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**PR 72, 74 and 150
(76FR28193)**

**DOCKETED
USNRC**

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
ATTN: Rulemakings and Adjudications Staff

June 30, 2011 (11:37 am)

**OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF**

Reference: Federal Register Notice, NRC-2009-0096, published in Federal Register, Volume 76, No. 94, dated May 16, 2011.

Subject: B&W NOG, Inc.'s Comments on Preliminary Rule Language, Amendments to Material Control and Accounting Regulations, Docket ID NRC-2009-0096

Dear Sir or Madam:

Babcock & Wilcox Nuclear Operations Group, Inc. ("B&W NOG") would like to take the opportunity to provide comments in regards to the Preliminary Rule Language, "Amendments to Material Control and Accounting (MC&A) regulations", published in the Federal Register on May 16, 2011 (76 FR 28193) by the U.S. Nuclear Regulatory Commission ("NRC").

- (1) In Part B Discussion, paragraph 2, the NRC proposes that existing references in subparts C, D, and E of 10 CFR part 74 to Fundamental Nuclear Material Control (FNMC) plans be replaced with references to a MC&A plan. B&W NOG requests that the NRC consider keeping the FNMC Plan as a reference and allow this document to include implementation of new rules. The value added by changing the name of the FNMC Plan to a MC&A Plan is uncertain. Reference to the FNMC plan is incorporated throughout Licensing documents as well as multiple licensee operating procedures, therefore, it will result in significant man-hours and costs to review/revise all affected documents.
- (2) The proposed rule changes do not make it clear if approved license exemptions, waivers, and special provisions already granted in the existing FNMC plans would be grandfathered into the new separately approved MC&A plan. Failure to include such provisions in the new plan would result in significant amount of resources from both the NRC and licensees to review, document, and reapprove such provisions for a new licensing document. We therefore recommend that such licensee specific provisions be allowed to continue in any new form of the document.
- (3) The definition of "custodian" in Section 74.4 is excessively rigid in describing the custodian's responsibility for maintaining the accounting system. Maintenance of the accounting system can be properly accomplished by a variety of other qualified personnel as well.
- (4) This definition of the "two-person" rule in Section 74.4 is too broad and needs clarification. For example, the phrase "whenever a task covered by the rule is performed" could be interpreted to apply to such tasks as data entry, statistical analysis, and operations of MC&A measurement systems that are controlled by standards, and/or changes to parameter files affecting calculations for Measurement Control purposes

rather than for purpose of controlling access to nuclear material. Furthermore, the definition does not allow for tasks performed via mechanical/computer automation or a combination of a person and mechanical/computer automation where the automation can serve as a second person.

- (5) In Sections 74.51(d), 74.59(e)(7), 74.59(f)(1) and 74.59(h)(2)(ii), the NRC redefines semiannual and/or six month inventory periods to mean 180 calendar days. The proposed rule will have negative consequences by not considering the impact of leap years and the shortening of the time allotted to complete a physical inventory. The existing language of Section 74.59 (f) (1) requires that: "Except as required by part 75 of this Chapter, perform a physical inventory at least every six calendar months and within 45 days after the start of the ending inventory". For a typical 365 calendar day year, this equates to approximately 182 to 183 days between inventories. The new rule will compress this period to 180 days. As a result, a licensee will be forced to advance his inventory schedules by 5 days every calendar year. This will significantly impact coordination of inventories with work and holiday schedules, and may impact synchronization of other reporting requirements. B&W NOG requests that the NRC consider keeping the current inventory period referenced as every 6 months, or expand the rule to include 185 days or 180 days plus or minus 5 days.

As always, we appreciate the opportunity the NRC provides for licensees to comment on preliminary rule language, and we hope that you will consider the recommendations presented above. Should additional information be needed for this matter, please contact me at (434) 522-5665.

Sincerely,



Barry L. Cole
Manager, Licensing & Safety Analysis
B&W NOG, Inc., Lynchburg

cc: M. Suwala
W. Ogden
NRC, Region II
NRC, Resident Inspector
NRC, Merritt Baker