

except pursuant to paragraphs (e), (f)(1), or (f)(3)(ii) of this section, unless an inspection certificate has been issued by the Texas-Federal Inspection Service covering them and the certificate is valid at the time of shipment. City destinations shall be listed on inspection certificates and release forms.

(f) * * *

(1) * * *

(2) *Gift packages.* The handling to any person of gift packages of onions not exceeding 25 pounds per package, individually addressed to such person and not for resale, is exempt from the container requirements of paragraph (c) of this section, but shall conform to all assessment requirements of § 959.42 and inspection requirements of paragraph (d) of this section, if such onions were not previously handled by a first handler. All such onions shall meet the grade and size requirements of paragraphs (a) and (b) of this section.

(3) *Experimental shipments.* (i) Upon approval of the committee, onions may be shipped in bulk bins with inside dimensions of 47 inches x 37½ inches x 36 inches deep and having a volume of 63,450 cubic inches, or containers deemed similar by the committee. Each container shall have a new perforated polyethylene liner at least 2 mils in thickness. Also, onions may be shipped in 25- and 20-pound cartons, upon approval of the committee. Such experimental shipments shall be exempt from paragraph (c) of this section but shall be handled in accordance with the safeguard provisions of § 959.54 and paragraph (g) of this section. The committee shall be notified of carton size and furnished a container manifest, and shippers must furnish the committee with outturn reports on such shipments.

(ii) Upon approval by the committee, onions may be shipped for other experimental purposes exempt from regulations issued pursuant to §§ 959.42, 959.52, and 959.60, provided they are handled in accordance with the safeguard provisions of § 959.54 and paragraph (g) of this section.

(iii) Upon approval of the committee, onions may be shipped for testing in types and sizes of containers other than those specified in paragraphs (c) and (f)(2) of this section, provided that the handling of onions in such experimental containers shall be under the supervision of the committee.

(4) *Export shipments.* (i) Upon approval of the committee, the prohibition against packaging or loading onions on any Sunday may be modified or suspended to permit the handling of onions for export provided that such

handling complies with the procedures and safeguards specified by the committee.

(ii) Following approval, if the handler grades, packages, and ships onions for export on any Sunday, such handler shall on the first weekday following shipment, cease all grading, packaging, and shipping operations for the same length of time as the handler operated on Sunday. Upon completion of such shipments, the handler shall report thereon as prescribed by the committee.

(iii) Export shipments shall also be exempt from all container requirements of this section.

(5) *Onions failing to meet requirements.* Onions failing to meet the grade, size, and container requirements of this section, and not exempt under paragraphs (e) or (f) of this section, may be handled only pursuant to § 959.126. Such onions not handled in accordance with paragraph (g) of this section shall be mechanically mutilated at the packing shed rendering them unsuitable for fresh market.

(g) *Safeguards.* Each handler making shipments of onions for relief, charity, canning, freezing, or experimental purposes shall:

(i) *Applicability to Imports.* During the period beginning on the effective date of this rule and ending on June 15 for the 1987 season and during the period beginning March 10 and ending May 31 of each year.

PART 980—VEGETABLES; IMPORT REGULATIONS; ONIONS

§ 980.116 [Removed]

3. Section 980.116 is removed.

4. Section 980.117 Import Regulations; Onions. (43 FR 5499, February 9, 1978) is amended by revising paragraphs (a) (2) and (b), (1) and (2) to read as follows:

§ 980.117 Import regulations; onions.

(a) * * *

(2) Therefore, it is hereby determined that: Imports of onions during the June 1 through March 9 period are in most direct competition with the marketing of onions produced in designated countries of Idaho and Malheur County, Oregon, covered by Marketing Order No. 958, as amended (7 CFR Part 958), and during the March 10 through May 31 period the marketing of imported onions is in most direct competition with onions produced in designated counties in South Texas covered by Market Order No. 959, as amended (7 CFR Part 959).

(b) * * * (1) During the period June 1 through March 9 of each marketing year, whenever onions grown in designated

counties in Idaho and Malheur County, Oregon, are regulated under Marketing Order No. 958, imported onions shall comply with the grade, size, quality, and maturity requirements imposed under that order.

(2) During the period March 10 through May 31 of each marketing year, whenever onions grown in designated counties in South Texas are regulated under Marketing Order No. 959, imported onions shall comply with the grade, size, quality and maturity requirements imposed under that order.

Dated: March 5, 1987.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 55, 60, 61, 70, 71, 72, 110, and 150

Completeness and Accuracy of Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The NRC is amending its regulations to codify the obligations of licensees and applicants for licenses to provide the Commission with complete and accurate information, to maintain accurate records and to provide for disclosure of information identified by licensees as significant for licensed activities.

DATE: Comment period expires April 10, 1987. Comments received after this date will be considered if it is practical to do so, but assurance of consideration is given only for comments received on or before this date.

ADDRESSES: Interested persons are invited to send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments may also be delivered to Room 1121, 1717 H Street, NW., Washington, DC between 8:15 a.m. and 5:00 p.m. Copies of any comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Assistant General Counsel for Enforcement, Office of the

General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-7496.

SUPPLEMENTARY INFORMATION: Accuracy and forthrightness in communications to the NRC by licensees and applicants for licenses are essential if the NRC is to fulfill its responsibilities to ensure that utilization of radioactive material is consistent with the health and safety of the public, the common defense and security and the protection of the environment. Several provisions of the Atomic Energy Act highlight the importance of accurate information. Section 186 provides that "Any license may be revoked for any material false statement in the application or any statement of fact required under section 182 . . ."

Section 182 provides that:

The Commission may at any time after the filing of the original application, and before the expiration of the license, require further written statements in order to enable the Commission to determine whether the application should be granted or denied or whether a license should be modified or revoked. All applications and statements shall be signed by the applicant or licensee. Applications for and statements made in connection with, licenses under sections 103 and 104 shall be made under oath or affirmation. The Commission may require any other applications or statements to be made under oath or affirmation.

This need for accuracy in communications has been emphasized through the adoption in licensing provisions, although not on a uniform basis, of requirements regarding the submission of applications. *See, e.g.*, 10 CFR 50.30(b), 55.10(d), 61.20(a), 70.22(e) and 72.11(b).

The Commission's expectation of accuracy in communications has not been limited to written information submitted in applications. The Commission's decision is an enforcement action taken against Virginia Electric and Power Co. established a comprehensive requirement for applicants and licensees to provide complete and accurate information to the Commission. In the *VEPCO* case, of false statement were alleged to have been made in *VEPCO*'s submissions to the Commission on the geology of the North Anna site. Omissions of information by *VEPCO* were also evaluated: Two were failures to present evidence at the Licensing Board construction permit hearings about suspected faulting and the third omission was *VEPCO*'s failure to provide the Board or staff with reports prepared by its geology consultant. In its decision, the Commission concluded "that the material false statement

phrase in the Atomic Energy Act may appropriately be read to require full disclosure of material data". *Virginia Electric & Power Company* (North Anna Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480 (1976), *aff'd*, 571 F.2d 1289 (4th Cir. 1979). The Commission decided materiality is to be judged by whether information has a natural tendency or capability to influence an agency decisionmaker; that knowledge of the falsity of a material statement is not necessary for a material false statement under section 186 and that material omissions are actionable to the same extent as affirmative material false statements.

Under this standard, both the written statements and omissions made by *VEPCO* were subject to civil penalties. In subsequent years, the Commission took a number of enforcement actions for material false statements. These enforcement actions included the following factual situations: Omission of information about receipt of draft reports during oral statements made in an informal meeting between the staff and a licensee; statements in a telephone call, letter and oral briefing that mobile sirens forming part of a licensee's prompt public notification system were installed and operational, when in fact they were not; oral statements to an NRC inspector that licensed material had not been out of storage, when in fact it had been used; and erroneous statements in response to an IE Bulletin concerning the use of certain lubricants and fasteners.

The Commission's General Policy and Procedure for NRC Enforcement Actions, 10 CFR Part 2, App. C, originally published on March 9, 1982, (47 FR 9987) specifically dealt with enforcement for material false statements. In March 1984, after several years of handling enforcement cases under the *VEPCO* holding and this enforcement policy, the Commission specifically solicited comments on the issue of material false statements. Responses to the following questions were requested:

- (1) Has the Commission's emphasis on material false statements had a positive effect on the quality of communications with the NRC or has it had a chilling effect on such communications?
- (2) Should the definition of material false statement be changed to apply only to written statements, submitted under oath?
- (3) Should materiality be contingent upon the safety significance of the underlying information?
- (4) Should materiality be dependent upon actually influencing an agency reviewer as opposed to having the

capability of influencing a reasonable agency reviewer?

(5) What would the expected effect of such changes be? (49 FR 8584, March 8, 1984).

The Commission received comments from twenty-nine organizations and individuals, including utilities, law firms, utility associations, an architect engineer, an intervenor, an employee at a nuclear facility, and members of the public. The comments are summarized below categorized into five principal concerns.

Threshold for Material False Statements

Most of the commenters suggested that the definition of material false statement which the Commission had been using since the *VEPCO* decision in 1976 is too broad. *VEPCO* case does not contain an actual definition of the term "material false statement" but it does describe the elements of the phrase. Under that decision, a material false statement may be an affirmative statement or an omission. By implication, therefore, a material false statement need not be in writing or under oath. It need not be made with knowledge of its falsity; it can be unintentionally made.

Some commenters sought to limit the definition by changing the materiality standard. Some suggested that it should take into greater account the safety significance of the information. Others suggested that instead of merely having the capability of influencing a reasonable agency reviewer, the statement should be required to actually influence a reasonable agency reviewer.

Omissions

Comments criticized the application of material false statement on an omission, arguing that if the NRC wanted to require full disclosure of material information it should clarify its reporting requirements to indicate just what information is required to be disclosed.

Legal Issues

A number of commenters expressed the view that, as matter of law, a material false statement must be submitted in writing and under oath for a power reactor. This conclusion was based on their reading of sections 186 and 182 of the Atomic Energy Act that a material false statement can exist only when when the statement in question is contained in an application or sought by the NRC under section 182 of the Act. Section 182 provides that "applications for, and statements made in connection with, licenses under sections 103 and 104 [of the Act] shall be made under

oath or affirmation." Not all commenters favored restricting application of the term to only those statements under oath. Some argued that such a limitation will only create a greater administrative burden on the licensee, because the Commission will demand that all correspondence be notarized.

Negative Connotations

Many of the commenters focused on the adverse impact on the integrity of individuals and licensees which they believe results from a citation for a material false statement. In their view, a material false statement is understood by the public as a lie with all of the connotations of dishonesty which that entails. Largely because of these connotations, many commenters urged that the definition of material false statement be narrowed and its use limited to those situations where integrity or honesty is actually at issue. Accordingly, some suggested that it be reserved for intentional false statements.

Oral Statements

Many commenters also focused their criticism on the application of sanctions for material false statements involving oral communications since many of the day-to-day contacts with the NRC are by telephone or through oral conversations with inspectors on site. The commenters indicated that the inclusion of these statements in the definition of material false statements had a chilling effect on day-to-day communications to the detriment of the regulatory process.

At the time the Commission solicited these comments, it also stated its intention to have an in-depth study of the enforcement program performed by a small committee of individuals selected from outside the agency. The Advisory Committee for Review of the Enforcement Policy was formally established by the NRC on August 31, 1984. (49 FR 35273, September 6, 1984). In addition to considering the comments already submitted to the Commission, the Committee solicited further comments from interested persons on the extent to which the NRC's enforcement policy has been serving the purposes announced by the Commission, including the policy on material false statements. (50 FR 1142, January 9, 1985). Public meetings were held by the Committee during which 46 witnesses drawn from NRC staff, licensees, industry groups and law/consulting groups gave testimony to the Committee, many commenting on the material false statement policy.

In its Report submitted to the Commission on November 23, 1985 the Committee made the following recommendation:

The material false statement policy should be changed to limit citations for material false statements to written statements or sworn testimony made knowing the statement was incorrect or made with careless disregard for correctness. If incorrect oral statements or omissions are to be cited, it should be under another label.

The Committee concluded that the application of the label material false statement to unintended and inadvertent statements and omissions, as well as to intentional ones, will ultimately, if it has not already, impede the flow of information to the Commission. The evidence of growing pressure toward limiting oral communications was found to be especially apparent. In addition, the labeling of honest errors as material false statements was found to have a "depressing effect on utility staff morale" and to some extent limited an organization's ability to "recruit and retain capable staff." Committee Report at 24. The indistinctness in defining what is required to avoid a material false statement citation for an omission creates an "uncontrollable and opened liability" for licensees, which, considering the high cost to the utility of such a citation, is an "unreasonable and unfair burden." Committee Report at 26.

In its meeting with the Commission on December 10, 1985, several of the Committee members elaborated on their recommendation. Briefly, they indicated that oral communications can be made by anyone within the licensee's organization and, unlike written communications, the licensee generally has no way of controlling the exchange or of assuring that the statement in fact represents the licensee's position. It is very difficult as a matter of proof to reconstruct what exactly was said for an oral statement. There will likely be disputes about what is said and whether the misstatement, if there was one, was intentional, accidental, negligent or reckless. It is reasonable to reserve the category of "material false statements" to written or sworn statements where there is another mechanism for penalizing oral statements, e.g., as inaccurate information, and where the penalty can be as severe as for those statements labeled material false statements. If the Commission persists in labeling oral statements as material false statements, Committee members recommended that the Commission limit and define the people in licensee organizations who are capable of

making oral material false statements and provide some description of the circumstances in which they have to be aware that they carry that liability.

With respect to the citation of omissions as material false statements, several Committee members indicated that it is such a wide open potential source of liability, that even though the number of such citations is small, the perception of vulnerability in the regulated community is pervasive. Although an egregious omission case can be posed where the strongest sanction including the label material false statement is warranted, the day-to-day cases will be more ambiguous and difficult situations. From the standpoint of an effective enforcement program, deterrence does not suffer if an occasional egregious omission or oral statement is cited as inaccurate information with a civil penalty for a severity level one or two violation, rather than as a material false statement with a civil penalty of similar severity level.

In view of the concerns which have been developing within the Commission and which are evident from the public comments and the efforts of the Advisory Committee, principally with the application of the "material false statement" label to unintentionally inaccurate information, the Commission has determined that changes are necessary to: (1) The manner in which its standards for accuracy in information provided to or maintained for Commission inspection are articulated for licensees and applicants; and (2) its current material false statement policy articulated in the Commission's *VEPCO* decision and in the Enforcement Policy in Appendix C to Part 2 of the Commission's regulations. The Commission has concluded that a new requirement should be placed in each of the licensing sections of the Commission's regulations which sets forth an applicant's and a licensee's obligations concerning accuracy and completeness in their communications with the NRC and in the records required to be maintained by the Commission. The Commission believes this approach will continue to provide incentives for applicants and licensees to scrutinize their internal operations to determine that information provided to the NRC is complete and accurate and that records maintained in accordance with Commission requirements are complete and accurate and give the Commission greater flexibility to enforce these obligations without invoking the negative connotations about a licensee's character by a

citation for a material false statement in cases involving an unintentionally inaccurate or incomplete submittal.

The new regulations include identical provisions in Parts 30, 40, 50, 55, 60, 61, 70, 71, 72, and 110 which contain two elements: (1) A general provision which requires that all information provided to the Commission by an applicant or licensee or required by the Commission to be maintained by the applicant or licensee shall be complete and accurate in all material respects; and (2) a reporting requirement to replace the full disclosure aspects of the current material false statement policy and would require applicants and licensees to report to the NRC information identified by the applicant or licensee as having a significant implication for the public health and safety or common defense and security. Section 150.20 is being amended to provide that when an Agreement State licensee is operating within NRC's jurisdiction under the general license granted by § 150.20, the licensee is subject to the above requirements.

These regulations are being issued under the Commission's authority in sections 62, 63, 65, 81, 82, 103, 104, 161(o), 182, and 274 as well as 186 of the Atomic Energy Act of 1954, as amended. While section 186 can be read as addressing only material false statements made in certain contexts, the scope of the Commission's responsibilities under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as well as the Commission's decision in the *VEPCO* case and subsequent enforcement actions under that statement of the law, make it clear that the Commission has the inherent authority to require communications with the agency on regulatory matters to be complete and accurate regardless of their context. Under section 186 of the Atomic Energy Act failure to observe any of the terms or provisions of any regulation of the Commission is an explicit basis for revocation of a license. Thus, with the adoption of these new regulations regarding accuracy in communications and records, a violation of paragraph (a) or (b) of the proposed rule may be grounds for revocation of a license as well as imposition of civil penalties under section 234 of the Atomic Energy Act.

Paragraph (a) of the proposed rule would codify in a uniform manner an applicant's and a licensee's obligation, as articulated in the *VEPCO* decision, to ensure the accuracy of its communications with the Commission. The provision does not create any new obligations for licensees and applicants;

rather, it describes in a regulation rather than in an adjudicatory decision, the standard for accuracy to be adhered to when supplying information to the agency or when generating and maintaining records required to be kept by the Commission. The standard described in paragraph (a) of the proposed rule, "complete and accurate in all material respects," continues the degree of accuracy prescribed in the *VEPCO* decision; that is, any information provided to the Commission or maintained in records required by the Commission which has the ability to influence the agency in the conduct of its regulatory responsibilities must be complete and accurate.

Under this proposed rule, not only material incorrect information, written or oral, but omitted information which causes an affirmative statement to be materially incomplete or inaccurate, will be subject to sanctions. The proposed rule uses the phrase "provided to the NRC" rather than "submitted to the NRC" to indicate that all communications, oral or written, throughout the term of the license, not just at the application stage, are expected to be complete and accurate. The Commission intends to apply a rule of reason in assessing completeness of a communication. For example, in the context of reviewing an initial application or a renewal application for a license, it is not uncommon for an NRC reviewer to seek additional information to clarify his or her understanding of the information already provided. Such an inquiry by the NRC does not necessarily mean that incomplete information which would violate this rule has been submitted.

This new provision also makes explicit the requirement that records required to be maintained by the Commission must be complete and accurate in all material respects. It is clear that when the Commission establishes a requirement that a licensee generate records to document a particular licensed activity, inherent in that requirement is the expectation that those records will accurately reflect the activities accomplished. In the past, when the Commission has discovered that inaccurate or incomplete records have been developed or maintained, citations have been issued for violation of the underlying recordkeeping requirement. Now that the Commission is adopting a regulation which states a generic requirement for accuracy in information made available to the agency, it was deemed desirable to explicitly refer to information kept in records pursuant to Commission

requirements for inspection by the NRC, as well as information submitted to the NRC, since the standard for accuracy and completeness is the same for all information in whatever form it is made available to the Commission. This explicit statement of the standard of accuracy required for records does not in any way change existing recordkeeping requirements or add to the kind or nature of records expected to be maintained.

Paragraph (b) of the proposed rule codifies in a modified form, and replaces, the "full disclosure" aspects of licensees' and applicants' obligations established by the *VEPCO* decision. In that decision the Commission recognized its obligation "to promulgate regulations which provide clear, comprehensive guidance to applicants and licensees," *VEPCO* at 489, but went on to conclude that,

[T]he fact remains that no specific set of regulations, however carefully drawn, can be expected to cover all possible circumstances. Information may come from unexpected sources or take an unexpected form, but if it is material to the licensing decision and therefore to the public health and safety, it must be passed on to the Commission if we are to perform our task. . . .

Since the initial description of the "full disclosure" requirement in *VEPCO*, however, reporting obligations for substantial additional categories of significant safety information have been affirmatively established, e.g., 10 CFR 21.21, and 10 CFR 50.72 and 50.73. Both material and reactor licenses contain numerous reporting requirements. Most safety information which a licensee may develop will likely be required to be reported by some specific requirements. Nevertheless, there may be some circumstances where a licensee possesses some residual safety information which could affect licensed activities but which is not otherwise required to be reported.

Therefore, the proposed rule provides that if a licensee or an applicant identifies information which has significant implications for public health and safety or the common defense and security, it must be reported to the Commission. The rule makes clear that reporting under this section is not required if such reporting would duplicate information already submitted in accordance with other requirements such as 10 CFR 20.402 through 20.408, 21.21, 50.34, 50.71, 50.72, 50.73, and 73.71.

Consideration was given to proposing a more broadly worded requirement such as "each applicant or licensee shall notify the Commission of information material to the regulatory process." The

Commission concluded, however, that with such a formulation of the rule, with essentially no guidance on how to determine what must be reported, it would be difficult for licensees or applicants to predict with any certainty what the Commission will deem to be material. Such a rule would likely provide little incentive for licensees or applicants to scrutinize or police their information gathering process for reportable information. The purpose of the reporting requirement which is being proposed is to provide clear notice that if any applicant or licensee recognizes it has information with significant health or safety or common defense or security implications, the information must be reported to the NRC notwithstanding the absence of a specific reporting requirement. Submission of a report depends upon the licensee's recognition of the significance of the information.

The codification of a full disclosure requirement in this manner should not result in additional burdens on applicants and licensees. Licensees and applicants will not be required to develop formal programs similar to those prescribed under 10 CFR Part 21 to identify, evaluate, and report information. What is expected is a professional attitude toward safety throughout a licensee's or applicant's organization such that if a person identifies some potential safety information, the information will be freely provided to the appropriate company officials to determine its safety significance and reportability to the Commission.

While proposed paragraph (b) defers to the licensee's judgment of the significance of information, the licensee's "identification" of the significance of the information need not be in the form of a specific documented decision before a violation of the rule exists for failure to report. An applicant's or licensee's recognition of information as significant could be established by the fact that specific meetings were held to discuss the matter, analyses performed or other internal actions taken to evaluate the matter. In addition, abuse of a licensee's responsibility under paragraph (b), if not punishable as a violation of paragraph (b), could be addressed by the Commission under its authority to issue orders to modify, suspend or revoke a license. For example, an order would be appropriate where the action of a licensee in not recognizing the significance of the information and failing to report it, together with other relevant facts, raises serious questions about either its competence, *i.e.*, its

ability to evaluate information, or its trustworthiness, *i.e.*, its failure to consider potentially significant information for evaluation.

Finally, the Commission has decided to exercise its discretion in the application of the term material false statement to miscommunications and limit use of the term to situations where there is an element of intent. A Charge of material false statement is equated by the public and most people in the industry with lying and intention to mislead. Yet under the current policy, a material false statement under the Atomic Energy Act can be either an affirmative statement, oral as well as written, or an omission, and can be unintended and inadvertent as well as intentional. The Advisory Committee concluded that enforcement of accuracy in communications by citations for a material false statement is "too blunt and heavy an instrument to be effective in achieving improved accuracy and completeness of information given to the NRC by licensees." The Commission agrees. The free flow of information from applicants and licensees is essential to the effectiveness of the NRC's regulatory program. A policy of sanctions for inaccurate information which has the likelihood to impede information flow, or which causes licensees to concentrate on limiting and qualifying what they say rather than on the quality of the information provided in order to avoid being charged with lying, does not serve the interests of the NRC.

This change recognizes the negative connotations which are associated by the public and the industry with the term material false statement but retains the use of this label as an additional enforcement tool in egregious situations, which will be determined on a case-by-case basis. The Commission expects to use the term rarely because with the adoption of this proposed rule, the Commission will have the mechanism to apply the full range of enforcement sanctions to inaccurate communications or records without reliance on the term material false statement. Consequently, the Commission sees no need to develop a specific definition of the term "material false statement."¹ The

¹ Any characterization or use which the Commission gives to the term material false statement as used in the Atomic Energy Act of 1954, as amended, is, of course, limited to the Commission's civil enforcement actions and has no legal impact on the meaning given to similar terms and phrases used in other statutes, *e.g.*, 18 U.S.C. 1001, or on the authority of the Department of Justice to prosecute under such statutes. Thus, regardless of what enforcement action NRC may take for a communication failure, the failure may be subject to criminal sanctions.

Department of Justice supports this approach in view of the potential for confusion from the Commission's use of the term material false statement in its civil context and prosecutions for material false statements under 18 U.S.C. 1001. However, should a violation of the proposed requirement for complete and accurate information be labeled as a material false statement, it is expected that the communication failure will be flagrant and involving, for example, instances (1) where an inaccurate or incomplete written or sworn oral statement is made knowing the statement is inaccurate or incomplete, or with careless disregard for its accuracy or completeness; or (2) where an inaccurate or incomplete sworn oral statement is made with a clearly demonstrable knowledge of its inaccuracy or incompleteness.

The Commission's existing material false statement policy is currently reflected in the General Statement of Policy and Procedure for NRC Enforcement Actions, 10 CFR Part 2, Appendix C. Modifications to this policy to reflect the new rules and the changes to Commission policy announced here will be made at the time a final rule on this subject is adopted by the Commission.

Environmental Impact: Categorical Exclusion

With respect to the proposed amendments to 10 CFR Parts 30, 40, 50, 60, 61, 70, 71, and 72, the NRC has determined that the proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). The NRC has also determined that the proposed amendments to 10 CFR Parts 55, 110, and 150 meet the eligibility criteria for the categorical exclusion described in 10 CFR 51.22(c)(1). Accordingly, neither an environmental impact statement nor an environmental assessment has been prepared in connection with the issuance of the proposed rule.

Paperwork Reduction Act Statement

This proposed rule would add a specific information collection requirement that is subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This proposed rule is being submitted to the Office of Management and Budget for review and approval of the paperwork requirement.

Regulatory Analysis

The Commission's current requirement for accuracy and completeness of information provided to the Commission is specified in the adjudicatory decision rendered with

respect to an enforcement action taken against Virginia Electric Power Company in 1976. The proposed rule would articulate this requirement, which governs the day-to-day interactions between NRC personnel and licensees and applicants, in a regulation issued under the Commission's general authority to establish instructions for the provision of information and reports to the Commission rather than by interpretation of the material false statement provision of section 186 of the Atomic Energy Act in an adjudicatory decision. Codifying this requirement is preferable to the only alternative, which is continued reliance on the adjudicatory decision, as the only statement of the requirement. Codification of the requirement will give the regulated community more explicit and accessible notice of the standards of accuracy expected of it and will give the Commission greater flexibility to enforce these standards without unnecessarily applying the label material false statement to communications from licensees and applicants. In view of the extensive public comments and the recommendations of the Advisory Committee for Review of the Enforcement Policy received in response to the Commission's request for evaluation of the existing practice and proposed changes to it, it is apparent that this proposed rule is the preferred alternative and the cost entailed in its promulgation and application is necessary and appropriate. The foregoing discussion constitutes the regulatory analysis for this proposed rule.

Backfit Statement

The proposed rule codifies the existing obligations of applicants and licensees to provide information relating to licensed activities which could have significant implications for those activities and to ensure that all information provided to the Commission or maintained pursuant to Commission requirements is complete and accurate in all material respects. The Commission has determined, therefore, that the backfit rule, 10 CFR 50.109, does not apply to the proposed rule. The rule is purely administrative in nature, and therefore does not result in the "modification of or addition to systems, structures, components, or design of a facility . . . or the procedures or organization required to design, construct, or operate a facility. . ." See 10 CFR 50.109(a)(1).

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), and consistent with NRC's Size Standards published December 9, 1985 (50 FR 50241), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. The proposed rule, which will affect large and small licensees alike, merely codifies an existing requirement, established through an adjudicatory decision, that all information provided to the Commission relating to licensed activities or maintained pursuant to Commission requirements be complete and accurate in all material respects. In addition, the proposed rule, if adopted, would reduce the existing burden on licensees because the full disclosure aspect of the current judicially imposed requirement has been modified to limit it to that information which the licensee itself has determined has a significant implication for licensed activities.

Any small entity subject to this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this in a comment that indicates the following:

- (a) The licensee's size in terms of annual income or revenue, and number of employees;
- (b) How the proposed regulation would result in a significant economic burden upon the licensee as compared to that on a larger licensee;
- (c) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities.

List of Subjects

10 CFR Part 30

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

10 CFR Part 40

Government contracts, Hazardous materials—transportation, Nuclear materials, Penalty, Reporting requirements, Source material, Uranium.

10 CFR Part 50

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

10 CFR Part 55

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

10 CFR Part 60

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

10 CFR Part 61

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

10 CFR Part 70

Hazardous materials—transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 71

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

10 CFR Part 72

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

10 CFR Part 110

Administrative practice and procedure, Classified information, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 150

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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 30, 40, 50, 55, 60, 61, 70, 71, 72, 110 and 150.

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

1. The authority citation for Part 30 is revised to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 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, 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 (442 U.S.C. 2234). Section 30.61 also issued under Sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 30.3 30.34 (b) and (c), 30.41(a) and (c), and 30.53 are issued under sec. 161b., 68 Stat. 948 as amended (42 U.S.C. 2201(b)); and §§ 30.6, 30.9, 30.36, 30.51, 30.52, 30.55 and 30.56 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Immediately following § 30.8, a new § 30.9 is added under the undesignated center heading "General Provisions" to read as follows:

§ 30.9 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

3. 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, 955, as amended; secs. 11(e)(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, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 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) is 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).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 40.3, 40.25(d) (1) through (3), 40.35(a) through (d), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948 as amended, (42 U.S.C. 2201(b)); and §§ 40.5 40.9 40.25 (c), (d) (3), and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64 and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. Immediately following § 40.8, a new § 40.9 is added under the undesignated center heading "General Provisions" to read as follows:

§ 40.9 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

5. The authority citation for Part 50 is revised to read as follows:

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

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). 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 through 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100 through 50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) under 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. Immediately following § 50.8, a new § 50.9 is added under the undesignated center heading "General Provisions" to read as follows:

§ 50.9 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license condition to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the

Commission by other reporting or updating requirements.

PART 55—OPERATORS' LICENSES

7. The authority citation for Part 55 is revised to read as follows:

Authority: Secs. 107, 161, 68 Stat. 939, 948, as amended (42 U.S.C. 3137, 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Section 55.40 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 55.3 and 55.31 (a) through (d) are issued under sec. 1611, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 55.6b, 55.9 and 55.41 are issued under sec. 1610, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

8. Immediately following § 55.6a, a new § 55.6b is added under the undersigned center heading "General Provisions" to read as follows:

§ 55.6b Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

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

9. 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); sec. 121, Pub. L. 97-425, 98 Stat. 2228 (42 U.S.C. 10141).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 60.8a, 60.71 to 60.75 are issued under sec. 1610, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

10. Immediately following § 60.8, a new § 60.8a is added to Subpart A to read as follows:

§ 60.8a Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

11. 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 5821).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); Tables 1 and 2, §§ 61.3, 61.24, 61.25, 61.27(a), 61.41 through 61.43, 61.52, 61.53, 61.55, 61.56, and 61.61 through 61.63 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 61.8a, 61.10 through 61.16, 61.24, and 61.80 are issued under sec. 1610, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

12. Immediately following § 61.8, a new § 61.8a is added to Subpart A to read as follows:

§ 61.8a Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 70—DOMESTIC LICENSING OR SPECIAL NUCLEAR MATERIAL

113. 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, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246, (42 U.S.C. 5841, 5842, 5845, 5846).

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). Section 70.36 and 70.44 also issued under sec. 164, 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).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.19(c), 70.21(c), 70.22(a), (b), (d) through (k), 70.24(a) and (b), 70.32(a)(3), (5), (6), (d), and (i), 70.36, 70.39(b) and (c), 70.41(a), 70.42(a) and (c), 70.56, 70.57(b), (c), and (d), 70.58(a) through (g)(3) and (h) through (j) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 70.7, 70.20a (a) and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32(a)(6), (c), (d), (e), and (g), 70.36, 70.51(c) through (g), 70.56, 70.57(b) and (d), and 70.58(a) through (g)(3) and (h) through (j) are issued under sec. 1611, 68 Stat. 949, as amended (42 U.S.C. 2201(i));

and §§ 70.5, 70.9, 70.20b(d) and (e), 70.38, 70.51(b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58(g)(4), (k), and (l), 70.59 and 70.60(b) and (c) are issued under sec. 1610, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

14. Immediately following § 70.8, a new § 70.9 is added under the undesignated center heading "General provisions" to read as follows:

§ 70.9 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

15. The authority citation for Part 71 is revised to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 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, and 5846).

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

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 71.3, 71.43, 71.45, 71.55, 71.63 (a) and (b), 71.83, 71.85, 71.87, 71.89, and 71.97 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 71.5(b), 71.6a, 71.91, 71.93, 71.95, and 71.101(a) are issued under sec. 1610, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

16. Immediately following § 71.6, a new § 71.6a is added to subpart A to read as follows:

§ 71.6a Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 72—LICENSING REQUIREMENTS FOR THE STORAGE OF SPENT FUEL IN AN INDEPENDENT SPENT FUEL STORAGE INSTALLATION (ISFSI)

17. 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, 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, 2882); sec. 274, Pub. L. 88-273, 73 Stat. 688, as amended (42 U.S.C. 2021); secs. 201, 202, 206, 86 Stat. 1242, 1244, 1246, as amended (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).

Section 72.34 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2330 (42 U.S.C. 10154).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); Sections 72.6, 72.14, 72.15, 72.17(d), 72.19, 72.33(b) (1), (4), (5), (e), (f), 72.36(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 72.10, 72.15, 72.17(d), 72.33 (c), (d) (1), (2), (e), 72.81, 72.83, 72.84(a), 72.91 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 72.9a, 72.33 (b)(3), (d)(3), (f), 72.35(b), 72.50-72.52, 72.53(a), 72.54(a), 72.55, 72.56, 72.80(c), 72.84(b) are issued under sec. 1610, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

18. Immediately following § 72.9, a new § 72.9 is added to Subpart A to read as follows:

§ 72.9a Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL AUTHORITY

19. 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, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 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. 96-533, 94 Stat. 3138 (42 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 110.21 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 through 110.113 also issued under 5 U.S.C. 552, 554. Sections 110.30 through 110.35 also issued under 5 U.S.C. 553.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 110.20 through 110-29, 110.50, and 110.120 through 110.129

also issued under secs. 161b and i, 68 Stat. 948, 949, as amended (42 U.S.C. 2201(b) and (i)); and §§ 110.7(a) and 110.53 are also issued under sec. 161(o), 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

20. Immediately following § 110.7, a new § 110.7a is added to Subpart A to read as follows:

§ 110.7a Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

21. The authority citation for Part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2201i); sec. 201, 68 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued 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 150.17a 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).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); § 150.20(b)(2) through (4) and 150.21 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); 150.14 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and

§§ 150.16 through 150.19 and 150.20(b) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

22. The introductory paragraph of § 150.20(b) is revised to read as follows:

§ 150.20 Recognition of agreement state licenses.

(b) Notwithstanding any provision to the contrary in any specific license issued by an Agreement State to a person engaging in activities in a non-Agreement State or in offshore waters under the general licenses provided in this section, the general licenses provided in this section are subject to the provisions of §§ 30.7(a) through (e), 30.9, 30.14(d) and §§ 30.34, 30.41, and 30.51 to 30.63, inclusive, of Part 30 of this chapter; § 40.7(a) through (e), § 40.9, and §§ 40.41, 40.51, 40.61, 40.63, inclusive, 40.71 and 40.81 of Part 40 of this chapter; and § 70.7(a) through (e), § 70.9, and §§ 70.32, 70.42, 70.51 to 70.56, inclusive, 70.60 to 70.62, inclusive, and 70.71 of Part 70 of this chapter; and to the provisions of Parts 19, 20, and 71 and Subpart B of Part 34 of this chapter. In addition, any person engaging in activities in non-Agreement States or in offshore waters under the general licenses provided in this section:

Separate views of Commissioner Asselstine follow.

Dated at Washington, DC, this 6th day of March, 1987.

For the Nuclear Regulatory Commission,
John C. Hoyle,

Acting Secretary of the Commission.

Separate Views of Commissioner Asselstine

The Commission's proposal to substitute this regulation for its present standards governing material false statements suffers from two major flaws. First, it requires less than the full disclosure required by the Commission in the *VEPCO* case. Second, it fails to provide clear guidance to the licensees on what their responsibilities are in reporting information to the NRC.

The Commission has for ten years used the standards set out in the *VEPCO* case when taking enforcement action for misstatements or failures to report information. Licensees and applicants are required to assure that all submissions of material information are complete and accurate, whether made orally or in writing. In addition, licensees and applicants have an affirmative duty to report all material information to the Commission, even in the absence of a specific reporting requirement in the regulations. Material

information is that which has the capability of influencing a reasonable agency expert in the conduct of his duties.

That standard is rather broad, but the Commission has justified such a full disclosure requirement on the ground that it is essential to ensure that the Commission could fulfill its duty to protect the public health and safety. CLI-76-22, 4 NRC 480, 488. A full disclosure requirement is essential given the audit nature of the NRC's regulatory activities. Because the agency actually observes or inspects only a small portion of a licensee's activities, we must depend heavily on the licensee to identify and report to the NRC any problems which may affect the safety of the public. The full disclosure requirement established in *VEPCO* provides assurance that licensees will bring to the agency's attention all material safety information. Only with all relevant information can the NRC make a thorough appraisal before reaching a regulatory decision. While specific reporting requirements in regulations are important to provide guidance to the licensees, they are not sufficient to ensure full disclosure:

... no set of specific regulations, however carefully drawn, can be expected to cover all possible circumstances. Information may come from unexpected sources or take an unexpected form, but if it is material to the licensing decision and therefore to the public health and safety it must be passed on to the Commission if we are to perform our task. 4 NRC 489.

Thus, the Commission properly felt that a full disclosure provision which is broad enough to cover all circumstances is necessary. The Commission said that a healthy dose of common sense and a look at the context in which the issue arose would be sufficient to resolve most problems which might arise because of the breadth of the requirement. That has, in fact, been the case in the past ten years since the *VEPCO* decision was issued. The Commission has used the material false statement violation in a limited number of cases and only after careful review. The Commission's judicious use of these citations has effectively corrected deficient performance on the part of a few licensees and has served as a reminder to the rest of the industry of the need for full disclosure of material information.

The Commission is no longer willing to rely on common sense, however. Largely because of concerns raised about the difficulty of controlling the oral statements of all licensee employees and about the pejorative

connotations of the label "material false statement" the Commission has decided to engage in rulemaking to articulate a modified policy on disclosure of information. Unfortunately the proposed rule fails to accomplish one of the primary purposes of rulemaking—to establish clear guidance to the regulated entities. Rather, the rule discards well-thought-out and well-established principles and substitutes something that even the lawyers will have difficulty understanding.

Subsection b. of the proposed rule is the Commission's substitute for the full disclosure requirement. It falls far short of the *VEPCO* standard. First, The rule limits the ability of the Commission to take enforcement action if a licensee fails to report significant information. The rule only requires disclosure of information, which is not otherwise required by regulation, order, statute, or license condition, in those cases where the licensee has *identified* it as "having for the regulated activity a significant implication" for the public health and safety. This standard in effect allows the licensee to determine what information is relevant to the conduct of agency business. It is unusual, to say the least, for an agency to leave up to the regulated entity the determination of what information is material for purposes of deciding whether to take enforcement action. The Commission does not explain what benefit this additional element provides. In fact, it will add to the difficulty in taking enforcement action because it requires proof of a new element, the fact of identification by the licensee.¹

Moreover, the rule includes no provision for enforcement action if the licensee should have identified information as being significant and did not. A licensee only violates subsection b. if it actually identifies information and fails to report it. If the licensee fails to identify significant information, the Commission can take no enforcement action based on the rule. The Commission states that it intends to fall back on its general authority to revoke, suspend or modify licenses in those cases where there is a question about the reasonableness of the licensee's failure to identify information as being significant:

... an order might be appropriate where the action of the licensee in not recognizing the significance of the information and failing

to report it, together with the relevant facts, raises serious questions about either its competence, *i.e.*, its ability to evaluate information, or its trustworthiness, *i.e.*, its failure to consider potentially significant information for evaluation.

Thus, the rule provides that a licensee can be penalized under the rule only for failure to report information it has identified as significant. Yet, according to the Commission, the licensee can be penalized under the Commission's general regulatory authority for failure to identify information as being significant. However, the Commission fails to explain what standards will be used in determining whether to take enforcement action for a failure to identify. There certainly are no standards in the rule. This seems to be a particularly clumsy way of regulating the reporting of significant information. A more logical approach would be to set out a clear standard governing what information the Commission thinks should be reported and to clearly explain when licensees will be subject to enforcement action for failure to report such information. It would be easier for the licensees to understand and would not require them to go beyond the rule to understand when they might be penalized for failure to identify information.

A third problem with the proposed rule is that the Commission has raised the threshold for what information has to be reported. Under *VEPCO* the full disclosure standard requires that a licensee report any information which has the capability to influence a reasonable agency expert. The Commission has substituted for that standard a requirement that licensees report information "having for the regulated activity significant implications for the public health and safety and the common defense and security." What that phrase means is anybody's guess. The Commission makes no attempt to explain what it means, and it certainly has no accepted legal definition as does the term "material" which is used in the Commission's present standard. Once again the Commission fails to add clarity. Rather, this phrase will only provide fertile ground for litigation.

The only thing that is clear about this phrase is that it sets a higher threshold for reporting than that required under the present full disclosure requirement. Obviously by inserting the term "significant" into the rule the Commission meant to require something less than that all material information be reported. The Commission fails to explain why such a change is necessary, what benefit will accrue from the

change, or how the change will help the Commission to ensure that it is aware of all relevant information when it carries out its duty to protect the public health and safety.

The Commission's rule thus fails not only to require full disclosure of material safety information, but it fails to provide clear guidance. The law on material false statements was well settled and worked effectively for ten years. The Commission has substituted for that long-settled law a rule which makes requirements less clear, which establishes new standards that make little sense, which will only make it more difficult to take enforcement action, and which will surely lead to much litigation. The benefits of this rule are, on the other hand, difficult to discern. The rule certainly will not encourage full disclosure, and it does nothing to clarify Commission requirements. In its effort to ensure that reporting violations will no longer be labelled material false statements, the Commission has diminished the NRC's ability to obtain the information it needs to discharge its safety mission and to deal effectively with licensees who fail to provide the agency with needed information.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 332

Powers Inconsistent With Purposes of Federal Deposit Insurance Law

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Extension of deadline for consideration, adoption, and publication of final rule.

SUMMARY: This notice serves to extend the period of time which the FDIC may use under its internal policy statement for the consideration, adoption, and publication of the FDIC's final rule on participation by insured banks in real estate development and insurance underwriting activities.

DATE: The deadline for final agency action on the proposed rule is extended to September 15, 1987.

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Senior Attorney, Legal Division, (202) 898-3743, or Robert E. Feldman, Senior Attorney, Legal Division, (202) 898-3743, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

¹ The Commission seems to recognize that there may be some difficulty in actually establishing that a licensee has identified information as significant because the Commission sets out in the statement of considerations a few examples of actions which may be indicative of identification.