223.7104 Exceptions.

(a) The prohibition of 10 U.S.C. 2692 does not apply to any of the following:

(1) The storage, treatment, or disposal of materials that will be or have been used in connection with an activity of DoD or in connection with a service to be performed on a DoD installation for the benefit of DoD.

(2) The storage of strategic and critical materials in the National Defense Stockpile under an agreement for such storage with the Administrator of General Services Administration.

(3) The temporary storage or disposal of explosives in order to protect the public or to assist agencies responsible for Federal, State, or local law enforcement in storing or disposing of explosives when no alternative solution is available, if such storage or disposal is made in accordance with an agreement between the Secretary of Defense and the head of the Federal, State, or local agency concerned.

(4) The temporary storage or disposal of explosives in order to provide emergency lifesaving assistance to civil authorities.

(5) The disposal of excess explosives produced under a DoD contract, if the head of the military department concerned determines, in each case, that an alternative feasible means of disposal is not available to the contractor, taking into consideration public safety, available resources of the contractor, and national defense production requirements.

(6) The temporary storage of nuclear materials or nonnuclear classified materials in accordance with an agreement with the Secretary of Energy.

(7) The storage of materials that constitute military resources intended to be used during peacetime civil emergencies in accordance with applicable DoD regulations.

(8) The temporary storage of materials of other Federal agencies in order to provide assistance and refuge for commercial carriers of such material during a transportation emergency.

(9) The storage of any material that is not owned by DoD, if the Secretary of the military department concerned determines that the material is required or generated in connection with the authorized and compatible use of a facility of DoD, including the use of such a facility for testing material or training personnel.

(10) The treatment and disposal of any toxic or hazardous materials not owned by DoD, if the Secretary of the military department concerned determines that the material is required or generated in connection with the authorized and compatible use of a facility of that military department and the Secretary enters into a contract or agreement with the prospective user that—

(i) Is consistent with the best interest of national defense and environmental security; and

(ii) Provides for the prospective user’s continued financial and environmental responsibility and liability with regard to the material.

(11) The storage of any material that is not owned by DoD if the Secretary of the military department concerned determines that the material is required or generated in connection with the use of a

space launch facility located on a DoD installation or on other land controlled by the United States.

(b) The Secretary of Defense may grant an exception to the prohibition in 10 U.S.C. 2692 when essential to protect the health and safety of the public from imminent danger if the Secretary otherwise determines the exception is essential and if the storage or disposal authorized does not compete with private enterprise.

Parent topic: Subpart 223.71 - STORAGE, TREATMENT, AND DISPOSAL OF TOXIC OR HAZARDOUS MATERIALS