Rules and Regulations

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

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Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Justice

Section 213.3310 is amended to show that one position of Secretary to the Director, National Institute of Law Enforcement and Criminal Justice, is excepted under Schedule C.

Effective on November 6, 1973, § 213.3310(s)(5) is added as set out below.

§ 213.3310 Department of Justice.

* * * * *

(s) *Law Enforcement Assistance Administration.* * * *

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(5) One Secretary to the Director, National Institute of Law Enforcement and Criminal Justice.

* * * * *

(5 U.S.C. secs. 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp. p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-23593 Filed 11-5-73;8:45 am]

Title 6—Economic Stabilization

CHAPTER I—COST OF LIVING COUNCIL

PART 102—PUBLIC ACCESS TO RECORDS

Public Disclosure of CLC Reports

The purpose of this amendment to the Cost of Living Council's regulations governing public access to its records is to (1) define a business enterprise as a parent and the consolidated and unconsolidated entities which it directly or indirectly controls, (2) require the filing of an additional copy of certain quarterly reports to be used by the Council in responding to requests for public disclosure, (3) provide for the certification that public disclosure of certain quarterly reports is not required because the submitting firm has not increased prices sufficiently to require disclosure, and (4) specify those parts of Schedules F, R, and T which the Council has determined contain information which is nonproprietary and therefore subject to disclosure in accordance with Part 102 of Title 6, Code of Federal Regulations.

Subpart F of Part 102, dealing with public disclosure of the Forms CLC-2 and CLC-22, applies to business enterprises having certain characteristics. Previously, "business enterprise" had been defined in § 102.53 with reference to the instructions to the Form CLC-2 and to the Form CLC-22. Section 102.53 is amended to define business enterprise as a firm is defined in Part 150 of the Economic Stabilization Regulations for purposes of determining tier status.

Under § 102.54(a)(3), a firm required to submit additional copies of its Form CLC-2 or CLC-22 quarterly report omitting all proprietary data must submit three copies. This requirement is being changed to four copies. The additional copy will allow the Council to respond to public disclosure requests at both CLC Headquarters in Washington and the IRS District Offices where the copies are filed.

A new paragraph (d) is being added to § 102.54 providing for a business enterprise having annual sales or revenues of $250 million or over to certify that its quarterly reports are not subject to public disclosure, when the business enterprise has not increased prices enough to require such disclosure under the terms of § 205(b)(1) of the Economic Stabilization Act of 1970, as amended.

The Council has previously set out in §§ 102.55 and 102.56 an item-by-item listing of the data on Forms CLC-2 and CLC-22 and their related Schedule C's which the Council has determined to be nonproprietary. Similar listings are being added covering related Schedules F (Report or Record of Food Manufacturing Revenues), R (Reconciliation of Forms 10-K, 10-Q or Other Financial Statements to Form CLC-22), and T (Report of Retailing and Wholesaling Markups or Gross Margins).

Because the purpose of these amendments is to make technical corrections and to provide immediate guidance and information with respect to the decisions of the Council, the Council finds that publication in accordance with normal rulemaking procedure is impracticable and that good cause exists for making these amendments effective in less than 30 days. Interested persons may submit written comments regarding these regulations. Communications should be addressed to the Office of the General Counsel, Cost of Living Council, 2000 M Street NW., Washington, D.C. 20508.

(Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11695, 38 FR 1473; E.O. 11730, 38 FR 19345; Cost of Living Council Order No. 14, 38 FR 1489.)

In consideration of the foregoing, Part 102 of Title 6 of the Code of Federal Regulations is amended as set forth herein, effective November 2, 1973.

Issued in Washington, D.C., on November 2, 1973.

JAMES W. MCLANE,
Deputy Director,
Cost of Living Council.

1. In § 102.53 the definition of "Business enterprise" is amended to read as follows:

§ 102.53 Definitions.

For the purpose of this subpart—

"Business enterprise" means a parent and the consolidated and unconsolidated entities which it directly or indirectly controls, as those terms are defined in § 150.31 of this title.

* * * * *

2. Section 102.54(a)(3) is amended and a new paragraph (d) is added to read as follows:

§ 102.54 Disclosure procedure.

(a) * * *

(3) Attach four copies of the entire CLC-2 or CLC-22 submission which omit all proprietary information or data in accordance with the definitions and rules provided in § 102.55 or § 102.56.

* * * * *

(d) Each business enterprise having annual sales or revenues of $250 million or more and submitting to the Cost of Living Council a Form CLC-2 or Form CLC-22 which is not subject to public disclosure because the business enterprise has not charged a price for a substantial product that exceeds the 1.5 percent limitation specified in § 102.51(b)(1)(iii) shall attach a supporting certification to that effect.

4. Section 102.56 is amended by adding new paragraphs (d), (e), and (f) to read as follows:

§ 102.56 Form CLC-22 data.

* * * * *

(d) *Schedule F (Report or Record of Food Manufacturing Revenues).* (1) The information called for in items 1 and 2 serves to identify or describe the firm, the reporting period, and the base period. All of the information is nonproprietary data because it does not include either trade data or general financial data.

(2)(i) Item 3 (Price Rule) Columns (a) and (b) contain nonproprietary data because only the names of product lines and related standard industrial classification codes is required, which is neither trade data nor general financial data other than "SEC data", and is generally avilable to the public elsewhere.

(ii) Column (c) (Base Revenues) reports the revenues by product line in the base period selected by the firm pursuant to Subpart Q. Generally, the base period is any 4 consecutive fiscal quarters, at the firm's option, of the eight fiscal quarters which ended prior to May 11, 1973. With respect to slaughtering and manufacturing of meat products, however, the base period is any 4 consecutive fiscal quarters, at the option of the firm concerned, which began after May 25, 1970 and ended before May 11, 1973. These 4-quarter periods are not required to correspond to the fiscal year used on the SEC Form 10-K. In addition, the CLC definition of revenues for Column (c) provides for adjustments to revenues which are not normally reflected in "revenues" for SEC reporting purposes. For example, the CLC definition of "revenues" for Column (c) excludes revenues from foreign operations and may exclude revenues derived from food or food raw materials purchased and sold without change in form, and from hedging activities. Therefore, this information has no counterpart on SEC Form 10-K prepared as though the firm were a single-product-line firm and it is defined as proprietary data.

(iii) Column (d) compares the ratio of the current volume to the volume in the base period. This information has no counterpart on a SEC Form 10-K prepared as though the firm were a single-product-line firm and thus it is defined as proprietary data.

(iv) The data required in Column (e) is a percentage figure representing "Cost justification plus 100 percent" for each product line entered in item 3. These are calculations unique to the Schedule F and find no counterpart on the SEC Form 10-K. However, in order to fulfill the general purpose of § 205 of the Economic Stabilization Act of 1970, as amended, and in exercise of the authority granted thereunder, the Council defines the data required in Column (e) of item 3, as nonproprietary CLC data.

(v) Column (f) (Permissible Revenues) is determined by multiplying together the information in Columns (c), (d), and (e). This figure is a special CLC calculation which has no counterpart in the SEC Form 10-K. Therefore, the information required is not SEC data, and is defined as proprietary data.

(vi) Column (g) (Current Revenues) calls for current revenues as defined by the Cost of Living Council. This definition is not the same as that used for SEC purposes, because items bought and sold without change in form must be excluded. Since such general financial data, thus more narrowly prescribed, is not required for SEC purposes, it is defined as proprietary data.

(vii) The data called for in Column (h) (Current Revenues Under (Over)) contains the result of a special CLC calculation which has no counterpart in the SEC Form 10-K. Therefore, the information in Column (h) is not SEC data, and is defined as proprietary data.

(e) *Schedule R (Reconciliation of Forms 10-K, 10-Q or Other Financial Statements to Form CLC-22.* (1) The information called for in lines 1 and 2 serves to identify the firm and the period of time being reconciled. All of this information is nonproprietary because it does not include either trade data or general financial data.

(2) Lines 3 (Net Sales/Revenues) and 4 (Net Income) contain data reported to the SEC and are therefore nonproprietary.

(3) Lines 5 (Adjustments) and 6 (Intercompany sales/income) are special CLC calculations which have no counterpart in the SEC Form 10-K. Therefore, none of the information required is SEC data and all of it is defined as proprietary data.

(4) Line 7 calls for restatements of lines 3 or 4. Since any such restatement would be a restatement of data otherwise included in a periodic report to the SEC, the restatement is nonproprietary.

(5) Lines 8 (Equity interest in other entities), 9 (Non-operating items), 10 (Income tax expense), and 11 (Extraordinary items) call for data required to be updated to the SEC which is therefore nonproprietary.

(6) Lines 12 (Net sales) and 13 (Operating income) are already defined in Parts II and III of the Form CLC-22 as proprietary data.

(f) *Schedule T (Report of Retailing and Wholesaling Markups or Gross Margins)*. (1) The information called for in items 1 through 4 serves to identify the firm, the reporting period, the purpose of the filing, and whether the firm is reporting on customary initial percentage markups, or gross margins. All of the information required is nonproprietary data because it does not include either trade data or general financial data other than SEC data, and is generally available to the public elsewhere.

(2) Item 5 (Schedule of Markups or Gross Margins). The information as to the pricing base period is nonproprietary because it is neither trade data nor general financial data. The information required in Column (a) for item 5 is nonproprietary data because it is the merchandise or customer categories, which is neither trade data nor general financial data other than SEC data, and is generally available to the public elsewhere.

(3) The information required in Colums (b), (c), (d), (e), (f), (g), and (h), concerns markups or gross margins by merchandise or customer category. This information has no counterpart on a SEC Form 10-K prepared as though the firm was a single-product-line firm and thus it is defined as proprietary data.

(4) Item 6 calls for name, title, address, and telephone number. Everything required in this item is nonproprietary data because it does not include either trade data or general financial data other than SEC data and is generally available to the public elsewhere.

[FR Doc.73-23730 Filed 11-2-73;3:56 pm]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

PART 945—IRISH POTATOES GROWN IN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

Expenses and Rate of Assessment

This document authorizes the Idaho-Eastern Oregon Potato Committee to spend not more than $36,825 for its operations during the fiscal period ending May 31, 1974, and to collect $0.0026 per hundredweight on assessable potatoes handled by first handlers.

The committee was established under Marketing Agreement No. 98 and Order No. 945, both as amended (7 CFR Part 945), regulating the handling of Irish potatoes grown in Idaho and Malheur County, Oregon. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

Notice was published in the September 20 FEDERAL REGISTER (38 FR 26384) regarding the proposals. It afforded interested persons an opportunity to file written comments not later than September 28, 1973. None was filed.

After consideration of all relevant matters, including the proposals set forth in the notice, it is found that the following budget and rate of assessment should be issued:

§ 945.226 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period ending May 31, 1974, by the Idaho-Eastern Oregon Potato Committee for its maintenance and functioning and for such other purposes as the Secretary determines to be appropriate will amount to $36,825.

(b) The rate of assessment to be paid by each handler in accordance with this part shall be $0.0026 per hundredweight, or equivalent quantity, of assessable potatoes handled by him as the first handler during the fiscal period.

(c) Unexpended income in excess of expenses for the fiscal period may be carried over as a reserve to the extent authorized in § 945.44(b).

(d) Terms used in this section shall have the same meaning as when used in the marketing agreement and this part.

It is hereby found that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) the relevant provisions of this part require that the rate of assessment for a particular fiscal period shall be applicable to all assessable potatoes from the beginning of such period and (2) the current fiscal period began on June 1, 1973, and the rate of assessment herein fixed will apply to all assessable potatoes beginning with such date.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.)

Dated: November 1, 1973.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.73-23587 Filed 11-5-73;8:45 am]

CHAPTER X—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; MILK), DEPARTMENT OF AGRICULTURE

[MILK ORDER NO. 136]

PART 1136—MILK IN THE GREAT BASIN MARKETING AREA

Order Terminating Certain Provisions

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Great Basin marketing area.

After consideration of all relevant material, it is hereby found and determined that the following provisions of the order no longer tend to effectuate the declared policy of the Act:

1. Section 1136.9(d).
2. In § 1136.31(a), beginning in the first line, the provision, "and each handler pursuant to § 1136.9(d)."
3. Section 1136.63.
4. In § 1136.81, the reference to § 1136.63.
5. Section 1136.86(d).
6. In § 1136.88, the reference to § 1136.63.

STATEMENT OF CONSIDERATION

The termination order would remove provisions of the order that designate a vendor as a handler. A vendor is a person who does not operate a pool plant but receives fluid milk products for resale and distributes to retail or wholesale outlets, via a mobile delivery vehicle, packaged fluid milk products received from a pool plant.

Such person is required to make reports to the market administrator at such time and in such manner as the market administrator requests. Further, each vendor must pay into the producer-settlement fund, on or before the 25th day at the end of the month, at the difference between the value of the skim milk and butterfat in fluid milk products received from a producer-handler during the month at the Class I price applicable at the location of the producer-handler's plant (but not less than the Class III price) and its value at the Class III price subject to conditions specified in the order. Also, such vendor must pay the administrative assessment for such milk and is subject to a charge for unpaid obligations as provided by the order.

The provisions were made effective November 1, 1970, to provide for circumstances in which a producer-handler supplies fluid milk products to a vendor who at the same time obtains fluid milk products from handlers regulated, fully or partially, by the Great Basin order or by another order.

The final decision of the proceeding in which the provisions were considered, contained a conclusion at 35 FR 15009 that the disposition of the surplus production of a producer-handler to a vendor receiving fluid milk products from other handlers should be treated in the same manner as the disposition of a producer-handler's surplus to a regulated handler.

The vending of milk occurs under a wide variety of circumstances in the Great Basin marketing area. Administrative experience has established that some persons having or acquiring interests other than milk distribution are in a position to avoid financial obligation under the order even though they purchase milk from pool plants and producer-handlers. At the same time, persons who engage primarily in operating one or more milk delivery routes, and who similarly buy milk from pool plants and producer-handlers, may incur financial obligation under the order. While there is little difference in these operations insofar as the distribution of milk from producer-handler sources is concerned, there is substantial reason to doubt that such provisions can be uniformly and equitably applied to all such persons. It reasonably may be expected that deletion of the provisions in question will not be disruptive to marketing conditions.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This termination is necessary to reflect current marketing conditions and to maintain orderly marketing in the marketing area in that the provisions to be terminated do not effectuate the declared policy of the Act; and

(b) This termination eases a restriction and does not require of persons affected substantial or extensive preparation prior to the effective date.

Therefore, good cause exists for making this order effective November 6, 1973.

It is therefore ordered, That the aforesaid provisions of the order are hereby terminated.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.)

Effective date: November 6, 1973.

Signed at Washington, D.C., on November 1, 1973.

CLAYTON YEUTTER,
Assistant Secretary.

[FR Doc.73-23541 Filed 11-5-73;8:45 am]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER D—GUARANTEED LOANS

[FHA Instructions 449.1 and 449.3]

PART 1843—FARMER LOANS

Clarification Amendments

Correction

In FR Doc. 73-23275 appearing at page 30102 of the issue of Thursday, November 1, 1973, the amendatory language preceding the heading and text of § 1843.3 should be corrected to read as follows:

1. Section 1843.3 is amended by revising paragraphs (a), (b), and (c) to read as set forth below. Paragraph (d) as published at 38 FR 29051 remains unchanged.

Title 10—Atomic Energy

CHAPTER I—ATOMIC ENERGY COMMISSION

PART 70—SPECIAL NUCLEAR MATERIAL

PART 73—PHYSICAL PROTECTION OF SPECIAL NUCLEAR MATERIAL

Amended Requirements for Material in Transit

On February 1, 1973, the Atomic Energy Commission published in the FEDERAL REGISTER (38 FR 3080) proposed amendments to its regulations in 10 CFR Part 73 which would, in the interest of the common defense and security, strengthen existing requirements for physical protection of special nuclear material while in transit. Interested persons were invited to submit comments and suggestions for consideration in connection with the proposed amendments within 30 days after publication in the FEDERAL REGISTER. The comment period was subsequently extended another 30 days. Upon consideration of the comments received and other factors involved, the Commission has adopted the proposed amendments, with certain modifications as set forth below.

Significant differences from the amendments published for comment are: (1) The text has been reorganized to present the general requirements for the protection of special nuclear material in one section, and to group into sections requirements for particular transportation modes and monitoring methods; (2) the concept and definition of "dual occupancy protection" has been replaced with a "continuous visual surveillance" concept and definition; (3) requirements for fingerprint seals have been replaced by requirements for tamper-indicating type seals; (4) call-in times for road and rail movements have been extended from two to five hours when radiotelephone coverage or conventional telephone coverage along the planned route is not available; (5) only one driver is required in the cargo vehicle when escorts are used for motor vehicle movements which last less than one hour and during which continuous radiotelephone or radio communication with the shipper is maintained; (6) criteria for protection of special nuclear material in shipments by sea have been added; (7) monitoring requirements have been further clarified, and requirements for arming monitors have been added; (8) export requirements have been clarified; (9) the requirement that direct routes be taken in motor shipments has been eliminated; and (10) licensees and applicants for a license are required to submit a plan outlining the procedures that will be used to meet the requirements of Part 73 applicable to transportation. Editorial changes were also made.

The following discussions pertain to items (1) through (10) respectively:

(1) The text of the rule as set forth below has been reorganized to present in one section requirements that apply generally to all modes of transportation. Requirements pertaining to particular modes of transportation are specified in individual sections. Requirements for monitoring during transfers and other criteria have been put into separate sections.

(2) The concept and definition of "continuous visual surveillance" has been substituted for the concept and definition of "dual occupancy protection" since it is a more widely used term. Requirements for dual occupancy protection are still retained in conjunction with "continuous visual surveillance" for shipments by road (§ 73.31(c)) of one hour or more and for shipments by road of less than an hour where continuous communication with the shipper is not available. The requirement that a driver or other authorized individual be within 10 feet of the access door leading to the special nuclear material has been replaced by a requirement that all access to storage areas or cargo compartments be kept within unobstructed view at all times.

(3) Since, under the regulations that follow, special nuclear material in transit will be under continuous surveillance during road movements, and at all stops during air, rail and sea movements, the requirement for fingerprint-type seals has been changed to a requirement for tamper-indicating type seals. Tamper-indicating type seals are also required in 10 CFR Part 70 to provide an indication that material is intact.

(4) Where no radiotelephone coverage is available, a requirement that the driver of a motor shipment of special nuclear material call in every two hours could necessitate frequent detours from the planned route.

Such detours would increase transit time and hence vulnerability to diversion. Accordingly, calls shall be made by either radiotelephone or conventional telephone (if available along the preplanned route) at least every two hours. In cases where radiotelephone coverage or a conventional telephone has not been available along the preplanned route for 5 hours, a conventional telephone call shall be made.

(5) In order to reduce costs between local plant transfers or local plant to airport transfers which take less than an hour, the need for two drivers in the cargo vehicle has been eliminated when escorts are used provided continuous communication to the licensee or his agent is available.

(6) Requirements for shipment by sea have been included in the amendments that follow to cover all possible modes of transportation. The requirements are for: (a) Armed guards at all scheduled stops at domestic seaports; (b) no ship-to-ship transfers; (c) minimizaton of ports of calls; (d) ship-to-shore communication every 24 hours.

(7) The monitoring requirements at terminal points have been combined into one section and made applicable to shipments by all modes of transportation. Consistent with the protection required for land shipments while a vehicle is in motion, monitors are required to be armed. This will assure that a shipment is adequately protected at points where shipments are subject to possible theft or misrouting.

(8) Requirements applicable to export by air or sea have been clarified by a provision that licensees assure that an unarmed escort accompany a shipment from the last port or terminal in the United States up to the terminal at which the special nuclear material is unloaded from the vehicle that left the United States. From that point to the final destination an exchange of hand-to-hand receipts is required at all points en route where there is a transfer of custody.

(9) The requirement that direct routes be taken in motor shipments has been eliminated because of the possible need to "interline," which may result in transportation through points which do not necessarily lie along the most direct route. The need to minimize transit times, however, has been retained.

(10) The requirement that a plan be submitted by certain licensees for use of either specially designed trucks or escorts has been expanded to require that licensees submit a plan outlining the procedures that will be used to meet the transportation requirements of Part 73. Part 70 has also been revised to reflect this requirement for license applicants.

On or before January 7, 1974, licensees are required to submit a plan outlining the procedures that will be used to meet the requirements of these amendments, including a plan for the selection, qualification, and training of armed escorts, or the specification and design of a specially designed truck or trailer, as appropriate. This plan must be followed as of March 8, 1973.

Each applicant for a license to import, export, transport, deliver to a carrier in a single shipment, or take delivery of a single shipment as specified in § 73.1(b) of this chapter is also required to include in his application filed pursuant to Part 70 a plan outlining the procedures that will be used to meet the requirements of these amendments, including a plan for the selection, qualification, and training of armed escorts, or the specification and design of a specially designed truck or trailer, as appropriate.

Pursuant to the Atomic Energy Act of 1954, as amended, and sections 552 and 553 of Title 5 of the United States Code the following amendments to Title 10, Chapter 1, Code of Federal Regulations, Parts 70 and 73 are published as a document subject to codification.[1]

1. Section 70.22 is amended by adding a new paragraph (g) to read as follows:

§ 70.22 Contents of application.

* * * * *

(g) Each application for a license which would authorize the transport or delivery to a carrier for transport of special nuclear material in an amount specified in § 73.1(b) of this chapter shall include a description of the plan for physical protection of special nuclear material in transit in accordance with §§ 73.30 through 73.36 and 73.41(c) of this chapter, including a plan for the selection, qualification and training of armed escorts, or the specification and design of a specially designed truck or trailer as appropriate.

2. The prefatory language of § 70.23(a) is amended and a new paragraph (a)(9) is added to § 70.23 to read as follows:

§ 70.23 Requirements for the approval of applications.

(a) An application for a license, other than a license for export, will be approved if the Commission determines that:

* * * * *

(9) Where the applicant is required to submit a plan for physical protection of special nuclear material in transit pursuant to § 70.22(g), of this chapter, the applicant's plan is adequate.

* * * * *

3. A new paragraph (d) is added to § 70.32 to read as follows:

§ 70.32 Conditions of licenses.

* * * * *

(d) The licensee shall make no change which would decrease the effectiveness of the plan for physical protection of special nuclear material in transit prepared pursuant to § 70.22(g) or 73.30(e) of this chapter without the prior approval of the Commission. A licensee desiring to make such changes shall submit an application for a change in the technical specifications incorporated in his license, if any, or for an amendment to his license pursuant to § 50.90 or § 70.34 of this chapter, as appropriate. The licensee may

[1] Concurrently with publication of this notice, the Atomic Energy Commission is publishing further amendments of Parts 70 and 73 which appear on pages 30537–30546

make changes to the plan for physical protection of special nuclear material without prior Commission approval if these changes do not decrease the effectiveness of the plan. A report containing a description of each change shall be furnished the Commission within two months after the change.

4. Paragraph (b) of § 73.1 is amended and a new paragraph (c) is added to read as follows:

§ 73.1 **Purpose and scope.**

* * * * *

(b) This part prescribes requirements for the physical protection of special nuclear material in transportation by any person who is licensed pursuant to the regulations in Part 70 of this chapter who imports, exports, transports, delivers to a carrier fo transports, deliver
carrier for transport in a single shipment, or takes delivery of a single shipment free on board at the point where it is delivered to a carrier, either uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium, or any combination of these materials, which is 5,000 grams or more computed by the formula grams= (grams contained U-235)+2.5 (grams U-233+grams Pu).

(c) This part also applies to shipments by air of special nuclear material in quantities exceeding (1) 20 grams or 20 curies, whichever is less, of plutonium or uranium-233, or (2) 350 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope).

5. In § 73.3, a new paragraph (n) is added to read as follows:

§ 73.3 **Definitions.**

* * * * *

(n) "Continuous visual surveillance" means unobstructed view at all times of a shipment of special nuclear material, and of all access points to a temporary storage area or cargo compartment containing the shipment.

6. The undesignated center head following § 73.13 is amended to read as follows:

PHYSICAL PROTECTION OF SPECIAL NUCLEAR MATERIAL IN TRANSIT

7. Section 73.30 is amended to read as follows:

§ 73.30 **General requirements.**

(a) Except as specified in paragraph § 73.36(a) or as otherwise authorized pursuant to § 73.30(f), each licensee who transports or who delivers to a carrier for transport either uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium, or any combination of these materials, which is 5,000 grams or more. Computed by the formula grams= (grams contained U-235)+2.5 (grams U-233+grams Pu), shall make arrangements to assure that such special nuclear material will, if a common or contract carrier is used, be transported under the established procedures of a carrier which provides a system for the physical protection of valuable material in transit and requires an exchange of hand-to-hand receipts at origin and destination and at all points enroute where there is a transfer of custody.

(b) Transit times of shipments other than those specified in § 73.1(c) shall be minimized and routes shall be selected to avoid areas of natural disaster or civil disorders. Such shipments shall be preplanned to assure that deliveries occur at a time when the receiver at the final delivery point is present to accept receipt of shipment.

(c) Special nuclear material shall be shipped in containers which are sealed by tamper indicating type seals. The container shall also be locked if it is not in another container or vehicle which is locked. If inspection of the container or vehicle is not required by State or local authorities before final destination, the outermost container or vehicle shall also be sealed by tamper indicating type seals. No container weighing 500 pounds or less shall be shipped in open trucks, railroad flat cars or box cars and ships. This paragraph does not apply to shipments of quantities specified in § 73.1(c).

(d) When guards are used pursuant to §§ 73.31(c)(1), 73.31(c)(2), 73.33 and 73.35, the licensee shall not permit an individual to act as a guard unless there is documentation that the individual has been qualified by demonstrating an understanding of his duties and responsibilities. The licensee or his agent shall have documentation that guards have been requalified annually.

(e) By January 7, 1974, each licensee shall submit a plan outlining the procedures that will be used to meet the requirements of §§ 73.30 through 73.36 and 73.41(c) including a plan for the selection, qualification, and training of armed escorts, or the specification and design of a specially designed truck or trailer as appropriate. This plan shall be followed by the licensee after March 6, 1974.

(f) A licensee or applicant for a license may apply to the Commission for approval of proposed procedures for transport of special nuclear material in a manner not otherwise authorized by the regulations of this part. Such application shall include a description and quantity of the special nuclear material involved, the origin and destination, the carriers to be used, the expected time in transit, the number of transfer points, the communications to be used, the vehicle visual identification, and the cargo security and surveillance measures to be used.

8. Section 73.31 is amended to read as follows:

§ 73.31 **Shipment by road.**

(a) All shipments by road shall be made without any scheduled intermediate stops to transfer special nuclear material or other cargo between the facility from which it is shipped and the facility of the receiver.

(b) All motor vehicles used to transport special nuclear material shall be equipped with a radiotelephone which can communicate with a licensee or his agent. The licensee or agent with whom communications shall be maintained for different segments of the shipment shall be predesignated before a shipment is made. Calls to such licensee or agent shall be made at least every 2 hours when radiotelephone or conventional telephone coverage along the route is available to relay position and projected route. Call frequency may extend up to 5 hours when radiotelephone or conventional telephone coverage is not available along the preplanned route, at which time a conventional telephone call shall be made. In the event no call is received in accordance with these requirements, the licensee or his agent shall immediately notify an appropriate law enforcement authority and the appropriate Atomic Energy Commission Regulatory Operations Regional Office listed in Appendix A of this part.

(c) A shipment shall be accompanied by at least two people in the vehicle containing the shipment, which may be two drivers or one driver and an authorized individual. The vehicle containing the shipment shall be under continuous visual surveillance, or one of the drivers or authorized individuals shall be in the cab of the vehicle, awake, and not in a sleeper berth. The shipment shall be further protected by one of the following methods:

(1) An armed escort consisting of at least two guards shall accompany the shipment in a separate escort vehicle. Escorts shall maintain continuous vigilance for the presence of conditions or situations which might threaten the security of the shipment, take such action as circumstances might require to avoid interference with continuous safe passage of the cargo vehicle, provide assistance to, or summon aid for crew of cargo vehicles in case of emergency, check seals and locks at each stop where time permits, and observe the cargo vehicle and adjacent areas during stops or layovers. Continuous radio communication capability shall be provided between the cargo vehicle and the escort vehicle. Escort vehicles shall also be equipped with a radiotelephone. The licensee may use his own employees as armed escorts or he may use an agent. Only the driver is required in the vehicle containing special nuclear material for shipments involving an average of less than an hour in transportation, if continuous radiotelephone or radio communication is maintained during the course of the shipment with the licensee or agent monitoring the shipment.

(2) The shipment shall be made in a specially designed truck or trailer which reduces the vulnerability to diversion. Design features of the truck or trailer shall permit immobilization of the van and provide barriers or deterrents to physical penetration of the cargo compartment unless armed guards are also used in which case immobilization of the vehicle is not required.

(d) Transfers to and from other modes of transportation shall be in accordance with § 73.35.

(e) Vehicles shall be marked on top with identifying letters or numbers which will permit identification of the vehicle under daylight conditions from the air in clear weather at 1,000 feet above ground level. The same code of letters and numbers as those used on the top shall also be marked on the sides and rear of the vehicle to permit identification from the ground.

§ 73.60 [Redesignated]

9. Former § 73.60 is deleted; § 73.32 is redesignated as § 73.60, and a new § 73.32 is added to read as follows:

§ 73.32 Shipments by air.

(a) Except as specifically approved by the Atomic Energy Commission, no shipment of special nuclear material shall be made in passenger aircraft in excess of (1) 20 grams or 20 curies whichever is less, of plutonium or uranium-233, or (2) 350 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope).

(b) In shipments on cargo aircraft of either uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233 or plutonium, or any combination of these materials which is 5,000 grams or more computed by the formula grams=(grams contained U-235)+2.5 (grams U-233+grams Pu), transfers shall be in accordance with § 73.35. Transfers shall be minimized.

(c) Export shipments shall be escorted by an unarmed authorized individual, who may be a crew member, from the last terminal in the United States until the shipment is unloaded at a foreign terminal. He shall perform monitoring duties at foreign terminals as described in § 73.35.

10. Section 73.33 is redesignated paragraph (d) of the new § 73.60 and is amended to read as follows:

§ 73.60 Physical protection of special nuclear material in use or storage.

* * * * *

(d) Each licensee shall test and maintain intrusion alarms, security containers, and protected areas utilized by the licensee pursuant to the requirements of this part as follows:

(1) Intrusion alarms and security containers shall be maintained in operable and effective condition.

(2) Intrusion alarms shall be inspected and tested for operability and required functional performance at intervals not exceeding seven (7) days.

11. A new § 73.33 is added to read as follows:

§ 73.33 Shipment by rail.

(a) A shipment by rail shall be escorted by two guards, in the shipment car or an escort car of the train, who shall keep the shipment cars under observation and who shall detrain at stops when practicable and time permits to guard the shipment cars under observation, and check car or container locks and seals. Radiotelephone communication shall be maintained with a licensee or his agent to relay position every 2 hours or less, and at scheduled stops in the event that radiotelephone coverage was not available in the last 5 hours before the stop. The licensee or agent with whom communications shall be maintained for different segments of the shipment shall be predesignated before a shipment is made. In the event no call is received in accordance with these requirements, the licensee or his agent shall immediately notify an appropriate law enforcement authority and the appropriate Atomic Energy Commission Regulatory Operations Regional Office listed in Appendix A of this part.

(b) Transfers shall be in accordance with § 73.35.

12. A new § 73.34 is added to read as follows:

§ 73.34 Shipment by sea.

(a) Shipments shall be made on vessels making the minimum ports of call. Transfers to and from other modes of transportation shall be in accordance with § 73.35. There shall be no scheduled transfers to other ships. At domestic ports of call where other cargo is transferred, the shipment shall be protected in accordance with § 73.35(a).

(b) The shipment shall be placed in a secure compartment which is locked and sealed. Locks and seals shall be periodically inspected in transit, if accessible, by an escort or crew member.

(c) Export shipments shall be escorted by an unarmed authorized individual, who may be a crew member, from the last port in the United States until the shipment is unloaded at a foreign port. He shall perform monitoring duties at foreign ports as described in § 73.35.

(d) Ship-to-shore communications shall be available, and a ship-to-shore contact shall be made every twenty-four hours to relay position information, and the status of the shipment, which shall be determined by a daily inspection where possible. This information shall be sent, as often as it is available, to the licensee or his agent who makes the arrangements for the protection of the shipment.

13. A new § 73.35 is added to read as follows:

§ 73.35 Transfer of special nuclear material.

All transfers shall be monitored by a guard. An alternate guard shall be designated at all transfer points to substitute, if necessary. Monitoring of special nuclear material transfers shall be conducted as follows:

(a) At scheduled intermediate stops where special nuclear material is not scheduled for transfer, the guard shall observe the opening of the cargo compartment and assure that the shipment is not removed. The guard shall maintain continuous visual surveillance of the cargo compartment. Continuous visual surveillance of the cargo compartment shall be maintained up to the time the vehicle is ready to depart. The guard shall observe the vehicle until it has departed, and shall notify the licensee or his agent of the latest status immediately thereafter.

(b) At points where special nuclear material is transferred from a vehicle to storage, from one vehicle to another, or from storage to a vehicle, the guard shall keep the shipment under continuous visual surveillance by observing the opening of the cargo compartment of the incoming vehicle and assuring that the shipment is complete by checking locks and/or seals. Continuous visual surveillance of a shipment shall be maintained at all times it is in the terminal or in storage. Shipments shall be preplanned in order to avoid storage times in excess of 24 hours. Continuous visual surveillance of the cargo compartment shall be maintained up to the time the vehicle is ready to depart from the terminal. The guard shall observe the vehicle until it has departed, and shall notify the licensee or his agent of the latest status immediately thereafter.

(c) The guard shall be required to immediately notify the carrier and the licensee who made the arrangements for protection of special nuclear material of any deviation from or attempted interference with schedule or routing.

14. A new § 73.36 is added to read as follows:

§ 73.36 Miscellaneous requirements.

(a) Each licensee who takes delivery of special nuclear material free on board (f.o.b.) the point at which it is delivered to a carrier for transport shall make the arrangements to assure that such special nuclear material will be protected in transit as prescribed in §§ 73.30 through 73.35, rather than the person who delivers such shipment to the carrier for transport.

(b) Each licensee who imports special nuclear material shall make arrangements to assure that such material will be protected in transit as follows:

(1) An individual designated by the licensee or his agent, or as specified by a contract of carriage, shall confirm the container count and examine locks and/or seals for evidence of tampering, at the first place in the United States at which the shipment is discharged from the arriving carrier.

(2) The shipment shall be protected at the first terminal at which it arrives in the United States and all subsequent terminals as provided in §§ 73.30 through 73.35 and paragraphs (c) and (f) of this section.

(c)(1) Each licensee who delivers special nuclear material to a carrier for transport shall immediately notify the consignee by telephone, telegraph, or teletype, of the time of departure of the shipment, and shall notify or confirm with the consignee the method of transportation, including the names of carriers, and the estimated time of arrival of the shipment at its destination. (2) In the case of a shipment free on board (f.o.b.) the point where it is delivered to a carrier for transport, each licensee shall, before the shipment is delivered to the carrier, obtain written certification from the licensee who is to take delivery of the shipment at the f.o.b. point that the physical protection arrangements required by §§ 73.30 through 73.35 for licensed shipments have been made. When an AEC license-exempt contractor is the consignee of a shipment, the licensee shall, before the shipment is delivered to the carrier, obtain written certification from the contractor who is to take delivery of the shipment at the f.o.b. point that the physical protection arrangements required by AEC Manual Chapters 2401 or 2405 have been made. (3) Each licensee who delivers special nuclear material to a carrier for transport shall also make arrangements with the consignee to be notified immediately by telephone, telegraph, or teletype, of the arrival of the shipment at its destination.

(d) In addition to complying with the requirements specified in paragraphs (c) and (f) of this section, each licensee who exports special nuclear material shall comply with the requirements specified in §§ 73.30 through 73.35, as applicable, up to the first point where the shipment is taken off the vehicle outside the United States. The licensee shall also make arrangements with the consignee to be notified immediately by telephone and telegraph, teletype, or cable, of the arrival of the shipment at its destination, or of any such shipment that is lost or unaccounted for after the estimated time of arrival at its destination.

(e) Each licensee who receives a shipment of special nuclear material shall immediately notify the person who delivered the material to a carrier for transport of the arrival of the shipment at its destination. In the event such a shipment fails to arrive at its destination at the estimated time, the consignee, if a licensee, or in the case of an export shipment, the licensee who exported the shipment, shall immediately notify by telephone and telegraph, or teletype, the Director of the appropriate Atomic Energy Commission Regulatory Operations Regional Office listed in Appendix A of this part, and the licensee or other person who delivered the material to a carrier for transport. The licensee who made the physical protection arrangements shall also immediately notify by telephone and telegraph, or teletype the Director of the appropriate Atomic Energy Commission Regulatory Operations Regional office listed in Appendix A of the action being taken to trace the shipment.

(f) Each licensee who makes arrangements for physical protection of a shipment of special nuclear material as required by §§ 73.30 through 73.36 shall immediately conduct a trace investigation of any shipment that is lost or unaccounted for after the estimated arrival time and file a report with the Commission as specified in § 73.71. If the licensee who conducts the trace investigation is not the consignee, he shall also immediately report the results of his investigation by telephone and telegraph, or teletype to the consignee.

15. An undesignated center head is added after § 73.36 to read as follows:

PHYSICAL PROTECTION REQUIREMENTS AT FIXED SITES

16. Section 73.41(c) is amended to read as follows:

§ 73.41 Records.

* * * * *

(c) Shipments of special nuclear material subject to the requirements of this part, including names of carriers, major roads to be used, flight numbers in the case of air shipments, dates and expected times of departure and arrival of shipments, names and addresses of the monitor and one alternate monitor at each transfer point, verification of communication equipment on board the transfer vehicle, names of individuals who are to communicate with the transport vehicle, container seal descriptions and identification, and any other information to confirm the means utilized to comply with §§ 73.30 through 73.36. Such information shall be recorded prior to shipment. Information obtained during the course of the shipment such as reports of all communications, change of shipping plan including monitor changes, trace investigations and others shall also be recorded.

§ 73.71 [Redesignated]

17. § 73.42 is redesignated § 73.71.

Effective date. The foregoing amendments are effective on March 6, 1974, except for §§ 70.22(g), 70.23(a)(9), and 73.30(e), which will become effective on December 6, 1973.

(Sec. 161, Pub. Law 83-703, 68 Stat. 948; (42 U.S.C. 2201).)

Dated at Germantown, Maryland this 31st day of October 1973.

For the Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.73-23551 Filed 11-5-73;8:45 am.]

PHYSICAL PROTECTION OF PLANTS AND MATERIALS

On February 1, 1973, the Atomic Energy Commission published in the FEDERAL REGISTER (38 FR 3073, 3075, and 3082), proposed amendments to its regulations in 10 CFR Parts 50, 70, and 73 which would, in the interests of the common defense and security and in the interests of public health and safety, strengthen the physical protection of licensee plants and of special nuclear materials (SNM) located at licensed facilities.

Interested parties were invited to submit comments and suggestions for consideration pertaining to the proposed amendments within 30 days after the publication in the FEDERAL REGISTER. The comment period was subsequently extended 30 days. Upon consideration of the comments received, and other factors involved, the Commission has adopted the proposed amendments, with certain modifications, as set forth below.

Significant differences from the amendments published for comment are the following: (1) Inclusion of all physical protection requirements into Part 73 and the subsequent expansion of the scope of that part; (2) removal of the requirement to search vehicles prior to entry into the protected area of a licensee's plant and clarification of the requirement that all drivers of such vehicles be escorted; (3) exemption of employees who possess an AEC clearance from a routine search at the protected area boundary; and (4) specification of the maximum amount of fissile material per volume of material (e.g., scrap) which can be stored outside a material access area. In addition, several editorial and clarifying changes were made.

The following discussions pertain to the items (1) through (4) above:

(1) The rule set forth below consolidates all the fixed-site physical protection requirements into a single part of the Commission's regulations in Title 10 of the Code of Federal Regulations, Part 73. The scope of that part is expanded accordingly. The purpose of the consolidation is to increase clarity and assure consistency.

(2) The rule set forth below does not require a search prior to entry into a protected area of a licensee's plant of either vehicles or of all packages. A thorough search of vehicles and packages on vehicles would take considerable time and effort and could necessitate dismantling the vehicles and the opening of each package to inspect the contents. Instead, drivers of trucks and delivery and service vehicles shall be escorted within the protected area. Packages being transported into the protected area shall be checked on a random basis. As in the proposed rule, hand-carried packages must be searched prior to entry into a protected area. Further, all persons, packages, and vehicles must be searched upon exit from a material access area.

(3) In the rule set forth below, employees possessing an AEC security clearance are exempted from a routine search but are required to be searched on a random basis prior to entry into the protected area. The exemption is based upon the belief that an AEC clearance in conjunction with a random search provides adequate assurance that such individuals will not carry materials which could be used for sabotage into the facility.

(4) In the rule set forth below, enriched uranium scrap which contains no more than 0.25 grams of uranium-235 per liter of scrap material may be stored in 30-gallon or larger containers outside a building, within an area separately fenced within the protected areas. Uranium scrap so stored would require theft of approximately 160 30-gallon containers to accumulate a strategic quantity (5,000 grams) of uranium-235.

The purpose of these amendments is to impose requirements for the protection of plants of licensees against acts of industrial sabotage and for the protection of SNM in the possession of licensees against theft by establishing and maintaining a physical protection system of (i) protective barriers and intrusion detection devices at fixed sites to provide early detection of an attack, (ii) deterrence to attack by means of armed guards, and (iii) liaison and communication with law enforcement authorities capable of rendering assistance to counter such attacks.

Pursuant to the Atomic Energy Act of 1954, as amended, and Sections 552 and 553 of Title 5 of the United States Code, the following amendments of Title 10, Chapter I, Code of Federal Regulations, Parts 50, 70, and 73 are published as a document subject to codification.[1]

PART 50—LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. A new paragraph (c) is added to § 50.34 of 10 CFR Part 50 to read as follows:

§ 50.34 Contents of applications: technical information.

* * * * *

(c) Physical security plan. Each application for a license to operate a production or utilization facility shall include a physical security plan. The plan shall consist of two parts. Part I shall address vital equipment, vital areas, and isolation zones, and shall demonstrate how the applicant plans to comply with the requirements of Part 73 of this chapter, if applicable, at the proposed facility.[2] Part II shall list tests, inspections, and other means to be used to demonstrate compliance with such requirements, if applicable.

2. New paragraphs (p) and (q) are added to § 50.54 of 10 CFR Part 50 to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(p) The licensee shall make no change which would decrease the effectiveness of a security plan prepared pursuant to § 50.34(c) or paragraph (q) of this section without the prior approval of the Commission. A licensee desiring to make such a change shall submit an application for a change in the technical specifications incorporated in his license or for an amendment to his license pursuant to § 50.90, as appropriate. The licensee shall maintain records of changes to the plan made without prior Commission approval, and shall furnish to the Commission a report containing a description of each change within two months after the change is made.

(q) Each licensee who is authorized to operate a production or utilization facility and who has not submitted a physical security plan, as described in § 50.34(c) by November 6, 1973 shall submit such a plan to the Commission for approval by January 7, 1974.

PART 70—SPECIAL NUCLEAR MATERIAL

3. Section 70.22(g) of 10 CFR is amended and a new paragraph (h) is added to read as follows:

§ 70.22 Contents of applications.

* * * * *

(g) Each application for a license which would authorize the transport or delivery to a carrier for transport of special nuclear material in an amount specified in § 73.1(b)(2) of this chapter shall include a description of the plan for physical protection of special nuclear material in transit in accordance with §§ 73.30 through 73.36 and 73.41(c) of this chapter, including a plan for the selection, qualification and training of armed escorts, or the specification and design of a specially designed truck or trailer as appropriate.

(h) Each application for a license to possess or use at any site or contiguous sites subject to control by the licensee uranium-235 (contained in uranium enriched to 20 percent or more in the uranium-235 isotope), uranium-233, or plutonium alone or in any combination in a quantity of 5,000 grams or more computed by the formula, grams=(grams contained U–235)+2.5 (grams U–233 +grams plutonium), other than a license for possession or use of such material in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter, shall include a physical security plan, consisting of two parts. Part I shall address vital equipment, vital areas, and isolation zones, and shall demonstrate how the applicant plans to meet the physical protection requirements of Part 73 of this chapter in the conduct of the activity to be licensed. Part II shall list tests, inspections, and other means to demonstrate compliance with such requirements.

4. In § 70.23 paragraph (a) is revised and a new paragraph (a)(10) is added to read as follows:

§ 70.23 Requirements for the approval of applications.

(a) An application for a license, other than a license for export, will be approved if the Commission determines that:

* * * * *

(10) Where the applicant is required to submit a physical security plan pursuant to § 70.22(h), the applicant's proposed plan is adequate.

* * * * *

5. New paragraphs (e) and (f) are added to § 70.32 to read as follows:

§ 70.32 Conditions of licenses.

* * * * *

(e) The licensee shall make no change which would decrease the effectiveness of a security plan prepared pursuant to § 70.22(h) or paragraph (f) of this section without the prior approval of the Commission. A licensee desiring to make such a change shall submit an application for an amendment to his license pursuant to § 70.34. The licensee shall maintain records of changes to the plan made without prior Commission approval, and shall furnish to the Commission a report containing a description of each change within two months after the change is made.

(f) Each license who is authorized to possess or use at any site or contiguous site subject to control by the licensee uranium-235 (contained in uranium enriched to 20 percent or more in the U–235 isotope) uranium 233, or plutonium alone or in any combination in a quantity of 5,000 grams or more computed by the formula, grams=(grams contained U–235)+2.5 (grams U–235+grams plutonium), other than possession or use involved in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter, and who has not submitted a physical security plan as described in § 70.22(h), shall submit a physical security plan to the AEC for approval by January 7, 1974.

6. The title of Part 73 is revised to read as follows:

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

7. Paragraphs (a) through (c) of § 73.1 are amended and redesignated as paragraphs (b)(1), (b)(2), and (b)(3), respectively, and new paragraphs (a) and (b)(4) are added to read as follows:

§ 73.1 Purpose and scope.

(a) *Purpose*. This part prescribes requirements for physical protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used for the purpose of protection against acts of industrial sabotage and protection of special nuclear material against theft by establishment and maintenance of a physical protection system of: (1) Protective barriers and intrusion detection devices at fixed sites to provide early detection of an attack, (2) deterrence to attack by means of armed guards and escorts, and (3) liaison and communication with law enforcement authorities capable of rendering assistance to counter such attacks.

(b) *Scope*. (1) This part prescribes requirements for (i) the physical protection of production and utilization facilities licensed pursuant to Part 50 of this chapter; (ii) the physical protection of plants in which activities licensed pursuant to Part 70 of this chapter are conducted, and the physical protection of special nuclear material by any person who pursuant to the regulations in Part 70 of this chapter possesses or uses at any site or contiguous sites subject to control by the licensee, uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium alone or in any combination in a quantity of 5,000 grams or more computed by the formula,

[1] These amendments include further amendments of certain sections of Parts 70 and 73 which appear on pages 30533 and 30542.

[2] Regulatory Guide 1.17 dated June 1973 describes physical security criteria generally acceptable for the protection of nuclear power reactors against acts of industrial sabotage.

grams=(grams contained U-235)+2.5 (grams U-235+grams plutonium).

(2) This part prescribes requirements for the physical protection of special nuclear material in transportation by any person who is licensed pursuant to the regulations in Part 70 of this chapter who imports, exports, transports, delivers to a carrier for transport in a single shipment, or takes delivery of a single shipment free on board at the point where it is delivered to a carrier, either uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium, or any combination of these materials, which is 5,000 grams or more computed by the formula grams=(grams contained U-235)+2.5(grams U-233+grams plutonium).

(3) This part also applies to shipments by air of special nuclear material in quantities exceeding (1) 20 grams or 20 curies, whichever is less, of plutonium or uranium-233, or (2) 350 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope).

(4) Special nuclear material subject to this part may also be protected pursuant to security procedures prescribed by the Commission or another Government agency for the protection of classified materials. The provisions and requirements of this part are in addition to, and not in substitution for, any such security procedures. Compliance with the requirements of this part does not relieve any licensee from any requirement or obligation to protect special nuclear material pursuant to security procedures prescribed by the Commission or other Government agency for the protection of classified materials.

8. Existing § 73.2 is deleted and § 73.3 is redesignated as § 73.2; paragraphs (h), (i), and (j) are deleted; paragraph (n) is redesignated paragraph (e), new paragraphs (h), (i), (j), (k), and (p) are added, and paragraphs (a), (c), (d), (e), (f), (k), (l), and (m) are amended to read as follows:

§ 73.2 Definitions.

As used in this part:

(a) Terms defined in Parts 50 and 70 of this chapter have the same meaning when used in this part.

* * * * *

(c) "Guard" means a uniformed individual armed with a firearm whose primary duty is the protection of special nuclear material against theft and/or the protection of a plant against industrial sabotage.

(d) "Watchman" means an individual, not necessarily uniformed or armed with a firearm, who provides protection for a plant and the special nuclear material therein in the course of performing other duties.

(e) "Continuous visual surveillance" means unobstructed view at all times of a shipment of special nuclear material, and of all access to a temporary storage area or cargo compartment containing the shipment.

(f) "Physical barrier" means

(1) Fences constructed of No. 11 American wire gauge, or heavier wire fabric, topped by three strands or more of barbed wire or similar material on brackets angled outward between 30° and 45° from the vertical, with an overall height of not less than eight feet, including the barbed topping.

(2) Building walls constructed of stone, brick, cinder block, concrete, steel or comparable materials (openings in which are secured by grates, doors, or covers of construction and fastening of sufficient strength such that the integrity of the wall is not lessened by any opening), or walls of similar construction; not part of a building, provided with a barbed topping described in paragraph (f)(1) of this section of a height of not less than 8 feet.

(3) Ceilings and floors constructed to offer equivalent resistance to penetration equivalent to that of building walls described in paragraph (f)(2) of this section.

* * * * *

(h) "Vital area" means any area which contains vital equipment within a structure, the walls, roof, and floor of which constitute physical barriers of construction at least as substantial as walls as described in paragraph (f)(2) of this section.

(i) "Vital equipment" means any equipment, system, device, or material, the failure, destruction, or release of which could directly or indirectly endanger the public health and safety by exposure to radiation. Equipment or systems which would be required to function to protect public health and safety following such failure, destruction, or release are also considered to be vital.

(j) "Material access area" means any location which contains special nuclear material, within a vault or a building, the roof, walls, and floor of which each constitute a physical barrier.

(k) "Isolation zone" means any area, clear of all objects which could conceal or shield an individual, adjacent to a physical barrier, which is monitored to detect the presence of individuals or vehicles within that area.

(l) "Intrusion alarm" means a tamper indicating electrical, electro-mechanical, electro-optical, electroni or similar device which will detect intrusion by an individual into a building, protected area, vital area, or material access area, and alert guards or watchmen by means of actuated visible and audible signals.

(m) "Lock" in the case of vaults or vault type rooms means a three-position, manipulation resistant, dial type, built-in combination lock or combination padlock and in the case of fences, walls and buildings, means an integral door lock or padlock which provides protection equivalent to a six-tumbler cylinder lock. "Lock" in the case of a vault or vault type room also means any manipulation resistant, electromechanical device which provides the same function as a built-in combination lock or combination padlock which can be operated remotely or by the "reading" or insertion of information which can be uniquely characterized and which allows operation of the device. "Locked" means protected by an operable lock.

(n) "Vault" means a burglar-resistant windowless enclosure with walls, floor and roof of: (1) Steel at least one-half inch thick, (2) reinforced concrete or stone at least 8 inches thick, (3) non-reinforced concrete or stone at least 12 inches thick, or (4) monolithic floor or roof construction of equivalent resistance to entry, with a built-in lock in a steel door at least 1 inch thick, exclusive of the locking mechanism.

(o) "Vault-type room" means a room with one or more doors, all capable of being locked, protected by an intrusion alarm which creates an alarm upon the entry of a person anywhere into the room and upon exist from the room or upon movement of an individual within the room.

(p) "Industrial sabotage" means any deliberate act directed against a plant in which an activity licensed pursuant to the regulations in this chapter is conducted, or to any component of such a plant, which could directly or indirectly endanger the public health and safety by exposure to radiation, other than such acts by a enemy of the United States, whether foreign government or other person.

§ 73.3 [Redesignated]

10. Section 73.4 is redesignated as § 73.3.

11. Section 73.5 is redesignated § 73.4 and amended to read as follows:

§ 73.4 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part should be addressed to the Director of Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545, or may be delivered in person at the Commission's offices at 1717 H Street NW., Washington, D.C.; at 7920 Norfolk Avenue, Bethesda, Maryland; or at Germantown, Maryland.

§ 73.5 [Redesignated]

12. Section 73.12 is redesignated § 73.5.

§ 73.13 [Redesignated]

13. Section 73.13 is redesignated § 73.6 and amended to read as follows:

§ 73.6 Exemptions for certain quantities and kinds of special nuclear material.

A licensee is exempt from the requirements of §§ 73.30 through 73.36 and of §§ 73.60 and 73.70 of this part, with respect to the following special nuclear material:

(a) Uranium-235 contained in uranium enriched to less than 20 percent in the U-235 isotope;

(b) Special nuclear material which is not readily separable from other radioactive material and which has a total external radiation dose rate in excess of 100 rems per hour at a distance of 3 feet from any accessible surface without intervening shielding; and

(c) Special nuclear material in a quantity not exceeding 350 grams of uranium-235, uranium-233, plutonium, or a combination thereof, possessed in any analytical, research, quality control, metallurgical or electronic laboratory.

14. Paragraphs (b) and (c) of § 73.30 are amended to read as follows:

§ 73.30 General requirements.

* * * * *

(b) Transit times of shipments other than those specified in § 73.1(b)(3) shall be minimized and routes shall be selected to avoid areas of natural disaster or civil disorders. Such shipments shall be preplanned to assure that deliveries occur at a time when the receiver at the final delivery point is present to accept receipt of shipment.

(c) Special nuclear material shall be shipped in containers which are sealed by tamper indicating type seals. The containers shall also be locked if it is not in another container or vehicle which is locked. If inspection of the container or vehicle is not required by State or local authorities before final destination, the outermost container or vehicle shall also be sealed by tamper indicating type seals. No container weighing 500 pounds or less shall be shipped in open trucks, railroad flat cars or box cars and ships. This paragraph does not apply to shipments of quantities specified in § 73.1(b)(3).

* * * * *

15. A new § 73.40 and center head are added to read as follows:

PHYSICAL PROTECTION REQUIREMENTS AT FIXED SITES

§ 73.40 Physical protection: General requirements at fixed sites.

Each licensee shall provide physical protection against industrial sabotage and against theft of special nuclear material at the fixed sites where licensed activities are conducted. Security plans submitted to the Commission for approval shall be followed by the licensee after March 6, 1974.

16. A new § 73.50 is added to read as follows:

§ 73.50 Requirements for physical protection of licensed activities, other than the operation of nuclear reactors, against industrial sabotage.

In addition to any other requirements of this part, each licensee who is authorized to operate a fuel reprocessing plant pursuant to Part 50 of this chapter or who possesses or uses uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium alone or in any combination in a quantity of 5000 grams or more computed by the formula, grams = (grams contained U-235) + 2.5 (grams U-233 + grams plutonium), other than in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter, shall comply with the following after March 6, 1974.

(a) *Physical security organization.* (1) The licensee shall establish a security organization, including guards, to protect his facility against industrial sabotage and the special nuclear material in his possession against theft.

(2) At least one supervisor of the security organization shall be on site at all times.

(3) The licensee shall establish, maintain and follow written security procedures which document the structure of the security organization and which detail the duties of guards, watchmen, and other individuals responsible for security.

(4) The licensee shall not permit an individual to act as a guard or watchman unless such individual has been properly trained and equipped and has qualified by demonstrating: (i) an understanding of the licensee's security procedures, and (ii) the ability to execute all duties required of him by such procedures. Each guard and watchman shall be requalified at least annually. Such requalification shall be documented.

(b) *Physical barriers.* (1) The licensee shall locate vital equipment only within a vital area, which, in turn, shall be located within a protected area such that access to vital equipment requires passage through at least two physical barriers. More than one vital area may be within a single protected area.

(2) The licensee shall locate material access areas only within protected areas such that access to the material access area requires passage through at least two physical barriers. More than one material access area may be within a single protected area.

(3) The physical barrier at the perimeter of the protected area shall be separated from any other barrier designated as a physical barrier within the protected area, and the intervening space monitored or periodically checked to detect the presence of persons or vehicles so that the facility security organization can respond to suspicious activity or to the breaching of any physical barrier.

(4) An isolation zone shall be maintained around the physical barrier at the perimeter of the protected area and any part of a building used as part of that physical barrier. The isolation zone shall be monitored to detect the presence of individuals or vehicles within the zone so as to allow response by armed members of the licensee security organization to be initiated at the time of penetration of the protected area. Parking facilities, both for employees and visitors, shall be located outside the isolation zone.

(5) Isolation zones and clear areas between barriers shall be provided with illumination sufficient for the monitoring required by paragraphs (b) (3) and (4), but not less than 0.2 foot candles.

(c) *Access requirements.* The licensee shall control all points of personnel and vehicle access into a protected area including shipping or receiving areas, and into each vital area. Identification of personnel and vehicles shall be made and authorization shall be checked at such points.

(1) At the point of personnel and vehicle access into a protected area, all individuals, except employees who possess an AEC personnel security clearance, and all hand-carried packages shall be searched for devices such as firearms, explosives, and incendiary devices, or other items which could be used for industrial sabotage. The search shall be conducted either by a physical search or by the use of equipment capable of detecting such devices. Employees who possess an AEC personnel security clearance shall be searched at random intervals. Subsequent to search, drivers of delivery and service vehicles shall be escorted at all times while within the protected area.

(2) All packages being delivered into the protected area shall be checked for proper identification and authorization. Packages other than hand-carried packages shall be searched at random intervals.

(3) A picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.

(4) Access to vital areas and material access areas shall be limited to individuals who are authorized access to vital equipment or special nuclear material and who require such access to perform their duties. Authorization for such individuals shall be provided by the issuance of specially coded numbered badges indicating vital areas and material access areas to which access is authorized. Unoccupied vital areas and material access areas shall be protected by an active intrusion alarm system.

(5) Individuals not employed by the licensee shall be escorted by a watchman, or other individual designated by the licensee, while in a protected area and shall be badged to indicate that an escort is required. In addition, each individual not employed by the licensee shall be required to register his name, date, time, purpose of visit, employment affiliation, citizenship, name and badge number of the escort, and name of the individual to be visited. Except for a driver of a delivery or service vehicle an individual not employed by the licensee, who requires frequent and extended access to a protected area or a vital area need not be escorted provided such individual is provided with a picture badge, which he must receive upon entrance into the protected area and which he must return each time he leaves the protected area, which indicates (i) nonemployee—no escort required; (ii) areas to which access is authorized, and (iii) the period for which access has been authorized.

(6) No vehicles used primarily for the conveyance of individuals shall be permitted within a protected area except under emergency conditions.

(7) Keys, locks, combinations, and related equipment shall be controlled to minimize the possibility of compromise and promptly changed whenever there is evidence that they have been compromised. Upon termination of employment of any employee,[1] keys, locks, combinations, and related equipment to which that employee had access shall be changed.

(d) *Detection aids.* (1) All alarms required pursuant to this part shall annunciate in a continuously manned central alarm station located within the protected area and in at least one other continuously manned station, not necessarily within the protected area, such that a single act cannot remove the capability of calling for assistance or otherwise responding to an alarm. All alarms shall be self-checking and tamper indicating. The annunciation of an alarm at the onsite central alarm station shall indicate the type of alarm (e.g., intrusion alarm, emergency exit alarm, etc.) and location. All intrusion alarms, emergency exit alarms, alarm systems, and line supervisory systems shall at minimum meet the performance and reliability levels indicated by GSA Interim Federal Specification W-A-00450 B (GSA-FSS).

(2) All emergency exits in each protected area and each vital area shall be alarmed.

(e) *Communication requirements.* (1) Each guard or watchman on duty shall be capable of maintaining continuous communication with an individual in a continuously manned central alarm station within the protected area, who shall be capable of calling for assistance from other guards and watchmen and from local law enforcement authorities.

(2) The alarm stations required by paragraph (d)(1) of this section shall have conventional telephone service for communication with the law enforcement authorities as described in paragraph (e)(1) of this section.

(3) To provide the capability of continuous communication, two-way radio voice communication shall be established in addition to conventional telephone service, between local law enforcement authorities and the facility and shall terminate at the facility in a continuously manned central alarm station within the protected area.

(4) All communications equipment, including offsite equipment, shall remain operable from independent power sources in the event of loss of primary power.

(f) *Testing and maintenance.* Each licensee shall test and maintain intrusion alarms, emergency alarms, communications equipment, physical barriers, and other security related devices or equipment utilized pursuant to this section as follows:

(1) All alarms, communications equipment, physical barriers, and other security related devices or equipment shall be maintained in operable and effective condition.

(2) Each intrusion alarm shall be functionally tested for operability and required performance at the beginning and end of each interval during which it is used for security, but not less frequently than once every seven (7) days.

(3) Communications equipment shall be tested for operability and performance not less frequently than once at the beginning of each security personnel work shift.

(g) *Response requirement.* (1) The licensee shall establish liaison with local law enforcement authorities. In developing his physical security plan, the licensee shall take account of the probable size and response time of the local law enforcement authority assistance.

(2) Upon detection of abnormal presence or activity of persons or vehicles within an isolation zone, a protected area, or a vital area, or upon evidence of intrusion into a protected area or a vital area, the facility security organization shall (i) determine whether or not a threat exists, (ii) assess the extent of the threat, if any, and (iii) take immediate measures to neutralize the threat, either by appropriate action by facility guards or by calling for assistance from local law enforcement authorities, or both.

17. Section 73.60 is added to read as follows:

§ 73.60 Physical protection of special nuclear material at fixed sites.

Each licensee who pursuant to the regulations in Part 70 of this chapter possesses at any site or contiguous sites subject to control by the licensee uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium alone or in any combination in a quantity of 5,000 grams or more computed by the formula, grams = (grams contained U-235) + 2.5 (grams U-233 + grams plutonium) shall, by March 6, 1974 protect the special nuclear material from theft or diversion as follows:

(a) *Access requirements.* (1) Special nuclear material shall be stored or processed only in a material access area. No activities other than those which require access to special nuclear material or equipment employed in the process, use, or storage of special nuclear material, shall be permitted within a material access area.

(2) Material access areas shall be located only within a protected area to which access is controlled.

(3) Special nuclear material not in process shall be stored in a vault equipped with an intrusion alarm or in a vault-type room and each such vault or vault-type room shall be controlled as a separate material access area.

(4) Enriched uranium scrap in the form of small pieces, cuttings, chips, solutions or in other forms which result from a manufacturing process, contained in 30-gallon or larger containers, with a uranium-235 content of less than 0.25 grams per liter, may be stored within a locked and separately fenced area which is within a larger protected area provided that the storage area is no closer than 25 feet to the perimeter of the protected area. The storage area when unoccupied shall be protected by a guard or watchman who shall patrol at intervals not exceeding 4 hours, or by intrusion alarms.

(5) Admittance to a material access area shall be under the control of authorized individuals and limited to individuals who require such access to perform their duties.

(6) Prior to entry into a material access area, packages shall be searched for devices such as firearms, explosives, incendiary devices, or counterfeit substitute items which could be used for theft or diversion of special nuclear material.

(7) Methods to observe individuals within material access areas to assure that special nuclear material is not diverted shall be provided and used on a continuing basis.

(b) *Exit requirement.* Each individual, package, and vehicle shall be searched for concealed special nuclear material before existing from a material access area unless exit is into a contiguous material access area. The search may be carried out by a physical search or by use of equipment capable of detecting the presence of concealed special nuclear material.

(c) *Detection aid requirement.* Each unoccupied material access area shall be locked and protected by an intrusion alarm on active status. All emergency exits shall be continuously alarmed.

(d) *Testing and maintenance.* Each licensee shall test and maintain intrusion alarms, physical barriers, and other devices utilized pursuant to the requirements of this section as follows:

(1) Intrusion alarms, physical barriers, and other devices used for material protection shall be maintained in operable condition.

(2) Each intrusion alarm shall be inspected and tested for operability and required functional performance at the beginning and end of each interval during which it is used for material protection, but not less frequently than once every seven (7) days.

18. Section 73.41 is redesignated as § 73.70 and amended to read as follows:

RECORDS AND REPORTS

§ 73.70 Records.

Each licensee subject to the provisions of §§ 73.30 through 73.36 and/or § 73.50 and/or § 73.60 shall keep the following records:

(a) Names and addresses of all individuals who have been designated as authorized individuals.

(b) Names, addresses, and badge numbers of all individuals authorized to have access to vital equipment or special nuclear material, and the vital areas and material access areas to which authorization is granted.

(c) A register of visitors, vendors, and other individuals not employed by the licensee recorded pursuant to § 73.50(c)(5).

(d) A log indicating name, badge number, time of entry, reason for entry, and time of exit of all individuals granted access to a normally unoccupied vital area.

(e) Documentation of all routine security tours and inspections, and of all tests, inspections, and maintenance performed on physical barriers, intrusion alarms, communications equipment, and other security related equipment used pursuant to the requirements of this part.

(f) A record at each onsite alarm annunciation location of each alarm, false alarm, alarm check, and tamper indication that identifies the type of alarm, location, alarm circuit, date, and time. In addition, details of response by facility guards and watchmen to each alarm, intrusion, or other security incident shall be recorded.

(g) Shipments of special nuclear material subject to the requirements of this part, including names of carriers, major roads to be used, flight numbers in the case of air shipments, dates and expected times of departure and arrival of shipments, names and addresses of the monitor and one alternate monitor at each transfer point, verification of communication equipment on board the transfer vehicle, names of individuals who are to communicate with the transport vehicle, container seal descriptions and identification; and any other information to confirm the means utilized to comply with §§ 73.30 through 73.36. Such information shall be recorded prior to shipment. Information obtained during the course of the shipment such as reports of all communications, change of shipping plan including monitor changes, trace investigations and others shall also be recorded.

(h) Procedures for controlling access to protected areas and for controlling access to keys for locks used to protect special nuclear material.

19. Section 73.71 is amended to read as follows:

§ 73.71 Reports of unaccounted for shipments, suspected theft, unlawful diversion, or industrial sabotage.

(a) Each licensee who conducts a trace investigation of a lost or unaccounted for shipment pursuant to § 73.36(f) shall immediately report to the Director of the appropriate Atomic Energy Commission Regulatory Operations Regional Office listed in Appendix A, by telephone, telegram, or teletype, the details and results of his trace investigation and shall file within a period of fifteen (15) days a written report to the Director of the appropriate Regulatory Operations Regional Office with a copy to the Director of Regulatory Operations, U.S. Atomic Energy Commission, Washington, D.C. 20545, setting forth the details and results of the trace investigation.

(b) Each licensee shall report immediately to the Director of the appropriate Atomic Energy Commission Regulatory Operations Regional Office listed in Appendix A, by telephone, telegram, or teletype, any incident in which an attempt has been made, or is believed to have been made, to commit a theft or unlawful diversion of special nuclear material which he is licensed to possess, or to commit an act of industrial sabotage against his plant. The initial report shall be followed within a period of fifteen (15) days by a written report submitted to the Director of the appropriate Regulatory Operations Regional Office, with a copy to the Director of Regulatory Operations, U.S. Atomic Energy Commission, Washington, D.C. 20545, setting forth the details of the incident. Subsequent to the submission of the written report required by this paragraph a licensee shall immediately inform the Director of the appropriate Regulatory Operations Regional Office by means of a written report of any substantive additional information, which becomes available to the licensee, concerning the incident.

§ 73.80 [Redesignated]

20. Section 73.51 is redesignated as § 73.80.

Effective date. The foregoing amendments become effective on December 6, 1973.

(Sec. 161, Public Law 83-703, 68 Stat. 948; 42 U.S.C. 2201.)

Dated at Germantown, Maryland this 31st day of October 1973.

For the Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.73-23552 Filed 11-5-73;8:45 am]

PART 70—SPECIAL NUCLEAR MATERIAL

Revised Control and Accounting Requirements

On February 1, 1973, the Atomic Energy Commission published in the FEDERAL REGISTER (38 FR 3077) proposed amendments to its regulations in 10 CFR Part 70 which would revise the materials control and accounting requirements for special nuclear material.

Interested parties were invited to submit comments and suggestions for consideration in connection with the proposed amendments within 60 days after publication in the FEDERAL REGISTER. Upon consideration of the comments received, and other factors involved, the Commission has adopted the proposed amendments, with certain modifications as set forth below.

Significant differences from the proposed amendments published for comment are: (1) A change in the detailed control and accounting requirements for plutonium containing 80 percent or more by weight of the isotope Pu-238; (2) addition of a requirement for tamper-safing procedures to include control of the tamper-safing devices and records of the date and time of tamper-safing; (3) addition of requirements for the identification and control of in-process items containing special nuclear material; (4) changes in the date of the first inventory required under the amended regulation and the date by which the licensee's description of his program to meet the amended regulations must be submitted to the Commission have been made; (5) a change in the required frequency of plutonium inventories has been made from one to two months; (6) clarification of the description of that portion of a fuel reprocessing plant requiring only 6-month inventories; (7) addition of a five-year retention period for material balance and inventory records; (8) provision for licensees to apply for a license or amendment authorizing alternate limits of error (LE) for material unaccounted for (MUF) than specified in the proposed amendments and deletion of the limit of error of MUF requirements to be effective after January 1, 1976; (9) modification of LEMUF requirements to specify that they apply to a total plant balance for inprocess material of each type; (10) modification of the absolute minimum quantity limits for LEMUF to reflect a less stringent requirement for low enriched uranium; (11) modification of the material balance requirements to require accounting for plutonium only on the element basis; (12) deletion of specific remeasurement criteria for material inventory that has not been tamper-safed to permit the licensee flexibility in this remeasurement of SNM; and (13) addition of a footnote to clarify that the regulations do not require plant shutdown and cleanout for physical inventory. In addition, editorial changes were made.

The following discussion pertains to the respective items (1) through (13) above:

(1) The rule set forth below requires that the control and accounting requirements for plutonium containing 80 percent or more by weight of the isotope Pu-238 be the same as those for low-enriched uranium. This isotope of plutonium, because of the heat generated within the material, is, like low-enriched uranium, an improbable fissile material for use in nuclear weapons and does not require the controls specified in Part 70 for strategic material such as high-enriched uranium and plutonium having higher Pu-239 isotopic content. This isotope at these concentrations, i.e., greater than 80 percent, does not exist in quantity because it is produced only by special irradiation programs and not ordinarily as a product from power reactors

(2) The rule set forth below specifies that tamper-safing devices must be controlled and that the date and time of application of the devices be recorded. Unless it can be assured that the tamper-safing devices are available only to authorized persons and that there is documented evidence that the devices were applied at a time appropriate to ensure the integrity of the measurement of the material, tamper-safing cannot be an effective control mechanism.

(3) The proposed rule required item identification and control for items containing special nuclear material that had been tamper-safed and were not in process. It is equally as important to identify and control items in process that contain special nuclear material. The rule set forth below requires identification and control of items containing special nuclear material whether in process or not in process.

(4) Section 70.51(e)(2) of the proposed amendments would have required the licensee to perform the first inventory under the amended rule within 90 days after the effective date of the rule. However, § 70.51(g) would not have required the licensee to submit a description of his procedures to be used to comply with the requirements of amended rule until 120 days after the effective date. Based on comments received, the Commission believes the licensee should develop and submit a description of his inventory procedures prior to taking an inventory following the amended rule. Accordingly, the rule set forth below provides effective dates such that the addi-

tional material control and accounting requirements will become effective 6 months after publication of these amendments, the first inventory under the revised rule must be taken within 6 months after publication of these amendments, and the licensee's program description must be submitted to the Commission within 4 months after publication of these amendments. Until the submittals have been reviewed and their acceptability determined, licensees will be expected to follow the material control and inventory program described in their submittals.

(5) After evaluating comments, it was determined not to be feasible for licensees to meet the 0.5 percent limit on the limit of error of material unaccounted for (LEMUF) on a monthly balance for plutonium as specified in the proposed amendments. To meet the 0.5 percent limit licensees indicated that plant shutdown and clean-out would be required. Even then there were some questions whether the 0.5 percent limit would be met. To have a higher throughput factor for the LEMUF limit, the rule set forth below requires conduct of plutonium inventories every two months instead of every month as required by the proposed amendment. The two-month inventory interval for plutonium (other than in a reprocessing facility) makes the limits and inventory interval for plutonium the same as for high enriched uranium.

(6) The proposed rule identified that part of a fuel reprocessing plant which would have required physical inventory at only 6-month intervals. Comments indicated that the intent of this requirement was not clear. The rule set forth below more specifically identifies that portion of the fuel reprocessing process that is inaccessible and not as susceptible to diversion of special nuclear material and therefore does not require as frequent inventories as more accessible processes and materials.

(7) The rule set forth below specifies a five-year retention time for material balance and inventory records. This requirement is consistent with International Atomic Energy Agency records retention requirements and will make the U.S. records retention requirements compatible with IAEA safeguards for purpose of the Treaty on the Nonproliferation of Nuclear Weapons.

(8) At the time that the proposed rules were formulated, it was recognized that some types of processes and operations initially could not meet the proposed regulations and provision was made for application for exception to the specified requirements. Based upon comments received and upon reconsideration, the Commission has determined that specific provision should be made in the regulations for consideration of alternative LEMUF limits. The regulation has been revised accordingly. If a licensee has demonstrated through actual experience that he cannot meet the specified LE MUF limits, he may apply to the Commission for imposition of limits that can be met. These alternate limits will be approved if the licensee demonstrates that he has made reasonable efforts and cannot meet the prescribed limits and he has or will initiate a program to enable him to meet the prescribed limits. In view of this alternate provision and in consideration of the many uncertainties in the developing technology, prediction of firm LEMUF limits two to three years in the future was not considered feasible. Licensee performance and technological developments will be evaluated on a continuing basis and more stringent LEMUF limits established as the need is indicated and as the state-of-the-art permits.

(9) The proposed amendments were not clear as to which material balance the LEMUF limits applied. The rule set forth below specifies that the LEMUF limits apply to the total plant in-process material balance for a given material type. While balances still will be needed for material balance areas and limits of error calculated for such balances to permit MUF evaluation, the LEMUF limits specified in the rule set forth below do not apply for such balances unless they consist of the total plant in-process balance for a given material type.

(10) The proposed amendments specified absolute quantities for the LEMUF limits below which the relative percentage limits would not apply. The proposed limits for low enriched uranium were more stringent at the 3–4 percent enrichment level on an effective kilogram basis than the limits for plutonium, U-233, and high enriched uranium. To provide proper gradation of requirements the limits for low enriched uranium have been modified.

(11) The proposed amendments would have required calculation of an in-process material balance, MUF, and LEMUF for both element and isotope for plutonium. Adequate control can be maintained for plutonium using only the element balance. The rule set forth below requires calculation of an in-process material balance, MUF and LEMUF for plutonium element only.

(12) The proposed amendments specified confidence levels for statistical sampling plans to be used for verification of previous measurements for inventory purposes. Comments indicated that these statistical sampling plan statements were interpreted to mean specific requirements for the use of the specified plans. There also appeared to be some confusion as to the interpretation of the confidence levels being required. The rule set forth below specifies only that measurements of SNM on inventory whose integrity is not ensured by tamper-safing shall be vertified by remeasurement. The licensee may select appropriate remeasurement procedures and sampling plans. These plans will be included in the description of his program which will be submitted to the Commission.

(13) Comments indicated that the inventory criteria in the proposed amendments were interpreted as requiring plant shutdown and cleanout for physical inventory. Such is not required so long as process inventory measurements can be made on a dynamic basis to sufficient precision and accuracy to meet the LEMUF limits specified in § 70.51(e)(5)(ii). The rule set forth below contains a footnote to this effect. Many comments indicated that the licensee should be given flexibility to develop "innovative" inventory techniques to preclude costly plant shutdown. Such flexibility had always been the intent of the proposed amendments.

Pursuant to the Atomic Energy Act of 1954, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments of Title 10, Chapter I, Code of Federal Regulations, Part 70 are published as a document subject to codification.

1. Section 70.4 is amended by adding a new paragraph (t) to read as follows:

§ 70.4 Definitions.

* * * * *

(t) "Effective kilograms of special nuclear material" means: (1) For plutonium and uranium-233 their weight in kilograms; (2) For uranium with an enrichment in the isotope U-235 of 0.01 (1%) and above, its element weight in kilograms multiplied by the square of its enrichment expressed as a decimal weight fraction; and (3) For uranium with an enrichment in the isotope U-235 below 0.01 (1%), by its element weight in kilograms multiplied by 0.0001.

2. Paragraph (b) of § 70.22 is revised to read as follows:

§ 70.22 Content of applications.

* * * * *

(b) Each application for a license to possess at any one time special nuclear material in a quantity exceeding one effective kilogram of special nuclear material and to use such special nuclear material for activities other than those involved in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter or those involved in a waste disposal operation, or as sealed sources, shall also contain:

(1) A full description of the applicant's program for control of and accounting for special nuclear material which will be in his possession under license, including:

(i) Procedures used in receiving, storing and shipping special nuclear material;

(ii) Procedures for controlling special nuclear material during its processing or use in the facility, if appropriate;

(iii) Procedures by which process losses are determined;

(iv) Special nuclear material records and reporting procedures;

(v) Physical inventory procedures showing how the requirements of paragraphs (e) and (f) of § 70.51 will be satisfied;

(vi) Measurement and statistical control procedures; and

(vii) Administrative controls (organization and management) for assuring appropriate implementation of the procedures described in paragraph (b) (1) (i) through (vi) of this section.[1]

(2) An identification of the fundamental material controls provided in the procedures described in paragraphs (b) (1) (i) through (vii) of this section, which the applicant considers essential for assuring that special nuclear material in his possession under license will be adequately safeguarded. Such proposed controls will be considered by the Commission in determining the conditions to be incorporated in the license pursuant to § 70.32(c).

* * * * *

3. Paragraph (c) of § 70.32 is revised to read as follows:

§ 70.32 Conditions of licenses.

* * * * *

(c) Each license authorizing the possession at any one time and location of special nuclear material in a quantity exceeding one effective kilogram of special nuclear material and the use of such special nuclear material except those uses involved in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter or those involved in a waste disposal operation, or in sealed sources, shall contain and be subject to a condition requiring the licensee to maintain and follow (1) the program for control and accounting for special nuclear material and fundamental material controls described pursuant to § 70.22(b) (2) and (2) such other material control procedures as the Commission determines to be essential for the safeguarding of special nuclear material. The licensee shall make no change which would decrease the effectiveness of the material control and accounting program prepared pursuant to § 70.22(b) (1) or § 70.51(g) without the prior approval of the Commission. A licensee desiring to make such changes shall submit an application for amendment to his license pursuant to § 70.34. The licensee shall maintain records of changes to the material control and accounting program made without prior Commission approval, and shall furnish to the Commission a report containing a description of each change within:

(1) Two months of the change if it pertains to plutonium, uranium-233 or uranium-235 contained in uranium enriched 20% or more in the uranium-235 isotope, and

(2) Six months of the change if it pertains to uranium enriched less than 20 percent inthe uranium-235 isotope.

[1] For guidance in preparing the required descriptions, an applicant may consult "Guide for Preparation of Fundamental Material Controls and Nuclear Materials Safeguards Procedures," and "Regulatory Guide 5.3 Statistical Terminology and Notation For Special Nuclear Materials Controls and Accountability" which are available for inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. Copies of these guides may be obtained by addressing a request to the Director of Regulatory Standards, U.S. Atomic Energy Commission, Washington, D.C. 20545.

4. Section 70.51 is revised to read as follows:

§ 70.51 Material balance, inventory, and records requirements.

(a) As used in this section:

(1) "Additions to material in process" means receipts that are opened except for receipts opened only for sampling and subsequently maintained under tamper-safing, and opened sealed sources.

(2) "Enrichment category" for uranium 235 means high-enriched uranium—that uranium whose isotope content is 20 percent or more uranium 235 by weight, and low-enriched uranium—that uranium whose isotope content is less than 20 percent uranium 235 by weight.

(3) "Element" means uranium or plutonium.

(4) "Fissile isotope" means (i) uranium-233 or (ii) uranium-235 by enrichment category.

(5) "Limit of error" means the uncertainty component used in constructing a 95 percent confidence interval associated with a quantity after any recognized bias has been eliminated or its effect accounted for.

(6) "Material balance" means a determination of material unaccounted for (MUF) by subtracting ending inventory (EI) plus removals (R) from beginning inventory (BI) plus additions to inventory (A). Mathematically,

$$MUF = BI + A - EI - R$$

(7) "Material in process" means any special nuclear material possessed by the licensee except in unopened receipts, sealed sources, and ultimate product maintained under tamper-safing.

(8) "Physical inventory" means determination on a measured basis of the quantity of special nuclear material on hand at a given time. The methods of physical inventory and associated measurements will vary depending on the material to be inventoried and the process involved.[2]

(9) "Removals from material in process" includes measured quantities of special nuclear material disposed of as discards, encapsulated as a sealed source, or in other ultimate product paced under tamper-safing or shipped offsite.

(10) "Tamper-safing" means the use of devices on containers or vaults in a manner and at a time that ensures a clear indication of any violation of the integrity of previously made measurements of special nuclear material within the container or vault.

(11) "Ultimate product" means any special nuclear material in the form of a product that would not be further processed at that licensed location.

(12) "Unopened receipts" means receipts not opened by the licensee, including receipts of sealed sources, and receipts opened only for sampling and subsequently maintained under tamper-safing.

(b) Each licensee shall keep records showing the receipt, inventory (including location), disposal, acquisition, import, export, and transfer of all special nuclear material in his possession regardless of its origin or method of acquisition.

[2] Criteria for physical inventories are set out in paragraph (f) of this section.

(c) Each licensee who is authorized to possess at any one time special nuclear material in a quantity exceeding one effective kilogram of special nuclear material shall establish, maintain, and follow written material control and accounting procedures which are sufficient to enable the licensee to account for the special nuclear material in his possession under license.

(d) Except as required by paragraph (e) of this section, each licensee who is authorized to possess at any one time and location special nuclear material in a quantity totaling more than 350 grams of contained uranium 235, uranium 233, or plutonium, or any combination thereof, shall conduct a physical inventory of all special nuclear material in his possession under license at intervals not to exceed twelve months.

(e) Effective May 6, 1974, each licensee who is authorized to possess at any one time special nuclear material in a quantity exceeding one effective kilogram of special nuclear material and to use such special nuclear material for activities other than those involved in the operation of a nuclear reactor licensed pursuant to Part 50 of this chapter or those involved in a waste disposal operation; as sealed sources; or as reactor irradiated fuels involved in research, development, and evaluation programs in facilities other than irradiated fuel reprocessing plants, shall:

(1) Maintain procedures which shall include:

(i) Procedures for tamper-safing containers or vaults containing nuclear material not in process, which include control of access to the devices and records of the date and time of application of each device to a container or vault; unique identification of each such item; inventory records showing the identity, location, and quantity of special nuclear material for all such items; and records of the source and disposition of all such items;

(ii) Records of the quantities of special nuclear material added to or removed from the process;

(iii) Inventory records for the quantity of special nuclear material in process;

(iv) Unique identification of items or containers containing special nuclear material in process; inventory records showing the identity, location, and quantity of special nuclear material for all such items; and records of the source and disposition of all such items;

(v) Documentation of all transfers of special nuclear material between material balance areas to show identity and quantity of special nuclear material transferred;

(vi) Requirements for authorized signatures on each document for transfer of special nuclear material between material balance areas; and

(vii) Means for control of and accounting for internal transfer documents.

(2) On or before May 6, 1974, and thereafter as necessary to comply with the requirements of paragraph (e) (3) of

this section, perform a physical inventory of all special nuclear material in his possession in compliance with the criteria for physical inventories set forth in paragraph (f) of this section.

(3) Conduct physical inventories made in accordance with the criteria for physical inventories set forth in paragraph (f) of this section at intervals determined from the start of the beginning inventory to the start of the ending inventory not to exceed:

(i) 2 calendar months for plutonium except for plutonium containing 80 percent or more by weight of the isotope Pu-238, uranium 233 and for uranium enriched 20 percent or more in the isotope uranium 235 (except as provided in paragraph (e) (3) (ii) of this section); and

(ii) 6 calendar months for uranium enriched less than 20 percent in the isotope uranium 235; for plutonium, U-233 and high-enriched uranium in that portion of an irradiated-fuel reprocessing plant from the dissolver to the first vessel outside of the radiation shielded portion of the process; and for plutonium containing 80 percent or more by weight of the isotope Pu-238;

(4) Within 30 calendar days after the start of each ending physical inventory required by paragraph (e)(3) of this section:

(i) Calculate, for the material balance interval terminated by that inventory, the material unaccounted for (MUF) and its associated limit of error for each element and the fissile isotope for uranium contained in material in process;

(ii) Reconcile and adjust the book record of quantity of element and fissile isotope, as appropriate, to the results of the physical inventory;

(iii) Complete and maintain for a period of five years material balance records for each material balance showing the quantity of element and fissile isotope, as appropriate, in each component of the material balance, with the associated limit of error for the material unaccounted for both in terms of absolute quantity of element and fissile isotope and relative to additions to or removals from material in process for the interval, where results of limit of error calculations are recorded in sufficient detail to permit an evaluation of sources of error.

(iv) Complete and maintain for a period of five years a record summarizing the quantities of element and fissile isotope, as appropriate, for ending inventory of material in process, additions to material in process during the material balance interval and removals from the material in process during the material balance interval; and

(v) Complete and maintain for a period of five years a record summarizing the quantities of element and fissile isotope, as appropriate, in unopened receipts (including receipts opened only for sampling and subsequently maintained under tamper-safing), and ultimate products maintained under tamper-safing, or in the form of sealed sources;

(5) Establish and maintain a system of control and accountability such that the limits of error for any material unaccounted for (MUF) ascertained as a result of the material balances made pursuant to paragraph (e)(3) of this section do not exceed (i) 200 grams of plutonium or uranium 233, 300 grams of high enriched uranium or uranium 235 contained in high enriched uranium, or 9,000 grams of uranium 235 contained in low enriched uranium, (ii) those limits specified in the following table, or (iii) other limits authorized by the Commission pursuant to paragraph (e)(6) of this section:

Material Type	*Limit of Error of MUF on Any Total Plant Inprocess Material Balance* [a] *Percent*
Plutonium element or uranium 233 in a chemical reprocessing plant	1.0
Uranium element and fissile isotope in a reprocessing plant	0.7
Plutonium element, uranium 233, or high enriched uranium element and fissile isotope—all other	0.5
Low-enriched uranium element and fissile isotope—all other	0.5

[a] As a percentage of additions to or removals from material in process, whichever is greater.

Any licensee subject to this paragraph on December 6, 1973, who requests higher limits pursuant to paragraph (e)(6) of this section at the time he submits his program description under the provisions of paragraph (g) of this section is hereby authorized to operate at the higher limits until the application for license or amendment has been finally determined by the Commission;

(6) An applicant or a licensee subject to the requirements of paragraph (e) of this section may request limits higher than those specified in paragraph (e)(5) of this section. The requested higher limits shall be pased on considerations such as the type and complexity of process, the number of unit operations, process throughput quantities, process recycle quantities, and the technology available and applicable to the control and accounting of the material in the process. The Commission will approve higher limits if the applicant demonstrates:

(i) That he has made reasonable efforts and cannot meet the limits of error of MUF specified in paragraph (e)(5) of this section; and

(ii) That he has initiated or will initiate a program to achieve improvements in his material control system so as to meet the limits specified in paragraph (e)(5) of this section.

(f) Each licensee subject to the requirements of paragraph (e) of this section shall:

(1) Establish physical inventory procedures to assure that:

(i) The quantity of special nuclear material associated with each item on inventory is a measured value;

(ii) Each item on inventory is listed and identified to assure that all items are listed and that no item is listed more than once;

(iii) Cutoff procedures for transfers and processing are established so that all quantities are inventoried and none are inventoried more than once;

(iv) Cutoff procedures for records and reports are established so that all transfers for the inventory and material balance interval and no others are included in the records; and

(v) Upon completion of the inventory, all book and inventory records, both total plant and material balance area, are reconciled with and adjusted to the physical inventory.

(2) Establish inventory procedures for sealed sources and containers or vaults containing special nuclear material that provide for:

(i) Identification and location of all such items;

(ii) Verification of the integrity of the tamper-safing devices for such items;

(iii) Reverification of identity and quantity of contained special nuclear material for each item not tamper-safed, or whose tamper-safing is found to have been compromised;

(iv) Verification of the correctness of the inventory records of identity and location for all such items; and

(v) Documentation in compliance with the requirements of paragraphs (f)(2)(i), (ii), (iii), and (iv) of this section.

(3) Establish inventory procedures for special nuclear material in process that provide for:

(i) Measurement of all quantities not previously measured by the licensee for element and fissile isotope; and

(ii) For all material whose content of element and fissile isotope has been previously measured by the licensee but for which the validity of such previously made measurements has not been assured by tamper-safing, verification of the quantity of contained element and fissile isotope by remeasurement.

(4) Conduct physical inventories according to written inventory instructions for each inventory which shall;

(i) Assign inventory duties and responsibilities;

(ii) Specify the extent to which each material balance area and process is to be shut down, cleaned out, and/or remain static; [4]

(iii) Identify the basis for accepting previously made measurements and their limits of error;

(iv) Designate measurements to be made for inventory purposes and the procedures for making such measurements; and

(v) Identify the means by which material on inventory will be listed to assure that each item is inventoried and that there is no duplication.

(g) Each licensee subject to the requirements of paragraph (e) of this section-

[4] No process shutdown and/or cleanout for inventory is required if requirements with respect to MUF and the limit of error of MUF as specified in paragraph (e)(5)(ii) of this section are met using other inventory methods.

tion shall submit to the Commission for approval by March 6, 1974, a full description of the program intended to be used to enable the licensee to comply with that paragraph and the requirements set forth in paragraph (f) of this section. This program shall be followed by the licensee after May 6, 1974.

(h) Each licensee who determines that the requirements of paragraph (e) of this section will require modifications of his plant or equipment costing $500,000 or more may, by March 6, 1974, apply to the Commission for an extension of time, not to exceed six additional months, for compliance with those requirements. Each application for extension shall include a description of the modifications to be made, a statement of estimated associated costs with substantiating evidence, and a schedule of the dates when the modifications will be commenced and completed.

5. Section 70.53 is revised to read as follows:

§ 70.53 Material status reports.

(a) Each licensee who is authorized to possess at any one time and location special nuclear material in a quantity totaling more than 350 grams of contained uranium 235, uranium 233, or plutonium or any combination thereof, shall complete and submit to the Commission Material Status Reports on Form AEC-742, in accordance with printed instructions for completing the form, concerning special nuclear material received, produced, possessed, transferred, consumed, disposed of or lost by the licensee. All such reports shall be made as of June 30 and December 31 of each year and shall be filed with the Commission within thirty (30) days after the end of the period covered by the report. The Commission may permit a licensee to submit Material Status Reports at other times when good cause is shown.

(b) Each licensee subject to the requirements of § 70.51(e) shall submit to the appropriate Regional Office of the AEC Directorate of Regulatory Operations listed in Appendix A of Part 73 of this chapter within 30 calendar days after the start of each ending physical inventory required by § 70.51(e)(3):

(1) If the material unaccounted for exceeded both (i) its associated limit of error and (ii) 200 grams of plutonium or U-233, 300 grams of high enriched uranium or uranium U-235 contained in high enriched uranium, or 9,000 grams of U-235 contained in low enriched uranium, a statement of the probable reasons for the material unaccounted for and actions taken or planned with respect to the material unaccounted for; and

(2) If for any material the limit of error of the material unaccounted for balance exceeds any applicable limits specified in § 70.51(e)(5) or approved pursuant to § 70.51(e)(6), a statement of the probable reasons for the limit of error and actions taken or planned with respect to the limit of error.

Effective date. The foregoing amendments become effective on December 6, 1973.

(Secs. 53b, 161, Pub. L. 83-703, 68 Stat. 930, 948 (42 U.S.C. 2073(b), 2201)

Dated at Germantown, Maryland this 31st day of October 1973.

For the Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.73-23553 Filed 11-5-73;8:45 am]

Title 12—Banks and Banking

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

[No. 73-1569]

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

Real Estate Loan Prepayments

The Federal Home Loan Bank Board considers it desirable to amend § 545.6-12(b) of the rules and regulations for the Federal Savings and Loan System (12 CFR 545.6-12(b)) in order to authorize Federal associations to make or purchase interests in real estate loans secured by other than homes or combinations of homes and business properties which contain a provision prohibiting any prepayment of the loan.

The second sentence of § 545.6-12(b) had required that all borrowers "from a Federal association shall have the right to prepay their loans without penalty unless the loan contract makes express provision for a prepayment penalty". The amended § 545.6-12(b) limits the requirement of permitting prepayments to loans secured by homes and combinations of homes and business property. The final sentence of § 545.6-12(b) continues to prescribe the maximum prepayment penalty for loans secured by homes only.

Accordingly, the Board hereby amends said § 545.6-12 by revising paragraph (b) thereof to read as set forth below, effective November 6, 1973:

Since the above amendment relieves restrictions, the Board hereby finds that notice and public procedure with respect to said amendment are unnecessary under the provisions of 12 CFR 508.11 and 5 U.S.C. 553(b).

§ 545.6-12 Loan payments.

* * * * *

(b) *Loan payments and prepayments.* Payments on the principal indebtedness of all loans on real estate security shall be applied directly to the reduction of such indebtedness, but prepayments made on an installment loan may be reapplied from time to time in whole or in part by a Federal association to offset payments which subsequently accrue under the loan contract. Each borrower from Federal associations on a loan secured by a home or combination of home and business property shall have the right to prepay the loan without penalty unless the loan contract makes express provision for a prepayment penalty. The prepayment penalty for a loan secured by a home which is occupied or to be occupied in whole or in part by a borrower shall not be more than 6 months' advance interest on that part of the aggregate amount of all prepayments made on such loan in any 12-month period which exceeds 20 percent of the original principal amount of the loan.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943-48 Comp., p. 1071.)

By the Federal Home Loan Bank Board.

Dated: October 17, 1973.

[SEAL] EUGENE M. HERRIN,
Assistant Secretary.

[FR Doc.73-23569 Filed 11-5-73;8:45 am]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

PART 118—HANDICAPPED ASSISTANCE LOANS

Assistance to Certain Nonprofit Organizations and Small Business Concerns Owned by Handicapped Individuals

A proposal was issued on July 31, 1973 (38 FR 20351), to establish rules and regulations governing financial assistance to certain nonprofit organizations operated in the interests of the handicapped and to small business concerns owned, or to be owned, by handicapped individuals. The proposal established a new Part 118 to set forth guidelines for eligibility, credit terms, and procedures for financial assistance pursuant to section 7(g) of the Small Business Act, as amended. Interested persons were given till August 30, 1973, to submit written statements of facts, opinions, or arguments concerning the proposal. All comments submitted were given due consideration.

As a result of the comments received, the following changes are made:

1. Section 118.1, *Program objectives:* The proposal to limit financial assistance for nonprofit organizations to enable them to perform on Federal contracts under Public Law 92-28 (amended Wagner-O'Day Act), or to fulfill contracts and orders for goods and services from the private sector was considered to be too restrictive. Many workshops market products through their own retail outlets, many workshops have Federal contracts obtained on a competitive basis, and many State and local governments purchase goods and services from workshops and the proposed language appeared to limit this type of activity. The proposed language has, therefore, been revised to broaden the scope of the program objectives for nonprofit organizations to allow for financial assistance to enable these organizations to produce and provide marketable goods and services.

2. Section 118.2, *Definitions:* Many comments were submitted concerning the definition for "handicapped individuals." From the evaluation of the comments, it became apparent that a handicap which in any way limits the selection of employment refers to what is accomplished by employment and training at a workshop but does not apply to "engaging" in a business endeavor. The definition of "handicapped

individual" has been modified to allow for this difference and now provides that only for HAL-2 loans should the degree of handicap limit the individual in engaging in normal competitive business practice. Definitions for the "Committee" and for "Central Nonprofit Organization" have been eliminated and the other definitions renumbered accordingly. Under the definition for "nonprofit organization", the word "direct" has been added to clarify production or provision of the commodities or services.

3. Section 118.11(a), Eligibility for HAL-1: The requirement for affiliation with a Central Nonprofit Organization has been eliminated as a result of a general expression that this provision was too restrictive and served no useful purpose in establishing the ability of the applicant organization to meet qualifications for loan assistance. Other new provisions which were recommended were not adopted on the same basis as being too restrictive.

4. Section 118.11(d), Eligibility for HAL-2: The word "professional" has been added to further define a "counselor" and the subparagraph concerning overcoming a handicap has been eliminated. It was pointed out the requirement, as stated in the authorizing legislation, that the handicap be of a permanent nature renders this provision redundant. It was also noted that the suggested provision could rule out for assistance the individual who has a permanent impairment but who has received training to ready him or her for employment or to overcome the handicap. This was not the intention of the proposal as every applicant must still demonstrate that the business can be operated in such a manner as reasonably to assure repayment.

5. Section 118.31, *Terms and conditions*, has been reworded to substitute clarifying language. The intent of the provision remains the same.

6. Section 118.41, *Participations*, has also been reworded to substitute clarifying language. The intent of this provision remain the same.

Many comments dealt with provisions which are of a statutory nature, such as the 75 percent man-hour employment requirement and the need for reasonable assurance of repayment and cannot be eliminated.

Accordingly, with these changes and additions, the proposed amendments are adopted as set forth below:

AUTHORITY: Section 7(g) of the Small Business Act, as amended (sec. 3, Pub. L. 92-595, 86 Stat. 1314; 15 U.S.C. 636(g)).

§ 118.1 Program objectives.

(a) Loans made to public or private nonprofit as defined in § 118.2(e), organizations (HAL-1) will be limited to nonprofit sheltered workshops and any similar organization to enable them to produce and provide marketable goods and services. It is not the purpose of these loans to provide for supportive services to workshops. These supportive services include, but are not limited to, subsidization of wages of low producers, health and rehabilitation services, and management. Usually such supportive services are funded by fees from State or local rehabilitation agencies, community fundraising drives, private donors, grants, bequests, and other Government programs. The Small Business Act prohibits the duplication of the work or activity of any other department or agency of the Federal Government unless expressly provided for.

(b) Loans made to eligible small business concerns owned by handicapped persons (HAL-2) are to assist in the establishment, acquisition, or operation of a small business.

§ 118.2 Definitions.

For purposes of this part:

(a) "Administrator" means the Administrator of the Small Business Administration.

(b) "SBA" means the Small Business Administration.

(c) "Small business concern" means a business concern which would qualify as a small business under § 121.3-10 of this chapter.

(d) The "Act" means the Small Business Act.

(e) "Nonprofit organization" means any public or private organization which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; and which, in the production of commodities and in the provision of services during any fiscal year in which it receives financial asistance under this program, employs handicapped individuals for not less than 75 percent of the man-hours required for the direct production or provision of the commodities or services.

(f) "Handicapped individual" means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable and also, in the case of applications for HAL-2, which limits the individual(s) in engaging in normal competitive business practices without SBA loan assistance.

(g) "HAL-1" means a Handicapped Assistance Loan to a nonprofit organization, as defined in Paragraph (e) of this section.

(h) "HAL-2" means a Handicapped Assistance Loan to an eligible small business concern owned, or to be owned, by handicapped individual(s).

HANDICAPPED ASSISTANCE LOANS

§ 118.11 Eligibility.

(a) In order to be eligible to apply for a HAL-1, the nonprofit organization must submit certification that it is organized under the laws of the State, or of the United States, as a nonprofit organization operating in the interests of handicapped individuals. Such certification may include copies of by-laws, incorporation papers, certification of its tax exempt status as determined by the Internal Revenue Service ((501)(3)(c)), and recognition and approval by a State Vocational Rehabilitation Agency. It must provide documentation that it employs during any fiscal year in which it recieves SBA financial assistance, handicapped individuals for not less than 75 percent of the man-hours required for the direct production of commodities or in the provision of services which it renders. In addition it must comply with any applicable occupational health and safety standard which may be prescribed by the Secretary of Labor:

(1) Loans under HAL-1 are not to be used as a substitute for historical sources of funding.

(2) Financial assistance shall not be extended if funds are otherwise available on reasonable terms from private sources or other Federal, State or local programs. It must be demonstrated that:

(i) The applicant's bank account will not make the loan.

(ii) Private credit is not obtainable.

(iii) Grant funds from other Government programs are not available.

(iv) Contributions from foundations, local or state fund raising activities, including tax assessments, donations, and similar historical avenues of funding will not be diminished as a result of the SBA loan.

(b) In order to be eligible to apply for a MAL-2, a business must qualify under Parts 120 and 121 of this chapter, except where inconsistent with specific provisions in this part. In the case of a partnership, corporation, or cooperative, the business must be 100 percent owned by handicapped individuals.

(1) Applications for financial assistance may be considered only when there is evidence that the desired credit is not otherwise available on reasonable terms. The financial assistance applied for shall be deemed to be otherwise available on reasonable terms, unless it is satisfactorily demonstrated that:

(i) Proof of refusal of the required financial assistance has been obtained from—

(A) The applicant's bank of account;

(B) If the amount of financial assistance applied for is in excess of the amount that the bank normally lends to any one borrower, then a refusal from a correspondent bank or from any other lending institution whose lending capacity is adequate to cover the financial assistance applied for; and

(C) Not less than 2 financial institutions for direct loans in cities where the population exceeds 200,000.

Proof of refusal must contain the date, amount and terms requested, and the reasons for not granting the desired credit. Bank refusal to advance credit should not be considered the full test of unavailability of credit and, where there is knowledge or reasons to believe that credit is otherwise available on reasonable terms from sources other than such banks, the financial assistance applied for cannot be granted notwithstanding the receipt of written refusals from such banks.

(ii) The financial assistance required does not appear to be obtainable:

(A) On reasonable terms through the public offering or private placing of securities of the applicant;

(B) Through the disposal at a fair price of assets not required by the applicant in the conduct of the existing business or not reasonably necessary to its potential healthy growth; and

(C) Without undue hardship through utilization of the personal credit resources of the owner, partners, management, or principal shareholders of the applicant;

(D) Through other applicable Government financing, including SBA's regular Business Loan Program and its Economic Opportunity Loan Program.

(c) Under HAL-2 financial assistance may be used to acquire a business.

(d) Applicants for assistance under HAL-2 must provide information from a physician, psychiatrist, and/or professional counselor in writing as to the permanent nature of the handicap and the limitations it places on the applicant.

(e) Direct loan assistance is subject to the availability of funds.

§ 118.21 Limitations on use of proceeds.

(a) Loans for nonprofit organizations HAL-1) may not be used for:

(1) Training, education, housing; or other supportive services for handicapped employees of sheltered workshops.

(2) Construction of facilities if a construction grant is available from other Government sources.

(3) Purchase of a building when mortgage insurance through other Federal agencies is available.

(b) Restrictions on use of proceeds for HAL-2 loans are the same as for regular SBA business loans with the exception of acquisition of a business.

§ 118.31 Terms and conditions.

(a) HAL loans shall not be made, participated in, or guaranteed if the total amount of the Government's share of such assistance to a single borrower at any one time exceeds a total outstanding of $350,000. The loan limit applies collectively to all HAL-2 loans to business entities owned or controlled by affiliated ownership and for all HAL-1 loans to the specific applicant nonprofit organization.

(1) The administrative ceiling on a direct loan is $100,000, and $150,000 as the SBA share of an immediate participation loan. Acceptance of such applications is subject to availability of funds.

(b) Interest on direct loans and the SBA share of an immediate participation loan is 3 percent per annum.

(c) Subject to the approval of SBA, the participants share of immediate participation loans, and on guaranteed loans prior to SBA's purchase, the interest rate shall be at a legal and reasonable rate. Maximum allowable rates for the bank share of any HAL loan shall be the same as established for business and Economic Opportunity loans which are set forth in Part 120.3(b)(2).

(d) The interest rate on SBA's share of a guaranteed loan after purchase by SBA becomes the same as the rate for direct loans. SBA's payment to the guaranteed participant of accrued interest to the date of purchase shall be at the interest rate established by participant but shall not exceed an effective rate of interest of 8 percent per annum, and without any future adjustment for any unpaid accrued interest in excess of 8 pecent per annum.

(e) Repayment will be required at the earliest feasible date giving consideration to the use to be made of the funds and indicated ability to repay with 15 years as the absolute maximum. When deemed necessary, grace periods for payment of principal may be provided. Interest payments must be made as soon after the loan is disbursed as possible and will be required during any grace period. A fluctuating repayment schedule may be established for seasonal businesses or nonprofit organizations.

§ 118.41 Participations.

(a) It is the policy to stimulate and encourage loans by banks and other lending institutions.

(1) An applicant for a direct HAL loan must show that an immediate participation or guaranteed loan is not available. An applicant for any immediate participation loan must show that a guaranteed loan is not available.

(2) SBA's share of immediate participation loans shall not exceed 75 percent of the loan. Exceptions may be made in cases when the participant's legal lending limit precludes a 25 percent participation. In such cases the participant will be required to share in the loan to the extent of its legal lending limit but in no event less than 10 percent. In guaranteed loans the exposure of SBA under the guaranty may not exceed 90 percent of the unpaid principal balance and accrued interest.

(3) The guaranty fee paid by the bank to SBA on the guaranteed portion of a loan and the service fee charged by the bank to SBA on SBA's share of an immediate participation loan shall be the same as those fees applicable on regular business loans.

(4) No agreement to extend financial assistance under this program shall establish any preferences in favor of a bank or other lending institution.

§ 118.51 Credit requirements.

(a) An applicant must meet certain practical credit requirements established by SBA. Principal requirements are as follows:

(1) An applicant must be of good character as determined by SBA.

(2) There must be evidence that the ability exists to operate the business or the nonprofit organization successfully.

(3) There must be enough capital invested in the business so that, with assistance through SBA, the business will be able to operate on a sound financial basis.

(4) As required by the Small Business Act, as amended, the proposed loan, whether direct, immediate participation, or guaranteed must be "of such sound value or so secured as reasonably to assure repayment."

(i) In those border line cases where a reasonable doubt exists as to repayment ability, the decision shall be resolved in favor of the applicant.

(5) The loan should be secured by collateral of a type, amount, and value which, considered with other factors, such as the character and ability of the management, and of the prospective earnings, will afford the required assurance of repayment.

(i) On loans to be made to finance Federal Government contracts, an assignment of amounts to come due under such contracts may be required.

(ii) Personal guaranties of the officers or directors of nonprofit organizations (HAL-1) shall not be required.

(6) The past earnings record and future prospects of the firm for HAL-2 loans must indicate ability to repay the loan out of income from the business.

(i) For loans to nonprofit organizations (HAL-1), evidence that the organization has the capability and experience to perform successfully on the work to be performed must be furnished but it is not necessary that the loan be repaid from the earnings of the organization if repayment ability can be determined on another basis.

§ 118.61 Application procedures.

(a) An applicant desiring to obtain HAL assistance shall apply to the regional, district, or branch office servicing the area where the business or nonprofit organization is located, or to the applicant's bank which in turn will apply for the SBA guaranty to the regional, district, or branch office servicing the area where the business or nonprofit organization is located.

(1) If another SBA office is closer, the applicant may obtain counseling, advice, or assistance in filing an application from that office.

(2) Addresses of SBA offices are listed in Part 101 of this chapter.

(b) After a direct loan application has been submitted to SBA and has been approved or declined, the regional or district office will send a letter of notification to the applicant. In cases of decline, the reasons will be stated. When a bank is participating, the bank will be notified of the final decision.

(1) In the event of decline, the applicant may request a reconsideration from the declining office within six months. A reconsideration request must include new or additional information which will overcome the stated reasons for decline.

§ 118.71 Applicability of other SBA regulations.

(a) All applicable provisions of Parts 120 and 122 of this chapter shall apply to HAL's except where other provision is made in this part.

Effective date. These SBA regulations are effective November 5, 1973.

Dated: November 1, 1973.

(Catalog of Federal Domestic Assistance Programs. 59.003, Economic Opportunity Loans; 59.012, Small Business Loans; 13.763, Rehabilitation Services and Facilities.)

THOMAS S. KLEPPE,
Administrator.

[FR Doc.73-23594 Filed 11-5-73;8:45 am]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 73-307]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Supplies and Equipment for Aircraft; Saudi Arabia

In accordance with section 309(d), 46 Stat. 690, as amended (19 U.S.C. 1309 (d)), the Secretary of Commerce has found and under date of May 8, 1973, has advised the Secretary of the Treasury that, except for spare parts, commissary stores, ground equipment, and aircraft supplies other than fuels, lubricants and consumable technical supplies, Saudi Arabia allows privileges substantially reciprocal to those provided for in sections 309 and 317, 46 Stat. 690, as amended, 696, as amended (19 U.S.C. 1309, 1317), to aircraft registered in the United States and engaged in foreign trade. Corresponding privileges are accordingly extended to aircraft registered in Saudi Arabia and engaged in foreign trade, effective as of the date of such notification.

Accordingly, paragraph (f) of § 10.59, Customs regulations, is amended by the insertion of "Saudi Arabia" in appropriate alphabetical order, the number of this Treasury Decision in the opposite column headed "Treasury Decision(s)" and the wording "applicable only as to aircraft fuels, lubricants, and consumable technical supplies" opposite "Saudi Arabia" in the column headed "Exceptions, if any, as noted" in the list of nations in that paragraph.

(Secs. 309, 317, 624, 46 Stat. 690, as amended, 696, as amended, 759 (19 U.S.C. 1309, 1317, 1624))

As there is a statutory basis for the exemption from Customs duties on withdrawal of supplies by aircraft when reciprocity has been established, notice and public procedure thereon are found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

[SEAL] LEONARD LEHMAN,
Acting Commissioner of Customs.

Approved: October 29, 1973.

EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

[FR Doc.73-23711 Filed 11-5-73;8:45 am]

[T.D. 73-308]

FINES, PENALTIES, AND FORFEITURES

Authority To Mitigate or Remit

Sections 171.21 and 172.21 of the Customs Regulations delegate to district directors of Customs the authority to mitigate or remit fines, penalties, and forfeitures up to certain specified amounts, and to cancel any claim for liquidated damages not exceeding certain specified amounts. It is deemed advisable to enlarge this delegation so as to reduce the volume of cases which require submission to the Headquarters office of the United States Customs Service and thereby expedite the disposition of such cases.

Sections 171.33 and 172.33, Customs Regulations, provide that if a petitioner is not satisfied with a decision with respect to a petition for remission or mitigation of fines, penalties, or forfeitures, or a petition for relief from liquidated damages, he may file a supplemental petition with the district director. The supplemental petition is forwarded to the Commissioner of Customs for reconsideration of the case except where the district director grants additional relief and there has been no specific request on the part of the petitioner for review by the Commissioner of Customs. In order to further promote the prompt disposition of cases involving fines, penalties, forfeitures, and liquidated damages, and in order to provide an additional level of independent review within the Customs region, it has been decided to delegate to regional commissioners of Customs the authority to decide supplemental petitions for relief in cases within the district director's authority to mitigate, remit, or cancel when the district director believes no additional relief is warranted, or when the petitioner is not satisfied with the additional relief granted by the district director, or if there has been a specific request on the part of the petitioner for review by the regional commissioner.

Accordingly, the amendments to §§ 10.39 (e) and (f), 10.92(d), 18.8(d), 125.42, 171.21, 171.33(b), 172.21, and 172.33(b) of the Customs regulations are hereby adopted as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

§§ 10.39, 10.92 [Amended]

Sections 10.39 (e) and (f) and 10.92(d) are amended by substituting "$50,000" for "$20,000".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

§ 18.8 [Amended]

Section 18.8(d) is amended by substituting "$50,000" for "$20,000".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

§ 125.42 [Amended]

Section 125.42 is amended by substituting "$50,000" for "$20,000".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

PART 171—FINES, PENALTIES, AND FORFEITURES

Section 171.21 is amended to read as follows:

§ 171.21 Petitions acted on by district director.

The district director may mitigate or remit fines, penalties, and forfeitures incurred under any law administered by the United States Customs Service on such terms and conditions as, under the law and in view of the circumstances, he shall deem appropriate, when the total amount of the fines and penalties incurred with respect to any one offense, together with the total value of any merchandise or other article subject to forfeiture or to a claim for forfeiture value, does not exceed $25,000.

Paragraph (b) of § 171.33 is amended to read as follows:

§ 171.33 Supplemental petitions for relief.

* * * * *

(b) *Consideration*—(1) *Decisions of the district director.* Where the district director has the authority to grant relief in accordance with the provisions of § 171.21, he may grant additional relief if he believes it is warranted. If there has been a specific request on the part of the petitioner for review by the regional commissioner of Customs, or if the district director believes no additional relief is warranted, or if the petitioner is not satisfied with the additional relief granted by the district director, the supplemental petition, together with all pertinent documents, shall be forwarded to the regional commissioner of the region in which the district lies for reconsideration and disposition of the case.

(2) *Decisions of the Commissioner of Customs.* A supplemental petition appealing a decision of the Commissioner