

# ENERGYSOLUTIONS

April 21, 2014

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48 FR 67224

Cindy Bladey  
Chief, Rules, Announcements, and Directives Branch  
Office of Administration  
U.S. Nuclear Regulatory Commission  
Mail Stop: TWB-05B01M  
Washington, D.C. 20555-0001

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RULES AND DIRECTIVES  
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**Subject: Comments on Proposed Amendments to Material Control and Accounting Regulations, 10 CFR Parts 40, 70, 72, 74, and 150**

**Reference: Docket ID NRC-2009-0096**

Dear Ms. Bladey:

EnergySolutions hereby submits the following comments in response to the subject notice. We appreciate the opportunity to comment on the U.S. Nuclear Regulatory Commission's (NRC) proposed revisions to its regulations for Material Control and Accounting for Special Nuclear Material (SNM). We are supportive of the NRC's aim to enhance performance-based, risk-informed regulations; however, we believe this rulemaking exemplifies the challenges associated with performance-based regulations in the Agency.

EnergySolutions is in general agreement with and echoes the comments provided by the Nuclear Energy Institute in its March 10, 2014 letter from Mr. Adrian Heymer. In particular, we agree that the technical bases for the proposed rule changes have not been sufficiently well established and that if NRC chooses to proceed with revisions to Part 74, the technical and regulatory bases should be established and the proposed rule be republished for comment. In addition, we offer the specific comments below.

**It is not clear from the language in the proposed rule that there will be no impact to operations at low-level radioactive waste (LLW) disposal facilities.** EnergySolutions and other licensees are currently subject to Exemption Orders that provide an exemption from the Part 70 licensing requirements for possession of SNM with more than 350 grams of uranium enriched in U-235. While §§ 74.31(a)(2), 74.41(a)(2), 74.51(a)(2) explicitly exclude LLW disposal facilities, other language in the proposed rule creates ambiguity regarding this exclusion.

The proposed language for § 74.3 General performance objectives states that "...each licensee who is authorized to possess or use SNM in a quantity greater than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, at a fixed site, shall implement and maintain a material control and accounting program..." There is no exception cited for LLW disposal facilities. Furthermore, this section begins with the phrase "In addition to any other requirements in this part..." This could be read to impose a requirement in addition to those in §§ 74.31(a)(2), 74.41(a)(2), 74.51(a)(2), which invoke the performance objectives but exclude LLW facilities. Such a broad interpretation is consistent with the summary language in

the November 8, 2013, *Federal Register* notice, which states that “The proposed amendments add new requirements that would apply to NRC licensees who are authorized to possess SNM in a quantity greater than 350 grams.”

EnergySolutions proposes that, at a minimum, NRC revise § 74.3 to include an explicit exclusion for LLW disposal facilities. To accomplish this, we propose replacing the phrase “...SNM in a quantity greater than 350 grams” with “...SNM as authorized by a 10 CFR 70 license.”

As the NRC stated in EnergySolutions’ January 30, 2003 Exemption Order, 10 CFR 70 emphasizes criticality safety and safeguarding SNM against diversion or sabotage, and these are not considered significant issues because of the diffuse form of the SNM in waste under the conditions authorized by the Order. Any changes to Part 74 should explicitly preserve this exclusion. We do not feel that the proposed rule as worded accomplishes this objective.

**Item Control Requirements should not be imposed at ISFSIs.** EnergySolutions believes that the regulatory process currently in place for independent spent fuel storage installations (ISFSIs) is adequate to ensure the protection of SNM. Furthermore, we are not aware that the NRC has prepared any risk assessment that would justify changes. We are challenged to provide alternatives to what staff has proposed given that we are unaware of any need for strengthening existing requirements. Proposed changes to item control requirements should not be adopted.

**There is no need to change the threshold amount of SNM.** It is not clear why the NRC is soliciting comment on revising the threshold amount of SNM. We are not aware of any basis for revising the existing threshold of 350 grams. The potential effect on Agreement State licensees is significant, but the NRC has offered no analysis to suggest there is a problem with the current level, or of the effect of lowering it.

There are numerous examples throughout the rule that are cause for concern due to unintended, or unassessed, consequences of the cumulative impacts of regulation. Treating SNM records as safeguards information is but one example of the potential for the new rule to impart significant and costly regulatory burdens on licensees. EnergySolutions believes it is the NRC’s responsibility to the public to evaluate how much these new controls will cost the industry as well as to assess the cumulative impact of the new rules on licensees.

Thank you again for this opportunity to comment. Questions regarding these comments may be directed to me at (801) 649-2109 or [dshrum@energysolutions.com](mailto:dshrum@energysolutions.com).

Sincerely,



Daniel B. Shrum  
Senior Vice President  
Regulatory Affairs