Rules and Regulations

Federal Register
Vol. 49, No. 47
Thursday, March 8, 1984

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 422

Potato Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing date.

SUMMARY: Under the authority contained in the Potato Crop Insurance Regulations (7 CFR Part 422), the Federal Crop Insurance Corporation (FCIC) herewith gives notice of the extension of the sales closing date for accepting applications for crop insurance on potatoes in one county in Virginia and two counties in North Carolina. This action is necessary because the actuarial tables for those counties have not been placed on file in the service offices by the required date. The intended effect of this notice is to advise all interested parties of the extension of sales closing dates and to comply with the provisions of the potato crop insurance regulations with respect to the authority of the Manager, FCIC, to extend sales closing dates.

EFFECTIVE DATE: March 8, 1984.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: Under the provisions contained in the Potato Crop Insurance Regulations (7 CFR Part 422), the closing date for accepting applications for crop insurance on potatoes is February 28. Because of a delay in preparation and filing of the actuarial tables in Northampton County, Virginia, and Pamlico and Pasquotank Counties, North Carolina, FCIC is extending the sales closing date for accepting applications in those counties.

Under the authority contained in 7 CFR 422.7(b) of the Potato Crop Insurance Regulations, the closing date for accepting applications may be extended by placing the extended date on file in the service office and by publishing a notice in the **Federal Register** upon determination that no adverse selectivity will result during such period of extension. If adverse conditions should develop during such period, FCIC will immediately discontinue the acceptance of applications.

List of Subjects in 7 CFR Part 422

Crop insurance, Potatoes.

Accordingly, under the authority contained in 7 CFR 422.7(b) of the Potato Crop Insurance Regulations, the Federal Crop Insurance Corporation herewith gives notice that the closing date for accepting applications for potato crop insurance in the States and Counties listed below, is extended through the close of business on March 16, 1984:

Virginia
Northampton
North Carolina
Pamlico
Pasquotank

(Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516))

Done in Washington, D.C., on February 28, 1984.

Peter F. Cole,
Secretary, Federal Crop Insurance Corporation.

Dated: February 29, 1984.

Approved by:

Edward Hews,
Acting Manager.

[FR Doc. 84-6098 Filed 3-7-84; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Delta Air Lines, Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the listing of carriers which have entered into agreements with the Service for the preinspection of their passengers and crews at locations outside the United States by adding the name of Delta Air Lines, Inc.

EFFECTIVE DATE: February 24, 1984.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 Eye Street NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Delta Air Lines, Inc. on February 24, 1984 to provide for the preinspection of its passengers and crews as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilitates processing passengers and crews upon arrival at a U.S. port of entry and is a convenience to the traveling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds an air carrier's name to the present listing and is editorial in nature.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Air carriers, Airlines, Aliens, Government contracts, Inspections.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.4 [Amended]

Section 238.4 is amended by adding the name "Delta Air Lines, Inc." under "At Nassau".

(Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228))

Dated: February 27, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-6298 Filed 3-7-84; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 81

[Docket No. 84-020]

Lethal Avian Influenza

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the Lethal Avian Influenza interim rule (1) by deleting the area designated as a quarantined area in New Jersey because of lethal avian influenza and (2) by making the extraordinary emergency provisions of the interim rule no longer applicable to New Jersey. This action is necessary because it has been determined that lethal avian influenza no longer exists in New Jersey. The effect of this action is to delete unnecessary prohibitions and restrictions on the interstate movement of live poultry and certain other items from the previously quarantined area in New Jersey; and to make no longer applicable to New Jersey provisions for inspections and seizures upon any premises; disposal of poultry and other items; cleaning of pens, coops, containers, troughs, other accessories, and means of conveyance; and appraisal and payment for destruction of poultry and other items affected with or exposed to lethal avian influenza.

DATES: Effective date is March 6, 1984. Written comments must be received on or before May 7, 1984.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. William W. Buisch, Chief, National Emergency Field Operations Staff, VS, APHIS, USDA, Room 747, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8073.

SUPPLEMENTARY INFORMATION:

Background

This document amends the Lethal Avian Influenza interim rule by deleting the area designated as a quarantined area in New Jersey because of lethal avian influenza and removing New Jersey from the extraordinary emergency provisions of the interim rule. The Lethal Avian Influenza interim rule is set forth in 9 CFR Part 81 (48 FR 51422-51423, 51798, 52420-52427, 52885-52887, 53586, 53678-53679, 53679-53681, 53997, 54574-54575, 55402-55405, 55722, 57474-57475, 49 FR 368-369, 2742-2744, 3446-3448, 3494, 3839-3845, 5723-5724, 7978-7979).

Lethal avian influenza is defined as a disease of poultry caused by any form of H5 influenza virus that is determined by the Deputy Administrator to have spread from the 1983 outbreak in poultry in Pennsylvania.

Quarantined Areas

With certain exceptions, the interim rule provides that the following articles designated as prohibited articles are prohibited from being moved interstate from a quarantined area:

(1) Live poultry,

(2) Manure from poultry, and

(3) Litter that has been used by poultry. The interim rule also provides, with certain exceptions, that the following articles designated as restricted articles are allowed to be moved interstate from a quarantined area only in accordance with certain conditions:

(1) Poultry carcasses or parts thereof,

(2) Eggs from poultry, and

(3) Coops, containers, troughs or other accessories that have been used in the handling of poultry or poultry eggs.

Prior to the effective date of this document, the quarantined area in New Jersey included portions of Cumberland, Gloucester, and Salem Counties. Lethal avian influenza had been found to occur in New Jersey only on one premises in Salem County. The poultry on that premises in Salem County have been depopulated. Also, extensive surveys conducted on all commercial and noncommercial poultry premises in the previously quarantined area indicate that there are no lethal avian influenza virus or antibodies in poultry within the previously quarantined area and that lethal avian influenza no longer exists in New Jersey.

Under these circumstances there is no longer a basis for imposing prohibitions or restrictions on the movement of live poultry or other items from any area in New Jersey because of lethal avian influenza.

Extraordinary Emergency Provisions

The extraordinary emergency provisions of the interim rule apply to States where an extraordinary emergency exists because of lethal avian influenza. These provisions are specifically authorized under the Act of July 2, 1962 (21 U.S.C. 134-134h). In this connection, the extraordinary emergency provisions provide for inspections and seizures upon any premises in such States; disposal of poultry and other items; cleaning of pens, coops, containers, troughs, other accessories, and means of conveyance; and appraisal and payment for destruction of poultry and other items affected with or exposed to lethal avian influenza. Prior to the effective date of this document, the extraordinary emergency provisions applied to New Jersey and Pennsylvania. It is necessary to continue to apply the extraordinary emergency provisions to Pennsylvania. However, under the circumstances explained above, there is no longer a basis for applying the extraordinary emergency provisions to New Jersey.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the movement of live poultry and certain other items from New Jersey, and to benefit New Jersey by declaring that lethal avian influenza no longer exists in New Jersey.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are contrary to the public interest; and good cause is found for making this interim rule effective upon signature. Comments are solicited for 60 days after publication of this document. A final document discussing comments received and any amendments required will be published in the **Federal Register**.

Executive Order and Regulatory Flexibility Act

The emergency nature of this action makes it impracticable for the Agency to follow the procedures of Executive Order 12291 and Secretary's Memorandum 1512-1 with respect to this interim rule. Immediate action is warranted in order to delete unnecessary restrictions on the movement of live poultry and certain other items from New Jersey, and to benefit New Jersey by declaring that lethal avian influenza no longer exists in New Jersey.

This emergency situation also makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act impracticable. Since this action may have a significant economic impact on a substantial number of small entities, the Final Regulatory Impact Analysis, if required, will address the issues required in section 604 of the Regulatory Flexibility Act.

List of Subjects in 9 CFR Part 81

Animal diseases, Poultry and poultry products, Transportation.

Under the circumstances referred to above, 9 CFR Part 81 is amended as follows:

PART 81—LETHAL AVIAN INFLUENZA

§ 81.4 [Amended]

1. Section 81.4 is amended by removing paragraph (b) and redesignating paragraphs (c) and (d) as (b) and (c), respectively.

§ 81.10 [Amended]

2. Section 81.10 is amended by removing "New Jersey and" in the first and second sentences, and by revising the last sentence to read "The Commissioner of Agriculture of Pennsylvania has been informed of these facts."

§ 81.11 [Amended]

3. The first sentence in § 81.11 is amended by removing "New Jersey and".

§ 81.12 [Amended]

4. The first sentence in § 81.12 is amended by removing "New Jersey and".

(Sec. 2, 23 Stat. 31, as amended; secs. 4–8, 23 Stat. 31–33, as amended; secs. 1–3, 32 Stat. 791, 792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; 41 Stat. 699; sec. 2, 65 Stat. 693; secs. 2–3, 5–6, and 11, 76 Stat. 129–132; 76 Stat. 663, 7 U.S.C. 450, 21 U.S.C. 111–113, 114a–1, 115–117, 119–126, 130, 134a, 134b, 134d, 134e, 134f; 7 CFR 2–17, 2.51, and 371.2(d))

Done at Washington, D.C. this 6th day of March, 1984.

W. E. Ketter,

Acting Deputy Administrator, Veterinary Services

[FR Doc. 84–6361 Filed 3–6–84; 2:19 pm]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

General Statement of Policy and Procedure for Enforcement Actions

AGENCY: Nuclear Regulatory Commission.

ACTION: Revised general statement of policy.

SUMMARY: The NRC is publishing minor revisions to its enforcement policy (47 FR 9987 (March 9, 1982)) based upon its experience to date in implementing the policy. The policy statement is intended to inform licensees and the public of the bases for taking various enforcement actions. The policy is codified as Appendix C to Part 2 of Title 10 of the Code of Federal Regulations. The Commission has also directed that a study of the enforcement program be performed by a small committee of individuals from outside the agency to be selected by the Commission. As a result of this study, additional changes to the policy may be proposed. Comments on these revisions are solicited and will be considered in the in-depth study of the enforcement program.

EFFECTIVE DATE: This revised statement of policy is effective March 8, 1984 while comments on the policy are being received. Submit comments on or before June 1, 1984. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Send comments and suggestions to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments may be examined in the U.S. Nuclear Regulatory Commission Public Document Room, 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Jane A. Axelrad, Director, Enforcement Staff, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (301–492–4909).

SUPPLEMENTARY INFORMATION:

Background

The criteria used by the Commission to conduct its enforcement activities were first published on October 17, 1972 (37 FR 21962). These criteria were subsequently modified on January 3, 1975 (40 FR 820) and on December 3, 1979 (44 FR 77135). In late 1979, the Commission directed the staff to prepare a comprehensive statement of enforcement policy. This staff effort was given added urgency by the enactment of Pub. L. 96–295 (signed June 30, 1980), that, among other things, amended Section 234 of the Atomic Energy Act to raise the maximum civil penalty the NRC can impose from $5,000 to $100,000 per violation per day and eliminated the provision limiting the total civil penalties for any 30-day period to $25,000. On September 4, 1980, the Commission approved a proposed general statement of policy on enforcement. Comments were solicited on the policy and a series of public meetings was held. On March 9, 1982, the Commission published a final version of the policy (47 FR 9987).

The policy has now been in effect for about two years. The Commission directed the staff to evaluate the policy and recommend changes if any were necessary. The staff met with groups of utility representatives and public interest groups and consulted the NRC Regional Administrators and Office Directors soliciting comments on whether any changes to the policy should be made. The Commission has determined that, pending further study, no major changes should be made to the policy at this time. The Commission has determined, however, that certain minor revisions should be made now.

The Commission has also directed that an in-depth study of the enforcement program be performed by a small committee of individuals from outside the agency to be selected by the Commission. This study will begin this spring. As a result of this study, additional changes to the policy may be proposed.

The Commission is soliciting comments on the minor revisions described below. These comments will be considered in the in-depth study of the enforcement program. In addition, the Commission is particularly interested in comments on the issue of material false statements. In the VEPCO decision in 1976, Virginia Electric Power Company (North Anna Power Station, Units 1 and 2) CLI–76–22, 4 NRC 480, affirmed, *Virginia Electric & Power Co. v. NRC, 571* F 2d 1289 (4th Cir. 1978), the Commission defined the term "material false statement" as a statement that is false by omission or commission and has the capability to influence a reasonable agency expert. The Commission's staff has been applying this definition and has taken enforcement actions in several cases for violations involving material false statements.

The Commission is interested in comments on the agency's policy on material false statements. Specifically, has the Commission's emphasis on material false statements had a positive effect on the quality of communications with the NRC or has it had a chilling effect on such communications? Should the definition of material false statement be changed to apply only to written statements, submitted under oath? Should materiality be contingent upon the safety significance of the underlying information? Should "materiality" be dependent upon actually influencing an agency reviewer as opposed to having the capability of influencing a reasonable agency reviewer? What would the expected effect of such changes be? As discussed above, these comments will be considered in the in-depth study of the enforcement program and may result in further changes to the policy.

In the following paragraphs, the revisions to the policy which are being made now are described. Only the sections to which changes were made are discussed here. The numbering of the sections tracks the section numbers in the policy.

I. Introduction and Purpose

1. The word "noncompliance" was changed to "violation" wherever it appears in the policy to more precisely describe the focus of the enforcement policy.

2. The phrase "noncompliance should be more expensive than compliance" has been changed to "sanctions should be designed to ensure that a licensee does not deliberately profit from violations of NRC requirements." This change was made to clarify the original intent that licensees committing deliberate violations should receive higher sanctions to remove any benefit attributable to the violation. If this provision were read literally, sanctions for some inadvertent violations of technical specifications would be in the million-dollar range but would not likely prevent future violations. The Commission has concluded that the purpose of the enforcement policy to deter future noncompliance would be better served by reserving such sanctions for deliberate violations of NRC requirements.

II. Statutory Authority and Procedural Framework

The statutory authority section has been revised to note that sections 84 and 147 of the Atomic Energy Act, in addition to the sections already enumerated, authorize the imposition of civil penalties for violations of regulations implementing those provisions.

III. Severity of Violations

1. A few minor editorial changes were made. In addition, changes were made to reflect that a new Supplement, Supplement VIII, was added. This Supplement is discussed in more detail under Supplement VIII.

2. Language has been added to reflect the practice that has been adopted of evaluating some violations in the aggregate and assigning a single severity level for a group of violations. The existing policy provided that to focus on the underlying cause of a violation, the cumulative total civil penalty for all violations that contributed to or were unavoidable consequences of that problem would be based on the amount shown in the civil penalty tables. Since the amount in the tables is based upon the severity level of a violation, the Commission has found it necessary in some cases to aggregate the violations for the assignment of a severity level. In addition, this change is being made to recognize that individual violations, when viewed collectively, may have a greater significance than when considered separately. By aggregating the violations to evaluate the severity level, the Commission hopes to focus attention on the underlying problem or programmatic deficiencies where appropriate.

3. The existing policy indicates that a licensee will be cited for a failure to report a condition or event if it was aware of the condition or event or if enough information existed that the licensee should have been aware of the condition or event. The policy has been clarified to indicate that a licensee will not normally be cited for failure to report a condition or event unless the licensee was actually aware of the condition or event that it failed to report.

4. A clarifying example has been added to the section on willfulness to indicate that inadvertent clerical errors in a document submitted to the NRC is an example of an act that does not rise to the level of careless disregard.

IV. Enforcement Conferences

A new section has been added to the policy containing a description of the circumstances under which enforcement conferences will be held and the information that should be discussed at such conferences. The references in sections IV.B and IV.E to enforcement conferences have been deleted and the substance of these provisions has been included in the new section.

In incorporating the substance of section IV.B, two changes were made. The Commission has noted that enforcement conferences will normally be closed to the public. In addition, the existing policy provided that a civil penalty would not be imposed for a Severity Level IV violation unless a licensee had been cited previously for a similar violation for which an enforcement conference had been held and for which corrective action had proved ineffective. The Commission has, on occasion, wanted to impose a civil penalty for a Severity Level IV violation similar to a previous violation but for which an enforcement conference had not been held. The policy has been changed to delete the reference to a previous similar Severity Level IV violation for which an enforcement conference had been held. Instead, the policy states that the NRC may elect to hold an enforcement conference for Severity Level IV violations which, if repeated, could lead to escalated enforcement action. The policy also states that civil penalties may be imposed for previous similar Severity Level IV violations for which corrective action has proved ineffective in achieving compliance. The NRC will normally hold an enforcement conference before proposing a civil penalty for a Severity Level IV violation.

V. Enforcement Actions

A. Notice of Violation

A few minor editorial changes were made similar to those made in the previous sections. For example, the word "licensee" was changed to "recipient" where appropriate to reflect that under the recent change to 10 CFR 2.200 and 2.201, non-licensees may now be the recipients of Notices of Violation.

B. Civil Penalty

1. The provisions of the policy providing that generally, civil penalties are imposed for Severity Level I and II violations and are considered and usually imposed for Severity Level III violations have been changed. First, the policy has been changed to indicate that mitigation factors may be applied to Severity Level II violations. The purpose of this change is to provide additional incentives to licensees to identify, report, and correct violations. The existing policy that mitigation will not be allowed for Severity Level I violations has not been changed. Second, the policy has been changed to delete the words "usually imposed" for Severity Level III violations. Instead, civil penalties will be considered for

these violations. This is consistent with other changes to the policy that are being made to eliminate the many smaller penalties that have been issued to reactor licensees for violations of lesser safety significance.

2. Several changes were made to the factors considered for mitigation or escalation of a penalty.

a. *Prompt identification and reporting*—The reference in this factor, and in the introductory material, to self-disclosing incidents has been deleted. This provision has been difficult to implement, and the Commission has determined that self-identification and reporting should be encouraged to the maximum extent practicable. Therefore, credit of up to 50% will be considered for any violation promptly identified, reported and corrected by a licensee. The amount of credit to be given will be based upon the ease with which it was identified. Thus, less credit will be given for self-disclosing incidents (such as acute overexposures that show up on film badges) than for violations discovered during a licensee audit or surveillance program, but some credit may be given if appropriate.

b. *Corrective action to prevent recurrence*—The policy has been changed to allow for escalation by as much as 50% (instead of the previous 25%) if corrective action is not prompt or if the corrective action is only minimally acceptable. Mitigation of up to 50% will be allowed for unusually prompt and extensive corrective actions. Previously, the policy contained four escalating factors, each allowing for 25% escalation, and two mitigating factors, each allowing for 50% mitigation. However, since the Commission is adding a factor for performance that allows for up to 100% mitigation or escalation, neither the escalation factors nor the mitigation factors will add up to 100%. Instead, the amount of possible escalation will be equal to the amount of possible mitigation for each factor.

c. *Enforcement history*—This factor has been revised to provide for up to 100% mitigation of the base civil penalty for prior good performance in the general area of concern. The policy also provides for up to 100% escalation (increased from 25%) for poor performance in the general area of concern. Under this provision, a civil penalty can be fully mitigated for a first offense in an area of concern or for an offense in an area in which no previous offense had occurred for a period of at least two years. However, a civil penalty can be doubled if a similar violation occurs within a two-year period. It is expected that as a result of this change, fewer small penalties will be issued, particularly for reactors.

In considering prior performance, prior enforcement history, including previous Severity IV and V violations in the area of concern, and escalated enforcement actions will be considered. For reactor licensees, the Systematic Assessment of Licensee Performance (SALP) ratings will also be considered in determining whether mitigation or escalation is appropriate.

d. *Prior Notice of Similar Events*—The only change to this factor was to increase the percentage allowable for escalation from 25% to 50% for the reasons described above.

e. *Multiple Occurrences*—The percentage for escalation in this factor was changed from 25% to 50%. In addition, the qualification on when this factor may be used (when NRC identifies the violation or for violations associated with self-disclosing incidents) has been deleted. The Commission believes that escalation of a penalty may be appropriate where multiple examples of a violation are identified, regardless of who identifies them. However, escalation under this factor may be offset by mitigation for prompt identification and reporting of a violation.

3. Three other changes regarding escalation of penalties have been made. First, consistent with the addition of the factor on past performance, the policy now states that in cases involving willfulness, flagrant NRC-identified violations, repeated poor performance in an area of concern, or serious breakdown in management controls, the NRC intends to apply its full enforcement authority where such action is warranted. Second, a statement has been added to clarify that management involvement in a violation may result in a higher sanction but the lack of such involvement does not mitigate a penalty. This change is being made as a result of the decisions in *Consolidated X-Ray Service Corp.*, ASLBP-83-483-01 OT, 17 NRC 693 (April 28, 1983) and *Atlantic Research*, ALAB-594, 11 NRC 841 (1980) in which an Administrative Law Judge and an Appeal Board, respectively, decided to mitigate two civil penalties because management was not directly involved in the violations. The Commission has determined that mitigation for lack of management involvement could encourage lack of management involvement in licensed activities and might result in a decrease in protection of the public health and safety. The Commission expects management to be closely involved in the control of licensed activities to prevent violations of regulatory requirements. If management causes or condones violations of regulatory requirements, sanctions will be appropriately escalated.

Third, the language on escalation of a penalty for duration and the use of daily civil penalties has been clarified. The policy did not explicitly allow for escalation for duration other than through daily civil penalties. In some cases, it is desirable to escalate a civil penalty for duration without assessing a daily civil penalty. The language has been changed to provide for this.

4. The language regarding Commission approval of issuance of proposed penalties in excess of 3.75 times the maximum civil penalty for a single Severity Level I violation has been moved to the section on Responsibilities (Section VII).

5. The language regarding focusing on the fundamental problems has been clarified as described in Section III above.

6. A number of changes were made to the civil penalty tables:

a. *Safeguards*—Table 1A was revised to establish the same base penalty amount for safeguards violations for reactor licensees regardless of the category of material. This was done because the original designation by IAEA of categories of material was not intended to refer to reactor facilities. The upper limit for the base penalty was selected because the safety consequences of reactor sabotage are considered equal to the safety consequences of theft of material from a Category 1 fuel facility.

b. *Materials Licensees*—The base penalties have been adjusted for some categories of licensees, and base penalties have been added which apply to uranium mills and conversion facilities. These changes were made as a result of experience gained in working with the policy to better equate the amounts of the base civil penalties for various licensees with their health and safety significance.

Table 1A was revised to increase the base civil penalty to $100,000 for Severity Level I violations by power reactor licensees, except for those involving transportation, because the maximum civil penalty is generally appropriate for such violations unless mitigating circumstances are present. This will also result in an increase of the base civil penalties for other severity levels.

C. Esclation of Enforcement Sanctions

Table 2 has been changed to indicate that a civil penalty might not be imposed for the first Severity Level III violation in an area of concern or for an offense in an area in which no previous offense had occurred for a period of at least two years. This change is consistent with the change to the factors allowing complete mitigation for good performance in an area of concern.

D. Related Administrative Actions

The references to enforcement conferences have been deleted and their substance has been covered in section IV. Some minor editorial changes have also been made.

VI. Responsibilities

This section has been changed to reflect the present responsibilities of the Regional Administrators and to reflect existing Commission guidance regarding when Commission consultation is required. In addition to the circumstances previously enumerated in the policy, Commission consultation is now required before issuance of any proposed enforcement action that involves a Severity Level I violation or a material false statement. Commission consultation was required before issuance of a civil penalty involving 3.75 times the Severity Level I values shown in Table 1A. Now, Commission consultation is required prior to issuance of a civil penalty involving 3 times the Severity Level I values shown in Table 1A. For reactor operations, this amount will be $300,000.

VII. The Supplements

The supplements have been changed in several respects. As described below, a new supplement involving emergency planning has been added. In addition, the introductory language to each of the severity levels in each of the Supplements has been changed to clarify that the examples are only examples and that the examples themselves illustrate the significance of violations of that type. For example, under the old policy, the introductory language for Severity Level I violations under Supplement I contained the words "Very significant violations involving." The revised policy will state "Violations involving for example." The examples provided are examples of violations that the Commission considers to be very significant.

a. *Supplement I.*

1. The policy now includes violations of technical specification limiting conditions for operation (TS LCOs) as Severity Level III violations. However, the examples provided in the policy are confusing. They include TS LCO violations involving a loss of function as examples of both Severity Level II and Severity Level III violations. Furthermore, the TS example for Severity Level III includes a "degraded condition and sufficient information existed to alert the licensee that he was in an action statement condition" which does not take into account the factor that is most often considered in determining the severity level of a TS violation, the safety significance of the system involved in the violation. The Commission is clarifying these examples by deleting the references to loss of function and degraded condition and by providing more explicit examples based upon the safety significance of the violation. The examples provided, two in Severity Level III and two in Severity Level IV, were chosen as fairly obvious examples of significant and less significant TS violations.

2. The word "serious" has been deleted from example 3, Severity Level III, Supplement I because the Commission believes that dereliction of duty itself constitutes a serious violation.

3. The words "when the reported matter does not constitute a violation" have been deleted from Supplement I, Severity Level IV, because these words are unnecessary.

b. *Supplement II.*

No changes were made to Supplement II.

c. *Supplement III.*

The safeguards supplement was revised in three ways.

1. The present examples were clarified to indicate that it is the loss of one or more of the elements of access control that determines the severity level of a violation.

2. New examples were added to distinguish violations relating to the protection of safeguards information of lesser significance from those that involve information which would significantly assist an individual in an act of radiological sabotage or theft of special nuclear material.

3. The failure to perform a proper search at an access control point that results in the introduction of contraband to the site was added as a Severity Level III violation. Some violations of search requirements may be considered minor. However, the search procedure is expected to uncover attempts to introduce contraband to the site and, when this failure is demonstrated by the actual introduction of contraband, it is clearly a significant violation.

d. *Supplement IV*—Minor changes were made to this supplement. A change was made to one example of a Severity Level III violation to bring the example into closer conformance with the relative significance of similar examples under other severity levels for this supplement.

e. *Supplement V*—Minor changes were made to this supplement to ensure that a graduated approach to violations was adequately described in the examples.

f. *Supplement VI*—Minor changes were made to this supplement.

g. *Supplement VII.*

1. Examples were added to this supplement to address the Commission's increasing concern with violations involving falsification of records. The Commission views falsification of records which the NRC requires be kept to be a serious concern. The records are required to be kept to enable a licensee to adequately control the safety of its licensed activities. In addition, deliberate falsification of records of significant information by management personnel is obviously a serious violation. Accordingly, violations involving deliberate falsification of significant records by or with the knowledge of management are considered Severity Level I violations. Either deliberate falsification, or falsification by or with the knowledge of management, of significant records is described as an example of a Severity Level II violation. Any other falsification of significant records is described as an example of a Severity Level III violation.

2. The examples for violations involving discrimination against an employee in violation of Section 210 of the ERA have been clarified. Violations by senior corporate management have been categorized as Severity Level I violations. Violations by plant management above first-line supervision have been categorized as Severity Level II violations, and violations by first-line supervision have been categorized as Severity Level III violations.

3. The examples regarding Part 21 violations have been made consistent with statutory authority.

h. *Supplement VIII—Emergency Preparedness.*

The existing Enforcement Policy did not contain any examples of emergency preparedness violations in any of the supplements. However, the Commission has been taking enforcement actions under the emergency preparedness rules and guidance is necessary regarding what enforcement actions are appropriate. Accordingly, the Commission has developed a new Supplement VIII on Emergency Preparedness containing examples of emergency preparedness violations of varying severity. The examples are based upon the planning standards in 10 CFR 50.47(b). Since the planning standards on assessment and notification are considered to be the most significant, violations of more than one of these standards is considered a Severity Level II violation. No examples of Severity Level I violations of planning standards are provided because the Commission did not believe that violations of these standards should be considered as significant as a failure to classify, notify, or respond to an event in a general emergency, the example provided of a Severity Level I violation. The other examples are based upon failure to promptly classify, notify, or respond to an event, and are distinguished by the emergency action level that best describes the event. By "correctly classify," the Commission means classify at a sufficiently high protective action level. Enforcement action will not normally be taken for overclassifying an event.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Section 552 of Title 5 of the United States Code, the following statement of policy is published as Appendix C to 10 CFR Part 2 as a document subject to codification to be effective immediately.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Sec. 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Secs. 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sec. 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Secs. 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Secs. 2.300–2.309 also issued under Pub. L. 97-415, 96 Stat. 2071 (42 U.S.C. 2133). Secs. 2.600–2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 as amended (42 U.S.C. 4332). Secs. 2.700a, 2.719 also issued under 5 U.S.C. 554. Secs. 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557, § 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Secs. 2.800 and 2.808 also issued under 5 U.S.C. 553. Sec. 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Appendix A also issued under sec. 6, Pub. L. 91-580, 84 Stat. 1473 (42 U.S.C. 2135).

2. Appendix C to Part 2 is revised to read as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

The following statement of general policy and procedure explains the enforcement policy and procedures of the U.S. Nuclear Regulatory Commission and its staff in initiating enforcement actions, and of presiding officers, the Atomic Safety and Licensing Appeals Board, and the Commission in reviewing these actions. This statement is applicable to enforcement in matters involving the public health and safety, the common defense and security, and the environment.[1]

I. Introduction and Purpose

The purpose of the NRC enforcement program is to promote and protect the radiological health and safety of the public, including employees' health and safety, the common defense and security, and the environment by:

- Ensuring compliance with NRC regulations and license conditions;
- Obtaining prompt correction of violations;
- Deterring future violations; and
- Encouraging improvement of licensee performance, and by example, that of industry, including the prompt identification and reporting of potential safety problems.

Consistent with the purpose of this program, prompt and vigorous enforcement action will be taken when dealing with licensees who do not achieve the necessary meticulous attention to detail and the high standard of compliance which the NRC expects of its licensees. It is the Commission's intent that sanctions should be designed to ensure that a licensee does not deliberately profit from violations of NRC requirements. Each enforcement action is dependent on the circumstances of the case and requires the exercise of discretion after consideration of these policies and procedures. In no case, however, will licensees who cannot achieve and maintain adequate levels of protection be permitted to conduct licensed activities.

[1] Antitrust enforcement matters will be dealt with on a case-by-case basis.

II. Statutory Authority and Procedural Framework

A. Statutory Authority

The NRC's enforcement jurisdiction is drawn from the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended.

Section 161 of the Atomic Energy Act authorizes NRC to conduct inspections and investigations and to issue orders as may be necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property. Section 186 authorizes NRC to revoke licenses under certain circumstances (e.g., for material false statements, in response to conditions that would have warranted refusal of a license on an original application, for a licensee's failure to build or operate a facility in accordance with the terms of the permit or license, and for violation of a NRC regulation). Section 234 authorizes NRC to impose civil penalties not to exceed $100,000 per violation per day for the violation of certain specified licensing provisions of the Act, rules, orders, and license terms implementing these provisions, and for violations for which licenses can be revoked. In addition to the enumerated provisions in section 234, sections 84 and 147 authorize the imposition of civil penalties for violations of regulations implementing those provisions. Section 232 authorizes NRC to seek injunctive or other equitable relief for violation of regulatory requirements.

Section 206 of the Energy Reorganization Act authorizes NRC to impose civil penalties for knowing and conscious failures to provide certain safety information to the NRC.

Chapter 18 of the Atomic Energy Act provides for varying levels of criminal penalties (i.e., monetary fines and imprisonment) for willful violations of the Act and regulations or orders issued under Sections 65, 161(b), 161(i), or 161(o) of the Act. Section 223 provides that criminal penalties may be imposed on certain individuals employed by firms constructing or supplying basic components of any utilization facility if the individual knowingly and willfully violates NRC requirements such that a basic component could be significantly impaired. Section 235 provides that criminal penalties may be imposed on persons who interfere with inspectors.

Section 236 provides that criminal penalties may be imposed on persons who attempt to or cause sabotage at a nuclear facility or to nuclear fuel. Alleged or suspected criminal violations of the Atomic Energy Act are referred to the Department of Justice for appropriate action.

B. Procedural Framework

10 CFR Part 2, Subpart B, of NRC's regulations sets forth the procedures the NRC uses in exercising its enforcement authority. 10 CFR 2.201 sets forth the procedures for issuing notices of violation.

The procedure to be used in assessing civil penalties is set forth in 10 CFR 2.205. This regulation provides that the appropriate NRC Office Director initiates the civil penalty process by issuing a notice of violation and proposed imposition of a civil penalty. The licensee is provided an opportunity to contest in writing the proposed imposition of a civil penalty. After evaluation of the licensee's response, the Director may mitigate, remit, or impose the civil penalty. An opportunity is provided for a hearing if a civil penalty is imposed.

The procedure for issuing an order to show cause why a license should not be modified, suspended, or revoked or why such other action should not be taken is set forth in 10 CFR 2.202. The mechanism for modifying a license by order is set forth in 10 CFR 2.204. These sections of Part 2 provide an opportunity for a hearing to the affected licensee. However, the NRC is authorized to make orders immediately effective if the public health, safety or interest so requires or, in the case of an order to show cause, if the alleged violation is willful.

III. Severity of Violations

Regulatory requirements [2] have varying degrees of safety, safeguards, or environmental significance. Therefore, the relative importance of each violation must be identified as the first step in the enforcement process.

Consequently, violations are categorized in terms of five levels of severity to show their relative importance within each of the following eight activity areas:

Reactor Operations; Facility Construction; Safeguards; Health Physics; Transportation; Fuel Cycle and Materials Operations; Miscellaneous Matters; and Emergency Preparedness.

Licensed activities not directly covered by one of the above listed areas, e.g., export license activities, will be placed in the activity area most suitable in light of the particular violation involved. Within each activity area, Severity Level I has been assigned to violations that are the most significant and Severity Level V violations are the least significant. Severity Level I and II violations are of very significant regulatory concern. In general, violations that are included in these severity categories involve actual or high potential impact on the public. Severity Level III violations are cause for significant concern. Severity Level IV violations are less serious but are of more than minor concern; i.e., if left uncorrected, they could lead to a more serious concern. Severity Level V violations are of minor safety or environmental concern.

Comparisons of significance between activity areas are inappropriate. For example, the immediacy of any hazard to the public associated with Severity Level I violations in Reactor Operations is not directly comparable to that associated with Severity Level I violations in Reactor Construction.

While examples are provided in Supplements I through VIII for determining the appropriate severity level for violations in each of the eight activity areas, the examples are neither exhaustive nor controlling.

These examples do not create new requirements. Each is designed to illustrate the significance which the NRC places on a particular type of violation of NRC requirements. Each of the examples in the supplements is predicated on a violation of a regulatory requirement.

In each case, the severity of a violation will be characterized at the level best suited to the significance of the particular violation. In some cases, violations may be evaluated in the aggregate and a single severity level assigned for a group of violations.

The severity level of a violation may be increased if the circumstances surrounding the matter involve careless disregard of requirements, deception or other indications of willfulness. The term "willfulness" as used here embraces a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements. Willfulness does not include acts which do not rise to the level of careless disregard, e.g., inadvertent clerical errors in a document submitted to the NRC. In determining the specific severity level of a violation involving willfulness, consideration will be given to such factors as the position of the person involved in the violation (e.g., first-line supervisor or senior manager), the significance of any underlying violation, the intent of the violator (i.e., negligence not amounting to careless disregard, careless disregard, or deliberateness), and the economic advantage, if any, gained as a result of the violation. The relative weight given to each of these factors in arriving at the appropriate severity level will be dependent on the circumstances of the violation.

The NRC expects licensees to provide full, complete, timely, and accurate information and reports. Accordingly, unless otherwise categorized in the Supplements, the severity level of a violation involving the failure to make a required report to the NRC will be based upon the significance of and the circumstances surrounding the matter that should have been reported. A licensee will not normally be cited for a failure to report a condition or event unless the licensee was actually aware of the condition or event which it failed to report. However, the severity level of an untimely report, in contrast to no report, may be reduced depending on the circumstances surrounding the matter.

IV. Enforcement Conferences

Whenever the NRC has learned of the existence of a potential violation for which a civil penalty or other escalated enforcement action may be warranted, the NRC will normally hold an enforcement conference with the licensee prior to taking enforcement action. The NRC may also elect to hold an enforcement conference for other violations, e.g., Severity Level IV violation which, if repeated, could lead to escalated enforcement action. The purpose of the enforcement conference is to: (1) Discuss the violations, their significance and causes, and the licensee's corrective actions, (2) determine whether there are any aggravating or mitigating circumstances, and (3) obtain other information which will help determine the appropriate enforcement action.

In addition, during the enforcement conference, the licensee will be given an opportunity to explain to the NRC what corrective actions (if any) were taken or will be taken following discovery of the potential violation. Licensees will be told when a meeting is an enforcement conference. Enforcement conferences will not normally be open to the public.

When needed to protect the public health and safety or common defense and security, escalated enforcement action, such as the issuance of an immediately effective order modifying, suspending, or revoking a license, will be taken prior to the enforcement conference. In such cases, an enforcement conference may be held after the escalated enforcement action is taken.

V. Enforcement Actions

This section describes the enforcement sanctions available to NRC and specifies the conditions under which each may be used. The basic sanctions are notices of violation, civil penalties, and orders of various types. Additionally, related administrative mechanisms such as bulletins and confirmatory action letters are used to supplement the enforcement program. In selecting the enforcement sanctions to be applied, NRC will consider enforcement actions taken by other Federal or State regulatory bodies having concurrent jurisdiction, such as in transportation matters. With very limited exceptions, whenever a violation of NRC requirements is identified, enforcement action is taken. The nature and extent of the enforcement action is intended to reflect the seriousness of the violation involved. For the vast majority of violations, action by an NRC regional office is appropriate in the form of a Notice of Violation requiring a formal response from the recipient describing its corrective actions. The relatively small number of cases involving elevated enforcement action receives substantial attention by the public, and may have significant impact on the licensee's operation. These elevated enforcement actions include civil penalties; orders modifying, suspending or revoking licenses; or orders to cease and desist from designated activities.

A. Notice of Violation

A notice of violation is a written notice setting forth one or more violations of a legally binding requirement. The notice normally requires the recipient to provide a written statement describing: (1) corrective steps which have been taken and the results achieved; (2) Corrective steps which will be taken to prevent recurrence; and (3) the date when full compliance will be achieved. NRC may require responses to notices of violations to be under oath. Normally, reponses under oath will be required only in connection with civil penalties and orders.

NRC uses the notice of violation as the standard method for formalizing the existence of a violation. A notice of violation is normally the only enforcement action taken, except in cases where the criteria for civil penalties and orders, as set forth in Sections IV.B and IV.C, respectively, are met. In such cases, the notice of violation will be issued in conjunction with the elevated actions.

[2] The term "requirement" as used in this policy means a legally binding requirement such as a statute, regulation, license condition, technical specification, or order.

Because the NRC wants to encourage and support licensee initiative for self-identification and correction of problems, NRC will not generally issue a notice of violation for a violation that meets all of the following tests:

(1) It was identified by the licensee;

(2) It fits in Severity Level IV or V;

(3) It was reported, if required;

(4) It was or will be corrected, including measures to prevent recurrence, within a reasonable time; and

(5) It was not a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation.

Licensees are not ordinarily cited for violations resulting from matters not within their control, such as equipment failures that were not avoidable by reasonable licensee quality assurance measures or management controls. Generally, however, licensees are held responsible for the acts of their employees. Accordingly, this policy should not be construed to excuse personnel errors. Enforcement actions involving individuals, including licensed operators, will be determined on a case-by-case basis and must be approved by the Director of the responsible Program Office.[3]

B. Civil Penalty

A civil penalty is a monetary penalty that may be imposed for violation of: (a) Certain specified licensing provisions of the Atomic Energy Act or supplementary NRC rules or orders, (b) any requirement for which a license may be revoked, or (c) reporting requirements under Section 206 of the Energy Reorganization Act. Civil penalties are designed to emphasize the need for lasting remedial action and to deter future violations.

Generally, civil penalties are imposed for Severity Level I violations, are imposed absent mitigating circumstances for Severity Level II violations, are considered for Severity Level III violations, and may be imposed for Severity Level IV violations that are similar[4] to previous violations for which the licensee did not take effective corrective action.

In applying this guidance for Severity Level IV violations, NRC normally considers civil penalties only for similar Severity Level IV violations that occur after the date of the last inspection or within two years, whichever period is greater.

Civil penalties will normally be assessed for knowing and conscious violations of the reporting requirements of Section 206 of the Energy Reorganization Act, and for any willful violation of any Commission requirement including those at any severity level.

NRC imposes different levels of penalties for different severity level violations and different classes of licensees. Tables 1A and 1B show the base civil penalties for various reactor, fuel cycle, and materials programs. The structure of these tables generally takes into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration. Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. Regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be such that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amounts of such penalties take into account a licensee's "ability to pay." In determining the amounts of civil penalties for licensees for whom the tables do not reflect the ability to pay, NRC will consider as necessary an increase or decrease on a case-by-case basis.

NRC attaches great importance to comprehensive licensee programs for detection, correction, and reporting of problems that may constitute, or lead to, violation of regulatory requirements. This is emphasized by giving credit for effective licensee audit programs when licensees find, correct, and report problems expeditiously and effectively. To encourage licensee self-identification and correction of violations and to avoid potential concealment of problems of safety significance, application of the adjustment factors set forth below may result in no civil penalty being assessed for violations which are identified, reported (if required), and effectively corrected by the licensee.

On the other hand, ineffective licensee programs for problem identification or correction are unacceptable. In cases involving willfulness, flagrant NRC-identified violations, repeated poor performance in an area of concern, or serious breakdown in management controls, NRC intends to apply its full enforcement authority where such action is warranted, including issuing appropriate orders and assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of $100,000 per violation, per day. In this regard, while management involvement, direct or indirect, in a violation may lead to an increase in the civil penalty, the lack of such involvement may not be used to mitigate a civil penalty. Allowance of mitigation could encourage lack of management involvement in licensed activities and a decrease in protection of the public health and safety.

NRC reviews each proposed civil penalty case on its own merits and adjusts the base civil penalty values upward or downward appropriately. Tables 1A and 1B identify the base civil penalty values for different severity levels, activity areas, and classes of licensees. After considering all relevant circumstances, adjustments to these values may be made for the factors described below:

1. *Prompt Identification and Reporting.* Reduction of up to 50% of the base civil penalty may be given when a licensee identifies the violation and promptly reports the violation to the NRC. In weighing this factor, consideration will be given to, among other things, the length of time the violation existed prior to discovery, the opportunity available to discover the violation, the ease of discovery and the promptness and completeness of any required report. No consideration will be given to this factor if the licensee does not take immediate action to correct the problem upon discovery.

2. *Corrective Action to Prevent Recurrence.* Recognizing that corrective action is always required to meet regulatory requirements, the promptness and extent to which the licensee takes corrective action, including actions to prevent recurrence, may be considered in modifying the civil penalty to be assessed. Unusually prompt and extensive corrective action may result in reducing the proposed civil penalty as much as 50% of the base value shown in Table 1. On the other hand, the civil penalty may be increased as much as 50% of the base value if initiation of corrective action is not prompt or if the corrective action is only minimally acceptable. In weighing this factor, consideration will be given to, among other things, the timeliness of the corrective action, degree of licensee initiatives, and comprehensiveness of the corrective action—such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern.

3. *Past Performance.* Reduction by as much as 100% of the base civil penalty shown in Table 1 may be given for prior good performance in the general area of concern. On the other hand, the base civil penalty may be increased as much as 100% for prior poor performance in the general area of concern.

In weighing this factor, consideration will be given to, among other things, the effectiveness of previous corrective action for similar problems, overall performance such as Systematic Assessment of Licensee Performance (SALP) evaluations for power reactors, and prior enforcement history including Severity Level IV and V violations in the area of concern. For example, failure to implement previous corrective action for prior similar problems may result in an increase in the civil penalty.

4. *Prior Notice of Similar Event.* The base civil penalty may be increased as much as 50% for cases where the licensee had prior knowledge of a problem as a result of a licensee audit, or specific NRC or industry notification, and had failed to take effective preventive steps.

5. *Multiple Occurrences.* The base civil penalty may be increased as much as 50% where multiple examples of a particular violation are identified during the inspection period.

The above factors are additive. However, in no instance will a civil penalty for any one violation exceed $100,000 per day.

[3] Section 234 of the Atomic Energy Act gives the Commission authority to impose civil penalties for violations on "any person." "Person" is broadly defined in Section 11s of the AEA to include individuals, a variety of organizations, and any representatives or agents. This gives the Commission authority to impose civil penalties on employees of licensees or on separate entities when a violation of a requirement directly imposed on them is committed.

[4] The word "similar," as used in this policy, refers to those violations which could have been reasonably expected to have been prevented by the licensee's corrective action for the previous violation.

The duration of a violation may also be considered in assessing a civil penalty. A greater civil penalty may be imposed if a violation continues for more than a day. For example:

(1) If a licensee is aware of the existence of a condition which results in an ongoing violation and fails to initiate corrective action, each day the condition existed may be considered as a separate violation and, as such, subject to a separate additional civil penalty.

(2) If a licensee is unaware of a condition resulting in a continuing violation, but clearly should have been aware of the condition or had an opportunity to correct the condition but failed to do so, a separate violation and attendant civil penalty may be considered for each day that the licensee clearly should have been aware of the condition or had an opportunity to correct the condition, but failed to do so.

(3) Alternatively, whether or not a licensee is aware or should have been aware of a violation that continues for more than one day, the civil penalty imposed for one violation may be increased to reflect the added significance resulting from the duration of the violation.

The Tables and the mitigating factors determine the civil penalties which may be assessed for each violation. However, to focus on the fundamental underlying causes of a problem for which enforcement action appears to be warranted, the cumulative total for all violations which contributed to or were unavoidable consequences of that problem may be based on the amount shown in the table for a problem of that Severity Level, as adjusted. If an evaluation of such multiple violations shows that more than one fundamental problem is involved, each of which, if viewed independently, could lead to civil penalty action by itself, then separate civil penalties may be assessed for each such fundamental problem. In addition, the failure to make a required report of an event requiring such reporting is considered a separate problem and will normally be assessed a separate civil penalty, if the licensee is aware of the matter that should have been reported.

Table 1A—BASE CIVIL PENALTIES

	Plant operation, construction, health physics and EP	Safeguards	Transportation	
			Greater than type A quantity [1]	Type A quantity or less [2]
a. Power reactors	$100,000	$100,000	$100,000	$5,000
b. Test reactors	10,000	10,000	10,000	2,000
c. Research reactors & critical facilities	5,000	5,000	5,000	1,000
d. Fuel fabricators and industrial processors [3]	25,000	[4] 100,000	25,000	5,000
e. Mills and uranium conversion facilities	10,000		5,000	2,000
f. Industrial users of material [5]	10,000		5,000	2,000
g. Waste disposal licensees	10,000		5,000	2,000
h. Academic or medical institutions [6]	5,000		2,500	1,000
i. Other material licensees	1,000		2,500	1,000

[1] Includes irradiated fuel, high level waste, unirradiated fissile material, and any other quantities requiring Type B packaging.
[2] Includes low specific activity waste (LSA), low level waste, Type A packages, and excepted quantities and articles.
[3] Large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material.
[4] This amount refers to Category 1 licensees (as defined in 10 CFR 73.2(bb)). Licensed fuel fabricators not authorized to possess Category 1 material have a base penalty amount of $50,000.
[5] Includes industrial radiographers, nuclear pharmacies, and other industrial users.
[6] This applies to nonprofit institutions not otherwise categorized under sections "a" through "g" in this table.

TABLE 1B—BASE CIVIL PENALTIES

[Base Civil Penalty Amount]

Severity Level	Percent of amount listed in Table 1A
I	100
II	80
III	50
IV	15
V	5

C. Orders

An order is a written NRC directive to modify, suspend, or revoke a license; to cease and desist from a given practice or activity; or to take such other action as may be proper (*see* 10 CFR 2.202 and 2.204). Orders may be issued as set forth below. Orders may also be issued in lieu of, or in addition to, civil penalties, as appropriate.

(1) License Modification Orders are issued when some change in licensee equipment, procedures, or management controls is necessary.

(2) Suspension Orders may be used:

(a) To remove a threat to the public health and safety, common defense and security, or the environment;

(b) To stop facility construction when: (i) Further work could preclude or significantly hinder the identification or correction of an improperly constructed safety-related system or component, or (ii) the licensee's quality assurance program implementation is not adequate to provide confidence that construction activities are being properly carried out;

(c) When the licensee has not responded adequately to other enforcement action;

(d) When the licensee interferes with the conduct of an inspection or investigation; or

(e) For any reason not mentioned above for which license revocation is legally authorized.

Suspension may apply to all or part of the licensed activity. Ordinarily, a licensed activity is not suspended (nor is a suspension prolonged) for failure to comply with requirements where such failure is not willful and adequate corrective action has been taken.

(3) Revocation Orders may be used:

(a) When a licensee is unable or unwilling to comply with NRC requirements,

(b) When a licensee refuses to correct a violation,

(c) When a licensee does not respond to a notice of violation where a response was required,

(d) When a licensee refuses to pay a fee required by 10 CFR Part 170, or

(e) For any other reason for which revocation is authorized under Section 186 of the Atomic Energy Act (e.g., any condition which would warrant refusal of a license on an original application).

(4) Cease and Desist Orders are typically used to stop an unauthorized activity that has continued after notification by NRC that such activity is unauthorized.

Orders are made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interest, or safety so requires, or when the order is responding to a violation involving willfulness. Otherwise, a prior opportunity for a hearing on the order is afforded. For cases in which the NRC believes a basis could reasonably exist for not taking the action as proposed, the licensee will ordinarily be afforded an opportunity to show cause why the order should not be issued in the proposed manner.

D. Escalation of Enforcement Sanctions

NRC considers violations of Severity Levels I, II, or III to be serious. If serious violations occur, NRC will, where necessary, issue orders in conjunction with civil penalties to achieve immediate corrective actions and to deter further recurrence of serious violations. NRC carefully considers the circumstances of each case in selecting and applying the sanction(s) appropriate to the case in accordance with the criteria described in Sections V.B and V.C, above.

Examples of enforcement actions that could be taken for similar Severity Level I, II, or III violations are set forth in Table 2. The actual progression to be used in a particular case will depend on the circumstances. However, enforcement sanctions will normally escalate for recurring similar violations.

Normally the progression of enforcement actions for similar violations will be based on violations under a single license. When more than one facility is covered by a single license, the normal progression will be based on similar violations at an individual facility and not on similar violations under the same license. However, it should be noted that under some circumstances, e.g., where there is common control over some facet of facility operations, similar violations may be charged even though the second violation occurred at a different facility or under a different license. For example, a physical security violation at Unit 2 of a dual unit plant that repeats an earlier violation at Unit 1 might be considered similar.

TABLE 2.—EXAMPLES OF PROGRESSION OF ESCALATED ENFORCEMENT ACTIONS FOR SIMILAR VIOLATIONS IN THE SAME ACTIVITY AREA UNDER THE SAME LICENSE

Severity of violation	Number of similar violations from the date of the last inspection or within the previous two years (whichever period is greater)		
	1st	2nd	3rd
I	a+d	a+b+c	d.
II	a	a+b	a+b+c.
III		a	a+b.

a. Civil penalty.
b. Suspension of affected operations until the Office Director is satisfied that there is reasonable assurance that the licensee can operate in compliance with the applicable requirements; or modification of the license, as appropriate.
c. Show cause for modification or revocation of the license, as appropriate.
d. Further action, as appropriate.

E. Related Administrative Actions

In addition to the formal enforcement mechanisms of notices of violation, civil penalties, and orders, NRC also uses administrative mechanisms, such as bulletins, circulars, information notices, generic letters, notices of deviation, and confirmatory action letters to supplement its enforcement program. NRC expects licensees to adhere to any obligations and commitments resulting from these processes and will not hesitate to issue appropriate orders to make sure that such commitments are met.

(1) Bulletins, Circulars, Information Notices and Generic Letters are written notifications to groups of licensees identifying specific problems and recommending specific actions.

(2) Notices of Deviation are written notices describing a licensee's or a vendor's failure to satisfy a commitment where the commitment involved has not been made a legally binding requirement. A notice of deviation requests a licensee or vendor to provide a written explanation or statement describing corrective steps taken (or planned), the results achieved, and the date when corrective action will be completed.

(3) Confirmatory Action Letters are letters confirming a licensee's agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.

F. Referrals to Department of Justice

Alleged or suspected criminal violations of the Atomic Energy Act (and of other relevant Federal laws) are referred to the Department of Justice for investigation. Referral to the Department of Justice does not preclude the NRC from taking other enforcement action under this General Statement of Policy. However, such actions will be coordinated with the Department of Justice to the extent practicable.

VI. Public Disclosure of Enforcement Actions

In accordance with 10 CFR 2.790, all enforcement actions and licensees' responses are publicly available for inspection. In addition, press releases are generally issued for civil penalties and orders. In the case of orders and civil penalties related to violations at Severity Levels I, II, or III, press releases are issued at the time of the order or the proposed imposition of the civil penalty. Press releases are not normally issued for Notices of Violation.

VII. Responsibilities

The Director, Office of Inspection and Enforcement, as the principal enforcement officer of the NRC, has been delegated the authority to issue notices of violations, civil penalties, and orders.[5] Regional Administrators may also issue notices of violation for Severity Levels IV and V vialtions and may sign notices of violation for Severity Level III violations with no proposed civil penalty and proposed civil penalty actions with the concurrence of the Director, IE. In recognition that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, the Director, IE or the Regional Administrator must exercise judgment and discretion in determining the severity levels of the violations and the appropriate enforcement sanctions, including the decision to impose a civil penalty and the amount of such penalty, after considering the general principles of this statement of policy and the technical significance of the violations and the surrounding circumstances.

The Commission will be provided written notification of all enforcement actions involving civil penalties or orders. The Commission will be consulted prior to taking enforcement action in the following situations (unless the urgency of the situation dictates immediate action):

(1) An action affecting a licensee's operation that requires balancing the public health and safety or common defense and security implications of not operating with the potential radiological or other hazards associated with continued operation.

(2) Proposals to impose civil penalties in amounts greater than 3 times the Severity Level I values shown in Table 1A;

(3) Any proposed enforcement action that involves a Severity Level I violation;

(4) Any enforcement action that involves a finding of a material false statement;

(5) Any action the Office Director believes warrants Commission involvement; or

(6) Any proposed enforcement action on which the Commission asks to be consulted.

Supplement I—Severity Categories

Reactor Operations

A. Severity I—Violations involving for example:

1. A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications, being exceeded;

2. A system[6] designed to prevent or mitigate a serious safety event not being able to perform its intended safety function[7] when actually called upon to work;

3. An accidental criticality; or

4. Release of radioactivity offsite greater than ten (10) times the Technical Specifications limit.[8]

B. Severity II—Violations involving for example:

1. A system designed to prevent or mitigate serious safety events not being able to perform its intended safety function; or

2. Release of radioactivity offsite greater than five (5) times the Technical Specifications limit.

C. Severity III—Violations involving for example:

1. A significant violation of a Technical Specification Limiting Condition for Operation where the appropriate Action Statement was not satisfied within the time allotted by the Action Statement, such as:

a. In a pressurized water reactor, in the applicable modes, having one high-pressure safety injection pump inoperable for a period in excess of that allowed by the action statement; or

b. In a boiling water reactor, one primary containment isolation valve inoperable for a period in excess of that allowed by the action statement.

2. A system designed to prevent or mitigate a serious safety event not being able to perform its intended function under certain conditions (e.g., safety system not operable unless offsite power is available; materials or components not environmentally qualified);

3. Dereliction of duty on the part of personnel involved in licensed activities;

4. Changes in reactor parameters which cause unanticipated reductions in margins of safety;

5. Release of radioactivity offsite greater than the Technical Specifications limit; or

6. Failure to meet the requirements of 10 CFR 50.59 such that a required license amendment was not sought.

D. Severity IV—Violations involving for example:

1. A less significant violation of a Technical Specification Limiting Condition for Operation where the appropriate Action Statement was not satisfied within the time allotted by the Action Statement, such as:

a. In a pressurized water reactor, a 5% deficiency in the required volume of the condensate storage tank; or

b. In a boiling water reactor, one subsystem of the two independent MSIV leakage control subsystems inoperable.

[5] The Directors of the Offices of Nuclear Reactor Regulation and Nuclear Material Safety and Safeguards have also been delegated similar authority, but it is expected that normal use of this authority by NRR and NMSS will be confined to actions necessary in the interest of public health and safety. The Director, Office of Administration, has been delegated the authority to issue orders where licensees violate Commission regulations by nonpayment of license fees. It is planned to consider redelegation of some or all of these authorities to the Administrators of the NRC Regional Offices over the next several years.

[6] "System" as used in these supplements, includes administrative and managerial control systems, as well as physical systems.

[7] "Intended safety function" means the total safety function, and is not directed toward a loss of redundancy. For example, considering a BWR's high pressure ECCS capability, the violation must result in complete invalidation of both HPCI and ADS subsystems. A loss of one subsystem does not defeat the intended safety function as long as the other subsystem is operable.

[8] The Technical Specification limit as used in this Supplement (Items A.4, B.2 and C.5) does not apply to the instantaneous release limit.

2. Failure to meet the requirements of 10 CFR 50.59 that does not result in a Severity Level I, II, or III violation;

3. Failure to meet regulatory requirements that have more than minor safety or environmental significance; or

4. Failure to make a required Licensee Event Report.

E. Severity Level V—Violations that have minor safety or environmental significance.

Supplement II—Severity Categories

Part 50—Facility Construction

A. Severity I—Violations involving a structure or system that is completed [9] in such a manner that it would not have satisfied its intented safety related purpose.

B. Severity II—Violations involving for example:

1. A breakdown in the quality assurance program as exemplified by deficiencies in construction QA related to more than one work activity (e.g., structural, piping, electrical, foundations). Such deficiencies normally involve the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits and normally involve multiple examples of deficient constuction or construction of unknown quality due to inadequate program implementation; or

2. A structure or system that is completed in such a manner that it could have an adverse effect on the safety of operations.

C. Severity III—Violations involving for example:

1. A deficiency in a licensee quality assurance program for construction related to a single work activity (e.g., structural, piping, electrical or foundations). Such significant deficiency normally involves the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits, and normally involves multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation;

2. Failure to confirm the design safety requirements of a structure or system as a result of inadequate preoperational test program implementation; or

3. Failure to make a required 10 CFR 50.55(e) report.

D. Severity IV—Violations involving failure to meet regulatory requirements including one or more Quality Assurance Criteria not amounting to Severity Level I, II, or III violations that have more than minor safety or environmental signficance.

E. Severity V—Violations that have minor safety or environmental significance.

Supplement III—Severity Categories

Safeguards

A. Severity I—Violations involving for example:

1. An act of radiological sabotage or actual theft, loss, or diversion of a formula quantity of strategic special nuclear material[10] (SSNM);

2. Actual entry of an unauthorized individual into a vital area or material access area from outside the protected area (i.e., penetration of both barriers) that was not detected at the time of entry; or

3. Failure to promptly report knowledge of an actual or attempted theft or diversion of SSNM or an act of radiological sabotage.

B. Severity II—Violations involving for example:

1. Actual theft, loss or diversion of special nuclear material (SNM) of moderate strategic significance;[11]

2. Failure to control access such that all three elements of access control (barrier, monitoring, and response) at the protected area or vital area are inadequate or two of three elements are inadequate in both the protected and vital area;

3. Failure to implement approved compensatory measures when the central and secondary alarm stations are inoperable;

4. Failure to establish or maintain safeguards systems designed or used to prevent or detect the unauthorized removal of a formula quantity of SNM from areas of authorized use or storage; or

5. Failure to use established transportation security systems designed or used to prevent the theft, loss, or diversion of a formula quantity of SNM or acts of radiological sabotage.

C. Severity III—Violations involving for example:

1. Failure to control access such that two of the three elements of access control at the vital area or protected area barrier are inadequate;

2. Failure to control access to a transport vehicle or the SNM being transported that does not constitute a Severity I or II violation;

3. Failure to establish or maintain safeguards systems designed or used to prevent or detect the unauthorized removal of SNM of moderate strategic significance from areas of authorized use or storage;

4. Failure to implement approved compensatory measures when the central (or secondary) alarm station is inoperable;

5. Failure to conduct a proper search at the access control point that results in introduction to the site of firearms, explosives, incendiary devices, or other items which could be used for industrial sabotage; or

6. Failure to properly secure or protect classified or other sensitive safeguards information which would significantly assist an individual in an act of radiological sabotage or theft of special nuclear material.

D. Severity IV—Violations involving for example:

1. Failure to establish or maintain safeguards systems designed or used to prevent or detect the unauthorized removal of SNM of low strategic significance [12] from areas of authorized use or storage;

2. Failure to implement 10 CFR Parts 25 and 95 and information addressed under Section 142 of the Act, and the NRC approved security plan relevant to those parts;

3. Failure to control access to a vital area or material access area from inside the protected area or failure to control access to the protected area in that one of the three elements of access control is inadequate;

4. Failure to properly secure or protect classified or other sensitive safeguards information which would not significantly assist an individual in an act of radiological sabotage or theft of special nuclear material; or

5. Other violations, such as failure to follow an approved security plan, that have more than minor safeguards significance.

E. Severity V—Violations that have minor safeguards significance.

Supplement IV—Severity Categories

Health Physics 10 CFR Part 20 [13]

A. Severity I—Violations involving for example:

1. Single exposure of a worker in excess of 25 rems of radiation to the whole body, 150 rems to the skin of the whole body, or 375 rems to the feet, ankles, hands, or forearms;

2. Annual whole body exposure of a member of the public in excess of 2.5 rems of radiation;

3. Release of radioactive material to an unrestricted area in excess of ten times the limits of 10 CFR 20.106;

4. Disposal of licensed material in quantities or concentrations in excess of ten times the limits of 10 CFR 20.303; or

5. Exposure of a worker in restricted areas of ten times the limits of 10 CFR 20.103.

B. Severity II—Violations involving for example:

1. Single exposure of a worker in excess of 5 rems of radiation to the whole body, 30 rems to the skin of the whole body, or 75 rems to the feet, ankles, hands or forearms;

2. Annual whole body exposure of a member of the public in excess of 0.5 rems of radiation;

3. Release of radioactive material to an unrestricted area in excess of five times the limits of 10 CFR 20.106;

4. Failure to make an immediate notification as required by 10 CFR 20.403(a)(1) and 10 CFR 20.403(a)(2);

5. Disposal of licensed material in quantities or concentrations in excess of five times the limits of 10 CFR 20.303; or

6. Exposure of a worker in restricted areas in excess of five times the limits of 10 CFR 20.103.

C. Severity III—Violations involving for example:

1. Single exposure of a worker in excess of 3 rems of radiation to the whole body, 7.5 rems to the skin of the whole body, or 18.75 rems to the feet, ankles, hands or forearms;

2. A radiation level in an unrestricted area such that an individual could receive greater than 100 millirem in a one hour period or 500 millirem in any seven consecutive days;

[9] "Completed" means completion of construction including review and acceptance by the construction QA organization.

[10] See 10 CFR 73.2(bb).

[11] See 10 CFR 73.2(x).

[12] See 10 CFR 73.2(y).

[13] Personal over exposures and associated violations, incurred during a life saving effort, will be treated on a case-by-case basis.

3. Failure to make a 24-hour notification as required by 10 CFR 20.403(b) or an immediate notification required by 10 CFR 20.402(a);

4. Substantial potential for an exposure or release in excess of 10 CFR 20 whether or not such exposure or release occurs (e.g., entry into high radiation areas, such as under reactor vessels or in the vicinity of exposed radiographic sources, without having performed an adequate survey, operation of a radiation facility with a nonfunctioning interlock system);

5. Release of radioactive material to an unrestricted area in excess of the limits of 10 CFR 20.106;

6. Improper disposal of licensed material not covered in Severity Levels I or II;

7. Exposure of a worker in restricted areas in excess of the limits of 10 CFR 20.103;

8. Release for unrestricted use of contaminated or radioactive material or equipment which poses a realistic potential for significant exposure to members of the public, or which reflects a programmatic (rather than isolated) weakness in the radiation control program;

9. Cumulative worker exposure above regulatory limits when such cumulative exposure reflects a programmatic, rather than an isolated weakness in radiation protection;

10. Conduct of licensee activities by a technically unqualified person; or

11. Significant failure to control licensed material.

D. Severity IV—Violations involving for example:

1. Exposures in excess of the limits of 10 CFR 20.101 not constituting Severity Level I, II, or III violations;

2. A radiation level in an unrestricted area such that an individual could receive greater than 2 millirem in a one hour period or 100 millirem in any seven consecutive days;

3. Failure to make a 30-day notification required by 10 CFR 20.405;

4. Failure to make a followup written report as required by 10 CFR 20.402(b), 20.408, and 20.409; or

5. Any other matter that has more than minor safety or environmental significance.

E. Severity V—Violations that have minor safety or environmental significance.

Supplement V—Severity Categories

Transportation [14]

A. Severity I—Violations of NRC transportation requirements involving for example:

1. Annual whole body radiation exposure of a member of the public in excess of 0.5 rems of radiation; or

2. Breach of package integrity resulting in surface contamination or external radiation levels in excess of ten times the NRC limits.

B. Severity II—Violations of NRC transportation requirements involving for example:

1. Breach of package integrity resulting in surface contamination or external radiation levels in excess of NRC requirements;

2. Surface contamination or external radiation levels in excess of five times NRC limits that did not result from a breach of package integrity; or

3. Failure to make required initial notifications associated with Severity Level I or II violations.

C. Severity III—Violations of NRC transportation requirements involving for example:

1. Breach of package integrity;

2. Surface contamination or external radiation levels in excess of, but less than a factor of five above NRC requirements, that did not result from a breach of package integrity;

3. Any noncompliance with labelling, placarding, shipping paper, packaging, loading, or other requirements that could reasonably result in the following:

a. Improper identification of the type, quantity, or form of material;

b. Failure of the carrier or recipient to exercise adequate controls; or

c. Substantial potential for personnel exposure or contamination, or improper transfer of material; or

4. Failure to make required initial notification associated with Severity Level III violations.

D. Severity IV—Violations of NRC transportation requirements involving for example:

1. Package selection or preparation requirements which do not result in a breach of package integrity or surface contamination or external radiation levels in excess of NRC requirements; or

2. Other violations that have more than minor safety or environmental significance.

E. Severity V—Violations that have minor safety or environmental significance.

Supplement VI—Severity Categories

Fuel Cycle and Materials Operations

A. Severity I—Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed ten times the limts specified in the license;

2. A system designed to prevent or mitigate a serious safety event not being operable when actually required to perform its design function; or

3. A nuclear criticality accident.

B. Severity II—Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed five times the limits specified in the license; or

2. A system designed to prevent or mitigate a serious safety event being inoperable.

C. Severity III—Violations involving for example:

1. Failure to control access to licensed materials for radiation purposes as specified by NRC requirements;

2. Possession or use of unauthorized equipment or materials in the conduct of licensee activities which degrades safety;

3. Use of radioactive material on humans where such use is not authorized;

4. Conduct of licensed activities by a technically unqualified person;

5. Radiation levels, contamination levels, or releases that exceed the limits specified in the license; or

6. Medical therapeutic misadministrations.

D. Severity IV—Violations involving for example:

1. Failure to maintain patients hospitalized who have cobalt-60, cesium-137, or iridium-192 implants or to conduct required leakage or contamination tests, or to use properly calibrated equipment;

2. Other violations that have more than minor safety or environmental significance; or

3. Failure to report medical diagnostic misadministrations.

E. Severity V—Violations that have minor safety or environmental significance.

Supplement VII—Severity Categories

Miscellaneous Matters

A. Severity I—Violations involving for example:

1. A Material False Statement (MFS) [15] in which the statement made was deliberately false;

2. Falsification of records which NRC requires be kept of significant information in which the records were deliberately falsified by or with the knowledge of management;

3. A knowing and intentional failure to provide the notice required by Part 21; or

4. Action by senior corporate management in violation of Section 210 of the ERA against an employee.

B. Severity II—Violations involving for example:

1. A MFS or a reporting failure, involving information which, had it been available to the NRC and accurate at the time the information should have been submitted, would have resulted in regulatory action or would likely have resulted in NRC seeking further information;

2. A MFS in which the false statement was made with careless disregard;

3. Deliberate falsification of records which NRC requires be kept involving significant information;

4. Action by plant management above first-line supervision in violation of section 210 of the ERA against an employee; or

5. A failure to provide the notice required by Part 21.

C. Severity III—Violations involving for example:

1. A MFS not amounting to a Severity Level I or II violation.

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[14] Some transportation requirements are applied to more than one licensee involved in the same activity such as a shipper (10 CFR 73.20) and a carrier (10 CFR 70.20a). When a violation of such a requirement occurs, enforcement action will be directed against the responsible licensee which, under the circumstances of the case, may be one or more of the licensees involved.

[15] In essence, a Material False Statement is a statement that is false by omission or commission and is relevant to the regulatory process. As can be seen in the examples, in determining the specific severity level of a violation involving material false statements or falsification of records, consideration will be given to such factors as the position of the person involved in the violation (e.g., first line supervisor or senior manager), the significance of the information involved, and the intent of the violator (i.e., negligence not amounting to careless disregard, careless disregard, or deliberateness). The relative weight given to each of these factors in arriving at the appropriate severity level will be dependent on the circumstances of the violation.

2. Deliberate falsification, or falsification by or with the knowledge of management, of records which the NRC requires be kept that did not involve significant information.

3. Action by first-line supervision in violation of section 210 of the ERA against an employee; or

4. Inadequate review or failure to review such that, if an appropriate review had been made as required, a Part 21 report would have been made.

D. Severity IV—Violations involving for example:

1. Inadequate review or failure to review under Part 21 or other procedural violations associated with Part 21 with more than minor safety significance;

2. A false statement caused by an inadvertent clerical or similar error involving information which, had it been available to NRC and accurate at the time the information should have been submitted, would probably not have resulted in regulatory action or NRC seeking additional information; or

E. Severity V—Violations of minor procedural requirements of Part 21.

Supplement VIII—Severity Categories

Emergency Preparedness

A. Severity I—Violations involving for example:

In a general emergency, licensee failure to promptly: (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff).

B. Severity II—Violations involving for example:

1. In a site area emergency, licensee failure to promptly: (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff); or

2. Licensee failure to meet or implement more than one emergency planning standard involving assessment or notification.

C. Severity III—Violations involving for example:

1. In an alert, licensee failure to promptly: (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff); or

2. Licensee failure to meet or implement one emergency planning standard involving assessment or notification.

D. Severity IV—Violations involving for example: Licensee failure to meet or implement any emergency planning standard or requirement not directly related to assessment and notification.

E. Severity V—Violations that have minor safety or environmental significance.

Dated at Washington, D.C., this 2nd day of March, 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-6176 Filed 3-7-84; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

Applications, Requests, Submittals, Delegations of Authority and Notices of Acquisition of Control

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: FDIC is amending its regulations to delegate authority to its Board of Review to withdraw any notice of assessment of civil money penalty issued by it under section 7(j)(15) or 8(i) or 18(j) of the Federal Deposit Insurance Act or section 106(b)(2) of the Bank Holding Company Act and any notice of charges issued by it under section 8(b) of the Federal Deposit Insurance Act pursuant to authority delegated by the Board of Directors, and to delegate authority jointly to the Director of the Division of Bank Supervision and the Deputy General Counsel for Open Bank Regulation and Supervision to issue a section 8(b) order where a proposed order to cease and desist, as approved by the Board of Directors, is agreed to without change by the respondent.

EFFECTIVE DATE: March 8, 1984.

FOR FURTHER INFORMATION CONTACT: James L. Meador, Senior Attorney, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429, (202) 389-4171.

SUPPLEMENTARY INFORMATION: Section 303.13(o) of FDIC's rules and regulations (12 CFR 303.13(o)) delegates authority to FDIC's Board of Review to initiate an administrative cease-and-desist proceeding by the issuance of a notice of charges under section 8(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(1)) and to issue a notice of assessment of civil money penalty under section 7(j)(15), 8(i) and 18(j) of the Federal Deposit Insurance Act (12 U.S.C. 7(j)(15), 8(i) and 18(j)) and section 106(b)(2) of the Bank Holding Company Act (12 U.S.C. 1972(b)(2)). Under circumstances where the unsafe or unsound practice and condition or violation of law or regulation or condition imposed by the agency in connection with the granting of any application or request no longer exists or intervening corrective action by the bank has rendered it to be of such diminished magnitude as to no longer require formal regulatory action by the FDIC, the notice of charges or notice of assessment may be withdrawn. Under pre-existing procedure, the withdrawal of a notice of charges or notice of assessment was accomplished by the action of FDIC's Board of Directors. This required unnecessary administrative effort and delay. The amendment delegates authority to the Board of Review to withdraw any notice of charges issued by the Board of Review under delegated authority.

The Board of Directors also has delegated authority jointly to the Division of Bank Supervision and the Deputy General Counsel for Open Bank Regulation and Supervision to issue a section 8(b) order to cease and desist where a proposed order, as approved by the Board of Directors, is agreed to without change by the respondent. This delegation of authority eliminates duplication of administrative effort and consequent delay.

Regulatory Factors

The requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are inoperative here because the amendments do not impose recordkeeping or reporting burdens on any insured bank or other member of the public.

The amendments are rules of agency practice and procedure. The Regulatory Flexibility Act (5 U.S.C. 603, 604) does not require the preparation of a regulatory flexibility analysis because the amendments will not cause a significant economic impact on any insured bank or other member of the public.

The amendments are technical, nonsubstantive changes to FDIC's rules of practice and procedure. In accordance with FDIC's statement of policy regarding the "Development and Review of FDIC Rules and Regulations" (44 FR 31007, May 30, 1979) and the Administrative Procedure Act (5 U.S.C. 553), the FDIC dispenses with general notice and public participation, and makes the amendments effective on publication in the **Federal Register**.

List of Subjects in 12 CFR Part 303

Administrative practice and procedure, Authority delegations, Bank deposit insurance, Banks, banking.

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION CONTROL

Part 303 of chapter III of title 12 of *Code of Federal Regulations* is amended as follows:

1. The authority citation for Part 303 reads as follows:

Authority: Secs. 2(5), 2(6), 2(7)(j), 2(8), 2(9 "Seventh" and "Tenth"), 2(18), 2(19), Pub. L. No. 797 64 Stat. 876, 881, 891, 893 as amended by Pub. L. No. 86-463, 74 Stat. 129; sec. 2, Pub. L. No. 87-827, 76 Stat. 953; Pub. L. No. 88-593, 78 Stat. 940; Pub. L. No. 89-79, 79 Stat. 244; sec. 1, Pub. No. 89-356, 80 Stat. 7; sec. 12(c), Pub. L. No. 89-485, 80 Stat. 242; sec. 3, Pub. L. No. 89-597, 80 Stat. 824; title II, secs. 201, 205, Pub. L. No. 89-695, 80 Stat. 1055; sec. 2(b), Pub. L. No. 90-505, 82 Stat. 856; secs. 6(c) (7), (12), (13), Pub. L. No. 95-369, 92 Stat. 616-620; title III, secs. 306, 309 and title VI, sec. 602, Pub. L. No. 95-630, 92 Stat. 3677, 3683 (12 U.S.C. 1815, 1816, 1817(j), 1818, 1819 "Seventh" and "Tenth", 1828, 1829); title I, sec. 108, Pub. L. No. 90-321, 82 Stat. 150 as amended by title IV, sec. 403, Pub. L. No. 93-495, 88 Stat. 1517 and title VI, sec. 608, Pub. L. No. 96-221, 94 Stat. 171 (15 U.S.C. 1607).

2. By inserting the words "Board of Directors or the" in § 303.13(o)(2)(i) between the words "the" and "Board of Review".

3. By adding a new paragraph (o)(9) to § 303.13 as follows:

§ 303.13 Other delegations of authority.

* * * * *

(o) * * *

(9) *Withdrawal of notice of charges or notice of assessment of civil money penalty issued by the Board of Review under delegated authority.* The Board of Review is hereby delegated authority to withdraw and terminate any notice of assessment of civil money penalty issued by itself under section 7(j)(15) or 8(i) or 18(j) of the Federal Deposit Insurance Act or section 106(b) of the Bank Holding Company Act and any notice of charges issued by itself under section 8(b)(1) of the Federal Deposit Insurance Act pursuant to authority delegated to the Board of Review by the Board of Directors.

By order of the Board of Directors, March 5, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-6268 Filed 3-7-84; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-20708, File No. S7-975]

Exemption for Certain Foreign Government Securities for Purposes of Futures Trading

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a rule which designates British and Canadian government securities as "exempted securities" under the Securities Exchange Act of 1934 (the "Exchange Act") for purposes only of the Exchange Act's application to the marketing in this country of certain futures contracts on those securities. The rule would have the effect of removing the designated securities from the class of securities on which futures trading is forbidden by the Commodity Exchange Act ("CEA"). Trading the underlying securities, absent compliance with applicable registration and other requirements, would remain prohibited to the same extent as under current law.

EFFECTIVE DATE: March 8, 1984.

FOR FURTHER INFORMATION CONTACT: Eneida Rosa, Esq., Branch of Options Regulation, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549. (202) 272-7345.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under recently enacted amendments to the CEA, [1] the trading of futures contracts on individual securities is prohibited, unless such securities qualify as "exempted securities" under Section 3 of the Securities Act of 1933 ("Securities Act") or Section 3(a)(12) of the Exchange Act. Since the legislative history of the new amendments indicates that Congress did not intend to forbid the marketing of futures on British government bonds (so-called "gilt-edged" bonds or "gilts") [2] in this country so long as the futures contracts are not settled here and the bonds themselves are not traded here, the Commission proposed Rule 3a12-8 under the Exchange Act, which would designate such bonds, as well as certain Canadian government securities, as "exempted" securities under Section 3(a)(12) for the purpose of permitting futures trading in this country. [3]

The Futures Trading Act of 1982 ("Futures Trading Act"), signed by President Reagan on January 11, 1983, adds Section 2(a)(1)(B)(v) to the CEA and provides that:

* * * [n]o person shall offer to enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under Section 3 of the Securities Act of 1933 or Section 3(a)(12) of the Securities Exchange Act of 1934 * * * .

The apparent effect of this language would be to prohibit both the offer and the acceptance in this country of any future on any individual security, including the British gilt and Canadian government securities, unless the security qualifies as an "exempted security" under Section 3 of the Securities Act or 3(a)(12) of the Exchange Act. Foreign government bonds, generally, are not exempted securities under either of these sections. Section 3(a)(12) also provides, however, that the term "exempted security" includes:

* * * such other securities * * * as the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this title which by their terms do not apply to an "exempted security" or to "exempted securities."

Therefore, the Commission may exclude gilt or Canadian bond futures from the proscription in the CEA's new Section 2(a)(1)(B)(v) by exempting, subject to appropriate limitations, the underlying bond.

The effect of the CEA's new language on foreign government security futures traded on foreign boards of trade was specifically addressed when Congress was considering the Futures Trading Act. Representatives Timothy Wirth and Tom Daschle, members of the two House committees which deliberated on

[1] The Futures Trading Act of 1982, Pub. L. 97-444, 96 Stat. 2294.

[2] "Gilt-edged" generally refers to a variety of obligations of the British government, British local authorities, British nationalized industries, and Commonwealth central governments and corporations. The references in the legislative history, however, were specifically to the long-term British government bonds on which futures currently trade. While the references hereinafter, to "gilts" include only long-term obligations of the British government, the proposed rule includes no limitation as to the term of the debt instrument. *See* footnote 6 infra.

[3] Securities Exchange Act Release No. 19811 (May 25, 1983), 48 FR 24725 (June 2, 1983 "Proposing Release").

the bill, discussed the question on the House floor, in the context of gilt futures. The Securities and Exchange Commission and the Commodity Futures Trading Commission ("CFTC") had jointly proposed the provision in question as part of a jurisdictional agreement (the "SEC/CFTC Accord" or "Accord"). Mr. Daschle noted his understanding that neither agency had intended to bar gilt futures trading. Mr. Wirth agreed that the provision had not intended to bar gilt futures trading, but pointed out that clarifying legislation would be unnecessary in view of the SEC's intention to take administrative action to allow the sale of these futures contracts in this country.[4]

To satisfy this Congressional expectation, the Commission proposed for comment Rule 3a12-8.[5] Aside from certain drafting changes, a new condition concerning the location of the markets trading the relevant futures contracts, and the deletion of a condition relating to the frequency of settlement on the futures, the rule adopted is substantially similar to the rule proposed. The Commission continues to believe that the rule will be useful both in removing any questions regarding the applicability of the Exchange Act to futures on the subject foreign securities and in averting the unnecessary application of the CEA's ban on trading futures in these securities.[6]

As noted in the Proposing Release, the Commission wishes to effectuate Congress' intentions without abandoning its long-standing policy of subjecting foreign government securities, for most purposes, to the requirements of the federal securities laws.[7]

The final terms of Rule 3a12-8 create an exemption for British and Canadian government debt securities limited to (a) futures trading; (b) underlying securities that are not registered in the United States; (c) transactions not involving contracts deliverable in the United States; and (d) securities that are the subject of a futures contract traded on a market located in the country whose government issues those securities. The Commission believes these limitations are both within the intent of Congress and reasonably related to the regulation of the securities markets.

II. Discussion

Five comment letters were received in response to the Proposing Release.[8] The questions raised in the Proposing Release and the points made by commentators have resulted in five main areas of concern in connection with the proposed rule: (1) Whether the Commission's proposed conditions of exemption might amount to an inappropriate regulation of futures trading; (2) whether the exemption should extend to securities underlying futures contracts traded on American contract markets; (3) whether the wording of the proposed rule so limits the extent of the proposed exemption as to render it a nullity; (4) how the proposed exemption might affect regulation of domestic securities trading and general regulatory policy; and (5) the importance of conditioning the exemption by requiring that the foreign board of trade over which the futures are traded be located in the country issuing the underlying bond.

A. Jurisdiction

The CBT and the Merc objected strenuously to Rule 3a12-8 as proposed. Both maintained that, as restricted and conditioned, it amounted to an attempt by this Commission to regulate futures trading and to designate contract markets, despite the exclusive jurisdiction of the CFTC in these areas.

The CFTC has no authority to regulate, exclusively or otherwise, futures contracts that cannot lawfully be traded. Therefore, if the underlying security is not an "exempted security" within the meaning of the securities laws, the overlying futures contract is not subject to CFTC regulation.[9] As the Joint Explanatory Statement noted, "* * * the CFTC would have exclusive jurisdiction over all *permissible* futures contracts as well as options on those futures * * *." (Emphasis added.)[10]

In recognition of the Commission's direct and substantial regulatory interest in futures on securities groups or indices, the Congress granted it a strong voice in the determination of which such contracts should be authorized.[11] Since the regulatory interests of the Commission are even more directly implicated in the trading of futures on individual non-exempt securities, the Commission does not consider it inconsistent with the policy of the CEA for the Commission to exercise its well-established authority to conditionally exempt securities in such a way as to assure that any consequent futures trading will not impair the Commission's regulation of the securities markets.

The Commission concurs that it would be inappropriate as a policy matter for it to establish an elaborate futures regulatory structure in the process of providing a conditional exemption for foreign government securities. These exemptive conditions, however, though inevitably having an impact on which futures may trade and which may not—are reasonably related to the goals of securities regulation and protection of the securities markets, and the Commission thus believes that they may properly be incorporated into its rule. The Conditions in Rule 3a12-8 are directed to these goals. Specifically, the conditions are designed to minimize the impact of the exemption on securities distribution and trading in the United States, in a manner consistent with discussion on the floor of Congress at

[4] Congressional Record, H. 7492 (daily ed., September 23, 1982). *See also* letter of Chairman John S. R. Shad to Senator David L. Boren, attaching memorandum of June 2, 1982 from SEC General Counsel to Chairman Shad; letter of Chairman Phillip McB. Johnson to Senator Boren (June 3, 1982). The CEA section 2(a)(1)(B)(v) was to be designated section 2(a)(1)(B)(iv) at the time these letters were written.

[5] While futures on Canadian government bonds and bills were not specifically addressed in the legislative history, no basis has appeared for treating them differently from the gilt futures contracts and they were included in the rule proposal at the request of the Toronto Stock Exchange ("TSE").

[6] Since November 1982, the LIFFE has traded a futures contract on long-term British government bonds known as the "long gilt." It was the legality of this contract with which the legislative history was specifically concerned. *See* Proposing Release and materials cited therein. In order to meet Congressional expectations that this contract could trade legally in the United States, CFTC and Commission staff have taken the position in several exchanges of correspondence that administrative action against the sale here of the LIFFE gilt futures will not be taken while proposed Rule 3a12-8 is pending. *See* File No. S7-975.

[7] Moreover, this rulemaking, has not been viewed as an occasion for an overall review of the question of futures on individual securities, a matter deferred, at the time of the Accord, for later consideration. *See* SEC/CFTC Joint Explanatory Statement reprinted in H. Rept. No. 97-626, 97th Cong., 2d Sess., Pt. 2 at 13 (1982).

[8] These letters were from the following: Thomas R. Donovan, President, Chicago Board of Trade "(CBT"), July 5, 1983; the London International Financial Futures Exchange ("LIFFE") forwarded by letter of John Umana, Arnold & Porter, July 12, 1983; Huntly McKay, Vice President for Markets and Market Development, TSE, July 12, 1983; Thomas Eric Kilcollin, Vice President of Research and Chief Economist, Chicago Mercantile Exchange ("Merc"), July 26, 1983; and Kenneth Raisler, General Counsel, CFTC, August 1, 1983.

[9] The CFTC would have the authority—the exclusive administrative authority—to bring an action to halt such unlawful futures trading. Rule 3a12-8, however, does not purport to transfer this authority to the SEC or to affect it other than to specify instruments that may lawfully be the subject of futures contracts.

[10] H. Rpt. 626, Pt. 2, *supra*, at 13.

[11] *See* CEA Section 2(a)(1)(B)(iv); *see also* Senate Rpt. 390 97th Cong., 2d Sess., at 6 and 7 (1982); House Rpt. 565, 97th Cong., 2d Sess., Pt. 2, at 18 (1982); House Rpt. 626, Pt. 2, *supra*, at 14 and at note 6.

the time the Futures Trading Act of 1982 was under consideration.[12]

B. Restriction to Foreign Contracts

The Merc and the CBT argued that the proposed exemption should leave room for the CFTC to designate American boards of trade as contract markets for futures on the exempted British and Canadian securities. They believed that to do otherwise would suggest that the SEC rather than the CFTC has the right to designate contract markets, and would confine the futures to precisely those markets over which United States government agencies have the least regulatory power.

The Commission has made no determination regarding expansion of the exemption to futures contracts traded on domestic boards of trade. The Commission does believe that such action raises discrete concerns regarding the expansion of cash trading that might develop if there were present here substantial markets in the overlying futures. In addition, no exemption broader than the one adopted today is clearly contemplated in the events leading to this rulemaking. The letters of Chairmen Shad and Johnson to Senator Boren speak only for foreign contracts.[13] In addition, Congressman Wirth's discussion in the House of Representatives also refers to foreign futures.[14] Moreover, the specific futures contract discussed—the long gilt—is in fact a foreign future, *i.e.*, one traded on a foreign board of trade. Therefore, the Commission believes that the rule should continue to be aimed narrowly at foreign futures at this time. If, after futures are traded resulting from the adoption of the rule, there are proposals to trade such futures contracts in the United States, the Commission may revisit this issue.

The Proposing Release also sought comments on the advisability of limiting the proposed rule to foreign futures contracts traded solely on a board of trade located in the country whose government issues the underlying security. The Merc and the CBT challenged the Commission's authority to "designate" contract markets in this manner, while the CFTC suggested that non-issuer governments might have an equally strong interest in the integrity of any board of trade within their jurisdiction. The CFTC also felt that the absence or discontinuance of trading in the territory of the issuer government would not necessarily mean that the contract itself was without economic usefulness. It advised the Commission to defer consideration of the matter, since, at present, the markets trading futures on the prospective exempted securities are, in fact, located within the territories of the issuer-governments. The Commission agrees with the CFTC that it is appropriate to defer consideration until proposals relating to other markets have been made. The Commission believes that this cautious approach is furthered by limiting this rule to markets and locations presently known.[15]

C. The "Nullity" Problem

LIFFE and the CFTC were concerned with Rule 3a12–8's proposed language defining the foreign government securities as "exempted" from all provisions of the 1934 Act which by their terms do not apply to exempted securities "*but only insofar as such provisions may be construed to apply to the offer or sale of foreign futures contracts* * * *." (emphasis added).

These commentators suggested that if the CFTC's exclusive jurisdiction over futures trading precludes application of any Exchange Act provision to futures trading, the proposed rule would declare the securities exempted only for a nonexistent class of cases, and, therefore, would fail for lack of effect. The CFTC recommended that the Commission replace the limiting language referring to application of Exchange Act provisions with this limitation: "but only insofar as the designated foreign government security underlies and is the subject of foreign futures contracts."

The Commission does not regard the wording proposed as entirely without effect. The exemption, for example, would at least have precluded private actions brought on the theory that Section 15(c)(2) of the 1934 Act (forbidding broker-dealer fraud in off-exchange transactions but not extending to transactions in exempted securities) confers a private right of action[16] and that the CFTC's exclusive authority is merely an administrative one, so that where a private right of action derives directly from the statute, suit arguably may be brought under the securities laws where the transaction sued upon has both a securities and a commodities aspect.[17]

In addition, the Commission believes that it would go beyond the intent of Congress to remove virtually all Exchange Act authority over the enumerated foreign securities, and it does not intend to do so simply because the securities are deliverable on a foreign futures contract. However, the Rule's wording has been revised in order to leave no doubt that the Rule is intended to permit the trading of futures contracts of the type it describes, in accordance with the understanding of Congress.

D. Relationship to General Regulatory Policy and American Securities Markets

Rule 3a12–8 will make available in the United States for the first time[18] futures on individual securities not themselves considered appropriate for exemption from registration. The exemption has been drawn cautiously, but inevitable problems are posed in integrating any such exemption into the general scheme of federal securities regulation.

1. *Disclosure.* The fundamental purpose of the federal securities laws is to require disclosures that will enable investors to judge for themselves the

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[12] *See* remarks of Rep. Wirth, Congressional Record, H. 7492 (daily ed., September 23, 1982): Thus, if the SEC were to deem the gilt-edged securities * * * exempted securities, *for the purpose of transactions in foreign futures contracts* * * *, such transactions would be permitted * * *. I understand from the SEC that it intends promptly to take the necessary administrative action to accomplish this result *so long as actual trading of the underlying* * * * *securities does not occur in this country* * * *. (Emphasis added.)

[13] Letter of Chairman John S. R. Shad to Senator David L. Boren, attaching memorandum of June 2, 1982, from SEC General Counsel to Chairman Shad; letter of Chairman Phillip McB. Johnson to Senator Boren, June 3, 1982. *See* File No. S7–975 and Proposing Release.

[14] *See* note 12, *supra*.

[15] The location restriction, it should be understood, will prevent application of the rule for purposes of futures traded on a market outside the issuer-country. It will not, however, remove from the rule's protection futures traded on a market inside the issuer country because another market has been established outside that country. The Commission also believes requiring markets be located in the jurisdiction of the designated governments will reduce the likelihood that some off-shore futures markets might be established or utilized for the purpose of disguised marketing of the underlying securities. In view of these considerations, the Commission adopts the rule with the suggested restriction as to market location.

[16] *See Franklin National Bank* v. *L.B. Meadows & Co.*, 318 F. Supp. 1339 (E.D.N.Y. 1970); *see also American Bank & Trust Co.* v. *Barad Shaff Securities Corp.*, 335 F. Supp. 1276, 1282 (S.D.N.Y. 1972); *but see Walck* v. *American Stock Exchange, Inc.*, 565 F. Supp. 1051, 1059 (E.D. Pa. 1981), *aff'd*, 687 F. 2d 778 (3d cir. 1982), *cert. denied* 103 Sup. Ct. 2118 (1983).

[17] There is susbstantial authority on both sides of the latter proposition. *See Mordaunt* v. *Incomco*, 686 F.2d 815 (9th Cir. 1982); *Peavey Co.* v. *Mitchell*, CCH Fed. Sec. L. Rpts. ¶ 99593 (W.D. Okla 1983) *Mullis* v. *Merrill Lynch, Pierce, Fenner and Smith, Inc.*, 492 F. Supp. 1345 (D. Nev. 1980) and *Westlake* v. *Abrams*, 504 F. Supp. 337 (N.D. Ga. 1980); *see also Witzel* v. *Chartered Systems Corp.*, 490 F. Supp. 343, 347–48 (D. Minn. 1980). *But see Gonzales* v. *Paine, Webber, Jackson & Curtis, Inc.*, 493 F. Supp. 499 (S.D.N.Y. 1980); *Fairchild, Arabatzis & Smith* v. *Prometco Co.*, 470 F. Supp. 610 (S.D.N.Y. 1979); *Hofmayer* v. *Dean Witter & Co.*, 459 F. Supp. 733 (N.D. Cal. 1978); *Bartels* v. *International Commodities Corp.*, 435 F. Supp. 865 (D. Conn. 1977); *see also E.F. Hutton & Co.* v. *Schank*, 456 F. Supp. 507 (D. Utah 1976).

[18] Except as already noted above. *See* note 6 *supra*.

prospects and creditworthiness of the securities issuer. This aim would be frustrated if disclosure requirements could be circumvented simply by marketing the investment on a delayed delivery basis by use of a derivative instrument rather than on a cash delivery basis.

For this reason, the Proposing Release sought comment on the possibility of restricting the exemption to underlying securities issued by a government as to which some type of securities acts disclosure had been made. None of the five commentators wrote to suggest or support such a requirement. The Toronto Stock Exchange ("TSE") feared that a disclosure requirement might impose more compliance costs than the TSE's small futures market could justify. The Merc argued that the Commission was without authority to apply a disclosure requirement to futures transactions, and the CFTC reserved comment pending a specific disclosure proposal.[19]

In the interests of simplicity and in view of the other safeguards provided in Rule 3a12–8, the Commission has elected at this time not to incorporate a disclosure requirement into the rule. Americans have relatively ready access to information about the governments presently covered by the rule, most of it in the English language.[20] Furthermore, with respect to disclosures relating to the credit-worthiness of the issuer, the Division notes that, presently, there are securities products available, *i.e.*, British pound and Canadian dollar options, whose value is as dependent on the condition and policy of those foreign governments as are the governments' debt securities. With respect to these securities, however, no disclosure about the governments is required.

2. *Delivery.* One of the principal safeguards incorporated in the exemption, as currently drafted, is its restriction to securities delivered abroad. These restrictions should hamper the development of a domestic market in the unregistered bonds and deter utilization of futures contracts as if they were simply deferred-delivery cash transactions.

The Merc objected that delivery in the United States was irrelevant to any concern over "a flood of unregistered offerings in the United States," pointing out that the Securities Act addresses offers and sales made within the federal government's jurisdiction, not the locale of the delivery point.

In the Commission's judgment, delivery of the securities located outside the United States will inhibit the development of domestic trading in these unregistered securities. Therefore, the Commission has determined to retain the delivery restriction.[21] Furthermore, as already noted, the Congressional discussion cited by the Proposing Release in support of the rule assumed that "actual trading of the underlying gilt-edged securities" would not occur in this country.[22]

The LIFFE expressed concern about the specific language of the proposed Rule's foreign delivery requirement paragraph as originally drafted. That paragraph would have excepted from the exemption any security delivered within the United States pursuant to a foreign futures contract, or "pursuant to any other purchase * * * sale or exchange * * * [or] sold or offered for sale in contemplation of delivery within the United States." LIFFE feared that under the quoted terms, once a particular gilt bond had been sold or delivered in the United States, regardless of whether the transaction had any connection to a LIFFE futures contract, that bond (and perhaps, all bonds of the same issue or series) might, thereafter, be considered ineligible for the exemption. Consequently, any futures contract for which it was a deliverable issue might become ineligible for sale in the United States.

The Rule is not intended to have such an effect nor to expose LIFFE to the threat of litigation on the basis of transactions beyond its oversight or control. The Commission will only set the condition, therefore, that the exemption shall not be available with respect to any futures contract deliverable in the United States.

3. *Unregistered Securities.* The exclusion of registered securities from the exemption was proposed to prevent futures trading from disrupting regulated markets for registered underlying securities.[23] It may be contended that there is not a large likelihood of manipulation in the market for British or Canadian government debt. Nevertheless, investors' markets should not be subject to the vagaries of a "shadow market" in the same or derivative instruments, subject to a differing or less rigorous regulatory regime. In addition, it would seem anomalous to maintain a U.S. delivery prohibition if some eligible bonds themselves were registered and trading in United States cash markets. This limitation, moreover, is not likely to interfere with contracts used as tools for hedging in or speculating on foreign interest rates (rather than as deferred delivery cash deals), because nearly all British and Canadian government debt currently registered in this country is denominated in U.S. dollars.[24]

4. *Delivery Periods.* Several commentators criticized the proposal to confine the exemption to securities underlying a foreign futures contract having no more than one delivery month per quarter.

The Merc objected to this provision on a number of grounds. In addition to questioning the appropriateness of this limitation on the flexibility of markets to design suitable futures contracts, it questioned whether this limitation would in fact serve the Commission's objective of preventing circumvention of the federal securities laws by use of the futures markets. The CBT objected generally to this and other restrictions imposed by the SEC. The CFTC saw no significant investor protection issues that could be affected by the frequency of delivery periods and questioned the need for them. The Commission remains concerned that the futures markets in these instruments not be employed simply to avoid the registration and other provisions of the federal securities laws. We concur, however, that this may not be an essential limitation in accomplishing that purpose.[25] Accordingly, the Commission is not at this time adopting any restriction on the frequency or length of delivery periods.[26]

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[19] The type of disclosure provision contemplated would not have related to the futures transaction itself but to the information publicly available concerning the security itself. Thus, the Commission suggested that the exemption might be limited to the securities of issuers currently filing a Form 18K with the Commission. *See* Proposing Release, at 24726 n. 6.

[20] This information includes registration information for certain British and Canadian government securities, noted in the Proposing Release, that are registered in the United States.

[21] The Merc suggests that domestic delivery would improve the regulatory picture by making the delivery subject to the oversight of American authorities. The Commission believes, however, that it would also broaden the appeal and possibilities for abuse of the futures contracts.

[22] Remarks of Rep. Timothy Wirth, Congressional Record, H. 7492 (daily ed., September 23, 1982).

[23] The Merc felt that if disruption of regulated markets were the only problem, then futures trading could be permitted on all unregistered securities. Disruption, of course, is not the only problem. Circumvention of the disclosure policies embodied in the securities laws and inconsistency with the Commission's general policy requiring registration prior to the distribution of foreign government issues are also relevant.

[24] *See* Proposing Release.

[25] Moreover, none of the existing contracts that will be affected by Rule 3a12–8 settle more often than quarterly.

[26] The Proposing Release also raised several questions concerning the tools available to the CFTC to deal with these foreign futures contracts and specifically solicited comment on whether Commission action should await or coordinate with further rulemaking by the CFTC.

The CFTC's comment stated that it had no immediate plans to promulgate rules in the foreign

Continued

For the reasons stated above, the Commission adopts Rule 3a12-8, as set forth below, providing an exemption from the Exchange Act for British and Canadian government debt securities and limited to (a) futures trading; (b) uderlying securities not registered in the United States; (c) transactions not involving contracts deliverable in the United States; and (d) securities that are the subject of a futures contract traded solely on a market located in the country whose government issues those securities.

III. Regulatory Flexibility Act Considerations

The Chairman of the Commission certified in connection with the Proposing Release that Rule 3a12-8, if adopted, would not have a significant economic impact on a substantial number of small entities. None of the comments addressed the certification.

IV. Effects on Competition and Other Findings

Section 23(a)(2) of the Act [27] requires the Commission, in adopting rules under the Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has considered Rule 3a12-8 in light of the standards cited in Section 23(a)(2) and believes that adoption of Rule 3a12-8 will not impose any burden on competition not necessary or appropriate in furtherance of the Act, since, as stated herein, it is designed to assure the lawful availability in this country of certain foreign government security futures not otherwise permitted under the terms of the CEA. The Rule, thus, serves to expand the range of financial products available in the United States and enhances competition in financial markets. In addition, the Rule does not impose a burden on competition because absent substantive amendments to the federal securities laws, the domestic exhanges could not under any circumstances trade these foreign government securities futures contracts in the United States. Finally, any minimal burden on competition imposed by the conditions in Rule 3a12-8 is outweighted by the need to ensure that futures trading on these securities is consistent with the goals and purposes of the federal securities laws by minimizing the impact of the Rule on securities trading and distribution in the United States.

The Commission finds, in accordance with the Administrative Procedure Act,[28] that the adoption of Rule 3a12-8 is exemptive in nature. Accordingly, the foregoing action becomes effective immediately upon publication in the **Federal Register.**

futures area, but at the same time it expressed no reservations about its capacity and authority to deal with regulatory questions the contemplated futures trading might present, and, it recommended prompt action adopting an exemption. Moreover, the CFTC also noted the strong interest foreign governments have in regulating futures exhanges in their jurisdiction.

In light of these consideration, the Commission has determined to proceed with the promulgation of Rule 3a12-8 at this time without awaiting further action by the CFTC.

[27] 15 U.S.C. 78w(a)(2).

[28] 5 U.S.C. 553(d).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

V. Statutory Basis

Proposed Rule 3a12-8 is adopted under the Act, (15 U.S.C. 78a *et seq.*, and particularly Sections 3(a)(12), and 23(a) 15 U.S.C. 78c(a)(12) and 78w(a)).

VI. Text of Final Rule

Accordingly, Title 17, Chapter II of the Code of Federal Regulations is amended by adding § 240.3a12-8 as follows:

PART 240—GENERAL RULES AND REGULATION, SECURITIES EXCHANGE ACT OF 1934

§ 240.3a12-8 Exemption for designated foreign government securities for purposes of futures trading.

(a) When used in this Rule, the following terms shall have the meaning indicated: (1) The term "designated foreign government security" shall mean a security not registered under the Securities Act of 1933 nor the subject of any American depositary receipt so registered, and representing a debt obligation of the government of

(i) The United Kingdom of Great Britain and Northern Ireland; or

(ii) Canada.

(2) The term "qualifying foreign futures contracts" shall mean any contracts for the purchase or sale of a designated foreign government security for future delivery, as "future delivery" is defined in 7 U.S.C. 2, provided such contracts require delivery outside the United States, any of its possessions or territories, and are traded on or through a board of trade, as defined at 7 U.S.C. 2, that is located within the nation whose government issues the designated foreign government securities to which the contracts relate.

(b) Any designated foreign government security shall, for purposes only of the offer, sale or confirmation of sale of qualifying foreign futures contracts, be exempted from all provisions of the Act which by their terms do not apply to an "exempted security" or "exempted securities."

By the Commission.

Dated: March 2, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-6301 Filed 3-7-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 84-57]

Amendment Removing China From the List of Countries Entitled to Special Tonnage Tax Exemption

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This rule amends the Customs Regulations by removing the People's Republic of China (China) from the list of nations whose vessels are exempted from the payment of any higher tonnage duties than are applicable to vessels of the U.S. and from the payment of light money. The Department of State informed Customs that, due to the expiration of the U.S.-China Agreement on Maritime Transport, there is no longer satisfactory evidence that no discriminatory duties of tonnage or imposts are being imposed in ports of China upon vessels belonging to citizens of the U.S. or on their cargoes. Therefore, privileges regarding exemption from the payment of discriminatory duties upon vessels registered in China which enter U.S. ports cannot be granted by the U.S. at this time.

EFFECTIVE DATE: December 16, 1983.

FOR FURTHER INFORMATION CONTACT: Harold Singer, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton, known as "light money", on all foreign vessels which enter United States ports (46 U.S.C. 121, 128). However, vessels of a foreign nation may be exempted from the payment of special tonnage taxes and light money upon pres‹ntation of proof satisfactory to the President that no discriminatory duties of tonnage or imposts are imposed by that foreign nation on U.S. vessels or their cargoes (46 U.S.C. 141). Section 4.22, Customs Regulations (19 CFR 4.22), lists those nations whose vessels have been exempted from the payment of any higher tonnage duties than are applicable to vessels of the U.S. and from the payment of light money.

By letter dated December 19, 1983, the Department of State informed the Customs Service that the U.S.-China Agreement on Maritime Transport, which was signed and took effect on September 17, 1980, expired on December 16, 1983. When this Agreement was signed, there was satisfactory evidence that no discriminatory duties of tonnage or imposts were being imposed or levied in ports of China upon vessels wholly belonging to citizens of the U.S., or upon the produce, manufactures, or merchandise imported into China on vessels from the U.S. Accordingly, T.D. 82-16, published in the **Federal Register** on January 14, 1982 (47 FR 2084), amended § 4.22, Customs Regulations, by granting reciprocal privileges to vessels of China as of September 17, 1980. However, since no successor Agreement has yet been concluded and because the only assurances the Government of China has provided the U.S. Government concerning tonnage duties were contained in the Maritime Agreement, which expired December 16, the Department of State believes that the U.S. is no longer in possession of satisfactory evidence regarding the absence of discriminatory duties of tonnage or imposts on U.S. vessels. Therefore, the Department of State recommended to customs that China be removed, effective December 16, 1983, from the list of nations whose vessels are exempted from the payment of the special tonnage tax and the payment of light money. On December 30, 1983, the Director, Carriers, Drawback and Bonds Division of the Customs Service determined that effective December 16, 1983, China should be deleted from the list in § 4.22.

By virtue of the authority vested in the President by section 4228 of the Revised Statutes, as amended (46 U.S.C. 141), the President has delegated the authority to grant this exemption to the Secretary of the Treasury by E.O. No. 10289, September 17, 1951, a amended by E.O. No. 10882, July 18, 1960 (3 CFR, 1959–1963 Comp., Ch II). By Treasury Department Order 165-25 the Secretary of the Treasury delegated authority to the Commissioner of Customs to prescribe regulations relating to § 4.22 and other sections of the Customs Regulations relating to lists of nations entitled to preferential treatment in Customs matters because of reciprocal privileges accorded to vessels and aircraft of the U.S. Subsequently, by Customs Delegation Order No. 66 (T.D. 82-201), dated October 13, 1982, the Commissioner delegated authority to grant this exemption and to amend these sections to the Assistant Commissioner (Commercial Operations), who redelegated this authority to the Director, Office of Regulations and Rulings, who then re-delegated it to the Director, Regulations Control and Disclosure Law Division.

Finding

On the basis of the information received from the Secretary of State, as described above, it has been determined that the United States is no longer in possession of satisfactory evidence regarding the absence of discriminatory duties of tonnage or imposts imposed on U.S vessels in ports of China. Therefore, China is removed from the list of nations whose vessels are exempted from the payment of the special tonnage tax and the payment of light money as of December 16, 1983.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Cargo vessels, Maritime carriers, Vessels.

Regulations Amendment

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

§ 4.22 [Amended]

To reflect this change, § 4.22, Customs Regulations (19 CFR 4.22), is amended by deleting "China.*" from the list of nations entitled to exemptions from special tonnage taxes and deleting "*See also Taiwan." below "Zaire." on the same list.

(R.S. 251, as amended, 4219, as amended, 4228, as amended, 4255, as amended, sec. 3, 23 Stat. 119, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624, 46 U.S.C. 5, 121, 128, 141)).

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely implements a statutory requirement and involves a matter in which the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

Inapplicability of the Regulatory Flexibility Act

This document is not subject to the provisions of section 603 and 604 of Title 5, United States Code, as added by section 3 of Pub. L. 96-354, the "Regulatory Flexibility Act." That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a major impact analysis is not required.

Drafting Information

The principal author of this document was James S. Demb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: March 1, 1984.

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 84-6261 Filed 3-7-84; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Part 10

Caribbean Basin Initiative

AGENCY: Customs Service, Treasury.

ACTION: Notice of extension of time for comment.

SUMMARY: This notice extends the period of time within which interested members of the public may submit written comments with respect to interim Customs Regulations relating to the Caribbean Basin Initiative which were published as T.D. 84-14 in the **Federal Register** on January 5, 1984 (49 FR 852). Comments were to have been received on or before March 5, 1984.

Customs has been requested to extend the comment period because of the complicated issues raised and the need to solicit the views of the governments affected by the interim regulations. Customs believes the request has merit. Accordingly, the period of time for the submission of written comments is extended to May 4, 1984.

DATE: Comments must be received on or before May 4, 1984.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the

Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations Control Branch, U.S. Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: William L. Marchi, Duty Assessment Division (202–566–2957); Legal Aspects: Francis W. Foote, Classification and Value Division (202–566–2938); U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Dated: March 2, 1984.

John P. Simpson,

Director, Office of Regulations and Rulings.

[FR Doc. 84–6177 Filed 3–7–84; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Parts 1 and 301

[T.D. 7948]

Tax Return Preparers

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to the Income Tax Regulations under sections 6107(b) and the Regulations on Procedure and Administration under section 7216(b) of the Internal Revenue Code of 1954. The amendment under section 6107(b) relates to the retention of records of income tax returns prepared by a corporation or a partnership as an income tax return preparer. The amendment under section 7216(b) relates to disclosure to grand juries of income tax return information by the preparers of the returns. These amendments to the regulations clarify existing regulations under sections 6107(b) and 7216(b).

EFFECTIVE DATES: The changes made by this Treasury decision are effective on April 9, 1984.

FOR FURTHER INFORMATION CONTACT: Mary Frances Pearson of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T (LR–290–82) or call 202–566–3289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1983, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 6107(b) and the Regulations on Procedure and Administration under section 7216(b) (26 CFR Part 301) (48 FR 52087). The proposed amendment to section 6107(b) designated the person required to retain records of income tax returns when the income tax return preparer is a corporation or partnership which has been dissolved. The proposed amendment to regulations under section 7216(b) clarified that disclosure of tax return information by an income tax return preparer to a grand jury does not trigger the penalty provision of section 7216(a). There were no written comments or requests for a public hearing. Therefore, the regulations are being published as they appeared in the notice of proposed rulemaking.

Discussion

Section 6107(b) provides that an income tax return preparer must retain a copy of each income tax return prepared, or a list of the taxpayers for whom such returns were prepared, available for inspection upon request for a specified 3-year period. When the preparer is a corporation or a partnership which is dissolved before expiration of the 3-year period, the question has arisen as to who must retain the above described records for inspection until the 3-year period has expired. This amendment to the regulation would place that duty upon all persons under state law who are responsible for winding up the affairs of the corporation or partnership. If no persons are designated under state law, then the regulations provide that, collectively, the directors of the corporation or the general partners of the partnership shall be required to retain the records for the requisite 3-year period.

Section 7216(b) provides that the penalty provision of section 7216(a) will not apply to the disclosure or use of information by preparers of returns if the disclosure is made pursuant to provisions of the Code or pursuant to an order of a court. Section 7216(b)(3) gives the Secretary regulatory authority to prescribe other exceptions to section 7216(a). This amendment to the regulation would clarify that disclosure of tax return information by an income tax return preparer to a grand jury does not trigger the penalty provision of section 7216(a).

Drafting Information

The principal author of these regulations is Mary Frances Pearson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, both on matters of substance and style.

Regulatory Flexibility Act of 1980 and Executive Order 12291

Although a notice of proposed rulemaking which solicited public comments was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirement of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6). The Commissioner of Internal Revenue has determined that this regulation is not subject to Executive Order 12291.

List of Subjects

26 CFR 1.601–1—1.6109–2

Income taxes, Administration and procedure, and Payment of tax.

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information and Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 301 are amended as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. Section 1.6107–1(b) is amended by adding three sentences at the end thereof to read as set forth below:

§ 1.6107–1 Income tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.

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