

SECTION 8.0
APPLICABLE LAWS AND REGULATIONS

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8.0 APPLICABLE LAWS AND REGULATIONS

This chapter identifies the major laws, regulations and other requirements that would be applicable to the fabrication and deployment of any of the container systems for naval spent fuel considered in this EIS. Detailed summaries of many of these laws, regulations and other requirements can be found in the INEL Programmatic EIS (DOE 1995, Volume 1, Chapter 7) which is incorporated by reference in this section.

8.1 Federal Statutes and Regulations

8.1.1 Atomic Energy Act of 1954, as Amended (42 USC § 2011 et seq.)

The Atomic Energy Act, as amended, authorizes DOE, the Nuclear Regulatory Commission and the Environmental Protection Agency to issue regulations and establish standards for utilizing atomic energy for peaceful purposes consistent with public health and safety. Some associated regulations include:

- 10 CFR Part 20 - Standards for Protection Against Radiation
- 10 CFR Part 71 - Packaging and Transportation of Radioactive Material
- 10 CFR Part 835 - Occupational Radiation Exposure
- 40 CFR Part 190 - Environmental Radiation Protection Standards for Nuclear Power Operations
- 40 CFR Part 191 - Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High Level and Transuranic Radioactive Waste.

8.1.2 Clean Air Act, as Amended (42 USC §§ 7401-7671q)

The Clean Air Act, as amended, is intended to protect and enhance the quality of the nation's air resources. Implementing regulations are in 40 CFR Parts 50 through 99. Some regulations important to this EIS include:

- 40 CFR Part 61, Subpart H - National Emission Standards for Emissions of Radionuclides Other than Radon from DOE Facilities
- 40 CFR Part 86 - Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines
- 40 CFR Part 93, Subpart B - Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

8.1.3 Clean Water Act, as Amended (33 USC §§ 1251 - 1387)

The Clean Water Act, as amended, is intended to restore and maintain the chemical, physical and biological integrity of the nation's water. The most important implementing regulations are located in 40 CFR Part 122 et seq. - National Pollution Discharge Elimination System.

8.1.4 Emergency Planning and Community Right-to-Know Act of 1986

Under Subtitle A of this Act (also known as "SARA Title III"), federal facilities provide various information to state emergency response commissions and local emergency planning committees. Implementing regulations are found in 40 CFR Parts 350 through 372.

8.1.5 Federal Facility Compliance Act (42 USC § 6921 et seq.)

The Federal Facility Compliance Act, enacted on October 6, 1992, waives sovereign immunity for fines and penalties for Resource Conservation and Recovery Act violations at Federal facilities. However, the effective date of the waiver has been delayed for three years for mixed waste storage prohibition violations, as long as the Federal facility is in compliance with all other applicable requirements of the Resource Conservation and Recovery Act. During this three-year period, DOE is required to prepare plans for developing the required treatment capacity for mixed wastes stored or generated at each facility. Each plan must be approved by the host state or the U.S. Environmental Protection Agency, after consultation with the plan. The Federal Facility Compliance Act further provides that the DOE will not be subject to fines and penalties for land disposal restriction storage prohibition violations for mixed waste as long as it is in compliance with such an approved plan and consent order and meets all other applicable regulations.

8.1.6 Hazardous Materials Transportation Act (49 USC § 5101 et seq.)

The purpose of the Hazardous Materials Transportation Act is to provide adequate protection against the risks inherent in the transportation of hazardous materials in commerce. Implementing regulations include:

- 49 CFR Parts 171 - 397 - Requirements for Marking, Labeling, Placarding and Emergency Response, etc.
- 49 CFR Part 173 - Radiation Level Limitations
- 49 CFR Part 174 - Requirements for Rail Transport
- 49 CFR Part 176 - Requirements for Waterborne Transport
- 49 CFR Part 397 - Truck Routing Requirements
- 10 CFR Part 71 - Packaging and Transportation of Radioactive Material

8.1.7 Low-Level Radioactive Waste Policy Act, as Amended (42 USC §§ 2021b-2021d)

The Low-Level Radioactive Waste Policy Act, as amended, sets forth the responsibilities of federal and state governments for disposal of low-level radioactive waste. Implementing regulations include:

- 10 CFR Part 20 - Standards for Protection Against Radiation
- 10 CFR Part 61 - Licensing Requirements for Land Disposal of Radioactive Waste.

8.1.8 National Environmental Policy Act, as Amended (42 USC § 4321 et seq.)

The National Environmental Policy Act, as amended, establishes a national policy of promoting awareness of the environmental impacts of activities by federal government agencies. Implementing regulations by the Council of Environmental Quality are found in 40 CFR Parts 1500 - 1508.

8.1.9 Noise Control Act of 1972, as Amended (42 USC § 4901 et seq.)

The Noise Control Act, as amended, promotes an environment free from noise that jeopardizes health and welfare.

8.1.10 Noise Pollution and Abatement Act of 1970 (42 USC § 7641 et seq.)

The Noise Pollution and Abatement Act provides for determination of methods to abate objectionable noise.

8.1.11 Nuclear Waste Policy Act of 1982, as Amended (42 USC § 10101 et seq.)

The Nuclear Waste Policy Act of 1982, as amended, provides for the management of spent nuclear fuel and high level waste and provides requirements for interim storage. Important implementing regulations include:

- 10 CFR Part 60 - Disposal of High-Level Radioactive Wastes in Geologic Repositories
- 10 CFR Part 72 - Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Waste.

8.1.12 Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC §5121 et seq.)

This Act provides for federal government assistance to state and local governments in the event of a disaster. The implementing regulations for the Federal Emergency Management Agency are in 44 CFR Chapter I.

8.1.13 Solid Waste Disposal Act as Amended by the Resource Conservation and Recovery Act (42 USC § 6901 et seq.)

The treatment, storage and disposal of hazardous and nonhazardous waste is regulated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984. Pursuant to Section 3006 of the Act, any state that seeks to administer and enforce a hazardous waste program pursuant to the Resource Conservation and Recovery Act may apply for U.S. Environmental Protection Agency authorization of its program. The Environmental Protection Agency regulations implementing the Resource Conservation and Recovery Act are found in 40 CFR Parts 260-280. These regulations define hazardous wastes and specify hazardous waste transportation, handling, treatment, storage, and disposal requirements.

The regulations imposed on a generator or a treatment, storage, and/or disposal facility vary according to the type and quantity of material or waste generated, treated, stored, and/or disposed. The method of treatment, storage, and/or disposal also impacts the extent and complexity of the requirements.

8.2 Executive Orders

8.2.1 Executive Order 11514 - Protection and Enhancement of Environmental Quality

Executive Order 11514 requires federal agencies to monitor and control their activities to protect and enhance the quality of the environment.

8.2.2 Executive Order 12088 - Federal Compliance with Pollution Control Standards, as Amended by Executive Order 12580

This Executive Order assigns responsibility for ensuring the prevention, control, and abatement of environmental pollution by federal agencies.

8.2.3 Executive Order 12344 - Naval Nuclear Propulsion Program

This Executive Order, enacted as Public Law 98-525, (42 USC § 7158) establishes the responsibility and authority, in the Department of the Navy and in the Department of Energy, of the Director of the Naval Nuclear Propulsion Program for all matters involving naval nuclear fuel.

8.2.4 Executive Order 12856 - Right to Know and Pollution Prevention

This Executive Order provides requirements to federal agencies concerning toxic chemicals.

8.2.5 Executive Order 12898 - Environmental Justice

Executive Order 12898 requires federal agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs on minority and low-income populations.

8.2.6 Executive Order 11593 - Protection and Enhancement of the Cultural Environment

This Executive Order directs Federal agencies to locate, inventory, and nominate properties under their jurisdiction or control to the National Register of Historic Places if those properties qualify. This process requires the Navy to provide the Advisory Council on Historic Preservation the opportunity to comment on the possible impacts of the proposed activity on any potential eligible or listed resources.

8.2.7 Executive Order 11988 - Floodplain Management

This Executive Order directs Federal agencies to establish procedures to ensure that the potential effects of flood hazards and floodplain management are considered for any action undertaken in a floodplain and that floodplain impacts be avoided to the extent practicable.

8.2.8 Executive Order 11990 - Protection of Wetlands

This Executive Order directs governmental agencies to avoid, to the extent practicable, any short- and long-term adverse impacts on wetlands wherever there is a practicable alternative.

8.2.9 Executive Order 12962 - Recreational Fisheries

This Executive Order directs Federal agencies, to the extent permitted by law and where practical, to improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities. This includes evaluating the effects of Federally funded, permitted, or authorized actions on aquatic systems and recreational fisheries and documenting those effects relative to the purpose of this order.

8.3 Other Laws and Regulations

- American Indian Religious Freedom Act of 1978 (42 USC § 1996)
- Archeological Resource Protection Act, as Amended (916 USC § 470 et seq.)
- Bald and Golden Eagle Protection Act (16 USC § 668)
- Endangered Species Act, as Amended (16 USC § 1531 et seq.)
- Migratory Bird Treaty Act, as Amended (16 USC § 703 et seq.)
- National Historic Preservation Act, as Amended (16 USC § 470 et seq.)
- Native American Graves Protection and Repatriation Act of 1990 (25 USC § 3001)
- Pollution Prevention Act of 1990 (42 USC 13101 et seq.)
- Religious Freedom Restoration Act of 1993 (42 USC § 2000 et seq.)

- Idaho Hazardous Waste Management Act of 1983 (Idaho Code, Title 39, Chapter 44)
- Idaho Environmental Protection and Health Act (Idaho Code, Title 39, Chapter 101 et seq.)
- Idaho Water Pollution Control Act (Idaho Code, Title 39, Chapter 36)

8.4 DOE Orders

In addition to the above, the DOE Orders listed in Table 8.1 are considered. DOE Orders are in the process of being revised, replaced or consolidated. For clarity, the old order identification number is listed along with the tentative new number as available.

TABLE 8.1 DOE Orders^a

DOE Order Numbers		Subject
New	Old	
O 252.1	1300.2A	DOE Technical Standards Program (May 19, 1992)
O 460.2	1540.2	Hazardous Material Packaging for Transport—Administrative Procedures (September 30, 1986; Chg. 1, December 19, 1988)
O 460.2	1540.3A	Base Technology for Radioactive Material Transportation Packaging Systems (July 8, 1992)
O 442.1	3790.1B	Federal Employee Occupational Safety and Health Program (January 7, 1993)
O 430.1	4330.4A	Maintenance Management Program (October 17, 1990)
O 430.1	4700.1	Project Management System (March 6, 1987)
-	5000.3B	Occurrence Reporting and Utilization of Operations Information (April 9, 1992)
-	5400.1	General Environmental Protection Program (November 9, 1988; Chg. 1, June 29, 1990)
P 450.2	5400.2A	Environmental Compliance Issue Coordination (January 31, 1989; Chg. 1, January 7, 1993)
O 441.1	5400.5	Radiation Protection of the Public and the Environment (February 8, 1990; Chg. 2, January 7, 1993)
N 441.1	N5400.13	Sealed Radioactive Source Accountability (December 22, 1994)
O 450.1	5440.1E	National Environmental Policy Act Compliance Program (November 10, 1992)

TABLE 8.1 - DOE Orders^a (Cont.)

DOE Order Numbers		Subject
New	Old	
O 441.1	5480.1B	Environmental, Safety and Health Program for DOE Operations (September 23, 1986; Chg. 4, March 27, 1990)
O 441.1	5480.3	Environmental Requirements for the Packaging and Transportation of Hazardous Materials, Hazardous Substances, and Hazardous Wastes (July 9, 1985)
O 440.3	5480.4	Environmental Protection, Safety and Health Protection Standards (May 15, 1984; Chg. 4, January 7, 1993)
O 440.1	5480.7A	Fire Protection (February 17, 1993)
O 440.1	5480.8A	Contractor Occupational Medical Program (June 26, 1992)
O 440.1	5480.10	Contractor Industrial Hygiene Program (June 26, 1985)
N 441.1	5480.11	Radiation Protection for Occupational Workers (December 21, 1988; Chg. 3, June 17, 1992)
O 225.1	5480.17	Site Safety Representatives (October 5, 1988)
-	5480.19	Conduct of Operations Requirements for DOE Facilities (July 9, 1990; Chg. 1, May 18, 1992)
O 424.1	5480.21	Unreviewed Safety Questions (December 24, 1991)
O 423.1	5480.22	Technical Safety Requirements (February 25, 1992; Chg. 1, September 15, 1992)
O 421.3	5480.23	Nuclear Safety Analysis Reports (April 10, 1992)
O 420.1	5480.24	Nuclear Criticality Safety (August 12, 1992)
-	5480.27	Equipment Qualification for Reactor and Nonreactor Nuclear Facilities (January 15, 1993)
P 420.1	5480.28	Natural Phenomena Hazards Mitigation (1-15-93)
O 421.3	5481.1B	Safety Analysis and Review System (September 23, 1986; Chg. 1, May 19, 1987)
O 224.3	5482.1B	Environment, Safety and Health Appraisal Program (September 23, 1986; Chg. 1, November 18, 1991)
O 440.1	5483.1A	Occupational Safety and Health Program for DOE Contractor Employees at Government-Owned, Contractor-Operated Facilities (June 22, 1983)
O 231.2	5484.1	Environmental Protection, Safety and Health Protection Information Reporting Requirements (February 21, 1981; Chg. 7, October 17, 1990)
O 151.1	5500.1B	Emergency Management System (April 30, 1991; Chg. 1, February 27, 1992)

TABLE 8.1 - DOE Orders^a (Cont.)

DOE Order Numbers		Subject
New	Old	
O 151.1	5500.2B	Emergency Categories, Classes, and Notification and Reporting Requirements (April 30, 1991; Chg. 1, February 27, 1992)
O 151.1	5500.3A	Planning and Preparedness for Operational Emergencies (April 30, 1991; Chg. 1, February 27, 1992)
O 151.1	5500.4A	Public Affairs Policy and Planning Requirements for Emergencies (June 8, 1992)
O 151.1	5500.7B	Emergency Operating Records Protection Program (October 23, 1991)
O 151.1	5500.9A	Emergency Planning, Preparedness, and Response to Continuity of Government Emergencies (July 8, 1992)
O 151.1	5500.10	Emergency Readiness Assurance Program (April 30, 1991; Chg. 1, February 27, 1992)
O 154.3	5530.3	Radiological Assistance Program (January 14, 1992; Chg. 1, April 10, 1992)
O 154.5	5530.5	Federal Radiological Monitoring and Assessment Center (July 10, 1992)
O 460.4	5610.14	Transportation Safeguards System Program Operations (May 12, 1993)
O 470.1	5630.11B	Safeguards and Security Program (August 2, 1994)
O 470.2	5630.12A	Safeguards and Security Inspection and Evaluation Program (June 23, 1992)
O 474.1	5633.3B	Control and Accountability of Nuclear Materials (September 7, 1994)
O 415.1	5660.1B	Management of Nuclear Materials (May 26, 1994)
O 416.1	5700.6C	Quality Assurance (August 21, 1991)
O 435.1	5820.2A	Radioactive Waste Management (September 26, 1988)
O 420.1	6430.1A	General Design Criteria (April 6, 1989)
O 440.1	5480.9	Construction Safety and Health Program (November 18, 1987)
O 362.2	5480.20	Personnel Selection, Qualification, Training, and Staffing Requirements at DOE Reactor and Nonreactor Nuclear Facilities (February 20, 1991)
O 414.1	5600.1	Management of Department of Energy Weapon Program and Weapon Complex (June 27, 1979)
O 471.2	5630.8A	Safeguarding of Naval Nuclear Propulsion Information (July 31, 1990)

^aDOE currently is restructuring and consolidating its Order system. Therefore, some of the Orders listed in this table may be renumbered, consolidated, or eliminated in the future.

8.5 Other Legal Matters

8.5.1 Civil Actions in the United States District Court for the District of Idaho

On June 28, 1993 the U.S. District Court in Idaho enjoined DOE from transporting any spent nuclear fuel into the State of Idaho until DOE completed an environmental impact statement. The EIS was ordered to cover the impacts of the transportation, receipt, processing, and storage of any spent nuclear fuel at the INEL. This EIS was completed and issued in final form on April 30, 1995 and a Record of Decision was issued on June 1, 1995.

On October 16, 1995, the parties to the litigation reached a settlement of all issues related to the EIS. On October 17, 1995, the U.S. District Court in Idaho issued a Court Order vacating all prior injunctions in the cases and incorporating the settlement agreement as a Consent Order.