

RULEMAKING ISSUE AFFIRMATION

October 2, 2002

SECY-02-0179

FOR: The Commissioners

FROM: William D. Travers
Executive Director for Operations

SUBJECT: FINAL RULE: MATERIAL CONTROL AND
ACCOUNTING AMENDMENTS

PURPOSE:

To request Commission approval for publication of the final rule.

BACKGROUND:

In a Staff Requirements Memorandum (SRM) dated May 8, 2001 (Attachment 1), the Commission approved publication of the proposed rule that would amend the material control and accounting (MC&A) regulations (SECY-01-0066, April 20, 2001). The proposed rule was published in the Federal Register on May 30, 2001 (66 FR 29251). The comment period closed on August 13, 2001, and four comment letters were received. The commenters were the two Category I licensees, the Nuclear Energy Institute (NEI), and a consulting firm. These comments are discussed in the final rule (Attachment 2).

DISCUSSION:

The staff has considered whether this rulemaking should proceed at this time or be placed on hold until completion of the staff's reevaluation of the safeguards and physical security programs. The staff has concluded that this rulemaking should go forward. This rulemaking clarifies the MC&A requirements by removing the inconsistencies between Category I, II, and III requirements. This should improve the staff's ability to focus on the more risk significant aspects of the requirements. The rulemaking also results in a single location for all the MC&A requirements which will help both the NRC and stakeholders to locate those requirements that apply to a given facility. The majority of the contemplated changes should not be impacted by

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the planned reevaluation. The requirements to report receipt and transfers of special nuclear material are not being changed by this rulemaking. The staff is not aware of any reason that this rulemaking should not go forward at this time.

The current regulations require Material Balance Reports (DOE/NRC-742) and Inventory Composition Reports (DOE/NRC-742C) to be completed within 30 days of March 31 and September 30 of each year. These reports are typically based on book values, as opposed to physical inventory results, because the dates do not always coincide with the time frame for a facility's physical inventory. The data from a physical inventory is significantly more meaningful than the book value reported during the interim periods. The final rule changes the reporting time frame to coincide with the requirement for a physical inventory and provides additional time to complete the report, except for Category I licensees. Identification of an actual loss or theft of material would still be reported within one hour per the current regulations.

In comments on the proposed rule, the NRC's two Category I licensees requested that the proposed change not be implemented because it would have the unintended consequence of potentially increasing burden. Because Category I licensees are required to conduct a semi-annual inventory, they would not gain any benefit from the proposed changes. Therefore, because the intent of the proposed change was to reduce unnecessary regulatory burden, the current requirements for submitting the Material Balance Reports and Inventory Composition Reports will be retained as requested by the commenters. Category I licensees will continue to submit their reports within 30 days of March 31 and September 30 of each year. Because most licensees are only required to conduct an annual physical inventory, they will benefit from the change with a decrease in reporting frequency from twice a year to once a year.

The current regulations for Category II facilities require the conduct of physical inventories every 2 to 6 months, depending on the material; the final rule changes the frequency to every 9 months. By revising the time frame to complete the reports to coincide with the physical inventory and providing additional time to complete the paperwork, most licensees will be provided with more flexibility and the regulatory burden will be reduced. The change will also allow licensees to devote additional attention to the more risk significant aspects of their programs. Reactor and material licensees will benefit from these changes, except the Category I licensees. The industry has indicated support for this initiative through the Nuclear Materials Management and Safeguards System (NMMSS) users group and in comments on the proposed rule.

Current MC&A requirements for Category II facilities and the general MC&A requirements have been interspersed among the safety and general licensing requirements of 10 CFR Part 70. The final amendments will consolidate the MC&A requirements for Category II facilities with the rest of the MC&A requirements for Categories I and III facilities in 10 CFR Part 74. Furthermore, portions of the current rules regarding Category II material in Part 70 are not risk-informed. Some of the current requirements for Category II facilities are more restrictive than those for Category I facilities. These requirements will be made more risk-informed, consistent with the existing MC&A requirements for Categories I and III facilities. Conforming changes will also be made to 10 CFR Parts 61, 73, 75, 76, and 150 to reflect the relocations. The relocation of the MC&A requirements and the modification to the Category II requirements will enhance

the regulatory process by providing any future Category II licensees with a better understanding of the procedures and requirements for MC&A. Moving the remaining MC&A requirements from Part 70 to Part 74 will also simplify locating the requirements for all licensees.

In addition, the categorical exclusion for the requirement to perform an environmental review will be broadened to include amendments of safeguards plans, as well as be made general enough to cover all safeguards plans and amendments for all licenses issued under the Nuclear Regulatory Commission's (NRC) authority in 10 CFR Chapter 1, to avoid the need to amend the subsection when new licensing parts are added. The final rule will also correct typographical errors, remove old implementation dates, and update and add some terminology to reflect current practice.

The final rule will reduce the regulatory burden on both licensees and the NRC staff, while maintaining adequate safeguards. There will be no impact on safety. The MC&A requirements for Category II facilities and the general MC&A requirements for all facilities would be easier to locate, thereby improving the efficiency and effectiveness of the regulations. The efficiency of NMMSS should be improved as it will no longer get all the material status reports simultaneously. Public confidence would not be affected by this final rule change.

In SECY-01-0175, the staff informed the Commission of licensee activities and NRC staff plans associated with the two fuel rods apparently missing from the spent fuel pool at Millstone Unit 1. This final rule does not change the inventory or record retention requirements for reactor licensees. As part of the staff actions, the staff has committed to evaluating the current NRC requirements for tracking and reporting SNM transactions to identify changes that may be necessary to prevent similar incidents from occurring. In the April 30, 2002, lessons-learned report about MC&A at power reactors, the staff did not identify any problems with the regulations.

The staff has also evaluated this rulemaking against the ongoing actions, outlined in SECY-02-0093 and the subsequent July 25, 2002 SRM, to respond to the October 2001, Department of Energy Inspector General report on NMMSS. The staff is not aware of any conflicts between this rulemaking and the actions outlined in SECY-02-0093 or the SRM.

AGREEMENT STATE ISSUES:

Changes impacting 10 CFR 70.51(a) and (b), and conforming changes to 10 CFR 61.80(g), 10 CFR 70.19(c), 10 CFR 150.20(b), and new 10 CFR 74.19(a) are classified as Category C compatibility items. Agreement States would be required to adopt the essential objectives; however, the manner in which these essential objectives are addressed would not need to be the same as NRC's. A conforming change to 10 CFR 70.8(b) is a Category D compatibility item. Agreement States do not need to adopt this program element for purposes of compatibility. The final amendment does not revise the MC&A requirements that potentially impact Agreement States--it merely relocates the requirements. Therefore, it is not expected that Agreement States will need to make any conforming changes to their regulations. The other changes are Category NRC compatibility items and, therefore, are areas of NRC exclusive authority. No comments were received from the Agreement States.

RESOURCES:

Resources to complete and implement the rule are included in the current budget. The rule will not result in any NMMSS contract savings.

COORDINATION:

The Office of the General Counsel has no legal objection to the final rule. The Office of the Chief Financial Officer has reviewed this Commission Paper for resource implications and has no objection.

RECOMMENDATIONS:

That the Commission:

1. Approve for publication in the Federal Register the attached final rule (Attachment 2).
2. To satisfy the requirement of the Regulatory Flexibility Act, 5 U.S.C. 605 (b), certify that this rule does not have significant impact on a substantial number of small entities. This certification is included in the attached final rule.
3. Note:
 - a. That 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);
 - b. That a final Regulatory Analysis has been prepared for this rulemaking;
 - c. That a final Environmental Assessment has been prepared for this rulemaking (Attachment 3);
 - d. That the staff has determined that this action is not a "major rule," as defined in the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 [5 U.S.C. 804(2)] and has confirmed this determination with the Office of Management and Budget (OMB). The appropriate Congressional and General Accounting Office contacts will be informed (Attachment 4);
 - e. That the appropriate Congressional committees will be informed;
 - f. That a press release will be issued by the Office of Public Affairs when the final rulemaking is filed with the Office of the Federal Register; and

- g. That the final rule contains amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.) that have been already approved by the OMB.

/RA/

William D. Travers
Executive Director
for Operations

Attachments:

1. Staff Requirements Memorandum dated May 8, 2001
2. Final Rule
3. Environmental Assessment
4. SBREFA forms

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