

99 U.S.C. § 1

Chapter 1

This Chapter may be cited for the regulation and control of research, development, lifecycle, and genetic material disposal of Genetically Engineered Extinct Prehistoric Species.

§ 1 Definitions

Definitions under the act include:

- (a) “genetically engineered extinct prehistoric species (GEEPS)” are defined as those species, once extinct and prehistoric (occurring before recorded history), modified by rDNA techniques, including the entire lineage of plants and animals that contain the modification. The term GEEPS can refer to both animals and plants with heritable rDNA constructs and animals and plants with non-heritable rDNA constructs (e.g., those modifications combining modern DNA with prehistoric and extinct DNA).
- (b) "special genetic material" is defined as any extinct and prehistoric genetic material not naturally occurring; but the material is engineered, modified, or created through, but not limited to, rDNA manipulation, gene splicing, genetic mutation, and toxic waste spills
- (c) Predator: A dinosaur which kills or feeds on other living animals for food.
- (d) Non-predator: A dinosaur which does not kill or feed on other living animals for food.
- (e) “person” includes an individual, partnership, corporation, association, or public or private organization other than an agency;
- (f) “party” includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;
- (g) “rule” means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;
- (h) “rulemaking” means agency process for formulating, amending, or repealing a rule;
- (i) “order” means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;
- (j) “adjudication” means agency process for the formulation of an order;
- (k) “major rule” means any rule that is likely to result in--
 - (1) an annual effect on the economy of \$100,000,000 or more;
 - (2) a major increase in costs or prices for consumers and individual industries likely affected by the rule.

§ 2 Policy Statement

§ 2.1 Declaration

Significant dangers and risks are associated with introducing once extinct and prehistoric life forms into



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

the global ecology through genetic manipulation and recombinant DNA (rDNA) experimentation. It is therefore declared to be the policy of the United States that:

(a) the development, use, and control of Genetically Engineered Extinct Prehistoric Species (GEEPS) shall be directed so as to make the maximum contribution to the general welfare and global scientific community through approved programs at universities, private enterprises, government agencies, and other approved entities, subject at all times to the paramount objective of maintaining public health and safety;

(b) the integrity of the global ecology must be maintained above any and all GEEPS development, use and control, and;

(c) because our global ecology is fragile and the consequences for upsetting the global ecology are potentially catastrophic, extreme care must be exercised to control the research, development, lifecycle, and genetic material disposal of GEEPS.

§ 2.2 Findings

(a) Primary Finding: Because private entities are profit oriented and the use of prehistoric DNA for cloning and replication is a prime area for abuse – affecting the public health and welfare – the US government should provide effective criminal and civil penalties to deter, punish, and remedy and damage cause by improper use of prehistoric DNA.

(b) The Congress of the United States hereby makes the following secondary findings concerning the development, use and control of GEEPS:

- (1) Because experimentation in the creation of new life requires significant thought, preparation, and planning -- such experimentations must be handled with vigilant and extreme caution.
- (2) Because the health and safety of the public must be protected, and defense of the country held secure, the processing and utilization of special genetic material and byproduct must be regulated in the national interest.
- (3) Because special genetic material, production facilities, and utilization facilities are affected with the public interest, the United States must regulate the production and utilization of special genetic material and of the facilities used in connection therewith.
- (4) Because interstate damage may be caused by the operation of facilities for production or utilization of special genetic material, those facilities are placed within interstate commerce for the purposes of this Act.
- (5) Because GEEPS may contribute to the defense of the nation and general welfare, funds of the United States may be provided for their development and use.
- (6) Because of the broad possible impact and implications of GEEPS, this Act applies to all conduct that affects trade and commerce of the United States of America.

§ 2.3 Objectives

(a) Congress declares that the regulation and control of GEEPS research, development, lifecycle, and



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

genetic material disposal shall be conducted to contribute to one or more of the following objectives:

- (1) The advancement of scientific knowledge.
- (2) The education of the public of the Global Community.
- (3) Maintaining the safety, health, and welfare of the public of the Global Community.
- (4) The preservation of the image of the United States as a world leader in technological advancements in the scientific realm.
- (5) The protection of the public in regards to significant scientific advancements that pose a public welfare risk.
- (6) The expansion of human knowledge.
- (7) The protection of the public from the improper use of science and its effects.
- (8) Allowing for means and methods of encouraging highly regulated private enterprises.

§ 2.4 Purpose

(a) It is the purpose of this Act to effectuate the policies set forth above by providing for:

- (1) a program of conducting, assisting, and fostering research and development of GEEPS and special genetic material in order to encourage maximum scientific and industrial progress;
- (2) a program for Government control of the production, possession, use, transportation, purchase, sale, housing, care, handling, and treatment of GEEPS and special genetic material, whether owned by the Government or others, by carriers or by persons or organizations engaged in using them for research, experimental, or exhibition purposes, so directed as to make the maximum contribution to the common defense and security and the national welfare, and to provide continued assurance of the Government's ability to enter into and enforce agreements with nations or groups of nations for the control of GEEPS and special genetic materials.
- (3) a program for the dissemination of unclassified scientific and technical information and for the control, dissemination, and declassification of Restricted Data, subject to appropriate safeguards, so as to encourage scientific and industrial progress. The program shall promote international cooperation by promoting the common security and making available to cooperating nations the benefits of peaceful applications of GEEPS as widely as expanding technology and considerations of the common defense and security will permit.
- (4) The program of administration shall be consistent with the foregoing policies and programs, with international arrangements, and with agreements for cooperation, which will enable the Congress to be currently informed so as to take further legislative action as may be appropriate.

§ 2.5 Environmental Impact

- (a) All agencies enforced under GEEPS shall:
- (b) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment;



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

- (c) identify and develop methods and procedures, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;
- (d) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--
 - (1) the environmental impact of the proposed action,
 - (2) any adverse environmental effects which cannot be avoided should the proposal be implemented,
 - (3) alternatives to the proposed action,
 - (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
 - (5) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;
- (e) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;
- (f) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;
- (g) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment where entertainment parks are built; and
- (h) initiate and utilize ecological information in the planning and development of entertainment parks.

§ 3 Effect

§ 3.1 Extraterritoriality

- (a) It is the intention of Congress that this Act has extraterritorial effect.
- (b) This Act therefore applies to, but is not limited to, all conduct by persons, companies, and entities occurring:
 - (1) within the United States;
 - (2) within Indian Country; and
 - (3) outside the United States but within the jurisdiction of the United States Federal Courts.
- (c) This Act gives Federal Courts extraterritorial jurisdiction over actions brought by the GEEPS Commission or by the United States for conduct in violation, or constituting significant steps in furtherance of a violation, of this act, notwithstanding whether said conduct occurs within the territorial jurisdiction of the United States.



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

§ 3.2 Preemption

- (a) Except as expressly provided by this Act, the GEEPS Act and rules promulgated pursuant to its authority preempt state law when state law obstructs the purpose and objectives or presents unduly burdensome obstacles to comports with federal regulations.
- (b) No state action shall be brought or maintained by creators of GEEPS biology or technology, or by owners or operators of GEEPS facilities, based on allegations that the GEEPS Commission failed to adequately warn of danger, or that that the Commission negligently approved design and construction plans for the facility.
- (c) On the five-year anniversary of the date this GEEPS Act is enacted, and every five years thereafter, the GEEPS Commission shall transmit to Congress a report documenting the effect of the interaction of the GEEPS Act and the various state laws, and shall provide to Congress with that report recommendations regarding preemption and other aspects of the GEEPS Act in order to more effectively effectuate the purposes of the GEEPS Act.

§ 3.3 Compensation for Injury Due to Violation of this Act

§ 3.3.1 Claims for Damages

- (a) This section applies to any person seeking to recover damages for injuries (including death) resulting from the violation of this Act or rules and regulations promulgated hereunder by any person or entity. An action to recover damages under this section is commenced by filing a claim with the Commission or with an officer or body the Commission shall designate by rule. The claim shall name as defendant the person or entity alleged to have caused the injury by violating this Act or rules and regulations promulgated hereunder, but in no event shall a complaint under this section be made against the United States of America or any division thereof. The claim shall contain specific allegations sufficient, if proven, to show that the person or entity against whom damages are claimed violated this Act or rules and regulations promulgated hereunder and that the violation caused injury to the claimant.
- (b) The person filing the claim shall serve notice of the claim on the person or entity alleged to have caused the injury by violating this Act or rules and regulations promulgated hereunder, pursuant to the notice requirements of the Federal Rules of Civil Procedure Rule.
- (c) Damages proven in a claim filed under this section shall be paid to the claimant by the person or entity responsible for violating of this Act or rules and regulations promulgated hereunder. The person filing the claim under this section, or their representatives or estate, shall be entitled to recover actual damages having resulted or reasonably certain to result from the violation of this Act or rules and regulations promulgated hereunder, including reasonable attorney fees and other costs to pursue the claim. The estate of the decedent whose death was caused by violation a violation of this Act or rules and regulations promulgated hereunder shall be entitled to recover actual pre-death damages resulting from the injury plus \$50,000. In no case shall punitive damages be awarded to a claimant under this section, but this section shall not impair the ability of the Commission to assess civil penalties against a person or entity shown to be violating this Act or rules and regulations promulgated hereunder.

§ 3.3.2 Time for Filing Claims

- (a) A claim under subsection 3.3.1 above, must be filed within 3 years after the injury or death. In a case of latent injury, the time for filing claim does not begin to run until the claimant has a compensable injury



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

and is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship of the compensable injury to the violation of this Act or rules and regulations promulgated hereunder.

(b) The time limitations above this section do not—

- (1) begin to run against a minor until he reaches 21 years of age or has had a legal representative appointed; or
- (2) run against an incompetent individual while he is incompetent and has no duly appointed legal representative; or
- (3) run against any individual whose failure to comply is excused by the Secretary on the ground that such notice could not be given because of exceptional circumstances.

§ 3.3.3 Hearing on the claim and order

(a) The Commission shall conduct a hearing, under oath on any claim which sets forth a prima facie case for recovery of damages under this section. The Commission may regulate the course of the hearing pursuant to rules and regulations promulgated hereunder. The Commission may, on motion of the claimant or defendant, order pre-hearing discovery.

(b) The claimant shall have the burden of proving the violation of this Act or rules and regulations promulgated hereunder, the injury, and amount of damages by a preponderance of the evidence.

(c) In conducting the hearing, the Commission is not bound by common law or statutory rules of evidence, by technical or formal rules of procedure (except as otherwise required by this section), but may conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the Commission shall receive such relevant evidence as the claimant adduces and such other evidence as the Commission determines necessary or useful in evaluating the claim.

(d) Within 20 business days of the hearing, the Commission shall determine and make a finding of facts and make an order for or against payment of compensation under this section. Such orders are enforceable by the District Court wherein the claimant or defendant resides or conducts business, and are appealable as any other order under this Act.

§ 3.3.5 Additional Rules; Hearing Officers and Appeals

(a) The Commission may prescribe rules and regulations necessary for the administration of this section including rules and regulations for the conduct of hearings under this section.

(b) The Commission may appoint officers or a body of officers to fulfill the Commission's duties under this section. If such an officer or body enters an order under subsection 3.3.4, the order may be appealed to the Commission. Once the Commission affirms or denies the order, or declines to review the order, the order shall then be a final order appealable as any other order of the Commission under this Act.

§ 4 The GEEPS Commission

§4.1 GEEPS Commission

§ 4.1.1 Composition and Function of Commission

(a) There is established an independent regulatory commission to be known as the Genetically Engineered and Extinct Prehistoric Species (GEEPS) Commission which shall be composed of seven members, each of whom shall be a citizen of the United States. The President shall designate one



EDUCATING
TOMORROW'S
LAWYERS®

This resource was downloaded from <http://etl.du.edu>

IAALS

INSTITUTE for the ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

member of the Commission as Chairman thereof to serve as such during the pleasure of the President. The Chairman may from time to time designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all meetings of the Commission and a quorum for the transaction of business shall consist of at least five members present. Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information relating to the performance of his duties or responsibilities, and shall have one vote. Action of the Commission shall be determined by a majority vote of the members present. The Chairman (or Acting Chairman in the absence of the Chairman) shall be the official spokesman of the Commission in its relations with the Congress, Government agencies, persons, or the public, and, on behalf of the Commission, shall see to the faithful execution of the policies and decisions of the Commission, and shall report thereon to the Commission from time to time or as the Commission may direct. The Commission shall have an official seal which shall be judicially noticed.

- (b) The Chairman of the Commission shall be the principal executive officer of the Commission, and he shall exercise all of the executive and administrative functions of the Commission, including functions of the Commission with respect to (a) the appointment and supervision of personnel employed under the Commission (other than personnel employed regularly and full time in the immediate offices of commissioners other than the Chairman, and except as otherwise provided in this chapter), (b) the distribution of business among such personnel and among administrative units of the Commission, and (c) the use and expenditure of funds.
- (c) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.
- (d) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining upon the distribution of appropriated funds according to major programs and purposes.

§ 4.1.2 Appointment, Term, and Removal of Members

(a) Appointment

- (1) Members of the Commission (“members”) shall be appointed by the President, by and with the advice and consent of the Senate.
- (2) Appointments of members pursuant to this subsection shall be made in such a manner that not more than four members of the Commission shall be members of the same political party.
- (3) Three members of the Commission shall be representatives of private industry. The other four members shall be from the public sector.



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

(b) Term of Office—

Each member shall serve for a term of seven years, each such term to commence on July 1, except that of the seven members first appointed to the Commission, one shall serve for one year, one for two years, one for three years, one for four years, one for five years, one for six years and one for seven years to be designated by the President at the time of appointment; and except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term. For the purpose of determining the expiration date of the terms of office of the five members first appointed to the GEEPS Commission, each such term shall be deemed to have begun July 1, 2012.

(c) Submission of appointments to Senate—

Such initial appointments shall be submitted to the Senate within 180 days of passage of the Act.

(d) Removal of members; prohibition against engagement in business or other employment—

Any member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

§ 4.1.3 Conflict of Interest

Members of the commission and employees of the agency are declared to be in positions of public trust. In order to ensure the confidence of the people of the United States in the integrity of the agency, its employees, and the commission, the following restrictions shall apply:

(a) Acceptance of fees, commissions, gifts, or other considerations prohibited

No member, attorney, or other employee of the agency shall, directly or indirectly, be the beneficiary of, receive or solicit any fee, commission, gift, or other consideration of monetary value for or in connection with any transaction or business under this chapter other than such salary, fee, or other compensation as she may receive as such member, attorney, or employee of the agency.

(1) Notwithstanding any other provision of this statute, the following exceptions shall apply to the rule against acceptance of gifts:

- (i) Unsolicited gifts with a monetary value of \$20.00 or less;
- (ii) Gifts clearly received on behalf of a familial or personal relationship;
- (iii) Free attendance to an event or function at which the member, attorney or employee is speaking or presenting on behalf of the agency; and
- (iv) Gifts given as an award or honorary degree for work conducted on behalf of the agency.

(b) Acquisition of Interest in a Regulated Entity

Except as otherwise provided in this subsection, no member or employee of the Agency who acts on or reviews applications, investigates or enforces regulations set forth under this statute may acquire, directly or indirectly, any financial interest in such regulated entity for a period of three years after the date on which such officer or employee ceases to be employed by the Commission or Agency.

(c) Prohibitions



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

- (1) Any member, attorney or employee of this agency, including but not limited to Commissioner, Commissioner member, Advisory Committee member, Inspector or Enforcer, shall not—
 - (i) carry out any inspections of any operation in which such agent, or employee of such agent has, or has had, a financial interest, including the provision of consultancy services; or
 - (ii) accept payment, gifts, or favors of any kind from the business or entity inspected other than prescribed fees; or
 - (iii) be financially interested (directly or otherwise) in any business entity falling under regulation by GEEPS; or
 - (iv) be in the employment of, or accept gratuities from, any such entity; or
 - (v) be engaged in any other kind of activity specified by regulation of the GEEPS Commission as involving a conflict of interest; provided, however, that the GEEPS Commission may by regulation provide exceptions to the restrictions of this section as the GEEPS Commission determines are consistent with the purposes of this section.

- (2) Prohibition with respect to personnel of official or Federal agencies and business or governmental entities related to such agencies; substantial stockholder; use of official inspection service; authority delegation; report to Congressional committees
 - (i) No official agency or a Federal agency delegated authority under this chapter, or any member, director, officer, or employee thereof, and no business or governmental entity related to any such agency, shall be employed in or otherwise engaged in, or directly or indirectly have any stock or other financial interest in, any business involving the commercial transportation, storage, merchandising, licensing, or other commercial handling of genetically engineered prehistoric species, or the use of official inspection service; and no business or governmental entity conducting any such business, or any member, director, officer, or employee thereof, and no other business or governmental entity related to any such entity, shall operate or be employed by or directly or indirectly have any stock or other financial interest in, any official agency or a Federal agency delegated inspection authority. Further, no substantial stockholder in any incorporated official agency shall be employed in or otherwise engaged in, or be a substantial stockholder in any corporation conducting any such business, or directly or indirectly have any other kind of financial interest in any such business; and no substantial stockholder in any corporation conducting such a business shall operate or be employed by or be a substantial stockholder in, or directly or indirectly have any other kind of financial interest in, any official agency.

 - (ii) A substantial stockholder of a corporation shall be any person holding 2 per centum or more, or one hundred shares or more, of the voting stock of the corporation, whichever is the lesser interest. Any entity shall be considered to be related to another entity if it owns or controls, or is owned or controlled by, such other entity, or both entities are owned or controlled by another entity.

 - (iii) If a Federal governmental agency is delegated authority to perform official inspection, or a Federal governmental agency is designated as an official agency, the



This resource was downloaded from <http://etl.du.edu>

EDUCATING
TOMORROW'S
LAWYERS®

IAALS

INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

GEEPS Commission shall specify the officials and other personnel thereof to which the conflict of interest provisions of this subsection (2) apply.

§ 4.1.4 Penalties

- (a) Any persons violating any provision of this section shall, upon conviction thereof, be punished by the following:
 - (i) Whoever engages in the conduct constituting the offense shall be imprisoned for not more than two years or fined in the amount set forth in this title, or both.
 - (ii) Whoever willfully engages in the conduct constituting the offense shall be imprisoned for not more than five years or fined in the amount set forth in this title, or both.
- (b) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under any provision of this section and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than \$200,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.
- (c) If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense under any provision of this section, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.

§ 4.1.5 Committee Review

The Designated Federal Officer or alternate for each GEEPS advisory committee and the General Counsel or designee shall review the interests and affiliations of each member of the Designated Federal Officer's advisory committee annually, and upon the commencement of the member's appointment to the committee, for the purpose of ensuring that such appointment is consistent with the laws and regulations on conflict of interest applicable to that member.

§ 4.1.6 Testimony and Ethics

- (a) Nothing in this section prevents an individual from giving testimony under oath or from making statements required to be made under penalty of perjury.
- (b) This section is to be considered supplemental to all other criminal or civil statutory, or common law regulations and penalties set forth under federal or state law including, but not limited to, the Standards of Ethical Conduct codified at 5 C.F.R. § 2635, and the following federal statutes: 18 U.S.C. §§ 203, 205, 207-09, as enforced under 18 U.S.C. § 216.

§ 4.2 Functions of the Commission

- (a) Those functions of the GEEPS Commission, hereinafter referred to as the "Commission", concerned with:
 - (1) policy formulation;



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

(2) rulemaking, as promulgated in Section (a) of Rulemaking and Adjudication, except that those matters that do not pertain to policy formulation orders or adjudications shall be reserved to the Chairman of the Commission;

(3) orders and adjudications, as promulgated in Section (b) of Rulemaking and Adjudication; shall remain vested in the Commission. The Commission may determine by majority vote, in an area of doubt, whether any matter, action, question or area of inquiry pertains to one of these functions. The performance of any portion of these functions may be delegated by the Commission to a member of the Commission, including the Chairman of the Geeps Commission, hereinafter referred to as the "Chairman", and to the staff through the Chairman.

(b) With respect to the following officers or successor officers duly established by statute or by the Commission, the Chairman shall initiate the appointment, subject to the approval of the Commission; and the Chairman or a member of the Commission may initiate an action for removal, subject to the approval of the Commission:

- (1) Secretary of the Commission,
- (2) General Counsel,
- (3) Director of Hazard Elimination Agency Team (HEAT),
- (4) Director of the Office of Compliance and Enforcement.
- (5) Director of Licensing

§ 4a Offices Under the Commission

§ 4a.1 The Office of Congressional Affairs—

- (a) Advises the Chairman, the GEEPS Commission, and GEEPS staff on all GEEPS relations with Congress and the views of Congress toward GEEPS policies, plans and activities;
- (b) Maintains liaison with Congressional committees and members of Congress on matters of interest to GEEPS;
- (c) Serves as primary contact point for all GEEPS communications with Congress;
- (d) Coordinates GEEPS internal activities with Congress;
- (e) Plans, develops, and manages GEEPS' legislative programs; and
- (f) Monitors legislative proposals, bills, and hearings.

§ 4a.2 The Office of Administration—

- (a) Develops and implements agency-wide contracting policies and procedures;
- (b) Develops policies and procedures and manages the operation and maintenance of GEEPS offices, facilities, and equipment;
- (c) Plans, develops, establishes, and administers policies, standards, and procedures for the overall GEEPS security program; and
- (d) Develops and implements policies and procedures for the review and publication of GEEPS



This resource was downloaded from <http://etl.du.edu>

EDUCATING
TOMORROW'S
LAWYERS®

IAALS

INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

rulemakings, and ensures compliance with the Regulatory Flexibility Act and the Congressional Review Act and provides translation services.

§ 4a.3 The Office of the General Counsel—

- (a) Directs matters of law and legal policy, providing opinions, advice, and assistance to the agency with respect to all of its activities;
- (b) Reviews and prepares appropriate draft GEEPS Commission decisions on public petitions seeking direct GEEPS Commission action and rulemaking proceedings involving hearings, monitors cases pending before presiding officers;
- (c) Provides interpretation of laws, regulations, and other sources of authority;
- (d) Reviews the legal form and content of proposed official actions;
- (e) As requested, provides the agency with legal advice and opinions on acquisition matters, including agency procurement contracts; interagency agreements to acquire supplies and services; and grants and cooperative agreements. Prepares or concurs in all other interagency agreements, delegations of authority, regulations; orders; licenses; and other legal documents and prepares legal interpretations thereof;
- (f) Reviews and directs intellectual property (patent) work;
- (g) Represents and protects the interests of GEEPS in legal matters and in court proceedings, and in relation to other government agencies, administrative bodies, committees of Congress, foreign governments, and members of the public; and
- (h) Represents the GEEPS staff as a party in GEEPS administrative hearings.

§ 4b Advisory Committees

(a) This provision grants the GEEPS Commission the power, in accordance with The Federal Advisory Committee Act (5 U.S.C.A. Appx. 2 §§ 1 et seq.) (FACA), to establish advisory bodies, within the purview of GEEPS' regulatory responsibilities, to provide advice, make recommendations, and render expert opinions as requested by the GEEPS Commission, inter-agency departments, and GEEPS staff.

- (1) Advisory Committees shall consist of a maximum of fifteen members appointed by the GEEPS Commission for terms of four years each.
- (2) One member shall be designated by the GEEPS Commission as its Chairman.
- (3) The members of the Committee shall receive a per diem compensation for each day spent in meetings or conferences, or other work of the Committee, and all members shall receive their necessary traveling or other expenses while engaged in the work of the Committee.
- (4) The members of the General Advisory Committees established may serve as such without regard to the provisions of section 281, 283, or 284 of title 18 of the United States Code, except insofar as such sections may prohibit any such member from receiving compensation from a source other than a non-profit educational institution.



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

(b) There is hereby established an Advisory Committee on Construction, Security and Containment Licensing Review. The Committee shall:

- (1) Provide expert opinions on issues including, but not limited to, materials, design, engineering, development, power sources and operation of facilities seeking or currently in possession of license(s) issued by the GEEPS Commission;
- (2) Review the adequacy of proposed safety standards;
- (3) Review safety studies and facility license applications referred to it and shall make reports thereon;
- (4) Consider geographic placement, geological effects, and environmental impact of GEEPS and GEEPS facilities and advise and render expert opinions on appropriate geographical locations to establish GEEPS facilities;
- (5) Advise the GEEPS Commission and other GEEPS staff with regard to the hazards of proposed or existing facilities related to securing and containing GEEPS in all stages of reproduction of rDNA;
- (6) Advise the GEEPS Commission and other GEEPS staff with regard to proposed emergency response procedures related to the escape of any GEEPS or any injury to a human by any GEEPS.
- (7) Perform such other related duties as the GEEPS Commission or other inter-agency departments may request.
- (8) Additional details regarding this Advisory Committee shall be provided in the regulations.

(c) There is hereby established an Advisory Committee on rDNA Licensing, Reproduction and Animal Health. This Committee shall:

- (1) Review safety studies and license applications referred to it by the GEEPS Commission and shall make reports and recommendations thereon;
- (2) Provide expert opinions to the GEEPS Commission on the design, development, and operation of rDNA research and experimentation requiring licensure;
- (3) Advise the GEEPS Commission and other GEEPS staff with regard to the hazards of proposed or existing experimentation with rDNA and the adequacy of proposed safety standards;
- (4) Advise the GEEPS Commission on the different prehistoric species sought to be licensed, including, but not limited to the species size, weight, predator status, and natural aggression tendencies;
- (5) Advise the GEEPS Commission on proper methods of reproduction and safe birthing procedures;



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

- (6) Advise the GEEPS Commission on proper procedures for the feeding, care, treatment of illnesses or injury including euthanasia guidelines, and the transportation of GEEPS within or between licensed facilities;
- (7) Perform other such related duties as the GEEPS Commission or other inter-agency departments may request.
- (8) Additional details regarding this Advisory Committee shall be provided in the regulations.

(d) There is hereby established an Advisory Committee on International and Indigenous Programs. This Committee shall:

- (1) Advise the GEEPS Commission, the Chairman, and GEEPS staff on current and developing international social, political, environmental, and economic affairs relevant to GEEPS.
- (2) Recommend policies concerning GEEPS exports and imports, international safeguards, international physical security, and international cooperation and assistance in safety and protection.
- (3) Plan, develop, and manage international genetically engineered extinct prehistoric species safety information exchange programs and coordinate international research agreements;
- (4) Obtain, evaluate, and use pertinent information from other GEEPS and U.S. Government offices in providing opinions on GEEPS export and license applications;
- (5) Establish and maintain working relationships with individual countries and international genetically engineered extinct prehistoric species organizations, as well as other involved U.S. Government agencies;
- (6) Ensure that all international activities regulated by this agency are well coordinated domestically and internationally and that they are consistent with GEEPS regulations, U.S. policies, and international customs; and
- (7) Ensure that international activities regulated by GEEPS will, to the furthest extent possible, uphold the rights of Indigenous peoples as recognized by international human rights law and custom.

(e) There is hereby established an Advisory Committee on GEEPS waste management. The Committee shall:

- (1) Advise and render expert opinions on all aspects of GEEPS waste management, within the purview of GEEPS' regulatory responsibilities, with primary emphasis on disposal of waste management, but will also include other aspects such as handling, processing, transportation, storage, and safeguarding GEEPS waste.
- (2) Examines and report on specific areas of concern referred to it by the GEEPS Commission or a designated representative of the GEEPS Commission,



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

- (3) Undertake studies and activities on its own initiative as appropriate to carry out its responsibilities.

(f) Additional rules pertaining to Advisory Committees under this section will be promulgated by the agency.

§ 5 Licensing

The Licensing Commission, under the GEEPS Commission, is authorized to license the construction, distribution, and use of genetic material as defined by the GEEPS Act and the construction of facilities created for those purposes.

§ 5.1 Construction Licensing

- (a) The Licensing Commission shall, for every application of a construction license, hold a full adjudicatory hearing, on the record after opportunity for agency hearing, to find on the merits, whether the applicant will be able to comply with the required safety standards and procedures promulgated through agency rulemaking, and make a good faith showing that the applicant will meet ethical standards.
- (b) To this end, the Licensing Committee, with the aid of a fact finding team, shall:
 - (1) Publish in the Federal Register the required safety standards for construction of facilities, their maintenance, and adequate safety procedures; and
 - (2) On the record after opportunity for agency hearing, after giving opportunity for industry leaders to be heard, find the proper level of ethical standards to be applied, and publish those standards in the Federal Register.
- (c) Upon a sufficient finding that the applicant will be able to comply with standards set out, the Licensing Commission will issue a license for the construction of a production and care facility.
- (d) The Licensing Commission shall share acquired information with the Office of Compliance and Enforcement, and HEAT.
- (e) Inspections, pursuant to the Act, shall be conducted periodically to guaranty that all standards are being met. Data from such inspections shall be shared with appropriate departments within the Agency in the form of a report compiled and distributed not more than 20 days after the date of the inspection.
- (f) If the Licensing Commission determines the minimum agency standards are not being met, or can conclusively determine that those standards will not be met in the future, construction licensing will be revoked.
- (g) Upon notice of revocation, the applicant has 30 days to appeal the decision to the Licensing Commission. An appellant must prove by a preponderance of the evidence on the record, that the revocation was improper.

§ 5.2 Transfer of Licenses – Consolidation, Merger, Sale, & Purchase

- (a) Licenses for the construction of facilities and the use of genetic material in the creation of prehistoric animals, cannot be transferred to another through Sale or Purchase; except through



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

- (1) Consolidation; or
 - (2) Merger.
- (b) In a case of Consolidation or Merger, the transferee must make a showing to the Licensing Commission that all safety and ethical standards will continue to be met.

§ 5.3 Operations Licensing

- (a) Each facility which, upon completion of construction, wishes to engage in the development or use of genetic material under GEEPS, shall apply for an operating license.
- (b) The Licensing Committee shall, for every application of an operation license, hold a full adjudicatory hearing on the merits to find:
- (1) whether the safety standards for construction of facilities, maintenance of facilities, and adequate safety procedures have been met under §5.1;
 - (2) whether the facility shows a sufficient understanding of the needs of each species it applies for;
 - (3) whether the facility shows a sufficient understanding of the known risks and potential risks of each species; and
 - (4) whether the safety standards above are sufficient to contain all applied for species, taking into account whether the species dwells in land, water, or air.
- (c) Upon a finding that the facility licensee has met the requisite safety standards for each species it has applied for, the Licensing Commission shall issue an operation license to the facility, which shall be valid for a period of 1 year.
- (d) Each facility licensee shall specify in their application for an operation license the types of species they will be cloning and or keeping at the facility. The licensee will include at minimum the following information:
- (1) each species of animal or plant that the facility licensee intends to develop or keep;
 - (2) information regarding whether that specie is carnivorous, omnivorous, or herbivorous;
 - (3) the safety mechanisms in place to contain each species listed, as well as the emergency provisions in place for an escape; and
 - (4) such other information as may be determined by rule or regulation.
- (e) The Licensing Commission shall issue a separate license for predator and non-predator species.
- (f) At the Agency's discretion, but at least once each year, the Office of Compliance and Enforcement shall send an inspection team to inspect each facility licensee to determine whether the requisite safety standards are kept up to date and to ensure that the facility is complying with the terms of their license, including but not limited to determine what types of species the facility is engaged in cloning. Within a reasonable time after the inspection, the results shall be compiled into a brief report and shared with HEAT and the Licensing Commission.

§ 6 Office of Compliance and Enforcement

§ 6.1 The Mission and Authority of the Office of Compliance and Enforcement (“OCE”)

- (a) The OCE central mission is to promote safety in research, development, lifecycle, and genetic material disposal of GEEPS.
- (b) The OCE has broad authority to take actions that the Agency deems necessary to carry out the provisions of GEEPS, which includes but does not limit the power to investigate and inspect; issue notices, citations, and pursue enforcement violation.
- (c) The OCE is responsible for GEEPS Enforcement, but is to coordinate and share information with other branches of the agency.

§ 6.2 Applicability

The compliance and enforcement under the OCE is applicable to all activities and entities regulated by this Act.

§ 6.3 Structure

- (a) The OCE shall be headed by an Executive Secretary (Executive), who is appointed by the Agency’s Commission.
- (b) The central function of the Executive is to ensure that the appropriate parties comply with the GEEPS Act.
- (c) The Executive will report quarterly to the Commission regarding those requirements laid out in GEEPS rules and regulations.
- (d) Conflict of interest provisions under this title that apply to the GEEPS Commission also apply to the Executive.
- (e) An OCE member’s term is limited to five years
- (f) The Executive is required to hold a monthly meeting to promote a cohesive functionality between the licensing and HEAT departments in order to facilitate cooperating and the sharing of relevant information.
- (g) The Executive will participate in compiling the Agency’s annual report to Congress.

§ 6.4 Enforcement

- (a) OCE is authorized to assert discretion in determining the extent and the mechanism of its enforcement against an entity or individual that is subject to GEEPS.
- (b) OCE will operate completely independent of HEAT. Heat will turn over all information it obtains through any authorized emergency investigation.
- (c) OCE is authorized and responsible for reviewing such information as well as additional information as provided by the agency, to determine the existence of non-compliance with this Act.
- (d) OCE and the licensing branch of the agency are authorized to exchange information in order to determine non-compliance or whenever it may otherwise be efficient to do so.
- (e) OCE must act within one year of receipt of information that indicates evidence of non-compliance.
- (f) OCE is authorized to act against any party pursuant to Section 10 of the Act.



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

§ 6.5 Investigation and Inspections

- (a) For the purpose of determining compliance with this Act and agency rules or to investigate or eliminate a real or potential hazard, agency officers, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized without a warrant:
- (1) To enter, during regular business hours, and inspect within reasonable limits and in a reasonable manner any facility, compound, vehicle, or other identifiable area involved in the research, development, containment, transportation, or commercial utilization of genetically engineered extinct pre-historic species (GEEPS), or to question privately any such employer, employee, agent, or contractor;
 - (2) To inspect, copy, or require the submission of any record, file, or other information kept within such facility or area regarding the research, development, lifecycle, or genetic material disposal of a GEEPS, or is a data used or compiled to satisfy the reporting and disclosure requirements of this Act.
 - (3) An agency officer may permit a representative of the employer or a representative authorized by their employees to accompany the agency officer during the physical inspection of any area for the purpose of aiding such inspection.
- (b) The Agency is authorized with a warrant to search the person, personal effects, vehicle, or home of such person when the Agency has probable cause, based upon evidence, to conclude that an employer, employee, agent, or contractor working in any facility, compound, vehicle, or other identifiable area involving in the research, development, containment, transportation, or commercial utilization of genetically engineered extinct pre-historic species (GEEPS), has removed from such area:
- (1) rDNA or any other genetic material derived from a GEEPS;
 - (2) embryo(s),
 - (3) egg(s); or
 - (4) living GEEPS.

§ 6.6 Mandatory Record Keeping and Quarterly Reports

- (a) Each private entity falling under the Act shall make, keep, preserve, and make available to the OCE, such records regarding the entity's activities relating to this Act as the Agency may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for the development of information regarding the cause and prevention of accidents, hazardous, catastrophes, or illnesses.
- (1) The Agency shall prescribe that every employer maintains accurate and complete records.
 - (2) The Agency shall proscribe that any event that is indicative of an accident, hazard, catastrophe, or illness shall be fully documented and recorded and stored for up to ten years.
- (b) Each employer shall file with the Agency, in accordance with such rules and regulations as the Agency may prescribe as necessary or appropriate to insure compliance with this Act, which includes:
- (1) Quarterly reports including information and documentation regarding the research and development of the employer, the internal controls in place that ensures compliance with this Act, and any material occurrence or happening that occurred during the quarter.



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

(2) The employer is required to supplement its quarterly report to keep the Agency's information and documents on the company reasonably current.

(c) Any entity, which materially changes its operation, must report said changes to the Agency immediately. OCE has the authority to promulgate rules defining "material changes."

§ 6.7 Public Access to Information Under the Freedom Of Information Act (FOIA)

- (a) OCE shall disclose to any person, upon request, any available information unless:
- (1) disclosure is exempted under the "Freedom of Information Act"; OR
 - (2) the request is in regard to the formation of genetic make-up of rDNA of any GEEPS,
- (b) The exemptions in paragraph (a) will not apply if such information is requested due to a triggering event that implicates national safety and public welfare where there is a substantial likelihood of imminent harm or danger.
- (c) The exemptions in paragraph (a) will not apply if such information is requested by a treating physician upon a medical emergency and the information is shown to be reasonably necessary to effective treatment; if the information is protected as a trade secret, a nondisclosure agreement must be signed.

§ 6.8 Subpoenas

- (a) For the purpose of administration or enforcement of this Act, or any regulations, rules, or orders issued thereunder, this Agency is authorized to:
- (1) Administer oaths and affirmations; AND
 - (2) By subpoena to require any person to appear and testify or appear and produce documents, or both, at any designated place.
 - (3) Witnesses subpoenaed under this subsection shall be paid the same fees and mileage, as are paid witnesses in the district courts of the United States.
 - (4) In the case of a witness that fails or refuses to obey a subpoena served upon such person pursuant to this subsection, the district court for any district in which such person is found or resides or transacts business, upon application of the Attorney General on behalf of the United States, shall have jurisdiction to issue an order requiring such person to appear and give testimony or appear and produce documents, or both in accordance of the subpoena; and failure to obey such order of the court may be punished by such court as a contempt thereof.

§ 7 The Hazard Elimination Agency Team (HEAT)

§ 7.1 Purpose

HEAT is established for the general purpose of providing a rapid response to real or potential hazards at any facility governed by the Act, the general public, and the environment; effecting any and all measures to abate those real or potential hazards; facilitating public awareness of potential hazards; and developing an emergency response plan.

§ 7.2 Emergency Response

HEAT shall establish an "Emergency Response Plan." The EMP must:

- (a) comply with any requirement promulgated by the agency and consistent with this act;



This resource was downloaded from <http://etl.du.edu>



INSTITUTE for the ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

- (b) designate procedures for notifying the general public in the event of a real or potential hazard;
- (c) establish and promulgate to the general public procedures for individuals to follow once a hazard is detected

§ 7.3 Information and Inspection

- (a) To facilitate up to date and efficient emergency response planning, HEAT shall have access to any and all records and inspection data acquired by any other department under this Act. HEAT shall require, concurrently with the Office of Compliance and Enforcement and the licensing arm of the agency, any facility where GEEPS are located to report in immediately when a change occurs concerning:
 - (1) the genus and species of any living GEEPS;
 - (2) the formation or genetic make-up of rDNA of any GEEPS;
 - (3) a description of the potential hazards associated with those GEEPS;
 - (4) the existence of any condition that could be hazardous in the future;
 - (5) any other requirements promulgated by the agency including “major changes” as promulgated by the Agency pursuant to Section 6.
- (b) To facilitate public awareness of potential hazards, HEAT shall make the reported information available to the public in the form of a quarterly publication; the formation or genetic make-up of rDNA of any GEEPS will be excluded from this publication.
- (c) Any facility involved in the development or containment of GEEPS shall report to HEAT immediately any occurrence that represents a real or potential hazard that threatens physical harm, or could result in imminent danger.
- (d) Any person who is aware of a real or potential hazard associated with GEEPS that threatens physical harm, or could result in imminent danger shall immediately notify HEAT.

§ 7.4 Emergency Response

- (a) HEAT is responsible for promptly initiating a preliminary assessment of whether there is a real hazard that could result in imminent danger
- (b) If HEAT learns of a real hazard that threatens physical harm, or could result in imminent danger, it may undertake actions to:
 - (1) Evaluate the magnitude and severity of the harm, hazard, or threat to public health, welfare, or environment of the United States;
 - (2) Assess the feasibility of containing, stopping, and eliminating the harm, hazard or threat;
 - (3) Take measures, as set forth by the agency, to eliminate the harm, hazard or threat; AND
 - (4) Implement the Emergency Response Plan
- (c) To the extent that a joint response management structure is implemented, that brings together the federal government, the state government, and the responsible party to achieve an effective and efficient response, HEAT maintains its authority.
- (d) If HEAT, through its investigation and abatement of hazards discovers a violation of the regulatory framework, it shall submit a detailed report to the Commission.

§ 8 Rulemaking Procedure

§ 8.1 Rulemaking Authority



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

The Agency shall have the authority to promulgate rules in furtherance of the policy, goals, and purpose of this act.

§ 8.2 Proposed Rules

- (a) Where negotiated rulemaking is not employed in accordance with section 8.3 of this chapter, and where the proposed rule is not a major rule as defined under this Act, any action for the issuance, amendment, or repeal of any regulation under this title, shall begin by a proposal made
- (1) by the Secretary on his own initiative,
 - (2) by an Advisory Committee, or by petition of any interested person, showing reasonable grounds therefore, filed with the Secretary.
- (b) General notice of proposed rulemaking shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include--
- (1) a statement of the time, place, and nature of public rule making proceedings;
 - (2) reference to the legal authority under which the rule is proposed; and
 - (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.
- (c) The Secretary shall afford all interested persons an opportunity to present their views thereon, orally or in writing.
- (1) The Secretary shall afford all interested persons an opportunity to present their views thereon, orally or in writing.
 - (2) As soon as practicable thereafter, but not earlier than 60 days after the publication of the proposed rule, the Secretary shall make such rule final and publish it in the Federal Register.
 - (3) The rule shall become effective at such time as may be specified therein, but not earlier than 30 days after the final rule is published, unless the Secretary finds that emergency conditions exist necessitating an earlier effective date, in which event the Secretary shall specify in the order his findings as to such conditions.
- (d) The Commission shall provide for a 30-day comment period for after promulgation for--
- (1) Any rule adopted under the emergency provision of section (c)(3); and
 - (2) For any comments received after promulgation, the Secretary shall publish a statement in the Federal Register containing an evaluation of the significant comments and any revisions of the rule or policy statement made as a result of the comments and their evaluation.
- (e) Subject to all relevant comment periods and other time restrictions in this Act, each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

§ 8.3 Procedures for Negotiated Rulemaking

- (a) if a proposed rule is a major rule, as defined by § 1, such a rule must be proposed through a negotiated rulemaking under section 8.3 of this Act.



This resource was downloaded from <http://etl.du.edu>

EDUCATING
TOMORROW'S
LAWYERS®

IAALS

INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

- (b) General notice of proposed negotiated rulemaking shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law.
- (c) Within 30 days after the notice is published, the Secretary shall hold a public hearing on the record for the purpose of receiving evidence relevant and material to the proposed rule.
- (d) The public hearing shall be held in accordance with 5 U.S.C. §§ 556 and 557, and as provided below:
- (e) 5) The hearing shall be presided by:
 - (1) the agency;
 - (2) one or more members of the body which comprises the agency; or
 - (3) one or more administrative law judges appointed under section 3105 of this title.
- (f) Subject to published rules of the agency and within its powers, employees presiding at hearings may--
 - (1) administer oaths and affirmations;
 - (2) issue subpoenas authorized by law;
 - (3) rule on offers of proof and receive relevant evidence;
 - (4) take depositions or have depositions taken when the ends of justice would be served;
 - (5) regulate the course of the hearing;
 - (6) hold conferences for the settlement or simplification of the issues by consent of the parties or by the use of alternative means of dispute resolution as provided in subchapter IV of this chapter;
 - (7) inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage use of such methods;
 - (8) require the attendance at any conference held pursuant to paragraph (6) of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy;
 - (9) dispose of procedural requests or similar matters;
 - (10) make or recommend decisions in accordance with 5 U.S.C. § 557 ; and
 - (11) take other action authorized by agency rule consistent with this subchapter.
- (g) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.
- (h) At the hearing, any interested person may be heard in person or by representative. As soon as practicable after completion of the hearing, the Secretary shall make the final rule public. Such rule shall be based only on substantial evidence of record at such hearing and shall set forth, as part of the rule, detailed findings of fact on which the rule is based. The Secretary shall specify in the rule the date on which it shall take effect, except that it shall not be made to take effect prior to the ninetieth day after its publication unless the Secretary finds that emergency conditions exist necessitating an

earlier effective date, in which event the Secretary shall specify in the order his findings as to such conditions.

- (i) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with 5 U.S.C. § 557 and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

§ 8.3 Establishment of Negotiated Rulemaking Committee

- (a) The Commission shall establish a negotiated rulemaking committee where the proposed rule is a major rule as defined in § 1.
- (b) The Commission may establish a negotiated rulemaking committee to negotiate and develop any other proposed rule, if the Secretary determines that the use of the negotiated rulemaking procedure is in the public interest. In making such a determination, the Secretary shall consider whether:
 - (1) there is a need for a rule;
 - (2) there are a limited number of identifiable interests that will be significantly affected by the rule;
 - (3) there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who:
 - i. can adequately represent the interests identified under paragraph (B); and
 - ii. are willing to negotiate in good faith to reach a consensus on the proposed rule;
 - (4) there is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;
 - (5) the negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule;
 - (6) the agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and
 - (7) the agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment.
- (c) If the Commission establishes a negotiated rulemaking committee, the Commission shall publish in the Federal Register and, as appropriate, in trade or other specialized publications, a notice which shall include:
 - (1) an announcement that the Commission intends to establish a negotiated rulemaking committee to negotiate and develop a proposed rule;



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

- (2) a description of the subject and scope of the rule to be developed, and the issues to be considered;
 - (3) a list of the interests which are likely to be significantly affected by the rule;
 - (4) a list of the persons proposed to represent such interests and the person or persons proposed to represent the Commission;
 - (5) a proposed agenda and schedule for completing the work of the committee, including a target date for publication by the agency of a proposed rule for notice and comment;
 - (6) a description of administrative support for the committee to be provided by the agency, including technical assistance;
 - (7) a solicitation for comments on the proposal to establish the committee, and the proposed membership of the negotiated rulemaking committee; and
 - (8) an explanation of how a person may apply or nominate another person for membership on the committee, as provided under subsection (b).
- (d) Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person specified in a notice under subsection (b)(1)(D) may apply for, or nominate another person for, membership on the negotiated rulemaking committee to represent such interests with respect to the proposed rule.
- (e) If after considering comments and applications submitted under subsection (b), the Commission determines that a negotiated rulemaking committee can adequately represent the interests that will be significantly affected by a proposed rule and that it is feasible and appropriate in the particular rulemaking, the Commission may establish a negotiated rulemaking committee. In establishing and administering such a committee, the Commission shall comply with the Federal Advisory Committee Act with respect to such committee, except as otherwise provided in this subchapter.
- (f) The Commission shall limit membership on a negotiated rulemaking committee to 25 members, unless the Commission head determines that a greater number of members is necessary for the functioning of the committee or to achieve balanced membership. Each committee shall include at least one person representing the Commission.
- (g) The Commission shall provide appropriate administrative support to the negotiated rulemaking committee, including technical assistance.
- (h) Each negotiated rulemaking committee established under this subchapter shall consider the matter proposed by the Commission for consideration and shall attempt to reach a consensus concerning a proposed rule with respect to such matter and any other matter the committee determines is relevant to the proposed rule.
- (i) If a committee reaches a consensus on a proposed rule, at the conclusion of negotiations the committee shall transmit to the Commission a report containing the proposed rule. If the committee does not reach a consensus on a proposed rule, the committee may transmit to the Commission a report specifying any areas in which the committee reached a consensus. The committee may include in a report any other

information, recommendations, or materials that the committee considers appropriate. Any committee member may include as an addendum to the report additional information, recommendations, or materials.

- (j) In addition to the report required by subsection (7), a committee shall submit to the Commission the records required under section 10(b) and (c) of the Federal Advisory Committee Act.
- (k) The Commission shall make all reasonable efforts to incorporate the consensus reached by the committee into the draft of the proposed rule and publish it for notice and comment in accordance with section (a) of this chapter.

§ 8.4 Review Procedure

- (a) All challenges to rules or procedures shall be made pursuant to § 13 of this Act.

§ 9 Adjudication

§ 9.1 Application

- (a) This section applies in every case of adjudication or on the record hearing required under the Act, except to the extent that there is involved:
 - (1) a matter subject to a subsequent trial of the law and the facts de novo in a court;
 - (2) the selection or tenure of an employee, except an administrative law judge;
 - (3) cases in which an agency is acting as an agent for a court; or
 - (4) the certification of worker representatives.

§ 9.2 Notice

- (a) Persons entitled to notice of a the Commission hearing shall be timely informed of:
 - (1) the time, place, and nature of the hearing;
 - (2) the legal authority and jurisdiction under which the hearing is to be held; and
 - (3) the matters of fact and law asserted.
- (b) When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

§ 9.3 Pre-Hearing

- (a) The Commission shall give all interested parties opportunity for:
 - (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and
 - (2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of Title 5 U.S.C.

§ 9.4 Decision



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

The employee who presides at the reception of evidence pursuant to 5 U.S.C. § 556 shall make the recommended decision or initial decision as follows:

- (a) The employee shall initially decide the case unless the Commission requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the Commission without further proceedings unless there is an appeal to, or review on motion of, the Commission within time provided by rule.
 - (1) On appeal from or review of the initial decision, the Commission has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.
 - (2) When the Commission makes the decision without having presided at the reception of the evidence, the presiding employee shall first recommend a decision.
- (b) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration:
 - (1) proposed findings and conclusions; or
 - (2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and
 - (3) supporting reasons for the exceptions or proposed findings or conclusions.
- (c) The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of--
 - (A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and
 - (B) the appropriate rule, order, sanction, relief, or denial thereof.

§ 9.5 Ex Parte Communication

In any agency proceeding under this section, except to the extent required for the disposition of ex parte matters as authorized by law--

- (a) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;
- (b) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;
- (c) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:
 - (1) all such written communications;



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

- (2) memoranda stating the substance of all such oral communications; and
 - (3) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;
- (d) upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and
- (e) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.
- (f) This subsection does not constitute authority to withhold information from Congress.
- (h) Except to the extent required for the disposition of ex parte matters as authorized by law, such an employee may not
- (1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or
 - (2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for the Commission.
- (i) An employee or agent engaged in the performance of investigative or prosecuting functions for the Commission in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of Title 5 U.S.C., except as witness or counsel in public proceedings. This subsection does not apply:
- (1) in determining applications for initial licenses;
 - (2) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; or
 - (3) to the Commission or a member or members of the body comprising the Commission.
- (j) Before any violation of this chapter is reported by the Secretary to any United States attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding.

§ 10 Enforcement

§10.1.1 Enforcement Actions

After an investigation, OCE is authorized to issue the following:

- (a) Warning Enforcement Notice, which shall state:



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

- (1) the alleged violation of the Act or Agency rule;
 - (2) potential penalties if the violation goes uncorrected;
 - (3) the preliminary steps a party must take in order to be in compliance with the Act or Agency rule; and.
 - (4) a date, time, and location for a compliance meeting with the relevant GEEPS office or department.
- (b) Prohibition Notice, which shall state:
- (1) the alleged violation of the Act or Agency rule;
 - (2) the length and scope of the prohibition;
 - (3) the preliminary steps a party must take in order to be in compliance with the Act or Agency rule; and
 - (4) the Agency employee that is assigned to assist the party in complying with the relevant portion of the Act or Agency rule.

§ 10.1.2 HEAT Violations

- (a) Any person or entity who owns or operates a facility during a real hazard or change listed under § 7.3 and who failed to comply with the requirements of § 7, shall be liable for—
- (1) All costs of remedial action incurred by the HEAT, the United States Government or a State or an Indian tribe;
 - (2) Any other costs of response incurred by any other person;
 - (3) Damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release in violation of this chapter; and
 - (4) The costs of any injury or death of innocent bystanders
- Any penalties for violations of § 7 will be issued by the Commission after an adjudicatory hearing pursuant to § 9 of the Act
- (b) Defenses for failure to report real or potential hazard:
- (1) An act of God
 - (2) An act of war
 - (3) Technological failures beyond the reasonable control of the potentially liable parties.
- (c) In all cases of noncompliance with this chapter the Licensing Committee shall hold a hearing, subject to § 9, to determine whether the noncompliant party's license should be revoked or suspended for a period of time.

§ 10.2 Civil Penalties

- (a) Any person or company who violates a provision of this act shall be liable to the GEEPS commission for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day such a violation continues shall, for purposes of this subsection, constitute a separate violation of the act.
- (b) A civil penalty for a violation of the act shall be assessed by the Director of OCE by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of the APA. Before issuing such an order, the Director of OCE shall give written notice to the person to be assessed a civil penalty under such order of the Director of OCE's proposal to issue such order and provide such person an opportunity to

request, within 15 days of the date the notice is received by such person, such a hearing on the order.

- (c) In determining the amount of a civil penalty, the Director of OCE shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.
- (d) The Director of OCE may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.
- (e) Any person or company who requested in accordance with paragraph (b) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.
- (f) If any person or company fails to pay an assessment of a civil penalty—
 - (1) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with this section; or
 - (2) after a court in an action brought under this section has entered a final judgment in favor of the Director of OCE, the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in this section or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

§ 10.3 Criminal Penalties

Any person or company who knowingly or willfully violates any provision of this act, shall, in addition to or in lieu of any civil penalty which may be imposed under subsection (a) of this section for such violation, be subject, upon conviction, to a fine of not more than \$25,000 for each day of violation, or to imprisonment for not more than one year, or both.

§ 11 Practice Before the Commission

§ 11.1 Definitions

- (a) Practice defined. For the purposes of these Rules of Practice, practicing before the GEEPS Commission shall include, but shall not be limited to:
 - (1) Transacting any business with the GEEPS Commission; and



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

- (2) The preparation of any statement, opinion or other paper by any attorney, genetics engineer or other professional or expert, filed with the GEEPS Commission in any licensing application, notification, safety or enforcement proceeding, rulemaking proceeding, or submission of other documents with the consent of such attorney, genetics engineer or other professional or expert.

§ 11.2 Appearing Before the Commission

- (a) In any proceeding, an individual may appear on his or her own behalf.
- (b) In any proceeding, a person may be represented by an attorney at law admitted to practice before the Supreme Court of the United States or the highest court of any State; a member of a partnership may represent the partnership; a bona fide officer of a corporation, trust or association may represent the corporation, trust or association; and an officer or employee of a state commission or of a department or political subdivision of a state may represent the state commission or the department or political subdivision of the state.
- (c) Former employees of the GEEPS Commission are not barred from representing parties before the GEEPS Commission so long as they do not violate the provisions governing Conflicts of Interest under this Title.
- (d) Designation of address for service; notice of appearance; power of attorney; withdrawal.

(1) Representing oneself. When an individual first makes any filing or otherwise appears on his or her own behalf before the GEEPS Commission or a hearing officer in a proceeding under the GEEPS Commission's authority, he or she shall file with the GEEPS Commission, or otherwise state on the record, and keep current, an address at which any notice or other written communication required to be served upon him or her or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours.

(2) Representing others. When a person first makes any filing or otherwise appears in a representative capacity before the GEEPS Commission or a hearing officer in a proceeding under the Commission's authority, that person shall file with the GEEPS Commission, and keep current, a written notice stating the name of the proceeding; the representative's name, business address and telephone number; and the name and address of the person or persons represented.

(3) Power of attorney. Any individual appearing or practicing before the GEEPS Commission in a representative capacity may be required to file a power of attorney with the GEEPS Commission showing his or her authority to act in such capacity.

(4) Withdrawal. Any person seeking to withdraw his or her appearance in a representative capacity shall file a notice of withdrawal with the GEEPS Commission or the hearing officer. The notice shall state the name, address, and telephone number of the withdrawing representative; the name, address, and telephone number of the person for whom the appearance was made; and the effective date of the withdrawal. If the person seeking to withdraw knows the name, address, and telephone number of the new representative, or knows that the person for whom the appearance was made intends to represent him- or herself, that information shall be included in the notice. The notice must be served on all interested parties in the proceeding. The notice shall be filed at least five days before the proposed effective date of the withdrawal.

§ 11.3 Suspension and Disbarment



This resource was downloaded from <http://etl.du.edu>

EDUCATING
TOMORROW'S
LAWYERS®

IAALS

INSTITUTE for the ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

- (a) Generally. The GEEPS Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the GEEPS Commission after notice and opportunity for hearing in the matter:
- (i) Not to possess the requisite qualifications to represent others; or
 - (ii) To be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or
 - (iii) To have willfully violated, or willfully aided and abetted the violation of any provision of GEEPS or the rules and regulations thereunder.
- (b) Certain professionals and convicted persons. Any attorney who has been suspended or disbarred by a court of the United States or of any State; or any person who has been convicted of a felony or a misdemeanor involving a person/organization/organism regulated by GEEPS shall be forthwith suspended from appearing or practicing before the GEEPS Commission. A disbarment, suspension, revocation or conviction within the meaning of this section shall be deemed to have occurred when the disbarring, suspending, revoking or convicting agency or tribunal enters its judgment or order, including a judgment or order on a plea of nolo contendere, regardless of whether an appeal of such judgment or order is pending or could be taken.
- (c) Temporary suspensions. An order of temporary suspension shall become effective upon service on the respondent. No order of temporary suspension shall be entered by the GEEPS Commission more than 90 days after the date on which the final judgment or order entered in a judicial or administrative proceeding has become effective, whether upon completion of review or appeal procedures or because further review or appeal procedures are no longer available.
- (d) The GEEPS Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any attorney, genetics engineer, or other professional or expert who has been by name:
- (1) Permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the GEEPS Commission, from violating or aiding and abetting the violation of any provision of GEEPS or of the rules and regulations thereunder; or
 - (2) Found by any court of competent jurisdiction in an action brought by the GEEPS Commission to which he or she is a party or found by the GEEPS Commission in any administrative proceeding to which he or she is a party to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of GEEPS or of the rules and regulations thereunder.
 - (3) Any person temporarily suspended from appearing and practicing before the GEEPS Commission, within 30 days after service upon him or her of the order of temporary suspension, petition the GEEPS Commission to lift the temporary suspension. If no petition has been received by the GEEPS Commission within 30 days after service of the order, the suspension shall become permanent.
 - (4) Within 30 days after the filing of a petition, the GEEPS Commission shall either lift the temporary suspension, or set the matter down for hearing at a time and place designated by the GEEPS Commission, or both, and, after opportunity for hearing, may censure the petitioner or

disqualify the petitioner from appearing or practicing before the GEEPS Commission for a period of time or permanently. In every case in which the temporary suspension has not been lifted, every hearing held and other action taken shall be expedited.

- (5) In any hearing held on a petition filed in accordance with this section, the employees of the GEEPS Commission shall show either that the petitioner has been enjoined or that the petitioner has been found to have committed or aided and abetted violations and that showing, without more, may be the basis for censure or disqualification. Once that showing has been made, the burden shall be upon the petitioner to show cause why he or she should not be censured or temporarily or permanently disqualified from appearing and practicing before the GEEPS Commission. In any such hearing, the petitioner may not contest any finding made against him or her or fact admitted by him or her in the judicial or administrative proceeding upon which the proceeding is predicated. A person who has consented to the entry of a permanent injunction without admitting the facts set forth in the complaint shall be presumed for all purposes under this paragraph to have been enjoined by reason of the misconduct alleged in the complaint.
- (e) Filing of prior orders. Any person appearing or practicing before the GEEPS Commission who has been the subject of an order, judgment, decree, or finding shall promptly file with the Secretary of the GEEPS Commission a copy thereof (together with any related opinion or statement of the agency or tribunal involved). Failure to file any such paper, order, judgment, decree or finding shall not impair the operation of any other provision of this section.

§ 11.4 Reinstatement

- (a) An application for reinstatement of a person permanently suspended or disqualified under this section may be made at any time, and the applicant may, in the GEEPS Commission's discretion, be afforded a hearing; however, the suspension or disqualification shall continue unless and until the applicant has been reinstated by the GEEPS Commission for good cause shown.
- (b) Any person suspended under this section shall be reinstated by the GEEPS Commission, upon appropriate application, if all the grounds for application of the provisions of that paragraph are subsequently removed by a reversal of the conviction or termination of the suspension, disbarment, or revocation. An application for reinstatement on any other grounds by any person suspended under this section may be filed at any time and the applicant shall be accorded an opportunity for a hearing in the matter; however, such suspension shall continue unless and until the applicant has been reinstated by order of the GEEPS Commission for good cause shown.

§ 12 Inspector General

§ 12.1 Establishment

(a) There is established in the GEEPS Commission the Office of the Inspector General (hereafter in this section referred to as the "Office"), headed by the Inspector General of GEEPS (hereafter in this section referred to as the "Inspector General"). The functions of this Office shall be:

- (1) to conduct and supervise audits and investigations relating to the programs and operations of GEEPS;



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

(2) to provide leadership and coordination and recommend policies for activities designed (i) to promote economy, efficiency, and effectiveness in the administration of, and (ii) to prevent and detect fraud and abuse in, such programs and operations; and

(3) to provide a means for keeping the head of GEEPS and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action;

(b) Equipment and supplies – The Chairman of GEEPS shall ensure the Office is provided with appropriate and adequate office space, together with such equipment, supplies, and communications facilities and services as determined by the Inspector General to be necessary for the operation of the Office, and shall provide necessary maintenance services for such office space and the equipment and facilities located therein

§ 12.2 Appointment of Inspector General; Supervision; Removal; Political Activities; Appointment of Assistant Inspector General for Auditing and Assistant Inspector General for Investigations

(a) There shall be at the head of the Office an Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. The Inspector General shall report to and be under the general supervision of the Chairman of GEEPS. Neither the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

(b) The Inspector General may be removed from office by the President. If the Inspector General is removed from office or is transferred to another position or location within an establishment, the President shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer. Nothing in this subsection shall prohibit a personnel action otherwise authorized by law, other than transfer or removal.

(c) The Inspector General shall, in accordance with applicable laws and regulations governing the civil service--

(1) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of auditing activities relating to programs and operations of the establishment, and

(2) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities relating to such programs and operations.

(e) The annual rate of basic pay for the Inspector General shall be the rate payable for level III of the Executive Schedule under section 5314 of title 5, United States Code, plus 3 percent.

(f) The Inspector General may not receive any cash award or cash bonus, including any cash award under chapter 45 of title 5, United States Code.

(g) Each Inspector General shall, in accordance with applicable laws and regulations governing the civil service, obtain legal advice from a counsel reporting directly to the Inspector General.



This resource was downloaded from <http://etl.du.edu>

EDUCATING
TOMORROW'S
LAWYERS®

IAALS

INSTITUTE for the ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

§ 12.3 Duties and Responsibilities of The Inspector General

(a) Applicability of duties of Inspector General of executive branch establishment – The Inspector General shall carry out the same duties and responsibilities with respect to GEEPS as an Inspector General of an establishment carries out with respect to an establishment under section 4 of the Inspector General Act of 1978, (5 U.S.C. App. 4), under the same terms and conditions which apply under such section.

(b) Semiannual reports – The Inspector General shall prepare and submit semiannual reports summarizing the activities of the Office in the same manner, and in accordance with the same deadlines, terms, and conditions, as an Inspector General of an establishment under section 5 (other than subsection (a)(13) thereof) of the Inspector General Act of 1978, (5 U.S.C. App. 5). For purposes of applying section 5 of such Act to the Inspector General, the Chairman of the GEEPS Commission shall be considered the head of the establishment. The Chairman shall, within 30 days of receipt of a report, report to the Committees on Appropriations of the House of Representatives and of the Senate consistent with section 5(b) of such Act.

§ 12.4 Powers of the Inspector General -

(a) In general – The Inspector General may exercise the same authorities with respect to GEEPS as an Inspector General of an establishment may exercise with respect to an establishment under section 6(a) of the Inspector General Act of 1978, (5 U.S.C. App. 6(a)), other than paragraphs (7) and (8) of such section.

(b) Staff

(1) In general – The Inspector General may appoint and fix the pay of such personnel as the Inspector General considers appropriate. Such personnel may be appointed without regard to the provisions of Title 5 regarding appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no personnel of the Office (other than the Inspector General) may be paid at an annual rate greater than \$500 less than the annual rate of pay of the Inspector General under subsection (b)(4) of this section.

(2) Experts and consultants – The Inspector General may procure temporary and intermittent services under section 3109 of Title 5 at rates not to exceed the daily equivalent of the annual rate of basic pay for level IV of the Executive Schedule under section 5315 of such title.

(3) Independence in appointing staff – No individual may carry out any of the duties or responsibilities of the Office unless the individual is appointed by the Inspector General, or provides services procured by the Inspector General, pursuant to this paragraph. Nothing in this subparagraph may be construed to prohibit the Inspector General from entering into a contract or other arrangement for the provision of services under this section.

§ 13 Judicial Review

§13.1 Actions reviewable.

(a) The following Commission actions shall be subject to judicial review in the manner prescribed under this chapter [the following judicial review provisions]:



EDUCATING
TOMORROW'S
LAWYERS®

This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

(1) Any final order entered in any proceeding of the kind previously specified in this section.

(2) Any final order allowing or prohibiting a facility to build or operating a GEEPS facility

(3) Any final rule or regulation establishing standards to govern GEEPS facilities, including any such facilities leased to an operator, or the creation or use of any GEEPS biology or technology;

(4) Any final determination made under this title relating to whether a GEEPS facility, including any such facility leased to an operator, are in compliance with the Commission's standards governing the facility and all applicable laws.

(b) Final rules promulgated after any kind of negotiated rulemaking shall be reviewable pursuant to paragraph (a), above, but no court shall review a challenge to the negotiated rulemaking process itself unless the petitioner can demonstrate, on the face of the complaint, that the agency conducted or participated in the negotiated rulemaking process in bad faith.

§ 13.2 Right of Review

Any person suffering legal wrong because of any action of the Commission, or adversely affected or aggrieved by action of the Commission, is entitled to judicial review thereof. Nothing herein

(a) affects other limitations on judicial review or the power or duty of the court or administrative law judge to dismiss any action or deny relief on any other appropriate legal or equitable ground; or

(b) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought

§13.3 Jurisdiction of Courts of Appeals; Venue

(a) The United States courts of appeal (other than the United States Court of Appeals for the Federal Circuit) have exclusive jurisdiction over any other state or federal courts to hear any action to enjoin, set aside, suspend (in whole or in part), determine the validity of, or review in any other way, any challenge pursuant to § 13.1 [Actions reviewable] of this chapter. Jurisdiction is invoked by filing a petition under § 13.4 [Review of orders, etc.] of this chapter.

(b) The venue of a proceeding under this chapter is in the judicial circuit in which the petitioner resides or has its principal office, where the injury alleged in the proceeding occurred or will occur, or in the United States Court of Appeals for the District of Columbia Circuit.

(c) Notwithstanding the previous two subsections, the United States courts of appeal will only have jurisdiction to hear any action to enjoin, set aside, suspend, determine the validity of, or review any other way, any challenge pursuant to § 13.1 of this chapter after the petitioner has exhausted all agency remedies and appeals outlined in §13.4 and § 13.5 of this chapter.

§13.4 Review of Orders, Time, etc.



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

On the entry of a final order reviewable under this chapter, the agency shall promptly give notice thereof by service or publication in accordance with its rules. Any party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order in an agency proceeding presided over by an administrative law judge. The petition shall contain a concise statement of—

- (a) the nature of the proceedings as to which review is sought;
- (b) the grounds on which relief is sought; and
- (c) the relief prayed.

The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the agency. The Federal Rules of Evidence shall not apply to agency hearings or appeals, but a residuum of competent evidence must support the decision.

§ 13.5 Appeals and Exhaustion

Any ruling in accordance with §13.4 of this statute may be subject to two interagency appeals to be filed within 60 days of any ruling reached under that section or subsequent to the first appeal.

Only after exhausting all agency remedies and appeals, an aggrieved party may file a petition to review the order in the court of appeals wherein venue lies. The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the agency. The clerk shall serve a true copy of the petition on the agency and on the Attorney General by registered mail, with request for a return receipt. The petition shall contain a concise statement of—

- (a) the nature of the proceedings as to which review is sought;
- (b) the facts on which venue is based;
- (c) the grounds on which relief is sought; and
- (d) the relief prayed.

The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the agency.

§ 13.6 Petitions to Review; Proceedings

(a) Unless determined on a motion to dismiss, petitions to review orders reviewable under this chapter and after satisfying the requirements of § 13.5 are heard in the court of appeals on the record of the pleadings, evidence adduced, and proceedings before the agency, when the agency has held a hearing whether or not required to do so by law.



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

(b)When the agency has not held a hearing before taking the action of which review is sought by the petition, the court of appeals shall determine whether a hearing is required by law. After that determination, the court shall—

(1)remand the proceedings to the agency to hold a hearing in accordance with § 13.4 and §13.5 of this chapter, when a hearing is required by law;

(2)pass on the issues presented, when a hearing is not required by law and it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; or (c)If a party to a proceeding to review applies to the court of appeals in which the proceeding is pending for leave to adduce additional evidence and shows to the satisfaction of the court that—

(1)the additional evidence is material; and

(2)there were reasonable grounds for failure to adduce the evidence before the agency;

the court may order the additional evidence and any counterevidence the opposite party desires to offer to be taken by the agency. The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken, and may modify or set aside its order, and shall file in the court the additional evidence, the modified findings or new findings, and the modified order or the order setting aside the original order.

§ 13.7 Representation; Intervention

The Attorney General is responsible for and has control of the interests of the Government in all appeals court proceedings under this chapter. The GEEPS Commission, and any party in interest in the proceeding before the Commission whose interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended, may appear as parties thereto of their own motion and as of right, and be represented by counsel in any proceeding to review the order. Communities, associations, corporations, firms, and individuals, whose interests are affected by the order of the agency, may intervene in any proceeding to review the order. The Attorney General may not dispose of or discontinue the proceeding to review over the objection of any party or intervenor, but any intervenor may prosecute, defend, or continue the proceeding unaffected by the action or inaction of the Attorney General.

§ 13.8 Jurisdiction

(a)The Court of Appeals has jurisdiction of the proceeding on the filing and service of a petition to review an agency ruling or appeal. The court of appeals in which the record on review is filed, on the filing, has jurisdiction to vacate stay orders or interlocutory injunctions previously granted by any court, and has exclusive jurisdiction to make and enter, on the petition, evidence, and proceedings set forth in the record on review, a judgment determining the validity of, and enjoining, setting aside, or suspending, in whole or in part, the order of the agency.

(b)The filing of the petition to review does not of itself stay or suspend the operation of the order of the Commission, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. When the petitioner makes application for an interlocutory injunction restraining or suspending the enforcement, operation, or



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

execution of, or setting aside, in whole or in part, any order reviewable under this chapter, at least 5 days' notice of the hearing thereon shall be given to the agency and to the Attorney General. In a case in which irreparable damage would otherwise result to the petitioner, the court of appeals may, on hearing, after reasonable notice to the agency and to the Attorney General, order a temporary stay or suspension, in whole or in part, of the operation of the order of the agency for not more than 60 days from the date of the order pending the hearing on the application for the interlocutory injunction, in which case the order of the court of appeals shall contain a specific finding, based on evidence submitted to the court of appeals, and identified by reference thereto, that irreparable damage would result to the petitioner and specifying the nature of the damage. The court of appeals, at the time of hearing the application for an interlocutory injunction, on a like finding, may continue the temporary stay or suspension, in whole or in part, until decision on the application.

§ 13.9 Relief Pending Review

When the Commission finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial or agency review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court or administrative law judge, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings

§ 13.10 Scope of Review

The GEEPS Commission has explicit authority to interpret ambiguities in this statute in a reasonable manner based on specialized expertise. To the extent necessary and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall -

- (a) compel agency action unlawfully withheld or unreasonably delayed; and
- (b) hold unlawful and set aside agency action, findings, and conclusions found to be -
 - (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law—this standard of review extends particularly to appeals of informal rulemaking;
 - (2) contrary to constitutional right, power, privilege, or immunity;
 - (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (4) without observance of procedure required by law;
 - (5) unsupported by substantial evidence in a case subject to formal rulemaking according to § 8 or adjudication under § 9 of this Act or otherwise reviewed on the record of created during or in furtherance of such a proceeding; or
 - (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

(7) In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(c) For the purposes of this section, “substantial evidence” means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of the record considered as a whole, taking into account whatever in the record fairly detracts from the weight of the evidence relied upon by the agency to support its decision.

§ 13.11 Review in Supreme Court

Any final judgment of the court of appeals in a proceeding to review under this chapter are subject to review by the Supreme Court on a writ of certiorari. Application for the writ shall be made within 45 days after entry of the order and within 90 days after entry of the judgment, as the case may be. The United States, the agency, or an aggrieved party may file a petition for a writ of certiorari.

§ 13.12 Enforcement in District Courts

The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain any person from violating any order issued by a court under this chapter.

§ 14 Agency Rules

§ 14.1 Rules

- (a) The Agency shall, with the advice of the Advisory Committee on rDNA Licensing, Reproduction, and Animal Health—
- (1) Periodically update the list of species considered to be GEEPS, the list of species designated as predators, and the list of any banned species. Blanket bans of species require the Agency to define any such categories (e.g. carnivores, predators, etc.)
 - (2) Develop rules pertaining to the application approval process for new species research and development and the lab facilities where such research may take place. The Agency also shall develop any required safety procedures in the development of new species including, but not limited to, emergency protocols within the research facility, waste management within the research facility, necessary pre- and post-development documentation. The Committees on Emergency Medical Services and Protocol of Emergency GEEPS Procedures, Facility Shutdowns, and Emergency Medical Procedures for Humans Injured by GEEPS may also work with the Agency on these research facility emergency protocols.
 - (3) Develop rules to restrict or prohibit the reproduction of GEEPS. The Agency may employ the techniques best suited to this end, including the creation and use of lysine or other chemically-dependent species. The Agency may also promulgate rules in the interest of balancing ecosystems, including limiting the number of a particular species or imposing minimum ratios of one species to another.
 - (4) Develop rules providing for the adequate nutrition and care of GEEPS. The Agency may develop minimum standards for food safety, storage, and nutritional content.



This resource was downloaded from <http://etl.du.edu>



INSTITUTE *for the* ADVANCEMENT
of the AMERICAN LEGAL SYSTEM

- (b) The Agency shall, with the advice of the Advisory Committee on Facility Placement, establish rules to restrict the geographic location of a GEEPS entertainment facility, if necessary. This may include minimum distances from schools or maximum distances from medical facilities.
- (c) The Agency shall, with the advice of the Advisory Committee on Construction, Security, and Containment Licensing Review—
- (1) Develop rules on the materials to be used in cages and fences used to contain GEEPS. This includes the ability to define minimum and maximum dimensions, square footage, fence height, fence wattage, and capacity of any area used to house, transfer, or store GEEPS.
 - (2) Create rules establishing where operators can or must obtain power and back-up power sources. The Agency may also establish minimum requirements for computing capability, off-site backup data storage, and numbers of employees with operating system knowledge.
 - (3) Suggest security measures that operators may use to control park entry and exit by persons with access to GEEPS and rDNA materials.
 - (4) Develop rules requiring certain weapons and vehicles to be maintained, accessible, and on-site at an entertainment facility.
- (d) The Agency shall, with the advice of the Advisory Committees on Emergency Medical Services and Protocol of Emergency GEEPS Procedures, Facility Shutdowns, and Emergency Medical Procedures for Humans Injured by GEEPS—
- (1) Develop rules articulating the emergency protocol to be followed in the event that a guest of the entertainment facility is injured by a GEEPS.
 - (2) Develop protocol to be followed in the event of a GEEPS-involved security breach.
 - (3) Require entertainment facilities to have the ability to quickly destroy GEEPS in the event of an emergency, if the Agency deems necessary.
- (e) The Agency shall, with the advice of the Advisory Committee on GEEPS Waste Management, develop rules providing for GEEPS waste management, storage, and disposal.
- (f) The Agency shall develop rules providing for minimum employee training and supervision standards. The Agency may also develop rules establishing minimum education, experience, or other qualifications necessary for persons working directly with GEEPS and rDNA materials inside or outside of entertainment facilities. The Agency may also develop rules requiring a minimum level of protective clothing and devices for employees of entertainment facilities.