

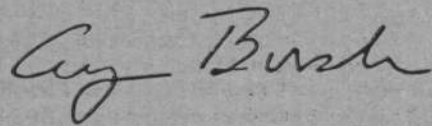
example, the difference between liberty and license, between the grateful exercise of freedom and the misuse of our precious rights.

This Thanksgiving, as we reflect on our Nation's heritage and give thanks to God for our many blessings, let us renew the solemn commitment that John Winthrop and his fellow pilgrims made more than 300 years ago. At a time when so many of the world's peoples look to America's example, let us stand for a liberty "to that only which is good, just, and honest." Mindful, too, that "he that gives to the poor lends to the Lord," let us reach out with generosity to persons in need—strangers who are hungry and homeless, neighbors who are sick or lonely, and loved ones who are eager for our time, attention, and encouragement.

I am both confident and grateful that—in the future, as in the past—this Thanksgiving tradition will continue to bind us in appreciation of life's greatest blessings: our families and friends, our rich heritage of freedom, and, most of all, the unchanging wisdom and presence of Almighty God.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim Thursday, November 26, 1992, as a National Day of Thanksgiving. I urge all Americans to gather in their homes and in places of worship on that day to offer thanks to the Almighty for the many blessings that He has granted us as individuals and as a Nation. May we always strive to remain worthy of them.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of November, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.



Presidential Documents

Proclamation 6509 of November 20, 1992

National Education First Week, 1992

By the President of the United States of America

A Proclamation

Three years ago, beginning with our historic Education Summit with the Nation's Governors, we launched America 2000—an ambitious campaign to achieve excellence in our schools. Today more than 2,000 cities and towns throughout the United States and territories proudly count themselves as America 2000 communities, thanks to the shared commitment of parents, teachers, students, local public officials, and concerned business leaders. Recognizing the importance of education, not only as a treasure in itself, but also as the key to advancement for individuals and nations, these Americans are working to meet high standards in the classroom and to make their homes and neighborhoods places where learning can happen. As a result of this outpouring of support for our America 2000 strategy, we have begun to chart promising gains—7 years before our target date.

Since we launched America 2000, concerned individuals from all walks of life have responded enthusiastically to the challenge of building a new generation of American schools. Last year, when private sector leaders formed the New American Schools Development Corporation and announced a nationwide competition for the best school designs imaginable, nearly 700 teams submitted proposals. The Administration also pursued, and this July I was pleased to sign, the Higher Education Amendments of 1992, which will promote lifelong learning and achievement by expanding eligibility for student loans, by improving the accountability of student loan programs, and by providing for an alternative certification program through which States can devise ways to enlist the knowledge, experience, and skills of qualified men and women who want to teach yet lack traditional teaching degrees. In keeping with America 2000 and with our calls for increased competition and accountability in our Nation's schools, at least 10 States have expanded parental choice in education, and this year's report of the National Education Goals Panel shows that we have begun to increase the high school completion rate while, at the same time, significantly reducing drug use in and around our schools.

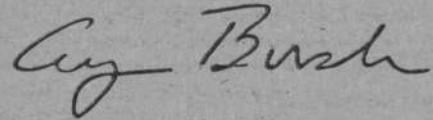
These developments are encouraging, and they are powerful testimony to the principles that guide our America 2000 strategy: greater parental choice and involvement in education; increased flexibility for teachers; high standards of student performance, verified by testing; competition and accountability in schools; and, of course, sustained cooperation among all Americans. However, even as we take justifiable pride in our progress, we know there is still much work to be done. In a world that demands excellence in science, technology, and commerce, America's economic competitiveness will remain at risk as long as our students are not among the best in the world. We must continue to reach out to the nearly 2,000 students who drop out of school each day, abandoning their best hope for a bright future, and we must continue to expand educational opportunities for the estimated 26 million Americans who are functionally illiterate. Toward these ends, concerned Americans in education, business, private voluntary organizations, and the media are joining together in observance of National Education First Week.

This week we renew our commitment to achieving excellence in education—school by school, community by community. Millions of parents, educators, business owners, and volunteers are participating in this effort in support of our America 2000 strategy, and I salute them.

In recognition of the importance of learning to each American and to our Nation, the Congress, by House Joint Resolution 543, has designated the week of November 30 through December 6, 1992, as "National Education First Week" and has requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of November 30 through December 6, 1992, as National Education First Week. I urge all Americans to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of November, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.



[FR Doc. 92-28746

Filed 11-20-92; 4:45 pm]

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Rules and Regulations

Federal Register

Vol. 57, No. 227

Tuesday, November 24, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER, issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319 and 321

[Docket No. 91-038-3]

Importation of Potatoes From Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of potato plants and tubers from Canada that were established by two previously published interim rules. These interim rules were necessary to prevent the introduction of the necrotic strain of potato virus Y (PVYⁿ) into the United States. This final rule relaxes some of the restrictions on importing certain potatoes from Canada imposed by two prior interim rules and strengthens others. The rule will require certification of certain potatoes from Canada based on levels of testing and proximity and relationship to infected potatoes. Implementation of this rule will provide protection to U.S. agriculture against the introduction of PVYⁿ while relieving unnecessary restrictions.

EFFECTIVE DATE: November 24, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. James Petit de Mange, Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8645.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective April 25, 1991, and published in the *Federal Register* on April 30, 1991 (56 FR 19789-19791, Docket No. 91-038), we amended the regulations in 7 CFR parts 319 and 321 concerning the importation of

potatoes by adding restrictions on the importation of potato plants and tubers from the Canadian provinces of New Brunswick and Prince Edward Island. This emergency action was necessary to prevent the introduction into the United States of the necrotic strain of potato virus Y (PVYⁿ).

PVYⁿ can infect potatoes, tobacco, tomatoes, and peppers. Investigations by Agriculture Canada indicated that PVYⁿ had been found in Prince Edward Island and New Brunswick. The spread of PVYⁿ had been the result of movement of Atlantic variety seed potatoes from a farm in Prince Edward Island. Based on that information, we instituted changes that required special certifications for seed potatoes from all of Canada, and for table stock and processing potatoes from Prince Edward Island and New Brunswick.

Comments on the April interim rule were required to be received on or before July 1, 1991. We received 10 comment letters prior to this closing date, submitted by Canadian potato industry representatives, U.S. potato importers, Canadian government agencies, and various State agencies. One comment supported the rule as written, five comments opposed the interim rule, and four comments suggested delaying a final rule until the results of follow-up Canadian surveys were available.

Upon completion, these follow-up surveys indicated that the extent of the infestation in Prince Edward Island was more widespread than previously believed and that PVYⁿ had been detected in Ontario, Nova Scotia, and Quebec, and in potato varieties other than Atlantic. Most of those new detections could be traced back to potatoes originating in Prince Edward Island. The surveys detected PVYⁿ only once in each of the provinces of New Brunswick and Nova Scotia, and twice in Quebec. Agriculture Canada authorized the infected potatoes for local processing only within the province where grown. We perceived the risk of introducing PVYⁿ in potatoes from those provinces to be small relative to potatoes from Ontario and Prince Edward Island.

Therefore, in a second interim rule effective on December 27, 1991, and published in the *Federal Register* on January 6, 1992 (57 FR 331-334, Docket No. 91-105), we further amended the

regulations in 7 CFR parts 319 and 321 by:

(1) Broadening the prohibition on seed potatoes from Prince Edward Island to all varieties from all parts of Prince Edward Island;

(2) Adding Ontario as a province from which seed potatoes were prohibited, regardless of variety, due to circumstances concerning the presence of PVYⁿ in tobacco, potatoes, and possibly other hosts in Ontario that had not yet been identified;

(3) Allowing the importation of seed potatoes from other provinces, with an import permit from the U.S. Department of Agriculture (USDA) and accompanied by a phytosanitary certificate stating: (i) The province of origin; (ii) that the potatoes were neither the progeny of nor were grown on the same Canadian seed potato farm with potatoes produced in Ontario or Prince Edward Island in 1988 or later; (iii) that the potatoes were not the sibling potatoes of a lot potatoes known to be infested with PVYⁿ; and (iv) that the potatoes were not harvested from a farm or field within 200 meters of a farm or field where PVYⁿ had been detected;

(4) Allowing the importation of table stock and processing potatoes from Ontario and Prince Edward Island, with a USDA import permit and accompanied by a phytosanitary certificate stating that the potatoes: (i) were not grown from seed potatoes that were siblings of a lot of potatoes known to be infested with PVYⁿ; (ii) were not harvested from a farm or field within 200 meters of any farm or field where PVYⁿ was detected; and (iii) were treated while dormant with the sprout inhibitor chlorpropham in accordance with labeled rates approved and authorized by the U.S. Environmental Protection Agency;

(5) Allowing the importation of table stock and processing potatoes from Ontario and Prince Edward Island that had been treated with chlorpropham, but which did not meet the other certification requirements described above, only from August 15 through March 15, inclusive;

(6) Allowing the importation of table stock and processing potatoes harvested in New Brunswick, Nova Scotia, and Quebec without sprout inhibitor treatment, with a USDA import permit and accompanied by a phytosanitary certificate stating: (1) the province of origin; (ii) that the potatoes were neither

the progeny of nor were grown on the same Canadian seed potato farm with potatoes produced in Ontario or Prince Edward Island in 1988 or later; (iii) that the potatoes were not the sibling potatoes of a lot of potatoes known to be infested with PVYⁿ; and (iv) that the potatoes were not harvested from a farm or field within 200 meters of a farm or field where PVYⁿ had been detected;

(7) Allowing the importation of table stock and processing potatoes harvested in New Brunswick, Nova Scotia, and Quebec that do not meet the above requirements, with a USDA import permit and accompanied by a phytosanitary certificate stating: (i) the province of origin and; (ii) that the potatoes were treated while dormant with the sprout inhibitor chlorpropham in accordance with labeled rates approved and authorized by the U.S. Environmental Protection Agency; and

(8) Broadening the prohibition on the importation of potato plants (other than tubers and true seeds) to include those from Nova Scotia, Ontario, and Quebec.

We invited comments on this January interim rule, stipulating that they be received on or before March 6, 1992. We received eight timely comment letters, submitted by Canadian potato industry representatives, U.S. potato importers, Canadian government agencies, and various State agencies. Three comments expressed some support, while five were in opposition. A summary of the changes we are making in response to comments precedes the discussion of comments below.

None of the comments in response to either interim rule concerned the importation of potato plants regulated by 7 CFR 319.37-2. The facts presented in the relevant portion of the interim rule published on January 6, 1992, still provide a rational basis for the regulations concerning potato plants from Canada. Therefore, we are adopting without change that portion of the interim rule published on January 6, 1992, that amended 7 CFR 319.37-2.

Summary of Changes Made in This Final Rule

Under this final rule, seed potatoes grown in Canada may be imported into the United States under certain conditions, summarized below. As the situation evolves and USDA evaluates new survey data, amendments to the regulations will be made as warranted.

Seed potatoes from Canadian provinces where PVYⁿ is known to have been established (New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec); May be imported into the United States if they are accompanied by a phytosanitary certificate issued by

Agriculture Canada stating the province of origin and stating that:

(1) The potatoes have been found free of PVYⁿ based on leaf or tuber sprout testing;

(2) All potato fields grown within 200 meters of the seed lot have been found free of PVYⁿ based on leaf or tuber sprout testing;

(3) The potatoes originated from fields that are 5 kilometers or more from any field testing positive for PVYⁿ;

(4) The potatoes are not sibling or cousin potatoes of a lot of potatoes known to be infected with PVYⁿ;

(5) The potatoes originated from fields that are 200 meters or more from any field planted with sibling or cousin potatoes of a lot of potatoes known to be infected with PVYⁿ; and

(6) The potatoes are foundation or certified seed potatoes.

Seed potatoes imported from provinces where PVYⁿ has not been found: May be imported into the United States if they are accompanied by a phytosanitary certificate issued by Agriculture Canada stating the province of origin and that the potatoes:

(1) Are not the progeny of potatoes produced in New Brunswick, Nova Scotia, Ontario, Prince Edward Island, or Quebec, and were not grown within 200 meters of a field planted with sibling or cousin potatoes of a lot of potatoes known to be infected with PVYⁿ; or

(2) Are the progeny of seed potatoes that were produced in New Brunswick, Nova Scotia, Ontario, Prince Edward Island, or Quebec, and:

(i) Have been found free of PVYⁿ based on leaf or tuber sprout testing;

(ii) All potato fields grown within 200 meters of the seed lot have been found free of PVYⁿ based on leaf or tuber sprout testing;

(iii) Are not sibling or cousin potatoes of a lot of potatoes known to be infected with PVYⁿ;

(iv) Originated from fields that are 200 meters or more from any field planted with sibling or cousin potatoes of a lot of potatoes known to be infected with PVYⁿ;

(v) The potatoes are foundation or certified seed potatoes.

Table stock and processing potatoes may be imported into the United States from New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec if they are accompanied by a phytosanitary certificate issued by Agriculture Canada stating the province of origin and stating that:

(1) The potatoes have been found free of PVYⁿ based on leaf or tuber sprout testing;

(2) All potato fields grown within 200 meters of the seed lot have been found

free of PVYⁿ based on leaf or tuber sprout testing;

(3) The potatoes originated from fields that are 5 kilometers or more from any field testing positive for PVYⁿ;

(4) The potatoes are not sibling or cousin potatoes of a lot of potatoes known to be infected with PVYⁿ;

(5) The potatoes originated from fields that are 200 meters or more from any field planted with sibling or cousin potatoes of a lot of potatoes known to be infected with PVYⁿ;

(6) The potatoes are certifiable as foundation or certified seed potatoes.

Table stock and processing potatoes that cannot meet the conditions above, may be imported into the United States from New Brunswick, Nova Scotia, Ontario, Prince Edward Island, or Quebec if they are accompanied by a phytosanitary certificate issued by Agriculture Canada stating the province of origin and stating that the potatoes:

(1) Are not known to be infected with PVYⁿ; and

(2) Are treated with the sprout inhibitors chlorpropham or maleic hydrazide, or both.

Comments on First Interim Rule (Docket No. 91-038)

Survey Results

The majority of commenters on the original interim rule of April 25, 1991, suggested waiting for the results of a follow-up survey being conducted by Agriculture Canada before making final import restriction decisions. The second interim rule was based on the results of the follow-up survey.

Potatoes from New Brunswick

Three commenters stated that New Brunswick had only three positive lots, which were infested by imported seed, and that the province has done all possible to quarantine and eradicate PVYⁿ by disposing of all infected material and putting suspect material under quarantine. They therefore requested that the rule be annulled, asserting there was no risk involved with the import of potatoes from New Brunswick.

We recognize the efforts that officials in New Brunswick and Agriculture Canada have made toward identifying and disposing of all infected potatoes. However, at the time the comments were received we believed that the movement of potatoes infected by PVYⁿ presented the risk of spreading the disease within the growing season from one farm to another. Further, neither Agriculture Canada nor New Brunswick declared eradication of PVYⁿ based on

the removal of three positive lots. Therefore, we were not able to remove the restrictions as they applied to New Brunswick at that time.

Paperwork Burden.

Several commenters stated that the additional paperwork burden created by the permit application would turn American buyers away from purchasing New Brunswick potatoes.

We do not believe our permit application process is unduly burdensome for importers of any product imported from Canada, including potatoes. The process is simple and uncomplicated, with no fee charged for the permits.

Comments on Second Interim Rule (Docket No. 91-105)

New Test Results

Several commenters asked that we reduce or remove restrictions on the importation of potatoes from certain areas of Canada. They asked that restrictions be reduced based on new testing that indicated that a large number of lots originally found positive for PVYⁿ had been misdiagnosed. They stated that the results of the surveys conducted in New Brunswick and Prince Edward Island in the summer of 1991 showed an unusually large number of infested lots of potatoes, and that the test results were immediately questioned. According to the commenters, subsequent tests were made of the potatoes that were originally considered positive for PVYⁿ. These results showed that, in many cases, PVYⁿ symptoms were confused with those caused by a mix of other viruses (PVX and Common PVY). Consequently, they said, PVYⁿ is considered to be in only 10 lots on Prince Edward Island, 10 in Ontario, 1 in New Brunswick, 1 in Nova Scotia, and 2 in Quebec. The commenters stated that these test results also indicate that Inspection District 5 on Prince Edward Island remains free from PVYⁿ. Several of the commenters requested that USDA accept potatoes from Inspection District 5 under the same import requirements as for New Brunswick, Nova Scotia, and Quebec. Another commenter suggested allowing the importation of seed potatoes except from certain zones.

At the time the second interim rule was published, we were notified that Agriculture Canada was retesting the potato lots that were originally determined as PVYⁿ infested. We recognize the flaw in the testing that resulted in many false positives and accept the results of the subsequent tests as valid. These tests indicate that

the spread of PVYⁿ is less pervasive than originally thought. We also have confidence in the eradication efforts being made by Agriculture Canada and the affected provinces. The issue concerning Inspection District 5 on Prince Edward Island will be addressed in our response to the "Zonal Proposal" comment, below.

Seed Potatoes Grown in Ontario

Many of the commenters objected to the prohibition on seed potatoes from Ontario, stating that PVYⁿ has never been found in seed potatoes grown in Ontario. They stated that all PVYⁿ detections (except one tobacco field) were linked to infected potatoes which could either be traced back to those illegally imported into Ontario from home gardens or to potatoes destined for processing. They stated that all infected potatoes were processed or otherwise destroyed, ensuring that there would be no further spread of the virus. They further stated that between 500 and 600 leaf samples from Ontario seed potatoes were sent to private laboratories for tests in 1991, and that all were negative for PVYⁿ. Agriculture Canada tested 105 samples taken from Ontario seed potatoes in greenhouses during the winter of 1991; again, all were negative. Therefore, the commenters felt that prohibiting the importation of all seed potatoes from Ontario was too restrictive.

We did not see results of tests conducted by Agriculture Canada until late April 1992. We do not know the sample size or other testing protocols for the private tests, and therefore cannot comment on their validity. However, we are making changes that will allow the importation of certain seed potatoes from Ontario (see "Zonal Proposal," below).

One commenter also noted that all potatoes testing positive for PVYⁿ in Ontario were located at least 100 kilometers from the closest Ontario seed farm. However, the commenter also stated that the positive lots grown in Alliston, Ontario, from Prince Edward Island seed potatoes, were 5 kilometers from the nearest seed potato farm. Additionally, the positives in potatoes and tobacco were not grown near the seed production area of Ontario. The commenter suggested not allowing any seed potatoes from south of Highway 401 and 402, rather than prohibiting seed potatoes from all of Ontario.

The distances described in the comment seem to be contradictory. However, the Ontario seed production areas do appear to be separate and distinct from the areas in Ontario where PVYⁿ was found. The virus was

detected in the south; seed potatoes are only grown in the north of Ontario. As noted above, we are making changes that will allow the import of certain seed potatoes from Ontario (see "Zonal Proposal," below).

Two commenters stated their belief that work done on alternate hosts, for instance the ground cherry, indicates that these hosts were not significant in the spread of the virus. According to another commenter, all positives from Ontario have been destroyed and alternate hosts tested indicated they did not contribute to the spread of the virus. The commenters do not see PVYⁿ as recurring in Ontario. Thus they feel our interim rule prohibiting the importation of seed potatoes from Ontario is overly restrictive.

Based on the information available at the time that we wrote the interim rule published on January 6, 1992, we did not know the source of infection for all the PVYⁿ detections in Ontario. Alternate hosts, such as ground cherry, can be infected with the virus and survive the winter in many areas, thus acting as a possible source for the spread of PVYⁿ from season to season. Therefore, we do not believe alternate hosts should be ignored in the search for causes for the disease. However, as noted, we are making changes that will relieve some restrictions on the importation of seed potatoes from Ontario (see "Zonal Proposal," below).

Potatoes Grown in Prince Edward Island

Several commenters objected to the prohibition of all varieties of seed potatoes from all parts of Prince Edward Island, asserting that the restriction is not based on current information. They claimed that Districts 4, 5, and 6 are free of the virus and that in 1991, only the following varieties were found to be infected: Jemseg, Belmont, Shepody, and Russet Norkotah. They noted that in 1990 the infected varieties were: Atlantic, Russet Burbank, Belle Isle, and Superior.

In our April 1991 interim rule we regulated by variety because at that time it appeared that one variety—Atlantic—was the cause of the outbreak of PVYⁿ. The survey in the summer of 1991 revealed that many other varieties and many other farms were infested. We decided to prohibit all seed potatoes from Ontario and Prince Edward Island in the January 1992 interim rule based on that survey data. We do not know of any varieties that may be immune to infection with PVYⁿ. Therefore, we do not intend to regulate by variety, but will regulate based on levels of testing and proximity and relationship to

infected potatoes (see "Zonal Proposal," below).

Sprout Inhibitors

Objections were made to requiring the use of the sprout inhibitor chlorpropham on potatoes while they are dormant. Commenters pointed out that labels for some chlorpropham products do not require application "while dormant." They stated that chlorpropham is used to inhibit sprout growth when sprouts begin to form and that it is not systemic and it "prevents" sprouts from growing after dormancy has been broken. It was felt that our requiring treatment only while dormant is unjustified since this does not positively prevent sprout formation.

The product Sprout-Nip E.C. was used as a specific example by the commenter. The label states that "Contact with the buds is essential for results to be effective." One commenter requested allowing treatment of potatoes with chlorpropham after small buds have appeared.

Our research shows that the various chlorpropham formulations carry different labeling instructions. The Sprout Nip aerosol grade formulations produced for the Platte Chemical Company, for example, indicate that the treatment should be done "after the curing period and before sprouting of potatoes occurs," i.e., while dormant. However, the label on the Platte Chemical formulation of Sprout Nip chlorpropham emulsifiable concentrate does not require that the treatment should be made to dormant potatoes. Therefore, we are requiring that chlorpropham treated potatoes be treated according to label directions and be certified by Agriculture Canada as so treated, without reference to dormancy.

Two commenters requested that, in addition to chlorpropham, we also allow the use of the sprout inhibitor maleic hydrazide, stating that it is effective if properly applied and that it has been approved for plant quarantine use.

Maleic hydrazide is applied by the farmer in the field. At the time of the earlier interim rule, we believed that certification would be difficult. However, we are willing to accept potatoes certified by Agriculture Canada as treated with maleic hydrazide. By virtue of a phytosanitary certificate stating that potatoes are treated with maleic hydrazide, Agriculture Canada will be asserting that the treatments have been applied in accordance with the label.

Processing Potatoes

Two commenters stated that there is little risk of introducing PVYⁿ into the

United States through processing potatoes, and therefore, that processing potatoes should be exempt from the sprout inhibitor treatment requirement. They also stated that it is doubtful that culls (presumably untreated) would be a problem at processing plants, since most of these plants are in large urban areas away from farms.

We have decided to make no change based on these comments. We believe that those processing potatoes that will require sprout inhibitor treatment as a result of this rule would present some risk to U.S. agriculture, as discussed below, if imported untreated.

Our primary concern with untreated processing potatoes imported from PVYⁿ affected areas is that culls, or discarded potatoes, could collect at processing plants and begin to sprout. Under the right conditions, and in the presence of an insect vector, PVYⁿ hosts growing in the vicinity of a processing plant would be at risk of becoming infected with the virus. Although many processing plants are in urban areas, many such plants also exist in potato growing areas and other areas where PVYⁿ hosts are grown.

Finally, we feel there are many operational difficulties in tracking, monitoring, and safeguarding untreated processing potatoes. Those activities would place significant demands upon our agency in areas where our personnel and resources are limited.

Use of Table Stock as Seed

One commenter questioned our concern that home gardeners would plant potatoes purchased from the grocery store, thus using table stock as seed, which he believed to be unlikely. He stated that home gardeners are particular and look to buy the best seed potatoes available. Thus he feels that our restrictions on table stock are too stringent.

Our knowledge of home gardeners in the United States is that very often they plant potatoes purchased in grocery stores due to the greater availability and variety. Therefore, because we still believe that table stock presents a pathway for entry of PVYⁿ into the United States, we are making no change based on this comment.

PVYⁿ in California

Several commenters pointed out that Agriculture Canada has twice detected PVYⁿ in potatoes grown in California, yet neither the USDA nor any State government has placed restrictions on the movement of these potatoes within the United States. They stated that no U.S. survey is available to justify a PVYⁿ-free status for California potatoes.

They further stated that Ontario has self-tested and found no positives in their system, and officials in Ontario believe there is no more risk associated with moving potatoes from Ontario than from California. They feel the leaf sampling surveys used in Ontario are far more comprehensive than the tuber tests used to detect PVYⁿ in California potatoes. Therefore, they feel that Ontario potatoes present far less risk than California potatoes. Two commenters stated that since the United States is not taking similar restrictive actions in California, in response to the alleged detection of the virus on potatoes grown in that State, the interim rule can be considered a barrier to free trade, placing Canadian growers at an unfair disadvantage in U.S. markets.

Our interim rules were written based on information provided by Agriculture Canada. The intent of the rules was to protect the United States from the introduction of PVYⁿ. As discussed below, we have not been able to confirm the presence of PVYⁿ in California. Therefore, we do not believe that California potatoes present a risk to other parts of the United States or Canada. If PVYⁿ were confirmed in the United States, we would take action to prevent its spread and at the same time would continue to regulate Canadian potatoes from the affected provinces. Therefore, we do not believe our rules constitute a trade barrier.

We received notifications from Agriculture Canada that PVYⁿ was detected in California potatoes many months after the potatoes were harvested and sold. It has been very difficult to conduct follow-up tests on these potatoes under these circumstances. The potatoes were grown and marketed for table stock and, to date, none of the original potatoes have been located for testing. In the areas where the suspect potatoes were grown, field surveys of volunteer potato plants and alternate hosts of the virus have proved negative for PVYⁿ. (Volunteer plants are those that have reseeded naturally, as opposed to having been planted.)

When the interim rule published on January 6, 1992, was written in 1991, surveys for PVYⁿ had been or were being performed in California, Florida, Idaho, Maine, Oregon, and Washington, and PVYⁿ had not been found. The California Department of Food and Agriculture and the departments of agriculture in most potato- and tobacco-producing States, in cooperation with USDA, continue to survey for the virus.

Phytosanitary Certification

One basically supportive commenter expressed concern that Agriculture Canada exercise great care regarding phytosanitary certification of eligible seed and table stock potatoes.

We feel very positively about the steps Canada is taking in the eradication and control of the spread of PVYⁿ, including phytosanitary certification. We have been working closely with Agriculture Canada and the provinces in their development of eradication plans as well as survey and testing procedures.

Separation Distance

One basically supportive commenter stated that he would like to see the separation distance from PVYⁿ infested fields increased from 200 meters, as stated in the interim rule, to ½ mile or 1000 meters.

Agriculture Canada has determined through surveys for PVYⁿ that the virus may be spread by aphids up to 3.5 kilometers from infested fields. Further, Agriculture Canada cites a study by Howell and Mink that supports the establishment of a 5-kilometer zone. That study states that the natural spread of carrot thin leaf virus (a potyvirus like PVYⁿ) by aphids is very low beyond 2 miles (3.2 kilometers) and nonexistent at 3 miles (4.8 kilometers) and beyond. Agriculture Canada is using the 5-kilometer zone as part of its national PVYⁿ survey and eradication program, and currently restricts the movement and use of potatoes from within 5 kilometers of an infested field.¹

As discussed below under "Zonal Proposal," we have added provisions to protect against the spread of PVYⁿ beyond the 200-meter distance provided for in the interim rule.

Zonal Proposal

A "Zonal Proposal for the Management of PVYⁿ" was submitted as a comment by Prince Edward Island authorities as an alternative to the total quarantine and restriction on importation required by the interim rules. The zonal proposal suggests no planting of seed, or movement of seed for planting, from an area surrounding a positive field. The potatoes from a positive field would be used only for processing in the local area. The potatoes grown within 200 meters of those in a positive field would be left to grow if they tested negative for PVYⁿ and would be eligible for sale as seed to countries without PVYⁿ restrictions.

Potatoes from two other areas surrounding a positive field, those from 200 meters to 1 kilometer and from 1 to 5 kilometers, would require a high level of testing, including winter grow-out testing, before being allowed to be sold as seed in Canada.

Canada has adopted a zonal plan to control and eradicate PVYⁿ based on the Prince Edward Island proposal. Furthermore, Agriculture Canada and the provinces have carried out a nationwide survey for PVYⁿ in all Canadian seed potato producing areas.

The plan was issued as a Canadian Directive that applies to any potatoes produced in Canada that are found infected with PVYⁿ or that are within a 5-kilometer radius of an infested field. This Directive eliminates from use as seed potatoes in Canada any lot of potatoes found infested with PVYⁿ, any sibling lot(s) of known infested lots (including sibling lots that tested negative for the virus) and all potatoes grown within 1 kilometer of an infested field. All potatoes within that controlled area will be tested at various levels depending upon their proximity to an infested field. Potatoes from that area may be used for table stock and processing within Canada if they have been treated with a sprout inhibitor.

Further, the Canadians allow potatoes grown in the area from 1 kilometer to 5 kilometers from a PVYⁿ infested field, and those potatoes grown within 200 meters of a sibling lot that tested negative for PVYⁿ, to be used for seed in Canada only if they have been tested in a winter grow-out test and found free from PVYⁿ.

We have determined that this concept of regulated zones, enhanced by testing for PVYⁿ and other restrictions as described below, will provide protection for U.S. agriculture against the introduction of PVYⁿ. In keeping with USDA's policy of using multiple safeguards, we are enhancing our certification requirements based on levels of testing and proximity and relationship to infected potatoes.

We are adding a provision to require that all potato fields grown within 200 meters of the seed lot intended for importation into the United States be tested and found to be negative for PVYⁿ. The testing shall be leaf testing at the 1000 leaf level, or higher, per seed lot, or tuber sprout testing at the 1000 tuber sprout level, or higher, per seed lot. We have determined that the fields which have been found free of PVYⁿ based on the serological tests performed by Agriculture Canada officials, or by laboratories that are approved by Agriculture Canada, at the level of 1000 or higher randomly sampled leaves per

seed lot provides a high degree of protection to U.S. agriculture. The same holds true for testing at the level of 1000 or higher randomly sampled tuber sprouts per lot of seed potatoes. Surveys to detect the presence of PVYⁿ in potatoes are normally made in the summer when the foliage of the potato plant can be collected and tested. However, only the tubers are available after harvest for sampling following the growing season, thus both leaf and tuber sprout sampling are acceptable.

We are further requiring that seed potatoes intended for importation into the United States originate in fields that are at least 5 kilometers from any field that has tested positive for PVYⁿ. As discussed above under "Separation Distance," there is the slight possibility that PVYⁿ may have been spread by aphids up to 3.5 kilometers from infested fields. We agree with Agriculture Canada's use of a 5-kilometer safety zone as a way of further reducing the risk of the spread of PVYⁿ.

Because they present an increased risk of spreading PVYⁿ, we are prohibiting the importation of seed potatoes that are siblings or cousins of a lot of potatoes known to be infested with PVYⁿ. We also are prohibiting the importation of seed potatoes grown within 200 meters of a field planted with potatoes that are siblings or cousins of a lot of potatoes known to be infested with PVYⁿ. Sibling potatoes are defined as potatoes produced from a common seed source in the previous growing season and that are planted in different fields during the current growing season. (We have revised the definition of "sibling potatoes" in the regulations to make it clearer.) Cousin potatoes are potatoes produced from different lots of sibling potatoes and that are descended from the same source of seed potatoes two growing seasons back.

As a final precaution, we are allowing only foundation seed potatoes or certified seed potatoes to be imported into the United States from provinces in Canada where PVYⁿ is known to be established. Foundation and certified seed potatoes, which are derived from disease-free stock, have been grown in soil for five and six growing seasons, respectively. Over this period of time, any PVYⁿ viruses in the stock would have time to develop to levels likely to be detected in leaf or tuber sprout testing at the 1000 leaf or 1000 tuber sprout level or higher.

We recognize that the PVYⁿ surveys performed in Canada may have been more thorough in one province than another. However, we do not equate these differences as a significant

¹ For additional information on this study, contact the individual named under "FOR FURTHER INFORMATION CONTACT."

increase in risk. The combined effects of the survey information that is available, the prohibition against the movement of Prince Edward Island seed potatoes to other provinces since 1990, the regulatory actions taken by the Canadian government in the provinces where PVYⁿ was found, and the testing and certification requirements established by this rule, will provide an insignificant risk of the introduction of PVYⁿ.

Therefore, we are amending 7 CFR 321.9(b) to allow seed potatoes to be imported into the United States from provinces in Canada where PVYⁿ is known to be established, provided that:

(1) The potatoes have been found free of PVYⁿ based on leaf testing at the level of 1000 leaves per seed lot, or higher, or tuber sprout testing at the level of 1000 tubers per seed lot, or higher;

(2) All potato fields grown within 200 meters of the seed lot have been found free of PVYⁿ based on leaf testing at the level of 1000 leaves per seed lot, or higher, or tuber sprout testing at the level of 1000 tubers per seed lot, or higher;

(3) The potatoes originated from fields that are at least 5 kilometers from any field testing positive for PVYⁿ;

(4) The potatoes are not sibling or cousin potatoes of a lot of potatoes known to be infected with PVYⁿ;

(5) The potatoes originated from fields that are at least 200 meters from any field planted with sibling or cousin potatoes of a lot of potatoes known to be infected with PVYⁿ;

(6) The potatoes are foundation or certified class seed potatoes.

Based on the rationale discussed above for the importation of seed potatoes from Canadian provinces where PVYⁿ is known to have been established, we are amending the regulations to allow seed potatoes to be imported into the United States from provinces in Canada where PVYⁿ has not been found, provided that the potatoes:

(1) Are not the progeny of potatoes produced in a Canadian province where PVYⁿ is known to be established (New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec), and were not grown within 200 meters of a field planted with sibling or cousin potatoes of a lot of potatoes known to be infected with PVYⁿ; or

(2) Are the progeny of seed potatoes that were produced in a province where PVYⁿ is known to be established (New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec) and:

(i) Have been found free of PVYⁿ based on leaf testing at the level of 1000

leaves per seed lot, or higher, or tuber sprout testing at the level of 1000 tubers per seed lot, or higher;

(ii) All potato fields grown within 200 meters of the seed lot have been found free of PVYⁿ based on leaf testing at the level of 1000 leaves per seed lot, or higher, or tuber sprout testing at the level of 1000 tubers per seed lot, or higher;

(iii) Are not sibling or cousin potatoes of a lot of potatoes known to be infected with PVYⁿ;

(iv) Originated from fields that are 200 meters or more from any field planted with sibling or cousin potatoes of a lot of potatoes known to be infected by PVYⁿ;

(v) The potatoes are foundation or certified class seed potatoes.

Further, we have determined that table stock and processing potatoes from the Canadian provinces where PVYⁿ is known to be established may be safely imported into the United States using the same certification requirements that will apply to seed potatoes. We believe the PVYⁿ surveys performed in Canada over the last 2 years, plus the destruction of all known PVYⁿ infected seed potatoes, greatly reduce the risk of PVYⁿ introduction through table stock and processing potatoes.

Therefore, we are also amending 7 CFR 321.9 (d) and (e) to allow table stock and processing potatoes to be imported into the United States from provinces where PVYⁿ has been found (New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec) if they meet the certification requirements for seed potatoes outlined above, or with certification stating that the potatoes:

(1) Are not known to be infected with PVYⁿ; and

(2) Are treated with the spout inhibitors chlorpropham and/or maleic hydrazide, or both, in accordance with the rates and manner specified on the product label.

Effective Date

This is a substantive rule that relieves restrictions, and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the *Federal Register*. This rule relaxes some of the restrictions on importing certain potatoes from Canada imposed by two prior interim rules and strengthens others. The rule will require certification of certain potatoes from Canada based on levels of testing and proximity and relationship to infected potatoes. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely

affected by restrictions we no longer find warranted. The shipping season for potatoes from Canada is in progress. Making this rule effective immediately will allow interested persons in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of APHIS has determined that this rule should be effective upon publication in the *Federal Register*.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule amends the regulations governing the importation of potatoes by relaxing some of the restrictions on the importation of certain potatoes harvested from Canada which were imposed by two previously published interim rules. The interim rules were prompted by the detection of the necrotic strain of potato virus Y (PVYⁿ) in several Canadian provinces and were necessary to prevent the introduction of the disease into the United States. This action will continue to require the certification of potatoes imported from Canada, but on a "zonal" basis rather than province by province.

The entities that may be most affected by this regulation include U.S. potato producers, importers, and processing plants. Although it is not possible to determine the total number of firms within these categories which can be classified as small entities, over 64 percent of all potato growers and 94 percent of U.S. fruit and vegetable processing firms could be considered small by Small Business Administration guidelines. In general, the impact of the final rule on potato prices in the United States should be minimal, as Canadian potato imports do not represent a significant portion of the total U.S. supply.

Canadian imports to the United States vary from year to year depending upon market conditions in both countries. In

general, U.S. importers of Canadian potatoes will likely benefit from the relaxation of import restrictions. This is particularly true for importers of specific varieties, such as the Shepody potato, for which Canada is a key supplier. Overall, the changes made by this final rule should result in an increase in the amount of seed, table stock, and processing potatoes imported into the United States from Canada, although actual levels will depend on U.S. market conditions. In addition, U.S. vegetable processing firms are not expected to be significantly impacted by the regulatory change.

Large and small U.S. producers, on the other hand, could be negatively impacted, since an increased supply of imports tends to lower domestic prices. The degree to which U.S. producers would be impacted depends on how much of their annual income is derived from the production of potatoes. In this case, it does not appear as if the level of Canadian imports will increase so dramatically as to have a significant impact on U.S. potato prices. Prior to the imposition of the interim rules, Canadian seed potato imports represented between 5 and 6 percent of total U.S. seed potato supplies, while imports of table and processing potatoes comprised only about 1 percent of total U.S. supplies. It is not expected that this regulatory change will cause Canadian imports to rise much beyond these former levels.

Some U.S. producers of certain potato varieties may be adversely impacted since the varieties they grow fill a very small niche of the U.S. demand market. If Canadian imports of these varieties increase, the domestic price may sharply decline. However, APHIS believes that the number of domestic potato producers in this situation is not significant.

Potato plants imported from Canada are generally not used for the commercial production of potatoes and are of no economic significance.

Overall, this regulatory change is not expected to have a substantial effect on the U.S. potato industry. This final rule has the potential to increase the availability of seed potato varieties not widely produced in this country. We are requiring sprout inhibitor treatment on fewer potatoes due to the protective measures that result from the zoning plan described above. Thus it is possible that this will reduce the cost of Canadian potatoes for U.S. purchasers. Therefore, U.S. consumers could benefit from this action, since a greater quantity of popular potato varieties from Canada, such as Shepody, could be made available at reduced prices.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule will allow potatoes to be imported into the United States from Canada. State and local laws and regulations regarding potatoes imported under this rule will be preempted while the vegetable is in foreign commerce. If the potatoes are imported for immediate distribution and sale to the consuming public, they would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. This rule has no retroactive effect and does not require administrative proceedings before parties may file suit in court.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control numbers are 0579-0049 and 0579-0088.

List of Subjects

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

7 CFR Part 321

Imports, Plant diseases and pests, Potatoes, Quarantine, Reporting and recordkeeping requirements.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, that portion of the interim rule that amended 7 CFR part 319.37-2(a) and that was published at 57 FR 331-334 on January 6, 1992.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151-167; 7 CFR 2.17, 2.51, and 371.2(c).

Accordingly, 7 CFR part 321 is amended to read as follows:

PART 321—RESTRICTED ENTRY ORDERS

1. The authority citation for part 321 continues to read as follows:

Authority: 7 U.S.C. 154, 159, and 162; 44 U.S.C. 35; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 321.2 is amended by revising the definition for "sibling potatoes" and by adding six definitions in alphabetical order to read as follows:

§ 321.2 Definitions.

Certified seed potatoes. Potatoes that were derived from disease free stock and which have been grown for six growing seasons in soil.

Cousin potatoes. Potatoes that are produced from different lots of sibling potatoes and which descended from the same source of seed potatoes two growing seasons back.

Foundation seed potatoes. Potatoes that were derived from disease free stock and which have been grown for five growing seasons in soil.

Leaf testing. Leaves that have been randomly sampled from a potato field and tested serologically for PVYⁿ by an Agriculture Canada official or by a laboratory that has been approved by Agriculture Canada to perform such a test.

Seed lot. A lot of potatoes used for planting of a named variety and class that is identifiable by a single number issued by a governmental agency responsible for regulating potatoes.

Sibling potatoes. Potatoes produced from a common seed source in the previous growing season which have been planted in different fields in the current growing season.

Tuber sprout testing. Sprouts taken from tubers randomly sampled from a lot of potatoes and tested serologically for PVYⁿ by an Agriculture Canada official or by a laboratory that has been approved by Agriculture Canada to perform such a test.

3. In § 321.9, paragraphs (b) through (f) are revised to read as follows:

§ 321.9 Importation of potatoes from Canada.

(b) Seed potatoes that are not prohibited importation under paragraph (a) of this section may be imported into the United States from Canadian provinces where PVYⁿ is known to have been established (New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec) if they are accompanied by a phytosanitary certificate issued by Agriculture Canada stating the province of origin and stating that:

(1) The potatoes have been found free of PVYⁿ based on leaf testing at the level of 1000 leaves per seed lot, or higher, or tuber sprout testing at the level of 1000 tubers per seed lot, or higher;

(2) All potato fields grown within 200 meters of the seed lot have been found free of PVYⁿ based on leaf testing at the level of 1000 leaves per seed lot, or higher, or tuber sprout testing at the level of 1000 tubers per seed lot, or higher;

(3) The potatoes originated from fields that are 5 kilometers or more from any field testing positive for PVYⁿ;

(4) The potatoes are not sibling or cousin potatoes of a lot of potatoes known to be infected with PVYⁿ;

(5) The potatoes originated from fields that are 200 meters or more from any field planted with sibling or cousin potatoes of a lot of potatoes known to be infected with PVYⁿ;

(6) The potatoes are foundation or certified seed potatoes.

(c) Seed potatoes that are not provided for in paragraphs (a) and (b) of this section may be imported from New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec if they are accompanied by a phytosanitary certificate issued by Agriculture Canada stating the province of origin and that the potatoes:

(1) Are not the progeny of potatoes produced in a Canadian province where PVYⁿ is known to be established (New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec), and were not grown within 200 meters of a field planted with sibling or cousin potatoes of a lot of potatoes known to be infected with PVYⁿ; or

(2) Are the progeny of seed potatoes that were produced in a province where PVYⁿ is known to be established (New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec) and:

(i) Have been found free of PVYⁿ based on leaf testing at the level of 1000 leaves per seed lot, or higher, or tuber sprout testing at the level of 1000 tubers per seed lot, or higher;

(ii) All potato fields grown within 200 meters of the seed lot have been found free of PVYⁿ based on leaf testing at the level of 1000 per seed lot, or higher, or tuber sprout testing at the level of 1000 tubers per seed lot, or higher;

(iii) Are not sibling or cousin potatoes of a lot of potatoes known to be infected with PVYⁿ;

(iv) Originated from fields that are 200 meters or more from any field planted with sibling or cousin potatoes of a lot of potatoes known to be infected with PVYⁿ;

(v) The potatoes are foundation or certified seed potatoes.

(d) Table stock and processing potatoes that are not prohibited importation under paragraph (a) of this section and that are grown in New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec, may be imported from Canada into the United States if they are accompanied by a phytosanitary certificate issued by Agriculture Canada stating the province of origin and stating that:

(1) The potatoes have been found free of PVYⁿ based on leaf testing at the level of 1000 leaves per seed lot, or higher, or tuber sprout testing at the 1000 tubers per seed lot, or higher;

(2) All potato fields grown within 200 meters of the seed lot have been found free of PVYⁿ based on leaf testing at the level of 1000 leaves per seed lot, or higher, or tuber sprout testing at the level of 1000 tubers per seed lot, or higher;

(3) The potatoes originated from fields that are 5 kilometers or more from any field testing positive for PVYⁿ;

(4) The potatoes are not sibling or cousin potatoes of a lot of potatoes known to be infected with PVYⁿ;

(5) The potatoes originated from fields that are 200 meters or more from any field planted with sibling or cousin potatoes of a lot of potatoes known to be infected with PVYⁿ;

(6) The potatoes are certifiable as foundation or certified seed potatoes.

(e) Table stock and processing potatoes that cannot be certified under paragraph (d) of this section and that were grown in New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Quebec, may be imported from Canada into the United States if they are accompanied by a phytosanitary certificate issued by Agriculture Canada stating the province of origin and stating that the potatoes:

(1) Are not known to be infected with PVYⁿ; and

(2) Are treated with the sprout inhibitors chlorpropham and/or maleic hydrazide, or both, in accordance with the rates and manner specified on the product label.

(f) Importers must obtain an import permit issued by the United States Department of Agriculture, in accordance with § 321.4, for potatoes for which phytosanitary certificates are required by paragraphs (b) through (d) of this section.

(Approved by the Office of Management and Budget under control number 0579-0088)

Done in Washington, DC, this 20th day of November 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service,

[FR Doc. 92-28593 Filed 11-23-92; 8:45 am]

BILLING CODE 3410-34-M

Commodity Credit Corporation

7 CFR Parts 1413 and 1421

RIN 0560-AC69

1993 Wheat Program: Acreage Reduction, Paid Land Diversion, and Loan Rates

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The 1993 acreage reduction program (ARP) percentage for wheat is 0 percent. A paid land diversion (PLD) program will not be implemented for 1993 wheat. The 1993 wheat loan rate is \$2.45 per bushel.

On April 6, 1992, the Commodity Credit Corporation (CCC) issued a proposed rule with respect to the 1993 production adjustment program for wheat which is conducted by the CCC in accordance with the Agricultural Act of 1949 (the 1949 Act), as amended. This rule is necessary to amend the regulations to set forth the acreage reduction percentage for the 1993 crop of wheat and to set forth the determination that a PLD program will not be available for 1993 wheat. In addition, this final rule amends the regulations with respect to the loan rate for 1993 wheat. These actions are required by Section 107B of the 1949 Act.

EFFECTIVE DATE: November 24, 1992.

FOR FURTHER INFORMATION CONTACT: Craig Jagger, Agricultural Economist, Grains Analysis Division, USDA-ASCS, room 3740-S, P.O. Box 2415, Washington, DC 20013-2415 or call 202-720-4418.

SUPPLEMENTARY INFORMATION: The Final Regulatory Impact Analysis describing the options considered in developing this rule and the impact of the implementation of each option is available on request from the above-named individual.

This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as "major." It has been determined these program provisions will result in an annual effect on the economy of \$100 million or more.

It has been determined that the Regulatory Flexibility Act is applicable to this final rule because the CCC is required by section 107B(o) of the 1949 Act to publish a notice of proposed rulemaking with respect to the subject matter of this rule. The Final Regulatory Impact Analysis referred to above determined that this action will have no significant economic impact on small entities because the regulatory burden on the affected entities would remain the same regardless of the determinations made by this action. Thus, CCC certifies that this rule will have no significant economic impact on a substantial number of small entities.

It has been determined by an environmental evaluation that this action will not have significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The titles and numbers of the Federal Assistance Program, as found in the catalog of Federal Domestic Assistance, to which this rule applies, are Wheat Production Stabilization—10.058.

The program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule are not retroactive. There are no issues involving preemption or the exhaustion of administrative remedies.

This final rule does not impose any new information collection requirements on the public, or increase the reporting burden for the information collections currently approved by the Office of Management and Budget (OMB) under OMB No. 0560-0092.

Background

This final rule amends 7 CFR part 1413 to set forth determinations on the Acreage Reduction and Paid Land Diversion Programs for 1993 wheat and 7 CFR part 1421 to set forth the determinations on the 1993 loan levels. General descriptions of the statutory basis for the determination of the ARP in this rule were set forth at 57 FR 11588 (April 6, 1992).

Comments on the ARP level as received during the specified comment period are summarized as follows:

(a) The public was asked to comment on three 1992 wheat ARP options: 5 percent, 0 percent, and no ARP. Sixty-

seven comments were received, of which 57 specified an ARP level.

(b) The 0-percent ARP was the most popular option with 30 percent (17 of 57) of respondents in favor. Respondents favoring this level stated that the U.S. must not unilaterally reduce production and abandon world markets—especially while the GATT negotiations are ongoing. They also noted that wheat-sector returns are higher with a 0-percent ARP than with a 5-percent, that a 0-percent ARP gives the maximum payment acres after flexibility, and that acres idled under the conservation reserve program and annual programs hurt the rural infrastructure.

(c) The 5-percent ARP was the next most popular, with 26 percent of respondents (15 of 57) in favor. Reasons included higher wheat prices, lower government costs, and concerns that stocks could build too much under a 0-percent ARP.

(d) National and State producer organizations were about evenly divided between the 0 and 5-percent options. The national wheat producer organization split the difference at 2.5 percent, while one state farm organization also favored a level between 0 and 5 percent.

(e) The no-ARP option was strongly rejected by most respondents—especially producers and producer organizations. Only two grain merchandisers and an anonymous individual favored the no-ARP option. Opponents to the no-ARP option cited the loss of the 0/92 program and the loss of advanced deficiency payments as their major reasons for opposition.

(f) Twenty respondents advocated a variety of ARP levels greater than 5 percent. Most of these respondents were individual producers.

After considering these comments, the Secretary announced an ARP of 0 percent. The Secretary determined that a 0-percent ARP would be implemented for several reasons. A 0-percent ARP would maintain U.S. competitiveness in world markets while balancing the risks of excessive supplies and possible shortages. A 0-percent ARP reflects the tightened U.S. supply situation and further emphasizes the desire of the U.S. to reduce its reliance on ARP's. It signals to competitors that the U.S. will not idle significant acreage to support the world price level for wheat and also signals to domestic and foreign customers that the U.S. will be a reliable supplier.

A 0-percent ARP was estimated to increase U.S. wheat supplies by about 180 million bushels over 1992 levels. The following table shows the estimated impacts of three different 1993 ARP

options based on May 1992 estimates the month in which the 1993 ARP decision was made.

TABLE 1.—ESTIMATED IMPACTS OF 1993 WHEAT ARP OPTIONS

Item	Op- tion 1	Op- tion 2	Op- tion 3
ARP (%)	5	0	None
Participation (%)	83	86	90
Planted Acres (Mil. acr.)	72.0	74.7	77.8
Production (Mil. bu.)	2,346	2,420	2,493
Domestic Use (Mil. bu.)	1,105	1,115	1,125
Exports (Mil. bu.)	1,150	1,175	1,200
Ending stocks (Mil. bu.)	580	619	657
Season Average Producer Price (\$/bu.)	3.00	2.92	2.85
Deficiency Payments (\$ mil.)	1,902	2,168	2,326

The announced ARP level of 0 percent is 15 percentage points below the statutory maximum of 15 percent. The 1949 Act provides that an ARP of not more than 0 to 15 percent may be implemented if the ending stocks-to-use (S/U) ratio for the previous marketing year is equal to or less than 40 percent. When the 1993 ARP was announced, the S/U for the 1992 marketing year was estimated to be 19.7 percent. Because the 1992 S/U level is below 34 percent, the minimum 5-percent ARP imposed by section 1104 of the Agricultural Reconciliation Act of 1990 does not apply.

A PLD is not implemented for 1993 wheat because it is unnecessary given the supply and use conditions which led to an ARP of 0 percent.

Acreage Reduction. In accordance with section 107B(e)(1) of the 1949 Act, the ARP has been established with respect to the 1993 crop of wheat at 0 percent. Accordingly, in order to be eligible for wheat price support loans, purchases, and payments, producers will not be required to reduce their 1993 acreage of wheat for harvest from the crop acreage base established for wheat for a farm. Producers must, however, limit their 1993 acreage of wheat for harvest to the crop acreage base established for wheat and the normal flex acres and optional flex acres of other crop acreage bases established on the farm.

Paid Land Diversion. In accordance with section 107B(e)(5) of the 1949 Act, no PLD program will be implemented for 1993 wheat.

Price Support Loan Levels. In accordance with section 107B(a) of the 1949 Act, the price support loan rate has been established with respect to the 1993 crop of wheat at \$2.45 per bushel.

List of Subjects

7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Recordkeeping and reporting requirements, Rice, Soil conservation, Wheat.

7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Warehouses, Wheat.

Accordingly, 7 CFR parts 1413 and 1421 are amended as follows:

PART 1413—[AMENDED]

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308; 1308a; 1309; 1441-2; 1444-2; 1444f; 1444b-3a; 1461-1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended by revising paragraph (a)(1) and by revising paragraph (d) to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) * * *

- (1)(i) 1991 wheat, 15 percent;
- (ii) 1992 wheat, 5 percent;
- (iii) 1993 wheat, 0 percent;

(d) Paid land diversion program payments shall not be made available to producers of the 1991, 1992, and 1993 crops of wheat and the 1991 and 1992 crops of feed grains, ELS and upland cotton, and rice.

PART 1421—[AMENDED]

3. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f-1, 1445b-3a, 1444c-3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

4. Section 1421.7(c)(1) is revised to read as follows:

§ 1421.7 Adjustment of basic support rates.

(c) * * *

- (1)(i) 1991 Wheat—\$2.04 per bushel;
- (ii) 1992 Wheat—\$2.21 per bushel;
- (iii) 1993 Wheat—\$2.45 per bushel;

Signed November 13, 1992, at Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92-28370 Filed 11-23-92; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1402-92]

RIN 1115-AC32

Nonimmigrant Classes; International Cultural Exchange Visitors, Q Classification

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule establishes an international cultural exchange visitor program in accordance with section 101(a)(15)(Q) of the Immigration and Nationality Act (Act), as amended by the Immigration Act of 1990. Under this program, a qualified employer may petition the Immigration and Naturalization Service (Service) for approval to bring in a nonimmigrant alien in Q classification, for a duration not to exceed fifteen (15) months, to engage in prearranged employment or training and to share his or her own culture with the American public. The international cultural exchange program is intended to enhance the American people's knowledge and appreciation of different cultures.

EFFECTIVE DATE: December 24, 1992.

FOR FURTHER INFORMATION CONTACT:

Pearl B. Chang, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, telephone number, (202) 514-3241.

SUPPLEMENTARY INFORMATION:**Background**

Section 208 of the Immigration Act of 1990 (IMMACT 90), Public Law 101-649, November 29, 1990, amended the Immigration and Nationality Act to create a new nonimmigrant status. Under this provision, nonimmigrant aliens may come to the United States for a period not to exceed 15 months to participate in international cultural exchange programs. The Attorney General shall approve cultural exchange programs for the purposes of providing practical training, employment, and the sharing of the culture of the alien's country of nationality. The statute also requires that designated qualified employers accord an international cultural exchange visitor the same wages and working conditions as domestic workers similarly employed.

Petition for Approval of a Cultural Exchange Program

The Service will approve international cultural exchange programs for the duration of the program or 15 months, whichever is shorter. The qualified employer must file a petition on Form I-129, Petition for Nonimmigrant Workers, with the applicable fee, with the INS service center having jurisdiction over the area where the alien will perform services or labor, or receive training. The petitioner may include more than one international cultural visitor on the petition. A new petition on Form I-129, with the applicable fee, must be filed with the appropriate Service director each time a qualified employer wants to sponsor additional international cultural exchange visitors. The qualified employer may, however, substitute for or replace a named participant on a previously approved petition for the remainder of the program without filing a new Form I-129.

In its initial petition, an employer must simultaneously request approval (on the same Form I-129) of both the international cultural exchange program and the admission of the particular international cultural exchange visitors. The Q cultural visitor's eligibility for admission will be considered only if the international cultural exchange program is approved.

Discussion of Comments

On August 22, 1991, at 56 FR 41623-41628, the Service published an interim rule implementing the Q visa provision of the Act. Eight commenters responded. The discussion that follows summarizes the issues raised relating to the interim rule, provides the Service's position on these issues, and identifies the revisions adopted in the final rule.

Definitions—Section 214.2(q)(1)

(1) The interim rule referred to a nonimmigrant alien in Q status as a cultural exchange visitor. Noting that a "cultural exchange visitor" could easily be confused with an "exchange visitor" in nonimmigrant status under section 101(a)(15)(J) of the Act, one commenter suggested that the term "cultural visitor" or "cultural worker" be used instead. Because section 101(a)(15)(Q) uses the words "international cultural exchange" to describe the purpose of this new nonimmigrant classification, the Service has also used that phrase in the title of this rule. Likewise, the definition in the final rule refers to a nonimmigrant alien in Q status as an "international cultural exchange visitor." In order to avoid confusion with the J "exchange visitor" category, however, the final rule uses

"cultural visitor" throughout as a shorthand for "international cultural exchange visitor."

(2) The interim rule required a qualified employer to have been actively doing business in the United States for at least two years. "Doing business" was defined as "the regular, systematic, and continuous provision of goods and/or services by a qualified employer * * *." One commenter felt that the term "services" should include courses and cultural programs provided by schools and museums.

For the purpose of determining whether an employer regularly, systematically, and continuously provides goods or services, the term "services" could be broadly interpreted to include economic activities whose outputs are other than tangible goods, such as lectures, seminars, and other types of cultural programs. This was not specified in the interim rule itself, however. In addition, although § 214.2(q)(3)(iii)(B) of the interim rule already indicated that lectures, seminars, and other types of cultural programs are acceptable cultural components of a Q cultural exchange program, the same language was not included in the definition of "doing business." Therefore, in order to ensure clarity and consistency, the definition has been revised in the final rule to specify that providing lectures, seminars, or other types of cultural programs may qualify as "doing business."

(3) The interim rule permits the "petitioner" to be an employer's "designated agent who has been employed * * * in an executive or managerial position for the prior year." One commenter stated that the "prior year" requirement is "unduly restrictive." Contending that an employer is entitled to hire the best qualified person to manage its cultural exchange program, the commenter felt that the "prior year" requirement would prohibit an employer from hiring experienced program managers from other Q cultural exchange programs.

The Service agrees that employers should have the flexibility to hire the best qualified personnel to manage their cultural exchange programs. The final rule allows a newly hired employee to act as the employer's designated agent, but continues to require that he or she be employed in an executive or managerial capacity. The requirement is met if the designated agent has the authority to make business decisions for the employer, such as how to use resources, and how to design and implement the cultural exchange program.

(4) One commenter recommended that the definition of "qualified employer" be modified to explicitly include educational and non-profit organizations that provide services, such as museums or cultural centers. Sections 214.2(q)(3)(iii)(A) and (B) of the interim rule provided for non-profit organizations, such as schools, museums, and other types of cultural centers, as permissible sponsors of Q cultural exchange programs. To further clarify that a qualified employer need not engage in active commerce, the Service deleted the word "business" from, and added the term "non-profit organizations" to, the definition of "qualified employer" in the final rule.

Admission of International Cultural Exchange Aliens and the One-Year Foreign Residence Requirement—Section 214.2(q)(2)

(1) One commenter urged the Service to modify the language in this paragraph to allow repeated participation in short-duration programs by a Q cultural visitor. The commenter argued that the Q cultural visitor should not be subject to the foreign residence requirement until he or she has been in Q status for a total of 15 months regardless of the number of Q programs in which he or she has taken part.

Detailed records would be required to monitor repeated visits by a particular person in different Q cultural exchange programs over an extended period of time. Allowing an individual to participate in a series of different cultural exchange programs without fulfilling the interim foreign residence requirement would not obviously enhance the general value of the Q visa provision. In addition, the costs and burdens of the required recordkeeping for both the Service and the program sponsors would outweigh any benefits gained by the suggested change.

It should be noted that nothing in the regulation prohibits the approval, for a duration of up to 15 months, of a cultural exchange program comprising more than one session of the same cultural activities. For example, a cultural exchange program comprising two 2-month sessions of scheduled cultural activities each year, the first from October to November and the second from March to April, may be approved for a duration of seven months. Similarly, a cultural exchange program approved for a 15-month duration might run continuously except for a one-month break in the winter and a 3-month break in the summer. Participants in such programs, if otherwise eligible, will be admitted in Q status for the approved length of the cultural exchange program

plus 30 days. During this period of time, the participants may travel outside of the United States and return to continue their program. No new petitions are required of the employer.

Also, a cultural visitor in a Q program that is approved for less than 15 months may have his or her stay extended up to the 15-month limit if he or she is the beneficiary of a new petition by either the same or a new employer. Upon completion of the approved cultural exchange program(s), a cultural visitor must depart and remain outside the United States for at least one year before he or she can be readmitted in Q status. During the year of foreign residence, the alien may travel briefly to the United States for pleasure or business.

(2) Another commenter protested that the one-year foreign residence requirement is not consistent with the legislative intent and should be removed from the regulation. Certain features of the statute indicate otherwise. First, section 101(a)(15)(Q) of the Act provides that a participant in an approved international cultural exchange program may enter the United States only temporarily; that is, "for a period not to exceed 15 months." Second, the statute also makes clear that this nonimmigrant classification is open only to the alien who has "a residence in a foreign country which he has no intention of abandoning." This language clearly indicates that Congress intended for a cultural visitor to depart this country after completing his or her cultural exchange program. The foreign residence requirement serves to give effect to this legislative intent.

On the other hand, the interim rule allows the foreign residence requirement to be applied with considerable flexibility. During the year of foreign residence, a Q cultural visitor is not barred from entering the United States as a visitor for business or pleasure, or as a temporary worker in another nonimmigrant visa classification. Nor is a Q alien made ineligible for adjustment of status or lawful immigration because of the foreign residence requirement.

(3) Still another commenter observed that while a Q cultural visitor's stay in this country is limited to 15 months, he or she may extend his or her stay by changing his or her nonimmigrant visa classification. The commenter requested that the Service clarify this point in the final rule.

Section 248 of the Act prohibits a change of nonimmigrant classification by certain nonimmigrants, such as J-1 exchange visitors who are subject to a two-year foreign residence requirement.

This prohibition does not apply, however, to Q nonimmigrant aliens. Therefore, Q status does not bar the cultural visitor from remaining in the United States longer than fifteen months by changing to another nonimmigrant classification. This point need not be specified within the Q regulations themselves, however, since the rules governing changes of nonimmigrant classification under section 248 of the Act can be found in the Service's implementing regulations at 8 CFR part 248.

International Cultural Exchange Program—Section 214.2(q)(3)

(1) Three commenters felt that the requirements for program approval are more restrictive than Congress intended. They urged the Service to expand the interim rule to allow private exchanges that might not be directly accessible to the American public. Two commenters also objected to the requirement that the cultural component be an essential and integral part of the exchange program. These commenters argued that requiring a direct connection between the cultural component and the work component was unnecessarily restrictive. They stated that it was unreasonable to expect a cultural visitor to achieve the culture-sharing objective of the cultural exchange program while receiving on-the-job training. They recommended that these two components be treated as two equal but independent aspects of the cultural exchange program.

These recommendations do not take adequate account of the language of the statute itself. The Q visa provision is designed to foster "cultural exchange." The statute uses precisely this term and requires that a cultural exchange program have the purpose of "providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality." This language suggests that Congress envisioned a sharing of culture more widespread and accessible than the private cultural exchanges suggested by the commenters. It also suggests that the culture-sharing aspect of the status is the feature distinguishing this from nonimmigrant classifications that are tied solely to employment. Based on this language, the Service has retained in the final rule the requirements that a Q cultural exchange program must have structured public activities with specific culture-sharing goals, and that the cultural exchange visitor's employment or training must serve the cultural objectives of the program. Where training or employment is the primary reason for an alien's visit to this country, the alien should seek a visa

classification that is appropriate for temporary workers, such as H-1B, H-2B, or H-3.

(2) One commenter observed that while the interim regulations required an international cultural exchange program to have structured instructional activities which would improve the American public's knowledge of the culture of the Q cultural visitor's country of nationality, the term "American public" was not defined. The commenter urged the Service to define "American public" to mean the general public or an audience identified with a particular cultural interest.

Defining too loosely the degree of public access that a program must offer in order to qualify under this rule—to permit, for example, a presentation in a private home—could undermine the culture-sharing purpose of the Q nonimmigrant provision. On the other hand, requiring a program to be universally available to every member of the public would seem unduly restrictive. Section 214.2(q)(3) has therefore been revised to permit approval of a program that will be available to the American public or to a segment of the public sharing a common cultural interest.

(3) Two commenters were concerned that the provisions of 8 CFR 214.2(q)(3)(iii)(B) pertaining to the required cultural component could be interpreted by some to be more restrictive than intended, and that the examples given therein might be misconstrued to be the limiting standards. These commenters urged clarification.

The Service has adopted this suggestion and modified 8 CFR 214.2(q)(3)(iii)(B) to make it clear that the list of activities contained in the final rule serves to illustrate rather than to limit the kinds of activities that can make up a cultural exchange program.

Supporting Documentation—Section 214.2(q)(4)

(1) The interim rule required appropriate supporting documentation each time an employer filed a petition. Three commenters urged the Service to adopt a program designation procedure similar to the one used for the J-1 exchange visitor program. They recommended that the Service designate qualified sponsors to administer cultural exchange programs. The designated sponsors would then sponsor cultural visitors under a blanket authorization without further adjudication by the Service. These commenters suggested that the Service monitor the designated program sponsors to assure their compliance with the regulatory requirements.

Two other commenters felt that, while proper documentation of eligibility is necessary for adjudicative purposes, the employers should not be required to submit the same information repeatedly. They urged the Service to reduce the paperwork burden for employers who file multiple petitions in the same calendar year. They suggested that the documentation requirement be waived for employers petitioning to repeat a cultural exchange program which was approved earlier in the year.

The Service has considered the blanket authorization suggestion and decided that the petition process, as proposed in the interim rule, is a more efficient way to administer the Q cultural exchange program. Because the petitions for program approval are processed at remote adjudication centers which are not equipped for direct interaction with the public or for monitoring programs, the blanket authorization approach is simply not compatible with the Service's current organizational resources. However, the Service has determined to streamline the petition process by reducing the documentation requirements after initial approval in the same calendar year. The final rule requires complete documentation only if the petition has not previously been approved in that calendar year. A copy of the initial program approval notice may be used in lieu of the required documentation if the employer is petitioning for a repetition of an earlier program. Paragraph (q)(4)(iv) was added in the final rule to reflect this procedural change.

(2) One commenter objected to the requirement that the petitioning employer must have been in business for two years and currently employ five full-time United States residents. The commenter argued that these requirements were unduly restrictive.

The Service believes that the Q visa program can operate successfully only through qualified employers capable of responsibly administering cultural exchange programs. The five-employee and two-year-in-business requirements were designed to ensure that the sponsoring employer is firmly established and has the resources to implement the proposed cultural exchange program and remunerate the cultural visitors. Section 214.2(q)(4) also requires a petitioning employer to demonstrate, however, that it is "actively doing business"—that is, that it is engaged in the "regular, systematic, and continuous provision of goods and/or services"—and that it "has the financial ability to remunerate the participant(s)." The Service agrees with

the commenter that these two evidentiary requirements can adequately protect the integrity of the program without the need of further restrictions. Therefore, the Service removed the five-employee and two-year-in-business requirement.

(3) One commenter pointed out a discrepancy between the interim rule and the statute. The commenter noted that paragraph (q)(4)(iii)(B) of the interim rule asked for a certification of "prevailing" wages when the statute merely required the employer to offer the "same" wages to cultural visitors as it would be domestic workers similarly employed.

The Service consistently used the term "comparable" throughout the entire interim rule except in paragraph (q)(4)(iii)(B). This was an oversight, and the term "comparable" appears throughout the final rule. The Service selected the term "comparable" in order to implement Congress's wish that cultural exchange visitors receive wages and working conditions that are the "same" as those of similarly situated domestic workers. Section 214.2(q)(4)(iii)(B) requires the petitioner to certify compliance with this requirement. While it will be significant, and ordinarily sufficient, that a particular employer intends to pay its cultural exchange visitors the same wages that it pays its own domestic employees who perform similar work, this will not necessarily be enough. It would be necessary, for example, to reject a petition if there were evidence that the petitioner pays its domestic employees wages significantly below those paid to other domestic workers similarly employed in the area and that the number of domestic workers employed by the petitioner is so small as to suggest a subterfuge to avoid the statute's requirement that the cultural exchange visitors be "employed under the same wages and working conditions as domestic workers." The key issue is whether the cultural exchange visitor will work under conditions and for wages that are comparable to those accorded to domestic workers similarly employed in the same geographical area.

(4) Section 214.2(q)(3)(iii) of the interim rule established three requirements that an international cultural exchange program must meet to merit approval: a cultural component, a work component, and interaction with the American public. Section 212.2(q)(4)(ii) established documentary requirements roughly corresponding to the three requirements set out in § 212.2(q)(3)(iii). One commenter took issue with the content of the

documentary requirements, such as the requirement that a petitioner demonstrate that the American public would derive an "obvious cultural benefit" from the proposed program. In addition, the relationship was not clear between the program requirements of § 212.2(q)(3)(iii) and the substantively similar—but differently worded—documentary requirements of § 212.2(q)(4)(ii). Because § 212.2(q)(4)(i) already requires a petitioning employer to provide evidence that the exchange program meets the standards set out in § 212.2(q)(3), the documentary requirements in § 212.2(q)(4)(ii) are redundant and potentially confusing. For this reason, the Service removed them from the final rule.

Filing of Petitions—Section 214.2(q)(5)

(1) One commenter requested that the Service clarify when an employer must file a new petition to extend an approved program. As stated in the background section of this preamble, each Q cultural exchange program is approved for the duration of the program or 15 months, whichever is shorter. Multiple cultural visitors may be included in the same petition (see paragraph 3 below), and each individual on an approved petition will only be admitted for the duration of the approved program. Replacement or substitution may be made for an individual listed on an approved petition, but only for the remainder of the approved program. A new petition must be filed each time the employer wants to sponsor additional cultural visitors. Although a completed program may be repeated, no extension will be granted for an approved program.

(2) The interim rule provided for the filing of a Q visa petition with the service center having jurisdiction over the area where the alien would perform services or labor or receive training. One commenter suggested that the Service permit employers having operations in more than one location to file their petitions with the service center having jurisdiction over the headquarters of the business.

The final rule has been revised to permit employers to file petitions with either the service center having jurisdiction over the operation's headquarters or the service center having jurisdiction over the location where the cultural visitor will perform services or labor or receive training. However, except in unusual circumstances, employers are advised to maintain consistent administrative patterns once they have made the initial decision either to centralize or to decentralize the administration of their

cultural exchange programs. Employers who consistently administer their cultural exchange programs in the same manner will benefit from streamlined petition procedures available under § 212.2(q)(4)(iv) when petitioning to repeat a previously approved program in the same calendar year.

(3) The final rule also contains a revision to the applicable filing procedures. The interim rule required a separate petition for each participant if all participants in a single program did not intend to apply for a Q visa at the same United States consulate. Likewise, a separate petition was required for each participant who is visa-exempt under 8 CFR 212.1(a), if each visa-exempt participant in a single program did not intend to apply for admission to the United States at the same port of entry. To ensure more efficient processing of the petitions and to reduce the paperwork burden, the final rule permits a single petition for multiple participants even in these situations. Upon approval of the petition, a copy of the approval notice will be forwarded to each appropriate United States consulate or port of entry. Sections 214.2(q)(5)(ii) and 214.2(q)(7)(ii) have been revised to incorporate these changes.

Derivative Q Status

As noted in the interim rule, section 101(a)(15)(Q) of the Act does not provide derivative Q status for the spouse or children of a cultural visitor. One commenter suggested that the Service provide for the accompanying dependents of a Q cultural visitor by creating a derivative visa classification.

When Congress intends to create derivative status for the dependents of an alien who acquires a certain immigration status, it generally does so explicitly. For example, section 101(a)(15)(J) of the Act explicitly authorizes the alien spouse and minor children of a person in J nonimmigrant status to enter the United States. Congress included no such derivative status when it enacted section 101(a)(15)(Q). For this reason, the final rule does not provide for derivative Q status. However, the family members of a Q alien may join the Q alien in the United States in any other visa classification for which they are eligible.

Outside Employment

One commenter complained that actors sponsored by educational institutions to teach drama often perform off-campus for a fee. The commenter asked the Service to clarify that Q aliens are not permitted to work

outside of the approved cultural exchange program in which they are participants.

The Service has already made it clear in § 214.2(q)(11) that a Q alien may be employed only by the qualified employer through which the alien attained the Q nonimmigrant status. Employment outside of the authorized program violates the terms of the alien's Q nonimmigrant status.

Reciprocity

Two commenters complained that the interim rule did not sufficiently address reciprocity. One of the commenters argued that the Q employer should also be required to send Americans abroad. The other commenter recommended that the employer be required to provide structured training for the cultural visitor to satisfy the element of international exchange.

The Service did not adopt the suggestion to require employers to send Americans abroad on reciprocal exchanges for two reasons: (1) There is no evidence that any exchange requirement was contemplated by Congress; and (2) the exchange element is implicit in the program. Section 101(a)(15)(Q) of the Act provides that a qualified employer may be approved by the Attorney General to bring in a cultural exchange visitor in Q status to engage in prearranged employment or practical training and to teach the American public the culture of the alien's nationality. While the statute does not require reciprocal exchange activities, the element of exchange is implicit in the Q aliens' exposure to the American culture and way of life through their employment or practical training in the United States. Since this exposure is inherent in the Q cultural visitors' stay in this country, the Service did not require specific evidence of cultural benefits to the international cultural visitor.

Effective Date

The final rule shall take effect 30 days from the date of publication in the *Federal Register*. The petition for Q visa classification must be filed on Form I-129 with the required fee.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirement contained in this regulation has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. Clearance number for this collection is contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Authority delegation (Government agencies), Employment.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1221, 1281, 1282; 8 CFR part 2.

2. Section 214.2 is amended by revising paragraph (q) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

(q) *International cultural exchange visitor*—(1) *Definitions*. As used in this section:

Country of nationality means the country of which the participant was a national at the time of the petition seeking international cultural exchange visitor status for him or her.

Doing business means the regular, systematic, and continuous provision of goods and/or services (including lectures, seminars and other types of cultural programs) by a qualified employer which has employees, and does not include the mere presence of an agent or office of the qualifying employer.

Duration of program means the time in which a qualified employer is conducting an approved cultural exchange program in the manner as established by the employer's petition for program approval, provided that the period of time does not exceed 15 months.

International cultural exchange visitor or cultural visitor means an alien who has a residence in a foreign country which he or she has no intention of abandoning, and who is coming temporarily to the United States to take part in an international cultural exchange program approved by the Attorney General.

Petitioner means the employer or its designated agent who has been employed by the qualified employer on a permanent basis in an executive or

managerial capacity. The designated agent must be a United States citizen, an alien lawfully admitted for permanent residence, or an alien provided temporary residence status under sections 210 or 245A of the Act.

Qualified employer means a United States or foreign firm, corporation, non-profit organization, or other legal entity (including its U.S. branches, subsidiaries, affiliates, and franchises) which administers an international cultural exchange program designated by the Attorney General in accordance with the provisions of section 101(a)(15)(Q) of the Act.

(2) *Admission of cultural visitor*—(i) *General*. A nonimmigrant alien may be authorized to enter the United States as a participant in an international cultural exchange program approved by the Attorney General for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality. The period of admission is the duration of the approved international cultural exchange program or fifteen (15) months, whichever is shorter. A nonimmigrant alien admitted under this provision is classifiable as a cultural visitor in Q status.

(ii) *Limitation on admission*. Any alien who has been admitted into the United States as a cultural visitor under section 101(a)(15)(Q) of the Act shall not be readmitted in Q status unless the alien has resided and been physically present outside the United States for the immediate prior year. Brief trips to the United States for pleasure or business during the immediate prior year do not break the continuity of the one-year foreign residency.

(3) *International cultural exchange program*—(i) *General*. A United States employer shall petition the Attorney General on Form I-129, Petition for a Nonimmigrant Worker, for approval of an international cultural exchange program which is designed to provide an opportunity for the American public to learn about foreign cultures. The United States employer must simultaneously petition on the same Form I-129 for the authorization for one or more individually identified nonimmigrant aliens to be admitted in Q status. These aliens are to be admitted to engage in employment or training of which the essential element is the sharing with the American public, or a segment of the public sharing a common cultural interest, of the culture of the alien's country of nationality. The cultural visitor's eligibility for admission will be

considered only if the international cultural exchange program is approved.

(ii) *Program validity.* Each petition for an international cultural exchange program will be approved for the duration of the program, which may not exceed 15 months, plus 30 days to allow time for the participants to make travel arrangements. Subsequent to the approval of the initial petition, a new petition must be filed each time the qualified employer wishes to bring in additional cultural visitors. A qualified employer may replace or substitute a participant named on a previously approved petition for the remainder of the program in accordance with paragraph (q)(6) of this section. The replacement or substituting alien may be admitted in Q status until the expiration date of the approved petition.

(iii) *Requirements for program approval.* An international cultural exchange program must meet all of the following requirements:

(A) *Accessibility to the public.* The international cultural exchange program must take place in a school, museum, business or other establishment where the American public, or a segment of the public sharing a common cultural interest, is exposed to aspects of a foreign culture as part of a structured program. Activities that take place in a private home or an isolated business setting to which the American public, or a segment of the public sharing a common cultural interest, does not have direct access do not qualify.

(B) *Cultural component.* The international cultural exchange program must have a cultural component which is an essential and integral part of the cultural visitor's employment or training. The cultural component must be designed, on the whole, to exhibit or explain the attitude, customs, history, heritage, philosophy, or traditions of the cultural visitor's country of nationality. A cultural component may include structured instructional activities such as seminars, courses, lecture series, or language camps.

(C) *Work component.* The cultural visitor's employment or training in the United States may not be independent of the cultural component of the international cultural exchange program. The work component must serve as the vehicle to achieve the objectives of the cultural component. The sharing of the culture of the cultural visitor's country of nationality must result from his or her employment or training with the qualified employer in the United States.

(iv) *Requirements for cultural visitors.* To be eligible for cultural visitor status, an alien must be a bona fide nonimmigrant who:

(A) Is at least 18 years of age at the time the petition is filed;

(B) Is qualified to perform the service or labor or receive the type of training stated in the petition;

(C) Has the ability to communicate effectively about the cultural attributes of his or her country of nationality to the American public; and

(D) Has resided and been physically present outside of the United States for the immediate prior year, if he or she was previously admitted as a cultural visitor.

(4) *Supporting documentation—(i) Documentation by the employer.* To establish eligibility as a qualified employer, the petitioner must submit with the completed Form I-129 appropriate evidence that the employer:

(A) Maintains an established international cultural exchange program in accordance with the requirements set forth in paragraph (q)(3) of this section;

(B) Has designated a qualified employee as a representative who will be responsible for administering the international cultural exchange program and who will serve as liaison with the Immigration and Naturalization Service;

(C) Is actively doing business in the United States;

(D) Will offer the alien(s) wages and working conditions comparable to those accorded local domestic workers similarly employed; and

(E) Has the financial ability to remunerate the participant(s).

(ii) *Certification by petitioner.* (A) The petitioner must give the date of birth, country of nationality, level of education, position title, and a brief job description for each cultural visitor included in the petition. The petitioner must verify and certify that the prospective participants are qualified to perform the service or labor, or receive the type of training, described in the petition.

(B) The petitioner must report the cultural visitors' wages and certify that such cultural exchange visitors are offered wages and working conditions comparable to those accorded to local domestic workers similarly employed.

(iii) *Supporting documentation* as prescribed in paragraphs (q)(4)(i) and (q)(4)(ii) of this section must accompany a petition filed on Form I-129 in all cases except where the employer files multiple petitions in the same calendar year. When petitioning to repeat a previously approved cultural exchange program, a copy of the initial program approval notice may be submitted in lieu of the documentation required under paragraph (q)(4)(i) of this section. The Service will request additional

documentation only when clarification is needed.

(5) *Filing of petitions—(i) General.* A United States employer seeking to bring in cultural visitors must file a petition on Form I-129, Petition for a Nonimmigrant Worker, with the applicable fee, along with appropriate documentation. The petition and accompanying documentation should be filed with either the service center having jurisdiction over the employer's headquarters or the service center having jurisdiction over the area where the cultural visitors will perform services or labor or will receive training. A new petition on Form I-129, with the applicable fee, must be filed with the appropriate service center each time a qualified employer wants to bring in additional cultural visitors. Each person named on an approved petition will be admitted only for the duration of the approved program. Replacement or substitution may be made for any person named on an approved petition as provided in paragraph (q)(6) of this section, but only for the remainder of the approved program.

(ii) *Petition for multiple participants.* The petitioner may include more than one participant on the petition. The petitioner shall include the name, date of birth, nationality, and other identifying information required on the petition for each participant. The petitioner must also indicate the United States consulate at which each participant will apply for a Q visa. For participants who are visa-exempt under 8 CFR 212.1(a), the petitioner must indicate the port of entry at which each participant will apply for admission to the United States.

(iii) *Service, labor, or training in more than one location.* A petition which requires the cultural visitor to engage in employment or training (with the same employer) in more than one location must include an itinerary with the dates and locations of the services, labor, or training.

(iv) *Services, labor, or training for more than one employer.* If the cultural visitor will perform services or labor for, or receive training from, more than one employer, each employer must file a separate petition with the service center having jurisdiction over the area where the alien will perform services or labor, or receive training. The cultural visitor may work part-time for multiple employers provided that each employer has an approved petition for the alien.

(v) *Change of employers.* If a cultural visitor is in the United States under section 101(a)(15)(Q) of the Act and decides to change employers, the new

employer must file a petition. However, the total period of time the cultural visitor may stay in the United States remains limited to fifteen (15) months.

(6) *Substitution or replacement of participants.* The petitioner may substitute for or replace a person named on a previously approved petition for the remainder of the program without filing a new Form I-129. The substituting cultural visitor must meet the qualification requirements prescribed in paragraph (q)(3)(iv) of this section. To request substitution or replacement, the petitioner shall, by letter, notify the consular office at which the alien will apply for a visa or, in the case of visa-exempt aliens, the Service office at the port of entry where the alien will apply for admission. A copy of the petition's approval notice must be included with the letter. The petitioner must state the date of birth, country of nationality, level of education, and position title of each prospective cultural visitor and must certify that each is qualified to perform the service or labor or receive the type of training described in the approved petition. The petitioner must also indicate each cultural visitor's wages and certify that the cultural visitor is offered wages and working conditions comparable to those accorded to local domestic workers in accordance with paragraph (q)(11)(ii) of this section.

(7) *Approval of petition.*—(i) The director shall consider all the evidence submitted and request other evidence as he or she may deem necessary.

(ii) The director shall notify the petitioner and the appropriate United States consulate(s) of the approval of a petition. For participants who are visa-exempt under 8 CFR 212.1(a), the director shall give notice of the approval to the director of the port of entry at which each such participant will apply for admission to the United States. The notice of approval shall include the name of the cultural visitors, their classification, and the petition's period of validity.

(iii) An approved petition for an alien classified under section 101(a)(15)(Q) of the Act is valid for the length of the approved program or fifteen (15) months, whichever is shorter.

(iv) A petition shall not be approved for an alien who has an aggregate of fifteen (15) months in the United States under section 101(a)(15)(Q) of the Act, unless the alien has resided and been physically present outside the United States for the immediate prior year.

(8) *Denial of the petition.*—(i) *Notice of denial.* The petitioner shall be notified of the denial of a petition, the reasons

for the denial, and the right to appeal the denial under part 103 of this chapter.

(ii) *Multiple participants.* A petition for multiple cultural visitors may be denied in whole or in part.

(9) *Revocation of approval of petition.*—(i) *General.* The petitioner shall immediately notify the appropriate Service center of any changes in the employment of a participant which would affect eligibility under paragraph (q) of this section.

(ii) *Automatic revocation.* The approval of any petition is automatically revoked if the qualifying employer goes out of business, files a written withdrawal of the petition, or terminates the approved international cultural exchange program prior to its expiration date.

(iii) *Revocation on notice.* The director shall send the petitioner a notice of intent to revoke the petition in whole or in part if he or she finds that:

(A) The cultural visitor is no longer employed by the petitioner in the capacity specified in the petition, or if the cultural visitor is no longer receiving training as specified in the petition;

(B) The statement of facts contained in the petition was not true and correct;

(C) The petitioner violated the terms and conditions of the approved petition; or

(D) The Service approved the petition in error.

(iv) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the period of time allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

(v) *Appeal of a revocation of a petition.* Revocation with notice of a petition in whole or in part may be appealed to the Associate Commissioner for Examinations under part 103 of this chapter. Automatic revocation may not be appealed.

(10) *Extension of stay.* An alien's total period of stay in the United States under section 101(a)(15)(Q) of the Act cannot exceed fifteen (15) months. The authorized stay of a cultural visitor may be extended within the 15-month limit if he or she is the beneficiary of a new petition filed in accordance with paragraph (q)(3) of this section. The new petition, if filed by the same employer, should include a copy of the previous

petition's approval notice and a letter from the petitioner indicating any terms and conditions of the previous petition that have changed.

(11) *Employment provisions.*—(i) *General.* An alien classified under section 101(a)(15)(Q) of the Act may be employed only by the qualified employer through which the alien attained Q nonimmigrant status. An alien in this class is not required to apply for an employment authorization document. Employment outside the specific program violates the terms of the alien's Q nonimmigrant status within the meaning of section 241(a)(1)(C)(i) of the Act.

(ii) *Wages and working conditions.* The wages and working conditions of a cultural visitor must be comparable to those accorded to domestic workers similarly employed in the geographical area of the alien's employment. The employer must certify on the petition that such conditions are met as in accordance with paragraph (q)(4)(iii)(B) of this section.

Dated: November 4, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92-28412 Filed 11-23-92; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11, 19, 20, 21, 25, 26, 30, 31, 32, 33, 34, 35, 39, 40, 50, 52, 53, 54, 55, 60, 61, 70, 71, 72, 73, 74, 75, 95, 110, 140, 150

RIN 3150-AD62

Clarification of Statutory Authority for Purposes of Criminal Enforcement

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to clarify the applicability of the existing criminal penalty provisions of the Atomic Energy Act of 1954, as amended (the Act), to willful violations of certain of the Commission's regulations. The rule identifies more clearly those current regulations which may subject the violator to criminal penalties for willful violation of, attempted violation of, or conspiracy to violate, those regulations.

EFFECTIVE DATE: December 24, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. James Lieberman, Director, Office of

Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-2741.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Analysis of Public Comments.
- III. The New Regulations.
- IV. Administrative Statements.

I. Background

On January 3, 1992 (57 FR 222), the Nuclear Regulatory Commission published in the **Federal Register** proposed revisions to its regulations which will clarify the applicability of the criminal penalty provisions of the Atomic Energy Act of 1954, as amended, to the NRC's regulations. The proposed rule was intended to identify more clearly those regulations which are issued under statutory authority that may subject the violator to criminal penalties for willful violation of, attempted violation of, or conspiracy to violate, those regulations.

The NRC's regulations are issued under authority of Section 161, among others, of the Atomic Energy Act of 1954, as amended (the Act). Within Section 161, there are five provisions, Sections 161b, 161i, 161o, 161p, and 161x, that provide the Commission with authority to issue regulations. The rulemaking authority delegated to the Commission in sections 161b, 161i, and 161o provides the basis for most of the substantive rules issued by the Commission that are codified in 10 CFR chapter I.

Section 161b of the Act authorizes the Commission to "establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property * * *." Section 161i states that the Commission may "prescribe such regulations or orders as it may deem necessary (1) to protect Restricted Data received by any person in connection with any activity authorized pursuant to this Act, (2) to guard against the loss or diversion of any special nuclear material acquired by any person pursuant to section 53 or produced by any person in connection with any activity authorized pursuant to this Act, to prevent any use or disposition thereof which the Commission may determine to be inimical to the common defense and security, * * * and (3) to govern any activity authorized pursuant to this Act, * * * in order to protect health and to minimize danger to life or property." Section 161o authorizes the Commission to "require by rule, regulation, or order,

such reports, and the keeping of such records with respect to, and to provide for such inspections of, activities and studies of types specified in Section 31 and of activities under licenses issued pursuant to sections 53, 63, 81, 103, and 104, as may be necessary to effectuate the purposes of this Act, including section 105." Thus, the Commission's rulemaking authority in these sections is the basis for the substantive rules of the Commission. Section 161x authorizes the Commission to establish, by regulation, standards to ensure financial security for decontamination and decommissioning of sites containing certain byproduct material, specifically mill tailings. The remaining section (161p) authorizes the Commission to make, promulgate, issue, rescind, and amend rules and regulations which may be necessary to carry out the purposes of the Act. This last section pertains to administrative (nonsubstantive) regulations, as opposed to the substantive, specified matters of sections 161b, i, and o. Section 161p is used for the promulgation of those rules that are necessary to administratively complement the rules issued pursuant to 161b, 161i, and 161o. In light of the more specific authority of sections 161b, i, o, or x, Section 161p is considered a catchall provision that has no application where a different provision of Section 161 provides specific authority.

Section 222 of the Act provides criminal penalties for willful violation (including an attempted violation or a conspiracy to violate) of sections 57, 92, and 101 of the Act, and unlawful interference with any recapture or entry under section 108 of the Act. Section 223 of the Act provides criminal penalties for willful violation, including an attempted or a conspiracy violation, of any provision of the Act for which no criminal penalty is specifically provided and for willful violation of any regulation or order prescribed or issued under sections 65, 161b, 161i, or 161o of the Act.

In the past the NRC has provided notice as to which regulations are subject to the penalty provisions of section 223 by including a paragraph in the authority citation for each affected part of 10 CFR chapter I that identifies provisions of the appropriate regulations, by section or paragraph, that the NRC considers promulgated under sections 161b, 161i, or 161o. However, the NRC has identified several problems with this method of providing notice. It may not always be readily apparent from a statement in the authority citations for each part that the purpose of that statement is to provide

notice of potential criminal penalties for certain willful violations. To fully appreciate this notice, a reader needs to understand the rulemaking provisions of sections 161b, 161i, and 161o, as well as the criminal penalty provisions of section 223. From time to time, errors have been made which hampered the effectiveness of including the criminal penalty notice provisions in the authorities sections. In some instances, authority citations have been simply to section 161 without any indication of which subsection of 161 was used to promulgate the regulation. Substantive regulations, such as 10 CFR 50.7(a), which addresses discrimination against any employee for raising safety concerns, were overlooked. When § 50.7(a) was originally issued, there was no specific notice in the authority section that this section was issued under sections 161b, 161i, or 161o. This oversight resulted in a failure to provide notice to the public that this substantive regulation was promulgated under the specific subsections for which the Act provides criminal penalties for willful violations.¹ These types of problems have affected the NRC's ability to refer cases to the Department of Justice and seek an appropriate criminal remedy.

The NRC has considered how to provide more effective and consistent notice of criminal penalties for willful violations of specific regulations. The NRC has also considered how to minimize imprecision that could jeopardize appropriate criminal enforcement action against those who willfully violate these regulatory requirements. As more fully explained in Part III of the Supplementary Information section, the final rule restructured the notice provisions to accomplish these ends.

II. Analysis of Public Comments

In response to the January 3, 1992, proposed rule, the NRC received comments from eleven organizations or individuals. Five of the comments were from members of the medical community, including hospitals and medical societies. Three sets of comments were received from utilities with nuclear facilities. One set was submitted by a nuclear industry organization. Two sets of comments were received from law firms that represent nuclear utilities. The commenters generally were critical of certain features of the proposed rule.

¹ The omission as to 10 CFR 50.7(a) was subsequently corrected. (March 21, 1990: 55 FR 10404).

The NRC's consideration of the comments follows.

A. Legal Issues

1. NRC Authority

Comment. The NRC has exceeded its authority to issue regulations under sections 161 b, i, and o. Some commenters complained that the range of Commission regulations to which criminal penalties attach was too broad, in that Congress did not intend to make all substantive NRC regulations subject to criminal penalties.

Response. The sole piece of legislative history from the 1954 Act cited in support of this position is that section 223 is characterized as establishing "the criminal penalties for violation of . . . rules and regulations issued under certain specified limited statutory authority." (Emphasis added by commenter). The NRC believes, however, that section 223 is clear on its face. Section 223 states that criminal penalties are available for every willful violation of regulations issued under section 65 and sections 161 b, i, and o; these sections of the Act are the "certain limited statutory authority" to which the legislative history refers.

Some commenters also stated that the approach used by the NRC appears to violate the general rule of statutory construction that criminal statutes are to be strictly construed and are not to be extended by inference or implication. As stated above, however, section 223 is clear, and the NRC's approach is intended to provide notice, not to extend the reach of section 223 by inference, implication or otherwise. The rule as drafted clearly states in each 10 CFR part that all regulations in the part are subject to criminal penalty except those specifically enumerated as excepted. This language is straightforward, unambiguous, and constitutes clear notice in a narrative form, replacing the legalistic notice contained in the legal authority provisions. A person should reasonably be able to read this new rule and understand that, unless specifically excepted in the new rule, a willful violation of any NRC regulation in the 10 CFR part may subject a person to criminal liability.

A few commenters pointed to sections 206 and 210 of the Energy Reorganization Act as evidence that Congress did not intend criminal penalties to attach to violations of NRC regulations implementing those sections, e.g., 10 CFR 50.7. However, the legislative history shows only that the Congress determined that certain individuals violating the provisions of section 206 itself should be subject to

civil penalties, not that a violation, with the requisite criminal degree of willfulness, of regulations issued under the Act would be subject to civil penalties only. Moreover, there is no provision in section 206 that explicitly authorizes the issuance of regulations. The specific authority for these regulations is found in sections 161b and 161o of the Act. Because adequate authority to issue regulations had already been granted under those provisions of the Atomic Energy Act, it was not necessary that section 206 of the Energy Reorganization Act grant explicit authority to issue regulations under that Act. As to section 210, that provision provides no direct authority to the NRC. Rather, the drafters of that provision recognized the existing authority under the Atomic Energy Act. The clear purpose of section 210 was to provide a mechanism for individuals to obtain a remedy for discrimination. Thus, the legal authority for 10 CFR 50.7 and similar regulations in other 10 CFR parts in section 161i of the Atomic Energy Act as well as section 210.

The Commission has maintained that the scope of the Atomic Energy Act is broad enough that its authority extends to the regulation of those supplying the components of a facility or activity regulated under that Act. The legislative history of the Energy Reorganization Act supports this view and suggests that section 206 was a mandate from the Congress to the Commission to exercise its preexisting authority. Section 206 was enacted by the Congress in response to an increase in safety defects, to emphasize the need for prompt identification of deficiencies at all levels of facility construction, including components supplied by vendors. Citing the fact that component failures accounted for more than half of the abnormal occurrences reported to the Atomic Energy Commission (AEC) in 1973, the Congress determined to provide, specifically, for the reporting of safety defects and noncompliance, and section 206 emphasizes the importance of prompt reporting. Section 206 should not be interpreted as an extension of AEC authority, but rather as a mandate by the Congress that the AEC must exercise its authority to compel prompt reporting by both licensees and vendors. The Commission interprets the statement in the Senate Committee Report that there is no "similar provision" in the Atomic Energy Act requiring the reporting of safety defects and noncompliance as just that and not as a statement that there is no authority in the Act to require this type of reporting. Section 206(a) limits the civil penalty liability of individuals to

individual directors and responsible officers of firms who knowingly or consciously fail to report as required, and does not otherwise address the NRC's enforcement authority. Because the regulations issued to implement section 206 could have been issued solely on the basis of the authority contained in the 1954 Act, sections 161 b, i, and o are clear authority for their issuance. The NRC has also addressed this issue in the Statement of Considerations for the recent rule on Deliberate Misconduct by Unlicensed Persons (56 FR 40664; August 15, 1991).

Some of the same commenters also noted that the conferees substituted the words "knowingly and consciously" for the words "knowingly and willingly" when the provision for criminal penalty in section 206 was eliminated. The commenters cite this language as proof that Congress did not provide for criminal penalties for violation of this section, and the Commission does not disagree with this interpretation. That is not the same thing as saying, as the commenters do, that Congress failed to provide for criminal penalties for willful violation of the regulations issued to enforce section 206. The relevant section in this case is section 223 of the Atomic Energy Act, which provides for criminal penalties against one who "willfully violates" any regulation issued under section 161b, i, or o of the Act. Because the part 21 regulations are issued under these Sections, willful violation of those regulations subjects a violator to criminal penalties under section 223.

One commenter cited *Kerr-McGee Chemical Corp.* (Kress Creek Decontamination), ALAB-885, 27 NRC 59 (1988), for proposition that the Atomic Safety and Licensing Appeal Board has specifically disapproved the practice of citing section 161b, i, and o as general authority for regulations issued to implement completely separate legislation. That case involved the use by the NRC of regulations promulgated by another regulatory agency and accordingly is distinguishable from the situation at hand.

2. Retroactivity

Comment. The rule should clearly state that it will not operate retroactively.

Response. A few commenters urged that the rule should expressly state that it will not operate retroactively. While the new rule will not operate retroactively, it is not necessary to so state in regulatory text. A sentence has been added to the Supplementary Information section that explicitly states

that the rule will not operate retroactively.

There are two categories of regulations that are impacted by the final rule. The first category is the large group of regulations that previously contained a statement, in the authority citation for the part, identifying the regulation as being promulgated under section 161b, i, or o, for purposes of section 223. The second category is comprised of those substantive regulations where the authority citation did not previously state that the regulations were issued under section 161b, i, or o.

As to the regulations for which appropriate notice was provided through the statement in the authority citation, criminal penalties have been, and continue to be, available for willful violations occurring prior to the enactment of the final rule. In these cases, there would be no reliance on the final rule for the notice of potential criminal penalties. Because any criminal prosecution based on actions or occurrences before the effective date of the new rule would not rely on that rule, *Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1988), cited in the comments for the presumption against retroactivity of administrative rules, is inapposite, as is the argument that the final rule could be an "ex post facto" criminal law prohibited by the Constitution. Prospectively, the final rule provides notice of potential criminal liability for willful violations of these regulations by a narrative statement in a substantive rule rather than by the more legalistic format of citing it in the authority citation.

For regulations not previously stated to be subject to criminal penalties, the final rule provides notice of potential criminal penalties for willful violations. For these regulations, the NRC agrees that the final rule cannot be relied upon for notice of potential criminal liability for violations occurring before the effective date of the final rule. Thus, there will be no retroactive operation of the final rule to these regulations.

3. Authority To Impose Criminal Penalties; Allocation of Specific Sections

Comment. One commenter stated that the NRC should reevaluate whether each section of its regulations was adopted under the authority of a specific section of the Act. The commenter also argued that the failure of the substantive/administrative distinction is illustrated by the NRC's failure to explain in the notice of proposed rulemaking why some sections are subject to criminal sanctions while

similar sections are not, e.g., § 72.106 is covered, but the other sections providing siting evaluation factors, (§§ 72.92, 72.94, 72.98, 72.100, 72.104) are not covered and § 110.9a is covered but other sections also listing plant material and equipment (§§ 110.8, 110.9) are not covered.

Response. As indicated in the January 3, 1992 proposed rule, prior to publishing the proposed rule, the NRC evaluated each section in its regulations to identify which sections are promulgated under sections 161b, 161i or 161o of the Act. The proposed rule also explained that, in determining which regulations are substantive, the NRC intended to include those regulations that create duties, obligations, conditions, restrictions, limitations, and prohibitions. The regulations to be included are those that describe activities requiring an NRC license, the actions and conduct required of a licensee under license conditions, and the information a licensee must collect, report, record and protect.

In consideration of the comments received on the proposed rule, the NRC reviewed the determinations of the sections in its regulations that are promulgated under sections 161b, 161i or 161o. With respect to the specific sections addressed by the comments, several changes have been made in the allocations and the reasons for the NRC's determinations are explained in Part III of this Supplementary Information. As to the remaining sections in the regulations, the NRC adheres to the prior determinations.

4. Use of Criminal Penalties

Comment. One commenter stated the view that the NRC should reevaluate whether it is sound public policy to impose criminal penalties for each regulation in the proposed rule. In support of this view, the commenter contended criminal penalties should be narrowly applied and deference should be given to due process in the criminal context.

Response. As stated above, section 223 of the Act expressly provides for criminal penalties for a willful violation of (or an attempt or conspiracy to willfully violate) any regulation prescribed or issued by the NRC under the Act's substantive rulemaking authorities. The Act therefore incorporates the judgment that it is sound public policy to provide criminal penalties for willful violation of substantive regulations the Act authorizes NRC to prescribe. Moreover, criminal penalties furnish an important, additional enforcement tool to ensure compliance and to deter future

violations. See Memorandum of Understanding between the Nuclear Regulatory Commission and the Department of Justice (53 FR 50317; December 14, 1988).

5. Inadequate Justification for Allocation of Sections

Comment. One commenter expressed the view that the proposed rule would designate regulations for criminal penalties wholesale without specific explanation of the rationale for specific sections or paragraphs and would reverse prior determinations in this regard. The commenter included an appendix that lists the sections in the Commission's existing regulations which are not presently subject to section 223, but would be made subject by the proposed rule. The appendix also lists sections, of which only certain subsections are currently subject to section 223, which would be made entirely subject to section 223 by the proposed rule.

The commenter also stated that the general notice of proposed rulemaking did not sufficiently identify the pertinent changes to permit careful analysis of issues of potentially great significance. The commenter also stated that the proposed rule involves changes of substance, as opposed to format, and argued that, because of the many affected sections, the explanation in the notice did not offer adequate opportunity to comment on the proposed changes.

Response. The proposed rule provided notice of the proposed action and a statement of the NRC's rationale which covered each potentially affected section of NRC regulations. The proposed rule stated, among other things, that the intent of the rule was to identify more clearly and consistently those particular sections of NRC regulations that include criminal enforcement penalties. The proposed rule also explained that, for purposes of determining the specific NRC regulations prescribed under the rulemaking authorities that include criminal penalties, the NRC included regulations creating duties, obligations, conditions, restrictions, limitations and prohibitions. The proposed rule noted that these regulations include regulations that describe the activities requiring a license, the actions and conduct required of licensees under license conditions, and the information to be collected, reported, recorded and protected by a licensee and NRC. Any commenter was free to express views in light of the rationale given in the proposed rule and to comment on each

section of NRC regulations which the NRC had identified as included under the Act's rulemaking provisions covered by criminal penalties. In fact, some interested persons so commented, as reflected in other parts of this notice. (See discussion of § 50.7, etc. in response II.A.1).

With respect to the commenter's first listing—those sections of NRC regulations which were not identified, prior to the proposed rule, as prescribed under the rulemaking provisions covered by the Act's criminal penalties—the proposed rule explained that from time to time, errors had been made in providing notice of the criminal penalty provisions of the Act and that, in some instances, the provisions had not been specified or were overlooked. The proposed rule also stated that the purpose of the proposed rule was to remedy prior errors and oversights, minimize errors that could jeopardize appropriate enforcement action, and eliminate uncertainty and provide clear and consistent notice. Thus, commenters were apprised of the agency's underlying intentions, were able to identify the specific regulatory sections which would be affected, and were free to provide their views on NRC's proposal.

As to the commenter's second listing—those parts of the NRC's regulations which had identified some, but not all, sections as subject to criminal penalties prior to the proposed rule—the proposed rule stated that the NRC considered how best to provide notice which would minimize errors that might potentially jeopardize appropriate enforcement action and which would eliminate uncertainty and provide clear and consistent notice. The proposed rule also stated that the NRC was proposing to adopt a standard format for all 10 CFR parts and explained that the proposed standard format would specifically identify any non-substantive sections of the regulations so as to exclude from criminal enforcement penalties "those sections that are mainly administrative and do not address substantive matters." Thus, interested parties were apprised of the NRC's intention to adopt a standard notice format that would identify sections of NRC regulations that were promulgated under sections 161b, i, or o and, accordingly, would not single out particular subsections or paragraphs of its regulations that were to be excluded from criminal enforcement penalties. In this connection, the standard notice format, by focusing on sections of NRC regulations, will eliminate the

opportunity for error that had existed in the past.

6. Specificity of Sections to Support Criminal Prosecution

Comment. One commenter contended that many sections of the NRC's existing regulations, which the NRC was proposing to make subject to criminal penalties, are not sufficiently clear to put individuals on notice of the conduct to be penalized. In support of this view, the commenter questioned what conduct would willfully violate § 52.63 given that some paragraphs cover actions of the NRC itself. The commenter expressed the view that the NRC should consider whether § 52.63 would give adequate notice of the legal standards being imposed.

Response. As to the general comment questioning the clarity of existing NRC requirements, NRC regulations do provide clear and adequate notice of the legal standards applicable to all persons subject to the regulations, including applications and licensees. In addition to the regulatory language of the provisions themselves, the structure, history and motivating purpose for a particular regulation generally lend further certainty to the conduct to be punished. Moreover, to answer any reasonable doubt that may persist for a particular requirement, persons subject to NRC regulations have available to them all of the explanatory information compiled in an open rulemaking process as well as a body of public, detailed, and explicit NRC regulatory guidance and virtually all related NRC information.

Further, the Commission's intent in the present rulemaking is not to rewrite regulations or establish which provisions should be subject to criminal enforcement. The latter was done by the Congress. Rather, this rulemaking is merely to give notice of which regulations are subject to criminal enforcement by virtue of having been issued under sections 161b, i, or o. Whether a published regulation is adequate to maintain a criminal prosecution is left for the Department of Justice to decide in a given case. Therefore, this rulemaking does not address the possibility that in a given criminal prosecution, the NRC's authority for a specific regulation might be challenged.

With respect to § 52.63, the regulation provides clear and adequate notice; it prescribes certain actions by a licensee with respect to a standard design certification, provides that the licensee may make design changes without prior Commission approval under specified circumstances, and requires the licensee

to maintain and make available records of all facility changes until license termination.

B. Policy Issues

1. General.

a. Adequacy of current enforcement mechanisms.

Comment. Two commenters indicated that current enforcement mechanisms are adequate and questioned the need for the rulemaking.

Response. The Congress, in section 223 of the Act, provided that willful violations of regulations that are promulgated under certain sections of the Act are subject to criminal penalties. Thus, the Congress has given notice of possible criminal prosecution for violations of requirements promulgated under certain specified statutory provisions.

The NRC, in its regulations, has in the past provided notice of what has been promulgated under those specified statutory provisions. Given that the authority for a regulation is section 161b, i, or o of the Act, criminal sanctions follow by virtue of the terms of section 223. The NRC has no choice as to what is potentially criminal or not. To give clearer notice, this rulemaking clarifies the impact of promulgating a regulation under those specific provisions. Thus, this rulemaking will make it easier for persons subject to NRC regulations to know what conduct may be subject to criminal prosecution and, therefore, provide additional deterrence against willful violations.

The final rule provides a more straight-forward system of providing notice of which regulations are subject to criminal enforcement. Some comments on the proposed rule incorrectly suggest that the NRC is embarking on a new effort here. These comments may reflect a lack of understanding of the prior manner of giving notice. With some exceptions, regulations remain in the same posture vis-a-vis criminal prosecution as they were prior to this rulemaking. The changes that are being made are to correct prior errors and to harmonize treatment of similar provisions among the various parts of 10 CFR chapter I. These changes are further described in Part III of the Supplementary Information section.

b. Effect on licensee performance.

Comment. One commenter was concerned that the proposed regulations could have an adverse effect on licensee performance. The commenter suggested that while the NRC seeks early access to information as to an event, a licensee

might be hesitant to submit information at an early stage out of fear that the information might later be found to be incorrect, and thus the provider of the original false information could be subject to criminal liability. Therefore, the licensee would delay submitting information to be more certain of its accuracy.

Response. This rulemaking does not change the situation for licensees. Licensees have always been subject to prosecution for material false statements under 18 U.S.C. 1001. The NRC's reporting regulations and their requirements to submit complete and accurate information were promulgated under section 1610 and, therefore, a person providing false information has, in the past, been subject to a potential criminal prosecution (52 FR 49362; December 31, 1987).²

The NRC believes that rather than diminishing licensee performance, the final rule should improve it. The rule provides greater clarity as to just what actions are—and are not—subject to criminal prosecution. To the extent that the possibility of prosecution deters improper behavior, the rule furthers that concept. As for reporting information, the threat of prosecution is only a concern to those who would supply incorrect information with the intent of doing so, or intentionally withhold information, knowing that reporting is required. If a report made in good faith is based on the best information available when submitted, a later correction based on additional information or analysis would not render the provider of the original information subject to criminal prosecution. Because the NRC presumes that licensees discourage criminal behavior, this final rule should not adversely impact licensee performance.

c. Effect on licensee's ability to attract personnel.

Comment. The proposed rule would have an adverse effect on licensee's ability to attract personnel because it would add a layer of liability.

Response. The considerations expressed in the previous responses apply to this comment as well. The NRC

regulations that are substantive, if willfully violated, are already subject to criminal penalties. These same regulations have been subject to criminal penalties since their promulgation. The NRC believes licensees seek to employ people who desire to perform a job properly and in compliance with all requirements.

2. Specific Medical Issues

a. Effect on medical practice and patient care.

Comment. The regulations impinge on or are incompatible with the practice of medicine or efficient patient care and deviation from the regulations is sometimes necessary. Therefore, making these provisions subject to criminal penalty puts practitioners in an untenable situation.

Response. The NRC does not agree that the regulations are incompatible with the practice of medicine or efficient patient care. The NRC is sensitive to patient care needs and has gone to great lengths to avoid any intrusion or interference in the exercise of physicians' judgment regarding what is the best medical treatment for their patients. This approach is consistent with the NRC's Medical Use Policy statement (44 FR 8242; February 9, 1979). In those infrequent cases when patient care may be impacted by compliance with the regulations or license conditions, such as lifesaving situations, situations where the procedure is not readily available at another institution nearby, or situations in which the physician believes the procedure is the procedure of choice for the patient and it is consistent with other applicable regulations, appropriate and timely actions are recommended by the licensee and approved by the NRC on a case-by-case basis.

b. Regulation of practice issues by the states.

Comment. Medical and pharmacy practice and malpractice issues are regulated by the states and should not be regulated by the NRC as well.

Response. Although medical and pharmacy practice and malpractice are regulated by the states, NRC regulations are based on the Atomic Energy Act which provides an independent basis for Federal regulation of nuclear materials. Although NRC and state regulations may cover the same activity, drug or device, they cover separate aspects of the activity, drug or device. State boards of pharmacy license facilities, including radiopharmacies, for the practice of pharmacy; whereas the NRC licenses radiopharmacies for the possession and use of licensed material and is concerned with the safe handling and

use of the licensed material. State boards of medicine license individual physicians to practice medicine to include all aspects of patient care. NRC regulations focus on the safe use of licensed material by authorization user physicians. As part of its criteria for authorization, the NRC requires that physicians be licensed by a state board of medicine. Therefore, enforcement of NRC regulations, including criminal penalties for willful violations of NRC regulations, is independent of activities of the states.

c. Need to delay the rule or exclude certain areas.

Comment. The proposed rulemaking should not apply to parts 33, 34, and 35. Application of the rule to these parts should be delayed until medical regulations are revised or should exclude violations relating to patient care.

Response. The criminal penalty provisions of the Act are already applicable to 10 CFR parts 33, 34, and 35. The final rule adds notice of criminal penalties to one section of 10 CFR part 34, § 34.4, concerning records, to harmonize with other NRC recordkeeping requirements. The final rule also adds notice of criminal penalties to two sections of 10 CFR part 35, § 35.5, also concerning records in order to harmonize with other NRC recordkeeping requirements and § 35.972, concerning recentness of training. Therefore, as to the noted parts, the final rule mainly restates, in a more consistent and clear manner, those regulations which may subject the violator to criminal penalties.

d. Effect on research.

Comment. The proposed regulations will stymie research.

Response. As indicated in the response to the previous comment, the criminal penalty provisions of the Act already apply, to the same extent, to research programs under part 35. The clarifications in this rulemaking, except as noted above, merely restate the current authority. There is no indication in the comment that these provisions have stymied research in the past.

III. The New Regulations

The NRC considered how to best provide notice as to which regulations are issued under sections 161b, 161i, or 161o, and to minimize errors that could jeopardize appropriate enforcement action. To eliminate any uncertainty and to provide clearer and more consistent notice of criminal penalties for willful violations of specific regulations, the Commission is adopting a standard format for identifying those regulations

² One commenter believed that the proposed rule would make 10 CFR 50.9 newly subject to criminal enforcement. When promulgated, § 50.9 (and other similar sections) were all promulgated under Section 1610 of the Act, and were noticed as being subject to criminal enforcement. Confusion may have occurred concerning this section, as the 10 CFR published for 1988 and 1989 showed the section correctly under the Authority listing, but apparently due to an error it was omitted when republishing the Authority listing in a later rulemaking and the volumes published thereafter. This type of situation illustrates one reason for the adoption of this final rule.

that, if willfully violated, are subject to criminal enforcement penalties. While the statement of general authority for each part will remain the same, the authority citations will no longer provide notice by the inclusion of a specific reference to those regulations issued under sections 161b, 161i, or 161o for the purpose of section 223 of the Act. These paragraphs within the authority citations are removed.

Instead, each appropriate part in 10 CFR chapter I contains a section that addresses criminal penalties. The new "Criminal penalties" section added to each part in this final rule contains a statement that for the purposes of section 223 all the regulations in the part are "issued under one or more of sections 161b, 161i, or 161o," except as otherwise noted in a separate paragraph. Any section of the regulations which is not substantive in nature is specifically identified and excluded from criminal enforcement penalties. Those sections that are mainly administrative and do not address substantive matters are excluded.

In addition, it is the NRC's intention, when each new regulation is promulgated in the future, to include, when applicable, a statement in the Supplementary Information published in the *Federal Register* that the regulation is issued under sections 161b, 161i, or 161o. If a regulation is not issued under one of these sections, the criminal penalty section for the part in which the regulation is contained will be amended to specifically include the new regulation provisions in the listed exceptions. The inclusion of a "Criminal penalties" provision in the body of regulations in each substantive part will provide explicit notice of potential criminal penalties and should enable all persons subject to the rules to readily determine whether willful violation of the regulation could result in criminal liability, such as a fine or imprisonment. The provisions of this final rule take effect on the date specified and are not retroactive.

As stated above, in determining which NRC regulations are substantive and, accordingly, are promulgated under sections 161b, 161i, or 161o of the Act, the NRC has included those rules that create duties, obligations, conditions, restrictions, limitations, and prohibitions. Regulations that are considered substantive include those that describe which activities require an NRC license, what a licensee must do under license conditions, and what information is required to be collected,

reported, recorded, and protected by licensees and the NRC.³

The regulations stating what is to be submitted in an application for an NRC license have not been included as substantive regulations. This is because those requirements are stated in a general manner without language that specifically imposes a requirement. Nonetheless, any willful submission of material false information to the NRC in a license application remains subject to criminal enforcement as a violation of the NRC's regulations on completeness and accuracy of information (See e.g., 10 CFR 30.9, 50.9, and similar provisions) and under the provisions of 18 U.S.C. 1001. In a few instances, a section that appears similar to the application requirement sections discussed above is issued under section 161 b, i, or o, and subject to criminal prosecution, because the section also contains a provision that imposes a specific requirement, such as § 50.34(e), which requires an applicant to protect Safeguards Information. This is a result of the decision to address regulations at the section level and not attempt to separate paragraphs that have substantive provisions from paragraphs that do not. This decision was made because the practice of listing at the paragraph level frequently contributed to errors and confusion in the past. Thus, as discussed in the response to comment II.A.5, the standard format adopted in this rulemaking addresses material at the section level.

As noted in some of the response to comments, some sections that were not previously noticed as subject to criminal enforcement have been included under the criminal enforcement provisions effective with this rule. Notice of the application of section 223 of the Act may have been overlooked when those regulations were originally promulgated. In other cases, the reference may have been simply to their being promulgated under section 161, without further designation, and this rulemaking resolves any potential issue as to their status. As noted, other sections are included because they contain a substantive requirement in one or more paragraphs, and their inclusion is appropriate under the standard format developed in this rulemaking. Also, some sections are being included to make their treatment consistent with

similar sections in other parts of 10 CFR chapter I.

In light of comments received and subsequent further analysis, a few changes in the allocation of sections have been made since the notice of proposed rulemaking was published. These changes are reflected in this final rule. Included among those changes are §§ 31.7 and 40.22 which have been identified as being issued under section 161 b, i, or o, as they contain substantive provisions, and to conform with the treatment of similar provisions concerning general licensees. Section 71.1 is also being identified as issued under section 161 b, i, or o, to treat it in the same manner as § 60.4, which contains similar substantive provisions. Sections 72.92, 72.94, 72.98, 72.100, 72.102, and 72.104, concerning siting evaluation factors for storing spent fuel and waste, are presently listed as being promulgated under provisions of section 161i of the Act, and are, therefore, subject to criminal enforcement. The proposed rule would have changed that allocation and treated these sections as nonsubstantive. After review of comments and further evaluation, these sections are being retained in the group promulgated under section 161 b, i, or o, because they set forth important substantive criteria that must be met. This treatment is consistent with the treatment of § 72.106. Among the changes, §§ 110.28 and 110.29 are substantive and therefore are included. These sections do not stand alone, but rather are related to other substantive sections that specifically refer to them (e.g., §§ 110.22, 110.23, 110.24, and 110.25) and are subject to criminal sanctions. Similarly, §§ 110.8 and 110.9 are being identified as substantive to achieve consistency with § 110.9a and because these sections relate to the restrictions enunciated in §§ 110.5 and 110.6 which are subject to criminal sanctions. This change also resolves the question raised by a commenter (see II.A.3.) as to the seemingly disparate treatment of § 110.9a, which resulted from an error in the printing of the proposed rule. Sections 110.123 and 110.125 are being identified as substantive in light of the significance of the obligations specified in those sections and the treatment of comparable sections in part 110. The reference to § 110.144 was a printing error and has been corrected to read § 110.124.

In addition, the NRC noted in the proposed rule that inconsistent language had been used in the various parts to describe civil remedies, and that a few parts did not contain any such

³ In the case of a regulation issued under sections 161 b, i, or o, which refers to an appendix (e.g., 10 CFR 50.54(o) referring to Appendix J—Primary Reactor Containment Leakage Testing for Water-cooled Power Reactors), the appendix is also deemed to have been issued under sections 161 b, i, or o.

provision. The final rule adopts consistent language in each part and adds those provisions to parts that may be the basis for civil enforcement action. This action does not add any new sanction, but clarifies that civil and criminal enforcement authority is available. Previous provisions as to criminal sanctions that appeared in "Violations" sections in some parts have been deleted because they are replaced by the new "Criminal Penalties" sections.

IV. Administrative Statements

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers: 3150-0001, 0002, 0007, 0008, 0009, 0010, 0011, 0014, 0015, 0016, 0017, 0018, 0020, 0032, 0035, 0036, 0039, 0044, 0046, 0047, 0055, 0062, 0123, 0126, 0127, 0130, 0132, 0135, 0146, 0151, and 0155.

Regulatory Analysis

The NRC has prepared this regulation in order to identify the provisions of its regulations that are issued under section 223 of the Act for purposes of imposing criminal penalties on those who willfully violate those regulatory requirements. The NRC recognizes a need to clearly, simply, and accurately identify these provisions to provide public notice that violations of certain provisions may subject the violator to criminal penalty. The amendments presented in this rule are intended to accomplish this objective. This rule does not result in the creation of new potential liabilities and imposes no new requirements on NRC licensees. This discussion constitutes the regulatory analysis for this rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not result in the creation of any new potential liabilities

and will not impose new or additional requirements on NRC licensees.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, a backfit analysis is not required for this rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 11

Criminal penalties, Hazardous materials—transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Criminal penalties, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power reactors, Protection of information, Reporting and recordkeeping requirements.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 31

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 33

Byproduct material, Criminal penalties, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 34

Criminal penalties, Packaging and containers, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 39

Byproduct material, Criminal penalties, Nuclear material, Oil and gas exploration—well logging, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Source material, Special nuclear material.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials—transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Criminal penalties, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and

reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 53

Administrative practice and procedure, High-level waste, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Spent fuel, Waste treatment and disposal.

10 CFR Part 54

Administrative practice and procedure, Age-related degradation, Backfitting, Classified information, Criminal penalties, Environmental protection, Incorporation by reference, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 55

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 60

Criminal penalties, High-level waste, Nuclear power plants and reactors, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 61

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Criminal penalties, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 71

Criminal penalties, Hazardous materials—transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 73

Criminal penalties, Hazardous materials—transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 74

Accounting, Criminal penalties, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Criminal penalties, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 140

Criminal penalties, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 150

Criminal penalties, Hazardous materials—transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 11, 19, 20, 21, 25, 26, 30, 31, 32, 33, 34, 35, 39, 40, 50, 52, 53, 54, 55, 60, 61, 70, 71, 72, 73, 74, 75, 95, 110, 140, and 150.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

2. A new center heading "Violations" and § 11.30 are added directly after § 11.21 to read as follows:

Violations

§ 11.30 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

3. Section 11.32 is added directly after § 11.30 to read as follows:

§ 11.32 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all regulations in part 11 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 11 that are not issued under sections 161b, 161i, or

161o for the purposes of section 223 are as follows: §§ 11.1, 11.3, 11.5, 11.7, 11.8, 11.9, 11.16, 11.21, 11.30, and 11.32.

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS; INSPECTION AND INVESTIGATIONS

4. The authority citation for part 19 is revised to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

5. Section 19.30 is revised to read as follows:

§ 19.30 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

6. section 19.40 is added to read as follows:

§ 19.40 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 19 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 19 that are not issued under sections 161b, 161i, or

161o for the purposes of section 223 are as follows: §§ 19.1, 19.2, 19.3, 19.4, 19.5, 19.8, 19.16, 19.17, 19.18, 19.30, 19.31, and 19.40.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

7. The authority citation for part 20 (including §§ 20.1 through 20.2402) is revised to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 20.408 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

8. Section 20.601 is revised to read as follows:

§ 20.601 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

9. Section 20.602 is added to read as follows:

§ 20.602 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in §§ 20.1 through 20.602 are issued under one or more of sections

161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in §§ 20.1 through 20.602 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 20.1, 20.2, 20.3, 20.4, 20.5, 20.6, 20.7, 20.8, 20.107, 20.108, 20.204, 20.206, 20.302, 20.306, 20.501, 20.502, 20.601, and 20.602.

§ 20.2401 [Amended]

10. In § 20.2401, paragraph (c) is removed.

11. Section 20.2402 is added directly after § 20.2401 to read as follows:

§ 20.2402 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in §§ 20.1001 through 20.2402 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in §§ 20.1001 through 20.2402 that are not issued under Sections 161b, 161i, or 161o for the purposes of Section 223 are as follows: §§ 20.1001, 20.1002, 20.1003, 20.1004, 20.1005, 20.1006, 20.1007, 20.1008, 20.1009, 20.1704, 20.1903, 20.1905, 20.2002, 20.2007, 20.2301, 20.2302, 20.2401, and 20.2402.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

12. The authority citation for part 21 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2201, 2282); secs. 201, as amended, 206, 88 Stat. 1242, as amended 1246 (42 U.S.C. 5841, 5846).

Section 21.2 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

13. Section 21.62 is added directly after § 21.61 to read as follows:

§ 21.62 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 21 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 21 that are not issued under sections 161b, 161i, or

161o for the purposes of section 223 are as follows: §§ 21.1, 21.2, 21.3, 21.4, 21.5, 21.7, 21.8, 21.61, and 21.62.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

14. The authority citation for part 25 is revised to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

§ 25.37 [Amended]

15. In § 25.37, paragraph (c) is removed.

16. Section 25.39 is added directly after § 25.37 to read as follows:

§ 25.39 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 25 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 25 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 25.1, 25.3, 25.5, 25.7, 25.8, 25.9, 25.11, 25.19, 25.25, 25.27, 25.29, 25.31, 25.37, and 25.39.

PART 26—FITNESS FOR DUTY PROGRAMS

17. The authority citation for part 26 is revised to read as follows:

Authority: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

§ 26.90 [Amended]

18. In § 26.90, paragraph (c) is removed.

19. Section 26.91 is added directly after § 26.90 to read as follows:

§ 26.91 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 26 are issued under one or more of sections 161b, 161i, or

161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 26 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 26.1, 26.2, 26.3, 26.4, 26.6, 26.8, 26.90, and 26.91.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

20. The authority citation for part 30 is revised to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 188, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

21. Section 30.63 is revised to read as follows:

§ 30.63 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

22. Section 30.64 is added directly after § 30.63 to read as follows:

§ 30.64 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for

criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 30 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 30 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 30.1, 30.2, 30.4, 30.5, 30.6, 30.8, 30.11, 30.12, 30.13, 30.15, 30.16, 30.31, 30.32, 30.33, 30.37, 30.38, 30.39, 30.61, 30.62, 30.63, 30.64, 30.70, 30.71, and 30.72.

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

23. The authority citation for part 31 is revised to read as follows:

Authority: Secs. 81, 161, 183, 68 Stat. 935, 948, 954, as amended (42 U.S.C. 2111, 2201, 2233); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842). Section 31.6 also issued under sec. 274, 73 Stat. 688 (42 U.S.C. 2021).

24. Section 31.13 is added directly after § 31.12 to read as follows:

§ 31.13 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

25. Section 31.14 is added directly after § 31.13 to read as follows:

§ 31.14 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 31 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 31 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 31.1, 31.2, 31.3, 31.4, 31.9, 31.13, and 31.14.

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

26. The authority citation for part 32 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

27. Subpart E (§§ 32.301 and 32.303) is added to part 32 to read as follows:

Subpart E—Violations

Sec.
32.301 Violations.
32.303 Criminal penalties.

Subpart E—Violations

§ 32.301 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section

186 of the Atomic Energy Act of 1954, as amended.

§ 32.303 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 32 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 32 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 32.1, 32.2, 32.8, 32.11, 32.14, 32.17, 32.18, 32.22, 32.23, 32.24, 32.26, 32.27, 32.28, 32.51, 32.53, 32.57, 32.61, 32.71, 32.72, 32.73, 32.74, 32.301, and 32.303.

PART 33—SPECIFIC DOMESTIC LICENSES OF BROAD SCOPE FOR BYPRODUCT MATERIAL

28. The authority citation for part 33 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

29. A new center heading "Violations" and §§ 33.21 and 33.23 are added directly after § 33.17 to read as follows:

Violations

§ 33.21 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

§ 33.23 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 33 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 33 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 33.1, 33.8, 33.11, 33.12, 33.13, 33.14, 33.15, 33.16, 33.21, 33.23 and 33.100.

PART 34—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

30. The authority citation for part 34 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 34.32 also issued under sec. 206, 88 Stat. 1246 (42 U.S.C. 5846).

31. A new center heading "Violations" and §§ 34.61 and 34.63 are added directly after § 34.51 to read as follows:

Violations

§ 34.61 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under Section 186 of the Atomic Energy Act of 1954, as amended.

§ 34.63 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 34 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 34 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 34.1, 34.2, 34.3, 34.8, 34.11, 34.51, 34.61, and 34.63.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

32. The authority citation for Part 35 is revised to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

33. Section 35.990 is revised to read as follows:

35.990 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section

186 of the Atomic Energy Act of 1954, as amended.

34. Section 35.991 is added directly after § 35.990 to read as follows:

§ 35.991 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in Part 35 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 35 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 35.1, 35.2, 35.8, 35.12, 35.18, 35.19, 35.57, 35.100, 35.600, 35.901, 35.970, 35.971, 35.990, 35.991, and 35.999.

PART 39—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

35. The authority citation for part 39 is revised to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 69, 81, 82, 161, 182, 183, 186, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2112, 2201, 2232, 2233, 2236, 2282); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

36. Section 39.101, is revised to read as follows:

§ 39.101 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

37. Section 39.103 is added directly after § 39.101 to read as follows:

§ 39.103 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 39 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 39 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 39.1, 39.2, 39.5, 39.8, 39.13, 39.91, 39.101, and 39.103.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

38. The authority citation for part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, sec. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

39. Section 40.81 is revised to read as follows:

§ 40.81 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

- (1) For violations of—
 (i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;
 (ii) Section 206 of the Energy Reorganization Act;
 (iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;
 (iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

40. Section 40.82 is added directly after § 40.81 to read as follows:

§ 40.82 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 40 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 40 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 40.1, 40.2, 40.2a, 40.4, 40.5, 40.6, 40.8, 40.11, 40.12, 40.13, 40.14, 40.20, 40.21, 40.31, 40.32, 40.34, 40.43, 40.44, 40.45, 40.71, 40.81, and 40.82.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

41. The authority citation for part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58-50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections

50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

42. Section 50.110 is revised to read as follows:

§ 50.110 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under Section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

43. Section 50.111 is added directly after § 50.110 to read as follows:

§ 50.111 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 50 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in Part 50 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 50.1, 50.2, 50.3, 50.4, 50.8, 50.11, 50.12, 50.13, 50.20, 50.21, 50.22, 50.23, 50.30, 50.31, 50.32, 50.33, 50.34a, 50.35, 50.36b, 50.37, 50.38, 50.39, 50.40, 50.41, 50.42, 50.43, 50.45, 50.50, 50.51, 50.52, 50.53, 50.56, 50.57, 50.58, 50.81, 50.82, 50.90, 50.91, 50.92, 50.100, 50.101, 50.102, 50.103, 50.109, 50.110, and 50.111.

PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

44. The authority citation for part 52 continues read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

45. Subpart D (§§ 52.111 and 52.113) is added to part 52 to read as follows:

Subpart D—Violations

Sec.

52.111 Violations.

52.113 Criminal penalties.

Subpart D—Violations

§ 52.111 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

§ 52.113 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 52 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 52 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 52.1, 52.3, 52.5, 52.8, 52.11, 52.13, 52.15, 52.17, 52.18, 52.19, 52.21, 52.23, 52.24, 52.27, 52.29, 52.31, 52.33, 52.37, 52.39, 52.41, 52.43, 52.45, 52.47, 52.48, 52.49, 52.51, 52.53, 52.54, 52.55, 52.57, 52.59, 52.61, 52.71, 52.73, 52.75, 52.77, 52.79, 52.81, 52.83, 52.85, 52.87, 52.89, 52.93, 52.97, 52.101, 52.111, and 52.113.

PART 53—CRITERIA AND PROCEDURES FOR DETERMINING ADEQUACY OF AVAILABLE SPENT NUCLEAR FUEL STORAGE CAPACITY

46. The authority citation for part 53 is revised to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 69, 81, 103, 104, 161, 68 Stat. 930, 932, 933, 934, 935, 936, 937, 948, as amended (42 U.S.C. 2073, 2077, 2092, 2095, 2099, 2111, 2133, 2134, 2201); secs. 201, 209, as amended, 88 Stat. 1242, 1248, as amended (42 U.S.C. 5841, 5849); secs. 132, 135, 96 Stat. 2230, 2232 (42 U.S.C. 10152, 10155).

PART 54—REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS

47. The authority citation for part 54 is revised to read as follows:

Authority: Secs. 102, 103, 104, 161, 181, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, as amended (42 U.S.C. 5841, 5842).

48. Section 54.41 is added directly after § 54.37 to read as follows:

§ 54.41 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended.
(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

- (1) For violations of—
 - (i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;
 - (ii) Section 206 of the Energy Reorganization Act;
 - (iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;
 - (iv) Any term, condition, or limitation of any license issued under the sections

specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under Section 186 of the Atomic Energy Act of 1954, as amended.

49. Section 54.43 is added directly after § 54.41 to read as follows:

§ 54.43 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violations of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 54 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 54 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 54.1, 54.3, 54.5, 54.7, 54.9, 54.11, 54.15, 54.17, 54.19, 54.21, 54.22, 54.23, 54.25, 54.27, 54.29, 54.31, 54.41, and 54.43.

PART 55—OPERATOR'S LICENSES

50. The authority citation for part 55 is revised to read as follows:

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97-425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

51. Section 55.71 is revised to read as follows:

§ 55.71 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

- (1) For violations of—
 - (i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;
 - (ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

52. Section 55.73 is added directly after § 55.71 to read as follows:

§ 55.73 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 55 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 55 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 55.1, 55.2, 55.4, 55.5, 55.6, 55.7, 55.8, 55.11, 55.13, 55.31, 55.33, 55.35, 55.41, 55.43, 55.47, 55.51, 55.55, 55.57, 55.61, 55.71, and 55.73.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

53. The authority citation for part 60 is revised to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97-425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141).

54. Subpart J (§§ 60.181 and 60.183) is added to part 60 to read as follows:

Subpart J—Violations

Sec.
60.181 Violations.
60.183 Criminal penalties.

Subpart J—Violations

§ 60.181 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

- (1) The Atomic Energy Act of 1954, as amended;
- (2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

§ 60.183 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 60 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 60 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 60.1, 60.2, 60.3, 60.5, 60.6, 60.7, 60.8, 60.15, 60.16, 60.17, 60.18, 60.21, 60.22, 60.23, 60.24, 60.31, 60.32, 60.33, 60.41, 60.42, 60.43, 60.44, 60.45, 60.46, 60.51, 60.52, 60.61, 60.62, 60.63, 60.64, 60.65, 60.101, 60.102, 60.111, 60.112, 60.113, 60.121, 60.122, 60.130, 60.131, 60.132, 60.133, 60.134, 60.135, 60.137, 60.140, 60.141, 60.142, 60.143, 60.150, 60.151, 60.152, 60.162, 60.181, and 60.183.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

55. The authority citation for part 61 is revised to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851).

56. Section 61.83 is revised to read as follows:

§ 61.83 Violations.

(a) The Commission may obtain an injunction or other court order to

prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

57. Section 61.84 is added directly after § 61.83 to read as follows:

§ 61.84 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 61 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in Part 61 that are not issued under sections 161b, 161i, or 161o for the purposes of Section 223 are as follows: §§ 61.1, 61.2, 61.4, 61.5, 61.6, 61.7, 61.8, 61.10, 61.11, 61.12, 61.13, 61.14, 61.15, 61.16, 61.20, 61.21, 61.22, 61.23, 61.26, 61.30, 61.31, 61.50, 61.51, 61.54, 61.55, 61.58, 61.59, 61.61, 61.63, 61.70, 61.71, 61.72, 61.73, 61.83, and 61.84.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

58. The authority citation for part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232 (42 U.S.C. 10155, 10161). Section 70.7 also

issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

59. Section 70.71 is revised to read as follows:

§ 70.71 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

60. Section 70.72 is added directly after § 70.71 to read as follows:

§ 70.72 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 70 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 70 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 70.1, 70.2, 70.4, 70.5, 70.6, 70.8, 70.11, 70.12, 70.13, 70.13a, 70.14, 70.18, 70.23, 70.31, 70.33, 70.34, 70.35, 70.37, 70.61, 70.62, 70.63, 70.71, and 70.72.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

61. The authority citation for part 71 is revised to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 71.97 also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789-790.

62. Section 71.99 is revised to read as follows:

§ 71.99 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

63. Section 71.100 is added directly after § 71.99 to read as follows:

§ 71.100 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 71 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 71 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 71.0, 71.2, 71.4, 71.6, 71.7,

71.9, 71.10, 71.31, 71.33, 71.35, 71.37, 71.39, 71.41, 71.43, 71.45, 71.47, 71.51, 71.52, 71.53, 71.65, 71.71, 71.73, 71.75, 71.77, 71.99, and 71.100.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

64. The authority citation for part 72 is revised to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148 (c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168 (c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

65. Section 72.84 is revised to read as follows:

§ 72.84 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under Section 186 of the Atomic Energy Act of 1954, as amended.

66. Section 72.86 is added directly after § 72.84 to read as follows:

§ 72.86 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 72 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 72 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 72.1, 72.2, 72.3, 72.4, 72.5, 72.7, 72.8, 72.9, 72.16, 72.18, 72.20, 72.22, 72.24, 72.26, 72.28, 72.32, 72.34, 72.40, 72.42, 72.46, 72.54, 72.56, 72.58, 72.60, 72.62, 72.84, 72.86, 72.90, 72.96, 72.108, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.182, 72.194, 72.200, 72.202, 72.204, 72.206, 72.210, 72.214, 72.220, 72.230, 72.236, 72.238, and 72.240.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

67. The authority citation for part 73 is revised to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued sec. 606, Pub. L. 99-399, 100 Stat. 876 (42 U.S.C. 2169).

68. Section 73.80 is revised to read as follows:

§ 73.80 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under Section 186 of the Atomic Energy Act of 1954, as amended.

69. Section 73.81 is added directly after § 73.80 to read as follows:

§ 73.81 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 73 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 73 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 73.1, 73.2, 73.3, 73.4, 73.5, 73.6, 73.8, 73.25, 73.45, 73.80, and 73.81.

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

70. The authority citation for part 74 is revised to read as follows:

Authority: Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

71. Section 74.83 is revised to read as follows:

§ 74.83 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

72. Section 74.84 is added directly after § 74.83 to read as follows:

§ 74.84 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 74 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 74 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 74.1, 74.2, 74.4, 74.5, 74.6, 74.7, 74.8, 74.83 and 74.84.

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

73. The authority citation for part 75 is revised to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

74. Section 75.51 is revised to read as follows:

§ 75.51 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

(c) The Commission may issue orders to secure compliance with the provisions of this part or to prohibit any violation of such provisions as may be proper to protect the common defense and security. Enforcement actions, including proceedings instituted with respect to Agreement State licensees, will be conducted in accordance with the procedures set forth in part 2, subpart B of this chapter. Only NRC licensees, however, are subject to license modification, suspension, or revocation as a result of enforcement action.

75. Section 75.53 is added directly after § 75.51 to read as follows:

§ 75.53 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 75 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 75 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 75.1, 75.2, 75.3, 75.4, 75.5, 75.8, 75.9, 75.12, 75.37, 75.41, 75.46, 75.51, and 75.53.

PART 95—SECURITY FACILITY APPROVAL AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

76. The authority citation for part 95 is revised to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959-1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

77. Section 95.61 is revised to read as follows:

§ 95.61 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under Section 186 of the Atomic Energy Act of 1954, as amended.

78. Section 95.63 is added directly after § 95.61 to read as follows:

§ 95.63 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 95 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 95 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 95.1, 95.3, 95.5, 95.7, 95.8,

95.9, 95.11, 95.17, 95.19, 95.21, 95.23, 95.55, 95.59, 95.61, and 95.63.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

79. The authority citation for part 110 is revised to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 108, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 66 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092-2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154-2158, 2201, 2231-2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 110.1(b)(2) also issued under Pub. L. 96-92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d, 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99-440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80-110.113 also issued under 5 U.S.C. 552, 554. Sections 110.30-110.35 also issued under 5 U.S.C. 553.

80. Section 110.60 is revised to read as follows:

§ 110.60 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

81. Section 110.67 is added directly after § 110.66 to read as follows:

§ 110.67 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 110 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 110.1, 110.2, 110.3, 110.4, 110.7, 110.10, 110.11, 110.30, 110.31, 110.40, 110.41, 110.42, 110.43, 110.44, 110.45, 110.51, 110.52, 110.60, 110.61, 110.62, 110.63, 110.64, 110.65, 110.66, 110.67, 110.70, 110.71, 110.72, 110.73, 110.80, 110.81, 110.82, 110.83, 110.84, 110.85, 110.86, 110.87, 110.88, 110.89, 110.90, 110.91, 110.100, 110.101, 110.102, 110.103, 110.104, 110.105, 110.106, 110.107, 110.108, 110.109, 110.110, 110.111, 110.112, 110.113, 110.120, 110.122, 110.124, 110.130, 110.131, 110.132, 110.133, 110.134, and 110.135.

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

82. The authority citation for part 140 is revised to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

83. Subpart F (§§ 140.87 and 140.89) is added to part 140 to read as follows:

Subpart F—Violations

Sec.

140.87 Violations.

140.89 Criminal penalties.

Subpart F—Violations

§ 140.87 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

§ 140.89 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 140 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 140 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 140.1, 140.2, 140.3, 140.4, 140.5, 140.7, 140.8, 140.9, 140.9a, 140.10, 140.14, 140.16, 140.18, 140.19, 140.20, 140.51, 140.52, 140.71, 140.72, 140.81, 140.82, 140.83, 140.84, 140.85, 140.87, 140.89, 140.91, 140.92, 140.93, 140.94, 140.95, 140.96, 140.107, 140.108, and 140.109.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

84. The authority citation for part 150 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

85. Section 150.30 is revised to read as follows:

§ 150.30 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

86. Section 150.33 is added directly after § 150.32 to read as follows:

§ 150.33 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 150 are issued under one or more of sections 161b, 161i, or 161o, except for sections listed in paragraph (b) of this section.

(b) The regulations in part 150 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: § 150.1, 150.2, 150.3, 150.4, 150.5, 150.7, 150.8, 150.10, 150.11, 150.15, 150.15a, 150.30, 150.31, 150.32, and 150.33.

Dated at Rockville, Maryland, this 16th day of November 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-28228 Filed 11-23-92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

Collection of Passenger Facility Charges (PFC) From Passengers Traveling on Frequent Flyer Award Tickets

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability: Interpretation Regarding Collection of PFC's on Frequent Flyer Award Tickets.

SUMMARY: A provision in the Fiscal Year (FY) 1993 Appropriations Act requires certain changes to the FAA's implementation of the Passenger Facility Charge (PFC) program. The FAA has interpreted that provision to require: (1) That the agency suspend enforcement during FY 1993 of the collection of PFC's from frequent flyer bonus ticket travelers and (2) that new PFC applications be approved during FY 1993 only if they exclude collection of PFC's from those travelers. This notice provides notification of the availability of a legal interpretation of the recent amendment and a summary of the conclusions of that interpretation.

FOR FURTHER INFORMATION CONTACT:

David L. Bennett, Assistant Chief Counsel, Airports and Environmental Law, (202) 267-3199; or Donna Taylor, Manager, Passenger Facility Charge Branch (202) 267-9318, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION: Section 328 of the Department of Transportation and Related Agencies Fiscal Year 1993 Appropriations Act, Public Law 102-388 (2d Sess. October 6, 1992) prohibits the use of appropriated funds for planning or executing rules or regulations to "add Passenger Facility Charges to the cost of travel benefits commonly known as 'frequent flyer award certificates' or any other bonus program offered by any airline." By this notice, the FAA is informing the public, including carriers and public agencies eligible to impose PFC's, of the effect of the statute and of FAA actions to carry out the statutory prohibition.

14 CFR part 158, Federal Aviation Regulations (FAR) part 158, currently requires the collection of PFC's from passengers traveling on frequent flyer bonus tickets. Frequent flyer passengers are considered revenue passengers as indicated in 14 CFR part 241. Section 328 became effective on October 6, 1992, and is effective through September 30, 1993. The provision does not amend or repeal any part of the 1990 legislation that established the PFC program or the regulatory requirements in FAR part 158. Section 328 contains no words of retroactivity. It does prohibit the FAA from expending funds in FY 1993 to implement or enforce collection of PFC's under FAR part 158 from travelers flying on frequent flyer mileage or other bonus awards.

Section 328 prohibits the FAA from using FY funds to enforce the collection of the frequent flyer PFC's. It also

precludes the FAA from approving any new PFC applications that would require PFC collections from frequent flyers bonus tickets or other bonus tickets. Since the authorizing statute and the rule were not repealed or amended, FAR part 158 is still in effect. As a result, the airlines are still obligated to collect PFC's from frequent flyer award travelers at airports where PFC collection was approved prior to October 6, 1992. Funds collected under these approved programs would be retained by the airports.

The FAA defines a "frequent flyer award certificate" to mean a zero-fare award of air transportation that an air carrier or foreign air carrier provides to a passenger in exchange for accumulated travel mileage credits in a customer loyalty program. "Any other bonus program" is not defined in the statute. The FAA defines "any other bonus program" to mean any other accumulated travel mileage or accumulated trip credit program offered by an airline for which zero-fare awards of transportation are made, whether or not the term "frequent flyer" is used in the definition of that program. The definitions of "frequent flyer award certificate" and "any other bonus program" do not extend to redemption of accumulated credits for awards of additional or upgraded service on trips for which the passenger has paid a published fare.

A legal analysis of this issue can be obtained from the Office of the Chief Counsel.

Issued in Washington, DC on November 18, 1992.

Kenneth P. Quinn,
Chief Counsel.

[FR Doc. 92-28426 Filed 11-18-92; 4:55 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Application and Closing Out of Offsetting Long and Short Positions; Exceptions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is amending Rule 1.46, by providing two additional exceptions to the general rule pertaining to the application, and closing out, by a futures commission merchant ("FCM") of offsetting long and short commodity futures or option positions in

a customer account. These additional exceptions would apply to purchases and sales of commodity futures or option contracts in error accounts, including, but not limited to, broker error accounts, and for the separate accounts of a customer by a commodity trading advisor ("CTA") trading pursuant to separate trading "programs." The promulgation by the Commission of these two exceptions reduces the regulatory burden associated with this rule.

In promulgating as final the exception for error trades, the Commission is modifying the proposed rule to allow one day after the discovery of the error before the error trade must be closed out. In promulgating the second additional exception, the Commission is modifying the proposed rule to clarify that the exception is not limited to technical or "systematic" trading programs and to expand the exception to include associated persons of an FCM, as well as registered CTAs. Finally, as proposed, the Commission is deleting Commission Rule 1.46(e)(2), which requires an FCM to provide the customer with a quarterly consolidated account statement where the customer's trading in at least one separate account is directed by the FCM and offsetting long and short positions are being held open.

EFFECTIVE DATE: December 24, 1992.

FOR FURTHER INFORMATION CONTACT:

Paul M. Architzel, Chief Counsel, Division of Economic Analysis, or Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-6990 or (202) 254-8955, respectively.

SUPPLEMENTARY INFORMATION:

I. Introduction

Commission Rule 1.46(a) (17 CFR 1.46) generally requires that an FCM close out a customer's previously-held short or long commodity futures or option position if an offsetting purchase or sale is made for the customer's account, and that an FCM furnish promptly to the customer a purchase-and-sale statement showing the financial result of the transactions. Rule 1.46(b) generally provides that if the short or long position held in the account is greater than the quantity purchased or sold, the FCM must apply the offsetting purchase or sale to the oldest portion of the previously-held short or long position, unless the customer or option customer specifically instructs otherwise.

There are currently seven exceptions to Rule 1.46.¹ The Commission has proposed two additional exceptions. The proposed eighth exception, for purchases or sales in error accounts, was the subject of a Petition for Rulemaking. The petition was published for comment on June 16, 1992, and the comment period closed on August 17, 1992. 57 FR 26801. The proposed ninth exception, for purchases or sales for the separate accounts of a customer by a commodity trading advisor trading pursuant to separate "trading programs," was published for comment on August 5, 1992. That comment period closed on October 5, 1992. Finally, in connection with its proposed ninth exception, the Commission posed a series of questions for comment regarding the general issue of the continued efficacy of the rule in light of its multiple exceptions. In particular, the Commission requested comment regarding the benefits to customers of the current rule and the relative costs of various alternatives.

II. The Proposed Rules

As noted above, the proposed eighth exception is based upon a Petition for Rulemaking of the Chicago Board of Trade (CBT). The Petition reasoned that:

As a practical matter, positions which have been incurred as the result of an error should be kept separate, for offset purposes, from positions which are established as part of the market participant's actual trading strategy. The proposed amendment to Commission Regulation 1.46 would facilitate this separation.

57 FR at 26802.

The rule, as proposed, was modified from that of the petition to limit the proposed exception to error positions which are closed out by the close of the following business day. The Commission requested, however, that

¹ The seven types of transactions that currently are exempt include: (1) Purchases or sales of commodity options held by commercial interests in the underlying commodity that are economically appropriate to the reduction of risks for the conduct and management of a commercial enterprise; (2) purchases or sales constituting "bona fide hedging transactions" as defined in Commission Rule 1.3(z); (3) sales during the period for, and for the purpose of, making delivery on a futures contract; (4) purchases or sales made in the separate accounts of a commodity pool directed by two or more unaffiliated commodity trading advisors acting independently; (5) purchases or sales made by a leverage transaction merchant constituting cover of its obligations; (6) purchases or sales made in the separate accounts owned by a futures or option customer where the persons directing the trading are unaffiliated with, and act independently of, each other person directing trading for a separate account; and (7) purchases or sales made in the separate accounts of a person granted an exemption under Commission Rule 150.3.

commenters suggest alternative standards to this time limit to determine the appropriate identification of positions as "error trades." The Commission also clarified that under the proposed exception, such positions must be closed out by offset in an open and competitive pit transaction, could not be closed out by a "transfer" trade and could not be left open indefinitely.² 57 FR 26803. Finally, the Commission requested comment on whether the exception should apply only to positions carried in a separate error account, or whether it could also be applied, as proposed, to error positions even if carried in an account that included non-error positions. *Id.*

The proposed ninth exception was suggested by a commenter in connection with the Commission's ongoing general review of its rules. The proposal provides an exception from the rule 1.46 requirement that off-setting long and short positions be closed out for positions traded on behalf of a customer by a CTA trading "separate and independent systems."

As the Commission noted in the Notice of Proposed Rulemaking, the primary effect of the proposed exception would be to permit CTAs to trade for their customers separate trading systems through the same FCM. Currently, this type of trading can be effectuated by trading through more than one FCM. The Commission did not propose to define "separate systems," but did propose that, to be eligible for the exception, to the extent the trading programs are marketed, they must be marketed separately. Finally, based upon its experience with the current rule, the Commission, at the suggestion of the commenter, reevaluated the need for the currently required consolidated quarterly statement. The Commission proposed deleting this requirement, noting that although the consolidated quarterly statement provided a ready tabulation of the accounts' positions, as a whole, all of that information nevertheless is available to the customer

on the customer's monthly statement. 57 FR 34534.

III. Comments Received and the Final Rules

Three comment letters were received on the proposed eighth exception to Rule 1.46. Each commenter is a contract market: Coffee, Sugar & Cocoa Exchange, Inc. (CSCE); Chicago Mercantile Exchange (CME); and CBT. CSCE supported the proposed amendment, including the modifications suggested by the Commission. CME supported the Commission modification to permit the exception to apply to positions identified as errors but carried in an account that includes positions other than errors. CME noted that it requires floor brokers to maintain error accounts³ and believes that error trades should be placed in such accounts so as to allow for the efficient tracking of error trades by the exchange's compliance department. CME further noted, however, that the decision as to whether error trades must be placed in error accounts should be left to the exchanges, a position consistent with the Commission's proposal.

The CME and CBT raised objections to the Commission's proposals to limit the exception to error positions offset by the following business day. CBT stated that "[t]here are many cases where customers indicate that a trade is not theirs several days after its execution," and suggested that the Commission "allow a trader one day after the discovery of the error." [Emphasis in original.] The CME argued for no time limit, raising a concern that a limit move in the market could make it impossible to liquidate the error position and might lead an FCM, AP or FB to liquidate its own pre-existing position and retain the error position in such circumstances.

The Commission has carefully considered these comments and acknowledges that there are cases where errors are not discovered immediately. Specifically, a trade assigned to a customer account might be disavowed by the customer several days later, and therefore not transferred to an error account or identified as an error trade until several days after the trade was executed.⁴ In that case, the Commission agrees that the trader should have until the close of business on the business day after the error trade

is discovered and assigned to his error account (or identified as an error trade when transferred to an account also containing non-error trades) to offset the trade. The final rule reflects this change.

The Commission does not agree with the CME comment that there should be no time limit on error trades under the new exception to Rule 1.46. If the position is the result of a true error, it should be offset quickly. If the FB, FCM or AP wishes, for whatever reason, to speculate with the new position, then the error trade has changed its identity to that of a non-error trade and should be treated as such. The Commission has determined that the close of business on the business day following discovery of the error is generally the appropriate demarcation for deeming an error trade to have changed its character.

However, the Commission also acknowledges that market conditions could serve to frustrate good faith efforts to offset an error trade promptly. Accordingly, the Commission has further modified its proposal to provide that if at the close of business on the business day following the discovery of the error trade, the relevant market has reached a daily price fluctuation limit and the trader is unable to offset the error trade,⁵ the FCM, AP or FB will have until "as soon as practicable thereafter" to offset the error trade.⁶ The holder of the error trade position should be prepared to trade out of the position immediately as soon as trading in the market resumes.

If the error trade has not been offset through an additional trade by the time set forth in paragraph (d)(8)(ii) of Rule 1.46, the FCM must close out its error trade and the pre-existing offsetting position in its proprietary trading account or the error trade and personal trade of its AP or an FB (whether in separate accounts or the same account if no error account is used by the AP or FB). The Commission believes that such actions will be consistent with the provisions of paragraphs (d)(8)(ii) and (iii) of Rule 1.46 regarding offset of error trades by open and competitive means on or subject to the rules of a contract

⁵ The Commission recognizes that trading can be occurring at the limit, but even if a trader has placed an order to offset an error position, it may be difficult to get such order filled under those conditions.

⁶ The Commission also recognizes that markets can be at daily price limit levels for part of a trading day. However, rather than setting forth a specific amount of time in the rule to apply in situations where the market is in a limit move condition for part but not all of a trading day, the Commission has adopted the close of business as the relevant point in time for determining if a limit move has impeded the ability to offset an error position.

² As the Commission noted when it proposed this amendment, the definition of the term "customer" under Commission Rule 1.3(k) (17 CFR 1.3(k) (1992)) provides in pertinent part that "an owner or holder of . . . a proprietary account shall . . . be deemed to be a customer within the meaning of . . . [Rule] 1.46." Thus, Rule 1.46 would apply to accounts of a futures commission merchant's (FCM) associated person (AP) and even the FCM's own accounts, as well as those of floor brokers (FBs). Further, an FCM must take into consideration positions in separate accounts of the same customer which it is carrying in applying Rule 1.46. U.S. Department of Agriculture, Commodity Exchange Authority Administrative Determination No. 134 (May 25, 1948).

³ The Commission also noted this when it proposed the amendment. See 57 FR 26801, 26802 & n.3.

⁴ Of course the trade, before being identified as an error by the customer, might have to be offset by another trade in the customer's account. This new exception would offer no relief in that situation.

market rather than by transfer to another account controlled by that same market participant, and is also consistent with the concept that at a certain point in time, an error trade changes character and must be treated like any other non-error position.⁷ If this requires the FCM to close out the error trade and the pre-existing offsetting non-error position, the Commission does not believe this should cause significant distortion of open interest reporting.

Six commenters responded to the proposed ninth exception. The commenters included two futures exchanges, two CTAs, an FCM, and an industry association representing CTAs. All of those commenting on the subject supported deletion of the required consolidated quarterly statement, and all but one of the commenters supported generally the proposed ninth exception. The commenter opposing the ninth exception, a futures exchange, suggested that the proposed rule was "overly vague and would create an uneven playing field between CTAs and other market participants." In contrast, an industry association representing CTAs, noted its strong support for the proposed rule, stating that:

[W]e are strongly supportive of the Commission's proposed revision to Rule 1.46. The proscriptions set forth in Rule 1.46 were adopted long before the emergence of the managed futures industry. Accordingly, the Rule has had unintended effects on CTAs, their clients, and FCMs which execute and clear transactions of such clients.

[T]he Rule compels adoption of costly, burdensome internal compliance procedures at a CTA or executing FCM, or compels an investor—often against his interest—to execute transactions through two or more FCMs. These deleterious effects are compounded by distortions in a CTA's performance record caused by the Rule. Due to the artificial "offsets" mandated by the Rule, the accuracy of a CTA's performance record for each separate approach is jeopardized.

Despite their general support for the proposed ninth exception, several of the commenters recommended various modifications. In particular, two commenters suggested that the language of the exception be changed from "trading systems." They expressed the view that

[F]rom an industry perspective, a trading "system" or "systematic" approach generally is applied to an approach whereby the CTA enters orders pursuant to trading signals generated entirely from objective factors (which frequently is computerized) and permits little or no subjective (judgmental) factors from affecting trading decisions. While we are aware that the burden of proving independence in a trading approach may be more difficult for discretionary trading approaches (trading approaches in which an element of discretion affects trading decisions), the majority of CTAs have a discretionary approach and the amended Rule should not suggest that such approaches would be precluded from application of the rule if the independence of such approach can be demonstrated.

The Commission notes, in this regard, that the language of the proposed rule was suggested by a commenter, and that the Commission, by its use, or in its discussion of the proposed rule in the **Federal Register**, did not intend to imply that the proposed exception was limited to computerized or technical trading approaches. Accordingly, the Commission is modifying the language of the proposed rule to reflect that the exception applies to positions held in separate accounts of separate trading "programs" which are marketed separately.

A second commenter, an FCM, contended that the proposed exception should be broadened to include positions of customer trading programs managed by an FCM or its associated person ("AP"), which otherwise meet the criteria for the exception. This commenter reasoned that:

[A]ssuming the primary objective of Rule 1.46 is to properly monitor open interest, we can find no reason to distinguish between CTAs exercising trading authority over multiple accounts, and FCMs or their APs engaging in the same activity. Both CTAs and FCMs are obligated to uphold the same legal, regulatory, and ethical standards. Neither may keep positions open for the purposes of distorting open interest or to avoid the recognition of losses or the payment of commissions.

Accordingly, since the proposed amendment seeks to accommodate the varying trading strategies of CTAs, and since those same strategies are being employed by FCMs (or their APs), the rule should reflect the needs of both CTAs and FCMs.

The Commission believes that the comment has merit. Insofar as CTAs and FCMs (or their APs) engage in similar activities, pursuant to equivalent regulatory requirements, the relief encompassed in the proposed exception should be available equally to both. Accordingly, the Commission is modifying the final rule to include within the ninth exception, FCMs or their APs trading for their customers

separate trading programs which are marketed separately.⁸

The Commission has considered carefully these comments, and, with the modifications noted above, is adopting as final the proposed ninth exception. In addition, the Commission is deleting the required consolidated quarterly statement, as proposed. In doing so, the Commission notes that all of the information contained in the consolidated statement is available to customers on their monthly statements. Accordingly, despite deletion of this required statement, the Commission does not anticipate a reduction in information provided to customers, while reducing an administrative burden on FCMs.

In addition to comment on this proposed exception, the Commission requested comment on issues relating, in general, to the continued efficacy of Rule 1.46. In particular, the Commission asked a series of five questions relating to the costs and benefits of the current rule and a number of alternatives, including deletion of the rule.

Two commenters, both futures exchanges, addressed these issues in general terms. One of the commenters stated the view that the increased number of exceptions from the rule

undercut the rationale for maintaining the regulation. We expect that as the futures industry continues to grow and develop, there will be additional justifiable requests for position accounting alternatives, and consequently, more petitions to develop further exceptions to the regulation. Rather than continuing to carve out exceptions, we believe the regulation should be eliminated.

In contrast, the second exchange commenter reasoned that

Allowing all customers to use special instruct accounts would add confusion and decrease the accuracy of open interest, large trader and delivery position reports. This would also add confusion between FCMs and their customers as to when and which positions to offset on a daily basis. We believe that Rule 1.46, even with its many

⁷ The Commission reiterates, however, as it noted when proposing this rule amendment, that if the FCM carrying the broker's error account or the FCM carrying the broker's own trading account sought the protection of the bankruptcy laws, the Commission might, in appropriate cases and upon application by the trustee or the affected clearing organization, permit offsetting open contracts to be liquidated, or settlement on such contracts to be made, by transfer trades. 17 CFR 190.04(d) (1992). See 57 FR 26801, 26803 n.5.

⁸ If an FCM or AP provided commodity interest trading advice to a client, then the FCM or AP would be a CTA subject to registration as such, unless the FCM qualified for the exclusion from the CTA definition in the Commodity Exchange Act (which provides that a person is excluded from the CTA definition if it furnishes commodity trading advice "solely incidental" to the conduct of its business or profession) or the AP qualified for the exemption from CTA registration in Rule 4.14(a)(3) (which provides that a person is not required to register as a CTA if it is registered as an AP and the person's commodity trading advice "is issued solely in connection with" its employment as an AP). In adopting this ninth exception to Rule 1.46, the Commission does not intend in any way to imply that FCMs or APs might not be CTAs or to affect the eligibility requirements under the Act or Commission rules.

exceptions, serves its intended useful purpose.

None of the commenters, however, provided detailed analysis regarding the relative costs and benefits of the rule. The Commission, in the Federal Register notice, identified several benefits of the rule and potential costs in maintaining, and in deleting, this rule. After carefully considering the comments which it received on these issues, the Commission believes that before proposing further rulemaking, it is necessary to better determine the potential impact of its action. Accordingly, the Commission is adopting the amendments to the rule proposed above, but at this time is proposing no further changes.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small entities. The Commission has previously determined that "FCMs" are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1982). These proposed rules modify the requirements under which FCMs must close out offsetting positions and issue a consolidated purchase-and-sale statement. The proposed amendment does not impose any additional burdens, but rather, alleviates already existing obligations. Accordingly, if promulgated, these rules would have no significant impact on a substantial number of small entities. For the above reasons, and pursuant to section 2(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities. However, the Commission particularly invited comments from any firms or other persons which believe that the promulgation of these proposed rule amendments might have a significant impact upon their activities. No such comments were received.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, ("PRA") imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. There are no information collection requirements under the provisions of the PRA contained in Rule 1.46 and the Commission has determined that this proposed amendment has no burden.

List of Subjects in 17 CFR Part 1

Offsetting positions, Close-out requirements, Commodity trading advisors, Commodity futures.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4g, 5 and 8a of the Act, 7 U.S.C. 6g, 7 and 12a (1988), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.46 is amended by adding new paragraphs (d)(8), and (d)(9), by revising paragraph (e)(1) and by removing and reserving paragraph (e)(2), to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

(d) *Exceptions.* The provision of this section shall not apply to:

(8) Purchases or sales held in error accounts, including but not limited to floor broker error accounts, and purchases or sales identified as errors at the time they are assigned to an account that contains other purchases or sales not identified as errors and held in that account ("error trades"), provided that:

(i) Each error trade does not offset another error trade held in the same account;

(ii) Each error trade is offset by open and competitive means on or subject to the rules of a contract market by not later than the close of business on the business day following the day the error trade is discovered and assigned to an error account or identified as an error trade, unless at the close of business on the business day following the discovery of the error trade, the relevant market has reached a daily price fluctuation limit and the trader is unable to offset the error trade, in which case the error trade must be offset as soon as practicable thereafter; and

(iii) No error trade is closed out by transferring such an open position to another account also controlled by that same trader.

(9) Purchases or sales held in the separate accounts of a customer who has granted discretionary authority to a

futures commission merchant, an associated person of a futures commission merchant, or a commodity trading advisor trading separate trading programs which have been marketed separately, *provided that:*

(i) The purchases and sales for such accounts are executed in open and competitive means on or subject to the rules of a contract market; and

(ii) No position held for or on behalf of separate accounts traded in accordance with this paragraph (d)(9) may be closed out by transferring such an open position from one of the separate accounts to another of such accounts.

(e) * * *

(1) The futures commission merchant must first furnish the customer or option customer with a written statement disclosing that, if held open, offsetting long and short positions in the separate accounts may result in the charging of additional fees and commission and the payment of additional margin, although offsetting positions will result in no additional market gain or loss. Such written statement shall be attached to the risk disclosure statement required to be provided to a customer or option customer under § 1.55 of this part.

(2) [Reserved].

Issued in Washington, DC, this 18th day of November, 1992, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-28429 Filed 11-23-92; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM93-2-000; Order No. 546]

18 CFR Part 375

Regulation Delegating Authority

Issued November 12, 1992.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending part 375 of the Commission's regulations in order to delegate to the Director of the Office of Pipeline and Producer Regulation the same authority to rule on out-of-cycle purchased gas adjustment filings that the Director now has with respect to quarterly PGA filings. The Commission generally delegates