

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 34, 35, and 75

[NRC-2015-0263]

RIN 3150-AJ70

Modified Small Quantities Protocol

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to collect information on nuclear material possessed by entities in the U.S. Caribbean Territories, as well as to allow for International Atomic Energy Agency (IAEA) inspection access, if requested by the IAEA. This final rule implements the requirements of “The Agreement between the United States of America and the IAEA for the application of safeguards in connection with the Treaty for the Prohibition of Nuclear Weapons in Latin America” (INFCIRC/366 or U.S.–IAEA Caribbean Territories Safeguards Agreement), that apply to the United States (U.S.) based on modifications to this Agreement’s small quantities protocol.

DATES: *Effective Date:* This final rule is effective **[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. *Compliance Date:* Compliance with this final rule is required by **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Please refer to Docket ID NRC-2015-0263 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2015-0263. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the SUPPLEMENTARY INFORMATION section.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Gregory R. Trussell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6445; e-mail: Gregory.Trussell@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Agreement between the U.S. and the IAEA for the application of safeguards in connection with the Treaty for the Prohibition of Nuclear Weapons in Latin America (U.S.–IAEA Caribbean Territories Safeguards Agreement (ADAMS Accession No. ML17065A218)) entered into force on April 6, 1989. When the U.S.–IAEA Caribbean Territories Safeguards Agreement was signed, the U.S. and the IAEA also concluded a “Small Quantities Protocol” (SQP) to the agreement that held in abeyance almost all reporting and access requirements. The SQPs are designed for countries with minimal or no nuclear material and activities to minimize the burden of international safeguards implementation. The IAEA, as a part of its efforts to strengthen international safeguards in 2005, identified proliferation concerns associated with holding certain provisions of the U.S.–IAEA Caribbean Territories Safeguards Agreement in abeyance through an SQP, and has since urged countries with an original SQP, including the U.S., to adopt a “modified SQP” that would have the effect of taking out of abeyance certain reporting and inspection requirements of the U.S.–IAEA Caribbean Territories Safeguards Agreement. The U.S. and the IAEA have agreed on the text for a modified SQP, which will be brought into force upon an exchange of diplomatic letters between the U.S. and the IAEA.

When the U.S.–IAEA Caribbean Territories Safeguards Agreement and its SQP was brought into force in 1989, no revisions were made to part 75 of title 10 of the *Code of Federal Regulations* (10 CFR), “Safeguards on Nuclear Material—Implementation of U.S.–IAEA Agreement,” as most of the provisions were held in abeyance by the original SQP. In light of the modified SQP, which takes certain reporting and inspection provisions of the U.S.–IAEA Caribbean Territories Safeguards Agreement out of abeyance, the scope and requirements of

10 CFR part 75 need to be revised to include these reporting and inspection requirements. The applicable requirements of the U.S.–IAEA Caribbean Territories Safeguards Agreement, as captured in the amendments to 10 CFR part 75, impact all entities that possess source material and special nuclear material within the U.S. Caribbean Territories.

II. Discussion

A. General Overview

The scope and requirements of 10 CFR part 75 need to be expanded to include the provisions of the U.S.–IAEA Caribbean Territories Safeguards Agreement under the modified SQP. The applicable requirements of the U.S.–IAEA Caribbean Territories Safeguards Agreement, as captured in the amendments to 10 CFR part 75, impact all entities that possess source material and special nuclear material within the U.S. Caribbean Territories, which are defined in the amended 10 CFR part 75 as: Puerto Rico, the U.S. Virgin Islands, Navassa Island, Serranilla Bank, Baja Nuevo (Petrel Island), and the Guantanamo Bay Naval Base. This final rule requires affected entities to:

- Provide basic information about the user (e.g., user’s name and address), including organizational structure, geographic location, use of the nuclear material, and other relevant information requested pursuant to the safeguards agreement.
- Provide an initial inventory report of all source and special nuclear material possessed, and an annual inventory report thereafter. This reporting requirement will also include source material that is contained in non-nuclear end use applications (e.g., depleted uranium shielding).
- Provide annual Material Status Reports for nuclear materials covered by the applicable provisions of the U.S.–IAEA Caribbean Territories Safeguards Agreement.

- Provide an inventory change report when possessors import or export nuclear material (including shipments between U.S. Territories as well as to and from the 50 States) and provide advance notification, as specified in §§ 75.43, 75.44, and 75.45, of such an import or export exceeding one effective kilogram, as defined in § 75.4.
- Provide access for IAEA inspections. These inspections are expected to occur on an infrequent basis. The scope of IAEA inspections may include several activities, such as examination of records; verifying the functioning and calibration of instruments; and utilizing IAEA equipment for independent measurement, containment (such as a seal), and/or surveillance.

This final rule also makes conforming changes to the purpose and scope sections in 10 CFR parts 34 and 35, “Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations,” and “Medical Use of Byproduct Material,” to inform entities that possess source and special nuclear material subject to regulation under these parts, that the requirements in 10 CFR part 75 may also apply to them.

The regulations in 10 CFR part 75 already contain requirements for the existing IAEA safeguards agreements to which the U.S. is a party, i.e., the U.S.–IAEA Safeguards Agreement (INFCIRC/288) (ADAMS Accession No. ML17065A211) and its associated Additional Protocol. The revised regulations will clearly delineate which entities are subject to the requirements under each particular safeguards agreement. It should be noted that those entities subject to the provisions of the U.S.–IAEA Caribbean Territories Safeguards Agreement are not subject to the provisions of the U.S.–IAEA Safeguards Agreement and its associated Additional Protocol as defined in § 75.4.

B. IAEA Inspections

Possessors of source and special nuclear material in the U.S. Caribbean Territories will be subject to special and ad hoc inspections by the IAEA pursuant to the modified SQP. Articles 69, 71, 72, 73, 74, and 87 of U.S.–IAEA Caribbean Territories Safeguards Agreement that pertain to IAEA inspections were previously held in abeyance. Through the modification of the SQP, these Articles will be newly applicable to possessors of “nuclear material outside facilities,” as that term is defined in revised § 75.4, which means “nuclear material in the U.S. Caribbean Territories which is not in a facility, and is customarily used in amounts of one effective kilogram or less.” In order to accommodate these new requirements, the NRC is revising existing sections of 10 CFR part 75 that pertain to IAEA inspections. Under existing regulations, IAEA inspections were only applicable to “facilities,” under the U.S.–IAEA Safeguards Agreement. However, through the inclusion of the U.S.–IAEA Caribbean Territories Safeguards Agreement in the scope of 10 CFR part 75, the NRC is expanding the applicability of inspection-related sections to include possessors of nuclear material outside facilities.

C. Records and Reports

Possessors of nuclear material outside facilities in the U.S. Caribbean Territories will be subject to new recordkeeping and reporting requirements pursuant to the modified SQP. Articles 7, 12, 32, 47, 60, 66, 67, and 93 of the U.S.–IAEA Caribbean Territories Safeguards Agreement were either held in abeyance or not applicable; however, through the modification of the SQP, these Articles will now be applicable to possessors of nuclear material outside facilities. In order to accommodate these new requirements, the NRC revised existing sections of 10 CFR part 75 that pertain to records and reports. Under existing regulations, recordkeeping and reporting requirements were only applicable to “facilities” and “locations” (as defined in § 75.4). However, through the inclusion of the U.S.–IAEA Caribbean Territories

Safeguards Agreement in the scope of 10 CFR part 75, the NRC is expanding the applicability of recordkeeping and reporting-related sections to include possessors of nuclear material outside facilities.

D. Terminations and Exemptions

The U.S. Government may request terminations and exemptions for declared source or special nuclear material under Articles 11, 13, 33, 34, 35, and 36 of the U.S.–IAEA Caribbean Territories Safeguards Agreement. Previously, the U.S. Government had not utilized the termination and exemption provisions under the U.S.–IAEA Safeguards Agreement, therefore these provisions were not in the existing regulations in 10 CFR part 75. Due to the anticipated material types, quantities, and uses of nuclear material in the U.S. Caribbean Territories, as well as the fact that this safeguards agreement mimics a comprehensive safeguards agreement for a non-nuclear weapon state, the U.S. Government anticipates utilizing the exemption and termination provisions under the U.S.–IAEA Caribbean Territories Safeguards Agreement. As such, this final rule incorporates termination and exemption provisions into 10 CFR part 75.

E. New Definitions

Given the addition of the U.S.–IAEA Caribbean Territories Safeguards Agreement to the scope of 10 CFR part 75, it is necessary to specifically define and reference each individual safeguards agreement (i.e., “U.S.–IAEA Safeguards Agreement” and “U.S.–IAEA Caribbean Territories Safeguards Agreement”). This change is implemented throughout 10 CFR part 75 to ensure consistency in the use of terminology, and to distinguish between the requirements of each safeguards agreement. Furthermore, the new term “physical location” is added to 10 CFR part 75 to clarify the difference between geographic coordinates and the Additional Protocol term of art “location.” The term “nuclear material outside of facilities” was added as a new and

distinct term of art that refers specifically to special nuclear and source material in the U.S. Caribbean Territories. This new term was necessary in order to distinguish the requirements of the U.S.–IAEA Caribbean Territories Safeguards Agreement from the requirements in the other safeguards agreements that utilize the terms of art “facilities” and “locations.” The term “U.S. Caribbean Territories” was added to refer to the territories covered by the U.S.–IAEA Caribbean Territories Safeguards Agreement.

F. General Administrative Matters

To enhance the clarity and consistency of the regulations, several new definitions are added, and other definitions are revised or removed. Additionally, this final rule incorporates conforming changes, punctuation, and grammatical edits. In several sections, a website link is added to reference existing NRC guidance documents to replace the requirement for the public to submit a written request for a copy of the guidance documents.

III. Rulemaking Procedure

Under the Administrative Procedure Act (5 U.S.C. 553(a)(1)), the normal notice and comment requirements do not apply if the rulemaking involves a military or foreign affairs function of the U.S. Since this final rule involves a foreign affairs function of the U.S., the notice and comment provisions of the Administrative Procedure Act do not apply (5 U.S.C. 553(a)(1)). This final rule will become effective 30 days after its publication in the *Federal Register*. The amendments are effective **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**.

IV. Section-by-Section Analysis

§ 34.1 Scope and Purpose.

This final rule revises § 34.1 to inform those persons who possess nuclear material subject to NRC regulation under 10 CFR part 35 that the requirements in 10 CFR part 75 may also apply to them or their possession of nuclear material.

§ 35.1 Scope and Purpose.

This final rule revises § 35.1 to inform those persons who possess nuclear material subject to NRC regulation under 10 CFR part 35 that the requirements in 10 CFR part 75 may also apply to them or their possession of nuclear material.

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

This final rule revises the 10 CFR part 75 title to read: SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF SAFEGUARDS AGREEMENTS BETWEEN THE UNITED STATES AND THE INTERNATIONAL ATOMIC ENERGY AGENCY.

§ 75.1 Purpose.

This final rule revises § 75.1 to include all requirements under any safeguards agreement between the U.S. and the IAEA.

The purpose section is revised to make it generally applicable to all U.S.–IAEA safeguards agreements utilizing a new term of art “safeguards agreements.” “Safeguards agreements” includes the U.S.–IAEA Caribbean Territories Safeguards Agreement as well as other existing U.S.–IAEA safeguards agreements. The word “physical” is added in front of the word “location” (to read “physical location”).

§ 75.2 Scope.

This final rule revises § 75.2 to ensure that possessors of nuclear material outside facilities who are physically located in the U.S. Caribbean Territories are now included within the scope of the regulations in 10 CFR part 75. Paragraph (b) clarifies that possessors of nuclear material outside facilities that are physically located in the U.S. (i.e., the 50 States, not including U.S. Territories) are not included within the scope of the regulations in 10 CFR part 75. The previous text in § 75.2 is simplified to remove unnecessary and repetitive references to existing requirements already enumerated elsewhere in 10 CFR part 75. The national security exclusion, which previously only referenced the term “locations,” a term of art specifically relating to the Additional Protocol, is changed to reference “facilities or locations.”

§ 75.3 Exemptions.

This final rule revises § 75.3 to reference all safeguards agreements between the U.S. and the IAEA, using the term of art “safeguards agreements,” rather than list each agreement individually. “Safeguards agreements” includes the U.S.–IAEA Caribbean Territories Safeguards Agreement, as exemptions may apply to this agreement. Paragraph (b) is moved to new § 75.26, “Exemptions from IAEA safeguards.”

§ 75.4 Definitions.

This final rule revises § 75.4 by adding definitions to accommodate the inclusion of the SQP to the U.S.–IAEA Caribbean Territories Safeguards Agreement in a manner that avoids confusion with the existing safeguards agreements, removing a definition that was specific to only one safeguards agreement, and revising certain definitions to make them generally applicable to all safeguards agreements. The definition for *Agreement* is being removed; the definitions for *Inventory change*, *Key measurement point*, *Location*, and *Safeguards Agreement*

are being revised; and the definitions for *Nuclear Material Outside Facilities*, *Person*, *Physical location*, *Small Quantities Protocol*, *U.S. Caribbean Territories*, *U.S.–IAEA Caribbean Territories Safeguards Agreement*, and *U.S.–IAEA Safeguards Agreement* are being added.

Agreement is being removed because it referred to one specific safeguards agreement; § 75.4 now includes and defines each specific safeguards agreement.

Inventory change is being revised to remove the words “source or special” from the definition because the term “nuclear material” is defined under this part to include only source or special nuclear material.

Key measurement point is being revised to include the word “physical” before the word “location” so as to remove any potential confusion between this usage and the term of art “location” as it is used specifically in the Additional Protocol.

Location is revised to read any geographical point or area subject to IAEA safeguards under the Additional Protocol because it was identified either by the U.S. in its declarations, or by the IAEA resulting from a question.

Safeguards Agreement is being revised to read “Safeguards Agreements” such that it includes all current safeguards agreements, protocols, and subsidiary arrangements, between the U.S. and the IAEA.

Nuclear material outside facilities is being added and means nuclear material in the U.S. Caribbean Territories which is not in a facility, and is customarily used in amounts of one effective kilogram or less.

Person is being added and means 1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the U.S. Department of Energy, except that the Department shall be considered a person within the meaning of the regulations in this part to the extent that its facilities are subject to the licensing and related regulatory authority of the Commission pursuant to Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244) and the Uranium Mill Tailings Radiation Control Act of 1978 (92 Stat. 3021), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and 2) any legal successor, representative, agent, or agency of the foregoing.

Physical location is being added to provide a definition that is specific to a geographic point or area where nuclear material or activity resides and to remove any potential confusion with the term of art "location" as it is used specifically in the Additional Protocol.

Small Quantities Protocol is being added and means the Small Quantities Protocol to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty for the Prohibition of Nuclear Weapons in Latin America (INFCIRC/366).

U.S. Caribbean Territories is being added and means those territories for which, de jure or de facto, the U.S. is internationally responsible and which lie within the limits of the geographical zone established in Article 4 of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Tlatelolco Treaty), which includes: Puerto Rico, the U.S. Virgin Islands, Navassa Island, Serranilla Bank, Baja Nuevo (Petrel Island), and the Guantanamo Bay Naval Base.

U.S.–IAEA Caribbean Territories Safeguards Agreement is being added and means the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty for the Prohibition of Nuclear Weapons in Latin America (INFCIRC/366), and all protocols and subsidiary arrangements thereto.

U.S.–IAEA Safeguards Agreement is being added and means the Agreement between the United States of America and the IAEA for the Application of Safeguards in the United States (INFCIRC/288), and all protocols and subsidiary arrangements thereto.

§ 75.6 Facility and location reporting.

This final rule revises the heading for § 75.6 to read “Reporting requirements for facilities, locations, and nuclear material outside facilities.” The requirement to provide advanced notification of imports, exports, or domestic transfers has been added to the table in paragraph (c) to correct an oversight from a previous rulemaking action. The letter “C” is being added after “DOE/NRC Form 742” under the first item in the table under paragraph (c), to correct an oversight from a previous rulemaking action. The websites, <https://www.nrc.gov/reading-rm/doc-collections/forms> and www.AP.gov, where the forms listed in paragraphs (c) through (d) of § 75.6 can be accessed, are being added to correct an oversight from a previous rulemaking action. The phone number for the NRC Headquarters Operations Center (HOC) is being added to the table in paragraph (c) to clarify the means of contacting the HOC. Adding the terms “nuclear material outside facilities” and “safeguards agreements” to paragraph (b) of this section makes the U.S.–IAEA Caribbean Territories Safeguards Agreement generally applicable in this section. The section is being further revised to include accounting, recordkeeping, and reporting requirements for those entities subject to the

U.S.–IAEA Caribbean Territories Safeguards Agreement that are physically located in the U.S. Caribbean Territories. These requirements are listed in the table under new paragraph (e) and pertain to the requirements as outlined in Parts I and II of the U.S.–IAEA Caribbean Territories Safeguards Agreement. Other conforming changes to account for the new information in paragraph (e) are being made throughout 10 CFR part 75 for consistency.

§ 75.7 Notification of IAEA safeguards.

This final rule reorders and revises § 75.7 for clarity and changes the reference to “Safeguards Agreement” to read “US-IAEA Safeguards Agreement,” and the reference to “facility or location” to read “facility.” Both changes in reference clarify that a selection for IAEA safeguards can only be made under the U.S.–IAEA Safeguards Agreement, and do not pertain to other referenced agreements in this part, such as the Additional Protocol or the U.S.–IAEA Caribbean Territories Safeguards Agreement. Minor editorial changes, such as changing “Commission” to read “NRC,” are also being made.

§ 75.8 IAEA inspections.

This final rule revises § 75.8 to include the term of art “nuclear material outside facilities,” which is specific to the U.S.–IAEA Caribbean Territories Safeguards Agreement, and is included in paragraphs (a)-(d), which state that the NRC will provide notice in writing if an IAEA inspection is to occur, and describe the procedures that must be followed to allow the IAEA access. Paragraph (a) is revised to include the SQP agreement as allowing for IAEA inspections. Paragraph (a)(1) is revised to add the types of inspections applicable to possessors of nuclear material outside facilities located in the U.S. Caribbean Territories, which are ad hoc and special inspections only. Paragraph (a)(4) is revised to replace the word “place” with the term physical location to be more specific in where IAEA inspections may take place. The requirements specific to inspections for nuclear material outside facilities are located in new

paragraphs (h) and (i), which are parallel in structure to the requirements for “facilities.” The text in the original paragraph (h) is revised and redesignated as new paragraph (j). Minor editorial changes, such as changing “Commission” to read “NRC,” are also being made.

§ 75.9 Information collection requirements: OMB approval.

This final rule revises § 75.9 to add a reference to new § 75.12 to the list of approved information collection requirements in 10 CFR part 75.

FACILITY AND LOCATION INFORMATION

This final rule revises the undesignated center heading, “Facility and Location Information” to read “Information for Facilities, Locations, and Nuclear Material Outside Facilities.”

§ 75.10 Facility information.

This final rule revises the § 75.10 section heading to read “Facilities.” Other minor conforming changes are being made to this section including changing “Safeguards Agreement” to read “US-IAEA Safeguards Agreement” and to include the word “physical” before the word “location” to denote when an actual physical location is being specified and to distinguish it from the “location” term of art used specifically under the Additional Protocol. Minor editorial changes, such as changing “Commission” to read “NRC,” are also being made.

§ 75.11 Location information.

This final rule revises § 75.11 section heading to read “Locations.” Other conforming changes are being made to this section including adding the word “physical” before the word “location” to denote when an actual physical location is being specified and to distinguish it from the “location” term of art used specifically under the Additional Protocol.

§ 75.12 Communication of information to IAEA is revised and redesignated as

§ 75.13 Communication of information to IAEA.

This final rule redesignates § 75.12 as new § 75.13 and adds new § 75.12, “Nuclear material outside facilities.” The records retention requirements in paragraphs (b)(1) and (b)(4) of this section have been moved to § 75.24, “Retention of records.” Minor conforming changes are being made including changing the references to individual safeguards agreements to refer collectively to all safeguards agreements between the U.S. and the IAEA, and adding new § 75.12 for requirements applicable only to the U.S. Caribbean Territories. Minor editorial changes, such as changing “Commission” to read “NRC,” are also being made.

§ 75.12 Nuclear material outside facilities.

This final rule adds new § 75.12, which provides details on the types of information possessors of nuclear material outside facilities physically located in the U.S. Caribbean Territories are required to report to the NRC on an annual basis, such as name, mailing address, use of nuclear material, etc.

Material Accounting and Control For Facilities

This final rule revises the undesignated center heading, “Material Accounting and Control For Facilities” to read “Material Accounting and Control” so that the subpart applies to all entities subject to material accounting and control requirements, not only to facilities.

§ 75.15 Facility attachments.

This final rule revises § 75.15 by making minor conforming changes, such as changing “Commission” to read “NRC” and changing “Safeguards Agreement” to read “U.S.–IAEA Safeguards Agreement.”

§ 75.21 General requirements.

This final rule revises § 75.21 by adding new paragraph (b) to include possessors of nuclear material outside facilities, and the requirement to establish, maintain, and follow written material accounting and control procedures, pursuant to the U.S.–IAEA Caribbean Territories Safeguards Agreement. The records retention requirements in paragraph (a) are moved to § 75.24, “Retention of records.” Minor conforming changes are being made to change the reference from “Safeguards Agreement” to read “U.S.–IAEA Safeguards Agreement” and by changing “Commission” to read “NRC.”

§ 75.24 Retention of records.

This final rule restructures and revises § 75.24 to include new paragraphs (a) and (b) to include the records retention requirements from § 75.21(a) and to specifically list who is required to retain records and to include the term of art “nuclear material outside facilities,” which is specific to the U.S.–IAEA Caribbean Territories Safeguards Agreement. Minor editorial changes, such as changing “Commission” to read “NRC,” are also being made.

IAEA Nuclear Material Exemptions and Terminations

This final rule adds a new undesignated center heading, “IAEA Nuclear Material Exemptions and Terminations.”

§ 75.26 Exemption from IAEA safeguards and

§ 75.27 Requirements for facilities, locations, and nuclear material outside facilities after issuance of IAEA exemptions.

This final rule adds new §§ 75.26 and 75.27 to describe the types of nuclear material upon which the U.S. Government may request an exemption from IAEA safeguards and to

address the different requirements after such exemptions have been granted by the IAEA for facilities, locations, and nuclear material outside facilities.

§ 75.28 Termination from IAEA safeguards and

§ 75.29 Requirements for facilities, locations, and nuclear material outside facilities after termination from IAEA safeguards.

This final rule adds new §§ 75.28 and 75.29 to describe the conditions under which the U.S. Government may request the termination of IAEA safeguards and to address the different requirements after such terminations have been granted by the IAEA for facilities, locations, and nuclear material outside facilities.

§ 75.31 General requirements.

This final rule restructures § 75.31 to include new paragraphs (a) and (b) to address general accounting, recordkeeping, and reporting requirements for possessors of nuclear material outside facilities. Minor editorial changes, such as changing “Commission” to read “NRC,” are also being made.

§ 75.32 Initial inventory report.

This final rule revises § 75.32 to address the specific initial inventory reporting requirements for both licensees of facilities and possessors of nuclear material outside facilities and to make minor editorial changes. Paragraph (a) is revised and split into two paragraphs: (a) Licensees of facilities and (b) Possessors of nuclear material outside facilities. Paragraph (b) is revised and redesignated as new paragraph (c) Paragraph (c) is revised and redesignated as new paragraph (e). A new paragraph (d) is added. Minor editorial changes, such as changing “Commission” to read “NRC,” are also being made.

§ 75.33 Accounting reports.

This final rule revises § 75.33 by changing the name of the “Nuclear Material Transaction Report” to read “Inventory Change Report (Nuclear Material Transaction Report).”

§ 75.34 Inventory change reports.

This final rule revises § 75.34 to include possessors of nuclear material outside facilities in the requirement to submit inventory change reports and to include time submittal requirements. New paragraph (b)(4) is added to address the specific import requirements for possessors of nuclear material outside facilities. The previously undesignated sentence after paragraph (a)(2) but before paragraph (b) is revised and designated as paragraph (b)(3). The paragraphs previously designated (b)(1) and (2) are redesignated as paragraphs (c)(1) and (2) to explain when a U.S. Department of Energy (DOE)/NRC Form 740M must be completed. Websites that contain the Office of Management and Budget (OMB)-approved NUREG guidance documents are included in new paragraph (d). Minor editorial changes are being made, such as changing the name “Nuclear Material Transaction Reports” to read “Inventory Change Report (Nuclear Material Transaction Report).”

§ 75.35 Material status reports.

This final rule revises § 75.35 to include possessors of nuclear material outside facilities in the requirement to submit material status reports. New paragraphs (c)–(e) are being added. Paragraph (c) is added to include possessors of nuclear material outside facilities to the requirement to submit material status reports. Paragraph (d) is added to clarify when a material status report must be accompanied by DOE/NRC Form 740M. Paragraph (e) is added to clarify where the forms and their instructions may be accessed. Furthermore, a specific 12-month reporting period is being added. Minor editorial changes, such as changing “Commission” to read “NRC,” are also being made.

§ 75.36 Special reports.

This final rule revises § 75.36 to include possessors of nuclear material outside facilities in the requirements for submitting special reports. Paragraph (c) is removed and the text is revised and redesignated as paragraphs (b)(1) and (2). Minor editorial changes, such as changing “Commission” to read “NRC,” are also being made.

§ 75.43 Circumstances requiring advance notification.

This final rule revises § 75.43 by modifying paragraph (a) to make the section generally applicable to any person subject to any U.S.–IAEA safeguards agreement. Minor editorial changes, such as changing “Commission” to read “NRC,” are also being made.

§ 75.46 Expenses.

This final rule revises § 75.46 to make it generally applicable to any person subject to any U.S.–IAEA safeguards agreement. Minor editorial changes, such as changing “Commission” to read “NRC,” are also being made.

§ 75.53 Criminal penalties.

This final rule revises paragraph (b) by changing the reference § 75.12 to its new designation as § 75.13 and by adding new §§ 75.26 through 75.29.

V. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule affects two “small entities” as defined by the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

VI. Regulatory Analysis.

A regulatory analysis has not been prepared for this final rule. The information reported is necessary to satisfy U.S. Government obligations with the IAEA under the Agreement between the U.S. and the IAEA for the application of safeguards in connection with the Treaty for the Prohibition of Nuclear Weapons in Latin America, (INFCIRC/366 or “U.S.–IAEA Caribbean Territories Safeguards Agreement”).

VII. Backfitting and Issue Finality

The NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this final rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Implementation of the U.S.–IAEA Caribbean Territories Safeguards Agreement and its modified SQP will not involve backfitting or issue finality considerations. The entities subject to the revised requirements needed to implement the modified SQP are not accorded backfitting or issue finality protection. Therefore, a backfit analysis is not required.

VIII. Cumulative Effects of Regulation

This final rule will take maximum advantage of the existing requirements (e.g., 10 CFR parts 34, 35, and 75) for those persons possessing nuclear material to maintain records of their receipt, shipment, and disposal of nuclear material and to submit reports on their holdings of nuclear material. Furthermore, the NRC will use existing OMB approved forms for reporting information on nuclear material.

IX. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883).

X. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in 10 CFR 51.22(c)(1), for amendments to 10 CFR part 75, and § 51.22(c)(3), for amendments on 10 CFR parts 34 and 35, which categorically excludes from environmental review rules that are corrective or of a minor, nonpolicy nature and do not substantially modify existing regulations. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

XI. Paperwork Reduction Act

This final rule contains a revision to existing collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The collections of information were approved by the OMB, approval numbers 3150-0003, 3150-0004, 3150-0055, 3150-0057, and 3150-0058.

The burden to the public for the information collection(s) is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection.

Persons licensed to possess specified quantities of nuclear material currently report inventory and transaction of material to the Nuclear Materials Management and Safeguards System via the DOE/NRC Forms: DOE/NRC Form 740M, Concise Note; DOE/NRC Form 741, Nuclear Material Transaction Report; DOE/NRC Form 742, Material Balance Report; and DOE/NRC Form 742C, Physical Inventory Listing. This collection is being renewed to include approximately 25 entities (9 have been identified) subject to the U.S.–IAEA Caribbean Territories Safeguards Agreement (INFCIRC/366). Part 75 of 10 CFR requires licensees to provide reports of nuclear material inventory and flow for entities under the U.S.–IAEA Caribbean Territories Safeguards Agreement (INFCIRC/366), permit inspections by IAEA inspectors, give immediate notice to the NRC in specified situations involving the possibility of loss of nuclear material, and give notice for imports and exports of specified amounts of nuclear material. These licensees will also follow written material accounting and control procedures, although actual reporting of transfer and material balance records to the IAEA will be done through the U.S. State System of Accounting and Control (Nuclear Materials Management and Safeguards System, collected under OMB clearance numbers 3150-0003, 3150-0004, 3150-0055, 3150-0057, and 3150-0058)

The NRC needs this information to implement its international safeguards obligations under the U.S.–IAEA Caribbean Territories Safeguards Agreement (INFCIRC/366).

You may submit comments on any aspect of the information collection(s), including suggestions for reducing the burden, by the following methods:

Federal rulemaking Web Site: Go to <http://www.regulations.gov> and search for Docket ID NRC-2015-0263.

- **Mail comments to:** Information Services Branch, Office of the Chief Information Officer, Mail Stop: T-2 F43, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 or to Aaron Szabo, Desk Officer, Office of Information and Regulatory Affairs (3150-0004,-0005, -0055, -0056, and -0057), NEOB-10202, Office of Management and Budget, Washington, DC 20503; telephone: 202-395-3621, e-mail: oir_submission@omb.eop.gov.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

XII. Congressional Review Act

This final rule is a rule as defined in the Congressional Review Act (5 U.S.C. §§ 801-808). However, OMB has not found it to be a major rule as defined in the Congressional Review Act.

XIII. Agreement State Compatibility

Under the “Policy Statement on Adequacy and Compatibility of Agreement State Programs” approved by the Commission on June 30, 1997, and published in the Federal Register on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category “NRC.” Compatibility is not required for Category “NRC” regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State’s administrative procedure laws but does not confer regulatory authority on the State.

XIV. Availability of Guidance

The NRC has revised NUREG/BR-0006, “Instructions for Completing Nuclear Material Transaction Reports;” (ADAMS Accession Nos. ML17026A069) and NUREG/BR-0007, “Instructions for the Preparation and Distribution of Material Status Reports,” (Accession Nos. ML17026A076) to add an SQP-specific appendix. Public comment will be available for the next revisions of NUREG/BR-0006 and NUREG/BR-0007 (separate from this final rule), anticipated in calendar year 2017.

List of Subjects

10 CFR Part 34

Criminal penalties, Incorporation by reference, Manpower training programs, Occupational safety and health, Packaging and containers, Penalties, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures, X-rays.

10 CFR Part 35

Biologics, Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Labeling, Medical devices, Nuclear energy, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Security measures, Treaties.

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 34, 35, and 75:

PART 34 -- LICENSES FOR RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

1. The authority citation for part 34 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 81, 161, 181, 182, 183, 223, 234, 274 (42 U.S.C. 2111, 2201, 2231, 2232, 2233, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); 44 U.S.C. 3504 note.

2. Revise § 34.1 to read as follows:

§ 34.1 Purpose and scope.

This part prescribes requirements for the issuance of licenses for the use of sealed sources containing byproduct material and radiation safety requirements for persons using these sealed sources in industrial radiography. The provisions and requirements of this part are in addition to, and do not supersede, other requirements of this chapter, including, but not limited to, parts 19, 20, 21, 30, 37, 71, 75, 150, 170, and 171 of this chapter. This rule does not apply to medical uses of byproduct material.

PART 35 -- MEDICAL USE OF BYPRODUCT MATERIAL

3. The authority citation for part 35 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 81, 161, 181, 182, 183, 223, 234, 274, (42 U.S.C. 2111, 2201, 2231, 2232, 2233, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); 44 U.S.C. 3504 note.

4. Revise § 35.1 to read as follows:

§ 35.1 Purpose and scope.

This part contains the requirements and provisions for the medical use of byproduct material and for issuance of specific licenses authorizing the medical use of this material. These requirements and provisions provide for the radiation safety of workers, the general public, patients, and human research subjects. The provisions and requirements of this part are in addition to, and do not supersede, other requirements of this chapter, including, but not limited to, parts 19, 20, 21, 30, 37, 71, 75, 170, and 171 of this chapter.

PART 75 -- SAFEGUARDS ON NUCLEAR MATERIAL – IMPLEMENTATION OF SAFEGUARDS AGREEMENTS BETWEEN THE UNITED STATES AND THE INTERNATIONAL ATOMIC ENERGY AGENCY

5. The authority citation for part 75 continues to read as follows:

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.

6. Revise the heading of part 75 to read as set forth above.

7. Revise § 75.1 to read as follows:

§ 75.1 Purpose.

The purpose of this part is to implement the requirements established by the safeguards agreements between the United States (U.S.) and the International Atomic Energy Agency (IAEA). This part contains requirements to ensure that the U.S. meets its nuclear non-proliferation obligations under the safeguards agreements. These obligations include providing information to the IAEA on the physical location of applicant, licensee, or certificate holder activities; information on source and special nuclear materials; and access to the physical location of applicant, licensee, or certificate holder activities. These obligations are similar to the obligations accepted by other countries.

8. Revise § 75.2 to read as follows:

§ 75.2 Scope.

(a) The regulations in this part apply to all persons licensed by the Nuclear Regulatory Commission (NRC) or an Agreement State; hold a certificate of compliance, construction permit or authorization issued by the NRC; have filed an application with the NRC to construct a facility or to receive source or special nuclear material; or possess source or special nuclear material subject to NRC regulation under 10 CFR Chapter I.

(b) The regulations in this part do not apply to facilities or locations determined by the U.S. Government to be associated with activities or information of direct national security significance, or possessors of nuclear material outside facilities who are not located in the U.S. Caribbean Territories.

9. Revise § 75.3 to read as follows:

§ 75.3 Exemptions.

The NRC 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 agreements, are not inimical to the common defense and security, and are otherwise in the public interest.

10. Amend § 75.4 by:

(a) Removing the definition for *Agreement*;

(b) Revising the definitions for *Inventory change*, *Key measurement point*, *Location* and *Safeguards Agreements*; and

(c) Adding the definitions for *Nuclear Material Outside Facilities*, *Person*, *Physical location*, *Small Quantities Protocol*, *U.S. Caribbean Territories*, *U.S.–IAEA Caribbean Territories Safeguards Agreement*, and *U.S.–IAEA Safeguards Agreement*, in alphabetical order.

The revisions and additions read as follows:

§ 75.4 Definitions.

* * * * *

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

* * * * *

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

* * * * *

Location means any geographical point or area subject to IAEA safeguards under the Additional Protocol because it was identified either by the U.S. in its declarations, or by the IAEA resulting from a question.

* * * * *

Nuclear material outside facilities means nuclear material in the U.S. Caribbean Territories which is not in a facility, and is customarily used in amounts of one effective kilogram or less.

* * * * *

Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the U.S. Department of Energy, except that the Department shall be considered a person within the meaning of the regulations in this part to the extent that its facilities are subject to the licensing and related regulatory authority of the Commission pursuant to Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244) and the Uranium Mill Tailings Radiation Control Act of 1978 (92 Stat. 3021), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

* * * * *

Physical location means a specific geographical point or area, where either nuclear material subject to Safeguards Agreements resides or an activity subject to the Safeguards Agreements occurs.

* * * * *

Safeguards Agreements means the Agreement between the United States of America and the IAEA for the Application of Safeguards in the United States (INFCIRC/288) and all protocols and subsidiary arrangements thereto, and the Agreement between the United States and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty for the Prohibition of Nuclear Weapons in Latin America (INFCIRC/366) and all protocols and subsidiary arrangements thereto.

* * * * *

Small Quantities Protocol means the Small Quantities Protocol to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty for the Prohibition of Nuclear Weapons in Latin America (INFCIRC/366).

* * * * *

U.S. Caribbean Territories means those territories for which, de jure or de facto, the U.S. is internationally responsible and which lie within the limits of the geographical zone established in Article 4 of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Tlatelolco Treaty), which includes: Puerto Rico, the U.S. Virgin Islands, Navassa Island, Serranilla Bank, Baja Nuevo (Petrel Island), and the Guantanamo Bay Naval Base.

U.S.–IAEA Caribbean Territories Safeguards Agreement means the Agreement between the United States of America and the IAEA for the Application of Safeguards in Connection with the Treaty for the Prohibition of Nuclear Weapons in Latin America (INFCIRC/366), and all protocols and subsidiary arrangements thereto.

* * * * *

U.S.–IAEA Safeguards Agreement means the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States (INFCIRC/288), and all protocols and subsidiary arrangements thereto.

11. Amend § 75.6:

- (a) Revise the section heading as set forth below;
- (b) Revise paragraphs (b) and (c); and
- (c) Add new paragraph (e).

The revisions and addition to read as follows:

§ 75.6 Reporting requirements for facilities, locations, and nuclear material outside facilities.

* * * * *

(b) Each applicant, licensee, certificate holder, or possessor of nuclear material outside facilities, who has been given notice by the NRC in writing that it is required to report under Safeguards Agreements for its facility, nuclear material outside facilities, or location, shall make its initial and subsequent reports, including attachments, in an appropriate format defined in the instructions. The DOE/NRC forms and their instructions may be accessed at <https://www.nrc.gov/reading-rm/doc-collections/forms>. The AP-A and associated forms may be accessed at www.AP.gov.

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

Item	Section	Manner of delivery
***	**	As specified by printed instructions for preparation of DOE/NRC Form-742C.
***	**	**
***	**	**

Special Reports	**	To the NRC Headquarters Operations Center (commercial telephone number 301-816-5100).
Advance Notification of Import and Exports or of Domestic Transfers	75.43	In writing to the NRC, as specified in 75.6(a), 75.44, and 75.45.
***	**	**
***	**	**

* * * * *

(e) Nuclear material outside facilities – Specific information regarding nuclear material outside facilities in the U.S. Caribbean Territories 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-742C and DOE/NRC Form 740M.
Inventory Change Reports	75.34	As specified by printed instructions for preparation of DOE/NRC Form-741 and DOE/NRC Form-740M.
Material Status Reports	75.35	As specified by printed instructions for preparation of DOE/NRC Form-742, DOE/NRC Form-742C, and DOE/NRC Form-740M.
Special Reports	75.36	To the NRC Headquarters Operations Center (commercial telephone number 301-816-5100).
Advance Notification of Import and Exports or of Domestic Transfers	75.43	In writing to the NRC, as specified in 75.6(a), 75.43, 75.44, and 75.45.
Nuclear Material Outside Facilities Information	75.12	As specified by printed instructions for preparation of DOE/NRC Form 740M.

12. Revise § 75.7 to read as follows:

§ 75.7 Notification of IAEA safeguards.

(a) The NRC, by written notice, will inform the applicant, licensee, or certificate holder of those facilities subject to the application of IAEA safeguards under the U.S.–IAEA Safeguards Agreement.

(b) The licensee must inform the NRC in accordance with § 75.6(c) of this part:

(1) Before the licensee begins an activity that may be subject to the U.S.-IAEA Safeguards Agreement; or

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

(c) The notice provided under paragraph (a) of this section is effective until the NRC informs the licensee or certificate holder, in writing, that its facility is no longer so designated. Whenever a previously designated facility is no longer subject to the application of IAEA safeguards under the U.S.–IAEA Safeguards Agreement, the NRC will give the licensee or certificate holder prompt notice to that effect.

13. In § 75.8, revise paragraphs (a), (a)(1), (a)(4), (b) through (d); redesignates and revise paragraph (h) as paragraph (j); and add new paragraphs (h) and (i) to read as follows:

§ 75.8 IAEA inspections.

(a) As provided in the U.S.–IAEA Safeguards Agreement and Additional Protocol, inspections may be ad hoc, routine, special, or a complementary access (or a combination of the foregoing). As provided in the Small Quantities Protocol of the U.S.–IAEA Caribbean Territories Safeguards Agreement, inspections may be ad hoc or special. 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, certificate holder's, or possessor's of nuclear material outside facilities facility information or initial inventory report, or to identify and verify changes in the situation which have occurred

after the inventory date under § 75.32(a) or (b) of this part at any physical location where the initial inventory report or any inspections carried out indicate that nuclear material subject to safeguards pursuant to the Safeguards Agreements may be present;

* * * * *

(4) Special inspections may be conducted at any of the physical locations specified above and any additional places where the NRC (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, certificate holder, or possessor of nuclear material outside facilities 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, certificate holder, or possessor of nuclear material outside facilities should consult with the NRC 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, certificate holder, or possessor of nuclear material outside facilities 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, certificate holder, or possessor of nuclear material outside facilities shall not admit the person until the NRC has confirmed the person's credentials. The applicant, licensee, certificate holder, or possessor of nuclear material outside facilities shall notify the NRC promptly, by telephone, whenever an IAEA representative arrives at a facility, nuclear material outside facilities, or location without advance notification. The applicant, licensee, certificate holder, or possessor of nuclear material outside facilities shall also contact the NRC, by telephone, within 1 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, certificate holder, or possessor of nuclear material outside facilities subject to the provisions of this part shall allow the IAEA opportunity to conduct an NRC-approved inspection or complementary access of the facility, nuclear material outside facilities, or location to verify the information submitted under §§ 75.10 through 75.12 and 75.31 through 75.43 of this part. The NRC will assign an employee to accompany IAEA representative(s) at all times during the inspection or complementary access. The applicant, licensee, certificate holder, or possessor of nuclear material outside facilities may accompany IAEA representatives who inspect or access the facility, nuclear material outside facilities, or location. The IAEA representatives should not be delayed or otherwise impeded in the exercise of their duties.

* * * * *

(h) Each possessor of nuclear material outside facilities shall permit the IAEA, in conducting an ad hoc or special inspection for nuclear material outside facilities, to:

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

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

(3) 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;

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

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

(i) Each possessor of nuclear material outside facilities shall, at the request of an IAEA inspector during an ad hoc or special inspection for nuclear material outside facilities:

(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 U.S.–IAEA Caribbean Territories Safeguards Agreement and included in the safeguards approach approved by the United States and the 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.

(j) Nothing in this section requires or authorizes an applicant, licensee, certificate holder, or possessor of nuclear material outside facilities to carry out any operation that would otherwise constitute a violation of the terms of any applicable license, regulation, or order of the NRC.

§ 75.9 [Amended]

14. In § 75.9(b) add the number "75.12" in numerical order.

15. Revise the undesignated center heading "**FACILITY AND LOCATION INFORMATION**" to read "**INFORMATION FOR FACILITIES, LOCATIONS, AND NUCLEAR MATERIAL OUTSIDE FACILITIES**".

§ 75.10 [Amended]

16. Amend § 75.10:

(a) Revise the section heading to read “**Facilities**”,

(b) In paragraphs (a) and (c)(2) remove the phrase “Safeguards Agreement” wherever it may appear and add in its place the phrase “U.S.–IAEA Safeguards Agreement”,

(c) In paragraphs (b)(1), (b)(2), and (d)(5), remove the word “location” and add in its place the phrase “physical location”, and

(d) Wherever it may appear, remove the word “Commission” and add in its place the word “NRC”.

§ 75.11 [Amended]

17. In § 75.11, revise the section heading to read “**Locations**”, and in paragraphs (b)(1), (b)(3), and (b)(5) through (b)(7), wherever it may appear, remove the word “location” and add in its place the phrase “physical location”.

18. Redesignate § 75.12 as new § 75.13 and add new § 75.12 to read as follows:

§ 75.12 Nuclear material outside facilities.

A possessor of nuclear material outside facilities shall provide to the NRC the possessor’s name and mailing address, physical location of the nuclear material, use of nuclear material, and nuclear material accounting and control procedures, including organizational responsibilities for accountancy and control. This information must be provided annually with the material status report in accordance with §§ 75.6(e) and 75.35(c) of this part.

19. Revise § 75.13 to read as follows:

§ 75.13 Communication of information to the International Atomic Energy Agency (IAEA).

(a) Except as otherwise provided in this section, the NRC will furnish to the IAEA all information submitted under §§ 75.10, 75.11, 75.12, and 75.31 through 75.43 of this part.

(b)(1) An applicant, licensee, certificate holder, or possessor of nuclear material outside facilities may request that information of particular sensitivity, that it customarily holds in confidence, not be transmitted physically to the IAEA. An applicant, licensee, certificate holder, or possessor of nuclear material outside facilities 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.

(2) In considering such a request, it is the policy of the NRC to achieve an effective balance between legitimate concerns of licensees, applicants, certificate holders, or possessors of nuclear material outside facilities, 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 Agreements. The NRC 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 agreements.

(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 NRC will determine a physical location where the information will remain readily available for examination by the IAEA and will so inform the applicant, licensee, certificate holder, or possessor of nuclear material outside facilities.

(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 Agreements, the NRC may at its own initiative, or at the request of a licensee, determine that any information submitted under §§ 75.10, 75.11, and 75.12 of this part shall not be physically transmitted to, or made available for examination by, the IAEA.

20. Revise the undesignated center heading “**MATERIAL ACCOUNTING AND CONTROL FOR FACILITIES**” to read “**MATERIAL ACCOUNTING AND CONTROL**”.

§ 75.15 [Amended]

21. In § 75.15, wherever it may appear, remove the phrase “Safeguards Agreement” and add in its place the phrase “U.S.–IAEA Safeguards Agreement”, also wherever it may appear, remove the word “Commission” and add in its place the word “NRC”.

22. In § 75.21, revise paragraph (a), redesignates paragraphs (b) through (d) as paragraphs (c) through (e), and add new paragraph (b) to read as follows:

§ 75.21 General requirements.

(a) Each licensee or certificate holder who has been given notice by the NRC in writing that its facility has been identified under the U.S.–IAEA Safeguards Agreement shall establish, maintain, and follow written material accounting and control procedures.

(b) Each possessor of nuclear material outside facilities in the U.S. Caribbean Territories shall establish, maintain, and follow written material accounting and control procedures.

* * * * *

23. Revise § 75.24 to read as follows:

§ 75.24 Retention of records.

(a) The applicant, licensee, certificate holder, or possessor of nuclear material outside facilities shall retain as a record any request made pursuant to §§ 75.13(b)(1), 75.13(b)(4), and 75.21 of this part and documents related to that request which are either prepared or received by that entity, until the NRC terminates the license or certificate, or until the entity no longer possesses nuclear material, whichever occurs later. When records required by these sections are superseded, these records must be retained for 3 years after each change is made.

(b) The applicant, licensee, certificate holder, or possessor of nuclear material outside facilities shall retain the records referred to in §§ 75.22 and 75.23 of this part for at least 5 years.

24. Add a new undesignated center heading and new §§ 75.26 through 75.29 to read as follows:

IAEA NUCLEAR MATERIAL EXEMPTIONS AND TERMINATIONS

§ 75.26 Exemption from IAEA safeguards.

(a) The U.S. Government may request from the IAEA an exemption from IAEA safeguards 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 nonnuclear activities; and

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

(b) Nuclear material exempted under paragraph (a) of this section must not exceed the quantity limits specified in the Safeguards Agreements.

(c) The NRC shall provide a prompt notification of an exemption issued by the IAEA to the applicable licensee, certificate holder, or nuclear material outside facilities.

§ 75.27 Requirements for facilities, locations, and nuclear material outside facilities after issuance of IAEA exemptions.

(a) *Licensees of facilities.* After the NRC has notified a licensee of a facility under § 75.26(c) of this part that the IAEA has approved the exemption requested under § 75.26(a) of this part, the licensee:

- (1) Shall submit reports to the NRC pursuant to §§ 75.6(c) and 75.31(a) of this part; and
- (2) Shall not export any nuclear material identified under § 75.26 of this part until the NRC notifies the licensee that IAEA safeguards under the U.S.–IAEA Safeguards Agreement have been re-applied.

(b) *Licensees of locations.* A licensee of a location shall provide annual updates pursuant to § 75.11(c) of this part following notification from the NRC that the IAEA has approved the exemption requested under § 75.26 of this part.

(c) *Possessors of nuclear material outside facilities.* After the NRC has notified a possessor of nuclear material outside facilities under § 75.6(c) of this part that the IAEA has approved the exemption requested under § 75.26(a) of this part, a possessor of nuclear material outside facilities:

- (1) Shall submit reports to the NRC pursuant to §§ 75.6(e) and 75.31(b) of this part; and
- (2) Shall not export out of the U.S. Caribbean Territories any nuclear material identified under § 75.26 of this part until the NRC notifies the possessor that IAEA safeguards under the U.S.–IAEA Caribbean Territories Safeguards Agreement have been re-applied.

(d) *Prohibition against commingling of nuclear material in storage.* Licensees of facilities, licensees of locations, and possessors of nuclear material outside facilities shall not

store nuclear material exempted under § 75.26 of this part together with nuclear material subject to Safeguards Agreements.

(e) Nuclear material exempted from IAEA safeguards under § 75.26 of this part is not subject to inspections by the IAEA.

§ 75.28 Termination from IAEA safeguards.

(a) Upon request of the U.S. Government, the IAEA may terminate IAEA safeguards on nuclear material which has been consumed, or has been diluted in such a way that it is no longer usable for any nuclear activity relevant from the point of view of safeguards, or has become practicably irrecoverable.

(b) The NRC will notify the affected licensees, certificate holders, and nuclear material outside facilities of the IAEA's termination of IAEA safeguards.

§ 75.29 Requirements for facilities, locations, and nuclear material outside facilities after termination from IAEA safeguards.

(a) *Licensees of facilities.* A licensee of a facility shall submit an Inventory Change Report pursuant to §§ 75.6(c) and 75.31(a) of this part following notification from the NRC that IAEA safeguards have been terminated as described in § 75.28 of this part.

(b) *Licensees of locations.* A licensee of a location shall provide annual updates pursuant to § 75.11(c) of this part following notification from the NRC that IAEA safeguards have been terminated as described in § 75.28 of this part.

(c) *Possessors of nuclear material outside facilities.* A possessor of nuclear material outside facilities shall submit an Inventory Change Report pursuant to §§ 75.6(e) and 75.31(b) of this part following notification from the NRC that IAEA safeguards have been terminated as described in § 75.28 of this part.

(d) Nuclear material that has had IAEA safeguards terminated as described in § 75.28 of this part is not subject to inspections by the IAEA.

25. Revise § 75.31 to read as follows:

§ 75.31 General requirements.

(a) Each licensee or certificate holder who has been given notice by the NRC under § 75.7 of this part that its facility has been identified under the U.S.–IAEA 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 of this part. These reports must be based on the records kept under § 75.21 of this part. At the request of the NRC, the licensee or certificate holder shall amplify or clarify any report with respect to any matter relevant to implementation of the U.S.–IAEA Safeguards Agreement. Any amplification or clarification must be in writing and must be submitted, to the address specified in the request, within 20 days of the date of the request or other time as may be specified by the NRC.

(b) Each possessor of nuclear material outside facilities (possessor) subject to the U.S.–IAEA Caribbean Territories Safeguards Agreement shall make, in an appropriate computer-readable format, an initial inventory report in accordance with § 75.32 of this report. Thereafter, that possessor shall make accounting reports as described in §§ 75.33 through 75.35 of this part and special reports as described in § 75.36 of this part. These reports must be based on the records kept under § 75.21(b) of this part. At the request of the NRC, the possessor shall amplify or clarify any report with respect to any matter relevant to implementation of the U.S.–IAEA Caribbean Territories Safeguards Agreement. Any amplification or clarification must be in

writing and must be submitted, to the address specified in the request, within 20 days of the date of the request or other time as may be specified by the NRC.

26. Revise § 75.32 to read as follows:

§ 75.32 Initial inventory report.

(a) *Licensees of facilities.* The initial inventory report must show the quantities of nuclear material at a facility. The quantities reported in the initial inventory report must be accurate as of the last day of the calendar month in which the NRC gives notice to the licensee or certificate holder that an initial inventory report is required (the “inventory date” on DOE/NRC Form 742C).

(b) *Possessors of nuclear material outside facilities.* The initial inventory report must show the quantities of nuclear material outside facilities. The quantities reported in the initial inventory report must be accurate as of the last day of the calendar month in which the possessor of nuclear material outside facilities becomes subject to the requirements of this part (the “inventory date” on DOE/NRC Form 742C).

(c) The information in the initial inventory report may be based upon the accounting records. The initial inventory report must be submitted to the NRC on DOE/NRC Form 742C in accordance with the instructions in NUREG/BR-0007 and NMMSS Report D-24 “Personal Computer Data Input for NRC Licensees.” Copies of the instructions for completing DOE/NRC Form 742C and DOE/NRC Form 740M may be obtained from the following Web sites:

<http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures> and

<https://nnsa.energy.gov/aboutus/ourprograms/nuclearsecurity/nmmsshome/nmmssinfo/nmmssreports>.

(d) DOE/NRC Form 742C must be accompanied by DOE/NRC Form 740M if any batch of source material reported in DOE/NRC Form 742C is equal to or less than 0.4 kg.

(e) The initial inventory report must be submitted to the NRC no later than 20 days after the inventory date.

27. Revise § 75.33(a)(1)(i) to read as follows:

§ 75.33 Accounting reports.

(a)(1) * * *

(i) Inventory Change Reports (Nuclear Material Transaction Report); and

* * * * *

28. Revise § 75.34 to read as follows:

§ 75.34 Inventory change reports.

(a) Each licensee of a facility, certificate holder, or possessor of nuclear material outside facilities who transfers nuclear material subject to IAEA safeguards shall submit an Inventory Change Report (Nuclear Material Transaction Report) to the NRC no later than the close of business the next working day after each transfer, in accordance with the instructions in NUREG/BR-0006 and NMMSS Report D-24 "Personal Computer Data Input for NRC Licensees." Each licensee of a facility, certificate holder, or possessor of nuclear material outside facilities who receives nuclear material subject to IAEA safeguards shall submit an Inventory Change Report to the NRC. Inventory Change Reports for receipts must be submitted within 10 days after the material is received, in accordance with the instructions in NUREG/BR-0006 and NMMSS Report D-24 "Personal Computer Data Input for NRC Licensees." Copies of the instructions for completing DOE/NRC Form 741 and DOE/NRC Form

740M may be obtained from the following Web sites: <http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures> and <https://nnsa.energy.gov/aboutus/ourprograms/nuclearsecurity/nmmsshome/nmmssinfo/nmssreports>.

(b) An Inventory Change Report (Nuclear Material Transaction Report) 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.

(3) Each person who receives any nuclear material from a foreign source shall complete both the supplier's and receiver's portion of DOE/NRC Form 741.

(4) Each person in the U.S. Caribbean Territories who receives nuclear material from the U.S. outside the U.S. Caribbean Territories shall complete both the supplier's and receiver's portion of DOE/NRC Form 741.

(c) An Inventory Change Report must be accompanied by DOE/NRC Form 740M whenever it is necessary to:

(1) Explain the inventory changes set forth in the operating records required by § 75.23 of this part; or

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

(d) Copies of the instructions for completing DOE/NRC Form 741 and DOE/NRC Form 740M may be obtained from the following Web sites: <http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures> and <https://nnsa.energy.gov/aboutus/ourprograms/nuclearsecurity/nmmsshome/nmmssinfo/nmssreports>.

29. Revise § 75.35 to read as follows:

§ 75.35 Material status reports.

(a) Each licensee of a facility, certificate holder, or possessor of nuclear material outside facilities with nuclear materials subject to IAEA safeguards shall submit a material status report for each physical inventory taken in accordance with the material accounting and control procedures required by § 75.21 of this part. The material status report must include a DOE/NRC Form 742 and a DOE/NRC Form 742C which lists all batches separately and specifies material identification and batch data for each batch. The reports described in this section must be prepared and submitted in accordance with instructions in NUREG/BR-0006, NUREG/BR-0007, and NMMSS Report D-24.

(b) Unless otherwise specified in the license conditions, material status reports shall be submitted to the NRC as soon as possible, but in any event no later than 30 days after the start of the physical inventory.

(c) Possessors of nuclear material outside facilities must submit a material status report to the NRC every 12 calendar months, for a reporting period that commences on May 1st and concludes on April 30th of the next calendar year. The annual inventory report must be dated April 30th.

(d) A material status report must be accompanied by DOE/NRC Form 740M whenever it is necessary to:

- (1) Describe the anticipated operational program;
- (2) Provide additional explanation and clarification at the country, facility material balance area, report, or entry level;
- (3) Provide additional explanation not accommodated in any of the data elements of DOE/NRC Form 742 or DOE/NRC Form 742C; or
- (4) Report actual inventory values equal to or less than 0.4 kg of source material.

(e) Copies of the instructions for completing DOE/NRC Form 742, DOE/NRC Form 742C, and DOE/NRC Form 740M may be obtained from the following Web sites:

<http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures> and

<https://nnsa.energy.gov/aboutus/ourprograms/nuclearsecurity/nmmsshome/nmmssinfo/nmssreports>.

30. Revise § 75.36 to read as follows:

§ 75.36 Special reports.

(a) This section applies to licensees, certificate holders, and possessors of nuclear material outside facilities who:

(1) Have been given notice under § 75.7(a) that their facilities are subject to the application of IAEA safeguards, or

(2) Are subject to the U.S.–IAEA Caribbean Territories Safeguards Agreement.

(b) Each entity subject to this section shall immediately make a special report to the NRC, by telephone, if:

(1) There is a loss of nuclear material:

(i) in excess of specified limits, as stated in license conditions, for those entities described in (a)(1) of this section, or

(ii) in any amount, for those entities described in (a)(2) of this section,

(2) There are unexpected changes in containment to the extent that unauthorized removal of nuclear material has become possible, or

(3) Reporting is required under a license condition.

31. Revise § 75.43(a) to read as follows:

§ 75.43 Circumstances requiring advance notification.

(a) Each person subject to the Safeguards Agreements shall give advance written notification to the NRC regarding the international and domestic transfers specified in this section.

* * * * *

32. Revise § 75.46(a), (b), the introductory text of (c), and (d) to read as follows:

§ 75.46 Expenses.

(a) Under the Safeguards Agreements, the IAEA undertakes to reimburse any person subject to this part for extraordinary expenses incurred as a result of its specific request provided that the IAEA has agreed in advance to do so. The Safeguards Agreements also provide that the IAEA will reimburse that person for the cost of making additional measurements or taking samples at the specific request of an IAEA inspector.

(b) The NRC will inform persons subject to this part, by license condition or by other means (e.g., written communication), of those items of extraordinary expense which the IAEA has agreed in advance to reimburse.

(c) The NRC will inform persons subject to this part, by license condition or by other means (e.g., written communication), of the procedures to be used to document:

* * * * *

(d) The NRC will take appropriate action to assist persons subject to this part regarding the reimbursement of any expense which, under the Safeguards Agreements, is to be borne by the IAEA.

§ 75.53 [Amended].

33. In § 75.53(b), add §§ 75.13, 75.26, 75.27, 75.28, and 75.29 in numerical order.

Dated at Rockville, Maryland, this xxth day of Xxxxx, 201X.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.