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THE WHITE HOUSE

WASHINGTON

March 7, 1983

MEMORANDUM FOR RICHARD G. DARMAN  
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING *Orig. signed by FFF*  
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Legislation Re: Nuclear  
Licensing and Regulatory Reform

Counsel's Office has reviewed the above-referenced draft legislation and finds no objection to it from a legal perspective.

FFF:JGR:aw 3/7/83

cc: FFFielding  
✓ JGRoberts  
Subj.  
Chron

## MEMORANDUM

THE WHITE HOUSE  
WASHINGTON

March 7, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Draft Legislation Re: Nuclear  
Licensing and Regulatory Reform

Richard Darman has requested comments by March 10 on the above-referenced draft legislation, submitted by Secretary Hodel to the Cabinet Council on Natural Resources and the Environment. The legislation has already been cleared through the OMB process; the question is whether the Administration should now forward it to Congress. The legislation streamlines nuclear plant licensing procedures, primarily by authorizing advance approval of standardized nuclear plant designs, by establishing one-step licensing of construction and operation, and by improving hearing rules. The issue is complicated by the fact that the Nuclear Regulatory Commission submitted its own legislative proposal to Congress on February 21, 1983. The bills are similar in many respects, but sufficiently different that Hodel recommends that the Cabinet Council approve introduction of the Administration bill.

I have reviewed Hodel's memorandum, the bill, and the accompanying analysis, and have no legal objection. I have drafted a memorandum to Darman noting no legal objection to the draft legislation. The question whether the bill should be submitted in light of the NRC bill is purely one of legislative tactics on which I do not consider it advisable for our office to opine.

Attachment

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WASHINGTON

March 7, 1983

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Subj.  
Chron

# WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence  
Received (YY/MM/DD) 1 / 1Name of Correspondent: Richard G. Harman☐ MI Mail Report

User Codes: (A) \_\_\_\_\_

(B) \_\_\_\_\_

(C) \_\_\_\_\_

Subject: Draft Legislation re: Nuclear Licensing  
and Regulatory Reform Legislation

## ROUTE TO:

## ACTION

## DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Completion Date YY/MM/DD
<u>CU Holland</u>	ORIGINATOR	<u>83/03/02</u>		<u>1 / 1</u>
<u>CU AT 18</u>	Referral Note: <u>D</u>	<u>83/03/02</u>		<u>583/03/10</u>
	Referral Note: _____	<u>1 / 1</u>		<u>1 / 1</u>
	Referral Note: _____	<u>1 / 1</u>		<u>1 / 1</u>
	Referral Note: _____	<u>1 / 1</u>		<u>1 / 1</u>
	Referral Note: _____	<u>1 / 1</u>		<u>1 / 1</u>

## ACTION CODES:

A - Appropriate Action  
C - Comment/Recommendation  
D - Draft Response  
F - Furnish Fact Sheet  
to be used as Enclosure

I - Info Copy Only/No Action Necessary  
R - Direct Reply w/Copy  
S - For Signature  
X - Interim Reply

## DISPOSITION CODES:

A - Answered  
B - Non-Special Referral  
C - Completed  
S - Suspended

## FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer  
Code = "A"  
Completion Date = Date of Outgoing

Comments: \_\_\_\_\_

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## WHITE HOUSE STAFFING MEMORANDUM

DATE: March 2 ACTION/CONCURRENCE/COMMENT DUE BY: Thursday, March 10SUBJECT: DRAFT LEGISLATION RE NUCLEAR LICENSING AND REGULATORY REFORM  
LEGISLATION

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	GERGEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HARPER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	JENKINS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input type="checkbox"/>	<input type="checkbox"/>
CLARK	<input type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/> P	<input checked="" type="checkbox"/> SS	WILLIAMSON	<input type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	VON DAMM	<input type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	BRADY/SPEAKES	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
FULLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

Remarks:

Please provide any comments/edits by Thursday, March 10th.

Thank you.

Richard G. Darman  
Assistant to the President  
(x2702)Response:

THE WHITE HOUSE

WASHINGTON

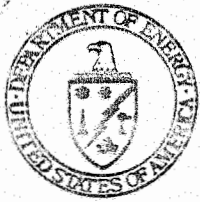
March 2, 1983

MEMORANDUM FOR DICK DARMAN

FROM: BECKY NORTON DUNLOP *BND*  
SUBJECT: NUCLEAR LICENSING AND REGULATORY  
REFORM LEGISLATION

Attached is draft legislation prepared by the  
Department of Energy.

This legislation is a candidate for Presidential  
transmittal and has already been cleared through  
the OMB process.



THE SECRETARY OF ENERGY  
WASHINGTON, D.C. 20585

February 25, 1983

MEMORANDUM FOR THE CABINET COUNCIL ON NATURAL RESOURCES  
AND THE ENVIRONMENT

SUBJECT: NUCLEAR LICENSING AND REGULATORY REFORM

ISSUE:

Should the Administration forward for introduction in the Congress the Department of Energy's proposed nuclear licensing and regulatory reform legislation?

BACKGROUND:

In his October 8, 1981 policy statement on nuclear energy, the President directed the Secretary of Energy to give immediate priority attention to recommending improvements in the nuclear licensing and regulatory process. That directive stemmed from the perception that a more abundant, affordable, and secure energy future is a critical element of the Administration's economic recovery program, that nuclear power is one of the best potential sources of new electrical energy supplies in the coming decades, and that, therefore, the government should act in a manner consistent with the public health and safety to remove unnecessary regulatory obstacles to the development of nuclear power.

Secretary Edwards' initial response to the President's directive was the formation of a Department of Energy (DOE) task force to study the problems inherent in the present nuclear licensing and regulatory process and to recommend both administrative and legislative changes that would serve to improve that process. The report of the DOE task force was approved on May 4, 1982, and the administrative portion of the task force's recommendations was then provided to the Chairman of the Nuclear Regulatory Commission (NRC). The legislative changes recommended by the DOE task force have been embodied in a draft bill, the "Nuclear Licensing and Regulatory Reform Act of 1983," that has been sent to the Office of Management and Budget for clearance.



Concurrently with this effort, the NRC has been working to develop its own legislative proposals for the reform of the nuclear licensing and regulatory process. An NRC bill entitled the "Nuclear Power Plant Licensing Reform Act of 1983" was forwarded to the Congress on February 21, 1983.

The NRC and DOE bills are closely similar in most major respects, including the establishment of procedures for the optional advance approval by NRC of nuclear powerplant sites and "standardized" designs for entire powerplants or major subsystems of plants, an optional one-step licensing process in lieu of the current two-step process which requires separate proceedings for a construction permit and an operating license, and their recognition of the need to rationalize the rules for conducting public hearings in licensing proceedings.

There are certain areas, however, in which the DOE and NRC bills differ somewhat in the details of their approaches. With regard to one-step licensing, for example, the NRC bill would require the holding of a pre-operational hearing which DOE does not believe should be necessary, and which if required to be held could substantially undercut the effectiveness of one-step licensing. Similarly, although both bills establish a streamlined "hybrid" hearing process to minimize the use of cumbersome and inefficient adjudicatory hearing procedures where no issues of material fact are in dispute, use of the streamlined process would only be discretionary under the NRC bill, but would be mandatory under DOE's approach.

A further important difference between the two bills concerns their approaches for controlling and systemizing NRC's imposition of new and additional regulatory requirements, or "backfits", on previously licensed facilities. The DOE bill establishes a statutory standard for the imposition of backfits, by providing that no backfit shall be imposed unless it will result in a substantial enhancement of public health and safety that is justified when considered over the remaining life of the facility. The DOE bill also provides that no backfit shall be imposed unless it has been reviewed and approved by the Commission itself, in addition to staff review. In contrast, the NRC bill does not require centralized review by the Commission, and would leave to NRC rulemaking the development of a backfit standard.

DISCUSSION:

It should be noted at the outset that, except for one-step licensing, all the principal reforms set forth in both the NRC and DOE bills could be implemented administratively by NRC. The administrative avenue does not, however, provide the assurance of predictability and policy stability which are of paramount importance; administrative reforms would always be subject to revision or retrenchment with every change of NRC membership. Only through legislation can these objectives be effectively attained.

Moreover, as noted above, there are significant differences in policy emphasis between the NRC and DOE bills. In our view, the DOE approach is more likely to produce a more efficient nuclear licensing and regulatory process that avoids the imposition of unjustifiable economic burdens on utilities and their ratepayers while contributing to a greater focus on the NRC's primary responsibility, the protection of the public health and safety.

Finally, the introduction of legislation by the Administration would provide direct and visible support of the President's stated policy objective of revitalizing the nuclear industry.

RECOMMENDATION:

That the Cabinet Council approve the introduction of DOE's nuclear licensing and regulatory reform legislation as soon as possible in the 98th Congress.

  
DONALD PAUL HODEL

A BILL

To improve the nuclear licensing and regulatory process, to  
amend the Atomic Energy Act of 1954, and for other purposes.

1       Be it enacted by the Senate and House of Representatives  
2       of the United States of America in Congress assembled, That  
3       this Act may be cited as the "Nuclear Licensing and  
4       Regulatory Reform Act of 1983".

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FINDINGS AND PURPOSES

SEC. 2. (a) The Congress, recognizing that an effective and efficient licensing and regulatory process for siting, construction, and operation of nuclear powerplants meeting safety and environmental criteria is in the national interest, finds and declares that--

(1) interstate commerce is substantially affected by the siting, construction, and operation of nuclear powerplants;

(2) meaningful public participation in siting and licensing of nuclear powerplants should be assured;

(3) determinations respecting the need for the power to be generated by new nuclear powerplants should be made by State or local authorities, where possible, and not by the Federal Government;

(4) siting and construction of nuclear powerplants would be facilitated and the public health and safety enhanced by the use of pre-approved nuclear power reactor designs which reduce the need for individual reactor licensing reviews;

(5) siting of nuclear powerplants would be facilitated by early review and approval of the suitability of sites;

1           (6) siting, construction, and operation of  
2 nuclear powerplants would be facilitated by use of  
3 a single-step licensing process; and

4           (7) the Nuclear Regulatory Commission should  
5 continue to exercise its independent statutory  
6 responsibilities to protect the public health and  
7 safety and the common defense and security, taking  
8 into account that absolute safety is an unattainable  
9 goal for any energy source, that the cost of  
10 additional safety requirements should be given  
11 consideration, and that adequate protection of the  
12 health and safety of the public, in accordance  
13 with high standards established by the Commission,  
14 is the paramount consideration.

15       (b) The purposes of this Act are--

16           (1) to improve the effectiveness and efficiency  
17 of the nuclear powerplant licensing and regulatory  
18 process, consistent with the paramount responsibility  
19 of the Nuclear Regulatory Commission to protect the  
20 health and safety of the public sound environmental,  
21 safety and security principles;

22           (2) to protect the public interest and  
23 ensure meaningful public participation in the  
24 nuclear licensing and regulatory process;

25           (3) to recognize the interests of the

1 States and local authorities in the nuclear  
2 licensing and regulatory process;

3 (4) to facilitate the use of pre-approved  
4 sites and designs for nuclear powerplants; and

5 (5) to provide for a single-step licensing  
6 process for nuclear powerplants under conditions  
7 which assure the continued protection of the public  
8 health and safety, which will be in accord with the  
9 common defense and security, and which assure  
10 appropriate consideration of the environment.

#### 11 TITLE I - LICENSING AND REGULATORY PROCESS

##### 12 Backfitting Requirements

13 SEC. 101. The Atomic Energy Act of 1954 is amended  
14 by adding after section 29 a new section 29a to read as  
15 follows:

##### 16 SEC. 29a. BACKFITTING REQUIREMENTS.--

17 "a. The Commission shall adopt regulations  
18 establishing procedures for centralized review by the  
19 Commission of all Commission staff proposals for  
20 backfitting requirements.

21 "b. (1) The Commission shall adopt regulations  
22 setting forth criteria to be used in review and approval  
23 of proposed backfitting requirements under subsection  
24 a. of this section. The regulations shall require  
25 evaluation of the safety or security concerns which

1 give rise to the proposal, the improvements in safety  
2 that would result from adoption of the proposal, estimates  
3 of costs to potentially affected licensees in implementing  
4 the proposal, and other matters the Commission determines  
5 to be necessary.

6       "(2) The Commission shall not approve a proposed  
7 backfitting requirement under subsection a. of this  
8 section unless, based on the criteria in paragraph (1)  
9 of this subsection, the Commission determines that the  
10 proposed backfitting requirement will substantially  
11 enhance the public health and safety or the common  
12 defense and security as a result of improved overall  
13 safety of facility operation and that this improvement  
14 in overall safety is justified when considered over the  
15 remaining life of the facility. Approval of a proposed  
16 backfitting requirement by the Commission under subsection  
17 a. of this section is not delegable.

18       "(3) Any action taken by the Commission under  
19 paragraph (2) of this subsection shall not be subject  
20 to section 181 or 189 of this Act or section 10 of the  
21 Administrative Procedure Act, and shall not be subject  
22 to judicial review in any manner.

23       "c. As used in this section, "backfitting require-  
24 ment" means an addition, deletion, or modification to  
25 those aspects of the engineering, construction, or operation



1 of a production or utilization facility upon which a  
2 permit, license, or approval was issued.

3 "d. A proposed backfitting requirement approved  
4 under subsection a. of this section or proposed by any  
5 other person except the holder of a permit, license, or  
6 design approval is not effective until it is issued by  
7 the Commission as an amendment to a permit, license, or  
8 design approval, or as a rule, regulation, order or  
9 amendment thereof. The Commission shall not issue a  
10 backfitting requirement under this subsection until it  
11 determines that the backfitting requirement meets the  
12 test set out in paragraph b.(2) of this section.

13 "e. This section shall not apply to the application  
14 by the Commission of a backfitting requirement to facilities,  
15 sites approved under section 193 of this Act, or designs  
16 approved under section 194 of this Act, if the Commission  
17 determines that absent immediate action to impose the  
18 requirement, the public health and safety or the common  
19 defense and security will not be adequately protected."

20 "f. The Commission may apply the requirements of  
21 this section to analyses and testing requirements  
22 proposed by the Commission staff."

23 SEC. 102. Section 185 of the Atomic Energy Act of  
24 1954 (42 U.S.C. §2235) and its catchline are amended to  
25 read as follows:



1           "SEC. 185. CONSTRUCTION PERMITS, OPERATING  
2 LICENSES, AND CONSTRUCTION AND OPERATING LICENSES.--

3           "a. An applicant for a license to construct or  
4 modify a production or utilization facility shall, if  
5 the application is otherwise acceptable to the Commission,  
6 be initially granted a construction permit. Upon the  
7 filing of additional information by the applicant needed  
8 to bring the original application up to date, the  
9 Commission shall issue an operating license to the  
10 applicant upon finding that the facility authorized has  
11 been constructed and will operate in conformity with  
12 the application as amended, the provisions of this Act,  
13 and the rules and regulations of the Commission. For  
14 all other purposes of this Act, a construction permit  
15 is a 'license'.

16           "b.(1) The Commission may issue a construction  
17 and operating license to an applicant for a commercial  
18 production or utilization facility, if the application  
19 is sufficient to enable the Commission to determine  
20 that the facility will be constructed and will operate  
21 in conformity with the application, the provisions of  
22 this Act, and the rules and regulations of the Commission.  
23 For all other purposes of this Act, a construction and  
24 operating license is a 'license'.

25           "(2) (A) Before commencing operation, the holder

107. License Application Review

This section would give the Advisory Committee on Safeguards general discretionary authority to decide applications merit its review. Review of design plans and applications referred to the ACRS by the NRC is mandatory.

108. Additional Transitional Provisions

This section would permit the present NRC procedures requiring early site review and design approval to remain in effect, subject to further NRC action, and extends the provisions to cover applicants for construction and operating licenses. This is done in order to ensure that these provisions stand on secure legal authority. The NRC's authority to modify, revoke or otherwise affect these regulatory programs is not affected.

This section would allow holders of, and applicants for, construction permits to apply for construction and operating licenses. This provision would apply even if the permit was issued before the effective date of this Act. Introduction and consideration of information at a hearing on an application for a construction and operating license for a facility that has been granted a construction permit would be limited in the same ways as are provided for all other licensing applications in section 103.

109. Safety Goal Report

This section would require the NRC to adopt and implement a safety goal and supporting methodologies and report to the Congress within one year from the effective date of this Act on the progress it has made toward adoption and implementation of the safety goal.

**TITLE II - CONFORMING AMENDMENTS**

This section would amend several provisions of the Atomic Energy Act to conform with the provisions of this

1 of Commission action or inaction under this section  
2 must be brought, if at all, during this fourteen day period.

3 "(D) Any action by the staff under section  
4 185 b.(2)(B) of this Act or by the Commission under  
5 section 185 b.(2)(C) of this Act is not subject to  
6 sections 181 or 189 of this Act. Commission action or  
7 inaction under section 185 b.(2)(C) of this Act is  
8 subject to judicial review in the manner prescribed in  
9 the Act of December 29, 1950 (ch. 1189, 64 Stat. 1129)  
10 and is subject to section 10 of the Administrative  
11 Procedure Act.

12 "c. The Commission shall provide for on-site  
13 inspection of construction to ensure conformity with  
14 the provisions of this Act, the application as amended,  
15 the construction permit or construction and operating  
16 license, and the rules and regulations of the Commission.

17 "d. The State in which a facility is to be located,  
18 a political subdivision of the State having direct  
19 authority over electric generating facilities within  
20 its jurisdiction, or another authorized public entity shall  
21 certify to the Commission the need for the power to be  
22 provided by the facility if the State, political  
23 subdivision, or public entity is required by law to  
24 make a determination concerning that need. This certification  
25 shall be binding upon the Commission, which shall

1 incorporate the certification in its environmental  
2 impact statement pertaining to the facility. The  
3 certification is valid for purposes of the National  
4 Environmental Policy Act of 1969 only if it is valid  
5 under the law which requires the State, political  
6 subdivision, or public entity to make the determination  
7 of need. If no State, political subdivision, or other  
8 public entity is required to make this certification,  
9 the Commission shall certify the need for the power to  
10 be provided by the facility. The certification under  
11 this subsection is not subject to judicial review in a  
12 Federal court unless it is performed by the Commission  
13 or another Federal agency.

14 "e. The Commission may allow an applicant for a  
15 construction permit or construction and operating  
16 license for a production or utilization facility to  
17 prepare the proposed facility site for construction and  
18 perform those limited construction activities that the  
19 Commission determines to be permissible, upon  
20 determining:

21 "(1) that all findings required to be made  
22 by the Commission under the National Environmental  
23 Policy Act of 1969 before issuing a construc-  
24 tion permit or a construction and operating license  
25 have been made;

1           "(2) that the certification under subsection  
2           d. of this section has been made;

3           "(3) that there is reasonable assurance on  
4           the basis of the available information and review  
5           to date that the proposed site is a suitable  
6           location for a facility of the general size and  
7           type proposed from the standpoint of the protection  
8           of the health and safety of the public; and

9           "(4) that there are no significant unresolved  
10          public health and safety issues with respect to  
11          the limited construction activities.

12        "These activities shall be conducted at the risk of the  
13        applicant and shall be subject to termination or  
14        modification by the Commission at any time. Safety-  
15        related construction activities undertaken under this  
16        subsection shall not proceed for more than one year from  
17        their commencement unless the Commission, upon good  
18        cause shown, extends this period.

19        "f. This section does not affect the authority  
20        of any State or local governmental unit to issue any  
21        permit or license for the siting, construction or  
22        operation of a production or utilization facility.

23        "g. This section does not affect the requirement  
24        that the antitrust review under this Act be completed  
25        before the issuance of a construction permit or a

1 construction and operating license, including where  
2 necessary a hearing on antitrust issues under sections  
3 105c. and 189 of this Act."

4 Hearings

5 SEC. 103. Section 189 of the Atomic Energy Act of  
6 1954 (42 U.S.C. §2239) is amended as follows:

7 (a) Section 189 a.(1) is amended to read as follows:

8 "a.(1) Except as provided in section 126 of this Act,  
9 this section applies to the following proceedings:

10 "(A) to grant, suspend, amend, revoke, or  
11 renew a license, construction permit, construction  
12 and operating license, site permit, or application  
13 to transfer control;

14 "(B) to establish the compensation, award,  
15 or royalties under sections 153, 157, 186c., or  
16 188 of this Act;

17 "(C) to authorize preparation of a facility  
18 site or performance of limited construction  
19 activities under section 185 e. of this Act; or

20 "(D) to grant, suspend, amend, revoke, or  
21 renew an approval of a facility design or major  
22 subsystem thereof."

1       (b) Section 189 a.(2) is redesignated section 189  
2 a.(6), and is amended by inserting "or construction and  
3 operating license" after "operating license" wherever  
4 it occurs.

5       (c) New sections 189 a.(2), (3), (4) and (5) are  
6 added after section 189 a.(1), to read as follows:

7       "(2) Except as provided in paragraph (4) of this  
8 subsection, no less than thirty days after publication  
9 of a notice by the Commission in the Federal Register,  
10 the hearing officer shall provide any person an opportunity  
11 to submit for the record written data, views, or arguments  
12 in a proceeding under this section. Upon petition of a  
13 person whose interest may be affected by this proceeding,  
14 the hearing officer shall grant an opportunity for oral  
15 presentation on any issue as to which the petitioner  
16 sets forth, with reasonable specificity, his contentions  
17 and the bases for those contentions. The hearing  
18 officer shall admit that person as a party to the  
19 proceeding. The oral presentation shall be preceded by  
20 discovery procedures that the rules of the Commission  
21 may provide. Each party shall submit in written form,  
22 before oral presentation, within the time prescribed by  
23 the hearing officer, all the facts and arguments upon  
24 which that party proposes to rely.



1           "(3) (A)   Following the conclusion of oral presentation,  
2 each party shall submit to the hearing officer, in  
3 written form, proposed findings setting forth the  
4 issues which it believes require a formal hearing and  
5 the reasons why it believes a formal hearing is required  
6 as to these issues. The hearing officer shall then  
7 consider all proposed findings, written submissions,  
8 and oral presentations and shall designate, as to those  
9 issues which have been included in a party's proposed  
10 findings, which issues require a formal hearing, conducted  
11 under sections 554, 556, 557 and 558 of title 5, United  
12 States Code, and which issues do not require a formal  
13 hearing.

14           "(B) The Commission shall review the designations  
15 made by the hearing officer, the proposed findings, the  
16 written submissions, and oral presentations. The Commission  
17 shall then decide, as to those issues which have been  
18 designated by the hearing officer, which issues require  
19 a formal hearing, conducted under sections 554, 556,  
20 557 and 558 of title 5, United States Code, and which  
21 issues do not require a formal hearing.

22           "(C) The hearing officer shall designate an issue  
23 for formal hearing, and the Commission shall decide  
24 that a formal hearing is required as to the issue, if--



1           "(i) the issue consists of a genuine and  
2           substantial dispute of fact which can be resolved  
3           with sufficient accuracy only by introduction  
4           of evidence at a formal hearing; and

5           "(ii) the decision of the hearing officer or  
6           the Commission is likely to depend in whole or in  
7           part on the resolution of this dispute.

8   A hearing officer designation or Commission decision  
9   that a formal hearing is or is not required shall be in  
10   writing and shall state the reasons upon which it is  
11   based. The Commission decision is not subject to  
12   judicial review under section 189 b. of this Act until  
13   the proceeding which is the subject of the hearing has  
14   been concluded and a final order has been entered.

15          "(D) If an issue has not been included in a party's  
16   proposed findings, the question of whether a formal  
17   hearing is required as to that issue is not subject to  
18   judicial review unless there are extraordinary circumstances  
19   that excuse the failure to include the issue in a  
20   party's proposed findings.

21          "(E) For purposes of this section, "hearing  
22   officer" means an Atomic Safety Licensing Board, admini-  
23   strative law judge, or other person appointed by the  
24   Commission to conduct an oral presentation or formal  
25   hearing. This paragraph shall not modify any other

1 provision of law.

2       "(4) (A) With respect to any proceeding for which  
3 the Commission issued a notice of hearing before the  
4 effective date of this Act, the Commission may apply  
5 the procedures set forth in this section, the procedures  
6 in effect for that hearing prior to the effective date  
7 of this Act, or other appropriate procedures authorized  
8 by law. A Commission decision under this paragraph  
9 is not delegable.

10       "(B) A hearing in a proceeding under chapter 18 of  
11 this Act shall be conducted in accordance with sections  
12 554, 556, 557 and 558 of title 5, United States Code.

13       "(5) In an oral presentation or formal hearing  
14 under this section, the Commission shall implement, by  
15 rule, regulation, or order, the following limitations  
16 on admission of information:

17               "(A) on issues that have not been raised and  
18 resolved in other proceedings under this Act, no  
19 information shall be admitted unless it is signi-  
20 ficant, relevant, material, and concerns the  
21 protection of the public health and safety or the  
22 common defense and security from overall plant  
23 operation;

24               "(B) subject to paragraphs (C) and (D),  
25 no other information shall be admitted, on issues

1 that have been raised and resolved in other  
2 proceedings under this Act, until significant new  
3 information has been introduced and admitted which  
4 raises a prima facie showing that action is  
5 needed to substantially enhance the public health  
6 and safety or the common defense and security as a  
7 result of improved overall safety of facility  
8 operation and that this improvement in overall  
9 safety is justified when considered over the  
10 remaining life of the facility.

11 "(C) on an application to grant, suspend, amend,  
12 or revoke a construction permit, operating license or  
13 construction and operating license for a facility  
14 for which a design approval has been obtained,  
15 information concerning design issues raised and  
16 resolved in the design approval proceeding shall  
17 not be admitted unless agreed to by the applicant.  
18 Where the applicant does not agree to admit the  
19 information, it must be reviewed in a design approval  
20 proceeding under section 194.

21 "(D) on an application to renew a site  
22 permit or design approval, or an application by  
23 the holder of the permit, license or design  
24 approval to amend a permit, license or design  
25 approval, no other information shall be admitted,

1 on issues that were raised and resolved in the  
2 permit, license or design approval proceeding,  
3 until significant new information has been introduced  
4 and admitted which raises a prima facie showing  
5 that the facility, site or design will not comply  
6 with this Act or the Commission's rules and  
7 regulations for protection of the public health  
8 and safety or the common defense and security.".

9 Early Site Approval

10 SEC. 104. The Atomic Energy Act of 1954 is amended by  
11 adding after section 192 a new section 193 to read as follows:

12 "SEC. 193. EARLY SITE APPROVAL.--

13 "a. The Commission may issue a site permit for  
14 approval of a site for one or more production or utilization  
15 facilities upon the application of any person or entity,  
16 notwithstanding the fact that an application for a  
17 construction permit or a combined construction permit  
18 and operating license for the facility or facilities  
19 has not been filed. For all other purposes of this  
20 Act, a site permit is a 'license'.

21 b. An application for a site permit shall be in  
22 writing and shall contain the information required by  
23 the Commission to determine the suitability of the site  
24 for its intended purpose, including:

1           "(1) the number, type, and thermal power  
2 level of the facilities that could be located on  
3 the site;

4           "(2) the boundaries of the site;

5           "(3) the proposed general location of each  
6 facility on the site;

7           "(4) the proposed maximum levels of radiological  
8 and thermal effluents that each facility would  
9 produce;

10           "(5) the type of cooling systems (intake or  
11 outflow) that may be employed by each facility;

12           "(6) the seismic, meteorological, hydrologic  
13 and geologic characteristics of the proposed site  
14 and the population density of the area surrounding  
15 the site; and

16           "(7) other information that the Commission  
17 may by rule or regulation require.

18           "c.(1)     If, after considering all information  
19 submitted by an applicant under subsection b. of this  
20 section, the Commission determines that the proposed  
21 site is suitable for the construction and operation of  
22 the facility or facilities described in the application  
23 consistent with public health and safety it shall issue  
24 a site permit subject to conditions that it considers  
25 appropriate.

1       "(2) In making a determination under section 193  
2 c.(1) of this Act, the Commission shall, with respect  
3 to each of the matters specified in section 193 b. of  
4 this Act, state in writing its findings regarding the  
5 suitability of the site for the facility or facilities  
6 described in the application.

7       "(3) A final Commission determination on an  
8 application filed under this section is a final order  
9 of the Commission for purposes of section 189 b. of  
10 this Act.

11       "d.(1) A site permit shall be conclusive with  
12 respect to a facility for which an application for a  
13 construction permit or a construction and operating  
14 license is filed within a period of ten years from the  
15 date of issuance of the site permit.

16       "(2)(A) Not less than twelve nor more than eighteen  
17 months before the expiration of the ten-year period, a  
18 site permit holder may apply for a renewal of the site  
19 permit. Upon review by the Commission, the Commission  
20 may renew a site permit for additional ten-year periods  
21 from the date of renewal.

22       "(B) Upon application for renewal of a site  
23 permit, the Commission shall renew the site permit  
24 unless it finds that significant new information on the  
25 site has become available which makes it likely that the

1 site will not comply with this Act or the Commission's  
2 rules and regulations for protection of the public  
3 health and safety or the common defense and security.

4 "e. An applicant for a construction permit or a  
5 construction and operating license for a production or  
6 utilization facility to be located on a site approved  
7 under section 193 a. of this Act, upon 30 days' prior  
8 written notice to the Commission and to the State in  
9 which the site is located and upon publication twice in  
10 those major newspapers serving the affected area as may  
11 be reasonably calculated to notify concerned or affected  
12 persons of the scope of the intended preparation,  
13 unless otherwise ordered by the Commission or the  
14 State, may prepare the approved site for construction  
15 and perform those limited construction activities that  
16 the Commission determines are permissible. These  
17 activities shall be conducted at the risk of the applicant  
18 and are subject to modification or termination by the  
19 Commission at any time. Safety-related construction  
20 activities shall not proceed for more than one year from  
21 their commencement unless the Commission, upon good  
22 cause shown, extends the period. Nothing in this  
23 subsection affects the authority of a State or local  
24 governmental unit to issue a permit or license for the  
25 preparation of the site or the construction activities



1 authorized by this subsection.

2 "f. For purposes of the National Environmental  
3 Policy Act of 1969, an environmental impact statement  
4 prepared in connection with the issuance of a site  
5 permit need not contain an assessment of the need for  
6 power from the facility or facilities proposed to be  
7 constructed on the site for which the site permit is  
8 sought.

9 "g. Approval of a site under this section does  
10 not preclude its approval or use as a site for an  
11 alternate or modified type of energy facility or for  
12 any other purpose.

13 "h. The Commission may issue a site permit with  
14 respect to limited aspects of the suitability of the  
15 site for its intended purpose, under rules and regulations  
16 the Commission considers appropriate.

17 "i. For purposes of the National Environmental  
18 Policy Act of 1969, Commission issuance of a site  
19 permit is a "major Federal action", and the issuance of  
20 the permit is considered to significantly affect the  
21 quality of the human environment if construction and  
22 operation of a facility with the characteristics  
23 described in the permit, on the site for which the  
24 permit is issued, would have significant effects on the  
25 quality of the human environment."



Approval of Designs

SEC. 105. The Atomic Energy Act of 1954 is amended by adding after section 193, as added by this Act, a new section 194 to read as follows:

"SEC. 194. APPROVAL OF DESIGNS.--

"a. The Commission may approve a design for a commercial production or utilization facility upon application by any person, notwithstanding the fact that an application for a construction permit or construction and operating license for the facility has not been filed.

"b. The Commission also may approve designs for any major subsystem of a commercial production or utilization facility that represents a discrete element of the facility, as defined by the Commission.

"c. Notwithstanding section 161 w. of this Act or the Independent Offices Appropriation Act of 1952, an application filing or issuance fee shall not be required for an application for approval or for an amendment or renewal of an approval of a design of a facility or major subsystem under this section. The Commission may allocate the costs that would otherwise have been defrayed by fees required of applicants under this section among applicants for permits or licenses who propose to use the approved design.

1        "d.(1) An approval issued by the Commission under  
2 this section is conclusive with respect to an application  
3 for a construction permit or a construction and operating  
4 license which meets any conditions of the approval and  
5 which is filed within a period of ten years from the  
6 date of issuance of the approval.

7        "(2) (A) Not less than twelve nor more than  
8 eighteen months prior to the expiration of the ten-year  
9 period provided under paragraph (1), the person to whom  
10 the approval was issued may apply for a renewal of the  
11 approval. Upon review by the Commission, the Commission  
12 may renew the approval for additional ten-year periods from  
13 the date of renewal.

14        "(B) Upon application for renewal of a approval  
15 issued under subsections a. or b. of this section, the  
16 Commission shall renew the approval unless it finds that  
17 significant new information relevant to the design has  
18 become available which makes it likely that the design  
19 will not comply with this Act or the Commission's rules  
20 and regulations for protection of the public health and  
21 safety or the common defense and security.

22        "e. In accordance with section 553 of title 5,  
23 United States Code, the Commission may promulgate  
24 rules that set forth standards and criteria for production  
25 or utilization facility designs and may approve designs

1 for minor subsystems of commercial production or  
2 utilization standardized facilities, as defined by the  
3 Commission, and designs for production or utilization  
4 facilities used for other than commercial purposes.

5 "f. A final Commission determination on an applica-  
6 tion filed under sections 194 a., b., or e. of this Act  
7 is a final order of the Commission for purposes of  
8 section 189 b. of this Act."

9 Amendments and Deviations at Request of Holder

10 SEC. 106. The Atomic Energy Act of 1954 is amended  
11 by adding after section 194, as added by this Act, a  
12 new section 195 to read as follows:

13 "SEC. 195. AMENDMENTS AND DEVIATIONS AT REQUEST OF HOLDER.--

14 "a. The Commission shall not approve an amendment  
15 to a license, construction permit, construction and  
16 operating license, design approval, or site permit  
17 proposed by the holder of the permit, license, or  
18 approval, unless it determines that the amendment will  
19 comply with this Act and the Commission's rules and  
20 regulations for protection of the public health and  
21 safety or the common defense and security.

22 "b.(1) The holder of a permit, license or approval  
23 may deviate from any aspect of the permit, license or  
24 approval without prior Commission approval unless the  
25 deviation involves a change in the technical specifications

1 incorporated in the permit, license or approval or an  
2 unreviewed safety question. A deviation shall not  
3 otherwise alter the permit, license or approval. The holder  
4 of the permit, license or approval to which the deviation  
5 applies shall maintain such records of the deviation  
6 and the basis for the determination that it does not  
7 involve a change in the technical specifications or an  
8 unreviewed safety question that the Commission may by  
9 rule or regulation require. These records shall be  
10 available for inspection by the Commission. A deviation  
11 which involves a change in the technical specifications  
12 or an unreviewed safety question shall be proposed to  
13 the Commission as an amendment under subsection a. of  
14 this section.

15 "(2) A deviation involves an unreviewed safety  
16 question if:

17 "(a) The probability of occurrence or the  
18 consequences of an accident or malfunction of  
19 equipment important to safety previously evaluated  
20 in the proceeding on the permit, license or  
21 approval may be increased; or

22 "(b) A possibility for an accident or malfunction  
23 of a different type than any evaluated previously  
24 in the proceeding on the permit, license or  
25 approval may be created; or

1           "(c) The margin of safety as defined in the  
2           the basis for any technical specification is  
3           reduced."

4                       License Application Review

5           SEC. 107. Subsection 182 b. of the Atomic Energy  
6   Act of 1954 (42 U.S.C. §2232 b.) is amended to read as  
7   follows:

8           "b. The Advisory Committee on Reactor Safeguards  
9   may review an application to grant, amend, or renew a  
10   license, construction permit, construction and operating  
11   license, or site permit. The Committee shall review  
12   each application for design approval, each proposed  
13   amendment or renewal of a design approval, and any  
14   application under sections 103, 104, or 193 of this  
15   Act that the Commission refers to the Committee. The  
16   Committee shall submit a report to the Commission on  
17   each application, design approval or proposed amendment  
18   or renewal of a rule that it reviews. The Committee  
19   decision to review or fail to review an application  
20   or proposed amendment or renewal of a design approval  
21   and the Commission decision to refer or not refer an  
22   application to the Committee, is not subject to  
23   judicial review. Except to the extent that security  
24   classification prevents disclosure, any report required

1 by this subsection shall be made part of the record of  
2 the application or rulemaking proceeding and available  
3 to the public.".

4 Additional Transitional Provisions

5 SEC. 108. The Atomic Energy Act of 1954 is  
6 amended by adding after section 195, as added by this  
7 Act, a new section 196 to read as follows:

8 "SEC. 196. ADDITIONAL TRANSITIONAL PROVISIONS.--

9 "a. The procedures provided in Appendices M, N,  
10 O and Q of Title 10 of the Code of Federal Regulations;  
11 Part 50; Subpart F of Part 2 of the same title; and the  
12 Commission's Topical Report Program, shall continue in  
13 effect until modified, terminated, superseded, set  
14 aside or revoked in accordance with law by the Commission.

15 "b. An applicant for a construction and operating  
16 license may incorporate by reference in the application  
17 a Staff Site Report issued under Appendix Q of Title  
18 10 of the Code of Federal Regulations, Part 50 or an  
19 approval of a final design issued under Appendices N or  
20 O of the same Part. The report or approval shall be  
21 given the same effect that the Commission provides when  
22 the report or approval is incorporated by reference in  
23 an application for a construction permit or operating  
24 license.

1        "c. An application for a construction permit may  
2 be converted by the applicant into an application for  
3 a construction and operating license, subject to  
4 section 185 b. of this Act. An applicant granted a  
5 construction permit may apply for a construction and  
6 operating license, subject to section 185 b. of this  
7 Act."

8                                Safety Goal Report

9        SEC. 109. The Atomic Energy Act of 1954 is  
10 amended by adding after section 196, as added by  
11 this Act, a new section 197 to read as follows:

12        "SEC. 197. SAFETY GOAL REPORT--

13        "The Commission shall adopt and implement a safety  
14 goal, and supporting methodologies, through the issuance  
15 of those rules and regulations that the Commission  
16 considers appropriate. Within one year from the effec-  
17 tive date of this section, the Commission shall report  
18 to the Congress on the progress it has made toward  
19 adoption and implementation of this safety goal."

20                                Title II - Conforming Amendments

21                                Advisory Committee on Reactor Safeguards

22        SEC. 201. The second sentence of section 29 of  
23 the Atomic Energy Act of 1954 (42 U.S.C. §2039) is  
24 amended to read as follows:

1 "The Committee, as provided in section 182 b., shall  
2 review safety studies, facility license applications,  
3 site permit applications, and design approval applications  
4 and shall make reports thereon, shall advise the Commission  
5 with regard to the hazards of proposed or existing  
6 reactor facilities and the adequacy of proposed reactor  
7 safety standards, and shall perform such other duties  
8 as the Commission may request.".

9 Antitrust Provisions

10 SEC. 202. The first sentence of section 105  
11 c. (2) of the Atomic Energy Act of 1954 (42 U.S.C.  
12 §2135 c.(2)) is amended by striking "a license to construct  
13 or operate" and inserting in its place "an early site permit  
14 and an application for a license to construct, operate,  
15 or construct and operate".

16 General Provisions

17 SEC. 203. Section 161 o. of the Atomic Energy  
18 Act of 1954 (42 U.S.C. §2201 o.) is amended by inserting  
19 "authorized by section 193 or conducted" after "activities"  
20 the second time it occurs.

21 Revocation

22 SEC. 204. Section 186 a. of the Atomic Energy  
23 Act of 1954 (42 U.S.C. §2236 a.) is amended by inserting



1 "or site permit or design approval" after "license"  
2 wherever it appears; and by inserting "or sections 193  
3 or 194" after "section 182".

4 Modification of License

5 SEC. 205. Section 187 of the Atomic Energy  
6 Act of 1954 (42 U.S.C. §2237) is amended by inserting  
7 "and site permits and design approvals" after "licenses".

8 Atomic Safety and Licensing Board

9 SEC. 206. Section 191 a. of the Atomic Energy Act  
10 of 1954 (42 U.S.C. §2241 a.) is amended by deleting  
11 "or" after "license"; inserting a comma in its place;  
12 and by inserting ", or site permit or design approval"  
13 after "authorization".

14 Other Conforming Amendments

15 SEC. 207. The table of contents of the Atomic  
16 Energy Act of 1954 is amended by--

17 (a) adding after the item relating to section 29  
18 the following:

19 "Sec. 29a. Backfitting Requirements.";

20 (b) striking the item relating to section 185  
21 and inserting in its place the following:

22 "Sec. 185. Construction Permits, Operating Licenses,  
23 and Construction and Operating Licenses."; and

24 (c) adding after the item relating to section 192  
25 the following:

- 1 "Sec. 193. Early Site Approval.
- 2 Sec. 194. Approval of Designs.
- 3 Sec. 195. Amendments and Deviations at Request of Holder.
- 4 Sec. 196. Additional Transitional Provisions.
- 5 Sec. 197. Safety Goal Report."

# NUCLEAR LICENSING AND REGULATORY REFORM ACT OF 1983

## Section-By-Section Analysis

### Section 101. Backfitting Requirements

This section would require the NRC to establish procedures for centralized review by the Commission of all backfitting requirements proposed by the NRC staff. The method of implementing this centralized review would be left to NRC discretion. A "backfitting requirement" would be defined as an addition, deletion, or modification to those aspects of the engineering, construction, or operation of a production or utilization facility upon which a permit, license or approval was issued. The Commission would adopt regulatory criteria to be used in reviewing and approving backfitting requirements which would include consideration of safety, security and cost factors.

A proposed backfitting requirement would only be approved by the Commission within this internal review process if the Commission determined that the proposed backfitting requirement would substantially enhance the public health and safety or the common defense and security as a result of improved overall safety of facility operation and that this improvement in overall safety was justified when considered over the remaining life of the facility. This test would allow the NRC to evaluate a generic backfitting requirement in terms of its effect on the overall level of safety at the class of affected facilities rather than at each individual plant. In addition, the test is intended to require the evaluation of a backfit proposal as it affects overall plant safety rather than just the safety aspects of one portion of the plant and to place the burden on the Commission to establish that the requirements of the standard have been met.

The Commission approval responsibility would be non-delegable in order to assure that the Commission itself approves of the backfitting requirements proposed by the staff. Since the Commission itself has the responsibility initially for determining the safety of overall plant operation when it grants a construction permit or an operating license, a modification in overall plant safety, even though such modification is approved through the centralized staff review process, should also require Commission review.

Backfitting proposals which are denied through the centralized review process before getting to the Commission review step would not need to be reviewed by the Commission. Disposition of these proposals would be left to NRC's discretion. Because the Commission approval under the centralized review process is only an internal approval of a backfit proposal, and is not a final agency action, this section provides in subparagraph (b) (2) that judicial review is not appropriate at this time.

It is important to note that this internal Commission approval does not make a backfit effective. A proposed backfitting requirement approved in the internal review process or proposed by any other person would not be effective until issued by the Commission in the form of an amendment to a permit, license, approval, or as a rule, regulation, order, or amendment thereof. Such an action by the Commission would be a final agency action and would be subject to judicial review. Except as provided in section 106, the Commission would apply the same standard it used earlier in the internal review process. Amendments proposed by the holder of a permit, license, or design approval under section 106 would have to meet the standard set out in that section. Although the scope of the internal review process is specifically described to cover backfit proposals issued as described above, nothing in the legislation would prevent the Commission from including items such as regulatory guides and branch technical positions within the scope of the centralized review process.

Issuance by the Commission of an amendment or a rule, regulation, or order makes the backfit applicable to the affected facilities, sites or designs. This issuance authority could be delegated by the Commission, in the same manner, for example, as it presently delegates some of its decisionmaking authority to Licensing Boards or Commission staff officials.

A proposed backfit would not be required to follow the procedures set out in this section if it were required to remedy an emergency safety problem.

Section 102. Construction Permits, Operating Licenses, and Construction and Operating Licenses

This section would authorize the NRC to grant, individually, a construction permit and an operating license for a production or utilization facility and to grant, as a combination license, a construction and operating license for a commercial production or utilization facility. An application for a construction and operating license would be required to contain a level of detail sufficient to allow the NRC to make the determinations, concerning public health and safety

and the common defense and security, required by the Atomic Energy Act and NRC rules and regulations. This section would not mandate the specific level of detail required in an application. That would be left to the NRC. For issues which are not usually decided at the pre-construction stage, such as emergency planning, the NRC would require that the application satisfy certain general criteria sufficient for the NRC to make the needed findings. Specific details concerning these issues could be filled in and agreed to with the NRC during the construction process.

An expedited procedure for commencement of operation would be provided for facilities which have a construction and operating license. A holder of a construction and operation license would certify that the plant has been constructed, and will operate, safely. It is intended that this licensee be allowed to certify construction when the plant has been substantially completed. The NRC would specify the requirements for this certification, including the level and type of detail required. Upon receipt of the certification, the NRC would publish a notice of receipt in the Federal Register. A thirty day public comment period would then be provided. The NRC staff would review the certification under its inspection and enforcement responsibilities and comments received from the public and report to the Commission, within forty-five days of publication of the notice of receipt in the Federal Register, concerning whether the certification is correct and whether operation should be allowed, prohibited, or limited.

The Commission then would have thirty days in which it could prohibit or limit operation if it determined that the licensee certification was incorrect. This decision to prohibit or limit operation would be in the Commission's discretion, based upon their review of the staff report and their own judgment. If operation were not prohibited or limited by the Commission, the licensee could commence operation fourteen days after the thirty-day NRC review period is over. Legal challenges to the NRC action or inaction could only be brought within this fourteen-day pre-operation period. Neither the Administrative Procedure Act nor the hearing procedures pursuant to section 189 would apply to the certification review process. Because all of the issues should have been raised and resolved earlier in the process, the intent of this section is to avoid any unnecessary delay. No public hearing is provided for and none is intended for the certification review process. This process would ensure that, once a COL is obtained, a licensee would be able to commence operation unless the Commission itself issued an order prohibiting or limiting operation.

Before issuance of a construction permit or construction and operating license, a State or local agency or other public entity would be required to certify to the NRC the need for the power to be generated by the facility if it is required by any other law to make this need for power determination. This certification would be binding on the NRC for purposes of the National Environmental Policy Act of 1969 (NEPA). An agency, such as TVA, that is authorized to certify need for power for its own facilities, would be required to submit its certification to NRC under the provision. While several different entities may now make some type of need projections, NRC will be bound only by the determination required by law to be performed. This certification would be valid for purposes of NEPA if it were valid under the law authorizing the agency to make the certification. Unless the agency were Federal, the certification would only be subject to review in a State court. If no state or local agency or public entity were required to make the certification as to a specific plant, the NRC would make the determination itself.

The NRC would be required to conduct on-site inspection of facility construction. An applicant for a construction permit or construction and operating license could perform those limited construction activities permitted by the NRC. While both safety-related and non-safety related activities could be permitted, safety-related activities may not continue for more than one year unless this period is extended by the NRC.

This section would not grant additional authority to states or other authorized public entities, but simply recognizes existing authority to make need for power determinations. Indeed, this section would not affect in any manner existing regulatory authority to states and local governmental units.

### Section 103. Hearings

This section sets forth which proceedings would be subject to a hearing and would provide procedures for conducting such hearings. It would establish a "hybrid" style hearing process for use in most proceedings. First, no less than thirty days after publication of a notice in the Federal Register, persons would be allowed to introduce written submissions into the record of the proceeding. Any person whose interest might be affected could then petition the hearing officer for oral presentation. The hearing officer could be an Atomic Safety Licensing Board, an administrative law judge, or other person or persons appointed by the NRC to conduct the proceeding. The NRC, in its own discretion, would choose the appropriate type of hearing officer. This section is not intended to modify present NRC authority as to appointment of hearing officers.



The hearing officer would grant oral presentation on any issue as to which the petitioner states his contentions, and their bases, with reasonable specificity. The oral presentation would be preceded by discovery and by written submittal, from all parties, of the facts and arguments to be relied upon in the oral argument.

After oral presentation has been completed, the hearing officer would allow each party a certain amount of time to submit to the hearing officer, in written form, proposed findings setting forth the issues which it believes would require a formal hearing for resolution and the reasons why it believes a formal hearing is required as to these issues. The term "formal hearing" is meant to denote a hearing conducted under 5 U.S.C. §§554, 556, 557 and 558. The hearing officer would then designate, as to those issues which had been included in the parties' proposed findings, which issues required a formal hearing for resolution and which issues did not. The hearing officer would not be prohibited from designating for formal hearing an issue not included in the parties' proposed designations if he decided that a formal hearing were required as to that issue.

The NRC would review these designations, the written submissions, and oral presentation, and affirm or reverse the hearing officer's designations as to each issue. The Commission would not be prohibited from mandating a formal hearing for an issue not designated by the hearing officer if it decided that a hearing were required as to the issue. Judicial review of these NRC decisions would not be available until the entire proceeding has been concluded and a final order has been entered. No judicial review would be allowed concerning whether a formal hearing is required as to an issue unless the issue had been included in a party's proposed findings or extraordinary circumstances excused the failure to include the issue.

Hearings for which notices of hearing were issued before enactment of this Act would be subject to those procedures that the NRC decided were appropriate. This could include adjudicatory, hybrid, or any other legally authorized procedure.

Enforcement hearings would be conducted entirely in a trial-type, formal hearing mode rather than the combined oral argument-formal hearing mode described above.

This section would not change the language contained in the NRC Fiscal Years 1982 and 1983 Authorization Act that authorized the Commission to issue and make immediately effective any amendment to an operating license when the Commission determined that such amendment involved no significant hazards consideration. This section would include a construction and operating license, in addition to an operating license, as being subject to this authority.

This section would provide limitations on information which may be admitted in hearings on various applications. It would affect only information introduced by a party, leaving the present sua sponte authority of the Commission and its hearing officers unchanged. On issues raised and resolved by NRC in other licensing proceedings, no other information could be admitted until significant, new information has been introduced and admitted which raises a prima facie showing that action is needed to substantially enhance the public health and safety or the common defense and security and that the improvement in overall safety is justified when considered over the remaining life of the facility.

The term "prima facie" means that the proponent of such information has the burden of going forward and must make an affirmative showing by tendering evidence which is sufficient, absent a rebuttal, to meet the test outlined above. Accordingly, the information would be ruled inadmissible if the proponent were unable to go forward or, having gone forward, made an insufficient showing. This standard is more restrictive than the standard presently used by the NRC to limit introduction of new information on issues previously raised and resolved.

Information concerning issues which have not been raised and resolved in other NRC licensing proceedings could not be admitted unless it is significant, relevant, material and concerns the overall effect of the plant on the public health and safety or common defense and security.

Information concerning design issues which have been raised and resolved in a design approval proceeding could not be admitted in a facility license proceeding. These issues would have to be raised and resolved in proceedings to amend the design approval. The issue of the relationship between the design approval and a site permit would not have been raised and resolved in the design approval proceeding, so this issue would not be subject to the above restriction.

This section will not affect the licensing procedures for the licensing of expanded spent nuclear fuel storage capacity pursuant to section 134 of P.L. 97-425.



#### Section 104. Early Site Approval

This section would authorize the NRC to approve sites or selected aspects of the sites for commercial production or utilization facilities prior to the filing of any applications to construct or operate facilities on the sites. Site permits would be valid and effective for ten years and renewable for additional ten-year periods. A site permit would be subject to backfitting as laid out in section 101 of this Act. A "hybrid" style hearing, under section 103 of this Act, would be provided on request before issuance of the permit.

A pre-approved site could be incorporated into an application for a construction permit or construction and operating license. Review of issues that had been raised and resolved in the site permit proceeding would then be strictly limited. Reexamination of such issues in hearings would be restricted as set forth in section 103 of the Act. Reexamination of these issues by the NRC staff in its application review would be limited by the restrictions on imposition of backfits under section 101 of this Act.

The need for power determination would be made at the construction permit or construction and operating license stage, in the manner prescribed in section 102 of this Act, and incorporated into the NEPA process by means of a supplement to the existing Environmental Impact Statement. An applicant for a construction permit or construction and operating license who had obtained a site permit could perform limited construction activities before issuance of the permit or license.

#### Section 105. Approval of Designs

This section would permit the NRC to approve facility or major facility subsystem designs for commercial production or utilization facilities independent of applications for construction permits or construction and operating licenses. It is envisioned that as nuclear powerplant technology matures and operational experience increases, the industry may wish to avail itself of the opportunity to obtain pre-approval of major subsystems and ultimately pre-approval of full facility designs. This section would make that opportunity available.

Such a pre-approved design could then be incorporated into an application for a construction permit or construction and operating license. Review of issues that had been

raised and resolved in the design approval proceeding would then be strictly limited. Reexamination of such issues in hearings would be restricted as set forth in section 103 of this Act. Reexamination of these issues by the NRC staff in its application review would be limited by the restrictions on imposition of backfits under section 101 of this Act.

The NRC would define the level of detail required in an application for a design approval. Design approvals would be valid and effective for ten years from date of issuance and could be renewed for additional ten-year periods. A design approval would be subject to backfitting as laid out in section 101 of this Act. A "hybrid" style hearing under section 103 of this Act would be provided on request before issuance of the design approval rule.

#### Section 106. Amendments and Deviations at Request of Holder

This section would set forth the standard to be applied by the Commission in determining whether or not to approve an amendment proposed by the holder of a permit, license, or approval. This section would authorize the Commission to approve an amendment proposed by the holder as long as the amendment would comply with the Atomic Energy Act and the Commission's own rules and regulations for the protection of the public health and safety or the common defense and security. This different test for amendment approval, in contrast to the approval standard required for an amendment proposed by the staff or any other person, is necessary to provide a reasonable degree of flexibility to the holder to make changes in its construction or operational activities. It should not be necessary for the Commission to meet a burden of showing safety improvements in situations where the holder of the license is the party seeking the amendment.

This section would also authorize the holder of a permit, license or approval to deviate from any aspect of the permit, license or approval without prior Commission approval unless the deviation involved a change in the technical specifications of the permit, license or approval or an unreviewed safety question. A record-keeping requirement would be established, as required by the Commission, so that the Commission could review the records to assure compliance with this section. A deviation that required a change in the technical specifications or an unreviewed safety question would be proposed to the Commission as an amendment and would have to meet the test set forth in subsection a. of this section. The definition of an unreviewed safety question is included in this section.

#### Section 107. License Application Review

This section would give the Advisory Committee on Reactor Safeguards general discretionary authority to decide which applications merit its review. Review of design approvals and applications referred to the ACRS by the NRC would be mandatory.

#### Section 108. Additional Transitional Provisions

This section would permit the present NRC procedures concerning early site review and design approval to remain in effect, subject to further NRC action, and extends the procedures to cover applicants for construction and operating licenses. This is done in order to ensure that these procedures stand on secure legal authority. The NRC's authority to modify, revoke or otherwise affect these regulatory programs is not affected.

The section would allow holders of, and applicants for, construction permits to apply for construction and operating licenses. This provision would apply even if the permit was granted before the effective date of this Act. Introduction and consideration of information at a hearing on an application for a construction and operating license for a facility which has been granted a construction permit would be limited in the same ways as are provided for all other licensing hearings in section 103.

#### Section 109. Safety Goal Report

This section would require the NRC to adopt and implement a safety goal and supporting methodologies and report to the Congress within one year from the effective date of this Act on the progress it has made toward adoption and implementation of the safety goal.

### TITLE II - CONFORMING AMENDMENTS

This section would amend several provisions of the Atomic Energy Act to conform with the provisions of this Act.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 6, 1983

OBZ

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Department of Justice Views  
on S.J. Res. 26

Gregory Jones of OMB has asked for comments by close of business today on a proposed letter from Robert McConnell to Chairman Thurmond, responding to the Chairman's request for the Department of Justice's views on S.J. Res. 26. That resolution would amend the Constitution to permit the President to reduce or disapprove any item of appropriations in any act or joint resolution. Any item not reduced or disapproved would become law, and a reduced or disapproved item could be restored to its original amount by a simple majority in each House rather than the two-thirds needed to override a typical veto. A new amount could be set by a two-thirds vote of both Houses. The resolution was introduced by Senator Dixon (D-Ill.).

McConnell's letter declines to take a position on the policy question whether the Constitution should be amended to give the President an item veto power. Instead, the letter points out four difficulties with the proposal as drafted:

- °the amendment would only apply to appropriation items, so its impact would be limited.
- °as worded the proposal would apparently permit Congress upon reconsidering an appropriation vetoed by the President to set a new amount which would become law without resubmission to the President.
- °since a simple majority of both Houses could reinstate the original amount disapproved or reduced by the President, without resubmission, the practical effect of the amendment may be minimal. A simple majority, after all, was required to pass the appropriation in the first place.
- °the proposal would not permit the President to veto non-germane riders or parts of bills containing unrelated provisions, the most frequently cited need for an item veto, since it is limited to appropriations items.

I think the idea behind Senator Dixon's proposed is a good one: the President could do much to break up budget "log-rolling," or at least make it more difficult, by forcing separate votes on individual appropriations items that are unlikely to be able to stand alone. I agree with Justice's decision not to comment on the policy behind such a reallocation of powers between the Legislature and the Executive, however, primarily because the resolution probably has no chance of passage. We are involved in enough inter-branch disputes under the present Constitution without looking for more under a proposed one.

Attachment

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 6, 1983

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Attachment



THE WHITE HOUSE

WASHINGTON

May 6, 1983

MEMORANDUM FOR GREGORY JONES  
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING  
COUNSEL TO THE PRESIDENT

SUBJECT: Department of Justice Views  
on S.J. Res. 26

Counsel's Office has reviewed the proposed report of the Department of Justice on S.J. Res. 26, and finds no objection to it from a legal perspective.

FFF:JGR:aw 5/6/83

cc: FFFielding  
JGRoberts  
Subj.  
Chron



# WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

FIOO4

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence  
Received (YY/MM/DD) 1 / 1Name of Correspondent: Gregory Jones☐ MI Mail Report

User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: SJ Res 26 (amendment authorizing the  
Pres to disapprove or reduce an item of  
appropriations)

## ROUTE TO:

## ACTION

## DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CWH011</u>	ORIGINATOR	<u>83 05 02</u>			<u>1 / 1</u>
<u>WAT1B</u>	Referral Note: <u>DD</u>	<u>83 05 02</u>		<u>S</u>	<u>83 05 12</u>
	Referral Note: _____	<u>1 / 1</u>			<u>1 / 1</u>
	Referral Note: _____	<u>1 / 1</u>			<u>1 / 1</u>
	Referral Note: _____	<u>1 / 1</u>			<u>1 / 1</u>
	Referral Note: _____	<u>1 / 1</u>			<u>1 / 1</u>

## ACTION CODES:

A - Appropriate Action  
C - Comment/Recommendation  
D - Draft Response  
F - Furnish Fact Sheet  
to be used as Enclosure

J - Info Copy Only/No Action Necessary  
R - Direct Reply w/Copy  
S - For Signature  
X - Interim Reply

## DISPOSITION CODES:

A - Answered C - Completed  
B - Non-Special Referral S - Suspended

## FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer  
Code = "A"  
Completion Date = Date of Outgoing

Comments: \_\_\_\_\_

Keep this worksheet attached to the original incoming letter.  
Send all routing updates to Central Reference (Room 75, OEOB).  
Always return completed correspondence record to Central Files.  
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

141719 *cu*

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
ROUTE SLIP

Richard Hauser	Take necessary action	<input type="checkbox"/>
TO Mike Uhlmann	Approval or signature	<input type="checkbox"/>
Frank Seidl	Comment	<input type="checkbox"/>
Karen Wilson	Prepare reply	<input type="checkbox"/>
Roger Greene	Discuss with me	<input type="checkbox"/>
Mike Horowitz	For your information	<input type="checkbox"/>
	See remarks below	<input type="checkbox"/>
FROM <i>GWTJ</i> Gregory Jones		DATE 4/25/83

REMARKS

May I have your c [REDACTED] the  
attached [REDACTED]

cc: Jim Murr

98TH CONGRESS  
1ST SESSION

# S. J. RES. 26

Proposing an amendment to the Constitution authorizing the President to disapprove or reduce an item of appropriations.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 1 (legislative day, JANUARY 25), 1983

Mr. DIXON introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary

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## JOINT RESOLUTION

Proposing an amendment to the Constitution authorizing the President to disapprove or reduce an item of appropriations.

1      *Resolved by the Senate and House of Representatives*  
2      *of the United States of America in Congress assembled*  
3      *(two-thirds of each House concurring therein), That the fol-*  
4      *lowing article is proposed as an amendment to the Constitu-*  
5      *tion of the United States, which shall be valid to all intents*  
6      *and purposes as part of the Constitution if ratified by the*  
7      *legislatures of three-fourths of the several States within*  
8      *seven years after its submission to the States for ratification:*

## 1 "ARTICLE —

2 "The President may reduce or disapprove any item of  
3 appropriation in any Act or joint resolution, except any item  
4 of appropriation for the legislative branch or the judicial  
5 branch of the Government. If an Act or joint resolution is  
6 approved by the President, any item of appropriation con-  
7 tained therein which is not reduced or disapproved shall  
8 become law. The President shall return with his objections  
9 any item of appropriation reduced or disapproved to the  
10 House in which the Act or joint resolution containing such  
11 item originated. The Congress may, in the manner prescribed  
12 under section 7 of article I for Acts disapproved by the Presi-  
13 dent, reconsider any item disapproved or reduced under this  
14 section, except that only a majority vote of each House shall  
15 be required to approve an item which has been disapproved  
16 or to restore an item which has been reduced by the Presi-  
17 dent to the original amount contained in the Act or joint  
18 resolution."



U. S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Strom Thurmond  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for the views of the Department of Justice on S.J. Res. 26, 98th Congress, 1st Session, which proposes an amendment to the Constitution authorizing the President to disapprove or reduce an item of appropriations.

The proposed amendment would authorize the President to reduce or disapprove "any item of appropriation in any Act or joint resolution, except any item of appropriation for the legislative branch or the judicial branch." If the President approves an act, any item not reduced or disapproved becomes law. In order to disapprove, the President must "return with his objections any item of appropriation reduced or disapproved" to the originating House. Congress may reconsider any item which the President has disapproved or reduced by a two-thirds vote in each House as prescribed under Article I, section 7, "except that only a majority vote of each House" is required to restore an item to the original amount contained in the act. The last clause distinguishes S.J. Res. 26 from a number of earlier proposals, e.g., H.J. Res. 146, 88th Cong., 1st Sess. (1963).

In commenting on this proposed amendment, the Department of Justice fully recognizes that Article V of the Constitution assigns to Congress the responsibility for proposing constitutional amendments to the States, that the Executive branch has no direct role in this process, and in particular that the proposal is not subject to the veto power of the President, Hollingsworth v. Virginia, 3 Dallas (3 U.S.) 378 (1798).

The proposed amendment would give the President a new power to exercise a so-called "item veto." Article I, § 7, cl. 2 of the Constitution, which provides that the President

shall return to the House in which it originated, with his objections, any bill of which he does not approve, has been interpreted as not permitting item vetoes. 1/

The question of an item veto was not raised at the Constitutional Convention. However, a number of Presidents have supported such a proposal, and numerous proposals to give the President an item veto power have been introduced in Congress, none of them acted on favorably. Forty-two state governors currently have some form of item veto power. See The Book of the States 276-78 (1982-1983).

While the Department of Justice takes no position on the policy question whether the Constitution should be amended to give the President an item veto power, we have several comments on the specific provisions of S.J. Res. 26. First, the proposed amendment would apply only to "any item of appropriation" in a bill or joint resolution, and thus would not have the impact outside the budget area which some state provisions have.

Second, the proposed amendment would authorize Congress to "reconsider any item disapproved or reduced" in accordance with the existing provisions in Article I, § 7 governing congressional overrides of Presidential vetoes. This would appear to permit Congress to substitute a new amount in an appropriation by a two-thirds majority of each House, and, as we read the proposed amendment, that new amount would not then be subject to Presidential disapproval. In effect, this would permit Congress to enact, by a two-thirds majority in each House, a new appropriation which would not be subject to Presidential disapproval. Since two-thirds in each House could override a veto, this provision may not be of great practical significance; at the same time, the Framers of the Constitution obviously believed that no "new" legislation should be enacted, even by a two-thirds majority vote of each House of Congress, until such time as Congress had the benefit of the President's specific objection to any particular legislation and the opportunity to consider the President's views.

Third, and more importantly, the proposed amendment would permit Congress to reinstate the original amount after an item veto or reduction by only a majority vote of each

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1/ See 33 Writings of George Washington 96 (1940); Taft, Chief Magistrate 14 (1916); Willoughby, II The Constitution of the United States 659-60 (2d ed. 1929).



House. The practical effect of this provision seems much more significant. If the President elects to use his item veto for particular appropriations, rather than vetoing an entire bill under Art. I, § 7, any item he disapproves may be reinstated by a majority vote in each House apparently without opportunity for the President to reconsider whether to veto the entire bill under Art. I, § 7. This clause could well eliminate the practical impact of the proposed amendment. It is true that the President could use the proposed amendment to ask Congress to focus separately on particular items. Whether Congress would do so, however, is another question. There is nothing to stop the original majority from simply reinstating the original figures. Reduction of "pork-barrel" appropriations and "log-rolling," which are viewed as the principal advantage of an item veto power, would be less likely under this clause: members of the original majority might stay together upon reconsideration for fear that by voting against others' "pork-barrel" they would lose their bargaining power in the next year's appropriation process. In sum, because of the last clause in the proposed amendment, S.J. Res. 26 would probably result in a much less meaningful addition to the President's power in the budget area than earlier proposals which have required a two-thirds majority to reinstate an item.

Finally, because it applies only to appropriation items, the amendment would not generally empower the President to disapprove "non-germane" riders or to veto parts of bills containing two or more unrelated subjects, a power which many Presidents have believed they should have in order to play the role in the legislative process intended for them by Art. I, § 7. We also note that the proposed amendment does not define "item," which may lead to controversy.

As we have stated, the adoption of S.J. Res. 26 involves policy considerations as to which the Department of Justice makes no recommendations.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Robert A. McConnell  
Assistant Attorney General  
Office of Legislative Affairs