

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40, 70, 72, 74, and 150

[NRC-2009-0096]

RIN 3150-AI61

Amendments to Material Control and Accounting Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Discontinuation of rulemaking activity.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is discontinuing a rulemaking activity that would have consolidated and revised the material control and accounting requirements for special nuclear material. The purpose of this action is to inform members of the public of the discontinuation of the rulemaking activity and to provide a brief discussion of the NRC's decision. The rulemaking activity will no longer be reported in the NRC's portion of the Unified Agenda of Regulatory and Deregulatory Actions (the Unified Agenda).

DATES: As of July 8, 2019, the rulemaking activity discussed in this document is discontinued.

ADDRESSES: Please refer to Docket ID NRC-2009-0096 when contacting the NRC about the availability of information for this action. You may obtain publicly-available

information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2009-0096. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the SUPPLEMENTARY INFORMATION section.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Thomas Young, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-5795, e-mail: Thomas.Young@nrc.gov; U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Background

The NRC ensures that its licensees control and account for special nuclear material (SNM) through the provisions that are currently in part 74 and several sections of part 72 of title 10 of the *Code of Federal Regulations* (10 CFR). These material control and accounting (MC&A) regulations are intended to ensure that the information about SNM is accurate, authentic, and sufficiently detailed to enable a licensee to maintain current knowledge of its SNM and manage its program for securing and protecting SNM from any loss, theft, diversion, or misuse. The requirements for MC&A, together with those for physical protection of facilities and information security, make up the primary elements of the NRC's SNM safeguards program. The MC&A component of the larger SNM safeguards program helps ensure that SNM is not stolen or otherwise diverted from the facility and supports the NRC's strategic goal of ensuring the secure use of radioactive materials.

Following the events of September 11, 2001, the NRC completed a comprehensive review of its safeguards and security programs, including MC&A requirements. Physical protection and MC&A programs complement each other in the safeguarding of nuclear materials. In SECY-08-0059, "Rulemaking Plan: Part 74 - Material Control and Accounting of Special Nuclear Material," dated April 25, 2008 (ADAMS Accession No. ML080580307), the NRC staff provided the Commission with a range of options for amending the MC&A regulations to provide a more risk-informed regulatory framework commensurate with the post-September 11, 2001, threat environment.

In the staff requirements memorandum (SRM) for SECY-08-0059, dated February 5, 2009 (ADAMS Accession No. ML090360473), the Commission approved Option 4 of the rulemaking plan, which directed the NRC staff to revise and consolidate the existing MC&A requirements into 10 CFR part 74 in order to update, clarify, and strengthen the regulations.

II. Discussion

On November 8, 2013, the NRC published a proposed rule and draft regulatory guidance documents in the *Federal Register* for public comment (78 FR 67225; 78 FR 67224, respectively). The proposed rule would have added new requirements for NRC licensees authorized to possess SNM in a quantity greater than 350 grams. Most of the proposed rule requirements would have clarified existing language and consolidated MC&A requirements into 10 CFR part 74. Other proposed rule requirements were intended to strengthen specific sections of the requirements for some types of facilities by providing: general performance objectives; item control system requirements; the use of tamper-safing procedures; and the designation of material balance areas, item control areas, and material custodians. The proposed rule would have applied, to different extents, to facilities licensed under 10 CFR parts 50, 52, 70, and 72.

The NRC received 27 comment submissions from members of the nuclear industry, Agreement State organizations, and private citizens. Regarding the proposed rule, several commenters expressed concerns that meeting the general performance objectives would require extensive changes to existing MC&A programs and that the general performance objectives were in some cases too restrictive. Commenters also spoke to the proposed removal of some thresholds and exemptions in the item control system requirements and their perception that requirements for tamper-safing and for material balance areas and item control areas were too far-reaching. In addition, several commenters requested that the NRC prepare a more complete regulatory analysis and a backfit analysis. Several commenters provided input to improve the clarity and utility of the draft associated regulatory guidance documents.

In response to the public comments, the NRC issued a revised regulatory analysis (ADAMS Accession No. ML18061A055) and a backfit evaluation (ADAMS Accession No. ML18061A058). A full list of comments received, and the NRC's responses, is available in ADAMS under Accession No. ML18061A050.

In SECY-18-0104, "Draft Final Rule: Amendments to Material Control and Accounting Regulations (RIN 3150-AI61; NRC-2009-0096)," dated October 15, 2018 (ADAMS Accession No. ML18061A056), the staff requested Commission approval to publish the final rule in the *Federal Register*. The final rule would have included revisions made to the proposed rule in response to public comments and revisions to the six draft associated regulatory guidance documents to reflect and explain the revised MC&A requirements in 10 CFR part 74.

In SRM-SECY-18-0104, dated April 3, 2019 (ADAMS Accession No. ML19093B393), the Commission disapproved the draft final rule and directed the staff to discontinue this rulemaking activity.

III. Conclusion

The NRC is discontinuing this rulemaking activity for the reasons discussed in this document. In the next edition of the Unified Agenda, the NRC will update the entry for this rulemaking activity and reference this document to indicate that the rulemaking activity is no longer being pursued. This rulemaking activity will appear in the completed actions section of that edition of the Unified Agenda but will not appear in future editions. If the NRC decides to pursue similar or related rulemaking activities in the future, it will inform the public through new rulemaking entries in the Unified Agenda.

Dated at Rockville, Maryland, this 2nd day of July, 2019.

For the Nuclear Regulatory Commission.

/RA/

Denise L. McGovern,
Acting Secretary of the Commission.