

RULEMAKING ISSUE (NEGATIVE CONSENT)

March 27, 2001

SECY-01-0054

FOR: The Commissioners

FROM: William D. Travers
Executive Director for Operations

SUBJECT: RULEMAKING PLAN: 10 CFR PARTS 72 AND 73 - "CONFORMING
REQUIREMENTS OF EVENT NOTIFICATION"

PURPOSE:

To inform the Commission that the Executive Director for Operations (EDO) intends to sign the enclosed Rulemaking Plan to amend certain sections in Parts 72 and 73 dealing with event notification reporting to conform them with the current Nuclear Regulatory Commission (NRC) reporting requirements in 10 CFR 50.72 and 50.73.

BACKGROUND:

An advance notice of proposed rulemaking (ANPR) was published on July 23, 1998 (63 FR 39522), notifying the public that the NRC was considering amending its event reporting requirements. Although the ANPR was primarily directed at potential changes to power reactor reporting requirements in 10 CFR 50.72 and 50.73, it also requested public comments to identify areas where other reporting requirements could be simplified and/or modified to a less burdensome, more risk-informed approach. The issue of potential changes for other reporting requirements was included in the agenda for the public meeting on August 21, 1998, to discuss the ANPR, as well as in the agenda for the public workshop on September 1, 1998, on Direction Setting Issue (DSI) 13, "The Role of Industry." Pertinent suggestions were provided at those meetings as well as in written comments on the ANPR.

In SECY-99-022, "Rulemaking to Modify Reporting Requirements for Power Reactors" (January 20, 1999), the staff presented recommendations that had been made by commenters for changes to reporting requirements beyond 10 CFR 50.72 and 50.73, including the following:

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- 10 CFR 72.75 contains the requirement for a 4-hour report and 30-day written follow-up report. Revise this requirement to 8 hours and 60 days similar to changes proposed for 10 CFR 50.72 and 50.73.
- 10 CFR 73.71 and Appendix G to Part 73 contain requirements for 1-hour reports. Amend these requirements to 8 hours similar to changes proposed for 10 CFR 50.72.

In its March 19, 1999, Staff Requirements Memorandum (SRM) on SECY-99-022, the Commission directed the staff to provide the Commission with a schedule and plan of action for revising the reporting requirements listed in the paper. The staff provided the requested schedule and plan of action in SECY-99-181, "Proposed Plans and Schedules to Modify Reporting Requirements Other Than 10 CFR 50.72 and 50.73 for Power Reactors and Material Licensees" (July 9, 1999). The staff's plan, with respect to the Part 72 and Part 73 recommended changes listed above, was to consider, if the reporting requirements in 10 CFR 50.72 and 50.73 should change, whether conforming changes to 10 CFR 72.75 and 73.71 would be appropriate. The staff also noted that, in a May 27, 1999, SRM on SECY-99-115, "Final Rule: Amendments to 10 CFR Part 72 - Miscellaneous Changes to Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste" (April 14, 1999), the Commission had instructed the staff, if the rulemaking to revise 10 CFR 50.73(b) should go forward, to consider at that time whether additional conforming changes to Part 72 would be appropriate.

In SECY-00-0093, "Rulemaking To Modify the Event Reporting Requirements for Power Reactors In 10 CFR 50.72 and 50.73 and for Independent Spent Fuel Storage Installations (ISFSI) in 10 CFR 72.216" (April 21, 2000), the staff submitted a final rule to the Commission to revise the event reporting requirements in 10 CFR 50.72, 50.73, and 72.216. The staff also noted that, consistent with SECY-99-181, it would provide a rulemaking plan to the Commission for changes to the reporting requirements in Parts 72 and 73 within 5 months after the Part 50 rule change was completed. In addition, in response to one of the comment letters on the proposed rule to revise 10 CFR 50.72, 50.73, and 72.216, the staff agreed to evaluate conforming changes to the event reporting requirements in Part 76.

Part 76 was not included as part of this rulemaking plan because of ongoing event notification reporting requirement activities within other parts of the regulations that have the potential for conflict with the event notification reporting requirements in Part 76. In January 2000, the Office of Nuclear Material Safety and Safeguards (NMSS) established an NRC/State working group on event reporting to perform an independent review of the materials event reporting and assessment process and to make recommendations for improving the effectiveness and efficiency of this process. This working group will publish its findings and conclusions in the spring of 2001. The findings by the materials event working group may have a substantial impact on the materials event reporting requirements of all parts of Chapter I of Title 10 of the CFR, including, in particular, Parts 30, 40, 70, 74, and 76. Therefore, because of these potential interfaces among these parts for event notification reporting, and the fact that the staff has not yet assessed the findings and conclusions of the working group, the staff is not ready to make any definitive recommendation(s) with regard to proposing any conforming event reporting requirement changes to Part 76. After evaluation of the NRC/State working group

findings, the staff will recommend the appropriate next steps to NMSS management to consider revising the event reporting requirements in Part 76 (e.g., initiate rulemaking). Reporting requirements of Parts 72 and 73, while affecting both material and nuclear power plant licensees, currently primarily affect nuclear power plant licensees. Most Part 72 licensees are also Part 50 licensees. By far, the majority of licensees required by Part 73 to have a substantial security force are also Part 50 licensees. Therefore, conforming Parts 72 and 73 reporting requirements with Part 50 requirements would reduce regulatory burden and confusion and, thus, have a greater urgency than Part 76.

The Commission subsequently issued a final rule revising the event reporting requirements in 10 CFR 50.72, 50.73, and 72.216 (65 FR 63769; October 25, 2000).

DISCUSSION:

The purpose of this rulemaking is to amend the event notification reporting requirements for Parts 72 and 73 and make conforming changes, where appropriate, to align them with the current event notification reporting requirements of a Part 50 final rule issued October 25, 2000 (65 FR 63769). The staff evaluated the issues and concerns of the Part 50 final rule, and considered its regulatory framework as a basis for concluding that conforming changes to the event notification reporting requirements in Parts 72 and 73 were also warranted. Staff believes that because most of the facilities subject to the event notification requirement in Parts 72 and 73 are: (1) either physically collocated with reactor facilities or are reactor facilities, (2) share the same management structure, and (3) share the same emergency preparedness organization, it is appropriate to conform and harmonize the Parts 72 and 73 event notification regulations. Conforming the reporting requirements to the revised Part 50 event notification requirements will maintain safety, and take advantage of the work already performed to relate risk to reporting requirements on these types of facilities. The added resources to conduct additional risk-informing analysis would not result in increased safety, nor would they contribute to efficiency, effectiveness, or a reduction in unnecessary regulatory burden.

This rulemaking is also intended to improve NRC efficiency and effectiveness, while maintaining public confidence through the timely communication of information on recently occurring or ongoing events; to eliminate the unnecessary reporting burden associated with reporting events of little or no safety significance; and to base revised reporting requirements on importance to risk, such that the reporting times will be consistent with the time that information is needed for appropriate NRC action.

Currently, the revised event notification reporting requirements in Part 50, approved by the Commission, require written notification within 60 days and verbal notification within 1 hour (emergency events), 4 hours (nonemergency events), and 8 hours (nonemergency events). The need for a 4-hour versus an 8-hour nonemergency notification is based on the urgency of the situation and the NRC's need to take prompt action. However, the current event notification reporting requirements in Parts 72 and 73 are somewhat different than the requirements in Part 50, and the staff believes that some requirements should be changed (e.g., the current 30-day written requirement) while others should remain the same (e.g., some of the verbal notification requirements). To provide historical perspective, the staff has reviewed past records of verbal reports for the period between 1985 and 2000 made to the NRC Operations Center for Parts 72 and 73. For spent fuel storage activities, one information-only and four nonemergency reports

were made to the NRC during this period under the then applicable reporting requirements [10 CFR 50.72(vii) and 72.75(b)]. For Part 73, staff identified that approximately 3,600 reports have been submitted during this same time period; however, after licensees fully implemented Generic Letter 91-03 ("Reporting of Safeguards Events," March 6, 1991), the number of reports decreased. Approximately 60 reports have been received each year from 1995 to 2000 [10 CFR 73.71(a)(1) and 73.72(b)(1)]. Although the frequency and number of event reports is not high, staff does not advocate their elimination. These reports provide necessary information to allow the NRC to analyze emergencies, to assess any immediate risks to public health and safety and to determine an appropriate level of response. Specifics of the staff's proposed changes to the event reporting requirements in Parts 72 and 73 are discussed in the table attached to the rulemaking plan. It is anticipated that these proposed changes will eliminate duplicative requirements (e.g., the separate 4-hour notification of an unplanned fire or explosion in addition to notifications made under the emergency plan) and, in some cases, will add new requirements to provide the NRC with information to better perform its mission and achieve greater harmony with Part 50 event notification requirements.

The staff believes that consideration of the proposed changes discussed in the rulemaking plan is consistent with two of NRC's strategic performance goals: (1) to reduce unnecessary regulatory burden on stakeholders, and (2) to increase public confidence in NRC's regulatory process to maintain safety. This rulemaking is intended: (1) to allow reporting times to be consistent with the time that information is needed for appropriate NRC action, and (2) to eliminate unnecessary reporting burden associated with reporting events of little or no safety significance.

RESOURCES:

To complete and implement the recommended option in the rulemaking plan, 1.0 full-time equivalent position(s) will be required spread over fiscal years 2001 and 2002. Contractual support will be used to develop the proposed and final rule, and \$94,000 has been allocated for this contract covering fiscal years 2001 and 2002. These resources are included in the current budget.

COORDINATION:

The Office of the General Counsel has no legal objection to the rulemaking plan. The Office of the Chief Financial Officer has no objection to the resource estimates contained in this paper. The Office of the Chief Information Officer (OCIO) has reviewed the rulemaking plan for information technology and information management implications and concurs with the plan.

RECOMMENDATION:

Absent Commission objection, the staff will proceed with the development of a proposed rule to revise the event notification reporting requirements of Parts 72 and 73 to: (1) conform Parts 72 and 73 to Part 50 to improve overall regulatory efficiency and effectiveness; i.e., to provide more consistency among these parts; (2) reduce the regulatory burden, i.e., to examine the events for which notification is required in Part 72, and the time limits for notification, to determine whether reports are needed and when; (3) base revised reporting requirements on importance to risk such that the reporting times will be consistent with the time that information is needed for appropriate NRC action; i.e., this could allow having a 24-hour report for Part 72 even if Part 50 required an 8-hour report; and (4) bring Part 72 into greater harmony with Part 50 by adding requirements. Staff requests action within 10 days. Action will not be taken until the SRM is received. We consider this action to be within the delegated authority of the EDO.

/RA/

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Executive Director
For Operations

Attachments: 1. Rulemaking Plan
2. Table of Conforming Changes

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