

RulemakingComments Resource

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Subject: Docket ID NRC-2009-0096 and Docket ID NRC-2013-0195, RIN 3150-AI61:
Amendments to Material Control and Accounting Regulations and Proposed Guidance
for Fuel Cycle Facility Material Control and Accounting Plans

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FirstEnergy Nuclear Operating Company (FENOC) Comments on Amendments to Material Control and Accounting Regulations and Proposed Guidance for Fuel Cycle Facility Material Control and Accounting Plans

In response to 78 FR 67224, 78 FR 67225, and 78 FR 79328, FirstEnergy Nuclear Operating Company (FENOC) has reviewed the proposed rule and guidance, and appreciates the opportunity to provide comments.

1. FENOC fully supports and endorses the comments provided by the Nuclear Energy Institute (NEI) on the proposed rule and guidance for 10 CFR Part 74, "Amendments to Material Control and Accounting Regulations".

FENOC appreciated the opportunity to participate in the public meetings on January 9, 2014 and February 5, 2014 and agrees with NEI that the meetings assisted stakeholders in gaining a better understanding of the intent behind several of the proposed revisions, and for the NRC to better understand comments, concerns, and questions from stakeholders on the impacts of the proposed rule.

In general however, key provisions remain unclear. Also, the intent behind several proposed provisions is not clearly stated, and is inconsistent with the proposed rule language and guidance information. Without improved clarity of the proposed rule language, and improved consistency with the regulatory guidance, adoption of the proposed rule would introduce a great potential for inconsistent interpretation of the regulations by power reactor licensees and NRC Material Control and Accounting (MC&A) inspectors.

One goal is to avoid implementation issues, similar to those experienced with the 10 CFR 37 rulemaking, and to avoid unnecessary regulatory burden and cost due to a lack of clarity of intent and lack of regulatory basis.

2. FENOC also submits the following specific comments regarding the proposed rule and guidance to emphasize our support of NEI comments related to:

- The new general performance objectives (GPOs) in 74.3
- Tracking of "all" SNM required by 74.19(a)(1)
- Inventory interval of 12 months as defined in 74.19(c)
- New item control requirements in 74.19(d)

a) 74.3(a), (b), (c) – General Performance Objectives

FENOC supports the NEI comments to clarify, and better quantify, terms such as "confirm", "any" and "rapid".

FENOC also supports the NEI proposed alternative language for Part 74.3(b), and (c).

b) 74.3(e) – General Performance Objective

Based on NRC feedback during the February 5, 2014 public meeting, there was indication that current recordkeeping requirements would satisfy the intent of this GPO. However, the FR notes that 74.3(e) would require MC&A information to be stored in a locked file cabinet or room. FENOC strongly supports the position that this requirement be deleted since it is contradictory to the understood intent of the GPO.

FENOC does not believe that any additional controls are needed beyond existing recordkeeping programs required by Part 74. However, should the NRC proceed with this provision, the proposed rule wording should be clarified to ensure that the rule does not:

- control access to physical areas containing SNM (beyond current access control) for the sake of protecting MC&A information
- create new information protection/handling requirements (e.g., as for Safeguards Information) or,
- control paper or electronic copies of MC&A information, e.g., core maps, 741 forms, etc.

Also, should the NRC proceed with this provision, FENOC supports the NEI proposed alternate language for 74.3(e), and concurs that appropriate regulatory analysis and guidance would need to be developed.

c) Part 74.19(a)(1) – Tracking of “all” SNM

FENOC strongly supports replacing the word “all” in 74.19(a)(1) with “reportable quantity”.

The resulting consequence of “all” requires the tracking of items containing SNM in minute quantities, e.g., in the range of 1E-3 to 1E-6 grams. These minute quantities pose little to no risk to the public, or for theft or diversion. Also, items with these minute quantities require no DOE/NRC Form 741 for shipping and can be disposed of in Class “A” waste disposal sites with no tracking requirements. The requirement for power reactor licensees to track these minute quantity items creates unnecessary regulatory burden as these quantities are below regulatory reporting threshold, and physical inventory of some of these items, e.g., used nuclear instruments stored in high radiation areas, results in unnecessary radiological exposures.

d) Part 74.19(c) – 12-month inventory interval

Part 74.19(c) provides a 12-month inventory interval for licensees under Subpart B of 10 CFR 74. FENOC strongly supports the current regulation. For consistency with current regulation, we support deleting the reference to “370 day” in Section XII on page 67239 of the FR.

Additionally, FENOC suggests that the NRC guidance provided in the letter from Daniel H. Dorman to Douglas J. Walters, “Frequency of the Physical Inventory of Special Nuclear Material Required by 10 CFR 74.19(c)”, dated March 13, 2007, be added to Section XII of the FR to clarify the current 74.19(c) language, “not to exceed 12 months”.

e) Part 74.19(d) – Item Control System (ICS)

The FR indicates that the proposed rule for an ICS is consistent with ANSI N15.8. The NRC should explicitly state that following ANSI N15.8-2009 would satisfy the proposed requirement for an ICS. This is implied on FR pages 67228, 67240, and 67246, but should be explicitly stated.

It is our understanding that an ICS is expected to be capable of keeping current and accurate information of SNM item to allow determination of loss, theft, or diversion; and have the ability to provide all necessary information for investigation and recovery. We support NRC’s proposal not to define a frequency and request that NRC confirm that Section 12 of ANSI N15.8-2009, “System Review and Assessment” could be the framework for any processes a power reactor licensee would want to implement.

As discussed in the January 9, 2014 public meeting, annual physical inventories would satisfy the requirement to “periodically collect and verify the MC&A information recorded on site” (FR page 67242). Therefore, we strongly agree with the NEI comment that NRC should replace “periodically” with “every twelve months”.

Enhancements have been made over the past decades that have greatly improved the overall control and accounting of Special Nuclear Material, without the need for new regulations. FENOC agrees with the NEI comment that, as written, the proposed rule would not provide a commensurate or greater increase in safety or security, and would place unnecessary regulatory burden and cost on licensees. The ambiguity in the proposed language and the inconsistency with the regulatory guidance is of legitimate concern to FENOC since the potential for inconsistent interpretations of the rule is great, thereby creating the potential for even more unnecessary regulatory burden and cost.

The use of the word “all” in current regulation, 74.19(a)(1), and the resulting requirement to track minute quantities of SNM, is a clear example of how ambiguous terminology has yielded unnecessary regulatory burden, cost, and

radiological consequences to power reactor licensees for little to no gain in physical security or safety of the public.

We encourage the NRC to discontinue its rulemaking efforts to “strengthen” MC&A requirements. If the NRC decides to proceed with this rulemaking, credence should be given to industry comments, requests for a clear regulatory analysis and basis, and proposed alternative language.

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