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Ms. Annette Vietti-Cook, Secretary
U.S. Nuclear Regulatory Commission
Attention: Rulemakings and Adjudications Staff
Washington, DC 20555-0001

Direct tel: 803-647-3436
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Our ref: LTR-RAC-14-15

Date: March 10, 2014

Subject: Comments on Proposed Rulemaking and Guidance, "Amendments to Material Control and Accounting Regulations," Docket ID NRC-2009-0096 and Docket ID NRC-2013-0195

Dear Ms. Vietti-Cook:

Westinghouse Electric Company LLC (Westinghouse) appreciates the opportunity to comment on the Nuclear Regulatory Commission's (NRC) proposed rulemaking to amend its regulations for material control and accounting (MC&A) of special nuclear material. Westinghouse fully endorses the comments on the rulemaking submitted by the Nuclear Energy Institute (NEI) on March 10, 2014. In addition to demonstrating its support of the industry comment letter, Westinghouse is providing a separate comment letter to emphasize the potential impacts of this proposed regulation on Westinghouse as the largest supplier of nuclear fuel in the United States, and a licensee under 10 C.F.R. part 70.

Westinghouse's comments on the proposed amendments to the MC&A rule come mainly from the perspective of the safety and security significance of the special nuclear material that would be primarily affected by the amendments. Westinghouse does not believe that the proposed rule as currently drafted would provide any measurable increase in safety or security, but would nevertheless result in a substantial additional burden on licensees. This is because the proposed rule changes would require significant process and procedure changes at the affected facilities, but the NRC has failed to adequately articulate what problem it is attempting to address by imposing these changes. Westinghouse believes that the NRC would have better appreciated the potential benefits and costs associated with this rulemaking had it performed an adequate analysis from a backfitting perspective, which the NRC chose not to perform.

Taken in proper context, as a fabricator of nuclear fuel, Westinghouse is licensed to possess low enriched uranium (LEU), also known as Category III special nuclear material. Generally, LEU contains less than 5% enrichment in Uranium 235. As recognized by the NRC and generally in the nuclear industry, LEU by definition is non-strategic. It has low significance from either a safety or security perspective. The NRC, for instance, acknowledged as early as 1982 that "Safeguard risks associated with LEU are substantially less than those associated with SSNM. It is impossible to construct a clandestine fission explosive (CFE) device with uranium enriched to less than 6 percent in U-235" There is nothing to indicate that there has been any change to this fundamental understanding of the security significance of this type of material since these statements.

Nevertheless, as a Category III licensee, Westinghouse has implemented (both as required and voluntarily) substantial additional measures to ensure that the special nuclear material it possesses cannot be accessed by unauthorized entities. Many of the security measures that are currently implemented at the Columbia facility stem from requirements that were imposed by the NRC by order after the terrorist attacks of September 11, 2011. Despite these additional security measures and the low security significance of the affected special nuclear materials, changes to the MC&A rule proposed by the NRC seem to have been developed in isolation from these basic facts. Since these facts suggest that the current state of MC&A is adequate, Westinghouse is challenged to understand the need for the scope of the changes proposed; particularly since the NRC has not articulated how the process and procedure changes we feel would need to be made to comply with this proposed rule would improve the safety or security of our facility.

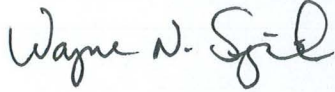
As further explained in detail in the attachment, there are a number of specific concerns regarding the proposed rule and guidance. The most significant concerns with the rulemaking are the following:

1. New general performance objectives in 74.3
 - These general performance objectives would potentially place unnecessary expenses and burden on licensees and are being proposed without the necessary clarity to support effective implementation by licensees.
 - The changes to absolute terms, such as “any” and “all”, create new and infeasible situations.
2. Elimination of two exemptions related to item control and addition of new absolute language in 74.31(c)(6)
 - These proposals would cause significant impacts without any commensurate or greater increase in the safety or security of the affected facilities. The existing exemptions have been in place for many years without any indication that there is a major problem warranted their rescission. Westinghouse does not believe that the NRC has thoroughly analyzed the impacts of eliminating these exemptions.
 - The impact to industry to apply item control to these materials is greatly understated because the NRC assumes incorrectly that “licensees have in-house systems that track such items in near real time.” Imposing new requirements based on assumptions about administrative technologies used at sites that are not required by the NRC is not an effective strategy for sound regulatory decision-making.
3. New requirements for tamper-safing in 74.31(c)(9)
 - When interpreted in combination with the proposal in 10 CFR 74.31(c)(6) to detect “any” unauthorized removal of any SNM, this requirement would significantly increase the use of tamper seals and/or vaults, etc. at our facilities.

Westinghouse supports common-sense measures to improve the clarity and effectiveness of the current MC&A rule. However, taken as a whole, the NRC must recognize that the current MC&A program has for many years effectively provided adequate mechanisms to account for the special nuclear material subject to the current rule’s requirements. In light of the fact that there appears no clear problem that the NRC is trying to address, Westinghouse urges the NRC to reconsider whether the current proposed revisions to the MC&A rule are consistent with the NRC’s Principles of Good Regulation and its current policies and procedures with respect to rulemaking.

Should you have any questions or require additional information, please feel free to contact me at sepitkwn@westinghouse.com or telephone me at 803-647-3436.

Kindest regards,



Wayne N. Sepitko

Manager, Environment, Health & Safety
Columbia Fuel Fabrication Facility
Westinghouse Electric Company LLC
License SNM-1107 Docket70-1151

Attachments

cc: U. S. Nuclear Regulatory Commission, Region II,
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Attachment 1

Specific Comments on Proposed Rule and Guidance

74.3 General Performance Objectives

The Introduction and Summary of Proposed revisions to MC&A Regulations states in regard to the General Performance Objectives, “The NRC does not expect that Category I, II, and III licensees would need to alter their MC&A programs in response to the 10 CFR 74.3 GPOs, because these GPOs are similar to the existing GPOs.” This is inconsistent with the plain language of the proposed GPOs which indicate to facilities that they would need to implement new and more stringent nuclear material and MC&A information access controls. NRC needs to resolve this discrepancy by rewording the GPOs to clearly define performance objectives that are consistent with existing performance capabilities of fuel cycle facilities with approved FNMC Plans.

74.3(a) - Current MC&A requirements for Special Nuclear Material of Low Strategic Significance provide guidance on “Current” in the context of maintaining current knowledge “when the sum of the time of existence of an item, the time to make a record of the item, and the time to locate the item exceeds 14 days.” With the proposed change to eliminate the 14 day exemption, as currently worded, this provision implies that changes to quantities and locations of items and information on items in receipts and shipments must be updated/recorded in the item control system instantaneously. This would result in significant impacts to industry to achieve these capabilities that are not considered in the regulatory analysis. The NRC should reword this provision to include a practical timeframe for licensees to update item information in the item control system and for receiving and entering receipts into accounting records that is consistent with currently authorized licensee practices.

74.3(b) - “Detect, respond to, and resolve any anomaly indicating a possible loss, theft, diversion or misuse of SNM.”

- The absolute qualifier/term “any” implies no lower threshold of significance. It also implies the capability to detect every occurrence of anomalies at all times or even that all anomalies must be detected in real time as they occur. This would result in significant impact to industry to achieve these capabilities that are not considered in the regulatory analysis.
- The Introduction and Summary of Proposed revisions to MC&A Regulations states in regard to the General Performance Objectives, “The NRC does not expect that Category I, II, and III licensees would need to alter their MC&A programs in response to the 10 CFR 74.3 GPOs, because these GPOs are similar to the existing GPOs.” As it relates to 74.3(b), do current licensee approaches that utilize multiple control measures to provide necessary checks and balances to deter unauthorized removals and detect anomalies meet the new performance objective? While no single component is designed to be capable of identifying all anomalies, all of the time, do existing licensee capabilities that provide a high probability that any indicator of missing SNM when encountered will be recognized as an indicator and will be investigated and resolved meet the intent of 74.3(b)? If no, then these new requirements would result in significant impacts to industry to achieve these capabilities that are not considered in the regulatory analysis.

74.3(e) requires information protection for MC&A information that might assist adversaries to carry out acts of theft, diversion, misuse, or radiological sabotage.

- What is meant by MC&A Information, what does it include?
- It appears that the intent of this requirement is to create a new classification of information and associated new controls. Does “MC&A Information” need to be protected so that only those with a “need to know” can access the information?
- The Statements of Consideration state that “Proposed 10 CFR 74.3(e) would require that information related to MC&A be stored in a locked file cabinet or office.” Is it the intent of 74.3(e) that information such as copies of FNMC plans, Reports of Item Listings and locations, hardcopies of nuclear material transaction reports, hardcopies of NRC Form 327, or nuclear material shipment/receipts schedules be protected and stored in a locked cabinet or office? If so, these new requirements would result in significant impacts to industry to achieve these capabilities that are not considered in the regulatory analysis. Such a position would be inconsistent with the NRC’s statement noted above that it “does not expect that Category I, II, and III licensees would need to alter their MC&A programs in response to the 10 CFR 74.3 GPOs....”
- Does MC&A information mean MC&A records as described in the Draft NUREG-1065? Are the information protection requirements in 74.3(e) satisfied by existing licensee programs and practices for facility access control and MC&A Recordkeeping (record retention, retrieval, redundancy, traceability, and protection from loss, damage, vandalism, alteration and access by unauthorized persons)? If not, then these new requirements would result in significant impacts to industry to achieve these capabilities that are not considered in the regulatory analysis.

74.31(c) Program Capabilities

74.31(c)(6) is being modified to remove the exemptions for items existing less than 14 days and individual items containing less than 500g of U235. These proposed changes are without an articulated safety or security basis and would incur significant impacts not accurately reflected in the regulatory analysis.

- Westinghouse is opposed to the elimination of the two item control exemptions that have been in place for decades and have established de facto practical requirements for maintaining current knowledge of items and defining “substantial” quantities of material to be accounted for, controlled and protected from unauthorized removal. Elimination of the 14 day exemption implies that all items be created and item records and information on items in receipts and shipments must be updated or recorded in the item control system instantaneously. This would result in significant impacts to Westinghouse to achieve these capabilities without any commensurate or greater increase in the safety or security of the affected facilities.
- Current item control system capabilities and MC&A processes are designed to only track those material forms currently required to be tracked and not these additional material forms. Under a potential interpretation of the proposed rule, these material forms will need to be containerized in some instances, measured for SNM quantity in certain instances, and entered into the item control

tracking system. Containers will have to be modified to include unique identification and item control system software will have to be modified to include transactions to track new material forms/containers. Measurement methods will need to be developed, measurement equipment will need to be procured and integrated with the item control system software. Personnel would potentially have to perform new routine measurements and item control transactions. The potential impact to Westinghouse as a result of applying item control to these materials is greatly understated because the NRC assumes incorrectly that “licensees have in-house systems that track such items in near real time.” Imposing new requirements based on assumptions about administrative technologies used at sites that are not required by the NRC is not an effective strategy for sound regulatory decision-making. Further, Westinghouse believes it is a disincentive for the industry to individually or collectively seek improvements based on best practices or business improvements if it believes that the NRC will simply codify every voluntary measure.

- The NRC should reword this provision to include a practical timeframe for licensees to update item information in the item control system and for receiving and entering receipts into accounting records that is consistent with currently authorized licensee practices.

74.31(c)(9)– Tamper-Safing

- The intent of the wording in 10 CFR 74.31(c)(9) is unclear. Westinghouse cannot discern whether the intent was to expand or increase the existing use of tamper seals in our facility.
- When interpreted in combination with the proposal in 10 CFR 74.31(c)(6) to detect “any” unauthorized removal of any SNM, this requirement would be incredibly onerous and significantly increase the use of tamper seals and/or vaults, etc. at our facilities.
- NRC assumes incorrectly that, “all Category III facilities routinely tamper-safe containers of SNM, so this is not expected to be a burden for the affected licensees.” Most intermediate process material forms/items are not routinely tamper sealed while in interim storage during the material balance period (MBP) but rather are sealed in preparation for annual inventory at the end of the MBP. The new GPO requirements imply that these items be measured and stored under tamper seal in order to prevent and or detect unauthorized removal, etc. If the NRC intends to increase or expand licensees’ existing use of tamper-safing, the impact to industry for tamper-safing is greatly understated. If this is not the intent then, NRC needs to confirm in the final rule or supporting documentation that the addition of the provision for the tamper safe seal program is only intended for licensees to follow existing procedures and maintain adequate controls of tamper safe seals and not to add additional tamper safe seal usage in facilities.

RulemakingComments Resource

From: Culler, Sherrie L. <cullersl@westinghouse.com>
Sent: Monday, March 10, 2014 10:24 AM
To: RulemakingComments Resource
Cc: Sepitko, Wayne N
Subject: Comments on Proposed Rulemaking
Attachments: LTR-RAC-14-15 Comments on Proposed Rulemaking.pdf

To whom it may concern:

Please find attached LTR-RAC-14-15, Comments on Proposed Rulemaking and Guidance, "Amendments to Material Control and Accounting Regulations," Docket ID NRC-2009-0096 and Docket ID NRC-2013-0195.

Should you require additional information, please e-mail or call (803) 647-2220.

Thank you,

Sherrie L. Culler

EH&S Records Coordinator

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