PDR

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Gentlemen:

The purpose of this letter is to document the position of the Material Control and Accountability Licensing Branch relative to the implementation and reporting of changes and modifications to approved Fundamental Nuclear Material Control Plans.

Three major amendments to upgrade material control and accounting for safeguards have been incorporated in 10 CFR Part 70 during the past five years. These are 10 CFR 70.51, 70.57, and 70.58. With each change, licensees have been required to submit detailed plans which describe the site specific program they will implement to ensure compliance with the new regulations. These plans were based on the operating conditions at the time they were written and for the foreseeable future. However, changes in facility operation inevitably occur which necessitate revision of these plans. The fact that the plans are expected to be dynamic documents is recognized in the provisions of 10 CFR 70.32(c).

In accordance with the provisions of this paragraph, a change or modification may be implemented without prior NRC approval when the effectiveness of the material control and accounting program is not decreased. The change or modification must subsequently be reported to NRC Licensing and the appropriate Region Office within two or six months depending on the category of special nuclear material involved. Conversely, if a change or modification is necessary that would decrease the effectiveness of the program, NRC Licensing approval is required prior to implementation.

While the intent of paragraph 70.32(c) is clear, i.e., to provide a vehicle for plan modification, there are no requirements or guidance relative to assessing the impact of a proposed change on the material control and accounting program. In view of the potential consequences of an incorrect decision, the importance of an adequate assessment is clear. A change implemented without prior approval which is questionable in the mind of a safeguards inspector may be cited as an unresolved item and referred to Licensing for evaluation. In a case where there is a significant potential for an adverse effect on the public health and safety or the common defense or security, an item of noncompliance with appropriate enforcement action could result. With the importance of making the correct decision in mind, the following guidance is provided.

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a. It is desirable that each licensee establish a formal review procedure. All licensee personnel affected by a proposed change should be given the opportunity to have input in the decision making process. The final decision on a change should be made by the individual designated to have overall responsibility for the material control and accounting program after it has been fully considered by those affected.

b. A plan change which has been judged by the licensee not to decrease the effectiveness of the program should be submitted to the Material Control and Accountability Licensing Branch as soon as possible. Although 70.32(c) allows two or six months for notice to the Commission, we believe that an earlier submittal is in the best interest of both the licensee and NRC. An early review provides added assurance that a correct evaluation has been made. The change should be submitted in the form of dated revised pages to the Fundamental Nuclear Material Control Plan. This format permits the reviewer to quickly assess the impact of the change and facilitates easy incorporation in the plan.

c. When a licensee deems it necessary to implement a change which could decrease the overall effectiveness of the plan, the proposed change must be submitted to Material Control and Accountability Licensing Branch with sufficient lead time to permit a thorough evaluation. When possible, this should be at least thirty (30) days in advance of the licensees desired implementation date. As before, the change should be submitted as dated, revised pages to the Fundamental Nuclear Material Control Plan; supporting information should be included in an appendix.

With respect to the license fee program (Part 170 of the Commission's regulations), the submission described in paragraph (b) is not subject to a fee. However, if the Material Control and Accountability Licensing reviewer disagrees with the licensee's interpretation, and the licensee elects to pursue the matter further by submitting additional supporting information, a fee in the appropriate category (administrative, minor or major safeguards) must be submitted before further review commences. It should be noted that a submission of the type described in paragraph (c) always requires a fee.

If you have any comments or questions on this guidance, I will be pleased to hear from you.

Sincerely,

James G. Partlow, Chief
Material Control and Accountability
Licensing Branch
Division of Safeguards