

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

GENERAL PROVISIONS

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AUTHORITY: Atomic Energy Act of 1954, secs. 53, 63, 103, 104, 122, 161, 223, 234, 1701 (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201, 2273, 2282, 2297f); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

Section 75.4 also issued under Nuclear Waste Policy Act secs. 135 (42 U.S.C. 10155, 10161).

SOURCE: 45 FR 50711, July 31, 1980, unless otherwise noted.

§ 75.1 Purpose.

The purpose of this part is to implement the requirements established by treaties between the United States and the International Atomic Energy Agency (IAEA). These treaties include the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America (Safeguards Agreement) and the Protocol Additional to the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America (Additional Protocol). This part contains requirements to ensure that the United States meets its nuclear non-proliferation obligations under these US/IAEA Safeguards treaties. These obligations include providing information to the IAEA on the place of applicant, licensee, or certificate holder activities; information on source and special nuclear materials; and access to the place of applicant, licensee, or certificate holder activities. These obligations are similar to the obligations accepted by other countries.

[73 FR 78607, Dec. 23, 2008]

§ 75.2 Scope.

(a) All persons licensed by the Nuclear Regulatory Commission or an Agreement State, or who hold a certificate of compliance, or construction permit or authorization issued by the Nuclear Regulatory Commission are subject to the requirements of this part. These requirements also apply to all persons who have filed an application with the NRC to construct a facility or to receive source or special nuclear material. Locations determined by the U.S. Government to be associated with activities or information of direct national security significance to the United States are excluded from these requirements. Specifically, these requirements pertain to the following locations and activities of licensees and certificate holders:

- (1) A facility, as defined in § 75.4, and the site of the facility;

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(2) A location performing nuclear fuel cycle-related research and development, as defined in § 75.4;

(3) A location manufacturing, assembling, or constructing nuclear fuel cycle-related equipment or materials as defined in § 75.4;

(4) A location of a uranium or thorium mine or concentration plant (e.g., in-situ leach mines and activities involving ore processing);

(5) A location importing or possessing “impure” source material [i.e., source material not in the form of purified chemical products (e.g., UF₆, U metal, UO₂)];

(6) A location possessing source or special nuclear material on which IAEA safeguards have been exempted or terminated;

(7) A location receiving imports of material or equipment that is subject to export controls; and

(8) The activity of exporting source materials for non-nuclear purposes or exporting of non-nuclear material or equipment that is subject to export controls.

(b) Facilities referred to in § 75.2(a)(1) are also subject to the reporting requirements of § 75.6(b) and (c), IAEA inspections in § 75.8, Facility information in § 75.10, and the Material Accounting and Control requirements in §§ 75.21 through 75.45.

(c) Locations referred to in § 75.2(a)(2) through 75.2(a)(7) are also subject to the reporting requirements of § 75.6(b) and (d), and IAEA inspections in § 75.8, and location information in § 75.11.

[73 FR 78607, Dec. 23, 2008]

§ 75.3 Exemptions.

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

(b) Without limiting the generality of paragraph (a) of this section, the U.S. Government may request from the IAEA an exemption with respect to nuclear material of the following types:

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

(2) Nuclear material used in non-nuclear activities; and

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

[73 FR 78607, Dec. 23, 2008]

§ 75.4 Definitions.

As used in this part:

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

Additional Protocol means the Protocol Additional to the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, concluded between the United States and the IAEA in Vienna, Austria, on June 12, 1998, that follows the provisions of INFCIRC/540.

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

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

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

Complementary access means access provided to IAEA inspectors in accordance with the provisions of the Additional Protocol.

Containment (with respect to IAEA safeguards) means containers, devices, or structures that are used to prevent undetected access to or movement of nuclear material.

Effective kilogram means a unit used in safeguarding nuclear material. The quantity is:

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

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

Eligible Facilities List means the list of facilities that are eligible for IAEA safeguards inspections under the US/IAEA Safeguards Agreement, which the Secretary of State or his designee last submitted for Congressional review and which was not disapproved. A copy of this list is available for inspection at the NRC Web site, <http://www.nrc.gov>, and/or at the NRC Public Document Room. In accordance with the provisions of the Safeguards Agreement, facilities of direct national security significance are excluded from the Eligible Facilities List.

Environmental sampling (with respect to IAEA Safeguards) means the collection of environmental samples (e.g., air, water, vegetation, soil, or smears from surfaces) at a location specified by the IAEA for the purpose of assisting the IAEA to draw a conclusion about the absence of undeclared nuclear material or nuclear activities.

Facility means:

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

(2) A plant that converts nuclear material from one chemical form to another (e.g., Uranium hexafluoride plant);

(3) A fuel fabrication plant;

(4) An enrichment plant or isotope separation plant for the separation of isotopes of uranium or to increase the abundance of ²³⁵U.

(5) An installation designed to store nuclear material, such as an independent spent fuel storage installation (ISFSI) or a monitored retrievable storage installation (MRS) as defined in §72.3 of this chapter; or

(6) Any plant or location where the possession of more than 1 effective kilogram of nuclear material is licensed pursuant to Parts 40, 50, 60, 61, 63, 70, 72, 76, or 150 of this chapter or an Agreement State license.

Facility attachment means a document negotiated between the U.S. and the

IAEA that establishes safeguards commitments for a particular facility.

IAEA means the International Atomic Energy Agency or its duly authorized representatives.

IAEA material balance area means an area established for IAEA accounting purposes, such that:

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

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

Initial protocol means the protocol to the *Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America* that was concluded with the IAEA and provides the IAEA the right to select a facility for material accounting reporting only without the right to conduct inspections.

Inventory change means an increase or decrease in the quantity of source or special nuclear material in an IAEA material balance area.

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

Location means any geographical point or area identified by the United States in its declarations, or by the IAEA resulting from a question, under the Additional Protocol.

Managed access means procedures to protect sensitive or classified information or, to meet safety or physical protection requirements, while allowing the IAEA to accomplish the purpose of a complementary access request.

Nuclear fuel cycle-related manufacturing and construction means those activities related to the manufacture or construction of any of the following: Components for separating the isotopes of uranium or enriching uranium in the isotope 235, zirconium tubes, heavy water or deuterium, nuclear-grade graphite, irradiated fuel casks and canisters, reactor control rods, criticality

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safe tanks and vessels, irradiated fuel element chopping machines, and hot cells.

Nuclear fuel cycle-related research and development means those activities specifically related to any process or system development aspect of any of the following: Conversion of nuclear material; enrichment of nuclear material; nuclear fuel fabrication; reactors; critical facilities; reprocessing of nuclear fuel; and processing of intermediate or high-level waste containing plutonium, high-enriched uranium, or uranium-233.

Nuclear material means any source material or any special nuclear material.

Safeguards Agreement means the Agreement Between the United States and the IAEA for the Application of Safeguards in the United States, and all protocols and subsidiary arrangements to the agreement.

Subsidiary Arrangement means a document, negotiated between the U.S. and the IAEA, that formally defines the technical and administrative procedures to implement the measures contained in the Safeguards Agreement.

Surveillance (with respect to IAEA Safeguards) means instrumental or human observation aimed at detecting the movement of nuclear material.

Transitional Facility Attachment means that portion of the “Transitional Subsidiary Arrangements to the Protocol to the Safeguards Agreement” that pertains to a particular fa-

cility that has been identified under the Initial Protocol.

[45 FR 50711, July 13, 1980, as amended at 46 FR 58283, Dec. 1, 1981; 53 FR 31683, Aug. 19, 1988; 57 FR 18393, Apr. 30, 1992; 57 FR 33432, July 29, 1992; 63 FR 26963, May 15, 1998; 66 FR 55816, Nov. 2, 2001; 73 FR 78608, Dec. 23, 2008]

§ 75.5 Interpretations.

Except as authorized specifically by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 75.6 Facility and location reporting.

(a) Except where otherwise specified, all communications concerning the regulations in this Part shall be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001. Written communications may be delivered in person to the Nuclear Regulatory Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738 between 7:30 a.m. and 4:15 p.m. eastern time. If a submittal deadline falls on a Saturday, Sunday, or a Federal holiday, the next Federal working day becomes the official due date.

(b) Each applicant, licensee, or certificate holder who has been given notice by the Commission in writing that its facility or location is required to report under the Safeguards Agreement shall make its initial and subsequent reports, including attachments, in an appropriate format defined in the instructions.

(c) *Facilities*—Specific information regarding facilities is to be reported as follows:

Item	Section	Manner of delivery
Initial Inventory Report	75.32	As specified by printed instructions for preparation of DOE/NRC Form-742.
Inventory Change Reports	75.34	As specified by printed instructions for preparation of DOE/NRC Form-741 and Form-740M.
Material Status Reports	75.35	As specified by printed instructions for preparation of DOE/NRC Form-742, Form-742C, and Form-740M.
Special Reports	75.36	To the NRC Headquarters Operations Center.
Facility information	75.10(d)	As specified by printed instructions for Form N-71 and associated forms.

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Item	Section	Manner of delivery
Site information	75.10(e)	As specified by printed instructions for preparation of DOC/NRC Form AP–A and associated forms.

(d) Locations—Specific information regarding locations is to be reported as follows:

Item	Section	Manner of delivery
Fuel cycle-related research and development information ...	75.11(b)(1)	As specified by printed instructions for preparation of DOC/NRC Form AP–1 and associated forms.
Fuel cycle-related manufacturing and construction information.	75.11(b)(2)	As specified by printed instructions for preparation of DOC/NRC Form AP–1 and associated forms.
Mines and concentration plant information	75.11(b)(3)	As specified by printed instructions for preparation of DOC/NRC Form AP–1 and associated forms.
Impure source material possession information	75.11(b)(4)	As specified by printed instructions for preparation of DOC/NRC Form AP–1 and associated forms.
Imports and exports of source material for non-nuclear end uses.	75.11(b)(5)	As specified by printed instructions for preparation of DOC/NRC Form AP–1 and associated forms.
IAEA safeguards-exempted and terminated nuclear material information.	75.11(b)(6)	As specified by printed instructions for preparation of DOC/NRC Form AP–1 and associated forms.
Imports and exports of non-nuclear material and equipment	75.11(b)(7)	As specified by printed instructions for preparation of DOC/NRC Form AP–1 and associated forms.

[73 FR 78609, Dec. 23, 2008, as amended at 80 FR 45844, Aug. 3, 2015]

§ 75.7 Notification of IAEA safeguards.

(a) The licensee must inform the NRC:

(1) Before the licensee begins an activity that may be subject to the Safeguards Agreement; or

(2) Within 30 days of beginning an activity subject to the Additional Protocol.

(b) The Commission, by written notice, will inform the applicant, licensee, or certificate holder of those facilities subject to the application of IAEA safeguards.

(c) Such notice is effective until the Commission informs the licensee or certificate holder, in writing, that its facility or location is no longer so designated. Whenever a previously designated facility or location is no longer subject to the application of IAEA safeguards, the Commission will give the licensee or certificate holder prompt notice to that effect.

[73 FR 78609, Dec. 23, 2008]

§ 75.8 IAEA inspections.

(a) As provided in the Safeguards Agreement and Additional Protocol, inspections may be ad hoc, routine, special, or a complementary access (or a combination of the foregoing). The objectives of the IAEA inspectors in

the performance of inspections are as follows:

(1) Ad hoc inspections to verify information contained in the licensee’s, applicant’s, or certificate holder’s facility information or initial inventory report, or to identify and verify changes in the situation which have occurred after the initial inventory reporting date at any location where the initial inventory report or any inspections carried out indicate that nuclear material subject to safeguards under the Safeguards Agreement may be present;

(2) Ad hoc inspections to identify and, if possible, verify the quantity and composition of the nuclear material referred to in notifications specified under §75.43(b) (pertaining to exports) or §75.43(c) (pertaining to imports) at any place where nuclear material may be located;

(3) Routine inspections are conducted as specified by the facility attachments referred to in §75.15 to verify nuclear material and as-built facility design at the strategic points and the records maintained under this part;

(4) Special inspections may be conducted at any of the places specified above and any additional places where the Commission (in coordination with other Federal agencies), in response to an IAEA request, finds access to be necessary;

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(5) Complementary access may be conducted at a location, using measures permitted under the Additional Protocol and as specified by managed access procedures, for the IAEA inspectors to verify the completeness and accuracy of the information provided on DOC/NRC Form AP-1 or AP-A and associated forms; and

(6) Complementary access must be provided at any additional locations where the Commission (in coordination with other Federal agencies), in response to an IAEA request, finds access to be necessary.

(b) The NRC will notify the applicant, licensee, or certificate holder of each such inspection or complementary access in writing as soon as possible after receiving the IAEA's notice from the U.S. Department of State. The applicant, licensee, or certificate holder should consult with the Commission immediately if the inspection or complementary access would unduly interfere with its activities or if its key personnel cannot be available.

(c) Each applicant, licensee, or certificate holder subject to the provisions of this part shall recognize as a duly authorized representative of the IAEA any person bearing IAEA credentials for whom the NRC has provided written or electronic authorization that the IAEA representative is permitted to conduct inspection activities on specified dates. If the IAEA representative's credentials have not been confirmed by the NRC, the applicant, licensee, or certificate holder shall not admit the person until the NRC has confirmed the person's credentials. The applicant, licensee, or certificate holder shall notify the Commission promptly, by telephone, whenever an IAEA representative arrives at a facility or location without advance notification. The applicant, licensee, or certificate holder shall also contact the Commission, by telephone, within one hour with respect to the credentials of any person who claims to be an IAEA representative and shall accept written or electronic confirmation of the credentials from the NRC. Confirmation may be requested through the NRC Operations Center (commercial telephone number 301-816-5100).

(d) Each applicant, licensee, or certificate holder subject to the provisions of this part shall allow the IAEA opportunity to conduct an NRC-approved inspection or complementary access of the facility or location to verify the information submitted under §§ 75.10, 75.11, and 75.31 through 75.43. The NRC will assign an employee to accompany IAEA representative(s) at all times during the inspection or complementary access. The applicant, licensee, or certificate holder may accompany IAEA representatives who inspect or access the facility or location. The IAEA representatives should not be delayed or otherwise impeded in the exercise of their duties.

(e) Each applicant, licensee, or certificate holder shall permit the IAEA, in conducting an ad hoc, routine, or special inspection at a facility, to:

(1) Examine records kept under § 75.21;

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

(3) Verify the function and calibration of instruments and other measurement control equipment;

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

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

(6) Perform other measures requested by the IAEA and approved by the NRC.

(f) Each applicant, licensee, or certificate holder shall, at the request of an IAEA inspector during an ad hoc, routine, or special inspection at a facility:

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

(2) Take other actions contemplated by the Safeguards Agreement, and included in the safeguards approach approved by the United States and the

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IAEA, including but not limited to the following examples:

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

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

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

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

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

(vi) Carrying out other calibrations.

(g) Each applicant, licensee, or certificate holder shall permit the IAEA, in conducting complementary access at a location, under the provisions of the Additional Protocol and subsidiary arrangements, to:

(1) Perform visual observations and record observations as photographs;

(2) Conduct environmental sampling, when authorized by the U.S. Government;

(3) Use radiation detection and measurement devices;

(4) Apply seals and other identifying and tamper-indicating devices;

(5) Perform nondestructive measurements and sampling;

(6) Examine records relevant to quantities, origin, and disposition of materials to confirm the accuracy of the information provided under § 75.11;

(7) Examine safeguards-relevant production and shipping records; and

(8) Other objective measures that have been demonstrated to be technically feasible and the use of which has been agreed upon by the IAEA Board of Governors and following consultations between the IAEA and U.S. Government.

(h) Nothing in this section requires or authorizes an applicant, licensee, or certificate holder to carry out any operation that would otherwise constitute a violation of the terms of any applicable license, regulation, or order of the Commission.

[73 FR 78609, Dec. 23, 2008]

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§ 75.9 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission, or another U.S. Government agency, has submitted the information collection requirements contained in this Part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this Part under control number 3150-0055.

(b) The approved information collection requirements contained in this Part appear in §§ 75.6, 75.7a, 75.10, 75.11, 75.21, 75.22, 75.23, 75.24, 75.31, 75.32, 75.33, 75.34, 75.35, 75.36, 75.43, 75.44, and 75.45.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In § 75.10, Form N-71 and associated forms are approved under control number 3150-0056.

(2) In §§ 75.31, 75.32, 75.33, and 75.35, DOE/NRC Form 742 is approved under control number 3150-0004.

(3) In §§ 75.33 and 75.34, DOE/NRC Form 741 is approved under control number 3150-0003.

(4) In §§ 75.34 and 75.35, DOE/NRC Form 740M is approved under OMB control number 3150-0057.

(5) In § 75.35, DOE/NRC Form 742C is approved under control number 3150-0058.

(6) In §§ 75.10 and 75.11, DOE/NRC Forms AP-1, AP-A, and associated forms are approved under control number 0694-0135.

[49 FR 19628, May 9, 1984, as amended at 62 FR 52189, Oct. 6, 1997; 67 FR 67101, Nov. 4, 2002; 73 FR 78610, Dec. 23, 2008]

FACILITY AND LOCATION INFORMATION

§ 75.10 Facility information.

(a) Each applicant, licensee, or certificate holder subject to the provisions

of this Part shall submit facility information, in response to written notification from the Commission, with respect to any facility that the Commission indicates has been identified under the Safeguards Agreement, the Initial Protocol to the Agreement, or meets the Additional Protocol reporting criteria, and in which the applicant, licensee, or certificate holder carries out licensed activities. (The Commission request must state whether the facility has been identified under Article 39(b) of the principal text of the Safeguards Agreement or Article 2(a) of the Initial protocol.) The applicant, licensee, or certificate holder shall submit the requested information to the Commission within the period specified in the Commission's request.

(b) Facility information includes:

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

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

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

(4) A description of the existing and proposed procedures at the facility for nuclear material accounting and control, with special reference to material balance areas established by the licensee, measurement of flow, and procedures for physical inventory taking (As part of this description, the applicant, licensee, or certificate holder may identify a process step involving information that it deems to be commercially sensitive and for which it proposes that a special material balance area be established so as to restrict IAEA access to this information); and

(5) A map of the site and information on the size of the buildings and on the general nature of the activities conducted in each building.

(c) Each licensee or certificate holder shall thereafter submit to the Commis-

sion information with respect to any modification at the facility affecting the information referred to in paragraph (a) of this section. The following information must be submitted:

(1) Regarding a modification of a type described in the license or certificate conditions: At least 180 days before the modification is scheduled to be started, except that in an emergency or other unforeseen situation a shorter period may be approved by the Commission.

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

(d) The information specified in paragraphs (b) and (c) of this section, except for the information specified in paragraph (b)(5) of this section, must be prepared on IAEA approved Design Information Questionnaire forms (Form N-71 and associated forms or other forms supplied by the Commission). The information must be sufficiently detailed to enable knowledgeable determinations to be made in the development of Facility Attachments or amendments thereto, including:

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

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

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

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

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

(6) Selection of appropriate combinations of containment and surveillance

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methods and techniques at the strategic points at which they are to be applied; and

(7) Information on organizational responsibility for material accounting and control.

(e) Information specified in paragraph (b)(5) of this section must be submitted as specified by instructions for DOC/NRC Form AP-A and associated forms and shall contain a site map drawn to scale as an attachment.

(f) The applicant's, licensee's, or certificate holder's security rules for physical protection that will impact the IAEA inspectors at the facility must be included in the facility information only when and to the extent specifically requested by the Commission.

(g) Health and safety rules that are to be observed by the IAEA inspectors at the facility must be included in the facility information.

(h) Information must be provided on the need to manage IAEA access to the facility to protect health and safety or to protect classified, proprietary, or other sensitive information, and on other protective measures that should be implemented should an IAEA access be requested.

[73 FR 78611, Dec. 23, 2008]

§75.11 Location information.

(a) As required by the Additional Protocol, each applicant, licensee, or certificate holder shall submit location information to the Commission as specified in the instructions for DOC/NRC Form AP-1 and associated forms.

(b) Location information includes:

(1) Nuclear fuel cycle-related research and development information including a general description of the activity and information specifying the location of the activity.

(2) Nuclear fuel cycle-related manufacturing or construction information including a description of the scale of operations for the activity.

(3) Uranium and thorium mine and concentration plant information including information on the location, operational status, and the estimated annual production capacity and current annual production of the activity.

(4) Impure source material possession information including the quantities,

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the chemical composition, and the use or intended use of the material (e.g., nuclear or non-nuclear use).

(5) Imports and exports of source material for non-nuclear end uses including the location, quantities, chemical compositions, and use of the imported or exported material.

(6) IAEA-exempted and -terminated nuclear material information including information regarding the quantities, uses, and location of the nuclear material.

(7) Imports and exports of non-nuclear material and equipment including the location, quantity and description of the materials and equipment.

(c) Information specified in paragraphs (b)(1) through (b)(7) of this section must be supplied as specified in the instructions for DOC/NRC Form AP-1 and associated forms. The information provided on DOC/NRC Form AP-1 and associated forms must be submitted annually. If the information has not changed, a "No change" report must be provided. NRC should also be notified when the activity is no longer performed. The annual report must be submitted by January 31 of each succeeding year after the initial report. The initial report must be submitted no later than 30 calendar days following the date of publication of this rule.

(d) Information must be provided on the need to manage IAEA access to the location to protect health and safety or to protect classified, proprietary, or other sensitive information, and on other protective measures that should be implemented should an IAEA access be requested.

[73 FR 78611, Dec. 23, 2008]

§75.12 Communication of information to IAEA.

(a) Except as otherwise provided in this section, the Commission will furnish to the IAEA all information submitted under §§75.10, 75.11, and 75.31 through 75.43.

(b)(1) An applicant, licensee, or certificate holder may request that information of particular sensitivity, that it customarily holds in confidence, not be transmitted physically to the IAEA. An applicant, licensee, or certificate holder who makes this request shall, at

the time the information is submitted, identify the pertinent document or part thereof and make a full statement of the reasons supporting the request. The applicant, licensee, or certificate holder shall retain a copy of the request and all documents related to the request as a record until the Commission terminates the license or certificate for each facility or location involved with the request, or until the Commission notifies the applicant, licensee, or certificate holder that the applicant, licensee, or certificate holder is no longer under the Safeguards Agreement. Superseded material must be retained for 3 years after each change is made.

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

(3) A request made under § 2.390 of this chapter will not be treated as a request under this section unless the application makes specific reference to this section, nor shall a determination to withhold information from public disclosure necessarily require a determination that such information not be transmitted physically to the IAEA.

(4) If a request is granted, the Commission will determine a location where the information will remain readily available for examination by the IAEA and will so inform the applicant, licensee, or certificate holder. The applicant, licensee, or certificate holder shall retain this information as a record until the Commission terminates the license or certificate for the facility involved with the request or until the Commission notifies the ap-

plicant, licensee, or certificate holder that the applicant, licensee, or certificate holder is no longer under the Safeguards Agreement. Superseded material must be retained for 3 years after each change is made.

(c) A request made under § 2.390(b) of this chapter will not be treated as a request under this section unless the application makes specific reference to this section, nor shall a determination to withhold information from public disclosure necessarily require a determination that this information not be transmitted physically to the IAEA.

(d) Where consistent with the Safeguards Agreement, the Commission may at its own initiative, or at the request of a licensee, determine that any information submitted under §§ 75.10, and 75.11 shall not be physically transmitted to, or made available for examination by, the IAEA.

[45 FR 50711, July 31, 1980, as amended at 53 FR 19262, May 27, 1988; 69 FR 2281, Jan. 14, 2004; 73 FR 78612, Dec. 23, 2008]

MATERIAL ACCOUNTING AND CONTROL FOR FACILITIES

§ 75.15 Facility attachments.

(a) The Facility Attachment or Transitional Facility Attachment will document the determinations referred to in § 75.10 and will contain other appropriate provisions.

(b) The Commission will issue license or certificate amendments, as necessary, to implement the Safeguards Agreement and the Facility Attachment (as amended from time to time). The license or certificate amendments through reference to the Facility Attachment or Transitional Facility Attachment, or otherwise, will specify:

- (1) IAEA material balance areas;
- (2) Types of modifications for which information is required, under § 75.10, to be submitted in advance;
- (3) Procedures, as referred to in § 75.21;
- (4) The extent to which isotopic composition must be included in batch data (under § 75.22) and advance notification (§ 75.45);
- (5) Items to be reported in the concise notes accompanying inventory change reports, as referred to in § 75.34;

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

(7) Actions required to be taken under § 75.8(f) at the request of an IAEA inspector;

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

(9) Other appropriate matters.

(c) The Commission will also issue license or certificate amendments, as necessary, for implementing the Initial Protocol to the Safeguards Agreement and the Transitional Facility Attachment (as amended from time to time).

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

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

(f) Locations reporting under the Additional Protocol, unless located in a facility selected under Article 39(b) of the main text of the Safeguards Agreement, do not have Facility Attachments or Transitional Facility Attachments.

[73 FR 78612, Dec. 23, 2008]

§ 75.21 General requirements.

(a) Each licensee or certificate holder who has been given notice by the Commission in writing that its facility has been identified under the Safeguards Agreement shall establish, maintain, and follow written material accounting and control procedures. The licensee or certificate holder shall retain as a record current material accounting and

control procedures until the Commission terminates the license or certificate for the facility involved with the request or until the Commission notifies the licensee or certificate holder that the licensee or certificate holder is no longer under the Safeguards Agreement. Superseded material must be retained for 3 years after each change is made.

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

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

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

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

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

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

(6) A system of accounting and operating records.

(c)(1) The procedures must, unless otherwise specified in license or certificate conditions, conform to the facility information submitted by the licensee under § 75.10.

(2) Until facility information has been submitted by the applicant, licensee, or certificate holder, the procedures must be sufficient to document changes in the quantity of nuclear material in or at its facility. Observance of the procedures described in §§ 40.61 or 74.15 of this chapter (or the corresponding provisions of the regulations of an Agreement State) by any applicant, licensee, or certificate holder subject thereto constitutes compliance with this paragraph.

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

[45 FR 50711, July 31, 1980, as amended at 53 FR 19263, May 27, 1988; 67 FR 78149, Dec. 23, 2002; 73 FR 78613, Dec. 23, 2008]

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§ 75.22 Accounting records.

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

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

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

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

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

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

§ 75.23 Operating records.

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

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

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

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

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

§ 75.24 Retention of records.

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

REPORTS

§ 75.31 General requirements.

Each licensee or certificate holder who has been given notice by the Commission in writing that its facility has been identified under the Safeguards Agreement shall make, in an appropriate computer-readable format, an initial inventory report, and thereafter shall make accounting reports, with respect to the facility and, in addition, licensees or certificate holders who have been given notice, under § 75.7 that their facilities are subject to the application of IAEA safeguards, shall make the special reports described in § 75.36. These reports must be based on the records kept under § 75.21. At the request of the Commission, the licensee or certificate holder shall amplify or clarify any report with respect to any matter relevant to implementation of the Safeguards Agreement. Any amplification or clarification must be in writing and must be submitted, to the address specified in the request, within 20 days or other time as may be specified by the Commission.

[73 FR 78613, Dec. 23, 2008]

§ 75.32 Initial inventory report.

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

(b) The initial inventory report, to be submitted to the Commission as specified by the instructions (NUREG/BR-0007 and NMMSS Report D-24 "Personal Computer Data Input for NRC Licensees"), must show the quantities of nuclear material contained in or at a facility as of the initial inventory reporting date. The information in the initial inventory report may be based upon the licensee's or certificate holder's book record.

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

[45 FR 50711, July 31, 1980, as amended at 59 FR 35622, July 13, 1994; 73 FR 78613, Dec. 23, 2008]

§ 75.33 Accounting reports.

(a)(1) The accounting reports for each IAEA material balance area must consist of:

- (i) Nuclear Material Transaction Reports (Inventory Change Reports); and
- (ii) Material status reports showing the material balance based on a physical inventory of nuclear material actually present.

(2) These prescribed computer-readable forms replace the following forms which have been submitted in paper form:

- (i) The DOE/NRC Form 741; and
- (ii) The DOE/NRC Form 742.

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

[45 FR 50711, July 31, 1980, as amended at 49 FR 19629, May 9, 1984; 59 FR 35622, July 13, 1994; 73 FR 78613, Dec. 23, 2008]

§ 75.34 Inventory change reports.

(a) Nuclear Material Transaction Reports (Inventory Change Reports) in computer-readable format to be completed in accordance with instructions (NUREG/BR-0006 and NMMSS Report D-24 "Personal Computer Data Input for NRC Licensees"), must specify identification and batch data for each batch of nuclear material, the date of the inventory change, and, as appropriate,

(1) The originating IAEA material balance area or the shipper; and

(2) The receiving IAEA material balance area or the recipient.

Each licensee who receives special nuclear material from a foreign source shall complete both the supplier's and receiver's portion of the form.

(b) Nuclear Material Transactions Reports (Inventory Change Reports), when appropriate, must be accompanied by Concise Notes, completed as specified in the instructions (NUREG/BR-0006 and NMMSS Report D-24

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"Personal Computer Data Input for NRC Licensees"). Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Washington, DC 20555-0001. This Concise Note is used in:

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

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

[59 FR 35622, July 13, 1994, as amended at 73 FR 78613, Dec. 23, 2008; 79 FR 75741, Dec. 19, 2014]

§ 75.35 Material status reports.

(a) A material status report must be submitted for each physical inventory which is taken as part of the material accounting and control procedures required by § 75.21. The material status report must include a material balance report and a physical inventory report which lists all batches separately and specifies material identification and batch data for each batch. When appropriate, the material status report must be accompanied by a Concise Note. The reports described in this section must be prepared and submitted in accordance with instructions (NUREG/BR-0006, NUREG/BR-0007, and NMMSS Report D-24 "Personal Computer Data Input for NRC Licensees"). Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Washington, DC 20555-0001.

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

[45 FR 50711, July 31, 1980, as amended at 59 FR 35622, July 13, 1994; 73 FR 78613, Dec. 23, 2008; 79 FR 75741, Dec. 19, 2014]

§ 75.36 Special reports.

(a) This section applies only to licenses or certificate holders who have been given notice under § 75.7(b) that

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their facilities are subject to the application of IAEA safeguards.

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

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

[45 FR 50711, July 31, 1980, as amended at 73 FR 78613, Dec. 23, 2008]

ADVANCED NOTIFICATION AND EXPENSES

§ 75.43 Circumstances requiring advance notification.

(a) Each applicant, licensee, or certificate holder who has been given notice under § 75.7 shall give advance written notification to the Commission regarding the international and domestic transfers specified in this section.

(b) *Exports.* Notification shall be given of any proposed shipment of nuclear material for peaceful purposes under an export license issued pursuant to part 110 of this chapter, in an amount exceeding one effective kilogram, directly or indirectly to any non-nuclear-weapon state (as referred to in Article III(2) of the Treaty on the Non-Proliferation of Nuclear Weapons, 21 U.S.T. 483). If the licensee anticipates that it will make two or more shipments for peaceful purposes, within any period of 90 days, directly or indirectly to destinations in the same non-nuclear-weapon state, notification shall be given of each shipment if the aggregate quantity of nuclear material to be transferred exceeds one effective kilogram.²

(c) *Imports.* (1) Notification shall be given (to the fullest extent possible on the basis of available information) with respect to nuclear material which

immediately prior to export is subject to safeguards, under an agreement with the IAEA, in the country from which the material, directly or indirectly, is being exported. Such notification is only required, however, if the quantities of nuclear material are as specified in paragraph (c)(2) of this section.

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

(d) *Domestic transfers.* Notification must be given regarding any shipments of nuclear material (other than small quantities in the form of samples containing less than 0.01 effective kilogram per sample) to a non-eligible destination. As used in this paragraph, a *non-eligible destination* means any destination in the United States other than a facility on the Eligible Facilities List.

[45 FR 50711, July 31, 1980, as amended at 73 FR 78613, Dec. 23, 2008]

§ 75.44 Timing of advance notification.

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

(1) In the case of exports and domestic transfers, at least 20 days in advance of the preparation of the nuclear material for shipment from the facility.

(2) In the case of imports, at least 12 days in advance of the unpacking of nuclear material at the facility.

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

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

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

[45 FR 50711, July 31, 1980, as amended at 73 FR 78614, Dec. 23, 2008]

§ 75.45 Content of advance notification.

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

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

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

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

(3) Means of transport; and

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

[45 FR 50711, July 31, 1980, as amended at 73 FR 78614, Dec. 23, 2008]

§ 75.46 Expenses.

(a) Under the Safeguards Agreement, the IAEA undertakes to reimburse an applicant, licensee, or certificate holder who has been given notice under § 75.7 for extraordinary expenses incurred as a result of its specific re-

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quest: *Provided*, That the IAEA has agreed in advance to do so. The Safeguards Agreement also contemplates that, in any case, the IAEA will reimburse an applicant, licensee, or certificate holder for the cost of making additional measurements or taking samples at the specific request of an IAEA inspector.

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

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

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

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

(d) The Commission will take appropriate action to assist the applicant, licensee, or certificate holder regarding the reimbursement of any expense which, under the Safeguards Agreement, is to be borne by the IAEA.

[45 FR 50711, July 31, 1980, as amended at 73 FR 78614, Dec. 23, 2008]

ENFORCEMENT

§ 75.51 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

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

[57 FR 55079, Nov. 24, 1992]

§ 75.53 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, or conspiracy to violate, any regulation issued under sections 161b., 161i., or 161o. of the Act. For purposes of criminal sanctions under section 223, all the regulations in Part 75 are issued under one or more of sections 161b., 161i., or 161o., except as provided in paragraphs (b) and (c) of this section.

(b) The regulations in Part 75 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 75.1, 75.2, 75.3, 75.4, 75.5, 75.7, 75.9, 75.12, 75.15, 75.46, 75.51, and 75.53.

(c) Any provision in Part 75 that implements the "Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America," known as the "Additional Protocol," signed by the United States on June 12, 1998, is not issued under sections 161b., 161i., or

161o, for the purposes of criminal sanctions under section 223.

[73 FR 78614, Dec. 23, 2008]

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