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ATOMIC ENERGY COMMISSION

ISSUANCE OF AEC REGULATION TO PROHIBIT INTERFERENCE
WITH HARDTACK NUCLEAR TEST SERIES

Note by the Secretary

The attached report by the General Counsel is circulated for consideration by the Commission at an early meeting.

W. B. McCool

Secretary

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ATOMIC ENERGY COMMISSION

ISSUANCE OF AEC REGULATION TO PROHIBIT INTERFERENCE
WITH HARDTACK NUCLEAR TEST SERIES

Report by the General Counsel

1. Early in January of this year the Atomic Energy Commission received a copy of a letter addressed to the President from the Committee for Non-Violent Action against Nuclear Weapons. This letter informed the President that four members of the Committee plan to sail a thirty-foot ketch into the danger area encompassing the Bikini and Eniwetok atolls in the Marshall Islands in protest of the HARDTACK nuclear test series which the Atomic Energy Commission and the Department of Defense have announced will begin in April at the Eniwetok Proving Ground. The ketch is to remain in the danger area, "come what may," in an effort to halt the test activities.

2. On March 25th, the ketch, which is named the "Golden Rule" sailed from San Pedro, California, presumably, upon the basis of earlier announcements, bound for the Hawaiian Islands as a first stop, and from there to proceed to the danger area. With normal weather conditions, the "Golden Rule" should arrive in the Hawaiian Islands two weeks from date of departure.

3. Any delay of the HARDTACK test series caused by the presence of the "Golden Rule" in the danger area would measurably detract from its efficient and early completion. If the "Golden Rule" sails into or within the close vicinity of the danger area, such a delay may result. It is imperative, therefore, that some means of action be developed which will prevent the crew of the "Golden Rule" from carrying out its announced intention of interference.

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4. One course of action suggested by representatives of the Department of State, and favorably considered by the Legal Counsel's Office of the Department of Justice, is that the Atomic Energy Commission issue a regulation under its general authority to carry out the purposes of the Atomic Energy Act of 1954, and to protect the health and safety of the public, which would provide a basis for taking appropriate steps to prevent interference by the "Golden Rule". Attached is such a regulation, and the legal rationale upon which its proposed issuance is based is set forth in the following paragraphs.

5. Subsection 161 i. (3) of our Act provides that the Commission may prescribe such regulations as it deems necessary to govern any activity authorized pursuant to the Atomic Energy Act in order to protect health and to minimize danger to life or property. Subsection 161 q. authorizes the Atomic Energy Commission to promulgate such regulations as may be necessary to carry out the purposes of the Atomic Energy Act.

6. One of the activities authorized pursuant to subsection 91 a. of the Atomic Energy Act is to conduct experiments in the military application of atomic energy. Under this authority the Commission has tested nuclear weapons for a number of years. Further, sections 1, 2, and 3 of the Atomic Energy Act clearly indicate that it is an important purpose of the Act to develop atomic energy for military purposes, and there can be no question that nuclear weapons testing is an essential element in carrying out this purpose.

7. If it is assumed, as must be the case, that exclusion of unauthorized individuals from the danger area surrounding the Eniwetok Proving Ground is essential to the efficient and early completion of the HARDTACK test series, and to the protection of the health and safety of the public, it would seem legally

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feasible for the Commission to issue a regulation under the authority of section 161, mentioned above, which would prohibit an unauthorized entry or attempt to enter the danger area by persons subject to the jurisdiction of the United States.

8. It is realized, of course, that the danger area comprises roughly 390,000 square nautical miles and thus extends far beyond the geographical limits of the Pacific Trust Territories which are administered by the United States and of which the Eniwetok atoll is a part. We are dealing with international waters, but a valid use of these waters by the United States should be protected against the interference of our citizens, particularly when the activity involved, i.e., nuclear weapons testing, is one expressly authorized by Congress and one so vital to our national security.

9. The attached regulation, if issued, could be used as a basis for requesting two types of preventive action. Section 232 of our Act authorizes the Attorney General to apply for a court order enjoining or restraining any person who has engaged in or "is about to engage in" any acts which constitute or will constitute a violation of any regulation issued pursuant to the Atomic Energy Act, provided the appropriate showing can be made. As the letter from the Committee for Non-Violent Action clearly states an intention to enter the danger area in order to interfere with our test activities, and as the "Golden Rule" has sailed with the same announced intention, it would not appear to be a difficult task to show that the crew of the "Golden Rule" "is about to engage in" a violation of the attached regulation, once it were issued. Injunctive action might be accomplished during the stop-over of the "Golden Rule" in the Hawaiian Islands where jurisdiction over the crew could be obtained by the District Court in Honolulu.

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10. A second and probably preferable course of action would be for the Commission to issue the attached regulation as a basis for the Coast Guard taking enforcement measures. As the regulation, if issued and violated, carries criminal sanctions under section 223 of our Act, the Coast Guard, acting pursuant to the Act of August 4, 1949, as amended, 14 U.S.C. section 89, could arrest the vessel's crew on the high seas. The aforementioned provision authorizes the Coast Guard to "make * * * arrests upon the high seas * * * for the prevention, detection, and suppression of violations of laws of the United States." Implementing this authority, Coast Guard personnel "may at any time go on board of any vessel subject to the jurisdiction, or to the operation of any law, of the United States" for purposes of inquiry and inspection. An arrest may be made when "it appears that a breach of the laws of the United States rendering a person liable to arrest is being or has been committed". If such a procedure were followed, the vessel's crew, subsequent to the arrest, could be returned to the jurisdiction of an appropriate Federal district court. This alternative method of proceeding was favored by the Legal Counsel's Office of the Department of Justice in view of the possible delay that might be encountered in obtaining court action, and in view of the limitations that might be encountered in enforcing a court order which found the crew of the "Golden Rule" in contempt of an injunction. If the "Golden Rule" sailed from Honolulu in disregard of an injunction, application would have to be made for a court order finding the crew in contempt. This requirement would probably permit the ship to reach the high seas before the contempt order issued, and the latter's enforcement under such circumstances might not be legally possible.

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11. Both of these actions are based upon issuance of the attached regulation. In my opinion, its immediate issuance is advisable not only as a necessary condition to taking one or the other or both of the above-mentioned actions, but also as a notice to the "Golden Rule" that its entry into the danger area is prohibited.

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UNITED STATES ATOMIC ENERGY COMMISSION
TITLE 10 - ATOMIC ENERGY
CHAPTER 1 - ATOMIC ENERGY COMMISSION
PART 112 - ENIWETOK NUCLEAR TEST SERIES, 1958

On February 14, 1958, the Atomic Energy Commission issued public notice of the danger area which will be established April 5, 1958 in connection with the forthcoming HARDTACK nuclear test series to be conducted at the Eniwetok Proving Ground in the Marshall Islands. The efficient and early completion of this test series, which is to begin in April 1958, is of major importance to the defense of the United States and of the free world.

To avoid any unnecessary delay or interruption of that test activity, and to protect the health and safety of the public, the Atomic Energy Commission is issuing the following regulations which will be effective until the HARDTACK test series is completed:

In view of the importance of these tests to the national defense, the potential hazard to the health and safety of individuals who enter the danger area, and the early starting date of the tests, the Atomic Energy Commission has found that general notice of proposed rule making and public procedure thereon would be contrary to the public interest; and that good cause exists why these rules should be made effective without the customary period of notice.

Pursuant to the Administrative Procedures Act, Public Law 404, 79th Congress, 2d Session, the following rules are published as a document subject to codification, to be effective upon publication in the Federal Register:

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Sec.

112.1 Purpose

112.2 Scope

112.3 Definitions

112.4 Prohibition

Authority: Sections 112.1 to 112.4 issued under Section 161, 68 Stat. 948; 42 U.S.C. 2201. Interpret or apply Section 91, 68 Stat. 936, 42 U.S.C. 2121; Section 2, 68 Stat. 921, 42 U.S.C. 2012; and Sec. 3, 68 Stat. 922, 42 U.S.C. 2013.

Sec. 112.1 Purpose. The regulations in this part are issued in order to permit the Atomic Energy Commission in the interest of the United States to exercise its authority pursuant to section 91.a. of the Atomic Energy Act of 1954, as efficiently and expeditiously as possible with a minimum hazard to the health and safety of the public.

Sec. 112.2 Scope. This part applies to all United States citizens and to all other persons subject to the jurisdiction of the United States, its Territories and possessions.

Sec. 112.3 Definitions. As used in this part:

(a) "Danger Area" means that area which is to be established, effective April 5, 1958, encompassing the Bikini and Eniwetok Atolls Marshall Islands and which is bounded by a line joining the following geographic coordinates:

18° 30' N.,	156° 00' E.
18° 30' N.,	170° 00' E.
11° 30' N.,	170° 00' E.
11° 30' N.,	166° 16' E.
10° 15' N.,	166° 16' E.
10° 15' N.,	156° 00' E.

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(b) "HARDTACK test series" means that series of nuclear tests to be conducted by the Atomic Energy Commission and the Department of Defense at the Eniwetok Proving Ground located within the above defined danger area and which are to begin in April 1958, and end at an announced time during the calendar year 1958.

Sec. 112.4 Prohibition. No United States citizen or other person who is within the scope of this part shall enter, attempt to enter or conspire to enter the danger area during the continuation of the HARDTACK test series, except with the express approval of appropriate officials of the Atomic Energy Commission or the Department of Defense.