

POLICY ISSUE
NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Wright
SUBJECT: SECY-20-0109: Petition for Rulemaking and Rulemaking Plan on Immediate Notification Requirements for Nonemergency Events

Approved X Disapproved X Abstain Not Participating

COMMENTS: Below Attached X None

Entered in STARS

Yes X

No

Signature

July 23, 2021

Date

Commissioner Wright's Comments on "SECY-20-0109: Petition for Rulemaking and Rulemaking Plan on Immediate Notification Requirements for Non-emergency Events"

I approve the staff's recommendation to close the docket for PRM-50-116 and initiate rulemaking to evaluate the current requirements and guidance for immediate notifications for non-emergency events at operating nuclear power plants. I also approve publication of the associated *Federal Register* notice and issuance of the letter informing the petitioner of this action, subject to the attached edits.

As discussed in the paper, this effort could benefit both the NRC and licensees by further aligning the requirements with safety and risk-significance and improving the efficiency of the reporting process for both traditional and non-traditional reactors without adversely affecting our safety and security mission. I support this risk-informed approach and encourage the staff to leverage data, technology, and innovative thinking in refining our requirements. However, I agree with the staff that it is not appropriate to shift the burden for gathering, verifying, and communicating information on non-emergency events from licensees to resident inspectors.

While I approve initiating this rulemaking, I do not support the proposed resource estimate, because it is unusually high for the expected result. The staff should incorporate any applicable lessons learned from the Retrospective Review of Administrative Requirements and Rulemaking Process Innovation efforts to appropriately balance the regulatory improvements of this rulemaking effort and the anticipated staff expenditures. I agree with the Chairman that the staff should discontinue this effort if it determines at any point that the costs are not justified by the benefits. The staff should provide the Commission the regulatory basis document for information no later than 10 business days prior to its transmittal for publication.

Finally, I approve the staff's recommendation on the reviews by the ACRS and the ACMUI. However, I do not approve the staff's recommendation on the CRGR review. While reporting requirements typically do not constitute backfitting, the staff should follow backfit guidance and best practices and do a case-by-case analysis of whether the changes meet the definition of backfitting or constitute changes affecting issue finality. The staff should consult with the NRC Backfitting and Forward Fitting Community of Practice prior to engaging with the CRGR to assist with determining whether the proposed action would be excluded from backfitting or issue finality considerations.

[7590-01-P]

DAW Edits

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-116; NRC-2018-0201]

Elimination of Immediate Notification Requirements for Nonemergency Events

Commented [DAW1]: The regulations say non-emergency. Please insert hyphen as indicated above in each instance of nonemergency if allowed by OFR's rules.

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; consideration in the rulemaking process.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will consider in its rulemaking process issues raised in a petition for rulemaking (PRM), dated August 2, 2018, submitted by Mr. Bill Pitesa on behalf of the Nuclear Energy Institute. The petition was docketed by the NRC on November 20, 2018, and assigned Docket No. PRM-50-116. The petitioner requested that the NRC amend its regulations to eliminate immediate notification requirements for nonemergency events for operating nuclear power reactors. The NRC will evaluate the current requirements and guidance for immediate notification of nonemergency events for operating nuclear power reactors, assess whether the requirements present an unnecessary reporting burden, and if ~~they~~ do so, determine whether the reporting requirement can be reduced or eliminated if that it does not have a commensurate safety benefit. -

DATES: The docket for the petition for rulemaking, PRM-50-116, is closed on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Please refer to Docket ID NRC-2018-0201 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2018-0201 or the future rulemaking Docket ID NRC-2020-0036. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1-800-397-4209, at 301-415-4737, or by e-mail to pdr.resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the "Availability of Documents" section.

- **Attention:** The Public Document Room, where you may examine and order copies of public documents, is currently closed. You may submit your request to the Public Document Room via e-mail at pdr.resource@nrc.gov or call 1-800-397-4209 between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Daniel Doyle, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 301-415-3748, e-mail: Daniel.Doyle@nrc.gov.

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I. The Petition

Section 2.802 of title 10 of the Code of Federal Regulations (10 CFR), "Petition for rulemaking—requirements for filing," provides an opportunity for any person to petition the Commission to issue, amend, or rescind any regulation. The NRC received and docketed a ~~petition for rulemaking (PRM) (ADAMS Accession No. ML18247A204)~~ dated August 2, 2018 (ADAMS Accession No. ML18247A204), filed by Mr. Bill Pitesa on behalf of the Nuclear Energy Institute (NEI or petitioner). The NRC assigned this PRM the docket number of PRM-50-116. On November 20, 2018 (83 FR 58509), the NRC published a notice of docketing and request for comment on PRM-50-116 in the *Federal Register*. The petitioner requests that the NRC revise its regulations in 10 CFR 50.72, "Immediate notification requirements for operating nuclear power reactors,"~~part 50 to title 10 of the Code of Federal Regulations (10 CFR), "Domestic Licensing of Production and Utilization Facilities,"~~ to remove the current requirement for licensees to immediately report nonemergency events that occur at operating nuclear power reactors. The petitioner states that licensees currently have procedures for responding to nonemergency events and ensuring that NRC resident inspectors are notified of nonemergency events independent of the requirements in § 50.72, ~~"Immediate notification requirements for operating nuclear power reactors."~~ The petitioner did not

request removal of § 50.72 in its entirety, only the nonemergency notification requirements in § 50.72(b). The petitioner believes that “duplicative notifications under 10 CFR 50.72 serve no safety function and are not needed to prevent or minimize possible injury to the public or to allow the NRC to take necessary action.”

The petitioner suggests that in lieu of the currently required notifications, the NRC should establish guidance for the resident inspectors that provides consistent and standard expectations for using the existing communication protocols that the petitioner claims have proven to be effective for communicating from the site to the resident inspectors and, from there, to NRC management.

II. Public Comments on the Petition

On November 20, 2018, the NRC requested comments from the public on the petition and posed five specific questions to gain a better understanding of the scope and basis for the issues raised by the petitioner. The comment period ended on February 4, 2019, and the NRC received 16 public comments~~s-submissions~~. Eleven ~~submissions-comments~~ (from NEI and nuclear power reactor licensees) supported the petition, one ~~comment submission~~ (from two private citizens) partially supported the petition, two ~~commentssubmissions~~ (from a private citizen and a nongovernmental organization) opposed the petition, and two ~~commentssubmissions~~ (from private citizens) were out of scope. The following is a summary of the comments organized by the specific questions in the notice of docketing.

In the first question, the NRC requested feedback on how stakeholders review and use the information contained in nonemergency event notifications, and how they would be affected if all nonemergency event notifications were eliminated. Two private citizens stated that they do not regularly review notifications on the NRC’s website, but

the information may be beneficial to maintain for public review. The same commenters supported the removal of redundancies in communication and suggested that the NRC maintain only those § 50.72 requirements that do not have a corresponding § 50.73, “Licensee event report system” report so the public is kept informed.

Several industry commenters also responded to this question. While their comments varied regarding the level of regular review of nonemergency event notifications, the consensus was that their organizations would not be adversely impacted by the elimination of the nonemergency reporting requirements of § 50.72. Several industry commenters stated that their primary sources of operating experience are § 50.73 licensee event reports (LERs), NRC inspection reports, NRC generic communications, and the Institute for Nuclear Power Operations (INPO) operating experience database. Several commenters also stated that § 50.72 event notifications are of little value because they do not contain sufficient information on which to base follow-up or corrective actions.

The second NRC question requested feedback on whether the public release of § 50.73 ~~licensee event reports~~LERs alone meets the needs of the public and noted the three § 50.72 reporting requirements that do not have a corresponding § 50.73 ~~licensee event report~~LER. Two private citizens and a nongovernmental organization agreed that the NRC should retain those nonemergency event notifications that do not have a corresponding § 50.73 ~~licensee event report~~LER. For the remaining reporting requirements, the public comments were divided. Two private citizens suggested that redundant reporting requirements should be eliminated, and a third private citizen preferred maintaining the status quo for nonemergency event notifications. A nongovernmental organization stated that notifications ef-for a plant shutdown, deviation from technical specifications, degraded conditions (i.e., safety barriers), unanalyzed

conditions, and system actuations should continue because the seriousness of some conditions may not be readily apparent.

Several industry members also provided comments in response to this question. In general, the industry commenters agreed that the information in the § 50.73 ~~licensee event reports~~ LERs provides more detail and context than § 50.72 event notifications. The commenters also concluded that generally, additional information beyond the § 50.73 ~~licensee event report~~ LER (e.g., from the INPO operating experience database) is necessary to meet the information needs of the industry in order to determine applicability and take corrective actions.

The third NRC question requested that stakeholders identify, from their perspectives, the most burdensome provisions in § 50.72. The NRC received several responses from members of the industry on this topic. Several commenters repeated concerns raised by the petitioner. In addition, the commenters provided additional insight to the potential burdens of the nonemergency reporting requirements of § 50.72. Specifically, one commenter expressed a concern that the training required to make infrequent event notifications detracts from training in other areas. Another commenter stated that subjective terms in the regulation, such as “seriously” (§ 50.72(b)(3)(ii)(A)), “significantly” (§ 50.72(b)(3)(ii)(B)), or “could” (§ 50.72(b)(3)(v)) foster strenuous debates within the licensee organization or between the licensee and the NRC. One commenter estimated that approximately 30 to 40 event evaluations per licensee are performed per year and determined not to be reportable under § 50.72.

The fourth NRC question directly asked if stakeholders agree with the petitioner’s assertion that § 50.72 nonemergency notifications are contrary to the best interests of the public and are contrary to the stated purpose of the regulation. The comments received from members of the public generally disagreed with the petitioner’s assertion. Comments received from industry agreed with the petitioner’s assertion.

The fifth NRC question requested feedback from stakeholders on potential alternatives to the petitioner's proposed changes that would address the concerns raised in the petition while still providing timely event information to the NRC and the public. Most of the comments received were from members of the industry and did not provide alternative approaches to the petitioner's proposed changes to § 50.72. One commenter stated that the NRC should eliminate the reporting requirements of §§ 50.72 and 50.73 on the basis that licensees already have access to various industry platforms in order to obtain pertinent operational experience information.

The NRC received other comments related to the petition, including specific comments on the basis and background of current requirements, the significance of a loss of safety function, and suggested alternatives to the timeliness requirements for submission of § 50.73 ~~licensee event reports~~LERs.

The NRC reviewed the other public comments received and recommends consideration of these comments in the rulemaking process. The NRC uses the basis and background of the current requirements to inform the regulatory basis of any proposed rule. The staff will discuss the significance of the loss of a safety function in greater detail in its regulatory basis.

Regarding the suggested alternatives to the timeliness requirements for submission of a § 50.73 ~~licensee event report~~LER, the staff notes that this would result in a significant change to the reporting requirements of § 50.73. This change may also result in the NRC receiving less information regarding root causes of the events reported due to the more stringent time demand. The NRC intends to gather additional stakeholder feedback on this topic in the rulemaking process.

III. Reasons for Consideration

Although the petitioner requested elimination of the requirements for licensees to immediately report nonemergency events that occur at operating nuclear power plants, the underlying issue is whether the current nonemergency reporting requirements create an unnecessary reporting burden. The NRC will consider this issue in its rulemaking process. The NRC will evaluate the current requirements and guidance for immediate notification of nonemergency events for operating nuclear reactors, assess whether the requirements present an unnecessary reporting burden, and if ~~they do so~~, determine - whether the reporting requirement can be reduced or eliminated ~~that if it~~ does not have a commensurate safety benefit. The NRC must preserve the ability to maintain situational awareness of significant events at nuclear power plants, and the visibility and openness of the event notifications to public stakeholders.

Evaluation of Petitioner Assertions

Assertion 1: § 50.72 is overdue for an update.

The petitioner states that the NRC has occasionally revised the notification and reporting requirements in §§ 50.72 and 50.73 based on accumulated operating experience to remove certain requirements that provided little or no safety benefit. The petitioner asserts that these regulations have not been updated in this manner since January 2001, and that the petition is based on the accumulation of additional operating experience.

NRC Evaluation: The NRC agrees with this assertion. The NRC acknowledges that it last updated notification and reporting requirements in § 50.72 in 2001 and that sufficient operating experience exists to consider an update to the reporting requirements in § 50.72(b). The staff performed an initial evaluation of each reporting

requirement in § 50.72(b) and preliminarily determined that some nonemergency reporting requirements could be updated. The NRC agrees that the reporting requirements in § 50.72(b) should be assessed and will evaluate each reporting requirement in its rulemaking process.

Assertion 2: The § 50.72 nonemergency notifications are redundant with resident inspectors' communications to the NRC.

In support of this assertion, the petitioner states that resident inspectors are familiar with the design and operations of nuclear power plants and are trained how to react to events that occur at the site, including when to escalate issues to NRC management. The petitioner also claims that NRC licensees have procedures or practices in place that ensure notification of the resident inspector independent of the requirements of § 50.72, and that the nonemergency notifications under § 50.72 serve no unique safety function.

NRC Evaluation: The NRC disagrees with the assertion that § 50.72 nonemergency notifications to the Headquarters Operations Center (HOC)¹ are redundant with resident inspectors' communications to the NRC. The petitioner claims that licensees have procedures in place to ensure that resident inspectors are informed of these types of events and that the reports made under § 50.72 are duplicated by licensee verbal reports to the onsite NRC resident inspectors. The NRC notes that the notifications to the resident inspectors as described by the petitioner are voluntary initiatives performed by the licensees; the NRC does not require licensees to contact the resident inspector. If the NRC relies on voluntary practices alone to maintain awareness of the nonemergency events listed in § 50.72(b), then there is an increased risk of loss

¹ The NRC HOC is the primary center of communication and coordination among the NRC, its licensees, State and Tribal agencies, and other Federal agencies regarding operating events involving nuclear reactors or materials. Located in Rockville, MD, the NRC HOC is staffed 24 hours a day by employees trained to receive and evaluate event reports and coordinate incident response activities.

of situational awareness and the ability to make timely decisions with adequate information. The resident inspectors may receive voluntary reports from licensees but ~~are may~~ not always be immediately available ~~at all times~~ and are not expected to perform the communication duties assumed by the HOC. Headquarters Operations Officers (HOOs) are always on call and have special knowledge and communication tools to enable accurate and efficient collection and dissemination of information for all types of facilities. In addition, every call to the HOO is recorded to ensure accuracy of information. Adding this burden to the resident inspectors could impact their ability to provide adequate oversight of the nonemergency events and decrease the speed and quality of information sharing within the NRC about nonemergency events. Further, reliance on the ~~R~~resident ~~I~~inspectors picking up the reporting requirement undermines the basis for the rule change as it would recognize that the need for the reporting is still necessary, it would simply shift the burden responsibility from the licensee to the NRC, ~~from the licensee.~~

Assertion 3: The § 50.72 nonemergency notifications distract key plant staff when they are addressing events.

The petitioner claims that elimination of the § 50.72(b) nonemergency notifications requirement would provide a safety benefit by allowing licensees to redirect technical and engineering resources away from procedural reporting compliance activities and toward assessment and corrective action activities immediately following nonemergency events.

NRC Evaluation: The NRC disagrees, in part, with this assertion. A wide variety of events are reportable in accordance with § 50.72. Likewise, the amount of effort expended to determine if the event in question is reportable varies widely. For example, a licensee should know immediately if it is issuing a press release or notifying another government agency, which is reportable under § 50.72(b)(2)(xi). The burden for

reporting this event should be only the additional cost of calling the NRC HOO and reporting the event without a significant amount of internal deliberation by the licensee. The one-hour report for deviation from a technical specification in accordance with § 50.54(x) serves as an example reporting requirement that should be apparent to the licensee and require minimal resources to report. On the other hand, commenters on the petition noted that other events, such as unanalyzed conditions, are less apparent and require more resources to determine if they are reportable. The time estimates provided by the commenters varied significantly. The NRC also received public comments that question whether licensees have sufficient resources to respond to events if they do not have sufficient resources to determine if an event is reportable. This assertion also raises a concern that licensees do not have a sufficient understanding of the intent of § 50.72(b).

To address these concerns, the NRC would need to perform additional analysis on each reporting requirement to determine which reporting requirements are creating these issues. The NRC will gather additional input from external stakeholders to determine the best way to resolve these concerns.

In summary, it is likely that certain reporting requirements have significantly more impact on licensees than others. As part of the rulemaking process, the NRC will hold public meetings with licensees to better understand which requirements cause these issues and how best to address them.

Assertion 4: The § 50.72 nonemergency notifications that are not currently reported in a 60-day ~~licensee event report~~LER under § 50.73 are unrelated to reactor safety.

The petitioner asserts that the three § 50.72 nonemergency notifications that do not have a corresponding requirement for a 60-day ~~licensee event report~~LER under § 50.73 are unrelated to reactor safety. These three requirements are § 50.72(b)(2)(xi),

involving a news release or notification to another government agency; § 50.72(b)(3)(xii), involving the transport of a radioactively contaminated person to an offsite medical facility; and § 50.72(b)(3)(xiii), involving a major loss of emergency assessment capability, offsite response capability, or offsite communications capability.

The petitioner states that the first two requirements are essentially “courtesy calls,” and resident inspectors can handle them. The petitioner claims that § 50.72(b)(3)(xiii) is a good example of a burdensome regulation that distracts licensee managers from the problems at hand. The petitioner claims that resident inspectors will be aware of these types of emergency preparedness problems. Furthermore, the petitioner claims that issues reported under § 50.72(b)(3)(xii) will be captured in the licensee’s corrective action program, reviewed by the resident inspector, and, as appropriate, captured in a subsequent quarterly inspection report that is made available to the public.

NRC Evaluation: The NRC disagrees, in part, with this assertion. The petitioner correctly points out the three kinds of § 50.72 event notifications that have no corresponding requirement for a ~~licensee event report~~ LER pursuant to § 50.73; ~~however,~~ the NRC believes that these reports are important for other reasons not identified by the petitioner. Although the § 50.72(b)(2)(xi) and (3)(xii) events do not directly impact reactor safety, the § 50.72(b)(3)(xiii) notification allows the NRC to confirm that reasonable assurance of public health and safety and the common defense and security is maintained by quickly evaluating and ensuring that the licensee maintains its ability to effectively implement the emergency response plan or that the licensee has taken or is taking the appropriate compensatory measures to ensure the emergency plan can still be effectively implemented. ~~The NRC may need to take immediate action in response to these events. For example, a major loss of assessment capability, without adequate compensatory measures put in place, could degrade or prevent a~~

~~licensee's ability to successfully implement its emergency response plan and negatively affect the NRC's reasonable assurance determination.~~ The NRC needs to be able to quickly assess the impact of the loss of assessment capability as well as the adequacy of the compensatory measure(s) put in place to address the loss, to allow for timely engagement with the licensee, if required.

The number of event reports under § 50.72(b)(3)(xiii) dropped significantly after NRC endorsement of NEI 13-01, "Reportable Action Levels for Loss of Emergency Preparedness Capabilities," dated July 2014 in Supplement 1 to NUREG-1022, Revision 3, dated September 2014. Prior to the endorsement of NEI 13-01, the NRC received on the order of hundreds of reports per year under this requirement. After the endorsement of NEI 13-01, the NRC now receives approximately 50–60 reports per year. As explained in the statement of considerations for the 2000 final rule amending § 50.72, "Reporting Requirements for Nuclear Power Reactors and Independent Spent Fuel Storage Installations at Power Reactor Sites; Final Rule," (65 FR 63769, 63774; October 25, 2000), the 8-hour reports, ~~such as including~~ § 50.72(b)(3)(xii) ~~and through~~ (xiii), are for "events where there may be a need for the NRC to take an action within about a day, such as initiating a special inspection or investigation." ~~If the NRC accepts the petitioner's suggested changes and relies solely on licensees' voluntary calls to the resident inspectors, then the NRC may not be able to take appropriate action in a timely manner. The current requirements in~~ Currently, § 50.72 establish timeliness requirements for notifying the NRC. If the NRC removed these requirements, then licensees would instead provide voluntary reports to resident inspectors based on each licensee's site-specific procedures, which may or may not impose timeliness expectations for notification of the resident inspector. For example, event response for nonemergency events could be delayed several days if an event, such as an actuation of the reactor protection system, occurs on a Friday night, and the resident inspector is

not informed until Monday morning. Such a delay may impact the agency's ability to determine the appropriate response to an event in a timely manner. If, due to the delay in reporting, the NRC is delayed in this assessment and in potentially taking responsive action, public health and safety could be affected.

In addition, it may not be readily apparent to the public how the NRC communicates and utilizes information received under these reporting requirements. The HOO communicates this information to all the interested internal NRC stakeholders when these reports are made. The reports in § 50.72(b)(2)(xi) and (b)(3)(xii) are of particular interest to the agency in that they ensure that the NRC is aware of communications made to other agencies and is kept informed of situations that are of high public interest (i.e., news releases and transport of contaminated personnel). An important factor for event notifications under § 50.72(b)(3)(xii) is the potential for radioactive materials on the contaminated individual to be removed from the site and distributed outside of the radioactivity-controlled area.

The petitioner claims that reports made under § 50.72(b)(2)(xi) and (b)(3)(xii) are essentially "courtesy calls" made to the NRC. The NRC notes that by the petitioner's own admission, licensees expend minimal effort to notify the NRC if a news release or notification to another government agency is made. In these cases, the reportability of these events should be readily apparent to the licensee and, therefore, cause little administrative burden beyond that of a call to the NRC HOO.

Regarding the claim-assertion that resident inspectors can handle these "courtesy calls," in addition to the previous discussion regarding delayed communication, communicating these events only to the resident inspector could alter the direct and efficient communication structure via the HOO and replace it with an indirect structure that is less efficient at disseminating information within the NRC. Moreover, licensee calls to the NRC HOC are recorded to ensure accuracy of information but, under the

petitioner's proposal, licensee conversations with resident inspectors would not be recorded. Since the NRC HOC infrastructure for dissemination of this information currently exists, the resident inspectors could report the information to the NRC HOC.

But this shifts the responsibility of contacting the HOC from the licensee to the resident inspectors. In addition, ~~the~~ the NRC HOC procedures would need to be updated ~~in order~~ to address any issues associated with this change, and the NRC would need to develop guidance for the resident inspectors to communicate nonemergency events to the NRC HOC. These changes would incur additional costs for training and equipment and may result in inconsistencies in the quality and timeliness of information about these events being shared within the NRC. This could potentially delay the NRC in the performance of its regulatory functions. The concerns with additional burden on resident inspectors if they are expected to communicate issues within the NRC are provided in the NRC's evaluation of Assertion 2.

The NRC needs to preserve the ability to respond effectively to events, maintain situational awareness, provide proper regulatory oversight, and maintain credibility with the public. The NRC intends to gather additional stakeholder feedback on this topic in the rulemaking process.

Assertion 5: The public will continue to be notified of the event in accordance with § 50.73.

The petitioner states that the ~~fuller~~ descriptions in ~~licensee event reports~~ (LERs) ~~provided~~ within 60 days, as required by 10 CFR 50.73, are available to the public. Given that these are nonemergency events, this is sufficient for transparency purposes."

NRC Evaluation: The NRC agrees, in part, with this assertion. The petitioner's claim that the public will be notified of the event in accordance with § 50.73 is correct, with the exception of the three reporting requirements in § 50.72, as discussed in

Assertion 4, that do not have a corresponding reporting requirement in § 50.73: § 50.72(b)(2)(xi), (b)(3)(xii), and (b)(3)(xiii). For these reports, the NRC disagrees that the reporting requirements of § 50.73 are sufficient for the purposes of public transparency.

The NRC agrees with the petitioner's statement that LERs contain "fuller," or more complete, descriptions of the reported event. The requirements of § 50.73 contain more detail regarding required content than the event notification requirements in § 50.72. The LERs generally contain a much more descriptive narrative of the event and the failure mechanisms involved.

In addition, the NRC received several public comments regarding timeliness of ~~reports~~ LERs. Two private citizens expressed support for the petition with the caveat that § 50.73 LERs should be moved to a 30-day reporting requirement to meet the needs of informing the public. However, such a significant change to the timing of the reporting requirements in § 50.73 may increase the burden on licensees and result in the NRC receiving less information regarding root causes of the events reported due to the more stringent time demand. Furthermore, even a 30-day reporting requirement for § 50.73 LERs would represent a significant reduction in timeliness for public notification compared to the current § 50.72 notification requirements. As part of the rulemaking, the NRC will consider how it would continue to provide timely notification of events to the public if it also alters timing requirements for notifications by licensees. The NRC intends to gather additional stakeholder feedback on this topic in the rulemaking process.

Assertion 6: The NRC has never taken any kind of action in response to prompt notifications.

The petitioner claims that the requirement to notify the NRC within 4 or 8 hours implies that the NRC would need to take action before the end of the 8-hour shift (for a

4-hour report) or soon after the shift turnover (for an 8-hour report). The petitioner claims that in the almost 40 years that this regulation has been in place, the NRC has never taken any kind of action in this tight timeframe to protect the public for one of these nonemergency events. The petitioner claims that there is no need for this type of prompt action, and that the NRC ~~occasionally rarely~~ dispatches inspection teams. The petitioner claims that notification from the resident inspector is more than sufficient for this kind of “prompt action.”

NRC Evaluation: The NRC disagrees with this assertion. The petitioner claims that the requirement to notify the NRC within 4 or 8 hours implies that the NRC would need to take action before the end of the 8-hour shift (for a 4-hour report) or soon after the shift turnover (for an 8-hour report). When the NRC receives these reports, the NRC HOO adds the items to a database for communication in a regular morning email. If there are items of interest (e.g., complicated reactor scrams, emergency core cooling system injection) that indicate a need for prompt communication, the NRC HOO notifies interested NRC stakeholders via immediate phone calls as soon as the information from the event is put into the database. The NRC HOO may also issue to NRC management a “HOO Highlight” email. These events are typically communicated to staff and management within an hour of receipt of the notification.

There are several other actions that the NRC could take in response to these notifications. In the statement of considerations for the 2000 final rule, the Commission analyzed the intent of the timeliness requirements in § 50.72(b), and noted that the final provisions required 4-hour reporting, if the event was not reported in 1 hour, for an 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. The Commission stated that such an event may include an onsite fatality or inadvertent release of radioactively contaminated

materials, and that this is the same as previously required. The Commission concluded that these reports are needed promptly because they involve events where there may be a need for the NRC to respond to heightened public concern.

The 2000 final rule also required 4-hour reporting, if the event was not reported in 1 hour, for unplanned transients. The Commission explained that these are events where there may be a need for the NRC to take a reasonably prompt action, such as partially activating its response plan to monitor the course of the event. For the remaining events reportable under § 50.72, the final rule required 8-hour reporting, if not reported in 1 hour or 4 hours; these are events where there may be a need for the NRC to take an action within about a day, such as initiating a special inspection or investigation.

Since the implementation of the 2000 final rule, the NRC has taken various prompt actions in response to event notifications under § 50.72(b). For example, the nonemergency event notifications serve as a potential trigger for Management Directive (MD) 8.3, "NRC Incident Investigation Program," evaluations, which may or may not result in a reactive inspection in response to the event.

The NRC performed a total of 140 reactive inspections from 2006 to 2018, an average of approximately 11 reactive inspections per year. In the period from 2006 to 2012, the NRC performed an average of approximately 14 reactive inspections per year. In the period from 2013 to 2018, the NRC performed an average of approximately 7 reactive inspections per year. In 2018, the NRC performed 4 reactive inspections. Even though the total number of reactive inspections has declined over the past 12 years, the NRC still performs several reactive inspections per year. In addition to these reactive inspections, there are ~~more events~~ other actions for which the agency may perform as a result of an MD 8.3 evaluation. For those evaluations where baseline inspection is recommended (no reactive inspection), the regions occasionally dispatch additional

inspectors to the site to respond to nonemergency events. ~~There are also cases, such as the dual unit trip at the Calvert Cliffs Nuclear Power Plant in 2015 (Event Notification 50961), where the NRC performed an MD 8.3 evaluation and decided to perform a reactive inspection within approximately 24 hours (“Calvert Cliffs Nuclear Power Plant Units 1 and 2—NRC Special Inspection Report 05000317/2015009 and 05000318/2015009,” dated May 27, 2015).~~

The NRC also routinely receives inquiries from reporters and members of the public regarding events at nuclear power stations. The nonemergency event notifications provide timely notification of events for those situations where the agency may need to respond to heightened public concern. For example, the dual unit trip at the Calvert Cliffs Nuclear Power Plant in 2015 (Event Notification 50961), where the NRC performed an MD 8.3 evaluation and decided to perform a reactive inspection within approximately 24 hours (“Calvert Cliffs Nuclear Power Plant Units 1 and 2 – NRC Special Inspection Report 05000317/2015009 and 05000318/2015009,” dated May 27, 2015), ~~the Calvert Cliffs dual unit trip~~ resulted in local news media coverage. Wholesale removal of these reporting requirements could render the agency unable to respond effectively to public requests for information.

Finally, depending on the nature of the nonemergency event, the agency may need to activate its response plan. At the Pilgrim Nuclear Power Station, winter storm Juno in January 2015 caused a loss-of-offsite power that caused a reactor trip (~~see~~ Event Notification 50769). Then, about 10 hours later, a second event notification, 50771, was made due to complications with the plant response and failed mitigating systems. At that point, the NRC’s Incident Response Center entered into Monitoring mode for this complicated event even though emergency plan activation criteria were not met.

The petitioner ~~correctly~~ claims that the NRC dispatches inspection teams for only 1% of nonemergency events. "occasionally dispatches inspection teams." However, the petitioner's statement does not recognize the actions taken by the NRC prior to dispatching these inspection teams. As discussed earlier in this section, the NRC sends inspection teams to nuclear power plants several times a year. The notifications made under § 50.72 serve as a potential trigger for the resident inspectors and regional staff to perform an MD 8.3 evaluation. The MD 8.3 evaluation assesses an event against several criteria to determine if the NRC should, in response to an event, 1) handle the issue in the baseline inspection program, 2) dispatch a special inspection team to investigate the event, or 3) dispatch an augmented inspection team to investigate the event in greater detail. The NRC may initiate an MD 8.3 evaluation as soon as a report is received, depending on the event.

Based on these reasons and examples, the NRC disagrees with the petitioner's assertion that the NRC has never taken any kind of action in response to these types of prompt event notifications or that these types of "prompt actions" are not needed.

Assertion 7: The § 50.72 nonemergency notification requirements are contrary to the NRC's principles of good regulation, specifically efficiency and openness.

As set forth in NUREG-1614, Volume 7, "Strategic Plan: Fiscal Years 2018–2022," the NRC's principle of efficiency states, in part, "Regulatory activities should be consistent with the degree of risk reduction they achieve. Where several effective alternatives are available, the option which minimizes the use of resources should be adopted." The petitioner argues that the burden of these requirements is not consistent with the degree of risk reduction achieved for the reasons discussed in the petition. Several commenters provided additional details about burdens associated with these requirements, including developing and maintaining procedures and training, screening events for possible reporting, over-reporting, retracting notifications determined to be

unnecessary, and recordkeeping. The petitioner and several commenters state that the limited benefit to the NRC and the public from these notifications is not commensurate with the time and resources expended. The petitioner states that there are currently two pathways for communicating similar information, and the more efficient pathway that optimizes resources and also communicates more information should be the one that is adopted. The petitioner believes that the more efficient pathway is from the licensee to a resident inspector and then from the resident inspector to NRC regional management.

Regarding the principle of openness, the petitioner states that a perceived benefit of the current § 50.72 requirements is that information is provided to the public. However, the petitioner states that the public availability of LERs under § 50.73 within 60 days is sufficient for transparency purposes given that these are nonemergency events. The NRC's response to this view is included in its evaluation of Assertion 5.

NRC Evaluation: The NRC disagrees in part that the reporting requirements of § 50.72 are contrary to the ~~other NRC p~~Principles of ~~g~~Good ~~r~~Regulations. The NRC agrees in part with the petitioner's claim that the reporting requirements of § 50.72 should be evaluated ~~for against the NRC's efficiency Principle of Good~~ Regulation efficiency. However, as discussed previously, the reporting requirements vary greatly by number of reports per year and the amount of time licensees may spend deciding whether a specific reporting requirement has been met. Therefore, the NRC will consider this issue in its rulemaking process, where the NRC may solicit public input to help determine the best course of action to address the petitioner's concerns.

The NRC agrees in part that LERs meet the informational needs of the public, except in those cases where an event ~~causes could result in~~ immediate heightened public concern. These cases may include press releases, emergency response to the site, failures or inadvertent actuation of emergency sirens, notification of other

government agencies, or the transport of contaminated individuals from the site, and openness and efficiency is of utmost importance.

Regarding the principle of independence, the nonemergency reporting requirements in § 50.72 support the concept of seeking all available facts and opinions from licensees. Specifically, the nonemergency reporting requirements support this principle in that licensees notify the NRC of events of interest. The intent of the rule is to support the capability of the NRC to make timely decisions and to provide adequate assurances regarding actual or potential threats to public health and safety. This depends heavily on the rapidity with which significant events are communicated by nuclear power reactor licensees to NRC. The NRC has an obligation to collect facts quickly and accurately about significant events, assess the facts, take necessary action, and inform the public about the extent of the threat, if any, to public health and safety. Notification of these nonemergency events in a timely manner allows the agency to perform an independent assessment of the event and take appropriate action, if necessary.

Regarding reliability, the NRC acknowledges that § 50.72 has not been updated since 2001. During the rulemaking process, the NRC will evaluate the additional operating and regulatory experience gained since 2001 and determine if any changes are necessary to the nonemergency reporting requirements of § 50.72.

Assertion 8: The purpose and objectives of § 50.72 will continue to be fully met if the requested amendments are made.

The petitioner claims that the purpose and objectives of § 50.72 will continue to be fully met if the NRC grants the petitioner's request to remove the nonemergency reporting requirements contained in § 50.72(b). The petitioner bases the request on the existence of voluntary procedures to inform resident inspectors.

NRC Evaluation: For the reasons listed in the responses to the assertions in this section of this document, the NRC disagrees in general that the intent of § 50.72 would be fully met if the requested amendments were implemented as stated; however, the NRC intends to assess this claim in the rulemaking process to determine whether the NRC can reduce or eliminate any requirements within § 50.72 (~~due to being unnecessarily burdensome~~) and still preserve the regulation's purposes and objectives ~~of § 50.72~~. The NRC needs to maintain the ability to respond effectively to events, maintain situational awareness, provide proper regulatory oversight, and preserve credibility with the public.

Assertion 9: Rulemaking is the preferred solution to deal with the petitioner's concerns.

NRC Evaluation: The NRC agrees, in part, that the rulemaking process can evaluate and potentially resolve the petitioner's underlying concerns associated with unnecessary burden caused by requirements associated with nonemergency event notifications. The NRC will address this issue in the rulemaking process. The NRC disagrees with the petitioner's proposed changes ~~that would~~ eliminate all nonemergency reporting requirements in § 50.72. Rulemaking will enable the NRC to evaluate the reporting criteria in § 50.72(b) on a case-by-case basis to determine if the reporting requirements should be modified (e.g., changing the timeliness or method of reporting requirements, or eliminating or adding requirements). The NRC will hold public meetings with stakeholders throughout the rulemaking process to better understand which requirements have the greatest impact on industry and the public. It may be possible to address some of these concerns by clarifying regulatory guidance.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

DOCUMENT	ADAMS ACCESSION NO. / WEB LINK / FEDERAL REGISTER CITATION
PRM-50-116 - Nuclear Energy Institute Petition to Amend 10 CFR 50.72, "Immediate Notification Requirements for Operating Nuclear Power Reactors," August 2, 2018	ML18247A204
PRM-50-116: Petition for rulemaking; notice of docketing and request for comment, November 20, 2018	83 FR 58509
Management Directive 8.3, "NRC Incident Investigation Program," June 25, 2014	ML18073A200
NUREG-1614, Volume 7, "Strategic Plan: Fiscal Years 2018–2022," February 2018	ML18032A561
NUREG-1022, Rev 3, Supplement 1, "Event Report Guidelines 10 CFR 50.72(b)(3)(xiii)," September 2014	ML14267A447
NEI 13-01, Rev 0, "Reportable Action Levels for Loss of Emergency Preparedness Capabilities," July 2014	ML14197A206
"Calvert Cliffs Nuclear Power Plant Units 1 and 2 – NRC Special Inspection Report 05000317/2015009 and 05000318/2015009," May 27, 2015	ML15147A354
Event Notification Report for January 28, 2015: EN 50769	https://www.nrc.gov/reading-rm/doc-collections/event-status/event/2015/20150128en.html#en50769
Event Notification Report for January 28, 2015: EN 50771	https://www.nrc.gov/reading-rm/doc-collections/event-status/event/2015/20150128en.html#en50771
Event Notification Report for April 10, 2015: EN 50961	https://www.nrc.gov/reading-rm/doc-collections/event-status/event/2015/20150410en.html#en50961

V. Conclusion

For the reasons cited in this document, the NRC will consider the petition in the rulemaking process. The NRC will evaluate the current requirements and guidance for immediate notification of nonemergency events for operating nuclear power reactors, assess whether the requirements present an unnecessary reporting burden, and if ~~they~~ ~~do so~~, determine whether the reporting requirement can be reduced or eliminated ~~that if it~~ does not have a commensurate safety benefit.

The NRC tracks the status of all rules and PRMs on its Web site at <https://www.nrc.gov/about-nrc/regulatory/rulemaking/rules-petitions.html>. The public may monitor the docket for the rulemaking on the Federal rulemaking Web site, <https://www.regulations.gov>, by searching on Docket ID NRC-2020-0036. In addition, the Federal rulemaking Web site allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: 1) navigate to the docket folder (NRC-2020-0036); 2) click the "Sign up for Email Alerts" link; and 3) enter an e-mail address and select the frequency of e-mails (daily, weekly, or monthly). Publication of this document in the *Federal Register* closes Docket ID NRC-2018-0201 for PRM-50-116.

Dated Month, XX, 202~~1~~9.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.