

May 10, 2013

MEMORANDUM TO: R. W. Borchardt
Executive Director for Operations

FROM: Andrew L. Bates, Acting Secretary /RA/

SUBJECT: STAFF REQUIREMENTS – COMSECY-12-0026 – REVISIONS
TO PROPOSED RULE: AMENDMENTS TO MATERIAL
CONTROL AND ACCOUNTING REGULATIONS
(RIN 3150-A161)

The Commission has disapproved publishing the proposed revisions to the material control and accounting requirements at this time.

The staff should conduct a backfit analysis on the proposed two-person rule provision and include the results in the rulemaking package.

As an alternative approach, if the staff believes significantly more time is needed to address this backfit issue, the staff could remove the two-person rule provision from this rulemaking package and consider the issue in a future rulemaking effort. If the two person rule provision is removed, the *Federal Register* Notice for this rule should include a statement that such a provision will be considered for rulemaking in the future and that interested stakeholders will have the opportunity to comment.

Before the *Federal Register* Notice is issued, the staff should provide the draft *Federal Register* Notice and regulatory analysis to the Commission for information.

The staff should revise any eventual *Federal Register* Notice to reflect that implementation of the two-person rule does not, in fact, simply consist of information collection and reporting.

For future proposed revisions or additions to the requirements in 10 CFR Part 74, if the staff concludes that the proposed revision or addition does not involve any provisions that impose backfits as defined in the backfit rules (10 CFR §§ 50.109, 70.76, 72.62, or 76.76, and the issue finality provisions in Part 52), the staff should provide an adequate explanation to support its conclusion in the appropriate section of the applicable *Federal Register* Notice.

The following changes should be made, as appropriate, to any eventual *Federal Register* Notice:

- a. Page 1, 2nd sentence of “SUMMARY” section, revise to read: “The NRC’s regulations specify requirements for ~~collecting and reporting information about~~ **control and accounting of** SNM that is held ~~be~~ **by** a licensee.”
- b. Page 2, 2nd ¶, first sentence, revise to read: “...adoption of a two-person rule to ~~verify the accuracy of MC&A information that licensees must collect and report.~~”

- c. Page 2, 2nd ¶, last 2 lines, revise to read: "...ensure the information about **adequate control and accurate accounting of SNM** is accurate."
- d. Page 7, 2nd full ¶, lines 4 – 5, revise to read: "...10 CFR part 70, and such requirements also apply to **reactor** licensees under 10 CFR parts 50 or 52, and (delete extra space)ISFSI licensees..."
- e. Page 8, line 2, revise to read: "...facilities ~~now~~ **currently** operate)."
- f. Page 8, line 9, revise to read: "...facilities ~~which~~ **that** are licensed..."
- g. Page 9, 2nd ¶, line 3, revise to read: "...five ~~common~~ GPOs in a new 10 CFR 74.3, and these requirements **that** would apply..."
- h. Page 11, line 4, revise to read: "...**for** by the reactor industry **by the** American National Standards Institute (ANSI)..."
- i. Page 11, 2nd ¶, last line, revise to read: "...SNM but ~~were~~ **are** not now..."
- j. Page 12, 2nd line of "Tamper-Safing" section, revise to read: "...vaults ~~which~~ **that** contain SNM."
- k. Page 12, last full sentence, revise to read: "...are required to follow ~~these MC&A~~ **tamper-safing** requirements.."
- l. Page 14, lines 8 - 9, revise to read: "... whenever an ~~information collection and reporting~~ task covered by this rule is performed."
- m. Page 14, lines 13 – 16, revise to read: "...attesting that the ~~information collection and reporting~~ task has been performed accurately. ~~Such workers must be able to verify both that the task was completed... and that the~~ **material was** information collected and recorded during the task is **accounted for** accurately."
- n. Page 14, 2nd ¶, lines 2 – 3, revise to read: "...unintentionally ~~inaccurately~~ record **inaccurate or incorrect** information...or would ~~inaccurately~~ **incorrectly** identify..."
- o. Page 14, 2nd ¶, lines 4 – 7, revise to read: "... ~~The primary objective of this requirement is to ensure the accuracy of MC&A records. The two-person rule would have additional security-related benefits, such as~~ **also** ~~reducing~~ the likelihood..."
- p. Page 15, line 14, revise to read: "...that ~~information generated or recorded for the operation being performed is~~ **material is accounted for** accurately."
- q. Page 15, last ¶, lines 1 – 2, revise to read: "...ISFSIs, and **Part 70**-licensees authorized to possess 350 grams of SNM or less **that are not Category I, II, or III fuel facilities**."
- r. Page 15, last 2 lines, revise to read: "...Licensed **Part 70** facilities authorized to possess 350 grams of SNM or less **that are not Category I, II, or III fuel facilities**..."

- s. Page 16, 1st full ¶, line 2, revise to read: "... definition of an MBA..."
- t. Page 21, add the following new question at the end: "Should there be a threshold for the amount of material that is required to be tracked under an item control system?"
- u. Page 22, 2nd ¶, lines 1 – 3, revise to read: "... the NRC proposes a new requirement for use of a two-person rule for specific tasks that involve information collection and reporting."
- v. Page 22, 2nd ¶, line 8, revise to read: "...Are there other information collection and reporting tasks..."
- w. Page 23, 1st ¶, line 3, revise to read: "...on NRC licensees while still maintaining adequate control and accounting of SNM?"
- x. Page 24, 2nd line from the bottom, revise to read: "...strengthen information collection and reporting requirements..."
- y. Page 28, line 7, revise to read: "...SNM, but which are not..."
- z. Page 29, line 12, add a comma after "gram units,"
- aa. Page 31, ¶ L. , lines 2-3 revise to read: "...and to verify the accuracy of the that accurate accounting of information about SNM is conducted that is being collected and reported. A licensee subject...condition. The two-person rule would have additional benefits such as also reducing the likelihood..."
- bb. Page 58, "Section XV. Backfitting and Issue Finality," revise to reflect SRM direction on conducting a backfit analysis.
- cc. Page 60, line 1, revise to read: "...Accounting means a system which that..."
- dd. Page 60, line 7, revise to read: "...in a manner which that minimizes..."
- ee. Page 61, line 6, revise to read: "...information which that is not accurate..."
- ff. Page 62, 1st full sentence, revise to read: "While the primary objective of the requirements is to The proposed revised and additional requirements achieve a number of objectives, including ensuring the accuracy of MC&A information records and reporting, the NRC acknowledges that some of the requirements, such as the two-person rule, would have additional safeguards-related benefits, such as reducing the likelihood that a single individual would be able to carry out any unauthorized diversions of SNM, and would increaseing the likelihood that deviation from safety and security procedures would be detected.
- gg. Page 62, 1st full ¶, revise to read: "...why the provision constitutes includes an information..."
- hh. Page 75, line 3, revise to read: "...Accounting means a system which that..."

- ii. Page 77, line 17, revise to read: "...procedures, and that ~~the information recorded about the task is accurate~~ material is accounted for accurately."
- jj. Page 82, ¶ (1), line 1, revise to read: "...structure which that assures..."
- kk. Page 82, ¶ (2), line 1, add a comma after "system,"
- ll. Page 82, ¶ (3), line 1, add a comma after "program,"
- mm. Page 83, lines 3 – 4, revise to read: "...difference which that is rejected by a statistical test which that has..."
- nn. Page 86, ¶ (4)(ii), line 3, revise to read: "...test which that has..."
- oo. Page 96, line 3, revise to read: "...values and which that include..."

cc: Chairman Macfarlane
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
CFO
OCA
OPA
Office Directors, Regions, ACRS, ASLBP (via E-Mail)
PDR