a public meeting and all entities, both large and small, were able to express views on the issues.

This rule does not impose additional reporting or recordkeeping requirements on either small or large Oregon and Washington pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule regarding this action was published in the **Federal Register** on August 26, 2009 (FR 74 43082). Copies of the rule were made available to all Oregon and Washington processed pear handlers. The proposal was also made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending September 25, 2009, was provided so that persons interested in the proposal could respond. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and order may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the PCC and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because (1) The 2009–2010 fiscal period began on July 1, 2009, and the order requires that the assessment rate for each fiscal period apply to all pears for canning handled during such fiscal period; (2) the PPC needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; (3) handlers are aware of this action, which was recommended by the PPC at a public meeting and is similar to other assessment rate actions issued in past years; and (4) a 30-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

PART 927—PEARS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 927.237, the introductory text and paragraph (a) are revised to read as follows:

§ 927.237 Processed pear assessment rate.

On or after July 1, 2009, the following base rates of assessment for pears for processing are established for the Processed Pear Committee:

(a) $8.41 per ton for any or all varieties or subvarieties of pears for canning classified as ''summer/fall'' excluding pears for other methods of processing;

* * * * *

Dated: October 6, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–24681 Filed 10–13–09; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC–2008–0458]

RIN 3150–AI31

Criminal Penalties; Unauthorized Introduction of Weapons

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to authorize the imposition of Federal criminal penalties on those who, without authorization, introduce weapons or explosives into specified classes of facilities and installations subject to the regulatory authority of the NRC. This action is necessary to implement section 229, ''Trespass on Commission Installations,'' of the Atomic Energy Act of 1954, as amended (AEA).

DATES: This rule is effective on April 12, 2010.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2008–0458]. Address questions about NRC dockets to Carol Gallagher at 301–415–5905, e-mail *Carol.Gallagher@nrc.gov*.

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: James E. Adler, Office of the General Counsel, telephone 301–415–1656, e-mail: *james.adler@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 654 of the Energy Policy Act of 2005, ''Unauthorized Introduction of Dangerous Weapons,'' amended § 229 of the AEA (42 U.S.C. 2278a) to authorize the NRC to issue regulations that make it a Federal crime to bring, without authorization, weapons or explosives into facilities designated by the NRC.

This rule implements that legislative provision.

In 1956, Congress added § 229 to the AEA. That section made it a Federal crime to bring weapons or explosives, without authorization, into facilities owned by the Atomic Energy Commission. With the enactment of the Energy Reorganization Act in 1974, this provision covered facilities now owned or occupied by the U.S. Department of Energy (DOE) as well as the buildings occupied by the NRC. Section 229 of the AEA did not extend to facilities regulated by the NRC. Over the years, there were incidents where individuals were successful in bringing weapons into NRC-regulated facilities without authorization. Fortunately, the individuals were not terrorists or others with malevolent intent and no damage was done. In such circumstances, the NRC had the ability to take action against its licensee for violation of security requirements, but could not refer the matter to the U.S. Department of Justice (DOJ) for criminal prosecution of the individual; any criminal sanctions had to be sought by the State under State law. Beginning in the late 1980s, the NRC submitted legislative proposals to Congress requesting that Congress enact legislation that would make it a Federal crime to bring weapons or explosives, without authorization, into NRC-designated facilities.

Congress enacted the requested legislation in § 654 of the Energy Policy Act of 2005, amending § 229 of the AEA (42 U.S.C. 2278a). This section authorizes the NRC to

> issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to person or property, into or upon any facility, installation, or real property subject to the jurisdiction, administration, in the custody of the Commission, or subject to the licensing authority of the Commission or certification by the Commission under this Act or any other Act.

Section 229 also requires that ''every such regulation of the Commission shall be posted conspicuously at the location involved.''

II. Public Comments

The NRC published a proposed rule on September 3, 2008 (73 FR 51378) and provided the opportunity for public comment. The **Federal Register** notice for the proposed rule identified certain issues about which the NRC was particularly interested in receiving comments. These issues included:

(1) Whether the rule's scope should be extended beyond the facilities listed in the proposed rule to additionally cover hospitals and other classes of facilities licensed to possess nationally tracked sources that are in the National Source Tracking System;

(2) Whether terms used in the proposed rule such as ''dangerous weapon,'' ''dangerous instrument or material,'' and ''explosive'' should be further defined, and what such definitions should be;

(3) Whether such definitions, if provided at all, should be set forth in the rule itself or in a guidance document;

(4) Whether the proposed 90-day implementation period provides licensees sufficient time to acquire and install the signs that the rule would require licensees to post;

(5) Whether the proposed rule's language regarding sign location is sufficient; and

(6) Whether the proposed rule's performance-based standard (*i.e.*, ''easily readable day and night'') should be replaced with more detailed requirements or with a reference to a preexisting signage standard, such as the standards promulgated under the Americans with Disabilities Act.

Seventeen comments were received. A few commenters addressed the issue of which facilities should be covered by the rule. Some of these commenters favored extending coverage to hospitals and other facilities possessing nuclear or radioactive material. Reasons given by such commenters included:

(1) Anyone who introduces a dangerous weapon, explosive, or other dangerous material into such a facility most likely intends to do harm;

(2) Anyone bringing such an item into a hospital or other facility that stores nuclear or radioactive material should expect to be penalized for doing so;

(3) Signs will ensure that the rule is not violated by accident, although anyone who intends to cause harm in a covered facility would likely not be deterred by the rule anyway; and

(4) Those seeking to access nuclear or radioactive materials in such facilities for illicit purposes would likely be able to locate those materials even if there are no signs posted pursuant to this rule. Thus, it is not valid to view such signs as rendering sensitive materials easier to find and therefore less secure.

Another commenter, however, recommended against extending the sign-posting requirement to these facilities. This commenter (a major medical institution) reasoned that:

(1) Signs would attract attention to the location of nationally tracked sources, thereby potentially rendering them less secure, given that many licensees currently try to avoid drawing attention to the locations of such materials;

(2) The strong language in the posting could be frightening to patients in hospitals, who may already be in a vulnerable state due to their medical situations; and

(3) Persons with unescorted access to facility areas of concern can simply be trained both to understand the rule themselves and to warn persons they escort about the rule's existence.

This commenter also noted that if the National Source Tracking System is expanded to include Category 3 and 1/10th Category 3 sources, an expansion of the rule to cover hospitals or other facilities would reach substantially more facilities than it otherwise would.

Several of the comments recommended that the NRC provide definitions of terms such as ''dangerous weapon,'' ''explosive,'' and ''dangerous instrument or material.'' Commenters' justifications for recommending definitions of these terms included promoting consistency in licensee reporting of violations of this rule and minimizing ambiguity in a rule whose violation may result in criminal prosecution. One commenter suggested that the content of these definitions should relate to the security capabilities of licensees to avoid prohibiting introduction of items that could not realistically be used to overpower plant security teams. Another commenter recommended that definitions be included in the rule itself, with further information and illustrations provided in a guidance document. Another commenter recommended that the posted notices identify any items that ordinary persons would not expect to be considered dangerous, but which nonetheless pose special hazards in light of the nature of the facility or the material located at the facility. Lastly, one commenter recommended that another term used in the proposed rule, ''introduce,'' be defined more clearly to ensure that the rule will apply to a person who introduces a dangerous instrument (e.g., a bullet) into the protected area by some means that does not require the person to pass beyond a sign (e.g., by firing a gun from outside the protected area).

As to the proposed 90-day implementation period, two industry commenters recommended that the period be extended to 180 days to allow sufficient time for sign procurement and installation. No other commenters expressed views on this issue.

A few comments addressed the issue of sign location. One of these comments

recommended installing signs not only at entrances, but also within protected areas to serve as additional reminders. Another comment sought clarification regarding areas outside the protected area but which nonetheless contain nuclear or radioactive material, such as licensee effluent treatment facilities, low-enriched uranium storage facilities, and radioactive waste storage facilities. The comment recommended that the posting requirement not apply to such areas, in light of the fact that entrants to such areas are not required to be searched prior to entry. Lastly, one commenter suggested allowing licensees the option of posting notices on roadways leading to facility checkpoints or parking areas, in addition to the notices required to be posted at vehicle and pedestrian entrances, in order to provide advance warning and thus facilitate the avoidance of protected areas by people carrying weapons.

Several commenters addressed the issue of sign characteristics. Some commenters recommended inclusion of specific rules regarding text size and color. One commenter suggested requiring lighting to ensure readability at night, while other commenters preferred the more flexible performance-based standard (*i.e.*, ''easily readable day and night'') utilized in the proposed rule. No commenters objected to the requirement that the notices be readable at night.

A number of comments also addressed topics beyond those specifically identified in the statement of considerations for the proposed rule. One commenter recommended that the rule require establishment of temporary weapons storage sites at pedestrian and vehicle entrances, so that persons lawfully carrying firearms can store any weapons before entering and pick them up when they leave. Another commenter recommended that the rule be harmonized with existing DOE signage regulations to avoid confusion or redundancy for those facilities that would be required to comply with both regulatory schemes. One commenter recommended that the rule define the term ''willful'' as ''an intentional act which may include evidence of subterfuge, masking, or malevolent intent.'' Finally, the DOJ recommended that the statement of considerations for the final rule clarify that the Federal Bureau of Investigation is not the only Federal entity other than the NRC that could potentially conduct investigations of suspected violations of this rule.

All of these comments are discussed and addressed in Section III below.

III. Discussion of the Final Rule

The NRC is amending 10 CFR 73.81, ''Criminal Penalties,'' and adding § 73.75, ''Posting,'' to implement § 654 of the Energy Policy Act of 2005. Under the regulations, the unauthorized willful introduction of any dangerous weapon, explosive or any other dangerous instrument or material likely to produce substantial injury or damage to persons or property upon the facilities or installations subject to §§ 236a.(1) or (4) of the AEA will be subject to the criminal penalties set forth in § 229 of the AEA. Consistent with the Energy Policy Act § 654 requirement that the regulation be posted conspicuously at each location involved, § 73.75 will require licensees to post notices at such facilities or installations.

Facilities Covered

The NRC is primarily concerned with dangers posed by the unauthorized introduction of weapons or explosives or other dangerous items when nuclear material and radioactive material are present. By listing these facilities in section 236 of the AEA, Congress has recognized the potential danger that could result from sabotage of such facilities; consequently, the NRC believes it prudent to also make the willful unauthorized introduction of weapons or explosives into or upon these facilities a Federal crime. The covered facilities include production and utilization facilities and uranium enrichment, uranium conversion and fuel fabrication facilities. The rule also covers some of the facilities listed in AEA § 236a.(2). Specifically, this rule would apply to high-level waste storage and disposal facilities and independent spent fuel storage installations. The remaining waste facilities and installations listed in § 236a.(2) that are subject to Agreement State jurisdiction may be covered in a future rulemaking. For other classes of licensees, the unauthorized introduction of weapons or explosives will continue to be governed, absent other Federal legislation, by State law.

The final rule accounts for the fact that not all portions of the listed classes of facilities will necessarily pose sufficient security concerns to justify imposition of criminal penalties. Therefore, the rule's application is limited to areas within a facility or installation's protected area, as well as portions of facilities or installations that are not within a protected area per se but for which security plans under 10 CFR part 73 must nonetheless be in place. The term ''protected facility or installation'' has also been added to the final rule to refer solely to those portions of facilities that the criminal penalties are intended to protect. The rule's reference to security plan requirements under Part 73, which was not included in the proposed rule, should resolve the ambiguity identified by a commenter regarding certain portions of facilities that are outside the protected area but which nonetheless contain nuclear or radioactive materials.

The NRC has limited the rule's applicability to the facilities listed in §§ 73.75(a) and 73.81(c)(2)(i) because the unauthorized introduction of a weapon or explosive into these facilities poses the greatest health and safety risk and because the NRC already pervasively regulates these facilities. Other facilities—such as hospitals—that contain radioactive materials are not as extensively regulated by the NRC. In order to apply § 73.81 to these other facilities, the NRC would have needed to interact with Agreement States and other State and Federal regulators to further assess the need for application of § 73.81 to these classes of facilities and to determine the proper placement of the required notices and the best way to implement this regulation. As suggested by a public comment, adding posted notices—which, under the statute, is a required complement to the imposition of criminal penalties—to facilities such as hospitals could raise substantial policy and implementation issues. While the NRC acknowledges the recommendations of some commenters that hospitals and other facilities be addressed via this rule, the NRC believes that such extension would raise additional complexities that would be best addressed in a separate rulemaking, should the NRC determine at a future date that expansion of the scope of this rule is warranted.

The NRC is not including the following facilities or materials even though they are listed in § 236 of the AEA:

- Subsection 236a.(3) covering any nuclear fuel for a utilization facility licensed under this Act, or any spent fuel from such a facility. Section 229 of the AEA specifically applies to ''facilities and installations,'' while this subsection applies to ''nuclear fuel'' and ''spent nuclear fuel.'' Fuel is neither a facility nor installation; therefore, § 229, by its terms, is not applicable to this subsection.
- Subsection 236a.(5) covering any ''production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, uranium conversion, or nuclear fuel fabrication facility'' during construction of the facility, if the destruction or damage

caused or attempted to be caused could adversely affect public health and safety. The NRC is primarily concerned with dangers posed by the unauthorized introduction of weapons or explosives into facilities when special nuclear material, byproduct material, or source material is present. Therefore, § 73.81(c) will apply only to those facilities designated in § 73.81(c)(2)(i) upon the receipt of such material. An unauthorized introduction of a weapon or explosive resulting in sabotage covered by AEA § 236 before the receipt of special nuclear material, byproduct material, or source material already constitutes a Federal crime. Although the proposed rule utilized the terms ''nuclear material'' and ''radioactive material'' instead of ''special nuclear material, byproduct material, or source material,'' the former terms are potentially vague and imprecise. Therefore, the final rule is using the latter terminology in order to avoid potential misinterpretation. This change, which appears in §§ 73.75(b)(2) and 73.81(c)(4), is intended to be clarifying rather than substantive.

- Subsection 236a.(6) covering any ''primary or backup facility from which a radiological emergency preparedness alert or warning system is activated.'' These facilities do not contain special nuclear material, byproduct material, source material, or the controls needed to operate a facility.
- Subsection 236a.(7) pertaining to other materials or property that the NRC designates by order or regulation. The NRC is excluding this section because the rulemaking implementing this subsection of § 236 has not commenced. The NRC may revisit this exclusion as part of the rulemaking implementing the Energy Policy Act of 2005 revisions to § 236, or in a separate rulemaking.

In response to a public comment, one class of facilities and installations that is exempted under the final rule includes those facilities and installations that already must comply with similar signage requirements under DOE regulations. DOE regulations already criminalize the unauthorized introduction of dangerous weapons, explosives, or other dangerous instruments or materials into or upon various facilities and installations within DOE's jurisdiction and require that such facilities and installations post notices to that effect. The DOE regulations, however, establish criminal penalties that, while not substantially different, are nonetheless not identical to those being established by this rule. Exempting these facilities from this rule avoids establishing what would in effect be identical crimes punishable by different penalties with respect to those facilities.

Criminal Penalties, Investigation, and Prosecution

Under the final rule's terms, whoever willfully introduces, without authorization, weapons or explosives into or upon any protected facility or installation (as defined in § 73.81(c)(2)) that is enclosed by a fence, wall, floor, roof, or other barrier would be guilty of a misdemeanor, and upon conviction, could be punished by a fine not to exceed $5,000, or imprisonment for not more than one year, or both, as set forth in section 229c of the AEA. Whoever willfully introduces, without authorization, weapons or explosives into or upon any other protected facility or installation would be, upon conviction, punishable by a fine of not more than $1,000, as set forth in section 229b of the AEA. The maximum penalties would vary based upon whether the facility in question is enclosed by a fence, wall, floor, roof, or other barrier. The proposed rule's version of 73.81(c)(1) was worded in a manner that, when read in conjunction with AEA sections 229b and 229c, was circular and potentially confusing. The final rule therefore contains a reworded section 73.81(c)(1). This modification is not, however, intended to change the substance of the rule in any way.

This final rule does not interfere with State prosecution of these crimes under State law, but it does allow the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, or other Federal law enforcement agencies to investigate and DOJ to prosecute in addition to, or instead of, the State government.

The NRC is also not making violations of § 73.75 criminally punishable under AEA sections 229b and 229c. The Commission's objective in this rulemaking, which the Commission believes is consistent with the Congressional intent, is to ensure that the criminal penalties in sections 229b and 229c apply to persons who introduce weapons into facilities without authorization. Furthermore, the NRC has sufficient administrative sanctions at its disposal to enforce the posting requirements.

Regulatory Burden—Posting of Signs

This regulation would not impose any burden on States. The only burden the regulation would impose on licensees is the statutorily mandated requirement that signs containing the quoted text in § 73.75 be posted conspicuously at each of the listed facilities. The rule requires that these signs be posted at all entrances to the protected area, as well as all entrances to buildings not within a protected area that nonetheless contain special nuclear material, byproduct material, or source material (except with respect to buildings for which security plans are not required under 10 CFR part 73). The link between the posting requirements and the NRC's security plan requirements under part 73 has been added to the final rule in response to a public comment to ensure consistency between the NRC's security regulations and the criminal penalties (and licensee posting obligations) being established. The signs may also include other prohibitions already posted at the point of entry.

Although one commenter recommended that additional signs be posted within each facility or installation to serve as further reminders of the regulation's criminal penalties, any person who willfully brings a prohibited item into the facility or installation will have already committed the crime by the time such reminder signs are encountered. The posting of such signs, therefore, will not be required, but licensees are not precluded from posting additional signs.

As the rule states, the signs must be easily readable day and night by both pedestrian and vehicular traffic. The NRC, in response to comments, is providing a 180-day implementation period for this requirement to allow licensees sufficient time to acquire and install the appropriate signs.

The posting requirement is primarily performance-based, stating that signs should be ''easily readable day and night.'' Accordingly, any design and placement that renders the notice ''easily readable day and night'' will satisfy this standard. Although one commenter suggested requiring lighting in order to ensure readability at night, the NRC believes it is sufficient to rely upon the performance-based standard for night readability, because different facilities, as well as different sign locations at each facility, may have different lighting needs.

Although the ''easily readable day and night'' standard is primarily performance-based, it is the NRC's view that compliance with an up-to-date version of the Americans with Disabilities Act (ADA) signage standards (currently set forth at 28 CFR part 36, appendix A, section 4.30) will satisfy the ''easily readable day and night'' standard with respect to those aspects of sign design and placement that the ADA standards address. In their present version, for instance, the ADA standards address topics such as character proportion, character height, finish and

contrast, and mounting location and height. Providing licensees the option of relying upon the ADA standards to help ensure compliance with the ''easily readable day and night'' standard should promote an appropriate balance of flexibility and predictability. The ADA standards may not, however, address all aspects of the ''easily readable day and night'' standard. For example, the current ADA standards do not address readability at night. Therefore, the ADA standards may, in practice, serve only as partial guidance with respect to sign design and placement.

One commenter recommended that the rule require licensees to provide a means for workers and visitors who lawfully possess weapons to temporarily store them at facility entrances prior to entering, such that the weapons could be retrieved later upon exiting. In the NRC's view, the presence or absence of temporary weapons storage for this purpose is primarily a convenience and logistical issue of potential concern to licensees, their employees, and other plant visitors; it is not an issue of significant regulatory concern that the NRC must address. Therefore, the final rule will neither prohibit nor mandate the presence of such temporary weapons storage at the entrances to affected facilities or installations.

Similarly, the posting of additional notices on roadways leading to checkpoints or parking areas is neither required nor prohibited by the rule and is, therefore, left to the licensee's discretion. It is important to note, however, that the location of a posted notice will define the point at which introduction into the facility occurs for purposes of this final rule, at least where introduction occurs at a traditional vehicle or pedestrian entrance to the facility. Accordingly, licensees wishing to post notices in addition to those required by § 73.75, such as to provide advance notice about the § 73.81 criminal penalties to workers or visitors who are approaching a facility entrance or a courtesy storage site for prohibited items, would be advised to ensure that such notices will not be mistaken for the notices required to be posted at facility entrances under § 73.75. This could be accomplished, for instance, by not using the precise language on the ''advance warning'' notices that is required to be used on the notices posted pursuant to § 73.75. Such additional ''advance warning'' notices, of course, would not take the place of the notices that § 73.75 requires to be posted at all vehicle and pedestrian entrances to each protected facility or installation.

Although the text of the final rule does not specifically address such situations, there may, as a practical matter, be cases in which a covered facility does not require its own posted notices. This would seem most likely to occur when one covered facility is embedded completely within the protected area of another covered facility (for example, an independent spent fuel storage facility located entirely within a nuclear power plant's protected area). Because § 73.75(b)(1) requires the posting of notices for protected areas only at the protected area's entrances, the embedded facility would not require its own notices if none of the embedded facility's entrances serve as entrances to the larger protected area.

One non-substantive change to the § 73.75 posting provision is that a new subsection 73.75(a) has been added to identify the categories of facilities to which § 73.75 applies. This eliminates an unnecessary cross reference to § 73.81(c). Another non-substantive change involves § 73.81(c)(2) of the proposed rule. The requirement found in that provision was redundant, serving merely to remind readers that there are associated posting requirements in § 73.75. Because some of the definitions in § 73.81(c) of the final rule perform a similar reminder function by referencing the § 73.75 posting requirements, § 73.81(c)(2) is unnecessary and has been removed.

Definitions of Key Terms

The unauthorized introduction—whether by carrying, transporting, discharging of a firearm, or otherwise—of weapons, explosives, or other dangerous instruments or materials into or upon the area marked by the posted notices will constitute a Federal crime under this final rule. For purposes of this final rule, ''without authorization'' means lacking authorization, as part of one's official duties, to carry the item in question. Accordingly, the introduction of weapons by security guards, peace officers, or military personnel as part of their official duties would be ''authorized'' and these individuals would not be subject to criminal sanctions under this rule. Additionally, the introduction of potentially dangerous industrial tools, machinery, or other materials into a facility as part of one's job duties would likewise not be subject to criminal sanctions under this rule.

As noted above, a new term, ''protected facility or installation,'' has been added to the final rule. This term, which encompasses solely those portions of facilities that the criminal penalties are meant to protect, is included to ensure that the posting requirements under § 73.75 and the criminal penalty provisions under § 73.81 will be consistent with one another (a task previously performed by the proposed rule's definition of ''introduce'') and to create a simple means of referring, in § 73.81(c)(1), to the facility areas that provision is meant to cover.

The terms ''dangerous weapons,'' ''dangerous instrument or material,'' and ''explosives'' are not defined in the statute that these regulations would implement. In addition, the DOE regulations referred to above utilize these same terms to define comparable criminal conduct but do not define them. The NRC has determined, however, that enforcement could be enhanced by providing definitions for at least some of these terms. Furthermore, a number of public comments recommended providing definitions to promote clarity and consistency in the rule's implementation.

Accordingly, the NRC, after consultation with DOJ, has adopted a set of definitions from existing Federal criminal statutes. A newly inserted definition for the rule's term ''dangerous weapon'' references existing definitions found at 18 U.S.C. 921(a)(3) and 26 U.S.C. 5845(a) for the term ''firearm'' and the 18 U.S.C. 930(g)(2) definition of the term ''dangerous weapon.'' [1] Although these relatively broad incorporated definitions may overlap with one another in many respects, the rule references each of them in order to ensure that no legitimately dangerous items will be inadvertently left uncovered by this rule. In addition, a new definition for ''explosive'' incorporates the definition of ''explosive'' found at 18 U.S.C. 844(j). The referenced ''firearm'' definitions do provide exceptions for antique weapons, certain recreational and sporting guns, and army surplus ordnance. Those exceptions, however, will have no effect for purposes of this final rule, because antique weapons, recreational and sporting guns, and army surplus ordnance still fall within the terms of the 18 U.S.C. 930(g)(2) definition of ''dangerous weapon,'' which broadly covers any ''weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or

[1] Because the term ''dangerous weapon'' as used in 18 U.S.C. 930(g)(2) does not expressly cover firearms, the NRC believes it is appropriate to incorporate definitions of ''firearm'' as well.

serious bodily injury.'' This is appropriate because even the types of weapons excepted under the ''firearm'' definitions are not appropriate for introduction, without authorization, into highly secure nuclear facilities.

The NRC does not plan to issue guidance for licensees beyond what is contained in this statement of considerations to further define these terms. The NRC considers extensive guidance to licensees regarding the reporting requirements associated with this final rule to be unnecessary. The purpose of the rule is to criminalize the unauthorized introduction of items that licensee security plans should already be prohibiting as part of their existing security efforts. Such items include guns, explosives, and any other items that would pose a legitimate security threat if brought into a protected facility without authorization. Unremarkable personal items such as pocket knives attached to key chains, butter knives in lunch boxes, and so on are not intended to be covered by this rule, and so would not trigger any licensee reporting requirements absent some further facts (such as, for example, evidence of intent to commit sabotage) which would implicate some other criminal provision or other basis for reporting the incident. Indeed, the 18 U.S.C. 930(g)(2) definition of ''dangerous weapon,'' which the final rule's definition of ''dangerous weapon'' incorporates, expressly excludes pocket knives with blades less than 2½ inches long. With these principles in mind, as well as the additional clarity provided by the definitions of ''dangerous weapon,'' ''firearm,'' and ''explosive'' that are being incorporated from existing Federal criminal statutes, the NRC expects that licensees will be able to comply with the reporting requirements associated with this rule without additional formal guidance. As explained in the next section of this statement of considerations, however, the NRC, after consulting with DOJ, will consider whether to adopt any additional guidance that is submitted by the regulated community to the NRC for review.

As to the term ''willful,'' the NRC is also declining a commenter's recommendation that the term be defined. The NRC expects that prosecutors and courts will define the term as it is usually defined when used in Federal criminal statutes. The U.S. Supreme Court has stated that, ''[a]s a general matter, when used in the criminal context, a 'willful' act is one undertaken with a 'bad purpose.' '' *Bryan* v. *United States,* 524 U.S. 184, 191 (1998). One common way to prove the existence of a ''bad purpose'' is to show that the defendant ''acted with knowledge that his conduct was unlawful.'' *Id.* at 192. This is consistent with one commenter's suggestion that the definition of willful should refer to ''evidence of subterfuge, masking, or malevolent intent,'' because such evidence would tend to indicate that the defendant knew the conduct in question was unlawful. Further, the easily readable notices posted at all vehicle and pedestrian entrances will help to ensure that all visitors are aware of the prohibition.

The definition of the term ''introduce,'' which was included in the proposed rule, is replaced in the final rule for clarification purposes with a new § 73.81(c)(3), which serves to define the entire phrase that is used in § 73.81(c)(1) (i.e., ''carrying, transporting, or otherwise introducing or causing to be introduced''). The new § 73.81(c)(3) removes any possible suggestion that the terms ''carrying,'' ''transporting,'' and ''otherwise introducing'' should be analyzed separately, rather than as a single concept meant to cover any conceivable method of introduction. The new provision also more expressly accounts for the fact that entrance to a protected facility or installation might occur at a location that is not a traditional vehicle or pedestrian entrance, and which therefore might not be in the vicinity of a notice posted pursuant to § 73.75. For instance, a perpetrator carrying a prohibited item might try to enter the facility by breaching a fence, wall, or other barrier, or by some other means that occurs away from the vehicle and pedestrian entrances and any § 73.75 notices. Under the proposed rule's formulation, it could have been unclear in these circumstances whether or when an introduction has actually occurred, because the proposed rule relied entirely upon the location of the notice to define when an ''introduction'' occurs. The new § 73.81(c)(3), therefore, relies upon a common sense concept of entering a facility for those instances where entry does not occur at a traditional ''entrance.'' When entrance to the facility does occur at a traditional vehicle or pedestrian entrance, however, the § 73.75 notice will remain the boundary marker for purposes of this rule.

Relationship of Rule to Licensee Security Procedures

As explained in the statements of consideration for the proposed rule, this rule should not require any changes to licensee security procedures. Under § 73.71(b)(1) and paragraph I(d) of appendix G to Part 73, licensees are required to report within one hour, followed by a written report within 60 days, ''the actual or attempted introduction of contraband into a protected area, material access area, vital area, or transport.'' For purposes of the final rule, weapons, explosives, or other dangerous instruments or materials that are introduced without authorization would be ''contraband.'' Licensees should note that the purpose of this rule is to broaden Federal prosecutorial authority, not to change licensee security practices.

With that said, licensees who suspect they have uncovered actual or attempted violations of this rule are encouraged to promptly notify local or Federal law enforcement authorities, who may provide additional guidance as circumstances warrant. Licensees may also, of course, contact the NRC for further guidance. The NRC does not currently plan to issue any additional guidance regarding the procedures that licensees should employ upon discovering actual or suspected violations or attempted violations of this rule. If licensees desire additional guidance regarding the procedural steps to follow after discovery of suspected or actual violations or attempted violations of this rule, the NRC is willing to review and consider whether to adopt any guidance that the regulated community sees fit to propose. The NRC anticipates that it would consult with DOJ before endorsing any proposed guidance.

Finally, the NRC notes that the preexisting responsibilities of licensees to maintain the security of their facilities are not altered by the fact that this rule is now making one particular class of security threat—the unauthorized introduction into protected facilities of dangerous weapons, explosives, or other dangerous instruments or materials—a Federal crime.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is establishing criminal penalties for the unauthorized introduction of weapons or explosives into or upon certain facilities and installations subject to the regulatory authority of the NRC. This action does not constitute the establishment of a standard that

contains generally applicable requirements.

V. Finding of No Significant Environmental Impact: Environmental Assessment

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in Subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and that, therefore, an environmental impact statement is not required. The basis for this determination is as follows:

The Need for the Rule:

This final rule is needed to implement § 229 of the AEA. In § 654 of the Energy Policy Act of 2005, Congress amended § 229 of the AEA, authorizing the NRC to issue regulations making it a Federal crime to, without authorization, introduce weapons or explosives into specified classes of facilities and installations subject to the regulatory authority of the NRC. Section 229 was also amended to require that each such regulation be posted conspicuously at the location involved.

Environmental Impacts of the Rule:

The NRC has completed its evaluation of the rule and concludes that it will not cause any significant environmental impact. The only action required by the rule is the requirement in § 73.75 that licensees place a notice at each entrance to the protected area and to any buildings not within a protected area that contain special nuclear material, byproduct material, or source material and which are required to have security plans under 10 CFR part 73. Licensees already post notices at the entrances to facilities, and this rule allows licensees to combine the notice required in § 73.75 with these other notices. The NRC requested public comments on the environmental assessment included with the proposed rule, which likewise predicted that there would be no significant environmental impacts, but no comments on the topic were received. The final rule includes essentially the same posting requirements that were found in the proposed rule, with only minor clarifications as to which buildings and areas are, and are not, covered by the posting requirements, as well as additional information regarding permissible sign formats. Therefore, the NRC has concluded that there will be little to no environmental impact of creating and posting the notices required by this final rule. Accordingly, the NRC concludes that there will be no significant environmental impacts associated with this action.

Alternatives to the Proposed Action:

As an alternative to the proposed action, the NRC staff considered not promulgating this rule (the ''no-action'' alternative). This would result in leaving unfulfilled the congressional authorization the NRC had sought. Moreover, because implementation of the rule would not result in any significant environmental impacts, the no-action alternative would not significantly reduce environmental impacts.

Accordingly, the NRC has determined in this environmental assessment that there will be no significant offsite impact to the public from this action.

VI. Paperwork Reduction Act Statement

This rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule does not establish any reporting requirements. In addition, the posting requirements contained in this rule are not included in the definition of information collection. This is because the text to be printed on the required notices is being completely supplied by NRC regulation (10 CFR 73.75(b)(3)), and a requirement to publicly disclose information that was originally provided by the Federal Government does not constitute an ''information collection.'' 5 CFR 1320.3(c)(2).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

VII. Regulatory Analysis

A regulatory analysis has not been prepared for this regulation. Congress authorized the NRC to implement by regulation § 654 of the Energy Policy Act of 2005, which establishes as a Federal crime the unauthorized introduction of weapons or explosives into NRC-designated facilities. The AEA requires that signs be conspicuously posted to warn facility entrants of the criminal prohibition. The only costs associated with implementing the rule are the costs to procure, post, and maintain these signs since procedures and organization required to protect against the unauthorized introduction of weapons are already required. The NRC estimates these costs to be $50 per sign, with an estimated average of six signs per affected facility, for an average total cost of $300 per facility. Based upon the number of facilities that would be covered by this rule if it were effective today, the NRC views $50,000 as a conservative industry-wide cost estimate. The NRC considers this cost to be reasonable because of the express congressional requirement that any facilities covered by regulations promulgated under AEA § 229a.(1) post such regulations ''conspicuously,'' and because the signs are required to be posted only at locations where entry into covered facilities would ordinarily occur.

VIII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule does not have a significant economic impact on a substantial number of small entities. The companies that own the facilities affected by this rule do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

IX. Backfit Analysis

The NRC has determined that a backfit rule, 10 CFR 50.109, 70.76, 72.62, 76.76, does not apply to this rule and that a backfit analysis is not required. A backfit analysis is not required because the only actions required by the rule are the procuring and posting of signs. The conspicuous posting of notices is expressly required by § 229a.(2) of the AEA for any facility covered by regulations promulgated under § 229a.(1), and so the requirement to post notices does not result from an exercise of NRC discretion. In any event, the posting of notices pursuant to this rule does not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility.

Likewise, the criminal penalties established by this rule merely authorize Federal prosecution of certain crimes, and therefore do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility.

X. Congressional Review Act

In accordance with the Congressional Review Act (5 U.S.C. 801–808), the NRC

has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

XI. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the NRC on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA, or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

List of Subjects in 10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 149, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2169, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005). 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).

■ 2. Section 73.75 is added to read as follows:

§ 73.75 Posting.

(a) This section applies to:

(1) Production or utilization facilities;

(2) High-level waste storage or disposal facilities and independent spent fuel storage installations;

(3) Uranium enrichment, uranium conversion, or nuclear fuel fabrication facilities.

(b)(1) Licensees or certificate holders operating facilities described in paragraph (a) of this section that have a protected area shall conspicuously post notices at every vehicle and pedestrian entrance to the protected area.

(2) Licensees or certificate holders operating facilities described in paragraph (a) of this section that include buildings not within a protected area that nonetheless contain special nuclear material, byproduct material, or source material shall conspicuously post notices at the personnel and vehicle entrances to each such building, except with respect to buildings for which no security plan is required under this part.

(3) The required notices must state: ''The willful unauthorized introduction of any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or upon these premises is a Federal crime. (42 U.S.C. 2278a.)''

(4) Every notice posted under this section must be easily readable day and night by both pedestrian and vehicular traffic entering the facility or installation.

(5) These notices may be combined with other notices.

(c) This section does not apply to facilities that, in addition to being regulated by the NRC under a license or certificate of compliance issued by the Commission, are also covered by U.S. Department of Energy regulations imposing criminal penalties, and associated posting requirements, under section 229 of the Atomic Energy Act with respect to unauthorized introduction of dangerous weapons, explosives, or other dangerous instruments or materials likely to produce substantial injury or damage to persons or property.

■ 3. In § 73.81, paragraph (b) is revised and paragraph (c) is added to read as follows:

§ 73.81 Criminal penalties.

* * * * *

(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, 73.75, 73.80, and 73.81.

(c)(1) No person without authorization may carry, transport, or otherwise introduce or cause to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or upon a protected facility or installation. Willful violations of this provision are punishable by the criminal penalties set forth in sections 229b and 229c of the Atomic Energy Act of 1954, as amended.

(2) As used in this section:

(i) ''Protected facility or installation'' means any production or utilization facility, high-level waste storage or disposal facility, independent spent fuel storage installation, uranium enrichment, uranium conversion, or nuclear fuel fabrication facility, but does not include those portions of such facilities that are not required under § 73.75(b) of this part to be identified by notices posted at their pedestrian and vehicle entrances, and does not include facilities described in § 73.75(c) of this part.

(ii) ''Without authorization'' means not authorized as part of one's official duties to carry the weapon, explosive, or other instrument or material;

(iii) ''Dangerous weapon'' includes any firearm, as defined in either 18 U.S.C. 921 or 26 U.S.C. 5845, or dangerous weapon, as defined in 18 U.S.C. 930;

(iv) ''Explosive'' means any explosive as defined in 18 U.S.C. 844(j).

(3) An item, such as a dangerous weapon, explosive, or other dangerous instrument or material, is considered to have been carried, transported, or otherwise introduced or caused to be introduced into or upon a protected facility or installation for purposes of paragraph (c)(1) of this section once the item has traveled past a notice posted pursuant to § 73.75 of this part at a vehicle or pedestrian entrance to the protected facility, or once the item has entered the protected facility or installation at a location that is not a vehicle or pedestrian entrance to the facility, whether such entry is accomplished through, over, under, or around a fence, wall, floor, roof, or other structural barrier enclosing the protected facility or installation or by any other means.

(4) For all protected facilities or installations that do not possess special nuclear material, byproduct material, or source material as of the effective date of this rule, this provision shall take effect upon receipt of such material at the applicable facility or installation.

Dated at Rockville, Maryland, this 5th day of October 2009.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E9–24566 Filed 10–13–09; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Parts 4, 122, 123, and 192

[CBP Dec. 09–39]

Technical Correction To Remove Obsolete Compliance Date Provisions From Electronic Cargo Information Regulations

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule; technical correction.

SUMMARY: This final rule removes the compliance date provisions of various sections of the CBP regulations pertaining to mandatory advance electronic transmission of in-bound and out-bound cargo information. As all the provisions requiring advance electronic transmission of cargo information are now in effect because the various dates or events described in the compliance date paragraphs triggering the compliance date have occurred, the compliance date paragraphs are now obsolete.

DATES: The rule is effective on October 14, 2009.

FOR FURTHER INFORMATION CONTACT: Gregory Olsavsky, Director, Cargo Control Division, Office of Field Operations, 202–344–1049.

SUPPLEMENTARY INFORMATION:

Background

As circumstances warrant, CBP sometimes publishes a regulation (a final or interim final rule) that delays its compliance date, or the compliance date for one or more of its provisions, until a future date and/or the occurrence of one or more specified events. When the condition or conditions precedent has been met, the provision becomes out of date and obsolete. This final rule removes several obsolete compliance date provisions from several sections of the CBP regulations.

Each compliance date provision being amended in this technical correction involves a final rule that was promulgated pursuant to section 343(a) of the Trade Act of 2002, as amended by the Maritime Security Act (19 U.S.C. 2071 note) (hereafter, section 343(a) of the Act). The final rule was published in the **Federal Register** (68 FR 68140) on December 5, 2003. Section 343(a) of the Act mandates the collection of cargo information through a CBP-approved electronic data interchange system before cargo is brought into or departs from the United States by any mode of commercial transportation (sea, air, rail, truck). This requirement spawned new sections of the regulations (19 CFR 122.48a, 123.91, 123.92, and 192.14) and required amendment of an existing section (19 CFR 4.7) to implement the law. Four of the five sections pertain to the advance electronic transmission requirement for cargo arriving in the United States by vessel carrier, air carrier, rail carrier, and truck carrier, and the fifth section pertains to this requirement for cargo departing from the United States onboard all modes of transportation. Because some carriers were not yet automated (with systems capable of electronic transmission through the appropriate CBP-approved data interchange system) or CBP had to upgrade its system, the new and amended regulations were drafted to contain a compliance date provision that delayed the date the carriers would be required to comply with the mandatory electronic transmission requirements. Over time, the compliance dates for these five sections of the CBP regulations have taken effect, rendering these provisions obsolete.

Changes Made in This Final Rule

This final rule amends the following five sections of the CBP regulations to remove from each an obsolete compliance date provision:

19 CFR 4.7

Under 19 CFR 4.7, applicable to commercial vessels transporting cargo to the United States, CBP must receive the CBP-approved electronic equivalent of the vessel's cargo declaration 24 hours before the cargo is laden aboard the vessel at the foreign port (19 CFR 4.7(b)(2)). This section also sets forth other requirements, such as information to be transmitted, and a compliance date. Under 19 CFR 4.7(b)(5), vessel carriers (and non-vessel operating common carriers electing to participate) must comply with the requirement to make electronic transmissions under paragraph (b)(2) within 90 days of December 5, 2003 (the date the implementing final rule was published) at all ports of entry in the United States.

Inasmuch as the compliance date has passed, this final rule removes paragraph (b)(5) from this section and makes a conforming change to paragraph (b)(2).

19 CFR 122.48a

Under 19 CFR 122.48a, applicable to commercial air carriers transporting cargo to the United States, CBP must electronically receive from an inbound air carrier (or from another party authorized under paragraph (c)(1) of this section) certain information concerning incoming cargo. In the case of flights departing directly to the United States from any port or place in North America, CBP must receive the information no later than the aircraft's departure and, for flights departing from any other foreign port or place, no later than 4 hours prior to the aircraft's arrival in the United States. Section 122.48a sets forth other requirements, including the information to be transmitted and a compliance date.

Under 19 CFR 122.48a(e)(1), air carriers must comply with the requirement to transmit cargo information to CBP electronically on and after March 4, 2004. Under 19 CFR 122.48a(e)(2), CBP may delay the compliance date set forth in paragraph (e)(1) of this section in certain circumstances (that need not be specified here). Under this paragraph (e)(2), CBP would announce any such delays in the **Federal Register**. As the March 4, 2004, compliance date was not delayed, no announcements of delay were published.

Inasmuch as the compliance date for all air carriers has passed, this final rule removes paragraph (e) from this section and makes a conforming change to paragraph (a).

19 CFR 123.91

Under 19 CFR 123.91, applicable to U.S. bound railroad trains with commercial cargo aboard, CBP must electronically receive from the rail carrier certain information concerning the incoming cargo. CBP must receive the information no later than 2 hours prior to the cargo's arrival at the first port of arrival in the United States (19 CFR 123.91(a)). This section also sets forth other requirements, including exceptions, the information to be submitted, and a compliance date. Under 19 CFR 123.91(e), carriers are required to comply with the section's electronic transmission requirements 90 days from the date that CBP publishes notice in the **Federal Register** informing carriers that the electronic data interchange system for transmission of cargo information is operational at the affected port(s).

On April 12, 2004, CBP published a notice in the **Federal Register** (69 FR 19207) providing a schedule of dates by which the electronic data interchange