

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 72 and 73

RIN: 3150-AG90

Event Notification Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its event notification regulations that apply to an Independent Spent Fuel Storage Installation (ISFSI) and to a Monitored Retrievable Storage (MRS) installation. The final rule will also amend safeguards event notification requirements that apply to facilities such as reactor facilities, fuel cycle facilities, ISFSIs, an MRS, licensees who possess or transport special nuclear material or spent fuel, a geological repository operations area, and gaseous diffusion plants. Some changes will reduce licensee burden by consolidating some notifications and lengthening, where appropriate, the reporting period for other notifications. These changes will not impact public health and safety. New requirements will be added to permit the NRC to more effectively carry out its responsibilities during emergencies and in responding to public, media, and other stakeholder inquiries during events or conditions at licensees' facilities. These changes will also align the standards for both the event notification requirements and the safeguards event notification requirements with previous changes made to the power reactor event notification requirements.

EFFECTIVE DATE: This final rule is effective on **insert 120 days from date of publication in the FEDERAL REGISTER.**

FOR FURTHER INFORMATION CONTACT: Mark Haisfield, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, [telephone (301) 415-6196, e-mail, MFH@nrc.gov].

SUPPLEMENTARY INFORMATION:

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 notification reporting requirements. Although the ANPR was primarily directed at potential changes to power reactor event notification requirements in 10 CFR 50.72 and 50.73, the notice also requested public comments to identify areas where other event notification reporting requirements could be simplified and/or modified to be less burdensome and more risk informed.

In SECY-99-022, "Rulemaking to Modify Reporting Requirements for Power Reactors" (January 20, 1999), the NRC staff presented recommendations for changes to reporting requirements beyond those to §§ 50.72 and 50.73, including the following:

- 10 CFR 72.75 (Reporting requirements for specific events and conditions) 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 §§ 50.72 and 50.73.

- 10 CFR 73.71 (Reporting of safeguards events) and 10 CFR Part 73, Appendix G (Reportable safeguards events) contain requirements for 1-hour reports. Amend these requirements to 8 hours and 60 days similar to changes proposed for §§ 50.72 and 50.73.

The Commission subsequently issued a final rule revising the event reporting requirements in §§ 50.72, 50.73, and 72.216 (65 FR 63769; October 25, 2000), and directed the NRC staff to consider, under a separate rulemaking, similar changes to the event notification requirements in 10 CFR Parts 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 73 (Physical Protection of Plants and Materials).

Proposed Rule

The NRC published the proposed rule, “Event Notification Requirements” in the Federal Register on August 22, 2002 (67 FR 54360). The comment period closed on November 5, 2002. The NRC received four comment letters on the proposed rule. These comments and responses are discussed in the “Public Comments on the Proposed Rule” section.

On September 6, 2002, the NRC published a proposed rule (67 FR 57120) and a concurrent direct final rule (67 FR 57084) on “Electronic Maintenance and Submission of Information.” This rulemaking would have revised, in part, § 73.71(a)(4). On December 4, 2002 (67 FR 72091), the NRC published a notice withdrawing the direct final rule, because the agency had received significant adverse comments on the proposed rule. However, no

comments were received on either the specific changes to § 73.71(a)(4) proposed by 67 FR 57120 or the changes to § 73.71(a)(4) proposed by 67 FR 54360. Accordingly, the NRC is consolidating these proposed rules, with respect to § 73.71(a)(4), in this final rule. The consolidated changes to § 73.71(a)(4) are described in the section-by-section changes below.

Discussion and Regulatory Action

This final rule will amend the NRC's regulations at 10 CFR Part 72 to change several event notification requirements that apply to Independent Spent Fuel Storage Installations (ISFSIs) and Monitored Retrievable Storage (MRS) installations. The final rule will also amend safeguards event notification requirements that apply to facilities subject to 10 CFR Part 73, such as reactor facilities, fuel cycle facilities, ISFSIs, MRSs, licensees who possess or transport special nuclear material or spent fuel, a geological repository operations area, and the gaseous diffusion plants. The NRC evaluated the issues and concerns of the §§ 50.72 and 50.73 event notification reporting requirements and considered this regulatory framework as a basis for concluding that similar changes to the event notification reporting requirements in 10 CFR Parts 72 and 73 are also warranted. The event reporting requirements of 10 CFR Parts 72 and 73 affect both material licensees and nuclear power plant licensees. Most of the facilities subject to the event notification reporting requirements in 10 CFR Parts 72 and 73 (power reactors and ISFSIs) are either physically co-located with reactor facilities or are reactor facilities. Most 10 CFR Part 72 licensees also hold a 10 CFR Part 50 (Domestic Licensing of Production and Utilization Facilities) license. These licensees share the same management structure and share the same emergency preparedness organization. Thus, conforming the reporting requirements of 10 CFR Part 72 with the revised requirements of 10 CFR Part 50 will

reduce regulatory burden and potential confusion, will maintain safety, and will take advantage of the work already performed to relate risk to reporting requirements for these types of facilities.

The NRC is removing § 72.216, "Reports." Section 72.216 does not contain separate requirements, but merely directs a 10 CFR Part 72 general licensee to comply with the reporting requirements of §§ 72.74 and 72.75. The addition of § 72.13, "Applicability," to the 10 CFR Part 72 regulations in a final rule issued on August 21, 2000 (65 FR 50606), eliminated the need for this section. Section 72.13 contains direction on the 10 CFR Part 72 regulations that apply to specific licensees, general licensees, or certificate holders. Section 72.216, paragraphs (a) and (b) were removed and reserved in a previous rulemaking (65 FR 63788; October 25, 2000). Paragraph (c) currently requires a general licensee to comply with §§ 72.74 and 72.75. Therefore, § 72.216 is no longer needed and will be removed and reserved, in its entirety. In addition, § 72.9 is revised as a conforming change because of the removal of § 72.216. Also, the reference to § 72.19 is removed from § 72.9 because there is no § 72.19 in 10 CFR Part 72.

With respect to the 10 CFR Part 73 event notification requirements, the 30-day period for submitting written follow-up reports for safeguards events will be extended to 60 days to be consistent with § 50.73. Changing the time limit from 30 days to 60 days does not imply that licensees should take longer than they previously did to develop and implement corrective actions. The NRC expects licensees to take timely corrective actions commensurate with the safety significance of the issue. The extension is based on simplicity for reporting, importance to risk, and having the required reporting time be consistent with the need for NRC action. Furthermore, the increased time for follow-up reporting will more likely allow for the completion of required root cause analyses, engineering evaluations, and full identification of corrective

actions after event discovery; preparation of more complete and accurate event reports; and fewer event report revisions and supplemental reports. However, the NRC believes the verbal safeguards event notification requirements should remain at 1 hour because the NRC may need to respond expeditiously to licensee safeguards notifications and notify other licensees and Federal agencies of the event, particularly in light of the current threat environment after the terrorist attacks of September 11, 2001.

Revising the 10 CFR Parts 72 and 73 event notification reporting requirements to be consistent with those in 10 CFR Part 50 will maintain safety and take advantage of the work already performed on the risk impacts of the event notification requirements for 10 CFR Part 50 licensees. The revision of 10 CFR Parts 72 and 73 will also reduce licensee burden through consolidation of some notifications and lengthening the reporting period for other notifications to correspond to the times required under 10 CFR Part 50. The current event notification reporting requirements in 10 CFR Part 50 require written notification within 60 days and verbal notification within 1 hour (emergency events), and within 1 hour, 4 hours and 8 hours for some non-emergency events. The need for a 4-hour versus an 8-hour non-emergency notification is based on the urgency of the situation and the NRC's need to take prompt action.

Public Comments on the Proposed Rule

This analysis presents a summary of the comments received on the proposed rule, the NRC's response to the comments, and changes made to the final rule as a result of these comments.

The NRC received four comment letters on the proposed rule. Two were from the nuclear industry (Strategic Teaming and Resource Sharing (STARS) and the Nuclear Energy

Institute (NEI)), one from the Idaho National Engineering and Environmental Laboratory (INEEL), and one from the Florida Department of Environmental Health. Copies of the public comments are available for review in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD.

In general, none of the commenters were opposed to amending the regulations to make the ISFSI and MRS event notification requirements and the safeguards event notification requirements consistent with changes to the power reactor event notification requirements. Several of the commenters provided specific recommendations to improve the final rule. The NRC is also making some clarifications for consistency and editorial changes in the final rule.

Comment 1: Three of the four commenters stated that they support the proposed rule change and the fourth (State of Florida) found that the proposed change is consistent with their existing Florida Coastal Management Program. INEEL, a national laboratory (and an NRC ISFSI licensee), also stated that the proposed changes to 10 CFR Parts 72 and 73 are welcomed and as currently described will not be difficult to implement.

Response: The NRC is not making any changes to the final rule that the NRC believes would negate the support for this rulemaking.

Comment 2: The two industry commenters (STARS and NEI) indicated that certain events that require verbal notification under § 50.72 do not require follow-up written notifications under § 50.73. The commenters suggested a similar approach be taken in § 72.75. Specifically, written follow-up notification need not be submitted for an emergency declaration

[paragraph (a)], issuance of a press release or notification of another Government agency [paragraph b(2)], or transportation of a radioactively contaminated individual to an offsite medical facility for treatment [paragraph c(3)].

Response: The NRC agrees with the comments. The Commission has previously concluded and affirmed in its 10 CFR Part 50 rulemaking (65 FR 63769; October 25, 2000), that written follow-up notifications are not required for reactor licensees who make verbal event notifications relating to the declaration of an emergency, issuance of a press release, notification to another Government agency, or transportation of a radioactively contaminated individual to an offsite medical facility for treatment.

Verbal and written notification requirements serve different purposes. A written follow-up notification provides a detailed analysis by the licensee of a reportable event (e.g., identification of root causes and identification of corrective action to prevent recurrence). The written analysis provides the NRC an opportunity to perform review and analysis as resources are available and to perform reviews for generic issues. In contrast, verbal notifications serve to alert the NRC of an event that may require immediate NRC response and mobilization of NRC and other Government resources. Consequently, written follow-up notification of some types of events do not add any value to the NRC's understanding of the event. For example, the NRC's goal is to be able to promptly respond to public or media inquiries if a licensee issues a press release or transports an injured worker, who is also contaminated, to an offsite facility for treatment. Sixty days after such an event, the NRC is not likely to receive inquiries requiring an immediate response.

With respect to emergency declarations, the NRC is already following the event closely and event notifications are sometimes retracted (i.e., the licensee makes an initial conservative judgement, that upon further review is determined to be unnecessary). Therefore, a written

follow-up notification would be both unnecessary and burdensome. Additionally, the absence of a written follow-up requirement on the declaration of an emergency does not obviate the licensee's responsibility in submitting a written follow-up event report based upon other § 72.75 criteria (which may have been the initiating cause that led to the emergency declaration).

Accordingly, the first sentence in the introductory paragraph to § 72.75(g) is revised to exempt verbal notifications made under §§ 72.75(a), (b)(2), and (c)(3) from the requirement for follow-up written notifications.

Comment 3: INEEL recommended that §§ 72.75(e)(3)(iv) and 72.75(g)(2)(xii) be modified to add at the end of the sentences in each of these sections the words “affected by the event.” The commenter believes that information provided to the NRC should be limited to the quantities and chemical and physical forms of the spent fuel, high-level waste (HLW), or reactor-related greater than Class C (GTCC) waste involved in the event, rather than the licensee's entire inventory.

Response: The NRC agrees with the intent of the commenter. The wording in the proposed rule for § 72.75(e)(3)(iv) and (g)(2)(xii) inadvertently left off the word “involved.” This word is used in the existing § 72.75(d)(1)(iv). Accordingly, § 72.75(e)(3)(iv) and (g)(2)(xii) are revised to include the phrase “involved in the event.”

Comment 4: INEEL recommended that § 72.75(g)(8) be deleted, because it is a characteristic of the information provided in the written report, and not part of the report's content. The commenter suggested that § 72.75(g)(8) of the proposed rule be moved to the last sentence of § 72.75(g), “Preparation and submission of written reports.”

Response: The NRC agrees with the comment. The second to last sentence of the

introductory paragraph of § 72.75(g) is revised to incorporate legibility requirements and § 72.75(g)(8) is removed.

Section-by-Section Changes

The following section is provided to assist the reader in understanding the specific changes made to each section or paragraph in 10 CFR Parts 72 and 73. For clarity of content in reading a section, much of that particular section may be repeated, although only a minor change is being made. This section should allow the reader to effectively review the specific changes without reviewing existing material that has been included for content, but has not been significantly changed.

In § 72.9, paragraph (b) is revised to remove §§ 72.19 and 72.216 as a conforming change.

Current § 72.75(b) is split into two new paragraphs, § 72.75(b) and (c) for 4-hour and 8-hour notifications, respectively. In new § 72.75(b), the existing 4-hour notification requirement remains unchanged for departing from a certificate condition or technical specification during an emergency (current § 72.75(b)(4)); a new requirement is added to notify the NRC when another Government agency is notified or a news release is planned to permit the NRC to promptly respond to public, media, and other stakeholder inquiries during events; and the current 4-hour notification is removed for events that require immediate action to avoid exposure or unplanned fires or explosions (current § 72.75(b)(1) and (b)(6)) because these notifications are redundant with the requirements in § 72.75(a).

In new § 72.75(c), the existing 4-hour event notifications are changed to an 8-hour notifications for (1) a defect in any spent fuel, high-level radioactive waste, or reactor-related

GTCC waste storage structure, system, or component important to safety¹ (current paragraph 72.75(b)(2)); (2) a significant reduction in the effectiveness of any spent fuel, high-level radioactive waste, or reactor-related GTCC storage confinement system in use (current § 72.75(b)(3)); and (3) an event that requires the transport of a radioactively contaminated person to an offsite medical facility for treatment (revision of current § 72.75(b)(5)).

Current § 72.75(c) for 24-hour reports is redesignated as § 72.75(d) and revised as follows: The current notification is retained for events in which equipment important to safety fails to function (current § 72.75(c)(2)). The requirement for notification of unplanned contamination events requiring controls restricting worker access for greater than 24 hours is removed, because such an event occurring at an ISFSI or MRS does not rise to a level of significance that would warrant notification. Facilities that store and manipulate spent fuel assemblies are by their very nature subject to identification of contamination outside of posted radiological contamination control areas (i.e., hot particles). The NRC considers the identification, control, and decontamination of these areas a routine radiation protection function, not an event requiring NRC notification — even if it takes the licensee more than 24 hours to clean up the contamination. Furthermore, although these 24-hour verbal reports are due within 24 hours of the discovery of the event, their relative lack of significance allows that this notification requirement be revised to permit these notifications to be delayed to the next working day (i.e., 8:00 a.m. Eastern time) when the end of the 24-hour period falls outside of

¹ 10 CFR 72.3 - Definitions. *Structures, systems, and components important to safety* means those features of the ISFSI, MRS, and spent fuel storage cask whose functions are-- (1) To maintain the conditions required to store spent fuel, high-level radioactive waste, or reactor-related GTCC waste safely; (2) To prevent damage to the spent fuel, the high-level radioactive waste, or reactor-related GTCC waste container during handling and storage; or (3) To provide reasonable assurance that spent fuel, high-level radioactive waste, or reactor-related GTCC waste can be received, handled, packaged, stored, and retrieved without undue risk to the health and safety of the public.

normal NRC working hours (7:30 a.m.- 5:00 p.m. Eastern time), a weekend, or a Federal holiday.

Current § 72.75(d) is split into three paragraphs and redesignated as new paragraphs (e), (f), and (g) (i.e., initial notification, follow-up notification, and preparation and submission of written reports) to provide greater clarity and consistency with §§ 50.72 and 50.73 event notification requirements.

In new § 72.75(e), the current requirement is retained to notify the NRC Headquarters Operations Center by telephone of emergency and non-emergency conditions [current § 72.75(d)(1)]. A new requirement is added to identify the Emergency Class declared or the respective paragraph of § 72.75 under which either a 4-hour, 8-hour, or 24-hour notification is being made. This notice will reduce confusion and facilitate NRC response to the emergency. The current requirement remains unchanged to provide supporting information [current § 72.75(d)(1)(i) through (v)]. Additionally, § 72.75(e)(3)(iv) is revised to include the words “involved in the event” to clarify the scope of the affected material that the licensee needs to describe.

In new § 72.75(f), new requirements are added for licensees to immediately make follow-up notifications to report degrading conditions, declaration of any Emergency Class, change of an Emergency Class, termination of the Emergency Class, the results of evaluations, the effectiveness of responses or protective measures, and information on unexpected ISFSI or MRS behavior. These added requirements will ensure that the information on a degrading condition or termination of the event is promptly communicated to the NRC. Consistent with current policy for reactor licensees, the NRC expects a 10 CFR Part 72 licensee to make any follow-up notifications to the NRC as soon as possible, but no later than 1 hour from the time of identification. Additionally, a requirement is added to maintain an open, continuous

communication channel with the NRC Headquarters Operations Center upon request by the NRC. This requirement is consistent with the current 10 CFR Part 50 event reporting requirements and ensures that during an ongoing emergency, the communications between the licensee and the NRC are not interrupted by the inability to complete a phone call when telephone circuits could be temporarily overloaded.

In new § 72.75(g), the current 30-day requirement is revised to require that written reports be submitted within 60 days [current § 72.75(d)(2)] to reduce the occurrence of supplemental reports and licensee burden. The requirements for human performance events [current § 72.75(d)(2)(i) through (d)(7), except § 72.75(d)(2)(ii)(I)] are revised to be consistent with currently revised § 50.73(b)(2)(ii)(J). The first sentence of the introductory paragraph of § 72.75(g) is revised to exclude events reported under § 72.75(a), (b)(2), and (c)(3) from the written follow-up notification requirements. The second to the last sentence in the introduction of § 72.75(g) is revised to incorporate legibility requirements for the written notifications.

New § 72.75(h) is added to indicate that the Commission may require a licensee to submit supplemental information if this information is necessary for the NRC to obtain a complete understanding of an unusually complex or significant event.

New § 72.75(i) is added to clarify that the requirements of § 72.75 apply (1) after a specific 10 CFR Part 72 license has been issued to an applicant; (2) after a 10 CFR Part 72 general licensee has first placed spent fuel on the ISFSI storage pad (if the ISFSI is located inside the reactor facility's protected area) or when the spent fuel is being transferred outside of the reactor facility's protected area to an ISFSI storage pad (if the ISFSI storage pad is located outside of the reactor facility's protected area); and (3) to non-emergency events that occurred within 3 years of the date of discovery. This paragraph will reduce licensee confusion about when the provisions of this section become applicable. The 3-year limitation will eliminate

notifications for events that are no longer significant and will be consistent with the current §§ 50.72 and 50.73.

Section 72.216 (Reports) is removed and reserved because it is no longer needed.

In § 73.71, paragraph (a)(4) is revised to extend the period for submitting written safeguards event notifications from 30 days to 60 days. In addition, the filing location and method are revised to require written safeguards event notifications to be submitted in accordance with § 73.4. A copy of the notification must also be provided to the Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response, in addition to the Director of the NRC program office responsible for the license (as specified in § 73.4).

In § 73.71, paragraph (d) is revised to extend the period for submitting written safeguards event notifications from 30 days to 60 days.

10 CFR Part 73, Appendix G, Paragraph I, is revised to extend the period for submitting written safeguards event notifications from 30 days to 60 days.

Criminal Penalties

For the purpose of Section 223 of the Atomic Energy Act (AEA), the Commission is issuing the final rule to amend 10 CFR Parts 72 and 73 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule will be subject to criminal enforcement.

Agreement State Compatibility

Under the “Policy Statement on Adequacy and Compatibility of Agreement State Programs” approved by the Commission on June 30, 1997, and published in the Federal

Register on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category “NRC.” Compatibility is not required for Category “NRC” regulations. 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 (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State’s administrative procedure laws, but does not confer regulatory authority on the State

Voluntary Consensus Standards

The National Technology Transfer 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 final rule, the NRC is amending its regulations to change several event notification requirements for ISFSI and MRS facilities and safeguards event notification requirements to more closely align them with event notifications for reactor facilities. This action does not constitute the establishment of a standard that establishes generally-applicable requirements and the use of a voluntary consensus standard is not applicable.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements contained in 10 CFR Parts 72 and 73 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget (OMB), approval numbers 3150-0132 and 3150-0002.

The burden to the public for the information collections in 10 CFR Part 72 is estimated to average 1 hour per response, and the burden for the information collections in 10 CFR Part 73 is estimated to be reduced an average 6 hours per response. There is also an annualized (over three years) implementation burden for 10 CFR Part 72 of 700 hours (33.3 hours per licensee) and for 10 CFR Part 73 of 2720 hours (13.5 hours per licensee). This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection.

Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Records Management Branch (T-6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail to

INFOCOLLECTS@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0132 and -0002), Office of Management and Budget, Washington, DC 20503.

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.

Regulatory Analysis

The Commission has prepared a final Regulatory Analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the regulatory analysis are available from Mark Haisfield, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001, telephone (301) 415-6196, e-mail, mfh@nrc.gov.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The majority of companies that own these facilities do not fall within

the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that, as in the final rule 10 CFR Parts 50 and 72, "Reporting Requirements for Nuclear Power Reactors and Independent Spent Fuel Storage Installations at Power Reactor Sites," the backfit rule (10 CFR 50.109, 10 CFR 70.76, 10 CFR 72.62, and 10 CFR 76.76) does not apply to information collection and reporting requirements such as those reporting requirements contained in this final rule. A backfit analysis is not required because this final rule does not involve any provisions that would impose backfits as defined in the backfit rule.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects

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, Whistle blowing.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transport, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

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. 552 and 553; the NRC is adopting the following amendments to 10 CFR Parts 72 and 73.

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

1. The authority citation for Part 72 continues to read as follows:

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).

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).

2. In § 72.9, paragraph (b) is revised to read as follows:

§ 72.9 Information collection requirements: OMB approval.

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(b) The approved information collection requirements contained in this part appear in §§ 72.7, 72.11, 72.16, 72.22 through 72.34, 72.42, 72.44, 72.48 through 72.56, 72.62, 72.70 through 72.82, 72.90, 72.92, 72.94, 72.98, 72.100, 72.102, 72.104, 72.108, 72.120, 72.126,

72.140 through 72.176, 72.180 through 72.186, 72.192, 72.206, 72.212, 72.218, 72.230, 72.232, 72.234, 72.236, 72.240, 72.242, 72.244, and 72.248.

3. Section 72.75 is revised to read as follows:

§ 72.75 Reporting requirements for specific events and conditions.

(a) *Emergency notifications:* Each licensee shall notify the NRC Headquarters Operations Center upon the declaration of an emergency as specified in the licensee's approved emergency plan addressed in § 72.32. The licensee shall notify the NRC immediately after notification of the appropriate State or local agencies, but not later than one hour after the time the licensee declares an emergency.

(b) *Non-emergency notifications:* Four-hour reports. Each licensee shall notify the NRC as soon as possible but not later than four hours after the discovery of any of the following events or conditions involving spent fuel, HLW, or reactor-related GTCC waste:

(1) An action taken in an emergency that departs from a condition or a technical specification contained in a license or certificate of compliance issued under this part when the action is immediately needed to protect the public health and safety, and no action consistent with license or certificate of compliance conditions or technical specifications that can provide adequate or equivalent protection is immediately apparent.

(2) Any event or situation related to the health and safety of the public or onsite personnel, or protection of the environment, for which a news release is planned or notification to other Government agencies has been or will be made. Such an event may include an onsite fatality or inadvertent release of radioactively contaminated materials.

(c) *Non-emergency notifications:* Eight-hour reports. Each licensee shall notify the

NRC as soon as possible but not later than eight hours after the discovery of any of the following events or conditions involving spent fuel, HLW, or reactor-related GTCC waste:

(1) A defect in any spent fuel, HLW, or reactor-related GTCC waste storage structure, system, or component that is important to safety.

(2) A significant reduction in the effectiveness of any spent fuel, HLW, or reactor-related GTCC waste storage confinement system during use.

(3) Any event requiring the transport of a radioactively contaminated person to an offsite medical facility for treatment.

(d) *Non-emergency notifications: 24-hour reports.* Each licensee shall notify the NRC within 24 hours after the discovery of any of the following events involving spent fuel, HLW, or reactor-related GTCC waste:

(1) An event in which important to safety equipment is disabled or fails to function as designed when:

(i) The equipment is required by regulation, license condition, or certificate of compliance to be available and operable to prevent releases that could exceed regulatory limits, to prevent exposures to radiation or radioactive materials that could exceed regulatory limits, or to mitigate the consequences of an accident; and

(ii) No redundant equipment was available and operable to perform the required safety function.

(2) For notifications made under this paragraph, the licensee may delay the notification to the NRC if the end of the 24-hour period occurs outside of the NRC's normal working day (i.e., 7:30 a.m. to 5:00 p.m. Eastern time), on a weekend, or a Federal holiday. In these cases, the licensee shall notify the NRC before 8:00 a.m. Eastern time on the next working day.

(e) *Initial notification:* Reports made by licensees in response to the requirements of this section must be made as follows:

(1) Licensees shall make reports required by paragraphs (a), (b), (c), or (d) of this section by telephone to the NRC Headquarters Operations Center.²

(2) When making a report under paragraphs (a), (b), (c), or (d) of this section, the licensee shall identify:

(i) The Emergency Class declared; or

(ii) Paragraph (b), "four-hour reports," paragraph (c), "eight-hour reports," or paragraph (d), "24-hour reports," as the paragraph of this section requiring notification of the non-emergency event.

(3) To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) The caller's name and call back telephone number;

(ii) A description of the event, including date and time;

(iii) The exact location of the event;

(iv) The quantities and chemical and physical forms of the spent fuel, HLW, or reactor-related GTCC waste involved in the event; and

(v) Any personnel radiation exposure data.

(f) *Follow-up notification:* With respect to the telephone notifications made under paragraphs (a), (b), (c) or (d) of this section, in addition to making the required initial notification, each licensee shall during the course of the event:

(1) Immediately report any further degradation in the level of safety of the ISFSI or MRS

² The commercial telephone number of the NRC Headquarters Operations Center is (301) 816-5100. Those licensees with an available Emergency Notification System (ENS) shall use the ENS to notify the NRC Headquarters Operations Center.

or other worsening conditions, including those that require the declaration of any of the Emergency Classes, if such a declaration has not been previously made; or any change from one Emergency Class to another; or a termination of the Emergency Class.

(2) Immediately report the results of ensuing evaluations or assessments of ISFSI or MRS conditions; the effectiveness of response or protective measures taken; and information related to ISFSI or MRS behavior that is not understood.

(3) Maintain an open, continuous communication channel with the NRC Headquarters Operations Center upon request by the NRC.

(g) *Preparation and submission of written reports.* Each licensee who makes an initial notification required by paragraphs (b)(1), (c)(1), (c)(2), or (d)(1) of this section shall also submit a written follow-up report to the Commission within 60 days of the initial notification. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all the necessary information and the appropriate distribution is made. These written reports must be of sufficient quality to permit legible reproduction and optical scanning and must be submitted to the NRC in accordance with § 72.4. These reports must include the following information:

(1) A brief abstract describing the major occurrences during the event, including all component or system failures that contributed to the event and significant corrective action taken or planned to prevent recurrence;

(2) A clear, specific, narrative description of the event that occurred so that knowledgeable readers conversant with the design of an ISFSI or MRS, but not familiar with the details of a particular facility, can understand the complete event. The narrative description must include the following specific information as appropriate for the particular event:

(i) The ISFSI or MRS operating conditions before the event;

(ii) The status of structures, components, or systems that were inoperable at the start of the event and that contributed to the event;

(iii) The dates and approximate times of occurrences;

(iv) The cause of each component or system failure or personnel error, if known;

(v) The failure mode, mechanism, and effect of each failed component, if known;

(vi) A list of systems or secondary functions that were also affected for failures of components with multiple functions;

(vii) For wet spent fuel storage systems only, after the failure that rendered a train of a safety system inoperable, an estimate of the elapsed time from the discovery of the failure until the train was returned to service;

(viii) The method of discovery of each component or system failure or procedural error;

(ix) For each human performance related root cause, the licensee shall discuss the cause(s) and circumstances;

(x) For wet spent fuel storage systems only, any automatically and manually initiated safety system responses;

(xi) The manufacturer and model number (or other identification) of each component that failed during the event; and

(xii) The quantities and chemical and physical forms of the spent fuel, HLW, or reactor-related GTCC waste involved in the event;

(3) An assessment of the safety consequences and implications of the event. This assessment must include the availability of other systems or components that could have performed the same function as the components and systems that failed during the event;

(4) A description of any corrective actions planned as a result of the event, including those to reduce the probability of similar events occurring in the future;

(5) Reference to any previous similar events at the same facility that are known to the licensee;

(6) The name and telephone number of a person within the licensee's organization who is knowledgeable about the event and can provide additional information concerning the event and the facility's characteristics; and

(7) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

(h) *Supplemental information:* The Commission may require the licensee to submit specific additional information beyond that required by paragraph (g) of this section if the Commission finds that supplemental material is necessary for complete understanding of an unusually complex or significant event. These requests for supplemental information will be made in writing, and the licensee shall submit, as specified in § 72.4, the requested information as a supplement to the initial written report.

(i) *Applicability:* The requirements of this section apply to:

(1)(i) Licensees issued a specific license under § 72.40; and

(ii) Licensees issued a general license under § 72.210, after the licensee has placed spent fuel on the ISFSI storage pad (if the ISFSI is located inside the collocated protected area, for a reactor licensed under part 50 of this chapter) or after the licensee has transferred spent fuel waste outside the reactor licensee's protected area to the ISFSI storage pad (if the ISFSI is located outside the collocated protected area, for a reactor licensed under part 50 of this chapter).

(2) Those non-emergency events specified in paragraphs (b), (c), and (d) of this section that occurred within 3 years of the date of discovery.

§ 72.216 [Reserved]

4. Section 72.216 is removed and reserved.

PART 73 – PHYSICAL PROTECTION OF PLANTS AND MATERIALS

5. The authority citation for Part 73 continues to read as follows:

AUTHORITY: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99-399, 100 Stat. 876 (42 U.S.C. 2169).

6. In § 73.71, paragraph (a)(4) and (d) are revised to read as follows:

§ 73.71 Reporting of safeguards events.

(a) ★ ★ ★

(4) The initial telephonic notification must be followed within a period of 60 days by a written report submitted to the NRC by an appropriate method listed in § 73.4. In addition to the

addressees specified in § 73.4, the licensee shall also provide one copy of the written report addressed to the Director, Division of Nuclear Security, Office of Nuclear Security and Incident Response. The report must include sufficient information for NRC analysis and evaluation.

★ ★ ★ ★ ★

(d) Each licensee shall submit to the Commission the 60-day written reports required under the provisions of this section that are of a quality that will permit legible reproduction and processing. If the facility is subject to § 50.73 of this chapter, the licensee shall prepare the written report on NRC Form 366. If the facility is not subject to § 50.73 of this chapter, the licensee shall not use this form but shall prepare the written report in letter format. The report must include sufficient information for NRC analysis and evaluation.

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7. In Appendix G to Part 73, the introductory sentence in paragraph I is revised to read as follows:

Appendix G to Part 73-Reportable Safeguards Events.

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I. *Events to be reported within one hour of discovery, followed by a written report within 60 days.*

★ ★ ★ ★ ★

Dated at Rockville, Maryland, this 15th day of May, 2003.

For the Nuclear Regulatory Commission.

/RA/
William D. Travers,
Executive Director for Operations.

Appendix G to Part 73-Reportable Safeguards Events.

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I. *Events to be reported within one hour of discovery, followed by a written report within 60 days.*

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Dated at Rockville, Maryland, this _____ day of _____, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,
Executive Director for Operations.

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"C" = copy without attachment/enclosure, "B" = copy with attachment/enclosure, "N" = No copy

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| OFFICE: | RGB:IMNS | | RGB:IMNS | | RGB:IMNS | | D:SFPO | |
| NAME: | MHaisfield | | SWastler | | GJanosko | | WBrach | |
| DATE: | 4/1/2003 | | 4/ 2/2003 | | 4/ 3/2003 | | 2 / 25 /2003 | |
| OFFICE: | D:IMNS | | ADM | | CFO | | CIO | |
| NAME: | CMiller | | MLesar | | JFunches (e-mail from R. Hesselink) | | BShelton (e-mail from BSt.Mary) | |
| DATE: | / /2003 | | 3 / 10 /2003 | | 3 / 18 /2003 | | 3 / 5 /2003 | |
| OFFICE: | NSIR | | OGC | | D:OE | | D:NRR | |
| NAME: | GTracy | | STreby: NLO | | FCongel (e-mail from LTrocine) | | SCollins (signed D. Mathews) | |
| DATE: | 3 / 21 /2003 | | 3 / 4 /2003 | | 3 / 21 /2003 | | 3 / 13 /2003 | |
| OFFICE: | D:NMSS | | DEDMRS | | EDO | | | |
| NAME: | MVirgilio | | CPaperiello | | WTravers | | | |
| DATE: | 04/30/2003 | | 5/15/2003 | | 5/15/2003 | | | |

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