

Dated: October 25, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

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7 CFR Part 997

[Docket No. FV-91-297FR]

Changes in Provisions Regulating the Quality of Domestically Produced Peanuts Not Subject to the Peanut Marketing Agreement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends 7 CFR part 997 which contains provisions regulating the quality of domestically produced peanuts not subject to the Peanut Marketing Agreement (7 CFR part 998). This action will change the regulations to recognize that blanching can only be used successfully in reconditioning peanuts failing to meet certain grade requirements, and to limit inspection of blanched peanuts to the same grade factors inspected under the Peanut Marketing Agreement (Agreement). This action will also make necessary revisions to clarify the regulations pertaining to ownership of peanuts which are moved for custom remilling or blanching, change the regulations to allow for more efficient utilization of peanut meal, make minor revisions in the disposition requirements for peanuts which fail to meet the requirements for human consumption and correct minor typographical errors in the regulations. These changes are intended to bring the inspection, quality and disposition requirements under part 997 into conformity with those under the Agreement as required by the Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: October 31, 1991.

FOR FURTHER INFORMATION CONTACT: Patrick A. Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2530-S, Washington, DC 20090-6456, telephone: 202-475-3862.

SUPPLEMENTARY INFORMATION:

This final rule is issued pursuant to requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and as further amended December 12, 1989, Public Law 101-220, Section 4(1), (2), 103 Stat. 1878, hereinafter referred to as the "Act".

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 80 handlers of peanuts who have not signed the Agreement and thus, will be subject to the regulations contained herein. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$3,500,000. It is estimated that most of the handlers are small entities. Most producers doing business with these handlers are also small entities. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than \$500,000.

There are three major peanut production areas in the United States: (1) Virginia-Carolina, (2) Southeast, and (3) Southwest. These areas encompass 16 states. The Virginia-Carolina area (primarily Virginia and North Carolina) usually produces about 18 percent of the total U.S. crop. The Southeast area (primarily Georgia, Florida and Alabama) usually produces about two-thirds of the crop. The Southwest area (primarily Texas, Oklahoma, and New Mexico) produces about 15 percent of the crop. Based upon the most current information, U.S. peanut production in 1990 totalled 3.60 billion pounds, a 10 percent decrease from 1989 and 1988. The 1990 crop value is \$1.26 billion, up 13 percent from 1989. The 1991 crop is estimated at 5.10 billion pounds.

Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. The Agreement plays a very important role in the industry's quality control efforts. It has been in place since 1965. Approximately 95 percent of 1988 crop peanuts were marketed by handlers signatory to the Agreement.

Requirements established pursuant to the Agreement require farmers' stock peanuts with visible *Aspergillus Flavus*

mold (the principal producer of aflatoxin) to be diverted to non-edible uses. Each lot of shelled peanuts for edible use must be officially sampled and chemically tested for aflatoxin by the Department or in laboratories approved by the Peanut Administrative Committee (Committee) established under the Agreement. The Committee works with the Department in administering the marketing agreement program. The inspection and chemical analysis programs are administered by the Department.

Public Law 101-220, enacted December 12, 1989, amended section 608(b) of the Act to require all peanuts handled by persons who have not entered into the Agreement (non-signers) to be subject to quality and inspection requirements to the same extent and manner as are required under the Agreement. Under the amendment, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the quality requirements of the Agreement. Regulations to implement Public Law 101-220 were issued and made effective on December 4, 1990. Violation of the requirements promulgated pursuant to Public Law 101-220 may result in a penalty in the form of an assessment by the Secretary equal to 140 percent of the support price for quota peanuts, as determined under section 108b of the Agricultural Act of 1949 (7 U.S.C. 1445C-2), for the marketing year for the crop with respect to which such violation occurs. The intent of Public Law 101-220 and the objective of the Agreement is to insure the only wholesome peanuts of good quality enter edible market channels.

Currently, paragraph (a)(2) of § 997.40 *Reconditioning and disposition of peanuts failing quality requirements* provides that handlers may blanch or cause to have blanched positive lot identified shelled peanuts (which originated from Segregation I peanuts as defined in § 997.5(b)) that fail to meet the requirements for human consumption specified in § 997.30(a). This includes peanuts failing to meet those requirements because of excess damage, minor defects, moisture, foreign material, fall through (sound split and broken kernels and whole kernels passing through specified sized screens), or which are positive as to aflatoxin. However, blanching is not a suitable process for reconditioning peanuts which fail to meet those requirements because of excess fall through. During the blanching process the red skins are removed from the peanuts and the moisture of the peanuts is reduced. The

loss of skins and moisture tends to reduce the size of the peanuts. Hence, peanuts failing to meet the fall through requirements initially would continue to fail to meet those requirements after blanching, and peanuts initially meeting the fall through requirements would likely fail to meet those requirements after blanching because of the change in size. In recognition of this and to bring the requirements into conformity with those in effect under the Agreement, this action modifies paragraph (a)(2) of § 997.40 to specify that only peanuts that fail to meet the requirements specified in § 997.30(a) because of excess damage, minor defects, moisture, or foreign material, or are positive as to aflatoxin may be blanched to attempt to cause the peanuts to meet the minimum requirements specified in paragraph (a). In addition, paragraph (a)(2) of § 997.40 is modified to specify that, after blanching, such peanuts must meet only the specification for unshelled peanuts, damaged kernels, minor defects, moisture and foreign material as listed in paragraph (a)(1) of § 997.30 and be accompanied by a negative aflatoxin certificate to be eligible for disposition into human consumption outlets.

Paragraph (b)(3) of § 997.40 requires meal produced from the crushing of "restricted" categories of peanuts to be disposed of for use as fertilizer or other non-feed uses. On January 23-24, 1991, the Committee unanimously recommended changes in the regulations under the Agreement requiring the meal produced from the crushing of all "restricted" categories of peanuts be sampled and tested for aflatoxin, and that the numeric test results be shown on the certificate accompanying each shipment of meal produced from the crushing of "restricted" categories of peanuts. The Committee also recommended that restrictions be removed from the regulations applicable to the use and disposition of meal produced from the crushing of "restricted" peanuts. Meal produced from the crushing of "unrestricted" categories of peanuts continues to be exempt from aflatoxin testing requirements and eligible for feed use without testing. These requirements were published in the *Federal Register* on August 8, 1991 (56 FR 37645). Accordingly, this final rule will implement similar changes in § 997.40 of the regulations applicable to handlers who are not signatory to the Agreement. In addition to requiring meal produced from the crushing of restricted categories of peanuts to be tested, the change requires such meal to be prepared for disposition in specifically

identified lots not exceeding 200,000 pounds to protect the reliability of the sampling and testing procedures.

Generally, restricted categories of peanuts are peanuts which were determined to be Segregation III or peanuts which contain or are likely to contain significant levels of aflatoxin. Unrestricted categories of peanuts are peanuts which have been determined to be Segregation I or II pursuant to § 997.20 or have been determined to be negative (based on the criteria applicable to non-edible quality categories) as to aflatoxin content.

Currently, other Federal and State requirements or criteria for the disposition of peanut meal in certain feed outlets are less restrictive than those in effect under part 997. Therefore, the regulations restrict dispositions of peanut meal for feed use that would be authorized under other State or Federal requirements or criteria. These changes will provide crushers and meal receivers with certified information as to the aflatoxin content of meal produced from restricted categories of peanuts. Receivers will then make usage determinations based upon Federal or State requirements or criteria in effect for the desired outlet. This will allow for more efficient utilization of peanut meal, eliminate differences between the regulations under part 997 and other State or Federal requirements or criteria, and simplify the requirements in effect for the disposition of peanut meal.

Section 997.40 includes provisions which regulate the disposition of peanuts which fail to meet the requirements for human consumption. Paragraph (b)(1)(iv) states that certain peanuts may be disposed of to wildlife feed or rodent bait use. This final rule deletes paragraph (b)(1)(iv), and revises paragraph (b) to specify that only fall through (a specific category of non-edible quality peanuts) which has been tested and determined negative as to aflatoxin may be used for such purposes. This change is necessary to make the disposition requirements consistent with those in place under the Agreement. The Department is also revising and redesignating paragraph (b)(4)(ii) as paragraph (b)(4)(iii), adding a new paragraph (b)(4)(ii), and revising paragraph (b)(5).

This final rule also revises the second sentence of § 997.40 (a)(3), which requires the title to peanuts moved for remilling or blanching to be retained by the original handler until such peanuts have been remilled or blanched and certified as meeting the requirements for human consumption, to specify that that sentence applies only to peanuts moved

for custom remilling or blanching under paragraphs (a)(1) and (a)(2) and not to peanuts which are sold to another handler for further handling. Currently, the regulations require handlers to retain title to peanuts which they are allowed to sell to other handlers for further handling. This action will correct the ambiguity in paragraph (a).

Finally, this action will correct minor typographical errors in the last sentence of § 997.30(c)(2), the first sentence of § 997.40(a)(1), and the first sentence of § 997.52.

Based on the above, the Administrator of the AMS has determined that the changes will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the sections of the regulations that will be amended have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0163.

Notice of these changes was published in the *Federal Register* on August 14, 1991 [56 FR 40269]. Interested persons were invited to submit written comments through August 29, 1991. No comments were received.

After consideration of all available information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because the 1991 crop year began July 1 and therefore this action should be implemented as soon as possible.

List of Subjects in 7 CFR Part 997

Peanuts, Quality regulations, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 997 is amended as follows:

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

1. The authority citation for 7 CFR part 997 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674; sec. 4, 103 Stat. 1878, 7 U.S.C. 608b.

2. Section 997.30 is amended by revising the last sentence of paragraph (c)(2) to read as follows:

§ 997.30 Outgoing regulation.

(c) * * *

(2) * * * A copy of such notice covering each lot shall be sent to the Division.

3. Section 997.40 is amended by revising the first sentence of paragraph (a)(1), revising paragraph (a)(2), revising the second sentence of paragraph (a)(3), and revising paragraph (b) to read as follows:

§ 997.40 Reconditioning and disposition of peanuts failing quality requirements.

(a) * * *

(1) Handlers may remill peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements of § 997.30(a) or move positive lot identified shelled peanuts that fail to meet such requirements to a custom remiller or sell such peanuts to another handler, or a handler as defined in 7 CFR 998.8, for remilling or further handling.

(2) Handlers may blanch or cause to have blanched positive lot identified shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for human consumption specified in § 997.30(a) because of excessive damage, minor defects, moisture, or foreign material or are positive as to aflatoxin. To be eligible for disposal into human consumption outlets, such peanuts after blanching, must meet the specifications for unshelled peanuts, damaged kernels, minor defects, moisture and foreign material as listed in § 997.30(a) and be accompanied by a negative aflatoxin certificate. If such peanuts do not meet the requirements of § 997.30(a) they shall be disposed of and such disposition reported as provided in paragraph (b) of this section.

(3) * * * The title of peanuts moved for custom remilling or blanching shall be retained by the handler until the peanuts have been remilled or blanched and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption outlets specified in § 997.30(a).

(b) Disposition of shelled peanuts failing quality requirements for human consumption.

(1) Handlers may dispose of positive lot identified shelled peanuts (which originated from Segregation 1 peanuts) which fail to meet the requirements for

human consumption specified in § 997.30(a) and positive identified lots of loose shelled kernels, fall through and pickouts which have been certified "negative" as to aflatoxin content as unrestricted:

(i) To domestic crushing or to other handlers, or a handler as defined in 7 CFR 998.8, for crushing or fragmenting and exportation (such disposition shall be reported on Form FV-117-5 "Handlers Report of Dispositions of Non-Edible Quality Shelled Peanuts to Crusher or Fragmenter or Dyeing Processor");

(ii) To export to countries other than Canada or Mexico, provided they meet fragmented requirements (such disposition shall be reported on Form FV-117-6 "Handler's Report of Export of Unrestricted Non-Edible Quality Fragmented Peanuts");

(iii) To domestic animal feed use as provided in paragraph (b)(2) of this section or to other handlers, or a handler as defined in 7 CFR 998.8, for such disposition. Fall through that has been sampled and determined negative as to aflatoxin content may be disposed of for use as wildlife feed or rodent bait use in containers labeled as such (such disposition shall be reported on Form FV-117-7 "Handlers Report of Disposition of Non-Edible Quality Peanuts for Wild-Life Feed or Rodent Bait").

(2) Shelled peanuts which fail to meet requirements for disposition to human consumption outlets may be disposed of for use as domestic animal feed: *Provided*, That each lot of peanuts so disposed of is:

(i) Treated with an appropriate coloring or dyeing solution with a minimum of 80 percent of the peanuts showing evidence of the dye or coloring agent;

(ii) Handled and shipped under positive lot identification procedures (except for bulk loads, red tags shall be used and such tags marked, "For Animal Feed—Not for Human Consumption");

(iii) Covered by a valid "negative" aflatoxin certificate; and

(iv) That the handler's bill of lading and invoice covering the shipment of each such lot include the following statement: "The peanuts covered by this bill of lading (or invoice) are for animal feed only and are not to be used for human consumption." Handlers shall report such disposition on Form FV-117-8 "Handler's Disposition Report of Dyed Non-Edible Quality Peanuts to Animal Feed Use (Unrestricted Peanuts Only)".

(3) Positive lot identified shelled peanuts failing to meet the quality requirements for human consumption specified in § 997.30(a) due to testing

positive for aflatoxin pursuant to § 997.30(c) may be disposed of for "restricted" domestic crushing and reported on Form FV-117-5 "Handlers Report of Dispositions of Non-Edible Quality Shelled Peanuts to Crusher or Fragmenter or Dyeing Processor". Such peanuts may also be exported, as "restricted", to countries other than Canada or Mexico. Prior to exportation, the shelled peanuts shall be certified by the Federal or Federal-State Inspection Service as meeting the requirements specified for "fragmented" peanuts. The "in-land" bill of lading and invoice covering the export of "restricted" peanuts must include the following statement: "The peanuts covered by this bill of lading (or invoice) are limited to crushing only and may contain aflatoxin. Exportation of such restricted peanuts shall be reported on Form FV-117-9 "Handler's Report of Export of Restricted Non-Edible Quality Fragmented Peanuts".

(4)(i) Handlers who have acquired Segregation 2 and 3 farmers' stock peanuts pursuant to § 997.20(f) may commingle such peanuts or keep them separate and apart. The Segregation 3 farmers' stock peanuts or commingled Segregation 2 and 3 farmers' stock peanuts may be disposed of to:

(A) Other handlers, or a handler as defined in 7 CFR 998.8, for shelling, fragmenting, or crushing, as "restricted"; or

(B) Crushers for crushing as "restricted". Handlers may shell such peanuts, and further disposition of the shelled peanuts shall be as provided in paragraph (b)(3) of this section.

(ii) Meal produced from the crushing of loose shelled kernels, fall through, and pickouts, which have not been certified negative as to aflatoxin content, and meal produced from the crushing of other "restricted" categories of peanuts shall be prepared for disposition in specifically identified lots not exceeding 200,000 pounds. Handlers or crushers, at their own expense, shall cause each such lot of meal to be sampled by an inspector of the Federal or Federal-State Inspection Service and tested for aflatoxin in a laboratory listed in § 997.30(c)(5)(i) of this part. The numerical test result of the chemical assay shall be shown on a certificate covering each lot of meal produced from "restricted" peanuts, and a copy of the certificate shall accompany each shipment or disposition. However, meal produced from the crushing of loose shelled kernels, fall through, and pickouts, which have been certified negative as to aflatoxin content, and meal produced from the crushing of

other categories of peanuts determined by this section to be eligible for "unrestricted" crushing, shall be exempt from aflatoxin testing requirements.

(iii) Handlers who have acquired Segregation 2 farmers' stock peanuts pursuant to § 997.20(f) and held them separate and apart from Segregation 3 peanuts may commingle the Segregation 2 farmers' stock with Segregation 1 farmers' stock for disposition to domestic crushing or export as inedibles. The Segregation 2 farmers' stock peanuts or commingled Segregation 1 and 2 farmers' stock peanuts may be disposed of to other handlers, or a handler as defined in 7 CFR 998.8, for shelling, fragmenting, or crushing or to crushers. Handlers may shell the Segregation 2 or commingled Segregation 1 and 2 peanuts and dispose of the shelled peanuts:

(A) To another handler, or a handler as defined in 7 CFR 998.8, for fragmenting or crushing;

(B) To export as "unrestricted"; or

(C) To domestic crushing as "unrestricted". The meal produced from such peanuts may be disposed of without restriction. Prior to exportation, the shelled peanuts shall be certified by the Federal or Federal-State Inspection Service as meeting the requirements specified for fragmented peanuts.

(5) Unless otherwise specified, the disposition and reporting requirements applicable to peanuts failing quality requirements for human consumption specified in the preceding paragraph (b) of this section shall also apply to loose shelled kernels, fall through and pickouts.

4. Section 997.52 is amended by revising the first sentence to read as follows:

§ 997.52 Reports of acquisitions and shipments.

Each handler shall report acquisitions of Segregation 1 farmers' stock peanuts on Form FV-117-10 "Handlers Monthly Report of Acquisitions" and file such other reports of acquisitions and shipments of peanuts, as prescribed in this part. * * *

Dated: October 25, 1991.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable
Division.

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**NUCLEAR REGULATORY
COMMISSION**

10 CFR Parts 2, 40, 70, and 74

RIN 3150-AD56

**Material Control and Accounting
Requirements for Uranium Enrichment
Facilities Producing Special Nuclear
Material of Low Strategic Significance**

AGENCY: Nuclear Regulatory
Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (Commission) is amending its regulations to include performance-based material control and accounting requirements that will apply to uranium enrichment facility licensees who produce significant quantities of special nuclear material (SNM) of low strategic significance. The requirements in this amendment are similar to existing requirements that apply to licensees authorized to possess and use more than one effective kilogram of special nuclear material (SNM) of low strategic significance. The final rule imposes requirements to ensure that enrichment facilities produce only enriched uranium of low strategic significance as authorized and will apply to all applicants who build or operate enrichment facilities.

EFFECTIVE DATE: December 2, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon E. Gundersen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3803 or Mr. Donald R. Joy, Office of Nuclear Material Safety and Safeguards, U.S. Regulatory Commission, Washington, DC 20555, telephone (301) 492-0352.

SUPPLEMENTARY INFORMATION:

Background

The Commission published the proposed rule on this subject in the *Federal Register* on December 17, 1990 (55 FR 51726). The rule proposed to amend 10 CFR part 74 to provide material control and accounting (MC&A) requirements for uranium enrichment facilities producing enriched uranium for use in light water reactor nuclear power facilities. Conforming amendments were also proposed for 10 CFR parts 2, 40, and 70. A draft regulatory guide, DG-5002, "Material Control and Accounting for Uranium Enrichment Facilities Authorized to Produce Special Nuclear Material of Low Strategic Significance" to accompany the proposed rule, was

made available during the comment period.

In the United States, current uranium enrichment operations are carried out exclusively by the Department of Energy (DOE). These operations have been and continue to be exempt by law from regulation by the NRC. Although licensed commercial enrichment is permitted by law, there has not been commercial interest in enrichment until recently. Hence the NRC currently has no regulations explicitly designed to regulate licensed enrichment.

The need for enrichment regulations is now emerging. On January 31, 1991, Louisiana Energy Services applied for a license to construct and operate an enrichment plant using gas centrifuge technology. In a separate action, DOE is proposing the construction and operation of an enrichment plant utilizing the atomic vapor laser isotope separation (AVLIS) process. Congress may require such a facility to be licensed by the NRC, although no requirements for NRC licensing exist at present. Both plants would be designed to produce low enriched uranium from natural uranium, where the term "natural uranium" refers to uranium that has not been artificially enriched in the U²³⁵ isotope.

Enactment of the Solar, Wind, Waste and Geothermal Power Production Incentives Act of 1990 (Pub. L. 101-575) provides that the licensing of uranium enrichment plants will be through a single license issued pursuant to 10 CFR parts 40 and 70, rather than a two-part license under 10 CFR part 50. The Commission is proceeding, as a separate matter, to conform its regulations to the requirements of this Act and thereby define the regulatory framework for licensing enrichment plants.

At the present time the NRC cannot rule out the possibility that enrichment equipment could be deliberately misused to produce unauthorized enriched uranium. The unauthorized enriched uranium could be either an undeclared excess of enriched uranium at the licensed enrichment level or uranium enriched to a level higher than that authorized. Production of unauthorized enriched uranium would be inimical to the common defense and security of the United States and is prohibited by the Atomic Energy Act of 1954, as amended.

Safeguards are needed for such facilities to protect against such unauthorized activities. This final rule would address the need for such safeguards primarily through creation of a new § 74.33 in NRC's existing material control and accounting regulations. This

section contains general performance objectives and system requirements and capabilities which licensees would be required to address through development and implementation of a fundamental nuclear material control (FNMC) plan.

Public Comments and NRC Responses

The Commission received six comment letters from different sources in response to the proposed rulemaking. Two comments from potential licensees, one from an engineering and construction firm, one from a Federal agency, and two from individuals. The Environmental Protection Agency stated that the proposed rule had been reviewed, but did not suggest modifications or specifically indicate support for or opposition to the proposed rule. Four commenters did not specifically indicate support or opposition to the proposed rule, but did suggest modifications. One commenter supported the rule with modifications.

General categories of comments from public comment letters and the Commission's responses are presented below. One commenter also addressed items in the draft regulatory guide. Those comments will not be discussed here, but they were considered during the preparation of the final regulatory guide.

Comments on Scope of Rule

One commenter stated that the proposed regulations was vague and subject to multiple interpretation. One commenter stated that § 74.31(a) should be modified to exclude any facilities that are subject to § 74.33 from the MC&A requirements of § 74.31. One commenter urged that only the agreed upon antiproliferation measures be imposed on U.S. licensees. The Commission concludes that the commenter meant those measures agreed upon by the United States and the International Atomic Energy Agency (IAEA). Apparently the commenter believes that NRC efforts might be thwarted by lax enforcement of antiproliferation measures in other countries. One commenter wanted the rule modified to acknowledge that physical security measures may be used to achieve the MC&A objectives of § 74.33. One commenter wanted to allow the production of enriched uranium up to the quantities specified for each enrichment level in the definition of low strategic significance because in the commenter's view, the safeguards significance is the same for all enrichment levels of SNM of low strategic significance. One commenter who also wanted to change the

proposed rule to permit production of low strategic significance material, argued that it is the illegal use and distribution of such material, not its production, that should be prevented.

One commenter argued that security measures at uranium enrichment facilities should be more stringent than that required at other types of facilities using uranium of this enrichment level because of the need to deter and detect high enriched uranium (HEU) production.

Response. The Commission disagrees with the first comment that the rule is unacceptably vague. Performance-based rules like the proposed rule are intentionally written to allow flexibility for how the applicants and licensees develop a program specific to their facility which meets the general performance objectives and stated system features and capabilities. Thus, the proposed rule by necessity was written in general rather than prescriptive terms. Prescriptive detail on acceptable ways to meet the objectives is provided in the accompanying regulatory guide.

The Commission agrees with the second comment, and § 74.31(a) has been revised to exclude specifically production facilities, licensed pursuant to part 70 of this chapter, from the requirements of § 74.31.

With regard to imposing requirements other than those agreed upon by the U.S. and the IAEA, the IAEA does not issue licenses, and this rule must reflect what the NRC considers acceptable and appropriate for licensing commercial uranium enrichment in the United States. However, the proposed rule was written with full consideration of IAEA agreements and licensees selected by the IAEA for their inspection may be subject to additional IAEA requirements under 10 CFR part 75.

While the Commission agrees with the thrust of the comment regarding physical security measures, it disagrees that specific acknowledgement of the use of such measures in achieving MC&A objectives is necessary. Physical security measures are a natural complement to MC&A programs. Under this rule, an applicant will be free to develop its MC&A program in any manner as long as it meets the general performance objectives and has the system features and capabilities specified. Physical security measures can be included if desired. Using locks or guards to prevent access to enrichment equipment is an example of a physical security measure which could be used to achieve, in part, the performance objectives relating to

unauthorized production of enriched uranium.

With regard to the level of enrichment allowed, the commenter who argued that the safeguards significance of all levels of enrichment of uranium of low strategic significance is the same appears to have a good point. However, at an enrichment facility, the presence of even a small quantity of HEU has a greater safeguards significance because of the nature of the facility, and therefore requires more restrictive regulation. The Commission's view is that the present MC&A requirements are appropriate for uranium enrichment facilities producing less than 10 percent U²³⁵ enriched uranium. More stringent requirements would be needed for enrichment facilities producing uranium of higher enrichments. Moreover, it is consistent with both the Atomic Energy Act and the Commission's longstanding defense-in-depth policy that both unauthorized use and production of HEU should be prevented.

One of the main purposes of this rule is to prevent and detect with high assurance, the production of HEU. Therefore, the suggestion that physical security measures be imposed that are greater than those required by § 73.67(f) for other types of facilities using uranium of low strategic significance was not taken because such measures are not needed.

Specific Comments

(1) *Comment on 10 CFR 40.1.* Two commenters suggested changing the reference from § 70.22 to § 74.33 in 10 CFR 40.1 to clarify where individuals can find additional criteria for the issuances of a license.

Response. The Commission considered this recommendation. However, because § 70.22 contains all the requirements for a license application e.g., environmental impact statement, emergency plan, physical security plan, etc., whereas § 74.33 contains only the MC&A part of the regulatory program required for an uranium enrichment facility, the reference is not being changed.

(2) *Contents of Applications.* Two commenters wanted changes to § 70.22(b) to exclude persons possessing enrichment equipment from being required to have a license, arguing consistency with the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (Pub. L. 101-575).

Response. The Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 specifically requires the licensing of any equipment,

or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium by defining such as an enrichment facility. Hence to adopt the comment would be in conflict with the Act.

(3) *Condition of License.* One commenter argued that the proposed change to § 70.32(c)(1) would require any licensee having a specified quantity of source material to have a part 70 or 74 MC&A program. The commenter suggested that part 40 could be more appropriately amended to directly reference MC&A requirements for natural and depleted uranium at enrichment facilities to avoid this situation.

Response. It was not the Commission's intent that source material at other than an enrichment facility be subject to the MC&A requirements of part 70 or 74. Accordingly, § 70.32(c)(1) has been revised by adding the words "at an uranium enrichment facility" after the words "source material." However, for reasons stated previously (see response to comment 1) the Commission believes that part 70 and not part 40 is the proper place to provide the MC&A reference.

(4) *Definitions.* For clarity, one commenter wanted to modify the definition of *active inventory* and add new definitions for the terms *dynamic inventory* and *items*.

Response. The recommendations to modify the definition of *active inventory* and add a definition for *dynamic inventory* were not adopted. In the Commission's opinion, the suggested modification of the definition of *active inventory* would add an inappropriate level of detail to the existing definition. A definition of *dynamic inventory* is not necessary because the meaning of the term is clear in the context of its use. The commenter's suggested definition of *item* has been added to § 74.4.

(5) *Reports of Loss or Theft or Attempted Theft or Unauthorized Production of Special Nuclear Material.* In order to reduce the possibility that reporting requirements would be overlooked, one commenter wanted to eliminate § 74.11 and have all the reporting requirements consolidated in § 70.52 and proposed § 70.50. Another commenter wanted to include recovery from a centrifuge crash(s) in addition to the 24 hour start-up process exclusion so that a temporary existence of enrichments greater than that authorized during such recovery would not be a violation of the regulations.

Response. The first comment was not adopted. Reporting requirements applicable to a variety of SNM licensees

are dispersed throughout part 74. The Commission does not see any benefit to removing reporting requirements from part 74 for one particular licensee. The second comment was not adopted for two reasons. First, because malfunctioning (crashed) centrifuge machines are normally shut down and isolated from production gas streams and left in place. Because of the configuration of the enrichment facilities, it is generally not practical to repair single centrifuge machines. Second, because the staff considers a period of adjustment following a centrifuge crash to be equivalent to a start-up process and either the adjustment or the start-up could be accomplished in 24 hours. For enrichment facilities employing laser isotope separation or gaseous diffusion technology an initial surge of HEU at start-up does not occur.

(6) *Need for New Section.* One commenter questioned the need for a new section instead of adding new requirements to existing § 74.31. Concern was also expressed about why the language in the proposed § 74.33 was not identical to the existing language of § 74.31.

Response. The new § 74.33 is a stand alone regulation applicable only to uranium enrichment facilities. Section 74.31 applies to fuel fabrication licensees. Each section has individual supporting guidance documents which described in detail the intent of the requirements contained in each section. Moreover, § 74.33 contains requirements unique to an enrichment facility, and therefore cannot be identical to § 74.31.

(7) *Performance Objectives.* One commenter was concerned that mass spectrometers could be used to produce gram quantities of HEU over a period of time and that they should be included in the regulation by allowing the production of enriched uranium to the quantities by enrichment level specified by low strategic significance. The commenter questioned how "accurate," "current," "reliable" knowledge must be and whether the terms apply equally to source material, SNM, product, tails, scrap, waste, in storage as items or in processing equipment. Also, the commenter wanted § 74.33(a)(1) to match the wording of § 74.31(a)(1) because the commenter believes they are objectives. The commenter wanted to delete the word "any" from § 74.33(c)(2) because the commenter wanted to allow production of enriched uranium greater than 10 percent provided the quantity limits for SNM of low strategic significance were not exceeded. Since during start-up of a centrifuge cascade a surge of uranium

enriched to more than 10% is a normal occurrence, one commenter wanted to add to the end of 10 CFR 74.33 (a)(5) and (c)(5)(i) the following: "for centrifuge enrichment facilities this requirement does not apply to each cascade during its start-up process, not to exceed the first 24 hours.", so that no resolution would be required. One commenter was concerned about not retaining a performance objective similar to § 74.31(a)(3) which would "aid in the investigation and recovery of missing material" for consistency.

Response. The comment to allow production of HEU has not been adopted because mass spectrometers are not production equipment but analytical equipment. Also, even if one considered mass spectrometers to be production equipment, it would be extremely difficult to produce one effective kilogram of SNM over any reasonable time period. (See response to comments on Scope of Rule.)

Concerning the second comment, performance objectives are broad statements of the principal parts of the required program. Guidance on how "accurate," "current," and "reliable" knowledge should be and to what extent the terms should apply to each material type is provided in the regulatory guide.

The objective in § 74.33(a)(1) has been rewritten to more closely parallel the wording of § 74.31(a)(1).

The word, "any" was deleted from § 74.33(a)(2) because it is not necessary but, the general intent remains the same, that is production is allowed only up to 10 percent U²³⁵.

The fourth comment was accepted and the commenter's suggested words, "for centrifuge enrichment facilities this requirement does not apply to each cascade during its start-up process, not to exceed the first 24 hours," were added to § 74.33(a)(5). Further, § 74.33(c)(5) was modified to include the intent of the comment.

New performance objectives, to provide information to aid in the investigation of missing uranium and the unauthorized enrichment of uranium, have been added in § 74.33(a) (7), (8), and (9) in response to the last comment related to keeping the requirements in § 74.31(a)(3) for these facilities.

(8) *Implementation.* One commenter wanted to change the phrase "2 years prior to facility start up" in § 74.33(b)(1) because the start date of the 2 year period can not be known until the actual end date is known. The commenter suggested specifying a maximum time interval following the initial license application. The same commenter stated that the wording of § 74.33(b) was faulty

in that licensees could be in noncompliance if NRC did not approve the fundamental nuclear material control (FNMC) plan in a timely manner, and unclear as to whether the FNMC plan must be implemented prior to receipt of (1) 5,000 grams U²³⁵ in a single receipt, (2) cumulative receipts of 5,000 grams U²³⁵ within a material type, or (3) 5,000 grams U²³⁵ from all receipts. The commenter also provided a suggested rewrite of § 74.33(b). Another commenter stated that the two year period for submittal of an FNMC plan is too long and that a preliminary plan should be submitted within one year with the final plan two months before start-up because the commenter plans to build and partially operate an enrichment facility in two years and facility configuration would not be finalized at the start of construction. Another commenter wanted to add to the end of § 74.33(b)(2) the phrase, "whichever comes later" so that the MC&A program does not need to be implemented until after the receipt of more than 5,000 grams U²³⁵ because of long construction times.

Response. The staff reconsidered the timing of the submission of the FNMC Plan. The final rule now requires the FNMC Plan to be submitted as part of the application which is consistent with § 70.22(b). As for the last suggestion, § 74.33(b)(2) was modified so as to clarify the Commission's intent to have the FNMC plan implemented prior to either the receipt of 5,000 grams U²³⁵ or the issuance of a license to test or operate the enrichment facility, whichever occurs first.

(9) *System Features and Capabilities.* One commenter expressed concern because § 74.33(c)(1) did not have the same wording as § 74.31(c)(1). In the commenter's view, deletion of word "critical" suggests that the NRC is downgrading the importance of key procedures. Also, the commenter indicated that the use of "periodic review" instead of "adequate review" weakened the requirement. One commenter questioned the use of "accurately" in describing measured values in § 74.33(c)(2), because in performance-based regulations the licensee should be allowed on the bases of cost effectiveness to choose the individual measurement accuracy to comply with § 74.33(c)(3). In § 74.33(c)(3)(ii), one commenter wanted to add the phrase "U²³⁵ of the" before "active inventory" for clarity. One commenter wanted to reword § 74.33(c)(3)(iii) for clarity because the commenter was not sure of the meaning of the phrase "so the licensee can

satisfy this requirement." One commenter stated that the lead-in clause of § 74.33(c)(4) is confusing in that the words "current and reliable knowledge" are also used in § 74.33(c)(6). One commenter appeared to be trying to help clarify inventory requirements for different types of materials by using the DOE material type codes. The commenter also suggested a parenthetical addition (i.e., "uranium in cascades"). One commenter suggested rewording § 74.33(c)(5)(i) to allow production of enriched uranium to quantities by enrichment level as specified by low strategic significance. One commenter wanted to rewrite § 74.33(c)(5)(ii) using the argument that it is the illegal use and distribution of such material, not its production that should be prevented. Three commenters wanted the wording of § 74.33(c)(6) to be identical to § 74.31(c)(6), which contained an exemption for solutions having less than 5 grams U²³⁵ per liter. One commenter wanted to include depleted uranium in the list of exempted items because of cost. One commenter wanted to rewrite § 74.33(c)(7) and change the term "statistically significant" to "standard error," claiming that standard error has a defined level of significance. One commenter wanted the U²³⁵ concentration of tails to be determined using by-difference accounting instead of measurements to save the cost of measuring the tails.

Response. The word "critical" was omitted from § 74.33(c)(1) to ensure that all MC&A procedures are written and periodically reviewed.

The periodic review of procedures is important to determine if the as written procedures are still applicable and reflect current practices. Any review has to be adequate to meet the regulatory intent of regulations. Therefore, this second comment was not adopted.

The Commission agrees with the comment to delete the word "accurately" from § 74.33(c)(2) because the quality of measurement performance is controlled by § 74.33(c)(3).

The comment to add the phrase "U²³⁵ of the" before "active inventory" in § 74.33(c)(3)(ii) was adopted as a clarifying change consistent with the intent of the proposed language of the rule.

Section 74.33(c)(3)(iii) has been rewritten using the commenter's language to clarify the intent of "those requirements."

As suggested, the lead in clause of § 74.33(c)(4) has been rewritten without using the words "current and reliable knowledge."

The suggestion to use DOE material type codes was not adopted because it is sufficient to define the term for the material type in 10 CFR chapter I and a code number would not add any new information. In addition, the types of materials to be inventoried, i.e., natural, depleted, and enriched uranium, are listed in § 74.33(c)(4)(i). The parenthetical addition (e.g., in the enrichment equipment) was added to § 74.33(c)(4)(i) to clarify where in process uranium is located. The commenter's use of "cascade" is too restrictive for a generic rule but, the more general term "enrichment equipment" captures the intent. Therefore this comment was partially adopted.

Although § 74.33(c)(5)(i) was rewritten using the commenter's language, with an added time restraint of 370 calendar days, the revised language refers to SNM of moderate strategic significance, and detection of a specific quantity, i.e., up to 10,000 grams, of uranium enriched to between 10 and 20 percent is required because smaller quantities of this material may be difficult to detect using currently available detection equipment in a gas centrifuge enrichment facility. Hence this revised language does not allow production of enriched uranium greater than 10 percent as was suggested by the commenter but the detection program has to be able to detect quantities less than those of moderate strategic significance within 370 days. In addition, suggested measurement systems to be used by the detection program are discussed in the regulatory guide.

The comment to rewrite proposed § 74.33(c)(5)(ii) has not been adopted because both the Atomic Energy Act and the Commission's longstanding defense-in-depth policy that both unauthorized use and production of HEU should be prevented.

The suggestion to reword § 74.33(c)(6) to reflect § 74.31(c)(6) was not adopted because enrichment operations generally do not produce a significant number of long-lived items such as solutions having less than 5 grams U²³⁵ per liter. Nonetheless, § 74.33(c)(6) was restructured to clarify the amounts exempted.

The suggested rewording of § 74.33(c)(7) has not been adopted. Neither "standard error" nor "statistically significant" are defined in 10 CFR part 74 but, the level of significance for "statistical significance" is provided in the accompanying guidance.

The comment to allow by-difference accounting of U²³⁵ in tails was not

adopted because a material balance cannot be established if the material in tails is not measured.

(10) *Hardware*. One individual commenter wanted to add to § 74.33 a requirement that plant hardware be designed to permit and facilitate independent "go/no-go" verification of the absence of unauthorized enrichment. This commenter also suggested consulting with IAEA on the plant hardware design prior to authorization of construction.

Response. The Commission does not believe that the suggested hardware design is either necessary or practical. Based upon its experience with safeguarding SNM in licensed material activities, the Commission is convinced that a proper MC&A program can provide adequate protection against unauthorized enrichment, and assurance that should it occur, it will be detected in a timely manner. Therefore, the Commission does not believe it is necessary to impose such a requirement. Furthermore, as it is the NRC's responsibility to license the enrichment facility, its requirements for protection of health and safety of the public and common defense and security take precedence over IAEA inspection schemes and protocols. Nonetheless, these MC&A requirements were developed cognizant of IAEA programs, because the U.S. is a member country of IAEA and complies with the IAEA requirements. Consequently, the suggestion of the commenter is refused.

Discussion of Final Rule Text

This section discusses the final rule text and modifications made in response to the proposed rule. Throughout the following discussion, referring to the text of the final regulations may aid in understanding the specific points of this discussion.

Part 70—Domestic Licensing of Special Nuclear Material

The phrase "operate an uranium enrichment facility" has been added to § 70.22(b) for clarification.

The phrase "at an uranium enrichment facility" has been added following the words "source material in § 70.32(c)(1)" to clarify that only uranium source material at an enrichment facility is subject to part 70 requirements.

Part 74—Material Control and Accounting of Special Nuclear Material

Section 74.4 Definitions

Based on public comment a definition of the term *item* has been added.

Section 74.11 Reports of Loss or Theft or Attempted Theft or Unauthorized Production of Special Nuclear Material

This section has been revised to be consistent with the proposed requirements of § 74.33(c)(5).

Section 74.31 Nuclear Material Control and Accounting for Special Nuclear Material of Low Strategic Significance

Based on public comment, § 74.31(a) is revised to include production facilities licensed pursuant to part 70 in the list of facilities to which this section does not apply.

Section 74.33 Nuclear Material Control and Accounting for Uranium Enrichment Facilities Authorized To Produce Special Nuclear Material of Low Strategic Significance

Based on public comment, § 74.33(a)(1) has been rewritten to clarify the general objective to both maintain the appropriate information and to periodically confirm the quantities and locations of the source material and special nuclear material by conducting physical inventories. Specific objectives for physical inventories are subsequently provided in § 74.33(c)(4). Thus, the phrase "and periodically confirm the quantities and locations of" was added to § 74.33(a)(1).

Based on public comment, the word "any" in proposed § 74.33(a)(2) between "detect" and "production" has been deleted. Also, in proposed § 74.33(a)(5) the word "any" between "of" and "production" has been deleted. The removal of the word "any" eliminates the apparent restrictions and does not change the intent of the rule.

Typographical errors were identified by public comment in proposed § 74.33(a)(3), (5), and (6). The word "for" between "production" and "uranium" has been changed to "of" in each of the three identified general performance objectives.

New performance objectives § 74.33(a)(7), (8), and (9) to provide information to aid in the investigation of missing uranium and unauthorized enrichment have been added based on public comment.

In proposed § 74.33(b)(1), the introductory phrase "no later than 2 years prior to facility start up" has been deleted. This was necessary to make this section consistent with existing § 70.22(b) which requires the submittal of the applicants program for control and accounting of the SNM, that will be in its possession under the license, with the license application. Section 74.33(b)(1) also was expanded to include the recordkeeping requirements of

proposed § 74.33(d) in the submitted plan.

For clarity, the phrase "based on all measurement error contributions," has been added after inventory difference in § 74.33(c)(3)(ii) to ensure that licensees understand that the standard error of inventory difference is calculated using only those variance contributions due to measurements.

Based on public comment, the word "accurately" has been deleted before the words "measured values" in § 74.33(c)(2). The word "accurately" is not needed because § 74.33(c)(3) has bounds for the control of all MC&A measurement systems.

For clarity, the phrase "based on all measurement error contributions," has been added after inventory difference in § 74.33(c)(3)(ii).

Based on public comment, the clarifying phrase "of (c)(3)(i) and (ii) of this section" was added to § 74.33(c)(3)(iii).

Based on public comment, the introductory statement of proposed § 74.33(c)(4) has been revised. The recordkeeping requirements of proposed § 74.33(d) are required to be in the FNMC plan, so the requirement for current and reliable data does not need to be established twice.

In proposed § 74.33(c)(4)(i), the parenthetical phrase (e.g., in the enrichment equipment) has been added to clarify the term "in-process" because a public comment appeared to incorrectly interpret "in-process" (comment requesting the NRC to add a definition for "dynamic inventory").

The proposed § 74.33(c)(5) has been revised by deleting "any" and modifying (c)(5)(i) and (ii) and renumbering proposed (c)(5)(ii) as (c)(5)(iii) to require that the licensee's detection system be capable of detecting: the production of uranium enriched to 10 percent or more in the isotope U²³⁵, to the extent that SNM of moderate strategic significance could be produced within any 370 calendar day period; the production of HEU; and the unauthorized production of uranium of low strategic significance.

The proposed § 74.33(c)(6) was rearranged and based on public comment the phrase "from the requirements of (c)(6)(i) and (ii)" was added.

Having considered all comments received, the Commission has determined that the final rule should be promulgated.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy

Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that these amendments are not a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. The rule is mainly administrative in nature and would not change any requirements that could have significant environmental impact. The final rule will provide assurance through material control and accounting measures and other appropriate requirements, that only enriched uranium of low strategic significance as authorized by the license is produced at a licensed enrichment facility. There may be some increase in occupational exposure stemming from safeguards-related activities such as data recording, inspecting, or sample taking, but likely not enough to be measurable or identifiable. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget approval number 3150-0123 at the proposed rule stage. Additional requirements contained in the final rule will not become effective until OMB approves them. Notice of OMB approval will be published in the *Federal Register*.

Regulatory Analysis

The Commission prepared a draft regulatory analysis for the proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission.

The Commission requested public comments on the draft regulatory analysis, but no comments were received. The draft regulatory analysis has been revised to reflect the addition of three new performance objectives contained in § 74.33(a) (7), (8), and (9), and the fact that a license application has been received by the Commission for the construction and operation of an uranium enrichment facility. The final regulatory analysis is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. The final rule will affect only persons who build or operate enrichment facilities producing enriched uranium of low strategic significance. The owners of enrichment facilities do not fall within the scope of the definition of "small entities" set forth in section 601(3) of the Regulatory Flexibility Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The Commission has determined that a backfit analysis is not required for this final amendment, because the backfit rule, 10 CFR 50.109, applies only to new requirements for power reactors. See 50 FR 38097 (September 20, 1985) (final backfit rule). However, as noted above, the Commission has prepared a regulatory analysis examining the benefits and impacts of these amendments.

List of Subjects

10 CFR Part 2

Administrative practice and procedures, Antitrust, Byproduct material, Classified information, Penalty, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 40

Government contracts, Hazardous materials—transportation, Nuclear materials, Criminal penalty, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Criminal penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 74

Accounting, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Criminal penalty, Radiation protection, Reporting and recordkeeping requirements,

Scientific equipment, Special nuclear material.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the Commission is adopting the following amendments to 10 CFR parts 2, 40, 70, and 74.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); Sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). (Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b *et seq.*).

2. In appendix C, supplement III is amended by adding new paragraphs A.3 and B.4 to read as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

* * *

Supplement III—Severity Categories

Safeguards

A. * * *

3. Actual unauthorized production of a formula quantity of special nuclear material.

B. * * *

4. Actual unauthorized production of special nuclear material.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

3. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)–(3), 40.35(a)–(d) and (f), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b, 161i, and 161o, 68 Stat. 948, 949, and 950, as amended, (42 U.S.C. 2201(b), 2201(i), and 2201(o)), and §§ 40.5, 40.9, 40.25(c), (d)(3), and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 40.1, paragraph (a) is revised to read as follows:

§ 40.1 Purpose.

(a) The regulations in this part establish procedures and criteria for the issuance of licenses to receive title to, receive, possess, use, transfer, or deliver source and byproduct materials, as defined in this part, and establish and provide for the terms and conditions upon which the Commission will issue such licenses. (Additional requirements applicable to natural and depleted uranium at enrichment facilities are set forth in § 70.22 of this chapter.) These regulations also provide for the disposal of byproduct material and for the long-term care and custody of byproduct material and residual radioactive material. The regulations in this part also establish certain requirements for the physical protection of import, export, and transient shipments of natural uranium. (Additional requirements applicable to the import and export of

natural uranium are set forth in part 110 of this chapter.)

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

5. The authority citation for part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, Sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under Secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95-601, Sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under Sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2136).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.7(g), 70.19(c), 70.21(c), 70.22 (a), (b), (d)–(k), 70.24 (a) and (b), 70.32 (a) (3), (5) and (6), (d) and (i), 70.36, 70.39 (b) and (c), 70.41 (a), 70.42 (a) and (c), 70.56, 70.57 (b), (c), and (d), 70.58 (a)–(g)(3), and (h)–(j) are issued under sec. 161b, 161i, and 161o, 68 Stat. 948, 949, and 950, as amended (42 U.S.C. 2201(b), 2201(i), and 2201(o)); §§ 70.7, 70.20a (a) and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32 (a)(6), (c), (d), (e), and (g), 70.36, 70.51 (c)–(g), 70.56, 70.57 (b) and (d), 70.58 (a)–(g)(3) and (h)–(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.9, 70.20b (d) and (e), 70.38, 70.51 (b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58 (g)(4), (k) and (l), 70.59, and 70.60 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. In § 70.22, paragraph (b) is revised and new paragraph (m) is added to read as follows:

§ 70.22 Contents of applications.

(b) Each application for a license to possess special nuclear material, or to possess equipment capable of enriching uranium, or to operate an uranium enrichment facility, or to possess and use at any one time and location special nuclear material in a quantity exceeding one effective kilogram, except for applications for use as sealed sources and for those uses involved in the operation of a nuclear reactor licensed pursuant to part 50 of this chapter and those involved in a waste disposal operation, must contain a full description of the applicant's program for control and accounting of such special nuclear material or enrichment

equipment that will be in the applicant's possession under license to show how compliance with the requirements of §§ 70.58, 74.31, 74.33, or 74.51 of this chapter, as applicable, will be accomplished.

(m) Each application for a license to possess equipment capable of enriching uranium or operate an enrichment facility, and produce, possess, or use more than one effective kilogram of special nuclear material at any site or contiguous sites subject to control by the applicant, must contain a full description of the applicant's security program to protect against theft, and to protect against unauthorized viewing of classified enrichment equipment, and unauthorized disclosure of classified matter in accordance with the requirements of 10 CFR parts 25 and 95.

7. In § 70.32, paragraph (c)(1) is revised to read as follows:

§ 70.32 Conditions of license.

(c)(1) Each license authorizing the possession and use at any one time and location of uranium source material at an uranium enrichment facility or special nuclear material in a quantity exceeding one effective kilogram, except for use as sealed sources and those uses involved in the operation of a nuclear reactor licensed pursuant to part 50 of this chapter and those involved in a waste disposal operation, shall contain and be subject to a condition requiring the licensee to maintain and follow:

(i) The program for control and accounting of uranium source material at an uranium enrichment facility or special nuclear material and fundamental nuclear material controls implemented pursuant to § 70.22(b), 70.58(1), 74.31(b), 74.33(b), or 74.51(c)(1) of this chapter, as appropriate;

(ii) The measurement control program for uranium source material at an uranium enrichment facility or special nuclear material control and accounting implemented pursuant to § 70.57(c), 74.31(b), 74.33(b), or 74.59(e) of this chapter, as appropriate; and

(iii) Such other material control procedures as the Commission determines to be essential for the safeguarding of uranium source material at an uranium enrichment facility or of special nuclear material and providing that the licensee shall make no change that would decrease the effectiveness of the material control and accounting program implemented pursuant to § 70.22(b), 70.58(1), 70.51(g), 74.31(b), 74.33(b), or 74.51(c)(1) of this chapter and the measurement control program

implemented pursuant to § 70.57(c), 74.31(b), 74.33(b), or 74.59(e) of this chapter without the prior approval of the Commission. A licensee desiring to make such changes shall submit an application for amendment to its license pursuant to § 70.34.

8. In § 70.51, the introductory text of paragraph (b) is revised to read as follows:

§ 70.51 Material balance, inventory, and records requirements.

(b) Licensees subject to the recordkeeping requirements of §§ 74.31, 74.33 and 74.59 of this chapter are exempt from the requirements of § 70.51(b) (1) through (5). Otherwise:

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

9. The authority citation for part 74 is revised to read as follows:

Authority: Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended, Sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 74.17, 74.31, 74.33, 74.51, 74.53, 74.55, 74.57, 74.59, 74.81, and 74.82 are issued under secs. 161b and 161i, 68 Stat. 948, 949, as amended (42 U.S.C. 2201(b) and 2201(i)); and §§ 74.11, 74.13, 74.15, and 74.17, are issued under Sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

10. In § 74.1, paragraph (a) is revised to read as follows:

§ 74.1 Purpose.

(a) This part has been established to contain the requirements for the control and accounting of special nuclear material at fixed sites and for documenting the transfer of special nuclear materials. General reporting requirements as well as specific requirements for certain licensees possessing special nuclear material of low strategic significance and formula quantities of strategic special nuclear material are included. Requirements for the control and accounting of source material at enrichment facilities are also included. The specific control and accounting requirements for other licensees are contained in §§ 70.51, 70.57, and 70.58 of this chapter.

11. In § 74.2, paragraphs (b) and (c) are revised to read as follows:

§ 74.2 Scope.

(b) In addition, specific control and accounting requirements are included for certain licensees who:

- (1) possess and use formula quantities of strategic special nuclear material,
- (2) possess and use special nuclear material of low strategic significance, or
- (3) possess uranium source material and equipment capable of producing enriched uranium.

(c) Specific control and accounting requirements for special nuclear material of moderate strategic significance and for miscellaneous categories of licensees who possess special nuclear material are contained in §§ 70.51, 70.57, and 70.58 of this chapter.

12. In § 74.4, the terms "batch" and "item" are added to read as follows:

§ 74.4 Definitions.

Batch means a portion of source material or special 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 measurements. The source material or special nuclear material may be in bulk form or contained in a number of separate items.

Item means any discrete quantity or container of special nuclear material or source material, not undergoing processing, having a unique identity and also having an assigned element and isotope quantity.

13. In § 74.8, paragraph (b) is revised to read as follows:

§ 74.8 Information collection requirements; OMB approval.

(b) The approved information collection requirements contained in this part appear in §§ 74.11, 74.13, 74.31, 74.33, 74.51, 74.57, and 74.59.

14. In § 74.11, the section heading and paragraph (a) are revised to read as follows:

§ 74.11 Reports of loss or theft or attempted theft or unauthorized production of special nuclear material.

(a) Each licensee who possesses one gram or more of contained uranium-235, uranium-233, or plutonium shall notify the NRC Operations Center within 1 hour of discovery of any loss or theft or other unlawful diversion of special nuclear material which the licensee is licensed to possess, or any incident in which an attempt has been made to commit a theft or unlawful diversion of

special nuclear material. The requirement to report within 1 hour of discovery does not pertain to measured quantities of special nuclear material disposed of as discards or inventory difference quantities. Each licensee who operates a uranium enrichment facility shall notify the NRC Operations Center within 1 hour of discovery of any unauthorized production of enriched uranium. For centrifuge enrichment facilities the requirement to report enrichment levels greater than that authorized by license within 1 hour does not apply to each cascade during its start-up process, not to exceed the first 24 hours.

15. In § 74.17, paragraph (a) is revised to read as follows:

§ 74.17 Special nuclear material physical inventory summary report.

(a) Each licensee subject to the requirements of § 74.31 or § 74.33 shall submit a completed Special Nuclear Material Physical Inventory Summary Report on NRC Form 327 not later than 60 calendar days from the start of the physical inventory required by § 74.31(c)(5) or § 74.33(c)(4) of this chapter. The licensee shall report the inventory results by plant and total facility to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

16. In § 74.31, paragraph (a) is revised to read as follows:

§ 74.31 Nuclear material control and accounting for special nuclear material of low strategic significance.

(a) **General performance objectives.** Each licensee who is authorized to possess and use more than one effective kilogram of special nuclear material of low strategic significance, excluding sealed sources, at any site or contiguous sites subject to control by the licensee, other than a production or utilization facility licensed pursuant to part 50 or 70 of this chapter, or operations involved in waste disposal, shall implement and maintain a Commission approved material control and accounting system that will achieve the following objectives:

17. A new § 74.33 is added to subpart C to read as follows:

§ 74.33 Nuclear material control and accounting for uranium enrichment facilities authorized to produce special nuclear material of low strategic significance.

(a) *General performance objectives.* Each licensee who is authorized by this chapter to possess equipment capable of enriching uranium or operate an enrichment facility, and produce, possess, or use more than one effective kilogram of special nuclear material of low strategic significance at any site or contiguous sites, subject to control by the licensee, shall establish, implement, and maintain a NRC-approved material control and accounting system that will achieve the following objectives:

- (1) Maintain accurate, current, and reliable information of and periodically confirm the quantities and locations of source material and special nuclear material in the licensee's possession;
- (2) Protect against and detect production of uranium enriched to 10 percent or more in the isotope U^{235} ;
- (3) Protect against and detect unauthorized production of uranium of low strategic significance;
- (4) Resolve indications of missing uranium;
- (5) Resolve indications of production of uranium enriched to 10 percent or more in the isotope U^{235} (for centrifuge enrichment facilities this requirement does not apply to each cascade during its start-up process, not to exceed the first 24 hours);
- (6) Resolve indications of unauthorized production of uranium of low strategic significance;
- (7) Provide information to aid in the investigation of missing uranium;
- (8) Provide information to aid in the investigation of the production of uranium enriched to 10 percent or more in the isotope U^{235} ; and
- (9) Provide information to aid in the investigation of unauthorized production of uranium of low strategic significance.

(b) *Implementation dates.* Each applicant for a license who would, upon issuance of a license pursuant to any part of this chapter, be subject to the requirements of paragraph (a) of this section shall:

(1) Submit a fundamental nuclear material control plan describing how the performance objectives of § 74.33(a), the system features and capabilities of § 74.33(c), and the recordkeeping requirements of § 74.33(d) will be met; and

(2) Implement the NRC approved plan submitted pursuant to paragraph (b)(1) of this section prior to:

- (i) The cumulative receipt of 5,000 grams of U^{235} contained in any

combination of natural, depleted, or enriched uranium or

(ii) NRC's issuance of a license to test or operate the enrichment facility; whichever occurs first.

(c) *System features and capabilities.*

To meet the general performance objectives of paragraph (a) of this section, the Material Control and Accounting (MC&A) system must include the features and capabilities described in paragraphs (c) (1) through (8) of this section. The licensee shall establish, document, and maintain:

(1) A management structure that ensures:

- (i) Clear overall responsibility for MC&A functions;
- (ii) Independence of MC&A management from production responsibilities;
- (iii) Separation of key MC&A responsibilities from each other; and
- (iv) Use of approved written MC&A procedures and periodic review of those procedures;

(2) A measurement program that ensures that all quantities of source material and special nuclear material in the accounting records are based on measured values;

(3) A measurement control program that ensures that:

(i) Measurement bias is estimated and minimized through the measurement control program, and any significant biases are eliminated from inventory difference values of record;

(ii) All MC&A measurement systems are controlled so that twice the standard error of the inventory difference, based on all measurement error contributions, is less than the greater of 5,000 grams of U^{235} or 0.25 percent of the U^{235} of the active inventory for each total plant material balance; and

(iii) Any measurements performed under contract are controlled so that the licensee can satisfy the requirements of paragraphs (c)(3) (i) and (ii) of this section;

(4) A physical inventory program that provides for:

- (i) Performing, unless otherwise required to satisfy part 75 of this chapter, a dynamic (nonshutdown) physical inventory of in-process (e.g., in the enrichment equipment) uranium and U^{235} at least every 65 days, and performing a static physical inventory of all other uranium and total U^{235} contained in natural, depleted, and enriched uranium located outside of the enrichment processing equipment at least every 370 calendar days, with static physical inventories being conducted in conjunction with a dynamic physical inventory of in-process uranium and U^{235} so as to

provide a total plant material balance at least every 370 calendar days; and

(ii) Reconciling and adjusting the book inventory to the results of the static physical inventory and resolving, or reporting an inability to resolve, any inventory difference that is rejected by a statistical test which has a 90 percent power of detecting a discrepancy of a quantity of U^{235} , established by NRC on a site-specific basis, within 60 days after the start of each static physical inventory;

(5) A detection program, independent of production, that provides high assurance of detecting:

(i) Production of uranium enriched to 10 percent or more in the U^{235} isotope, to the extent that SNM of moderate strategic significance could be produced within any 370 calendar day period;

(ii) Production of uranium enriched to 20 percent or more in the U^{235} isotope; and

(iii) Unauthorized production of uranium of low strategic significance;

(6) An item control program that ensures that:

(i) Current knowledge is maintained of items with respect to identity, uranium and U^{235} content, and stored location; and

(ii) Items are stored and handled, or subsequently measured, in a manner so that unauthorized removal of 500 grams or more of U^{235} , as individual items or as uranium contained in items, will be detected. Exempted from the requirements of paragraph (c)(6) (i) and (ii) of this section are licensed-identified items each containing less than 500 grams U^{235} up to a cumulative total of 50 kilograms of U^{235} and items that exist for less than 14 calendar days;

(7) A resolution program that ensures that any shipper-receiver differences are resolved that are statistically significant and exceed 500 grams U^{235} on:

(i) An individual batch basis; and

(ii) A total shipment basis for all source material and special nuclear material;

(8) An assessment program that:

(i) Independently assesses the effectiveness of the MC&A system at least every 24 months;

(ii) Documents the results of the above assessment;

(iii) Documents management's findings on whether the MC&A system is currently effective; and

(iv) Documents any actions taken on recommendations from prior assessments.

(d) *Recordkeeping.* (1) Each licensee shall establish records that will demonstrate that the performance objectives of paragraph (a) of this

section and the system features and capabilities of paragraph (c) of this section have been met and maintain these records in an auditable form, available for inspection, for at least 3 years, unless a longer retention time is required by part 75 of this chapter.

(2) Records that must be maintained pursuant to this part may be the original or a reproduced copy or a microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability for producing, on demand, legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications must include all pertinent information such as stamps, initials, and signatures.

(3) The licensee shall maintain adequate safeguards against tampering with and loss of records.

Dated at Rockville, Maryland, this 24th day of October, 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 703

Investment and Deposit Activities

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This final rule will restrict access to certain high risk investments that have been purchased by a limited number of federal credit unions. The rule will also prohibit federal credit unions from investing in corporate credit unions that fail to meet certain regulatory criteria and require that each federal credit union establish written investment policies consistent with the Federal Credit Union Act, NCUA Rules and Regulations, and other applicable laws and regulations. The rule also establishes conditions under which a federal credit union must analyze the credit quality of an institution it is permitted to invest in under section 107(8) of the Federal Credit Union Act. Finally, certain provisions of the regulation have been updated to reflect the restructuring of the federal deposit insurance system, and to clarify that

federal credit unions have the authority to invest in a mutual fund if the investments and investment transactions of the fund are legally permissible for federal credit unions under the Federal Credit Union Act and NCUA Rules and Regulations.

EFFECTIVE DATE: December 2, 1991, except that the effective date of the prohibition contained in § 703.5(e) is delayed until March 1, 1992.

ADDRESSES: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Lisa Henderson, Staff Attorney, Office of General Counsel (202-682-9630), or Charles Felker, Investment Officer, Office of Examination and Insurance (202-682-9640), at the above address.

SUPPLEMENTARY INFORMATION:

A. Background

On March 21, 1991, the NCUA Board published proposed changes to part 703 of the NCUA Rules and Regulations (See 56 FR 11944, Mar. 21, 1991). The changes were proposed pursuant to NCUA's established policy of reviewing its regulations at regular intervals. The proposal was issued with a 60-day comment period.

B. Comments

Forty-three comment letters were received: Twenty-four from federal credit unions, six from state chartered credit unions, one from a corporate credit union, three from state leagues, two from national trade associations, one from a state credit union regulator, one from a credit union bonding company, three from securities brokerage firms, and two from mortgage-related corporations. Six commenters approved of the proposal as written, while one commenter objected to it in its entirety. Thirteen commenters generally approved of the rule as written, suggesting only minor changes. The remainder of the commenters discussed specific provisions without expressing an opinion on the regulation as a whole.

C. Discussion and Authority

Section 703.1 Scope

No changes were made to this section. Two commenters noted, however, that although this section states that part 703 applies to federal credit unions, the supplementary information discussion of § 703.5 contained references to federally insured state credit unions.

The NCUA Board wishes to clarify that the provisions of part 703 apply to federal credit unions. The Board notes,

however, that federally insured state credit unions are required to establish an additional special reserve for investments if those credit unions are permitted by their respective states to make investments beyond those authorized by the Federal Credit Union Act and NCUA Rules and Regulations. This requirement is contained in part 741 of the NCUA Rules and Regulations (Requirements for Insurance), which applies to federal credit unions, federally insured state credit unions and credit unions making application for insurance of accounts pursuant to title II of the Federal Credit Union Act.

The NCUA Board also notes that federally insured state credit unions operating under state statutes that have "parity provisions" with respect to the investment powers conferred by the Federal Credit Union Act and NCUA Rules and Regulations will also be impacted by the final rule.

Section 703.2 Definitions

This section of the proposal included a number of new key terms and definitions. No comments were received relative to this section; accordingly, this section of the proposed rule has been carried into the final rule unchanged.

Section 703.3 Investment Policies

The proposed rule required each federal credit union to establish written investment policies consistent with the Federal Credit Union Act, NCUA Rules and Regulations, and other applicable laws and regulations, and to review them at least annually.

Eight commenters specifically agreed with this section. One commenter suggested, however, that the term "interest rate risk," which is listed in paragraph (e) as a consideration that must be addressed by written investment policies, be clarified in the supplementary information section. In response to this suggestion, the Board notes that "interest rate risk" is the risk that the general level of interest rates may rise, this causing the market value of outstanding obligations to fall. Federal credit unions can limit this risk by establishing written policies controlling the maturity distribution of the investment portfolio. Several commenters questioned the meaning of the term "approved" used in paragraph (h) when referring to the list of safekeeping facilities. The NCUA Board notes that the term "approved" was meant to refer to safekeeping facilities approved by the credit union's board of directors. The NCUA Board has clarified the meaning of the word "approved" in the final rule.