



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

October 20, 1992

AD 62-2
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For
our
regulation
FILE

MEMORANDUM FOR: Samuel J. Chilk, Secretary

FROM: James L. Blaha
Assistant for Operations

SUBJECT: ADDITION TO SECY-92-324, FINAL RULE REGARDING
CLARIFICATION OF STATUTORY AUTHORITY FOR PURPOSES
OF CRIMINAL ENFORCEMENT

As a result of questions from a Commissioner's Assistant, the staff believes that addition of a footnote to the Federal Register Notice in the subject paper is appropriate to avoid any possible confusion as to the treatment in the rule of appendices in 10 CFR Chapter I. Therefore, I suggest that the following footnote 3 be added at the end of the first full paragraph on page 28:

3. In the case of a regulation issued under Sections 161b, 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 Reactors), the appendix is also deemed to have been issued under Sections 161b, i, or o.

The Office of the General Counsel has no legal objection to this change.

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Assistant for Operations

cc: J. Taylor, EDO
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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.

Gere McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92-26412 Filed 11-23-92; 8:45 am]

BILLING CODE 4410-10-M

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 substantive, specified in 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 authority 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 10406).

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 (58 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-585, 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, 72.96, 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 licensee 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 recency 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 1968 and 1969 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.*

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

* In the case of a regulation issued under sections 161 b, i, or o, which refers to an appendix (e.g., 20 CFR 50.54(a) 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 85

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. 946, as amended (42 U.S.C. 2201); sec. 201, 68 Stat. 1242, as amended (42 U.S.C. 5841); Section 11.15(e) also issued under sec. 501, 65 Stat. 290 (31 U.S.C. 483a).

2. A new section 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

1610 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, 946, 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:

(i) 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, 946, 953, 955, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 20.406 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:

(i) 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, 20.2, 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); sec. 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

1610 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, 60 Stat. 942, 945, as amended (42 U.S.C. 2195, 2201), sec. 201, 68 Stat. 1242, as amended (42 U.S.C. 5841) E.O. 10965, as amended, 3 CFR 1959-1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12346, 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, 60 Stat. 930, 935, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2111, 2112, 2123, 2134, 2137, 2201), secs. 201, 202, 206, 68 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, 26.5, 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. 61, 62, 161, 162, 163, 166, 60 Stat. 935, 946, 953, 954, 955, as amended, sec. 234, 63 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2262), sec. 201, as amended, 202, 206, 68 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. 2851 (42 U.S.C. 5851).
Section 30.34(b) also issued under sec. 164, 68 Stat. 954, as amended (42 U.S.C. 2234).
Section 30.61 also issued under sec. 157, 68 Stat. 935 (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, 61, 62, 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. 61, 161, 163, 60 Stat. 935, 946, 954, as amended (42 U.S.C. 2111, 2201, 2233); r. cs. 201, as amended, 202, 68 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).
Section 31.6 also issued under sec. 274, 73 Stat. 588 (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, 61, 62, 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, 162, 163, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 68 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, 162, 163, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 68 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, 162, 163, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 68 Stat. 1242, as amended (42 U.S.C. 5841).

Section 34.32 also issued under sec. 206, 68 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

156 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, 66, 81, 82, 161, 182, 183, 186, 68 Stat. 929, 930, 932, 933, 934, 945, 946, 953, 954, 955, as amended, sec. 234, 63 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, 946, 953, 954, 955, as amended, sec. 11e(2), 63, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 63 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, 79 Stat. 660 (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, 162, 183, 186, 189, 68 Stat. 936, 937, 938, 946, 953, 954, 955, 956, as amended; sec. 234, 63 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 68 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. 653 (42 U.S.C. 4332). Sections 50.13, 50.5a(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.33, 50.35, 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. 653 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 68 Stat. 1245 (42 U.S.C. 5844). Sections 50.58-50.91, and 50.82 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, 162, 183, 186, 189, 68 Stat. 936, 946, 953, 954, 955, 956, as amended, sec. 234, 63 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 68 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, 946, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 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, 946, 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, 183, 68 Stat. 939, 948, 953, as amended, sec. 234, 83 Stat. 1244, 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. 2282 (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. 939, 932, 933, 935, 946, 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, 162, 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, 68 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, 16a, 163, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 63 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 68 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 70.71(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, 86 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. 185, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 938, 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, 162, 163, 68 Stat. 930, 932, 933, 935, 946, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233); sec. 201, as amended, 202, 206, 86 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 71.97 also issued under sec. 901, 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, 71.32, 71.35, 71.37, 71.50, 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, 85, 89, 81, 161, 162, 163, 164, 166, 167, 169, 68 Stat. 929, 930, 932, 933, 934, 935, 946, 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, 2262); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 86 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. 2220, 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 sec. 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. 169, 66 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 sec. 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, 96 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, 946, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 68 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under sec. 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. 670 (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, 90 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, 181, 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, 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. 96-92, 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, 88 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); sec. 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, 140.9i, 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, 66 Stat. 9-8, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021), sec. 201, 66 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, 66 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, 66 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, 66 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, 150.13, 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. Chalk,

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

Add the following OIDs to the remaining dyes:

9203090065 - AD62-2 012
Suppl 01 - 57FR55062

9203120051 - AD62-2 013
01 - 57FR55062

9203190215 - AD62-2 014
01 - 57FR55062

9203190243 - AD62-2 015
01 - 57FR55062

9203270008 - AD62-2 016
01 - 57FR55062

9204020003 - AD62-2 017
01 - 57FR55062

9203270013 - AD62-2 018
01 - 57FR55062

9204020001 - AD62-2 019
01 - 57FR55062

9203270022 - AD62-2 020
01 - 57FR55062

9204020097 - AD62-2 021
01 - 57FR55062

9209240502XA - AD62-2 022
XB - 57FR55062

9210290145 - AD62-2 023
01 - 57FR55062

UNIVERSITY OF CALIFORNIA, LOS ANGELES

ACFOSEI RULE #11, 19 et al. 3c
(57 FR 222) UCLA book

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PDR

UCLA SCHOOL OF MEDICINE
HARBOR - UCLA MEDICAL CENTER
DEPARTMENT OF RADIOLOGY
1000 CARSON STREET
TORRANCE, CALIFORNIA 90509

February 13, 1992

Samuel Chilk, Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Services Branch

Reference: Clarification of Statutory Authority for Purposes of
Criminal Enforcement (RIN 3150-AD62); FR 57 (2),
3 January 1992, pp 222-236

Dear Mr. Chilk:

I do not believe it is in the interest of this Nation to permit the Nuclear Regulatory Commission to subject violators of its regulations to criminal penalties for willful violation, attempted violation, or conspiracy to violate as the Proposed Rule is currently drafted. The Commission lists the regulations that affect nuclear medicine and nuclear pharmacy practitioners among those in jeopardy of criminal penalties. This is inappropriate for two reasons. First, the regulations and license conditions involving the practices of nuclear medicine and pharmacy are so incompatible with the effective and efficient delivery of quality healthcare services that many professionals engaged in providing these services are forced to commit willful violation, attempted violation, or conspiracy to violate regulations and license conditions regularly in order to practice. Second, medical and pharmacy malpractice issues are a matter of State, not NRC law.

It is not that we have not ardently tried to change the regulations and license conditions, however. It is just that NRC does not understand the issues. I have correspondence going back fourteen years and we have had a monumental push for improvement over the past five. Things are getting worse, not better. If the NRC prevents healthcare professionals from doing their best to care for their patients, it is NRC who should suffer criminal penalties, not the healthcare providers.

Consider the following situation. Approximately 90,000 doses of I-131-NaI per year are too volatile and need to be chemically stabilized to prevent I-131-I₂ gas inhalation by workers and members of the public. If a nuclear pharmacist stabilizes it he is willfully violating his license condition that prevents him from practicing nuclear pharmacy. If he does not stabilize it, he violates his ALARA license condition to decrease radiation absorbed dose. Would NPC kindly tell us which "sin" has greater criminal penalties, so we may direct our "sin" in the least punitive

9203090065

February 13, 1992
Samuel Chilk, Secretary
Page -2-

direction? As NRC has inflicted large penalties for practicing nuclear pharmacy already, it would appear that ALARA is not important. However, several years ago I achieved the I-131 "action level" in my technologist's thyroid when he dispensed unstabilized I-131-NaI because of a license condition forbidding stabilization. I think NRC should receive criminal penalties for the radiation absorbed dose inflicted on my technologist. Let's see, what would be appropriate? How about 30 days in jail rewriting the regulations, and no more Senior Executive Service bonuses until they are fixed?

And what of Dennis Honeychurch, who obtained his Masters in Radiopharmacy at USC in the nineteen seventies, accepted a position at the Oakland, CA Naval Hospital, and has been trying to get an NRC license to practice nuclear pharmacy ever since? Mr. Honeychurch even obtained a supportive decision from the California Attorney General in 1978, but NRC still refuses to recognize the practice of nuclear pharmacy. The FDA cooperates by giving Mr. Honeychurch many IND's for "investigational drugs" that have been in general clinical use for 20-30 years in order to help him "get around" NRC's regulations and license conditions. Is this "conspiracy to violate" the regulations? A little over a year ago I brought the entire pitiful correspondence between Mr. Honeychurch and NRC to senior NRC management for resolution. There has not been any answer yet. Presumably, it is all tied up with the SNM/ACNP Petition which is unresolved after 32 months. According to NRC's Agenda of Regulations, a Proposed Rule to cover the issues raised in our Petition is scheduled for 2/28/93. Four years to get out Proposed Regulations for a 13-page Petition supported by about 250,000 health care professionals? When Mr. Cunningham asked me to write the Petition he wanted final regulatory language included. He assigned the Chief of the Medical Section to work with me to assure that that language was compatible with NRC's regulatory structure. The last five of the 13 pages is final regulatory language. We did the staff's job when we wrote the Petition. It should have been published as written as a Proposed Rule within four weeks. It still should. Senior management and policy-makers need to read the Petition themselves, instead of trusting staff interpretations.

Does anyone remember NRC's Immediately Effective Rule on Assistance to Prospective Petitioners published in FR 56(48), 12 Mar 91, p. 10359? In announcement No. 26 dated Mar. 21, 1991, explaining the Rule, it says on p. 3, "A petition must be resolved within 12 months from the date of publication of the notice of receipt in the Federal Register. The Office assigned action to address the petition must establish a milestone schedule. Any extension of the schedule to resolve a petition beyond 12 months must be approved by

February 13, 1992
Samuel Chilk, Secretary
Page -3-

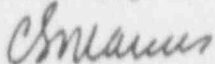
the EDO". I guess that means that a petition must be resolved within 12 months, unless it's not

I have an idea for a New Rule: "The NRC must understand and resolve all contentious issues within 12 months or else NRC forfeits its claim or right to regulate it". This has real possibilities, especially if applied to all federal regulatory agencies.

Getting back to that "Assistance to Prospective Petitioners" Rule, it states on p. 2 of the announcement that "After a petition has been submitted and the staff has reviewed the merits of the petition, discussions between the staff and petitioner regarding the wording for specific provisions of the regulations must occur in an open public forum". This means that if the NRC messes up and someone submits a petition to fix it, the petitioner cannot educate the staff that needs to fix the problem the staff created. Hm-m-m. The ACNP and SNM submitted a petition concerning broad aspects of the practices of nuclear medicine and pharmacy and medical research. That means that all 12,500 of us cannot talk to NRC staff about medicine, pharmacy, or medical research, except during an open, public forum, presumably advertised in the Federal Register. Well, many of us are ignoring that and communicating with staff anyway. I can just see NRC now, getting all geared up to inflict criminal penalties on us for "conspiracy toeducate"?

Help!

Sincerely,



Carol S. Marcus, Ph.D., M.D.
Director, Nuclear Med. Outpt. Clinic
and
Assoc. Prof. of Radiological Sciences
UCLA

CSM:sfd



S. Harris

"Although humans make sounds with their mouths and occasionally look at each other, there is no solid evidence that they actually communicate among themselves."

11, 19 et al.
(57 FR 222)

LETTER
NHC



SHANDS HOSPITAL
at the University of Florida

'92 MAR -5

February 25, 1992

2

Samuel Chilk, Secretary
U.S. Nuclear Regulatory Commission
Washington, D.D. 20555

Attention: Docketing and Services Branch

Reference: Clarification of Statutory Authority for Purposes
of Criminal Enforcement (RIN 3150-AD62); FR 57
(2), January 3, 1992, pp 222-236

Dear Mr. Chilk:

I am totally amazed that the Commission has chosen this time to clarify this issue. Without knowing the full extent of incompatibilities with Agreement State Programs (extended comment period) and without regard to the turmoil in the current 10 CFR 35, the Commission has chosen this time to fix "errors" that have existed for almost 30 years. I am relieved though that the commission has chosen to admit that wording had previously been imprecise and that "From time to time, errors have been made ...". Apparently the Commission needs to develop a quality assurance rule to encourage the writing and adopting of appropriate regulations.

According to the oldest issue of 10 CFR that I have (1978):

10 CFR Part	Effective Date	Penalties?
19	March 3, 1975	19.3 Violations
20	March 3, 1975	20.601 Violations
21	June 6, 1977	21.61 Failure to notify (Civil penalty)
30	June 16, 1965	30.63 Violations
31	August 17, 1973	30.63 Violations
32	June 26, 1965	30.63 Violations
33	Sept. 28, 1968	not specific
34	June 26, 1965	not specific

92-309025 0

Pharmacy Services

10 CFR Part	Effective Date	Penalties?
35	June 26, 1965	not specific
40	Jan. 14, 1961	40.81 Violations
50	Jan. 19, 1956	50.110 Violations
55	April 3, 1963	55.50 Violations
70	Feb. 3, 1956	70.71 Violations
71	July 22, 1966	71.64 Violations
73	Dec. 28, 1973	73.80 Violations
140	April 7, 1960	not specific
150	Feb. 14, 1962	150.30 Violations

It is important to note that 10 CFR 33, 34, & 35 deal mainly with licensing of medical facilities, radiographic uses and human uses of byproduct materials. These are also the sections to which "Violations" and "Criminal Penalties" sections are new. These sections of title 10 are nearly 30 years old. Why is it so important to add these sections now? Is the Nuclear Medicine community not complying with current regulations? Could it be that the current regulations are impossible to live with? Does the Commission think that it is better to impose criminal penalties instead of fixing the regulations so that they are compatible with other Federal and State laws.

The commission now thinks that mistakes have been made? Can we expect the same kind of time frame for a review of everything the commission does? I hope not. Currently there are major problems with 10 CFR 35 as is well known. The commissions failure to resolve these problems now places Nuclear Medicine practitioners in jeopardy of criminal prosecution if they do not obey regulations which are in conflict with the FDA, State Boards of Pharmacy, and State Boards of Medicine. Apparently it is the Commissions intent not to regulate by developing laws that people can comply with but to create confusion and fear. Now practitioners must decide whether they want to be sued for malpractice or thrown in jail.

The other section to which "Violations" and "Criminal Penalties" is new (10 CFR 140) deals with Financial Protection Requirements and Indemnity Agreements. Under 140.89 Criminal Penalties (b) ...not issued under... are ...140.8 Specific Exemptions, plus many others. As I understand it the Commission could exempt someone from liability in the use of byproduct material and, according to this latest paragraph, the Commission has made itself exempt from any liability for making this decision.

To summarize it appears that the true purpose for these changes is to create fear in the Nuclear Medicine community and to insure that the commission itself cannot be blamed for any future mistakes it might make. All of the other 10 CFR parts referred to already had this basic language in place.

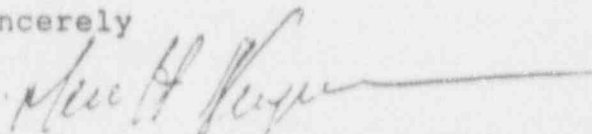
In a rational system where people trust each other comments such as these would be called paranoid. Unfortunately this is not the case. The NRC has worked hard to achieve this well deserved level of mistrust.

My recommendation is to dissolve this bureaucracy known as the NRC and start over. Any hope for the revival of the Nuclear Power Industry will most certainly suffer, as the Nuclear Medicine community is suffering now, if it is at the mercy of an organization that takes anywhere from 4 to 30 years to make up its mind or correct a mistake.

I anticipate that, as with the original directive from the Commission to the NRC staff to write the "Quality Assurance" Rule, this letter will be edited and stamped "Censored" pursuant to Section 161i of the Act and pertinent points will never see the light of day, so copies will be forwarded to appropriate individuals.

I would like to supply additional comments but I must work for a living. These changes may be a blessing in disguise. The inconsistencies in these various regulations may finally be cleared up by the criminal court system.

Sincerely



John H. Kuperus, Ph.D., BCNP, R.Ph.
Radiologic Pharmacy Coordinator

msp/JHK

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(703) 790-7900

FACSIMILE
(703) 82-2397

JAY E. SILBERG, P.C.
(202) 663-8063

March 6, 1992

3

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

ATTN: Docketing and Services Branch

Re: Proposed Rulemaking, "Clarification of Statutory
Authority for Purposes of Criminal Activity"

Dear Mr. Secretary:

This letter sets forth comments on the proposed rule published by the NRC on January 3, 1992, regarding "Clarification of Statutory Authority for Purposes of Criminal Enforcement." See 57 Fed. Reg. 222 (1992). The proposed rule purports "to identify more clearly those regulations which may subject the violator to criminal penalties for willful violation, attempted violation, or conspiracy to violate." Id. The rule would create within numerous regulations a new section explicitly addressing criminal penalties, and would specify for purposes of such penalties those regulatory provisions issued under sections 161(b), 161(i), or 161(o) of the Atomic Energy Act of 1954 ("Act"), 42 U.S.C. §§ 2201(b), (i), (o).^{1/}

Our comments focus on two major concerns with the proposed rule: (1) it adopts an excessively broad position regarding the NRC's authority to issue regulations under 42 U.S.C. §§ 2201(b), (i), and (o) for purposes of criminal penalties, and (2) it fails to state expressly that the penalties will not operate retroactively. We elaborate upon these concerns below.

^{1/} Section 223 of the Act, 42 U.S.C. § 2273, imposes criminal penalties for the willful violation of any regulation or order prescribed or issued under §§ 65, 161(b), 161(i), or 161(o) of the Act.

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Secretary of the Commission
March 6, 1992
Page Two

I. SCOPE OF NRC AUTHORITY TO ISSUE REGULATIONS
UNDER 42 U.S.C. §§ 2201(b), (i) & (o)

The proposed rule adopts a very expansive position as to which NRC regulations are issued under §§ 2201(b), (i), or (o) for purposes of subjecting willful violators to criminal enforcement under § 2273. The supplementary information maintains that the rulemaking authority in §§ 2201(b), (i) and (o) constitutes the basis for virtually all NRC regulations containing "substantive requirements" as opposed to mere "administrative" matters. See 57 Fed. Reg. at 222-23. Consequently, the proposed rule lists myriad "substantive" regulations into which the new "criminal penalties" sections are to be incorporated.

We submit that the list is exceedingly broad in scope. Under the proposed rule's interpretation of § 2273 and §§ 2201(b), (i), and (o), a willful violation of any substantive NRC regulation would create criminal liability. This interpretation contravenes the intentions expressed by Congress when it adopted the Act and related statutes addressing nuclear power.

The legislative history of the Act characterizes § 2273 as establishing "the criminal penalties for violation of . . . rules and regulations issued under certain specified limited statutory authority." S. Rep. No. 1699, 83rd Cong., 2nd Sess. (1954), reprinted in 1954 U.S. Code Cong. & Ad. News 3456, 3486 (emphasis added). The words "certain," "specified" and "limited" cannot be said to reflect a Congressional intention to make criminal penalties potentially applicable to violations of any substantive rule or regulation.

The absence of such a Congressional intention is further indicated by the language and legislative histories of other nuclear-related statutes. By way of example, we focus upon two provisions of the Energy Reorganization Act of 1974, 42 U.S.C. §§ 5846 and 5851. These statutory provisions are implemented by regulations into which the proposed rule would incorporate "criminal penalties" sections. For both provisions, however, Congress plainly envisioned that only civil penalties would be available.

Section 5846 applies to "[a]ny individual director or responsible officer of a firm constructing, owning, operating or supplying the components of any facility or activity which is

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March 6, 1992
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licensed or otherwise regulated pursuant to [the Act]." See 42 U.S.C. § 5846(a). Any such person must immediately notify the NRC if he obtains information reasonably indicating that the facility or activity, or a "basic component" delivered or offered for acceptance:

(1) fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission relating to substantial safety hazards, or

(2) contains a defect which could create a substantial safety hazard, as defined by regulations which the Commission shall promulgate

Id. Under § 5846(b), "[a]ny person who knowingly and consciously fails to provide the [required] notice . . . shall be subject to a [monetary] civil penalty" Thus Congress clearly intended that a § 5846 violation would create civil, and not criminal, liability. Notwithstanding this plain legislative language, the NRC regulations implementing § 5846, 10 C.F.R. Part 21, are among those to which the proposed rule would attach criminal penalties. See 57 Fed. Reg. at 226-27.

Like the statutory language, the legislative history also fail to support criminal penalties for violations of § 5846. The Senate bill which ultimately became § 5846, as reported by the Government Operations Committee, originally provided criminal penalties for a knowing and willful violation of that section. See S. Rep. No. 980, 93rd Cong., 2nd Sess. (1974), reprinted in 1974 U.S. Code Cong. & Ad. News 5470, 5478, 5527. The conference substitute, however, made "modifications to eliminate the provision for criminal penalties, making only civil penalties applicable in amounts as provided by Section 234 of the Atomic Energy Act" See Conf. Rep. No. 1445, 93rd Cong., 2nd Sess. (1974), reprinted in 1974 U.S. Code Cong. & Ad. News 5538, 5550 (emphasis added). In the section dealing with civil penalties, the conferees also substituted the phrase "knowingly and consciously" for the original phrase of "knowingly and willfully," because "the latter term [would be] more applicable to a criminal act." Id. This history clearly indicates that Congress intended to make criminal penalties inapplicable to violations of

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§ 5846,^{2/} and therefore to violations of its implementing regulations, 10 C.F.R. Part 21. Incorporation into Part 21 of a "criminal penalties" section would directly contravene that intent.

The second statutory example, Section 5851 of Title 42, prohibits licensees and their contractors from discriminating against employees who will or have commenced, testified in, or otherwise participated in nuclear-related government proceedings. See 42 U.S.C. § 5851(a). The NRC regulations implementing § 5851 are set forth at 10 C.F.R. § 50.7, to which the proposed rule also would attach criminal penalties. See 57 Fed. Reg. at 230. Again, however, Congress did not intend for criminal penalties to pertain. Section 5851 does not itself provide for criminal penalties,^{3/} but only for civil enforcement actions. See § 5851(b)-(f). Therefore, the NRC regulation which implements § 5851 cannot have a criminal component either.

In sum, the final rule should not characterize regulations as issued under §§ 2201(b), (i), or (o), for purposes of criminal penalties, where such regulations (such as Part 21 and § 50.7) implement statutes which themselves have no criminal aspect (such as 42 U.S.C. §§ 5846 and 5851). This principle should especially pertain where, as in the case of § 5846, the legislative history expressly indicates that criminalization was not intended.

^{2/} Notably, § 5846 violations are not covered by the "catch-all" provision of 42 U.S.C. § 2273 imposing criminal penalties for willful violations of "any provision of this chapter for which no criminal penalty is specifically provided." 42 U.S.C. § 2273(a). Section 2273 is contained in Title 42's Chapter 23, which sets forth the Atomic Energy Act of 1954 (42 U.S.C. § 2011 et. seq.). Section 5846 is contained not in chapter 23, but in chapter 73, titled "Development of Energy Sources" and setting forth the Energy Reorganization Act of 1974. Therefore, § 5846 is not part of "this chapter" (23), and the "catch-all" provision of § 2273 is inapposite to § 5846 violations.

^{3/} For the reasons set forth above, the "catch-all" criminal provision in 42 U.S.C. § 2273 is inapposite to § 5851 as well. Like § 5846, § 5851 appears in Title 42's chapter 73, rather than the chapter which § 2273 addresses (chapter 23).

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We note that the Atomic Safety and Licensing Appeal Board has specifically disapproved the practice of citing §§ 2201(b), (i), and (o) as general authority for regulations issued to implement completely separate legislation. In Kerr-McGee Chemical Corp. (Kress Creek Decontamination), ALAB-885, 27 NRC 59 (1988), the NRC staff contended that the NRC had jurisdiction under § 2201(b) to require a cleanup effort in accordance with radioactivity-in-soil standards which the EPA had issued through Part 192 regulations under the Uranium Mill Tailings Radiation Control Act of 1978 ("Tailings Act"). The staff argued that the NRC could use the EPA's standards as a "guidepost" in the enforcement of its responsibilities under § 2201(b) even though neither the Tailings Act nor the Part 192 regulations were themselves enforceable in the proceedings at hand. The Appeal Board rejected that argument:

This . . . is but an improper attempt to do indirectly that which is barred directly. . . . Further, there is nothing to indicate that the Commission is authorized or intends to enforce or apply EPA's Part 192 standards pursuant to any statute other than the Tailings Act. . . . [A]bsent express Commission direction, the EPA Part 192 standards [cannot] be imported to provide the substantive basis for . . . a remedial order In other words, these standards, explicitly promulgated pursuant to different statutory authority and otherwise legally barred from application here, cannot be "legitimized" by the staff's mere invocation of section [2201(b)].^{4/}

27 NRC at 68.

Likewise, the mere invocation of §§ 2201(b), (i), and (o) cannot legitimize the imposition of criminal penalties against violators of regulations that were promulgated to implement separate statutes into which Congress refused to incorporate a criminal component. These regulations include, but are not

^{4/} The Appeal Board further noted that "the regulations traditionally applied by the NRC under section [2201(b)] are the agency's Part 20 radiation protection standards." 27 NRC at 68.

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necessarily limited to, Part 21 and § 50.7. Accordingly, we submit that Part 21, § 50.7, and any similarly situated regulations should be excluded from the scope of the final rule.

II. RETROACTIVITY

Neither the proposed rule nor its supplementary information indicates whether the new "criminal penalties" sections are to be applied retroactively to conduct committed before their promulgation. For the reasons discussed below, retroactive application would be illegal under Supreme Court rulings and the Constitution. If only for purposes of clarification, the supplementary information for the final rule should state explicitly that, in accordance with the law, application of the rule shall be prospective only.

In Bowen v. Georgetown University Hospital, 488 U.S. 204 (1986), the Supreme Court confirmed the existence of a presumption against the retroactivity of administrative rules. The Secretary of Health and Human Services ("HHS") had promulgated regulations setting limits on the levels of reimbursable Medicare costs. The Supreme Court held that these cost limits could not be applied retroactively. "Retroactivity is not favored in the law." Id. at 208. "Thus," the Court stated, "congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result." Id.^{5/} "By the same principle," the Court continued, "a statutory

^{5/} A 1974 Supreme Court case had espoused the seemingly opposite position that, absent a clear expression of contrary Congressional intent, "a court is to apply the law in effect at the time it renders its decision." Bradley v. Richmond School Bd., 416 U.S. 696, 711 (1974) (attorney's fees statute that went into effect during pendency of appeal was to be applied by appellate court). In Kaiser Aluminum & Chemical Corp. v. Bonjorno, 110 S. Ct. 1570, 1577 (1990), the Court recognized an "apparent tension" existing between Georgetown University Hospital and Bradley. However, the Court declined to resolve that tension because the Kaiser

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grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms." Id. (emphasis added). Congress had conveyed no such power to the HHS Secretary in that instance. Id. at 213-14.

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case could be decided on other grounds. Id. Cf. id. at 1579-88 (Scalia, concurring) (endorsing Georgetown University Hospital's standard as more in accordance with longstanding precedents and good policy).

Since Kaiser, most lower courts addressing the retroactivity issue have either followed Georgetown University Hospital or found that nonretroactivity would obtain under both that case and Bradley. See, e.g., Simmons v. Lockhart, 931 F.2d 1226, 1230 (8th Cir. 1991); Wilson v. United States, 917 F.2d 529, 537 (Fed. Cir. 1990), cert. denied, 111 S. Ct. 2825 (1991); Alpo Petfoods, Inc. v. Ralston Purina Co., 913 F.2d 958, 964 (D.C. Cir. 1990); DeVargas v. Mason & Hanger-Silas Mason Co., 911 F.2d 1377, 1388-90 (10th Cir. 1990), cert. denied, 111 S. Ct. 799 (1991); Khandelwal v. Compuadd Corp., ___ F. Supp. ___, 1992 WL 5953 (E.D. Va. 1992) (all choosing the Georgetown standard over the Bradley standard); United States v. Murphy, 937 F.2d 1032, 1036-38 (6th Cir. 1991); Leland v. Federal Ins. Administrator, 934 F.2d 524, 528-29 & n.7 (4th Cir.), cert. denied, 112 S. Ct. 417 (1991); Wright v. Director, FEMA, 913 F.2d 1566, 1572-73 (11th Cir. 1990) (all finding statutes or regulations nonretroactive under both Georgetown and a relatively narrow reading of Bradley).

The courts have been especially likely to eschew retroactivity where, as in Georgetown University Hospital, the retroactivity of a regulation rather than a statute was involved. See, e.g., Wright v. Director, FEMA, 913 F.2d at 1572; Criger v. Becton, 902 F.2d 1348, 1354 (8th Cir. 1990). This unwillingness retroactively to apply regulations apparently extends even to courts which would have applied

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Similarly, neither § 2273 nor §§ 2201(b), (i), and (o) contain any language expressly authorizing the NRC to issue retroactive regulations under those statutes. Under Georgetown University Hospital, therefore, the NRC's final rule regarding criminal penalties cannot be applied retroactively to conduct occurring prior to promulgation. See also New England Power Co. v. NRC, 683 F.2d 12, 15 n.4 (1st Cir. 1982) (a retroactive fees rule would be "unsupported" by the governing statute and "destructive of petitioners' justifiable reliance on the regulations as they previously read"); Air Transport Ass'n v. CAB, 732 F.2d 219, 227 n.16 (D.C. Cir. 1984) (same import).

Nor could it be legitimately argued that there is no retroactivity because the new rules merely "clarify" an existing potential for criminal liability under the regulations as currently written. The current regulations generally contain no references within their texts to criminal penalties for violations. Rather, the regulations contain only an oblique statement, within the fine print of their "authorities" citations, that for purposes of § 2273, the regulations were issued under §§ 2201(b), (i), and (o). The word "criminal" is nowhere mentioned. See, e.g., 10 C.F.R. Parts 21, 50.

In the supplemental information for the proposed rule, the Commission itself conceded that the current method of providing notice of criminal liability presents "several problems." 37 Fed. Reg. at 223. The Commission stated that "[i]t 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." Id. Additionally, the Commission acknowledged the need "to eliminate any uncertainty" and "to clearly, simply, and accurately . . . provide public notice" of criminal liability. Id. at 223-24. By the Commission's own admission, therefore, the current regulations do not provide adequate notice of

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Bradley had a statute been at issue instead. See Orrego v. 833 West Buena Joint Venture, 943 F.2d 730, 730 (7th Cir. 1991); Stender v. Lucky Stores, Inc., ___ F. Supp. ___, 1992 WL 2904 at 5 n.17 (W.D. Cal. 1992).

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potential criminal penalties, and thus cannot themselves authorize criminal prosecution. See also New England Power Co. v. NRC, supra (rejecting NRC argument that 1981 regulation merely "clarified" and stated what was "inherent" in 1978 regulation, and finding that latter did not provide license applicants with adequate notice of fee-charging policies). The issue again becomes the new regulations' retroactivity, and such retroactivity is impermissible under Georgetown University Hospital.^{6/}

In addition to Georgetown University Hospital's pronouncements regarding the nonretroactivity of administrative rules generally, the fact that the new regulations address criminal penalties would make retroactivity unconstitutional. The Constitution prohibits Congress and the state legislatures from enacting any "ex post facto" criminal law. See Article I, § 9, cl. 3; Art. I, § 10, cl. 1. The prohibition applicable to Congress applies equally to administrative agencies issuing regulations as an exercise of authority delegated by federal legislation, such as § 2273 and §§ 2201(b), (i), and (o). See Prater v. United States Parole Commission, 802 F.2d 948, 953-54 (7th Cir. 1986). Further, the Supreme Court has long considered "ex post facto" any law that aggravates a crime or inflicts greater punishment than the law annexed to the crime when committed. See Calder v. Bull, 3 U.S. (3 Dall.) 386, 390-91 (1798). Under this definition, the term "ex post facto" certainly would describe a regulation that did not just increase criminal penalties, but elevated violations to the criminal level where the previously available sanctions had been civil only.

Clearly then, the NRC would run directly afoul of the Constitution if it attempted to criminalize violations of its regulations retroactively. For this reason as well as the other reasons discussed above, the Commission should include in the supplementary information for the final rule a statement clarifying

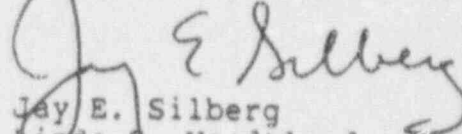
^{6/} Cf. United States v. Shabazz, 933 F.2d 1029, 1033 (D.C. Cir.) (courts should not give retroactive effect to new provisions merely because their authors have deemed them to be "clarifications" of old provisions, particularly where context is criminal law), cert. denied sub nom. McNeil v. United States, 112 S. Ct. 431 (1991).

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Secretary of the Commission
March 6, 1992
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that the criminal penalties referenced by the rule shall be prospective only.

Respectfully submitted,


Jay E. Silberg
Linda S. Wendtland



DEPARTMENT OF VETERANS AFFAIRS
Medical Center
Bay Pines FL 33504

PROPOSED RULE PR 11, 19 et al.

(57FR222)

AD 62-2 PDR

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March 12, 1992

OFFICE OF SECRETARY
In Reply Refer to DOCKETING & SERVICE
BRANCH

Samuel Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555
ATT: Docketing and Services Branch

(4)

RE: Clarification of Statutory Authority for Purposes of
Criminal Enforcement (RIN 3150-AD62); FR 57(2), 3 January 1992 (pp 222-236)

Dear Mr Chilk:

I read with much interest the above item cited from the Federal Register, and wish to submit the following comments to the Agency for consideration.

Personally, I find it incredible that the NRC would even consider subject violators of its regulations to criminal penalties for willful or attempted violation or conspiracy to violate as this draft rule implies, given the long track record that the Agency has demonstrated for the past 20 years (at least) in its every effort to delay acting in a timely manner almost every major issue that has come before it.

On issues involving the recognition of the practice of pharmacy, authorized nuclear pharmacist, the SNM/ACNP Petition for 10 CFR Part 35, the issues involving the ordering/dispensing of radioiodine pharmaceuticals, etc, in almost every instance, action taken by the Agency exceeded or has yet to even taken place within the scope of its published item of March 21, 1991 (FR 56(48), p 10359), in which it states that action would take place on matter brought before it within a 12 month time frame. While it is true that some of the items that I mention above were raised for discussion prior to this date, many of them never seem to have been rectified to the satisfaction of the nuclear medicine and nuclear pharmacy communities. Why?

Over the years, I have been in an position whereby I have worked with NRC staff members on various issues, especially those impacting nuclear pharmacy practice. It is not that individuals such as myself, and many others like me do not try. It just seems that our efforts to work with the Agency falls on deaf ears. Or there is the endless circular process on endless information gathering, and re-gathering, and analysis and re-analysis will no objective end-point to be seen. Often it seems that issues being addressed, are done so with a great deal of initial steam and enthusiasm, and once accumulated data reaches a certain point (especially one which appears to contradict the purported aim of the Agency), this issue is placed on the back burner, and further results are never heard about it again. Why?

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Though individual letters, and by way of letters that I have helped draft coming from the American Pharmaceutical Association and the American Society of Hospital Pharmacists, the outcome always seems to be one of the same. We strive to work with the NRC and to educate it on any given issue, but the end product is most often nebulous at best. Why?


Within the current Federal Register announcement on this item, several obvious problems exist in the thinking provided by the Agency. First, the regulations and license conditions involving the practices of nuclear medicine and nuclear pharmacy are so incompatible with the effective delivery of efficient and high quality health care, that often, we practitioners are forced to deviate from the intent of the requirements to order to achieve a level of practice that meets the needs of the patients whom we serve...and are committed too in terms of providing optimal care! Second, situations of potential medical and pharmacy malpractice are a matter that falls under the purview of State Boards of Medicine and Pharmacy respectively...not the NRC!

Now, if it is the intent of the Agency to apply the language contained within this Federal Register announcement only to those in nuclear power plants, whose errors in judgement can have drastic effects on the quality of life for the citizens of this country, than that is another issue altogether. If the NRC is concerned with matters in keeping with its Congressional mandate of assuring the public health and safety, then this is the obvious limit as to where its interests and efforts should lie.

As a practicing pharmacist for the past 12 years, and speaking on behalf of licensed physicians as well, I am not aware of anything contained within our respective "Code of Professional Ethics" that tells us to do anything other than hold the health and safety of the patients whom we serve in the highest regard. It is my perception that we strive on a daily basis, to achieve just that, despite the unbelievable burdens placed upon us by NRC regulations.

I sincerely hope that the Agency plans to re-evaluate whatever hidden agenda it currently holds onto, and likely plans to promulgate on this issue (perhaps regardless of the comments it receives today), and come to the realization once and for all, that we pharmacists and physicians no longer want intrusion into the practice of pharmacy and medicine! We are most eager and willing, as we have repeatedly try to show the Agency for many decades now, to help educate it on any number of critical issues. But if anyone is looking to point a finger of blame, one should spend a little more time taking a long hard look in a mirror and consider its own track record on issues that have, and continue to impact, on the practice of medicine and pharmacy.

Sincerely,



David L. Laven, NPh, CRPh, FASHP, FAPHA
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ACNP

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DOCKET NUMBER
PROPOSED RULE

PR

(57FR222)

USNRC

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The Society
of Nuclear
Medicine

March 12, 1992

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

(5)

Samuel Chilk, Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attn: Docketing and Services Branch

Re: RIN 3150-AD62; Clarification of Statutory Authority for Purposes of
Criminal Enforcement; FR Vol. 57, No. 2, January 2, 1992.

Dear Secretary Chilk:

These comments are submitted on behalf of the American College of Nuclear Physicians (ACNP) and the Society of Nuclear Medicine (SNM). Together, the ACNP and SNM represent approximately 14,000 physicians, scientists, academicians, and technologists who specialize in the production and medical application of radionuclides. The ACNP and SNM strongly urge the NRC to reconsider broad application of this rule as outlined in the Federal Register.

The NRC's "Principles of Good Regulation" (1990 Annual Report, p. 3; enclosed), lists independence, openness, efficiency, clarity, and reliability as conditions necessary to ensure safety. "Final [rule] decisions must be based on objective, unbiased assessments of all information, and must be documented with all reasons explicitly stated... Regulatory activities should be consistent with the degree of risk reduction they achieve... The public must be informed about and have the opportunity to participate in the regulatory processes..." For a proposed rule which could have serious and deleterious effects on the nuclear medicine community, we believe the rule making should include supportive data and an analysis of cost based on the "best available knowledge from research and operational experience."

The ACNP and SNM have requested the modification of several proposed and existing NRC regulations. The regulations, which include, but are not limited to, the Medical Quality Management Rule, the Interim Final Rule, and 10 CFR Part 20 Subpart D, are impractical and in some cases make compliance impossible for the practice of medicine and pharmacy. For this reason, deviation from regulations are necessary on occasion. The "Criminal Enforcement" proposed rule would place our members in an untenable situation. By following the letter of the law as indicated by existing regulations, in some cases, would be putting a patient's well being at risk. Conversely, if a physician uses his judgement as a licensed medical practitioner and deviates from NRC regulations, he or she could face criminal penalties if this rule were clarified and enforced.

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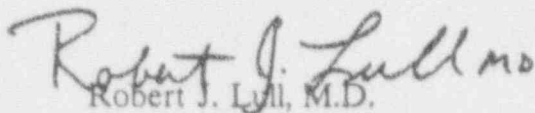
Page 2
Criminal Enforcement Comments
March 12, 1992

It was our understanding that Congress passed legislation thereby granting the NRC criminal authority to penalize nuclear reactor saboteurs and individuals who illegally obtain weapons-grade materials. This rule clearly extends beyond that realm and threatens the existence of certain sectors of industry, research, and medicine. Medical and pharmacy malpractice is governed by specific state law and professional organizations and is not the jurisdiction of the NRC.

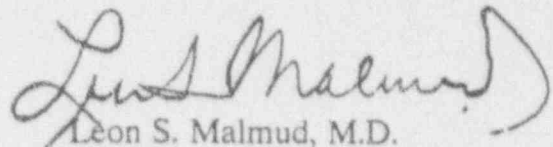
The ACNP and SNM requests that the NRC consider delaying this rule until existing medical use regulations are thoroughly revised. The professional medical and pharmacy organizations are eager to assist in this effort. In the interim, we suggest that the NRC exclude those violations which are necessary to patient care.

In summary, the ACNP and SNM do not believe the proposed rule demonstrates a need for a clarification of statutory authority for purpose of criminal enforcement. Nor does the rule identify where current enforcement is inadequate and how this rule addresses these inadequacies. ACNP and SNM can support a rule which addresses a specific, identifiable, real need in order to protect the public -- where such protection is warranted -- after weighing costs and benefits. We urge the NRC to table this proposed rule and revise existing regulations and license conditions using its own principals of good regulation.

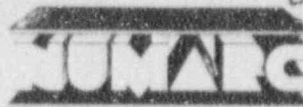
Sincerely,



Robert J. Lull, M.D.
President
American College of Nuclear Physicians



Leon S. Malmud, M.D.
President
The Society of Nuclear Medicine



DOCKET NUMBER
PROPOSED RULE

AD 62-2 PDR

PR 11, 19 et al.
(57 FR 222)

DOCKETED
USNRC

NUCLEAR MANAGEMENT AND RESOURCES COUNCIL

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92 MAR 18 P4:43

Robert W. Bishop
Vice President &
General Counsel

March 18, 1992

Mr. Samuel J. Chilk
Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, DC 20555

ATTENTION: Docketing and Services Branch

RE: Proposed Rule
*Clarification of Statutory Authority for
Purposes of Criminal Enforcement*
57 Fed. Reg. 222 (January 3, 1992)
Request for Comments

Dear Mr. Chilk:

The Nuclear Management and Resources Council, Inc. (NUMARC)', on behalf of the nuclear industry, is pleased to provide comments on the proposed rule, *Clarification of Statutory Authority for Purposes of Criminal Enforcement*, noticed in the Federal Register on January 3, 1992 (57 Fed. Reg. 222).

Background

NUMARC favors Commission action to make clear the agency's intent in the issuance and application of its regulations and the statutory bases therefor. However, in this case it appears that the Commission has exceeded its authority through its interpretation of its rulemaking authority pursuant to section 161 of the Atomic Energy Act (AEA). Additionally, it is our view that this rule is not merely a housekeeping measure--one that is purely administrative--but rather has significant substantive effect. Further, we believe that the rule is unnecessary. The NRC already has means sufficient to enforce violations of its regulations and these enforcement mechanisms provide the deterrent sought to maintain compliance by licensees and others subject to the regulations. And finally, NUMARC is concerned that the rule does not, as it should, make completely clear that it may not be applied retroactively.

NUMARC is the organization of the nuclear power industry that is responsible for coordinating the combined efforts of all utilities licensed by the NRC to construct or operate nuclear power plants, and of other nuclear industry organizations, in all matters involving generic regulatory policy issues and on the regulatory aspects of generic operational and technical issues affecting the nuclear power industry. Every utility responsible for constructing or operating a commercial nuclear power plant in the United States is a member of NUMARC. In addition, NUMARC's members include major architect/engineering firms and all of the major nuclear steam supply system vendors.

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Mr. Samuel J. Chilk
March 18, 1992
Page 2

The Supplementary Information section of the Federal Register Notice accompanying the proposed rule states that its purpose is to clarify the NRC's statutory authority to invoke criminal penalties for a willful violation, an attempt to violate, or a conspiracy to violate NRC regulations. To accomplish the rule's stated purpose, the NRC would include in each appropriate part in 10 C.F.R. Chapter I a provision to explicitly identify whether willful violations of those regulations will subject the violator to criminal penalties. The provision will "contain a statement for purposes of section 223 [that] all the regulations in the part are 'issued under one or more subsections 161b, 161i, or 161o,' except as otherwise noted in a separate paragraph." The Commission's notice distinguishes between those regulations issued pursuant to subsections 161b, i or o, which are substantive (rules that create duties, obligations, conditions, restrictions, limitations and prohibitions), and those issued pursuant to subsection 161p, which are administrative in nature (promulgated to assist in carrying out the purposes of the AEA).

The NRC Interpreted Its Authority Under Section 161 of the Atomic Energy Act Too Broadly.

A serious problem with the NRC's proposed rule arises from the Commission's view that it has authority under subsections 161b, i or o to impose criminal sanctions for a willful violation of essentially all of the NRC's substantive rules and regulations. This is an overly broad reading of the NRC's authority. A review of the legislative history of the AEA and the Energy Reorganization Act of 1974 (ERA) demonstrates that Congress did not intend to provide criminal penalties for a violation of all substantive rules or regulations. For example, the plain language of some sections of the ERA indicates that civil, and not criminal, penalties are to be the enforcement response for violations. Despite the Congressional direction found in the legislative history, implementation of the NRC's proposed rule would attempt to create criminal penalties for violations of these provisions.

Support for the industry's position that the NRC has interpreted the scope of its authority too broadly is found in the legislative history of the AEA for sections 222 and 223. See S. Rep. No. 1699, 83rd Cong., 2nd Sess. (1954), reprinted in 1954 U.S. Code Cong. & Ad. News 3456, 3486. In the Senate Report accompanying the substantial amendments to the AEA enacted in 1954, section 222 is described as establishing "criminal penalties for violation of certain of the prohibition sections within the act" and section 223 as establishing "the criminal penalties for violations of all of the balance of the provisions of the act or for rules and regulations issued under certain specified limited statutory authority." Because Congress chose to confine the application of criminal penalties to regulations issued under "certain," "specified" and "limited" authority, section 223 was clearly intended to be read narrowly. Given the plain meaning of the words, their inclusion must be construed to reflect Congress' intention to preclude the

Mr. Samuel J. Chilk
March 18, 1992
Page 3

Commission from having criminal penalties attach to all substantive rules and regulations.

Further support for this interpretation is derived from a review of some of the sections for which the proposed rule now would require criminal penalties. Perhaps the most compelling example of the proposed rule's application of criminal penalties where Congress clearly envisioned only civil penalties would apply is the regulations issued under 10 C.F.R. Part 21, which implement the statutory requirements of section 206 of the ERA of 1974. See 42 U.S.C. 5801 et seq. Section 206 is a reporting requirement to ensure that the NRC receives all information reasonably indicating noncompliance with statutory or regulatory requirements, or defects "which could create a substantial safety hazard...." This reporting requirement applies to "any individual director, or responsible officer of a firm constructing, owning, operating, or supplying the components of any facility or activity which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954 as amended...." The enforcement mechanism specifically provided in section 206(b) is that a civil penalty is to be imposed for any person who "knowingly and consciously" fails to provide the required notice. The legislative history reveals that the conferees substituted "knowingly and consciously" for "knowingly and willfully" and the conferees adopted this substitute language "to eliminate the provision for criminal penalties, making only civil penalties applicable." See Conf. Rep. No. 1445, 93rd Cong., 2nd Sess. (1974) reprinted in 1974 U.S. Code Cong. & Ad. News 5538, 5550. Because the NRC's proposed rule includes Part 21 among those regulations which are to be enforced with criminal penalties, the NRC's action directly disobeys Congress's express direction when it enacted section 206.

The NRC carefully should reevaluate the proposed imposition of criminal penalties, by individual section, to determine whether the NRC does indeed have statutory authority to impose criminal penalties in each instance. Prior to issuance of a final rule, the NRC should also reevaluate whether, as a matter of sound public policy, it is sensible to impose criminal penalties for each of the regulations in the proposed rule. This review should be undertaken while bearing in mind the general rule of statutory construction that criminal penalties are to be narrowly applied, as well as the concomitant deference that should be given to due process in the criminal context.

The Proposed Rule Could Have an Adverse Effect on Licensee Performance and the Ability to Attract Personnel.

The imposition of criminal penalties for actions taken pursuant to regulations which heretofore had not had criminal penalties attach could have a chilling effect on licensee performance. Section 50.9 provides an excellent example of this concern. This regulation mandates that licensees provide to the NRC complete and accurate information required by statute or Commission regulations, orders or license conditions. As a matter of practice, licensees notify the NRC promptly to provide information subject to this regulation, while continuing to update the NRC with supplemental information as it is

obtained. The proposed regulation may generate fear that an initial report based upon preliminary information may, retrospectively, be viewed as a misrepresentation. As a result, licensees may be reluctant to report expeditiously information potentially implicated by Section 50.9 to the NRC until the licensee has had the opportunity to compile the full set of facts surrounding the event. Thus, the across-the-board imposition of criminal penalties could hamper the Commission's ability to obtain early access to information. Undoubtedly, this is not the outcome intended by the NRC in its proposed rule.

In addition to its potentially inhibiting effect on licensee reporting, the proposed rule may also make it more difficult for nuclear utilities to attract well qualified personnel to work on nuclear projects. Given the NRC's interest in protecting public health and safety, high priority should be accorded to ensuring that nuclear utilities are able to attract staff members of sufficient caliber to safely operate and maintain its nuclear plants. The wholesale imposition of criminal penalties in the proposed rule adds a layer of liability which may be viewed as a significant deterrent by those seeking employment in the nuclear industry.

The Proposed Rule Can Not Be Applied Retroactively.

In addition to addressing the above stated concerns, the NRC should clearly state in the final rule that it will not be applied retroactively. Article I, Section 9 of the Constitution specifically prohibits the federal government's passage of ex post facto laws, the definition of which properly includes a law that changes the punishment or inflicts a greater punishment than the law annexed to the crime when it was committed. Thus, it is legally indisputable that the NRC has no authority to apply criminal penalties retroactively to acts committed prior to the promulgation of the rule because the Constitution affirmatively precludes an agency from taking such action.

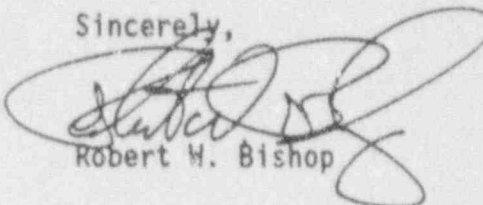
The consideration of retroactive application of the proposed rule is not merely an abstract issue of jurisprudence, but one which the NRC is likely to face immediately. It is not difficult to envision the case of an incident or action which occurred prior to the effective date of the rule, but which is not investigated and charges are not brought until after the rule's effective date. The ongoing investigation and inspection of alleged violations of 10 C.F.R. 50.7(a), which regulation addresses potential discrimination against employees who raise safety questions, clearly illustrates this point. That is precisely the kind of situation the prohibition against ex post facto laws is designed to prevent. To ensure conformity with the law, the rule should contain language that unequivocally indicates that the action for which the criminal penalty is to be applied must have occurred on or after the effective date of the rule.

In conclusion, NUMARC believes that, because criminal penalties are an extreme remedy, the NRC should exercise great caution and discipline in the imposition of such sanctions. On behalf of the nuclear industry, we

Mr. Samuel J. Chilk
March 18, 1992
Page 5

appreciate the opportunity to comment on the proposed rule. We would be pleased to discuss our comments further and respond to any questions NRC personnel may have.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert W. Bishop", is written over a large, loopy circular flourish.

ECG/RWB:bjb

Georgia Power Company
40 Inverness Center Parkway
Post Office Box 1295
Birmingham, Alabama 35201
Telephone 205 877-7122

DOCKET NUMBER **PR 11, 19 et al.** AD62-2
PROPOSED RULE **(57 FR 222)** PDR



Georgia Power

the southern electric system

9C

C. K. McCoy
Vice President, Nuclear
Vogtle Project

March 18, 1992

Docket Nos. 50-321 50-424
50-366 50-425

HL-2119
ELV-03573

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

(7)

ATTENTION: Docketing and Service Branch

Comments on Proposed Rule
"Clarification of Statutory Authority for Purposes of Criminal Enforcement"
(57 Federal Register 222 of January 3, 1992)

Dear Mr. Chilk:

Georgia Power Company has reviewed the request, "Clarification of Statutory Authority for Purposes of Criminal Enforcement" published in the Federal Register on January 3, 1992. In accordance with the request for comments, Georgia Power Company is in total agreement with the NUMARC comments which are to be provided to the NRC.

Should you have any questions, please advise.

Respectfully submitted,

C. K. McCoy

CKM/JDK

420 220008

Mr. Samuel J. Chilk
U.S. Nuclear Regulatory Commission
Page 2

cc: Georgia Power Company

Mr. J. T. Beckham, Jr., Vice President, Plant Hatch
Mr. W. B. Shipman, General Manager - Plant Vogtle
Mr. H. L. Sumner, Jr., General Manager - Plant Hatch
NORMS

U. S. Nuclear Regulatory Commission, Washington, DC
Mr. K. N. Jabbour, Licensing Project Manager - Hatch
Mr. D. S. Hood, Licensing Project Manager - Vogtle

U. S. Nuclear Regulatory Commission, Region II
Mr. S. D. Ebnetter, Regional Administrator
Mr. L. D. Wert, Senior Resident Inspector - Hatch
Mr. B. R. Bonser, Senior Resident Inspector - Vogtle

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1615 L STREET, N.W.

WASHINGTON, D.C. 20036-5680

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ALVIN H. GUTTERMAN

DIRECT DIAL NUMBER: (202) 955-6640

DOCKETED
USNRC

92 MAR 19 P2:51

OFFICE OF SECRETARY
DOCKETING BRANCH
TELECOPIER (202) 872-0581

March 18, 1992

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

ATTENTION: Docketing and Service Branch

RE: Proposed Rule
Clarification of Statutory Authority for Purposes
of Criminal Enforcement
57 Fed. Reg. 222 (Jan. 3, 1992)
Request for Comments

Dear Mr. Secretary:

These comments are submitted on behalf of Houston Lighting & Power Company ("HL&P") and Arizona Public Service Company ("APS") in response to the notice of proposed rule published by the U.S. Nuclear Regulatory Commission ("NRC"), Clarification of Statutory Authority for Purposes of Criminal Enforcement. The notice states that the proposed rule is "intended to identify more clearly those regulations which may subject the violator to criminal penalties for willfull (sic) violation, attempted violation, or conspiracy to violate." 57 Fed. Reg. 222, 222 (Jan. 3, 1992).

HL&P and APS have reviewed the comments on the proposed rule submitted by the Nuclear Management and Resources Council, Inc. ("NUMARC") and agree with them. However, they would like to take the opportunity to expand further on NUMARC's comments.

HL&P and APS support the NRC's objective of identifying very clearly which of its regulations are subject to Section 223 of the Atomic Energy Act ("the Act"). That section provides criminal penalties for willful violation, including attempts or conspiracies to violate, of any provision of the Act for which no criminal penalty is specifically provided, and of any regulation or order "prescribed or issued under Sections 65 or subsections

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Secretary of the Commission
March 18, 1992
Page 2

161(b), 161(i), or 161(o)" of the Act. Currently, notice of the applicability of the criminal penalty provisions of Section 223 is provided by a paragraph in the Authority section of each affected Part of 10 CFR chapter I identifying the specific sections (or subsections) of that Part which the NRC considers to be promulgated under Sections 161(b), 161(i), or 161(o). The proposed rules would replace the pertinent Authority paragraph in each Part with a new "Criminal penalties" section identifying the particular sections of that Part which are not issued under 161(b), 161(i), or 161(o) and therefore are not subject to criminal sanctions.

However, the proposed rule has adopted an inappropriate method to accomplish the stated goal of clarifying which regulations are subject to Section 223. Adopting the position that every rule is subject to criminal enforcement unless it is specifically excepted, would fall short of the "clear notice" objective of the proposed amendment. Moreover, such an approach would appear 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. United States v. Enmons, 410 U.S. 396, 411 (1972); United States v. Laub, 385 U.S. 475, 487 (1966); United States v. Cook, 384 U.S. 257, 262 (1965); Federal Communications Comm'n v. American Broadcasting Co., 347 U.S. 284, 297 (1953); United States v. Halseth, 342 U.S. 277, 280 (1951); Todd v. United States, 158 U.S. 278, 282 (1894). Penal provisions, such as Section 223, are to be narrowly construed in order to safeguard the rights of the defendant. Dowling v. United States, 473 U.S. 207, 214-15 (1985). Fundamental fairness requires that no person be held criminally responsible for conduct which he could not reasonably understand to be proscribed, see United States v. Laub, 385 U.S. at 487; Lanzetta v. New Jersey, 306 U.S. 451, 453 (1938), thereby demanding that the scope and application of the penal provisions be described with appropriate definiteness. Winters v. New York, 333 U.S. 507, 510 (1947); Pierce v. United States, 314 U.S. 306, 311 (1941); see Williams v. United States, 458 U.S. 279, 290 (1982). Certainty of the language of criminal statutes is generally held to be an essential element of constitutional due process of law. Connally v. General Construction Co., 269 U.S. 385, 391-93 (1925).

Moreover, an close examination of the legislative history, as well as the plain language, must be considered in order to determine whether criminal sanctions were intended by Congress in the first place. See First National Bank of Gordon v. Department

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Page 3

of the Treasury, Office of the Comptroller of the Currency, 911 F.2d 57 (8th Cir. 1990); cf. Dowling v. United States, 473 U.S. 207, 214 (1985). A review of the legislative history of the Atomic Energy Act and the Energy Reorganization Act demonstrates that Congress did not intend Section 223 to provide criminal penalties for willful violation of any substantive rule or regulation. See NUMARC's comments. For example, with respect to Section 50.7, when Congress adopted the underlying statute, Section 210 of the Energy Reorganization Act, it considered the appropriate remedies for a violation, and only provided for civil remedies. The legislative history reveals no Congressional intent to impose criminal sanctions. See S. Rep. No. 848, 95th Cong., 2d Sess. 29 (1978), reprinted in 1978 U.S.C.C.A.N. 7303, 7304. It is inappropriate for the Commission to designate criminal sanctions for sections where the legislative history is either ambiguous or clearly lacking any indication of Congressional intent to provide for criminal enforcement.

The proposed rules would designate regulations to be enforced by criminal penalties in an apparently indiscriminate, wholesale manner, without any specific explanation of the rationale for designating specific sections and subsections for inclusion.^{1/} This is particularly troubling since the rule would reverse NRC's prior determinations. Moreover, many of the sections that would be made subject to criminal enforcement are not drafted with sufficient clarity to put individuals on notice of the conduct that would constitute a crime. For example, it would be difficult to determine what conduct would constitute a willful violation of Section 52.63, when several of its subsections deal with what actions the Commission itself must take with respect to the finality of standard design certifications. Before criminal penalties are adopted for each section, the Commission should consider whether the specific subsections give adequate notice of legal standards being imposed.

The notice indicates that "[a]ny section of the regulation which is not substantive in nature will be specifically identified and excluded from criminal enforcement penalties", resulting in the exclusion of those sections that are "mainly administrative and do not address substantive matters." 57 Fed. Reg. 222, 223 (Jan. 3, 1992). In the present effort to determine

1/ The large number of proposed changes is shown by Appendix A to this letter.

Secretary of the Commission
March 18, 1992
Page 4

which NRC regulations are "substantive and, accordingly, are promulgated under Sections 161(b), 161(i), and 161(o) of the Act," the Notice states that it includes rules creating "duties, obligations, conditions, restrictions, limitations and prohibitions." *Id.* The notice also states that the NRC also included regulations describing "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." *Id.* This formulation ignores the essential fact that Sections 161(b), 161(i), and 161(o) are fairly precise - and not unlimited - grants of authority to the Commission to adopt regulations. The Act does not divide the Commission's regulations into those which are "substantive" and those which are "mainly administrative." The question of whether a particular regulation was adopted under the authority of a specific section of the Atomic Energy Act must be answered separately for each regulation. A general notice of proposed rulemaking, such as was published here, does not sufficiently identify the pertinent changes in a manner that promotes careful analysis of issues that are potentially of great significance. Those issues are appropriately considered when the specific regulation is adopted. See 5 U.S.C. § 553(b)(2).

The difficulty with the application of the substantive/administrative "standard" is shown by the failure of the notice to explain why certain sections would be subject to Section 223 while apparently similar sections would not. For example, the proposed rule would provide that Section 72.106 is enforced by criminal penalties, but none of the other sections providing siting evaluation factors (such as 72.92, 72.94, 72.98, 72.100, 72.104) are similarly designated, although these other sections are also subject to Section 223 according to the present Authority section. As another example, while Sections 110.8, 110.9 and 110.9a seem indistinguishable in the sense that all three sections list nuclear plant material and equipment, only Section 110.9a is designated as subject to Section 223 in the proposed rules.

In summary, the proposed rules are not just a change in format; they involve changes in substance which do not appear to be justified, and which certainly require more expansive and section-specific reasoning. Furthermore, the proposed rulemaking appears to be an effort to broaden the interpretation of the Commission's rulemaking authority provided by Sections 161(b), 161(i), and 161(o), thereby impermissibly expanding the list of sections subject to Section 223 criminal enforcement penalties.

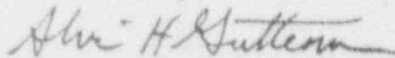
NEWMAN & HOLTZINGER, P.C.

Secretary of the Commission
March 18, 1992
Page 5

Because of the large number of sections which would be affected by the proposed rules and the cryptic way in which they are discussed in the notice, it is not practical to expect meaningful comments in response to this notice. If the Commission intends to pursue this effort, it should explain the proposal in sufficient detail and afford an adequate opportunity for interested parties to comment on the substantive changes proposed.

We appreciate the opportunity to submit these comments.

Sincerely,



Alvin H. Gutterman
Attorney for
Houston Lighting & Power Company
Arizona Public Service Company

cc: William J. Jump
Ronald J. Stevens

APPENDIX A

I. SECTIONS PRESENTLY NOT IDENTIFIED AS SUBJECT TO SECTION 223
WHICH WOULD BE MADE SUBJECT BY THE PROPOSED RULES

Part 11

11.10
11.11
11.13
11.15

Part 19

19.15
19.20
19.32

Part 20

20.203
20.311
20.1101
20.1501
20.1502
20.1601
20.1602
20.1603
20.1701
20.1702
20.1703
20.1801
20.1802
20.1901

Part 25

25.15
25.21
25.23
25.35

Part 26

26.10

Part 30

30.7
30.14
30.18
30.19
30.20
30.35

Part 31

31.6
31.12

Part 32

32.3
32.40
32.101
32.102
32.103
32.110

Part 34

34.4

Part 35

35.5
35.972

Part 39

39.11

Part 40

40.7
40.23
40.27
40.28
40.66
40.67

Part 50

50.9
50.33a

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50.36
50.36a
50.63
50.75

Part 52

52.25
52.35
52.39
52.45
52.63
52.91
52.99
52.103

Part 55

55.27
55.45
55.59

Part 60

60.4
60.9
60.160
60.161

Part 61

61.9
61.28
61.29
61.40
61.44
61.57
61.61
61.82

Part 70

70.20
70.25
70.44

Part 71

71.12
71.13
71.14
71.16
71.18
71.20
71.22
71.24
71.57
71.59
71.61
71.81
71.88
71.103
71.105
71.107
71.109
71.111
71.113
71.115
71.117
71.119
71.121
71.123
71.125
71.127
71.129
71.131
71.133
71.135
71.137

Part 72

72.212
72.216
72.218
72.232
72.234

Part 73

73.60
73.73
73.74

Part 95

95.18
95.36
95.49

Part 110

110.5
110.6
110.9a
110.32
110.33
110.34
110.35
110.36

Part 140

140.15
140.17
140.21
140.22

II. SECTIONS OF WHICH ONLY CERTAIN SUBSECTIONS ARE SUBJECT TO SECTION 223 (BY THE AUTHORITY CITATIONS PARAGRAPHS) WHICH WOULD BE MADE ENTIRELY SUBJECT TO SECTION 223 BY THE PROPOSED RULES

Part 19

19.11 a,c,d,e
19.14 a

Part 20

20.103 a,b,e,f
20.104 a,b
20.105 b
20.106 a
20.202 a
20.408 b
20.2005 b,c

Part 25

25.17 a
25.33 b,c

Part 30

30.34 b,c,f,g,i
30.41 a,c
30.56 b,c

Part 31

31.5 (c)(1)-(3),(c)(5)-(9),(c)(4),(8)
31.8 c
31.10 b
31.11 b,c,d,e

Part 32

32.15 a,c,d
32.25 a,b,c
32.29 a,b,c
32.55 a,b,d

Part 33

33.17 a

Part 34

34.20 (a)-(e)
34.21 a,b
34.25 a,b,c,d
34.31 a,b,c
34.33 a,b,c,d,e,f
34.43 a,b,c,d

Part 35

35.20 a,b
35.21 a,b
35.27 a,c,d
35.29 b
35.31 a
35.33 (a)-(b)
35.50 (a)-(d),(e)
35.51 (a)-(c),(d)
35.53 (a)-(b),(c)
35.59 (a)-(c),(d),(e)(1),(e)(2)(g),(h),(i)
35.70 (a)-(f),(g)
35.80 (a)-(e),(f)
35.92 a,b
35.200 b,c

35.204 a,b,c
35.310 a,b
35.404 a,b
35.406 a,b,c,d
35.410 a,b
35.610 a,b,c
35.630 a,b,c
35.632 (a)-(f),(g)
35.634 (a)-(e),(f)
35.636 a,b,c
35.641 a,b,c
35.643 a,b,c
35.647 c

Part 40

40.25 (c),(d)(1)-(3)(d)(4)
40.26 (c)(2)
40.41 b,c
40.51 a,c

Part 50

50.7 a
50.10 (a)-(c)
50.34 a,e
50.44 (a)-(c)
50.46 a,b
50.47 b
50.48 a,c,d,e
50.49 a,d,h,j
50.54 (a),(c),(e),(i),(i)(1),(1)-
(n),(p),(q),(t),(v),(w),(y),(z),(bb),(cc),(dd)
50.55 f
50.55a (a),(c)-(e),(g),(h)
50.59 b,c
50.60 a
50.61 b
50.62 b
50.64 b
50.70 a
50.71 (a)-(c),(e)
50.72 a
50.73 a,b
50.80 a,b

Part 61

61.27 a

Part 70

70.19 c
70.20a a,d
70.20b c,d,e
70.21 c
70.22 (a),(b),(d)-(k)
70.24 a,b
70.32 (a)(3),(5),(6),(c),(d),(e),(g),(i)
70.39 b,c
70.41 a
70.42 a,c
70.51 (b),(c)-(g),(i)
70.57 b,c,d
70.58 (a)-(g)(3),(g)(4),(h)-(j),(i)

Part 71

71.5 b
71.63 a,b
71.101 a

Part 72

72.10 c,e
72.44 (a),(b)(1),(3),(4),(5),(c)(5),(d)(1),(2),(3),(e),(f),
72.48 a,b,c
72.50 a,b
72.52 b
72.74 a,b
72.140 b,c,d

Part 95

95.15 a
95.29 b

Part 140

140.11 j
140.12 a

Part 150

150.20 (b)(1),(b)(2)-(5)

Southern Nuclear Operating Company
Post Office Box 1295
Birmingham, Alabama 35201
Telephone 205 868-5088

DOCKET NUMBER **PR 11, 19 et al.**
PROPOSED RULE **(57FR222)**

AD62-2
PDR



Southern Nuclear Operating Company
the southern electric system

J. D. Woodard
Vice President
Farley Project

March 18, 1992

Docket Nos. 50-348
50-364

(9)

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

ATTENTION: Docketing and Service Branch

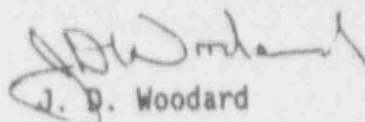
Comments on Proposed Rule
"Clarification of Statutory Authority for Purposes of Criminal
Enforcement"
(57 Federal Register 222 of January 3, 1992)

Dear Mr. Chilk:

Southern Nuclear Operating Company has reviewed the request,
"Clarification of Statutory Authority for Purposes of Criminal
Enforcement" published in the Federal Register on January 3, 1992. In
accordance with the request for comments, Southern Nuclear Operating
Company is in total agreement with the NUMARC comments which are to be
provided to the NRC.

Should you have any questions, please advise.

Respectfully submitted,


J. D. Woodard

JDW/JDK

cc: Mr. S. D. Ebnetter
Mr. S. T. Hoffman
Mr. G. F. Maxwell

9204020001



FPL

DOCKET NUMBER
PROPOSED RULE **PR 11, 19, et al.**
(57 FR 222)

P.O. Box 14000, Juno Beach, FL 33408-0420

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BRANCH

10

Mr. Samuel J. Chilk
Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington D. C. 20555

Attention: Docketing and Service Branch

Re: Proposed Rule; Clarification of Statutory
Authority for Purposes of Criminal Enforcement
57 Fed. Reg. 222 (January 3, 1992)

Dear Mr. Chilk:

Florida Power and Light Company (FPL) is the licensed operator of two nuclear power plant units in Dade County, Florida and two nuclear power plant units in St. Lucie County, Florida.

FPL has reviewed the comments prepared by the Nuclear Management and Resources Council (NUMARC) and endorses the NUMARC comments submitted to you by letter dated March 18, 1992.

FPL appreciates the opportunity to submit these comments.

Very truly yours,

W. H. Bohlke
Vice President
Nuclear Engineering and Licensing

WHB/JRL/dmb

9203270022



DOCKET NUMBER AD62-2 PDR
PROPOSED RULE OR 11, 19 et al.
(57 FR 222)
UNIVERSITY OF FLORIDA - COLLEGE OF MEDICINE
DEPARTMENT OF RADIOLOGY
USNRC JC

BOX J-374, J. HILLIS MILLER HEALTH CENTER
GAINESVILLE, FLORIDA 32610-0374

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(904) 396-0291 PHYSICIANS
(904) 396-0101 SHANDS SCHEDULING
(904) 392-8987 PROFESSIONAL FEES

FAX: (904) 396-0279

'92 APR 13 P1 35

OFFICE OF SECRETARY
DOCKETING & SERVICES
BRANCH

11

April 9, 1992

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555
ATTN: Docketing and Services Branch

Subject: Response to Proposed Changes in the Nuclear Regulatory
Commission Regulations
RIN-3150-AD62
Clarification of Statutory Authority for Purposes of Criminal Enforcement

Dear Sir:

I would like to respond to your proposed clarification of the statutory authority for criminal enforcement. I am a practicing nuclear medicine physician in the state of Florida. Many times in the past the entire nuclear medicine community, including myself, have responded to the NRC's increasing attempts to regulate our practice of medicine. Nuclear medicine is an incredibly safe profession with an extremely low incidence of misadministrations or abuses. The use of regular pharmaceuticals or other areas of medicine are far much more risky to the patient than anything done in nuclear medicine. We have always regulated ourselves and ensured a high degree of quality assurance.

Any of the latest changes in the NRC regulations have been vague or difficult to understand in regard to the practice of medicine. Currently as a physician, under the rights of practice of medicine and pharmacy, I have the right to prescribe and have a pharmacist formulate any drug that is considered safe and helpful to the patient. The use of FDA approved drugs in a "non-approved method" is still under the confines of the practice of medicine and pharmacy. Obviously in regard to research, this should be approved by my local institutional review board and should always be prepared to substantiate my use of these drugs in any different way. Many of the NRC regulations impinge on my right to practice medicine.

The new rules to allow criminal penalties in regard to the enforcement of NRC regulations is potentially quite dangerous. Again, the states that enforce many of the NRC regulations are sometimes relatively clueless in regard to the actual practice of medicine and the consequences of their enforcement. There is a

great deal of individual variance in the interpretation of these rules and I have yet to see two individuals read the rules and understand them in the same fashion. To add criminal penalties to what are potentially ambiguous guidelines is potentially dangerous. If the intent of this revision is to simply stymie the practice of medicine, this type of maneuver may certainly have that consequence.

At the University of Florida, we have been involved with the development of many new tests and new methods of diagnosing disease. These are aimed at diagnosing diseases earlier, better, and less expensive. In regard to NRC regulations which frequently cannot be clarified, the addition of criminal penalties will stymie much of this research. Whenever we have been posed with a question of interpretation of the NRC regulations, we have never been able to get clear cut interpretation in advance of any proposed work that we plan. I will sight an example. We considered the use of cyclotron produced isotopes at the University of Florida, obtaining these isotopes from a regional production facility in Tampa. It took us two years for any response from our local agencies in regard to whether this was a legal procedure or not. The addition of criminal penalties in a nebulous area is going to be a dangerous precedent.

I strongly hope that the nuclear medicine community will give an outcry to this proposed change and that the NRC will consider removing the "criminal penalties" from the guidelines that are monitoring the practice of medicine. We are simply trying to do our jobs and advance science and medical care in this country.

Best Regards,



Walter E. Drane, MD
Professor and Director
Division of Nuclear Medicine

WED:bt



RULEMAKING ISSUE

(Affirmation)

September 18, 1992

SECY-92-324

For: The Commissioners

From: James M. Taylor
Executive Director for Operations

Subject: FINAL RULE REGARDING CLARIFICATION OF
STATUTORY AUTHORITY FOR PURPOSES OF CRIMINAL
ENFORCEMENT

Purpose: Obtain Commission approval of a notice of
final rulemaking.

Background: On January 3, 1992 (57 FR 222), the
Commission approved and issued for public
comment the proposed rulemaking on this
issue. The comment period expired on March
18, 1992. Eleven comments were received on
the proposed rule. After reviewing the
comments, the staff now recommends Commission
approval of this final rule.

Section 223 of the Atomic Energy Act (the
Act) provides that whoever willfully
violates, attempts to violate, or conspires
to violate, any regulation issued under
Section 161b, i, or o of the Act -- the
substantive rulemaking provisions of the
Act -- is subject to criminal penalties.
Consequently, except for Section 161x
regulations (financial arrangements for
decommissioning), the Act establishes

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504-2741
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504-1683

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criminal penalties for willful violations of all substantive NRC regulations.

Under the present format, the NRC provides notice of the criminal penalty provisions of Section 223 of the Act by including a paragraph in the authority citation for each affected 10 CFR Part. This paragraph identifies the regulations, by section or paragraph, that the NRC promulgated under Sections 161b, 161i, or 161o. It has not always been readily apparent from this statement in each Part that the purpose is to provide notice of potential criminal penalties for willful violations of the regulations. Moreover, the present system of providing notice of the criminal penalty provisions of Section 223 has not always been accurate. Therefore, in SECY 91-327, the staff proposed a rulemaking to the Commission to change the method of providing this notice by adding to each part a section that clearly states the effect of Section 223, and that all regulations in that part are issued under Section 161b, i, or o, except those that are specifically enumerated.

Discussion:

The Commission received comments from 11 organizations and individuals. Six comments were from the nuclear power industry or its representatives and five comments were from the medical community. The NRC staff has summarized and responded to those comments in the enclosed final rulemaking package.

The final rulemaking package divides the comments and responses into legal and policy issues. The primary legal issue raised by the comments is whether the NRC is exceeding its authority in issuing these regulations. Congress -- not the NRC -- decided that criminal penalties should attach for willful violation of Commission regulations when it enacted Section 223 of the Act including the reference to Sections 161b, 161i, and 161o, which provide the authority for most of the Commission's substantive regulations. The Commission's purpose in the final rule is limited to providing a better means of notice that certain regulations are issued under the rulemaking authority for which the Congress

has provided criminal enforcement penalties. In response to a comment that questioned possible retroactive application of the rulemaking, the final rule package makes clear that the Commission does not intend to apply the rule retroactively. These matters are addressed in the discussion of the new regulations, Part IVI of the Supplementary Information.

The enclosed rulemaking package also responds to a policy concern that the rule could adversely affect licensee performance. In particular, it is noted that the Commission's purpose is to provide greater clarity as to the specific sections that are subject to criminal prosecution. To the extent that the possibility of prosecution does deter improper behavior, the increased clarity of the rule furthers that concept and, accordingly, is fully consistent with licensees' objectives to improve performance because the rule would only apply to those who willfully violate or disregard NRC requirements.

The final rule also responds to comments of the medical community broadly challenging the Commission's regulations as they allegedly affect the practice of medicine. These comments by the medical community largely miss the narrow purpose of this rule, which is to state more clearly the statutory basis for the regulations and not to modify the substance of the requirements themselves. In addition, the response to these comments notes that NRC regulations are narrowly drawn to address the safe handling and use of licensed radioactive material. The final rule explains the relatively few and minor actual changes in the allocation of sections that are being made. In Part 35, only two additional sections have been identified as being subject to criminal enforcement; § 35.5 was changed to agree with the treatment of similar sections throughout 10 CFR Chapter I, and § 35.972 was changed because it contains substantive provisions and, therefore, originally should have been noticed as subject to criminal enforcement authority.

Based on a re-evaluation in light of other comments, the NRC staff has included some sections not covered originally by the notice of potential criminal penalties. These changes occur in 10 CFR Parts 31, 40, 71, 72, and 110 and further harmonize the approach taken with other sections that set out substantive requirements. These changes are discussed in detail in Part III of the Supplementary Information.

Coordination:

The Office of the General Counsel has reviewed the final rule and has no legal objection.

Recommendations:

That the Commission:

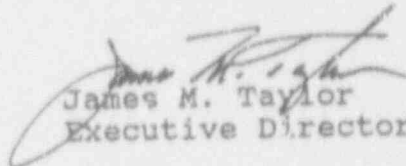
1. Approve publications of the amendments to 10 CFR Parts 11, 19, 20, 21, 25, 26, 30, 31, 32, 33, 34, 35, 39, 40, 50, 52, 53, 54, 55, 60, 61, 70, 71, 72, 73, 74, 75, 95, 110, 140, and 150 as a final rule (Enclosure A).
2. Certify that this rule will not have a significant economic impact on a substantial number of small entities, in order to satisfy requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b).
3. Note:
 - a. That the amendments will be published in the Federal Register, and will become effective 30 days after publication.
 - b. No environmental impact statement, negative declaration, or environmental impact appraisal need be prepared in connection with the amendments because the action taken by the amendments will not significantly affect the quality of the human environment.
 - c. These amendments have been coordinated with the Inspector General.

- d. The Office of Public Affairs will issue a public announcement, upon publication of the final rule in the Federal Register (Enclosure B).
- e. The Office of Congressional Affairs will inform the Subcommittee on Energy and the Environment of the House Committee on Interior and Insular Affairs, the Subcommittee on Energy and Power of the House Committee on Energy and Commerce, the Subcommittee on Environment, Energy and Natural Resources of the House Committee on Government Operations, and the Subcommittee on Nuclear Regulation of the Senate Committee on Environment and Public Works of this action by letter (Enclosure C).
- f. The Federal Register notice of rulemaking will be distributed by ADM to affected licensees and to public interest groups.
- g. The Chief Counsel of Advocacy of the Small Business Administration will be informed of the certification regarding economic impact on small entities together with the reason for it as is required by the Regulatory Flexibility Act.
- h. 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.).
- i. That if the Commission approves this final rule, the staff will take steps to conform recent rulemakings that have been approved since preparation of this paper,

The Commissioners

- 6 -

e.g., Part 36. In addition, future rulemakings will reflect the revised notice format.


James M. Taylor
Executive Director for Operations

Enclosures:

- A. Draft Federal Register Notice
- B. Draft Public Announcement
- C. Draft Congressional letter

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Monday, October 5, 1992.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Monday, September 28, 1992, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of October 5, 1992. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

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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 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: [30 days after the date of publication in the Federal Register].

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 .o "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 an 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 NPC has also considered how to minimize imprecision that could jeopardize appropriate criminal enforcement action against those who 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

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

certain features of the proposed rule. 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 161b, 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 161b, 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 to notice does not extend the reach of Section 223. Nor does the rule as drafted rely on inference or implication, but 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 161c 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 is Section 1611 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 161b, 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 the proposition that the Atomic Safety and Licensing Appeal Board has specifically disapproved the practice of citing Sections 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 applicants 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 these 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

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.

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 licensees' 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 authorized 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 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.

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 conformation (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 161b, 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 responses 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 161b, 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 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 161b, 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 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 USC 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, 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 penalty, 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 E. 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) (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, 90 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.

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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, 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, 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 or 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); secs. 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, secs. 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); 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) 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) 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 actions 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, 52.41, 52.43, 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, 2241 (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. 1243, 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, 32, 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 under 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 136 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, 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. 96-92, 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 of the Act. For purposes of Section 223, all the regulations in Part 110 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 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 23 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 the 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 day of 1992.

For the Nuclear Regulatory Commission

Samuel J. Chilk,
Secretary of the Commission

NRC AMENDS REGULATIONS TO SPECIFY WHERE
CRIMINAL PROSECUTION COULD BE INVOLVED

The Nuclear Regulatory Commission is amending its regulations to identify more clearly those regulations which--for willful violation, attempted violation or conspiracy to violate--may subject the violator to criminal penalties under the authority of the Atomic Energy Act of 1954, as amended.

The amendments include, in each appropriate part of Chapter 1 of Title 10 of the Code of Federal Regulations, a section that addresses criminal penalties and contains a statement that, for the purposes of the Atomic Energy Act, all the regulations in the part are issued under those sections of the Act that authorize criminal penalties. The exceptions are those regulations that are primarily administrative in nature and exempt from criminal penalties and these regulations are specifically enumerated.

The amendments to 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 of the Commission's regulations will become effective on (date).



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

Enclosure C

Dear Mr. Chairman:

The NRC has sent to the Office of the Federal Register for publication the enclosed amendments to the Commission's rules in 10 CFR Chapter I. These amendments clarify the applicability of the criminal penalty provisions of the Atomic Energy Act of 1954, as amended (the Act) to certain regulations.

These amendments are intended to more clearly identify those regulations which, for willful violation, attempted violation, or conspiracy to violate, may subject the violator to criminal penalties. The rule remedies several problems with the current method of providing notice of the criminal penalty provisions of the Act. The Commission is adopting a new standard format that will insert in each appropriate part in 10 CFR Chapter I a section that will address criminal penalties. Also, the regulations harmonize inconsistencies in language used to describe civil remedies and fill gaps as appropriate.

This administrative action does not place any additional requirements on current licensees.

These amendments will be published in the Federal Register and will become effective 30 days after publication in the Federal Register.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs



OFFICE OF THE
SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

October 27, 1992

AD 62-2 PDR

ACTION - Lieberman, OE

Cys: Taylor Blaha
Sniezek DMeyer
Thompson BShelton

IN RESPONSE, PLEASE
REFER TO: M921021

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

William C. Parler
General Counsel

FROM: Samuel J. Chilk, Secretary

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION/DISCUSSION
AND VOTE, 11:30 A.M., WEDNESDAY, OCTOBER 21,
1992, COMMISSIONERS' CONFERENCE ROOM, ONE
WHITE FLI. NORTH, ROCKVILLE, MARYLAND (OPEN
TO PUBLIC ATTENDANCE)

I. SECY-92-324 - Final Rule Regarding Clarification of Statutory
Authority for Purposes of Criminal Enforcement

The Commission, by a 5-0 vote¹, approved amendments to its rules which clarify the applicability of the existing criminal penalty provisions of the Atomic Energy Act to the Commission's regulations. The rule changes identify 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.

The final rule and Congressional letter should be modified as indicated in the attachment and forwarded to the Secretary for signature and publication.

(BDO)- (OE)

(SECY Suspens: 11/27/92) 9000078

¹ Section 201 of the Energy Reorganization Act, 42 U.S.C. §5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioners Rogers and Remick were not present when this item was affirmed. Accordingly, the formal vote of the Commission was 3-0 in favor of the decision. Commissioners Rogers and Remick had previously indicated that they would approve this paper and had they been present they would have affirmed their prior vote.

9210290145

II. SECY-92-345 - Referral of Hearing Request on License
Revocation Order to Atomic Safety and Licensing Board Panel

The Commission, by a 5-0 vote², approved an order providing guidance to the Licensing Board regarding the scope of any hearing on enforcement sanctions imposed for failure to pay user fees. The order provides for a narrow scope hearing which does not allow the fee schedule or its underlying methodology to be challenged in this type of hearing.

(Subsequently, on October 21, 1992, the Secretary signed the Order.)

Attachment:
As stated

cc: The Chairman
Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
Commissioner de Planque
OIG
PDR - Advance
DCS - P1-24

² Section 201 of the Energy Reorganization Act, 42 U.S.C. §5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioners Rogers and Remick were not present when this item was affirmed. Accordingly, the formal vote of the Commission was 3-0 in favor of the decision. Commissioners Rogers and Remick had previously indicated that they would approve this paper and had they been present they would have affirmed their prior vote.

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 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.

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

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

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} ~~to~~ notice, ~~does not~~ ^{to} extend the reach of Section 223 ^{by inference, implication or otherwise.} ~~Nor does~~ the rule as drafted ~~rely on inference or implication, but~~ 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 161c of the Act. Because adequate authority to issue

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 conformation (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

³ In the case of a regulation issued under Sections 161b, 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 Reactors), the appendix is also deemed to have been issued under Sections 161b, i, or o.

(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, ^{52.45,} 52.43, ^{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.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

Enclosure C

Dear Mr. Chairman:

The NRC has sent to the Office of the Federal Register for publication the enclosed amendments to the Commission's rules in 10 CFR Chapter I. These amendments clarify the applicability of the criminal penalty provisions of the Atomic Energy Act of 1954, as amended (the Act) to certain regulations.

These amendments are intended to more clearly identify those regulations which, for willful violation, attempted violation, or conspiracy to violate, may subject the violator to criminal penalties. The rule remedies several problems with the current method of providing notice of the criminal penalty provisions of the Act. The Commission is adopting a new standard format that will insert in each appropriate part in 10 CFR Chapter I a section that will address criminal penalties. Also, the regulations ~~harmonize~~ ^{correct} inconsistencies in language used to describe civil remedies and fill gaps as appropriate.

This administrative action does not place any additional requirements on current licensees.

These amendments will be published in the Federal Register and will become effective 30 days after publication in the Federal Register.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs