

October 21, 2002

MEMORANDUM TO: Martin J. Virgilio, Director  
Office of Nuclear Material Safety  
and Safeguards

FROM: Roy P. Zimmerman, Director /RA/  
Office of Nuclear Security and  
Incident Response

SUBJECT: USER NEED FOR REVISING 10 CFR PARTS 40 AND 150.

The Commission's regulations for the reporting of source material transactions are contained in 10 CFR Parts 40, 75 and 150. The regulations are supplemented by NUREG/BR-0006 that provides the instructions for completing the nuclear material transaction form. An interagency group consisting of representatives of the U.S. Nuclear Regulatory Commission (NRC), U.S. Department of Energy (DOE) and U.S. Department of State (DOS) has recently completed a review of the Government's commitments to track and report source material pursuant to various Government agreements. An outcome of this review was clarification to the NRC and the DOE of how source material should be tracked in the U.S. to satisfy the various Agreements for Cooperation. The interagency group recommends that the NRC and DOE modify their reporting requirements for source material to be more in line with the Government's needs and consistent with changes that are being implemented during calendar year 2002 to the Nuclear Materials Management and Safeguards System (NMMSS). The NRC's current reporting requirements for source material are more encompassing than required to satisfy the various Government agreements. Therefore, we expect that the proposed modifications to NRC rules may result in a slight reduction in the licensees' reporting burden for source material.

The Office of Nuclear Security and Incident Response (NSIR) requests assistance from your Division of Industrial and Medical Nuclear Safety (IMNS) to revise 10 CFR Parts 40 and 150 as described in the Attachment. The NSIR Project Manager for this action is Brian Horn who can be reached at telephone number 415-8128 or by e-mail at "bgh1".

We request that this rule change action be assigned a "Medium" priority and be performed as a direct final rule because it implements Government agreements.

Attachment: Proposed Changes to 10 CFR Parts 40 and 150

CONTACT: Brian Horn, NSIR/DNS  
(301) 415-8128

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Distribution

Central File D.Cool S.Frant P.Holahan NSIR R/F  
G:\rule-change-40-150a.wpd \* See previous concurrence **ML022960534**

OFC	DNS*	DNS*	DNS*	DNS*	NSIR*
NAME	BHorn:mm	CCollins	RNelson	GTracey	RZimmerman
DATE	4/8/02	4/ 25 /02	4/ 07 /02	6/ 06 /02	10/21/02

## **PROPOSED CHANGES TO 10 CFR PARTS 40 AND 150**

### **BACKGROUND:**

The U.S. Government has negotiated and has in force approximately twenty-four Agreements for Peaceful Nuclear Cooperation with foreign governments. In these agreements, the U.S. Government has agreed to track and report to the respective foreign Governments specified nuclear and non-nuclear material imported pursuant to these agreements. Currently, the Nuclear Regulatory Commission (NRC) regulations require licensees to track and report source material based on the origin of the material. Relying on the origin of the source material is no longer precise enough to meet the U.S. Government needs to satisfy its tracking and reporting requirements to the foreign parties of these agreements.

NRC is a member of an interagency working group responsible for implementing the tracking and reporting of nuclear material subject to various agreements that the U.S. has entered into force. As part of a recently completed review of the requirements of the various agreements, this working group has recommended that the national data base for nuclear material tracking be modified to better identify and track the nuclear materials subject to the various agreements and NRC change its reporting requirements for source material.

### **REGULATORY APPLICATION:**

As a whole, the recommended change made by the interagency working group is expected to slightly reduce licensees' reporting requirements for source material. The proposed change would replace requirements that foreign origin source material be reported to the Nuclear Material Management and Safeguards System (NMMSS) with a requirement that source material, subject to tracking and reporting requirements under any one of the agreements the U.S. has entered into force, be reported to NMMSS. This change is projected to slightly reduce the reporting burden of source material for both Agreement State licensees (10 CFR Part 150) and NRC licensees (10 CFR Part 40). This change would have no impact on licensees selected by the International Atomic Energy Agency pursuant to 10 CFR Part 75.

### **PROPOSED CHANGES TO NRC REGULATIONS:**

The following changes are proposed:

- Modify 10 CFR Part 150.17 to replace the wording "uranium or thorium source material of foreign origin" with "uranium or thorium source material with foreign obligations," and "imports 1 kilogram or more of uranium or thorium source material of any origin" with "imports or exports 1 kilograms or more of uranium or thorium source material". This later change is needed to conform 10 CFR Part 150.17 requirements with 10 CFR Part 40.64(a) and is needed for compliance with agreements the U.S. has entered into force.
- Modify 10 CFR Part 40.64 to replace the wording: "uranium or thorium source material of foreign origin" with "uranium or thorium source material with foreign obligations"; "imports or exports 1 kilogram of uranium or thorium source material of any origin" with "Imports or exports 1 kilogram of uranium or thorium or any obligation" and; "foreign origin source material inventory" with "foreign obligated source material inventory".

- Modify 10 CFR Part 40.64(b) to adjust the timing of the yearly statement of "foreign obligated source material inventory" to be within 30 days after September 30 of each year or as part of the licensees' material status reports required under 10 CFR Part 74. This change in the reporting time frame is requested as a conforming change to bring this reporting requirement in line with a recent change to 10 CFR Part 74 that your office has performed.

#### TIMING OF CHANGE

My staff is updating NUREG/BR-0006 & 0007 as well as seeking approval from the Office of Management and Budget to utilize the reporting forms which licensees use to make the above reporting changes. My staff hopes to have these actions completed and ready for licensee us by early/mid 2003. For coordination purposes, it is requested that the above mentioned proposed minor changes to 10 CFR Part 40 and 150 be completed and ready for implementation by early/mid 2003. This will allow the changes to be done in a manner that would be least disruptive to licensees.