

## Department of Energy

## § 862.3

Thence northerly approximately 3.20 miles to a point at latitude 36°37'26.804", longitude 116°04'11.355";

Thence northwesterly approximately 5.16 miles to a point at latitude 36°40'28.854", longitude 116°08'17.749";

Thence westerly approximately 8.63 miles to a point at latitude 36°40'23.246", longitude 116°17'37.466";

Thence southerly approximately 0.19 mile to a point at latitude 36°40'13.330", longitude 116°17'37.461";

Thence westerly approximately 8.49 miles to a point at latitude 36°40'13.666", longitude 116°26'47.915";

Thence northerly approximately 32.87 miles to a point at latitude 37°08'50", longitude 116°26'44.125";

Thence northwesterly approximately 15.37 miles to a point at latitude 37°20'45", longitude 116°34'20", the point of beginning herein.

[41 FR 56788, Dec. 30, 1978, as amended at 44 FR 37939, June 29, 1979]

## PART 862—RESTRICTIONS ON AIRCRAFT LANDING AND AIR DELIVERY AT DEPARTMENT OF ENERGY NUCLEAR SITES

Sec.

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AUTHORITY: 42 U.S.C. 2201(b), 2201(i) and 2278(a).

SOURCE: 52 FR 29838, Aug. 12, 1987, unless otherwise noted.

### § 862.1 Purpose.

The purpose of this part is to set forth Department of Energy, hereinafter "DOE", security policy regarding aircraft and air delivery on nuclear sites under the jurisdiction of DOE pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*).

### § 862.2 Scope.

(a) This part applies to all persons or aircraft entering or otherwise within or above areas within the boundaries of lands or waters subject to the jurisdiction, administration, or in the custody of the DOE at sites designated by DOE.

(b) This part is not applicable to:

(1) Aircraft operating pursuant to official business of the Federal Government;

(2) Aircraft over-flying or in the process of landing pursuant to official business of a state or local law enforcement authority with prior notification to DOE; or

(3) Aircraft in the process of landing on a DOE site due to circumstances beyond the control of the operator and with prior notification to DOE, if possible.

(c) Aircraft in paragraphs (b)(2) and (b)(3) of this section are within the scope of this part upon landing at a DOE designated site.

### § 862.3 Definitions.

(a) *Air delivery*. Delivering or retrieving a person or object by airborne means, including but not limited to, aircraft.

(b) *Aircraft*. A manned or unmanned device or any portion thereof, that is commonly used or intended to be used for flight in the air, including powerless flight. Such devices include but are not limited to any parachute, hovercraft, helicopter, glider, airplane or lighter than air vehicle.

(c) *Boundary*. A delineation on a map of Federal interest in land or water utilized by DOE pursuant to the Atomic Energy Act of 1954, as amended:

(1) Authorized by Congress, or

(2) Published pursuant to law in the FEDERAL REGISTER, or

(3) Filed or recorded with a State or political subdivision in accordance with applicable law.

(d) *Designated site*. An area of land or water identified in accordance with § 862.7 of this part.

(e) *Downed aircraft*. An aircraft that is on a designated site due to emergency landing or for any other reason.

(f) *Manager of Operations*. The manager of a DOE field office, the Manager of the Pittsburgh Naval Reactors Office, the Manager of the Schenectady Naval Reactors Office and, for designated sites administered directly by DOE Headquarters, the Chief Health, Safety and Security Officer.

[52 FR 29838, Aug. 12, 1987, as amended at 71 FR 68734, Nov. 28, 2006]

## § 862.4

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### § 862.4 Prohibitions and penalties.

(a) The following activities are prohibited by this part:

(1) Operation or use of aircraft on lands or waters of designated sites.

(2) Air delivery to or from designated sites.

(3) Removal or movement of downed aircraft, or participation in the removal or movement of downed aircraft, from or on a designated site unless prior authorization is obtained pursuant to § 862.5 of this part.

(4) Failure to remove a downed aircraft from a designated site in accordance with an order issued by the cognizant DOE Manager of Operations under § 862.5 of this part.

(5) Violation of Federal Aviation Administration regulations regarding minimum altitudes and prohibited flight maneuvers over a designated site.

(b) A person willfully engaging in activities prohibited by this part may be subject to the imposition of criminal penalties set forth in sections 223 and 229 of the Atomic Energy Act, as amended (42 U.S.C. 2273 and 2278(a)).

### § 862.5 Procedures for removal of downed aircraft.

(a) An aircraft on or brought on to a designated site, except as provided in § 862.2 (b)(1), shall not be moved within or removed from such areas except as provided for in this section. All such aircraft are subject to full inspection by DOE security personnel upon landing upon order of the Manager of Operations or his designee. Any attempt to depart or remove the aircraft from a designated site without clearance obtained pursuant to this section, may be assumed to be indicative of hostile intent by security forces at such sites.

(b)(1) The cognizant DOE Manager of Operations for a designated site may, on his own initiative, issue a written order to the owner or operator of a downed aircraft to require the removal of that aircraft from the site within 20 days of this notice. Such an order shall specify:

(i) The date upon which removal operations must be completed;

(ii) The times and means of access to and from the downed aircraft to be removed;

(iii) The manner of removal; and

(iv) An estimate of the cost of removal to DOE for which the owner or operator will be held liable if removal is accomplished by DOE.

(2) The owner or operator of the downed aircraft may file a written petition, supported by affidavits, to the cognizant Manager of Operations requesting that the order be modified or set aside. The petition may be granted by the Manager of Operations for good cause shown, upon a finding that it is clearly consistent with the national security, public safety, and federal property interests. Such petition must be filed at least 10 days prior to the date upon which removal is to be initiated, as specified in the order. The written decision of the Manager of Operations shall be a final agency action.

(c)(1) The owner of a downed aircraft may petition the cognizant Manager of Operations of permission to move or remove the downed aircraft from or within a designated site. The petition must provide assurances that the owner will fully compensate DOE for all costs incurred or damages experienced as a result of landing or removal through a contract for services. The Manager of Operations may, for good cause shown, waive part or all of the compensation which might otherwise be due DOE.

(2) The Manager of Operations may deny such petition in whole or part and prohibit removal of a downed aircraft upon finding that:

(i) The removal of a downed aircraft would create an unacceptable safety or security risk;

(ii) The removal of a downed aircraft would result in excessive resource loss of property damage or an unacceptable disruption of federal activities;

(iii) The removal of downed aircraft is impracticable or impossible;

(iv) The owner has failed to provide adequate assurances that all costs incurred or damages experienced by DOE due to landing or removal of aircraft will be fully paid immediately upon removal by the owner under a contract for services;

(v) An inspection of the aircraft has not been conducted by DOE security personnel.

(3) In the event that such petition is granted in whole or part, the cognizant

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Manager of Operations may issue an order, as set forth in (b)(1) (i) through (iv) of this section. In the event that a petition is denied in whole or part, the Manager of Operations shall issue a written decision which shall set forth the reasons for such denial.

(d) Failure to comply with an order issued by the Manager of Operations pursuant to this section is basis for DOE to consider the downed aircraft to be abandoned property. DOE may take whatever measures it deems necessary when it determines that downed aircraft is abandoned property.

(e) Notwithstanding paragraphs (b) and (c) of this section, the Manager of Operations may move or remove a downed aircraft from such an area upon oral or written notification to the owner or operator of such aircraft upon a finding that national security or operational requirements necessitate expedited movement or removal. The owner or operator may be held jointly and separately liable for all expenses incurred by DOE in the movement or removal of such aircraft. Such expenses shall be deemed to be incurred through an implied contract at law for services.

### § 862.6 Voluntary minimum altitude.

In addition to complying with all applicable FAA prohibitions or restrictions, aircraft are requested to maintain a minimum altitude of 2,000 feet above the terrain of a designated site. Applicable FAA prohibitions or restrictions take precedence over this voluntary minimum altitude.

### § 862.7 Designation of sites.

(a) DOE shall designate sites covered by this part as deemed necessary, consistent with the national security and public safety, through notice in the FEDERAL REGISTER.

(b) This part shall be effective as to any facility, installation, or real property on publication in the FEDERAL REGISTER of the notice designating the site.

(c) Upon designation of a site, the cognizant Manager of Operations may inform the public of such designation through press release or posting of notice at airfields in the vicinity of the designated site.

## PART 871—AIR TRANSPORTATION OF PLUTONIUM

Sec.

871.1 National security exemption.

871.2 Public health and safety exemption.

871.3 Records.

871.4 Limitation on redelegation of authority.

AUTHORITY: Pub. L. 94-187, 88 Stat. 1077, 1078 (42 U.S.C. 2391 *et seq.*); Energy Reorganization Act, Pub. L. 93-438, 88 Stat. 1233 (42 U.S.C. 5801 *et seq.*); secs. 2, 3, 91, 123, and 161 of the Atomic Energy Act of 1954, as amended.

SOURCE: 42 FR 48332, Sept. 23, 1977, unless otherwise noted.

### § 871.1 National security exemption.

(a) The following DOE air shipments of plutonium are considered as being made for the purposes of national security within the meaning of section 502(2) of Public Law 94-187:

(1) Shipments made in support of the development, production, testing, sampling, maintenance, repair, modification, or retirement of atomic weapons or devices;

(2) Shipments made pursuant to international agreements for cooperation for mutual defense purposes; and

(3) Shipments necessary to respond to an emergency situation involving a possible threat to the national security.

(b) The Deputy Administrator for Defense Programs may authorize air shipments falling within paragraph (a)(1) of this section, on a case-by-case basis: *Provided*, That the Deputy Administrator for Defense Programs determines that such shipment is required to be made by aircraft either because:

(1) The delay resulting from using ground transportation methods would have serious adverse impact upon a national security requirement;

(2) Safeguards or safety considerations dictate the use of air transportation;

(3) The nature of the item to be shipped necessitates the use of air transportation in order to avoid possible damage which may be expected from other available transportation environments; or

(4) The nature of the item being shipped necessitates rapid shipment by