling, use, and storage of products to be used under § 40.13(c)(1)(i) and (c)(1)(iii).
- (c) Each product will contain no more than the quantity or the concentration of source material specified for that product in § 40.13(c).

[76 FR 69122, Nov. 8, 2011; 76 FR 78805, Dec. 20, 2011; 78 FR 32340, May 29, 2013]

## **§ 40.53 Conditions for licenses issued for initial transfer of certain items containing source material: Quality control, labeling, and records and reports.**

- (a) Each person licensed under § 40.52 shall ensure that the quantities or concentrations of source material do not exceed any applicable limit in § 40.13(c).
- (b) Each person licensed under § 40.52 shall ensure that each product is labeled as provided in the specific exemption under § 40.13(c) and as required by their license. Those distributing products to be used under § 40.13(c)(1)(i) and (iii) or equivalent regulations of an Agreement State shall provide

radiation safety precautions and instructions relating to handling, use, and storage of these products as specified in the license.

(c)(1) Each person licensed under § 40.52 shall file a report with the Director, Office of Nuclear Material Safety and Safeguards by an appropriate method listed in § 40.5(a), including in the address: ATTN: Document Control Desk/Exempt Distribution.

(2) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee and indicate that the products are transferred for use under § 40.13(c), giving the specific paragraph designation, or equivalent regulations of an Agreement State.

(3) The report must include the following information on products transferred to other persons for use under § 40.13(c) or equivalent regulations of an Agreement State:

- (i) A description or identification of the type of each product and the model number(s), if applicable;
- (ii) For each type of source material in each type of product and each model number, if applicable, the total quantity of the source material; and
- (iii) The number of units of each type of product transferred during the reporting period by model number, if applicable.

(4) The licensee shall file the report, covering the preceding calendar year, on or before January 31 of each year. Licensees who permanently discontinue activities authorized by the license issued under § 40.52 shall file a report for the current calendar year within 30 days after ceasing distribution.

(5) If no transfers of source material have been made to persons exempt under § 40.13(c) or the equivalent regulations of an Agreement State, during the reporting period, the report must so indicate.

(6) The licensee shall maintain all information concerning transfers that support the reports required by this section for 1 year after each transfer is included in a report to the Commission.

[76 FR 78805, Dec. 20, 2011; 78 FR 32340, May 29, 2013; 79 FR 75740, Dec. 19, 2014]

## **§ 40.54 Requirements for license to initially transfer source material for use under the 'small quantities of source material' general license.**

An application for a specific license to initially transfer source material for use under § 40.22, or equivalent regulations of an Agreement State, will be approved if:

- (a) The applicant satisfies the general requirements specified in § 40.32; and
- (b) The applicant submits adequate information on, and the Commission approves the methods to be used for quality control, labeling, and providing safety instructions to recipients.

[76 FR 78805, Dec. 20, 2011; 78 FR 32340, May 29, 2013]

## **§ 40.55 Conditions of licenses to initially transfer source material for use under the 'small quantities of source material' general license: Quality control, labeling, safety instructions, and records and reports.**

(a) Each person licensed under § 40.54 shall label the immediate container of each quantity of source material with the type of source material and quantity of material and the words, "radioactive material."

(b) Each person licensed under § 40.54 shall ensure that the quantities and concentrations of source material are as labeled and indicated in any transfer records.

(c) Each person licensed under § 40.54 shall provide the information specified in this paragraph to each person to whom source material is transferred for use under § 40.22 or equivalent provisions in Agreement State regulations. This information must be transferred before the source material is transferred for the first time in each calendar year to the particular recipient. The required information includes:

(1) A copy of §§ 40.22 and 40.51, or relevant equivalent regulations of the Agreement State.

(2) Appropriate radiation safety precautions and instructions relating to handling, use, storage, and disposal of the material.

(d) Each person licensed under § 40.54 shall report transfers as follows:

(1) File a report with the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The report shall include the following information:

(i) The name, address, and license number of the person who transferred the source material;

(ii) For each general licensee under § 40.22 or equivalent Agreement State provisions to whom greater than 50 grams (0.11 lb) of source material has been transferred in a single calendar quarter, the name and address of the general licensee to whom source material is distributed; a responsible agent, by name and/or position and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred; and

(iii) The total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients.

(2) File a report with each responsible Agreement State agency that identifies all persons, operating under provisions equivalent to § 40.22, to whom greater than 50 grams (0.11 lb) of source material has been transferred within a single calendar quarter. The report shall include the following information specific to those transfers made to the Agreement State being reported to:

(i) The name, address, and license number of the person who transferred the source material; and

(ii) The name and address of the general licensee to whom source material was distributed; a responsible agent, by name and/or position and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred.



(iii) The total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients within the Agreement State.

(3) Submit each report by January 31 of each year covering all transfers for the previous calendar year. If no transfers were made to persons generally licensed under § 40.22 or equivalent Agreement State provisions during the current period, a report shall be submitted to the Commission indicating so. If no transfers have been made to general licensees in a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon request of the agency.

(e) Each person licensed under § 40.54 shall maintain all information that supports the reports required by this section concerning each transfer to a general licensee for a period of 1 year after the event is included in a report to the Commission or to an Agreement State agency.

[76 FR 78805, Dec. 20, 2011; 78 FR 32340, May 29, 2013; 79 FR 75740, Dec. 19, 2014]

## **§ 40.56 Restrictions on the use of Australian-obligated source material.**

(a) In accordance with Article 8 of the Agreement between the Government of Australia and the Government of the United States of America Concerning Peaceful Uses of Nuclear Energy, dated 2010, Australian-obligated source material shall not be used for military purposes. As used in this section, "military purposes" includes, but is not limited to, the production of tritium for use in nuclear explosive devices; military nuclear propulsion; munitions, including depleted uranium munitions; and other direct military non-nuclear applications. "Military purposes" does not include the supply of electricity to a military base from any power network; the production of radioisotopes to be used for medical purposes in military hospitals; and such other similar purposes.

(b) Licensees are prohibited from receiving, processing, transferring, or otherwise using Australian-obligated source material for military purposes.

[76 FR 69122, Nov. 8, 2011; 76 FR 78805, Dec. 20, 2011]

## **Records, Reports, and Inspections**

### **§ 40.60 Reporting requirements.**

(a) *Immediate report.* Each licensee shall notify the NRC as soon as possible but not later than 4 hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of licensed material that could exceed regulatory limits (events may include fires, explosions, toxic gas releases, etc.).

(b) *Twenty-four hour report.* Each licensee shall notify the NRC within 24 hours after the discovery of any of the following events involving licensed material:

(1) An unplanned contamination event that:

(i) Requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(ii) Involves a quantity of material greater than five times the lowest annual limit on intake specified in appendix B of §§ 20.1001-20.2401 of 10 CFR part 20 for the material; and

(iii) Has access to the area restricted for a reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to decontamination.

(2) An event in which equipment is disabled or fails to function as designed when:

(i) The equipment is required by regulation or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

(ii) The equipment is required to be available and operable when it is disabled or fails to function; and

(iii) No redundant equipment is available and operable to perform the required safety function.

(3) An event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body.

(4) An unplanned fire or explosion damaging any licensed material or any device, container, or equipment containing licensed material when:

(i) The quantity of material involved is greater than five times the lowest annual limit on intake specified in appendix B of §§ 20.1001-20.2401 of 10 CFR part 20 for the material; and

(ii) The damage affects the integrity of the licensed material or its container.

(c) *Preparation and submission of reports.* Reports made by licensees in response to the requirements of this section must be made as follows:

(1) Licensees shall make reports required by paragraphs (a) and (b) of this section by telephone to the NRC Operations Center.<sup>1</sup> To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) The caller's name and call back telephone number;

(ii) A description of the event, including date and time;

(iii) The exact location of the event;

(iv) The isotopes, quantities, and chemical and physical form of the licensed material involved; and

(v) Any personnel radiation exposure data available.

(2) *Written report.* Each licensee who makes a report required by paragraph (a) or (b) of this section shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports must be sent

to the NRC's Document Control Desk by an appropriate method listed in § 40.5, with a copy to the appropriate NRC regional office listed in appendix D to part 20 of this chapter. The reports must include the following:

- (i) A description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;
  - (ii) The exact location of the event;
  - (iii) The isotopes, quantities, and chemical and physical form of the licensed material involved;
  - (iv) Date and time of the event;
  - (v) Corrective actions taken or planned and the results of any evaluations or assessments; and
  - (vi) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.
- (3) The provisions of § 40.60 do not apply to licensees subject to the notification requirements in § 50.72. They do apply to those part 50 licensees possessing material licensed under part 40 who are not subject to the notification requirements in § 50.72.

[56 FR 40768, Aug. 16, 1991, as amended at 59 FR 14086, Mar. 25, 1994; 68 FR 58807, Oct. 10, 2003]

<sup>1</sup> The commercial telephone number for the NRC Operations Center is (301) 816-5100.

## **§ 40.61 Records.**

(a) Each person who receives source or byproduct material pursuant to a license issued pursuant to the regulations in this part shall keep records showing the receipt, transfer, and disposal of this source or byproduct material as follows:

- (1) The licensee shall retain each record of receipt of source or byproduct material as long as the material is possessed and for three years following transfer or disposition of the source or byproduct material.
- (2) The licensee who transferred the material shall retain each record of transfer of source or byproduct material until the Commission terminates each license that authorizes the activity that is subject to the recordkeeping requirement.
- (3) The licensee shall retain each record of disposal of source or byproduct material until the Commission terminates each license that authorizes the activity that is subject to the recordkeeping requirement.
- (4) If source or byproduct material is combined or mixed with other licensed material and subsequently treated in a manner that makes direct correlation of a receipt record with a transfer, export, or disposition record impossible, the licensee may use evaluative techniques (such as first-in-first-out), to make the records that are required by this Part account for 100 percent of the material received.

(b) The licensee shall retain each record that is required by the regulations in this part or by license condition for the period specified by the appropriate regulation or license condition. If a retention period is not otherwise specified by regulation or license condition, each record must be maintained until the Commission terminates the license that authorizes the activity that is subject to the recordkeeping requirement.

(c)(1) Records which must be maintained pursuant to this part may be the original or reproduced copy or microform if the reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

(2) If there is a conflict between the Commission's regulations in this part, license condition, or other written Commission approval or authorization pertaining to the retention period for the same type of record, the retention period specified in the regulations in this part for such records shall apply unless the Commission, pursuant to § 40.14 of this part, has granted a specific exemption from the record retention requirements specified in the regulations in this part.

(d) Prior to license termination, each licensee authorized to possess source material, in an unsealed form, shall forward the following records to the appropriate NRC Regional Office:

(1) Records of disposal of licensed material made under § 20.2002 (including burials authorized before January 28, 1981<sup>(1)</sup>), 20.2003, 20.2004, 20.2005; and

(2) Records required by § 20.2103(b)(4).

(e) If licensed activities are transferred or assigned in accordance with § 40.41(b), each licensee authorized to possess source material, in an unsealed form, shall transfer the following records to the new licensee and the new licensee will be responsible for maintaining these records until the license is terminated:

(1) Records of disposal of licensed material made under § 20.2002 (including burials authorized before January 28, 1981<sup>(1)</sup>), 20.2003, 20.2004, 20.2005; and

(2) Records required by § 20.2103(b)(4).

(f) Prior to license termination, each licensee shall forward the records required by § 40.36(f) to the appropriate NRC Regional Office.

[45 FR 65532, Oct. 3, 1980, as amended at 53 FR 19248, May 27, 1988; 61 FR 24674, May 16, 1996; 80 FR 45843, Aug. 3, 2015]

<sup>1</sup> A previous § 20.304 permitted burial of small quantities of licensed materials in soil before January 28, 1981, without specific Commission authorization. See § 20.304 contained in the 10 CFR, parts 0 to 199, edition revised as of January 1, 1981.

## § 40.62 Inspections.

(a) Each licensee shall afford to the Commission at all reasonable times opportunity to inspect source or byproduct material and the premises and facilities wherein source or byproduct material is used or stored.

(b) Each licensee shall make available to the Commission for inspection, upon reasonable notice, records kept by him pursuant to the regulations in this chapter.

[45 FR 65532, Oct. 3, 1980]

## § 40.63 Tests.

Each licensee shall perform, or permit the Commission to perform, such tests as the Commission deems appropriate or necessary for the administration of the regulations in this part, including tests of:

(a) Source or byproduct material;

(b) Facilities wherein source or byproduct material is utilized or stored;

(c) Radiation detection and monitoring instruments; and

(d) Other equipment and devices used in connection with the utilization and storage of source or byproduct material.

[45 FR 65533, Oct. 3, 1980]

## § 40.64 Reports.

(a) Except as specified in paragraphs (d) and (e) of this section, each specific licensee who transfers, receives, or adjusts the inventory in any manner, of uranium or thorium source material with foreign obligations by one kilogram or more; or who imports or exports one kilogram or more of uranium or thorium source material; or who uses one kilogram or more of any uranium or thorium source material in enrichment services, downblending uranium that has an initial enrichment of the U<sup>235</sup> isotope of 10 percent or more, or in the fabrication of mixed-oxide fuels, shall complete a Nuclear Material Transaction Report in computer-readable format as specified in the instructions in NUREG/BR-0006 and NMSS Report D-24, "Personal Computer Data Input for NRC Licensees." Each licensee who exports one kilogram or more of uranium or thorium source material shall complete in the format listed above the licensee's portion of the Nuclear Material Transaction Report unless there is indication of loss, theft, or diversion as discussed under paragraph (d) of this section, in which case both the licensee's and the foreign facility's information must be reported. Licensees who import one kilogram or more of uranium or thorium source material shall complete the supplier's and the licensee's portion of the Nuclear Material Transaction Report. Copies of the instructions may be obtained either by writing the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Washington, DC 20555-0001, or by e-mail to [RidsNmssFcsl@nrc.gov](mailto:RidsNmssFcsl@nrc.gov). Each licensee who transfers the material shall submit a Nuclear Material Transaction Report in computer-readable format as specified in the instructions no later than the close of business the next working day. Each licensee who receives the material shall submit a Nuclear

Material Transaction Report in computer-readable format in accordance with instructions within ten (10) days after the material is received. The Commission's copy of the report must be submitted to the address specified in the instructions. These prescribed computer-readable forms replace the DOE/NRC Form 741 previously submitted in paper form.

(b) Except as specified in paragraphs (d) and (e) of this section, each licensee who:

(1) Possesses, or had possessed in the previous reporting period, at any one time and location, one kilogram or more of uranium or thorium source material with foreign obligations as defined in this part, shall document holdings as of September 30 of each year and submit to the Commission within 30 days, a statement of its source material inventory with foreign obligations as defined in this part. Alternatively, this information may be submitted with the licensee's material status reports on special nuclear material filed under part 72 or 74 of this chapter, as a statement of its source material inventory with foreign obligations as defined in this part. This statement must be submitted to the address specified in the reporting instructions in NUREG/BR-0007, and include the Reporting Identification Symbol (RIS) assigned by the Commission to the licensee.

(2) Possesses, or had possessed in the previous reporting period, one kilogram or more of uranium or thorium source material pursuant to the operation of enrichment services, downblending uranium that has an initial enrichment of the  $U^{235}$  isotope of 10 percent or more, or in the fabrication of mixed-oxide fuels shall complete and submit, in computer-readable format, Material Balance and Physical Inventory Listing Reports concerning all source material that the licensee has received, produced, possessed, transferred, consumed, disposed of, or lost. Reports must be submitted for each Reporting Identification Symbol (RIS) account including all holding accounts. Each licensee shall prepare and submit these reports as specified in the instructions in NUREG/BR-0007 and NMMSS Report D-24, "Personal Computer Data Input for NRC Licensees." These reports must document holdings as of September 30 of each year and must be submitted to the Commission within 30 days. Alternatively, these reports may be submitted with the licensee's material status reports on special nuclear material filed under parts 72 or 74 of this chapter. Copies of the reporting instructions may be obtained either by writing to the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Washington, DC 20555-0001, or by e-mail to [RidsNmssFcsl@nrc.gov](mailto:RidsNmssFcsl@nrc.gov). Each licensee required to report material balance, inventory, and/or foreign obligation information, as detailed in this part, shall resolve any discrepancies identified during the report review and reconciliation process within 30 calendar days of notification of a discrepancy identified by the NRC.

(c)(1) Except as specified in paragraph (d) of this section, each licensee who is authorized to possess uranium or thorium pursuant to a specific license shall notify the NRC Headquarters Operations Center by telephone, at the numbers listed in appendix A of part 73 of this chapter, of any incident in which an attempt has been made or is believed to have been made to commit a theft or unlawful diversion of more than 6.8 kilograms (kg) [15 pounds] of such material at any one time or more than 68 kg [150 pounds] of such material in any one calendar year.

(2) The licensee shall notify the NRC as soon as possible, but within 4 hours, of discovery of any incident in which an attempt has been made or is believed to have been made to commit a theft or unlawful diversion of such material. A copy of the written followup notification should also be made to the Director, Division of Security Policy, Office of Nuclear Security and Incident Response, by an appropriate method listed in § 40.5.

(3) The initial notification shall be followed within a period of sixty (60) days by a written followup notification submitted in accordance with § 40.5. A copy of the written followup notification shall



also be sent to: ATTN: Document Control Desk, Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(4) Subsequent to the submission of the written followup notification required by this paragraph, the licensee shall promptly update the written followup notification, in accordance with this paragraph, with any substantive additional information, which becomes available to the licensee, concerning an attempted or apparent theft or unlawful diversion of source material.

(d) The reports described in paragraphs (a), (b), and (c) of this section are not required for:

(1) Processed ores containing less than five (5) percent of uranium or thorium, or any combination of uranium or thorium, by dry weight;

(2) Thorium contained in magnesium-thorium and tungsten-thorium alloys, if the thorium content in the alloys does not exceed 4 percent by weight;

(3) Chemical catalysts containing uranium depleted in the U-235 isotope to 0.4 percent or less, if the uranium content of the catalyst does not exceed 15 percent by weight; or

(4) Any source material contained in non-nuclear end use devices or components, including but not limited to permanently installed shielding, teletherapy, radiography, X-ray, accelerator devices, or munitions.

(e) Any licensee who is required to submit inventory change reports and material status reports pursuant to part 75 of this chapter (pertaining to implementation of the US/IAEA Safeguards Agreement) shall prepare and submit such reports only as provided in §§ 75.34 and 75.35 of this chapter (instead of as provided in paragraphs (a) and (b) of this section).

[35 FR 12195, July 30, 1970, as amended at 36 FR 10938, June 5, 1971; 38 FR 1272, Jan. 11, 1973; 38 FR 2330, Jan. 24, 1973; 40 FR 8787, Mar. 3, 1975; 41 FR 16446, Apr. 19, 1976; 45 FR 50710, July 31, 1980; 49 FR 24707, June 15, 1984; 51 FR 9766, Mar. 21, 1986; 52 FR 31611, Aug. 21, 1987; 59 FR 35620, July 13, 1994; 68 FR 10364, Mar. 5, 2003; 68 FR 58807, Oct. 10, 2003; 73 FR 32461, Jun. 9, 2008; 74 FR 62681, Dec. 1, 2009; 79 FR 75740, Dec. 19, 2014]

## **§ 40.65 Effluent monitoring reporting requirements.**

(a) Each licensee authorized to possess and use source material in uranium milling, in production of uranium hexafluoride, or in a uranium enrichment facility shall:

(1) Within 60 days after January 1, 1976 and July 1, 1976, and within 60 days after January 1 and July 1 of each year thereafter, submit a report to the Director, Office of Nuclear Material Safety and Safeguards, using an appropriate method listed in § 40.5, with a copy to the appropriate NRC Regional Office shown in appendix D to part 20 of this chapter; the report must specify the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous six months of operation, and such other information as the Commission may require to estimate maximum potential annual radiation doses to the public resulting from effluent releases. If quantities of radioactive materials released during the reporting period are significantly above the licensee's design objectives previously reviewed as part of the licensing action, the report shall cover this specifically. On the basis of such reports and any additional information the



Commission may obtain from the licensee or others, the Commission may from time to time require the licensee to take such action as the Commission deems appropriate.

(2) [Reserved]

(b) [Reserved]

[40 FR 53230, Nov. 17, 1975, as amended at 41 FR 21627, May 27, 1976; 42 FR 25721, May 19, 1977; 52 FR 31611, Aug. 21, 1987; 57 FR 18391, Apr. 30, 1992; 68 FR 58807, Oct. 10, 2003; 73 FR 5721, Jan. 31, 2008; 79 FR 75740, Dec. 19, 2014]

## **§ 40.66 Requirements for advance notice of export shipments of natural uranium.**

(a) Each licensee authorized to export natural uranium, other than in the form of ore or ore residue, in amounts exceeding 500 kilograms, shall notify the Director, Division of Security Policy, Office of Nuclear Security and Incident Response, by an appropriate method listed in § 40.5.

The notification must be in writing and must be received at least 10 days before transport of the shipment commences at the shipping facility.

(b) The notification must include the following information:

(1) The name(s), address(es), and telephone number(s) of the shipper, receiver, and carrier(s);

(2) A physical description of the shipment;

(3) A listing of the mode(s) of shipment, transfer points, and routes to be used;

(4) The estimated date and time that shipment will commence and that each nation (other than the United States) along the route is scheduled to be entered; and

(5) A certification that arrangements have been made to notify the Division of Security Policy, Office of Nuclear Security and Incident Response when the shipment is received at the receiving facility.

(c) A licensee who needs to amend a notification may do so by telephoning the Division of Security Policy, Office of Nuclear Security and Incident Response, at the numbers for the NRC Headquarters Operations Center listed in Appendix A to part 73 of this chapter.

[52 FR 9651, Mar. 26, 1987, as amended at 53 FR 4110, Feb. 12, 1988; 60 FR 24551, May 9, 1995; 68 FR 58808, Oct. 10, 2003; 69 FR 76600, Dec. 22, 2004; 74 FR 62681, Dec. 1, 2009]

## **§ 40.67 Requirement for advance notice for importation of natural uranium from countries that are not party to the Convention on the Physical Protection of Nuclear Material.**

(a) Each licensee authorized to import natural uranium, other than in the form of ore or ore residue, in amounts exceeding 500 kilograms, from countries not party to the Convention on the Physical

Protection of Nuclear Material (see appendix F to Part 73 of this chapter) shall notify the Director, Division of Security Policy, Office of Nuclear Security and Incident Response, using an appropriate method listed in § 40.5. . The notification must be in writing and must be received at least 10 days before transport of the shipment commences at the shipping facility.

(b) The notification must include the following information:

(1) The name(s), address(es), and telephone number(s) of the shipper, receiver, and carrier(s);

(2) A physical description of the shipment;

(3) A listing of the mode(s) of shipment, transfer points, and routes to be used;

(4) The estimated date and time that shipment will commence and that each nation along the route is scheduled to be entered.

(c) The licensee shall notify the Division of Security Policy by telephone at (301) 816-5100 when the shipment is received in the receiving facility.

(d) A licensee who needs to amend a notification may do so by telephoning the Division of Security Policy at (301) 816-5100.

[52 FR 9652, Mar. 26, 1987, as amended at 53 FR 4110, Feb. 12, 1988; 60 FR 24551, May 9, 1995; 68 FR 58808, Oct. 10, 2003; 69 FR 76600, Dec. 22, 2004; 74 FR 62681, Dec. 1, 2009]

## **Modification and Revocation of Licenses**

### **§ 40.71 Modification and revocation of licenses.**

(a) The terms and conditions of each license shall be subject to amendment, revision, or modification by reason of amendments to the Act, or by reason of rules, regulations, or orders issued in accordance with the Act.

(b) Any license may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application or any statement of fact required under section 182 of the Act, or because of conditions revealed by such application or statement of fact or any report, record, or inspection or other means which would warrant the Commission to refuse to grant a license on an original application, or for violation of, or failure to observe any of, the terms and conditions of the Act, or the license, or of any rule, regulation or order of the Commission.

(c) Except in cases of willfulness or those in which the public health, interest or safety requires otherwise, no license shall be modified, suspended, or revoked unless, prior to the institution of proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements.

[26 FR 284, Jan. 14, 1961, as amended at 35 FR 11460, July 17, 1970; 48 FR 32328, July 15, 1983]

## **Enforcement**

## **§ 40.81 Violations.**

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of--

- (1) The Atomic Energy Act of 1954, as amended;
- (2) Title II of the Energy Reorganization Act of 1974, as amended; or
- (3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of--

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

[57 FR 55074, Nov. 24, 1992]

## **§ 40.82 Criminal penalties.**

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 40 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 40 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 40.1, 40.2, 40.2a, 40.4, 40.5, 40.6, 40.8, 40.11, 40.12, 40.13, 40.14, 40.20, 40.21, 40.31, 40.32, 40.34, 40.43, 40.44, 40.45, 40.52, 40.54, 40.71, 40.81, and 40.82.

[57 FR 55075, Nov. 24, 1992; 78 FR 32341, May 29, 2013]

## **Appendix A to Part 40—Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes**

## **Produced by the Extraction or Concentration of Source Material From Ores Processed Primarily for Their Source Material Content**

*Introduction.* Every applicant for a license to possess and use source material in conjunction with uranium or thorium milling, or byproduct material at sites formerly associated with such milling, is required by the provisions of § 40.31(h) to include in a license application proposed specifications relating to milling operations and the disposition of tailings or wastes resulting from such milling activities. This appendix establishes technical, financial, ownership, and long-term site surveillance criteria relating to the siting, operation, decontamination, decommissioning, and reclamation of mills and tailings or waste systems and sites at which such mills and systems are located. As used in this appendix, the term "as low as is reasonably achievable" has the same meaning as in § 20.1003 of this chapter.

In many cases, flexibility is provided in the criteria to allow achieving an optimum tailings disposal program on a site-specific basis. However, in such cases the objectives, technical alternatives and concerns which must be taken into account in developing a tailings program are identified. As provided by the provisions of § 40.31(h) applications for licenses must clearly demonstrate how the criteria have been addressed.

The specifications must be developed considering the expected full capacity of tailings or waste systems and the lifetime of mill operations. Where later expansions of systems or operations may be likely (for example, where large quantities of ore now marginally uneconomical may be stockpiled), the amenability of the disposal system to accommodate increased capacities without degradation in long-term stability and other performance factors must be evaluated.

Licensees or applicants may propose alternatives to the specific requirements in this appendix. The alternative proposals may take into account local or regional conditions, including geology, topography, hydrology, and meteorology. The Commission may find that the proposed alternatives meet the Commission's requirements if the 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 the sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by the requirements of this Appendix and the standards promulgated by the Environmental Protection Agency in 40 CFR Part 192, Subparts D and E.

All site specific licensing decisions based on the criteria in this Appendix or alternatives proposed by licensees or applicants will take into account the risk to the public health and safety and the environment with due consideration to the economic costs involved and any other factors the Commission determines to be appropriate. In implementing this Appendix, the Commission will consider "practicable" and "reasonably achievable" as equivalent terms. Decisions involving these terms will take into account the state of technology, and the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to the utilization of atomic energy in the public interest.

The following definitions apply to the specified terms as used in this appendix:

*Aquifer* means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs. Any saturated zone created by uranium or thorium recovery operations would not be considered an aquifer unless the zone is or potentially is (1) hydraulically interconnected to a natural aquifer, (2) capable of discharge to surface water, or (3) reasonably accessible because of migration beyond the vertical projection of the boundary of the land transferred for long-term government ownership and care in accordance with Criterion 11 of this appendix.

*As expeditiously as practicable considering technological feasibility*, for the purposes of Criterion 6A, means as quickly as possible considering: the physical characteristics of the tailings and the site; the limits of *available technology*; the need for consistency with mandatory requirements of other regulatory programs; and *factors beyond the control of the licensee*. The phrase permits consideration of the cost of compliance only to the extent specifically provided for by use of the term *available technology*.

*Available technology* means technologies and methods for emplacing a final radon barrier on uranium mill tailings piles or impoundments. This term shall not be construed to include extraordinary measures or techniques that would impose costs that are grossly excessive as measured by practice within the industry (or one that is reasonably analogous), (such as, by way of illustration only, unreasonable overtime, staffing, or transportation requirements, etc., considering normal practice in the industry; laser fusion of soils, etc.), provided there is reasonable progress toward emplacement of the final radon barrier. To determine grossly excessive costs, the relevant baseline against which cost shall be compared is the cost estimate for tailings impoundment closure contained in the licensee's approved reclamation plan, but costs beyond these estimates shall not automatically be considered grossly excessive.

*Closure* means the activities following operations to decontaminate and decommission the buildings and site used to produce byproduct materials and reclaim the tailings and/or waste disposal area.

*Closure plan* means the Commission approved plan to accomplish closure.

*Compliance period* begins when the Commission sets secondary groundwater protection standards and ends when the owner or operator's license is terminated and the site is transferred to the State or Federal agency for long-term care.

*Dike* means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids or other materials.

*Disposal area* means the area containing byproduct materials to which the requirements of Criterion 6 apply.

*Existing portion* means that land surface area of an existing surface impoundment on which significant quantities of uranium or thorium byproduct materials had been placed prior to September 30, 1983.

*Factors beyond the control of the licensee* means factors proximately causing delay in meeting the schedule in the applicable reclamation plan for the timely emplacement of the final radon barrier notwithstanding the good faith efforts of the licensee to complete the barrier in compliance with paragraph (1) of Criterion 6A. These factors may include, but are not limited to:

- (1) Physical conditions at the site;
- (2) Inclement weather or climatic conditions;
- (3) An act of God;
- (4) An act of war;
- (5) A judicial or administrative order or decision, or change to the statutory, regulatory, or other legal requirements applicable to the licensee's facility that would preclude or delay the performance of activities required for compliance;
- (6) Labor disturbances;
- (7) Any modifications, cessation or delay ordered by State, Federal, or local agencies;
- (8) Delays beyond the time reasonably required in obtaining necessary government permits, licenses, approvals, or consent for activities described in the reclamation plan proposed by the licensee that result from agency failure to take final action after the licensee has made a good faith, timely effort to submit legally sufficient applications, responses to requests (including relevant data requested by the agencies), or other information, including approval of the reclamation plan; and
- (9) An act or omission of any third party over whom the licensee has no control.

*Final radon barrier* means the earthen cover (or approved alternative cover) over tailings or waste constructed to comply with Criterion 6 of this appendix (excluding erosion protection features).

*Groundwater* means water below the land surface in a zone of saturation. For purposes of this appendix, groundwater is the water contained within an aquifer as defined above.

*Leachate* means any liquid, including any suspended or dissolved components in the liquid, that has percolated through or drained from the byproduct material.

*Licensed site* means the area contained within the boundary of a location under the control of persons generating or storing byproduct materials under a Commission license.

*Liner* means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment which restricts the downward or lateral escape of byproduct material, hazardous constituents, or leachate.

*Milestone* means an action or event that is required to occur by an enforceable date.

*Operation* means that a uranium or thorium mill tailings pile or impoundment is being used for the continued placement of byproduct material or is in standby status for such placement. A pile or impoundment is in operation from the day that byproduct material is first placed in the pile or impoundment until the day final closure begins.

*Point of compliance* is the site specific location in the uppermost aquifer where the groundwater protection standard must be met.



*Reclamation plan*, for the purposes of Criterion 6A, means the plan detailing activities to accomplish reclamation of the tailings or waste disposal area in accordance with the technical criteria of this appendix. The reclamation plan must include a schedule for reclamation milestones that are key to the completion of the final radon barrier including as appropriate, but not limited to, wind blown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and final radon barrier construction. (Reclamation of tailings must also be addressed in the closure plan; the detailed reclamation plan may be incorporated into the closure plan.)

*Surface impoundment* means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well.

*Uppermost aquifer* means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

## I. Technical Criteria

*Criterion 1*—The general goal or broad objective in siting and design decisions is permanent isolation of tailings and associated contaminants by minimizing disturbance and dispersion by natural forces, and to do so without ongoing maintenance. For practical reasons, specific siting decisions and design standards must involve finite times (e.g., the longevity design standard in Criterion 6). The following site features which will contribute to such a goal or objective must be considered in selecting among alternative tailings disposal sites or judging the adequacy of existing tailings sites:

Remoteness from populated areas;

Hydrologic and other natural conditions as they contribute to continued immobilization and isolation of contaminants from groundwater sources; and

Potential for minimizing erosion, disturbance, and dispersion by natural forces over the long term.

The site selection process must be an optimization to the maximum extent reasonably achievable in terms of these features.

In the selection of disposal sites, primary emphasis must be given to isolation of tailings or wastes, a matter having long-term impacts, as opposed to consideration only of short-term convenience or benefits, such as minimization of transportation or land acquisition costs. While isolation of tailings will be a function of both site and engineering design, overriding consideration must be given to siting features given the long-term nature of the tailings hazards.

Tailings should be disposed of in a manner that no active maintenance is required to preserve conditions of the site.

*Criterion 2*—To avoid proliferation of small waste disposal sites and thereby reduce perpetual surveillance obligations, byproduct material from in situ extraction operations, such as residues from solution evaporation or contaminated control processes, and wastes from small remote above ground extraction operations must be disposed of at existing large mill tailings disposal sites; unless, considering the nature of the wastes, such as their volume and specific activity, and the costs and environmental impacts of transporting the wastes to a large disposal site, such offsite disposal is



demonstrated to be impracticable or the advantages of onsite burial clearly outweigh the benefits of reducing the perpetual surveillance obligations.

*Criterion 3*—The "prime option" for disposal of tailings is placement below grade, either in mines or specially excavated pits (that is, where the need for any specially constructed retention structure is eliminated). The evaluation of alternative sites and disposal methods performed by mill operators in support of their proposed tailings disposal program (provided in applicants' environmental reports) must reflect serious consideration of this disposal mode. In some instances, below grade disposal may not be the most environmentally sound approach, such as might be the case if a groundwater formation is relatively close to the surface or not very well isolated by overlying soils and rock. Also, geologic and topographic conditions might make full below grade burial impracticable: For example, bedrock may be sufficiently near the surface that blasting would be required to excavate a disposal pit at excessive cost, and more suitable alternative sites are not available. Where full below grade burial is not practicable, the size of retention structures, and size and steepness of slopes associated exposed embankments must be minimized by excavation to the maximum extent reasonably achievable or appropriate given the geologic and hydrologic conditions at a site. In these cases, it must be demonstrated that an above grade disposal program will provide reasonably equivalent isolation of the tailings from natural erosional forces.

*Criterion 4*—The following site and design criteria must be adhered to whether tailings or wastes are disposed of above or below grade.

(a) Upstream rainfall catchment areas must be minimized to decrease erosion potential and the size of the floods which could erode or wash out sections of the tailings disposal area.

(b) Topographic features should provide good wind protection.

(c) Embankment and cover slopes must be relatively flat after final stabilization to minimize erosion potential and to provide conservative factors of safety assuring long-term stability. The broad objective should be to contour final slopes to grades which are as close as possible to those which would be provided if tailings were disposed of below grade; this could, for example, lead to slopes of about 10 horizontal to 1 vertical (10h:1v) or less steep. In general, slopes should not be steeper than about 5h:1v. Where steeper slopes are proposed, reasons why a slope less steep than 5h:1v would be impracticable should be provided, and compensating factors and conditions which make such slopes acceptable should be identified.

(d) A full self-sustaining vegetative cover must be established or rock cover employed to reduce wind and water erosion to negligible levels.

Where a full vegetative cover is not likely to be self-sustaining due to climatic or other conditions, such as in semi-arid and arid regions, rock cover must be employed on slopes of the impoundment system. The NRC will consider relaxing this requirement for extremely gentle slopes such as those which may exist on the top of the pile.

The following factors must be considered in establishing the final rock cover design to avoid displacement of rock particles by human and animal traffic or by natural process, and to preclude undercutting and piping:

Shape, size, composition, and gradation of rock particles (excepting bedding material average particles size must be at least cobble size or greater);

Rock cover thickness and zoning of particles by size; and

Steepness of underlying slopes.

Individual rock fragments must be dense, sound, and resistant to abrasion, and must be free from cracks, seams, and other defects that would tend to unduly increase their destruction by water and frost actions. Weak, friable, or laminated aggregate may not be used.

Rock covering of slopes may be unnecessary where top covers are very thick (on the order of 10 m or greater); impoundment slopes are very gentle (on the order of 10 h:1 v or less); bulk cover materials have inherently favorable erosion resistance characteristics; and, there is negligible drainage catchment area upstream of the pile and good wind protection as described in points (a) and (b) of this Criterion.

Furthermore, all impoundment surfaces must be contoured to avoid areas of concentrated surface runoff or abrupt or sharp changes in slope gradient. In addition to rock cover on slopes, areas toward which surface runoff might be directed must be well protected with substantial rock cover (rip rap). In addition to providing for stability of the impoundment system itself, overall stability, erosion potential, and geomorphology of surrounding terrain must be evaluated to assure that there are not ongoing or potential processes, such as gully erosion, which would lead to impoundment instability.

(e) The impoundment may not be located near a capable fault that could cause a maximum credible earthquake larger than that which the impoundment could reasonably be expected to withstand. As used in this criterion, the term "capable fault" has the same meaning as defined in section III(g) of Appendix A of 10 CFR Part 100. The term "maximum credible earthquake" means that earthquake which would cause the maximum vibratory ground motion based upon an evaluation of earthquake potential considering the regional and local geology and seismology and specific characteristics of local subsurface material.

(f) The impoundment, where feasible, should be designed to incorporate features which will promote deposition. For example, design features which promote deposition of sediment suspended in any runoff which flows into the impoundment area might be utilized; the object of such a design feature would be to enhance the thickness of cover over time.

*Criterion 5*—Criteria 5A-5D and new Criterion 13 incorporate the basic groundwater protection standards imposed by the Environmental Protection Agency in 40 CFR Part 192, Subparts D and E (48 FR 45926; October 7, 1983) which apply during operations and prior to the end of closure. Groundwater monitoring to comply with these standards is required by Criterion 7A.

5A(1)—The primary groundwater protection standard is a design standard for surface impoundments used to manage uranium and thorium byproduct material. Unless exempted under paragraph 5A(3) of this criterion, surface impoundments (except for an existing portion) must have a liner that is designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil, groundwater, or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil, groundwater, or surface water) during the active life of the facility, provided that impoundment closure includes removal or decontamination of all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate. For

impoundments that will be closed with the liner material left in place, the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility.

5A(2)—The liner required by paragraph 5A(1) above must be—

(a) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(b) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(c) Installed to cover all surrounding earth likely to be in contact with the wastes or leachate.

5A(3)—The applicant or licensee will be exempted from the requirements of paragraph 5A(1) of this criterion if the Commission finds, based on a demonstration by the applicant or licensee, that alternate design and operating practices, including the closure plan, together with site characteristics will prevent the migration of any hazardous constituents into groundwater or surface water at any future time. In deciding whether to grant an exemption, the Commission will consider—

(a) The nature and quantity of the wastes;

(b) The proposed alternate design and operation;

(c) The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and groundwater or surface water; and

(d) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

5A(4)—A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations, overfilling, wind and wave actions, rainfall, or run-on; from malfunctions of level controllers, alarms, and other equipment; and from human error.

5A(5)—When dikes are used to form the surface impoundment, the dikes must be designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the impoundment.

5B(1)—Uranium and thorium byproduct materials must be managed to conform to the following secondary groundwater protection standard: Hazardous constituents entering the groundwater from a licensed site must not exceed the specified concentration limits in the uppermost aquifer beyond the point of compliance during the compliance period. Hazardous constituents are those constituents identified by the Commission pursuant to paragraph 5B(2) of this criterion. Specified concentration limits are those limits established by the Commission as indicated in paragraph 5B(5) of this criterion. The Commission will also establish the point of compliance and compliance period on a site specific basis through license conditions and orders. The objective in selecting the point of compliance is to provide the earliest practicable warning that the impoundment is releasing hazardous constituents to

the groundwater. The point of compliance must be selected to provide prompt indication of groundwater contamination on the hydraulically downgradient edge of the disposal area. The Commission shall identify hazardous constituents, establish concentration limits, set the compliance period, and may adjust the point of compliance if needed to accord with developed data and site information as to the flow of groundwater or contaminants, when the detection monitoring established under Criterion 7A indicates leakage of hazardous constituents from the disposal area.

5B(2)—A constituent becomes a hazardous constituent subject to paragraph 5B(5) only when the constituent meets all three of the following tests:

- (a) The constituent is reasonably expected to be in or derived from the byproduct material in the disposal area;
- (b) The constituent has been detected in the groundwater in the uppermost aquifer; and
- (c) The constituent is listed in Criterion 13 of this appendix.

5B(3)—Even when constituents meet all three tests in paragraph 5B(2) of this criterion, the Commission may exclude a detected constituent from the set of hazardous constituents on a site specific basis if it finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to exclude constituents, the Commission will consider the following:

- (a) Potential adverse effects on groundwater quality, considering—
  - (i) The physical and chemical characteristics of the waste in the licensed site, including its potential for migration;
  - (ii) The hydrogeological characteristics of the facility and surrounding land;
  - (iii) The quantity of groundwater and the direction of groundwater flow;
  - (iv) The proximity and withdrawal rates of groundwater users;
  - (v) The current and future uses of groundwater in the area;
  - (vi) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;
  - (vii) The potential for health risks caused by human exposure to waste constituents;
  - (viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;
  - (ix) The persistence and permanence of the potential adverse effects.
- (b) Potential adverse effects on hydraulically-connected surface water quality, considering—
  - (i) The volume and physical and chemical characteristics of the waste in the licensed site;
  - (ii) The hydrogeological characteristics of the facility and surrounding land;

- (iii) The quantity and quality of groundwater, and the direction of groundwater flow;
- (iv) The patterns of rainfall in the region;
- (v) The proximity of the licensed site to surface waters;
- (vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;
- (vii) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface-water quality;
- (viii) The potential for health risks caused by human exposure to waste constituents;
- (ix) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and
- (x) The persistence and permanence of the potential adverse effects.

5B(4)—In making any determinations under paragraphs 5B(3) and 5B(6) of this criterion about the use of groundwater in the area around the facility, the Commission will consider any identification of underground sources of drinking water and exempted aquifers made by the Environmental Protection Agency.

5B(5)—At the point of compliance, the concentration of a hazardous constituent must not exceed—

- (a) The Commission approved background concentration of that constituent in the groundwater;
- (b) The respective value given in the table in paragraph 5C if the constituent is listed in the table and if the background level of the constituent is below the value listed; or
- (c) An alternate concentration limit established by the Commission.

5B(6)—Conceptually, background concentrations pose no incremental hazards and the drinking water limits in paragraph 5C state acceptable hazards but these two options may not be practically achievable at a specific site. Alternate concentration limits that present no significant hazard may be proposed by licensees for Commission consideration. Licensees must provide the basis for any proposed limits including consideration of practicable corrective actions, that limits are as low as reasonably achievable, and information on the factors the Commission must consider. The Commission will establish a site specific alternate concentration limit for a hazardous constituent as provided in paragraph 5B(5) of this criterion if it finds that the proposed limit is as low as reasonably achievable, after considering practicable corrective actions, and that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In making the present and potential hazard finding, the Commission will consider the following factors:

- (a) Potential adverse effects on groundwater quality, considering—
  - (i) The physical and chemical characteristics of the waste in the licensed site including its potential for migration;

- (ii) The hydrogeological characteristics of the facility and surrounding land;
  - (iii) The quantity of groundwater and the direction of groundwater flow;
  - (iv) The proximity and withdrawal rates of groundwater users;
  - (v) The current and future uses of groundwater in the area;
  - (vi) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;
  - (vii) The potential for health risks caused by human exposure to waste constituents;
  - (viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;
  - (ix) The persistence and permanence of the potential adverse effects.
- (b) Potential adverse effects on hydraulically-connected surface water quality, considering—
- (i) The volume and physical and chemical characteristics of the waste in the licensed site;
  - (ii) The hydrogeological characteristics of the facility and surrounding land;
  - (iii) The quantity and quality of groundwater, and the direction of groundwater flow;
  - (iv) The patterns of rainfall in the region;
  - (v) The proximity of the licensed site to surface waters; (vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;
  - (vii) The existing quality of surface water including other sources of contamination and the cumulative impact on surface water quality;
  - (viii) The potential for health risks caused by human exposure to waste constituents;
  - (ix) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and
  - (x) The persistence and permanence of the potential adverse effects.

#### 5C-Maximum Values for Groundwater Protection

Constituent or property	Maximum concentration
Milligrams per liter:	
Arsenic	0.05
Barium	1.0
Cadmium	0.01



Chromium	0.05
Lead	0.05
Mercury	0.002
Selenium	0.01
Silver	0.05
Endrin (1,2,3,4,10,10-hexachloro-1,7 -epoxy-1,4,4a,5,6,7,8,9a-octahydro-1,4-endo, endo-5, 8-dimethano naphthalene)	0.0002
Lindane (1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer)	0.004
Methoxychlor (1,1,1-Trichloro-2,2-bis (p-methoxyphenylethane)	0.1
Toxaphene (C <sub>10</sub> H <sub>10</sub> Cl <sub>6</sub> , Technical chlorinated camphene, 67-69 percent chlorine)	0.005
2, 4-D(2,4-Dichlorophenoxyacetic acid)	0.1
2, 4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid)	
Picocuries per liter:	
Combined radium-226 and radium-228	5
Gross alpha-particle activity (excluding radon and uranium when producing uranium byproduct material or radon and thorium when producing thorium byproduct material)	15

5D-If the groundwater protection standards established under paragraph 5B(1) of this criterion are exceeded at a licensed site, a corrective action program must be put into operation as soon as is practicable, and in no event later than eighteen (18) months after the Commission finds that the standards have been exceeded. The licensee shall submit the proposed corrective action program and supporting rationale for Commission approval prior to putting the program into operation, unless otherwise agreed to by the Commission. The objective of the program is to return hazardous constituent concentration levels in groundwater to the concentration levels set as standards. The licensee's proposed program must address removing hazardous constituents that have entered the groundwater at the point of compliance or treating them in place. The program must also address removing or treating any hazardous constituents that exceed concentration limits in groundwater between the point of compliance and the downgradient facility property boundary. The licensee shall continue corrective action measures to the extent necessary to achieve and maintain compliance with the groundwater standard. The Commission will determine when the licensee may terminate corrective action measures based on data from the groundwater monitoring program and other information that provide reasonable assurance that the groundwater protection standard will not be exceeded.

5E-In developing and conducting groundwater protection programs, applicants and licensees shall also consider the following:

(1) Installation of bottom liners(Where synthetic liners are used, a leakage detection system must be installed immediately below the liner to ensure major failures are detected if they occur. This is in addition to the groundwater monitoring program conducted as provided in Criterion 7. Where clay liners are proposed or relatively thin, in-situ clay soils are to be relied upon for seepage control, tests



must be conducted with representative tailings solutions and clay materials to confirm that no significant deterioration of permeability or stability properties will occur with continuous exposure of clay to tailings solutions. Tests must be run for a sufficient period of time to reveal any effects if they are going to occur (in some cases deterioration has been observed to occur rather rapidly after about nine months of exposure)).

(2) Mill process designs which provide the maximum practicable recycle of solutions and conservation of water to reduce the net input of liquid to the tailings impoundment.

(3) Dewatering of tailings by process devices and/or in-situ drainage systems (At new sites, tailings must be dewatered by a drainage system installed at the bottom of the impoundment to lower the phreatic surface and reduce the driving head of seepage, unless tests show tailings are not amenable to such a system. Where in-situ dewatering is to be conducted, the impoundment bottom must be graded to assure that the drains are at a low point. The drains must be protected by suitable filter materials to assure that drains remain free running. The drainage system must also be adequately sized to assure good drainage).

(4) Neutralization to promote immobilization of hazardous constituents.

5F—Where groundwater impacts are occurring at an existing site due to seepage, action must be taken to alleviate conditions that lead to excessive seepage impacts and restore groundwater quality. The specific seepage control and groundwater protection method, or combination of methods, to be used must be worked out on a site-specific basis. Technical specifications must be prepared to control installation of seepage control systems. A quality assurance, testing, and inspection program, which includes supervision by a qualified engineer or scientist, must be established to assure the specifications are met.

5G—In support of a tailings disposal system proposal, the applicant/operator shall supply information concerning the following:

(1) The chemical and radioactive characteristics of the waste solutions.

(2) The characteristics of the underlying soil and geologic formations particularly as they will control transport of contaminants and solutions. This includes detailed information concerning extent, thickness, uniformity, shape, and orientation of underlying strata. Hydraulic gradients and conductivities of the various formations must be determined. This information must be gathered from borings and field survey methods taken within the proposed impoundment area and in surrounding areas where contaminants might migrate to groundwater. The information gathered on boreholes must include both geologic and geophysical logs in sufficient number and degree of sophistication to allow determining significant discontinuities, fractures, and channeled deposits of high hydraulic conductivity. If field survey methods are used, they should be in addition to and calibrated with borehole logging. Hydrologic parameters such as permeability may not be determined on the basis of laboratory analysis of samples alone; a sufficient amount of field testing (e.g., pump tests) must be conducted to assure actual field properties are adequately understood. Testing must be conducted to allow estimating chemi-sorption attenuation properties of underlying soil and rock.

(3) Location, extent, quality, capacity and current uses of any groundwater at and near the site.

5H—Steps must be taken during stockpiling of ore to minimize penetration of radionuclides into underlying soils; suitable methods include lining and/or compaction of ore storage areas.

*Criterion 6*—(1) In disposing of waste byproduct material, licensees shall place an earthen cover (or approved alternative) over tailings or wastes at the end of milling operations and shall close the waste disposal area in accordance with a design<sup>1</sup> which provides reasonable assurance of control of radiological hazards to (i) be effective for 1,000 years, to the extent reasonably achievable, and, in any case, for at least 200 years, and (ii) limit releases of radon-222 from uranium byproduct materials, and radon-220 from thorium byproduct materials, to the atmosphere so as not to exceed an average<sup>2</sup> release rate of 20 picocuries per square meter per second ( $\text{pCi}/\text{m}^2\text{s}$ ) to the extent practicable throughout the effective design life determined pursuant to (1)(i) of this Criterion. In computing required tailings cover thicknesses, moisture in soils in excess of amounts found normally in similar soils in similar circumstances may not be considered. Direct gamma exposure from the tailings or wastes should be reduced to background levels. The effects of any thin synthetic layer may not be taken into account in determining the calculated radon exhalation level. If non-soil materials are proposed as cover materials, it must be demonstrated that these materials will not crack or degrade by differential settlement, weathering, or other mechanism, over long-term intervals.

(2) As soon as reasonably achievable after emplacement of the final cover to limit releases of radon-222 from uranium byproduct material and prior to placement of erosion protection barriers or other features necessary for long-term control of the tailings, the licensee shall verify through appropriate testing and analysis that the design and construction of the final radon barrier is effective in limiting releases of radon-222 to a level not exceeding 20  $\text{pCi}/\text{m}^2\text{s}$  averaged over the entire pile or impoundment using the procedures described in 40 CFR part 61, appendix B, Method 115, or another method of verification approved by the Commission as being at least as effective in demonstrating the effectiveness of the final radon barrier.

(3) When phased emplacement of the final radon barrier is included in the applicable reclamation plan, the verification of radon-222 release rates required in paragraph (2) of this criterion must be conducted for each portion of the pile or impoundment as the final radon barrier for that portion is emplaced.

(4) Within ninety days of the completion of all testing and analysis relevant to the required verification in paragraphs (2) and (3) of this criterion, the uranium mill licensee shall report to the Commission the results detailing the actions taken to verify that levels of release of radon-222 do not exceed 20  $\text{pCi}/\text{m}^2\text{s}$  when averaged over the entire pile or impoundment. The licensee shall maintain records until termination of the license documenting the source of input parameters including the results of all measurements on which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. These records shall be kept in a form suitable for transfer to the custodial agency at the time of transfer of the site to DOE or a State for long-term care if requested.

(5) Near surface cover materials (i.e., within the top three meters) may not include waste or rock that contains elevated levels of radium; soils used for near surface cover must be essentially the same, as far as radioactivity is concerned, as that of surrounding surface soils. This is to ensure that surface radon exhalation is not significantly above background because of the cover material itself.

(6) The design requirements in this criterion for longevity and control of radon releases apply to any portion of a licensed and/or disposal site unless such portion contains a concentration of radium in land, averaged over areas of 100 square meters, which, as a result of byproduct material, does not exceed the background level by more than: (i) 5 picocuries per gram ( $\text{pCi}/\text{g}$ ) of radium-226, or, in the case of thorium byproduct material, radium-228, averaged over the first 15 centimeters (cm) below

the surface, and (ii) 15 pCi/g of radium-226, or, in the case of thorium byproduct material, radium-228, averaged over 15-cm thick layers more than 15 cm below the surface.

Byproduct material containing concentrations of radionuclides other than radium in soil, and surface activity on remaining structures, must not result in a total effective dose equivalent (TEDE) exceeding the dose from cleanup of radium contaminated soil to the above standard (benchmark dose), and must be at levels which are as low as is reasonably achievable. If more than one residual radionuclide is present in the same 100-square-meter area, the sum of the ratios for each radionuclide of concentration present to the concentration limit will not exceed "1" (unity). A calculation of the potential peak annual TEDE within 1000 years to the average member of the critical group that would result from applying the radium standard (not including radon) on the site must be submitted for approval. The use of decommissioning plans with benchmark doses which exceed 100 mrem/yr, before application of ALARA, requires the approval of the Commission after consideration of the recommendation of the NRC staff. This requirement for dose criteria does not apply to sites that have decommissioning plans for soil and structures approved before June 11, 1999.

(7) The licensee shall also address the nonradiological hazards associated with the wastes in planning and implementing closure. The licensee shall ensure that disposal areas are closed in a manner that minimizes the need for further maintenance. To the extent necessary to prevent threats to human health and the environment, the licensee shall control, minimize, or eliminate post-closure escape of nonradiological hazardous constituents, leachate, contaminated rainwater, or waste decomposition products to the ground or surface waters or to the atmosphere.

*Criterion 6A*—(1) For impoundments containing uranium byproduct materials, the final radon barrier must be completed *as expeditiously as practicable considering technological feasibility* after the pile or impoundment ceases operation in accordance with a written, Commission-approved reclamation plan. (The term *as expeditiously as practicable considering technological feasibility* as specifically defined in the Introduction of this appendix includes factors beyond the control of the licensee.) Deadlines for completion of the final radon barrier and, if applicable, the following interim milestones must be established as a condition of the individual license: windblown tailings retrieval and placement on the pile and interim stabilization (including dewatering or the removal of freestanding liquids and recontouring). The placement of erosion protection barriers or other features necessary for long-term control of the tailings must also be completed in a timely manner in accordance with a written, Commission-approved reclamation plan.

(2) The Commission may approve a licensee's request to extend the time for performance of milestones related to emplacement of the final radon barrier if, after providing an opportunity for public participation, the Commission finds that the licensee has adequately demonstrated in the manner required in paragraph (2) of Criterion 6 that releases of radon-222 do not exceed an average of 20 pCi/m<sup>2</sup> s. If the delay is approved on the basis that the radon releases do not exceed 20 pCi/m<sup>2</sup> s, a verification of radon levels, as required by paragraph (2) of Criterion 6, must be made annually during the period of delay. In addition, once the Commission has established the date in the reclamation plan for the milestone for completion of the final radon barrier, the Commission may extend that date based on cost if, after providing an opportunity for public participation, the Commission finds that the licensee is making good faith efforts to emplace the final radon barrier, the delay is consistent with the definition of available technology, and the radon releases caused by the delay will not result in a significant incremental risk to the public health.

(3) The Commission may authorize by license amendment, upon licensee request, a portion of the impoundment to accept uranium byproduct material or such materials that are similar in physical,

chemical, and radiological characteristics to the uranium mill tailings and associated wastes already in the pile or impoundment, from other sources, during the closure process. No such authorization will be made if it results in a delay or impediment to emplacement of the final radon barrier over the remainder of the impoundment in a manner that will achieve levels of radon-222 releases not exceeding 20 pCi/m<sup>2</sup>s averaged over the entire impoundment. The verification required in paragraph (2) of Criterion 6 may be completed with a portion of the impoundment being used for further disposal if the Commission makes a final finding that the impoundment will continue to achieve a level of radon-222 releases not exceeding 20 pCi/m<sup>2</sup>s averaged over the entire impoundment. In this case, after the final radon barrier is complete except for the continuing disposal area, (a) only byproduct material will be authorized for disposal, (b) the disposal will be limited to the specified existing disposal area, and (c) this authorization will only be made after providing opportunity for public participation. Reclamation of the disposal area, as appropriate, must be completed in a timely manner after disposal operations cease in accordance with paragraph (1) of Criterion 6; however, these actions are not required to be complete as part of meeting the deadline for final radon barrier construction.

*Criterion 7*—At least one full year prior to any major site construction, a preoperational monitoring program must be conducted to provide complete baseline data on a milling site and its environs. Throughout the construction and operating phases of the mill, an operational monitoring program must be conducted to measure or evaluate compliance with applicable standards and regulations; to evaluate performance of control systems and procedures; to evaluate environmental impacts of operation; and to detect potential long-term effects.

7A—The licensee shall establish a detection monitoring program needed for the Commission to set the site-specific groundwater protection standards in paragraph 5B(1) of this appendix. For all monitoring under this paragraph the licensee or applicant will propose for Commission approval as license conditions which constituents are to be monitored on a site specific basis. A detection monitoring program has two purposes. The initial purpose of the program is to detect leakage of hazardous constituents from the disposal area so that the need to set groundwater protection standards is monitored. If leakage is detected, the second purpose of the program is to generate data and information needed for the Commission to establish the standards under Criterion 5B. The data and information must provide a sufficient basis to identify those hazardous constituents which require concentration limit standards and to enable the Commission to set the limits for those constituents and the compliance period. They may also need to provide the basis for adjustments to the point of compliance. For licenses in effect September 30, 1983, the detection monitoring programs must have been in place by October 1, 1984. For licenses issued after September 30, 1983, the detection monitoring programs must be in place when specified by the Commission in orders or license conditions. Once groundwater protection standards have been established pursuant to paragraph 5B (1), the licensee shall establish and implement a compliance monitoring program. The purpose of the compliance monitoring program is to determine that the hazardous constituent concentrations in groundwater continue to comply with the standards set by the Commission. In conjunction with a corrective action program, the licensee shall establish and implement a corrective action monitoring program. The purpose of the corrective action monitoring program is to demonstrate the effectiveness of the corrective actions. Any monitoring program required by this paragraph may be based on existing monitoring programs to the extent the existing programs can meet the stated objective for the program.

*Criterion 8*—Milling operations must be conducted so that all airborne effluent releases are reduced to levels as low as is reasonably achievable. The primary means of accomplishing this must be by

means of emission controls. Institutional controls, such as extending the site boundary and exclusion area, may be employed to ensure that offsite exposure limits are met, but only after all practicable measures have been taken to control emissions at the source. Notwithstanding the existence of individual dose standards, strict control of emissions is necessary to assure that population exposures are reduced to the maximum extent reasonably achievable and to avoid site contamination. The greatest potential sources of offsite radiation exposure (aside from radon exposure) are dusting from dry surfaces of the tailings disposal area not covered by tailings solution and emissions from yellowcake drying and packaging operations. During operations and prior to closure, radiation doses from radon emissions from surface impoundments of uranium or thorium byproduct materials must be kept as low as is reasonably achievable.

Checks must be made and logged hourly of all parameters (e.g., differential pressures and scrubber water flow rates) that determine the efficiency of yellowcake stack emission control equipment operation. The licensee shall retain each log as a record for three years after the last entry in the log is made. It must be determined whether or not conditions are within a range prescribed to ensure that the equipment is operating consistently near peak efficiency; corrective action must be taken when performance is outside of prescribed ranges. Effluent control devices must be operative at all times during drying and packaging operations and whenever air is exhausting from the yellowcake stack. Drying and packaging operations must terminate when controls are inoperative. When checks indicate the equipment is not operating within the range prescribed for peak efficiency, actions must be taken to restore parameters to the prescribed range. When this cannot be done without shutdown and repairs, drying and packaging operations must cease as soon as practicable. Operations may not be restarted after cessation due to off-normal performance until needed corrective actions have been identified and implemented. All these cessations, corrective actions, and restarts must be reported to the appropriate NRC regional office as indicated in Criterion 8A, in writing, within ten days of the subsequent restart.

To control dusting from tailings, that portion not covered by standing liquids must be wetted or chemically stabilized to prevent or minimize blowing and dusting to the maximum extent reasonably achievable. This requirement may be relaxed if tailings are effectively sheltered from wind, such as may be the case where they are disposed of below grade and the tailings surface is not exposed to wind. Consideration must be given in planning tailings disposal programs to methods which would allow phased covering and reclamation of tailings impoundments because this will help in controlling particulate and radon emissions during operation. To control dusting from diffuse sources, such as tailings and ore pads where automatic controls do not apply, operators shall develop written operating procedures specifying the methods of control which will be utilized.

Milling operations producing or involving thorium byproduct material must be conducted in such a manner as to provide reasonable assurance that the annual dose equivalent does not exceed 25 millirems to the whole body, 75 millirems to the thyroid, and 25 millirems to any other organ of any member of the public as a result of exposures to the planned discharge of radioactive materials, radon-220 and its daughters excepted, to the general environment.

Uranium and thorium byproduct materials must be managed so as to conform to the applicable provisions of Title 40 of the Code of Federal Regulations, Part 440, "Ore Mining and Dressing Point Source Category: Effluent Limitations Guidelines and New Source Performance Standards, Subpart C, Uranium, Radium, and Vanadium Ores Subcategory," as codified on January 1, 1983.

*Criterion 8A*—Daily inspections of tailings or waste retention systems must be conducted by a qualified engineer or scientist and documented. The licensee shall retain the documentation for each



daily inspection as a record for three years after the documentation is made. The appropriate NRC regional office as indicated in appendix D to 10 CFR part 20 of this chapter, or the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, must be immediately notified of any failure in a tailings or waste retention system that results in a release of tailings or waste into unrestricted areas, or of any unusual conditions (conditions not contemplated in the design of the retention system) that if not corrected could indicate the potential or lead to failure of the system and result in a release of tailings or waste into unrestricted areas.

## *II. Financial Criteria*

*Criterion 9*—(a) Financial surety arrangements must be established by each mill operator before the commencement of operations to assure that sufficient funds will be available to carry out the decontamination and decommissioning of the mill and site and for the reclamation of any tailings or waste disposal areas. The amount of funds to be ensured by such surety arrangements must be based on Commission-approved cost estimates in a Commission-approved plan, or a proposed revision to the plan submitted to the Commission for approval, if the proposed revision contains a higher cost estimate, for:

(1) Decontamination and decommissioning of mill buildings and the milling site to levels which allow unrestricted use of these areas upon decommissioning, and

(2) The reclamation of tailings and/or waste areas in accordance with technical criteria delineated in Section I of this appendix.

(b) Each cost estimate must contain—

(1) A detailed cost estimate for decontamination, decommissioning, and reclamation, in an amount reflecting:

(i) The cost of an independent contractor to perform the decontamination, decommissioning and reclamation activities; and

(ii) An adequate contingency factor;

(2) An estimate of the amount of radioactive contamination in onsite subsurface material;

(3) Identification of and justification for using the key assumptions contained in the DCE; and

(4) A description of the method of assuring funds for decontamination, decommissioning, and reclamation.

(c) The licensee shall submit this plan in conjunction with an environmental report that addresses the expected environmental impacts of the milling operation, decommissioning and tailings reclamation, and evaluates alternatives for mitigating these impacts. The plan must include a signed original of the financial instrument obtained to satisfy the surety arrangement requirements of this criterion (unless a previously submitted and approved financial instrument continues to cover the cost estimate for decommissioning). The surety arrangement must also cover the cost estimate and the payment of the charge for long-term surveillance and control required by Criterion 10 of this section.

(d) To avoid unnecessary duplication and expense, the Commission may accept financial sureties that have been consolidated with financial or surety arrangements established to meet requirements of other Federal or state agencies and/or local governing bodies for decommissioning, decontamination, reclamation, and long-term site surveillance and control, provided such arrangements are considered adequate to satisfy these requirements and that the portion of the surety which covers the decommissioning and reclamation of the mill, mill tailings site and associated areas, and the long-term funding charge is clearly identified and committed for use in accomplishing these activities.

(e) The licensee's surety mechanism will be reviewed annually by the Commission to assure, that sufficient funds would be available for completion of the reclamation plan if the work had to be performed by an independent contractor.

(f) The amount of surety liability should be adjusted to recognize any increases or decreases resulting from:

(1) Inflation;

(2) Changes in engineering plans;

(3) Activities performed;

(4) Spills, leakage or migration of radioactive material producing additional contamination in onsite subsurface material that must be remediated to meet applicable remediation criteria;

(5) Waste inventory increasing above the amount previously estimated;

(6) Waste disposal costs increasing above the amount previously estimated;

(7) Facility modifications;

(8) Changes in authorized possession limits;

(9) Actual remediation costs that exceed the previous cost estimate;

(10) Onsite disposal; and

(11) Any other conditions affecting costs.

(g) Regardless of whether reclamation is phased through the life of the operation or takes place at the end of operations, an appropriate portion of surety liability must be retained until final compliance with the reclamation plan is determined.

(h) The appropriate portion of surety liability retained until final compliance with the reclamation plan is determined will be at least sufficient at all times to cover the costs of decommissioning and reclamation of the areas that are expected to be disturbed before the next license renewal. The term of the surety mechanism must be open ended, unless it can be demonstrated that another arrangement would provide an equivalent level of assurance. This assurance would be provided with a surety instrument which is written for a specified time (e.g., 5 years) and which must be automatically renewed unless the surety notifies the beneficiary (the Commission or the State regulatory agency) and the principal (the licensee) with reasonable time (e.g., 90 days) before the renewal date of their intention not to renew. In such a situation the surety requirement still exists and the licensee would be



required to submit an acceptable replacement surety within a brief time to allow at least 60 days for the regulatory agency to collect.

(i) Proof of forfeiture must not be necessary to collect the surety. In the event that the licensee can not provide an acceptable replacement surety within the required time, the surety shall be automatically collected before its expiration. The surety instrument must provide for collection of the full face amount immediately on demand without reduction for any reason, except for trustee fees and expenses provided for in a trust agreement, and that the surety will not refuse to make full payment. The conditions described previously would have to be clearly stated on any surety instrument which is not open-ended, and must be agreed to by all parties. Financial surety arrangements generally acceptable to the Commission are:

(1) Trust funds;

(2) Surety bonds;

(3) Irrevocable letters of credit; and

(4) Combinations of the financial surety arrangements or other types of arrangements as may be approved by the Commission. If a trust is not used, then a standby trust must be set up to receive funds in the event the Commission or State regulatory agency exercises its right to collect the surety. The surety arrangement and the surety or trustee, as applicable, must be acceptable to the Commission. Self insurance, or any arrangement which essentially constitutes self insurance (e.g., a contract with a State or Federal agency), will not satisfy the surety requirement because this provides no additional assurance other than that which already exists through license requirements.

*Criterion 10*—A minimum charge of \$250,000 (1978 dollars) to cover the costs of long-term surveillance must be paid by each mill operator to the general treasury of the United States or to an appropriate State agency prior to the termination of a uranium or thorium mill license.

If site surveillance or control requirements at a particular site are determined, on the basis of a site-specific evaluation, to be significantly greater than those specified in Criterion 12 (e.g., if fencing is determined to be necessary), variance in funding requirements may be specified by the Commission. In any case, the total charge to cover the costs of long-term surveillance must be such that, with an assumed 1 percent annual real interest rate, the collected funds will yield interest in an amount sufficient to cover the annual costs of site surveillance. The total charge will be adjusted annually prior to actual payment to recognize inflation. The inflation rate to be used is that indicated by the change in the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics.

### *III. Site and Byproduct Material Ownership*

*Criterion 11*—A. These criteria relating to ownership of tailings and their disposal sites become effective on November 8, 1981, and apply to all licenses terminated, issued, or renewed after that date.

B. Any uranium or thorium milling license or tailings license must contain such terms and conditions as the Commission determines necessary to assure that prior to termination of the license, the licensee will comply with ownership requirements of this criterion for sites used for tailings disposal.

C. Title to the byproduct material licensed under this Part and land, including any interests therein (other than land owned by the United States or by a State) which is used for the disposal of any such byproduct material, or is essential to ensure the long term stability of such disposal site, must be transferred to the United States or the State in which such land is located, at the option of such State. In view of the fact that physical isolation must be the primary means of long-term control, and Government land ownership is a desirable supplementary measure, ownership of certain severable subsurface interests (for example, mineral rights) may be determined to be unnecessary to protect the public health and safety and the environment. In any case, however, the applicant/operator must demonstrate a serious effort to obtain such subsurface rights, and must, in the event that certain rights cannot be obtained, provide notification in local public land records of the fact that the land is being used for the disposal of radioactive material and is subject to either an NRC general or specific license prohibiting the disruption and disturbance of the tailings. In some rare cases, such as may occur with deep burial where no ongoing site surveillance will be required, surface land ownership transfer requirements may be waived. For licenses issued before November 8, 1981, the Commission may take into account the status of the ownership of such land, and interests therein, and the ability of a licensee to transfer title and custody thereof to the United States or a State.

D. If the Commission subsequent to title transfer determines that use of the surface or subsurface estates, or both, of the land transferred to the United States or to a State will not endanger the public health, safety, welfare, or environment, the Commission may permit the use of the surface or subsurface estates, or both, of such land in a manner consistent with the provisions provided in these criteria. If the Commission permits such use of such land, it will provide the person who transferred such land with the right of first refusal with respect to such use of such land.

E. Material and land transferred to the United States or a State in accordance with this Criterion must be transferred without cost to the United States or a State other than administrative and legal costs incurred in carrying out such transfer.

F. The provisions of this part respecting transfer of title and custody to land and tailings and wastes do not apply in the case of lands held in trust by the United States for any Indian Tribe or lands owned by such Indian Tribe subject to a restriction against alienation imposed by the United States. In the case of such lands which are used for the disposal of byproduct material, as defined in this Part, the licensee shall enter into arrangements with the Commission as may be appropriate to assure the long-term surveillance of such lands by the United States.

#### *IV. Long-Term Site Surveillance*

*Criterion 12*—The final disposition of tailings, residual radioactive material, or wastes at milling sites should be such that ongoing active maintenance is not necessary to preserve isolation. As a minimum, annual site inspections must be conducted by the government agency responsible for long-term care of the disposal site to confirm its integrity and to determine the need, if any, for maintenance and/or monitoring. Results of the inspections for all the sites under the licensee's jurisdiction will be reported to the Commission annually within 90 days of the last site inspection in that calendar year. Any site where unusual damage or disruption is discovered during the inspection, however, will require a preliminary site inspection report to be submitted within 60 days. On the basis of a site specific evaluation, the Commission may require more frequent site inspections if necessary due to the features of a particular disposal site. In this case, a preliminary inspection report is required to be submitted within 60 days following each inspection.

#### *V. Hazardous Constituents*

*Criterion 13*—Secondary groundwater protection standards required by Criterion 5 of this appendix are concentration limits for individual hazardous constituents. The following list of constituents identifies the constituents for which standards must be set and complied with if the specific constituent is reasonably expected to be in or derived from the byproduct material and has been detected in groundwater. For purposes of this appendix, the property of gross alpha activity will be treated as if it is a hazardous constituent. Thus, when setting standards under paragraph 5B(5) of Criterion 5, the Commission will also set a limit for gross alpha activity. The Commission does not consider the following list imposed by 40 CFR Part 192 to be exhaustive and may determine other constituents to be hazardous on a case-by-case basis, independent of those specified by the U.S. Environmental Protection Agency in Part 192.

#### Hazardous Constituents

Acetonitrile (Ethanenitrile)

Acetophenone (Ethanone, 1-phenyl)

3-(alpha-Acetylbenzyl)-4-hydroxycoumarin and salts (Warfarin)

2-Acetylaminofluorene (Acetamide, N-(9H-fluoren-2-yl)-)

Acetyl chloride (Ethanoyl chloride)

1-Acetyl-2-thiourea (Acetamide, N-(aminothioxomethyl)-)

Acrolein (2-Propenal)

Acrylamide (2-Propenamide)

Acrylonitrile (2-Propenenitrile)

Aflatoxins

Aldrin (1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a,8b-hexahydro-endo, exo-1,4:5,8-Dimethanonaphthalene)

Allyl alcohol (2-Propen-1-ol)

Aluminum phosphide

4-Aminobiphenyl ([1,1'-Biphenyl]-4-amine)

6-Amino-1,1a,2,8,8a,8b-hexahydro-8-(hydroxymethyl)-8a-methoxy-5-methyl-carbamate azirino [2',3'3,4]pyrrolo[1,2-a]indole-4,7-dione, (ester) (Mitomycin C) (Azirino[2'3'3,4]pyrrolo(1,2-a) indole-4,7-dione, 6-amino-8-(((amino-carbonyl)oxy)methyl)-1,1a,2,8,8a,8b-hexa-hydro-8a methoxy-5-methy-)

5-(Aminomethyl)-3-isoxazolol (3(2H)-Isoxazolone, 5-(aminomethyl)-) 4-Aminopyridine (4-Pyridinamine)

Amitrole (1H-1,2,4-Triazol-3-amine)

Aniline (Benzenamine)

Antimony and compounds, N.O.S.<sup>3</sup>

Aramite (Sulfurous acid, 2-chloroethyl-, 2-[4-(1,1-dimethylethyl) phenoxy]-1-methylethyl ester)

Arsenic and compounds, N.O.S.<sup>3</sup>

Arsenic acid (Orthoarsenic acid)

Arsenic pentoxide (Arsenic (V) oxide)

Arsenic trioxide (Arsenic (III) oxide)

Auramine (Benzenamine, 4,4'-carbonimidoylbis[N,N-Dimethyl-, monohydrochloride)

Azaserine (L-Serine, diazoacetate (ester))

Barium and compounds, N.O.S.<sup>3</sup>

Barium cyanide

Benz[c]acridine (3,4-Benzacridine)

Benz[a]anthracene (1,2-Benzanthracene)

Benzene (Cyclohexatriene)

Benzeneearsonic acid (Arsonic acid, phenyl-)

Benzene, dichloromethyl- (Benzal chloride)

Benzenethiol (Thiophenol)

Benzidine ([1,1'-Biphenyl]-4,4'diamine)

Benzo[b]fluoranthene (2,3-Benzofluoranthene)

Benzo[j]fluoranthene (7,8-Benzofluoranthene)

Benzo[a]pyrene (3,4-Benzopyrene)

p-Benzoquinone (1,4-Cyclohexadienedione)

Benzotrichloride (Benzene, trichloromethyl)

Benzyl chloride (Benzene, (chloromethyl)-)

Beryllium and compounds, N.O.S.<sup>3</sup>

Bis(2-chloroethoxy)methane (Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-])

Bis(2-chloroethyl) ether (Ethane, 1,1'-oxybis[2-chloro-])

N,N-Bis(2-chloroethyl)-2-naphthylamine (Chlornaphazine)

Bis(2-chloroisopropyl) ether (Propane, 2,2'-oxybis[2-chloro-])

Bis(chloromethyl) ether (Methane, oxybis[chloro-])

Bis(2-ethylhexyl) phthalate (1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester)

Bromoacetone (2-Propanone, 1-bromo-)

Bromomethane (Methyl bromide)

4-Bromophenyl phenyl ether (Benzene, 1-bromo-4-phenoxy-)

Brucine (Strychnidin-10-one, 2,3-dimethoxy-)

2-Butanone peroxide (Methyl ethyl ketone, peroxide)

Butyl benzyl phthalate (1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester)

2-sec-Butyl-4,6-dinitrophenol (DNBP) (Phenol, 2,4-dinitro-6-(1-methylpropyl)-)

Cadmium and compounds, N.O.S.<sup>3</sup>

Calcium chromate (Chromic acid, calcium salt)

Calcium cyanide

Carbon disulfide (Carbon bisulfide)

Carbon oxyfluoride (Carbonyl fluoride)

Chloral (Acetaldehyde, trichloro-)

Chlorambucil (Butanoic acid, 4-[bis(2-chloroethyl)amino]benzene-)

Chlordane (alpha and gamma isomers) (4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro-3,4,7,7a-tetrahydro-) (alpha and gamma isomers)

Chlorinated benzenes, N.O.S.<sup>3</sup>

Chlorinated ethane, N.O.S.<sup>3</sup>

Chlorinated fluorocarbons, N.O.S.<sup>3</sup>

Chlorinated naphthalene, N.O.S.<sup>3</sup>

Chlorinated phenol, N.O.S.<sup>3</sup>

Chloroacetaldehyde (Acetaldehyde, chloro-)

Chloroalkyl ethers, N.O.S.<sup>3</sup>

p-Chloroaniline (Benzenamine, 4-chloro-)

Chlorobenzene (Benzene, chloro-)

Chlorobenzilate (Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-,ethyl ester)

p-Chloro-m-cresol (Phenol, 4-chloro-3-methyl)

1-Chloro-2,3-epoxypropane (Oxirane, 2-(chloromethyl)-)

2-Chloroethyl vinyl ether (Ethene, (2-chloroethoxy)-)

Chloroform (Methane, trichloro-)

Chloromethane (Methyl chloride)

Chloromethyl methyl ether (Methane, chloromethoxy-)

2-Chloronaphthalene (Naphthalene, betachloro-)

2-Chlorophenol (Phenol, o-chloro-)

1-(o-Chlorophenyl)thiourea (Thiourea, (2-chlorophenyl)-)

3-Chloropropionitrile (Propanenitrile, 3-chloro-)

Chromium and compounds, N.O.S.<sup>3</sup>

Chrysene (1,2-Benzphenanthrene)

Citrus red No. 2 (2-Naphthol, 1-[(2,5-dimethoxyphenyl)azo]-)

Coal tars

Copper cyanide

Creosote (Creosote, wood)

Cresols (Cresylic acid) (Phenol, methyl-)

Crotonaldehyde (2-Butenal)

Cyanides (soluble salts and complexes), N.O.S.<sup>3</sup>

Cyanogen (Ethanedinitrile)

Cyanogen bromide (Bromine cyanide)

Cyanogen chloride (Chlorine cyanide)

Cycasin (beta-D-Glucopyranoside, (methyl-ONN-azoxy)methyl-)

2-Cyclohexyl-4,6-dinitrophenol (Phenol, 2-cyclohexyl-4,6-dinitro-)

Cyclophosphamide (2H-1,3,2,-Oxazaphosphorine, [bis(2-chloroethyl) amino]-tetrahydro-,2-oxide)

Daunomycin (5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-[(3-amino-2,3,6-trideoxy)-alpha-L-lyxohexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-)

DDD (Dichlorodiphenyldichloroethane) (Ethane, 1,1-dichloro-2,2-bis(p-chlorophenyl)-)

DDE (Ethylene, 1,1-dichloro-2,2-bis(4-chlorophenyl)-)

DDT (Dichlorodiphenyltrichloroethane) (Ethane, 1,1,1-trichloro-2,2-bis (p-chlorophenyl)-)

Diallate (S-(2,3-dichloroallyl) diisopropylthiocarbamate)

Dibenz[a,h]acridine (1,2,5,6-Dibenzacridine)

Dibenz[a,j]acridine (1,2,7,8-Dibenzacridine)

Dibenz[a,h]anthracene (1,2,5,6-Dibenzanthracene)

7H-Dibenzo[c,g]carbazole (3,4,5,6-Dibenzcarbazole)

Dibenzo[a,e]pyrene (1,2,4,5-Dibenzpyrene)

Dibenzo[a,h]pyrene (1,2,5,6-Dibenzpyrene)

Dibenzo[a,i]pyrene (1,2,7,8-Dibenzpyrene)

1,2-Dibromo-3-chloropropane (Propane, 1,2-dibromo-3-chloro-)

1,2-Dibromoethane (Ethylene dibromide)

Dibromomethane (Methylene bromide)

Di-n-butyl phthalate (1,2-Benzenedicarboxylic acid, dibutyl ester)

o-Dichlorobenzene (Benzene, 1,2-dichloro-)

m-Dichlorobenzene (Benzene, 1,3-dichloro-)

p-Dichlorobenzene (Benzene, 1,4-dichloro-)

Dichlorobenzene, N.O.S.<sup>3</sup> (Benzene, dichloro-, N.O.S.<sup>3</sup>)

3,3'-Dichlorobenzidine ([1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-)

1,4-Dichloro-2-butene (2-Butene, 1,4-dichloro-)



Dichlorodifluoromethane (Methane, dichlorodifluoro-)

1,1-Dichloroethane (Ethylidene dichloride)

1,2-Dichloroethane (Ethylene dichloride)

trans-1,2-Dichloroethene (1,2-Dichloroethylene)

Dichloroethylene, N.O.S.<sup>3</sup> (Ethene, dichloro-, N.O.S.<sup>3</sup>)

1,1-Dichloroethylene (Ethene, 1,1-dichloro-)

Dichloromethane (Methylene chloride)

2,4-Dichlorophenol (Phenol, 2,4-dichloro-)

2,6-Dichlorophenol (Phenol, 2,6-dichloro-)

2,4-Dichlorophenoxyacetic acid (2,4-D), salts and esters (Acetic acid, 2,4-dichlorophenoxy-, salts and esters)

Dichlorophenylarsine (Phenyl dichloroarsine)

Dichloropropane, N.O.S.<sup>3</sup> (Propane, dichloro-, N.O.S.<sup>3</sup>)

1,2-Dichloropropane (Propylene dichloride)

Dichloropropanol, N.O.S.<sup>3</sup> (Propanol, dichloro-, N.O.S.<sup>3</sup>)

Dichloropropene, N.O.S.<sup>3</sup> (Propene, dichloro-, N.O.S.<sup>3</sup>)

1,3-Dichloropropene (1-Propene, 1,3-dichloro-)

Dieldin (1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octa-hydro-endo, exo-1,4:5,8-Dimethanonaphthalene)

1,2:3,4-Diepoxybutane (2,2'-Bioxirane)

Diethylarsine (Arsine, diethyl-)

N,N-Diethylhydrazine (Hydrazine, 1,2-diethyl)

O,O-Diethyl S-methyl ester of phosphorodithioic acid (Phosphorodithioic acid, O,O-diethyl S-methyl ester)

O,O-Diethylphosphoric acid, O-p-nitrophenyl ester (Phosphoric acid, diethyl p-nitrophenyl ester)

Diethyl phthalate (1,2-Benzenedicarboxylic acid, diethyl ester)

O,O-Diethyl O-2-pyrazinyl phosphorothioate (Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester)

Diethylstilbesterol (4,4'-Stilbenediol, alpha, alpha-diethyl, bis(dihydrogen phosphate, (E)-)

Dihydrosafrole (Benzene, 1,2-methylenedioxy-4-propyl-)

3,4-Dihydroxy-alpha-(methylamino)methyl benzyl alcohol (1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino)ethyl]-)

Dilsopropylfluorophosphate (DFP) (Phosphorofluoridic acid, bis(1-methylethyl) ester)

Dimethoate (Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester)

3,3'-Dimethoxybenzidine ([1,1'-Biphenyl]- 4,4'-diamine, 3-3'-dimethoxy-)

p-Dimethylaminoazobenzene (Benzenamine, N,N-dimethyl-4-(phenylazo)-)

7,12-Dimethylbenz[a]anthracene (1,2-Benzanthracene, 7,12-dimethyl-)

3,3'-Dimethylbenzidine ([1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-)

Dimethylcarbamoyl chloride (Carbamoyl chloride, dimethyl-)

1,1-Dimethylhydrazine (Hydrazine, 1,1-dimethyl-)

1,2-Dimethylhydrazine (Hydrazine, 1,2-dimethyl-)

3,3-Dimethyl-1-(methylthio)-2-butanone, O-[(methylamino) carbonyl] oxime (Thiofanox)

alpha,alpha-Dimethylphenethylamine (Ethanamine, 1,1-dimethyl-2-phenyl-)

2,4-Dimethylphenol (Phenol, 2,4-dimethyl-)

Dimethyl phthalate (1,2-Benzenedicarboxylic acid, dimethyl ester)

Dimethyl sulfate (Sulfuric acid, dimethyl ester)

Dinitrobenzene, N.O.S.<sup>3</sup> (Benzene, dinitro-, N.O.S.<sup>3</sup>)

4,6-Dinitro-o-cresol and salts (Phenol, 2,4-dinitro-6-methyl-, and salts)

2,4-Dinitrophenol (Phenol, 2,4-dinitro-)

2,4-Dinitrotoluene (Benzene, 1-methyl-2,4-dinitro-)

2,6-Dinitrotoluene (Benzene, 1-methyl-2,6-dinitro-)

Di-n-octyl phthalate (1,2-Benzenedicarboxylic acid, dioctyl ester)

1,4-Dioxane (1,4-Diethylene oxide)

Diphenylamine (Benzenamine, N-phenyl-)

1,2-Diphenylhydrazine (Hydrazine, 1,2-diphenyl-)

Di-n-propylnitrosamine (N-Nitroso-di-n-propylamine)

Disulfoton (O,O-diethyl S-[2-(ethylthio)ethyl] phosphorodithioate)

2,4-Dithiobiuret (Thioimidodicarbonic diamide)

Endosulfan (5-Norbornene, 2,3-dimethanol, 1,4,5,6,7,7-hexachloro-, cyclic sulfite)

Endrin and metabolites (1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,endo-1,4:5,8-dimethanonaphthalene, and metabolites)

Ethyl carbamate (Urethan) (Carbamic acid, ethyl ester)

Ethyl cyanide (propanenitrile)

Ethylenebisdithiocarbamic acid, salts and esters (1,2-Ethanediy1-biscarbamodithioic acid, salts and esters)

Ethyleneimine (Aziridine)

Ethylene oxide (Oxirane)

Ethylenethiourea (2-Imidazolidinethione)

Ethyl methacrylate (2-Propenoic acid, 2-methyl-, ethyl ester)

Ethyl methanesulfonate (Methanesulfonic acid, ethyl ester)

Fluoranthene (Benzo[j,k]fluorene)

Fluorine

2-Fluoroacetamide (Acetamide, 2-fluoro-)

Fluoroacetic acid, sodium salt (Acetic acid, fluoro-, sodium salt)

Formaldehyde (Methylene oxide)

Formic acid (Methanoic acid)

Glycidylaldehyde (1-Propanol-2,3-epoxy)

Halomethane, N.O.S.<sup>3</sup>

Heptachlor (4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-)

Heptachlor epoxide (alpha, beta, and gamma isomers) (4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-2,3-epoxy-3a,4,7,7-tetrahydro-, alpha, beta, and gamma isomers)

Hexachlorobenzene (Benzene, hexachloro-)

Hexachlorobutadiene (1,3-Butadiene, 1,1,2,3,4,4-hexachloro-)

Hexachlorocyclohexane (all isomers) (Lindane and isomers)

Hexachlorocyclopentadiene (1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-)

Hexachloroethane (Ethane, 1,1,1,2,2,2-hexachloro-)

1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,endo-dimethanonaphthalene  
(Hexachlorohexa-hydro-endo,endo-dimethanonaphthalene)

Hexachlorophene (2,2'-Methylenebis(3,4,6-trichlorophenol)

Hexachloropropene (1-Propene, 1,1,2,3,3,3-hexachloro-)

Hexaethyl tetraphosphate (Tetraphosphoric acid, hexaethyl ester)

Hydrazine (Diamine)

Hydrocyanic acid (Hydrogen cyanide)

Hydrofluoric acid (Hydrogen fluoride)

Hydrogen sulfide (Sulfur hydride)

Hydroxydimethylarsine oxide (Cacodylic acid)

Indeno (1,2,3-cd)pyrene (1,10-(1,2-phenylene)pyrene)

Iodomethane (Methyl iodide)

Iron dextran (Ferric dextran)

Isocyanic acid, methyl ester (Methyl isocyanate)

Isobutyl alcohol (1-Propanol, 2-methyl-)

Isosafrole (Benzene, 1,2-methylenedioxy-4-allyl-)

Kepone (Decachlorooctahydro-1,3,4-Methano-2H-cyclobuta[cd]pentalen-2-one)

Lasiocarpine (2-Butenoic acid, 2-methyl-, 7-[(2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy)methyl]-2,3,5,7a- tetrahydro-1H- pyrrolizin-1-yl ester)

Lead and compounds, N.O.S.<sup>3</sup>

Lead acetate (Acetic acid, lead salt)

Lead phosphate (Phosphoric acid, lead salt)

Lead subacetate (Lead, bis(acetato-0)tetrahydroxytri-)

Maleic anhydride (2,5-Furandione)

Maleic hydrazide (1,2-Dihydro-3,6-pyridazinedione)

Malononitrile (Propanedinitrile)

Melphalan (Alanine, 3-[p-bis(2-chloroethyl)amino]phenyl-,L-)

Mercury fulminate (Fulminic acid, mercury salt)

Mercury and compounds, N.O.S.<sup>3</sup>

Methacrylonitrile (2-Propenenitrile, 2-methyl-)

Methanethiol (Thiomethanol)

Methapyrilene (Pyridine, 2-[(2-dimethylamino)ethyl]-2-thenylamino-)

Metholmyl (Acetimidic acid, N-[(methylcarbamoyl)oxy]thio-, methyl ester)

Methoxychlor (Ethane, 1,1,1-trichloro-2,2-bis(p-methoxyphenyl)-)

2-Methylaziridine (1,2-Propylenimine)

3-Methylcholanthrene (Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-)

Methyl chlorocarbonate (Carbonochloridic acid, methyl ester)

4,4-Methylenebis(2-chloroaniline) (Benzenamine, 4,4-methylenebis- (2-chloro-)

Methyl ethyl ketone (MEK) (2-Butanone)

Methyl hydrazine (Hydrazine, methyl-)

2-Methylactonitrile (Propanenitrile, 2-hydroxy-2-methyl-)

Methyl methacrylate (2-Propenoic acid, 2-methyl-, methyl ester)

Methyl methanesulfonate (Methanesulfonic acid, methyl ester)

2-Methyl-2-(methylthio)propionaldehyde-o-(methylcarbonyl) oxime (Propanal, 2-methyl-2-(methylthio)-, 0-[(methylamino)carbonyl]oxime)

N-Methyl-N-nitro-N-nitrosoguanidine (Guanidine, N-nitroso-N-methyl-N- nitro-)

Methyl parathion (0,0-dimethyl 0-(4-nitrophenyl) phosphorothioate)

Methylthiouracil (4-IH-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-)

Molybdenum and compounds, N.O.S.<sup>3</sup>

Mustard gas (Sulfide, bis(2-chloroethyl)-)

Naphthalene

1,4-Naphthoquinone (1,4-Naphthalenedione)

1-Naphthylamine (alpha-Naphthylamine)

2-Naphthylamine (beta-Naphthylamine)

1-Naphthyl-2-thiourea (Thiourea, 1-naphthalenyl-)

Nickel and compounds, N.O.S.<sup>3</sup>

Nickel carbonyl (Nickel tetracarbonyl)

Nickel cyanide (Nickel (II) cyanide)

Nicotine and salts (Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl)-, and salts)

Nitric oxide (Nitrogen (II) oxide)

p-Nitroaniline (Benzenamine, 4-nitro-)

Nitrobenzene (Benzene, nitro-)

Nitrogen dioxide (Nitrogen (IV) oxide)

Nitrogen mustard and hydrochloride salt (Ethanamine, 2-chloro-, N-(2-chloroethyl)- N-methyl-, and hydrochloride salt)

Nitrogen mustard N-Oxide and hydrochloride salt (Ethanamine, 2-chloro-, N-(2-chloroethyl)-N-methyl-, and hydrochloride salt)

Nitroglycerine (1,2,3-Propanetriol, trinitrate)

4-Nitrophenol (Phenol, 4-nitro-)

4-Nitroquinoline-1-oxide (Quinoline, 4-nitro-1-oxide-)

Nitrosamine, N.O.S.<sup>3</sup>

N-Nitrosodi-n-butylamine (1-Butanamine, N-butyl-N-nitroso-)

N-Nitrosodiethanolamine (Ethanol, 2,2-(nitrosoimino)bis-)

N-Nitrosodiethylamine (Ethanamine, N-ethyl-N-nitroso-)

N-Nitrosodimethylamine (Dimethylnitrosamine)

N-Nitroso-N-ethylurea (Carbamide, N-ethyl-N-nitroso-)

N-Nitrosomethylethylamine (Ethanamine, N-methyl-N-nitroso-)

N-Nitroso-N-methylurea (Carbamide, N-methyl-N-nitroso-)

N-Nitroso-N-methylurethane (Carbamic acid, methylnitroso-, ethyl ester)

N-Nitrosomethylvinylamine (Ethenamine, N-methyl-N-nitroso-)

N-Nitrosomorpholine (Morpholine, N-nitroso-)

N-Nitrosonornicotine (Nornicotine, N-nitroso-)

N-Nitrosopiperidine (Pyridine, hexahydro-, N-nitroso-)

Nitrosopyrrolidine (Pyrrole, tetrahydro-, N-nitroso-)

N-Nitrososarcosine (Sarcosine, N-nitroso-)

5-Nitro-o-toluidine (Benzenamine, 2-methyl-5-nitro-)

Octamethylpyrophosphoramidate (Diphosphoramidate, octamethyl-)

Osmium tetroxide (Osmium (VIII) oxide)

7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid (Endothal)

Paraldehyde (1,3,5-Trioxane, 2,4,6-trimethyl-)

Parathion (Phosphorothioic acid, O,O-diethyl O-(p-nitrophenyl)ester)

Pentachlorobenzene (Benzene, pentachloro-)

Pentachloroethane (Ethane, pentachloro-)

Pentachloronitrobenzene (PCNB) (Benzene, pentachloronitro-)

Pentachlorophenol (Phenol, pentachloro-)

Phenacetin (Acetamide, N-(4-ethoxyphenyl)-)

Phenol (Benzene, hydroxy-)

Phenylenediamine (Benzenediamine)

Phenylmercury acetate (Mercury, acetatophenyl-)

N-Phenylthiourea (Thiourea, phenyl-)

Phosgene (Carbonyl chloride)

Phosphine (Hydrogen phosphide)

Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester (Phorate)

Phosphorothioic acid, O,O-dimethyl O-[p-((dimethylamino)sulfonyl)phenyl] ester (Famphur)

Phthalic acid esters, N.O.S.<sup>3</sup> (Benzene, 1,2-dicarboxylic acid, esters, N.O.S.<sup>3</sup>)



Phthalic anhydride (1,2-Benzenedicarboxylic acid anhydride)

2-Picoline (Pyridine, 2-methyl-)

Polychlorinated biphenyl, N.O.S.<sup>3</sup>

Potassium cyanide

Potassium silver cyanide (Argentate(1-), dicyano-, potassium)

Pronamide (3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide)

1,3-Propane sultone (1,2-Oxathiolane, 2,2-dioxide)

n-Propylamine (1-Propanamine)

Propylthiouracil (Undecamethylenediamine, N,N'-bis(2-chlorobenzyl-), dihydrochloride)

2-Propyn-1-ol (Propargyl alcohol)

Pyridine

Radium -226 and -228

Reserpine (Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[3,4,5- trimethoxybenzoyl)oxy]-, methyl ester)

Resorcinol (1,3-Benzenediol)

Saccharin and salts (1,2-Benzoisothiazolin-3-one, 1,1-dioxide, and salts)

Safrole (Benzene, 1,2-methylenedioxy-4-allyl-)

Selenious acid (Selenium dioxide)

Selenium and compounds, N.O.S.<sup>3</sup>

Selenium sulfide (Sulfur selenide)

Selenourea (Carbamimidoseleonic acid)

Silver and compounds, N.O.S.<sup>3</sup>

Silver cyanide

Sodium cyanide

Streptozotocin (D-Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-)

Strontium sulfide

Strychnine and salts (Strychnidin-10-one, and salts)

1,2,4,5-Tetrachlorobenzene (Benzene, 1,2,4,5-tetrachloro-)

2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD) (Dibenzo-p-dioxin, 2,3,7,8-tetrachloro-)

Tetrachloroethane, N.O.S.<sup>3</sup> (Ethane, tetrachloro-, N.O.S.<sup>3</sup>)

1,1,1,2-Tetrachlorethane (Ethane, 1,1,1,2-tetrachloro-)

1,1,2,2-Tetrachlorethane (Ethane, 1,1,2,2-tetrachloro-)

Tetrachloroethane (Ethene, 1,1,2,2-tetrachloro-)

Tetrachloromethane (Carbon tetrachloride)

2,3,4,6,-Tetrachlorophenol (Phenol, 2,3,4,6-tetrachloro-)

Tetraethyldithiopyrophosphate (Dithiopyrophosphoric acid, tetraethyl-ester)

Tetraethyl lead (Plumbane, tetraethyl-)

Tetraethylpyrophosphate (Pyrophosphoric acide, tetraethyl ester)

Tetranitromethane (Methane, tetranitro-)

Thallium and compounds, N.O.S.<sup>3</sup>

Thallic oxide (Thallium (III) oxide)

Thallium (I) acetate (Acetic acid, thallium (I) salt)

Thallium (I) carbonate (Carbonic acid, dithallium (I) salt)

Thallium (I) chloride

Thallium (I) nitrate (Nitric acid, thallium (I) salt)

Thallium selenite

Thallium (I) sulfate (Sulfuric acid, thallium (I) salt)

Thioacetamide (Ethanethioamide)

Thiosemicarbazide (Hydrazinecarbothioamide)

Thiourea (Carbamide thio-)

Thiuram (Bis(dimethylthiocarbamoyl) disulfide)

Thorium and compounds, N.O.S.,<sup>3</sup> when producing thorium byproduct material

Toluene (Benzene, methyl-)

Toluenediamine (Diaminotoluene)

o-Toluidine hydrochloride (Benzenamine, 2-methyl-, hydrochloride)

Tolylene diisocyanate (Benzene, 1,3-diisocyanatomethyl-)

Toxaphene (Camphene, octachloro-)

Tribromomethane (Bromoform)

1,2,4-Trichlorobenzene (Benzene, 1,2,4-trichloro-)

1,1,1-Trichloroethane (Methyl chloroform)

1,1,2-Trichloroethane (Ethane, 1,1,2-trichloro-)

Trichloroethene (Trichloroethylene)

Trichloromethanethiol (Methanethiol, trichloro-)

Trichloromonofluoromethane (Methane, trichlorofluoro-)

2,4,5-Trichlorophenol (Phenol, 2,4,5-trichloro-)

2,4,6-Trichlorophenol (Phenol, 2,4,6-trichloro-)

2,4,5-Trichlorophenoxyacetic acid (2,4,5-T) (Acetic acid, 2,4,5-trichlorophenoxy-)

2,4,5-Trichlorophenoxypropionic acid (2,4,5-TP) (Silvex) (Propionic acid, 2-(2,4,5-trichlorophenoxy)-)

Trichloropropane, N.O.S.<sup>3</sup> (Propane, trichloro-, N.O.S.<sup>3</sup>)

1,2,3-Trichloropropane (Propane, 1,2,3-trichloro-)

O,O,O-Triethyl phosphorothioate (Phosphorothioic acid, O,O,O-triethyl ester)

sym-Trinitrobenzene (Benzene, 1,3,5-trinitro-)

Tris(1-aziridinyl) phosphine sulfide (Phosphine sulfide, tris(1-aziridinyl-)

Tris(2,3-dibromopropyl) phosphate (1-Propanol, 2,3-dibromo-, phosphate)

Trypan blue (2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl (1,1'-biphenyl)- 4,4'-diyl)bis(azo)] bis(5-amino-4-hydroxy-, tetrasodium salt)

Uracil mustard (Uracil 5-[bis(2-chloroethyl)amino]-)

Uranium and compounds, N.O.S.<sup>3</sup>

Vanadic acid, ammonium salt (ammonium vanadate)

Vanadium pentoxide (Vanadium (V) oxide)

Vinyl chloride (Ethene, chloro-)

Zinc cyanide

Zinc phosphide

[50 FR 41862, Oct. 16, 1985, as amended at 52 FR 31611, Aug. 21, 1987; 52 FR 43562, Nov. 13, 1987; 53 FR 19248, May 27, 1988; 55 FR 45600, Oct. 30, 1990; 56 FR 23473, May 21, 1991; 58 FR 67661, Dec. 22, 1993; 59 FR 28229, June 1, 1994; 64 FR 17510, Apr. 12, 1999; 76 FR 35570, Jun. 17, 2011; 77 FR 39906, Jul. 6, 2012; 80 FR 74979, Dec. 1, 2015; 81 FR 86909, Dec. 2, 2016]

<sup>1</sup> In the case of thorium byproduct materials, the standard applies only to design. Monitoring for radon emissions from thorium byproduct materials after installation of an appropriately designed cover is not required.

<sup>2</sup> This average applies to the entire surface of each disposal area over a period of a least one year, but a period short compared to 100 years. Radon will come from both byproduct materials and from covering materials. Radon emissions from covering materials should be estimated as part of developing a closure plan for each site. The standard, however, applies only to emissions from byproduct materials to the atmosphere.

<sup>3</sup> The abbreviation N.O.S. (not otherwise specified) signifies those members of the general class not specifically listed by name in this list.

*Page Last Reviewed/Updated Wednesday, June 07, 2017*

**36 CFR PART 800 -- PROTECTION OF HISTORIC PROPERTIES (incorporating amendments effective August 5, 2004)**

**Subpart A -- Purposes and Participants**

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Appendix A – Criteria for Council involvement in reviewing individual section 106 cases

**Authority:** 16 U.S.C. 470s.

**Subpart A-Purposes and Participants**

**§ 800.1 Purposes.**

(a) *Purposes of the section 106 process.* Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. The procedures in this part define how Federal agencies meet these statutory responsibilities. The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of

project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

(b) *Relation to other provisions of the act.* Section 106 is related to other provisions of the act designed to further the national policy of historic preservation. References to those provisions are included in this part to identify circumstances where they may affect actions taken to meet section 106 requirements. Such provisions may have their own implementing regulations or guidelines and are not intended to be implemented by the procedures in this part except insofar as they relate to the section 106 process. Guidelines, policies and procedures issued by other agencies, including the Secretary, have been cited in this part for ease of access and are not incorporated by reference.

(c) *Timing.* The agency official must complete the section 106 process “prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license.” This does not prohibit agency official from conducting or authorizing nondestructive project planning activities before completing compliance with section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties. The agency official shall ensure that the section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking.

**§ 800.2 Participants in the Section 106 process.**

(a) *Agency official.* It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. The agency official has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of section 106 compliance. For the purposes of subpart C of this part, the agency official has the authority to commit the Federal agency to any obligation it may assume in the

implementation of a program alternative. The agency official may be a State, local, or tribal government official who has been delegated legal responsibility for compliance with section 106 in accordance with Federal law.

(1) *Professional standards.* Section 112(a)(1)(A) of the act requires each Federal agency responsible for the protection of historic resources, including archeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under regulations developed by the Secretary.

(2) *Lead Federal agency.* If more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the agency official who shall act on their behalf, fulfilling their collective responsibilities under section 106. Those Federal agencies that do not designate a lead Federal agency remain individually responsible for their compliance with this part.

(3) *Use of contractors.* Consistent with applicable conflict of interest laws, the agency official may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part. The agency official remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-Federal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines.

(4) *Consultation.* The agency official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process. The agency official should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other requirements of other statutes, as applicable, such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act and agency-specific legislation. The Council encourages the agency official to use to the extent possible existing agency procedures and mechanisms to fulfill the consultation requirements of this part.

(b) *Council.* The Council issues regulations to implement section 106,

provides guidance and advice on the application of the procedures in this part, and generally oversees the operation of the section 106 process. The Council also consults with and comments to agency officials on individual undertakings and programs that affect historic properties.

(1) *Council entry into the section 106 process.* When the Council determines that its involvement is necessary to ensure that the purposes of section 106 and the act are met, the Council may enter the section 106 process. Criteria guiding Council decisions to enter the section 106 process are found in appendix A to this part. The Council will document that the criteria have been met and notify the parties to the section 106 process as required by this part.

(2) *Council assistance.* Participants in the section 106 process may seek advice, guidance and assistance from the Council on the application of this part to specific undertakings, including the resolution of disagreements, whether or not the Council is formally involved in the review of the undertaking. If questions arise regarding the conduct of the section 106 process, participants are encouraged to obtain the Council's advice on completing the process.

(c) *Consulting parties.* The following parties have consultative roles in the section 106 process.

(1) *State historic preservation officer.*

(i) The State historic preservation officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the act, the SHPO advises and assists Federal agencies in carrying out their section 106 responsibilities and cooperates with such agencies, local governments and organizations and individuals to ensure that historic properties are taking into consideration at all levels of planning and development.

(ii) If an Indian tribe has assumed the functions of the SHPO in the section 106 process for undertakings on tribal lands, the SHPO shall participate as a consulting party if the undertaking takes place on tribal lands but affects historic properties off tribal lands, if requested in accordance with § 800.3(c)(1), or if the Indian tribe agrees to include the SHPO pursuant to § 800.3(f)(3).

(2) *Indian tribes and Native Hawaiian organizations.*

(i) *Consultation on tribal lands.*

(A) *Tribal historic preservation officer.* For a tribe that has assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the tribal historic preservation officer (THPO) appointed or designated in accordance with the act is the official representative for the purposes of section 106. The agency official shall consult with the THPO in lieu of the SHPO regarding undertakings occurring on or affecting historic properties on tribal lands.

(B) *Tribes that have not assumed SHPO functions.* When an Indian tribe has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the agency official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting historic properties on its tribal lands. Such Indian tribes have the same rights of consultation and concurrence that the THPOs are given throughout subpart B of this part, except that such consultations shall be in addition to and on the same basis as consultation with the SHPO.

(ii) *Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations.*

Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or Native Hawaiian organization shall be a consulting party.

(A) The agency official shall ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant

preservation issues and resolve concerns about the confidentiality of information on historic properties.

(B) The Federal Government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this part alters, amends, repeals, interprets or modifies tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or preempts, modifies or limits the exercise of any such rights.

(C) Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal Government and Indian tribes. The agency official shall consult with representatives designated or identified by the tribal government or the governing body of a Native Hawaiian organization. Consultation with Indian tribes and Native Hawaiian organizations should be conducted in a manner sensitive to the concerns and needs of the Indian tribe or Native Hawaiian organization.

(D) When Indian tribes and Native Hawaiian organizations attach religious and cultural significance to historic properties off tribal lands, section 101(d)(6)(B) of the act requires Federal agencies to consult with such Indian tribes and Native Hawaiian organizations in the section 106 process. Federal agencies should be aware that frequently historic properties of religious and cultural significance are located on ancestral, aboriginal, or ceded lands of Indian tribes and Native Hawaiian organizations and should consider that when complying with the procedures in this part.

(E) An Indian tribe or a Native Hawaiian organization may enter into an agreement with an agency official that specifies how they will carry out responsibilities under this part, including concerns over the confidentiality of information. An agreement may cover all aspects of tribal participation in the section 106 process, provided that no modification may be made in the roles of other parties to the section 106 process without their consent. An agreement may grant the Indian tribe or Native Hawaiian organization additional rights to participate or concur in agency decisions in the section 106 process beyond those specified in subpart B of this part. The agency official shall



provide a copy of any such agreement to the Council and the appropriate SHPOs.

(F) An Indian tribe that has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act may notify the agency official in writing that it is waiving its rights under § 800.6(c)(1) to execute a memorandum of agreement.

(3) *Representatives of local governments.* A representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur is entitled to participate as a consulting party. Under other provisions of Federal law, the local government may be authorized to act as the agency official for purposes of section 106.

(4) *Applicants for Federal assistance, permits, licenses and other approvals.* An applicant for Federal assistance or for a Federal permit, license or other approval is entitled to participate as a consulting party as defined in this part. The agency official may authorize an applicant or group of applicants to initiate consultation with the SHPO/THPO and others, but remains legally responsible for all findings and determinations charged to the agency official. The agency official shall notify the SHPO/THPO when an applicant or group of applicants is so authorized. A Federal agency may authorize all applicants in a specific program pursuant to this section by providing notice to all SHPO/THPOs. Federal agencies that provide authorizations to applicants remain responsible for their government to government relationships with Indian tribes.

(5) *Additional consulting parties.* Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.

(d) *The public.*

(1) *Nature of involvement.* The views of the public are essential to informed Federal decisionmaking in the section 106 process. The agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and

the relationship of the Federal involvement to the undertaking.

(2) *Providing notice and information.* The agency official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the agency official to consider in decisionmaking.

(3) *Use of agency procedures.* The agency official may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in subpart B of this part, if they provide adequate opportunities for public involvement consistent with this subpart.

## **Subpart B-The section 106 Process**

### **§ 800.3 Initiation of the section 106 process.**

(a) *Establish undertaking.* The agency official shall determine whether the proposed Federal action is an undertaking as defined in § 800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.

(1) *No potential to cause effects.* If the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the agency official has no further obligations under section 106 or this part.

(2) *Program alternatives.* If the review of the undertaking is governed by a Federal agency program alternative established under § 800.14 or a programmatic agreement in existence before January 11, 2001, the agency official shall follow the program alternative.

(b) *Coordinate with other reviews.* The agency official should coordinate the steps of the section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under other authorities such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act and agency-specific legislation, such as section 4(f) of the Department of

Transportation Act. Where consistent with the procedures in this subpart, the agency official may use information developed for other reviews under Federal, State or tribal law to meet the requirements of section 106.

(c) *Identify the appropriate SHPO and/or THPO.* As part of its initial planning, the agency official shall determine the appropriate SHPO or SHPOs to be involved in the section 106 process. The agency official shall also determine whether the undertaking may occur on or affect historic properties on any tribal lands and, if so, whether a THPO has assumed the duties of the SHPO. The agency official shall then initiate consultation with the appropriate officer or officers.

(1) *Tribal assumption of SHPO responsibilities.* Where an Indian tribe has assumed the section 106 responsibilities of the SHPO on tribal lands pursuant to section 101(d)(2) of the act, consultation for undertakings occurring on tribal land or for effects on tribal land is with the THPO for the Indian tribe in lieu of the SHPO. Section 101(d)(2)(D)(iii) of the act authorizes owners of properties on tribal lands which are neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe to request the SHPO to participate in the section 106 process in addition to the THPO.

(2) *Undertakings involving more than one State.* If more than one State is involved in an undertaking, the involved SHPOs may agree to designate a lead SHPO to act on their behalf in the section 106 process, including taking actions that would conclude the section 106 process under this subpart.

(3) *Conducting consultation.* The agency official should consult with the SHPO/THPO in a manner appropriate to the agency planning process for the undertaking and to the nature of the undertaking and its effects on historic properties.

(4) *Failure of the SHPO/THPO to respond.* If the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination, the agency official may either proceed to the next step in the process based on the finding or determination or consult with the Council in lieu of the SHPO/THPO. If the SHPO/THPO re-enters the section 106 process, the agency official shall continue the consultation without being required to reconsider previous findings or determinations.



(d) *Consultation on tribal lands.*

Where the Indian tribe has not assumed the responsibilities of the SHPO on tribal lands, consultation with the Indian tribe regarding undertakings occurring on such tribe's lands or effects on such tribal lands shall be in addition to and on the same basis as consultation with the SHPO. If the SHPO has withdrawn from the process, the agency official may complete the section 106 process with the Indian tribe and the Council, as appropriate. An Indian tribe may enter into an agreement with a SHPO or SHPOs specifying the SHPO's participation in the section 106 process for undertakings occurring on or affecting historic properties on tribal lands.

(e) *Plan to involve the public.* In consultation with the SHPO/THPO, the agency official shall plan for involving the public in the section 106 process. The agency official shall identify the appropriate points for seeking public input and for notifying the public of proposed actions, consistent with § 800.2(d).

(f) *Identify other consulting parties.* In consultation with the SHPO/THPO, the agency official shall identify any other parties entitled to be consulting parties and invite them to participate as such in the section 106 process. The agency official may invite others to participate as consulting parties as the section 106 process moves forward.

(1) *Involving local governments and applicants.* The agency official shall invite any local governments or applicants that are entitled to be consulting parties under § 800.2(c).

(2) *Involving Indian tribes and Native Hawaiian organizations.* The agency official shall make a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties. Such Indian tribe or Native Hawaiian organization that requests in writing to be a consulting party shall be one.

(3) *Requests to be consulting parties.* The agency official shall consider all written requests of individuals and organizations to participate as consulting parties and, in consultation with the SHPO/THPO and any Indian tribe upon whose tribal lands an undertaking occurs or affects historic properties, determine which should be consulting parties.

(g) *Expediting consultation.* A consultation by the agency official with the SHPO/THPO and other consulting parties may address multiple steps in §§ 800.3 through 800.6 where the agency official and the SHPO/THPO agree it is appropriate as long as the consulting parties and the public have an adequate opportunity to express their views as provided in § 800.2(d).

**§ 800.4 Identification of historic properties.**

(a) *Determine scope of identification efforts.* In consultation with the SHPO/THPO, the agency official shall:

(1) Determine and document the area of potential effects, as defined in § 800.16(d);

(2) Review existing information on historic properties within the area of potential effects, including any data concerning possible historic properties not yet identified;

(3) Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties; and

(4) Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to § 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites. The agency official should address concerns raised about confidentiality pursuant to § 800.11(c).

(b) *Identify historic properties.* Based on the information gathered under paragraph (a) of this section, and in consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the agency official shall take the steps necessary to identify historic properties within the area of potential effects.

(1) *Level of effort.* The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews,

sample field investigation, and field survey. The agency official shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects. The Secretary's Standards and Guidelines for Identification provide guidance on this subject. The agency official should also consider other applicable professional, State, tribal and local laws, standards and guidelines. The agency official shall take into account any confidentiality concerns raised by Indian tribes or Native Hawaiian organizations during the identification process.

(2) *Phased identification and evaluation.* Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process to conduct identification and evaluation efforts. The agency official may also defer final identification and evaluation of historic properties if it is specifically provided for in a memorandum of agreement executed pursuant to § 800.6, a programmatic agreement executed pursuant to § 800.14 (b), or the documents used by an agency official to comply with the National Environmental Policy Act pursuant to § 800.8. The process should establish the likely presence of historic properties within the area of potential effects for each alternative or inaccessible area through background research, consultation and an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects, and the views of the SHPO/THPO and any other consulting parties. As specific aspects or locations of an alternative are refined or access is gained, the agency official shall proceed with the identification and evaluation of historic properties in accordance with paragraphs (b)(1) and (c) of this section.

(c) *Evaluate historic significance.*

(1) *Apply National Register criteria.* In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified properties and guided by the Secretary's Standards and Guidelines for Evaluation, the agency official shall

apply the National Register criteria (36 CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible. The agency official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

(2) *Determine whether a property is eligible.* If the agency official determines any of the National Register criteria are met and the SHPO/THPO agrees, the property shall be considered eligible for the National Register for section 106 purposes. If the agency official determines the criteria are not met and the SHPO/THPO agrees, the property shall be considered not eligible. If the agency official and the SHPO/THPO do not agree, or if the Council or the Secretary so request, the agency official shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR part 63. If an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to a property off tribal lands does not agree, it may ask the Council to request the agency official to obtain a determination of eligibility.

(d) *Results of identification and evaluation.*

(1) *No historic properties affected.* If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in § 800.16(i), the agency official shall provide documentation of this finding, as set forth in § 800.11(d), to the SHPO/THPO. The agency official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking.

(i) If the SHPO/THPO, or the Council if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the agency official's responsibilities under section 106 are fulfilled.

(ii) If the SHPO/THPO objects within 30 days of receipt of an adequately documented finding, the agency official shall either consult with the objecting party to resolve the disagreement, or forward the finding and supporting documentation to the Council and request that the Council review the finding pursuant to paragraphs (d)(1)(iv)(A) through (d)(1)(iv)(C) of this section. When an agency official forwards such requests for review to the Council, the agency official shall concurrently notify all consulting parties that such a request has been made and make the request documentation available to the public.

(iii) During the SHPO/THPO 30 day review period, the Council may object to the finding and provide its opinion regarding the finding to the agency official and, if the Council determines the issue warrants it, the head of the agency. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The agency shall then proceed according to paragraphs (d)(1)(iv)(B) and (d)(1)(iv)(C) of this section.

(iv)(A) Upon receipt of the request under paragraph (d)(1)(ii) of this section, the Council will have 30 days in which to review the finding and provide the agency official and, if the Council determines the issue warrants it, the head of the agency with the Council's opinion regarding the finding. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. If the Council does not respond within 30 days of receipt of the request, the agency official's responsibilities under section 106 are fulfilled.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion before the agency reaches a final decision on the finding.

(C) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall then prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council, the SHPO/THPO, and the consulting parties. The head of the agency may delegate his or her duties under this paragraph to the agency's senior policy official. If the agency official's initial finding will be revised, the agency official shall proceed in

accordance with the revised finding. If the final decision of the agency is to affirm the initial agency finding of no historic properties affected, once the summary of the decision has been sent to the Council, the SHPO/THPO, and the consulting parties, the agency official's responsibilities under section 106 are fulfilled.

(D) The Council shall retain a record of agency responses to Council opinions on their findings of no historic properties affected. The Council shall make this information available to the public.

(2) *Historic properties affected.* If the agency official finds that there are historic properties which may be affected by the undertaking, the agency official shall notify all consulting parties, including Indian tribes or Native Hawaiian organizations, invite their views on the effects and assess adverse effects, if any, in accordance with § 800.5.

#### **§ 800.5 Assessment of adverse effects.**

(a) *Apply criteria of adverse effect.* In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified historic properties, the agency official shall apply the criteria of adverse effect to historic properties within the area of potential effects. The agency official shall consider any views concerning such effects which have been provided by consulting parties and the public.

(1) *Criteria of adverse effect.* An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

(2) *Examples of adverse effects.*

Adverse effects on historic properties include, but are not limited to:

(i) Physical destruction of or damage to all or part of the property;

(ii) Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation and provision of handicapped access, that is not consistent with the Secretary's Standards for the Treatment of Historic Properties (36 CFR part 68) and applicable guidelines;

(iii) Removal of the property from its historic location;

(iv) Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance;

(v) Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features;

(vi) Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and

(vii) Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

(3) *Phased application of criteria.* Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process in applying the criteria of adverse effect consistent with phased identification and evaluation efforts conducted pursuant to § 800.4(b)(2).

(b) *Finding of no adverse effect.* The agency official, in consultation with the SHPO/THPO, may propose a finding of no adverse effect when the undertaking's effects do not meet the criteria of paragraph (a)(1) of this section or the undertaking is modified or conditions are imposed, such as the subsequent review of plans for rehabilitation by the SHPO/THPO to ensure consistency with the Secretary's Standards for the Treatment of Historic Properties (36 CFR part 68) and applicable guidelines, to avoid adverse effects.

(c) *Consulting party review.* If the agency official proposes a finding of no adverse effect, the agency official shall notify all consulting parties of the finding and provide them with the documentation specified in § 800.11(e). The SHPO/THPO shall have 30 days from receipt to review the finding.

(1) *Agreement with, or no objection to, finding.* Unless the Council is reviewing the finding pursuant to paragraph (c)(3) of this section, the agency official may proceed after the close of the 30 day review period if the SHPO/THPO has agreed with the finding or has not provided a response, and no consulting party has objected. The agency official shall then carry out the undertaking in accordance with paragraph (d)(1) of this section.

(2) *Disagreement with finding.*

(i) If within the 30 day review period the SHPO/THPO or any consulting party notifies the agency official in writing that it disagrees with the finding and specifies the reasons for the disagreement in the notification, the agency official shall either consult with the party to resolve the disagreement, or request the Council to review the finding pursuant to paragraphs (c)(3)(i) and (c)(3)(ii) of this section. The agency official shall include with such request the documentation specified in § 800.11(e). The agency official shall also concurrently notify all consulting parties that such a submission has been made and make the submission documentation available to the public.

(ii) If within the 30 day review period the Council provides the agency official and, if the Council determines the issue warrants it, the head of the agency, with a written opinion objecting to the finding, the agency shall then proceed according to paragraph (c)(3)(ii) of this section. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part.

(iii) The agency official should seek the concurrence of any Indian tribe or Native Hawaiian organization that has made known to the agency official that it attaches religious and cultural significance to a historic property subject to the finding. If such Indian tribe or Native Hawaiian organization disagrees with the finding, it may within the 30 day review period specify the reasons for disagreeing with the finding and request the Council to review and object to the finding pursuant to paragraph (c)(2)(ii) of this section.

(3) *Council review of findings.*

(i) When a finding is submitted to the Council pursuant to paragraph (c)(2)(i) of this section, the Council shall review the finding and provide the agency official and, if the Council determines the issue warrants it, the head of the agency with its opinion as to whether the adverse effect criteria have

been correctly applied. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The Council will provide its opinion within 15 days of receiving the documented finding from the agency official. The Council at its discretion may extend that time period for 15 days, in which case it shall notify the agency of such extension prior to the end of the initial 15 day period. If the Council does not respond within the applicable time period, the agency official's responsibilities under section 106 are fulfilled.

(ii)(A) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion in reaching a final decision on the finding.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council, the SHPO/THPO, and the consulting parties. The head of the agency may delegate his or her duties under this paragraph to the agency's senior policy official. If the agency official's initial finding will be revised, the agency official shall proceed in accordance with the revised finding. If the final decision of the agency is to affirm the initial finding of no adverse effect, once the summary of the decision has been sent to the Council, the SHPO/THPO, and the consulting parties, the agency official's responsibilities under section 106 are fulfilled.

(C) The Council shall retain a record of agency responses to Council opinions on their findings of no adverse effects. The Council shall make this information available to the public.

(d) *Results of assessment.*

(1) *No adverse effect.* The agency official shall maintain a record of the finding and provide information on the finding to the public on request, consistent with the confidentiality provisions of § 800.11(c). Implementation of the undertaking in accordance with the finding as documented fulfills the agency official's responsibilities under section 106 and this part. If the agency official will not conduct the undertaking as proposed in the finding, the agency official shall reopen consultation under paragraph (a) of this section.

(2) *Adverse effect.* If an adverse effect is found, the agency official shall consult further to resolve the adverse effect pursuant to § 800.6.

#### **§ 800.6 Resolution of adverse effects.**

(a) *Continue consultation.* The agency official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties.

(1) *Notify the Council and determine Council participation.* The agency official shall notify the Council of the adverse effect finding by providing the documentation specified in § 800.11(e).

(i) The notice shall invite the Council to participate in the consultation when:

(A) The agency official wants the Council to participate;

(B) The undertaking has an adverse effect upon a National Historic Landmark; or

(C) A programmatic agreement under § 800.14(b) will be prepared;

(ii) The SHPO/THPO, an Indian tribe or Native Hawaiian organization, or any other consulting party may at any time independently request the Council to participate in the consultation.

(iii) The Council shall advise the agency official and all consulting parties whether it will participate within 15 days of receipt of notice or other request. Prior to entering the process, the Council shall provide written notice to the agency official and the consulting parties that its decision to participate meets the criteria set forth in appendix A to this part. The Council shall also advise the head of the agency of its decision to enter the process. Consultation with Council participation is conducted in accordance with paragraph (b)(2) of this section.

(iv) If the Council does not join the consultation, the agency official shall proceed with consultation in accordance with paragraph (b)(1) of this section.

(2) *Involve consulting parties.* In addition to the consulting parties identified under § 800.3(f), the agency official, the SHPO/THPO and the Council, if participating, may agree to invite other individuals or organizations to become consulting parties. The agency official shall invite any individual or organization that will assume a specific role or responsibility

in a memorandum of agreement to participate as a consulting party.

(3) *Provide documentation.* The agency official shall provide to all consulting parties the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c), and such other documentation as may be developed during the consultation to resolve adverse effects.

(4) *Involve the public.* The agency official shall make information available to the public, including the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c). The agency official shall provide an opportunity for members of the public to express their views on resolving adverse effects of the undertaking. The agency official should use appropriate mechanisms, taking into account the magnitude of the undertaking and the nature of its effects upon historic properties, the likely effects on historic properties, and the relationship of the Federal involvement to the undertaking to ensure that the public's views are considered in the consultation. The agency official should also consider the extent of notice and information concerning historic preservation issues afforded the public at earlier steps in the section 106 process to determine the appropriate level of public involvement when resolving adverse effects so that the standards of § 800.2(d) are met.

(5) *Restrictions on disclosure of information.* Section 304 of the act and other authorities may limit the disclosure of information under paragraphs (a)(3) and (a)(4) of this section. If an Indian tribe or Native Hawaiian organization objects to the disclosure of information or if the agency official believes that there are other reasons to withhold information, the agency official shall comply with § 800.11(c) regarding the disclosure of such information.

(b) *Resolve adverse effects.*

(1) *Resolution without the Council.*

(i) The agency official shall consult with the SHPO/THPO and other consulting parties to seek ways to avoid, minimize or mitigate the adverse effects.

(ii) The agency official may use standard treatments established by the Council under § 800.14(d) as a basis for a memorandum of agreement.

(iii) If the Council decides to join the consultation, the agency official shall follow paragraph (b)(2) of this section.

(iv) If the agency official and the SHPO/THPO agree on how the adverse

effects will be resolved, they shall execute a memorandum of agreement. The agency official must submit a copy of the executed memorandum of agreement, along with the documentation specified in § 800.11(f), to the Council prior to approving the undertaking in order to meet the requirements of section 106 and this subpart.

(v) If the agency official, and the SHPO/THPO fail to agree on the terms of a memorandum of agreement, the agency official shall request the Council to join the consultation and provide the Council with the documentation set forth in § 800.11(g). If the Council decides to join the consultation, the agency official shall proceed in accordance with paragraph (b)(2) of this section. If the Council decides not to join the consultation, the Council will notify the agency and proceed to comment in accordance with § 800.7(c).

(2) *Resolution with Council participation.* If the Council decides to participate in the consultation, the agency official shall consult with the SHPO/THPO, the Council, and other consulting parties, including Indian tribes and Native Hawaiian organizations under § 800.2(c)(3), to seek ways to avoid, minimize or mitigate the adverse effects. If the agency official, the SHPO/THPO, and the Council agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement.

(c) *Memorandum of agreement.* A memorandum of agreement executed and implemented pursuant to this section evidences the agency official's compliance with section 106 and this part and shall govern the undertaking and all of its parts. The agency official shall ensure that the undertaking is carried out in accordance with the memorandum of agreement.

(1) *Signatories.* The signatories have sole authority to execute, amend or terminate the agreement in accordance with this subpart.

(i) The agency official and the SHPO/THPO are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(1) of this section.

(ii) The agency official, the SHPO/THPO, and the Council are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(2) of this section.

(iii) The agency official and the Council are signatories to a



memorandum of agreement executed pursuant to § 800.7(a)(2).

(2) *Invited signatories.*

(i) The agency official may invite additional parties to be signatories to a memorandum of agreement. Any such party that signs the memorandum of agreement shall have the same rights with regard to seeking amendment or termination of the memorandum of agreement as other signatories.

(ii) The agency official may invite an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties located off tribal lands to be a signatory to a memorandum of agreement concerning such properties.

(iii) The agency official should invite any party that assumes a responsibility under a memorandum of agreement to be a signatory.

(iv) The refusal of any party invited to become a signatory to a memorandum of agreement pursuant to paragraph (c)(2) of this section does not invalidate the memorandum of agreement.

(3) *Concurrence by others.* The agency official may invite all consulting parties to concur in the memorandum of agreement. The signatories may agree to invite others to concur. The refusal of any party invited to concur in the memorandum of agreement does not invalidate the memorandum of agreement.

(4) *Reports on implementation.* Where the signatories agree it is appropriate, a memorandum of agreement shall include a provision for monitoring and reporting on its implementation.

(5) *Duration.* A memorandum of agreement shall include provisions for termination and for reconsideration of terms if the undertaking has not been implemented within a specified time.

(6) *Discoveries.* Where the signatories agree it is appropriate, a memorandum of agreement shall include provisions to deal with the subsequent discovery or identification of additional historic properties affected by the undertaking.

(7) *Amendments.* The signatories to a memorandum of agreement may amend it. If the Council was not a signatory to the original agreement and the signatories execute an amended agreement, the agency official shall file it with the Council.

(8) *Termination.* If any signatory determines that the terms of a memorandum of agreement cannot be or are not being carried out, the signatories

shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate it. The agency official shall either execute a memorandum of agreement with signatories under paragraph (c)(1) of this section or request the comments of the Council under § 800.7(a).

(9) *Copies.* The agency official shall provide each consulting party with a copy of any memorandum of agreement executed pursuant to this subpart.

**§ 800.7 Failure to resolve adverse effects.**

(a) *Termination of consultation.* After consulting to resolve adverse effects pursuant to § 800.6(b)(2), the agency official, the SHPO/THPO, or the Council may determine that further consultation will not be productive and terminate consultation. Any party that terminates consultation shall notify the other consulting parties and provide them the reasons for terminating in writing.

(1) If the agency official terminates consultation, the head of the agency or an Assistant Secretary or other officer with major department-wide or agency-wide responsibilities shall request that the Council comment pursuant to paragraph (c) of this section and shall notify all consulting parties of the request.

(2) If the SHPO terminates consultation, the agency official and the Council may execute a memorandum of agreement without the SHPO's involvement.

(3) If a THPO terminates consultation regarding an undertaking occurring on or affecting historic properties on its tribal lands, the Council shall comment pursuant to paragraph (c) of this section.

(4) If the Council terminates consultation, the Council shall notify the agency official, the agency's Federal preservation officer and all consulting parties of the termination and comment under paragraph (c) of this section. The Council may consult with the agency's Federal preservation officer prior to terminating consultation to seek to resolve issues concerning the undertaking and its effects on historic properties.

(b) *Comments without termination.* The Council may determine that it is appropriate to provide additional advisory comments upon an undertaking for which a memorandum of agreement will be executed. The Council shall provide them to the

agency official when it executes the memorandum of agreement.

(c) *Comments by the Council.*

(1) *Preparation.* The Council shall provide an opportunity for the agency official, all consulting parties, and the public to provide their views within the time frame for developing its comments. Upon request of the Council, the agency official shall provide additional existing information concerning the undertaking and assist the Council in arranging an onsite inspection and an opportunity for public participation.

(2) *Timing.* The Council shall transmit its comments within 45 days of receipt of a request under paragraph (a)(1) or (a)(3) of this section or § 800.8(c)(3), or termination by the Council under § 800.6(b)(1)(v) or paragraph (a)(4) of this section, unless otherwise agreed to by the agency official.

(3) *Transmittal.* The Council shall provide its comments to the head of the agency requesting comment with copies to the agency official, the agency's Federal preservation officer, all consulting parties, and others as appropriate.

(4) *Response to Council comment.* The head of the agency shall take into account the Council's comments in reaching a final decision on the undertaking. Section 110(l) of the act directs that the head of the agency shall document this decision and may not delegate his or her responsibilities pursuant to section 106. Documenting the agency head's decision shall include:

(i) Preparing a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's comments and providing it to the Council prior to approval of the undertaking;

(ii) Providing a copy of the summary to all consulting parties; and

(iii) Notifying the public and making the record available for public inspection.

**§ 800.8 Coordination With the National Environmental Policy Act.**

(a) *General principles.*

(1) *Early coordination.* Federal agencies are encouraged to coordinate compliance with section 106 and the procedures in this part with any steps taken to meet the requirements of the National Environmental Policy Act (NEPA). Agencies should consider their section 106 responsibilities as early as possible in the NEPA process, and plan

their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner. The determination of whether an undertaking is a "major Federal action significantly affecting the quality of the human environment," and therefore requires preparation of an environmental impact statement (EIS) under NEPA, should include consideration of the undertaking's likely effects on historic properties. A finding of adverse effect on a historic property does not necessarily require an EIS under NEPA.

(2) *Consulting party roles.* SHPO/THPOs, Indian tribes and Native Hawaiian organizations, other consulting parties, and organizations and individuals who may be concerned with the possible effects of an agency action on historic properties should be prepared to consult with agencies early in the NEPA process, when the purpose of and need for the proposed action as well as the widest possible range of alternatives are under consideration.

(3) *Inclusion of historic preservation issues.* Agency officials should ensure that preparation of an environmental assessment (EA) and finding of no significant impact (FONSI) or an EIS and record of decision (ROD) includes appropriate scoping, identification of historic properties, assessment of effects upon them, and consultation leading to resolution of any adverse effects.

(b) *Actions categorically excluded under NEPA.* If a project, activity or program is categorically excluded from NEPA review under an agency's NEPA procedures, the agency official shall determine if it still qualifies as an undertaking requiring review under section 106 pursuant to § 800.3(a). If so, the agency official shall proceed with section 106 review in accordance with the procedures in this subpart.

(c) *Use of the NEPA process for section 106 purposes.* An agency official may use the process and documentation required for the preparation of an EA/FONSI or an EIS/ROD to comply with section 106 in lieu of the procedures set forth in §§ 800.3 through 800.6 if the agency official has notified in advance the SHPO/THPO and the Council that it intends to do so and the following standards are met.

(1) *Standards for developing environmental documents to comply with Section 106.* During preparation of the EA or draft EIS (DEIS) the agency official shall:

(i) Identify consulting parties either pursuant to § 800.3(f) or through the NEPA scoping process with results consistent with § 800.3(f);

(ii) Identify historic properties and assess the effects of the undertaking on such properties in a manner consistent with the standards and criteria of §§ 800.4 through 800.5, provided that the scope and timing of these steps may be phased to reflect the agency official's consideration of project alternatives in the NEPA process and the effort is commensurate with the assessment of other environmental factors;

(iii) Consult regarding the effects of the undertaking on historic properties with the SHPO/THPO, Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, other consulting parties, and the Council, where appropriate, during NEPA scoping, environmental analysis, and the preparation of NEPA documents;

(iv) Involve the public in accordance with the agency's published NEPA procedures; and

(v) Develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA or DEIS.

(2) *Review of environmental documents.*

(i) The agency official shall submit the EA, DEIS or EIS to the SHPO/THPO, Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, and other consulting parties prior to or when making the document available for public comment. If the document being prepared is a DEIS or EIS, the agency official shall also submit it to the Council.

(ii) Prior to or within the time allowed for public comment on the document, a SHPO/THPO, an Indian tribe or Native Hawaiian organization, another consulting party or the Council may object to the agency official that preparation of the EA, DEIS or EIS has not met the standards set forth in paragraph (c)(1) of this section or that the substantive resolution of the effects on historic properties proposed in an EA, DEIS or EIS is inadequate. If the agency official receives such an objection, the agency official shall refer the matter to the Council.

(3) *Resolution of objections.* Within 30 days of the agency official's referral of an objection under paragraph (c)(2)(ii) of this section, the Council shall review the objection and notify the agency as to its opinion on the objection.

(i) If the Council agrees with the objection:

(A) The Council shall provide the agency official and, if the Council determines the issue warrants it, the head of the agency with the Council's opinion regarding the objection. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion in reaching a final decision on the issue of the objection.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council. The head of the agency may delegate his or her duties under this paragraph to the agency's senior Policy Official. If the agency official's initial decision regarding the matter that is the subject of the objection will be revised, the agency official shall proceed in accordance with the revised decision. If the final decision of the agency is to affirm the initial agency decision, once the summary of the final decision has been sent to the Council, the agency official shall continue its compliance with this section.

(ii) If the Council disagrees with the objection, the Council shall so notify the agency official, in which case the agency official shall continue its compliance with this section.

(iii) If the Council fails to respond to the objection within the 30 day period, the agency official shall continue its compliance with this section.

(4) *Approval of the undertaking.* If the agency official has found, during the preparation of an EA or EIS that the effects of an undertaking on historic properties are adverse, the agency official shall develop measures in the EA, DEIS, or EIS to avoid, minimize, or mitigate such effects in accordance with paragraph (c)(1)(v) of this section. The agency official's responsibilities under section 106 and the procedures in this

subpart shall then be satisfied when either:

(i) a binding commitment to such proposed measures is incorporated in

(A) the ROD, if such measures were proposed in a DEIS or EIS; or

(B) an MOA drafted in compliance with § 800.6(c); or

(ii) the Council has commented under § 800.7 and received the agency's response to such comments.

*(5) Modification of the undertaking.*

If the undertaking is modified after approval of the FONSI or the ROD in a manner that changes the undertaking or alters its effects on historic properties, or if the agency official fails to ensure that the measures to avoid, minimize or mitigate adverse effects (as specified in either the FONSI or the ROD, or in the binding commitment adopted pursuant to paragraph (c)(4) of this section) are carried out, the agency official shall notify the Council and all consulting parties that supplemental environmental documents will be prepared in compliance with NEPA or that the procedures in §§ 800.3 through 800.6 will be followed as necessary.

**§ 800.9 Council review of section 106 compliance.**

(a) *Assessment of agency official compliance for individual undertakings.* The Council may provide to the agency official its advisory opinion regarding the substance of any finding, determination or decision or regarding the adequacy of the agency official's compliance with the procedures under this part. The Council may provide such advice at any time at the request of any individual, agency or organization or on its own initiative. The agency official shall consider the views of the Council in reaching a decision on the matter in question.

(b) *Agency foreclosure of the Council's opportunity to comment.* Where an agency official has failed to complete the requirements of section 106 in accordance with the procedures in this part prior to the approval of an undertaking, the Council's opportunity to comment may be foreclosed. The Council may review a case to determine whether a foreclosure has occurred. The Council shall notify the agency official and the agency's Federal preservation officer and allow 30 days for the agency official to provide information as to whether foreclosure has occurred. If the Council determines foreclosure has occurred, the Council shall transmit the determination to the

agency official and the head of the agency. The Council shall also make the determination available to the public and any parties known to be interested in the undertaking and its effects upon historic properties.

(c) *Intentional adverse effects by applicants.*

(1) *Agency responsibility.* Section 110(k) of the act prohibits a Federal agency from granting a loan, loan guarantee, permit, license or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. Guidance issued by the Secretary pursuant to section 110 of the act governs its implementation.

(2) *Consultation with the Council.* When an agency official determines, based on the actions of an applicant, that section 110(k) is applicable and that circumstances may justify granting the assistance, the agency official shall notify the Council and provide documentation specifying the circumstances under which the adverse effects to the historic property occurred and the degree of damage to the integrity of the property. This documentation shall include any views obtained from the applicant, SHPO/THPO, an Indian tribe if the undertaking occurs on or affects historic properties on tribal lands, and other parties known to be interested in the undertaking.

(i) Within thirty days of receiving the agency official's notification, unless otherwise agreed to by the agency official, the Council shall provide the agency official with its opinion as to whether circumstances justify granting assistance to the applicant and any possible mitigation of the adverse effects.

(ii) The agency official shall consider the Council's opinion in making a decision on whether to grant assistance to the applicant, and shall notify the Council, the SHPO/THPO, and other parties known to be interested in the undertaking prior to granting the assistance.

(3) *Compliance with Section 106.* If an agency official, after consulting with

the Council, determines to grant the assistance, the agency official shall comply with §§ 800.3 through 800.6 to take into account the effects of the undertaking on any historic properties.

(d) *Evaluation of Section 106 operations.* The Council may evaluate the operation of the section 106 process by periodic reviews of how participants have fulfilled their legal responsibilities and how effectively the outcomes reached advance the purposes of the act.

(1) *Information from participants.* Section 203 of the act authorizes the Council to obtain information from Federal agencies necessary to conduct evaluation of the section 106 process. The agency official shall make documentation of agency policies, operating procedures and actions taken to comply with section 106 available to the Council upon request. The Council may request available information and documentation from other participants in the section 106 process.

(2) *Improving the operation of section 106.* Based upon any evaluation of the section 106 process, the Council may make recommendations to participants, the heads of Federal agencies, and the Secretary of actions to improve the efficiency and effectiveness of the process. Where the Council determines that an agency official or a SHPO/THPO has failed to properly carry out the responsibilities assigned under the process in this part, the Council may participate in individual case reviews conducted under such process in addition to the SHPO/THPO for such period that it determines is necessary to improve performance or correct deficiencies. If the Council finds a pattern of failure by a Federal agency in carrying out its responsibilities under section 106, the Council may review the policies and programs of the agency related to historic preservation pursuant to section 202(a)(6) of the act and recommend methods to improve the effectiveness, coordination, and consistency of those policies and programs with section 106.

**§ 800.10 Special requirements for protecting National Historic Landmarks.**

(a) *Statutory requirement.* Section 110(f) of the act requires that the agency official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When



commenting on such undertakings, the Council shall use the process set forth in §§ 800.6 through 800.7 and give special consideration to protecting National Historic Landmarks as specified in this section.

(b) *Resolution of adverse effects.* The agency official shall request the Council to participate in any consultation to resolve adverse effects on National Historic Landmarks conducted under § 800.6.

(c) *Involvement of the Secretary.* The agency official shall notify the Secretary of any consultation involving a National Historic Landmark and invite the Secretary to participate in the consultation where there may be an adverse effect. The Council may request a report from the Secretary under section 213 of the act to assist in the consultation.

(d) *Report of outcome.* When the Council participates in consultation under this section, it shall report the outcome of the section 106 process, providing its written comments or any memoranda of agreement to which it is a signatory, to the Secretary and the head of the agency responsible for the undertaking.

#### **§ 800.11 Documentation standards.**

(a) *Adequacy of documentation.* The agency official shall ensure that a determination, finding, or agreement under the procedures in this subpart is supported by sufficient documentation to enable any reviewing parties to understand its basis. The agency official shall provide such documentation to the extent permitted by law and within available funds. When an agency official is conducting phased identification or evaluation under this subpart, the documentation standards regarding description of historic properties may be applied flexibly. If the Council, or the SHPO/THPO when the Council is not involved, determines the applicable documentation standards are not met, the Council or the SHPO/THPO, as appropriate, shall notify the agency official and specify the information needed to meet the standard. At the request of the agency official or any of the consulting parties, the Council shall review any disputes over whether documentation standards are met and provide its views to the agency official and the consulting parties.

(b) *Format.* The agency official may use documentation prepared to comply with other laws to fulfill the

requirements of the procedures in this subpart, if that documentation meets the standards of this section.

(c) *Confidentiality.*

(1) *Authority to withhold information.* Section 304 of the act provides that the head of a Federal agency or other public official receiving grant assistance pursuant to the act, after consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to these criteria, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purposes of carrying out the act.

(2) *Consultation with the Council.* When the information in question has been developed in the course of an agency's compliance with this part, the Secretary shall consult with the Council in reaching determinations on the withholding and release of information. The Federal agency shall provide the Council with available information, including views of the SHPO/THPO, Indian tribes and Native Hawaiian organizations, related to the confidentiality concern. The Council shall advise the Secretary and the Federal agency within 30 days of receipt of adequate documentation.

(3) *Other authorities affecting confidentiality.* Other Federal laws and program requirements may limit public access to information concerning an undertaking and its effects on historic properties. Where applicable, those authorities shall govern public access to information developed in the section 106 process and may authorize the agency official to protect the privacy of non-governmental applicants.

(d) *Finding of no historic properties affected.* Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, drawings, as necessary;

(2) A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to § 800.4(b); and

(3) The basis for determining that no historic properties are present or affected.

(e) *Finding of no adverse effect or adverse effect.* Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of the steps taken to identify historic properties;

(3) A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;

(4) A description of the undertaking's effects on historic properties;

(5) An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and

(6) Copies or summaries of any views provided by consulting parties and the public.

(f) *Memorandum of agreement.*

When a memorandum of agreement is filed with the Council, the documentation shall include, any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1), an evaluation of any measures considered to avoid or minimize the undertaking's adverse effects and a summary of the views of consulting parties and the public.

(g) *Requests for comment without a memorandum of agreement.* Documentation shall include:

(1) A description and evaluation of any alternatives or mitigation measures that the agency official proposes to resolve the undertaking's adverse effects;

(2) A description of any reasonable alternatives or mitigation measures that were considered but not chosen, and the reasons for their rejection;

(3) Copies or summaries of any views submitted to the agency official concerning the adverse effects of the undertaking on historic properties and alternatives to reduce or avoid those effects; and

(4) Any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1).

#### **§ 800.12 Emergency situations.**

(a) *Agency procedures.* The agency official, in consultation with the appropriate SHPOs/THPOs, affected Indian tribes and Native Hawaiian organizations, and the Council, is encouraged to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or which respond to other immediate threats to life or property. If approved by the Council, the procedures shall govern the agency's historic preservation responsibilities during any disaster or emergency in lieu of §§ 800.3 through 800.6.

(b) *Alternatives to agency procedures.* In the event an agency official proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or another immediate threat to life or property, and the agency has not developed procedures pursuant to paragraph (a) of this section, the agency official may comply with section 106 by:

(1) Following a programmatic agreement developed pursuant to § 800.14(b) that contains specific provisions for dealing with historic properties in emergency situations; or

(2) Notifying the Council, the appropriate SHPO/THPO and any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to historic properties likely to be affected prior to the undertaking and affording them an opportunity to comment within seven days of notification. If the agency official determines that circumstances do not permit seven days for comment, the agency official shall notify the Council, the SHPO/THPO and the Indian tribe or Native Hawaiian organization and invite any comments within the time available.

(c) *Local governments responsible for section 106 compliance.* When a local government official serves as the agency official for section 106 compliance, paragraphs (a) and (b) of this section also apply to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or SHPO/THPO objects to the proposed action within seven days, the agency official shall comply with §§ 800.3 through 800.6.

(d) *Applicability.* This section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority. An agency may request an extension of the period of applicability from the Council prior to the expiration of the 30 days. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of section 106 and this part.

#### **§ 800.13 Post-review discoveries.**

(a) *Planning for subsequent discoveries.*

(1) *Using a programmatic agreement.* An agency official may develop a programmatic agreement pursuant to § 800.14(b) to govern the actions to be taken when historic properties are discovered during the implementation of an undertaking.

(2) *Using agreement documents.* When the agency official's identification efforts in accordance with § 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking and no programmatic agreement has been developed pursuant to paragraph (a)(1) of this section, the agency official shall include in any finding of no adverse effect or memorandum of agreement a process to resolve any adverse effects upon such properties. Actions in conformance with the process satisfy the agency official's responsibilities under section 106 and this part.

(b) *Discoveries without prior planning.* If historic properties are discovered or unanticipated effects on historic properties found after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section, the agency official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:

(1) If the agency official has not approved the undertaking or if construction on an approved undertaking has not commenced, consult to resolve adverse effects pursuant to § 800.6; or

(2) If the agency official, the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property agree that such property is of value solely for its scientific, prehistoric, historic or archeological data, the agency official may comply with the

Archeological and Historic Preservation Act instead of the procedures in this part and provide the Council, the SHPO/THPO, and the Indian tribe or Native Hawaiian organization with a report on the actions within a reasonable time after they are completed; or

(3) If the agency official has approved the undertaking and construction has commenced, determine actions that the agency official can take to resolve adverse effects, and notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery. The notification shall describe the agency official's assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects. The SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council shall respond within 48 hours of the notification. The agency official shall take into account their recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. The agency official shall provide the SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council a report of the actions when they are completed.

(c) *Eligibility of properties.* The agency official, in consultation with the SHPO/THPO, may assume a newly-discovered property to be eligible for the National Register for purposes of section 106. The agency official shall specify the National Register criteria used to assume the property's eligibility so that information can be used in the resolution of adverse effects.

(d) *Discoveries on tribal lands.* If historic properties are discovered on tribal lands, or there are unanticipated effects on historic properties found on tribal lands, after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section and construction has commenced, the agency official shall comply with applicable tribal regulations and procedures and obtain the concurrence of the Indian tribe on the proposed action.

#### **Subpart C-Program Alternatives**

##### **§ 800.14 Federal agency program alternatives.**

(a) *Alternate procedures.* An agency official may develop procedures to implement section 106 and substitute them for all or part of subpart B of this part if they are consistent with the Council's regulations pursuant to section 110(a)(2)(E) of the act.

(1) *Development of procedures.* The agency official shall consult with the Council, the National Conference of State Historic Preservation Officers or individual SHPO/THPOs, as appropriate, and Indian tribes and Native Hawaiian organizations, as specified in paragraph (f) of this section, in the development of alternate procedures, publish notice of the availability of proposed alternate procedures in the Federal Register and take other appropriate steps to seek public input during the development of alternate procedures.

(2) *Council review.* The agency official shall submit the proposed alternate procedures to the Council for a 60-day review period. If the Council finds the procedures to be consistent with this part, it shall notify the agency official and the agency official may adopt them as final alternate procedures.

(3) *Notice.* The agency official shall notify the parties with which it has consulted and publish notice of final alternate procedures in the Federal Register.

(4) *Legal effect.* Alternate procedures adopted pursuant to this subpart substitute for the Council's regulations for the purposes of the agency's compliance with section 106, except that where an Indian tribe has entered into an agreement with the Council to substitute tribal historic preservation regulations for the Council's regulations under section 101(d)(5) of the act, the agency shall follow those regulations in lieu of the agency's procedures regarding undertakings on tribal lands. Prior to the Council entering into such agreements, the Council will provide Federal agencies notice and opportunity to comment on the proposed substitute tribal regulations.

(b) *Programmatic agreements.* The Council and the agency official may negotiate a programmatic agreement to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings.

(1) *Use of programmatic agreements.* A programmatic agreement may be used:

(i) When effects on historic properties are similar and repetitive or are multi-State or regional in scope;

(ii) When effects on historic properties cannot be fully determined prior to approval of an undertaking;

(iii) When nonfederal parties are delegated major decisionmaking responsibilities;

(iv) Where routine management activities are undertaken at Federal installations, facilities, or other land-management units; or

(v) Where other circumstances warrant a departure from the normal section 106 process.

(2) *Developing programmatic agreements for agency programs.*

(i) The consultation shall involve, as appropriate, SHPO/THPOs, the National Conference of State Historic Preservation Officers (NCSHPO), Indian tribes and Native Hawaiian organizations, other Federal agencies, and members of the public. If the programmatic agreement has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the agency official shall also follow paragraph (f) of this section.

(ii) *Public Participation.* The agency official shall arrange for public participation appropriate to the subject matter and the scope of the program and in accordance with subpart A of this part. The agency official shall consider the nature of the program and its likely effects on historic properties and take steps to involve the individuals, organizations and entities likely to be interested.

(iii) *Effect.* The programmatic agreement shall take effect when executed by the Council, the agency official and the appropriate SHPOs/THPOs when the programmatic agreement concerns a specific region or the president of NCSHPO when NCSHPO has participated in the consultation. A programmatic agreement shall take effect on tribal lands only when the THPO, Indian tribe or a designated representative of the tribe is a signatory to the agreement. Compliance with the procedures established by an approved programmatic agreement satisfies the agency's section 106 responsibilities for all individual undertakings of the program covered by the agreement until

it expires or is terminated by the agency, the president of NCSHPO when a signatory, or the Council. Termination by an individual SHPO/THPO shall only terminate the application of a regional programmatic agreement within the jurisdiction of the SHPO/THPO. If a THPO assumes the responsibilities of a SHPO pursuant to section 101(d)(2) of the act and the SHPO is signatory to programmatic agreement, the THPO assumes the role of a signatory, including the right to terminate a regional programmatic agreement on lands under the jurisdiction of the tribe.

(iv) *Notice.* The agency official shall notify the parties with which it has consulted that a programmatic agreement has been executed under paragraph (b) of this section, provide appropriate public notice before it takes effect, and make any internal agency procedures implementing the agreement readily available to the Council, SHPO/THPOs, and the public.

(v) If the Council determines that the terms of a programmatic agreement are not being carried out, or if such an agreement is terminated, the agency official shall comply with subpart B of this part with regard to individual undertakings of the program covered by the agreement.

(3) *Developing programmatic agreements for complex or multiple undertakings.* Consultation to develop a programmatic agreement for dealing with the potential adverse effects of complex projects or multiple undertakings shall follow § 800.6. If consultation pertains to an activity involving multiple undertakings and the parties fail to reach agreement, then the agency official shall comply with the provisions of subpart B of this part for each individual undertaking.

(4) *Prototype programmatic agreements.* The Council may designate an agreement document as a prototype programmatic agreement that may be used for the same type of program or undertaking in more than one case or area. When an agency official uses such a prototype programmatic agreement, the agency official may develop and execute the agreement with the appropriate SHPO/THPO and the agreement shall become final without need for Council participation in consultation or Council signature.

(c) *Exempted categories.*

(1) *Criteria for establishing.* The Council or an agency official may propose a program or category of undertakings that may be exempted

from review under the provisions of subpart B of this part, if the program or category meets the following criteria:

- (i) The actions within the program or category would otherwise qualify as "undertakings" as defined in § 800.16;
- (ii) The potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and
- (iii) Exemption of the program or category is consistent with the purposes of the act.

(2) *Public participation.* The proponent of the exemption shall arrange for public participation appropriate to the subject matter and the scope of the exemption and in accordance with the standards in subpart A of this part. The proponent of the exemption shall consider the nature of the exemption and its likely effects on historic properties and take steps to involve individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The proponent of the exemption shall notify and consider the views of the SHPOs/THPOs on the exemption.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the exempted program or category of undertakings has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Council review of proposed exemptions.* The Council shall review an exemption proposal that is supported by documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of paragraph (c)(1) of this section have been met, describing the methods used to seek the views of the public, and summarizing any views submitted by the SHPO/THPOs, the public, and any others consulted. Unless it requests further information, the Council shall approve or reject the proposed exemption within 30 days of receipt, and thereafter notify the relevant agency official and SHPO/THPOs of the decision. The decision shall be based on the consistency of the exemption with the purposes of the act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic

properties in accordance with section 214 of the act.

(6) *Legal consequences.* Any undertaking that falls within an approved exempted program or category shall require no further review pursuant to subpart B of this part, unless the agency official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.

(7) *Termination.* The Council may terminate an exemption at the request of the agency official or when the Council determines that the exemption no longer meets the criteria of paragraph (c)(1) of this section. The Council shall notify the agency official 30 days before termination becomes effective.

(8) *Notice.* The proponent of the exemption shall publish notice of any approved exemption in the Federal Register.

(d) *Standard treatments.*

(1) *Establishment.* The Council, on its own initiative or at the request of another party, may establish standard methods for the treatment of a category of historic properties, a category of undertakings, or a category of effects on historic properties to assist Federal agencies in satisfying the requirements of subpart B of this part. The Council shall publish notice of standard treatments in the Federal Register.

(2) *Public participation.* The Council shall arrange for public participation appropriate to the subject matter and the scope of the standard treatment and consistent with subpart A of this part. The Council shall consider the nature of the standard treatment and its likely effects on historic properties and the individuals, organizations and entities likely to be interested. Where an agency official has proposed a standard treatment, the Council may request the agency official to arrange for public involvement.

(3) *Consultation with SHPOs/THPOs.* The Council shall notify and consider the views of SHPOs/THPOs on the proposed standard treatment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the proposed standard treatment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Termination.* The Council may terminate a standard treatment by publication of a notice in the Federal Register 30 days before the termination takes effect.

(e) *Program comments.* An agency official may request the Council to comment on a category of undertakings in lieu of conducting individual reviews under §§ 800.4 through 800.6. The Council may provide program comments at its own initiative.

(1) *Agency request.* The agency official shall identify the category of undertakings, specify the likely effects on historic properties, specify the steps the agency official will take to ensure that the effects are taken into account, identify the time period for which the comment is requested and summarize any views submitted by the public.

(2) *Public participation.* The agency official shall arrange for public participation appropriate to the subject matter and the scope of the category and in accordance with the standards in subpart A of this part. The agency official shall consider the nature of the undertakings and their likely effects on historic properties and the individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The Council shall notify and consider the views of SHPOs/THPOs on the proposed program comment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the program comment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) *Council action.* Unless the Council requests additional documentation, notifies the agency official that it will decline to comment, or obtains the consent of the agency official to extend the period for providing comment, the Council shall comment to the agency official within 45 days of the request.

(i) If the Council comments, the agency official shall take into account the comments of the Council in carrying out the undertakings within the category and publish notice in the Federal Register of the Council's comments and steps the agency will take to ensure that effects to historic properties are taken into account.



(ii) If the Council declines to comment, the agency official shall continue to comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(6) *Withdrawal of comment.* If the Council determines that the consideration of historic properties is not being carried out in a manner consistent with the program comment, the Council may withdraw the comment and the agency official shall comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(f) *Consultation with Indian tribes and Native Hawaiian organizations when developing program alternatives.* Whenever an agency official proposes a program alternative pursuant to paragraphs (a) through (e) of this section, the agency official shall ensure that development of the program alternative includes appropriate government-to-government consultation with affected Indian tribes and consultation with affected Native Hawaiian organizations.

(1) *Identifying affected Indian tribes and Native Hawaiian organizations.* If any undertaking covered by a proposed program alternative has the potential to affect historic properties on tribal lands, the agency official shall identify and consult with the Indian tribes having jurisdiction over such lands. If a proposed program alternative has the potential to affect historic properties of religious and cultural significance to an Indian tribe or a Native Hawaiian organization which are located off tribal lands, the agency official shall identify those Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to such properties and consult with them. When a proposed program alternative has nationwide applicability, the agency official shall identify an appropriate government to government consultation with Indian tribes and consult with Native Hawaiian organizations in accordance with existing Executive orders, Presidential memoranda and applicable provisions of law.

(2) *Results of consultation.* The agency official shall provide summaries of the views, along with copies of any written comments, provided by affected Indian tribes and Native Hawaiian organizations to the Council as part of the documentation for the proposed program alternative. The agency official and the Council shall take those views

into account in reaching a final decision on the proposed program alternative.

#### **§ 800.15 Tribal, State, and local program alternatives. (Reserved)**

#### **§ 800.16 Definitions.**

(a) *Act* means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470-470w-6.

(b) *Agency* means agency as defined in 5 U.S.C. 551.

(c) *Approval of the expenditure of funds* means any final agency decision authorizing or permitting the expenditure of Federal funds or financial assistance on an undertaking, including any agency decision that may be subject to an administrative appeal.

(d) *Area of potential effects* means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

(e) *Comment* means the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106.

(f) *Consultation* means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation.

(g) *Council* means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(h) *Day or days* means calendar days.

(i) *Effect* means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

(j) *Foreclosure* means an action taken by an agency official that effectively precludes the Council from providing comments which the agency official can meaningfully consider prior to the approval of the undertaking.

(k) *Head of the agency* means the chief official of the Federal agency responsible for all aspects of the agency's actions. If a State, local or tribal government has assumed or has

been delegated responsibility for section 106 compliance, the head of that unit of government shall be considered the head of the agency.

(l)(1) *Historic property* means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

(2) The term *eligible for inclusion in the National Register* includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

(m) *Indian tribe* means an Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(n) *Local government* means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

(o) *Memorandum of agreement* means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

(p) *National Historic Landmark* means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(q) *National Register* means the National Register of Historic Places maintained by the Secretary of the Interior.

(r) *National Register criteria* means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR part 60).

(s)(1) *Native Hawaiian organization* means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of

historic preservation that are significant to Native Hawaiians.

(2) *Native Hawaiian* means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(t) *Programmatic agreement* means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with § 800.14(b).

(u) *Secretary* means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

(v) *State Historic Preservation Officer (SHPO)* means the official appointed or designated pursuant to section 101(b)(1) of the act to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.

(w) *Tribal Historic Preservation Officer (THPO)* means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

(x) *Tribal lands* means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

(y) *Undertaking* means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.

(z) *Senior policy official* means the senior policy level official designated by the head of the agency pursuant to section 3(e) of Executive Order 13287.

#### **Appendix A to Part 800 -- Criteria for Council Involvement in Reviewing Individual section 106 Cases**

(a) *Introduction.* This appendix sets forth the criteria that will be used by the Council to determine whether to enter an individual section 106 review that it normally would not be involved in.

(b) *General policy.* The Council may choose to exercise its authorities under

the section 106 regulations to participate in an individual project pursuant to the following criteria. However, the Council will not always elect to participate even though one or more of the criteria may be met.

(c) *Specific criteria.* The Council is likely to enter the section 106 process at the steps specified in the regulations in this part when an undertaking:

(1) *Has substantial impacts on important historic properties.* This may include adverse effects on properties that possess a national level of significance or on properties that are of unusual or noteworthy importance or are a rare property type; or adverse effects to large numbers of historic properties, such as impacts to multiple properties within a historic district.

(2) *Presents important questions of policy or interpretation.* This may include questions about how the Council's regulations are being applied or interpreted, including possible foreclosure or anticipatory demolition situations; situations where the outcome will set a precedent affecting Council policies or program goals; or the development of programmatic agreements that alter the way the section 106 process is applied to a group or type of undertakings.

(3) *Has the potential for presenting procedural problems.* This may include cases with substantial public controversy that is related to historic preservation issues; with disputes among or about consulting parties which the Council's involvement could help resolve; that are involved or likely to be involved in litigation on the basis of section 106; or carried out by a Federal agency, in a State or locality, or on tribal lands where the Council has previously identified problems with section 106 compliance pursuant to § 800.9(d)(2).

(4) *Presents issues of concern to Indian tribes or Native Hawaiian organizations.* This may include cases where there have been concerns raised about the identification of, evaluation of or assessment of effects on historic properties to which an Indian tribe or Native Hawaiian organization attaches religious and cultural significance; where an Indian tribe or Native Hawaiian organization has requested Council involvement to assist in the resolution of adverse effects; or where there are questions relating to policy, interpretation or precedent under section 106 or its relation to other

authorities, such as the Native American Graves Protection and Repatriation Act.

**Council on Environmental Quality  
Executive Office of the President**

**REGULATIONS**  
**For Implementing The Procedural Provisions Of The**  
**NATIONAL**  
**ENVIRONMENTAL**  
**POLICY ACT**



**Reprint**  
**40 CFR Parts 1500-1508**  
**(2005)**



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## PART 1500—PURPOSE, POLICY, AND MANDATE

Sec.

1500.1 Purpose.

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1500.6 Agency authority.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and E.O. 11514, Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 55990, Nov. 28, 1978, unless otherwise noted.

### §1500.1 Purpose.

(a) The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains “action-forcing” provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA’s purpose is not to generate paperwork—even

excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.

### §1500.2 Policy.

Federal agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

### §1500.3 Mandate.

Parts 1500 through 1508 of this title provide regulations applicable to and binding on all fed-

eral agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190, 42 U.S.C. 4321 *et seq.*) (NEPA or the Act) except where compliance would be inconsistent with other statutory requirements. These regulations are issued pursuant to NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*) section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977). These regulations, unlike the predecessor guidelines, are not confined to sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. It is the Council's intention that judicial review of agency compliance with these regulations not occur before an agency has filed the final environmental impact statement, or has made a final finding of no significant impact (when such a finding will result in action affecting the environment), or takes action that will result in irreparable injury. Furthermore, it is the Council's intention that any trivial violation of these regulations not give rise to any independent cause of action.

#### **§1500.4 Reducing paperwork.**

Agencies shall reduce excessive paperwork by:

- (a) Reducing the length of environmental impact statements (§1502.2(c)), by means such as setting appropriate page limits (§§1501.7(b)(1) and 1502.7).
- (b) Preparing analytic rather than encyclopedic environmental impact statements (§1502.2(a)).
- (c) Discussing only briefly issues other than significant ones (§1502.2(b)).
- (d) Writing environmental impact statements in plain language (§1502.8).
- (e) Following a clear format for environmental impact statements (§1502.10).
- (f) Emphasizing the portions of the environmental impact statement that are useful to deci-

sionmakers and the public (§§1502.14 and 1502.15) and reducing emphasis on background material (§1502.16).

(g) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (§1501.7).

(h) Summarizing the environmental impact statement (§1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (§1502.19).

(i) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§§1502.4 and 1502.20).

(j) Incorporating by reference (§1502.21).

(k) Integrating NEPA requirements with other environmental review and consultation requirements (§1502.25).

(l) Requiring comments to be as specific as possible (§1503.3).

(m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (§1503.4(c)).

(n) Eliminating duplication with state and local procedures, by providing for joint preparation (§1506.2), and with other federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (§1506.3).

(o) Combining environmental documents with other documents (§1506.4).

(p) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement (§1508.4).

(q) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and is therefore exempt from requirements to prepare an environmental impact statement (§1508.13).

[43 FR 55990, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

**§1500.5 Reducing delay.**

Agencies shall reduce delay by:

- (a) Integrating the NEPA process into early planning (§1501.2).
- (b) Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document (§1501.6).
- (c) Insuring the swift and fair resolution of lead agency disputes (§1501.5).
- (d) Using the scoping process for an early identification of what are and what are not the real issues (§1501.7).
- (e) Establishing appropriate time limits for the environmental impact statement process (§§1501.7(b)(2) and 1501.8).
- (f) Preparing environmental impact statements early in the process (§1502.5).
- (g) Integrating NEPA requirements with other environmental review and consultation requirements (§1502.25).
- (h) Eliminating duplication with state and local procedures by providing for joint preparation (§1506.2), and with other federal procedures by providing that an agency may adopt appropriate environmental documents prepared by another agency (§1506.3).
- (i) Combining environmental documents with other documents (§1506.4).
- (j) Using accelerated procedures for proposals for legislation (§1506.8).
- (k) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment (§1508.4) and which are therefore exempt from requirements to prepare an environmental impact statement.

**§1500.6 Agency authority.**

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national

environmental objectives. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to insure full compliance with the purposes and provisions of the Act. The phrase "to the fullest extent possible" in section 102 means that each agency of the federal government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

**PART 1501—NEPA AND AGENCY PLANNING**

Sec.

- 1501.1 Purpose.
- 1501.2 Apply NEPA early in the process.
- 1501.3 When to prepare an environmental assessment.
- 1501.4 Whether to prepare an environmental impact statement.
- 1501.5 Lead agencies.
- 1501.6 Cooperating agencies.
- 1501.7 Scoping.
- 1501.8 Time limits.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609, and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977)).

SOURCE: 43 FR 55992, Nov. 29, 1978, unless otherwise noted.

**§1501.1 Purpose.**

The purposes of this part include:

- (a) Integrating the NEPA process into early planning to insure appropriate consideration of NEPA's policies and to eliminate delay.
- (b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.
- (c) Providing for the swift and fair resolution of lead agency disputes.
- (d) Identifying at an early stage the significant environmental issues deserving of study

and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.

(e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

#### **§1501.2 Apply NEPA early in the process.**

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(a) Comply with the mandate of section 102(2)(A) to “utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man’s environment,” as specified by §1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

(d) Provide for cases where actions are planned by private applicants or other non-federal entities before federal involvement so that:

(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later federal action.

(2) The federal agency consults early with appropriate state and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The federal agency commences its NEPA process at the earliest possible time.

#### **§1501.3 When to prepare an environmental assessment.**

(a) Agencies shall prepare an environmental assessment (§1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in §1507.3. An assessment is not necessary if the agency has decided to prepare an environmental impact statement.

(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.

#### **§1501.4 Whether to prepare an environmental impact statement.**

In determining whether to prepare an environmental impact statement the federal agency shall:

(a) Determine under its procedures supplementing these regulations (described in §1507.3) whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (§1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by §1508.9(a)(1).

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) Commence the scoping process (§1501.7), if the agency will prepare an environmental impact statement.

(e) Prepare a finding of no significant impact (§1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

(1) The agency shall make the finding of no significant impact available to the affected public as specified in §1506.6.

(2) In certain limited circumstances, which the agency may cover in its procedures under §1507.3, the agency shall make the finding of



no significant impact available for public review (including state and areawide clearing-houses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to §1507.3, or

(ii) The nature of the proposed action is one without precedent.

### **§1501.5 Lead agencies.**

(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, state, or local agencies, including at least one federal agency, may act as joint lead agencies to prepare an environmental impact statement (§1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) Any federal agency, or any state or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If federal agencies are unable to agree on which agency will be the lead agency or if the

procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency. A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action.

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which federal agency shall be the lead agency and which other federal agencies shall be cooperating agencies.

[43 FR 55992, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

### **§1501.6 Cooperating agencies.**

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process (described below in §1501.7).

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b) (3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

### **§1501.7 Scoping.**

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (§1508.22) in the FEDERAL REGISTER except as provided in §1507.3(e).

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected federal, state, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under §1507.3(c). An agency may give notice in accordance with §1506.6.

(2) Determine the scope (§1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (§1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in §1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule.

(b) As part of the scoping process the lead agency may:

(1) Set page limits on environmental documents (§1502.7).

(2) Set time limits (§1501.8).

(3) Adopt procedures under §1507.3 to combine its environmental assessment process with its scoping process.

(4) Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(c) An agency shall revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

**§1501.8 Time limits.**

Although the Council has decided that prescribed universal time limits for the entire NEPA process are too inflexible, federal agencies are encouraged to set time limits appropriate to individual actions (consistent with the time intervals required by §1506.10). When multiple agencies are involved the reference to agency below means lead agency.

(a) The agency shall set time limits if an applicant for the proposed action requests them: *Provided*, That the limits are consistent with the purposes of NEPA and other essential considerations of national policy.

(b) The agency may:

(1) Consider the following factors in determining time limits:

(i) Potential for environmental harm.

(ii) Size of the proposed action.

(iii) State of the art of analytic techniques.

(iv) Degree of public need for the proposed action, including the consequences of delay.

(v) Number of persons and agencies affected.

(vi) Degree to which relevant information is known and if not known the time required for obtaining it.

(vii) Degree to which the action is controversial.

(viii) Other time limits imposed on the agency by law, regulations, or executive order.

(2) Set overall time limits or limits for each constituent part of the NEPA process, which may include:

(i) Decision on whether to prepare an environmental impact statement (if not already decided).

(ii) Determination of the scope of the environmental impact statement.

(iii) Preparation of the draft environmental impact statement.

(iv) Review of any comments on the draft environmental impact statement from the public and agencies.

(v) Preparation of the final environmental impact statement.

(vi) Review of any comments on the final environmental impact statement.

(vii) Decision on the action based in part on the environmental impact statement.

(3) Designate a person (such as the project manager or a person in the agency's office with

NEPA responsibilities) to expedite the NEPA process.

(c) State or local agencies or members of the public may request a federal agency to set time limits.

## **PART 1502—ENVIRONMENTAL IMPACT STATEMENT**

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1502.25 Environmental review and consultation requirements.

**AUTHORITY:** NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

**SOURCE:** 43 FR 55994, Nov. 29, 1978, unless otherwise noted.

**§1502.1 Purpose.**

The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the federal government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by federal officials in conjunction with other relevant material to plan actions and make decisions.

**§1502.2 Implementation.**

To achieve the purposes set forth in §1502.1 agencies shall prepare environmental impact statements in the following manner:

(a) Environmental impact statements shall be analytic rather than encyclopedic.

(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

(c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.

(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker.

(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (§1506.1).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

**§1502.3 Statutory requirements for statements.**

As required by sec. 102(2)(C) of NEPA environmental impact statements (§1508.11) are to be included in every recommendation or report.

On proposals (§1508.23).

For legislation and (§1508.17).

Other major federal actions (§1508.18).

Significantly (§1508.27).

Affecting (§§1508.3, 1508.8).

The quality of the human environment (§1508.14).

**§1502.4 Major Federal actions requiring the preparation of environmental impact statements.**

(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (§1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad federal actions such as the adoption of new agency programs or regulations (§1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.

(c) When preparing statements on broad actions (including proposals by more than one

agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

(2) Generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(3) By stage of technological development including federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(d) Agencies shall as appropriate employ scoping (§1501.7), tiering (§1502.20), and other methods listed in §§1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay.

#### **§1502.5 Timing.**

An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (§1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made (§§1500.2(c), 1501.2, and 1502.2). For instance:

(a) For projects directly undertaken by federal agencies the environmental impact statement shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.

(b) For applications to the agency appropriate environmental assessments or statements shall be commenced no later than immediately after the application is received. Federal agencies are encouraged to begin preparation of such

assessments or statements earlier, preferably jointly with applicable state or local agencies.

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances the statement may follow preliminary hearings designed to gather information for use in the statements.

(d) For informal rulemaking the draft environmental impact statement shall normally accompany the proposed rule.

#### **§1502.6 Interdisciplinary preparation.**

Environmental impact statements shall be prepared using an inter-disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of the Act). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (§1501.7).

#### **§1502.7 Page limits.**

The text of final environmental impact statements (e.g., paragraphs (d) through (g) of §1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

#### **§1502.8 Writing.**

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

#### **§1502.9 Draft, final, and supplemental statements.**

Except for proposals for legislation as provided in §1506.8 environmental impact statements shall be prepared in two stages and may be supplemented.



(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

(b) Final environmental impact statements shall respond to comments as required in part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

#### **§1502.10 Recommended format.**

Agencies shall use a format for environmental impact statements which will encourage

good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

(a) Cover sheet.

(b) Summary.

(c) Table of contents.

(d) Purpose of and need for action.

(e) Alternatives including proposed action (sections 102(2)(C)(iii) and 102(2)(E) of the Act).

(f) Affected environment.

(g) Environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of the Act).

(h) List of preparers.

(i) List of agencies, organizations, and persons to whom copies of the statement are sent.

(j) Index.

(k) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in §§1502.11 through 1502.18, in any appropriate format.

#### **§1502.11 Cover sheet.**

The cover sheet shall not exceed one page. It shall include:

(a) A list of the responsible agencies including the lead agency and any cooperating agencies.

(b) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the state(s) and county(ies) (or other jurisdiction if applicable) where the action is located.

(c) The name, address, and telephone number of the person at the agency who can supply further information.

(d) A designation of the statement as a draft, final, or draft or final supplement.

(e) A one paragraph abstract of the statement.

(f) The date by which comments must be received (computed in cooperation with EPA

under §1506.10). The information required by this section may be entered on Standard Form 424 (in items 4, 6, 7, 10, and 18).

#### **§1502.12 Summary.**

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

#### **§1502.13 Purpose and need.**

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

#### **§1502.14 Alternatives including the proposed action.**

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§1502.15) and the Environmental Consequences (§1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in

the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

#### **§1502.15 Affected environment.**

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The description shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

#### **§1502.16 Environmental consequences.**

This section forms the scientific and analytic basis for the comparisons under §1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in §1502.14. It shall include discussions of:

(a) Direct effects and their significance (§1508.8).

(b) Indirect effects and their significance (§1508.8).



(c) Possible conflicts between the proposed action and the objectives of federal, regional, state, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See §1506.2(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under §1502.14 will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under §1502.14(f)).

[43 FR 55994, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

#### **§1502.17 List of preparers.**

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (§§1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

#### **§1502.18 Appendix.**

If an agency prepares an appendix to an environmental impact statement the appendix shall:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (§1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the environmental impact statement or be readily available on request.

#### **§1502.19 Circulation of the environmental impact statement.**

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in §1502.18(d) and unchanged statements as provided in §1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate federal, state or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft. If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

#### **§1502.20 Tiering.**

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or

environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Section 1508.28).

#### **§1502.21 Incorporation by reference.**

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

#### **§1502.22 Incomplete or unavailable information.**

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are

not known, the agency shall include within the environmental impact statement: (1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment; and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

(c) The amended regulation will be applicable to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the FEDERAL REGISTER on or after May 27, 1986. For environmental impact statements in progress, agencies may choose to comply with the requirements of either the original or amended regulation.

[51 FR 15625, Apr. 25, 1986]

#### **§1502.23 Cost-benefit analysis.**

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are

important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

**§1502.24 Methodology and scientific accuracy.**

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

**§1502.25 Environmental review and consultation requirements.**

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), and other environmental review laws and executive orders.

(b) The draft environmental impact statement shall list all federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate.

**PART 1503—COMMENTING**

Sec.

- 1503.1 Inviting comments.
- 1503.2 Duty to comment.
- 1503.3 Specificity of comments.
- 1503.4 Response to comments.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air

Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).  
SOURCE: 43 FR 55997, Nov. 29, 1978, unless otherwise noted.

**§1503.1 Inviting comments.**

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate state and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and

(iii) Any agency which has requested that it receive statements on actions of the kind proposed. Office of Management and Budget Circular A–95 (Revised), through its system of clearinghouses, provides a means of securing the views of state and local environmental agencies. The clearinghouses may be used, by mutual agreement of the lead agency and the clearinghouse, for securing state and local reviews of the draft environmental impact statements.

(3) Request comments from the applicant, if any.

(4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(b) An agency may request comments on a final environmental impact statement before the decision is finally made. In any case other agencies or persons may make comments before the final decision unless a different time is provided under §1506.10.

**§1503.2 Duty to comment.**

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmen-

tal standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in §1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment.

### **§1503.3 Specificity of comments.**

(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

### **§1503.4 Response to comments.**

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (§1502.19). The entire document with a new cover sheet shall be filed as the final statement (§1506.9).

## **PART 1504—PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY**

Sec.

1504.1 Purpose.

1504.2 Criteria for referral.

1504.3 Procedure for referrals and response.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43FR 55998, Nov. 29, 1978 unless otherwise noted.

**§1504.1 Purpose.**

(a) This part establishes procedures for referring to the Council federal interagency disagreements concerning proposed major federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is “unsatisfactory from the standpoint of public health or welfare or environmental quality,” section 309 directs that the matter be referred to the Council (hereafter “environmental referrals”).

(c) Under section 102(2)(C) of the Act other federal agencies may make similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council and the public.

[43 FR 55998, Nov. 29, 1978]

**§1504.2 Criteria for referral.**

Environmental referrals should be made to the Council only after concerted, timely (as early as possible in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what environmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental impacts, considering:

- (a) Possible violation of national environmental standards or policies.
- (b) Severity.
- (c) Geographical scope.
- (d) Duration.
- (e) Importance as precedents.
- (f) Availability of environmentally preferable alternatives.

[43 FR 55998, Nov. 29, 1978]

**§1504.3 Procedure for referrals and response.**

(a) A federal agency making the referral to the Council shall:

(1) Advise the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached.

(2) Include such advice in the referring agency’s comments on the draft environmental impact statement, except when the statement does not contain adequate information to permit an assessment of the matter’s environmental acceptability.

(3) Identify any essential information that is lacking and request that it be made available at the earliest possible time.

(4) Send copies of such advice to the Council.

(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final environmental impact statement has been made available to the Environmental Protection Agency, commenting agencies, and the public. Except when an extension of this period has been granted by the lead agency, the Council will not accept a referral after that date.

(c) The referral shall consist of:

(1) A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it, and requesting that no action be taken to implement the matter until the Council acts upon the referral. The letter shall include a copy of the statement referred to in (c)(2) of this section.

(2) A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

(i) Identify any material facts in controversy and incorporate (by reference if appropriate) agreed upon facts,

(ii) Identify any existing environmental requirements or policies which would be violated by the matter,

(iii) Present the reasons why the referring agency believes the matter is environmentally unsatisfactory,



(iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason,

(v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time, and

(vi) Give the referring agency's recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) Not later than twenty-five (25) days after the referral to the Council the lead agency may deliver a response to the Council, and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

(1) Address fully the issues raised in the referral.

(2) Be supported by evidence.

(3) Give the lead agency's response to the referring agency's recommendations.

(e) Interested persons (including the applicant) may deliver their views in writing to the Council. Views in support of the referral should be delivered not later than the referral. Views in support of the response shall be delivered not later than the response.

(f) Not later than twenty-five (25) days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

(1) Conclude that the process of referral and response has successfully resolved the problem.

(2) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.

(3) Hold public meetings or hearings to obtain additional views and information.

(4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.

(5) Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies

report to the Council that the agencies' disagreements are irreconcilable.

(6) Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).

(7) When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

(g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f)(2), (3), or (5) of this section.

(h) When the referral involves an action required by statute to be determined on the record after opportunity for agency hearing, the referral shall be conducted in a manner consistent with 5 U.S.C. 557(d) (Administrative Procedure Act).

[43 FR 55998, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

## **PART 1505—NEPA AND AGENCY DECISIONMAKING**

Sec.

1505.1 Agency decisionmaking procedures.

1505.2 Record of decision in cases requiring environmental impact statements.

1505.3 Implementing the decision.

**AUTHORITY:** NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

**SOURCE:** 43 FR 55999, Nov. 29, 1978, unless otherwise noted.

### **§1505.1 Agency decisionmaking procedures.**

Agencies shall adopt procedures (§1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not be limited to:

(a) Implementing procedures under section 102(2) to achieve the requirements of sections 101 and 102(1).

(b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment

and assuring that the NEPA process corresponds with them.

(c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.

(d) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that agency officials use the statement in making decisions.

(e) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

### **§1505.2 Record of decision in cases requiring environmental impact statements.**

At the time of its decision (§1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A-95 (Revised), part I, sections 6(c) and (d), and part II, section 5(b)(4), shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and

if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

### **§1505.3 Implementing the decision.**

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (§1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring.

## **PART 1506—OTHER REQUIREMENTS OF NEPA**

Sec.

1506.1 Limitations on actions during NEPA process.

1506.2 Elimination of duplication with state and local procedures.

1506.3 Adoption.

1506.4 Combining documents.

1506.5 Agency responsibility.

1506.6 Public involvement.

1506.7 Further guidance.

1506.8 Proposals for legislation.

1506.9 Filing requirements.

1506.10 Timing of agency action.

1506.11 Emergencies.

1506.12 Effective date.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).



SOURCE: 43 FR 56000, Nov. 29, 1978, unless otherwise noted.

### **§1506.1 Limitations on actions during NEPA process.**

(a) Until an agency issues a record of decision as provided in §1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major federal action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for federal, state or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of minimal expenditures not affecting the environment (e.g. long leadtime equipment and purchase options) made by non-governmental entities seeking loan guarantees from the Administration.

### **§1506.2 Elimination of duplication with State and local procedures.**

(a) Agencies authorized by law to cooperate with state agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and state and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(c) Agencies shall cooperate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more federal agencies and one or more state or local agencies shall be joint lead agencies. Where state laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, federal agencies shall cooperate in fulfilling these requirements as well as those of federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into state or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved state or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

### **§1506.3 Adoption.**

(a) An agency may adopt a federal draft or final environmental impact statement or portion

thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify.

#### **§1506.4 Combining documents.**

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork.

#### **§1506.5 Agency responsibility.**

(a) Information. If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers (§1502.17). It is the intent of this paragraph that acceptable work not be redone, but that it be verified by the agency.

(b) Environmental assessments. If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.

(c) Environmental impact statements. Except as provided in §§1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under §1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency.

#### **§1506.6 Public involvement.**

Agencies shall:

(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern notice shall include publication in the FEDERAL REGISTER and notice by mail to

national organizations reasonably expected to be interested in the matter and may include listing in the 102 Monitor. An agency engaged in rule-making may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to state and areawide clearing-houses pursuant to OMB Circular A-95 (Revised).

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Following the affected state's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other federal agencies, including the Council.

#### **§1506.7 Further guidance.**

The Council may provide further guidance concerning NEPA and its procedures including:

(a) A handbook which the Council may supplement from time to time, which shall in plain language provide guidance and instructions concerning the application of NEPA and these regulations.

(b) Publication of the Council's Memoranda to Heads of Agencies.

(c) In conjunction with the Environmental Protection Agency and the publication of the 102 Monitor, notice of:

(1) Research activities;

(2) Meetings and conferences related to NEPA; and

(3) Successful and innovative procedures used by agencies to implement NEPA.

#### **§1506.8 Proposals for legislation.**

(a) The NEPA process for proposals for legislation (§1508.17) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement which can serve as the basis for public and Congressional debate. The

statement must be available in time for Congressional hearings and deliberations.

(b) Preparation of a legislative environmental impact statement shall conform to the requirements of these regulations except as follows:

(1) There need not be a scoping process.

(2) The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the “detailed statement” required by statute; *Provided*, That when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by §§1503.1 and 1506.10.

(i) A Congressional committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.

(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*) and the Wilderness Act (16 U.S.C. 1131 *et seq.*)).

(iii) Legislative approval is sought for federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

(iv) The agency decides to prepare draft and final statements.

(c) Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiction.

#### **§1506.9 Filing requirements.**

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (MC2252-A), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Statements shall be filed with EPA

no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and §1506.10.

#### **§1506.10 Timing of agency action.**

(a) The Environmental Protection Agency shall publish a notice in the FEDERAL REGISTER each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under §1505.2 by a federal agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.

(2) Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement.

An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published. This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public's right of appeal. An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this

section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

(c) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to paragraph (d) of this section agencies shall allow not less than 45 days for comments on draft statements.

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency. (Also see §1507.3(d).) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

[43 FR 56000, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

**§1506.11 Emergencies.**

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

**§1506.12 Effective date.**

The effective date of these regulations is July 30, 1979, except that for agencies that administer programs that qualify under section 102(2)(D) of the Act or under section 104(h) of the Housing and Community Development Act of 1974 an additional four months shall be allowed for the

State or local agencies to adopt their implementing procedures.

(a) These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these regulations. No completed environmental documents need be redone by reasons of these regulations. Until these regulations are applicable, the Council’s guidelines published in the FEDERAL REGISTER of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.

(b) NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible.

**PART 1507—AGENCY COMPLIANCE**

Sec.

- 1507.1 Compliance.
- 1507.2 Agency capability to comply.
- 1507.3 Agency procedures.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 56002, Nov. 29, 1978, unless otherwise noted.

**§1507.1 Compliance.**

All agencies of the federal government shall comply with these regulations. It is the intent of these regulations to allow each agency flexibility in adapting its implementing procedures authorized by §1507.3 to the requirements of other applicable laws.

**§1507.2 Agency capability to comply.**

Each agency shall be capable (in terms of personnel and other resources) of complying



with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:

(a) Fulfill the requirements of section 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by section 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate environmental impact statements pursuant to section 102(2)(C) and comment on statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement of section 102(2)(E) extends to all such proposals, not just the more limited scope of section 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

(e) Comply with the requirements of section 102(2)(H) that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act and of Executive Order 11514, Protection and Enhancement of Environmental Quality, Sec. 2.

### **\$1507.3 Agency procedures.**

(a) Not later than eight months after publication of these regulations as finally adopted in the FEDERAL REGISTER, or five months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations. When the agency is a department, major

subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before publishing them in the FEDERAL REGISTER for comment. Agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants. The procedures shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and their own procedures. Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall comply with these regulations except where compliance would be inconsistent with statutory requirements and shall include:

(1) Those procedures required by §§1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), and 1508.4.

(2) Specific criteria for and identification of those typical classes of action:

(i) Which normally do require environmental impact statements.

(ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (§1508.4)).

(iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assess-

ments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public.

(d) Agency procedures may provide for periods of time other than those presented in §1506.10 when necessary to comply with other specific statutory requirements.

(e) Agency procedures may provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by §1501.7 may be published at a reasonable time in advance of preparation of the draft statement.

## **PART 1508—TERMINOLOGY AND INDEX**

Sec.

- 1508.1 Terminology.
- 1508.2 Act.
- 1508.3 Affecting.
- 1508.4 Categorical exclusion.
- 1508.5 Cooperating agency.
- 1508.6 Council.
- 1508.7 Cumulative impact.
- 1508.8 Effects.
- 1508.9 Environmental assessment.
- 1508.10 Environmental document.
- 1508.11 Environmental impact statement.
- 1508.12 Federal agency.
- 1508.13 Finding of no significant impact.
- 1508.14 Human environment.
- 1508.15 Jurisdiction by law.
- 1508.16 Lead agency.
- 1508.17 Legislation.
- 1508.18 Major Federal action.
- 1508.19 Matter.
- 1508.20 Mitigation.
- 1508.21 NEPA process.
- 1508.22 Notice of intent.
- 1508.23 Proposal.
- 1508.24 Referring agency.
- 1508.25 Scope.
- 1508.26 Special expertise.
- 1508.27 Significantly.
- 1508.28 Tiering.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 56003, Nov. 29, 1978, unless otherwise noted.

### **§1508.1 Terminology.**

The terminology of this part shall be uniform throughout the federal government.

### **§1508.2 Act.**

“Act” means the National Environmental Policy Act, as amended (42 U.S.C. 4321, *et seq.*) which is also referred to as “NEPA.”

### **§1508.3 Affecting.**

“Affecting” means will or may have an effect on.

### **§1508.4 Categorical exclusion.**

“Categorical exclusion” means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency in implementation of these regulations (§1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in §1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

### **§1508.5 Cooperating agency.**

“Cooperating agency” means any federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved



in a proposal (or a reasonable alternative) for legislation or other major federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in §1501.6. A state or local agency of similar qualifications or, when the effects are on a reservation, an Indian tribe, may by agreement with the lead agency become a cooperating agency.

#### **§1508.6 Council.**

“Council” means the Council on Environmental Quality established by title II of the Act.

#### **§1508.7 Cumulative impact.**

“Cumulative impact” is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

#### **§1508.8 Effects.**

“Effects” include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if

on balance the agency believes that the effect will be beneficial.

#### **§1508.9 Environmental assessment.**

“Environmental assessment”:

(a) Means a concise public document for which a federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency’s compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

#### **§1508.10 Environmental document.**

“Environmental document” includes the documents specified in §1508.9 (environmental assessment), §1508.11 (environmental impact statement), §1508.13 (finding of no significant impact), and §1508.22 (notice of intent).

#### **§1508.11 Environmental impact statement.**

“Environmental impact statement” means a detailed written statement as required by section 102(2)(C) of the Act.

#### **§1508.12 Federal agency.**

“Federal agency” means all agencies of the federal government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations states and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

**§1508.13 Finding of no significant impact.**

“Finding of no significant impact” means a document by a federal agency briefly presenting the reasons why an action, not otherwise excluded (§1508.4), will not have a significant effect on the human environment and for which an environmental impact statement there fore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

**§1508.14 Human environment.**

“Human environment” shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of “effects” (§1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

**§1508.15 Jurisdiction by law.**

“Jurisdiction by law” means agency authority to approve, veto, or finance all or part of the proposal.

**§1508.16 Lead agency.**

“Lead agency” means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

**§1508.17 Legislation.**

“Legislation” includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a federal

agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

**§1508.18 Major federal action.**

“Major federal action” includes actions with effects that may be major and which are potentially subject to federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (§1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§§1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 *et seq.*, with no federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*; treaties and international conventions or agreements; formal documents establishing an agency’s policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative

uses of federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

#### **§1508.19 Matter.**

“Matter” includes for purposes of Part 1504:

(a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of NEPA applies.

#### **§1508.20 Mitigation.**

“Mitigation” includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

#### **§1508.21 NEPA process.**

“NEPA process” means all measures necessary for compliance with the requirements of section 2 and title I of NEPA.

#### **§1508.22 Notice of intent.**

“Notice of intent” means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

(b) Describe the agency’s proposed scoping process including whether, when, and where any scoping meeting will be held.

(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

#### **§1508.23 Proposal.**

“Proposal” exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (§1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

#### **§1508.24 Referring agency.**

“Referring agency” means the federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

#### **§1508.25 Scope.**

“Scope” consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (§§1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include:

(1) No action alternative.

(2) Other reasonable courses of actions.

(3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) direct; (2) indirect; (3) cumulative.

#### **\$1508.26 Special expertise.**

“Special expertise” means statutory responsibility, agency mission, or related program experience.

#### **\$1508.27 Significantly.**

“Significantly” as used in NEPA requires considerations of both context and intensity:

(a) *Context*. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the

setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short and long-term effects are relevant.

(b) *Intensity*. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment. [43 FR 56003, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

**§1508.28 Tiering.**

“Tiering” refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement

subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

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Editorial Note: This listing is provided for information purposes only.  
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**THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969**, as amended (Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That this Act may be cited as the “National Environmental Policy Act of 1969.”

## **PURPOSE**

### **Sec. 2 [42 USC § 4321].**

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

## **TITLE I**

### **Congressional Declaration of National Environmental Policy**

#### **Sec. 101 [42 USC § 4331].**

(a) The Congress, recognizing the profound impact of man’s activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the federal government, in cooperation with state and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial

and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the federal government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate federal plans, functions, programs, and resources to the end that the Nation may —

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life’s amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

#### **Sec. 102 [42 USC § 4332].**

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance

with the policies set forth in this Act, and (2) all agencies of the federal government shall —

- (A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;
- (B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations;
- (C) include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on —
  - (i) the environmental impact of the proposed action,
  - (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
  - (iii) alternatives to the proposed action,
  - (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
  - (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible federal official shall consult with and obtain the comments of any federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate federal, state, and local agen-

cies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

- (D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a state agency or official, if:

- (i) the state agency or official has statewide jurisdiction and has the responsibility for such action,

- (ii) the responsible federal official furnishes guidance and participates in such preparation,

- (iii) the responsible federal official independently evaluates such statement prior to its approval and adoption, and

- (iv) after January 1, 1976, the responsible federal official provides early notification to, and solicits the views of, any other state or any federal land management entity of any action or any alternative thereto which may have significant impacts upon such state or affected federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by state agencies with less than statewide jurisdiction.

- (E) study, develop, and describe appropriate alternatives to recommended courses of

action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

- (F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;
- (G) make available to states, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;
- (H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and
- (I) assist the Council on Environmental Quality established by title II of this Act.

#### **Sec. 103 [42 USC § 4333].**

All agencies of the federal government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

#### **Sec. 104 [42 USC § 4334].**

Nothing in section 102 [42 USC § 4332] or 103 [42 USC § 4333] shall in any way affect the specific statutory obligations of any federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other federal or state agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other federal or state agency.

#### **Sec. 105 [42 USC § 4335].**

The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of federal agencies.

### **TITLE II**

## **COUNCIL ON ENVIRONMENTAL QUALITY**

#### **Sec. 201 [42 USC § 4341].**

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the federal government, the state and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

#### **Sec. 202 [42 USC § 4342].**

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who,

as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the federal government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

**Sec. 203 [42 USC § 4343].**

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

**Sec. 204 [42 USC § 4344].**

It shall be the duty and function of the Council —

1. to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC § 4341] of this title;
2. to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;
3. to review and appraise the various programs and activities of the federal government in the light of the policy set forth in

title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

4. to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;
5. to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;
6. to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;
7. to report at least once each year to the President on the state and condition of the environment; and
8. to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

**Sec. 205 [42 USC § 4345].**

In exercising its powers, functions, and duties under this Act, the Council shall —

1. consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, state and local governments and other groups, as it deems advisable; and
2. utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication

of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

#### **Sec. 206 [42 USC § 4346].**

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates [5 USC § 5313]. The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates [5 USC § 5315].

#### **Sec. 207 [42 USC § 4346a].**

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the federal government, any state, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

#### **Sec. 208 [42 USC § 4346b].**

The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

#### **Sec. 209 [42 USC § 4347].**

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter.

**The Environmental Quality Improvement Act**, as amended (Pub. L. No. 91- 224, Title II, April 3, 1970; Pub. L. No. 97-258, September 13, 1982; and Pub. L. No. 98-581, October 30, 1984.

#### **42 USC § 4372.**

(a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality

(hereafter in this chapter referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.

(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions; under this chapter and Public Law 91-190, except that he may employ no more than ten specialists and other experts without regard to the provisions of Title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of Title 5.

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the federal government affecting environmental quality by —

1. providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91- 190;
2. assisting the federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the federal government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;



3. reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;
4. promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;
5. assisting in coordinating among the federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;
6. assisting the federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the federal government;
7. collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.

#### **42 USC § 4373.**

Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

#### **42 USC § 4374.**

There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91- 190:

- (a) \$2,126,000 for the fiscal year ending September 30, 1979.
- (b) \$3,000,000 for the fiscal years ending September 30, 1980, and September 30, 1981.
- (c) \$44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.
- (d) \$480,000 for each of the fiscal years ending September 30, 1985 and 1986.

#### **42 USC § 4375.**

(a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the "Fund") to receive advance payments from other agencies or accounts that may be used solely to finance —

1. study contracts that are jointly sponsored by the Office and one or more other federal agencies; and
2. Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.

(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

**THE CLEAN AIR ACT § 309\*****§ 7609. Policy review**

(a) The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter or other provisions of the authority of the Administration, contained in any (1) legislation proposed by any federal department or agency, (2) newly authorized federal projects for construction and any major federal agency action (other than a project for construction) to which section 4332(2)(C) of the title applies, and (3) proposed regulations published by any department or agency of the federal government. Such written comment shall be made public at the conclusion of any such review.

(b) In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality.

\*July 14, 1955, c. 360, § 309, as added December 31, 1970, Pub. L. 91-604 § 12(a), 42 U.S.C. § 7609 (1970).

**Executive Order 11514—Protection and enhancement of environmental quality**

**Source:** The provisions of Executive Order 11514 of Mar. 5, 1970, appear at 35 FR 4247, 3 CFR, 1966-1970, Comp., p. 902, unless otherwise noted.

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law No. 91-190, approved January 1, 1970), it is ordered as follows:

**Section 1. Policy.** The federal government shall provide leadership in protecting and enhancing the quality of the Nation's environment to sustain and enrich human life. Federal agencies shall initiate measures needed to direct their

policies, plans and programs so as to meet national environmental goals. The Council on Environmental Quality, through the Chairman, shall advise and assist the President in leading this national effort.

**Sec. 2. Responsibilities of federal agencies.** Consonant with Title I of the National Environmental Policy Act of 1969, hereafter referred to as the "Act", the heads of federal agencies shall:

(a) Monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities. Heads of agencies shall consult with appropriate federal, state and local agencies in carrying out their activities as they affect the quality of the environment.

(b) Develop procedures to ensure the fullest practicable provision of timely public information and understanding of federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. federal agencies shall also encourage state and local agencies to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment.

(c) Insure that information regarding existing or potential environmental problems and control methods developed as part of research, development, demonstration, test, or evaluation activities is made available to federal agencies, states, counties, municipalities, institutions, and other entities, as appropriate.

(d) Review their agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants,



contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the purposes and provisions of the Act. A report on this review and the corrective actions taken or planned, including such measures to be proposed to the President as may be necessary to bring their authority and policies into conformance with the intent, purposes, and procedures of the Act, shall be provided to the Council on Environmental Quality not later than September 1, 1970.

(e) Engage in exchange of data and research results, and cooperate with agencies of other governments to foster the purposes of the Act.

(f) Proceed, in coordination with other agencies, with actions required by section 102 of the Act.

(g) In carrying out their responsibilities under the Act and this Order, comply with the regulations issued by the Council except where such compliance would be inconsistent with statutory requirements.

[Sec. 2 amended by Executive Order 11991 of May 24, 1977, 42 FR 26967, 3 CFR, 1977 Comp., p. 123]

**Sec. 3. *Responsibilities of Council on Environmental Quality.*** The Council on Environmental Quality shall:

(a) Evaluate existing and proposed policies and activities of the federal government directed to the control of pollution and the enhancement of the environment and to the accomplishment of other objectives which affect the quality of the environment. This shall include continuing review of procedures employed in the development and enforcement of federal standards affecting environmental quality. Based upon such evaluations the Council shall, where appropriate, recommend to the President policies and programs to achieve more effective protection and enhancement of environmental quality and shall, where appropriate, seek resolution of significant environmental issues.

(b) Recommend to the President and to the agencies priorities among programs designed for the control of pollution and for the enhancement of the environment.

(c) Determine the need for new policies and programs for dealing with environmental problems not being adequately addressed.

(d) Conduct, as it determines to be appropriate, public hearings or conferences on issues of environmental significance.

(e) Promote the development and use of indices and monitoring systems (1) to assess environmental conditions and trends, (2) to predict the environmental impact of proposed public and private actions, and (3) to determine the effectiveness of programs for protecting and enhancing environmental quality.

(f) Coordinate federal programs related to environmental quality.

(g) Advise and assist the President and the agencies in achieving international cooperation for dealing with environmental problems, under the foreign policy guidance of the Secretary of State.

(h) Issue regulations to federal agencies for the implementation of the procedural provisions of the Act (42 U.S.C. 4332(2)). Such regulations shall be developed after consultation with affected agencies and after such public hearings as may be appropriate. They will be designed to make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses. The Council shall include in its regulations procedures (1) for the early preparation of environmental impact statements, and (2) for the referral to the Council of conflicts between agencies concerning the implementation of the National Environmental Policy Act of 1969, as amended, and Section 309 of the Clean Air Act, as amended, for the Council's recommendation as to their prompt resolution.

(i) Issue such other instructions to agencies, and request such reports and other information from them, as may be required to carry out the

Council's responsibilities under the Act. (j) Assist the President in preparing the annual Environmental Quality Report provided for in section 201 of the Act.

(k) Foster investigations, studies, surveys, research, and analyses relating to (i) ecological systems and environmental quality, (ii) the impact of new and changing technologies thereon, and (iii) means of preventing or reducing adverse effects from such technologies.

[Sec. 3 amended by Executive Order 11991 of May 24, 1977, 42 FR 26967, 3 CFR, 1977 Comp., p. 123]

**Sec. 4. Amendments of E.O. 11472.**

[Sec. 4 amends Executive Order 11472 of May 29, 1969, Chapter 40. The amendments have been incorporated into that order.]

**NEPAnet:**

**<http://ceq.eh.doe.gov/nepanet.htm>**

NEPAnet is the web site established to serve as a central repository for NEPA information. It provides access to NEPA, the regulations and procedures employed by federal agencies, CEQ guidance, and NEPA points of contact within the federal agencies, tribes and the states. The site also provides a mechanism for identifying potential participants (state, tribal, and local governments) and serves as a link to environ-

mental resource information (statistical trends and tracking data). The NEPAnet site also interfaces with other federal agencies' sites by providing links to their environmental planning information sites, guidance, and NEPA points of contact within the federal agencies, tribes and the states. The site also provides a mechanism for identifying potential participants (state, tribal, and local governments) and serves as a link to environmental resource information (statistical trends and tracking data). The NEPAnet site also interfaces with other federal agencies' sites by providing links to their environmental planning information sites.

Access to environmental datasets is provided on the "environmental statistics" page of the NEPAnet web site which provides a compilation of environmental statistics and trends, complemented with hot-links – or passageways – to the data compiled by EPA, Interior, and other government agencies. In addition, the "environmental impact analysis data links" page of NEPAnet provides access to online environmental datasets and libraries compiled by the United States Geological Survey. For example, the USGS site provides access to data sets such as the National Wetlands Inventory maps and data, the USGS maps and data tables for water data stations in the US, as well as to libraries such as the largest known collection of on-line publications related to forestry research maintained by the Forest Service.

**Sec. 1506.9 Filing requirements.**

(a) Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities, EIS Filing Section, Ariel Rios Building (South Oval Lobby), Mail Code 2252-A, Room 7220, 1200 Pennsylvania Ave., NW., Washington, DC 20460. This address is for deliveries by US Postal Service (including USPS Express Mail).

(b) For deliveries in-person or by commercial express mail services, including Federal Express or UPS, the correct address is: US Environmental Protection Agency, Office of Federal Activities, EIS Filing Section, Ariel Rios Building (South Oval Lobby), Room 7220, 1200 Pennsylvania Avenue, NW., Washington, DC 20004.

(c) Statements shall be filed with the EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and Sec. 1506.10.

[70 FR 41148, July 18, 2005]

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