the interests of producers as defined in the order as hereby amended;

(The following determination is made with respect to the order amending the order regulating the handling of milk in the Central Arkansas marketing area.)

(3) The issuance of the order amending the Central Arkansas order is favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area; and

(The following determination is made with respect to the order amending the order regulating the handling of milk in the Memphis, Tennessee, marketing area.)

(4) The issuance of the order amending the Memphis, Tennessee, order is favored by at least three-fourths of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Memphis, Tennessee, and Central Arkansas marketing areas shall be in conformity to and in compliance with the terms and conditions of the aforesaid orders, as amended, and as hereby further amended, as follows:

PART 1097—MILK IN MEMPHIS, TENNESSEE, MARKETING AREA

In § 1097.52, all of that portion of the section preceding the table heading "Location of plant", is revised to read as follows:

§ 1097.52 Plant location adjustments for handlers.

For that milk which is received at a fluid milk plant (from producers or from a handler described in § 1097.9(c)), located outside the Arkansas counties of Clark, Conway, Craighead, Cross, Faulkner, Garland, Grant, Hot Spring, Jefferson, Lee, Lonoke, Monroe, Phillips, Poinsett, Pope, Prairie, Pulaski, Saline, St. Francis, White, and Woodruff and 50 miles or more from the city hall in Memphis, Tennessee, by shortest hard-surfaced highway distance, as determined by the market administrator, and which is transferred in the form of products designated as Class I milk in § 1097.40(a) to another fluid milk plant and assigned to Class I pursuant to the calculation provided in this section, or otherwise classified as Class I milk, the price specified in § 1097.50(a) shall be adjusted at the rate set forth in the following schedule according to the location of the fluid milk plant where such milk is received:

* * * * *

PART 1108—MILK IN CENTRAL ARKANSAS MARKETING AREA

Section 1108.7(b)(2) is revised to read as follows:

§ 1108.7 Pool plant.

* * * * *

(b) * * *

(2) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, unless one of the following conditions applies:

(i) If the plant is located within the marketing area and was a pool plant under this order during the immediately preceding month (except that prior pool plant qualification need not be met during the first month that the amended order is effective), it shall continue to be subject to all of the provisions of this part until the third consecutive month in which 50 percent or more of the plant's route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order; or

(ii) If the plant is located outside the marketing area and was a pool plant under this order in the immediately preceding month, it shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of the plant's route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

* * * * *

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

Effective date: August 1, 1980.

Signed at Washington, D.C., on: July 28, 1980.

Jerry Hill,

Deputy Assistant Secretary for Marketing Services.

[FR Doc. 80-23102 Filed 7-30-80; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40, 50, 70, 75, 150, and 170

Safeguards on Nuclear Material—Implementation of US/IAEA Agreement

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to enable the United States to implement the US/IAEA Safeguards Agreement, with respect to licensed activities, as soon as the Agreement enters into force. Implementation of the Agreement will require the cooperation of NRC and Agreement State licensees, in accordance with appropriate regulations. The rules published here are the means by which the Agreement will be implemented with respect to licensed activities.

EFFECTIVE DATE: Upon the Agreement's entry into force and publication of notice thereof in the **Federal Register.***

***Note.**—The Nuclear Regulatory Commission has submitted this rule to the Comptroller General for such review as may be appropriate under the Federal Reports Act, as amended, 44 U.S.C. 3512. The reporting requirements of this rule will not become effective until clearance is granted by the General Accounting Office following review as set forth in 44 U.S.C. 3512(c)(2). Comments regarding the report forms and instructions may also be submitted directly to the Commission. Submissions made within 21 days after GAO's publication, in the **Federal Register**, of notice of receipt of NRC's report proposals will be considered by the Commission before the forms are placed into use.

FOR FURTHER INFORMATION CONTACT: Mr. L. C. Solem, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Phone 301-443-5903); Mr. James R. Wolf, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Phone 301-492-8694); or Mr. Paul K. Morrow, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Phone 301-427-4004).

SUPPLEMENTARY INFORMATION: On May 25, 1978, the Nuclear Regulatory Commission published in the **Federal Register** (43 FR 22365) proposed amendments to Parts 40, 50, 70, and 150 and a new proposed Part 75 to Title 10, Code of Federal Regulations. Interested persons were invited to submit written comments or suggestions in connection with the proposed amendments within

60 days after publication in the Federal Register. On November 21, 1978, the Commission published a notice (43 FR 54255) regarding the availability of certain supplemental documents and extending the period of comment for 30 days. On July 17, 1979, the Commission published revised proposed amendments (44 FR 41468). Interested persons were invited to submit written comments and suggestions. Upon consideration of the comments received from 7 licensees and the Texas Department of Health, the Nuclear Regulatory Commission has decided to adopt and publish, with modification, the revised proposed amendments to Title 10, Chapter I, Code of Federal Regulations. Copies of the comments and an analysis of them by the NRC staff are available in the Commission's Public Document Room.

Overview

The United States, as a party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), has joined with other nations in an effort to limit the spread of nuclear weapons. To encourage widespread adherence to the NPT by non-nuclear-weapon States, President Johnson in 1967 announced that the United States would permit IAEA to apply its safeguards to nuclear activities in this country—excluding only those with direct national security significance. This policy has been reaffirmed by each succeeding President and has been referred to by other Governments as a consideration affecting their decisions to ratify the NPT.

The instrument for applying IAEA safeguards in the United States would be a formal Agreement between the U.S. Government and the International Atomic Energy Agency, to which the U.S. Senate gave its advice and consent to ratification as a treaty on July 2, 1980. The US/IAEA Agreement contains provisions which parallel agreements between the IAEA and non-nuclear-weapon States, the principal difference being the exclusion of national security activities. Implementation of the Agreement will require the cooperation of NRC and Agreement State licensees, in accordance with appropriate regulations. The rules published here are the means by which the Agreement will be implemented with respect to licensed activities.

The provisions of the Agreement were the subject of hearings before the Senate Committee on Foreign Relations on June 22 and December 11, 1979. In the development of these rules, the Commission has considered the matters discussed during those hearings and subsequent Senate deliberations. In particular the rules reflect our intention to work closely with licensees so as to ensure, insofar as possible, that the Agreement can be implemented in a spirit of full cooperation. It is widely recognized that IAEA safeguards can help protect the international community from nuclear proliferation, and the Commission perceives a general willingness to join together in efforts toward that end.

Changes

In summary, differences from the proposed amendments published for comment on July 17, 1979, are: (1) The regulations now specifically refer to Facility Attachments (or Transitional Facility Attachments) negotiated under the Agreement and indicate that certain provisions of the Facility Attachments will be reflected in license conditions; (2) licensees' opportunities for consultation are expanded; (3) various clarifying amendments have been made to reflect more clearly the structure of the Agreement, particularly with respect to identifications made under either the principal text or the Protocol; (4) procedures are provided for resolution of certain issues outside the context of a show-cause proceeding; (5) inspections are categorized by type, with inspectors' access rights further defined; (6) reference is made to a licensee's opportunity to propose that a special material balance area be established around process steps involving commercially sensitive information; (7) the standard for measuring sufficiency of installation information is revised to correct the implication that determinations are made unilaterally by IAEA; (8) licensees are advised not to include details of physical security plans in installation information; (9) provisions for reporting of modifications affecting installation information have been clarified and relaxed, particularly with respect to emergency or unforeseen situations; (10) the Commission's intention to provide NRC representatives to accompany IAEA inspectors is stated more positively; (11) licensees are relieved of the responsibility to revise their material accounting and control procedures until the Facility Attachment has been completed; (12) requirements with respect to records and reports describing the isotopic composition of licensees' holdings have been made less burdensome; (13) the inventory change report provision includes a better definition of the "concise note" requirement and is conformed to domestic safeguards regulations, particularly with respect to submission formalities; (14) scheduling for material status reports is made more flexible and the occasions when such reports are required are described more precisely; (15) the special reports provision has been revised with a view to minimizing efforts beyond those called for under the Agreement; (16) the Commission's intent to give prompt notice to a licensee when its installation is no longer subject to application of IAEA safeguards is made explicit; (17) the regulations now state that the IAEA will "reimburse for" (instead of the less specific "bear the cost of") certain expenses; (18) the provision pertaining to the breaking of IAEA seals has been stricken; and (19) miscellaneous minor changes have been made for purposes of clarification.

The following discussion pertains primarily to items (1) through (19) above. In come cases, the discussion also treats related suggestions which were considered by the Commission, but which—for the reasons stated—were not accepted.

(1) *Facility Attachments.* Implementation of the Agreement will require that a Facility Attachment be prepared for each installation where nuclear material subject to IAEA safeguards is located. (A Transitional Facility Attachment, which may omit a number of provisions, such as those applicable to inspections and special reports, will have to be prepared for an installation identified under the Protocol to the Agreement.) The proposed rule made no explicit reference to the Facility Attachment, but instead simply noted that certain written communications (intended to be based upon the Facility Attachment) would be binding upon licensees.

The Commission believes that the addition of language that refers expressly to the Facility Attachment will clarify the implementation process. Thus, instead of affording a licensee an opportunity to be consulted with respect to any matters that are to be the "subject of Agency determinations," the final rules relate licensee participation specifically to the contents of the Facility Attachment (or Transitional Facility Attachments). A further clarification is achieved by providing that certain provisions of the Facility Attachment will be referred to or reflected in license conditions. These changes appear in § 75.4 (additional definitions), § 75.8 (dealing with Facility Attachments), and §§ 75.11. 75.21, 75.22, 75.34, 75.35, 75.36, 75.42, 75.45 and 75.46 (references to license conditions). However, because Agreement State licensees are not subject to NRC license conditions, § 150.17a has been amended to indicate that the equivalent of license conditions would be provided, for such licensees, in the form of orders issued under section 274m of the Atomic Energy Act.

We have not implemented a suggestion that certain specific factors (e.g., cost-effectiveness) be identified as considerations that will influence the provisions of Facility Attachments. It is preferable to use general terms because of the wide range of provisions in the Agreement that must be given effect.

(2) *Consultation.* Several commenters once again noted the importance of licensees playing an active role in the negotiation of the Facility Attachment. The final rules accommodate these concerns by giving assurance that a licensee will be afforded a reasonable opportunity to participate in the development of the Facility Attachment and to review and comment upon it before it has been agreed to by the United States. (See § 75.8.) The Commission will give full and fair consideration to the comments of the licensee and will provide, on request, a statement of reasons for any conclusions it has reached that are contrary to the views of the licensee.

A number of commenters raised issues that will be addressed when Facility Attachments are prepared. The revised consultation provision gives further recognition to the rights of licensees to be heard at that time. It would be premature to accommodate such concerns in the rule, however, as their resolution will require agreement with the IAEA.

(3) *Terminology conforming to Agreement.* Several changes relate the language of the regulations more closely to that of the Agreement. Thus, as already mentioned, the final rules refer specifically to Facility Attachments and Transitional Facility Attachments. Similarly, where the context requires, the regulations now explicitly differentiate obligations arising under the principal text of the Agreement (relating to licensees whose installations are subject to the application of IAEA safeguards, including a program of inspections) from licensee obligations which arise under the Protocol to the Agreement.

The revised definition of "Agreement" points out that the term includes the Protocol "unless otherwise specified." Where the intent is to refer specifically either to the principal text on the one hand or to the Protocol on the other, the language so indicates. (See §§ 75.4(g), 75.4(q), 75.8, 75.41.) Although references to the Agreement in §§ 75.42 through 75.46 relate to activities under the principal text of the Agreement, and not the Protocol, limiting language was not inserted because in those sections the references back to § 75.41 adequately indicate that it is the principal text that is relevant.

Note also the addition of the defined term "identification under the Agreement" (§ 75.4(j)), which includes "identifications" (selections by IAEA from the eligible list) made under either Article 39(b) of the principal text of the Agreement or Article 2(a) of the Protocol. This term is used in the definitions of Facility Attachment and Transitional Facility Attachment, and in §§ 75.11, 75.21, 75.31, and 75.41. The significance of this addition is that it limits the implementation of the reporting and other provisions of the regulations to those installations which have been selected by IAEA under the principal text of the Agreement or the Protocol. In view of the applicable time constraints, the Commission had earlier contemplated that requests for installation information, in particular, might be made before formal identification by IAEA, but now believes that such a procedure should be avoided, at least at the outset, so to avoid any unnecessary burdens upon licensees. (Note that, in accordance with § 75.11(a), the Commission will specify the instrument under which the indentification has been made.)

(4) *Recourse procedures.* Some commenters requested that a procedure be established that would enable disputes with licensees to be resolved by means other than an enforcement proceeding. We construe this suggestion as relating particularly to proceedings instituted by a show-cause order under § 2.202. The Commission believes that this concern is answered, in part, by providing, in § 75.8, that requirements reflecting provisions of the Facility Attachments, unless agreed to by the licensee, will be issued in the form of license amendments under § 2.204 of the NRC rules of practice. A licensee has a right to a hearing with respect to an order entered pursuant to that regulation unless the Commission finds that the public health, safety, or interest requires the order to be made effective immediately. (In view of this change, the caption of § 75.51 has been changed from "Violations" to "Enforcement" and the references to § 2.201 and § 2.202 have been broadened to refer to Part 2, Subpart B instead.)

We have considered a suggestion that disputes arising in the course of IAEA inspections should be handled in a way that would allow a decision to be deferred until the cognizant Director (as specified in § 75.6(b)), after submission of the matter to him by interested parties, had made a determination. The proposal is unacceptable because, if applied, it could interfere with the IAEA's ability to implement a satisfactory safeguards regime. Another suggestion called for a special procedure to resolve disputes over installation information involving license applicants. This is unnecessary, however, because existing procedures allow for prompt resolution. For utilization facilities, the issues would arise in a context separate from the proceedings for the issuance of a construction permit or operating license. (A request would be issued under § 50.78 and would be determined, if necessary, under Part 2, Subpart B.) Applicants for materials licenses would be advised, should informal techniques prove to be unavailing, that the application does not comply with Commission regulations (§ 2.103) or that there has been a failure to supply required information (§ 2.108), and in either case a hearing could be scheduled promptly to resolve the issue.

(5) *Inspection categories.* One commenter took exception to the Commission's earlier statement that the regulations need not differentiate among types of inspections because in each case the obligations of licensees would be the same. We have reviewed the provisions of the Agreement once again and have determined that the locations to which an IAEA inspector may have access will depend upon the type of inspection. Section 75.42 has been modified to reflect the access provisions contained in Article 74.

(6) *Commercially sensitive process steps.* A commenter requested that the provisions of Article 46(b)(iv), which relates to the establishment of special material balance areas around process steps involving commercially sensitive information, should be incorporated in the regulations. While the proposed rule would have permitted a licensee to request such an MBA to be established, this is now made explicit in revised § 75.11(b)(4). It is anticipated, however, that this course would be followed only in exceptional situations and only where compatible with the terms and objectives of the Agreement.

(7) *"Agency determinations".* The provisions relating to submission of installation information (in § 75.11) have been amended to eliminate the term "Agency determinations." The matters involved are those to be included in the Facility Attachments, and thus the determinations will not be made unilaterally by IAEA. The new language corresponds more closely to its

counterpart in Article 46 of the Agreement.

(8) *Physical security plans.* The proposed rules provided for the withholding of details of physical security plans from physical transmission to the IAEA. We have determined, however, that such information need not ordinarily be included in installation information and have so indicated in § 75.11(e). Nevertheless, to provide a clear basis for denying access to such information (or other information), where consistent with the Agreement, we have retained (with modification) a portion of former § 75.12(c). (Paragraphs in § 75.12 have been rearranged for editorial reasons.)

(9) *Modifications to installation information.* Section 75.11(c) has been revised, in response to comments, so as to provide greater guidance and flexibility. First, the revised rules provide that the types of modifications that must be reported in advance will be set out in license conditions; this should result in greater specificity than the previously proposed language calling for such reporting when, among other things, a modification would decrease the effectiveness of the material accounting and control procedures. This amendment reflects the provision of Code 3.1.3 of the Subsidiary Arrangements, which contemplates that the types of modifications in question will be identified in the Facility Attachment. Second, a shorter reporting period is permitted, where approved by the Commission, in the event of unforeseen situations. This again implements Code 3.1.3, which requires that the longer notice period shall "normally" be provided. Third, since the modifications required to be reported under Article 45 are those "relevant for safeguards purposes," the duty to submit information with inventory change reports has correspondingly been restricted in § 75.11(c)(2). Finally, the deletion of the reference to "changes" (in addition to "modifications") is more faithful to Article 45.

(10) *IAEA inspections and visits.* In response to commenters' renewed urging that NRC inspectors accompany IAEA representatives, both §§ 75.13 and 75.42 have been revised to indicate that this will be done, to the extent feasible, unless the licensee agrees otherwise (instead of "upon request by a licensee"). However, to assure that the unavailability of NRC personnel does not result in a licensee's denying access to an IAEA inspector in violation of the Agreement, the regulations still require that unaccompanied inspectors be admitted.

A clarifying amendment with respect to the advance notice period has been included in § 75.13 to indicate that the allotted 3-day period does not commence at the time of posting of a written communication, but rather upon receipt of the information (whether by telephone or by mail). Further expansion of the minimum-notice period would be inconsistent with undertakings of the IAEA; nevertheless, licensees will be given as much notice as possible, since this should serve the interests of all in assuring that the IAEA visits are productive.

While a proposal that verification visits under § 75.13 be put off if key personnel are unavailable has not been accepted in full, that section has been revised to indicate that licensees should consult with the Commission immediately if this is the case. NRC would then proceed to take such action as necessary in light of Article 48 (relating to the sending of inspectors "in cooperation with the United States") and Article 9(c)(i), which provides that visits be arranged so as to "reduce to a minimum the possible inconvenience and disturbance" to the activities of the licensee concerned.

As noted above, § 75.42 has been modified to reflect the types of inspections authorized by the Agreement and to define more clearly inspectors' rights of access. In addition to giving licensees advance notification of inspections, in accordance with § 75.42(h), the Commission expects to periodically furnish licensees with other information regarding the IAEA inspection program.

(11) *Scope and implementation of procedures.* A commenter objected to the language in § 75.21 that would obligate a licensee to overhaul its procedures in advance of the negotiation of a Facility Attachment. Article 40(c), which allows the IAEA to apply safeguards on a interim basis, had been cited as the grounds for this provision. Upon further consideration, the conclusion reached is that Article 40(c) can be applied while the licensee continues to use its established material accounting and control procedures. It will be sufficient for the licensee to use those procedures so long as they allow inventory changes to be documented. (Code 10 of the Subsidiary Arrangements). As the schedule for implementation will be specified in license conditions, the reference (in former § 75.21(e)) to a 10-day period has been deleted. The qualifying language in § 75.21(b) also reflects the fact that the provisions of the Agreement may, for some installations, be achievable without procedures falling in each enumerated category.

Note the deletion of the reference to batch accounting, contained in former § 75.21(b). That provision was determined to be redundant.

The change in § 75.21(b)(6), substituting "a system of accounting and operating records" for "maintenance of" such records, adopts the parallel language of Article 32.

(12) *Records and reports of isotopic composition.* A commenter pointed out that the provision for including "isotopic composition" in the batch data defined in § 75.22(b) could be construed to call for a complete spectrum of major and minor isotopes present. This would go beyond the definition of "batch data" in Article 90D of the Agreement, which requires inclusion of isotopic composition "when appropriate." The extent to which the information is appropriate will depend upon the character of the activities involved. For a particular licensee it will be specified in the Facility Attachment. § 75.22(b) has accordingly been changed to relate the isotopic-composition recordkeeping requirement to license conditions (which will reflect the terms of the Facility Attachment).

The comment also prompted a change in § 75.45, which now calls for advance notifications of transfers to include isotopic composition data, other than fissile isotope weights, only to the extent specified by license conditions. This is more faithful to the provisions of the Subsidiary Arrangements.

(13) *Inventory change reports.* Section 75.34 has been amended to indicate that "concise notes," when appropriate, will be submitted on a separate form (DOE/NRC Form-740M, Concise Note) and to limit the requirement with respect to reports of the anticipated operational program so that it includes only matters that are specified in license conditions. The schedule for submission of the forms (former § 75.34(c)) has been deleted because it will be dealt with explicitly in the instructions; similar changes have been made in § 70.54 (nuclear material transfer reports in the domestic safeguards program) to assure consistency with Part 75. See also the conforming change in the source material regulations (§ 40.64).

(14) *Material status reports.* Revised material accounting procedures will require the use of two separate forms, a Material Balance Report (DOE/NRC Form-742) and a Physical Inventory Listing (DOE/NRC Form-742C). These are collectively referred to in § 75.35 as material status reports. Conforming changes also are made in § 40.64 (pertaining to source material) and

§ 70.53 (pertaining to special nuclear material), which sections also have been amended to eliminate conflict with the requirements of Part 75 (particularly with respect to scheduling).

Section 75.35 also has been modified to make it clear that physical inventory reports are required only for inventories which are taken in response to the requirements of Part 75. The reports need not be prepared for other inventories, such as those taken routinely for internal control purposes. Details with respect to entries on the forms have been deleted because they were incomplete and because the matter will be addressed specifically in the instructions for completing the forms. Further, the final rule allows for completion dates to be included in the license conditions; this may be necessary in some cases to assure compliance with Article 61(b) of the Agreement.

(15) *Special reports.* The Commission has once again reviewed comments to the effect that the special reports provision (§ 75.36) is unnecessarily burdensome, particularly with respect to losses of containment that occur "unexpectedly." Since the subject is one that will be treated in detail in the Facility Attachments, the Commission has determined that the requirements for particular installations should be treated in license conditions. Such conditions, tailored to the circumstances of individual licensees, will be phrased in a manner that will eliminate much of the concern that has been expressed. Language also has been inserted in § 75.31, which eliminates a perceived inconsistency in the regulations regarding the coverage of the special reports requirement.

(16) *Termination of installation designation.* The provision dealing with designation of installations (§ 75.41) has been expanded, in response to a suggestion, to indicate that the Commission will give a licensee prompt notice when its installation is no longer subject to the application of IAEA safeguards.

(17) *Expenses.* A commenter asked for the regulations to state the mechanism by which the IAEA is to "bear the cost" of certain expenses. The language concerned, in former § 75.47(a), was based upon Article 14 of the Agreement. The Commission understands that the reference to bearing the costs in question contemplates a reimbursement procedure. The proposed rule has accordingly been modified to substitute "reimburse a licensee for the cost" in place of "bear the cost." See new § 75.46. Should costs not be reimbursed with reasonable promptness, the Commission would, when deemed appropriate, seek to initiate action pursuant to § 75.46(d) and the dispute resolution articles of the Agreement.

(18) *Agency seals.* The section dealing with the breaking of IAEA seals (former § 75.46) has been deleted because there is no direct counterpart in the Agreement. This change is also responsive to concerns expressed by some licensees that the regulations could unduly interfere with operational requirements. The Facility Attachment will address matters relating to the integrity of IAEA seals and will take operational requirements into account.

(19) *Miscellaneous minor changes.* A number of editorial changes, though not substantive, merit brief comment. The term "IAEA" is used in place of "Agency" to avoid possible confusion that an agency of the United States government is being referred to. The explanation of "source data" in § 75.22 corresponds more closely to Article 90R of the Agreement. The former term "initial report" in § 75.32 is replaced by the more descriptive "initial inventory report." The additional statutory citations to sections 103 and 104 of the Atomic Energy Act provide a more explicit basis for including holders of construction permits within the scope of Part 75. Section 75.6(a), which specifies the NRC offices to whom specific communications are to be directed, has been changed so as to improve the efficiency of administering the regulations.

Discussion of Other Comments

In addition to the matters referred to above, the Commission has considered carefully all the issues identified in the comments received. Some of these, although not resulting in changes to the proposed rule, merit additional discussion, as follows:

Comment: Licensees should not be required to maintain two documents pertaining to material accounting and control, one for domestic purposes and one for IAEA purposes.

Response: As reflected in the final rule, NRC recognizes the desirability of reconciling the requirements of 10 CFR Parts 70 and 75 insofar as practicable. To the extent that duplication can be eliminated, we shall continue to make every effort to do so. Suggestions from licensees, drawn from their actual experience, will be welcome at any time.

Comment: Schedules for implementation of the Agreement do not allow sufficient time for licensees to make necessary preparations.

Response: The regulations, especially as revised, provide as much time as is permitted under the applicable provisions of the Agreement and Subsidiary Arrangements. Licensees are encouraged to make advance preparations so that installation information can be submitted promptly when requested by the Commission and so that applicable procedures, including initial inventory reporting, can be implemented in a timely fashion.

Comment: Experimental and research facilities should not be designated for the application of IAEA safeguards.

Response: Such facilities are within the scope of the Agreement. So long as selections are made in conformity with the Agreement and Subsidiary Arrangements, the Commission would have no occasion to urge any particular course of action upon the IAEA. In any event, the question cannot be dealt with in the context of the present rulemaking action.

Comment: NRC should provide, in the rule, more specific guidance regarding the information that must be submitted as installation information and as routine reports.

Response: Detailed guidance has been prepared by the NRC staff and is now available. This guidance includes various new or revised forms, together with instructions for their preparation. These are being submitted to the General Accounting Office for clearance pursuant to 44 U.S.C. 3512. GAO will publish notice of submission, at which time affected persons will have the opportunity to comment. Written data, views, or arguments regarding the forms and instructions may also be submitted directly to the Commission. Submissions made within 21 days after GAO's publication, in the **Federal Register**, of a notice of receipt of NRC's report proposals will be considered by the Commission before the forms are placed into use.

Comment: The regulations should indicate that the licensee need not include information beyond what is necessary for the Agency to make knowledgeable determinations.

Response: The proposed language fails to express affirmatively, as it should, just what a licensee must do. The formulation in § 75.11(d)—that the information shall be sufficiently detailed to enable knowledgeable determinations to be made in the development of Facility Attachments—is preferable.

Comment: The requirement that licensees submit a description of proposed procedures (as opposed to existing systems) is nebulous, may be applied unduly broadly, and is unnecessary in view of after-the-fact reports of changes in the safeguards system.

Response: The language in question (§ 75.11(b)(4)) implements Article 43(d) of the Agreement and accordingly has not been changed. However, as the forms supplied under § 75.11(d) will make clear, the licensee will not be called upon to propose any new procedures for purposes of compliance with the provisions of Part 75. The "proposed procedures" which must be described are those which the licensee intends to institute, for other reasons, but which are not yet in effect. (Our prior comments on this subject are withdrawn, to the extent they are inconsistent with this statement.) The details of the procedures, as opposed to a description thereof, would be required only when necessary for knowledgeable determinations to be made in the development of Facility Attachments.

Comment: The regulations should provide for defining in the Facility Attachment the categories of information that will be treated as being particularly sensitive.

Response: The commenter's concern relates to the avoidance of inadvertent loss of the protection contemplated by § 75.12(b)(1). The suggested amendment would be inappropriate, however, because the determination of particular sensitivity is to be made by the Commission; it is not a subject to be covered in the Facility Attachment. Indeed, the information in question most likely would be supplied to the IAEA before the Facility Attachment even has been prepared. To minimize the risk that available protection is lost through inadvertence, the forms supplied by the Commission (§ 75.11(d)), or the accompanying letter of transmittal, will call attention to the provisions of § 75.12. This may be done by reference to that section, by reciting it, or by including appropriate questions reflecting its terms.

Comment: Licensees should not be required to provide access to IAEA inspectors, under § 75.42, except "during normal working hours."

Response: To limit inspections to "normal working hours" could seriously interfere with the IAEA's ability to carry out its responsibilities. "During normal working hours" seems appropriate for visits under § 75.13 to verify installation information. However, the IAEA's safeguards regime cannot be effective if inspections outside of normal working hours are subject to restraints. In view of the relevant provisions of the Agreement (e.g., Article 9 (c)(i)), the scheduling of inspections, in practice, probably will not result in serious inconvenience to the licensee.

Comment: The rule should state that IAEA equipment will not be agreed to by the United States if it impinges upon certain specified interests of the licensee (such as safety, protection of proprietary information, and product quality).

Response: The recommended criteria are not included in the rule because they will not be utilized in precisely the terms proposed. They are relevant, however, in determining whether or not, for example, the safeguards "avoid undue interference . . . in the operation of the facilities," the information to be provided is the "minimum" required by the IAEA. The standards that will be applied are those contained in the Agreement itself, as made clear by the reference thereto in § 75.42(e)(2).

Comment: Advance notification should not be required, under § 75.43, with respect to routine shipments, such as those recycling uranium hexafluoride heels.

Response: The issue will be considered in the development of Facility Attachments. Relief may be provided, where appropriate, by granting an exemption under § 75.3(a).

Supplemental Rules

The Commission has determined that the rules set forth in this notice will permit timely implementation of the Agreement. However, certain additional details of the process will need to be treated by the time the Agreement enters into force, or shortly thereafter. For example, IAEA representatives must be assured of access to some items of classified information; to meet this need, appropriate rule changes, such as amendments to 10 CFR Parts 25 and 95, may be considered. Similarly, import and export regulations will be reviewed, with a view to adopting measures which will enable IAEA inspectors to discharge their functions without impediment. Any necessary rule changes will be made in accordance with established rulemaking procedures.

Notice

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of title 5 of the United States Code, the following new Part 75 and the following amendments to Parts 40, 50, 70, 150, and 170 of Title 10, Chapter I, Code of Federal Regulations, are published as a document subject to codification.

PART 40—LICENSING OF SOURCE MATERIAL

1. The citation of authority is amended by adding a new paragraph as follows:

Authority: * * * Section 40.31(g) also issued under Sec. 122, 68 Stat. 939, 42 U.S.C. 2152.

2. A new paragraph (q) is added to § 40.4 to read as follows:

§ 40.4 Definitions.

* * * * *

(q) "Effective kilogram" means (1) for the source material uranium in which the uranium isotope uranium–235 is greater than 0.005 (0.5 weight percent) of the total uranium present: 10,000 kilograms, and (2) for any other source material: 20,000 kilograms.

3. A new paragraph (g) is added to § 40.31 to read as follows:

§ 40.31 Application for specific licenses.

* * * * *

(g) An applicant for a license to possess and use source material in a uranium hexafluoride production plant or a fuel fabrication plant and any other applicant for a license to possess and use more than one effective kilogram of source material (except for ore processing, as defined in § 75.4 (o) of this chapter) should file with the Commission the installation information described in § 75.11 of this chapter; and the applicant shall permit verification thereof by the International Atomic Energy Agency and take such other action as may be necessary to implement the US/IAEA Safeguards Agreement, in the manner set forth in §§ 75.6, 75.11–75.14 of this chapter. The Commission will grant an exemption from the requirements of this section, upon application, if it determines that the installation will not be included on the United States eligible list. The installation information should be filed at least 9 months prior to the date when the applicant desires to receive the source material (or earlier upon request by the Commission). Applicants who desire to receive the source material within 9 months after the effective date of this paragraph should submit the installation information as soon as possible.

4. Section 40.64 is amended to read as follows:

§ 40.64 Reports.

(a) Except as specified in paragraphs (d) and (e) of this section, each licensee * * *.

(b) Except as specified in paragraphs (d) and (e) of this section, each licensee * * *.

* * * * *

(e) Any licensee who is required to submit inventory change reports and material status reports pursuant to Part 75 of this chapter (pertaining to implementation of the US/IAEA

Safeguards Agreement) shall prepare and submit such reports only as provided in § 75.34 and § 75.35 (instead of as provided in paragraphs (a) and (b) of this section).

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

5. The citation of authority is amended by inserting the following statement between the first and second sentences:

Authority: * * * Section 50.78 also issued under sec. 122, 68 Stat. 939, 42 U.S.C. 2152"; and by inserting, in the last sentence, the phrase "and § 50.78" between the words "§§ 50.70–50.71" and "issued under sec. 161o * * *

6. A new § 50.78, "Installation information and verification," with accompanying centerhead, is added to read as follows:

US/IAEA Safeguards Agreement

§ 50.78 Installation information and verification.

Each holder of a construction permit shall, if requested by the Commission, submit installation information, permit verification thereof by the International Atomic Energy Agency, and take such other action as may be necessary to implement the US/IAEA Safeguards Agreement, in the manner set forth in §§ 75.6 and 75.11–75.14 of this chapter.

PART 70—SPECIAL NUCLEAR MATERIAL

7. A sentence is added to the citation of authority to read as follows:

Authority: * * * Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

8. Section 70.21 is amended by adding a new paragraph (g) to read as follows:

§ 70.21 Filing.

* * * * *

(g) An applicant for a license to possess and use more than one effective kilogram of special nuclear material should file with the Commission the installation information described in § 75.11 of this chapter; and the applicant shall permit verification thereof by the International Atomic Energy Agency and take such other action as may be necessary to implement the US/IAEA Safeguards Agreement, in the manner set forth in §§ 75.6 and 75.11–75.14 of this chapter. The Commission will grant an exemption from the requirements of this paragraph, upon application, if it determines that the installation will not be included on the United States eligible list. The installation information should be filed at least 9 months prior to the date when the applicant desires to receive the special nuclear material (or earlier upon request by the Commission). Applicants who desire to receive the special nuclear material within 9 months after the effective date of this paragraph should submit the installation information as soon as possible.

9. Section 70.53 is amended to read as follows:

§ 70.53 Material status reports.

(a)(1) 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 (on DOE/NRC Form-742, Material Balance Report) material balance reports concerning special nuclear material received, produced, possessed, transferred, consumed, disposed of, or lost by the licensee. The licensee also shall prepare (on DOE/NRC Form-742C, Physical Inventory Listing) a statement of the composition of the ending inventory, which shall be submitted to the Commission as an attachment to each material balance report. All such reports shall be made as of March 31 and September 30 of each year and filed within thirty (30) days after the end of the period covered by the report. The Commission may permit a licensee to submit such reports at other times when good cause is shown. In preparing and submitting the reports described in this paragraph, the licensee shall comply with the printed instructions for completing the particular form.

(2) Any licensee who is required to submit routine material status reports pursuant to § 75.35 (pertaining to implementation of the US/IAEA Safeguards Agreement) shall prepare and submit such reports only as provided in that section (instead of as provided in paragraph (a)(1) of this section).

(b) * * *

* * * * *

10. Section 70.54 is amended by deleting the last two sentences. As amended, the section reads as follows:

§ 70.54 Nuclear material transfer reports.

Each licensee who transfers and each licensee who receives special nuclear material shall complete and distribute a Nuclear Material Transaction Report on DOE/NRC Form-741, in accordance with printed instructions for completing the form, whenever he transfers or receives a quantity of special nuclear material of 1 gram or more of contained uranium-235, uranium-233, or plutonium. Each licensee who receives such material from a foreign source shall complete both the suppliers and receivers portion of DOE/NRC Form-741; perform independent tests to assure the accurate identification and measurement of the material received, including its weight and enrichment; and indicate the results of these tests on the receivers portion of the form.

11. A new Part 75 is added to read as follows:

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

Authority: Secs. 53, 63, 103, 104, 122, 161b. and o., Pub. L. 83–703, 68 Stat. 930, 932, 936, 937, 939, 948; sec. 5, Pub. L. 88–489, 79 Stat. 602; secs. 4, 5, Pub. L. 91–560, 84 Stat. 1472 (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201(b) and (o)); sec. 201, as amended, Pub. L. 93–438, 88 Stat. 1242 (42 U.S.C. 5841).

Note.—For purposes of sec. 223, Pub. L. 83–703, 68 Stat. 958, as amended (42 U.S.C. 2273), the provisions of this part issued under sec. 161o., Pub. L. 83–703, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

General Provisions

§ 75.1 Purpose.

This part establishes a system of nuclear material accounting and nuclear material control to implement, with respect NRC and Agreement State licensees, the Agreement between the United States and the International Atomic Energy Agency (IAEA) for the Application of Safeguards in the United States.

§ 75.2 Scope.

(a) Except as provided in § 75.3, the requirements in this part apply to all persons licensed by the Commission or Agreement States to possess source or special nuclear material at an installation, as defined in § 75.4(k), on the United States eligible list. They also apply, to the extent specified in §§ 50.78, 40.31(g), 70.21(g), and 150.17a of this chapter, to holders of construction permits and to persons who intend to receive source material or special nuclear material.

(b) The United States eligible list is a list of installations eligible for IAEA safeguards under the US/IAEA Safeguards Agreement which the Secretary of State or his designee files with the Commission, a copy of which shall be available for inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. In accordance with the provisions of the Agreement, there will be excluded from the United States eligible list:

(1) Activities having direct national security significance.

(2) Mining and ore processing activities.

§ 75.3 Exemptions.

(a) The Commission may, upon application of any interested person or upon its own initiative, grant exemptions from the requirements of this part that it determines are authorized by law and consistent with the Agreement, are not inimical to the common defense and security, and are otherwise in the public interest.

(b) Without limiting the generality of paragraph (a) of this section, an exemption under this section may be granted with respect to nuclear material of the following types:

(1) Special nuclear material in gram quantities or less as a sensing component in instruments;

(2) Nuclear material used in non-nuclear activities, if such nuclear material is recoverable, and

(3) Plutonium with an isotopic concentration of plutonium–238 exceeding 80 percent.

§ 75.4 Definitions.

As used in this part:

(a) Unless otherwise defined in this section, the terms defined in § 40.4, § 50.2, and § 70.4 of this chapter have the same meaning when used in this part.

(b) "Agreement," except as used in the term "Agreement State," means the Agreement between the United States and the International Atomic Energy Agency for the Application of Safeguards in the United States. Unless otherwise specified, the term refers both to the principal text of the Agreement, consisting of 90 articles, and to the Protocol thereto.

(c) "Agreement State" as designated in Part 150 of this chapter means any State with which the Commission has entered into an effective agreement under subsection 274b. of the Act.

(d) "Batch" means a portion of nuclear material handled as a unit for accounting purposes at a key measurement point and for which the composition and quantity are defined by a single set of specifications or measurements. The nuclear material may be in bulk form or contained in a number of separate items.

(e) "Containment"[1] means:

(1) The application of any devices designed to limit the mobility of nuclear material, the access of personnel, or the unauthorized operation of equipment such as transfer valves and sampler lines; and

(2) Structural elements, including the design of buildings and layout of equipment, which minimize and control access to nuclear material.

(f) "Effective kilogram" means a unit used in safeguarding nuclear material. The quantity is:

(1) For special nuclear material: The amount specified in § 70.4(t) of this chapter.

(2) For source material: The amount specified in § 40.4(q) of this chapter.

(g) "Facility Attachment" means that portion of the Subsidiary Arrangements to the principal text of the Agreement that pertains to a particular installation that has been identified pursuant to Article 39(b) thereof.

(h) "IAEA" means the International Atomic Energy Agency or its duly authorized representatives.

(i) "IAEA material balance area" means an area established for IAEA accounting purposes, such that:

(1) The quantity of nuclear material in each transfer into or out of each material balance area can be determined; and

(2) The physical inventory of nuclear material in each material balance area can be determined when necessary in accordance with specified procedures.

(j) "Identification under the Agreement" means identification by the IAEA pursuant to Article 39(b) of the principal text of the Agreement or Article 2(a) of the Protocol.

(k) "Installation" means:

(1) A production facility or utilization facility as defined in § 50.2 of this chapter;

(2) A uranium hexafluoride production plant;

(3) A fuel fabrication plant; or

(4) Any location where the possession of more than one effective kilogram of nuclear material is licensed pursuant to Parts 40 or 70 of this chapter, or pursuant to an Agreement State license.

(l) "Inventory change" means an increase or decrease, established in accordance with the procedures required by this part, in terms of batches of nuclear material in an IAEA material balance area.

(m) "Key measurement point" means a location where nuclear material appears in such a form that it may be measured to determine material flow or inventory. Key measurement points thus include, but are not limited to, the inputs and outputs (including measured discards) and storages in material balance areas.

(n) "Nuclear material" means any source material or any special nuclear material.

(o) "Ore processing" means uranium milling and other procedures for producing U_3O_8 from uranium ore or from uranium concentrates produced as a byproduct from phosphate or other non-nuclear chemical production plants.

(p) "Surveillance" means instrumental or human observation to indicate or detect the movement of nuclear material.

(q) "Transitional Facility Attachment" means that portion of the Transitional Subsidiary Arrangements to the Protocol to the Agreement that pertains to a particular installation that has been identified pursuant to Article 2(a) thereof.

(r) "United States eligible list" means the list of installations described in § 75.2.

§ 75.5 Interpretations.

Except as authorized specifically by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or

[1] The term refers to nuclear material safeguards rather than radiological protection.

employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 75.6 Delivery of information, reports, and other communications.

(a) All information and reports required to be submitted pursuant to the provisions of this part and other communications concerning the regulations in this part shall be delivered as follows:

Item	Section	Manner of deliver
IAEA Representative.....	75.7	To the Cognizant Director.
Facility Attachments......	75.8	Do.
Installation Information.	75.11	Do.
Sensitive Information....	75.12	Do.
Verification of Installation Information.	75.13	Do.
Supplemental Information.	75.14	Do.
General Requirements (Amplification).	75.31	As specified in the request.
Initial Inventory Report.	75.32	In accordance with printed instructions for preparation of DOE/NRC Form-742.
Inventory Change Reports.	75.34	In accordance with printed instructions for preparation of DOE/NRC Form-741, and -740M.
Material Status Reports	75.35	In accordance with printed instructions for preparation of DOE/NRC Form-742, -742C, and -740M.
Special Reports............	75.36	To the Regional Office of the NRC Office of Inspection and Enforcement.
Inspection......................	75.42	Do.
Transfers (advance notification).	75.43	Do.
Delays...........................	75.44	Do.
Other Communications.		To the cognizant Director.

(b) If an installation is a nuclear power plant or a non-power reactor for which a construction permit or operating license has been issued, whether or not a license to receive and possess nuclear material at the installation has been issued, the cognizant Director is the Director, Office of Nuclear Reactor Regulation. For all other installations, the cognizant Director is the Director, Office of Nuclear Material Safety and Safeguards.

(c) Written communications to the Directors, Office of Nuclear Material Safety and Safeguards, or Office of Nuclear Reactor Regulation may be delivered by mail, addressed to such Director at the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or may be addressed to such Director and delivered in person at the Commission's offices 1717 H Street NW., Washington, D.C., or 7920 Norfolk Avenue, Bethesda, Maryland.

(d) Communications to the Regional Office of the NRC Office of Inspection and Enforcement shall be addressed to the office listed in Appendix A of Part 73 of this chapter for the region in which the installation is located.

§ 75.7 IAEA representatives.

Each licensee subject to the provisions of this part shall recognize as a duly authorized representative of the IAEA any person bearing IAEA credentials who at the time of a visit or inspection, or of any visit or inspection within the preceding two years, is or was accompanied by a Commission employee, provided, that if the IAEA representative is not accompanied by a Commission employee, his credentials shall have been confirmed by the Commission in writing for the particular visit or inspection or for a specified term. The licensee shall immediately communicate with the Commission, by telephone, with respect to the credentials of any other person who claims to be an IAEA representative and shall accept telephone confirmation of such credentials by the Commission.

§ 75.8 Facility Attachments.

(a) The Facility Attachment or Transitional Facility Attachment will document the determinations referred to in § 75.11 and will contain such other provisions as may be appropriate.

(b) The Commission will issue license amendments, as necessary, for implementation of the principal text of the Agreement and the Facility Attachment (as amended from time to time). The license amendments through reference to the Facility Attachment or Transitional Facility Attachment, or otherwise, will specify:

(1) IAEA material balance areas;

(2) Types of modifications with respect to which information is required, under § 75.11, to be submitted in advance;

(3) Procedures, as referred to in § 75.21;

(4) The extent to which isotopic composition must be included in batch data (under § 75.22) and advance notification (§ 75.45);

(5) Items to be reported in the concise notes accompanying inventory change reports, as referred to in § 75.34;

(6) Loss limits and changes in containment, as referred to in § 75.36 (pertaining to special reports);

(7) Actions required to be taken, in accordance with § 75.42(e)(2), at the request of an IAEA inspector;

(8) Procedures to be used for documentation of requests under § 75.46 (pertaining to expenses); and

(9) Such other matters as may be appropriate.

(c) The Commission will also issue license amendments, as necessary, for implementation of the Protocol to the Agreement and the Transitional Facility Attachment (as amended from time to time).

(d) License amendments will be made in accordance with the Commission's rules of practice (Part 2 of this chapter). Specifically, if the licensee does not agree to an amendment, an order modifying the license would be issued under § 2.204.

(e) Subject to constraints imposed by the Agreement, the Commission will afford the licensee a reasonable opportunity to participate in the development of the Facility Attachment or Transitional Facility Attachments applicable to the licensee's installation, and any amendments thereto, and to review and comment upon any such instrument before it has been agreed to by the United States. The Commission will provide to the licensee a copy of any such instrument that has been completed in accordance with the Agreement.

Installation Information

§ 75.11 Installation information.

(a) Each licensee subject to the provisions of this part shall submit installation information, in response to a written request from the Commission, with respect to any installation which the Commission indicates has been identified under the Agreement and in which the licensee carries out licensed activities. (The Commission request shall state whether the installation has been identified under Article 39(b) of the principal text of the Agreement or Article 2(a) of the Protocol.) The licensee shall submit such information to the Commission within the period, which shall be at least 45 days, specified in the Commission's request.

(b) Installation information includes:

(1) The identification of the installation, stating its general character, purpose, nominal capacity (thermal power level, in the case of power reactors), and geographic location, and the name and address to be used for routine purposes;

(2) A description of the general arrangement of the installation with reference, to the extent feasible, to the form, location and flow of nuclear material, and to the general layout of important items of equipment which use, produce, or process nuclear material;

(3) A description of features of the installation relating to material accounting, containment, and surveillance; and

(4) A description of the existing and proposed procedures at the installation for nuclear material accounting and

control, with special reference to material balance areas established by the licensee, measurement of flow, and procedures for physical inventory taking. (As part of this description, the licensee may identify a process step involving information which it deems to be commercially sensitive and for which it proposes that a special material balance area be established so as to restrict IAEA access to such information.)

(c) Each licensee shall thereafter submit to the Commission information with respect to any modification at the installation affecting the information referred to in paragraph (a) of this section. Such information shall be submitted:

(1) With respect to a modification of a type described in the license conditions: At least 70 days before the modification is scheduled to be completed, except that in an emergency or other unforeseen situation a shorter period may be approved by the Commission.

(2) With respect to any other modification relevant to the application of the provisions of the Agreement: At the time the first inventory change report is submitted after the modification is completed.

(d) The information specified in paragraphs (a) and (c) of this section shall be prepared on forms supplied by the Commission (including appropriate IAEA Design Information Questionnaire forms). The information shall be sufficiently detailed to enable knowledgeable determinations to be made in the development of Facility Attachments or amendments thereto, including:

(1) Identification of the features of installations and nuclear material relevant to the application of safeguards to nuclear material in sufficient detail to facilitate verification;

(2) Determination of IAEA material balance areas to be used for IAEA accounting purposes and selection of those strategic points which are key measurement points and which will be used to determine flow and inventory of nuclear material;

(3) Establishment of the nominal timing and procedures for taking of physical inventory of nuclear material for IAEA accounting purposes;

(4) Establishment of the records and reports requirements and records evaluation procedures;

(5) Establishment of requirements and procedures for verification of the quantity and location of nuclear material; and

(6) Selection of appropriate combinations of containment and surveillance methods and techniques at the strategic points at which they are to be applied.

(e) The licensee's detailed security measures for the physical protection of an installation shall be included in the installation information only when and to the extent specifically requested by the Commission.

§ 75.12 Communication of information to IAEA.

(a) Except as otherwise provided in this section, the Commission will furnish to the IAEA all information submitted under §§ 75.11 and 75.14.

(b)(1) A licensee may request that information of particular sensitivity, which it customarily holds in confidence, not be transmitted physically to the IAEA. A licensee who makes such a request should, at the time the information is submitted, identify the pertinent document or part thereof and make a full statement of the reasons supporting the request.

(2) In considering such a request, it is the policy of the Commission to achieve an effective balance between legitimate concerns of licensees, including protection of the competitive position of the owner of the information, and the undertaking of the United States to cooperate with the IAEA to facilitate the implementation of the safeguards provided for in the Agreement. The Commission will take into account the obligation of the IAEA to take every precaution to protect commercial and industrial secrets and other confidential information coming to its knowledge in the implementation of the Agreement.

(3) If a request is denied, the Commission will notify the applicant with a statement of reasons. The notice of denial will specify a time, not less than ten (10) days after the date of the notice, when the information will be transmitted physically to the IAEA.

(4) If a request is granted, the Commission will determine a location where the information will remain readily available for examination by the IAEA, and will so inform the licensee.

(c) A request made under § 2.790(b) of this chapter will not be treated as a request under this section unless the application makes specific reference to this section, nor shall a determination to withhold information from public disclosure necessarily require a determination that such information not be transmitted physically to the IAEA.

(d) Where consistent with the Agreement, the Commission may at its own initiative, or at the request of a licensee, determine that any information submitted under §§ 75.11 and 75.14 shall not be physically transmitted to, or made available for examination by, the IAEA.

§ 75.13 Verification.

(a) Each licensee subject to the provisions of this part shall afford to the IAEA during normal working hours, pursuant to prior notice from the Commission, opportunity to visit the installation to verify the installation information submitted under § 75.11. The licensee may accompany IAEA representatives who visit the installation for such purpose, provided that the IAEA representatives shall not be delayed or otherwise impeded in the exercise of their functions.

(b) The notice from the Commission may be given by telephone or in writing and shall provide the licensee actual knowledge of the visit at least three days in advance. The licensee should consult with the Commission immediately if the visit would unduly interfere with its activities or if its key personnel cannot be available.

(c) The Commission will to the extent feasible, unless the licensee agrees otherwise, assign an employee to accompany an IAEA representative engaged in a visit described in this section.

§ 75.14 Supplemental information.

(a) At the time information is submitted by a licensee under § 75.11(a), and promptly whenever changes are made, such licensee shall submit to the Commission:

(1) Information on organizational responsibility for material accounting and control, including information with respect to separation of functions to provide internal checks and balances.

(2) Health and safety rules to be observed by the IAEA inspectors at the installation.

(b) Information submitted pursuant to this section shall indicate that the information is being supplied for purposes of implementation of the US/IAEA Safeguards Agreement.

Material Accounting and Control

§ 75.21 General requirements.

(a) Each licensee who has been given notice by the Commission in writing that its installation has been identified under the Agreement shall establish, maintain and follow written material accounting and control procedures.

(b) The material accounting and control procedures required by paragraph (a) of this section shall include, as appropriate:

(1) A measurement system for the determination of the quantities of nuclear material received, produced, shipped, lost or otherwise removed from

inventory, and the quantities on inventory;

(2) The evaluation of precision and accuracy of measurements and the estimation of measurement uncertainty;

(3) Procedures for identifying, reviewing and evaluating differences in shipper/receiver measurements;

(4) Procedures, including frequency, for taking a physical inventory;

(5) Procedures for the evaluation of accumulations of unmeasured inventory and unmeasured losses; and

(6) A system of accounting and operating records.

(c)(1) The procedures shall, unless otherwise specified in license conditions, conform to the installation information submitted by the licensee under § 75.11.

(2) Until installation information has been submitted by the licensee, the procedures shall be sufficient to document changes in the quantity of nuclear material in or at its installation. Observance of the procedures described in § 40.61 or § 70.51 of this chapter (or the corresponding provisions of the regulations of an Agreement State) by any licensee subject thereto shall constitute compliance with this paragraph (c)(2).

(d) The requirements of this section are in addition to any other requirements of this chapter, relating to material accounting and control, that may apply to the licensee.

§ 75.22 Accounting records.

(a) The accounting records required by § 75.21 shall include, for each IAEA material balance area:

(1) All inventory changes, so as to permit a determination of the book inventory at any time;

(2) All measurement results that are used for determination of nuclear material quantities; and

(3) All adjustments and corrections that have been made with respect to inventory changes, book inventories and physical inventories.

(b) The records shall show, for each batch of nuclear material: material identification, batch data and source data. The "batch data" means a separate listing of the total weight of each element of nuclear material (including, as specified in the license conditions, isotopic composition for special nuclear material) with plutonium and enriched uranium measured in grams and natural or depleted uranium and thorium measured in kilograms. The "source data" are the data, recorded during measurement or calibration or used to derive empirical relationships, which identify nuclear material and provide batch data.

(c) For each inventory change, the records shall show the date of the inventory change and, when appropriate, (1) the originating IAEA material balance area or the shipper, and (2) the receiving IAEA material balance area or the recipient.

§ 75.23 Operating records.

The operating records required by § 75.21 shall include, as appropriate, for each IAEA material balance area:

(a) Those operating data which are used to establish changes in the quantities and composition of nuclear material;

(b) The data obtained from the calibration of tanks and instruments and from sampling and analyses, the procedures employed to control the quality of measurements, and the derived estimates of random and systematic error;

(c) A description of the sequence of the actions taken in preparing for, and in taking, a physical inventory, to ensure that it is correct and complete; and

(d) A description of the actions taken to ascertain the magnitude and cause of any accidental or unmeasured loss that might occur.

§ 75.24 Retention of records.

The records referred to in §§ 75.22 and 75.23 shall be retained by the licensee for at least five years.

Reports

§ 75.31 General requirements.

Each licensee who has been given notice by the Commission in writing that its installation has been identified under the Agreement shall make an initial inventory report, and thereafter shall make accounting reports, with respect to such installation; and, in addition, licensees who have been given notice, pursuant to § 75.41, that their installations are subject to the application of IAEA safeguards, shall make the special reports described in § 75.36. Such reports shall be based on the records kept in accordance with § 75.21. At the request of the Commission, the licensee shall amplify or clarify any report with respect to any matter relevant to implementation of the Agreement. Such amplification or clarification shall be in writing and shall be submitted, to the address specified in the request, within twenty (20) days or such other time as may be specified by the Commission.

§ 75.32 Initial inventory report.

(a) The initial inventory reporting date shall be the last day of the calendar month in which the Commission gives the licensee notice that an initial inventory report is required.

(b) The initial inventory report, to be submitted to the Commission on DOE/NRC Form-742, Material Balance Report, in accordance with printed instructions for completing the form, shall show the quantities of nuclear material contained in or at an installation as of the initial inventory reporting date. The information in the initial inventory report may be based upon the licensee's book record.

(c) The initial inventory report shall be dispatched within twenty (20) days after the initial inventory reporting date.

§ 75.33 Accounting reports.

(a) The accounting reports for each IAEA material balance area shall consist of (1) inventory change reports showing all changes in the inventory of nuclear material and (2) material status reports showing the material balance based on a physical inventory of nuclear material actually present.

(b) The reports shall be based on data available as of the date of reporting and may be corrected at a later date, as required.

§ 75.34 Inventory change reports.

(a) Inventory change reports, to be submitted on DOE/NRC Form-741, Nuclear Material Transaction Report, and prepared in accordance with printed instructions for completing the form, shall specify identification and batch data for each batch of nuclear material, the date of the inventory change, and, as appropriate, (1) the originating IAEA material balance area or the shipper and (2) the receiving IAEA material balance area or the recipient.

(b) Inventory change reports, when appropriate, will be accompanied by concise notes submitted on DOE/NRC Form-740M, Concise Note, and prepared in accordance with printed instructions for completing the form:

(1) Explaining the inventory changes on the basis of the operating records provided for under § 75.23; and

(2) Describing, to the extent specified in the license conditions, the anticipated operational program for the installation, including particularly, but not exclusively, the schedule for taking physical inventory.

§ 75.35 Material status reports.

(a) A material status report shall be submitted for each physical inventory which is taken as part of the material accounting and control procedures required by § 75.21. The material status report shall include a Material Balance Report (on DOE/NRC Form-742) and, attached thereto, a Physical Inventory Listing (on DOE/NRC Form-742C) which lists all batches separately and specifies material identification and batch data for each batch. Also, when appropriate, the material status report shall be accompanied by DOE/NRC Form-740M, Concise Note. The reports specified in this section shall be prepared and submitted in accordance with the printed instructions for completing the referenced forms.

(b) Unless otherwise specified in the license conditions, material status reports shall be dispatched as soon as possible and in any event within thirty (30) days after the start of the physical inventory.

§ 75.36 Special reports.

(a) This section applies only to licensees who have been given notice, pursuant to § 75.41, that their installations are subject to the application of IAEA safeguards.

(b) Each licensee who is subject to this section shall immediately make a special report to the Commission, by telephone (and also by telegraph, mailgram, or facsimile), in those situations described in license conditions.

(c) The situations referred to in paragraph (b) of this section include (1) the possibility of loss of nuclear material in excess of specified limits and (2) unexpected changes in containment to the extent that unauthorized removal of nuclear material has become possible.

§ 75.37 Disclosure of reports to IAEA.

The Commission may communicate to the IAEA any reports submitted to it pursuant to this part or any information contained in such reports.

Installations Designated for IAEA Safeguards

§ 75.41 Designation.

The Commission, by written notice, will designate those installations which, in accordance with identifications made from time to time by the IAEA, under Article 39(b) of the principal text of the Agreement, are subject to the application of IAEA safeguards. Such notice shall be effective until the Commission informs the licensee, in writing, that its installation is no longer so designated. Whenever a previously-designated installation is no longer subject to the application of IAEA safeguards, the Commission will give the licensee prompt notice to that effect.

§ 75.42 Inspections.

(a) Each licensee who has been given notice pursuant to § 75.41 shall afford to the IAEA, at all reasonable times, opportunity to inspect its designated installation as provided in this section. Licensee representatives may accompany IAEA inspectors, provided that the IAEA inspectors are not thereby delayed or otherwise impeded in the exercise of their functions.

(b) As provided in the Agreement, an inspection may be ad hoc, routine, or special (or a combination of the foregoing). An inspection shall be deemed to be routine unless the Commission has specifically advised the licensee otherwise.

(c) The locations to which IAEA inspectors shall have access in the performance of inspections shall be as follows:

(1) Ad hoc inspections to verify information contained in the licensee's initial inventory report or to identify and verify changes in the situation which have occurred since the initial inventory reporting date: any location where the initial inventory report or any inspections carried out therewith indicate that nuclear material subject to safeguards under the Agreement may be present.

(2) Ad hoc inspections to identify and if possible verify the quantity and composition of the nuclear material referred to in notifications given under § 75.43(b) (pertaining to exports) or § 75.43(c) (pertaining to imports): Any place where such nuclear material may be located.

(3) Routine inspections: The strategic points referred to in § 75.11 (or, until such strategic points have been specified, to the locations referred to in paragraph (c)(1) of this section) and the records maintained pursuant to this part.

(4) Special inspections: Any of the locations specified above and any additional locations where the Commission, in response to an IAEA request, finds access to be necessary.

(d) Each licensee shall permit the IAEA, in conducting any such inspections, to:

(1) Examine the records kept pursuant to § 75.21 of this part;

(2) Observe that the measurements of nuclear material at key measurement points for material balance accounting are representative;

(3) Verify the functioning and calibration of instruments and other measuring control equipment.

(4) Observe that samples at key measurement points for material balance accounting are taken in accordance with procedures which produce representative samples, to observe the treatment and analysis of the samples, and to obtain duplicates of such samples; and

(5) Arrange to use the IAEA's own equipment for independent measurement and surveillance.

(e) Each licensee shall, at the request of an IAEA inspector:

(1) Ship samples taken for the IAEA's use, in accordance with applicable packaging and export licensing regulations, by the method of carriage and to the address specified by the inspector; and

(2) Take other actions contemplated by the Agreement, as evidenced by the license conditions, including, for example:

(i) Enabling the IAEA to arrange to install its equipment for measurement and surveillance;

(ii) Enabling the IAEA to apply its seals and other identifying and tamper-indicating devices to containments;

(iii) Making additional measurements and taking additional samples for the IAEA's use;

(iv) Analyzing the IAEA's standard analytical samples;

(v) Using appropriate standards in calibrating instruments and other equipment; and

(vi) Carrying out other calibrations.

(f) Nothing in this section shall be deemed to require or authorize the licensee to carry out any operation that would otherwise constitute a violation of the terms of any applicable license, regulation, or order of the Commission.

(g) The Commission will to the extent feasible, unless the licensee agrees otherwise, assign an employee to accompany any IAEA representative engaged in an inspection described in this section.

(h) The Commission will normally provide a licensee advance notification of any inspection to be carried out by IAEA representatives. The licensee shall notify the Commission promptly, by telephone, whenever an IAEA inspector arrives at an installation without such advance notification.

§ 75.43 Circumstances requiring advance notification.

(a) Each licensee who has been given notice, pursuant to § 75.41, shall give advance written notification to the Commission with respect to the international and domestic transfers specified in this section.

(b) Exports. Notification shall be given of any proposed shipment of nuclear material for peaceful purposes under an export license issued pursuant to Part 110 of this chapter, in an amount exceeding one effective kilogram, directly or indirectly to any non-nuclear-weapon state (as referred to in Article III(2) of the Treaty on the Non-Proliferation of Nuclear Weapons, 21

U.S.T. 483). If the licensee anticipates that it will make two or more shipments for peaceful purposes, within any period of 90 days, directly or indirectly to destinations in the same non-nuclear-weapon state, notification shall be given of each shipment if the aggregate quantity of nuclear material to be transferred exceeds one effective kilogram.[2]

(c) *Imports.* (1) Notification shall be given (to the fullest extent possible on the basis of available information) with respect to nuclear material which immediately prior to export is subject to safeguards, under an agreement with the IAEA, in the country from which the material, directly or indirectly, is being exported. Such notification is only required, however, if the quantities of nuclear material are as specified in paragraph (c)(2) of this section.

(2) Notification shall be given with respect to any proposed import of nuclear material described in paragraph (c)(1) of this section in an amount exceeding one effective kilogram. If the licensee anticipates that it will receive two or more shipments of such nuclear material, within any 90-day period from points of origin in the same country, notification shall be given with respect to each shipment if the aggregate quantity of such nuclear material to be received exceeds one effective kilogram.

(d) *Domestic transfers.* Notification shall be given with respect to any shipments of nuclear material (other than small quantities in the form of samples containing less than 0.01 effective kilogram per sample) to a non-eligible destination. As used in this paragraph, a "non-eligible destination" means any destination in the United States other than an installation on the United States eligible list.

§ 75.44 Timing of advance notification.

(a) Except as provided in paragraph (b) of this section, notification to the Commission, where required by § 75.43, shall be given:

(1) In the case of exports and domestic transfers, at least twenty days in advance of the preparation of the nuclear material for shipment from the installation.

(2) In the case of imports, at least twelve days in advance of the unpackaging of nuclear material at the installation.

(b) For a particular receipt or shipment of nuclear material, the Commission will approve a shorter notice period than that specified by paragraph (a) of this section, for good cause, if it determines that observing the specified notification period would result in delay in shipment or unpackaging.

(c) The licensee shall inform the Commission, by phone, as soon as possible, with respect to any delay in the receipt (or unpackaging) or the shipment (or preparation for shipment) of nuclear material for which advance notification is required. New dates should be provided, if known.

§ 75.45 Content of advance notification.

(a) The notifications required by § 75.43 shall include the element weight of nuclear material being received or shipped, the chemical composition and physical form, the isotopic composition (to the extent specified by license conditions), the estimated date and place at the reporting installation where the nuclear material is to be unpackaged or prepared for shipment (and where the quantity and composition can be verified), the applicable IAEA material balance area at the reporting installation, the approximate number of items to be received or shipped, and the probable dates of receipt or shipment. The notification shall indicate that the information is being supplied pursuant to § 75.43.

(b) The notifications required with respect to export and import shipments shall also include

(1) If available, a general description of containers (including, in the case of exports, features that would permit sealing);

(2) Destination of export as authorized under an export license issued pursuant to Part 110 of this chapter, or origin of import (by country and, if known, place);

(3) Means of transport; and

(4) Expected date and place of arrival in the destination country (for exports) or in the United States (for imports).

§ 75.46 Expenses.

(a) Under the Agreement, the IAEA undertakes to reimburse a licensee who has been given notice, pursuant to § 75.41, for extraordinary expenses incurred as a result of its specific request: *Provided,* That the IAEA has agreed in advance to do so. The Agreement also contemplates that in any case the IAEA will reimburse a licensee for the cost of making additional measurements or taking samples at the specific request of an IAEA inspector.

(b) The Commission will inform the licensee, in the license conditions or other written communication, of those items of extraordinary expense which the Agency has agreed in advance to reimburse.

(c) The Commission will inform the licensee, in the license conditions, of the procedures to be used to document:

(1) An IAEA inspector's request for making additional measurements or taking additional samples; and

(2) An IAEA request for a particular action by the licensee that will give rise to reimbursable extraordinary expense.

(d) The Commission will take such action as it finds to be appropriate to assist the licensee with respect to the reimbursement of any expense which, under the Agreement, is to be borne by the IAEA.

Enforcement

§ 75.51 Enforcement.

(a) An injunction or other court order may be obtained prohibiting any violation of any provision of the Atomic Energy Act of 1954, as amended, or Title II of the Energy Reorganization Act of 1974, or any regulation or order issued thereunder. A court order may be obtained for the payment of a civil penalty imposed pursuant to section 234 of the Act for violation of section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Act, or section 206 of the Energy Reorganization Act of 1974, or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license issued thereunder, or for any violation for which a license may be revoked under section 186 of the Act. Any person who willfully violates any provision of the Act or any regulation or order issued thereunder may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

(b) The Commission may issue such orders to secure compliance with the provisions of this part or to prohibit any violation of such provisions as may be proper to protect the common defense and security. Enforcement actions, including proceedings instituted with respect to Agreement State licensees, will be conducted in accordance with the procedures set forth in Part 2, Subpart B of this chapter. Only NRC licensees, however, are subject to license modification, suspension, or revocation as such as a result of such enforcement actions.

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

12. The citation of authority is amended by adding the following paragraph:

[2] All foreign countries, with the exception of the People's Republic of China, France, the Soviet Union, and the United Kingdom, are non-nuclear-weapon states. Treaty on the Non-Proliferation of Nuclear Weapons, Article IX(3).

* * * Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). For purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), § 150.17a issued under Sec. 161b., 68 Stat. 950 (42 U.S.C. 2201(b)).

§ 150.10 [Amended]

13. Section 150.10 is amended by inserting in the first sentence "150.17a," between "150.17" and "150.18".

14. A new § 150.17a is added to read as follows:

§ 150.17a Compliance with requirements of US/IAEA safeguards agreement.

(a) For purposes of this section, the terms "effective kilogram", "ore processing", "installation", and "United States eligible list" have the meaning set forth in § 75.4 of this chapter.

(b) Each person who, pursuant to an Agreement State License, is authorized to possess source material in amounts greater than one effective kilogram (except in ore processing) is subject to the provisions of Part 75 of this chapter and shall comply with its applicable provisions. However, with respect to such persons, the Commission will issue orders under section 274m. of the Act instead of making license amendments; and, to the extent Part 75 refers to license amendments and license conditions, such references shall be deemed, for purposes of this paragraph, to refer to orders under section 274m. of the Act.

(c) An applicant for an Agreement State License authorizing possession of source material in amounts greater than one effective kilogram (except in ore processing) shall file with the Commission, at least 9 months prior to the date when the applicant desires to receive such source material or earlier upon request by the Commission, the installation information described in § 75.11 of this chapter (except that in the case of applicants who desire to receive the source material within 9 months after the effective date of this section, the installation information shall be submitted as soon as possible) and the applicant shall permit verification by the International Atomic Energy Agency and take such other action as may be necessary to implement the US/IAEA Safeguards Agreement, in the manner set forth in §§ 75.6, 75.11–75.14 of this chapter. The Commission will grant an exemption from this requirement, upon application, if it determines that the installation will not be included on the United States eligible list.

PART 170—FEES FOR FACILITIES AND MATERIALS LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

15. Section 170.11 is amended by adding a new paragraph (a)(10) to read as follows:

§ 170.11 Exemptions.

(a) No application fees, licensee fees, renewal fees, or inspection fees shall be required for:

* * * * *

(10) Activities of the Commission undertaken, pursuant to Part 75 of this chapter, solely for the purpose of implementation of the US/IAEA Safeguards Agreement.

(Amendments to all parts issued pursuant to citations of authority codified in the respective parts)

Dated at Washington, D.C. this 25th day of July 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80-23117 Filed 7-30-80; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Docket No. R-0320]

Short-Term Financial Intermediaries

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: On July 3, 1980, the Board announced the termination of its special deposit requirement on money market mutual funds and other similar creditors, effective August 11, 1980. Comments received have indicated potential operational difficulties arising from the maintenance of the special deposits until August 11, 1980. In view of these concerns, the Board has determined that all special deposits maintained by covered creditors will be returned on July 28, 1980, and no deposits will be required to be maintained thereafter.

EFFECTIVE DATE: July 28, 1980.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Assistant General Counsel (202/452-3625), or Daniel L. Rhoads, Attorney (202/452-3711), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: On July 3, 1980, the Board announced the termination of the credit restraints imposed on short term financial intermediaries under the Credit Control Act (12 U.S.C. §§ 1901–1909), as implemented by Executive Order 12201 (45 FR 46337). The effective date of this action was to be August 11, 1980, after which time a creditor subject to this Subpart would not be required to maintain a special deposit with the Federal Reserve System. In view of significant operational problems that may arise from the rescission of the special deposit requirement on that date, the Board has determined to terminate this Subpart effective July 28, 1980. Accordingly, special deposits will not be required to be maintained after July 28, 1980.

In view of the need to make this action effective on July 28, 1980, and because this action relieves a restriction, the Board for good cause finds that the notice and public procedure provisions of 5 U.S.C. 553 with regard to these actions are impracticable and contrary to the public interest.

Pursuant to its authority under the Credit Control Act (12 U.S.C. 1901–1909) effective July 28, 1980, the Board hereby rescinds Subpart B of its Credit Restraint regulation (12 CFR 229.11–229.15).

By order of the Board of Governors of the Federal Reserve System, July 25, 1980.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 80-23105 Filed 7-30-80; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561 and 563

[No. 80-444]

Reserve Requirements

Dated: July 24, 1980.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final regulations.

SUMMARY: The Board has amended its reserve requirements for institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, by: (1) retaining the statutory reserve requirement while eliminating the separately-designated Federal Insurance Reserve Account; (2) giving institutions three years to change their reserve calculation period to the beginning of the fiscal year; and (3) providing for extension of the period of time allowed for meeting the one-time reserve requirement, to a maximum of 30 years from the granting of insurance.

on an application basis. The Board believes that these actions will aid its supervisory efforts by reflecting a more accurate picture of an institution's financial position, while continuing to maintain the safety and soundness of institutions by requiring an adequate reserve for losses.

(Please Note: see accompanying Board Resolution No. 80–445, published elsewhere in this issue for proposed changes to substantive net worth requirements for insured institutions.)

EFFECTIVE DATE: July 31, 1980.

FOR FURTHER INFORMATION CONTACT: Dale Riordan, Director, Office of Policy and Economic Research, (202) 377–6750, or Nancy L. Feldman, Associate General Counsel, (202) 377–6440, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: On February 21, 1980, the Federal Home Loan Bank Board, by Resolution No. 80–104 (45 FR 12831, published on February 27, 1980) proposed amendments to its regulations pertaining to reserve requirements. The public comment period ended on April 28, 1980, with receipt of 105 comment letters from Federal and state-chartered savings and loan associations, trade groups, accountants and a law firm. The proposed amendments, providing for redesignation of the statutory reserve account, changes to the reserve calculation period, and a case-by-case extension of the time period for meeting the reserve requirement, were generally supported by all but half a dozen commenters, although many made recommendations for modification or clarification of one or more of the provisions. After reviewing the comments received and other available information, the Board has determined to adopt the proposed amendments with modifications, as described below.

Elimination of the Formally-Designated FIR Account

Subsection 403(b) of the National Housing Act, as amended (12 U.S.C. 1727), requires the Federal Savings and Loan Insurance Corporation, operated by the Board, to promulgate regulations providing for loss reserves. At present, §§ 563.11, 563.12, 563.13, and 563.14 of the Rules and Regulations for Insurance of Accounts (12 CFR 563.11–563.14) require insured institutions to establish a separate account for this purpose, designated by the Board as the Federal Insurance Reserve (FIR).

The FIR serves as a component of net worth, as defined and regulated by the Board. However, it is the net worth calculation, and not the FIR alone, which the Board believes is a useful regulatory indicator of operating condition. It was therefore proposed to eliminate the statutory reserve as a formally separate account, while continuing to include the items constituting the FIR as part of the net worth calculation. This change was intended to simplify examination and supervision of institutions, by providing more comprehensive information regarding an institution's reserve needs.

Most commenters enthusiastically supported the proposed change, but a few were concerned that an undifferentiated net worth account might jeopardize the tax status granted to reserve accounts established specifically for absorption of losses, and might trigger a large one-time tax assessment against funds currently held in the FIR account at the time of "transfer" to the general net worth account. The Board's proposal maintained the statutory reserve requirement and calculation in proposed § 563.13(a), and indicated that only a slight procedural change was intended; nevertheless, it is persuaded that modification of the proposed language is appropriate to ensure against the possibility of unintended change in tax treatment of institutions' loss reserves. The Board's Office of General Counsel has advised that it is of the view that the change will have no effect on the federal tax treatment of institutions so long as they continue to maintain the taxation loss reserve accounts required by Internal Revenue Service Regulation 1.593–7, and that the language of new § 563.13(a) should preserve current state tax treatment.

The Board has therefore determined to amend its proposed § 563.13(a) ("statutory reserve account") to refer specifically to absorption of losses including bad debts. Furthermore, items credited to the old FIR account must be designated "restricted retained earnings" in the list of items comprising the net worth account, and may only be used for absorption of losses. The Board believes that the provision as modified will make it clear that institutions continue to be required to calculate and maintain loss reserves, while increasing institutions' flexibility regarding use of other surplus.

Recommendations for Substantive Changes

Although the Board noted that present exclusions from the statutory reserve and substantive net worth requirements were not within the scope of the proposal, many commenters offered suggested modifications in these areas. Current net worth requirements are renumbered and restated in these final regulations. Attention is invited to Board Resolution No. 80–445, adopted today, in which the Board discusses and proposes substantive amendments to the net worth requirements.

Statutory Benchmark Requirement

Subsection 403(b) provides that reserves shall be built up to reach a level of three to six percent (currently set at five percent) of insured accounts, within a 20-year period, or up to a 30-year period in the case of any insured institution if the FSLIC determines such action to be necessary to meet mortgage needs. Current § 563.13(a) extends the period to 26 years for all institutions. As proposed, the Board has adopted a reversion to the 20 year period (with a grandfathering of institutions now insured from 18 to under 26 years, at the 20-year level), and an application process for extensions up to 30 years in individual cases upon a finding that such action is necessary to meet mortgage needs. As proposed, the provision is further amended to limit the statutory reserve test to "all insured accounts", to follow the statutory language.

A number of commenters recommended that the thirty-year extension be adopted for all institutions or that the "mortgage needs" test be eliminated or replaced with a better set of criteria for determining need of an extension. The Board believes that the statute contemplates a more individual determination, and notes that subsection 403(b) specifically requires application of a "mortgage needs" test.

The Principal Supervisory Agent in the institution's Federal Home Loan Bank district will have delegated authority to approve extensions of the time period; denials will be referred to the Board for final decision. Comment was specifically solicited on the proposed standards to be used in making a determination that such action is "necessary to meet mortgage needs", in connection with applications for extension: the proposal allowed approval of an extension if the PSA determined that the institution has the opportunity and willingness to make additional mortgage loans but that, because of rapid growth or other factors, not including losses or poor business practices, it would be difficult to do so without an extension. A number of commenters objected to the vagueness of the standards, questioning determination of terms such as "rapid growth". One commenter objected to the possibility of different judgments on similar fact situations arising in different Bank districts; two commenters suggested detailed standards based on demographic analysis, savings inflows and portfolio mix.

Upon reconsideration, the Board is reluctant to specify in detail the factors to be considered in making a determination that benchmark extension is necessitated by mortgage need in an area, on the ground that an attempt at specificity would be inflexible and unworkable. However, the Board does expect PSAs to make factual findings with regard to a determination that there is "opportunity" for mortgage investment by the institution, and to document the institution's "willingness" to maintain its mortgage loan program, and the Board will periodically review PSA determinations to help avoid substantial disparities among districts. Further, the Board has determined not to adopt the part of the proposed standard relating to an institution's reasons for needing the extension, because the Board believes these are not statutorily required. Rather, the Board has determined to substitute language authorizing the PSA to allow extensions where mortgage needs would be better served, if no supervisory objection is taken with regard to the institution's safe and sound operating condition.

Reserve Calculation Period

Present § 563.13 requires the reserve test to be calculated on the basis of account balances existing at the annual closing date. The Board had become aware of the difficulty, particularly in times of money market volatility, of "meeting a moving target", i.e. not knowing until the end of the year what the reserve requirements are and whether they have been met. The Board therefore proposed at § 563.13(b)(1) to change the regulation so that the reserve requirement for a given year would be calculated at the beginning of such year, with compliance required by the end of that year. A number of commenters recommended a choice of beginning- or end-of-year calculation, at the institution's option, pointing out that substantial savings outflows at year's end would distort the reserve amount necessary for the remaining base. The Board has determined to adopt the change in calculation period as proposed, but is persuaded on the basis of the foregoing comments to allow institutions three years to change to the beginning-of-year basis.

Section 563.14, regarding payment of dividends to insured members, restates current implementation of statutory requirements, but, as proposed, deletes the reference to "interest", which is not contained in subsection 403(b). Paragraph (a) of § 563.14 provides that dividends to insured members may not be paid out of the portion of net worth attributable to the statutory reserve. This provision was formerly found in § 563.11(a).

Paragraph (b) of amended § 563.14 maintains the present regulatory implementation of the section 403(b) statutory requirement that FSLIC approval be granted before dividends may be paid, in the event that losses are chargeable to the reserve. The provision is contained in present § 563.14.

The Board finds that the 30-day delay of effective date following publication as prescribed in 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary because it is in the public interest that insured institutions with fiscal years ending during the 30-day period be authorized to apply the revised reserve requirements.

Accordingly, the Board hereby amends Parts 561 and 563 by amending § 561.13, deleting §§ 563.11 and 563.12, and revising §§ 563.13 and 563.14, to read as set forth below.

SUBCHAPTER D—RULES AND REGULATIONS FOR INSURANCE OF ACCOUNTS

PART 561—DEFINITIONS

§ 561.13 [Amended]

1. Amend § 561.13 (the definition of "net worth") by changing the phrase "annual closing net worth requirement" in the second and third sentence of that section to read "annual net worth requirement".

PART 563—OPERATIONS

§ 561.11 [Deleted]

§ 561.12 [Deleted]

2. Delete §§ 563.11 and 563.12.

3. Amend § 563.13 by revising the title and paragraph (a) and paragraphs (b) (1) and (2); redesignating paragraph (b)(2) as (b)(3) and revising the first sentence of subdivision (i) thereof; amending and redesignating paragraph (b)(3) as (b)(4); redesignating paragraph (b)(4) as (b)(5); and amending paragraph (c) thereof; to read as set forth below.[1]

§ 563.13 Reserve accounts.

(a) *Statutory reserve requirement.* (1) This reserve requirement is established, pursuant to subsection 403(b) of the National Housing Act of 1934, as amended, solely for absorption of bad debts and other losses.

(2) The reserve requirement shall be an amount equal to five percent of insured account balances on the date of calculation, or the average of such account balances on such date and on one or more of the four immediately preceding annual calculation dates, provided all such dates are consecutive: *Provided,* That institutions that have not reached the twentieth anniversary of insurance of accounts shall calculate the reserve requirement by multiplying the above percentage by a fraction of which the numerator is the number of consecutive years of insurance and the denominator is twenty. The calculation period shall be as described in paragraph (b)(1) of this section.

(3) Institutions may count as reserves meeting the reserve requirement those items listed in the definition of net worth, as set forth in § 561.13 of this subchapter, except that the following items shall be excluded:

(i) Subordinated debt securities,

(ii) Capital stock accounts which contain mandatory retirement or redemption provisions, and

(iii) Specific loss reserves.

(4) Institutions shall maintain (until the next annual closing date) reserves as least equal to the dollar amount required at the last closing date.

(5)(i) Each institution shall, at any one annual closing date not later than the twentieth anniversary of insurance of accounts, have reserves equal to five percent of all insured accounts on such date except that institutions that have been insured from 18 to fewer than 26 years from the above date shall meet this requirement within 26 years of the date of insurance. (ii) Institutions may apply to the Corporation for extension of the time period, up to a maximum of the thirtieth anniversary, on the grounds that such action is necessary for the institution to meet mortgage needs. The Principal Supervisory Agent of the institution's Federal Home Loan Bank district is hereby delegated authority to approve such applications, upon a determination that the institution has the opportunity and willingness to make additional mortgage loans and s/he does not take supervisory objection to the probable effect of the extension on the institution's safe and sound operating conditions. If approval is denied, the application shall be forwarded for review and final decision by the Corporation.

(6) Items previously credited to the predecessor Federal Insurance Reserve Account shall be designated "restricted retained earnings" in the list of items comprising the net worth account, and shall be used only for absorption of losses. Items earmarked or otherwise designated but not credited to that

[1] Note: See accompanying Board Resolution No. 80-445, published elsewhere in this issue, for proposed changes to § 563.13 (a) and (b).

Account may be designated as restricted retained earnings.

(7) Payment of dividends to insured members must be made in accordance with § 563.14 of this Part.

(8) The term "insured accounts" as used in this paragraph has the meaning prescribed in § 561.6 of this subchapter.

(b) *Net worth requirements.* (1) *Calculation period.* The annual net worth requirement, as set forth in subparagraph (b)(2) of this section, shall be established at the beginning of each year, and shall be met at the end of the year: *Provided,* That institutions shall change to the beginning-of-year calculation by January 1, 1983, or sooner, but that if such change is made prior to that date, there may be no reversion to end-of-year calculation. "Year" refers to the fiscal period beginning after an institution's annual closing date following each anniversary of the date of insurance of accounts.

(2) *Minimum required amount.* (i) The following table shall be used in calculating net worth requirements:

Anniversary:	*Percentage*
2	0.50
3	0.75
4	1.00
5	1.25
6	1.50
7	1.75
8	2.00
9	2.25
10	2.50
11	2.75
12	3.00
13	3.25
14	3.50
15	3.75
16	4.00
17	4.25
18	4.50
19	4.75
20 and thereafter	5.00

An institution calculating its net worth requirement during the fiscal year in which insurance was issued shall multiply 5/10 of one percent by the fraction of the fiscal year which has elapsed since such issuance, calculated to the nearest month.

(ii) Net worth shall be at least equal to the greater of:

(*a*) An amount equal to the sum of:

(*1*) the amount obtained by multiplying the percentage corresponding to the anniversary date, as set forth in the table above, by either the amount of the institution's checking, tax and loan, and savings account balances on such date, or the average of such account balances on such date and on one or more of the four immediately preceding annual dates, provided all such dates are consecutive, (*2*) an amount equal to 20 percent of the institution's scheduled items, and (*3*) the additional amount required by paragraph (b)(5) of this section; or

(*b*) The amount determined under the Asset Composition and Net Worth Index set forth in subparagraph (b)(3) of this section, as adjusted by multiplying such amount by a fraction of which the numerator is the applicable percentage (from the table set forth above) and the denominator is 5.00 percent plus the additional amount required by subparagraph (b)(5) of this section.

(3) *Asset Composition and Net Worth Index.* (i) the Index referred to above is as follows: * * *

* * * * *

(4) *Maintenance of minimum level.* Institutions shall maintain (until the next annual closing date) net worth at least equal to the dollar amount required at the last closing date.

* * * * *

(c) *Failure to meet net worth requirements.* If any insured institution fails to meet the net worth requirements set forth in paragraph (b) of this section, the Corporation may, whether through enforcement proceedings (as provided in Parts 565 and 566 of this subchapter) or otherwise, require such institution to take one or more of the following corrective actions:

* * * * *

4. Revise § 563.14 to read as follows:

§ 563.14 Payment of dividends.

(a) No institution may pay dividends to insured members from its net worth, as determined pursuant to § 563.13(b) of this Part, unless the portion of the net worth account attributable to the statutory reserve requirement of § 563.13(a) of this Part (after deduction of dividend payments and the items listed in § 563.13(a)(3) (i) through (iii)) will be at least equal to the amount required under § 563.13(a)(2).

(b) No institution which has recognized losses of any kind chargeable to the portion of its net worth account attributable to its statutory reserve requirement may pay dividends to insured members, unless (1) its net worth account, after deduction of such losses, is at least equal to the amount required under § 563.13(a)(2), or (2) prior written approval is obtained from the Corporation. The Corporation hereby approves, for any such institution which has been insured for a period of 20 years or more and, prior to the charging of such losses, met the percentage requirement of § 563.13(a)(5), the declaration of dividends to insured members, if the institution provides not less than 25 percent of its net income (as defined in § 563c.12 of this subchapter) for the affected distribution period to the restoration of its reserve capacity.

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730). Sec. 5A, 47 Stat. 727, as amended by sec. 1, 64 Stat. 256, as amended, sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1425a, 1437). Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464). Reorg. Plan No. 3 of 1947, 172 FR 4891, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 80-23042 Filed 7-30-80; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Pilot Program

AGENCY: Small Business Administration.

ACTION: Pilot Program; exemption from rule.

SUMMARY: The Small Business Act requires a loan applicant to establish to SBA's satisfaction that the financial assistance sought is not otherwise available on reasonable terms. SBA has a financial assistance pilot program for socially disadvantaged small automobile dealerships which will require proof of refusal to extend financial assistance only from the bank of account. This will dispense with the requirement for a second bank's refusal. This program is being established in response to Pub. L. 96–302 and prior to regulations implementing that act.

EFFECTIVE DATE: July 15, 1980.

FOR FURTHER INFORMATION CONTACT: Robert H. Bartlett, Chief, Program Operations Division, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416, 202–653–6470.

SUPPLEMENTARY INFORMATION: The Small Business Act (Act), 15 U.S.C. 636(a)(1), and the regulations of the Small Business Administration (SBA), specifically 13 CFR 120.2(a)(1), required a loan applicant to establish to SBA's satisfaction that the financial assistance sought is not otherwise available on reasonable terms. Moreover, another section of the Act, 15 U.S.C. § 642, requires that applicant

> "to furnish the names of lending institutions to which such business enterprise has applied for loans, . . ."

This requirement is implemented by paragraph (i), (ii) and (iii) of the cited regulations, which required proof of refusal from the bank of account, a correspondent bank of the bank of account if the lending limit of the first bank is insufficient, and from another bank in cities with a population exceeding 200,000.

On July 2, 1980 President Carter approved Pub. L. 96–302 (84 Stat. 833),