# Rules and Regulations

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## FEDERAL DEPOSIT INSURANCE CORPORATION

**5 CFR Chapter XXII**

**12 CFR Part 336**

**RIN 3064–AA07, 3209–AA00 and 3209–AA16**

## Supplemental Requirements for Financial Disclosure, Qualified Trusts, and Certificates of Divestiture for Employees of the Federal Deposit Insurance Corporation

**AGENCY:** The Federal Deposit Insurance Corporation, (FDIC).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Federal Deposit Insurance Corporation (the Corporation), with the concurrence of the Office of Government Ethics (OGE), is issuing interim financial disclosure requirements for officers and employees of the Corporation. This interim rule revokes the Corporation's current financial disclosure regulations and promulgates substantially similar regulations, which are designed to supplement the Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture requirements issued by OGE.

**DATES:** This interim rule is effective July 26, 1993. Comments are invited and must be received on or before September 24, 1993.

**ADDRESSES:** Send comments to Hoyle L. Robinson, Executive Secretary, Attention: Room F–400, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to room F–402, 1776 F Street, NW., Washington, DC between 8:30 a.m. and 5 p.m. on business days. [FAX number: (202) 898–3838.] Comments will be available for inspection in the FDIC Reading Room, room 7118, 550 17th Street, NW., Washington, DC on business days between 9 am and 4:30 pm.

**FOR FURTHER INFORMATION CONTACT:** Katherine A. Corigliano, Assistant Executive Secretary (Ethics), (202) 898–7272, or Richard M. Handy, Ethics Program Manager, (202) 898–7271, Office of the Executive Secretary, 1776 F Street, NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On April 7, 1992, OGE published, for codification at 5 CFR part 2634, an interim rule pertaining to Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture, which revised the public and confidential financial disclosure systems for executive branch employees, pursuant to title I of the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended). See 57 FR 11800–11830 (April 7, 1992), as corrected at 57 FR 21854–21855 (May 22, 1992) and 57 FR 62605 (December 31, 1992). Pursuant to 5 CFR 2634.103, executive agencies are authorized to publish supplemental regulations as necessary to address special or unique agency circumstances, subject to OGE concurrence. This interim rule is necessary to supplement, for the Corporation, the financial disclosure requirements issued by OGE because it implements statutory restrictions which, though not generally applicable to employees of the executive branch, are expressly applicable to certain holdings and financial interests of Corporation officers and employees. In addition to implementing statutory restrictions, the interim rule addresses reporting relating to potential conflicts of interest unique to the Corporation's role as an insurer of Federal depository institutions and as primary and secondary regulator of member institutions of the Bank Insurance Fund and the Savings Association Insurance Fund. Also accomplished by the interim rule is the added designation of FDIC Form 2410/05 to the new SF 450, Confidential Financial Disclosure Report for purposes of meeting the operational needs of the Corporation's Employee Ethics Program.

The interim rule continues the Corporation's Employee Ethics Program requirements for disclosure:

(1) By all employees of interests in securities of Corporation insured depository institutions;

(2) By covered employees of indebtedness; and

(3) By covered employees of credit card obligations in insured state nonmember banks. The interim rule provides for the discontinuation of a requirement that covered employees file a report of employment upon resignation from the Corporation to accept employment in the private sector.

Unique Corporation specific circumstances exist in the provisions of 12 U.S.C. 1812(e)(2)(B), which prohibits any member of the Corporation's Board of Directors from holding stock in any insured depository institution or depository institution holding company as well as from holding a position as an officer or director of any insured depository institution, depository institution holding company, Federal Reserve bank, or Federal home loan bank. Although not driven by statute, the Corporation's Board of Directors, because of the Corporation's role as insurer and primary and secondary regulator of depository institutions, has historically made applicable to all employees a prohibition against the acquisition, during the terms of their employment, of securities of depository institutions insured by the Corporation and a requirement for recusal from matters affecting an institution, the securities of which an employee acquired prior to his or her Corporation employment or, in certain instances, the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). Enforcement of the aforementioned prohibitions is accomplished by a requirement for the completion by all the Corporation's new entrants of FDIC Form 2410/07, "Interest in Securities of FDIC Insured Depository Institutions." This requirement will be continued under this interim rule.

In addition, sections 212 and 213 of title 18 of the United States Code prohibit the offer of certain loans and gratuities to, and the acceptance of certain loans and gratuities by, examiners of federally insured depository institutions, including those employed by the Corporation. The Corporation's Board of Directors has historically required that certain

employees recuse themselves from participation in any matter involving an insured depository institution from which they have extensions of credit and prohibited certain employees from borrowing from certain classes of creditors. Enforcement of these restrictions and prohibitions is accomplished by requiring appointive directors, officers, certain senior employees, all bank examiners, and other designated employees to file FDIC Form 2410/06, "Confidential Report of Indebtedness" and designated employees of the Division of Supervision to file FDIC Form 2410/10, "Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention-Notice of Disqualification."

Pursuant to 12 U.S.C. 1819(a), the Corporation has independent statutory authority to issue regulations to implement the prohibitions set forth in section 2 of the Federal Deposit Insurance Act and 18 U.S.C. 212 and 213. Nevertheless, the Corporation has determined, because of the obvious relationship of these prohibitions to regulations implemented by OGE, to include the collection of disclosure forms necessary to enforce the prohibitions in supplemental regulations issued under 5 CFR part 3202, an approach with which OGE agrees. The Corporation is also hereby revoking its old reporting requirements contained in 12 CFR 336.24–336.28. Until issuance of a separate supplemental standards regulation, the Corporation is temporarily retaining, in 12 CFR part 336, its existing standards of conduct regulations (with an updated authority citation), which for the most part have been superseded by OGE's Standards of Ethical Conduct for executive branch employees, as codified at 5 CFR part 2635.

In addition to the aforementioned reporting requirements, the Corporation has in the past required that employees resigning from the Corporation to accept employment in the private sector complete a "Confidential Report Of Employment Upon Resignation," FDIC Form 2410/08. The report required the disclosure of information concerning an employee's prospective employer, the nature of its business or activities, the position to be occupied by the employee, the dates of negotiation for the employment, and the employee's official involvement, if any, with the prospective employer. The purpose of the report was to ensure employee compliance with criminal conflict of interest provisions governing the negotiation of employment (18 U.S.C. 208) and post-employment activities (18 U.S.C. 207). However, the Corporation has learned from experience that enforcement of the reporting requirement is difficult and that the information obtained has little value. Since the burden of this particular information collection has outweighed its benefits, the interim rule, by its revocation of 12 CFR 336.26, discontinues the requirement for filing a confidential report of employment upon resignation.

## II. Analysis of Regulation

*Section 3202.101 General Provisions*

Section 3202.101 sets forth general information regarding the purpose of this supplemental Corporation regulation, identifies with whom the reports required by this part must be filed, and provides notice of the retention schedule for the reports collected and their lack of availability to the general public.

*Section 3202.102 Confidential Financial Disclosure Reports (SF 450, FDIC Form 2410/05)*

Section 3202.102 adds the designation of FDIC Form 2410/05 to the SF 450, Executive Branch Personnel Confidential Financial Disclosure Report, to accommodate the Corporation's need for a three-part document.

*Section 3202.103 Confidential Report of Interest in FDIC-Insured Depository Institution Securities (FDIC Form 2410/07)*

Section 3202.103 imposes upon all Corporation employees a requirement to file a report of any direct or indirect interest in the securities of depository institutions insured by the Corporation. In addition, this section identifies the circumstances which give rise to the filing requirement, briefly describes the type of information which is required to be disclosed, and requires a certification that the employee has read and understands the rules governing ownership.

*Section 3202.104 Confidential Report of Indebtedness (FDIC Form 2410/06)*

Section 3202.104 identifies those Corporation employees who are required to file a confidential report of indebtedness, specifies when the report must be filed, and briefly describes the type of information which must be disclosed.

*Section 3202.105 Confidential Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions of Retention—Notice of Disqualification (FDIC Form 2410/10)*

Section 3202.105 identifies the employees who must meet the filing requirement, the circumstances which give rise to the reporting requirement, the time period within which the reporting requirement must be met, and a brief description of the information which must be disclosed.

## III. Matters of Regulatory Procedure

*Administrative Procedure Act*

The Board of Directors has found good cause pursuant to 5 U.S.C. 553(b) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these interim rules and repeal. The reason for this determination is that it is important to a smooth transition from the Corporation's prior disclosure rules to the new executive branch-wide financial disclosure regulations that these rulemaking actions take place as soon as possible. Furthermore, this rulemaking is related to the Corporation's organization, procedure and practice.

Nonetheless, this is an interim rulemaking, with provision for a 60 day public comment period. The Federal Deposit Insurance Corporation will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting these rules as final, with the concurrence of the Office of Government Ethics.

*Regulatory Flexibility Act*

The Board of Directors has concluded that the interim rule will not impose a significant economic hardship on small institutions. The Board of Directors therefore hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.).

*Paperwork Reduction Act*

The Board of Directors has determined that this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects**

*5 CFR Part 3202*

Administrative practice and procedure, Conflict of interests, Financial disclosure, Privacy, Reporting and recordkeeping requirements.

*12 CFR Part 336*

Conflict of interests.

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation, in concurrence with the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and title 12, chapter III, part 336, of the Code of Federal Regulations, as follows:

**TITLE 5—[AMENDED]**

1. A new chapter XXII consisting of Part 3202 is added to title 5 of the Code of Federal Regulations to read as follows:

**5 CFR CHAPTER XXII—FEDERAL DEPOSIT INSURANCE CORPORATION**

## PART 3202—SUPPLEMENTAL FINANCIAL DISCLOSURE REQUIREMENTS FOR EMPLOYEES OF THE FEDERAL DEPOSIT INSURANCE CORPORATION

Sec.



**Authority:** 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 12 U.S.C. 1819(a); 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2634.103.

**§ 3202.101 General provisions.**

(a) *Purpose.* This part establishes for officers and employees of the Federal Deposit Insurance Corporation (the Corporation) financial disclosure requirements in addition to the public and confidential financial disclosure reports required pursuant to 5 CFR part 2634, subparts B and I. This part also provides for the added designation of FDIC Form 2410/05 to the SF 450, Confidential Financial Disclosure Report.

(b) *Filing requirements.* The reporting individual shall file the financial disclosure and other reports required under 5 CFR part 2634 and §§ 3202.102–3202.105 with his or her assigned Deputy Ethics Counselor.

(c) *Custody and denial of public access.*

(1) Any report filed with the Corporation under §§ 3202.102–3202.105 shall be retained by the Corporation for a period of six years after receipt. After the six-year period, the report shall be destroyed unless needed in an ongoing investigation. See also FDIC Employee Financial Disclosure Statements Privacy Act system of records (1 FDIC Law, Regulations, and Related Acts (FDIC) 2209); see also the OGE/GOVT–2 Privacy Act system of records, for the reports filed under § 3202.102.

(2) The reports filed pursuant to §§ 3202.102–3202.105 are confidential. No member of the public shall have access to such reports, except pursuant to the order of a Federal court or as otherwise provided under the Privacy Act. See 5 U.S.C. 552a and the FDIC Employee Financial Disclosure Statements Privacy Act system of records.

**§ 3202.102 Confidential Financial Disclosure Reports (SF 450, FDIC Form 2410/05).**

The SF 450, Executive Branch Personnel Confidential Financial Disclosure Report, will also carry FDIC Form Number 2410/05. The structure and operations of the Corporation's Employee Ethics Program dictate that the form be printed in three parts, consisting of an original and two self copies.

**§ 3202.103 Confidential Report of Interest in FDIC Insured Depository Institution Securities (FDIC Form 2410/07).**

(a) *Who must file/when.* All FDIC employees shall file an FDIC Form 2410/07 (Report of Interest in FDIC Insured Depository Institution Securities) within 30 days of the date of entrance on duty. Thereafter, an updated FDIC Form 2410/07 shall be filed only if:

(1) An interest in an FDIC insured depository institution is acquired subsequent to the commencement of employment through a change in marital status or by gift, inheritance, or other personal circumstances beyond an employee's control, in which case an employee shall file FDIC Form 2410/07 within 30 days of acquiring the interest; or

(2) A previously acquired interest in a non-FDIC insured entity becomes an interest in an FDIC insured depository institution as the result of merger, acquisition, or other change in corporate ownership, or change in insurance status, in which case an employee shall file FDIC Form 2410/07 within 30 days of the entity's conversion to an FDIC insured status; or

(3) An employee divests himself or herself of a previously reported interest in FDIC decision or an FDIC insured depository institution, in which case an employee shall file FDIC Form 2410/07 as soon as possible after divestiture to facilitate the removal of any related disqualifications.

(b) *Report contents.* Each report filed pursuant to this section shall include:

(1) In part I:

(i) A brief description of any direct or indirect interest in the securities of an FDIC insured depository institution or affiliate, including a depository institution holding company, and the date and manner of acquisition or divestiture; and

(ii) A brief description of any direct or indirect continuing financial interest through a pension or retirement plan, trust or other arrangement, including arrangements resulting from any current or prior employment or business association, with any FDIC insured depository institution, affiliate, or depository institution holding company; and

(2) In part II, a certification acknowledging that the employee has read and understands the statements and instructions contained therein.

**§ 3202.104 Confidential Report of Indebtedness (FDIC Form 2410/06).**

(a) *Who must file/when.* Within 30 days of entrance on duty and annually thereafter, a confidential report of indebtedness must be filed:

(1) As a supplement to the Public Financial Disclosure Report (SF 278), by:

(i) Members of the Board of Directors, except the Comptroller of the Currency and the Director of the Office of Thrift Supervision;

(ii) Any assistant or deputy to the Board of Directors or to an individual board member or any assistant to assistant or deputies to the Board of Directors or to individual Board members except persons employed by the Office of the Comptroller of the Currency or the Office of Thrift Supervision; and

(iii) Division and office heads and persons immediately subordinate thereto;

(2) As a supplement to the Executive Branch Personnel Confidential Financial Disclosure Report (SF 450, FDIC Form 2410/05), by:

(i) Persons employed by the Division of Supervision as bank examiners in job

series 570; compliance examiners in job series 301; and

(ii) All other employees of the Division of Supervision and the Division of Resolutions at or above the grade 13.

(b) *Report contents.* Each confidential report of indebtedness filed pursuant to this section shall include:

(1) In part I, information on any indebtedness of the employee, his or her spouse, and/or dependent child, which is evidenced by a credit card issued by an FDIC insured depository institution, including the type of card, the year of receipt, the name and location of the issuer, and the total line of credit, regardless of the amount outstanding; and

(2) In part II, information on other indebtedness of the employee, his or her spouse, and/or dependent child, at any time during the reporting period and regardless of amount, to a federally insured financial institution, or any subsidiary or affiliate thereof, including mortgages and other consumer debt not reported in part I. With respect to each creditor, an employee shall disclose the type of liability, the name and location of the creditor, the year the debt was incurred, the term of the loan, and either the original or outstanding balance.

**§ 3202.105 Confidential Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions of Retention—Notice of Disqualification (FDIC Form 2410/10).**

(a) *Who must file/when.* Within 30 days of acquiring a credit card obligation to an insured state nonmember bank headquartered outside of the employee's region of employment, a "Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions of Retention-Notice of Disqualification," FDIC Form 2410/10, must be filed by:

(1) The Executive Director of the Divisions of Supervision and Resolutions;

(2) The Director of Supervision;

(3) The holder of any position immediately subordinate to the Director of Supervision;

(4) An Assistant Director, Regional Director, Deputy Regional Director, or an Assistant Regional Director; and

(5) An examiner, assistant examiner, compliance examiner, or other covered employee of the Division of Supervision at or above a grade 13 level.

(b) *Report contents.* Each statement filed pursuant to this section shall disclose the name of any Corporation insured state nonmember depository institution outside of the employee's region of assignment from which he or she has received a credit card and shall include certification that the credit cards listed were obtained only under such terms and conditions as are available to the general public, that the line of credit does not exceed $10,000, and that the employee is aware of and understands the requirement for self-disqualification from participation in matters affecting the creditors identified.

By Order of the Board of Directors.

Dated at Washington, DC this 24th day of November, 1992.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

Approved: July 14, 1993.

**Stephen D. Potts,**

*Director, Office of Government Ethics.*

**12 CFR CHAPTER III—[AMENDED]**

## PART 336—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority citation for part 336 is revised to read as follows:

**Authority:** 5 U.S.C. 7301; 12 U.S.C. 1819(a); sec. 502(a), E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306, as modified; 5 CFR 2635.403(a), 2635.803, 2637.101(a).

2. Part 336 is amended by removing and reserving subpart D, §§ 336.24–336.28.

By Order of the Board of Directors.

Dated at Washington, DC this 24th day of November, 1992.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 93–17612 Filed 7–23–93; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

**10 CFR Parts 30, 40, 70, and 72**

**RIN 3150–AD98**

### Decommissioning Recordkeeping and License Termination: Documentation Additions

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations to require holders of a specific license for possession of certain byproduct material, source material, special nuclear material, or for independent storage of spent nuclear fuel and high-level radioactive waste to prepare and maintain additional documentation that identifies all restricted areas where licensed materials and equipment were stored or used, all areas outside of restricted areas where documentation is required under current decommissioning regulations for unusual occurrences or spills, all areas outside of restricted areas where waste has been buried, and all areas outside of restricted areas containing material such that if the license were terminated, the licensee would be required to decontaminate the area or seek special approval for disposal. The final rule also requires licensees to submit specific information at the time of final decommissioning on decontaminated equipment that had been involved in the licensed activity that will remain onsite at the time of license termination. The information required by these amendments will provide greater assurance that decontamination and decommissioning of licensee facilities have been carried out in accordance with the Commission's regulations.

**EFFECTIVE DATE:** October 25, 1993.

**FOR FURTHER INFORMATION CONTACT:** Dr. Carl Feldman, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3883.

**SUPPLEMENTARY INFORMATION:**

### Background

NRC licensees subject to the requirements of 10 CFR Parts 30, 40, 70, and 72 who wish to terminate their licenses must decontaminate all contaminated facilities and sites according to NRC requirements before the NRC can authorize the termination of the license. Therefore, the licensee's application for license termination, and other records on decommissioning available from the licensee, must contain sufficient information on the residual radioactivity levels in the licensee's facilities and sites to allow the NRC staff to make a determination on whether the licensee's facilities and sites can be released for unrestricted use.

A General Accounting Office (GAO) report, "NRC Decommissioning Procedures and Criteria Need to Be Strengthened" (GAO/RCED–89–119, May 26, 1989), indicated incomplete recordkeeping as a potential problem. The issue was also discussed by the NRC at the hearing before the Energy and Environment Subcommittee of the House Committee on Interior and

Insular Affairs, chaired by Congressman Mike Synar of Oklahoma (Synar Subcommittee) on August 3, 1989. Both the GAO report and the Synar Subcommittee were concerned that, because of poor or insufficient knowledge as to the location within a licensee's site where licensee activities were conducted, the NRC could terminate a license and release facilities and sites for unrestricted use which may remain partially contaminated at levels which would be unacceptable. Currently, NRC's rules on decommissioning recordkeeping (10 CFR 30.35(g), 40.36(f), 70.25(g), and 72.30(d)) specifically require licensees to keep certain records important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the Commission. These records include drawings of structures and equipment in restricted areas where radioactive materials were used or stored, documentation identifying the location of inaccessible residual contamination, and detailed descriptions of unusual occurrences or spills of radioactive materials that can affect decommissioning. In addition, NRC's rules (10 CFR 20.2108) require licensees to maintain records on the location and radionuclide content of waste burial areas until license termination. However, these rules are not sufficiently explicit to ensure that all relevant areas of possible contamination will be identified at the actual time of decommissioning. For example, the licensee is not specifically required to list (1) all areas designated and formerly designated as restricted areas; (2) all areas outside of restricted areas that require documentation under the current decommissioning rules; (3) all areas outside of restricted areas where radioactive waste has been buried and require documentation under the current rules; (4) all areas outside of restricted areas which contain radioactive material such that, if the license expired, the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval of disposal (e.g. tailings piles); and (5) the location and description of equipment to remain onsite after license termination that was considered to be radioactively contaminated when final decommissioning was initiated. Yet the NRC will need to know of the existence and location of these areas and equipment in order to perform its confirmatory survey.

On October 7, 1991 (56 FR 50524), the NRC published a notice of proposed rulemaking in the **Federal Register**. The purpose of this proposed rulemaking was to clarify and make more explicit the recordkeeping and documentation requirements specified in the recently enacted decommissioning amendments (June 27, 1988, 53 FR 24018). The proposed rule would have required licensees to maintain in a single document and certify for completeness and accuracy, a list of the following:

(1) All onsite areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003;

(2) All onsite areas, other than restricted areas, where radioactive materials in quantities greater than amounts listed in Appendix C to §§ 20.1001–20.2401 of 10 CFR part 20 are or have been used, possessed or stored;

(3) All onsite areas, other than restricted areas, where spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site have occurred that required reporting pursuant to § 30.50 (b)(1) or (b)(4), including areas where subsequent cleanup procedures have removed the contamination; and

(4) All known locations and radionuclide contents of previous and current burial areas within the site.

Areas that contained byproduct material having half-lives of 10 days or less, or depleted uranium used only for shielding or as penetrators in unused munitions, or sealed sources authorized to be used at "temporary job sites" outside of the licensee's permanent facility and site boundary as specified in the license would not have had to be listed.

The proposed rule also would have required licensees who are required to submit a decommissioning plan, to submit this list as part of their plan. Finally, the proposed rule would have required that the above list include the location and description of all equipment, involved in the licensed operation, that is to remain onsite after license termination.

The comment period on the proposed rule expired December 23, 1991. Public comments were received on the proposed rule and are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW. (Lower Level), Washington, DC.

The NRC received nine comment letters in response to the proposed rule. The commenters consist of a broad institutional licensee, a medical licensee, State agencies, a Federal Government laboratory, several material licensees, and a nuclear power utility. In a number of cases, letters from different commenters addressed similar issues. The NRC has identified and responded to 12 separate issues that include all of the significant points raised by the commenters. The comments and NRC responses are presented below.

**Summary and Analysis of Public Comments**

1. *Comment.* The listing requirement under the expiration and termination of license which states that "Upon approval of the decommissioning plan by the Commission, the licensee shall * * * include a list of the location and description of all equipment involved in licensed operations that is to remain onsite at the time of license termination" is too broad. For example, as one commenter argued, under the proposed requirement, even a typewriter can be considered as a piece of "equipment involved in licensed operations" because the typewriter was used to generate reports concerning the licensed activities. Another commenter stated that "old" equipment decontaminated and returned to inventory for others to use should not be tracked until the termination of the license.

*Response.* The supplementary information to the proposed rule stated that, "* * * equipment to be left onsite at the time of license termination are appropriate for listing since these may be potential sources of exposure." It is not the intent of the Commission that licensees should list and track equipment such as a typewriter which never was contaminated or "old" equipment decontaminated to unrestricted area release levels and returned to inventory until the time of license termination; existing requirements in §§ 20.401 and 20.2103 require records of surveys made to confirm that equipment is suitable for unrestricted before it is removed from the site. Rather, the intention of this recordkeeping requirement is to ensure that any (contaminated) equipment that was decontaminated during decommissioning and is to be left onsite after license termination is identified. This would assist the NRC in performing a confirmatory survey. Therefore, the rule has been modified to clarify that contaminated equipment that has been or will be sent offsite to authorized radioactive waste disposal sites or decontaminated and released from the site to some other location and use need not be listed. A licensee is not required to identify this equipment prior to conducting the decontamination

and decommissioning operations. Specifically, §§ 30.36(c)(3), 40.42(c)(3), 70.38(c)(3), and 72.54(e)(2) will now read as follows:

"* * * and shall include a list containing the location and description of all equipment to remain onsite after license termination that was contaminated when final decommissioning was initiated."

2. *Comment.* Extend the exemption to all sealed sources on or offsite provided there has been no damage to or leakage from the sources. Commenters supported NRC's assessment that the risk of "contamination" from any sealed source "authorized to operate at temporary job sites" is minimal under normal use conditions. One commenter questioned the impact of the proposed rule on the uses of brachytherapy sources. Another commenter suggested that all sealed sources on or off the site should be exempted from the proposed rule provided there has been no damage or leakage from the sources.

*Response.* The NRC agrees that areas containing only sealed sources, both on or off the site, need not be listed provided the sealed sources have not leaked, or no contamination remains after any leak. Sections 30.35(g)(3) and 70.25(g)(3) have been amended to reflect this decision.

3. *Comment.* Will the proposed requirements be retroactive?

*Response.* The NRC does not intend for the requirements to be retroactive. However, the list should be as complete as possible and licensees should go back into the history of their licensed operation as far as possible to develop their initial list. After the initial list is generated, it would need to be updated at least every 2 years. Therefore, §§ 30.35(g)(3), 40.36(f), 70.25(g)(3), and 72.30(d)(3) have been amended to reflect this position.

4. *Comment.* Aside from exempting radioactive materials that possess half-lives of 10 days or less, an exemption should also be given for those radioactive materials that through time of possession have also decayed to very low levels.

*Response.* In principle it seems reasonable to exempt radioactive materials with half-lives greater than 10 days if during their time of possession they have decayed to very low levels. However, in practice this would be difficult to implement because the NRC would need to define, at that time, what NRC considers to be "very low levels." In addition, most licensees cannot predict the exact time of their license termination. However, the NRC agrees that the 10-day half-life is too restrictive. Moreover, materials with less than 65-day half-lives are already authorized by the Commission for decay-in-storage, for example, under 10 CFR 35.92. Therefore, a 65-day half-life appears to be a more reasonable and consistent limit. The rule has been modified accordingly. It is important to note that the purpose of this recordkeeping rule is to prevent contaminated areas and equipment from being overlooked at the time of license termination, because of inadequate recordkeeping. Any large amount of licensed material, no matter how short the half-life, should be properly controlled, surveyed, inventoried, and documented at all times. At the time of license termination, if the licensee possesses a sufficient amount of short half-life materials to affect decommissioning, the Commission would expect that the licensee would be able to identify the areas where these materials are used and/or stored.

5. *Comment.* The proposed rule is unduly burdensome and will not ensure that the stated aim is met. Therefore, the proposed rule should be withdrawn and problems that have been identified should be solved by existing methods, such as during routine inspections, under the current requirements, such as decommissioning regulations (10 CFR part 30.35) and 10 CFR part 20, subpart M, and through real time inspection and enforcement programs. At some large research institutions, the burdens created by the proposed regulation would be very significant because activities with small amounts of radioactive materials are conducted in numerous rooms and buildings.

*Response.* The Commission has carefully considered the comments received and reviewed the impact of the proposed rule. The discussed changes have been made to minimize the recordkeeping burden without diminishing the effectiveness of the rule. In addition, aside from the required list of previous and current restricted areas designated in the proposed rule, the final rule requires only the list of areas outside of restricted areas that require documentation (records) in the existing rule under §§ 30.35(g)(1), 40.36(f)(1), 70.25(g)(1), and 72.25(g)(1) for spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. Further, these records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas. The NRC regards remaining contamination as anything above the NRC's most current residual radioactivity criteria for allowing release for unrestricted use; see 57 FR 13382, April 16, 1992, for case specific guidance on this issue.

Rulemaking activities for specifying residual radioactivity limits for site cleanup are presently underway. As a result of these changes, only those areas and equipment that need to be surveyed by the NRC prior to license termination are now required to be listed. One comment from a large research institution noted that licensed activities and work locations changed on a frequent basis, and over time, rooms were renumbered or even disappeared. Although this rule only requires a list of previously restricted areas, it is prudent for all licensees to retain records of general historical information to support decisions by the licensee and the Commission on what decommissioning actions are necessary to release a facility for unrestricted use. Detailed records required by the regulations and other general information is often needed to determine how closely various areas must be surveyed to verify that they are suitable for unrestricted use. This information also may be needed to respond to allegations that certain decommissioning actions may not have been adequate to protect public health and safety. Therefore, in addition to the specific records required by this rule, all licensees are encouraged to maintain records of general information that will allow them to produce an accurate historical account of all licensed activities conducted during the life of the facility.

As a practical matter, the current regulations do not provide the assurance that all areas that need to be surveyed will be identified. This rule provides that assurance. As now modified, this rule applies to those areas of actual or potential contamination, whether restricted areas or areas outside of restricted areas, that the licensee would be expected to identify.

6. *Comment.* The requirement to list, in a single document, is redundant and too restrictive. Listing should allow reference to other records.

Commenters stated that licensees already have the required information under existing NRC regulations and license conditions. Although not in a specific listing, the information can be obtained from the licensee's existing records. Commenters also stated that the proposed requirement for a single document is too restrictive and that the current NRC decommissioning recordkeeping requirement [e.g., 10 CFR 70.25(g)] already requires licensees to keep decommissioning records "in an identified location." Certain documents

kept by the licensee at various locations for decommissioning purposes (e.g., as-built drawings submitted with original license application, results of wipe tests, etc.) need not be duplicated by the licensee at the central location but only referenced to their locations from a central location. These commenters further stated that to require that records be maintained in a single document will impose an unnecessary burden on licensees who must create a new document containing information found in other documents.

*Response.* Although the required information may be redundant because the information contained in the "single document" may exist in other licensee records, this information may not be in a form either readily available for inspection, or more important, to facilitate a confirmatory survey prior to license termination. In addition, information needed in the "single document" can be lost over a period of time because there is consequently no specific requirement for the licensee to create or maintain such a record until the end of the license. This was one of the points made at the hearing before the Energy and Environment Subcommittee of the House Committee on Interior and Insular Affairs, chaired by Congressman Mike Synar of Oklahoma (held on August 3, 1989). Thus, to assure that the needed information both exists and is available, the NRC is requiring the subject list and that it be a single document. Guidance explicitly specifying the level of detail expected in the list is being developed and included in a Regulatory Guide on material facilities decommissioning recordkeeping requirements.

7. *Comment.* The proposed 10 CFR 30.35(g)(3)(i) which requires a listing of "all onsite areas designated or formerly designated as restricted areas" should include an indication of the type of material used in each of these areas.

*Response.* The Commission does not believe that it is necessary to include this information in the list required by this rule. The documentation requirements currently contained at 10 CFR 30.35(g)(1) and corresponding sections under 10 CFR parts 40, 70, and 72, already require the information for situations the NRC considers appropriate, including spills and unusual occurrences.

8. *Comment.* The proposed requirement under 10 CFR 30.35(g)(3)(ii) is inconsistent because licensees are required to list all onsite areas, other than restricted areas, for radioactive materials in quantities greater than a certain threshold amount (i.e., new part 20 appendix C values), yet this same amount for certain materials (e.g., I–125) can be exempt under 10 CFR 30.71, Schedule B. Therefore, to reduce the size of the "single document" and to be consistent with current requirements, it was proposed that the threshold amount be increased 10 (or 100) times.

*Response.* Upon consideration of this comment, the NRC has concluded that only areas outside of the licensee's restricted areas that actually have been contaminated by these materials in a way that affects decommissioning need be listed. Any areas contaminated above the NRC unrestricted area release criteria outside of the licensee's restricted areas and covered under 10 CFR 30.35(g)(1) and corresponding sections of 10 CFR parts 40, 70, and 72 would require inclusion in the list as discussed earlier under Comment 5.

The NRC notes that the small quantities of material listed in 10 CFR 30.71, Schedule B, can only be distributed for certain uses by a licensee holding a distribution license pursuant to 10 CFR 32.18. Persons possessing such material are exempt from the regulations pursuant to 10 CFR 30.18. Distribution licenses under 10 CFR 32.18 authorize distribution of exempt materials in approved chemical/physical forms for specified purposes only. Manufacturers of byproduct materials are strictly prohibited under 10 CFR 30.18, from distributing radioactive materials to the general public, no matter how small the quantity, without the NRC approving the intended application of the material on a case-by-case basis.

9. *Comment.* The proposed requirements under 10 CFR 30.35(g)(3)(iii) are inconsistent with other regulatory requirements because licensees would be required to keep records of all incidents requiring reports as specified in 10 CFR 30.50(b) (1) or (4), and yet under current 10 CFR 30.35(g)(1), records of spills or other unusual occurrences in restricted areas may be "limited to instances when contamination remains after any cleanup procedures * * *."

*Response.* The NRC agrees that there was an inconsistency between the proposed requirements and current regulations under 10 CFR 30.35(g)(1). The intent of the proposed §§ 30.35(g)(3)(iii) was to ensure that at the time of actual decommissioning, all areas (i.e., restricted areas as well as unrestricted areas) that may still have contamination resulting from spills or other unusual occurrences are identified. The NRC agrees with the commenter that the current requirement under 10 CFR 30.35(g)(1) is sufficient to handle this concern because it covers all onsite areas. Therefore, proposed §§ 30.35(g)(3)(iii) has been deleted from the final rule, as have proposed §§ 40.36(f)(3)(iii) and 70.25(g)(3)(iii).

10. *Comment.* Listing of buried waste should include offsite as well as onsite specification if such waste has not been disposed of in a licensed disposal facility.

*Response.* The Commission agrees with this comment. However, 10 CFR 20.2108, "Records of Waste Disposal," already requires that these records be kept "until the Commission terminates each pertinent license requiring the record." Therefore, the proposed requirement to list "all known locations and radionuclide contents of previous and current burial areas within the site" is modified in the final rule to list all areas outside of restricted areas where current and previous wastes have been buried as documented under 10 CFR 20.2108, since the purpose of this rule is to consolidate all necessary information in one list.

However, the Commission is concerned that there may be areas outside of the licensee's restricted area containing radioactive materials which have radioactive concentrations greater than levels authorized by the Commission for unrestricted release, which are not considered to be spills or unusual occurrences, and which are currently not documented under 10 CFR 20.2108 because the licensee either does not consider these materials currently to be waste, or plans to dispose of these materials before the license is terminated. The Commission is concerned that these areas, if forgotten at the time of license termination, may become de facto areas of onsite disposal of radioactive waste. Onsite disposal would have to be authorized by the NRC per licensee application under 10 CFR 20.2002, subpart K and documented. Therefore, to clarify the original intent of this proposed requirement, §§ 30.35(g)(3)(iii), 40.36(f)(3)(iii), and 70.25(g)(3)(iii) of the proposed rule have been changed to include in the list:

"All areas outside of restricted areas which contain material so that, if the license expired the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under 10 CFR 20.302 or 20.2002."

See the response to Comment 5 for NRC case specific guidance concerning residual radioactivity limits for site cleanup. The NRC does not believe that similar requirements are necessary for part 72 licensees, because these licensees are not likely to have conduct of operations which would result in

contaminated areas arising from situations other than unusual occurrences or spills, which are already covered.

11. *Comment.* Proposed requirements under 10 CFR part 72 should allow independent spent fuel storage facilities that had previously held a part 50 license to use their part 50 records (i.e., 50.75(g)) to satisfy the listing requirements.

*Response.* Current part 50 licensees will have to apply to the NRC for a separate license if they wish to establish an independent spent fuel storage installation (ISFSI) under 10 CFR part 72. Whether the part 72 licensee was formerly a part 50 licensee is immaterial to the NRC in determining whether the applicant should get a part 72 license. The recordkeeping requirement for a part 72 license (72.18(d)) is similar to that for a part 50 license (50.75(g)); nevertheless, for the reasons explained in response to Comment 6, this does not allow for an exemption from the provisions of the listing requirement. Therefore, regardless of whether the part 72 licensees is also a holder of a part 50 license, the part 72 licensee should still provide the required listing.

12. *Comment.* A discussion needs to be included about the degree of compatibility this rule will require with respect to the Agreement States.

*Response.* The NRC agrees. In this case, the Commission believes that there is no reason for strict compatibility, and that while the Agreement States should have requirements similar to those being adopted in this final rule, they should be permitted flexibility to apply more stringent requirements if the States deem them appropriate. Therefore, the Commission proposed a Division 2 matter of compatibility and provided the Agreement States an opportunity to comment. The Agreement States generally agreed that such a level of compatibility was reasonable.

**Summary of Final Rule Provisions**

A. The final rule contains new requirements applicable to the licensed possession and use of source, byproduct, and special nuclear materials, and independent storage of spent nuclear fuel and high-level radioactive waste during ongoing facility operations.

*Sections 30.35(g)(3), 40.36(f)(3), and 70.25(g)(3).* Except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after cleanup of any leak) or byproduct materials having only half-lives of less than 65 days, or depleted uranium used only for shielding or as penetrators in unused munitions, licensees will be required to establish and maintain a list, contained in a single document. This list must be updated every 2 years, and include the following:

(i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003;

(ii) All areas outside of restricted areas that require documentation under § 30.35(g)(1) [or 40.36(f)(1) or 70.25 (g)(1).];

(iii) All areas outside of restricted areas where current and previous wastes have been buried as documented under 10 CFR 20.2108; and

(iv) All areas outside of restricted areas which contain material that, if the license expired, the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under 10 CFR 20.302 or 20.2002.

*Section 72.30(d):* A list contained in a single document. The list must be updated every 2 years and include the following:

(i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003;

(ii) All areas outside of restricted areas that require documentation under § 72.30(d)(1).

B. For those licensees who are required to submit a decommissioning plan, new requirements are applicable at the plan submittal and license termination stage.

*Sections 30.36(c)(2)(iii)(D), 40.42(c)(2)(ii)(D), 70.38(c)(2)(iii)(D), and 72.54(b)(4).* The information required in section A (the list of areas) above and any other information not required by section A that is considered necessary to support the adequacy of the decommissioning plan for approval.

*Sections 30.36(c)(3), 40.42(c)(3), 70.38(c)(3), and 72.56(e)(2).* "* * * * and shall include a list containing the location and description of all equipment to remain onsite after license termination that was contaminated when final decommissioning was initiated."

*Environmental Impact—Categorical Exclusion*

The NRC has determined that this regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(3) (ii) and (iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

*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 numbers 3150–0017, 3150–0020, 3150–0009, and 3150–0132.

Public reporting burden for this collection of information is estimated to average 5 hours per licensee response, including the time required reviewing instructions, searching existing data sources, gathering and maintaining the data needed and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0017, 3150–0020, 3150–0009, and 3150–0132), Office of Management and Budget, Washington, DC 20503.

*Regulatory Analysis*

The Commission has prepared a final regulatory analysis for this final 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. However, because of comments on the proposed rule amendments, significant changes were made to the final rule amendments which considerably lessen the impact on licensees. Therefore, the draft regulatory analysis was changed to reflect the modified final rule and its subsequent reduced regulatory impact. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

*Regulatory Flexibility Certification*

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant impact upon a substantial number of small entities. The final rule, contrary to the proposed rule, will only affect a small number of small entities because licensees will not be required to list either sealed sources that do not leak or unsealed licensed materials with half-lives of less than 65 days. Even for affected small entity licensees, the added requirements would require only a small effort not exceeding approximately 5 hours to compile the information and create the required list which essentially documents

information the licensee already has or will have. In fact, licensee costs may be reduced to the extent that these requirements allow the license to be terminated more expeditiously.

*Backfit Analysis*

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1), and therefore, that a backfit analysis is not required.

List of Subjects

*10 CFR Part 30*

Byproduct material, Criminal penalty, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

*10 CFR Part 40*

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

*10 CFR Part 70*

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

*10 CFR Part 72*

Manpower training program, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 30, 40, 70, and 72.

## PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for part 30 continues to read as follows:

**Authority:** Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 30.8 is amended by revising paragraph (b) to read as follows:

**§ 30.8 Information collection requirements: OMB approval.**

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 30.9, 30.11, 30.15, 30.19, 30.20, 30.32, 30.34, 30.35, 30.36, 30.37, 30.38, 30.41, 30.50, 30.51, 30.55, and Appendix A.

* * * * *

3. Section 30.35 is amended by redesignating paragraph (g)(3) as paragraph (g)(4) and adding a new paragraph (g)(3) to read as follows:

**§ 30.35 Financial assurance and recordkeeping for decommissioning.**

* * * * *

(g) * * *

(3) Except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after any leak) or byproduct materials having only half-lives of less than 65 days, a list contained in a single document and updated every 2 years, of the following:

(i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003;

(ii) All areas outside of restricted areas that require documentation under § 30.35(g)(1).

(iii) All areas outside of restricted areas where current and previous wastes have been buried as documented under 10 CFR 20.2108; and

(iv) All areas outside of restricted areas which contain material such that, if the license expired, the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under 10 CFR 20.302 or 20.2002.

* * * * *

4. Section 30.36 is amended by redesignating paragraph (c)(2)(iii)(D) as (c)(2)(iii)(E), adding a new paragraph (c)(2)(iii)(D), and revising paragraph (c)(3) to read as follows:

**§ 30.36 Expiration and termination of licenses.**

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(D) The information required in § 30.35(g)(3) and any other information required by § 30.35(g) that is considered necessary to support the adequacy of the decommissioning plan for approval;

* * * * *

(3) Upon approval of the decommissioning plan by the Commission, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in paragraph (c)(1)(v) of this section, shall certify the disposition of accumulated wastes from decommissioning, and shall include a list containing the location and description of all equipment to remain onsite after license termination that was contaminated when final decommissioning was initiated.

* * * * *

## PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

5. 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); secs. 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 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).

6. Section 40.8 is amended by revising paragraph (b) to read as follows:

**§ 40.8 Information collection requirements: OMB approval.**

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 40.25, 40.26, 40.31, 40.35, 40.36, 40.42, 40.43, 40.44, 40.60, 40.61, 40.64, 40.65, and Appendix A.

* * * * *

7. Section 40.36 is amended by redesignating paragraph (f)(3) as paragraph (f)(4) and adding a new paragraph (f)(3) to read as follows:

**§ 40.36 Financial assurance and recordkeeping for decommissioning.**

* * * * *

(f) * * *

(3) Except for areas containing depleted uranium used only for shielding or as penetrators in unused munitions, a list contained in a single document and updated every 2 years, of the following:

(i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003;

(ii) All areas outside of restricted areas that require documentation under § 40.36(f)(1);

(iii) All areas outside of restricted areas where current and previous wastes have been buried as documented under 10 CFR 20.2108; and

(iv) All areas outside of restricted areas which contain material so that, if the license expired, the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under 10 CFR Part 20.302 or 20.2002.

* * * * *

8. Section 40.42 is amended by redesignating paragraph (c)(2)(iii)(D) as paragraph (c)(2)(iii)(E), adding a new paragraph (c)(2)(iii)(D), and revising paragraph (c)(3) to read as follows:

**§ 40.42 Expiration and termination of licenses.**

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(D) The information required in § 40.36(f)(3) and any other information required by § 40.36(f) that is considered necessary to support the adequacy of the decommissioning plan for approval;

* * * * *

(3) Upon approval of the decommissioning plan by the Commission, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in paragraph (c)(1)(v) of this section, shall certify the disposition of accumulated wastes from decommissioning, and shall include a list containing the location and description of all equipment to remain onsite after license termination that was contaminated when final decommissioning was initiated.

* * * * *

## PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

9. 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 70.20(a)(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. 2152). 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. 2138).

10. Section 70.8 is amended by revising paragraph (b) to read as follows:

**§ 70.8 Information collection requirements: OMB approval.**

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 70.19, 70.20a, 70.20b, 70.21, 70.22, 70.24, 70.25, 70.32, 70.33, 70.34, 70.38, 70.39, 70.42, 70.50, 70.51, 70.52, 70.53, 70.57, 70.58, 70.59, and 70.60.

* * * * *

11. Section 70.25 is amended by redesignating paragraph (g)(3) as paragraph (g)(4) and adding a new paragraph (g)(3) to read as follows:

**§ 70.25 Financial assurance and recordkeeping for decommissioning.**

* * * * *

(g) * * *

(3) Except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after cleanup of any leak), a list contained in a single document and updated every 2 years, of the following:

(i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003;

(ii) All areas outside of restricted areas that require documentation under § 70.25(g)(1);

(iii) All areas outside of restricted areas where current and previous wastes have been buried as documented under 10 CFR 20.2108; and

(iv) All areas outside of restricted areas which contain material so that, if the license expired, the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under 10 CFR part 20.302 or 20.2002.

* * * * *

12. Section 70.38 is amended by redesignating paragraphs (c)(2)(iii)(D) and (c)(2)(iii)(E) as paragraphs (c)(2)(iii)(E) and (F), adding a new paragraph (c)(2)(iii)(D), and revising paragraph (c)(3) to read as follows:

**§ 70.38 Expiration and termination of licenses.**

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(D) The information required in § 70.25(g)(3) and any other information required by § 70.25(g) that is considered necessary to support the adequacy of the decommissioning plan for approval;

* * * * *

(3) Upon approval of the decommissioning plan by the Commission, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in paragraph (c)(1)(v) of this section, shall certify the disposition of accumulated wastes from decommissioning, and shall include a list containing the location and description of all equipment to remain onsite after license termination that was contaminated when final decommissioning was initiated.

* * * * *

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

13. The authority citation for Part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274 Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102 Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 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). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15),

2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and 218(a) 98 Stat. 2252 (42 U.S.C. 10198).

14. Section 72.30 is amended by revising the section heading, redesignating paragraph (d)(3) as paragraph (d)(4) and adding a new paragraph (d)(3) to read as follows:

**§ 72.30 Financial assurance and recordkeeping for decommissioning.**

* * * * *

(d) * * *

(3) A list contained in a single document and updated no less than every 2 years of the following:

(i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003; and

(ii) All areas outside of restricted areas that require documentation under § 72.30(d)(1).

* * * * *

15. Section 72.54 is amended by redesignating paragraph (b)(4) as paragraph (b)(6), adding a new paragraph (b)(4) and revising paragraph (e)(2) to read as follows:

**§ 72.54 Application for termination of license.**

* * * * *

(b) * * *

(4) The information required in § 72.30(d)(3) and any other information required by § 72.30(d) that is considered necessary to support the adequacy of the decommissioning plan for approval;

* * * * *

(e) * * *

(2) The terminal radiation survey and associated documentation demonstrates that the ISFSI and site are suitable for release for unrestricted use and the licensee include a list containing the location and description of all equipment to remain onsite after license termination that was contaminated when final decommissioning was initiated.

Dated at Rockville, Maryland, this 12th day of July 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,

*Executive Director for Operations.*

[FR Doc. 93–17585 Filed 7–21–93; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF ENERGY

## 10 CFR Part 810

## Assistance to Foreign Atomic Energy Activities

**AGENCY:** Office of Arms Control and Nonproliferation, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) is amending its regulations concerning unclassified assistance to foreign atomic energy activities. These amendments will: Establish a general authorization for assistance that would enhance the operational safety of existing civilian nuclear power reactors in the list of countries; add a definition of "operational safety" as this concept relates to existing civilian nuclear power plants; update the list of countries requiring specific authorization for assistance in the production of special nuclear material by deleting certain countries and adding others; require specific authorization for assistance relating to certain research and test reactors; require that any materials, equipment, or technology transferred under certain general authorizations not be retransferred to a country without prior U.S. Government consent; and make certain technical changes, such as updating addressees to whom reports and requests under these regulations should be submitted.

**EFFECTIVE DATE:** These amendments are effective on July 26, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. Zander Hollander, Export Control Specialist, Export Control Operations Division, Office of Export Control and International Safeguards, IS–40, U.S. Department of Energy, 1000 Independence Ave. SE, Washington, DC 20585. Telephone (202) 586–2125.

**SUPPLEMENTARY INFORMATION:**

### 1. Background

10 CFR part 810 implements section 57 b. (2) of the Atomic Energy Act of 1954, as amended by section 302 of the Nuclear Non-Proliferation Act of 1978 (NNPA) (42 U.S.C. 2077 (b) (2)). This section requires that U.S. persons who engage directly or indirectly in the production of special nuclear material outside the United States be authorized to do so by the Secretary of Energy. According to the part 810 regulations, assistance by U.S. persons to nuclear power reactor-related activities outside the United States is generally authorized for countries not listed in § 810.8(a), which sets forth the circumstances in which specific authorization is required. A main purpose of this revision is to establish a new general authorization for assistance that would enhance the operational safety of existing civilian nuclear power reactors in countries listed in § 810.8(a), thus eliminating the need for specific authorization by the Secretary of Energy for that assistance. In this regard, the new general authorization can be viewed as building on to the long-standing, and still retained, authority in § 810.7(b), which generally authorizes assistance to prevent or correct a current or imminent radiological emergency posing a significant danger to public health and safety. However, unlike for other general authorizations, applicants must obtain the written permission of the Department of Energy in order to use the new general authorization. Accordingly, the new general authorization can be viewed as a hybrid authorization in that it will not be automatic, as for example a general authorization under § 810.7(a), but does not involve the time-consuming process required for specific authorizations. DOE will review applications to confirm that proposed activities meet the criteria for use of the authorization and are consistent with the objectives of U.S. national security, national disclosure, and nuclear nonproliferation policy. In addition, DOE will provide each application received to the Departments of State (DOS), Commerce, and Defense, the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission, along with notice of DOE's proposal to allow or disallow use of the new general authorization. It is anticipated that in most cases, with DOS concurrence, permission or denial will be given within 30 days. If it appears that review is required beyond the 30-day period, DOE will notify the applicant within the 30-day period not to proceed until DOE informs the applicant otherwise.

The intent of the new general authorization is to:

- Expedite safety-related assistance to civilian nuclear power plants, particularly in the former Soviet Union, and support the U.S. Government's efforts to improve the operational safety of nuclear power reactors worldwide.
- Enable U.S. firms to compete more effectively against foreign competitors for safety-related nuclear business.
- Eliminate unnecessary paperwork and time-consuming bureaucratic delays.

Over the past several years, DOE has received numerous requests from U.S. firms to provide safety-related assistance to foreign nuclear power plants and has granted those requests after careful executive branch review.

DOE has now reached the conclusion that for this type of assistance a more expedited procedure would better serve the goal of enhancing safety while not compromising the equally important goal of strict adherence to the nonproliferation policy of the United States.

To assist applicants in determining whether the assistance they propose to furnish is likely to qualify for the "fast track" treatment afforded by the new general authorization, a definition of "operational safety" has been added to § 810.3 "Definitions."

The authorization also may apply to "continuing programs" of safety enhancement, in which a U.S. supplier undertakes a variety of informational and assistance activities intended to upgrade and maintain safety over a long period; this would obviate the need for specific authorization of each or several of the activities periodically.

In § 810.8(a), the list of countries requiring specific authorization even for nuclear power-reactor related activities has been modified to reflect the vast changes in the world since the list was last published in 1986. Deleted from the list are countries that no longer exist, some countries that have become party to the Nuclear Non-Proliferation Treaty (NPT) and completed full-scope safeguards agreements with the International Atomic Energy Agency (IAEA), and East European countries that had been listed solely for national security reasons that vanished with the disintegration of the Warsaw Pact. Added to the list are the republics of the former Soviet Union. Section 810.8 is also amended to require specific authorization for assistance relating to certain research or test reactors. An additional reporting requirement is added to § 810.13.

**2. Regulatory Changes**

The following changes are made to Part 810:

A. Section 810.3 *Definitions.* A definition of "operational safety" is added.

B. Section 810.4 *Communications.* A new addressee for communications is given.

C. Section 810.5 *Interpretations.* The title of the office providing advice is changed.

D. Section 810.7 *Generally authorized activities.* A new general authorization for assistance that would enhance the operational safety of existing civilian nuclear power reactors is added.

E. Section 810.8 *Grant of specific authorization.* The list of countries in § 810.8(a) is revised, with some countries deleted and others added. Section 810.8 is also amended by adding requirements for specific authorization for assistance relating to research and test reactors greater than 5 Megawatts Thermal and training in related activities.

F. Section 810.10 *Grant of specific authorization.* The addressee for proposals to provide assistance is changed.

G. Section 810.13 *Reports.* Reporting requirements include a vendor assurance that the vendor's agreement with a recipient requires the vendor to obtain DOE approval before consenting to retransfer materials, equipment, and technology transferred under certain general authorizations to a country listed in § 810.8. Also, the addressee for reports is changed.

H. Section 810.16 *Effective date and savings clause.* The savings clause states that the revision will not affect previously granted specific authorizations or generally authorized activities for which the contracts, purchase orders, or licensing arrangements are already in effect on the date of publication of the final rule; also, that persons engaging in activities generally authorized under the present regulations but requiring specific authorization under the revision must request such specific authorization within 90 days but may continue their activities until DOE acts on the request; also, that specific authorizations previously granted for assistance to the Soviet Union remain valid for the newly independent former republics of the Soviet Union.

**3. Statutory Requirements**

Pursuant to section 57 b. of the Atomic Energy Act, with the concurrence of the Department of State and after consultations with the Departments of Defense and Commerce, the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission, the Secretary of Energy has determined that to authorize this revision of 10 CFR part 810 will not be inimical to the interests of the United States.

**4. Procedural Matters**

*A. Regulatory Review*

Pursuant to the January 22, 1993, memorandum on the subject of regulatory review from the Director of the Office of Management and Budget (58 FR 6074, January 25, 1993), DOE submitted this notice to the Director for appropriate review. The Director has completed his review. Separately, DOE has determined that there is no need for a regulatory impact analysis because the rule is not a major rule as that term is defined in section 1(b) of Executive Order 12291."

*B. Review under the Regulatory Flexibility Act*

The rule was reviewed under the Regulatory Flexibility Act, Pub. L. 96–354 (42 U.S.C. 601–612) which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses and small government jurisdictions. This action amends regulations in a manner to expedite the current process of providing approval for U.S. persons to conduct certain activities in other countries; thus it would impose no economic burden upon small entities subject to those regulations. DOE accordingly certifies that there will not be a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

*C. Review under the National Environmental Policy Act*

The rule was reviewed under the National Environmental Policy Act of 1969, Public Law 91–190 (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality Regulations (40 CFR parts 1500–08), and the Department of Energy environmental regulations (10 CFR part 1021) and was determined not to constitute a major Federal action significantly affecting the quality of the human environment. Accordingly, no environmental impact statement is required.

*D. Review under Executive Order 12612*

Executive Order 12612 requires that regulations be reviewed for any substantial direct effects on States, on the relationship between the national Government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires the preparation of a Federalism assessment to be used in decisions by senior policymakers in promulgating or implementing the regulation. The rule will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government. Preparation of a Federalism assessment is therefore unnecessary.

*E. Review under Executive Order 12778*

Section 2 of Executive Order 12778 instructs each agency subject to

Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's rulemaking meets the requirements of sections 2(a) and (b) of Executive Order 12778.

*F. Paperwork Reduction Act*

The information collections in this rule are exempt from review by the Office of Management and Budget and from public comment for reasons of national security as provided for in Executive Orders 12035 and 12333 issued under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

**5. Review of Comments**

DOE published a proposed rule version of these amendments in the **Federal Register** on March 11, 1993 (58 FR 13427) and a correction to the proposed rule on March 23, 1993 (58 FR 15441). Written comments were received from four parties. These comments have been made available for public inspection in the DOE Reading Room during consideration of this final rule. As a result, the following changes in the proposed rule were either made or considered and rejected:

*A. Section 810.3 Definitions*

One comment suggested the word "public" in the newly added definition of "operational safety" might be confusing because the Atomic Energy Act's reference to "public health and safety" has been interpreted in Nuclear Regulatory Commission licensing to mean the health and safety of the U.S. "public," while here the reference is also to the foreign "public." Accordingly, it was proposed to replace the word "public" with "off-site population" in the definition, as well as in § 810.7(b) and in the new general authorization in § 810.7. To preclude the possibility of confusion resulting from the use of "public," DOE has adopted this proposal.

Another comment found the definition "extraordinarily broad." DOE agrees that it is broad, reflecting DOE experience that many kinds of appropriate assistance can contribute to the safe operation of a nuclear power reactor. DOE has been careful, however, to frame a definition that excludes an even wider variety of nuclear assistance—for example, safety-related assistance to enrichment or reprocessing facilities or assistance in designing or manufacturing reactors—for which this general authorization would not be available. Even then, the assistance could be provided to a recipient on the § 810.8 list of countries if a specific authorization were granted after review under these regulations.

*B. Section 810.7 Generally Authorized Activities*

One comment contended that the new safety-related general authorization would justify the provision of "virtually any kind of nuclear assistance in any country with a civilian nuclear power program," including countries "known or suspected to be developing nuclear weapons." In response, DOE would underscore the point made in the preamble to the proposed rule—that is, "DOE will review applications to confirm that proposed activities meet the criteria for use of the authorization and are consistent with the objectives of U.S. national security, national disclosure, and nuclear nonproliferation policy." This review will assess not only the safety-related nature of the proposed assistance and but also whether U.S. policy objectives are served. Thus, just as assistance under specific authorization is governed by the nonproliferation and safeguards status of the recipient country and is denied to countries "known or suspected to be developing nuclear weapons," so would assistance under the new general authorization.

The same comment expressed disbelief that "an exception to the specific authorization requirement is warranted" even for safety-related assistance to the former Soviet Union because "current part 810 specific authorization procedures are not onerous." However, at minimum, the comment held, the new general authorization should at least be limited to the republics of the former Soviet Union "which have implemented effective safeguards and made a commitment to long-term nuclear cooperation with the United States."

As to the onerousness of the specific authorization procedures, DOE experience has shown that processing routine cases under these procedures normally takes about three months, at best. However, since the "fast track" of the new general authorization will be reserved for safety-related assistance that poses little or no proliferation concern and going to countries that pose little or no proliferation concern, DOE believes it should be available for countries on the § 810.8(a) list other than the republics of the former Soviet Union, for example, Argentina or South Africa. Even so, DOE has deliberately chosen not to make this type of general authorization automatic—that is, available for the taking—as is the case for authorizations under §§ 810.7(a) and (g), for example, and in fact has chosen to make its approval more formal than for use of any other type of general authorization. This is because DOE believes the technical significance of the proposed safety-related assistance and its consistency with U.S. policy objectives cannot be left to the judgment of the applicant but must be assessed by DOE and the other agencies.

Further, the comment raised the concern that "the mere designation by the recipient country of a reactor as 'civil' should not automatically entitle it to operational safety assistance" and argued that the authorization should be limited to "operating" reactors rather than "existing" reactors to "avoid the risk of authorizing assistance to help complete reactors now under construction in countries of proliferation risk."

DOE agrees wholeheartedly that calling a reactor "civil" does not necessarily make it so. Accordingly, it has been the longstanding policy of DOE and the other agencies involved in reviews under these regulations to ascertain the true use of any reactor proposed to receive U.S. assistance. DOE has chosen to adopt "existing" rather than "operating" as a qualification on the term "reactor" because the former would enable improvement of safety features of a reactor prior to start-up, as well as assistance to safe start-up of a reactor that was shut down for maintenance or fuel reloading.

Another comment said DOE should have to give written permission for each case of transfer of assistance or at least have to grant permission at intervals (e.g. annually) to prevent granting of a "one-time permission to transfer a wide range of different technology over an indefinite period of time." DOE believes "one-time permission" for a series of transfers may be appropriate in some cases—for example, allowing associations of power reactor operators to exchange safety-related information regularly over time. However, DOE

foresees requiring periodic renewals of such applications to use the new general authorization.

A comment urged that the concurrence/consultation roles of the other agencies be addressed in the final regulations and a mechanism provided for dealing with disapproval by other agencies. As the preamble to the Proposed Rule indicated, the interagency procedures for use of the new general authorization will be approximately the same as for specific authorization: DOE will refer each proposal it believes qualifies for the safety-related general authorization to the Department of State for its concurrence and to the Departments of Defense and Commerce, the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission for their views. Since DOE intends to use the new general authorization only for safety-related assistance that poses no proliferation concern, it believes five working days should be ample for the interagency review. To keep interagency paperwork to a minimum, the Department of State has agreed to furnish a generic concurrence in advance and to inform DOE in writing when it does not wish this concurrence to apply.

As for providing a mechanism for dealing with agency disapproval of use of the new general authorization, current procedures as they apply to specific authorizations do not have such a mechanism. The law requires DOE to obtain DOS concurrence and to consult the other agencies. DOE and DOS fully consider the views of certain other agencies in reaching their conclusions and see no need for a formal conflict resolution process when the current consultation procedures work well.

One comment suggested that 20 days be allowed for interagency review of cases involving suspected nuclear proliferant countries. DOE has no intention of hurrying review of proposed assistance to nuclear proliferant countries—whether under specific authorization or the new general authorization. In the rare case that U.S. Government nonproliferation policy would not preclude assistance to such countries, it would certainly require that agencies have ample time to deliberate. In any event, no change in the regulations is needed to provide DOE and the other agencies the time necessary to assess fully each request.

Two comments suggested that to avoid possible misinterpretation, the new general authorization should state explicitly that it is intended to be used only for assistance to countries listed in § 810.8(a). DOE has made this change.

*C. Section 810.8 Activities Requiring Specific Authorization*

One comment urged that in addition to the many countries being deleted from the § 810.8(a) list, DOE should consider the early removal of Argentina and Brazil in recognition of the great progress these countries have made toward joining the international nuclear nonproliferation regime. DOE is well aware of recent developments in Argentina and Brazil and notes that Argentina, in particular, is making rapid progress toward fulfilling its commitments to put into force both the Treaty of Tlatelolco and a full-scope safeguards agreement with the IAEA. DOE believes that countries clearly renouncing nuclear weapons should be considered for removal from the § 810.8(a) list in a timely manner and pledges to do so.

One comment expressed concern over the reference to "prototype" reactors in proposed new section 8(c)(5). It noted that "prototype" could be misconstrued as including first models of new power reactors, although the intent is to require specific authorization for assistance to the kinds of reactors that have figured in the clandestine programs of would-be proliferants. Since requiring specific authorization for assistance to all "research" and "test" reactors greater than 5 Megawatts Thermal capacity would include the "prototypes" of such reactors, DOE has deleted the reference to "prototype" reactors in the subsection.

*Section 810.13 Reports*

DOE accepted two comments that the new reporting requirement on generally authorized assistance should make clear that it is the U.S. vendor's responsibility to have a retransfer consent agreement with the foreign recipient and to obtain DOE approval before consenting to a retransfer to a country listed in § 810.8(a). It also accepted a comment that DOE's approval should be necessary for subsequent retransfers to countries listed in § 810.8(a). The requirement has been modified to clarify DOE's original intent on this matter and consonant with the comments received.

**List of Subjects in 10 CFR Part 810**

Foreign relations, Nuclear energy, Reporting and recordkeeping requirements.

Issued in Washington, DC, July 20, 1993.

**Anthony Czajkowski,**

*Acting Director, Office of Arms Control and Nonproliferation, Office of Intelligence and National Security.*

For the reasons set out in the preamble, part 810 of title 10 of the Code of Federal Regulations is amended as set forth below:

## PART 810—ASSISTANCE TO FOREIGN ATOMIC ENERGY ACTIVITIES

1. Section 810.3 is amended by adding in alphabetical order the definition for the term "Operational safety" to read as follows:

**§ 810.3 Definitions.**

* * * * *

*Operational safety* means the capability of a reactor to be operated in a manner that prevents uncontrolled or inadvertent criticality, prevents or mitigates uncontrolled release of radioactivity to the environment, monitors and limits staff exposure to radiation and radioactivity, and protects off-site population from exposure to radiation or radioactivity. Operational safety may be enhanced by providing expert advice, equipment, instrumentation, technology, software, services, analyses, procedures, training, or other assistance that improves the capability of the reactor to be operated in such a manner.

* * * * *

2. Section 810.4 is amended by designating the first paragraph as (a) and revising it and by designating the second paragraph as (b) to read as follows:

**§ 810.4 Communications.**

(a) All communications concerning these regulations should be addressed to: U.S. Department of Energy, Washington, DC 20585. Attention: Director, Export Control Operations Division, IS–40, Office of Export Control and International Safeguards. Telephone (202) 586–2112.

* * * * *

**§ 810.5 [Amended]**

3. Section 810.5 is amended by removing the phrase "Division of Politico-Military Security Affairs (PMSA)" in the first sentence and adding in its place "Director, Export Control Operations Division (AN–30)". Section 810.5 is further amended by removing the acronym "PMSA" in the second sentence and adding in its place "the Director, Export Control Operations Division".

* * * * *

4. Section 810.7 is amended by removing the phrase "public health and safety" in paragraph (b) and adding in its place the phrase "the health and safety of the off-site population."

Section 810.7 is amended further by redesignating paragraphs (c) through (g) as (d) through (h) and adding a new paragraph (c) to read as follows:

**§ 810.7 Generally authorized activities.**

* * * * *

(c) Furnishing information or assistance, including through continuing programs, to enhance the operational safety of an existing civilian nuclear power plant in a country listed in § 810.8(a) or to prevent, reduce, or correct a danger to the health and safety of the off-site population posed by a civilian nuclear power plant in such a country; provided the Department of Energy is notified in advance by certified mail, return receipt requested, and approves the use of the authorization in writing; the Department will notify the applicant of the status of the request within 30 days from the date of receipt of the notification.

* * * * *

5. Section 810.8 is amended by revising paragraphs (a) and (c)(5) and adding a new paragraph (c)(6). These revisions read as follows:

**§ 810.8 Activities requiring specific authorization.**

(a) Engaging directly or indirectly in the production of special nuclear material in any of the countries listed below:

Afghanistan
Albania
Algeria
Andorra
Angola
Argentina
Armenia
Azerbaijan
Bahrain
Belarus
Brazil
Burma (Myanmar)
Cambodia
Chile
China, People's Republic of
Comoros
Cuba
Djibouti
Georgia
Guyana
India
Iran
Iraq
Israel
Kazakhstan
Korea, People's Democratic Republic of
Kuwait
Kyrgyzstan
Laos
Libya
Mauritania
Moldova
Monaco
Mongolian People's Democratic Republic
Mozambique
Niger
Oman
Pakistan
Qatar
Russia
Saudi Arabia
South Africa
Syria
Tajikistan
Turkmenistan
Ukraine
United Arab Emirates
Uzbekistan
Vanuatu
Vietnam
Zambia
Zimbabwe

Countries may be removed from or added to this list by amendments published in the **Federal Register**.

* * * * *

(c) * * *

(5) Designing, constructing, fabricating, operating, or maintaining research or test reactors capable of continuous operation above 5 Megawatts Thermal.

(6) Training in the activities of paragraphs (c) (1) through (5) of this section.

**§ 810.10 Grant of specific authorization.**

6. Section 810.10(a) is amended by removing the phrase "Director, Division of Politico-Military Security Affairs (DP–332), Office of International Security Affairs" and adding in its place "Director, Export Control Operations Division, IS–40, Office of Export Control and International Safeguards".

7. Section 810.13 is amended by revising the introductory text of paragraph (d), adding a new paragraph (d)(4), and revising paragraphs (f) and (g). These revisions read as follows:

**§ 810.13 Reports.**

* * * * *

(d) Any person, within 30 days after beginning any generally authorized activity under §§ 810.7(b), (c), or (h), shall provide to the Department of Energy:

* * * * *

(4) An assurance that the U.S. vendor has an agreement with the recipient ensuring that any subsequent transfer of materials, equipment, or technology transferred under general authorization to a country listed in § 810.8(a) will only take place if the vendor obtains DOE approval.

* * * * *

(f) Persons engaging in activities generally authorized under section § 810.7(a), (d), (e), (f), and (g) are not subject to reporting requirements under this section.

(g) All reports should be sent to: U.S. Department of Energy, Washington, DC 20585. Attention: Director, Export Control Operations Division, IS–40, Office of Export Control and International Safeguards.

8. Section 810.16 is revised to read as follows.

**§ 810.16 Effective date and savings clause.**

These regulations are effective on July 26, 1993. Except for actions that may be taken by DOE pursuant to section 810.11, this revision does not affect the validity or terms of any specific authorizations granted under the previous regulations or generally authorized activities under the previous regulations for which the contracts, purchase orders, or licensing arrangements are already in effect on July 26, 1993. Persons engaging in activities that were generally authorized under the previous regulations but that require specific authorization under the revised regulations must request specific authorization within 90 days but may continue their activities until DOE acts on the request. Specific authorizations previously granted for assistance to the Soviet Union remain valid for the newly independent former republics of the Soviet Union.

[FR Doc. 93–17717 Filed 7–23–93; 8:45 am]
BILLING CODE 6450–01–P

## FEDERAL RESERVE SYSTEM

### 12 CFR Parts 207, 220, 221 and 224

### Regulations G, T, U and X; Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; determination of applicability of regulations.

**SUMMARY:** The List of Marginable OTC Stocks (OTC List) is composed of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) is composed of foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to and deletions from the previous OTC List