

graph (1)(D), any generator of low-level radioactive waste within such region or non-member State shall, for the period beginning January 1, 1992 and ending upon the filing of the application described in paragraph (1)(D), be charged 3 times the surcharge otherwise applicable under subsection (d).

(3) Denial of access

No denial or suspension of access to a regional disposal facility under paragraph (2) may be based on the source, class, or type of low-level radioactive waste.

(4) Restoration of suspended access; penalties for failure to comply

Any access to a regional disposal facility that is suspended under paragraph (2) shall be restored after the non-sited compact region or non-member State involved complies with such requirement. Any payment of surcharge penalties pursuant to paragraph (2) for failure to comply with the requirements of this subsection shall be terminated after the non-sited compact region or non-member State involved complies with such requirements.

(f) Monitoring of compliance and denial of access to non-Federal facilities for noncompliance; information requirements of certain States; proprietary information

(1) Administration

Each State and compact commission in which a regional disposal facility referred to in paragraphs (1) through (3) of subsection (b) is located shall have authority—

(A) to monitor compliance with the limitations, allocations, and requirements established in this section; and

(B) to deny access to any non-Federal low-level radioactive waste disposal facilities within its borders to any low-level radioactive waste that—

(i) is in excess of the limitations or allocations established in this section; or

(ii) is not required to be accepted due to the failure of a compact region or State to comply with the requirements of subsection (e)(1).

(2) Availability of information during interim access period

(A) The States of South Carolina, Washington, and Nevada may require information from disposal facility operators, generators, intermediate handlers, and the Department of Energy that is reasonably necessary to monitor the availability of disposal capacity, the use and assignment of allocations and the applicability of surcharges.

(B) The States of South Carolina, Washington, and Nevada may, after written notice followed by a period of at least 30 days, deny access to disposal capacity to any generator or intermediate handler who fails to provide information under subparagraph (A).

(C) PROPRIETARY INFORMATION.—

(i) Trade secrets, proprietary and other confidential information shall be made available to a State under this subsection upon request only if such State—

(I) consents in writing to restrict the dissemination of the information to those

who are directly involved in monitoring under subparagraph (A) and who have a need to know;

(II) accepts liability for wrongful disclosure; and

(III) demonstrates that such information is essential to such monitoring.

(ii) The United States shall not be liable for the wrongful disclosure by any individual or State of any information provided to such individual or State under this subsection.

(iii) Whenever any individual or State has obtained possession of information under this subsection, the individual shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to an officer or employee of the United States or of any department or agency thereof and the State shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to the United States or any department or agency thereof. No State or State officer or employee who receives trade secrets, proprietary information, or other confidential information under sections 2021b to 2021j of this title may be required to disclose such information under State law.

(g) Nondiscrimination

Except as provided in subsections (b) through (e), low-level radioactive waste disposed of under this section shall be subject without discrimination to all applicable legal requirements of the compact region and State in which the disposal facility is located as if such low-level radioactive waste were generated within such compact region.

(Pub. L. 96-573, §5, as added Pub. L. 99-240, title I, §102, Jan. 15, 1986, 99 Stat. 1846.)

CODIFICATION

Section was enacted as part of the Low-Level Radioactive Waste Policy Act, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

CONSTITUTIONALITY

For constitutionality of section 102 of Pub. L. 99-240, see Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

§ 2021f. Emergency access

(a) In general

The Nuclear Regulatory Commission may grant emergency access to any regional disposal facility or non-Federal disposal facility within a State that is not a member of a compact for specific low-level radioactive waste, if necessary to eliminate an immediate and serious threat to the public health and safety or the common defense and security. The procedure for granting emergency access shall be as provided in this section.

(b) Request for emergency access

Any generator of low-level radioactive waste, or any Governor (or, for any State without a Governor, the chief executive officer of the

State) on behalf of any generator or generators located in his or her State, may request that the Nuclear Regulatory Commission grant emergency access to a regional disposal facility or a non-Federal disposal facility within a State that is not a member of a compact for specific low-level radioactive waste. Any such request shall contain any information and certifications the Nuclear Regulatory Commission may require.

(c) Determination of Nuclear Regulatory Commission

(1) Required determination

Not later than 45 days after receiving a request under subsection (b), the Nuclear Regulatory Commission shall determine whether—

(A) emergency access is necessary because of an immediate and serious threat to the public health and safety or the common defense and security; and

(B) the threat cannot be mitigated by any alternative consistent with the public health and safety, including storage of low-level radioactive waste at the site of generation or in a storage facility obtaining access to a disposal facility by voluntary agreement, purchasing disposal capacity available for assignment pursuant to section 2021e(c) of this title or ceasing activities that generate low-level radioactive waste.

(2) Required notification

If the Nuclear Regulatory Commission makes the determinations required in paragraph (1) in the affirmative, it shall designate an appropriate non-Federal disposal facility or facilities, and notify the Governor (or chief executive officer) of the State in which such facility is located and the appropriate compact commission that emergency access is required. Such notification shall specifically describe the low-level radioactive waste as to source, physical and radiological characteristics, and the minimum volume and duration, not exceeding 180 days, necessary to alleviate the immediate threat to public health and safety or the common defense and security. The Nuclear Regulatory Commission shall also notify the Governor (or chief executive officer) of the State in which the low-level radioactive waste requiring emergency access was generated that emergency access has been granted and that, pursuant to subsection (e), no extension of emergency access may be granted absent diligent State action during the period of the initial grant.

(d) Temporary emergency access

Upon determining that emergency access is necessary because of an immediate and serious threat to the public health and safety or the common defense and security, the Nuclear Regulatory Commission may at its discretion grant temporary emergency access, pending its determination whether the threat could be mitigated by any alternative consistent with the public health and safety. In granting access under this subsection, the Nuclear Regulatory Commission shall provide the same notification and information required under subsection (c). Absent a determination that no alternative consistent with the public health and safety would mitigate the

threat, access granted under this subsection shall expire 45 days after the granting of temporary emergency access under this subsection.

(e) Extension of emergency access

The Nuclear Regulatory Commission may grant one extension of emergency access beyond the period provided in subsection (c), if it determines that emergency access continues to be necessary because of an immediate and serious threat to the public health and safety or the common defense and security that cannot be mitigated by any alternative consistent with the public health and safety, and that the generator of low-level radioactive waste granted emergency access and the State in which such low-level radioactive waste was generated have diligently though unsuccessfully acted during the period of the initial grant to eliminate the need for emergency access. Any extension granted under this subsection shall be for the minimum volume and duration the Nuclear Regulatory Commission finds necessary to eliminate the immediate threat to public health and safety or the common defense and security, and shall not in any event exceed 180 days.

(f) Reciprocal access

Any compact region or State not a member of a compact that provides emergency access to non-Federal disposal facilities within its borders shall be entitled to reciprocal access to any subsequently operating non-Federal disposal facility that serves the State or compact region in which low-level radioactive waste granted emergency access was generated. The compact commission or State having authority to approve importation of low-level radioactive waste to the disposal facility to which emergency access was granted shall designate for reciprocal access an equal volume of low-level radioactive waste having similar characteristics to that provided emergency access.

(g) Approval by compact commission

Any grant of access under this section shall be submitted to the compact commission for the region in which the designated disposal facility is located for such approval as may be required under the terms of its compact. Any such compact commission shall act to approve emergency access not later than 15 days after receiving notification from the Nuclear Regulatory Commission, or reciprocal access not later than 15 days after receiving notification from the appropriate authority under subsection (f).

(h) Limitations

No State shall be required to provide emergency or reciprocal access to any regional disposal facility within its borders for low-level radioactive waste not meeting criteria established by the license or license agreement of such facility, or in excess of the approved capacity of such facility, or to delay the closing of any such facility pursuant to plans established before receiving a request for emergency or reciprocal access. No State shall, during any 12-month period, be required to provide emergency or reciprocal access to any regional disposal facility within its borders for more than 20 percent of the total volume of low-level radioactive

waste accepted for disposal at such facility during the previous calendar year.

(i) Volume reduction and surcharges

Any low-level radioactive waste delivered for disposal under this section shall be reduced in volume to the maximum extent practicable and shall be subject to surcharges established in sections 2021b to 2021j of this title.

(j) Deduction from allocation

Any volume of low-level radioactive waste granted emergency or reciprocal access under this section, if generated by any commercial nuclear power reactor, shall be deducted from the low-level radioactive waste volume allocable under section 2021e(c) of this title.

(k) Agreement States

Any agreement under section 2021 of this title shall not be applicable to the determinations of the Nuclear Regulatory Commission under this section.

(Pub. L. 96-573, §6, as added Pub. L. 99-240, title I, §102, Jan. 15, 1986, 99 Stat. 1855.)

CODIFICATION

Section was enacted as part of the Low-Level Radioactive Waste Policy Act, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2021g. Responsibilities of Department of Energy

(a) Financial and technical assistance

The Secretary shall, to the extent provided in appropriations Act, provide to those compact regions, host States, and nonmember States determined¹ by the Secretary to require assistance for purposes of carrying out sections 2021b to 2021j of this title—

(1) continuing technical assistance to assist them in fulfilling their responsibilities under sections 2021b to 2021j of this title. Such technical assistance shall include, but not be limited to, technical guidelines for site selection, alternative technologies for low-level radioactive waste disposal, volume reduction options, management techniques to reduce low-level waste generation, transportation practices for shipment of low-level wastes, health and safety considerations in the storage, shipment and disposal of low-level radioactive wastes, and establishment of a computerized data-base to monitor the management of low-level radioactive wastes; and

(2) through the end of fiscal year 1993, financial assistance to assist them in fulfilling their responsibilities under sections 2021b to 2021j of this title.

(b) Omitted

(Pub. L. 96-573, §7, as added Pub. L. 99-240, title I, §102, Jan. 15, 1986, 99 Stat. 1858.)

CODIFICATION

Subsec. (b) of this section, which required the Secretary to prepare and submit to Congress on an annual basis a report on low-level waste disposal, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, item 2 on page 84 of House Document No. 103-7.

¹ So in original. Probably should be “determined”.

Section was enacted as part of the Low-Level Radioactive Waste Policy Act, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2021h. Alternative disposal methods

(a) Not later than 12 months after January 15, 1986, the Nuclear Regulatory Commission shall, in consultation with the States and other interested persons, identify methods for the disposal of low-level radioactive waste other than shallow land burial, and establish and publish technical guidance regarding licensing of facilities that use such methods.

(b) Not later than 24 months after January 15, 1986, the Commission shall, in consultation with the States and other interested persons, identify and publish all relevant technical information regarding the methods identified pursuant to subsection (a) that a State or compact must provide to the Commission in order to pursue such methods, together with the technical requirements that such facilities must meet, in the judgment of the Commission, if pursued as an alternative to shallow land burial. Such technical information and requirements shall include, but need not be limited to, site suitability, site design, facility operation, disposal site closure, and environmental monitoring, as necessary to meet the performance objectives established by the Commission for a licensed low-level radioactive waste disposal facility. The Commission shall specify and publish such requirements in a manner and form deemed appropriate by the Commission.

(Pub. L. 96-573, §8, as added Pub. L. 99-240, title I, §102, Jan. 15, 1986, 99 Stat. 1858.)

CODIFICATION

Section was enacted as part of the Low-Level Radioactive Waste Policy Act, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2021i. Licensing review and approval

In order to ensure the timely development of new low-level radioactive waste disposal facilities, the Nuclear Regulatory Commission or, as appropriate, agreement States, shall consider an application for a disposal facility license in accordance with the laws applicable to such application, except that the Commission and the agreement state¹ shall—

(1) not later than 12 months after January 15, 1986, establish procedures and develop the technical capability for processing applications for such licenses;

(2) to the extent practicable, complete all activities associated with the review and processing of any application for such a license (except for public hearings) no later than 15 months after the date of receipt of such application; and

(3) to the extent practicable, consolidate all required technical and environmental reviews and public hearings.

(Pub. L. 96-573, §9, as added Pub. L. 99-240, title I, §102, Jan. 15, 1986, 99 Stat. 1859.)

¹ So in original. Probably should be “States”.