information, which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Prior documents in this proceeding:

Notice of Hearing: Issued February 14, 2005; published February 17, 2005 (70 FR 8043).

Amendment to Public Hearing on Proposed Rulemaking: Issued March 1, 2005; published March 3, 2005 (70 FR 10337).

Tentative Partial Decision: Issued July 21, 2005; published July 27, 2005 (70 FR 43335).

Interim Final Rule: Issued September 20, 2005; published September 26, 2005 (70 FR 56111).

Final Partial Decision: Issued January 17, 2006; published January 23, 2006 (71 FR 3435).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Mideast order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Mideast order:

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held in regard to certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Mideast marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The Mideast order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feed, available supplies of feed, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Mideast order, as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

The amendments to these orders are known to handlers. A final partial decision containing the proposed amendments to these orders was issued on January 17, 2006. An interim final rule adopting these pooling standards on an interim basis was issued on September 20, 2005.

The changes that result from these amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective May 1, 2006. It would be contrary to the public interest to delay the effective date of these amendments for 30 days after their publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559.)

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk that is marketed within the specified marketing area to sign a proposed marketing agreement tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of the order amending the Mideast order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended;

(3) The issuance of the order amending the Mideast order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1033

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Mideast marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended, as follows:

PART 1033—MILK IN THE MIDEAST MARKETING AREA

The interim final rule amending 7 CFR part 1033 which was published at 70 FR 56111 on September 26, 2005, is adopted as a final rule without change.

Dated: April 17, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–3775 Filed 4–19–06; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150–AH88

Implementation of the Nuclear Export and Import Provisions of the Energy Policy Act of 2005

AGENCY: Nuclear Regulatory Commission

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations that govern the export and import of nuclear equipment and material to implement provisions of the Energy Policy Act of 2005 signed into law on August 8, 2005. This amendment will facilitate exports to specified countries of high-enriched uranium for medical isotope production in reactors that are either utilizing low-enriched uranium (LEU) fuel or have agreed to convert to the use of LEU fuel. In addition, this final rule revises the definition of byproduct material to include discrete sources of radium-226, accelerator-produced radioactive material, and discrete sources of naturally occurring radioactive material. Finally, the rule will require specific licenses for exports and imports of radium-226 that meet the threshold values of the International Atomic Energy Agency's Code of Conduct on the Safety and Security of Radioactive Sources.

DATES: This final rule will become effective August 7, 2006.

ADDRESSES: Copies of the final rule and related documents may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Public File Area O1F21, Rockville, Maryland. These documents are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/*

adams.html. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For further information contact the PDR reference staff at 1 (800) 387–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.* the final rule and related documents are also available on the NRC's rulemaking Web site at *http://ruleforum.linl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Brooke G. Smith, International Policy Analyst, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–2347, e-mail *bgs@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary and Background

The purpose of this final rule is to amend the Commission's regulations at 10 CFR part 110, ''Export and Import of Nuclear Equipment and Material,'' to implement sections 630, 651(d), and 651(e) of the energy Policy Act of 2005 (EPAct), which was signed into law on August 8, 2005.

Section 630, ''Medical Isotope Production,'' of the EPAct, amended section 134 of the Atomic Energy Act of 1954, as amended (AEA), to facilitate the timely export to a ''Recipient Country'' of high-enriched uranium (HEU) for medical isotope production in reactors that are either utilizing low-enriched uranium (LEU) fuel or have agreed to convert to the use of LEU fuel. A ''Recipient Country'' is defined in section 630 as Canada, Belgium, France, Germany, and the Netherlands. The EPAct also requires the Commission to review and impose, via license conditions or other appropriate means, physical protection requirements that are applicable to the transportation and storage of HEU for medical isotope production or control of residual material after irradiation and extraction of medical isotopes.

Specifically, before issuing licenses authorizing the export of HEU in the form of fuel or targets for the production of medical isotopes to Canada, Belgium, France, Germany, and the Netherlands, the Commission must find that the Recipient Country has provided the United States with written assurances that any intermediate consignees and the ultimate consignee specified in the export application are required to use the HEU solely to produce medical isotopes. Further, the Commission must determine that the HEU will be irradiated in a reactor in a Recipient Country that uses an alternative nuclear reactor fuel, e.g., LEU, or is the subject of an agreement with the U.S. to convert to an alternative nuclear fuel when that fuel can be used in the reactor.

Section 630 suspends for the Recipient Countries (until the Secretary of Energy makes certain findings) the portions of section 134 of the AEA that required the Commission to make certain findings with respect to the use of LEU targets to produce medical isotopes before issuing an export license for HEU for medical isotope production.

This final rule amends § 110.42(a)(9) to reflect the revised export criteria with regard to export applications to Recipient Countries for medical isotope production. Although the implementing regulations promulgated will not take effect until August 7, 2006, NRC export licensing decisions have been governed by section 134 of the AEA, as amended by section 630 of the EPAct, since August 8, 2005. The NRC already evaluates the adequacy of the proposed physical protection measures under § 110.42(a)(3) when it evaluates individual export license applications, and has the authority to impose additional requirements in the license as the Commission deems necessary. Therefore, no rule changes are necessary to implement the statutory provision.

Section 651(d), ''Radiation Source Protection,'' of the EPAct amended the AEA by imposing new requirements pertaining to the export or import of Category 1 or Category 2 radiation sources as defined by the International Atomic Energy Agency (IAEA) Code of Conduct on the Safety and Security of Radioactive Sources (Code of Conduct) (and any other material that poses a threat, as determined by the Commission, other than spent nuclear fuel and special nuclear materials). The Code of Conduct includes sixteen categories of byproduct material sources, including radium-226. On July 1, 2005 (70 FR 37985), the Commission issued final regulations amending part 110 that together with other existing regulations satisfy the requirements of section 651(d) for the export and import of radioactive sources. However, at the time the July 2005 rule was issued, the Commission did not have authority to regulate radium-226; therefore, radium-226 was not listed in Appendix P to part 110 or covered by the scope for the July 2005 rule. The Commission provided notice that radium-226 would be added to Appendix P to part 110, consistent with the Code of Conduct, if Congress conferred upon the Commission jurisdiction over radium-226. Section 651(e) of the EPAct amended the definition of byproduct material in section 11e. of the AEA to include discrete sources of radium-226. Consistent with the notice provided in the July 2005 rule and the authority conferred upon the Commission by Congress in section 651(e) of the EPAct, this rule amends Appendix P to include Category 1 and Category 2 quantities of discrete sources of radium-226.

Section 651(e) of the EPAct amends section 11e. of the AEA to place accelerator-produced material, discrete sources of radium-226, and certain discrete sources of naturally-occurring radioactive material, other than source material, under NRC regulatory authority if produced, extracted, or converted for use in commercial, medical, or research activities. This rule amends Appendix L to part 110, ''Illustrative List of Byproduct Materials under NRC Export/Import Licensing Authority,'' to include discrete sources of radium-226 and accelerator-produced radioactive material. Prior to the enactment of the EPAct, the Department of Commerce (DOC) had jurisdiction over the export of radium-226. As provided by the EPAct, discrete sources of radium-226 will fall under NRC's jurisdiction; however, jurisdiction over the export of non-discrete sources of radium-226 will remain in DOC's jurisdiction. The Commission intends to define the term ''discrete source'' in a separate rulemaking.

Waiver of Notice and Comment Requirement

This rule revises the Commission's regulations solely to incorporate provisions pertaining to the export and import licensing included in the EPAct. This rule tracks statutory provisions and the drafting of it did not involve the exercise of discretionary decision-making. Good cause exists under 5 U.S.C. 553(b)(3)(B) to publish this final rule without soliciting public comment because public comment under these circumstances would serve no useful purpose and therefore, is unnecessary and contrary to the public interest.

Effective Date of Rule and Expiration of Time-Limited Waiver

The effective date of this rule, August 7, 2006, coincides with the expiration of a time-limited waiver pertaining to NRC regulation of the import and export of the new categories of byproduct material added to AEA section 11e. by the EPAct. *See* Energy Policy Act of 2005 Requirements; Treatment of Accelerator-Produced and other Radioactive Material as Byproduct

Material; Waiver, 70 FR 51581 (August 31, 2005).

The NRC has determined that this rule will pose no unreasonable risk to the public health and safety or the common defense and security.

II. Section by Section Analysis of Substantive Changes

Subpart A—General Provisions

Section 110.2. The definition of ''byproduct material'' has been revised to be consistent with section 651(e)(1) of the EPAct which amended the definition of byproduct material in section 11e. of the AEA to place accelerator-produced material, discrete sources of radium-226, and certain discrete sources of naturally occurring radioactive material, other than source material, under NRC regulatory authority if they are produced, extracted, or converted for use in commercial, medical, or research activities.

The terms ''medical isotope,'' ''radiopharmaceutical,'' and ''Recipient Country'' have been added to this section consistent with the section 630 of the EPAct which amended section 134 of the AEA.

Subpart D—Review of License Applications

Section 110.42. A new paragraph (a)(9) is amended to incorporate the requirements set forth in section 630 of the EPAct regarding medical isotope production.

Appendix L to Part 110—Illustrative List of Byproduct Materials Under NRC Export/Import Licensing Authority. The list of byproduct material in Appendix L is amended to add radium-226. Under the EPAct, the definition of byproduct material was expanded to include discrete sources of radium-226. The import or export of discrete sources of radium-226 that are below the threshold limits for radium-226 listed in Appendix P to part 110 may be accomplished through a general license set forth in 10 CFR 110.23. In addition, a footnote is added to Appendix L to indicate that the NRC has import and export authority over any accelerator-produced material that was produced, extracted or converted for use for a commerical medical, or research activity. A second footnote is added to Appendix L to indicate that NRC has import and export authority or discrete sources of radium-226.

Appendix P to Part 110—Category 1 and 2 Radioactive Material

Table 1.—Import and Export Threshold Limits

The list of category 1 and 2 radioactive material in Appendix P is amended to add radium-226 and the corresponding threshold limits for Category 1 and 2 quantities consistent with the values in Table 1 of the IAEA Code of Conduct. A specific license is required for the import or export of discrete sources of radium-226 meeting the threshold quantities listed in Table 1 of Appendix P. A footnote is added to the list in Appendix P to indicate that the NRC has import and export authority over discrete sources of radium-226.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 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 otherwise impractical. This final rule does not constitute the establishment of a standard for which the use of a voluntary consensus standard would be applicable.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule implements the provisions of the Energy Policy Act of 2005, sections 630, 651(d), and 651(e). The final rule does not impact the information collection burden for 10 CFR part 110 licensees. Any burden for licensing actions would be against NRC Form 7 (3150–0027). However, few, if any, licensing actions are expected to be submitted. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the OMB, approval number 3150–0036.

Public Protection Notification

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

Regulatory Analysis

The EPAct, which was signed into law on August 8, 2005, amended the definition of byproduct material in the Atomic Energy Act of 1954, as amended to include discrete sources of radium-226 and conferred regulatory authority of it to the NRC. Previously, radium-226 was under the jurisdiction of the U.S. Department of Commerce. The NRC is amending its regulations at 10 CFR part 110 to add radium-226 to the list of radioactive material in Appendix P to part 110. Shipments of radium-226 at or above the Category 2 level will require a specific license. This change to part 110 fulfills the mandate from Congress in section 651(d) and (e) of the EPAct and with the IAEA Code of Conduct. Additionally, to implement section 630, ''Medical Isotope Production,'' of the EPAct, this final rule amends 10 CFR 110.42, ''Export licensing criteria.'' There is no alternative to amending the regulations at 10 CFR part 110 to reflect changes in law. This final rule is expected to have an insignificant increase in the information collection burden and cost to the public for applications to export or import radium-226 at the quantities listed in Appendix P to part 110.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this rule because these amendments do not include any provisions that would impose backfits as defined in 10 CFR Chapter I.

Congressional Review Act

Under the Congressional Review Act of 1996, 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 OMB.

List of Subjects in 10 CFR Part 110

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

■ For the reasons set out in the premble 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 110.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

■ 1. 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, 134, 161, 170H., 181, 182, 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, 2160d., 2201, 2210h., 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841; sec. 5, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sections 110.1(b)(2) and 110.1(b)(3) 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 110.30–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 et seq.).

■ 2. In § 110.2, the definition of *Byproduct material* is revised, and definitions for *Medical isotope, Radiopharmaceutical,* and *Recipient Country* are added in alphabetical order to read as follows:

§ 110.2 Definitions.

* * * * *

Byproduct material means

(1) Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(2) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore (see 10 CFR 20.1003);

(3)(i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(ii) Any material that has been made radioactive by use of a particle accelerator and is produced, extracted, or converted after extraction, before, on, or after August 8, 2005 for use for a commercial, medical, or research activity; and

(4) Any discrete source of naturally occurring radioactive material, other than source material, that—

(i) The Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(ii) Before, on, or after August 8, 2005 is extracted or converted after extraction for use in a commercial, medical, or research activity.

* * * * *

Medical isotope, for the purposes of § 110.42(a)(10), includes Molybdenum 99, Iodine 131, Xenon 133, and other radioactive materials used to produce a radiopharmaceutical for diagnostic, therapeutic procedures or for research and development

* * * * *

Radiopharmaceutical, for the purposes of § 110.42(a)(10), means a radioactive isotope that contains byproduct material combined with chemical or biological material and is designed to accumulate temporarily in a part of the body for therapeutic purposes or for enabling the production of a useful image for use in a diagnosis of a medical condition.

Recipient Country, for the purposes of § 110.42(a)(10), means Canada, Belgium, France, Germany, and the Netherlands.

* * * * *

■ 3. In § 110.42, paragraph (a)(9)(i) is revised, paragraph (a)(9)(ii) is redesignated as paragraph (a)(9)(iii), and new paragraph (a)(9)(ii) is added to read as follows:

§ 110.42 Export licensing criteria.

(a) * * *

(9)(i) Except as provided in paragraph (a)(9)(ii) of this section, exports of high-enriched uranium to be used as a fuel or target in a nuclear research or test reactor, the Commission determines that:

(A) There is no alternative nuclear reactor fuel or tart enriched to less than 20 percent in the isotope U–235 that can be used in that reactor;

(B) The proposed recipient of the uranium has provided assurances that, whenever an alternative nuclear reactor fuel or target can be used in that reactor, it will use that alternative fuel or target in lieu of highly-enriched uranium; and

(C) The United States Government is actively developing an alternative nuclear reactor fuel or target that can be used in that reactor.

(ii) With regard to a Recipient Country, the Commission may issue a license authorizing the export of high-enriched uranium for medical isotope production, including shipment to and use at intermediate and ultimate consignees, if the Commission determines that:

(A) The Recipient Country has supplied an assurance letter to the United States Government in connection with the consideration by the Commission of the export license application has informed the United States Government that any intermediate consignees and the ultimate consignee specified in the export license application are required to use the high-enriched uranium solely for the production of medical isotopes; and

(B) The high-enriched uranium will be irradiated only in a reactor in the Recipient Country that—

(*1*) Uses an alternative nuclear fuel; or

(*2*) Is the subject of an agreement with the United States Government to convert to an alternative nuclear reactor fuel when alternative nuclear reactor fuel can be used in the reactor.

* * * * *

■ 4. Appendix L to part 110 is amended by adding new footnote a to the title of Appendix L, by amending the list of byproduct material by adding ''Radium-226 (Ra 226)'' in alphabetical order, and by adding new footnote b to read as follows:

Appendix L to Part 110—Illustrative List of Byproduct Materials Under NRC Export/Import Licensing Authority [a]

* * * * *

Radium-226 (Ra-226) [b]

* * * * *

■ 5. Appendix P to part 110 is amended by adding ''Radium-226'' in alphabetical order to Table 1. and new footnote a to read as follows:

Appendix P to Part 110—High Risk Radioactive Material

[a] Any accelerator-produced material produced, extracted, or converted for use for a commercial, medical, or research activity.

[b] Discrete sources of radium-226 (Ra-226).

TABLE 1.—IMPORT AND EXPORT THRESHOLD LIMITS

Radioactive material	Category 1		Category 2	
	Terabequerels (TBq)	Curies (Ci)	Terabequerels (TBq)	Curies (Ci)
* * * *	*		*	*
Radium-226 [a]	40	1,100	0.4	11
* * * *	*		*	*

[a] Discrete sources of radium-226.

Dated at Rockville, Maryland, this 4th day of April, 2006.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. 06–3664 Filed 4–17–06; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 202

[Release No. 34–53638]

RIN 3235–AJ55

Policy Statement Concerning Subpoenas to Members of the News Media

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; policy statement.

SUMMARY: The Securities and Exchange Commission is issuing a policy statement concerning the issuance of subpoenas to members of the media. This policy statement sets forth guidelines for the agency's professional staff to ensure that vigorous enforcement of the Federal securities laws is conducted completely consistently with the principles of the First Amendment's guarantee of freedom of the press, and specifically to avoid the issuance of subpoenas to members of the media that might impair the news gathering and reporting functions.

DATES: *Effective Date:* April 12, 2006.

FOR FURTHER INFORMATION CONTACT: Joan McKown (202–551–4933), Office of the Chief Counsel, Division of Enforcement, or Richard Levine (202–551–5468), Office of General Counsel.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is issuing a policy statement concerning the issuance of subpoenas to members of the media. In this policy statement the Commission sets forth guidelines for the agency's professional staff to ensure that vigorous enforcement of the federal securities laws is conducted completely consistently with the principles of the First Amendment's guarantee of freedom of the press, and specifically to avoid the issuance of subpoenas to members of the media that might impair the news gathering and reporting functions.

Regulatory Requirements

The provisions of the Administrative Procedure Act (''APA'') regarding notice of proposed rulemaking, opportunities for public comment, and prior publication are not applicable to general statements of policy, such as this one.[1] Similarly, the provisions of the Regulatory Flexibility Act,[2] which apply only when notice and comment are required by the APA or another statute, are not applicable.

List of Subjects in 17 CFR Part 202

Administrative practice and procedure.

Text of Amendment

■ In accordance with the foregoing, the Securities and Exchange Commission amends 17 CFR chapter II as follows:

PART 202—INFORMAL AND OTHER PROCEDURES

■ 1. The authority citation for part 202 continues to read, in part, as follows:

Authority: 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78*ll*(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, and 80b–11, unless otherwise noted.

* * * * *

■ 2. Add § 202.10 to read as follows:

§ 202.10 Policy statement of the Securities and Exchange Commission concerning subpoenas to members of the news media.

Freedom of the press is of vital importance to the mission of the Securities and Exchange Commission. Effective journalism complements the Commission's efforts to ensure that investors receive the full and fair disclosure that the law requires, and that they deserve. Diligent reporting is an essential means of bringing securities law violations to light and ultimately helps to deter illegal conduct. In this *Policy Statement the Commission sets forth guidelines for the agency's professional staff* to ensure that vigorous enforcement of the federal securities laws is conducted completely consistently with the principles of the First Amendment's guarantee of freedom of the press, and specifically to avoid the issuance of subpoenas to members of the media that might impair the news gathering and reporting functions. These guidelines shall be adhered to by all members of the staff in all cases:

(a) In determining whether to issue a subpoena to a member of the news media, the approach in every case must be to strike the proper balance between the public's interest in the free dissemination of ideas and information and the public's interest in effective enforcement of the federal securities laws.

(b) When the staff investigating a matter determines that a member of the news media may have information relevant to the investigation, the staff should:

(1) Determine whether the information might be obtainable from alternative non-media sources.

(2) Make all reasonable efforts to obtain that information from those alternative sources. Whether all reasonable efforts have been made will depend on the particular circumstances of the investigation, including whether there is an immediate need to preserve assets or protect investors from an ongoing fraud.

(3) Determine whether the information is essential to successful completion of the investigation.

(c) If the information cannot reasonably be obtained from alternative sources and the information is essential to the investigation, then the staff, after seeking approval from the responsible Regional Director, District Administrator, or Associate Director,

[1] 5 U.S.C. 553.

[2] 5 U.S.C. 601–602.