

RULEMAKING ISSUE NOTATION VOTE

December 15, 2011

SECY-11-0175

FOR: The Commissioners

FROM: R. W. Borchardt
Executive Director for Operations

SUBJECT: PROPOSED RULE: AMENDMENTS TO MATERIAL CONTROL
AND ACCOUNTING REGULATIONS (RIN 3150-AI61)

PURPOSE:

To request Commission approval to publish a proposed rule, in the *Federal Register*, that would amend Title 10 of the *Code of Federal Regulations* (10 CFR) to revise and consolidate within 10 CFR Part 74 requirements for material control and accounting (MC&A) of special nuclear material (SNM). The proposed changes would primarily affect 10 CFR Part 70 licensees. These changes are intended to update, clarify and strengthen the MC&A requirements. Minor conforming changes would be made to 10 CFR Parts 40, 70, 72 and 150. This paper does not address any new commitments. The proposed changes would be applicable to licensees authorized to possess quantities of SNM greater than 350 grams. Licensees authorized to possess SNM in quantities limited to 350 grams or less, whether licensed by the U.S. Nuclear Regulatory Commission (NRC) or by an Agreement State, would not be affected by this rulemaking.

BACKGROUND:

In 1985, the NRC created 10 CFR Part 74 to separate the MC&A requirements in 10 CFR Part 70 from safety requirements for licensees authorized to possess SNM under 10 CFR Part 70. Since that time, most of the MC&A requirements have been moved to 10 CFR Part 74.

In 2003, the Office of the Inspector General (OIG) conducted an audit to determine whether the NRC adequately ensures that its licensees control and account for SNM. In its report

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(OIG-03-A-15), OIG recommended that the NRC document the basis used for risk informing its oversight of MC&A activities.

In SECY-05-0143 (NRC's Agencywide Documents Access and Management System (ADAMS) Accession No. ML050870212), dated August 5, 2005, the staff proposed a number of changes to the MC&A program. These changes were based, in part, on: (1) the above referenced OIG recommendation; (2) an evaluation of NRC's MC&A regulatory program by Oak Ridge National Laboratory; and (3) staff considerations regarding the need to provide MC&A regulations for new types of licensees and facilities (e.g., a mixed oxide fuel fabrication facility). In the Staff Requirements Memorandum (SRM) for SECY-05-0143 (ADAMS Accession No. ML053220618), the Commission directed staff to develop a rulemaking plan, including: (1) a broad overview of how MC&A is integrated with other regulatory activities; (2) identification of areas requiring policy decisions by the Commission; and (3) a definition of the relationship between MC&A and physical security.

SECY-08-0059 (ADAMS Accession No. ML080580307), dated April 25, 2008, described the rulemaking plan, which included six options for Commission consideration. The SRM for SECY-08-0059 (ADAMS Accession No. ML090360473) directed the staff to proceed with Option 4, which was limited to revising and consolidating current MC&A requirements in 10 CFR Part 74, and revising existing guidance documents and issuing one new guidance document.

DISCUSSION:

The proposed changes to 10 CFR Part 74 are within the scope of Option 4 described in SECY-08-0059, and the reasons for making these changes are discussed in the *Federal Register* notice for the proposed rule (Enclosure 1).

The proposed changes are summarized below. The majority of the changes would affect MC&A provisions in 10 CFR Part 74, with conforming changes in 10 CFR Parts 40, 70, 72 and 150. The proposed changes would be consistent with the NRC's strategic goal and strategic outcome for security, and would enhance the requirements for MC&A commensurate with risk. In this regard, in terms of the amounts of SNM necessary to form a critical mass, the activities of licensees who are only authorized to possess 350 grams or less of SNM carry less risk compared to the activities of licensees authorized to possess more than 350 grams of SNM. Licensees who are only authorized to possess 350 grams or less of SNM are thus not being made subject to these enhanced MC&A requirements. However, all SNM licensees remain subject to the existing reporting requirements of 10 CFR 74.11, 74.13, and 74.15 (or to the parallel Agreement State reporting provisions contained in 10 CFR 150.16 and 150.17), thereby ensuring that on a nationwide basis an adequate level of nuclear safety and security over SNM will be maintained.

The preliminary proposed rule language was published in the *Federal Register* on May 16, 2011 (76 FR 28193), and thirteen comment letters were received and considered.

The organization of 10 CFR Part 74 into subparts A-F would remain unchanged. Fuel fabrication facilities supplying fuel to commercial power reactors, and uranium enrichment facilities (both of which are often referred to as Category III facilities) would remain subject to

Subpart C, “Special Nuclear Material of Low Strategic Significance.” Fuel fabrication facilities supplying fuel to the Navy reactors, and to research and test reactors (such fabrication facilities are often referred to as Category I facilities) would remain subject to Subpart E, “Formula Quantities of Strategic Special Nuclear Material.”

Under this rulemaking, the scope of 10 CFR Part 74 would be expanded to include independent spent fuel storage installations (ISFSIs). The proposed MC&A reporting requirements for an ISFSI licensee under 10 CFR Part 72 would be essentially unchanged, except that the requirements would be located in 10 CFR Part 74.

This rulemaking would add defined terms to 10 CFR Part 74. Some of the proposed definitions (*accounting, custodian, material control and accounting*) are already commonly used by licensees in their MC&A programs. Other proposed definitions (*material balance area, item control area, and two-person rule*) would clarify and strengthen the MC&A requirements.

A reference to a category I quantity of SNM would be added to the definition of *formula quantity*, to make it consistent with the existing definitions in 10 CFR Parts 70 and 73. Similarly, references to a category II quantity of SNM and a category III quantity of SNM would be added to the definitions of *special nuclear material of moderate strategic significance* and *special nuclear material of low strategic significance*, respectively, to match the existing definitions of these terms in 10 CFR Parts 70 and 73.

The defined term, *effective kilograms of special nuclear material* (and references to it in several provisions) would be removed from 10 CFR Part 74. Quantities of SNM would instead be expressed in gram units to simplify the accounting requirements in 10 CFR Part 74 and provide consistency with the existing 10 CFR Part 74 SNM definitions referenced above (*formula quantity, special nuclear material of moderate strategic significance, and special nuclear material of low strategic significance*), all of which specify quantities in gram units. This proposed removal would also correct an inconsistency within the current 10 CFR 74.19 provisions. Existing 10 CFR 74.19(b) refers to a quantity of SNM “exceeding one effective kilogram” in specifying the set of licensees that must establish written MC&A procedures. Existing 10 CFR 74.19(c) refers to a quantity of SNM “greater than 350 grams” in specifying the set of licensees that must conduct physical inventories. Removing *effective kilograms of special nuclear material* from 10 CFR Part 74 would also eliminate confusion caused by a conflict between the regulatory thresholds for the SNM categories (Category I, Category II, and Category III) and an effective kilogram of SNM. *Effective kilograms of special nuclear material* would remain as a defined term in 10 CFR Parts 40, 70, 75, 76, and 110, to ensure the continued effective implementation of the U.S./International Atomic Energy Agency Safeguards Agreement.

This rulemaking would add a new Appendix A to 10 CFR Part 74. The appendix, “Categories of Special Nuclear Material,” would include a table showing the quantities for each category, the corresponding subpart in 10 CFR Part 74 for each category, and formulae to calculate the quantity of material for Category I, II, or III facilities. The table would be based on the materials and quantities that are currently in Appendix M to 10 CFR Part 110, “Categorization of Nuclear Material.”

The existing general performance objectives (GPOs) in 10 CFR 74.31(a) and 74.33(a) (applicable to licensees of Category III facilities), 74.41(a) (applicable to licensees of Category II facilities), and 74.51(a) (applicable to licensees of Category I facilities) would be revised by consolidating their common provisions into a new 10 CFR 74.3. In addition to being applicable to Category III, II, and I facilities, the 10 CFR 74.3 GPOs would be applicable to reactor licensees and to two additional NRC materials licensees who are authorized to hold more than 350 grams of SNM, but which are not Category III, II, or I facilities. The GPOs describe informational activities to deter, detect, or aid in responding to any loss, theft, diversion or misuse of SNM. The GPO requirements in 10 CFR 74.33(a) that are specific to Category III enrichment facilities, and the GPO requirements in 10 CFR 74.51(a) that are specific to Category I facilities would be retained in those revised sections.

Under proposed revisions to 10 CFR 74.19(c), the reactor licensees and the two additional NRC materials licensees (who would be made subject to the GPO requirements as discussed above), would also be made subject to item control requirements, to better ensure that these licensees maintain current knowledge of each held item. Consistent with the graded approach that has long been used for MC&A requirements, these proposed item control provisions would be less rigorous than the existing item control requirements that the Category III, II, and I facilities must meet.

This rulemaking would revise the item control requirements in subparts C and D to remove some currently exempted items. Specifically, the exemption for items existing 14 days or less in Category III and II facilities would be removed. Licensees now have the ability to track such items within their MC&A systems. The exemption for items below the stated detection level for Category III facilities would be removed, as would a similar exemption applicable to Category II facilities, for the same reasons.

A two-person rule would be added to strengthen the MC&A requirements by making the unauthorized diversion of material less likely. The two-person rule would also better ensure that correct procedures are used, that covered actions are completed correctly by qualified and authorized personnel, and that information about the actions is accurately documented. The rule would apply to licensees who are subject to the 10 CFR Part 74, subpart C, D, or E requirements for tamper-safing, performing physical inventories, transferring SNM, or handling SNM that is not under an active control measure or monitoring or surveillance condition. The staff is aware that existing licensees have expressed concerns about the potential impact of the two-person rule. These concerns would be explored in public comments on the proposed rule, which may include public meetings during and after the comment period.

The existing references in 10 CFR Part 74 to a fundamental nuclear material control (FNMC) plan would be replaced with references to an MC&A plan. The staff's view is that FNMC is an outdated term and does not include "accounting." Licensees would not be required to change the names of their existing plans.

The exemption for an irradiated fuel reprocessing plant would be removed from 10 CFR Part 74, subpart E (existing 10 CFR 74.51(a)). The licensee of any future such facility would likely possess quantities of strategic SNM that need to be subject to the highest level of MC&A safeguards and security requirements, to ensure that this material is adequately protected.

Consistent with Option 4, if the NRC conducts a rulemaking for irradiated fuel reprocessing, MC&A requirements would be reviewed at that time to determine if any additional changes were necessary.

Many of the references to due dates and reporting frequencies would be changed to calendar days, to make 10 CFR Part 74 more uniform in this regard. Using calendar days avoids the existing uncertainty over whether weekends and holidays are counted in determining whether or not a licensee has taken timely action. Plain language changes would be made to clarify the requirements for shipper-receiver difference comparisons for all SNM receipts, by consistently referring to the standard error of the inventory difference. The requirements for material status reports would be re-organized for clarity.

SUPPORTING DOCUMENTS:

Enclosure 2, the Draft Regulatory Analysis, shows that the proposed rule would result in a total one-time cost to NRC licensees of approximately \$646,000 followed by total annual costs of approximately \$1.1 million. The analysis estimates the total present value of these costs at \$8.1 million (using a 7-percent discount rate) and at \$9.7 million (using a 3-percent discount rate) over the 10-year analysis period. The rule would result in a one-time cost to the NRC of approximately \$259,000, followed by no annual costs.

Enclosure 3, the Draft Environmental Assessment, includes the finding that this rule, if adopted, would not have any significant environmental impacts, and therefore this rulemaking does not warrant the preparation of an environmental impact statement. As the proposed amendments primarily pertain to information collection and reporting requirements, adopting them would have no significant impact on the quality of the human environment.

The following guidance documents would be revised and updated on a coordinated schedule that parallels this proposed rulemaking. Draft versions of these documents would be released for public comment with the proposed rule. Final versions of these documents would be released to the public with the final rule. A new guidance document for Category II facilities will be included with the guidance documents below:

- NUREG-1280, "Standard Format and Content Acceptance Criteria for the Material Control and Accounting (MC&A) Reform Amendment,"
- NUREG-1065, "Acceptable Standard Format and Content for the Fundamental Nuclear Material Control (FNMC) Plan Required for Low-Enriched Uranium Facilities,"
- NUREG/CR-5734, "Recommendations to the NRC on Acceptable Standard Format and Content for the Fundamental Nuclear Material Control (FNMC) Plan Required for Low-Enriched Uranium Enrichment Facilities,"
- NUREG/BR-0096, "Instructions and Guidance for Completing Physical Inventory Summary Report."

AGREEMENT STATE COMPATIBILITY ISSUES:

The proposed rule amends sections of the regulations that are currently classified as Compatibility Category "NRC," under the 1997 "Policy Statement on Adequacy and Compatibility of Agreement States Programs." The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or provisions of 10 CFR, and cannot be relinquished to the Agreement States. There are thus no compatibility issues.

RESOURCES:

The resources for this rulemaking are in the Fuel Facilities Business Line. To complete and implement the rulemaking, 3.0 full-time equivalents (FTE) would be required.

In Fiscal Year (FY) 2012, 1.7 FTE have been proposed in the NRC's budget being considered by Congress and would be required for this activity as follows: Office of Federal and State Materials and Environmental Management Programs (FSME) (1.0), Office of Nuclear Material Safety and Safeguards (NMSS) (0.3), Office of New Reactors (0.1), Office of Administration (ADM) (0.1), Office of the General Counsel (OGC) (0.1), and Office of Information Services (OIS) (0.1).

In FY 2013, 1.3 FTE are estimated for this activity as follows: FSME (0.5), NMSS (0.5), ADM (0.1), OGC (0.1), and OIS (0.1). These resources have been included in the agency's proposed FY 2013 budget.

RECOMMENDATIONS:

That the Commission:

1. Approve for publication, in the *Federal Register*, the proposed amendments to 10 CFR Parts 40, 70, 72, 74, and 150 (Enclosure 1).
2. Note:
 - a. The proposed amendments will be published in the *Federal Register*, allowing 75 days for public comment.
 - b. The Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification and the reasons for it, as required by the Regulatory Flexibility Act, 5 U.S.C. 605(b).
 - c. A Draft Regulatory Analysis has been prepared for this rulemaking (Enclosure 2).
 - d. A Draft Environmental Assessment has been prepared for this rulemaking (Enclosure 3).
 - e. Appropriate congressional committees will be informed of this action.

- f. A press release will be issued by the Office of Public Affairs when the proposed rulemaking is filed with the Office of the Federal Register.

Office of Management and Budget (OMB) Paperwork Reduction Act review is required. A clearance package will be forwarded to OMB no later than the date the proposed rule is submitted to the Office of the Federal Register for publication.

COORDINATION:

The OGC has no legal objection to the proposed rulemaking. The Office of the Chief Financial Officer has reviewed this Commission Paper for resource implications and has no objections. The rule suggests changes in information collection requirements that must be submitted to OMB no later than the date the proposed rule is forwarded to the *Federal Register* for publication.

/RA by Michael F. Weber for/

R. W. Borchardt
Executive Director
for Operations

Enclosures:

1. *Federal Register* notice
2. Draft Regulatory Analysis
3. Draft Environmental Assessment

NUCLEAR REGULATORY COMMISSION

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

RIN 3150-AI61

[NRC-2009-0096]

Amendments to Material Control and Accounting Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is proposing to amend its regulations for material control and accounting (MC&A) of special nuclear material (SNM). The goal of this rulemaking is to revise and consolidate the MC&A requirements in order to update, clarify and strengthen them. The proposed amendments would apply to NRC licensees who are authorized to possess SNM in a quantity greater than 350 grams. The MC&A requirements for an independent spent fuel storage installation (ISFSI) would be consolidated with MC&A regulations applicable to other types of facilities authorized to possess SNM. General performance objectives would be made applicable to an additional set of NRC licensees who are authorized to possess more than 350 grams of SNM. Some current exemptions in the MC&A regulations would be removed or modified to strengthen the requirements, and defined terms would be added to clarify the regulations. A two-person rule would be added to strengthen certain MC&A requirements for tamper-safing, performing physical inventories, transferring SNM, or any handling of SNM that is not under an active

control measure or monitoring or surveillance condition. Plain language revisions would also be made. Guidance documents would be updated as necessary to reflect these proposed changes.

DATES: Submit comments on the rule by **[insert 75 days from date of publication in the *Federal Register*]**. Submit comments specific to the information collections aspects of this rule by **[insert date 30 days from date of publication in the *Federal Register*]**. Comments received after these dates will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before these dates.

ADDRESSES: Please include Docket ID NRC-2009-0096 in the subject line of your comments. For instructions on submitting comments and accessing documents related to this action, see Section I, "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods.

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2009-0096. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; e-mail: Carol.Gallagher@nrc.gov.
- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.
- **E-mail comments to:** Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677.
- **Hand deliver comments to:** 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays (telephone: 301-415-1677).

• **Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at
301-415-1101

You may submit comments on the information collections by the methods indicated in Section X, Paperwork Reduction Act Statement, of this document.

FOR FURTHER INFORMATION CONTACT: Thomas Young, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-5795, e-mail: Thomas.Young@nrc.gov.

SUPPLEMENTARY INFORMATION:

- I. Submitting Comments and Accessing Information.
- II. Introduction and Background.
- III. Discussion.
 - A. *Whom would this action affect?*
 - B. *Why are the requirements being revised?*
 - C. *When would these actions become effective?*
 - D. *What are the changes to the general performance objectives?*
 - E. *Are sealed sources included in the general performance requirements for Category II and III facilities?*
 - F. *Why would newly defined terms be added to 10 CFR 74.4?*
 - G. *Why would the term, “effective kilograms of special nuclear material,” be removed from 10 CFR Part 74?*
 - H. *Why would Appendix A to 10 CFR part 74 be added?*

- I. Why would references to the MC&A “system” be changed to the MC&A “program,” and why would “MC&A plan” replace “FNMC plan?”*
- J. What would change in the reporting requirements to the NMMSS, including those that ISFSIs are subject to?*
- K. Why would a two-person rule be added?*
- L. Why would requirements be added to designate material balance areas (MBA), item control areas (ICA), and custodians?*
- M. Why would calendar days be inserted into 10 CFR part 74?*
- N. Would the implementation guidance documents be updated for the MC&A program?*
- O. Would there be changes for item controls or physical inventories?*
- P. Why would an exception be added to 10 CFR 74.15(b)(2)?*
- Q. What should I consider as I prepare my comments to the NRC?*

- IV. Discussion of Proposed Amendments by Section.
- V. Criminal Penalties.
- VI. Agreement State Compatibility.
- VII. Plain Language.
- VIII. Voluntary Consensus Standards.
- IX. Environmental Assessment and Finding of No Significant Environmental Impact:
Availability.
- X. Paperwork Reduction Act Statement.
- XI. Regulatory Analysis.
- XII. Regulatory Flexibility Certification.
- XIII. Backfitting and Issue Finality.

I. Submitting Comments and Accessing Information.

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, <http://www.regulations.gov>. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this notice using the following methods:

- **NRC's Public Document Room (PDR):** The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- **NRC's Agencywide Documents Access and Management System (ADAMS):** Publicly available documents created or received at the NRC are available online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov.
- **Federal rulemaking Web site:** Public comments and supporting materials related to this notice can be found at <http://www.regulations.gov> by searching on Docket ID NRC-2009-0096.

II. Introduction and Background.

The NRC plans to amend Title 10 of the *Code of Federal Regulations* (10 CFR) to consolidate the MC&A provisions in 10 CFR part 74. Conforming changes would be made to 10 CFR parts 40, 70, 72 and 150. The changes are intended to update, clarify, and strengthen MC&A requirements.

The existing 10 CFR part 74 regulations are organized in a graded fashion. General MC&A reporting and recordkeeping requirements in subpart B apply to all reactor and materials licensees authorized to possess SNM under 10 CFR part 70. Licensees authorized to possess SNM of “low strategic significance” (defined in 10 CFR 74.4) are subject to the more rigorous MC&A requirements in subpart C. Such licensees operate what are known as Category III facilities, which include licensed uranium enrichment facilities and the three fuel fabrication facilities supplying fresh fuel assemblies to commercial power reactors. Licensees authorized to possess SNM of “moderate strategic significance” (defined in 10 CFR 74.4) are subject to the MC&A requirements in subpart D, and are authorized to operate Category II facilities (no such facilities now operate). The most rigorous MC&A requirements are in subpart E, and apply to licensees authorized to possess a “formula quantity” (defined in 10 CFR 74.4) of strategic special nuclear material (SSNM). Such 10 CFR part 70 licensees operate what are known as Category I facilities. Only two such facilities now operate, and they fabricate fuel for use by the U.S. Navy and in research and test reactors. One potential Category I facility may operate in the future as a mixed oxide fuel fabrication facility.

In 2008, the NRC developed an MC&A rulemaking plan (SECY-08-0059, Rulemaking Plan: Part 74 - Material Control and Accounting of Special Nuclear Material, ADAMS Accession No. ML080580307) and submitted it to the Commission for its consideration. In accordance

with the Commission's approval of the rulemaking plan's Option 4 in the Staff Requirements Memorandum (SRM) for SECY-08-0059 (ADAMS Accession No. ML090360473), the following various changes would be made to 10 CFR part 74.

- Relocate the Nuclear Materials Management and Safeguards System (NMMSS)-related reporting requirements for ISFSIs that are currently located in 10 CFR part 72. These 10 CFR part 72 requirements duplicate requirements in existing subpart B of 10 CFR part 74. In this regard, revisions are proposed to 10 CFR 72.72 and 72.74, and 10 CFR 72.76 and 72.78 would be deleted. Revisions would be made to 10 CFR 40.64 and 150.17(b) to remove references there to 10 CFR part 72 material status reports.

- Revise 10 CFR part 74 to make it clear what requirements apply to different types of facilities because although the subpart B general provisions apply to almost all facilities that are authorized to possess and use SNM, some licensees have expressed confusion as to what requirements apply to a particular facility. To address this matter, the staff proposes to revise the 10 CFR part 74 definitions of *formula quantity*, *special nuclear material of moderate strategic significance*, and *special nuclear material of low strategic significance* by conforming them to the existing definitions in 10 CFR parts 70 and 73, making clear that these classes of SNM are what is referred to, respectively, as Category I, II and III quantities of material. Licensees authorized to possess Category I material are subject to the 10 CFR part 74 subpart E requirements, while licensees authorized to possess Category II and III material are subject to the subpart D and C requirements, respectively. To further clarify these divisions, the staff proposes to add Appendix A ("Categories of SNM") to 10 CFR part 74.

- Include general performance objectives (GPOs) that would apply to NRC licensees authorized to possess SNM in quantities greater than 350 grams, rather than having such objectives apply only to licensees authorized to possess Category I, II and III quantities of material, as is the case under the existing MC&A requirements. Examples of GPOs stated in

Option 4 of SECY-08-0059 include the need to confirm the presence of SNM and to resolve indications of missing material. The GPOs that would apply to NRC licensees authorized to possess SNM in a quantity greater than 350 grams are stated in proposed 10 CFR 74.3. Existing performance objectives that are specific to enrichment facilities would be retained in the revised 10 CFR 74.33(a) requirements. Existing performance objectives that are specific to Category I fuel fabrication facilities are retained in the revised 10 CFR 74.51(a) requirements.

- Add item control requirements that would apply to all NRC licensees authorized to possess SNM in quantities greater than 350 grams. Existing item control requirements applicable to Category I, II, and III facilities would remain unchanged. The less rigorous item control requirements that would apply to a licensee authorized to possess SNM in a quantity greater than 350 grams are stated in proposed 10 CFR 74.19(c)(1).

- Delete or modify some item control exemption provisions in 10 CFR 74.31(c)(6), 74.33(c)(6), and 74.43(b)(6).

- Include definitions for new terms and clarify the definitions of some terms. In this regard, the staff proposes to add defined terms for *accounting*, *custodian*, *item control area*, *item control system*, *material balance area*, *material control and accounting*, and *two-person rule*. The staff proposes to revise the defined terms for *formula quantity*, *special nuclear material of moderate strategic significance*, and *special nuclear material of low strategic significance*, as previously discussed.

- Add requirements related to the two-person rule, to ensure that two qualified and authorized individuals are present for tamper-safing, performing physical inventories, transferring SNM, or handling any SNM that is not under an active control measure or monitoring or surveillance condition. Category I licensees are presently subject to checks and balances (reflecting the two-person rule concept) in their MC&A programs as required by 10

CFR 74.51(b)(1), 74.59(b)(1), and (h)(3). To strengthen the MC&A requirements for Category III and II facilities, a two-person rule would be added in proposed revisions to 10 CFR 74.31(c)(6), 74.33(c)(6), and 74.43(c)(9). For Category I facilities, the two-person rule is stated in proposed 10 CFR 74.59(h)(6).

- Strengthen requirements related to tamper-safing containers and vaults. A tamper-safing program is already part of the MC&A requirements for Category II and I facilities (10 CFR 74.43(c)(3) and 74.59(f)(2), respectively) and similar tamper-safing requirements would be made applicable to the Category III fuel fabrication and uranium enrichment facilities as set forth in proposed 10 CFR 74.31(c)(9) and 74.33(c)(9).

Plain language revisions are reflected in the proposed regulations, and include replacing the existing references to the fundamental nuclear material control (FNMC) plan with references to an MC&A plan. The staff's view is that FNMC is an outdated term and does not include "accounting;" thus, it does not fully describe the accounting aspects of an MC&A program.

The defined term, *effective kilograms of special nuclear material* (and references to it in several provisions) would be removed from 10 CFR part 74. Quantities of SNM would instead be expressed in gram units to simplify the accounting requirements in 10 CFR part 74 and provide consistency with the existing 10 CFR part 74 definitions of the various types of SNM, all of which specify quantities in gram units. This proposed removal would also correct an inconsistency within the current 10 CFR 74.19 provisions. Existing 10 CFR 74.19(b) refers to a quantity of SNM "exceeding one effective kilogram" in specifying the set of licensees that must establish written MC&A procedures. Existing 10 CFR 74.19(c) refers to a quantity of SNM "greater than 350 grams" in specifying the set of licensees that must conduct physical inventories. Removing *effective kilograms of special nuclear material* from part 74 would also eliminate confusion caused by a conflict between the regulatory thresholds for the SNM

categories (Category I, Category II, and Category III) and an effective kilogram of SNM.

Effective kilograms of special nuclear material would remain as a defined term in 10 CFR parts 40, 70, 75, 76, and 110, to ensure the continued effective implementation of the U.S./International Atomic Energy Agency (IAEA) Safeguards Agreement.

Other proposed changes include revising 10 CFR 150.17(a) to conform with the proposed plain language revisions to 10 CFR 74.13. No substantive changes are being proposed in this regard and licensees authorized to possess SNM under a license from an Agreement State would continue to submit material status reports to the NRC via the NMMSS. References to due dates and reporting frequencies would be made more uniform by expressing most timeframes in terms of calendar days (e.g., 7, 30, 60, 65, 95, 185, or 370 calendar days). The interval for the number of months assigned to a licensee management assessment of the MC&A program would be retained (e.g., 12 months, 18 months, or 24 months). The retention period for records would be retained (e.g., 3 years). An Appendix A, "Categories of Special Nuclear Material," would be added to 10 CFR part 74. The appendix would be based on existing Appendix M to 10 CFR part 110, and would show the SNM quantity limits for Category I, Category II, and Category III facilities. The new appendix would also show the corresponding Subpart in 10 CFR part 74 for each category, and the formulae to calculate any combination of SSNM within the quantity limits for a category. A conforming change would be made to replace the reference to 10 CFR 74.51(c) with 10 CFR 74.51(b) because the paragraph designation about implementation of an MC&A plan would then be consistent with the other cites listed in 10 CFR 70.32(c)(1)(i) and (iii) that refer to paragraph (b) in 10 CFR 74.31, 74.33, and 74.41.

SECY-09-0082 ("Update on Reprocessing Regulatory Framework – Summary of Gap Analysis," ADAMS Accession No. ML091520280), dated May 28, 2009, included the NRC staff's recommendation that the existing 10 CFR 74.51(a) exemption for an irradiated fuel

reprocessing plant be removed as part of this rulemaking. Proposed 10 CFR 74.51(a)(2) reflects the removal of this exemption.

The NRC placed on www.regulations.gov a preliminary version of the proposed rule language to inform stakeholders of the status of the proposed rulemaking and invited stakeholders to provide informal comments by June 30, 2011. Thirteen comment letters were received by this date, and were considered. Public input at this stage helped to develop the proposed rule.

III. Discussion.

To further describe this proposed rulemaking the following series of questions and answers is set forth.

A. Whom would this action affect?

Licensees authorized by the NRC to possess SNM in a quantity greater than 350 grams would be affected by the proposed rule. For example, the proposed revisions to 10 CFR 74.19(c) would require licensees to establish, document, implement, and maintain an *item control system* (as newly defined in 10 CFR 74.4).

Agreement State licensees authorized to possess SNM are subject to the 10 CFR 150.17 material status reporting requirements. The proposed changes to these requirements are plain language revisions, and conform with the proposed plain language revisions to the 10 CFR 74.13 material status reporting requirements. These changes do not require any action by the Agreement State licensees.

B. Why are the requirements being revised?

Many of the current MC&A requirements were developed over 20 years ago and need to be updated to include commonly used terms. Item control system requirements are being strengthened by including items that are currently exempted from these requirements. The requirements for general performance objectives to deter, detect, or aid in responding to any loss, theft, diversion or misuse of SNM need to be extended to NRC licensees who are not authorized to possess Category I, II, or III amounts of material, but who are authorized to possess SNM in a quantity greater than 350 grams. The NRC's view is that all MC&A regulations governing SNM held by NRC licensees should be in 10 CFR part 74 in order to provide a focal point and a complete framework/ umbrella for controlling and accounting for all SNM under NRC oversight.

C. When would these actions become effective?

The NRC expects that the final rule would be published within 12 months of the publication of the proposed rule for comment. The revisions to the regulations would become effective after publication of the final rule.

D. What are the changes to the general performance objectives?

The existing general performance objectives (GPOs) in 10 CFR 74.31(a) and 74.33(a) (applicable to licensees of Category III facilities), 74.41(a) (applicable to licensees of Category II facilities), and 74.51(a) (applicable to licensees of Category I facilities) would be revised by consolidating their common provisions into a new 10 CFR 74.3. In addition to being applicable to Category III, II, and I facilities, the 10 CFR 74.3 GPOs would be applicable to reactor licensees and two additional NRC materials licensees that are authorized to hold more than 350 grams of SNM, but which are not Category III, II, or I facilities. The proposed 10 CFR 74.3 GPOs describe activities to deter, detect, or aid in responding to any loss, theft, diversion or misuse of SNM. The existing GPO provisions in 10 CFR 74.31, 74.33,

74.41, and 74.51 would be revised to refer to 10 CFR 74.3, but GPOs that are unique to uranium enrichment facilities and Category I fuel fabrication facilities would be retained in 10 CFR 74.33 and 74.51.

E. Are sealed sources included in the general performance requirements for Category II and III facilities?

Yes. The current exclusion for sealed sources in the 10 CFR 74.31 and 74.41 GPO provisions would be relocated to Appendix A (Note 1) to clarify that the sealed sources would not be considered for determining whether a facility is a Category III facility or a Category II facility. The change would be consistent with the current requirements, which were intended to exclude sealed sources from the material quantity calculations used to determine whether a facility is a Category III facility subject to subpart C requirements, or a Category II facility subject to the subpart D requirements of 10 CFR part 74. However, sealed sources would be within the scope of the proposed 10 CFR 74.3 GPOs. Sealed sources would continue to be subject to a licensee's MC&A program.

F. Why would newly defined terms be added to 10 CFR 74.4?

Certain terms are commonly used by licensees in their internal procedures implementing their MC&A systems, plans and programs, including *accounting, custodian, material control and accounting*. Defining these terms in NRC regulations would clarify the requirements and improve understanding of the regulations. Section 74.4 would provide the specific meaning for these terms that appear in the MC&A requirements. Other newly defined terms (*material balance area, item control area, and two-person rule*) and their related requirements are deemed necessary to strengthen the MC&A requirements at facilities holding significant amounts of SNM, by making any diversion or misuses of SNM at such facilities less likely.

G. Why would the term "effective kilograms of special nuclear material" be removed

from 10 CFR part 74?

Doing so would allow quantities of SNM specified in 10 CFR part 74 to be expressed in gram units which would simplify the accounting requirements and provide consistency with the existing definitions of *formula quantity*, *special nuclear material of low strategic significance*, and *special nuclear material of moderate strategic significance* which specify quantities in gram units. The reference to one effective kilogram in the 10 CFR 74.19(b) written MC&A procedures provision would be replaced with a reference to a quantity of SNM greater than 350 grams. This 350-gram amount would also be referenced in proposed 10 CFR 74.19(c) regarding the item control and the physical inventory provisions stated there. References to one effective kilogram in the GPO provisions of 10 CFR 74.31, 74.33, and 74.41 would be revised to instead reference gram units of material. The new Appendix A would also use gram units. The term would remain in 10 CFR parts 40, 70, 75, 76, and 110, to ensure the continued effective implementation of the U.S./IAEA Safeguards Agreement.

H. Why would Appendix A to 10 CFR Ppart 74 be added?

Appendix A would be added to clarify the definitions and quantities and units of various categories of SNM. Similar information is provided in existing Appendix M to 10 CFR part 110 and would be appended to 10 CFR part 74 as well for the convenience of licensees, NRC staff, and members of the public. Appendix A would clarify the elements, isotopic composition, and quantities of material that Category I, Category II, and Category III facilities are authorized to possess. Notes would be included to clarify that sealed sources are excluded from the quantity limits that are used to determine the category of a facility. An additional note is included that spent nuclear fuel is reduced one category level while the radiation exposure exceeds 1 Sievert (Sv) per hour (100 rads per hour) at 1 meter, unshielded. Formulae are included to calculate a quantity of material for Category I, Category II or Category III.

I. Why would references to the MC&A "system" be changed to the MC&A "program,"

and why would “MC&A plan” replace “FNMC plan?”

Portions of existing 10 CFR part 74 that refer to the MC&A “system” (e.g., 10 CFR 74.31(c), 74.33(a), and 74.51(a)) would be revised to instead refer to the MC&A “program.” The term “program” better describes the over-arching, comprehensive set of methods licensees use to control and track SNM, and using “program” avoids confusion with the required material measurement systems (e.g., 10 CFR 74.31(c)(2), 74.33(c)(3), and 74.59(d)) that are part of the overall MC&A program. Similarly, existing references to the overall “system” capabilities would be changed to “program” capabilities. The existing requirements referring to an item control program (e.g., 10 CFR 74.31(c)(6), 74.33(c)(6) and 74.43(b)(5)) would be revised to instead refer to an item control system.

Replacing the existing references to the FNMC plan with references to an MC&A plan is necessary in the NRC staff’s view because FNMC is an outdated term and does not include “accounting.” It does not fully describe the accounting aspects of the MC&A program, and is not consistent with the general title of 10 CFR part 74 (“Material Control and Accounting of Special Nuclear Material”). The term MC&A plan is not intended to be an exact name that licensees are required to use and licensees will not be required to change the names of their existing plans.

J. What would change in the reporting requirements to NMMSS, including those that ISFSIs are subject to?

The proposed addition of numbered subsections to 10 CFR 74.13(a) would make these reporting requirements easier to read and understand. The plain language revisions make no substantive changes to the existing requirements.

The NMMSS reporting requirements for an ISFSI currently in § 72.76 for material status reports and in § 72.78 for nuclear material transaction reports are duplicated in §§ 74.13 and 74.15, respectively. Proposed 10 CFR 74.2 would include existing ISFSIs within the scope of 10 CFR part 74. Accordingly, §§ 72.76 and 72.78 would be removed from 10 CFR part 72. The

requirements in § 72.72 for storage of source material (SM) and SNM would be revised to direct a licensee to refer to §§ 40.61 and 40.64 for SM and to subparts A and B in 10 CFR part 74 for SNM.

K. Why would a two-person rule be added?

The two-person rule would be added to strengthen the MC&A requirements by making the unauthorized diversion of material less likely. The two-person rule would also better ensure that correct procedures are used, that covered actions are completed correctly by qualified and authorized personnel and that information about the actions is accurately documented. A licensee subject to subpart C, D, or E would be required to have two qualified and authorized individuals involved for tamper-safing, performing physical inventories, transferring SNM, or handling any SNM that is not under an active control measure or monitoring or surveillance condition.

L. Why would requirements be added to designate material balance areas (MBAs), item control areas (ICAs), and custodians?

The MC&A requirements would be strengthened by specifically defining the terms for MBA and ICA and custodians and by consistently requiring licensees under subparts C, D, and E to designate MBAs and ICAs and custodians for these areas. The terms are widely used in the regulated community and 10 CFR part 74 would be clarified by setting forth the specific meaning for the terms in 10 CFR 74.4. A licensee would be required to designate MBAs and ICAs and assign custodial responsibilities for these areas to provide internal controls to deter or detect any diversion or misuse of SNM at the licensee's facility.

M. Why would calendar days be inserted into 10 CFR part 74?

To clarify 10 CFR part 74, references to due dates and reporting frequencies would be made more uniform by expressing most timeframes in calendar days. Using calendar days

avoids the existing uncertainty over whether weekends and holidays are counted in determining whether or not a licensee has taken timely action. The proposed clarifications are intended to make 10 CFR part 74 more internally consistent with existing 10 CFR 74.33(c)(4), which requires that annual static physical inventories be taken “at least every 370 calendar days.” Existing 10 CFR part 74 provisions referencing six-month intervals would be changed to “185 calendar days.”

N. Would the implementation guidance documents be updated for the MC&A program?

The following guidance documents are being revised and updated in conjunction with the rulemaking effort. In addition, a guidance document for Category II facilities (SNM of Moderate Strategic Significance) would be updated and issued with the following existing guidance documents. All revised NUREG guidance documents will be available for public comment in parallel with the scheduled publication of the proposed rule.

i. NUREG-1280, “Standard Format and Content Acceptance Criteria for the MC&A Reform Amendment,”

ii. NUREG-1065, “Acceptable Standard Format and Content for the Fundamental Nuclear Material Control (FNMC) Plan Required for Low-Enriched Uranium Facilities,”

iii. NUREG/CR-5734, “Recommendations to the NRC on Acceptable Standard Format and Content for the Fundamental Nuclear Material Control (FNMC) Plan Required for Low-Enriched Uranium Enrichment Facilities,”

iv. NUREG/BR-0096, “Instructions and Guidance for Completing Physical Inventory Summary Report.”

O. Would there be changes for item controls or physical inventories?

Subpart B in 10 CFR part 74 would be revised to include a new requirement in 10 CFR 74.19(c) stating that each licensee who is authorized to possess SNM, at any one time and site

location, in a quantity greater than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof must establish, document, implement, and maintain an item control system as defined in 10 CFR 74.4. A licensee (whether licensed by the NRC or an Agreement State) authorized to possess SNM in a quantity of 350 grams or less would not be affected by the item control requirement.

Some of the current exemption provisions for item controls would be removed. Specifically, the exemption provisions in 10 CFR 74.31(c)(6), 74.33(c)(6)(ii) and 74.43(b)(6) for items existing 14 days or less in Category III and II facilities would be removed. The 14-day exemption was put in the current regulations at a time when most Category III licensees did not have computer inventory controls and instead relied on manual ledger entries. In other words, the current regulation aligned the risk with what the licensees could do in a production environment.

However, over the last several years, licensees have implemented business systems that track SNM containing items through the use of bar codes and entries to computer systems. This has had the secondary benefit of giving these licensees the ability to track individual items and total inventory in near real time. Licensees have demonstrated this ability numerous times during inspections by NRC staff.

Current requirements in 10 CFR part 74 recognize the importance of conducting timely inventories and reporting the results by requiring the reporting of shipments and receipts of a gram or more of material in 10 days (see 10 CFR 74.15) and through the reporting of lost, stolen, or diverted SNM of a gram or more within one hour (10 CFR 74.11). Inspections performed by the NRC have identified cases where there were “near-misses” associated with current exemptions. Removal of the exemptions from the item control requirements would align this particular regulation with other requirements in 10 CFR part 74 to better ensure common

defense and security is maintained through accurate SNM item bearing inventories. These proposed regulatory changes would not be expected to impact licensees significantly since they already have in-house systems that track such items in near real time.

Additionally, for Category III facilities, the exemption provisions (in 10 CFR 74.31(c)(6) and 74.33(c)(6)(ii)) for individual items containing less than 500 grams of uranium-235, up to a total of 50 kilograms of uranium-235, would be removed. For a Category II facility, the exemption (in 10 CFR 74.43(b)(6)) for individual items containing less than 200 grams of plutonium or uranium-233; or 300 grams or more of uranium-235 up to a cumulative total of one formula kilogram of strategic SNM; or 17 kilograms of uranium-235 contained in uranium enriched to 10 percent or more but less than 20 percent in the uranium-235 isotope, would be removed. These exemptions were identified for removal in SECY-08-0059. Item control requirements that exclude kilogram amounts of material are not consistent with protection of the common defense and security.

P. Why would an exception be added to 10 CFR 74.15(b)(2)?

The exception from performing independent tests when receiving unirradiated fuel rods or unirradiated fuel assemblies would be included to clarify the requirement for licenses under 10 CFR parts 50 or 52. Similarly the requirement would be clarified for a licensee under 10 CFR part 70 receiving SNM contained in a sealed source that will not be opened. The NRC inspection program had indicated that typically a licensee will verify the contents of such shipments by reviewing the shipping papers and visual inspection of the material because independent testing, e.g., destructive testing or sampling has been impractical for determining the contents of the shipment being received.

Q. What should I consider as I prepare my comments to the NRC?

When submitting your comments, remember to:

- i. Identify the rulemaking (RIN 3150-A161; NRC-2009-0096).

- ii. Explain why you agree or disagree; suggest alternatives and substitute language.
- iii. Describe any assumptions and include technical information or data that you used.
- iv. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- v. Provide specific examples to illustrate your concerns, and suggest alternatives.
- vi. Explain your views as clearly as possible.
- vii. Make sure to submit your comments by the comment period deadline identified.
- viii. The NRC is particularly interested in your comments concerning the issues in Section II about item controls, two-person rule, designating MBAs, ICAs and custodial responsibilities for these areas. Section VI, Agreement State Compatibility, of this document contains a request for comment on the compatibility designations for the proposed rule; Section VII, Plain Language, contains a request for comments on the use of plain language; Section IX, Environmental Assessment and Finding of No Significant Environmental Impact Availability, contains a request for comments on the draft environmental assessment; Section X, Paperwork Reduction Act Statement, contains a request for comments on the information collection requirements; Section XI, Regulatory Analysis, contains a request for comments on the draft regulatory analysis; and Section XII, Regulatory Flexibility Certification, contains a request for comments on the impact of the proposed rule on small businesses.

IV. Discussion of Proposed Amendments by Section.

Section 40.64 Reports.

Paragraph (b)(1) would be revised to remove the reference to 10 CFR part 72.

Section 70.32 Conditions of licenses.

Paragraphs (c)(1)(i) and (iii) would be revised to replace the reference to § 74.51(c) with § 74.51(b). These sections were revised to provide consistent organization for subparts C, D, and E in 10 CFR part 74 and a conforming change would be completed in 10 CFR 70.32(c)(1)(i) and (iii).

Section 72.72 Material control and accounting requirements for source material and special nuclear material.

The title of the section would be revised from “Material balance, inventory, and records requirements for stored materials” to “Material control and accounting requirements for source material and special nuclear material.” Paragraph (a) would be revised to only reference requirements for source material, and would reference §§ 40.61 and 40.64 in this regard. The remainder of existing § 72.72 (a), (b), (c), and (d) would be removed because these requirements are duplicated in 10 CFR part 74. As previously discussed, the § 74.2 scoping provisions would be revised to include ISFSIs.

New paragraph (b) would reference MC&A requirements for SNM in 10 CFR part 74.

Section 72.74 Reports of accidental criticality.

The title of this section would be revised from “Reports of accidental criticality or loss of special nuclear material” to “Reports of accidental criticality.” Paragraph (a) would be revised to remove the requirement that any loss of SNM be reported within 1 hour of discovery. The ISFSIs would be subject to 10 CFR 74.11(a) with regard to any loss of SNM that must be reported within 1 hour of discovery. Section 72.74 would retain its reporting requirement for accidental criticality.

Paragraph (b) would be revised to state that required one-hour notifications be made to the NRC Headquarters Operations Center via any available telephone system. The outdated reference to the Emergency Notification System would be removed.

Section 72.76 Material status reports.

This section would be removed and reserved and in this regard § 72.9 would be changed.

Section 72.78 Nuclear material transaction reports.

This section would be removed and reserved and in this regard § 72.9 would be changed.

Section 74.2, Scope.

The last sentence of paragraph (a) would be revised to bring licensees who possess spent nuclear fuel at ISFSIs within the scope of the MC&A reporting and recordkeeping requirements in 10 CFR part 74.

Section 74.3, General performance objectives.

This section would be added to require a licensee authorized by the NRC to possess SNM in a quantity greater than 350 grams to implement and maintain an MC&A program that achieves the general performance objectives listed in paragraphs (a) through (e).

Section 74.4, Definitions.

This section would be revised to remove the definition, *Effective kilograms of special nuclear material*. This section would be revised to add definitions for the following terms:

Accounting, Custodian, Item control area, Item control system, Material balance area, Material control and accounting, and Two-person rule. The definitions of the following terms would be revised to conform with the existing definitions of these terms in 10 CFR parts 70 and 73, and to refer to Appendix A of this part: *Formula quantity, Special nuclear material of low strategic significance, and Special nuclear material of moderate strategic significance.*

Section 74.11, Reports of loss or theft or attempted theft or unauthorized production of special nuclear material.

Paragraph (b) would be revised to state that required licensee notifications be made to the NRC Headquarters Operations Center via any available telephone system within 1 hour of the event, and an outdated reference to the Emergency Notification System would be removed.

Section 74.13, Material status reports.

As discussed further in the following paragraph, plain language revisions would be made to paragraph (a) by specifying eight numbered requirements, and new paragraphs (b), (c), and (e) would be added. Existing paragraph (b) would be designated as paragraph (d).

Paragraph (a) (1) through (8) would specify deadlines by which various sets of licensees would be required to submit their material balance reports and physical inventory listing reports.

Paragraph (b) would include the reporting instructions that are in existing § 74.13(a), and would include references to the reporting forms (NUREG/BR-0007 and NMMSS Report D-24, “Personal Computer Data Input for NRC Licensees”) referenced in existing § 74.13(a).

Paragraph (c) would retain the provision in existing § 74.13(a) that the reports may be submitted at other times for good cause with prior NRC approval.

As indicated previously, paragraph (d) restates the existing § 74.13(b) provision regarding reports required under section 75.35 of this chapter (pertaining to implementation of the U.S./IAEA Safeguards Agreement).

Paragraph (e) would retain the requirement in existing § 74.13(a) regarding the resolution of any discrepancies identified during the report review.

Section 74.15, Nuclear material transaction reports.

Paragraph (b)(2) would be revised by adding an exception that independent testing is not required for receipt of unirradiated fuel rods, unirradiated fuel assemblies, or sealed sources containing SNM that will not be opened.

Section 74.19, Recordkeeping, procedures, item controls, and physical inventories.

This section's title would be revised to reference written MC&A procedures, item controls, and physical inventories.

As previously discussed, paragraph (b) would be revised to replace its reference to a quantity of SNM "exceeding one effective kilogram" with "a quantity greater than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof." For plain language reasons, the other existing requirements in paragraph (b) about written MC&A procedures, retention of the procedures and superseded portions of the procedures, would be redesignated in new paragraphs (b)(1), (2), and (3).

Paragraph (c) would be revised into three paragraphs. Paragraph (c)(1) would be added to make item control requirements applicable to NRC licensees authorized to possess SNM in a quantity greater than 350 grams. Paragraph (c)(2) retains the requirement for conducting a periodic physical inventory of SNM at intervals not to exceed 370 calendar days. Paragraph (c)(3) retains the requirement to keep records of the physical inventories performed.

Section 74.31 Nuclear material control and accounting for special nuclear material of low strategic significance.

The general performance objectives applicable to Category III facilities would be set forth in proposed § 74.3 as previously discussed. Revised § 74.31(a)(1) would incorporate the § 74.3 performance objectives by reference, thereby replacing the performance objectives set forth in existing § 74.31(a)(1)-(3). Proposed paragraph (a)(2) would retain elements of the exemption in existing § 74.31(a) applicable to production or utilization facilities, and any licensee operations involving waste disposal. Proposed paragraph (a)(2) would add an exemption for ISFSIs, thereby making it consistent with existing § 74.51(a).

Paragraph (b) would be revised by replacing the reference to “a fundamental nuclear material control (FNMC) plan” with a reference to “a MC&A plan.” The plan would need to achieve the general performance objectives in § 74.3, and meet the program capability requirements set forth in revised § 74.31(c).

The introductory language of paragraph (c) would be revised to state that the MC&A plan must: include the capabilities described in paragraphs (c)(1) through (11); and achieve the performance objectives in § 74.3. The title of paragraph (c) would be changed from “System capabilities” to “Program capabilities.” Existing paragraphs (c)(1) through (3) would remain unchanged. Paragraph (c)(4) would be clarified to state the standard error as the standard error of the inventory difference (SEID). The paragraph (c)(5) physical inventory timing provisions would be clarified by changing “60 days” to “60 calendar days.” Paragraph (c)(6) would be revised by referencing the item control system defined in § 74.4. The 14-day provision in the first sentence of the existing requirement would be removed. The reference to detecting “unauthorized removals of substantial quantities of material from items” in the second sentence would be changed to require detecting the removal of “any quantity of material.” In the third

sentence, the existing exemption from the detection requirements for “items individually containing less than 500 grams of uranium-235 up to a total of 50 kilograms of uranium-235” would be removed. The wording of paragraph (c)(7) would be revised to state as follows: “Conduct and document shipper-receiver difference comparisons for all SNM receipts on a total shipment basis, and on an individual batch basis when required by 10 CFR part 75 of this chapter, and ensure that any shipper-receiver difference that is statistically significant and exceeds twice the estimated standard deviation of the difference estimator and 500 grams of uranium-235 is investigated and resolved.” Paragraph (c)(8) would be revised by referencing the MC&A “program” rather than the MC&A “system.” Paragraphs (c)(9), (10), and (11) would be added to require that the MC&A program include, respectively: tamper-safing procedures; use of the two-person rule; and the designation of material balance areas, item control areas, and custodians responsible for these areas.

Section 74.33 Nuclear material control and accounting for uranium enrichment facilities authorized to produce special nuclear material of low strategic significance.

The general performance objectives applicable to Category III uranium enrichment facilities would be set forth in proposed § 74.3 as previously discussed, and revised § 74.33(a) would reflect this. The general performance objectives stated in existing paragraphs (a)(1) through (9) would be replaced by new paragraphs (a)(1) through (4), which would only reference source material. These general performance objectives would parallel those set forth in proposed § 74.3, which would apply only to SNM. New paragraph (a)(5) retains elements of existing paragraph (a)(8), and retains the exemption for centrifuge enrichment facilities stated in existing (a)(5).

Paragraph (b) would be revised by replacing the reference to “a fundamental nuclear material control (FNMC) plan” with a reference to “an MC&A plan.” The plan would need to

achieve the general performance objectives in § 74.3, the performance objectives in paragraph (a) as previously discussed, and meet the program capability requirements set forth in revised § 74.33(c).

The introductory language of paragraph (c) would be revised to state that the MC&A plan must: include the capabilities described in paragraphs (c)(1) through (11); and achieve the performance objectives (as previously referenced). The title of paragraph (c) would be changed from “System features and capabilities” to “Program capabilities.” Existing paragraphs (c)(1) through (2) would remain unchanged. Paragraph (c)(3)(ii) would be clarified to include the acronym SEID in a parenthetical. Paragraph (c)(4)(i) would be clarified by changing “65 days” to “65 calendar days.” Paragraph (c)(4)(ii) would be clarified by changing “60 days” to “60 calendar days.” Paragraph (c)(5) would be revised by adding “resolving” at the end of the introductory sentence, to read, “A detection program, independent of production, that provides high assurance of detecting and resolving.” Paragraph (c)(6) would be revised by deleting (c)(6)(i) and (ii). Paragraph (c)(6) would instead reference the item control system defined in § 74.4. The requirement to have such an item control system replaces the existing § 74.33(c)(6)(i) requirement. The reference to detecting the “unauthorized removal of 500 grams or more of uranium-235” in existing § 74.33(c)(6)(ii) would be changed to require detecting the removal of “any quantity of uranium-235.” The existing exemption in § 74.33(c)(6)(ii) from the detection requirements for items containing “less than 500 grams of uranium-235 up to a cumulative total of 50 kilograms of uranium-235,” and for items that “exist for less than 14 calendar days,” would be removed. This exemption would be replaced with a provision exempting items in solution with a concentration of less than 5 grams per liter, and waste items destined for burial or incineration (the proposed wording here tracks the portion of the § 74.31(c)(6) exemption that is being retained). Paragraph (c)(7) would be clarified to state

the requirements to conduct and document shipper-receiver difference comparisons for all SM and SNM receipts on a total shipment basis and on an individual batch basis when required by 10 CFR part 75 of this chapter, and that any shipper-receiver difference that is statistically significant and exceeds twice the estimated standard deviation of the difference and 500 grams of uranium-235 must be investigated and resolved. Paragraph (c)(8) would be revised by referencing the MC&A “program” rather than the MC&A “system.” Paragraphs (c)(9), (10), and (11) would be added to require that the MC&A program include, respectively: tamper-safing procedures; use of the two-person rule; and the designation of MBAs, ICAs, and custodians responsible for these areas.

Section 74.41 Nuclear material control and accounting for special nuclear material of moderate strategic significance.

The general performance objectives applicable to Category II facilities would be set forth in proposed § 74.3 as previously discussed. Revised § 74.41(a)(1) would incorporate the § 74.3 performance objectives by reference, thereby replacing the performance objectives set forth in existing § 74.41(a)(1) through (4). Proposed paragraph (a)(2) would retain elements of the exemption in existing § 74.41(a) applicable to production or utilization facilities, licensees using reactor irradiated fuels for research purposes, and any licensee operations involving waste disposal.

Paragraph (b) would be revised by replacing the reference to “a fundamental nuclear material control (FNMC) plan” with a reference to “an MC&A plan.” The plan would need to achieve the general performance objectives in § 74.3, meet the program capability requirements set forth in § 74.41(c), and the requirements of §§ 74.43 and 74.45 as previously discussed. The title of paragraph (b) would be changed from “Implementation schedule” to

“Implementation,” and the existing paragraphs (b)(1) and (2) would be consolidated into a single paragraph consistent with the format used in existing § 74.31(b).

Paragraph (c) would be revised by changing its title from “System capabilities” to “Program capabilities.” The reference in existing § 74.41(c) to the “MC&A system” would be changed to the “MC&A plan,” which must achieve the performance objectives in § 74.3, and include the capabilities described in §§ 74.43 and 74.45. The existing § 74.41(c)(1) and (2) checks and balances requirements remain the same.

Section 74.43 Internal controls, inventory, and records.

Paragraph (b)(3) would be revised to replace the title, “FNMC plan” with “MC&A plan.” Paragraph (b)(5) would be revised by replacing the term “item control program” with “item control system” as newly defined in § 74.4. The current paragraphs (b)(5)(i) and (b)(5)(ii) would be consolidated into proposed paragraph (b)(5). The current detection requirement in paragraph (b)(5)(ii) would be revised to require the detection of “unauthorized removals of individual items or any quantity of material (as defined in § 74.4) from items,” replacing the existing reference to the “unauthorized removal of 200 grams or more of plutonium or uranium-233 or 300 grams or more of uranium-235, as one or more whole items and/or as SNM removed from containers.” Paragraph (b)(6) would be revised to replace the exemptions stated in the current requirement. Only “items in solution with a concentration of less than 5 grams of U-235 per liter, and items of waste destined for burial or incineration” would be exempt from the detection requirements described previously. The reference to “shipper-receiver comparisons” in existing paragraph (b)(7) would be clarified to state “shipper-receiver difference comparisons.”

Paragraph (c)(3) would be clarified by removing the phrases, “if tamper-safe seals are to be used for assuring the validity of prior measurements,” and “showing the date and time of seal

application.” These changes are proposed so that the tamper-safing requirements in subparts C, D, and E of 10 CFR part 74 will be worded in a consistent manner. Paragraphs (c)(9) and (10) would be added to provide requirements that the MC&A plan capabilities must include, respectively, adherence to the two-person rule, and provide for the designation of MBAs, ICAs, and assigning custodial responsibilities for these areas.

Paragraph (d)(5) would be revised to refer to the performance objectives of proposed §§ 74.3 and 74.41(a)(1), as its current reference to § 74.41(a)(1) through (4) would no longer be accurate if the proposed changes to § 74.41(a) are made.

Section 74.45 Measurements and measurement control.

Paragraph (c)(4) would be clarified by spelling out the acronym SEID as the “standard error of the inventory difference.”

Section 74.51 Nuclear material control and accounting for strategic special nuclear material.

The general performance objectives applicable to Category I facilities would be set forth, in part, in proposed § 74.3 as previously discussed. Revised § 74.51(a)(1) would incorporate the § 74.3 performance objectives by reference. Additionally, proposed § 74.51(a)(1)(i) through (iii) would set forth the performance objectives stated in existing § 74.51(a)(2) through (4).

Proposed paragraph (a)(2) would retain the exemptions in existing § 74.51(a) applicable to production or utilization facilities, ISFSIs, and any licensee operations involving waste disposal, but would remove the exemption for an irradiated fuel reprocessing plant. The removal of this exemption is in accordance with the NRC staff’s recommendation in its regulatory framework gap analysis for irradiated fuel reprocessing documented in SECY-09-0082. The licensee of any future irradiated fuel reprocessing facility would likely be authorized to possess quantities of strategic SNM that need to be subject to the highest level of

MC&A safeguards and security requirements, to ensure that this material would be adequately protected.

To make the organization of requirements for Category I and Category III fuel fabrication facilities more consistent, changes in existing 10 CFR 74.51(b) and (c) are proposed, which would align the format with that used in existing 10 CFR 74.31(b) and (c). Thus, 10 CFR 74.51(b) would be retitled, "Implementation," and would contain elements of existing 10 CFR 74.51(c). Proposed 10 CFR 74.51(b) would refer to an "MC&A plan" rather than a "FNMC plan," for the reasons previously discussed. The MC&A plan would need to achieve the general performance objectives in §§ 74.3 and 74.51(a), and meet the requirements of §§ 74.53, 74.55, 74.57, and 74.59.

Proposed 10 CFR 74.51(c) would be retitled, "Program capabilities," and would contain elements of existing § 74.51(b). In addition to the MC&A plan requirements discussed in revised 10 CFR 74.51(b) above, 10 CFR 74.51(c) would require that the plan incorporate checks and balances that are sufficient to detect falsification of data and reports that could conceal diversion of SNM or strategic SNM (SSNM). A plain language change to simplify paragraph (c)(1) would revise "An individual" to "A single individual." A plain language change to simplify paragraph (c)(2) would revise "Collusion between an individual with MC&A responsibilities and another individual who has responsibility or control within both the physical protection and the MC&A systems" to "Collusion between two individuals, one or both of whom have authorized access to SNM or SSNM."

Section 74.51(d) would be revised to replace "FNMC" plan with "MC&A" plan. Additionally, the times to perform physical inventories would be expressed in terms of calendar days.

Section 74.53 Process monitoring.

Paragraph (a)(3) would be clarified to replace “a consecutive three-month period” with “a period of 95 calendar days.” Paragraph (a)(4) would be clarified to replace “any seven-consecutive-day period” with “a period of 7 calendar days.”

Paragraph (c)(1) would be clarified to replace “monthly” with “at intervals not to exceed 30 calendar days.”

Section 74.57 Alarm resolution.

Paragraph (c) would be revised to replace “fundamental nuclear material control plan” with “MC&A plan.”

Section 74.59 Quality assurance and accounting requirements.

In paragraph (e)(7), the requirement to correct SSNM measurement differences “accumulated over a six-month period” would be clarified to instead reference “a period not to exceed 185 calendar days.”

In paragraph (f)(1), the requirement to perform a physical inventory “every six calendar months” would be clarified to instead reference “every 185 calendar days,” and “45 days” would be clarified to specify “45 calendar days.” The paragraph (f)(2)(i) tamper-safing provision would be revised by adding at its end the phrase “and which include control of access to, and distribution of, unused seals and records,” in order to make this provision consistent across subparts C, D, and E of 10 CFR part 74.

With respect to required internal controls regarding how frequently scrap material must be measured, paragraph (h)(2)(ii) would be clarified by replacing “six months” with “185 calendar days.” Paragraph (h)(5) would be revised by adding at its beginning a

requirement to designate MBAs and ICAs, in order to make this provision consistent across subparts C, D, and E of 10 CFR part 74. Paragraph (h)(6) would be added to require use of the two-person rule for conducting tamper-safing operations, physical inventories, transfer of SNM, and for any handling of SNM that is not under an active control measure or monitoring or surveillance condition.

Appendix A to 10 CFR Part 74 - - Categories of Special Nuclear Material.

Appendix A would be added to provide a table stating the elements, isotopic composition, and quantities of material that Category I, Category II, and Category III facilities are authorized to possess. Notes are included to state that sealed sources are excluded from the quantity limits in the table and that spent nuclear fuel is reduced one category level while the radiation exposure exceeds 1 Sv per hour (100 rads per hour) at 1 meter, unshielded. Formulae are included to calculate a quantity of SSNM for Category I, Category II or Category III.

Section 150.17 Submission to Commission of nuclear material status reports.

The requirements in paragraph (a) would be clarified by arranging the requirements into numbered subsections (a)(1), (2), (3), and (4). The revised introductory paragraph would clarify the requirement to submit both a Material Balance Report and a Physical Inventory Listing Report to the NMMSS in accordance with the instructions in paragraph (a)(1). The reports would be due between January 1 and March 31 of each year.

Paragraph (a)(1) would include the reporting instructions that are in the current requirements in paragraph (a) and would state that individual reports must be prepared for each Reporting Identification Symbol account using the information in NUREG/BR-0007 and NMMSS

Report D-24, "Personal Computer Data Input for NRC Licensees." Paragraph (a)(2) would include the provision that is currently in paragraph (a) stating that the NRC may permit reports to be submitted at other times for good cause. Paragraph (a)(3) would include the statement in existing paragraph (b) regarding the submittal of reports under 10 CFR 75.35 (pertaining to implementation of the U.S./IAEA Safeguards Agreement). Paragraph (a)(4) would include the requirement that is currently in paragraph (a) that a licensee must resolve any discrepancies identified during the report review and reconciliation process within 30 calendar days of being notified of a discrepancy identified by the NRC.

Paragraph (b)(1) would be revised to remove the reference to 10 CFR part 72, and paragraph (b)(2) would also be revised to remove the reference to 10 CFR part 72.

V. Criminal Penalties.

For the purpose of Section 223 of the Atomic Energy Act of 1954, as amended (AEA), the Commission is proposing to amend 10 CFR parts 40, 70, 72, 74 and 150 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

VI. Agreement State Compatibility.

Under the "Policy Statement on Adequacy and Compatibility of Agreement States Programs," approved by the Commission on June 20, 1997, and published in the *Federal Register* (62 FR 46517; September 3, 1997), the regulations affected by this rulemaking are classified as compatibility Category "NRC." The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA, or the

provisions of 10 CFR, and cannot be relinquished to the Agreement States. Thus, States should not adopt these program elements.

VII. Plain Language.

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. Although regulations are exempt under the act, the NRC is applying the same principles to its rulemaking documents. Therefore, the NRC has written this document, including the proposed amended rule language, to be consistent with the Plain Writing Act. In addition, where existing rule language must be changed, the NRC has rewritten that language to improve its organization and readability. The NRC requests comment on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the NRC as explained in the ADDRESSES section of this document.

VIII. Voluntary Consensus Standards.

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would revise and consolidate requirements for MC&A in 10 CFR part 74. The NRC is not aware of any comprehensive voluntary consensus standards that address the proposed subject matter of this

proposed rule. The NRC will consider using a voluntary consensus standard if an appropriate standard is identified. If a voluntary consensus standard is identified for consideration, the submittal should explain why the standard should be used.

IX. Environmental Assessment and

Finding of No Significant Environmental Impact: Availability.

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not have any significant environmental impacts, and therefore this rulemaking does not warrant the preparation of an environmental impact statement. The proposed rule pertains to MC&A program requirements, which consist of administrative procedures and operations to track and control SNM and related information, in order to deter and detect any loss, theft, diversion, or unauthorized production of nuclear material. As the proposed amendments pertain to information collection and reporting requirements, adopting them would have no significant impact on the quality of the human environment. Thus the NRC finds that this proposed rulemaking will not have a significant environmental impact. For instructions on submitting comments and accessing documents related to the draft Environmental Assessment, see Section I, "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document.

X. Paperwork Reduction Act Statement.

This proposed rule amends information collection requirements contained in 10 CFR parts 72 and 74 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et

seq). These information collection requirements have been submitted to the Office of Management and Budget (OMB) for review and approval. The proposed changes to 10 CFR parts 40, 70, and 150 do not contain new or amended information collection requirements. Existing requirements were approved by the OMB, approval numbers 3150-0132 and 3150-0123.

Type of submission, new or revision: Revision.

The title of the information collection: 10 CFR part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste" and 10 CFR part 74, "Material Control and Accounting of Special Nuclear Material."

The form number if applicable: U.S. Department of Energy (DOE)/NRC Form 741, "Nuclear Material Transaction Report," DOE/NRC Form 742, "Material Balance Report," and DOE/NRC Form 742C, "Physical Inventory Listing."

How often the collection is required: Licensee timeframes for reporting to the NRC have not changed for NRC Forms 741, 742, and 742C. Licensees under subparts B and C of 10 CFR part 74 would submit reports within 60 calendar days after the start of the physical inventory covered by the reports, at intervals not to exceed 370 calendar days or 12 months. Licensees under subpart D of 10 CFR part 74 would submit reports within 60 calendar days after the start of the physical inventory covered by the reports, at intervals not to exceed 9 months. Licensees under subpart E of 10 CFR part 74 would be required to submit reports

within 30 calendar days after the start of the physical inventory covered by the reports, at intervals not to exceed 65 calendar days until performance acceptable to the NRC has been demonstrated and the Commission has issued formal approval to perform physical inventories at intervals not to exceed 185 calendar days. Forms are also submitted when a nuclear material transaction is made.

Who will be required or asked to report: Persons licensed under 10 CFR parts 50, 52, 70, 72, and 76 who possess and use certain forms and quantities of SNM.

An estimate of the number of annual responses: 7 responses (0 reporting responses + 7 record keepers).

The estimated number of annual respondents: 7.

An estimate of the total number of hours needed annually to complete the requirement or request: 926 hours (0 hours reporting plus 926 hours recordkeeping).

Abstract: The NRC is proposing to amend its regulations to revise and consolidate the requirements for MC&A of SNM in 10 CFR part 74. The proposed amendments relocate the NMMSS-related reporting requirements for a licensee operating an ISFSI from 10 CFR part 72 to 10 CFR part 74; however, no changes have been made to the reporting requirements for NRC Forms 741, 742, or 742C. The proposed rule would change recordkeeping requirements in subparts B, C, and D. Under subpart B a licensee authorized to possess SNM in a quantity greater than 350 grams would be required to establish, document, implement, and maintain an

item control system as defined in § 74.4. The reactor licensees have already implemented item control systems and would not be impacted by the proposed requirement. Licensees under subparts C and D would include currently exempted items in their item controls.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. *Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?*
2. *Is the estimate of burden accurate?*
3. *Is there a way to enhance the quality, utility, and clarity of the information to be collected?*
4. *How can the burden of the information collection be minimized, including the use of automated collection techniques?*

The public may examine and have copied for a fee publicly available documents, including the OMB supporting statement, at the NRC's PDR, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. The OMB clearance package and rule are available on the NRC's Web site, <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>, for 60 days after the signature date of this document.

Send comments on any aspect of these proposed regulations related to information collections, including suggestions for reducing the burden and on the previously stated issues, by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]** to the Information Services Branch (T-5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail to Infocollects.Resource@NRC.gov and to the Desk Officer, Chad Whiteman, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0123

and 0132), Office of Management and Budget, Washington, DC 20503. Comments on the proposed information collections may also be submitted via the Federal rulemaking Web Site <http://www.regulations.gov>, Docket ID NRC-2009-0096. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XI. Regulatory Analysis.

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The Commission requests public comment on the draft regulatory analysis (RA). For instructions on submitting comments and accessing documents related to the draft RA, see Section I, "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document.

XII. Regulatory Flexibility Certification.

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule would not, if promulgated, have a significant economic impact

on a substantial number of small entities. The majority of companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

The NRC is seeking public comment on the potential impact of the proposed rule on small entities. The NRC particularly desires comment from licensees who qualify as small businesses, specifically as to how the proposed regulation will affect them and how the regulation may be tiered or otherwise modified to impose less stringent requirements on small entities while still adequately protecting the public health and safety and common defense and security. Comments on how the regulation could be modified to take into account the differing needs of small entities should specifically discuss:

(a) The size of the business and how the proposed regulation would result in a significant economic burden upon it as compared to a larger organization in the same business community;

(b) How the proposed regulation could be further modified to take into account the business' differing needs or capabilities;

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulation was modified as suggested by the commenter;

(d) How the proposed regulation, as modified, would more closely equalize the impact of NRC regulations as opposed to providing special advantages to any individuals or groups; and

(e) How the proposed regulation, as modified, would still adequately protect the public health and safety and common defense and security.

For instructions on submitting comments and accessing documents related to this action, see Section I, "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document.

XIII. Backfitting and Issue Finality.

The NRC has determined that the NRC's backfitting and issue finality regulations in 10 CFR 50.109, 70.76, 72.62, 76.76, and in 10 CFR part 52, do not apply to this proposed rule because this amendment would not involve any provisions that are subject to these backfitting and issue finality provisions. The proposed rule addresses MC&A programs, which consist of administrative procedures and operations to track and control SNM and related information to deter and detect any loss, theft, diversion, or unauthorized production of nuclear material. These MC&A program requirements constitute information collection and reporting requirements. The NRC has determined that information collection and reporting requirements are not subject to the NRC's backfitting and issue finality regulations. The NRC's determination that MC&A programs are information collection and reporting requirements not subject to backfitting and issue finality regulations, is consistent with past MC&A rulemakings published in the *Federal Register* (e.g., 56 FR 55991; October 31, 1991, 67 FR 78130; December 23, 2002; and 73 FR 32453; June 9, 2008).

List of Subjects

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

10 CFR Part 74

Accounting, Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, SNM.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR parts 40, 70, 72, 74, and 150.

1. The authority citation for part 40 continues to read as follows:

PART 40 - DOMESTIC LICENSING OF SOURCE MATERIAL

AUTHORITY: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109-59, 119 Stat. 594 (2005). Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 40.64, revise paragraph (b)(1) to read as follows;

§ 40.64 Reports.

* * * * *

(b) * * *

(1) Possesses, or had possessed in the previous reporting period, at any one time and location, one kilogram or more of uranium or thorium source material with foreign obligations as defined in this part, shall document holdings as of September 30 of each year and submit to the Commission within 30 days, a statement of its source material inventory with foreign obligations as defined in this part. Alternatively, this information may be submitted with the licensee's material status reports on SNM filed under part 74 of this chapter, as a statement of its source material inventory with foreign obligations as defined in this part. This statement must be submitted to the address specified in the reporting instructions in NUREG/BR-0007, and include the Reporting Identification Symbol (RIS) assigned by the Commission to the licensee.

* * * * *

3. The authority citation for part 70 continues to read as follows

PART 70 - DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

AUTHORITY: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub. L. 104-134, 110.

Stat. 1321, 1321-349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 194 (2005).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

4. In § 70.32, revise paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii) to read as follows:

§ 70.32 Conditions of licenses.

* * * * *

(c)(1) * * *

(i) The program for control and accounting of uranium source material at a uranium enrichment facility and SNM at all applicable facilities as implemented pursuant to § 70.22(b), or §§ 74.31(b), 74.33(b), 74.41(b), or 74.51(b) of this chapter, as appropriate;

(ii) The measurement control program for uranium source material at a uranium enrichment facility and for SNM at all applicable facilities as implemented pursuant to §§ 74.31(b), 74.33(b), 74.45(c), or 74.59(e) of this chapter, as appropriate; and

(iii) Other material control procedures as the Commission determines to be essential for the safeguarding of uranium source material at a uranium enrichment facility or of SNM and providing that the licensee shall make no change that would decrease the effectiveness of the material control and accounting program implemented pursuant to § 70.22(b), or §§ 74.31(b),

74.33(b), 74.41(b), or 74.51(b) of this chapter, and the measurement control program implemented pursuant to §§74.31(b), 74.33(b), 74.41(b), or 74.59(e) of this chapter without the prior approval of the Commission. A licensee desiring to make changes that would decrease the effectiveness of its material control and accounting program or its measurement control program shall submit an application for amendment to its license pursuant to § 70.34.

* * * * *

5. The authority citation for part 72 continues to read as follows:

PART 72 - LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE AND REACTOR-RELATED GREATER THAN CLASS C WASTE

AUTHORITY: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102-486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 549 (2005). Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L.

97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

6. Revise § 72.72 to read as follows:

§ 72.72 Material control and accounting requirements for source material and special nuclear material.

(a) Each licensee shall follow the requirements of § 40.61 and § 40.64 of this chapter for source material.

(b) Each licensee shall follow the requirements of 10 CFR part 74, subparts A and B, for special nuclear material.

7. Revise § 72.74 to read as follows:

§ 72.74 Reports of accidental criticality.

(a) Each licensee shall notify the NRC Headquarters Operations Center within one hour of discovery of accidental criticality.

(b) Each licensee shall make the notifications required by paragraph (a) of this section to the NRC Headquarters Operations Center via any available telephone system to ensure that a report is received within one hour.

(c) Reports required under § 73.71 of this chapter need not be duplicated under the requirements of this section.

8. Remove and reserve §§ 72.76 and 72.78.

§ 72.76 [Removed and Reserved]

§ 72.78 [Removed and Reserved]

9. The authority citation for part 74 continues to read as follows:

PART 74 - MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

AUTHORITY: Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, sec.1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C.2073, 2077, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

10. In § 74.2, revise the last sentence in paragraph (a) to read as follows:

§ 74.2 Scope.

(a) * * * The general reporting and recordkeeping requirements of subpart B of this part also apply to licensees who possess spent nuclear fuel at independent spent fuel storage installations.

* * * * *

11. Add § 74.3 to read as follows:

§ 74.3 General performance objectives.

In addition to any other requirements in this part, 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 that enables the licensee to achieve the following general performance objectives in a timely manner:

(a) Maintain accurate, current, and reliable information on, and confirm the quantities and locations of SNM in its possession;

(b) Detect, respond to, and resolve any anomaly indicating a possible loss, theft, diversion, or misuse of SNM;

(c) Permit rapid determination of whether an actual loss, theft, diversion, or misuse of SNM has occurred;

(d) Provide information to aid in the investigation and recovery of missing SNM in the event of an actual loss, theft, diversion, or misuse; and

(e) Control access to MC&A information that might assist adversaries to carry out acts of theft, diversion, misuse, or radiological sabotage involving SNM.

12. In § 74.4:

a. Remove the definition for *Effective kilograms of special nuclear material*;

b. Add the definitions *Accounting*, *Custodian*, *Item control system*, *Item control area*, *Material balance area*, *Material control and accounting*, and *Two-person rule* in alphabetical order; and

c. Revise the definitions for *Formula quantity*, *Special nuclear material of low strategic significance*, and *Special nuclear material of moderate strategic significance*.

The additions and revisions read as follows:

§ 74.4 Definitions.

* * * * *

Accounting means a system which documents the quantities of special nuclear material (SNM) held on current inventory by the licensee, and includes tracking of receipts, shipments, and measured discards, and transfers of SNM.

* * * * *

Custodian means an individual authorized and qualified by the licensee who is responsible for controlling the movement of all SNM into, out of, and within a material balance area.

* * * * *

Formula quantity means strategic special nuclear material (SSNM) in any combination in a quantity of 5,000 grams or more computed by the formula, grams = (grams contained U-235) + 2.5 (grams U-233 + grams plutonium). This class of material is also referred to as a Category I quantity of material as shown in Appendix A to this part.

* * * * *

Item control area (ICA) means a designated administrative area within the controlled access area, in which SNM is maintained in such a way that, at any time, a count of the items and the related material quantities can be obtained using the accounting system. Control of items moving into, out of, and within an ICA is by the identity of an item and its assigned material quantity.

Item control system means a system tracking the creation, identity, element and isotopic content, location, and disposition of all items, which enables the licensee to maintain current knowledge of each item.

* * * * *

Material balance area (MBA) means a designated contiguous area in which the control of SNM is such that the quantity of material being moved into, out of, and within the MBA is an assigned value based on measurements of both the element content and the isotopic content.

Material control and accounting (MC&A) means a program to control and account for certain types of nuclear material used at a licensed facility, including SNM and source material, and which controls and accounts for unauthorized use of equipment capable of producing enriched uranium. The purpose of an MC&A program is to deter and detect any loss, theft, diversion, misuse, or unauthorized production of nuclear material.

* * * * *

Special nuclear material of low strategic significance means:

(1)(i) Less than an amount of SNM of moderate strategic significance, but more than 15 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope) or 15 grams of uranium-233 or 15 grams of plutonium or the combination of 15 grams when computed by the equation, grams = grams contained U-235 + grams plutonium + grams U-233; or

(ii) Less than 10,000 grams but more than 1,000 grams of uranium-235 (contained in uranium enriched to 10 percent or more, but less than 20 percent in the U-235 isotope); or

(iii) 10,000 grams or more of uranium-235 contained in uranium enriched above natural, but less than 10 percent in the U-235 isotope.

(2) This class of material is also referred to as a Category III quantity of material as shown in Appendix A to this part.

Special nuclear material of moderate strategic significance means:

(1)(i) Less than a formula quantity of SSNM but more than 1,000 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope) or more than 500 grams of uranium-233 or plutonium or in a combined quantity of more than 1,000 grams

when computed by the equation, grams=(grams contained U-235)+2 (grams U-233+grams plutonium); or

(ii) 10,000 grams or more of uranium-235 (contained in uranium enriched to 10 percent or more but less than 20 percent in the U-235 isotope).

(2) This class of material is also referred to as a Category II quantity of material as shown in Appendix A to this part.

* * * * *

Two-person rule means a requirement that at least two authorized and qualified persons be present whenever a task covered by the rule is performed. An authorized person under this rule is one who has been given authority by the licensee to perform the task, and a qualified person is one who has sufficient knowledge to determine if the proper procedure is being followed, meets any formal qualification requirements established by the licensee for performing the task, and is capable of attesting to the accuracy of the task being performed. Such persons must be able to verify both that the task was completed in accordance with the proper procedures, and that the information recorded about the task is accurate.

* * * * *

13. In § 74.11, revise paragraph (b) to read as follows:

§ 74.11 Reports of loss or theft or attempted theft or unauthorized production of special nuclear material.

* * * * *

(b) Each licensee shall make the notifications required by paragraph (a) of this section to the NRC Headquarters Operations Center via any available telephone system to ensure that a report is received within 1 hour.

* * * * *

14. Revise § 74.13 to read as follows:

§ 74.13 Material status reports.

(a) All licensees who possess or who had possessed in the previous reporting period one gram or more of irradiated or non-irradiated SNM are required to submit both a Material Balance Report and a Physical Inventory Listing Report of these materials to the NMMSS in accordance with the instructions in paragraph (b) of this section and according to the following schedule:

(1) Commercial power reactor licensees, authorized under part 50 or part 52 of this chapter shall submit both reports within 60 calendar days of the beginning of the physical inventory covered by the reports;

(2) Research and test reactors, authorized under part 50 of this chapter shall submit both reports within 60 calendar days of the beginning of the physical inventory covered by the reports;

(3) Independent spent fuel storage licensees, authorized under part 72 of this chapter shall submit both reports within 60 calendar days of the beginning of the physical inventory covered by the reports.

(4) Licensees subject to § 74.31 shall submit both reports within 60 calendar days of the beginning of the physical inventory covered by the reports;

(5) Licensees operating uranium enrichment facilities shall submit both reports within 60 calendar days of the beginning of the physical inventory providing a total plant material balance as described in § 74.33(c)(4)(i);

(6) Licensees subject to subpart D of this part shall submit both reports within 60 calendar days of the beginning of the physical inventory covered by the reports;

(7) Licensees subject to subpart E of this part shall submit both reports within 30 calendar days of the beginning of the physical inventory covered by the reports; and

(8) All other licensees who possess, or had possessed in the previous reporting period, one gram or more of irradiated or non-irradiated SNM shall submit both reports between January 1 and March 31 of each year.

(b) Each licensee shall prepare and submit the reports described in paragraph (a) of this section as follows:

(1) Reports must be submitted for each Reporting Identification Symbol (RIS) account, including all holding accounts, concerning SNM that the licensee has received, produced, possessed, transferred, consumed, disposed, or lost.

(2) Each licensee shall prepare and submit the reports described in this section as specified in the instructions in both NUREG/BR-0007 and NMMSS Report D-24 "Personal Computer Data Input for NRC Licensees."

(i) This prescribed computer-readable report replaces the DOE/NRC Form 742, Material Balance Report, and DOE/NRC Form 742C, Physical Inventory Listing Report, which have been previously submitted in paper form.

(ii) Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555-0001 or by e-mail to RidsNmssFcss.Resource@nrc.gov.

(c) The Commission may permit a licensee to submit the reports at other times for good cause. Such requests must be submitted in writing to Chief, Material Control and Accounting Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The licensee must

continue to report as required until such request is granted.

(d) Any licensee who is required to submit routine Material Status Reports under § 75.35 of this chapter (pertaining to implementation of the U.S./IAEA Safeguards Agreement) shall prepare and submit these reports only as provided in that section (instead of as provided in paragraphs (a) through (b) of this section).

(e) Each licensee subject to the requirements of this section shall resolve any discrepancies identified during the report review and reconciliation process within 30 calendar days of notification of a discrepancy identified by NRC.

15. In § 74.15, revise paragraph (b)(2) to read as follows:

§ 74.15 Nuclear material transaction reports.

* * * * *

(b) * * *

(2) Perform independent tests to assure the accurate identification and measurement of the material received, including its weight and enrichment; except that a licensee authorized under parts 50 or 52 of this chapter receiving unirradiated fuel rods or unirradiated fuel assemblies or a licensee authorized under part 70 of this chapter receiving SNM contained in a sealed source that will not be opened need not perform such tests; and

* * * * *

16. In § 74.19, revise paragraphs (b) and (c) to read as follows:

§74.19 Recordkeeping, procedures, item controls, and physical inventories.

* * * * *

(b) Each licensee authorized to possess special nuclear material, at any one time and

site location, in a quantity greater than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, shall:

(1) Establish, maintain, and follow written material control and accounting procedures that are sufficient to enable the licensee to account for the SNM in its possession under the license;

(2) Retain these procedures until the Commission terminates the license that authorizes possession of the special nuclear material; and

(3) Retain any superseded portion of the procedures for 3 years after the portion is superseded.

(c) Licensees subject to the requirements of §§ 74.31, 74.33, 74.41, or 74.51 are exempt from the requirements of paragraphs (c)(1) through (3) of this section. Otherwise, each licensee who is authorized to possess special nuclear material, at any one time and site location, in a quantity greater than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, shall:

(1) Establish, document, implement, and maintain an item control system as defined in § 74.4. Exempted from this requirement are items in solution with a concentration of less than 5 grams of uranium-235 per liter and items of waste destined for burial or incineration;

(2) Conduct a physical inventory of all SNM in its possession under the license at intervals not to exceed 370 calendar days; and

(3) Retain the records associated with each physical inventory until the Commission terminates the license that authorized the possession of special nuclear material. The records of the physical inventories need not be submitted to the Commission.

* * * * *

17. In § 74.31, revise paragraphs (a), (b), and (c) to read as follows:

§ 74.31 Nuclear material control and accounting for special nuclear material of low strategic significance.

(a) *General performance objectives.* (1) Each licensee who is authorized to possess and use a quantity greater than 350 grams of contained uranium-235 or SNM of low strategic significance (as defined in § 74.4 and shown in Appendix A to this part) at any site or contiguous sites subject to control by the licensee is subject to the performance objective requirements stated in § 74.3.

(2) Production or utilization facilities licensed under part 50 or 52 of this chapter; independent spent fuel storage installations licensed under part 72 of this chapter and operations involving waste disposal, are not subject to the requirements of subpart C of this part.

(b) *Implementation.* Each applicant for a license, and each licensee that, upon application for modification of its license, would become newly subject to paragraph (a) of this section shall submit for approval an MC&A plan describing how the performance objectives of § 74.3 and the requirements of paragraph (c) of this section will be met. The MC&A plan shall be implemented when a license is issued or modified to authorize the activities being addressed in paragraph (a) of this section, or by the date specified in a license condition.

(c) *Program capabilities.* To achieve the § 74.3 performance objectives, the MC&A plan must include the capabilities described in paragraphs (c)(1) through (11) of this section, and require the licensee to:

(1) Establish, document, and maintain a management structure which assures clear overall responsibility for material control and accounting functions, independence from production responsibilities, separation of key responsibilities, and adequate review and use of critical material control and accounting procedures;

(2) Establish and maintain a measurement system which assures that all quantities in the material accounting records are based on measured values;

(3) Follow a measurement control program which assures that measurement bias is estimated and significant biases are eliminated from inventory difference values of record;

(4) In each inventory period, control total material control and accounting measurement uncertainty so that twice its standard error of the inventory difference (SEID) is less than the greater of 9,000 grams of U-235 or 0.25 percent of the active inventory, and assure that any measurement performed under contract is controlled so that the licensee can satisfy this requirement;

(5) Unless otherwise required to satisfy part 75 of this chapter, perform a physical inventory at least every 12 months and, within 60 calendar days after the start of the inventory, reconcile and adjust the book inventory to the results of the physical inventory, and resolve, or report an inability to resolve, any inventory difference which is rejected by a statistical test which has a 90 percent power of detecting a discrepancy of a quantity of uranium-235 established by NRC on a site-specific basis;

(6) Establish, document, implement, and maintain an item control system as defined in § 74.4. Store and handle or subsequently measure items in a manner such that unauthorized removals of individual items or any quantity of SNM from items will be detected. Exempted from this requirement are items in solution with a concentration of less than 5 grams of uranium-235 per liter and items of waste destined for burial or incineration;

(7) Conduct and document shipper-receiver difference comparisons for all SNM receipts on a total shipment basis, and on an individual batch basis when required by part 75 of this chapter, and ensure that any shipper-receiver difference that is statistically significant and exceeds twice the estimated standard deviation of the difference estimator and 500 grams of uranium-235 is investigated and resolved;

(8) Independently assess the effectiveness of the MC&A program at least every 24 months, and document management's action on prior assessment recommendations.

(9) Maintain and follow procedures for tamper-safing (as defined in § 74.4) of containers or vaults (as defined in § 74.4) containing SNM, which include control of access to, and distribution of, unused seals and records;

(10) Use the two-person rule (as defined in § 74.4) for tamper-safing, performing physical inventories, for transferring SNM, and for any handling of SNM that is not under an active control measure, monitoring, or surveillance condition; and

(11) Designate material balance areas and item control areas and assign custodial responsibility for each of these areas in a manner that ensures that such responsibility can be effectively executed for all SNM possessed under license.

* * * * *

18. In § 74.33, revise paragraphs (a), (b), (c), and (d) to read as follows:

§ 74.33 Nuclear material control and accounting for uranium enrichment facilities authorized to produce special nuclear material of low strategic significance.

(a) *General performance objectives.* Each licensee who is authorized to possess equipment capable of enriching uranium or operate an enrichment facility, and produce, possess, or use a quantity greater than 350 grams of contained uranium-235 or SNM of low strategic significance (as defined in § 74.4 and shown in Appendix A to this part) at any site or contiguous sites, subject to control by the licensee, is subject to the performance objective requirements stated in § 74.3 and to the following performance objectives:

(1) Maintain accurate, current, and reliable information on, and confirm the quantities and locations of source material (SM) in its possession;

(2) Detect, respond to, and resolve any anomaly indicating a possible loss, theft, diversion, or misuse of SM;

(3) Permit rapid determination of whether an actual loss, theft, diversion, or misuse of SM has occurred;

(4) Provide information to aid in the investigation and recovery of missing SM in the event of an actual loss, theft, diversion, or misuse; and

(5) Provide information to aid in the investigation of any unauthorized production of uranium, including unauthorized production of uranium enriched to 10 percent or more in the isotope U-235. (For centrifuge enrichment facilities this requirement does not apply to each cascade during its start-up process, not to exceed the first 24 hours.)

(b) *Implementation.* Each applicant for a license who would, upon issuance of a license under any part of this chapter, be subject to the requirements of paragraph (a) of this section shall:

(1) Submit for approval a MC&A plan describing how the performance objectives of §§ 74.3 and 74.33(a), the program capabilities of § 74.33(c), and the recordkeeping requirements of § 74.33(d) will be met; and

(2) Implement the NRC-approved MC&A plan submitted under paragraph (b)(1) of this section prior to:

(i) The cumulative receipt of 5,000 grams of U-235 contained in any combination of natural, depleted, or enriched uranium; or

(ii) The NRC's issuance of a license to test or operate the enrichment facility, whichever occurs first.

(c) *Program capabilities.* To achieve the general performance objectives stated and referenced in paragraph (a) of this section, the MC&A plan must include the capabilities

described in paragraphs (c)(1) through (11) of this section. The licensee shall establish, document, implement and maintain:

(1) A management structure that ensures:

(i) Clear overall responsibility for MC&A functions;

(ii) Independence of MC&A management from production responsibilities;

(iii) Separation of key MC&A responsibilities from each other; and

(iv) Use of approved written MC&A procedures and periodic review of those procedures;

(2) A measurement program that ensures that all quantities of SM and SNM in the accounting records are based on measured values;

(3) A measurement control program that ensures that:

(i) Measurement bias is estimated and minimized through the measurement control program, and any significant biases are eliminated from inventory difference values of record;

(ii) All MC&A measurement systems are controlled so that twice the standard error of the inventory difference (SEID), based on all measurement error contributions, is less than the greater of 5,000 grams of U-235 or 0.25 percent of the U-235 of the active inventory for each total plant material balance; and

(iii) Any measurements performed under contract are controlled so that the licensee can satisfy the requirements of paragraphs (c)(3)(i) and (ii) of this section;

(4) A physical inventory program that provides for:

(i) Performing, unless otherwise required to satisfy part 75 of this chapter, a dynamic (nonshutdown) physical inventory of in-process (e.g., in the enrichment equipment) uranium and U-235 at least every 65 calendar days, and performing a static physical inventory of all other uranium and total U-235 contained in natural, depleted, and enriched uranium located outside of the enrichment processing equipment at least every 370 calendar days, with static physical inventories being conducted in conjunction with a dynamic physical inventory of in-process

uranium and U-235 so as to provide a total plant material balance at least every 370 calendar days; and

(ii) Reconciling and adjusting the book inventory to the results of the static physical inventory and resolving, or reporting an inability to resolve, any inventory difference that is rejected by a statistical test which has a 90 percent power of detecting a discrepancy of a quantity of U-235, established by NRC on a site-specific basis, within 60 calendar days after the start of each static physical inventory;

(5) A detection program, independent of production, which provides high assurance of detecting and resolving:

(i) Production of uranium enriched to 10 percent or more in the U-235 isotope, to the extent that SNM of moderate strategic significance (as defined in § 74.4) could be produced within any 370 calendar day period;

(ii) Production of uranium enriched to 20 percent or more in the U-235 isotope; and

(iii) Unauthorized production of uranium of low strategic significance (as defined in § 74.4);

(6) An item control system (as defined in § 74.4). The system must ensure that items are stored and handled or subsequently measured in a manner such that unauthorized removal of any quantity of U-235, as individual items or as uranium contained in items, will be detected. Exempted from this requirement are items in solution with a concentration of less than 5 grams of uranium-235 per liter and items of waste destined for burial or incineration;

(7) A system for conducting and documenting shipper-receiver difference comparisons for all source material and SNM receipts on a total shipment basis, and on an individual batch basis when required by part 75 of this chapter, to ensure that any shipper-receiver difference that is statistically significant and exceeds twice the estimated standard deviation of the difference estimator and 500 grams of uranium-235 is investigated and resolved;

(8) An assessment program that:

(i) Independently assesses the effectiveness of the MC&A program at least every 24 months;

(ii) Documents the results of the above assessment;

(iii) Documents management's findings on whether the MC&A program is currently effective; and

(iv) Documents any actions taken on recommendations from prior assessments;

(9) Procedures for tamper-safing (as defined in § 74.4) of containers or vaults (as defined in § 74.4) containing SNM, which include control of access to, and distribution of, unused seals and records;

(10) The two-person rule (as defined in § 74.4) for tamper-safing, performing physical inventories, for transferring SNM, and for any handling of SNM that is not under an active control measure, monitoring, or surveillance condition; and

(11) Material balance areas and item control areas, and shall assign custodial responsibility for each of these areas in a manner that ensures that such responsibility can be effectively executed for all SM and SNM possessed under license.

(d) Recordkeeping.

(1) Each licensee shall establish records that will demonstrate that the performance objectives stated and referenced in paragraph (a) of this section and the program capabilities of paragraph (c) of this section have been met and maintain these records in an auditable form, available for inspection, for at least 3 years, unless a longer retention time is required by part 75 of this chapter.

(2) Records that must be maintained pursuant to this part may be the original or a reproduced copy or a microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after

storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability for producing, on demand, legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications must include all pertinent information such as stamps, initials, and signatures.

(3) The licensee shall maintain adequate safeguards against tampering with and loss of records.

19. In § 74.41, revise paragraphs (a), (b), and (c) to read as follows:

§ 74.41 Nuclear material control and accounting for special nuclear material of moderate strategic significance.

(a) *General performance objectives.* (1) Each licensee who is authorized to possess and use SNM of moderate strategic significance (as defined in §74.4 and shown in Appendix A of this part) or 1 kilogram or more but less than 5 kilograms of SSNM (as defined in § 74.4 and shown in Appendix A to this part) in irradiated fuel reprocessing operations at any site or contiguous sites subject to control by the licensee, is subject to the performance objective requirements stated in § 74.3.

(2) Production or utilization facilities licensed under part 50 or 52 of this chapter; licensees using reactor irradiated fuels involved in research, development, and evaluation programs in facilities other than irradiated fuel reprocessing plants; and operations involving waste disposal, are not subject to the requirements of subpart D of this part.

(b) *Implementation.* Each applicant for a license, and each licensee that, upon application for modification of its license, would become newly subject to paragraph (a) of this section shall submit for approval an MC&A plan describing how the performance objectives of

§ 74.3 and the requirements of paragraph (c) of this section will be met. The MC&A plan shall be implemented when a license is issued or modified to authorize the activities being addressed in paragraph (a) of this section, or by the date specified in a license condition.

(c) *Program capabilities.* To achieve the § 74.3 performance objectives, the MC&A plan must include the capabilities described in §§ 74.43 and 74.45, and must incorporate checks and balances that are sufficient to detect falsification of data and reports that could conceal diversion of SNM by:

(1) A single individual, including an employee in any position; or

(2) Collusion between two individuals, one or both of whom have authorized access to SNM.

20. In § 74.43, revise paragraphs (b)(3), (b)(5), (b)(6), (b)(7), and (c)(3); add new paragraphs (c)(9) and (c)(10); and revise paragraph (d)(5) to read as follows:

§ 74.43 Internal controls, inventory, and records.

* * * * *

(b) * * *

(3) The licensee shall provide for the adequate review, approval, and use of written MC&A procedures that are identified in the approved MC&A plan as being critical to the effectiveness of the described system.

* * * * *

(5) The licensee shall establish, document, implement, and maintain an item control system as defined in § 74.4. The system must ensure that items are stored and handled or subsequently measured in a manner such that unauthorized removals of individual items or any

quantity of material (as defined in § 74.4) from items will be detected.

(6) Exempted from the requirements of paragraph (b)(5) of this section are items in solution with a concentration of less than 5 grams of U-235 per liter, and items of waste destined for burial or incineration.

(7) Conduct and document shipper-receiver difference comparisons for all SNM receipts,

* * * * *

(c) * * *

(3) Maintain and follow procedures for tamper-safing (as defined in § 74.4) of containers or vaults (as defined in § 74.4) containing SNM which include control of access to, and distribution of, unused seals and records;

* * * * *

(9) Use the two-person rule (as defined in § 74.4) for tamper-safing (as defined in § 74.4), performing physical inventories, for transfer of SNM, and for any handling of SNM that is not under an active control measure, monitoring, or surveillance condition; and

(10) Designate material balance areas and item control areas, and assign custodial responsibility for each of these areas in a manner that ensures that such responsibility can be effectively executed for all SNM possessed under license.

* * * * *

(d) * * *

(5) Establish records that will demonstrate that the performance objectives of § 74.3 and § 74.41(a)(1), the system capabilities of paragraphs (b) and (c) of this section, and § 74.45(b) and (c) have been met, and maintain these records in an auditable form, available for inspection, for at least 3 years, unless a longer retention time is specified by § 74.19(b), part 75 of this chapter, or by a specific license condition.

* * * * *

21. In § 74.45, revise paragraph (c)(4) to read as follows:

§ 74.45 Measurements and measurement control.

* * * * *

(c) * * *

(4) Establish and maintain a measurement control system so that for each inventory period the standard error of the inventory difference (SEID) is less than 0.125 percent of the active inventory, and assure that any MC&A measurements performed under contract are controlled so that the licensee can satisfy this requirement.

* * * * *

22. Revise § 74.51 to read as follows:

§ 74.51 Nuclear material control and accounting for strategic special nuclear material.

(a) *General performance objectives.* (1) Each licensee who is authorized to possess and use five or more formula kilograms of strategic special nuclear material (SSNM), as defined in § 74.4 and shown in Appendix A to this part, at any site or contiguous sites subject to control by the licensee, is subject to the performance objective requirements stated in § 74.3, and to the following performance objectives:

(i) Ongoing confirmation of the presence of SSNM in assigned locations;

(ii) Timely detection of the possible abrupt loss of five or more formula kilograms of SSNM from an individual unit process; and

(iii) Rapid determination of whether an actual loss of five or more formula kilograms of SSNM occurred.

(2) Production or utilization facilities licensed under part 50 or 52 of this chapter, independent spent fuel storage installations licensed under part 72 of this chapter; and any licensee operations involving waste disposal, are not subject to the requirements of subpart E of this part.

(b) *Implementation.* Each applicant for a license, and each licensee that, upon application for modification of its license, would become newly subject to paragraph (a) of this section shall submit for approval an MC&A plan describing how the performance objectives of § 74.3 and paragraph (a) of this section will be achieved, and how the requirements of paragraph (c) of this section will be met. The MC&A plan shall be implemented when a license is issued or modified to authorize the activities being addressed in paragraph (a) of this section, or by the date specified in a license condition.

(c) *Program capabilities.* To achieve the general performance objectives specified in § 74.3 and paragraph (a) of this section, the MC&A plan must provide the capabilities described in §§ 74.53, 74.55, 74.57 and 74.59 and must incorporate checks and balances that are sufficient to detect falsification of data and reports that could conceal diversion of SNM or SSNM by:

- (1) A single individual, including an employee in any position; or
- (2) Collusion between two individuals, one or both of whom have authorized access to SNM or SSNM.

(d) *Inventories.* Notwithstanding § 74.59(f)(1), licensees shall perform at least 3 physical inventories at intervals not to exceed 65 calendar days after implementation of the NRC-approved MC&A plan and shall continue to perform such inventories at intervals not to

exceed 65 calendar days until performance acceptable to the NRC has been demonstrated and the Commission has issued formal approval to perform physical inventories at intervals not to exceed 185 calendar days. Licensees who have prior experience with process monitoring and/or can demonstrate acceptable performance against all MC&A plan commitments may request authorization to perform inventories at intervals not to exceed 185 calendar days at an earlier date.

23. In § 74.53, revise the introductory text of paragraph (a), and paragraphs (a)(3), (a)(4), and (c)(1) to read as follows:

§ 74.53 Process monitoring.

(a) Licensees subject to § 74.51 shall monitor internal transfers, storage, and processing of SSNM. The process monitoring must achieve the detection capabilities described in paragraph (b) of this section for all SSNM except:

* * * * *

(3) SSNM with an estimated measurement standard deviation greater than 5 percent that is either input or output material associated with a unit that processes less than five formula kilograms over a period of 95 calendar days; and

(4) SSNM involved in research and development operations that process less than five formula kilograms during a period of seven calendar days.

* * * * *

(c) * * *

(1) Perform material balance tests on a lot or a batch basis, as appropriate, or at intervals not to exceed 30 calendar days, whichever is sooner, and investigate any difference greater than 200 grams of plutonium or U-233 or 300 grams of U-235 that exceeds three times

the estimated standard error of the inventory difference;

* * * * *

24. In § 74.57, revise the introductory text of paragraph (c) to read as follows:

§ 74.57 Alarm resolution.

* * * * *

(c) Each licensee shall notify the NRC Operations Center by telephone of any MC&A alarm that remains unresolved beyond the time period specified for its resolution in the licensee's MC&A plan. Notification must occur within 24 hours except when a holiday or weekend intervenes in which case the notification must occur on the next scheduled workday. The licensee may consider an alarm to be resolved if:

* * * * *

25. In § 74.59, revise paragraph (e)(7), the introductory text of paragraph (f)(1), paragraphs (f)(2)(i), (h)(2)(ii), and (h)(5), and add new paragraph (h)(6) to read as follows:

§ 74.59 Quality assurance and accounting requirements.

* * * * *

(e) * * *

(7) Investigate and take corrective action, as appropriate, to identify and reduce associated measurement biases when, for like material types (i.e., measured by the same measurement system), the net cumulative shipper/receiver differences accumulated over a period not to exceed 185 calendar days results in a value greater than one formula kilogram or 0.1 percent of the total amount received.

* * * * *

(f) * * *

(1) Except as required by part 75 of this Chapter, perform a physical inventory at least every 185 calendar days and within 45 calendar days after the start of the ending inventory:

* * * * *

(2) * * *

(i) Development of procedures for tamper-safing of containers or vaults containing SSNM not in process that include adequate controls to assure the validity of assigned SSNM values and which include control of access to, and distribution of, unused seals and records;

* * * * *

(h) * * *

(2) * * *

(ii) Any scrap measured with a standard deviation greater than 5 percent of the measured amount is recovered so that the results are segregated by inventory period and recovered within 185 calendar days of the end of the inventory period in which the scrap was generated except where it can be demonstrated that the scrap measurement uncertainty will not cause noncompliance with § 74.59(e)(5).

* * * * *

(5) Designate material balance areas and item control areas and assign custodial responsibility for each of these areas in a manner that ensures that such responsibility can be effectively executed for all SSNM possessed under license.

(6) Use the two-person rule (as defined in § 74.4) for tamper-safing (as defined in § 74.4), performing physical inventories, for transfer of SNM, and for any handling of SNM that is not under an active control measure, monitoring, or surveillance condition.

26. Add Appendix A to part 74 to read as follows:

Appendix A to Part 74 - - Categories of Special Nuclear Material.

Notes:

1. Sealed sources as defined in § 74.4 are excluded from the quantities in the table.
2. Irradiated fuel which by virtue of its original fissile material content is included as Category I or II before irradiation is reduced one category level, during the period of time that the radiation level from the fuel exceeds 1 Sv per hour (100 rads per hour) at 1 meter, unshielded.

Material	Isotopic Composition	Category I (Subpart E)	Category II (Subpart D)	Category III (Subpart C)
Plutonium	All plutonium (element)	2,000 g or more	Less than 2,000 g, but more than 500 g	500 g or less, but more than 15 g
Uranium-233	All U-233 enrichments	2,000 g or more	Less than 2,000 g, but more than 500 g	500 g or less, but more than 15 g
Uranium-235	Uranium enriched to 20% or more in isotope U-235	5,000 g or more	Less than 5,000 g, but more than 1,000 g	1,000 g or less, but more than 15 g
	Uranium enriched to 10%, but less than 20%, in isotope U-235		10,000 g or more	Less than 10,000 g, but more than 1,000 g
	Uranium enriched above 0.711%, but less than 10%, in isotope U-235			10,000 g or more

The formulae to calculate a quantity of SSNM as defined in § 74.4 are as follows:

- Category I, 5000 grams or more of SSNM

- grams = grams contained U-235 + 2.5 (grams U-233 + grams Pu)
- Category II, less than 5000 grams but more than 1000 grams of SSNM
 - grams = grams contained U-235 + 2 (grams U-233 + grams Pu)
- Category III, 1000 grams or less but more than 15 grams of SSNM
 - grams = grams contained U-235 + grams U-233 + grams Pu

27. The authority citation for part 150 continues to read as follows:

PART 150 - EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

AUTHORITY: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

28. Revise § 150.17 to read as follows:

§ 150.17 Submission to commission of nuclear material status reports.

(a) Except as specified in paragraph (d) of this section and § 150.17a, all licensees who possess or who had possessed in the previous reporting period one gram or more of irradiated

or non-irradiated special nuclear material are required to submit both a Material Balance Report and a Physical Inventory Listing Report of these materials to the NMMSS in accordance with the instructions in paragraph (a)(1) of this section. Both reports shall be submitted between January 1 and March 31 of each year.

(1) Each licensee shall prepare and submit the reports described in this section as follows:

(i) Reports must be submitted for each Reporting Identification Symbol (RIS) account, including all special nuclear material that the licensee has received, produced, possessed, transferred, consumed, disposed, or lost.

(ii) Each licensee shall prepare and submit the reports described in this section as specified in the instructions in both NUREG/BR-0007 and NMMSS Report D-24, "Personal Computer Data Input for NRC Licensees."

(iii) This prescribed computer-readable report replaces the DOE/NRC Form 742, Material Balance Report, and DOE/NRC Form 742C, Physical Inventory Listing Report, which have been previously submitted in paper form.

(iv) Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555-0001 or by e-mail to RidsNmssFcss.Resource@nrc.gov.

(2) The Commission may permit a licensee to submit the reports at other times for good cause. Such requests must be submitted in writing to Chief, Material Control and Accounting Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The licensee must continue to report as required until such request is granted.

(3) Any licensee who is required to submit routine Material Status Reports under § 75.35

of this chapter (pertaining to implementation of the U.S./IAEA Safeguards Agreement) shall prepare and submit these reports only as provided in that section (instead of as provided in paragraphs (a) through (b) of this section).

(4) Each licensee subject to the requirements of this section shall resolve any discrepancies identified during the report review and reconciliation process within 30 calendar days of notification of a discrepancy identified by NRC.

(b) Except as specified in paragraph (d) of this section and § 150.17a, each person possessing, or who had possessed in the previous reporting period, at any one time and location, under an Agreement State license:

(1) One kilogram or more of uranium or thorium source material with foreign obligations, shall document holdings as of September 30 of each year and submit to the Commission within 30 days. Alternatively, these reports may be submitted with the licensee's material status reports on special nuclear material filed under part 74 of this chapter. This statement must be submitted to the address specified in the reporting instructions in NUREG/BR-0007, and include the Reporting Identification Symbol (RIS) assigned by the Commission.

(2) One kilogram or more of uranium or thorium source material in the operation of enrichment services, down blending uranium that has an initial enrichment of the U-235 isotope of 10 percent or more, or in the fabrication of mixed-oxide fuels shall complete and submit, in computer-readable format, Material Balance and Physical Inventory Listing Reports concerning source material that the licensee has received, produced, possessed, transferred, consumed, disposed, or lost. Reports must be submitted for each RIS account including all holding accounts. Each licensee shall prepare and submit these reports as specified in the instructions in NUREG/BR-0007 and NMMSS Report D-24, "Personal Computer Data Input for NRC Licensees." These reports must document holdings as of September 30 of each year and submitted to the Commission within 30 days. Alternatively, these reports may be submitted with

the licensee's material status reports on special nuclear material filed under part 74 of this chapter. Copies of the reporting instructions may be obtained by writing to the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555-0001, or by e-mail to RidsNmssFcss.Resource@nrc.gov. Each licensee required to report material balance, and inventory information, as described in this part, shall resolve any discrepancies identified during the report review and reconciliation process within 30 calendar days of the notification.

Dated at Rockville, Maryland, this _____ day of _____, 2011.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

**Draft Regulatory Analysis for Proposed Rule:
Amendments to Material Control and Accounting
Regulations (10 CFR Part 74)**

U.S. Nuclear Regulatory Commission

December 2011



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Executive Summary

The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend the Title 10 of the *Code of Federal Regulations* (10 CFR) Part 74 material control and accounting (MC&A) regulations applicable to special nuclear material (SNM) and some source material. This rulemaking would consolidate the MC&A requirements currently in 10 CFR Part 72 for independent spent fuel storage installations (ISFSIs) in 10 CFR Part 74. Also, 10 CFR 150.17 (applicable to licensees located in Agreement States) would be changed to conform to 10 CFR 74.13. Part 74 of 10 CFR would also be revised to include a “two-person” rule to strengthen requirements for tamper-safing, performing physical inventories, transferring SNM, or any handling of SNM that is not under an active control measure or monitoring or surveillance condition. Other miscellaneous changes would also be made to 10 CFR Part 74 requirements for Category III, II, and I facilities respectively in Subparts C, D, and E. Plain language revisions would also be made to 10 CFR Part 74. Existing NUREG guidance documents would be revised to reflect these changes and a NUREG previously un-issued guidance document for Category II facilities would also be updated and included. References to due dates and reporting frequencies would be made more uniform by expressing such times in terms of calendar days. Section 74.4 would be amended by adding, removing, and modifying certain defined terms that are used throughout 10 CFR Part 74.

The regulatory analysis examines the benefits and costs of the proposed changes to the requirements for general performance objectives; recordkeeping and submitting reports; written MC&A procedures; completing physical inventories, item controls; tamper-safing operations; two-person rule for tamper-safing, performing physical inventories, handling nuclear materials, and for transferring nuclear materials; and designating material balance areas and item control areas and custodial responsibilities for these areas. The analysis makes the following key findings:

- **Total Cost to Industry.** The proposed rule would result in a total one-time cost to licensees of approximately \$646,000 followed by total annual costs of approximately \$1.1 million. The analysis estimates the total present value of these costs at \$8.1 million (using a 7-percent discount rate) and at \$9.7 million (using a 3-percent discount rate) over the 10-year analysis period.
- **Costs to the NRC.** The rule would result in a one-time cost to the NRC of approximately \$259,000, followed by no annual costs.

Decision Rationale. The NRC believes that the rule is cost-justified because the proposed regulatory initiatives would update, clarify, and strengthen the existing requirements, and thereby, promote the common defense and security.

Acronyms

ADAMS	Agencywide Documents Access and Management System
10 CFR	Title 10 of the <i>Code of Federal Regulations</i>
FNMC	Fundamental Nuclear Material Control
IAEA	International Atomic Energy Agency
NRC	U.S. Nuclear Regulatory Commission
SNM	Special Nuclear Material
ISFSI	Independent Spent Fuel Storage Installation
MC&A	Material Control and Accounting
NMMSS	Nuclear Materials Management and Safeguards System
NUREG	Nuclear Regulatory Publication

1. Introduction

The NRC is proposing to amend the 10 CFR Part 74 MC&A regulations applicable to SNM. This rulemaking would consolidate the MC&A requirements currently in 10 CFR Part 72 for ISFSIs in 10 CFR Part 74. Also, 10 CFR 150.17 (applicable to licensees located in Agreement States) would be changed to conform to 10 CFR 74.13. No substantive changes would be involved. References to due dates and reporting frequencies would be made more uniform by expressing such times in terms of calendar days. Section 74.4 would be amended by adding, removing, and modifying certain defined terms that are used throughout 10 CFR Part 74.

This analysis presents background material, rulemaking objectives, alternatives, and input assumptions, and it describes the consequences of the rule language and alternative approaches necessary to accomplish the regulatory objectives.

The remainder of this introduction is divided into two sections. Section 1.1 states the problem and the objective of the rulemaking. Section 1.2 provides background information.

1.1 Statement of the Problem and Objective of the Rulemaking

The Commission has directed the staff to revise and consolidate requirements for MC&A in 10 CFR Part 74. The MC&A requirements for an ISFSI that are currently located in 10 CFR Part 72 would be relocated in 10 CFR Part 74. In addition, 10 CFR Part 74 would be revised to make it clear what requirements apply to different types of facilities. The general provisions would be revised to include general performance objectives for the MC&A program that would apply to licensees authorized to possess SNM in a quantity greater than 350 grams. Some current exemptions in the regulations would be deleted or modified. Part 74 of 10 CFR would be revised to include definitions for some new terms and to clarify the definitions of some terms. Part 74 of 10 CFR would also be revised to include a “two-person” rule to strengthen requirements for tamper-safing, performing physical inventories, transferring SNM, or any handling of SNM that is not under an active control measure or monitoring or surveillance condition. Other miscellaneous changes would also be made to 10 CFR Part 74 requirements for Category III, II, and I facilities respectively in Subparts C, D, and E. Plain language revisions would also be made to 10 CFR Part 74. Existing NUREG guidance documents would be revised to reflect these changes and a NUREG guidance document for Category II facilities would be developed.

1.2 Background

Many of the current MC&A requirements were developed over 20 years ago and have been considered over the past several years during self-assessment and operating experience activities completed by the NRC. A more risk-informed and performance-based approach is being considered for the requirements in 10 CFR Part 74. The previous amendments to 10 CFR Part 74 consolidated the MC&A requirements from 10 CFR Part 70. All that remains to be moved are the requirements in 10 CFR Part 72 that apply to a licensee operating an ISFSI. There are reporting requirements for the Nuclear Materials Management and Safeguards System (NMMSS) that are located in 10 CFR Part 40 for source material. These requirements would not be moved as they are not applicable for SNM. There are also NMMSS reporting requirements in 10 CFR Part 150 that apply to Agreement State licensees. These requirements

would not be relocated to 10 CFR Part 74. This rulemaking would complete the relocation process by including ISFSIs in the scope of 10 CFR Part 74 and in the requirements for submitting material status reports and nuclear material transaction reports to the NRC via the NMMSS. Comporting changes would remove the requirements from 10 CFR Part 72 and refer to the MC&A requirements in 10 CFR Part 74. The proposed reporting requirements for a licensee under 10 CFR Part 72 would be essentially unchanged except that the requirements would be located in 10 CFR Part 74.

Currently there are no general performance objective requirements for NRC-licensed facilities which are authorized to possess more than 350 grams of SNM, but which are not Category I, II, or III facilities. This rulemaking would revise Subpart A of 10 CFR Part 74 to enlarge the set of NRC licensees who are subject to General Performance Objective (GPO) requirements.

This rulemaking would add defined terms to 10 CFR Part 74, modify some existing terms, and remove one defined term. Newly defined terms include: *accounting*, *custodian*, *item control system* and *item control area*, *material balance area*, *material control and accounting*, and *two person rule*. Modified terms include, *formula quantity*, *special nuclear material of moderate strategic significance*, and *special nuclear material of low strategic significance*. For these classes of materials, 10 CFR Part 74 would be revised to improve clarity of the requirements that apply to different types of facilities. These classes of materials would be designated respectively as a Category I quantity, a Category II quantity, and a Category III quantity. Also, a new appendix would be added to 10 CFR Part 74: Appendix A, Categories of Special Nuclear Material, that includes a table showing the quantities for each category, the reference corresponding to the subpart in 10 CFR Part 74 for each category, and formulae to calculate any combination of SNM in a quantity for a category. The term *Effective kilograms of special nuclear material* would be removed from 10 CFR Part 74 and the requirements would simply refer to gram quantities. *Effective kilograms of special nuclear material* would remain as a defined term in 10 CFR Parts 40, 70, 75, 76, and 110, to ensure the continued effective implementation of the US/International Atomic Energy Agency Safeguards Agreement.

Many of the references to due dates and reporting frequencies would be changed to calendar days, to make 10 CFR Part 74 more uniform in this regard. Using calendar days avoids the existing uncertainty over whether weekends and holidays are counted in determining whether or not a licensee has taken timely action.

A new item control requirement would be added to Subpart B of 10 CFR Part 74. Subparts C and D would be revised to remove some exemptions or modify requirements for item control of smaller quantities of SNM. Subparts C, D, and E would be revised to require at least two, qualified and authorized individuals to complete and observe certain operations and to require certain procedures to be established for tamper-safing containers or locations and to require designation of material balance areas or item control areas. Plain language revisions would clarify an MC&A program and various systems that comprise the MC&A program. The term, MC&A plan would replace the term, Fundamental Nuclear Material Control (FNMC) plan. Conforming changes would be completed for associated guidance documents that are used by licensees and the NRC and interested members of the public.

2. Identification and Preliminary Analysis of Alternative Approaches

The following sections describe the two regulatory options that the NRC is considering in order to meet the rulemaking objective identified in the previous section. Section 3 presents a detailed analysis.

2.1 Option 1: No Action

Under Option 1, the no-action alternative, the NRC would not amend the current regulations at 10 CFR Part 74. Current NRC regulations do not include GPO requirements for licensees authorized to possess more than 350 grams of SNM, but which are not Category I, II, or III facilities. Licensees under Subpart B are required to establish and follow written MC&A procedures but are not required to implement item controls. Licensees under Subparts C and D (Category III and II facilities, respectively) are now exempt from certain item controls involving kilogram amounts of SNM. There is no tamper-safing requirement in Subparts C or D and licensees under Subpart E (Category I facilities) are not required to control access to unused tamper seals or account for seals. Licensees under Subparts C, D, and E are not required to designate material balance areas, item control areas, or custodians for these areas. There is no direct requirement for the two-person rule. Any future irradiated fuel reprocessing plant would currently be exempt from the Subpart E requirements.

The licensees would continue to comply with existing regulations. They may choose to voluntarily implement these practices that have been encouraged within the industry for many years. There are currently no facilities that are licensed to operate under Subpart D of 10 CFR Part 74. The licensees operating under Subparts C and E have already implemented best practices which are similar to the proposed changes. Option 1 would avoid costs that the proposed rule would impose; however, the existing requirements would not be updated, clarified, or consolidated to improve security issues for facilities authorized to possess and use SNM that the NRC considers necessary to assure the common defense and security. Option 1, which is the no-action alternative, is the baseline for this regulatory analysis.

2.2 Option 2: Amend 10 CFR Part 74

The changes listed below are consistent with Option 2 to revise and consolidate MC&A requirements in 10 CFR Part 74.

- Relocate to 10 CFR Part 74 the NMMSS-related reporting requirements for ISFSIs that currently exist in 10 CFR Part 72. These requirements in 10 CFR Part 72 duplicate requirements in existing Subpart B of 10 CFR Part 74. In this regard, revisions are proposed to 10 CFR 72.72 and 72.74; 10 CFR 72.76 and 72.78 would be removed.
- Revise 10 CFR Part 74 to make it clear what requirements apply to different types of facilities because although the Subpart B general provisions apply to almost all facilities that are authorized to possess and use SNM, some licensees and NRC staff have expressed confusion as to what requirements apply to a particular facility. To address this matter, the staff proposes to modify the 10 CFR Part 74 definitions for *formula quantity*, *special nuclear material of moderate strategic significance*, and *SNM of low strategic significance* by conforming them to the existing definitions in 10 CFR Parts 70 and 73, which clarify these

classes of SNM respectively as Category I, II, and III quantities of strategic SNM. Licensees authorized to possess Category I material are subject to the requirements in 10 CFR Part 74, Subpart E, while licensees authorized to possess Category II or III material are subject to the requirements in Subpart D or C, respectively. To further clarify these divisions, the staff proposes to add Appendix A to 10 CFR Part 74 – a table listing the Category I, II, and III quantities of strategic SNM, and the formulae used to calculate these quantities.

- Include general performance objectives that would apply to licensees authorized to possess more than 350 grams of SNM but which are not licensees authorized to possess Category I, II, and III quantities of material. Examples of general performance objectives include the need to confirm the presence of SNM and to resolve indications of missing material. The general performance objectives that would apply to all NRC licensees authorized to possess SNM in a quantity greater than 350 grams are stated in proposed 10 CFR 74.3.
- Add item control requirements in proposed 10 CFR 74.19(c)(1) that would apply to licensees authorized to possess more than 350 grams of SNM but which are not Category I, II, and III quantities of material. Item control exemptions would be removed from 10 CFR 74.31(c)(6), 10 CFR 74.33(c)(6), and 10 CFR 74.43(b)(6).
- Move the exemptions for sealed sources in 10 CFR 74.31(a)(1) and 10 CFR 74.41(a)(1). These exemptions exclude sealed sources from being used in calculating whether or not a facility possesses SNM of low strategic significance or SNM of moderate strategic significance, respectively. To clarify this point, these exemptions would be moved to Appendix A.
- Remove the existing exemption in 10 CFR 74.51(a) for an irradiated fuel reprocessing plant.
- Include definitions for some new terms and to clarify the definitions of some terms. In this regard, the staff proposes to add defined terms for *accounting*, *custodian*, *item control area*, *item control system*, *material balance area*, *material control and accounting*, and *two-person rule*.
- Add requirements related to the two-person rule. Current requirements for checks and balances use the two-person rule concept for the MC&A program capabilities and for the quality assurance and accounting requirements in Subpart E at 10 CFR 74.51(b)(1) and 10 CFR 74.59 (b)(1) and (h)(3). The staff proposed to include the two-person rule in 10 CFR 74.31(c)(10), 74.33(c)(10), 74.43(c)(9), and 74.59(h)(6).
- Strengthen requirements related to tamper-indicating device programs. Having a tamper-safing program is already required in Subparts D and E at 10 CFR 74.43(c)(3) and 74.59(f)(2), respectively, and similar tamper-safing requirements would be added to Subpart C in proposed 10 CFR 74.31(c)(9) for fuel fabrication facilities using SNM of low strategic significance and 10 CFR 74.33(c)(9) for uranium enrichment facilities.

Other miscellaneous changes would be made, including plain language revisions. Such changes and revisions would replace the existing references to the FNMC Plan with references to an MC&A Plan. The staff's view is that FNMC is an outdated term and does not explicitly

refer to “accounting.” Thus, it does not fully describe the accounting aspects of the MC&A program.

The NUREG guidance documents listed below would be updated. A previously un-issued guidance document for a Category II facility would be updated and included with the guidance documents listed below.

1. NUREG-1280, Rev. 1 (1995), “Standard Format and Content Acceptance Criteria for the Material Control and Accounting (MC&A) Reform Amendment,”
2. NUREG-1065, Rev. 2 (1995), “Acceptable Standard Format and Content for the Fundamental Nuclear Material Control (FNMC) Plan Required for Low-Enriched Uranium Facilities,”
3. NUREG/CR-5734 (1991), “Recommendations to the NRC on Acceptable Standard Format and Content for the Fundamental Nuclear Material Control (FNMC) Plan Required for Low-Enriched Uranium Enrichment Facilities,”
4. NUREG/BR-0096(1992), “Instructions and Guidance for Completing Physical Inventory Summary Report.”

The NRC has estimated the benefits and costs of this option, as described in Sections 3 and 4 of this regulatory analysis, and has pursued Option 2 for the reasons discussed in Section 5.

3. Estimation and Evaluation of Values and Impacts

This section describes the analysis that the NRC conducted to identify and evaluate the benefits (values) and costs (impacts) of the two regulatory options. Section 3.1 identifies the attributes that the staff expects the proposed rulemaking to affect. Section 3.2 describes how the values and impacts have been analyzed. Finally, Section 3.3 presents the detailed results of the projected impacts.

3.1 Identification of Affected Attributes

This section identifies the factors within the public and private sectors that the final rule is expected to affect, using the list of potential attributes in Chapter 5 of NUREG/BR-0184, “Regulatory Analysis Technical Evaluation Handbook,” issued January 1997, and in Chapter 4 of NUREG/BR-0058, “Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission,” Revision 4, issued September 2004. The evaluation considered each attribute listed in Chapter 5 of NUREG/BR-0184. The basis for selecting those attributes is presented below.

Affected attributes include the following:

- Industry Implementation. The proposed changes would require certain licensees to implement general performance objectives, establish and follow written MC&A procedures, implement an item control system, implement a two-person rule for certain operations such as tamper-safing of containers or vaults, and designate material

balance areas and/or item control areas and custodial responsibilities for these areas. Certain items currently exempted from an item control program would be subject to item controls. An irradiated fuel reprocessing plant would no longer be exempted from the requirements for a Category I facility in 10 CFR Part 74, Subpart E.

- **NRC Implementation.** Under the proposed action, the NRC would develop the proposed rule package to be published by the Office of the *Federal Register* and prepare the final rule package that responds to comments from stakeholders and sets forth the final rule text for publication by the Office of the *Federal Register*. The NRC would revise guidance and inspection procedures to accommodate the requirements that would be added or modified by the rulemaking process.
- **Industry Operations.** The proposed changes to 10 CFR 74.19(c) would require reactor licensees and certain materials licensees to establish item control systems. Licensees would maintain the two-person rule by ensuring that individuals are qualified and authorized to perform and observe certain MC&A operations. Licensees would maintain material balance areas and/or item control areas and ensure custodial responsibilities are assigned to these areas. Certain items currently exempted from item control requirements would be tracked to maintain current knowledge of each item.
- **NRC Operations.** The proposed changes would include inspection and enforcement of requirements for certain licensees to adequately assure common defense and security of workers and members of the public from lost, missing, stolen, or diverted SNM. Inspectors would assess licensee implementation of the requirements noted above and operational activities noted above to maintain the MC&A program at licensee facilities. The NRC does not estimate any additional operating cost due to the proposed regulations because the routine inspection program is reviewed and updated at 3-year intervals and the proposed changes would be incorporated without increasing cost to the NRC to update procedures. The NRC inspection activities at a facility would include the proposed changes without increasing inspection effort.
- **Security Considerations.** The regulatory basis for 10 CFR Part 74 is security and the information and data and the activities to manage the information and data ensure that an adequate level of safety and security over SNM is maintained.

Attributes that the rulemaking options would *not* affect include the following: occupational health (routine), occupational health (accidents), public health (routine), public health (accidents), regulatory efficiency, environmental considerations, general public, improvements in knowledge, offsite property, onsite property, antitrust considerations, and other Government regulations.

3.2 Analytical Methodology

This section describes the methodology used to analyze the consequences associated with the proposed rule. The values (benefits) include any desirable changes in the affected attributes. The impacts (costs) include any undesirable changes in the affected attributes.

As described in Section 3.1, the attributes expected to be affected include the following:

- Industry implementation
- Industry operation
- NRC implementation
- NRC operations
- Safeguards and security considerations

This analysis relies on a qualitative evaluation of one of the affected attributes (safeguards and security considerations) due to the difficulty in quantifying the impact of the current rulemaking. This attribute would be affected by the regulatory options through the associated reduction in the risks of damage from malevolent use of SNM. Quantification would require estimation of factors such as: (1) the frequency of attempted theft or diversion, (2) the frequency with which theft or diversion attempts are (i.e., pre-rule) and will be (i.e., post-rule) successful, and (3) the impacts associated with successful theft or diversion attempts.

The NRC collected input assumptions using data and information from NRC workgroups and staff experience and NRC databases to estimate the costs associated with implementation and costs associated with annual operations of industry and the NRC.

In accordance with guidance from the Office of Management and Budget and NUREG/BR-0058, Revision 4, this regulatory analysis presents the results of the analysis using both 3-percent and 7-percent real discount rates. The NRC seeks public comments on the accuracy of these regulatory analysis assumptions and on the validity of the proposed rule's value and impact estimation methods.

3.2.1 Data and Assumptions

The analysis assumes that one-time implementation costs will be incurred in calendar year 2013. The analysis assumes that ongoing costs to revise and consolidate requirements for MC&A in 10 CFR Part 74 related to the proposed rule will begin in 2013 and will be modeled on an annual cost basis. The analysis calculated cost and savings over a 10-year time horizon with each year's costs or savings discounted back at a 7-percent and 3-percent discount rate in accordance with NUREG/BR-0058, Revision 4. Costs and savings are expressed in 2011 dollars.

Data/Affected Entities

The analysis assumes that licensees of the following existing facilities will be affected by this rule:

- Reactor facilities licensed under 10 CFR Part 50
- Industrial, academic, and research facilities licensed under 10 CFR Part 70
- Category III- Enrichment Facilities licensed under 10 CFR Part 70
- Category III- Fuel Fabrication Facilities licensed under 10 CFR Part 70
- Category I- Fuel Fabrication Facilities licensed under 10 CFR Part 70
- ISFSIs licensed under 10 CFR Part 72.

Applications for reactor facility licenses under 10 CFR Part 52 are pending. Any holders of Part 52 licenses would also be affected by this rule. Within the next 10 years, the NRC expects to receive and review an application for a medical isotope production facility. Such a facility, if licensed, would likely be a Category II facility that would be affected by this rule.

Other Data and Assumptions

The analysis makes the following other assumptions:

- The analysis assumes that the labor rate for the NRC staff is \$119 per hour.
- The analysis assumes a \$100 per hour labor rate for licensee nonsecurity-related personnel.
- The analysis assumes that the final rule will be published in December 2012 and would be effective in mid-2013.
- The analysis calculated cost over a 10-year timeframe with each year's costs or savings discounted back at a 7-percent and 3-percent discount rate, in accordance with NUREG/BR-0058, Revision 4.
- To the extent practical, quantitative information (e.g., costs and savings) and qualitative information (e.g., the nature and magnitude of impacts) on attributes affected by the rule were obtained from, or developed in consultation with, the NRC staff.

3.3 Detailed Results

This section presents a detailed estimate of the impacts for the proposed rulemaking (Option 2). Some values and impacts are addressed qualitatively for reasons discussed in Section 3.2. Exhibits 3-1 and 3-2 summarize these results.

Option 1: No Action

By definition, this option does not result in any values or impacts.

Option 2: Amend Regulations to Revise and Consolidate Requirements for MC&A of SNM in 10 CFR Part 74

Industry Implementation

Impact: Establish, Maintain Written MC&A Procedures

The proposed changes to 10 CFR 74.19(b)(1) would require each licensee authorized to possess SNM, at any one time and site location, in a quantity greater than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, to establish, maintain, and follow written MC&A procedures that are sufficient to enable the licensee to account for the SNM in its possession under the license. It is estimated by the NRC that the changes would not impact any additional licensees. The NRC staff compared the current

number of licensees subject to the current requirement with the number of licensees that would be subject to the proposed requirement which would reduce the threshold possession limit from one effective kilogram of SNM to a quantity greater than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof and determined that no additional licensees would be affected by proposed 10 CFR 74.19(b)(1).

Impact: Item Control System

The proposed changes to 10 CFR 74.19(c)(1) would require each licensee authorized to possess SNM, at any one time and site location, in a quantity greater than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, to establish, document, implement, and maintain an item control system as defined in § 74.4. These item controls would be applicable to reactor licensees and to two materials facilities licensed by the NRC that are authorized to hold more than 350 grams of SNM, but which are not Category III, II, or I facilities. The reactor licensees have already implemented item controls (i.e., controlling and accounting for discrete items) and thus would not be impacted by the proposed requirement. The two materials facilities would be impacted by the proposed requirement. The staff estimated about 5 labor hours would be needed for each of the two material licensees to establish an item control system. The labor rate is \$100 per hour. The onetime cost per licensee would be \$500 and the total onetime cost to the industry would be \$1,000.

Impact: Item Control Exemptions for Category III and II Facilities

The proposed changes to 10 CFR 74.31(c)(6) would require each Category III fuel fabrication facility to include currently exempted items in their item control system. The currently exempted items that a licensee would be required to track include items that exist for 14 days or less and individual items containing less than 500 grams of uranium-235 up to a total of 50 kilograms of uranium-235. It is estimated by the NRC that the changes would impact the three licensees that are currently operating Category III fuel fabrication facilities. The implementation time would be 250 hours at \$100 per hour. The one-time cost per licensee would be \$25,000 and the total one-time cost to the industry would be \$75,000.

The proposed changes to 10 CFR 74.33(c)(6)(ii) would require each Category III enrichment facility to include currently exempted items in their item control system. The currently exempted items that a licensee would be required to track include items that exist for less than 14 days and individual items containing less than 500 grams uranium-235 up to a cumulative total of 50 kilograms of uranium-235. It is estimated by the NRC that the changes would impact two licensees that are operating enrichment facilities and two potential licensees that are constructing enrichment facilities that will be licensed to operate in the future. The implementation time would be 250 hours at \$100 per hour. The one-time cost per licensee would be \$25,000 and the total one-time cost to the industry would be \$100,000.

The proposed changes to 10 CFR 74.43(b)(6) would require any future Category II facility to include currently exempted items in their item control system. The currently exempted items include items that exist for less than 14 calendar days and individual items containing less than 200 grams of plutonium or uranium-233 or 300 grams or more of uranium-235 up to a total of one formula of kilogram of strategic SNM or 17 kilograms of uranium-235 contained in uranium enriched to 10.00 percent or more but less than 20.00 percent in the uranium-235 isotope. It is

estimated by the NRC that the changes would impact one potential licensee (e.g., a medical isotope production facility could be operating within 10 years) and the implementation time would be 250 hours at \$100 per hour. The total one-time cost to the licensee and the industry would be at \$25,000.

Impact: Two- Person Rule

The proposed changes to 10 CFR 74.31(c)(10) would require each Category III fuel fabrication licensee to use the two-person rule (as defined in § 74.4) for conducting tamper-safing operations, physical inventories, transfer of SNM, and for any handling of SNM that is not under an active control measure or monitoring or surveillance condition. It is estimated by the NRC that the changes would impact the three licensees that are currently operating these Category III facilities. The implementation time would be 500 hours to train the workers. The one-time cost of training at \$100 per hour would be \$50,000 per licensee and the total one-time cost to the industry would be \$150,000.

The proposed changes to 10 CFR 74.33(c)(10) would require each uranium enrichment licensee to use the two-person rule (as defined in § 74.4) for conducting tamper-safing operations, physical inventories, transfer of SNM, and for any handling of SNM that is not under an active control measure or monitoring or surveillance condition. It is estimated by the NRC that the changes would impact two licensees that are operating enrichment facilities and two potential licensees that are constructing enrichment facilities that will be licensed to operate within 10 years. The implementation time to train the workers would be 500 hours. The one-time cost at \$100 per hour would be \$50,000 per licensee and the total one-time cost to the industry would be \$200,000.

The proposed changes to 10 CFR 74.43(c)(9) would require any future Category II licensee to use the two-person rule (as defined in § 74.4) for conducting tamper-safing operations, physical inventories, transfer of SNM, and for any handling of SNM that is not under an active control measure or monitoring or surveillance condition. It is estimated by the NRC that the changes would impact one potential licensee and the implementation time would be 500 hours to train the workers. The one-time cost to the licensee and the industry would be \$50,000.

The proposed changes to 10 CFR 74.59(h)(6) would require each Category I fuel cycle licensee to use the two-person rule (as defined in § 74.4) for conducting tamper-safing operations, physical inventories, transfer of SNM, and for any handling of SNM that is not under an active control measure or monitoring or surveillance condition. It is estimated by the NRC that the changes would impact the two licensees that are currently operating the Category I facilities and the potential licensee that would operate the mixed oxide (MOX) facility. The implementation time would be 150 hours to train the workers. The training time would be less than a Category III or II facility because many operations in a Category I facility are already performed under a two-person rule concept that is similar to the proposed two-person rule. The one-time cost at \$100 per hour would be \$15,000 per licensee and the total one-time cost for the industry would be \$45,000.

NRC Implementation

Impact: Develop Rule Package and Revise Guidance Documents

The NRC staff would develop the rule package and revise guidance and inspection procedures to accommodate the requirements that would be added or modified by the rulemaking process. This is an estimated \$259,420 one-time cost to the NRC. This effort will require one-half of a full-time equivalent position (FTE) for participating in the rulemaking activities and one-half FTE to revise and update the guidance documents.

Industry Operation

Impact: Item Control System

The proposed changes to 10 CFR 74.19(c)(1) would require each licensee authorized to possess SNM, at any one time and site location, in a quantity greater than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, to establish, document, implement, and maintain an item control system as defined in § 74.4. The NRC estimated the proposed change to include item controls would be applicable to reactor licensees and to two materials facilities licensed by the NRC who are authorized to hold more than 350 grams of SNM, but which are not Category III, II, or I facilities. The reactor licensees have already implemented item control systems and would not be impacted by the proposed requirement. The two materials facilities would be impacted by the proposed requirement. Because the number of items they possess is small and the number of transactions for their inventory is also small and they do not currently have an item control system, the annual time to perform these actions would be 3 hours per materials licensee. The annual cost at \$100 per hour would be \$300 per licensee and the total annual cost to the industry would be \$600.

Impact: Item Control Exemptions for Category III and II Facilities

The proposed changes to 10 CFR 74.31(c)(6) would require each Category III fuel fabrication facility to include currently exempted items in their item control system. The currently exempted items that a licensee would be required to track include items that exist for 14 days or less and individual items containing less than 500 grams of uranium-235 up to a total of 50 kilograms of uranium-235. It is estimated by the NRC that the changes would impact these three licensees that are currently operating the Category III facilities. The annual time would be 100 hours. The annual cost at \$100 per hour would be \$10,000 per licensee and the total annual cost to the industry would be \$30,000.

The proposed changes to 10 CFR 74.33(c)(6)(ii) would require each Category III enrichment facility to include currently exempted items in their item control system. The currently exempted items that a licensee would be required to track include items that exist for less than 14 days and individual items containing less than 500 grams uranium-235 up to a cumulative total of 50 kilograms of uranium-235. It is estimated by the NRC that the changes would impact two licensees that are operating enrichment facilities and two potential licensees that are constructing enrichment facilities that will be licensed to operate in the future. The annual time would be 100 hours at \$100 per hour. The annual cost per licensee would be \$10,000 and the total annual cost to the industry would be \$40,000.

The proposed changes to 10 CFR 74.43(b)(6) would require any future Category II facility to include currently exempted items in their item control system. The currently exempted items include items that exist for less than 14 calendar days and individual items containing less than

200 grams of plutonium or uranium-233 or 300 grams or more of uranium-235 up to a total of one formula of kilogram of strategic SNM or 17 kilograms of uranium-235 contained in uranium enriched to 10 percent or more but less than 20 percent in the uranium-235 isotope. It is estimated by the NRC that the changes would impact one potential licensee and the annual time would be 100 hours at \$100 per hour. The annual cost to the licensee and the industry would be \$10,000.

Impact: Two-Person Rule

The proposed changes to 10 CFR 74.31(c)(10) would require each Category III fuel fabrication licensee to use the two-person rule (as defined in § 74.4) for conducting tamper-safing operations, physical inventories, transfer of SNM, and for any handling of SNM that is not under an active control measure or monitoring or surveillance condition. It is estimated by the NRC that the changes would impact the three licensees that are currently operating the Category III facilities. The annual time would be 1,500 labor hours each to assign at least two qualified and authorized individuals to prevent collusion and ensure that correct procedures are used, the operations are completed correctly, and that information about the operation is accurately documented. The annual cost at \$100 per hour would be \$150,000 per licensee and the total annual cost to the industry would be \$450,000.

The proposed changes to 10 CFR 74.33(c)(10) would require each uranium enrichment licensee to use the two-person rule (as defined in § 74.4) for conducting tamper-safing operations, physical inventories, transfer of SNM, and for any handling of SNM that is not under an active control measure or monitoring or surveillance condition. It is estimated by the NRC that the changes would impact two licensees that are operating enrichment facilities and two potential licensees that are constructing enrichment facilities that will be licensed to operate within 10 years at 500 labor hours each to assign at least two qualified and authorized individuals to prevent collusion and ensure that correct procedures are used, the operations are completed correctly, and that information about the operation is accurately documented. The annual cost at \$100 per hour would be \$50,000 per licensee and the total annual cost to the industry would be \$200,000.

The proposed changes to 10 CFR 74.43(c)(9) would require any future Category II licensee to use the two-person rule (as defined in § 74.4) for tamper-safing operations, for conducting tamper-safing operations, physical inventories, transfer of SNM, and for any handling of SNM that is not under an active control measure or monitoring or surveillance condition. The NRC estimates this will impact one potential licensee at 1,000 labor hours to assign at least two qualified and authorized individuals to prevent collusion and ensure that correct procedures are used, the operations are completed correctly, and that information about the operation is accurately documented. The annual cost at \$100 per hour would be \$100,000 for the licensee and the annual cost to the industry would be \$100,000.

The proposed changes to 10 CFR 74.59(h)(6) would require each Category I fuel cycle licensee to use the two-person rule (as defined in § 74.4) for tamper-safing operations, for conducting tamper-safing operations, physical inventories, transfer of SNM, and for any handling of SNM that is not under an active control measure or monitoring or surveillance condition. It is estimated by the NRC that the changes would impact the two licensees that are currently operating the Category I facilities and the potential licensee that would operate the MOX facility.

The annual time would be 750 labor hours for each licensee to assign at least two qualified and authorized individuals to prevent collusion and ensure that correct procedures are used, the operations are completed correctly, and that information about the operation is accurately documented. The annual cost at \$100 per hour would be \$75,000 per licensee and the total annual cost to the industry would be \$225,000.

Impact: Removal of exemption in 10 CFR 74.51(a) for an irradiated fuel reprocessing plant

This proposed change would impact no licensees, because there are currently no operating irradiated fuel reprocessing plants.

NRC Operation

Impact: The amount of NRC inspection effort would not change. Inspectors would evaluate licensee implementation of the changes within the scope of the routine inspection program elements. The inspection procedures would be updated within the normal review and revision cycle at 3-year intervals. The procedures were revised in December 2010 and would be reviewed and updated in 2013 which would coincide with the issuance of the final rule.

Exhibit 3-1
Quantitative Results
Total Present Value for the Cost

	One-Time Implementation Costs	Annual Operating Costs	Total Combined Implementation and Annual Cost for 10-year Period at 3% Discount Rate	Total Combined Implementation and Annual Cost for 10-year Period at 7% Discount Rate
Industry Costs	\$646,000	\$1,055,600	\$9,650,482	\$8,060,093
NRC Costs	\$259,420	\$0	\$259,420	\$259,420
Total	\$905,420	\$1,055,600	\$9,909,902	\$8,319,513

Exhibit 3-2
Detailed Quantitative Results: Licensee Costs

Citation	Description	Number of Licensees Affected	Labor Rate \$/hr	Annual Hours per Licensee	Annual Cost per Licensee	Total Annual Cost	One-Time Implementation Cost per Licensee	Total One-Time Implementation Cost
74.19(b)(1)	Written MC&A Procedures	0						
74.19(b)(2)	Recordkeeping	0						
74.19(b)(3)	Recordkeeping	0						
74.19(c)(1)	Item Control System	2	\$100	3	\$300	\$600	\$500	\$1,000
74.31(c)(6)	Item Control Exemptions	3	\$100	100	\$10,000	\$30,000	\$25,000	\$75,000
74.33(c)(6)(ii)	Item Control Exemptions	4	\$100	100	\$10,000	\$40,000	\$25,000	\$100,000
74.43(b)(6)	Item Control Exemptions	1	\$100	100	\$10,000	\$10,000	\$25,000	\$25,000
74.31(c)(10)	Two-Person Rule	3	\$100	1,500	\$150,000	\$450,000	\$50,000	\$150,000
74.33(c)(10)	Two-Person Rule	4	\$100	500	\$50,000	\$200,000	\$50,000	\$200,000
74.43(c)(9)	Two-Person Rule	1	\$100	1,000	\$100,000	\$100,000	\$50,000	\$50,000
74.59(h)(6)	Two-Person Rule	3	\$100	750	\$ 75,000	\$225,000	\$15,000	\$45,000
Total						\$1,055,600		\$646,000

4. Presentation of Results

4.1 Values and Impacts

This section summarizes the values (benefits) and impacts (costs) estimated for these regulatory options. (Section 3.3 presents a more detailed analysis.) To the extent that the affected attributes could be analyzed quantitatively, the net effect of each option has been calculated and is presented below. However, some values and impacts could be evaluated only on a qualitative basis.

The benefits of this proposed rule are associated with safeguards and security considerations and the decreased risk of a security-related event, such as theft, diversion, or radiological sabotage of SNM and subsequent use for malevolent purposes. The values and impacts of the proposed changes that are nonquantifiable would improve a licensee's capabilities to deter and detect any loss, theft, diversion, or misuse of SNM that could result in a malevolent event. The proposed changes would promote the common defense and security of SNM.

Exhibit 4-1 summarizes the results of the value-impact analysis. Relative to the no-action alternative (Option 1), Option 2 would result in a net quantitative impact estimation of approximately \$9,900,000 at a 3-percent discount rate and \$8,300,000 at a 7-percent discount rate.

Exhibit 4-1
Summary of Impacts at Discount Rates of 3 Percent and 10 Percent for a 10-Year Period

Attribute	One-time Implementation Costs	Annual Operating Costs	Total Combined Implementation and Annual Cost for 10-year Period at 3% Discount Rate	Total Combined Implementation and Annual Cost for 10-year Period at 7% Discount Rate
Industry Implementation	\$646,000		\$646,000	\$646,000
Industry Operation		\$1,055,600	\$9,004,482	\$7,414,093
Industry Total Costs			\$9,650,482	\$8,060,093
NRC Implementation	\$259,420		\$259,420	\$259,420
NRC Operation				
NRC Total Costs			\$259,420	\$259,420
Total	\$905,420	\$1,055,600	\$9,909,902	\$8,319,513

5. Decision Rationale

The changes in this rulemaking are intended to consolidate MC&A requirements in 10 CFR Part 74 and to clarify, revise, modify, and strengthen the existing requirements. The decision rationale is based on how the values and impacts have been analyzed. Relative to the no-action alternative, Option 2 would result in a net cost estimated at approximately \$8,300,000 assuming a 7-percent discount rate, or approximately \$9,900,000 assuming a 3-percent discount rate. Offsetting the net cost, the NRC believes that Option 2 would result in substantial non-quantifiable benefits related to safety and security. Although costs are incurred as a result of the rule, the qualitative benefits associated with the rule outweigh its cost. The NRC believes that the rule is cost-justified because the proposed regulatory initiatives would promote the common defense and security of SNM.

6. Implementation

The staff proposes to make the final rule effective 90 days after its publication in the FR. For this analysis, the final rule effective date is mid-2013.

7. References

- NUREG/BR-0184, "Regulatory Analysis Technical Evaluation Handbook, Final Report," U.S. Nuclear Regulatory Commission, Washington, DC, January 1997.
- NUREG/BR-0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," Revision 4, U.S. Nuclear Regulatory Commission, Washington, DC, September 2004.
- SECY-08-0059, Rulemaking Plan: Part 74 - Material Control and Accounting of Special Nuclear Material, April 25, 2008.

**DRAFT ENVIRONMENTAL ASSESSMENT
AND FINDING OF NO SIGNIFICANT IMPACT
FOR THE PROPOSED RULE
AMENDING 10 CFR PARTS 40, 70, 72, 74, AND 150**

AMENDMENTS TO MATERIAL CONTROL AND ACCOUNTING REGULATIONS

**Office of Federal and State Materials and Environmental Management Programs
U.S. Nuclear Regulatory Commission**

I. INTRODUCTION AND BACKGROUND

The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend, clarify, update, and strengthen its regulations regarding the material control and accounting (MC&A) of special nuclear material (SNM). These regulations are located in Title 10 of the *Code of Federal Regulations* (10 CFR) part 74. The current MC&A requirements in subpart D of 10 CFR part 72 would be consolidated in subpart B of 10 CFR part 74.

The proposed substantive changes to the MC&A regulations would affect NRC licensees who are authorized to possess SNM in a quantity greater than 350 grams. Plain language revisions to 10 CFR 74.13 would clarify the material status reporting requirements within the Nuclear Materials Management and Safeguards System (NMMSS), and conforming changes would be made to the parallel Agreement State reporting requirements in 10 CFR 150.17. Agreement States do not have authority to issue a license to possess SNM in a quantity greater than 350 grams. A person desiring to possess and use such quantities would be required to submit an application to the NRC under 10 CFR part 70.

II. THE PROPOSED ACTION

As part of the proposed rulemaking action, the MC&A requirements for independent spent fuel storage installations (ISFSIs) in subpart D of 10 CFR part 72 would be consolidated with the MC&A regulations in subpart B of 10 CFR part 74. The 10 CFR part 72 requirements at issue are repeated in 10 CFR part 74 and the redundant 10 CFR part 72 requirements in §§ 72.72, 72.74, 72.76, and 72.78 would be removed.

The majority of the changes would be to the MC&A provisions in subparts A-E of 10 CFR part 74, and are intended in general to reduce ambiguity, facilitate implementation, and better align the requirements with current standards of practice for MC&A of SNM. Such changes would include (1) adding general performance objectives (GPOs) to subpart A of 10 CFR part 74 (GPOs are informational activities to deter, detect, or aid in responding to any loss, theft, diversion or misuse of SNM) that would apply to all NRC licensees that are authorized to possess SNM in quantities greater than 350 grams; (2) adding item control requirements to subpart B to better ensure that all NRC licensees that are authorized to possess SNM in quantities greater than 350 grams will be able to adequately deter or detect any diversion or misuse of SNM; (3) adding a “two-person” rule (*i.e.*, requiring the presence of at least two qualified and authorized individuals) to subparts C-E, applicable to actions involving tamper-safing, performing physical inventories, transferring SNM, or any handling of SNM that is not under an active control measure or monitoring or surveillance condition; (4) removing or modifying some current exemptions in subparts C, D, and E of 10 CFR part 74; and (5) revising 10 CFR part 74 subparts C, D, and E to require that certain procedures be established for tamper-safing containers or locations, and to require that procedures be established for designating material balance areas, item control areas, and custodial responsibilities for these areas.

Plain language revisions to 10 CFR parts 74 and 150 would clarify the required elements of an MC&A program and the various systems that comprise the MC&A program. Existing references to the fundamental nuclear material control (FNMC) plan in 10 CFR part 74 would be replaced by references to an MC&A plan.

In addition, the proposed action would add new definitions and modify some existing definitions in 10 CFR part 74. The proposed new defined terms are: *accounting*, *custodian*, *item control system*, *item control area*, *material balance area*, *material control and accounting*, and *two-person rule*. To improve clarity, the term *formula quantity* would be modified by describing it as a Category I quantity of material, consistent with the existing definitions of this term in 10 CFR parts 70 and 73. Similarly, the terms *SNM of moderate strategic significance* and *SNM of low strategic significance* would be modified by describing them as a Category II quantity of material and a Category III quantity of material, respectively, consistent with the existing definitions of these terms in 10 CFR parts 70 and 73. The term *effective kilogram of special nuclear material* would be removed from 10 CFR part 74 so that all MC&A definitions of the various types of SNM (and the affected MC&A provisions) would refer to gram quantities of nuclear material.

A new Appendix A, entitled “Categories of Special Nuclear Material,” would be added to 10 CFR part 74. The Appendix would include a table showing the Category I, II, and III quantities of SNM, the corresponding subpart in 10 CFR part 74 which governs NRC licensees authorized to hold Category I, II, and III quantities of SNM, and formulae to calculate Category I, II, and III quantities of SNM.

The following guidance documents would be revised and updated in conjunction with the proposed action. In addition, a guidance document for Category II facilities (SNM of Moderate Strategic Significance) would be updated and issued with the existing guidance documents below:

- NUREG-1280, “Standard Format and Content Acceptance Criteria for the Material Control and Accounting (MC&A) Reform Amendment”
- NUREG-1065, “Acceptable Standard Format and Content for the Fundamental Nuclear Material Control (FNMC) Plan Required for Low-Enriched Uranium Facilities”
- NUREG/CR-5734, "Recommendations to the NRC on Acceptable Standard Format and Content for the Fundamental Nuclear Material Control (FNMC) Plan Required for Low-Enriched Uranium Enrichment Facilities”
- NUREG/BR-0096, “Instructions and Guidance for Completing Physical Inventory Summary Report”

III. THE NEED FOR THE PROPOSED ACTION

Many of the current MC&A requirements were developed over 20 years ago and need to be updated, in part, to reflect advances in technology. As discussed above, some MC&A requirements in 10 CFR part 72 that apply to ISFSIs are repeated in 10 CFR part 74 and the redundant 10 CFR part 72 requirements would be deleted. The NMMSS reporting requirements for an ISFSI fall into this category, and §§ 72.72, 72.74, 72.76, and 72.78 would be consolidated in subpart B of 10 CFR part 74. Also, item control and GPO requirements are being extended to cover all NRC licensees that are authorized to hold more than 350 grams of SNM, to better ensure that such licensees will be able to adequately deter or detect any diversion or misuse of SNM.

IV. ENVIRONMENTAL IMPACTS OF PROPOSED ACTION

The proposed amendments will not result in any significant environmental impact. The proposed rule pertains to MC&A program requirements, which consist of administrative procedures and operations to track and control SNM and related information, in order to deter and detect any loss, theft, diversion, or unauthorized production of nuclear material. The amendments are intended to strengthen MC&A programs and plans that have already been approved by the NRC. Under the proposed revisions to subpart B of 10 CFR part 74, licensees authorized to hold more than 350 grams of SNM (but which are not authorized to hold Category I-III quantities of SNM), would be required to establish, implement, and maintain an MC&A program to achieve the GPOs that would be added to subpart A. Unlike the MC&A plans that must be approved by the NRC before they are implemented (under the existing subpart C-E requirements of 10 CFR part 74), MC&A programs to be established at non-Category I-III facilities would not require NRC approval before implementation, but these programs would be subject to NRC inspection. As discussed above, the set of NRC licensees (*i.e.*, those authorized to possess SNM in a quantity greater than 350 grams, but which are not authorized to hold Category I-III quantities of SNM) would also be required to establish, implement, and maintain item controls.

As the proposed amendments pertain to information collection and reporting requirements, adopting them would have no significant impact on the quality of the human environment. The proposed action does not alter the amounts of any radioactive effluents that could be released offsite from an NRC-licensed facility, and does not cause a significant increase in individual or cumulative radiological exposures to plant workers or members of the public. Further, the proposed action does not result in any significant increase in the potential for accidents at NRC-licensed facilities.

V. ALTERNATIVES TO THE PROPOSED ACTION

The alternative to this proposed action is to take no action. Under the no-action alternative, the NRC would not amend the current regulations. Thus, the more risk-informed and performance-based proposed changes, and their associated program and safety enhancements, would not be achieved.

Under the no-action alternative, licensees would continue to comply with existing regulations. The existing MC&A requirements would not be updated, clarified, or consolidated as described above.

VI. ALTERNATIVE USE OF RESOURCES

No irreversible commitments of resources would occur under this proposed action.

VII. AGENCIES AND PERSONS CONTACTED

No agencies or persons outside the NRC were contacted in connection with the preparation of this draft environmental assessment.

VIII. FINDING OF NO SIGNIFICANT IMPACT

The NRC has determined under the National Environmental Policy Act and its regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not have any significant environmental impacts. Therefore, this proposed action does not warrant the preparation of an environmental impact statement. As discussed above, the amendments

pertain to information collection and reporting requirements, and adopting them would have no significant impact on the quality of the human environment.