

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

June 2, 1980

CONSENT CALENDAR ITEM


SECY-80-274

For: The Commissioners

From: Robert B. Minogue, Director
Office of Standards Development

James R. Shea, Director
Office of International Programs

William J. Dircks, Director
Office of Nuclear Material Safety and Safeguards

Thru: Executive Director for Operations 

Subject: IMPLEMENTATION OF INTERNATIONAL ATOMIC ENERGY AGENCY SAFEGUARDS
REQUIREMENTS FOR NRC LICENSEES

Purpose: To obtain Commission approval to publish in final form a new 10 CFR Part 75, "Safeguards on Nuclear Material -- Implementation of US/IAEA Agreement," and conforming amendments to 10 CFR Parts 40, 50, 70, 150, and 170.

Category: This paper presents important proposed regulations for consideration by the Commission.

Discussion: Background

On May 25, 1978, the Commission issued for public comment a proposed new 10 CFR Part 75, "Safeguards on Nuclear Material -- Implementation of US/IAEA Agreement," and conforming amendments to 10 CFR Parts 40, 50, 70, and 150 to implement 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." These proposed implementing regulations contained provisions requiring licensees: (1) to submit information concerning their installations for the use of IAEA; (2) to establish, maintain, and follow prescribed material accounting and control procedures; (3) to provide reports; and (4) to permit inspections of their facilities by IAEA representatives.

On July 17, 1979, the Commission issued for a second round of public comment revised Part 75 and conforming amendments to Parts 40, 50, 70, 150, and 170. Interested persons were given 45 days to comment on the revised proposed amendments; several extensive sets of comments were received. In some cases, the views presented also were brought before the Senate Committee on Foreign Relations, which held hearings on June 22, 1979, and on December 11, 1979.

Enclosure "A" consists of the second revision of Part 75 and conforming amendments to Parts 40, 50, 70, 150, and 170, including a statement of considerations which contains discussion of issues raised by

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the commenters and discussions of proposed changes. As appropriate, Enclosure "A" also addresses points raised in the Senate hearings (including topics identified by Senator McClure which were discussed in SECY 80-89). The public comments and staff responses thereto are included as Enclosure "B".

Changes

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

Value/Impact

A comprehensive report, "Estimated Incremental Costs for Licensees to Implement the US/IAEA Safeguards Agreement," prepared for NRC under contract with Battelle, Pacific Northwest Laboratory, Richland, Washington, was included as Enclosure "C" in SECY-79-239.

The publication of 10 CFR Part 75 in final form and conforming amendments to 10 CFR Parts 40, 50, 70, 150, and 170 is needed to implement the US/IAEA Safeguards Agreement. The NRC has little latitude in formulating alternative courses of action, and thus a formal, full Value/Impact Statement is not provided.

Staff Conclusion

Upon consideration of the comments received, changes recommended, the desirability of implementing the Agreement as soon as possible, and the fact that final rules must be in place when the Agreement enters into force, the staff has concluded that final rules should be published.

Recommendation:

The Commission:

(a) Approve:

1. The publication of 10 CFR Part 75 and conforming amendments to 10 CFR Parts 40, 50, 70, 150, and 170, as set forth in Enclosure "A" in the Federal Register as final rules to implement the US/IAEA Safeguards Agreement.

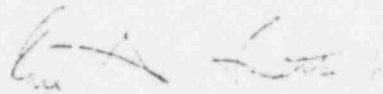
(b) Note that:

1. NRC staff has conducted an ongoing dialogue with staff members of the Executive Branch agencies represented in the Interagency Steering Group on IAEA Safeguards regarding the preceding drafts of Enclosure "A". On April 24, we requested formal Executive Branch review of the proposed final rule. We have not yet received a formal response, but all substantive comments expressed in an informal polling have been reflected in this paper.
2. The Subcommittee on Energy and the Environment of the House - Committee on Interior and Insular Affairs; the Subcommittee on Nuclear Regulation of the Senate - Committee on Environment and Public Works; the Committee on International Relations of the House; the Subcommittee on Arms Control, Oceans and International Environment of the Senate - Committee on Foreign Relations; and the Subcommittee on Energy, Nuclear Proliferation & Federal Services of the Senate - Committee on Government Affairs will be informed.
3. A public announcement such as Enclosure "C" will be issued when the amendments are filed with the Office of the Federal Register.

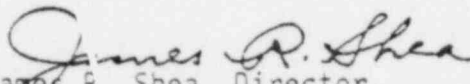
4. The General Accounting Office's review and approval of reporting requirements will be obtained.
5. Neither an Environmental Impact Statement nor a Negative Declaration is required because the proposed amendments are administrative and procedural and give rise to no substantive and significant environmental impacts other than those flowing directly from the Agreement itself.

Coordination:

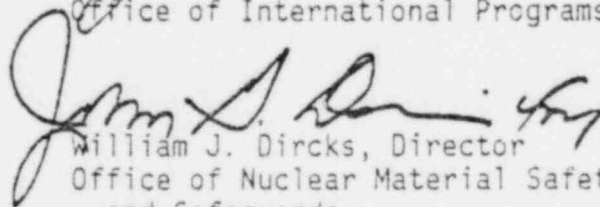
The Offices of Inspection and Enforcement, Nuclear Reactor Regulation, State Programs, and the Executive Legal Director and the Divisions of Rules and Records and Security concur in the recommendations of this paper. The Draft Public Announcement (Enclosure "C") has been prepared by the Office of Public Affairs. The Offices of Policy and Evaluation, and Management and Program Analysis have reviewed this paper and made no comment. Comments from the Office of the General Counsel have been incorporated in the paper.



Robert B. Minogue, Director
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James R. Shea, Director
Office of International Programs



William J. Dircks, Director
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Enclosures:

- "A" - Proposed 10 CFR Part 75 and Amendments to 10 CFR Parts 40, 50, 70, 150, and 170
- "B" - Summary of Comments
- "C" - Draft Public Announcement

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Tuesday, June 17, 1980.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT June 10, 1980, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of June 23, 1980. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

DISTRIBUTION

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ENCLOSURE A

NUCLEAR REGULATORY COMMISSION

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

SAFEGUARDS ON NUCLEAR MATERIAL -- IMPLEMENTATION
OF US/IAEA AGREEMENT

AGENCY: U.S. Nuclear Regulatory Commission

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to enable the United States to implement the US/IAEA Safeguards Agreement, with respect to licensed activities, as soon as the Agreement enters into force.

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

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

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

SUPPLEMENTARY INFORMATION: On May 25, 1978, the Nuclear Regulatory Commission published in the FEDERAL REGISTER (43 FR 22365) proposed amendments to Parts 40, 50, 70, and 150 and a new proposed Part 75 to Title 10, Code of Federal Regulations. Interested persons were invited to submit written comments or suggestions in connection with the proposed amendments within 60 days after publication in the FEDERAL REGISTER. On November 21, 1978, the Commission published a notice (43 FR 54255) regarding the availability of certain supplemental documents and extending the period of comment for 30 days. On July 17, 1979, the Commission published revised proposed amendments (44 FR 41468). Interested persons were invited to submit written comments and suggestions. Upon consideration of the comments received from 7 licensees and the Texas Department of Health, the Nuclear Regulatory Commission has decided to adopt and publish, with modification, the revised proposed amendments to Title 10, Chapter 1, Code of Federal Regulations. Copies of the comments and an analysis of them by the NRC staff are available in the Commission's Public Document Room.

OVERVIEW

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

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

The provisions of the Agreement were the subject of hearings before the Senate Committee on Foreign Relations on June 22 and December 11, 1979. In the development of these rules, the Commission has considered the matters discussed on those occasions. The Commission recognizes that the deliberations of the Senate, including any additional hearings that may be scheduled, Committee reports, and floor debate, may raise issues calling for reexamination. Should amendments to the rules become appropriate, the Commission, on its own, would initiate such modifications as may be needed. Depending upon the character of the change involved, this could be accomplished before the rules become effective or before the applicable provisions significantly affect licensees. The Commission will consider other suggestions for modification in accordance with the provisions of its rules of practice relating to petitions for rulemaking. (10 CFR §2.802)

In promulgating these rules, the Commission reaffirms its intention to work closely with licensees so as to ensure, insofar as possible, that

the Agreement can be implemented in a spirit of full cooperation. It is widely recognized that IAEA safeguards can help protect the international community from nuclear proliferation, and the Commission perceives a general willingness to join together in efforts toward that end.

CHANGES

In summary, differences from the proposed amendments published for comment on July 17, 1979, are: (1) the regulations now specifically refer to Facility Attachments (or Transitional Facility Attachments) negotiated under the Agreement and indicate that certain provisions of the Facility Attachments will be reflected in license conditions; (2) licensees' opportunities for consultation are expanded; (3) various clarifying amendments have been made to reflect more clearly the structure of the Agreement, particularly with respect to identifications made under either the principal text or the Protocol; (4) procedures are provided for resolution of certain issues outside the context of a show-cause proceeding; (5) inspections are categorized by type, with inspectors' access rights further defined; (6) reference is made to a licensee's opportunity to propose that a special material balance area be established around process steps involving commercially sensitive information; (7) the standard for measuring sufficiency of installation information is revised to correct the implication that determinations are made unilaterally by IAEA; (8) licensees are advised not to include details of physical security plans in installation information; (9) provisions for reporting of modifications affecting installation information have been clarified and relaxed, particularly with respect to emergency or unforeseen situations; (10) the Commission's intention to provide NRC representatives to accompany IAEA inspectors is

stated more positively; (11) licensees are relieved of the responsibility to revise their material accounting and control procedures until the Facility Attachment has been completed; (12) requirements with respect to records and reports describing the isotopic composition of licensees' holdings have been made less burdensome; (13) the inventory change report provision includes a better definition of the "concise note" requirement and is conformed to domestic safeguards regulations, particularly with respect to submission formalities; (14) scheduling for material status reports is made more flexible and the occasions when such reports are required are described more precisely; (15) the special reports provision has been revised with a view to minimizing efforts beyond those called for under the Agreement; (16) the Commission's intent to give prompt notice to a licensee when its installation is no longer subject to application of IAEA safeguards is made explicit; (17) the regulations now state that the IAEA will "reimburse for" (instead of the less specific "bear the cost of") certain expenses; (18) the provision pertaining to the breaking of IAEA seals has been stricken; and (19) miscellaneous minor changes have been made for purposes of clarification.

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

(1) Facility Attachments

Implementation of the Agreement will require that a Facility Attachment be prepared for each installation where nuclear material subject to IAEA safeguards is located. (A Transitional Facility Attachment, which

may omit a number of provisions, such as those applicable to inspections and special reports, will have to be prepared for an installation identified under the Protocol to the Agreement.) The proposed rule made no explicit reference to the Facility Attachment, but instead simply noted that certain written communications (intended to be based upon the facility attachment) would be binding upon licensees.

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

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

(2) Consultation

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

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

(3) Terminology conforming to Agreement

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

The revised definition of "Agreement" points out that the term includes the Protocol "unless otherwise specified." Where the intent is to refer specifically either to the principal text on the one hand or to

the Protocol on the other, the language so indicates. (See sections 75.4(g), 75.4(q), 75.8, 75.41.) Although references to the Agreement in Sections 75.42 through 75.46 relate to activities under the principal text of the Agreement, and not the Protocol, limiting language was not inserted because in those sections the references back to §75.41 adequately indicate that it is the principal text that is relevant.

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

(4) Recourse procedures

Some commenters requested that a procedure be established that would enable disputes with licensees to be resolved by means other than an enforcement proceeding. We construe this suggestion as relating particularly to proceedings instituted by a show-cause order under §2.202.

The Commission believes that this concern is answered, in part, by providing, in §75.8, that requirements reflecting provisions of the Facility Attachments, unless agreed to by the licensee, will be issued in the form of license amendments under §2.204 of the NRC rules of practice. A licensee has a right to a hearing with respect to an order entered pursuant to that regulation unless the Commission finds that the public health, safety, or interest requires the order to be made effective immediately. (In view of this change, the caption of §75.51 has been changed from "VIOLATIONS" to "ENFORCEMENT" and the references to §2.201 and §2.202 have been broadened to refer to Part 2, Subpart B instead.)

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

there has been a failure to supply required information (§2.108), and in either case a hearing could be scheduled promptly to resolve the issue.

(5) Inspection categories

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

(6) Commercially sensitive process steps

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

(7) "Agency determinations"

The provisions relating to submission of installation information (in §75.11) have been amended to eliminate the term "Agency determinations." The matters involved are those to be included in the Facility Attachments, and thus the determinations will not be made unilaterally by IAEA. The new language corresponds more closely to its counterpart in Article 46 of the Agreement.

(8) Physical security plans

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

(9) Modifications to installation information

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

Finally, the deletion of the reference to "changes" (in addition to "modifications") is more faithful to Article 45.

(10) IAEA inspections and visits.

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

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

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

to a minimum the possible inconvenience and disturbance" to the activities of the licensee concerned.

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

(11) Scope and implementation of procedures

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

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

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

(12) Records and reports of isotopic composition

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

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

(13) Inventory change reports

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

material transfer reports in the domestic safeguards program) to assure consistency with Part 75. See also the conforming change in the source material regulations (§40.64).

(14) Material status reports

Revised material accounting procedures will require the use of two separate forms, a Material Balance Report (DOE/NRC Form-742) and a Physical Inventory Listing (DOE/NRC Form-742C). These are collectively referred to in §75.35 as material status reports. Conforming changes also are made in §40.64 (pertaining to source material) and §70.53 (pertaining to special nuclear material), which sections also have been amended to eliminate conflict with the requirements of Part 75 (particularly with respect to scheduling).

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

(15) Special reports

The Commission has once again reviewed comments to the effect that the special reports provision (§75.36) is unnecessarily burdensome, particularly with respect to losses of containment that occur "unexpectedly." Since the subject is one that will be treated in detail in the

Facility Attachments, the Commission has determined that the requirements for particular installations should be treated in license conditions. Such conditions, tailored to the circumstances of individual licensees, will be phrased in a manner that will eliminate much of the concern that has been expressed. Language also has been inserted in §75.31, which eliminates a perceived inconsistency in the regulations regarding the coverage of the special reports requirement.

(16) Termination of installation designation

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

(17) Expenses

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

(18) Agency seals

The section dealing with the breaking of IAEA seals (former §75.46) has been deleted because there is no direct counterpart in the Agreement. This change is also responsive to concerns expressed by some

licensees that the regulations could unduly interfere with operational requirements. The Facility Attachment will address matters relating to the integrity of IAEA seals and will take operational requirements into account.

(19) Miscellaneous minor changes

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

DISCUSSION OF OTHER COMMENTS

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

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

Response: As reflected in the final rule, NRC recognizes the desirability of reconciling the requirements of 10 CFR 70 and 75 insofar as practicable. To the extent that duplication can be eliminated,

we shall continue to make every effort to do so. Suggestions from licensees, drawn from their actual experience, will be welcome at any time.

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

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

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

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

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

Response: Detailed guidance has been prepared by the NRC staff and is now available. This guidance includes various new or revised forms, together with instructions for their preparation. These are being submitted to the General Accounting Office for clearance

pursuant to 44 U.S.C. 3512. GAO will publish notice of submission, at which time affected persons will have the opportunity to comment. Written data, views, or arguments regarding the forms and instructions may also be submitted directly to the Commission. Submissions made within 21 days after GAO's publication, in the FEDERAL REGISTER, of a notice of receipt of NRC's report proposals will be considered by the Commission before the forms are placed into use.

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

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

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

Response: The language in question (§75.11(b)(4)) implements Article 43(d) of the Agreement and accordingly has not been changed. However, as the forms supplied under § 75.11(d) will make clear, the licensee will not be called upon to propose any new procedures for purposes of compliance with the provisions of Part 75. The "proposed procedures" which must be described are those which the licensee intends to institute, for other reasons, but which

are not yet in effect. (Our prior comments on this subject are withdrawn, to the extent they are inconsistent with this statement.) The details of the procedures, as opposed to a description thereof, would be required only when necessary for knowledgeable determinations to be made in the development of Facility Attachments.

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

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

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

Response: To limit inspections to "normal working hours" could seriously interfere with the IAEA's ability to carry out its responsibilities. "During normal working hours" seems appropriate for

visits under § 75.13 to verify installation information. However, the IAEA's safeguards regime cannot be effective if inspections outside of normal working hours are subject to restraints. In view of the relevant provisions of the Agreement (e.g., Article 9(c)(i)), the scheduling of inspections, in practice, probably will not result in serious inconvenience to the licensee.

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

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

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

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

SUPPLEMENTAL RULES

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

NOTICE

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of title 5 of the United States Code, the following new Part 75 and the following amendments to Parts 40, 50, 70, 150, and 170 of Title 10, Chapter 1, Code of Federal Regulations, are published as a document subject to codification.

PART 40 - LICENSING OF SOURCE MATERIAL

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

Paragraph 40.31(g) also issued under Sec. 122, 68 Stat. 939, 42 U.S.C. 2152.

2. A new paragraph ~~[(p)]~~ (q)* is added to §40.4 to read as follows:
 §40.4 Definitions.

* * * * *

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

3. A new paragraph (g) is added to §40.31 to read as follows:
 *
 § 40.31 Application for specific licenses.

* * * * *

(g) An applicant for a license to possess and use source material in a uranium hexafluoride production plant or a fuel fabrication plant and any other applicant for a license to possess and use more than one effective kilogram of source material (except for ore processing, as defined in § 75.4~~[(m)]~~ (o) of this chapter) should file with the Commission the installation information described in §75.11 of this chapter; and the applicant shall permit verification thereof by the International Atomic Energy Agency and take such other action as may be necessary to implement the US/IAEA Safeguards Agreement, in the manner set forth in §§75.6, 75.11-75.14 of this chapter. The Commission will grant an exemption from the requirements of this section, upon application, if it determines

*Comparative text to regulations published for public comment. Deletions are lined through and additions are underscored.

that the installation will not be included on the United States eligible list. The installation information should be filed at least 9 months prior to the date when the applicant desires to receive the source material (or earlier upon request by the Commission). Applicants who desire to receive the source material within 9 months after the effective date of this paragraph should submit the installation information as soon as possible.

4. Section 40.64 is amended to read as follows:

§40.64 Reports.

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

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

* * * * *

(e) Any licensee who is required to submit inventory change reports and material status reports pursuant to Part 75 of this chapter (pertaining to implementation of the US/IAEA Safeguards Agreement) shall prepare and submit such reports only as provided in §75.34 and §75.35 (instead of as provided in paragraphs (a) and (b) of this section).

PART 50 - DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

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

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

US/IAEA SAFEGUARDS AGREEMENT

§50.78 Installation information and verification.

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

PART 70 - SPECIAL NUCLEAR MATERIAL

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

Paragraph 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

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

§70.21 Filing.

* * * * *

(g) An applicant for a license to possess and use more than one effective kilogram of special nuclear material should file with the Commission the installation information described in §75.11 of this chapter; and the applicant shall permit verification thereof by the International Atomic Energy Agency and take such other action as may

be necessary to implement the US/IAEA Safeguards Agreement, in the manner set forth in §§75.6 and 75.11-75.14 of this chapter. The Commission will grant an exemption from the requirements of this paragraph, upon application, if it determines that the installation will not be included on the United States eligible list. The installation information should be filed at least 9 months prior to the date when the applicant desires to receive the special nuclear material (or earlier upon request by the Commission). Applicants who desire to receive the special nuclear material within 9 months after the effective date of this paragraph should submit the installation information as soon as possible.

9. Section 70.53 is amended to read as follows:

§ 70.53 Material status reports.

(a) (1) Each licensee who is authorized to possess at any one time and location special nuclear material in a quantity totaling more than 350 grams of contained uranium-235, uranium-233 or plutonium, or any combination thereof, shall complete and submit to the Commission (on DOE/NRC Form-742, Material Balance Report) material balance reports concerning special nuclear material received, produced, possessed, transferred, consumed, disposed of, or lost by the licensee. The licensee also shall prepare (on DOE/NRC Form-742C, Physical Inventory Listing) a statement of the composition of the ending inventory, which shall be submitted to the Commission as an attachment to each material balance report. All such reports shall be made as of March 31 and September 30 of each year and filed within thirty (30) days after the end of the period covered by the report. The Commission may permit a licensee to submit such reports at other times when good cause is shown.

In preparing and submitting the reports described in this paragraph, the licensee shall comply with the printed instructions for completing the particular form.

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

(b)***

* * * * *

§70.54 Nuclear material transfer reports.

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

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

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

[8-] 11. A new Part 75 is added to read as follows:

GENERAL PROVISIONS

Section

- 75.1 Purpose.
- 75.2 Scope.
- 75.3 Exemptions.
- 75.4 Definitions.
- 75.5 Interpretations.
- 75.6 Delivery of information, reports, and other communications.
- 75.7 [Agency] IAEA representatives.
- 75.8 Facility attachments.

INSTALLATION INFORMATION

- 75.11 Installation information.
- 75.12 Communication of information to [~~the-Agency~~] IAEA.
- 75.13 Verification.
- 75.14 Supplemental information.

MATERIAL ACCOUNTING AND CONTROL

- 75.21 General requirements.
- 75.22 Accounting records.
- 75.23 Operating records.
- 75.24 Retention of records.

REPORTS

- 75.31 General requirements.
- 75.32 Initial inventory report.
- 75.33 Accounting reports.
- 75.34 Inventory change reports.
- 75.35 Material [~~balance~~] status reports.
- 75.36 Special reports.
- 75.37 Disclosure of reports to [Agency] IAEA.

INSTALLATIONS DESIGNATED FOR [AGENCY] IAEA SAFEGUARDS

- 75.41 Designation.
- 75.42 Inspections.
- 75.43 Circumstances requiring advance notification.
- 75.44 Timing of advance notification.
- 75.45 Content of advance notification.
- [75:46 ~~Agency-seats-on-nuclear-material:~~]
- [75:47] 75.46 Expenses.

ENFORCEMENT

§75.51 [~~Violations:~~] Enforcement

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

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

GENERAL PROVISIONS

§75.1 Purpose.

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

§75.2 Scope.

(a) Except as provided in §75.3, the requirements in this part apply to all persons licensed by the Commission or Agreement States to possess source or special nuclear material at an installation, as defined in [~~§75-2(b)~~] §75.4(k), on the United States eligible list. They also apply,

to the extent specified in §§50.78, 40.31(g), 70.21(g), and 150.17a of this chapter, to holders of construction permits and to persons who intend to receive source material or special nuclear material.

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

- (1) Activities having direct national security significance.
- (2) Mining and ore processing activities.

§75.3 Exemptions.

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

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

- (1) Special nuclear material in gram quantities or less as a sensing component in instruments;
- (2) Nuclear material used in non-nuclear activities, if such nuclear material is recoverable, and
- (3) Plutonium with an isotopic concentration of plutonium-238 exceeding 80%.

§75.4 Definitions.

As used in this part:

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

~~[(b) "Agency" means the International Atomic Energy Agency (IAEA) or its duly authorized representatives.]~~

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

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

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

~~[(f)]~~ (e) "Containment"¹ means:

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

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

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

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

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

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

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

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

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

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

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

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

~~(i)~~(k) "Installation" means:

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

- (2) a uranium hexafluoride production plant;
- (3) a fuel fabrication plant; or
- (4) any location where the possession of more than one effective kilogram of nuclear material is licensed pursuant to Parts 40 or 70 of this chapter, or pursuant to an Agreement State license.

~~(j)~~(1) "Inventory change" means an increase or decrease, established in accordance with the procedures required by this part, in terms of batches[;] of nuclear material in an IAEA material balance area.

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

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

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

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

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

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

§75.5 Interpretations.

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

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

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

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

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

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

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

§75.7 [Agency] IAEA representatives.

Each licensee subject to the provisions of this part shall recognize as a duly authorized representative of the [Agency] IAEA any person bearing [Agency] IAEA credentials who at the time of a visit or inspection, or of any visit or inspection within the preceding two years, is or was accompanied by a Commission employee, provided, that if the [Agency] IAEA representative is not accompanied by a Commission employee, his credentials shall have been confirmed by the Commission in writing for the particular

visit or inspection or for a specified term. The licensee shall immediately communicate with the Commission, by telephone, with respect to the credentials of any other person who claims to be an [Agency] IAEA representative and shall accept telephone confirmation of such credentials by the Commission.

§75.8 Facility Attachments.

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

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

- (1) IAEA material balance areas;
- (2) Types of modifications with respect to which information is required, under §75.11, to be submitted in advance;
- (3) Procedures, as referred to in §75.21;
- (4) The extent to which isotopic composition must be included in batch data (under §75.22) and advance notification (§75.45);
- (5) Items to be reported in the concise notes accompanying inventory change reports, as referred to in §75.34;
- (6) Loss limits and changes in containment, as referred to in §75.36 (pertaining to special reports);
- (7) Actions required to be taken, in accordance with §75.42(e)(2), at the request of an IAEA inspector;

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

(9) Such other matters as may be appropriate.

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

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

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

INSTALLATION INFORMATION

§75.11 Installation information.

(a) Each licensee subject to the provisions of this part shall submit ~~[to the Commission;]~~ installation information, in response to ~~[and within the period (which shall be at least 45 days) specified in]~~ a written request from the Commission, ~~[the following information]~~ with respect to any installation which the Commission indicates has been identified under

the Agreement and in which the licensee carries out licensed activities[?]. (The Commission request shall state whether the installation has been identified under Article 39(b) of the principal text of the Agreement or Article 2(a) of the Protocol.) The licensee shall submit such information to the Commission within the period, which shall be at least 45 days, specified in the Commission's request.

(b) Installation information includes:

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

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

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

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

~~[(b)](c)~~ Each licensee shall thereafter submit to the Commission information with respect to any modification ~~[or-change]~~ at the installation affecting the information ~~[described]~~ referred to in paragraph (a) of this section. Such information shall be submitted:

(1) With respect to a modification ~~[or-change-which-will-necessitate-a-change-in-a-license-condition-or-technical-specification-or-which-will-decrease-the-effectiveness-of-the-material-accounting-and-control-procedures;]~~ of a type described in the license conditions: at least 70 days before the modification ~~[or-change]~~ is scheduled to be completed, except that in an emergency or other unforeseen situation a shorter period may be approved by the Commission.

(2) With respect to any other modification ~~[or-change;]~~ relevant to the application of the provisions of the Agreement: at the time the first inventory change report is submitted after the modification ~~[or-change]~~ is completed.

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

~~[(d)-The-Agency-determinations-referred-to-in-this-section-are:]~~

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

(2) Determination of IAEA material balance areas to be used for [Agency] IAEA accounting purposes and selection of those strategic

points which are key measurement points and which will be used to determine flow and inventory of nuclear material;

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

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

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

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

~~[(e) The Commission will consult with a licensee, at the licensee's request, with respect to any matter that is the subject of a determination to be made by the Agency:]~~

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

§75.12 Communication of information to [the Agency] IAEA.

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

(b)(1) A licensee may request that information of particular sensitivity, which it customarily holds in confidence, not be transmitted physically to the [Agency] IAEA. A licensee who makes such a request should, at the time the information is submitted, identify the pertinent

document or part thereof and make a full statement of the reasons supporting the request.

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

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

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

~~[(c)--information-which-identifies-a-licensee's-detailed-security measures-for-the-physical-protection-of-an-installation-in-which-licensed special-nuclear-material-is-possessed-or-used-may-be-the-subject-of-a request-by-a-licensee-under-paragraph-(b)-of-this-section-the-Commission may-at-its-own-initiative;-or-at-the-request-of-a-licensee;-determine-that the-information-described-in-this-paragraph-shall-not-be-transmitted-to-the Agency:]~~

~~[(d)](c)~~ A request made under §2.790(b) of this chapter will not be treated as a request under this section unless the application makes

specific reference to this section, nor shall a determination to withhold information from public disclosure necessarily require a determination that such information not be transmitted physically to the [Agency] IAEA.

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

§75.13 Verification.

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

(b) The notice from the Commission [~~referred-to-in-this-section~~] may be given by telephone or in writing and shall [~~be-provided-to~~] provide the licensee [~~at-least-3-days-prior-to-the-visit-~~] actual knowledge of the visit at least three days in advance. The licensee should consult with the Commission immediately if the visit would unduly interfere with its activities[~~-~~] or if its key personnel cannot be available.

(c) The Commission will to the extent feasible, [~~upon-request-by-a licensee;~~] unless the licensee agrees otherwise, assign an employee to accompany an [Agency] IAEA representative engaged in a visit described in this section.

§75.14 Supplemental information.

(a) At the time information is submitted by a licensee under [in accordance-with] §75.11(a), and promptly whenever changes are made, [each] such licensee [subject-to-the-provisions-of-this-part] shall submit to the Commission:

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

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

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

MATERIAL ACCOUNTING AND CONTROL

§75.21 General requirements.

(a) Each licensee [subject-to-the-provisions-of-this-part] who has been given notice by the Commission in writing that its installation has been identified under the Agreement shall establish, maintain and follow written material accounting and control procedures, [as-provided-in-this section:]

~~[(b)-The-procedures-shall-be-based-on-a-structure-of-IAEA-material balance-areas-and;-with-respect-to-each-batch-of-nuclear-material;-shall provide-for-measurements-of-flow-and-inventory-taking-at-key-measurement points:]~~

~~[(c)--The-procedures-and-the-IAEA-material-balance-areas-shall-be those-communicated-in-writing-by-the-Commission-to-the-licensee;-based~~

upon Agency determinations;--in the absence of such communication; and to the extent that any such communication may be incomplete; the licensee shall employ the procedures described by him in the information submitted under §75.11; except that he may treat the entire installation as a single IAEA material balance area unless he has received specific directions to the contrary:]

~~(d)~~ (b) The material accounting and control procedures required by [this section] 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) ~~Maintenance~~ A system of accounting and operating records.

~~(e)~~ Upon written direction from the Commission; the licensee shall implement the procedures required by this section;--Such implementation shall occur within 10 days after such direction or within such other period as may be specified by the Commission:]

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

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

~~[(f)]~~(d) The requirements of this section are in addition to any other requirements~~[-including-those-set-forth-in-§70:51(e);-§70:57;-and §70:5C-of-this-chapter;]~~ of this chapter, relating to material accounting and control, that may apply to the licensee.

§75.22 Accounting records.

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

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

(2) All measurement results that are used for determination of ~~[the-physical-inventory;]~~ nuclear material quantities; and

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

§75.32 Initial inventory report.

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

(b) The initial inventory report, to be submitted to the Commission on DOE/NRC Form-742, Material [~~Status~~] Balance Report, in accordance with printed instructions for completing the form, shall [~~list;-by-batch-and IAEA-material-balance-area;~~] show the quantities of nuclear material contained in or at an installation as of the initial inventory reporting

date. The information in the initial inventory report may be based upon the licensee's book record.

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

§75.33 Accounting reports.

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

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

§75.34 Inventory change reports.

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

(b) Inventory change reports, when appropriate, will be accompanied by concise notes [~~(in the Miscellaneous block of Form DOE/NRC-741):~~] submitted on DOE/NRC Form-740M, Concise Note, and prepared in accordance with printed instructions for completing the form:

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

(2) Describing, to the extent specified in the license conditions, the anticipated operational program for the installation, including particularly, but not exclusively, the schedule for taking physical inventory. [~~and such other items related to the Agreement as may be requested by the Commission:~~]

~~[(c) inventory change reports shall be completed and distributed as soon as possible after the inventory change occurred or is established:]~~

§75.35 Material [balance] status reports.

~~[(a) Material balance reports; to be submitted on Form DOE/NRC-742; Material Status Report; and prepared in accordance with printed instructions for completing the form; shall include the following entries:~~

- ~~(1) Beginning physical inventory;~~
- ~~(2) Inventory changes (first increases; then decreases);~~
- ~~(3) Ending book inventory;~~
- ~~(4) Shipper/receiver differences;~~
- ~~(5) Adjusted ending book inventory;~~
- ~~(6) Ending physical inventory; and~~
- ~~(7) Inventory difference (material unaccounted for):~~

~~A statement of the physical inventory; listing all batches separately and specifying material identification and batch data for each batch; shall be attached to each material balance report:]~~

(a) A material status report shall be submitted for each physical inventory which is taken as part of the material accounting and control procedures required by §75.21. The material status report shall include a Material Balance Report (on DOE/NRC Form-742) and, attached thereto, a Physical Inventory Listing (on DOE/NRC Form-742C) which lists all batches

separately and specifies material identification and batch data for each batch. Also, when appropriate, the material status report shall be accompanied by DOE/NRC Form-740M, Concise Note. The reports specified in this section shall be prepared and submitted in accordance with the printed instructions for completing the referenced forms.

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

§75.36 Special reports.

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

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

~~(1)--Any-unusual-incident-or-circumstances-indicate-that-there is-or-may-have-been-loss-of-nuclear-material-covered-by-the-applicable license-that-exceeds-limits-specified-for-this-purpose-in-a-written communication from the-Commission;-or~~

~~(2)--The-containment-has-changed-from-that-specified-in-a written-communication-from-the-Commission-to-the-extent-that-unauthorized removal-of-nuclear-material-has-become-possible;-unless-information-on-the change-had-been-reported-to-the-Commission-in-the-concise-notes-referred to-in-§75-34(b)(2)-in-an-inventory-change-report-submitted-at-least-10-days before-the-change-in-containment-occurs-]~~

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

§75.37 Disclosure of reports to [Agency] IAEA.

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

INSTALLATIONS DESIGNATED FOR [AGENCY] IAEA SAFEGUARDS

§75.41 Designation.

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

§75.42 Inspections.

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

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

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

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

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

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

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

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

- (1) Examine the records kept pursuant to §75.21 of this part;
- (2) Observe that the measurements of nuclear material at key measurement points for material balance accounting are representative;

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

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

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

~~(c)~~(e) Each licensee shall, at the request of an [Agency] IAEA inspector:

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

(2) Take other actions contemplated by the Agreement, as evidenced by [~~written-notice-from-the-Commission;~~] the license conditions, including, for example:

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

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

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

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

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

(vi) Carrying out other calibrations.

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

~~(e)~~(g) The Commission will to the extent feasible, ~~[upon request by a licensee;]~~ unless the licensee agrees otherwise, assign an employee to accompany any [Agency] IAEA representative engaged in an inspection described in this section.

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

§75.43 Circumstances requiring advance notification.

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

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

quantity of nuclear material to be transferred exceeds one effective kilogram.²

(c) Imports.

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

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

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

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).

§75.44 Timing of advance notification.

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

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

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

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

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

§75.45 Content of advance notification.

(a) The notifications required by §75.43 shall include the element weight of nuclear material being received or shipped, the chemical [~~and-isotopic~~] composition and physical form, the isotopic composition (to the extent specified by license conditions), the estimated date and place at the reporting installation where the nuclear material is to be unpackaged or prepared for shipment (and where the quantity and composition can be verified), the applicable IAEA material balance area at the

reporting installation, the approximate number of items to be received or shipped, and the probable dates of receipt or shipment. The notification shall indicate that the information is being supplied pursuant to §75.43.

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

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

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

(3) Means of transport; and

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

~~[§75:46--Agency-seals-on-nuclear-material--~~

~~A-licensee-who-has-been-given-notice;-pursuant-to-§75:41;-shall-not break-an-Agency-seal-on-any-nuclear-material-except-at-the-time-such nuclear-material-is-being-unpackaged;-when-health-and-safety-so-requires; or-at-other-times-as-authorized-by-the-Commission:]~~

~~[§75:47]~~ §75.46 Expenses.

(a) Under the Agreement, the [Agency] IAEA undertakes to reimburse a licensee who has been given notice, pursuant to §75.41, for extraordinary expenses incurred as a result of its specific request: Provided, That the [Agency] IAEA has agreed in advance to do so. The Agreement also contemplates that in any case the [Agency] IAEA will [~~bear~~] reimburse a

licensee for the cost of making additional measurements or taking samples at the specific request of an [Agency] IAEA inspector.

(b) The Commission will inform the licensee, in [~~writing;~~] 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 [~~writing;~~] the license conditions, of the procedures to be used to document:

(i) An [Agency] IAEA inspector's request for making additional measurements or taking additional samples; and

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

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

ENFORCEMENT

§75.51 Enforcement.

(a) An injunction or other court order may be obtained prohibiting any violation of any provision of the Atomic Energy Act of 1954, as amended, or Title II of the Energy Reorganization Act of 1974, or any regulation or order issued thereunder. A court order may be obtained for the payment of a civil penalty imposed pursuant to section 234 of the Act for violation of section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Act, or section 206 of the Energy Reorganization Act of 1974, or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license issued thereunder, or for any violation for which a license may be revoked under section 186 of the

Act. Any person who willfully violates any provision of the Act or any regulation or order issued thereunder may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

(b) The Commission may issue such orders to secure compliance with the provisions of this part or to prohibit any violation of such provisions as may be proper to protect the common defense and security. Enforcement actions, including proceedings instituted with respect to Agreement State licensees, will be conducted in accordance with the procedures set forth in Part 2, Subpart B [~~in-§2-201-(notice-of-violation)-and-§2-202-(order-to-show-cause)~~] of this chapter. Only NRC licensees, however, are subject to license modification, suspension, or revocation as such as a result of such enforcement actions.

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

~~[9-]~~12. The citation of authority is amended by adding the following paragraph:

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

~~[10-]~~13. Section 150.10 is amended by inserting in the first sentence "150.17a," between "150.17" and "150.18".

~~[11-]~~14. A new § 150.17a is added to read as follows:
§150.17a Compliance with requirements of US/IAEA Safeguards Agreement.

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

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

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

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

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

§170.11 Exemptions

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

* * * * *

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

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

Dated at _____ this _____ day of _____, 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk
Secretary of the Commission

ENCLOSURE B

PUBLIC COMMENT AND STAFF RESPONSE

1.0 Introduction

On May 25, 1978, the NRC published for 60-day public comment (43 FR 22365) proposed amendments to implement the US/IAEA Safeguards Agreement. On November 21, 1978, the comment period for 43 FR 22365 was extended for 30 days to December 21, 1978 (43 FR 54225).

For the period May 25 to July 24, 1978, comments were received from nineteen organizations. As a result of the extended comment period, November 21 to December 21, 1978, comments were received from three organizations. All comments and responses were summarized in Enclosure "B" of SECY-79-239.

On July 17, 1979, the NRC published (44 FR 41468) revised proposed amendment to obtain further comment, particularly with respect to the changes that were made. Interested persons were given 45 days to comment. As a result of the comment period, July 17 to August 31, 1979, comments were received from eight organizations. All comments received are listed and responded to below.

1.1 COMMENTERS

1.1.1 For the period May 25 to July 24, 1978 (43 FR 22365):

1. State of Arizona Atomic Energy Commission, Phoenix, AZ
2. Conner, Moore & Corber - Law Office (on behalf of Gulf States Utilities Co.), Washington, DC

3. LeBoeuf, Lamb, Lieby & MacRae (on behalf of Rochester Gas & Electric Corp.; Public Services Co. of Indiana; Omaha Public Power District; Detroit Edison Co.; and Niagara Mohawk Power Corp.), Washington, DC
4. Exxon Nuclear Co., Inc., Richland, WA
5. Florida Power & Light Co., Miami, FL
6. Allied Chemical, Morristown, NJ
7. Edison Electric Institute, Washington, DC
8. Commonwealth Edison, Chicago, IL
9. Yankee Atomic Electric Co., Westborough, MA
10. Atomic Industrial Forum, Inc., Washington, DC
11. University of Missouri, Columbia, MO
12. Westinghouse Electric Corp., Pittsburgh, PA
13. Carolina Power & Light Co., Raleigh, NC
14. Tennessee Valley Authority, Chattanooga, TN
15. NUSAC, Inc., McLean, VA
16. G.E. Vallecitos Nuclear Center, Plessanton, CA
17. Oregon State University, Corvallis, OR
18. Washington State University, Pullman, WA
19. Dow Chemical, Midland, MI

1.1.2 For the period November 21 to December 21, 1978 (43 FR 54255):

20. Carolina Power & Light Co., Raleigh, NC
21. Combustion Engineering, Inc., Hematite, MO
22. Babcock and Wilcox, Apollo, PA

1.1.3 For the period July 17 to August 31, 1979 (44 FR 41468):

23. Texas Department of Health, Austin, TX
24. G.E., San Jose, CA
25. Exxon Nuclear Co., Richland, WA
26. Commonwealth Edison, Chicago, IL
27. Allied Chemical, Morristown, NJ
28. Carolina Power & Light Co., Raleigh, NC
29. G.E., Wilmington, NC
30. Westinghouse, Pittsburgh, PA

PUBLIC COMMENTS TO 44 FR 41468 - 7/17/79

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 - 4.5.4 §75.47 [renumbered to §75.46] EXPENSES
- 5.0 PART 150 - EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES UNDER SECTION 274
- 6.0 PART 170 - FEES FOR FACILITIES AND MATERIALS LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED
 - 6.1.1 §170.11 EXEMPTIONS

2.0 GENERIC ISSUES

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2.1 COMMENT: Allied Chemical, Morristown, New Jersey

- A. In connection with our consideration of the proposed 10 CFR Part 75, we have been unable to obtain from the NRC information which notice in the Federal Register related to Part 75 indicated is available from the NRC. For example, following several telephone calls to representatives of NRC in July 1979 asking for a Model Facility Attachment, Design Information Questionnaire and Forms DOE/NRC 741 and 742, as each applied specifically to a UF₆ conversion facility, we received a package of information related to reactor safeguards, but the package did not contain the information which we had requested, i.e., the Facility Attachment relating to conversion facilities. It is apparent that the nature and activities of a UF₆ conversion plant differ significantly from the nature and activities of a reactor. Inasmuch as there are other UF₆ conversion plants now under safeguards in other countries, and since the U.S. proposes to parallel the safeguards applied in such other countries, the Facilities Attachments already adopted by such foreign countries should be readily available as models for our review and consideration.

Although not said to be available by the statement of Supplementary Information issued by NRC, the "Design Information Questionnaire" used in other countries should also be readily available to the NRC and could be supplied to us as a model of what the NRC proposes to require.

As a third and final example, we have been unable to obtain copies of forms DOE/NRC 741 and 742 other than those in use, and we understand that the NRC is revising these "so that they will provide the information required by I.A.E.A." In this regard we note that in at least one of the other three countries under I.A.E.A. and having operating UF₆ conversion facilities (Canada), a form essentially similar to the form 741 now used in the United States is currently in use. Our concern lies in the implication that in connection with its revision of these forms, the NRC is considering requiring more information from United States' facilities than appears to be required outside the United States.

RESPONSE: A copy of the IAEA model Facility Attachment and a Design Information Questionnaire for a conversion facility was forwarded to the commenter on September 19, 1979. The 741 and 742 forms requested were still under development; however, these revised forms and instructions for their preparation will be available for public comment before they are put into use.

Completed Design Information Questionnaires and Facility Attachments for UF_6 conversion facilities in other countries are held in confidence by the IAEA and are not available to the NRC.

Information required by NRC from the licensee will be only that required to meet the obligations under the Agreement.

- B. COMMENT: We understand that the degree of sophistication of the safeguards applicable to our facility will be defined by the Nuclear Regulatory Commission (NRC) in a "Facility Attachment" to be developed through discussion of the involved parties. We urge that, in the development of such Facility Attachments for conversion facilities, the place of such facilities in the fuel cycle be kept in mind. In the United States, the material to be subject to safeguards in a conversion facility (only the purified UF_6) comes from source material which was not subject to safeguards and is delivered to facilities (DOE enrichment plants) which are similarly not safeguarded. Accordingly, under the proposed regulations conversion facilities in the United States appear to be treated as isolated islands in the safeguards scheme.

RESPONSE: The commenter's conclusion is essentially correct. However, whether "isolated islands" or not, the provisions of the Agreement must be given full effect.

2.2 COMMENT: Exxon Nuclear Co., Richland, Washington

- A. Dual Information Requirements - One area of general concern that was not noted in the initial comments regards the seemingly dual information requirements under existing Part 70 and under proposed Part 75. It appears that some licensees would need to maintain two documents pertaining to material control and accounting. Under proposed Part 75 a version of the IAEA "Design Information Questionnaire" would need to be submitted and maintained on a current basis. Under Part 70 the "Fundamental Material Control Plan" would also need to be maintained on a current basis. It is requested that the Commission give serious consideration to the eventual incorporation of IAEA and NRC requirements into a single "Fundamental Control Plan" which would meet both NRC and IAEA requirements.

RESPONSE: The Design Information Questionnaire (DIQ) is an IAEA document, the use of which is intended to provide the IAEA with facility information and modification thereto so that a Facility Attachment can be prepared or updated. It is recognized that much of the data in the DIQ are also in the 'Fundamental Nuclear Material Control Plan' (FNMC); however, we feel the FNMC, which is required for domestic safeguards, contains information which is not needed by the IAEA or appropriate to give to them. NRC recognizes the desirability of reconciling the requirements of Parts 70 and 75 insofar as practicable. To the extent that duplication can be eliminated, we shall continue to make every effort to do so. Suggestions from licensees, drawn from their actual experience, will be welcome at any time.

- B. COMMENT: Schedule for Implementation - The Commission has indicated that it would provide an additional public comment period only for substantial cause. We understand the NRC's desire to bring the Agreement into force as soon as possible after its ratification. However, the public's interest in commenting on the implementing regulations in light of the Senate's deliberations, both in Committee and on the floor, should be accommodated as well. Accordingly, we suggest that, if the granting of a pre-promulgation public comment period after Senate action is viewed as impracticable, the Commission should issue "interim final regulations" with an opportunity for public comment thereon.

RESPONSE: The Commission believes that the extensive dialogue to date has fully illuminated the issues related to the Agreement and that the regulations, as revised, are in suitable form for promulgation. Should the Senate deliberations indicate a need for significant changes in the requirements, NRC, at its own initiative or in response to petitions for rulemaking, would develop modified rules for additional public comment. However, the potential benefits of extending the comment period at this time are outweighed by the adverse effects that unnecessary delays in implementation might have upon the United States foreign policy and non-proliferation objectives.

2.3 COMMENT: G.E., San Jose, California

Substantive Changes to Agreement - We believe that substantive changes should be made in the Agreement with the International Atomic Energy Agency for the Application of Safeguards in the United States of America, with Protocol to provide consistency with current NRC regulations and licensing practice. For example, the impracticable ten-day implementation period should be substantially lengthened; nuclear material in the form of previously measured sealed sources, tamper-safed containers, standards, small samples, and reactor-irradiated R&D fuel should be exempted from measurement; and certain routine, domestic, short-cycle shipments between an Agency safeguarded installation and one not so covered should be excepted from the 20-day advance notification requirement. Such changes would not be contrary to Agency safeguards objectives.

RESPONSE: The offer by the United States, as announced by President Johnson in 1967, included the application of safeguards in the United States in the manner they are applied under the Treaty on the Non-Proliferation of Nuclear Weapons in other countries. Substantial effort was expended on the text of the U.S. Agreement to assure it is as similar to other agreements as possible. Modification of the text of the Agreement and Protocol appears to be neither practical nor desirable at this time, and in any event, of course, it is a matter beyond the scope of the NRC regulatory authority. It is recognized that many of the specific requirements in the Agreement are not the same as those in the domestic program; however, whenever possible, the IAEA and domestic procedures have been combined to avoid duplication. Specific problem areas will be considered in the negotiation of the Facility Attachments.

2.4 COMMENT: Westinghouse, Pittsburgh, PA

Transition Period - The proposed regulations should include a 90-day period to allow for a smooth transition for implementation of this agreement. It has been the Westinghouse experience that whenever extensive procedural changes are implemented, misunderstandings regarding implementation of such procedures invariably develop. A 90-day implementation period would allow sufficient time to resolve misunderstandings without placing unreasonable burdens on the industry.

RESPONSE: The Agreement calls for a 90-day period from the selection of a facility until implementation of safeguards according to the terms of the Agreement. Section 75.11 allows each facility at least 45 days from the time of notification until a completed Design Information Questionnaire must be submitted. This leaves up to 45 days to develop the implementation program (Facility Attachment). If justified by some special or unique problem, the 90-day period may be extended upon agreement by the U.S. Government and the IAEA. The interval between publication of the rules and their effective date affords further opportunity to plan for implementation. Note that under revised §75.21, procedural changes will not be required until after Facility Attachments have been completed and license amendments have been made effective.

2.5 COMMENT: Exxon Nuclear Co., Richland, Washington

Termination of Safeguards on Waste Materials - It does not suffice for NRC to state that procedures for termination of safeguards will be covered in the Facility Attachments and that "guidance will be provided" to licensees on this subject. The general circumstances under which waste materials may be removed from safeguards under codes LD or TW are certainly known to the Commission and should be set forth, thus facilitating the preparation of the Facility Attachments. The setting forth of such standards in the rule is the only way licensees can be assured of uniform treatment as to termination of safeguards.

RESPONSE: The measured discard code LD and the retained waste code TW are just two of some thirty-two inventory change codes. In addition, safeguards may be terminated by exemption, foreign shipment, transfer to a non-safeguarded activity, transfer to a non-nuclear end use, and by accidental loss. A number of other changes involve additions of material to safeguards, blending of materials, and accounting adjustments. Many material description codes and measurement codes are also needed to fulfill the requirements of the Agreement.

Since many of these are site specific and too complex to include in the rule, the Facility Attachment is the only practical place for their development. As in other matters, however, the Commission will recognize that licensees are entitled to treatment that - subject to differences in the respective facilities and operations - is uniform. The Facility Attachments will be prepared with this principle in mind. To the extent that general guidance is included in instructions for completing required forms, licensees will have an opportunity to comment, and the Commission will consider any changes proposed at that time.

3.0 STATEMENT OF CONSIDERATIONS

3.0 STATEMENT OF CONSIDERATIONS

3.1 COMMENT: Exxon Nuclear Co., Richland, Washington

Changes - (9) - Consultation with the Licensee - The revised proposed rule professes, as a guiding precept, the objective of assuring the licensee a "genuine partner" status in implementation of the Agreement. We heartily endorse the aim as well as improvements in the revised proposed rule intended to advance that objective. We would suggest, however, that certain additional measures should be included in furtherance of that key goal.

The rule should provide that, except as specifically required by the Agreement, the NRC will take no action with respect to any matter that is the subject of a determination to be made by the Agency without first having consulted with the affected licensee and provided the licensee an adequate opportunity, reasonable under the circumstances, to present his position as respects such matters. We further recommend that the rule, or its preface, state as an implementation precept that, unless prohibited by the Agreement or otherwise impracticable, the Commission will afford the licensee an opportunity to be present when NRC discusses with the Agency matters directly affecting the licensee's interests.

RESPONSE: The Commission expects that there will be opportunity for the licensee to participate, to a meaningful degree, in NRC-IAEA discussions of matters directly affecting the licensee's individual interests. Additionally, the change in the consultation provision, while perhaps not guaranteeing the level of participation that is requested, does substantially broaden the licensees' rights to be heard.

3.2 COMMENT: Exxon Nuclear Co., Richland, Washington

Discussion of Other Comments - The revised proposed rule fails to provide any dispute resolution mechanism for disagreements which arise out of or in the course of an Agency inspection. The presence of NRC personnel at all Agency inspections will help to some extent, but (failing resolution at that level) the rule should make clear that an Agency inspection will not proceed until NRC has made a determination on such disputes. In order to facilitate such dispute resolution, we suggest that the cognizant NRC Office of Director be granted authority to determine the dispute, after the interested parties have presented their respective positions to him. The disputed inspection would be held in abeyance pending the Director's determination. The licensee

would, of course, retain the right (presently provided) for recourse to the provisions of 10 CFR Part 2, should it disagree with the Director's determination.

RESPONSE: Disputes which might occur in the implementation of Part 75 and which cannot be resolved promptly and informally by all parties concerned should be handled by the same methods that are currently available in resolving differences in the implementation of any other regulation. A procedure such as that proposed would be unacceptable because, if applied in non-nuclear-weapons states, it could interfere with the IAEA's ability to carry out its responsibilities without impediment.

3.3 COMMENT: Exxon Nuclear Co., Richland, Washington

Discussion of Other Comments - (7) Inspection Provision - We disagree with the Commissions' view that "responsibilities of the licensee" and "rights of the Agency" are the same with respect to ad hoc, routine, and special inspections. Articles 71 and 74 of the Agreement make clear that the Agency's right of access (and the licensee's concomitant responsibility to grant access) differ considerably with respect to these different categories of inspections. Furthermore, the number of routine inspections per year which the Agency may carry out is limited by Articles 77 and 78.

Unless the licensee is advised of the kind of inspection taking place, and the NRC implementing regulation incorporates the distinction between types of inspections, the licensee will have no basis, for example, to refuse access throughout his facility during what is supposed to be a routine inspection.

RESPONSE: Substantial revisions to §75.42 have been made in response to this comment.

4.0 PART 75 - SAFEGUARDS ON NUCLEAR MATERIAL

4.1 General Provisions

4.1.1 §75.3 Exemptions

4.1 GENERAL PROVISIONS

4.1.1. §75.3 Exemptions

4.1.1.1 COMMENT: G.E., Wilmington, N.C.

75.3. Exemptions, "...consistent with the Agreement."
This paragraph should be modified to read:

"...consistent with the objectives of the Agreement."

this is necessary to ensure clear understanding that licensees are at liberty to utilize the best available methods and new technology to meet international objectives. The Agreement and regulations are written based on current and past knowledge and, in certain instances, do not specifically provide for advanced techniques.

RESPONSE: The Agreement, upon entry into force, will be the law of the land. Accordingly, exceptions to the regulations can only be granted if "consistent with the Agreement"--not, more liberally, where "consistent with the objectives of the Agreement." The Agreement as written provides for the modification of the Design Information Questionnaire when advanced techniques or better methods are instituted in a facility. The licensee would submit information on such modifications, as provided in §75.11(c). This, in turn, may result in appropriate changes in the IAEA program (Facility Attachment).

4.1.1.2 COMMENT: Allied Chemical, Morristown, New Jersey

75.3 Language in the proposed amendment be clarified so there is no doubt but that, in a UF_6 conversion facility, only the packaged, purified UF_6 is subject to safeguards.

The I.A.E.A. requirements referenced by the NRC clearly state that source material in a UF_6 plant is subject to safeguards only when it reaches the "composition and purity suitable for fuel fabrication or for being isotopically enriched. . .", and that only that portion of the plant where such material exists is subject to safeguards. However, in your Federal Register notice of July 17, 1979 the amendment to Part 40 Section 40.31(g) excludes only "ore processing" which is then defined in 10 CFR Section 75.4(m) as those activities which produce U_3O_8 . We urge that before Part 75 is adopted, this definition be expanded to include the processing of U_3O_8 up to the point where the purified form of UF_6 has been packaged. This would clarify this matter to be consistent with the manner in which it is handled outside the United States.

RESPONSE: The conversion of U_3O_8 to UF_6 is not a process that is comprehended within the scope of "ore processing," either in customary usage or IAEA practice. As previously noted by the Commission, the source material would be subject to safeguards only when it attains a composition and purity suitable for fuel fabrication or for being isotopically enriched. Informal discussions with IAEA personnel indicate that the starting point of safeguards in the U.S. probably will be the UF_6 product; however, the precise point at which this characterization applies will be determined when a Facility Attachment is prepared. The criteria contained in the Agreement will be observed, and the licensee will have the opportunity to present its views fully at that time.

4.1.1.3 COMMENT: Exxon Nuclear Co., Richland, Washington

75.3 Experimental and Research Facilities - In our previous comments on the proposed rule, we contended that the "equal commercial burden" rationale (which underlies the voluntary offer) is incompatible with the application of agreement safeguards to non-economic experimental facilities that would not possess quantities of nuclear materials of safeguards importance under current NRC definition of safeguards importance.

We understand the Commission's position to be that the Agreement does not allow it to exempt research facilities from the eligible list or from Agency safeguards. However, even if the Agreement does limit NRC's exemption authority, this does not mean that the Commission should fail to exercise persuasion to bring Agreement implementation into accord with the intent of the Voluntary Offer.

With that in mind, we offer some relevant factors for your consideration and an accompanying suggestion for action which is in keeping with the aims of the Agreement.

An experimental process may become important to international safeguards if its development eventually leads to a process which uses or produces nuclear materials with safeguards significance. Short of that, routine IAEA safeguards are inappropriate; rather, the aim should be development of safeguards techniques which could be applied if and when the the process is developed and employed. Consistent with the foregoing, we believe that it would best serve the purposes of U.S. and the IAEA under the Agreement to establish a special category for experimental facilities which would provide for a cooperative U.S.-IAEA program for developing safeguards techniques which could

be applied to ensuing facilities using or capable of producing materials having safeguards significance. Implementation of routine IAEA safeguards would be excluded for such an experimental facility as long as the facility's operation only entailed possession of material of low safeguards risk. Current NRC requirements would, of course, continue to be applicable.

Accordingly, we ask that NRC urge the Agency to avoid designating experimental facilities of the type described above for Agreement safeguards but rather establish a U.S.-IAEA cooperative safeguards development program for such facilities.

RESPONSE: Under the terms of the Agreement, the IAEA will be permitted to apply specified safeguards on all source and special fissionable material in all facilities within the United States, excluding only those facilities associated with activities with direct national security significance to the United States. Certain research and development facilities which customarily use amounts of nuclear material equal to or less than one effective kilogram would be excluded by definition (Article 90I) from the application of IAEA safeguards under the Agreement. So long as the selection of facilities is made in conformity with this and other applicable criteria in the Agreement, the Commission would have no occasion to urge any particular course of action on the IAEA.

4.0 Part 75 - SAFEGUARDS ON NUCLEAR MATERIAL

4.2 Installation Information

4.2.1 §75.11 Installation Information

4.2.2 §75.12 Communication of Information to the Agency [IAEA]

4.2.3 §75.13 Verification

4.2 INSTALLATION INFORMATION

4.2.1 §75.11 Installation Information

4.2.1.1 COMMENT: Exxon Nuclear Co., Richland, Washington

- A. 75.11 Commercially Sensitive Information - In our initial comments on the proposed rule we urged that the revised rule include the provisions of paragraph 46(b)(iv) of the Agreement which provides that the U.S. can request a special material balance around a process step involving commercially sensitive information. We also suggested that the provisions of Article 74 of the Agreement on strategic points be included.

It is our understanding that those provisions were included in INFCIRC 153 (the basis for the Agreement), to provide a specific means by which a State could exclude a commercially sensitive process area such as a new enrichment process from Agency inspection in the Design Information Review stage and then continue to protect that exclusion during routine inspection using the strategic points concept to allow the IAEA to verify flow and inventory without entering the excluded area.

In response to our comments, the Commission noted that such provisions are not needed since proposed Part 75.11(a) allows the licensee to describe material balance areas and that 75.11(d)(6) alludes to the strategic points concept.

Proposed Part 75.11(a) appears to be taken nearly verbatim from Article 43 of the Agreement. Proposed Part 75.11(d) appears to be taken largely from Article 46 of the Agreement with the notable exception that Article 46(b)(iv), "A special material balance area may be established at the request of the United States around a process step involving commercially sensitive information," is missing. We believe that greater assurance in regard to protecting commercially sensitive information would be provided if Article 46(b)(iv) is included in either 75.11(a) or 75.11(d).

RESPONSE: While the proposed provisions of §75.11(a), as noted previously by the Commission, would have permitted a licensee to ask that a special MBA be established around a process step involving commercially sensitive information, this is now made explicit in revised §75.11(b)(4). It is anticipated, however, that the U.S. Government will request that this procedure be implemented, if at all, only in very exceptional situations where compatible with the terms and objectives of the Agreement.

- B. COMMENT: 75.11 Proprietary Information - While the revisions to 75.11 and 75.12 constitute a significant improvement, we believe further change is necessary for effective licensee guidance. The Commission has failed to give licensees (and potential licensees) adequate guidance as to those equipment items which need not be described in detail in the Design Information Questionnaire (DIQ). The opportunity for ad hoc consultation with NRC personnel provided by 75.11(a) is no substitute for a clear statement, in the rule, of the standards or criteria to guide the licensee in preparing the DIQ. For example, the regulations should expressly state (as does the preamble to the revised proposal) that information need not be provided where not required by the Agency for making safeguards determinations (i.e., verification of inventory or flow quantities) in a knowledgeable manner.

RESPONSE: Upon publication of final rules, the forms will be submitted to the General Accounting Office for clearance pursuant to 44 U.S.C. 3512. Detailed guidance related to the information to be supplied in the DIQ will be provided in written instructions accompanying the form for GAO clearance. GAO will publish notice of submission of the design information questionnaire, at which time affected persons will have the opportunity to raise pertinent questions. Comments may be sent concurrently to NRC, and they will be given consideration before the forms are placed in use.

- C. COMMENT: 75.11 Proprietary Information - Since the problem to be resolved is the licensee's right to protect information which the Agency has no need to know, the proposition should be stated in the negative (i.e., "the licensee need not include information beyond what is necessary to enable the Agency . . .") rather than the present version of 75.11(c).

RESPONSE: The formulation that the information "shall be sufficiently detailed to enable knowledgeable determinations to be made in the development of Facility attachments..." is preferable to that proposed by the commenter because the latter, although indicating what a licensee need not do, fails to express affirmatively (as we think it should) just what a licensee must do.

D. COMMENT: 75.11 Proprietary Information - We further believe that some means of dispute resolution should be established outside the scope of 10 CFR Part 2 to allow the licensee to test an NRC Staff determination on what it must include in a DIQ.

RESPONSE: We are not clear about the specific procedures the commenter has in mind. But, if an alternative dispute resolution procedure were provided as suggested we are concerned that it might be invoked without sufficient cause. This could unduly interfere with the Commission's ability to carry out its responsibilities in implementing the Agreement.

E. COMMENT: 75.11 Proprietary Information - This special procedure should provide for resolution on an expedited and priority basis, especially for those license applicants whose capacity to commence operations is dependent upon the early resolution of a dispute over installation information.

RESPONSE: The procedures allow for early resolution of disputes in the case of licensees planning to commence operations. For utilization facilities, the issues would arise in a context separate from the proceedings for the issuance of a construction permit or operating license. (A request would be issued under §50.78 and would be determined, if necessary, under Part 2, Subpart B.) Applicants for materials licenses would be advised, should informal techniques prove to be unavailing, that the application does not comply with Commission regulations (§2.103) or that there has been a failure to supply required information (§2.108), and in either case a hearing could be scheduled promptly to resolve the issue.

F. COMMENT: 75.11 Proprietary Information - Disputes arising in the course of Agreement implementation are distinguishable from the type of enforcement or other regulatory disputes which 10 CFR Part 2 is designed to resolve. In this regard, the preamble to the revised proposal states that "the Agreement, and the implementing regulations, support foreign policy and nuclear non-proliferation objectives that are independent of the regulatory requirements for domestic licensed activity." Consistent with that premise, we believe that when disputes arise in implementing the IAEA safeguards regime they should be resolved under a mechanism appropriately tailored for the purpose.

While 10 CFR Part 2 may be the appropriate means in some instances, (i.e., where enforcement action is involved), in cases such as those addressed by this comment, provision should be made for a pre-enforcement determination wherein a facility's license (or the timely processing of an application therefor) would not be at risk.

RESPONSE: See responses to comments D. and E., above. For the reasons stated there, the available mechanisms appear to be appropriate. Part 75 is essentially no different from other regulations, and similar means for enforcement and adjudication are called for.

4.2.1.2 COMMENT: G.E., Wilmington, N.C.

75.11(a)(4), "A Description of the Existing and Proposed Procedures at the Installation for Nuclear Material Accounting and Control..."

This paragraph should be modified to read:

"A Description of the Systems at the Installation..."

A "description of procedures" is really the specification for the system which the procedures implement. Therefore, it is more appropriate to require that a description of the systems be submitted than to require the more nebulous "description of procedures."

The mechanism is already in place, both in proposed 75.11(b) and in existing 70.32(c), for the IAEA and the NRC to be kept informed concerning changes in the safeguards system; therefore, advance notice of "proposed" procedures is unnecessary.

Also, "proposed procedures" (or proposed systems) will be difficult to describe ahead of their implementation, without risking that the submittal will be useless since between proposal and implementation many changes are sometimes made.

In preparation of the guidance for licensees associated with preparation of compliance plans for this new 10 CFR 75, the NRC should assure that the description referred to above need only be concise and definitely need not include a requirement for the procedures themselves to be submitted.

RESPONSE: §75.11(a)(4) [renumbered §75.11(b)(4)] implements Article 43(d) of the Agreement and accordingly has not been changed. The reference to "proposed procedures" which must be described are those which the licensee intends to

institute (for purposes other than compliance with the provisions of Part 75), but which are not yet in effect. The procedures themselves, as opposed to a description thereof, would be required only when necessary to enable for knowledgeable determinations to be made in the development of Facility Attachments (§75.11(d)).

4.2.1.3 COMMENT: G.E., San Jose, California

75.11(b) - The timing of licensee reporting of proposed or implemented changes to the installation information should be adjusted to be consistent with analogous timing requirements of 10 CFR 50 and 70. To avoid the invitation of temporary licensee noncompliances, the 70-day prior-submittal requirement of paragraph 75.11(b)(1) should contain a provision for an attempted Commission accommodation of a lesser timing in emergency or unforeseen situations. The timing of notifications of those nondecrease-in-effectiveness changes that do not involve inventory changes should be permitted on the schedule identified in paragraph 70.32(c).

RESPONSE: The 70-day prior-submittal requirement has been relaxed to allow for a shorter period in the event of emergency or unforeseen situations. This is consistent with the requirement of Code 3.1.3 of the Subsidiary Arrangements that the information "normally" be supplied to the IAEA 60 days in advance. The requirement for reporting of other changes with the first subsequent inventory change report has been retained in view of the corresponding provision of Code 3.1.4. Some flexibility - though not nearly so much as requested - is provided by requiring such reports only when "relevant to the application of the provisions of the Agreement." (See Article 45 of the Agreement and Article 8 of the Protocol.)

4.2.1.4 COMMENT: Exxon Nuclear Co., Richland, Washington

- A. 75.11(b)(1) Other Information Requirements - We continue to believe that 75.11(b)(1) requires clarification in order to give the licensee

guidance as to what changes or modifications need to be reported, and which of those require 70 days' advance notification. If the Commission intends that the changes covered by 75.11(b), both as to prospective notice and notice after the fact, shall be identical to those governed by 70.32 (or other regulatory provisions), the new rule should cross-reference that section or otherwise incorporate its relevant provisions. Clarity aside, the licensee can hardly be expected to have a meaningful voice in consultations concerning the drafting of a Facility Attachment if NRC does not disclose its objectives and standards in implementing the Agreement. In addition, the advance notice requirement contained in this section places a substantial burden on research and development facilities where frequent modifications to original designs, concepts, and other functioning of facilities are inherent in the developmental process. Extensive advance notice to the NRC every time any change is made is at odds with practical conduct of research and development activities. Therefore, we believe that the progress of research and development at the facility will inevitably be seriously retarded without affording commensurate safeguard benefits by applying this advance notice provisions, and we request an exception or at least some reduction in these requirements for all less-than-full scale facilities.

RESPONSE: The applicable provision of the Subsidiary Arrangements (Code 3.1.3) provides for "significant changes---as specified in Facility Attachments" to be reported in advance. The standards in §75.11(b)(1) were designed to give substance to the term "significant changes." However, since the subject is one which is to be covered in the Facility Attachments, the language has been modified so as to relate the licensee's obligation to the conditions of its license (which will reflect the terms of the Facility Attachment). The requirements of §75.11(b)(1) [renumbered §75.11(c)(1)], are not intended to be identical to other regulatory provisions. The commenter's concern regarding the burden on research and development facilities can be raised in connection with the terms to be included in the applicable Facility Attachment.

- B. COMMENT: 75.11(b)(1) Other Information Requirements - We continue to question the need for additional information on organizational responsibility required by 75.14(a)(1) which goes beyond the text of Article 44 of the Agreement. The requirement for "information with respect to separation of functions to provide internal checks and balances" is not part of the Agreement. The requirement appears to

be inconsistent with the preamble to the revised proposed rule which states, "the implementing regulations, support ... objectives that are independent of regulatory requirements for domestic licensed activity." Accordingly, since the agreement is directed towards safeguards and materials accountability functions rather than domestic regulatory activity, the information request is not relevant in the context of part 75. Therefore, this requirement should be deleted.

RESPONSE: The requirement that information with respect to separation of functions be supplied is a reasonable implementation of Article 44 and, in any event, is required by Code 2.3.1 of the Subsidiary Arrangements. Note, also, that the information required pertains only to separation of functions for material accounting and control and not to functional separations serving other management objectives.

4.2.1.5 COMMENT: G.E., Wilmington, N.C.

- A. 75.11(b)(1) "...with respect to a modification or a change which will necessitate a change in a license condition or technical specification or which will decrease the effectiveness of the material accounting and control procedures at least 70 days before the modification or change is scheduled to be completed."

This paragraph should be modified to read:

"...control procedures prior to the completion of the modification or change sufficiently in advance for the safeguards procedures to be adjusted when necessary."

This change is in accord with the Agreement.

Much of the information required herein is already required in 70; however, there is no timing requirement for submittal of the changes which require prior NRC approval. We attempt to provide such requests as early as possible, but there are times when we must operate on a short cycle.

RESPONSE: §75.11(b) [renumbered §75.11(c)(1)], implements Code 3.1.3 of the Subsidiary Arrangements as well as Article 45 of the Agreement. The requested change would therefore not suffice. The 70-day prior-submittal requirement has been relaxed, however, to allow for a shorter period in the event of emergency or unforeseen situations.

- B. COMMENT: 75.11(b)(2), "...with respect to any other change or modification, at the time the first inventory change report is submitted after the modification or change is completed."

This paragraph should be modified to read:

"...first inventory change report is submitted or within six months if inventory change reporting is not affected."

10 CFR 70 contains a comparable requirement specifying "within six months." The requirement to submit such other modifications or changes, at the next time a Form 741 is completed, puts an unwarranted burden on the licensee. This reporting requirement should be made compatible with that presently in 10 CFR 70.

All changes may not affect inventory change reporting. Therefore, consideration must be included for a reduced urgency in reporting changes which do not effect inventory change reports. 10 CFR 70 appears to be a good guide.

RESPONSE: §75.11(b)(2) [renumbered §75.11(c)(2)] has been amended to require submission of information with inventory change reports only when "relevant to the application of the provisions of the Agreement." This will include far more, of course, than modifications affecting the ICR's themselves. The first inventory change report is only the vehicle for submitting the information. The type of information to be reported is that in §75.11(b) as reflected in the DIQ.

4.2.1.6 COMMENT: G.E., San Jose, California

75.11(d) - Limiting criteria such as minimum sufficiency, cost-effectiveness, and reasonableness should be applied to the presently open-ended Agency determinations of paragraph 75.11(d). Otherwise, in spite of paragraph 75.11(e), overzealous finalization of the Facility Attachments could produce unnecessary burdens for the licensee. We suggest the following be added to paragraph 75.11(e):

"Consistent with Agency safeguards objectives, the Agency will consider factors of minimum sufficiency, cost-effectiveness, and reasonableness in making its determinations of such features as IAEA material balance areas, physical inventories, key measurement points, records and reports, verification procedures, and the like."

Furthermore, the ease of gaining appropriate exceptions to the Commission's rules would be facilitated by amending the phrase "...consistent with the Agreement" in paragraph 75.3 to read "...consistent with the objectives of the Agreement."

RESPONSE: The constraints upon the IAEA are contained in the Agreement. We believe it is preferable to refer generally, as in §75.11(d), to determinations to be made in the development of Facility Attachments; a listing such as that proposed by the commenter would be incomplete and not precisely in the terms of the Agreement and thus could give rise to avoidable questions of interpretation. Further, the proposed language, if read as a substantive requirement upon the IAEA rather than as a description of its activity, would be beyond the regulatory authority of the Commission.

4.2.1.7 COMMENT: Westinghouse, Pittsburgh, PA

75.11(d)(2) - Facility attachments are considered to be the primary instrument for implementation of IAEA safeguards at each facility. It is Westinghouse's understanding, based on discussions with representatives of other governments undergoing IAEA inspections, that changes to the attachments once implemented are difficult to obtain. The licensee should be considered an equal partner in the negotiations for its facility's attachment and no changes required to its operational procedures without full consultation. For example, based on the review of Model Guide for preparation of a Facility Attachment pertaining to a low enriched (<5 w/o U235) fuel fabrication plant (MO-3 dated October 1976) it is apparent that multiple Material Balance Areas (MBA) will be required.

Westinghouse believes that a single MBA is sufficient to localize SNM losses or thefts. Experience at the Westinghouse Columbia Nuclear Fuel Facility indicates that for facilities housed under one roof the use of 1 MBA and multiple assessment centers adequately provides for localization of input and output losses to one area within the plant. In over 10 years of operational experience at this facility, Westinghouse has never experienced a significant MUF and the Limit of Error of MUF has always been within the NRC requirements. To impose such a requirement without consulting the licensee will significantly increase the data handling and reporting required while providing little or no commensurate increase in material control and accountability.

Another example of a situation where licensee consultation is appropriate is the treatment of depleted and natural uranium as slightly enriched uranium. At the Columbia facility, depleted and natural uranium are used for manufacturing and administrative purposes such as line clean out and is not used to make a finished product. Implementation of this regulation would increase paperwork and require retraining of personnel and would be an excessive burden compared to the value of the benefit received.

RESPONSE: The consultation provision is intended to assure that the licensee will have a reasonable and adequate opportunity to make its views known. In this regard, it should be noted that the rules have been revised to provide explicitly that a licensee will have an opportunity to review and comment upon the Facility Attachment before it has been agreed to by the United States.

4.2.1.8 COMMENT: Carolina Power & Light Co.

75.11(e) - The facility attachment will have a major impact on each licensee since it establishes the determination of MBA's, the selection of key measurement points, the timing and procedures for taking of physical inventory, and the establishment of records and reports requirements. The licensee should, therefore, be actively involved in the development of those facility attachments applicable to his facilities. Although provisions have been made in 75.11(e) for the Commission to ". . . consult with the licensee, at the licensee's request, with respect to any matter which is the subject of a determination to be made by the Agency," we request that 75.11(e) provide for each licensee to review the draft facility attachment without prior application by the licensee for such review.

RESPONSE: The rules have been revised to provide explicitly that a licensee will have an opportunity to review and comment upon the Facility Attachment before it has been agreed to by the United States.

4.2.2 §75.12 Communication of Information to the Agency [IAEA]

4.2.2.1 COMMENT: G.E., Wilmington, N.C.

75.12(b)(1), "A licensee may request that information of particular sensitivity, which it customarily holds in confidence, not be transferred physically to the agency..."

This paragraph should be modified to read:

"In addition to Section 75.11(f), the licensee may request..."

Note: Add paragraph (f) to Section 75.11 as follows:

"The licensee may specify in the Facility Attachment those types or categories of information which shall be considered proprietary and, therefore, not provided to the Agency, provided that justification for such specifications fulfill the conditions of Section 75.12."

These and other statements under 75.12 related to licensee-identified sensitive information, possibly could be covered under the Facility Attachment. Otherwise, the interest of the licensee may not be properly safeguarded as indicated; for example, under 75.12(d), which states that a request made to the NRC under 2.790(d) will not be treated as a request under 10 CFR 75 unless the application makes specific reference to this action (etc.). This situation could lead to inadvertent disclosure of information sensitive to a licensee. Therefore, it might be appropriate to additionally cover such matters under the Facility Attachment.

RESPONSE: The determination whether information will be transmitted physically to the IAEA will be made by the Commission and not jointly between the United States and the IAEA. It is not a subject to be covered in the Facility Attachment. As indicated by §75.12, it may be necessary to transmit to the IAEA some information that a licensee customarily holds in confidence, so as to permit implementation of safeguards under the Agreement. The IAEA has established measures for protecting such information, which it has already received from facilities in many other countries.

To minimize the risk that available protection is lost through inadvertence, the forms supplied by the Commission (§75.11(d)), or the letter transmitting them, will call attention to the provisions of §75.12. This may be done by reference to that section, by reciting it, or by including appropriate questions reflecting its terms.

4.2.3 §75.13 Verification

4.2.3.1 COMMENT: G.E., San Jose, California

75.13(b) - Agency Verification Notification Timing - Paragraph 75.13(b) should be amended to change the phrase "...at least 3 days prior to the visit" to read instead "...as early as possible but at least 30 days prior to the visit." Agency preplanning and reviews will be conducted long before the visit so early notification is not unreasonable, and the Agency will want to assure that indispensable, expert licensee personnel are available during the visit.

RESPONSE: While NRC will endeavor to provide a longer lead time, its inability or neglect to do so cannot, consistent with the Agreement, excuse licensees from affording IAEA inspectors access. The requested "as early as possible" language has therefore not been added to the regulation. The 3-day (rather than 30-day) notice period has been retained in light of the one-week provision in Code 4.2.1 of the Transitional Subsidiary Arrangements (implementing Protocol Article 11(b)). §75.13(b) has been revised to invite the licensee to consult with the Commission if its key personnel cannot be available.

4.2.3.2 COMMENT: Exxon Nuclear Co., Richland, Washington

- A. 75.13(b) Verification of Installation Information - In our previous comments, we suggested at least a week's advance notice for Agency visits to a licensed facility to verify installation information. The revised proposed rule (75.13(b)) calls for only three days' advance notice to the licensee. We believe that three days will generally be insufficient time to make alternative arrangements if the suggested visitation date would unduly interfere with the licensee's activities.

RESPONSE: The 3-day notice period has been retained in light of the one-week provision in Code 4.2.1 of the Transitional Subsidiary Arrangements (implementing Protocol Article 11(b)).

- B. COMMENT: 75.13(b) Verification of Installation Information - We again suggest a week's notice as being both reasonable and practicable from the standpoint of all concerned. In any event, the rule should make clear that in the case of written notice, the notice period commences upon receipt by the licensee of the written communication.

RESPONSE: §75.13(b) has been revised to clarify the applicable period for written as well as telephone notice.

- C. COMMENT: 75.13(b) Verification of Installation Information - Further, if the Commission waits for a licensee's request to assign an NRC employee to accompany the Agency representative, such assignments

will be "feasible" in significantly fewer cases. The rule should provide for automatic assignment of an accompanying NRC employee, wherever feasible, unless the licensee agrees otherwise.

RESPONSE: §75.13(c) has been revised to provide for assignments of NRC employees, when feasible, unless the licensee agrees otherwise.

4.2.3.3 COMMENT: G.E., Wilmington, N.C.

75.13(b), Verification, "The notice...provided to the licensee at least 3 days prior to the visit."

This paragraph should be modified to read:

"...at least 30 days prior to the visit."

It appears obvious that the IAEA must conduct considerable preplanning and reviews prior to the verification of installation information; therefore, a longer cycle "prior" notification is not unreasonable.

Conduct of the verification will require significant licensee time and the availability of expert personnel from many functions within the operation and the Company. Adequate time should be given for the licensee to prepare for the verification visit.

RESPONSE: §75.13(b) has been modified so as to invite licensees to consult with NRC if key personnel cannot be available. While NRC will endeavor to provide a longer lead time, its inability or neglect to do so cannot, consistent with the Agreement, excuse licensees from affording Agency inspectors access. The 3-day (rather than 30-day) notice period has been retained in light of the one-week provision in Code 4.2.1 of the Transitional Subsidiary Arrangements (implementing Protocol Article 11(b)).

4.0 PART 75 - SAFEGUARDS ON NUCLEAR MATERIAL

4.3 Material Accounting and Control

4.3.1 §75.21 General Requirements

4.3.2 §75.22 Accounting Records

4.3 MATERIAL ACCOUNTING AND CONTROL

4.3.1 §75.21 General Requirements

4.3.1.1 COMMENT: G.E., Wilmington, N.C.

- A. 75.21(d)(1-6), "Material Accounting & Control, General Requirements."

This paragraph should be modified to read:

"The material accounting and control procedures required by this section shall include the same items specified in 10 CFR 70."

Repetition of requirements already stipulated by the NRC in 10 CFR 70 does not appear necessary.

RESPONSE: To the extent that the Agreement requires information different in form or substance from that required in 10 CFR 70, licensees will be obliged to provide it. This is made explicit by §75.21(d) [formerly §75.21(f)]. Nevertheless it is the goal of NRC to harmonize the provisions of the two parts of the regulations where this can practicably be accomplished, with due regard to the different objectives of domestic and IAEA safeguards activities.

- B. COMMENT: 75.21(d)(5) does not appear appropriate since U.S. licensees do not have unmeasured inventories.

RESPONSE: §75.21(d)(5) [renumbered §75.21(b)(5)] is retained in view of the parallel language of Article 32(e) of the Agreement.

4.3.1.2 COMMENT: Commonwealth Edison, Chicago, Illinois

75.21(d) - We concur with the statement made in the commentary to the proposed regulations with respect to "inventory changes" which states that "...in the case of reactors, the measurement system described in Section 75.21(d) will be designed to provide for the determination of 'burnup' at appropriate times, and only at such intervals will an inventory change require reporting." We urge that this statement be included in the regulations and that "burnup" determinations be reported only at such times as a Form DOE/NRC 742 is otherwise required.

RESPONSE: The key issue raised by this comment concerns the times that will be "appropriate" for determination of burnup. Until negotiations with the IAEA have been carried out, it would be premature to provide that these times would be limited to occasions when a form DOE/NRC-742 is otherwise required. Without such specificity, the observation that burnup determination and reporting would be required only when appropriate would add nothing of substance.

4.3.1.3 COMMENT: Carolina Power & Light Co.

75.21(d)(1) through (d)(3) should not apply to fuel assemblies delivered to nuclear power plants. We suggest the wording of this Section be changed to reference the facility attachments and that the facility attachment be modified, if necessary, to address these concerns.

RESPONSE: §75.21(d)(1) through (d)(3) [renumbered §75.21(b)(1) through (b)(3)] may apply to fuel assemblies delivered to nuclear power plants. However, the applicable procedures (to be referenced in the Facility Attachment) need not be complex.

4.3.1.4 COMMENT: G.E., Wilmington, N.C.

A. 75.21(e), General Requirements

This paragraph should be modified to read:

"Upon written notification from the Commission that the Facility Attachment has been approved, the licensee shall implement the procedures required for this section. Such implementation shall occur within 10 days in those areas where the licensee has existing procedures required by the Facility Attachment. Implementation of other requirements shall be based upon a project schedule negotiated between the NRC and the licensee."

Notwithstanding Article 40 of the Agreement and Article 4 of the Protocol, the proposed requirement is completely unreasonable and unworkable.

A licensee should not be required to make any change in operating practice or procedure, or in reporting procedure until the Facility Attachment is completed. The U.S. can report licensee information to the IAEA at anytime in a format which is as useful to

the IAEA as it can be until a Facility Attachment is complete. There is no need for an added requirement to be placed on a licensee until the Facility Attachment is completed and approved.

Implementation of IAEA safeguards in the U.S. has been defined in a recent study by Battelle. It required significant work effort and monetary expenditures by U.S. licensees. The fact that the negotiations and detailed agreements have taken years to formulate signifies the complexity. Therefore, immediate implementation is not technically feasible nor financially possible.

Implementation should follow a graduated schedule. Areas where U.S. requirements parallel IAEA requirements implementation is automatically immediate. Where records, reporting and procedural changes are required, a mutually acceptable plan and schedule should be negotiated between the licensee and the NRC.

Article 40 of the Agreement and Article 4 of the Protocol clearly imply anticipated difficulties by the Commission and the Agency in meeting the 90 day Facility Attachment target. (It is the opinion of many in the industry that they will not be able to meet this schedule.) For this reason, it appears unreasonable to require the licensees to adhere to an urgent and nearly impossible implementation schedule.

RESPONSE: We believe the commenter is correct in suggesting that licensees should not be required to overhaul their material accounting and control procedures until the Facility Attachment has been completed. The rules have been revised so as to permit existing procedures to be utilized until the Facility Attachment has been prepared. The schedule for implementation will be specified in license conditions, and the reference to a 10-day period has accordingly been deleted from the rule.

4.3.2 §75.22 Accounting Records

4.3.2.1 COMMENT: G.E., San Jose, California

- A. 75.22(b) Isotopic Composition Data - Paragraph 75.22(b) requires that the batch data in accounting records "...include isotopic composition for special nuclear material..." However, Part 70 does not require composition data for the isotopes of uranium other than U-235. Many licensees do not utilize mass spectrometric techniques to generate the U-235 data, so the remaining isotopic composition is not currently determined. Certainly the Agency safeguards objectives can be accommo-

dated by the reporting of uranium element and U-235 quantities without complete isotopic composition data. The aforementioned phrase should be so modified.

B. COMMENT: G. E. Wilmington, N.C.

75.22(b), Accountability Records, "The Batch data means a separate listing... including isotopic composition of nuclear material..."

This paragraph should be modified to read:

"...including fissile isotopes for special nuclear material..."

The phrase "isotopic composition" is generally accepted to mean a complete spectrum of major and minor isotopes where as the phrase "fissile isotopes" is generally accepted to mean only the major fissile isotopes present.

For example, for low enriched uranium, reporting should only be required for total elemental uranium and the fissile isotopic composition of uranium-235.

RESPONSE: Section 75.22(b) has been amended to define "batch data" so as to include isotopic composition only as specified in the license conditions. Thus, the extent to which isotopic composition will have to be reported will depend upon the provisions of the relevant Facility Attachment.

4.0 PART 75 - SAFEGUARDS ON NUCLEAR MATERIAL

4.4 Reports

- 4.4.1 §75.31 General Requirements
- 4.4.2 §75.32 Initial Reports
- 4.4.3 §75.34 Inventory Change Reports
- 4.4.4 §75.35 Material Balance Reports
- 4.4.5 §75.36 Special Reports

4.4 REPORTS

4.4.1 §75.31 General Requirements

4.4.1.1 COMMENT: Carolina Power & Light Co.

75.31, General Requirements, and 75.36, Special Reports, appear to be contradictory. 75.31 requires that each licensee subject to Part 75 make an initial report, and thereafter make accounting and special reports. However, 75.36 states "This section applies only to licensees who have been given notice, pursuant to Paragraph 75.41, that their installations are subject to the application of agency safeguards." This is an inconsistency.

RESPONSE: §75.31 has been revised to eliminate the inconsistency.

4.4.1.2 COMMENT: Commonwealth Edison, Chicago, Illinois

75.32 of the proposed regulations requires an initial report be filed within 20 days after the initial reporting date. Since detailed listings of each nuclear fuel assembly will be required, it is our opinion that a complete filing within 20 days may not be possible for a reactor operator because burnup calculations are required up to the reporting date and the volume of data required for possibly thousands of fuel assemblies. Therefore, we cannot guarantee complete reporting within the 20 day time limit.

RESPONSE: Individual fuel assembly loading (pre-burnup) quantities for material in the core are acceptable for initial inventory reports. Material in the spent-fuel storage area will be listed and include burnup data from the licensee's records. Batch definitions, burnup, and production assignments will be elaborated in the Facility Attachments for routine reporting purposes.

4.4.2 §75.32 Initial Reports

4.4.2.1 COMMENT: G.E., Wilmington, N.C.

75.32(a), Initial Report

This paragraph should be modified to read:

"The initial reporting date shall be the last day of the calendar month in which the Commission gives the licensee notice, provided

that notice is received by the 15th of the month, that an initial reporting is required."

Time is required for a licensee to make provisions to establish an accurate cutoff and to make provisions to complete the work within the 20-day provisions of 75.32(c).

The initial report date should be known by the NRC a minimum of 90 days prior to the initial report date. Reference Article 40 of the Agreement and Article 4 of the protocol as well as 75.11, 75.21 and 75.22.

RESPONSE: The initial inventory reporting date, under Article 60(a), is the last day of the month the Agreement enters into force. Because there is no requirement that the IAEA identifications under Article 39(b) occur at any particular time during that month, the suggested 15-day precutoff period cannot be guaranteed. The Commission recognizes the desirability of allowing as much lead time as possible. But inasmuch as facilities will not have been identified until entry into force occurs, it is not true that the initial report date for particular facilities would be known to NRC 90 days in advance. The same principle applies as well to facilities identified at a later date.

4.4.2.2 COMMENT: G.E., San Jose, California

75.32(a) Initial Report Timing - Paragraph 75.32(a) should be amended to provide for notification by the Commission to the licensee of the initial report date at least 15 days prior to the established initial report date. At least a 15-day period to this date will be necessary for the licensee to establish procedures for an accurate cutoff. Only with such a guaranteed precutoff period will the 20-day submission period of 75.32(c) be sufficient for the licensee to gather and assure the inventory data and prepare the report.

RESPONSE: The initial inventory reporting date, under Article 60(a), is the last day of the month the Agreement enters into force. Because there is no requirement that the IAEA identifications under Article 39(b) occur at any particular time during that month, the suggested 15-day precutoff period cannot

be guaranteed. The Commission recognizes the desirability of allowing as much lead time as possible.

4.4.3 §75.34 Inventory Change Reports

4.4.3.1 COMMENT: Carolina Power & Light Co.

75.34 and 75.35 require that Forms DOE/NRC-741 and DOE/NRC-742 will be prepared in accordance with printed instructions. We understand that these forms and instructions will be revised to conform with the Agreement. We request that they be issued for comment prior to implementation by the NRC.

RESPONSE: As in the case of Design Information Questionnaires, routine reporting forms will be submitted to the General Accounting Office (GAO) for clearance pursuant to 44 U.S.C. 3512. The GAO will also make DOE/NRC Forms 741 and 742 available for public comment. Licensees may concurrently send comments to the Commission for consideration before the forms are placed in use.

4.4.3.2 COMMENT: Carolina Power & Light Co.

75.34(c) states that Inventory Change Reports shall be completed and distributed as soon as possible. 75.34(a) states that Inventory Change Reports will be prepared in accordance with printed instructions for completing the form. The printed instructions currently require that each shipper "must dispatch Form DOE/NRC-741 on the same day the material is shipped. . ." Care should be taken in revising the instructions to make the filing deadline consistent with 75.34(c).

RESPONSE: Both §70.54 and §75.34 have been amended to delete a specification with respect to timeliness of submission. However, it should be noted that both sections retain the requirement that the forms be submitted in accordance with printed instructions. The instructions will continue to reflect the time allowed for completing and filing the forms.

4.4.4 §75.35 Material Balance Reports

4.4.4.1 COMMENT: Commonwealth Edison, Chicago, Illinois

75.35 - The proposed regulations seem to indicate that our routine inventories of fuel pools and vaults made for internal control purposes may trigger a requirement for fuel reporting of materials balance reports, including a listing of all fuel assemblies, under Section 75.35. We do not believe that such reporting is necessary in the case of a reactor operator.

RESPONSE: §75.35 has been amended to respond to the comment. §75.35(a) requires a statement of physical inventory by batch, and, if batches are identified in the Facility Attachments as individual assemblies, all fuel assemblies would have to be listed in the physical inventory listing.

4.4.4.2 COMMENT: Carolina Power & Light Co.

75.35 and 75.21(d)(4) - 70.53(a) requires that licensees complete a Material Status Report (Form NRC-742) as of March 31 and September 30 of each year and submit to the DOE within 30 days after the end of the period covered by the report. 75.35 states that Material Status Report (Form NRC-742) shall be dispatched within 30 days of the physical inventory. 75.21(d)(4) states that the facility attachment will dictate the frequency of physical inventories. Parts 70 and 75 are inconsistent. Shall the licensee file a NRC-742 as of March 31 and September 30, only as of physical inventory, or both? A clarification as to when the NRC-742 form should be filed needs to be made. It appears that more frequent reporting will be required under the existing and proposed regulations. We do not believe that more frequent reports are necessary or justified.

RESPONSE: §70.53 has been revised so that any licensee who is required to submit Material Balance Reports pursuant to Part 75 shall make all such reports only as provided in §75.35.

4.4.4.3 COMMENT: G.E., San Jose, California

- A. 75.35(b) Material Balance Report Timing - The change to paragraph 75.35(b) from the May 28 proposed rule to that in Reference 1 added a considerable burden for the licensee that is not supported by References 2, 3, and 4. Since these references require the U.S. to submit material balance reports to the Agency "...as soon as possible,

but within 30 days of the completion of physical inventory taking..." (emphasis added), paragraph 75.35(b) should be amended to change the phrase "...in any event within thirty (30) days after the start of the physical inventory" to read "...in any event within twenty (20) days after the inventory requirements of paragraphs 70.51(e)(4)(i) and (ii) have been completed."

4.4.4.4 COMMENT: G.E., Wilmington, N.C.

- B. 75.35(b), Material Balance Reports, "...and in any event within thirty (30) days after the start of the physical inventory."

This paragraph should be modified to read:

"...and in any event within twenty (20) days after the inventory requirements of 70.51(e)(4)(i) and (ii) have been completed."

The original wording of the proposed regulation was unclear because the completion of the physical inventory was not defined. 70.51(e)(4)(i) and (ii) clearly defines the completion of the physical inventory.

Performing the work of producing an IAEA Material Balance Report is a significant increment over current U.S. regulatory requirements.

Requirement to add this extra IAEA work into the already compressed U.S. thirty (30) day cycle is in opposition to U.S. regulatory desires of timely evaluation and reporting of inventory results.

Twenty (20) days is the minimum reasonable time for a licensee to transform, verify and report inventory information in the IAEA format.

RESPONSE: The Agreement's provision for material balance reports to be submitted "as soon as possible" is the limiting consideration. Since domestic regulations allow 30 days from the start of the physical inventory, there would be no basis to provide a longer period for purposes of Part 75. The "Physical Inventory Listing" (PIL) that will be required pursuant to Part 75 is appreciably more detailed than the "Composition of Ending Inventory" now required under Part 70. However, the PIL will normally be prepared as part of taking the physical inventory and, therefore, should have minimal impact on the preparation of the Material Balance Report. Nevertheless, we recognize that the language as it had

been proposed may be inappropriate as a means for satisfying Article 61(b), and a provision has been inserted that will allow for other schedules to be incorporated in license conditions.

4.4.5 §75.36 Special Reports

4.4.5.1 COMMENT: G.E., Wilmington, N.C.

75.36, Special Reports, (b)(2), "The containment has changed from that specified in a written communication from the Commission to the extent that unauthorized removal of nuclear material has become possible unless information on the change has been reported to the Commission..."

This paragraph should be modified to read:

"The containment has changed from that specified in the Facility Attachment to the extent that..."

The containment which should be considered to Agency safeguards purposes must be clearly specified prior to implementation of the Agency requirements, to avoid a large number of unnecessary reports by the licensee and the concomitant unnecessary administrative burden on the Agency.

RESPONSE: The proposed rules have been amended to tie the special reports more closely to the Facility Attachment.

4.4.5.2 COMMENT: G.E., San Jose, California

- A. 75.36(b)(1) De minimis Limits for Loss Reports - To assure partially a uniform application of Part 75 to all licensees, the phrase "...that exceeds limits specified for this purpose in a written communication from the Commission..." in paragraph 75.36(b)(1) should be replaced with specific minimum quantity limits below which reports would not be required.

RESPONSE: The general part of the Subsidiary Arrangements do not specify the loss limits for which special reports are required under Article 66. These de minimis limits, determined in accordance with the provisions of the Agreement will be specified in the Facility Attachments and license conditions.

- B. COMMENT: 75.36(b)(1) De minimis Limits for Loss Reports - Furthermore, it will be difficult for the licensee to know under what circumstances loss reports should be submitted without the inclusion of a definition of "loss" in paragraph 75.4.

RESPONSE: Loss limits and changes in containment which require specific reports will be established in the Facility Attachments for each facility and will vary from facility to facility depending on throughput and type of operation.

4.4.5.3 COMMENT: Exxon Nuclear Co., Richland, Washington

- A. 75.36(b)(2) Containment - The revised proposed rule fails, in 75.36(b)(2), to incorporate the word "unexpectedly," which is used in Article 66 of the Agreement. While the "concise notes" exception to the special report requirement improves this provision to some degree, it does not relieve our basic concern. We continue to believe that the word "unexpectedly" should be included in the proposed 75.36(b)(2) to give the licensee a clearcut basis for reporting a loss of containment incident.

RESPONSE: §75.36 has been amended so that special reports will only be required in those situations described in license conditions.

- B. COMMENT: 75.36(b)(2) Containment - Further, we believe that the Commission should define the basis for the containment features to be specified in the written communication from the Commission noted in 75.36(b)(2).

RESPONSE: The proposed rules have been amended to relate the containment features to the license conditions, which, in turn, will reflect the provisions of the applicable Facility Attachment.

4.4.5.4 COMMENT: G.E., San Jose, California

75.36(b)(2) Containment Sufficiency - Regarding containment change reporting in paragraph 75.36(2), the use of the word "possible" in the phrase "...that unauthorized removal of nuclear material has become possible..." implies that unauthorized removal has to be "impossible" under Part 75. The word "possible" should be replaced with the phrase "less improbable."

RESPONSE: According to the final rule, the conditions requiring special reports will be specified in license conditions.

4.0 Part 75 - SAFEGUARDS ON NUCLEAR MATERIAL

4.5 Installations Designated Agency Safeguards

4.5.1 §75.42 Inspections

4.5.2 §75.43 Circumstances Requiring Advance Notification

4.5.3 §75.44 Timing of Advance Notification

4.5.4 §75.47 [renumbered to §75.46] Expenses

4.5 INSTALLATIONS DESIGNATED AGENCY SAFEGUARDS

4.5.1 §75.42 Inspections

4.5.1.1. COMMENT: Exxon Nuclear Co., Richland, Washington

- A. 75.42 - The Supplementary Information accompanying the revised proposal rejects our comment that the rule should permit licensee non-compliance with a request calling for violation "of the Agreement or any other United States law." This formulation is called "excessively broad and vague." We view the alternative proposed by the Commission (the insertion of "as provided in this section" into 75.42(a) as unduly narrow and insufficient. As noted above, 75.42 fails to incorporate the limitations on the Agency's inspection rights which appear in the Agreement; therefore, stating that the inspections must be "as provided in this section" is not a meaningful limitation.

RESPONSE: Substantial revisions have been made in response to this comment, specifically with respect to differentiating between types of inspections and Agency access rights applicable thereto.

- B. COMMENT: 75.42(a) - The revised proposal deletes from 75.13 the language allowing Agency inspectors to verify installation information "at all reasonable times" and substitutes "during normal working hours" in lieu thereof. The same should be done in 75.42(a). Other NRC regulations (e.g., 70.55) do not provide for inspections by foreign nationals not employees of the U.S. Government and can, therefore, hardly be deemed either analogous or of precedential authority.

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

C. COMMENT: 75.42(b)(5) Installation of Agency Equipment - In our previous comments we suggested that:

the licensees should have a clearly stated right to refuse installation (of the Agency equipment) if the equipment presents (1) an abnormal safety or health hazard, (2) violates previously agreed to exclusions of commercially sensitive information, (3) violates in any way the legal rights of the licensee or his employees, (4) places an inequitable competitive burden on the licensee in relation to other U.S. competitors, or (5) jeopardizes quality of product.

The Commission's response is that these concerns will be considered in the development of Facility Attachments and that only equipment agreed to by the U.S. in the Facility Attachment need be installed.

While we are pleased to learn that the factors we enumerated will be taken into account, we believe that these factors state the necessary minimum criteria for Agency equipment. The rule should clearly state that Agency equipment which does not meet these criteria will not be agreed to by the U.S. Merely taking these factors into account may be understood by some as permitting them to be balanced against other -- unstated -- factors. Non-inclusion in the rule, therefore, fails to provide a licensee with the needed guidance and protection.

RESPONSE: The recommended criteria are not included in the rule because they will not be utilized in precisely the terms proposed. These considerations are relevant, however, in determining whether or not, for example, the safeguards "avoid undue interference...in the operation of the facilities," the information required is the "minimum" required by the IAEA, etc. The standards that will be applied are those contained in the Agreement itself, and this is made clear by the reference thereto in §75.42(e)(2). During the development of the Facility Attachments, the licensee will have an opportunity to discuss with the NRC and the IAEA, in detail, the installation of specific IAEA equipment.

4.5.1.2 COMMENT: Westinghouse, Pittsburgh, PA

75.42(e) - The proposed regulations currently provide that the Agency may conduct unscheduled audits and that NRC personnel will accompany Agency representatives to the extent feasible. Physical security requirements, as well as inspector safety necessitates that IAEA

representatives be accompanied at the facility. Moreover, since the IAEA representatives will be permitted on Westinghouse sites only because of the US/IAEA agreement, the U.S. government should assume responsibility and provide an escort for all IAEA representatives.

RESPONSE: §75.13(c) and §75.42 have been revised to provide for assignments of NRC employees, to the extent feasible, unless the licensee agrees otherwise. However, to assure that the unavailability of NRC personnel does not result in a licensee's denying access to an IAEA inspector, in violation of the Agreement, the regulations will still require that unaccompanied inspectors be admitted.

4.5.1.3 COMMENT: Allied Chemical, Morristown, New Jersey

75.42(e) - NRC representatives always accompany I.A.E.A. inspectors on facility inspections.

The line of communication from the facility licensee to I.A.E.A. is clearly defined by the proposed regulations and Supplementary Information. It is our understanding that any communications between a licensee and an I.A.E.A. inspector would only be on routine matters; and that response to any request for additional information by I.A.E.A. inspectors must be through authorized representatives of the NRC. As such matters can come up in the course of I.A.E.A. inspections, we consider it imperative that I.A.E.A. inspectors should always be accompanied by an NRC representative. Further, it is our belief that the tenure of personnel in NRC's field offices is greater than that of most I.A.E.A. inspectors -- most of whom are temporary employees. The practice of the NRC to have I.A.E.A. inspectors accompanied by the same person(s) from the cognizant NRC field office would supply necessary continuity of effort and reduce the imposition of repeated re-education upon the operators of facilities.

RESPONSE: §75.42 has been revised to provide for assignments of NRC employees, to the extent feasible, unless the licensee agrees otherwise. However, in order to assure that the unavailability of NRC personnel does not result in a licensee's denying access to an IAEA inspector, in violation of the Agreement, the regulations will still require that unaccompanied inspectors be admitted.

4.5.1.4 COMMENT: Exxon Nuclear Co., Richland, Washington

75.42(e) - The provisions for an accompanying NRC employee are inadequate. Since the licensee is not assured of advance notification of an inspection (and could not expect more than 24 hours' advance notice in some instances), it will seldom be possible for NRC to assign an employee to accompany an Agency inspector in response to a licensee request. The Commission should assign employees to accompany the inspectors during all inspections, unless the licensee agrees otherwise. A licensee should not be required to admit an Agency inspector in the absence of an NRC employee.

RESPONSE: §75.42 has been revised to provide for assignments of NRC employees, to the extent feasible, unless the licensee agrees otherwise. To assure that the unavailability of NRC personnel does not result in a licensee's denying access to an IAEA inspector, in violation of the Agreement, the regulations will still require that unaccompanied inspectors be admitted.

4.5.2 §75.43 Circumstances Requiring Advance Notification

4.5.2 COMMENT: G.E., Wilmington, N.C.

A. Paragraph 75.43(d) should be modified to read:

"(...less than .01 effective kilogram per sample and UF₆ cylinder heels recycles to domestic enrichment facilities)"

Precise interpretation of the proposed regulation reveals that the recycle of UF₆ heels will require notification at least twenty (20) days in advance of shipment to domestic enrichment facilities.

Recycle of UF₆ heels is a common practice throughout the nuclear industry. Fill, empty, recycle and fill cycles in many instances are less than twenty (20) days. The proposed requirement, therefore, will be a significant impedance to domestic operation of nuclear plants.

B. COMMENT: The regulations should specifically exempt recycle UF₆ heels from the requirement for this notification. The installation information and facility Attachments can include recognition that these activities occur at a specific plant. No further notification of the IAEA should be required.

RESPONSE: The advance notification provisions are based upon the pertinent portions of the Subsidiary Arrangements. It is expected that exceptions may be made in the course of development of Facility Attachments, to avoid advance notification of routine UF₆ cylinder heel recycles. Such exception would be implemented by the granting of exemptions under §75.3(a).

4.5.3 §75.44 Timing and Advance Notification

4.5.1 COMMENT: Exxon Nuclear Co., Richland, Washington

75.44 Advance Notification of Transfer - The changes to 75.44 in the revised proposed rule are a significant improvement, in terms of flexibility, over the original proposal. However, particularly for a licensee handling many routine transfers of source material or low enriched uranium, it seems unduly burdensome to require an individual report -- including all the details called for by 75.45 -- for each shipment covered by § 75.43. We suggest as an alternative that, in light of the 90-day cumulative transfer provisions in 75.43, the licensee be required to submit a quarterly forecast of its anticipated transfers covered by that section, including as much of the information required by 75.45 as is available. The licensee would notify the Commission, at the earliest practicable date, of significant changes to its forecast and of the required detailed information about each shipment not available when the forecast was submitted. The Commission, after consulting with the Agency, could exclude certain categories or transfers of non-strategic nuclear material, as shown on each quarterly forecast, from the detailed information requirements of 75.45.

RESPONSE: The advance notification provisions are based upon the pertinent portions of the Subsidiary Arrangements. As indicated above in response to the previous comment, exceptions may be made in the course of developing Facility Attachments. Minor changes have been made to conform §75.45(a) to the underlying provisions of the Subsidiary Arrangements.

4.5.4 §75.47 [renumbered to §75.46] Expenses

4.5.4.1 COMMENT: Allied Chemical, Morristown, New Jersey

75.47 - Safeguards not be imposed on any nuclear facility in the United States which are more extensive and burdensome than in other countries, or, in the event that such safeguards are imposed in response to national interests explicitly identified by the Federal Government, that any additional cost be borne by the Federal Government.

The United States has agreed to involvement in the I.A.E.A. safeguards program to preclude, among other objectives, the appearance of attempting to gain competitive advantage. Also, of course, fundamental to the I.A.E.A. regulations and the Non-Proliferation Treaty is the policy that all countries and all similar facilities subject to safeguards are to be treated equitably. Accordingly, we feel that the imposition of safeguards requirements on a United States facility which would result in costs to the facility's operation greater than those resulting from imposition of I.A.E.A. safeguards on similar facilities in other countries would be warranted only if such requirements were adopted in response to national interests explicitly identified and defined by the Federal Government. In the event that such national interests are so identified, the costs related to the safeguards requirements over and above those required by I.A.E.A. should, in the interest of equity, be borne by the Government. Also in the interest of equity, similar consideration is required should the Government apply safeguards which would apply to only certain United States' conversion facilities and which would therefore have a disproportionate impact and related inequitable cost burden.

RESPONSE: The provision of the Agreement relating to implementation by the same procedures followed elsewhere (Article 3(c)) will be applied - taking into account other pertinent provisions as well - to avoid the imposition of safeguards that are out of line with IAEA practice.

The policy issue regarding reimbursement cannot be resolved in the rulemaking context.

4.5.4.2 COMMENT: Exxon Nuclear Co., Richland, Washington

- A. 75.47 Reimbursement - At the outset, we would make a general observation as respects reimbursement. Implementation of the Safeguards Agreement imposes a special burden on licensees (especially those designated by the Agency for safeguards) with no countervailing

specific benefit to them. This is the premise underlying the exemption from license fees for NRC activities in implementation of the Agreement. In other major respects, however, licensees will be put at financial risk for the furtherance of "foreign policy and nuclear non-proliferation objectives" of the Federal Government. In that connection, there is no justification for requiring licensees to bear, in addition to the cost of compliance with NRC's implementing regulations, the risk of non-reimbursement by the Agency for "extraordinary expenses" or its inspectors. If the Commission believes it lacks the authority to act as the guarantor of Agency reimbursement, it should undertake to seek such statutory authority from Congress.

RESPONSE: The policy issue regarding reimbursement cannot be resolved in the rulemaking context. If the Commission were to be authorized to act as guarantor of IAEA reimbursement, the rules would then be modified.

- B. COMMENT: 75.47 Reimbursement - We have the following additional comments relating to the provisions dealing with reimbursement (75.47):

The mechanism by which the Agency will "bear the cost" of expenses for which it has not agreed in advance to reimbursement is not set forth. Presumably this mechanism is also reimbursement; if so, the rule should so state. Nor do the regulations state when (i.e., how long after the expense is incurred) reimbursement will be forthcoming.

RESPONSE: The language of §75.47(a) [renumbered to §75.46(a)] was based upon Article 14 of the Agreement. The Commission understands that the reference to bearing certain costs contemplates a reimbursement procedure. The paragraph has been modified to substitute "reimburse a licensee for the cost" in place of "bear the cost." We anticipate that reimbursement would be made with reasonable promptness.

- C. COMMENT: 75.47 Reimbursement - As to expenses other than "extraordinary expenses" for which the Agency has agreed in advance to reimburse the licensee, there should be established some mechanism by which the licensee can be assured (or, at the very least, advised of the guiding principles for a decision) that the Agency will agree to reimbursement for whatever actions its inspectors may request of the licensee. Merely informing the licensee of how to document Agency inspector's requests falls far short of such a guarantee. There should be licensee access, at all relevant times, to an Agency representative (directly or through NRC) who is authorized to approve reimbursable

expenditures on IAEA's behalf. Licensees should not be required to undertake action without specific assurances of reimbursement.

RESPONSE: The procedures referred to in §75.47(c) [renumbered to §75.46(c)] will be based upon provisions of the Facility Attachment, agreed to by the IAEA, which will serve to authorize reimbursable action. As now conceived, the documentation would include action by the IAEA or its inspector communicated to the licensee in written form before the cost is incurred. Accordingly, we would not expect a licensee to be placed in a position of doubt with respect to its rights to be reimbursed.

- D. COMMENT: 75.47 Reimbursement - If the Agency should fail to make timely reimbursement to a licensee for an expense which it has agreed to reimburse, there should be some procedure through which (in the absence of NRC's accepting the role of guarantor of reimbursement) the licensee can compel the Agency to honor its obligations.

RESPONSE: The Commission would, when deemed appropriate, seek to facilitate the reimbursement of expenses through available channels, pursuant to §75.47(d) [renumbered to §75.46(d)]. In principle, efforts in this regard could be directed to the resolution of any dispute under Articles 16, 19, 20, or 21, as applicable.

5.0 Part 150 - Exemptions and Continued Regulatory
Authority in Agreement States Under Section 274

5.0 PART 150 - EXEMPTION AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES UNDER SECTION 274

5.1 COMMENT: Texas Department of Health, Austin, Texas

- A. It is unclear how Agreement State licensees who already possess source material which will be subject to Part 75 will be notified of the requirement to obtain a license from the Commission and comply with the provisions of Part 75. It is suggested that the Commission provide copies of the proposed regulations as published in the Federal Register directly to potentially affected Agreement State licensees in order that their comments may be considered prior to adopting regulations that they will be required to abide by. Mailing lists of such licensees could be obtained from the appropriate regulatory agency in each Agreement State.

RESPONSE: Information regarding the Agreement has been widely circulated throughout the nuclear industry. Individual mailings are not deemed to be necessary, either to NRC or Agreement State licensees. There is no requirement that Agreement State licensees obtain licenses from the Commission. At a minimum, they will be notified of their obligations to comply with the provisions of Part 75 both by publication of the rules in the Federal Register and by written notice from the Commission pursuant to §75.11.

- B. COMMENT: 150.17a(b), provides procedural guidance to Agreement State licensees who desire "to receive such source material" but does not provide guidance to cover those who already possess such source material. This situation should be addressed.

RESPONSE: Agreement State licensees who already possess source material are advised, in §150.17a(b) and in §75.2(a), that they are subject to Part 75. Accordingly, by virtue of §75.11, they will be required to submit installation information in response to written NRC request. No additional guidance is required.

6.0 Part 170 - FEES FOR FACILITIES AND MATERIALS LICENSES
AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954.
AS AMENDED

6.1 General Provisions

6.1.1 §170.11 Exemptions

6.1 GENERAL PROVISIONS

6.1.1 §170.11 Exemptions

6.1.1.1 COMMENT: Carolina Power & Light Co.

170.11(a)(10) - We support the NRC's position that the US/IAEA Agreement and the implementing regulations (proposed 10 CFR 75) support foreign policy and nuclear nonproliferation objectives that are independent of the regulatory requirements for licensed activity, and therefore, persons should be exempt from the payment of fees in connection with activities of the Commission undertaken in carrying out the provisions of Part 75. We, therefore, support the adoption of the proposed 75.11(a)(10) [sic].

Response: No comment.

ENCLOSURE C

PUBLIC ANNOUNCEMENT
NRC PUBLISHES RULE CHANGES FOR
US/IAEA SAFEGUARDS AGREEMENT

The Nuclear Regulatory Commission is publishing new regulations which will implement the United States/International Atomic Energy Agency (IAEA) Safeguards Agreement. They will be effective when the Agreement has been ratified and enters into force.

In 1967, the United States volunteered to have IAEA safeguards applied to all major U.S. nuclear activities with the exception of those having direct national security significance. This offer was made to encourage the widest possible adherence to the Treaty on the Non-Proliferation of Nuclear Weapons, by demonstrating to other nations that they would not be placed at a commercial disadvantage by application of safeguards under the treaty. The offer also was a manifestation of U.S. support of the international safeguards system and demonstrated the U.S. belief that IAEA safeguards would not interfere with peaceful nuclear activities.

Following formal negotiations between the U.S. and the IAEA, the IAEA Board of Governors approved the proposed US/IAEA Safeguards Agreement on September 17, 1976. The Agreement has been submitted to the U.S. Senate for its advice and consent to ratification as a treaty.

The implementing regulations are contained in a new Part 75 of NRC regulations, "Safeguards on Nuclear Material -- Implementation of US/IAEA Agreement," and amendments to Parts 40, 50, 70, 150, and 170. They include provisions to

permit IAEA inspection of certain licensed installations; a requirement for licensees to prepare and submit information about their installations; provisions for the NRC to transfer such information to the IAEA subject to special precautions in case of proprietary or other sensitive information; a requirement for submitting reports required by the IAEA; and requirements for material accounting and control.

The regulations were first published for public comment in May of 1978. The following November the Commission announced the availability of some supplemental documents and extended the public comment period for another 30 days.

Consideration of the comments resulted in substantial changes to the original proposal. The Commission in July 1979 published a revised proposed rule for the purpose of affording further opportunity for participation by licensees in formulating the policies and procedures that will apply to their activities.

The new Part 75 and conforming amendments to the other regulations are being published in the Federal Register on _____. The effective date of the regulations will be announced in a subsequent FEDERAL REGISTER notice after ratification of the Agreement.