

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 72, 74, and 150

RIN 3150-AI61

[NRC-2009-0096]

Amendments to Material Control and Accounting Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Availability of preliminary proposed rule language.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is making available for comment preliminary proposed rule language concerning the NRC's proposed amendments to the material control and accounting (MC&A) regulations. These regulations apply to NRC licensees who are authorized to hold special nuclear material (SNM) and to certain licensees within the jurisdiction of the Agreement States that hold SNM and submit material status reports to the NRC. The goal of this rulemaking is to revise and consolidate the MC&A requirements. This Notice briefly summarizes the proposed amendments. After the Commission has reviewed and approved the proposed rule, it will be formally published for comment.

DATES: Submit comments by [insert date that is 45 days after the date of publication in the Federal Register] Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC-2009-0096 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, <http://www.regulations.gov>. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information and, therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any one of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2009-0096. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; e-mail: Carol.Gallagher@nrc.gov.
- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.
- **E-mail comments to:** Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677.

- **Hand deliver comments to:** 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (telephone 301-415-1677).
- **Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

You can access publicly available documents related to this notice using the following methods:

- **NRC's Public Document Room (PDR):** The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- **NRC's Agencywide Documents Access and Management System (ADAMS):** Publicly available documents created or received at the NRC are available online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The preliminary proposed rule language is available electronically under ADAMS Accession number ML111250585.
- **Federal rulemaking Web site:** Public comments and supporting materials related to this notice, including the preliminary proposed rule language, can be found at <http://www.regulations.gov> by searching on Docket ID NRC-2009-0096.

FOR FURTHER INFORMATION CONTACT: Thomas Young, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-5795, e-mail Thomas.Young@nrc.gov.

SUPPLEMENTARY INFORMATION:

The NRC plans to amend Parts 72, 74, and 150 to Title 10 of the *Code of Federal Regulations* (10 CFR). The majority of the changes would be to the MC&A provisions in 10 CFR Part 74.

A. Background.

The existing 10 CFR Part 74 regulations are organized in a graded fashion. General MC&A reporting and recordkeeping requirements in subpart B apply to all licensees authorized to hold SNM under 10 CFR Part 70. Licensees authorized to hold SNM of “low strategic significance” (defined in 10 CFR 74.4) are subject to the more rigorous MC&A requirements in subpart C. Such licensees operate what are known as Category III facilities, which include all uranium enrichment facilities and the fuel fabrication facilities supplying fresh fuel assemblies to commercial power reactors. Licensees authorized to hold SNM of “moderate strategic significance” (defined in 10 CFR 74.4) are subject to the MC&A requirements in subpart D, and are authorized to operate Category II facilities (no such facilities now operate). The most rigorous MC&A requirements are in subpart E, and apply to licensees authorized to hold a “formula quantity” (defined in 10 CFR 74.4) of strategic SNM. Such licensees operate what are known as Category I facilities, which supply fuel for use in naval reactors and in research and test reactors.

The MC&A requirements for Category I-III facilities include general performance objectives, and most of these facilities must meet item control requirements.

B. Discussion.

The MC&A provisions would be revised to include general performance objectives applicable to all licensees authorized to possess SNM. Licensees authorized to hold significant amounts of SNM would be required to have written MC&A procedures. Licensees authorized to

possess any quantity of SNM would be required to have item control systems. Subparts C and D of 10 CFR Part 74 (applicable to Category III, and II facilities, respectively) would be revised to remove most of the current exemptions from the item control requirements. Subparts C, D, and E would be revised to introduce the two-person rule (*i.e.*, having at least two, qualified and authorized individuals to complete and observe certain operations). Category I, II and III facilities would be required to establish procedures for tamper-safing storage containers or locations, and to specify material balance areas, item control areas, and custodial responsibility for these areas.

Category I, II and III facilities must have fundamental nuclear material control (FNMC) plans that have been approved by the NRC. The NRC staff's view is that FNMC is an outdated term, as it does not include "accounting," and thus does not fully describe the accounting aspects that MC&A programs must include. Existing references in subparts C, D, and E of 10 CFR Part 74 to FNMC plans would therefore be replaced with references to an MC&A plan. The proposed rulemaking would also:

- Consolidate in 10 CFR Part 74 the MC&A requirements currently in 10 CFR Part 72 for independent spent fuel storage installations (ISFSIs);
- Revise 10 CFR 150.17, which is applicable to those authorized to hold SNM in Agreement States, to conform to the proposed revisions to 10 CFR 74.13. No substantive changes would be involved;
- Make references to due dates and reporting frequencies more uniform by expressing such timeframes in terms of calendar days;
- Amend 10 CFR 74.4 by adding, removing, and modifying certain defined terms that are used throughout 10 CFR Part 74. The proposed definitions to be added are: *accounting*, *custodian*, *item control area*, *item control system*, *material balance area*, *material control*

and accounting, and two-person rule. The term *effective kilograms of special nuclear material* would be removed. In this regard, the affected requirements would instead refer to grams or kilograms of material. Definitions of the following terms would be modified: *formula quantity, special nuclear material of moderate strategic significance, and special nuclear material of low strategic significance.* These terms would be modified respectively to refer to certain quantities of SNM as Category I, Category II, or Category III, consistent with the existing definitions of these terms in 10 CFR Parts 70 and 73;

- Add Appendix A, “Categories of Special Nuclear Material,” to 10 CFR Part 74. This Appendix would be based on existing Appendix M to 10 CFR Part 110, and would show the SNM quantity limits respectively for Category I, Category II, and Category III; the corresponding subpart in 10 CFR Part 74 for each category; and the formulae to calculate any combination of strategic SNM within the quantity limits for a category.

The NRC is making the preliminary proposed rule language summarized in this notice available to inform stakeholders of the current status of this proposed rulemaking, and is inviting comment on the language. This preliminary proposed rule language may be subject to significant revisions during the rulemaking process. Public input at this stage will help inform the development of the proposed rule.

The NRC will review and consider any comments received; however, the NRC will not respond to any comments received at this pre-rulemaking stage. As appropriate, the Statements of Consideration for the proposed rule will briefly discuss any substantive changes made to the preliminary language as a result of the comments now being solicited. Stakeholders will have a further opportunity to comment on the rule language when it is published as a

proposed rule in accordance with the provisions of the Administrative Procedures Act. The NRC will respond to any such comments in the Statements of Consideration published with the final rule language.

The NRC may post updates to the preliminary proposed rule language on the Federal rulemaking Web site under Docket ID NRC-2009-0096. Regulations.gov allows members of the public to set-up notifications so that they may be alerted when documents are added to a docket. Users are notified via e-mail at an e-mail address provided at the time of registration for the notification. Directions for signing up for the automatic notifications can be found at <http://www.regulations.gov>. To do so, search for the docket you are interested in and then choose E-mail Alerts.

Dated at Rockville, Maryland, this 6th day of May, 2011.

For the Nuclear Regulatory Commission.

/RA/

Josephine M. Piccone, Director
Division of Intergovernmental Liaison
and Rulemaking
Office of Federal and State Materials
and Environmental Management Programs

proposed rule in accordance with the provisions of the Administrative Procedures Act. The NRC will respond to any such comments in the Statements of Consideration published with the final rule language.

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Dated at Rockville, Maryland, this 6th day of May, 2011.

For the Nuclear Regulatory Commission.

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Josephine M. Piccone, Director
Division of Intergovernmental Liaison
and Rulemaking
Office of Federal and State Materials
and Environmental Management Programs

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