

NON-CONCURRENCE PROCESS COVER PAGE

The U.S. Nuclear Regulatory Commission (NRC) strives to establish and maintain an environment that encourages all employees to promptly raise concerns and differing views without fear of reprisal and to promote methods for raising concerns that will enhance a strong safety culture and support the agency's mission.

Employees are expected to discuss their views and concerns with their immediate supervisors on a regular, ongoing basis. If informal discussions do not resolve concerns, employees have various mechanisms for expressing and having their concerns and differing views heard and considered by management.

Management Directive (MD) 10.158, "NRC Non-Concurrence Process," describes the Non-Concurrence Process (NCP).

The NCP allows employees to document their differing views and concerns early in the decision-making process, have them responded to (if requested), and include them with proposed documents moving through the management approval chain to support the decision-making process.

NRC Form 757, "Non-Concurrence Process," is used to document the process.

Section A of the form includes the personal opinions, views, and concerns of a non-concurring NRC employee.

Section B of the form includes the personal opinions and views of the non-concurring employee's immediate supervisor.

Section C of the form includes the agency's evaluation of the concerns and the agency's final position and outcome.

NOTE: Content in Sections A and B reflects personal opinions and views and does not represent the official agency's position of the issues, nor official rationale for the agency decision. Section C includes the agency's official position on the facts, issues, and rationale for the final decision.

1. Was this process discontinued? If so, please indicate the reason and skip questions 2 and 3:
Process was not discontinued
2. At the completion of the process, the non-concurring employee(s):
Continued to non-concur
3. For record keeping purposes:
This record has been reviewed and approved for public dissemination

NRC FORM 757 (06-2019) NRC MD 10.158		U.S. NUCLEAR REGULATORY COMMISSION		1. NCP Tracking Number NCP-2024-001
NON-CONCURRENCE PROCESS (Continued)				Date 2024-02-06
Section A – To Be Completed by Non-Concurring Employee				
2. Title of Subject Document PROPOSED RULE: REPORTING REQUIREMENTS FOR NONEMERGENCY EVENTS AT NUCLEAR POWER PLANTS (3150 AK71; NRC-2020-0036)			3. ADAMS Accession Number ML23318A475	
4. Document Signer Raymond Furstenau - EXECUTIVE DIRECTOR FOR OPERATIONS		5. Document Signer's Office EDO		6. Document Signer's Email Raymond.Furstenau@nrc.gov
7. Name of Non-Concurring Employees Caty Nolan (She/Her) - BRANCH CHIEF; Rebecca Sigmon - SENIOR REACTOR SYSTEMS ENGINEER; Daniel Mills - EXECUTIVE TECHNICAL ASSISTANT		8. Non-Concurring Employee Offices NSIR, NRR, OEDO		9. Employee Emails Catherine.Nolan@nrc.gov; Rebecca.Sigmon@nrc.gov; Daniel.Mills@nrc.gov
10. Non-Concurring Employee's Role for the Subject Document On Concurrence				
11. Name of Non-Concurring Employee Supervisors Michael Waters - DIR,DIV OF PREPAREDNESS & RESPONSE; Lisa Regner (She/Her) - BRANCH CHIEF; Tekia Govan - DEPUTY ASSISTANT FOR OPERATIONS		12. Non-Concurring Employee Supervisor Offices NSIR, NRR, OEDO		13. Supervisor Emails Michael.Waters@nrc.gov; Lisa.Regner@nrc.gov; Tekia.Govan@nrc.gov
14. I would like my non-concurrence considered and would like a written evaluation in Sections B and C.				
15. When the process is complete, I would like management to determine whether public release of the NCP Form (with or without redactions) is appropriate (Select "No" if you would like the NCP Form to be non-public): No				
16. Reasons for the Non-Concurrence, Potential Impact on Mission, and the Proposed Alternatives The analysis in this non-concurrence will address concerns with the proposed eliminations of 10 CFR 50.72 from several different angles. First, taken holistically, the elimination of publicly available information about reactor events, including (and perhaps especially) those with minimal safety significance, runs directly counter to the principle of openness. The eliminated criteria shift burden to resident inspectors, contrary to the SRM direction. Also contrary to the SRM, the regulatory basis does not demonstrate that the degradation in NRC situational awareness can be mitigated without relying on resident inspectors. Additionally, the proposed changes to the rule ignored the opportunity, despite SECY-20-0109 stating it would, to more fully consider new reactor designs under Part 50 or Part 52, including NuScale, or the language of Part 53, which will necessitate an additional round of rulemaking for 10 CFR 50.72 just within the next few years. Finally, the analysis will address concerns with the justifications given for each individual criterion proposed for elimination, which were inconsistent throughout. Please see attached documents.				
17. Submitted By / Submitted On Caty Nolan (She/Her) - BRANCH CHIEF; Rebecca Sigmon - SENIOR REACTOR SYSTEMS ENGINEER; Daniel Mills - EXECUTIVE TECHNICAL ASSISTANT				2024-02-06

NRC FORM 757 (06-2019) NRC MD 10.158		U.S. NUCLEAR REGULATORY COMMISSION		1. NCP Tracking Number NCP-2024-001
NON-CONCURRENCE PROCESS (Continued)				Date 2024-02-29
Section B – To Be Completed by Non-Concurring Employee’s Supervisor				
2. Title of Subject Document PROPOSED RULE: REPORTING REQUIREMENTS FOR NONEMERGENCY EVENTS AT NUCLEAR POWER PLANTS (3150 AK71; NRC-2020-0036)			3. ADAMS Accession Number ML23318A475	
4. Name of Non-Concurring Employee’s Supervisor Michael Waters - DIR,DIV OF PREPAREDNESS & RESPONSE; Lisa Regner (She/Her) - BRANCH CHIEF; Tekia Govan - DEPUTY ASSISTANT FOR OPERATIONS		5. Non-Concurring Employee’s Supervisor Email Michael.Waters@nrc.gov; Lisa.Regner@nrc.gov; Tekia.Govan@nrc.gov		6. Office NSIR, NRR, OEDO
7. Comments for the NCP Reviewer to Consider Thank you Caty, Rebecca, and Daniel for providing a well-written nonconcurrency. It methodically highlights important attributes of the proposed rulemaking through additional regulatory lens. Raising these differing views also reflects a good safety culture, given the importance of NRC situational awareness in our independent safety and security roles. I support moving forward with the proposed rulemaking and carefully resolving stakeholder comments, with the following enhancements to the draft FRN to address some important issues raised in this NCP. The supporting Regulatory Basis document (RB) addresses each reporting criteria and highlights that the primary basis for keeping selected reporting requirements is because without the event notification (ENs) some conditions may not be known within a time commensurate with the potential safety significance of the issue. Not knowing would be a degradation in situational awareness. For some reporting requirements being eliminated, the RB appears to acknowledge that there may be a potential net reduction in safety, and provides an analysis of the low number of past prompt reactive oversight actions. This is the apparent deciding factor to determine that these category of ENs have not been generally useful for effective oversight. In a practical sense, I believe that even the initial discussions of a potential MD 8.3 review, and the questioning attitude of inspectors at the start, helps NRC stay on top of evolving issues. And it can sometimes help nudge a licensee in the right direction in completing robust follow-up assessments. I have recommended that Section A and B of the FRN be updated to summarize the primary criteria that is being used to evaluate whether the reporting requirements should be kept or eliminated; and clearly state that the potential safety significance associated with those events is the primary decision criterion for the proposed changes (i.e. consideration of likelihoods, potential consequences, margins, and defense-in-depth factors associated with such events). The historic rule basis, as noted in Part A of the FRN, considered the needs of maintaining public awareness/confidence and mitigating stakeholder concerns. These factors no longer appear to be prominent criteria for this proposed rule. It is also not clear that future quarterly inspection reports will capture, for public consumption, all future events that will no longer be reported under the rule. I have recommended that Section A of the FRN be updated to note that public awareness of safety significant events is important for public confidence. However, it is not considered a significant decision criteria for the proposed rule. Section C of the FRN should objectively note the likely delay or elimination of public awareness of future events that will no longer be reported under the proposed rule. Resident inspectors are identified in the FRN basis as the backstop for appropriately addressing conditions that are no longer reported. I agree with concerns that there could be a perception in earlier drafts of the FRN that residents will still be able capture and address all events with similar vigor. I have heard mixed views from former residents on this point. As the RB notes, many licensee procedures require notifications to resident inspectors but such notifications are at the licensee’s discretion. I have recommended that Section C of the FRN state that future events, that are no longer reported, will be treated as any other plant condition of similar safety significance - subject to each licensee’s informal communication processes and NRC’s baseline sampling process that resident inspectors apply to all reported plant conditions. As a result, future plant events may no longer be promptly recognized and addressed by the resident, given their competing priorities in focusing on potentially more safety or security significant issues. The justification in the FRN for eliminating the notification requirement for a major loss of communications or emergency assessment capability has been modified with additional data and likelihood considerations, including the basis that there				

are backup communication avenues, and that a major loss would most likely be recognized by NRC through Emergency Action Level (EAL) notifications. The staff actively endorses and updates guidance for acceptable EAL schemes, which also may in part rely upon the existing 50.72 event notifications. I will task DPR staff to verify that new EAL guidance for operating and advanced reactors, including guidance currently under development, are reviewed to ensure consistency with the EAL assumptions credited in the proposed rulemaking. I believe other important concerns in the NCP are being addressed through the on-going concurrence process. I have provided a non-public response, in a separate attachment, to the non-public document referenced in the NCP.

8. Reviewed By / Reviewed On Michael Waters - DIR,DIV OF PREPAREDNESS & RESPONSE	2024-02-29
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NRC FORM 757 (06-2019) NRC MD 10.158		U.S. NUCLEAR REGULATORY COMMISSION		1. NCP Tracking Number NCP-2024-001	
NON-CONCURRENCE PROCESS (Continued)				Date 2024-02-29	
Section B – To Be Completed by Non-Concurring Employee’s Supervisor					
2. Title of Subject Document PROPOSED RULE: REPORTING REQUIREMENTS FOR NONEMERGENCY EVENTS AT NUCLEAR POWER PLANTS (3150 AK71; NRC-2020-0036)				3. ADAMS Accession Number ML23318A475	
4. Name of Non-Concurring Employee’s Supervisor Lisa Regner (She/Her) - BRANCH CHIEF		5. Non-Concurring Employee’s Supervisor Email Lisa.Regner@nrc.gov		6. Office NRR	
7. Comments for the NCP Reviewer to Consider Please see attachment.					
8. Reviewed By / Reviewed On Lisa Regner (She/Her) - BRANCH CHIEF				2024-02-29	

NRC FORM 757 (06-2019) NRC MD 10.158		U.S. NUCLEAR REGULATORY COMMISSION		1. NCP Tracking Number NCP-2024-001	
NON-CONCURRENCE PROCESS (Continued)				Date 2024-02-26	
Section B – To Be Completed by Non-Concurring Employee’s Supervisor					
2. Title of Subject Document PROPOSED RULE: REPORTING REQUIREMENTS FOR NONEMERGENCY EVENTS AT NUCLEAR POWER PLANTS (3150 AK71; NRC-2020-0036)				3. ADAMS Accession Number ML23318A475	
4. Name of Non-Concurring Employee’s Supervisor Tekia Govan - DEPUTY ASSISTANT FOR OPERATIONS		5. Non-Concurring Employee’s Supervisor Email Tekia.Govan@nrc.gov		6. Office OEDO	
7. Comments for the NCP Reviewer to Consider No Comment					
8. Reviewed By / Reviewed On Tekia Govan - DEPUTY ASSISTANT FOR OPERATIONS				2024-02-26	

NRC FORM 757 (06-2019) NRC MD 10.158		U.S. NUCLEAR REGULATORY COMMISSION		1. NCP Tracking Number NCP-2024-001
NON-CONCURRENCE PROCESS (Continued)				Date 2024-03-19
Section C – To Be Completed by NCP Coordinator				
2. Title of Subject Document PROPOSED RULE: REPORTING REQUIREMENTS FOR NONEMERGENCY EVENTS AT NUCLEAR POWER PLANTS (3150 AK71; NRC-2020-0036)			3. ADAMS Accession Number ML23318A475	
4. Name of NCP Coordinator Daniel Merzke - SENIOR REACTOR OPERATIONS ENGINEER		5. NCP Coordinator's Email Daniel.Merzke@nrc.gov		6. Office NRR
7. Agreed Upon Summary of Issues Summary of Issues (attached)				
8. Evaluation of Non-Concurrence and Rationale for Decision Response attached				
9. Coordinated By / Coordinated On Daniel Merzke				2024-03-19
10. Approved By / Approved On Mike King - DEP DIR FOR REACTOR SFTY PRGS & MISON				2024-03-19

50.72 Non-Concurrence

Staff Requirements Memorandum (SRM)-SECY-20-109, “Staff Requirements – Petition for Rulemaking and Rulemaking Plan on Immediate Notification Requirements for Nonemergency Events,” dated July 28, 2021, stated, “Changes that shift the responsibility for gathering, verifying, and communicating information on non-emergency events from licensees to resident inspectors should not be pursued. The staff should discontinue this effort if it determines at any point that the costs are not justified by the benefits or that the rulemaking would unacceptably degrade the NRC’s situational awareness.”

The proposed rulemaking package includes:

- 10 CFR 50.72(b)(2)(iv)(A) to eliminate the requirement to notify the NRC of an event that results or should have resulted in an emergency core cooling system discharge into the reactor coolant.
- 10 CFR 50.72(b)(2)(xi) to eliminate the requirement to notify the NRC of an event or situation related to the health and safety of the public or protection of the environment for which a news release is planned.
- 10 CFR 50.72(b)(3)(iv)(A) to eliminate the requirement to notify the NRC of an event or condition that results in valid actuation of specified safety systems.
- 10 CFR 50.72(b)(3)(v) to eliminate the requirement to notify the NRC of an event or condition that could have prevented fulfillment of the safety function of structures and systems needed to shut down and maintain the reactor in a safe condition, remove residual heat, control the release of radioactive material, and mitigate the consequences of an accident.
- 10 CFR 50.72(b)(3)(xii) to eliminate the requirement to notify the NRC of an event requiring the transport of a radioactively contaminated person to an offsite medical facility for treatment.
- 10 CFR 50.72(b)(3)(xiii) to eliminate the requirement to notify the NRC of any event that results in a major loss of emergency assessment capability, offsite response capability, or offsite communications capability (e.g., significant portion of control room indication, Emergency Notification System, or offsite notification system).

This analysis will address concerns with these eliminations from several different angles. First, taken holistically, the elimination of publicly available information about reactor events, including (and perhaps especially) those with minimal safety significance, runs directly counter to the principle of openness. The eliminated criteria shift burden to resident inspectors, contrary to the SRM direction. Also contrary to the SRM, the regulatory basis does not demonstrate that the degradation in NRC situational awareness can be mitigated without relying on resident inspectors. Additionally, the proposed changes to the rule ignored the opportunity, despite SECY-20-0109 stating it would, to more fully consider new reactor designs under Part 50 or Part 52, including NuScale, or the language of Part 53, which will necessitate an additional round of rulemaking for 10 CFR 50.72 just within the next few years. Finally, the analysis will address concerns with the justifications given for each individual criterion proposed for elimination, which were inconsistent throughout.

Openness

The NRC assumes a reputational risk by considering elimination of the significant non-emergency events in the proposed rule. By eliminating these required notifications, the NRC sends a message that awareness of off-normal conditions outside the expected licensing basis assumed for event response is not a priority. This cedes the decision for when and what the NRC needs to know from the regulatory body to the licensee, who will inform the NRC based on their own procedures that can be changed without prior NRC approval.

Eliminating reporting requirements has a detrimental effect on public transparency and can erode trust in the NRC's ability to perform its mission. Reporting requirements provide a structured framework for disclosing information about anomalous events, and helps the public hold the NRC accountable. Transparency allows the public to better understand and scrutinize NRC response to events, and to place new events in the proper safety context.

We reduce our effectiveness as a regulator by under-cutting public trust and confidence – the perception of the NRC as an open, transparent regulator goes a long way towards allowing the public to accept the decisions we make on complex systems with significant potential public health/economic impacts. Repeated assertions in the justification that elimination of reporting requirements demonstrates openness when it clearly does the opposite further undermine confidence in the process used to reach the decision.

Resident Inspector Burden

Many of the criteria for elimination in the proposed rulemaking package include a justification that routine inspection activities already provide the necessary information to the NRC in a sufficiently timely manner. Follow-up of corrective action program records is routine inspection activity. Current practice, as delineated in separate regional procedures, provides guidance to resident inspectors on issues and events that should be elevated to regional management. The focus of these communications is identification of issues potentially requiring additional regional support, but this is often informed by whether events are being reported to the NRC under 10 CFR 50.72. So while elimination is not necessarily adding burden to the resident inspectors, it is shifting the burden of responsibility for the identification and communication of these events to the inspectors and to the Regions.

This justification for elimination assumes continued resident inspector coverage at every site on at least a near-daily basis. The word "inspection" or "inspector" does not appear in the FRN for any previous 10 CFR 50.72, except in reference to the types of actions that NRC may take in response to a notification. The regulation is independent of the type and level of oversight the NRC applies to any given reactor licensee. This points to the historical distinction between oversight activities, which constitute the primary function of the resident inspectors, and the communication of events. Just as it is not the job of the NRC inspector to identify every degraded condition in the plant, but rather to perform inspection samples to verify that licensee programs are working as intended to identify and correct degraded conditions. Inspectors review hundreds of condition reports, log entries, and work management documents every week; it is not the job of the inspector to identify every reportable condition to ensure that appropriate NRC actions can be taken.

By removing the regulatory backstop for reporting, the NRC places a higher dependence for its awareness of plant events on licensee and NRC processes, programs, and procedures, including the resident inspection program, that can be modified, reduced, or eliminated. As noted in SECY 20-0109, "the staff does not consider the industry's voluntary reporting practice

as elaborated in the petition to be a sufficient basis for eliminating the 10 CFR 50.72 requirement to notify the NRC Headquarters Operations Center for nonemergency events.” Licensee procedures for notifying resident inspectors of events are non-quality procedures that may be modified or eliminated without NRC approval or even notification. The resident inspector program is not delineated in the regulations and may very well be subject to modification in the future. Even the Reactor Oversight Process is a voluntary framework.

Resident inspectors rely on these reports to make oversight and inspection decisions. Removal of these reporting requirements will likely lead to a delay of inspector response of a shift, a weekend, or possibly 60 days. In this time the resident inspectors will have lost the chance to observe and talk to the crew on shift, ask timely questions of plant personnel, and engage NRC resources when needed.

Reporting Burden

From SECY 20-0109, “The staff recommends addressing the petition by initiating a rulemaking to evaluate the current nonemergency reporting requirements and guidance with the goal of reducing unnecessary reporting burden.” From 2001-2023, there was an average of about 370 initial notifications per year made under 10 CFR 50.72 (although any given notification may have involved reporting criteria). However, during the five-year period from 2019-2023, there was an average of less than 160 initial notifications made per year. This indicates that even without any rulemaking, adjustments to guidance and processes have significantly reduced the reporting burden, as discussed in the Regulatory Basis.

Also from SECY 20-0109, “licensees spend approximately 10 man-hours for a simple notification and 25 man-hours for a complex notification.” While recognizing that there is more that goes into identifying and communicating an event than making the final phone call, if significant effort is required to determine whether an event is reportable, the Commission’s position from the 1983 final rule ([48 FR 39039](#)), and re-iterated in the 2000 final rule ([65 FR 63769](#)) is, “When applying engineering judgment, and there is a doubt regarding whether to report or not, the Commission’s policy is that licensees should make the report.” There is no regulatory penalty for over-reporting. Making an initial report does not in itself incur any additional oversight or inspection action, nor is it counted against a licensee in the assessment process. Any programs focused on trying to minimize reporting are intended to reduce the types of situations that require reports, not to spend resources trying to justify not reporting borderline cases.

Situational Awareness

None of the justifications provided in the proposed rule address the SRM direction to ensure that NRC situational awareness is not degraded. In particular, the justification for removing 10 CFR 50.72(b)(2)(xi) states that it is unrelated to nuclear plant safety, even though the reporting criteria, per the Statements of Consideration in the 1983 final rule, state that it is not for maintaining plant safety, but for “when such events require the NRC to respond because of media or public attention.” It is true that current NRC programs provide for resident inspectors at every site who will be able to recognize events during routine inspection activities including daily corrective action program reviews. (Note that licensee procedures for notifying resident inspectors of plant events are not quality procedures and may be modified or eliminated without NRC approval; this should not be relied upon for NRC notification). As stated in SECY-20-0109,

“Resident inspectors may receive voluntary reports from licensees but are not always available and are not expected to perform the communication duties assumed by the NRC Headquarters Operations Center. Headquarters Operations Officers 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. Adding the notification burden to the duties of resident inspectors could impact their ability to provide adequate oversight of the nonemergency event and decrease the speed and quality of information sharing within the NRC and to the public about nonemergency events.”

Given the directive in the SRM to ensure eliminated criteria do not result in transferring burden to resident inspectors or degradation of NRC situational awareness, the assumption needs to be that the NRC will not hear about events until the LER is received 60 days after the event. If follow-up truly is required “within about a day or so,” as stated in the basis for eight-hour reporting timeline in the 2000 final rule language ([65 FR 63769](#)), LER notification is not adequate for ensuring timely NRC action. Justifications need to clearly demonstrate that NRC’s statutory mission can be met while relying on processes that are not embedded in the regulations (and can therefore be changed without the extensive review that rulemaking requires).

Removal of these reporting requirements reduces the ability of resident inspectors to assess the situation in a timely manner. Much more can be learned from talking to plant personnel and observing plant conditions shortly after an event than days later after memories have degraded and plant conditions have changed. Removal of these reports also eliminates the possibility for experienced HOOs to ask for pertinent information and gather additional information from the onshift crew.

New/Advanced Reactor Considerations

10 CFR 50.72, “Immediate notification requirements for operating nuclear power reactors,” includes section (a) for the general requirements stating that each power reactor licensed under §§ 50.21(b) or 50.22 holding an operating license under this part or a combined license under part 52 of this chapter after the Commission makes the finding under § 52.103(g), are subject to this rule. In SECY-20-109 that the Commission approved, it stated, “the staff will consider in the rulemaking process whether the reporting requirements should be modified to address non-traditional reactors (e.g., AP1000, small modular reactors).” The proposed rule did not include the consideration of new/advanced applicants/licensees during the rulemaking process. There is no evidence in the regulatory basis or notice for the proposed rule that consideration was given to the very different types of events that are significant in some of these different designs. For example, one of the most limiting and safety significant events for the NuScale SMR is an ECCS actuation, yet the 4-hour and 8-hour reports for ECCS are proposed for elimination.

Additionally, the NRC has a duty to have technology inclusive language included in its regulations. The language for ECCS injection is not technology-inclusive as some new designs do not have ECCS injection. Another example is a non-light water reactor design that has safety-related backup cooling that is always on so it doesn’t actuate. While the proposed rule eliminates these two specific criteria, the new/advanced reactor stakeholders may deem it necessary to receive these non-emergency event notifications; however, these stakeholders were not considered during the rulemaking process. Moreover, the part 53 rulemaking would

need to reconcile any differences by most likely having conforming changes for 50.72. As additional rulemaking for 10 CFR 50.72 will be necessary in the near future to appropriately address the evolving scope of reactor designs, some of the changes proposed here appear premature, focused on experience with the current light water reactor fleet.

Technical and Safety Considerations

The justifications for elimination included in the proposed rule, discussed individually in detail below, appear to have been applied differently across the various criteria. The standard of 'performance of a reactive inspection' is applied to delineate agency action, but then criteria with three or even six reactive inspections in the past several years are discarded as not enough action to prevent elimination. Elimination is justified because an event is considered to be reported "infrequently," but in the regulatory basis this term is applied to events that were reported between 73 and 1,413 times over the course of 22 years. On the other hand, a criterion that is rarely used (five times in 22 years), is (correctly) recognized as important information for NRC response capabilities regardless of the fact that it is rare. It is acknowledged in the regulatory basis that routine resident inspector follow-up may not occur for up to five days, but then another criterion whose original basis assumes action can be taken within one day is eliminated with the justification that resident inspectors will likely identify the issue within about a day. The SRM was clear that actions that shift burden to resident inspectors are not an acceptable substitution for reporting requirements, but then routine inspection follow-up is considered justification for transferring the identification, notification, and communication burden from the licensee to the resident inspector.

10 CFR 50.72(b)(2)(iv)(A)

Any event that results or should have resulted in an emergency core cooling system discharge into the reactor coolant system

The original justification for this reporting criterion as a 1-hour notification in the 1983 final rule ([48 FR 39039](#)), includes discussion that events involving ECCS discharge are more serious than simple actuations (that may or may not result in discharge), resulting in a need for more timely reporting. The justification for eliminating this requirement includes:

- The number of reports is infrequent, occurring 89 times from 2000-2022;
- Prompt agency action has not been required;
- Most instances (all but eight) were accompanied by either an emergency report or a critical plant reactor protection system (RPS) actuation report;
- If the plant was not critical, the risk would be low, so NRC notification 60 days later required by 10 CFR 50.73(a)(2)(iv) would be adequate for inspection follow-through and data trending.

The frequency of the number of reports does not have any bearing on whether immediate notification of the NRC is necessary for making timely decisions to ensure adequate protection of public health and safety, as well as to respond to stakeholder inquiries to alleviate unnecessary fear or concern. To the point that reporting represents a burden, the fact that eliminating this criterion would only have eliminated eight reports from 2001-2023 indicates that eliminating this criterion does not have any meaningful impact on reporting burden. On the other hand, when an emergency declaration or RPS actuation is (or should have been)

accompanied by ECCS injection, this is important information for determining the level of agency response needed.

Injection at power without an actuation signal can result in a reactivity transient that challenges operators. An ECCS injection following a scram is indicative of unexpected complications. Following from this, while none of the eight events reported solely under 10 CFR 50.72(b)(2)(iv)(A) (or reported only under this criterion and other criteria slated for elimination) resulted in a reactive inspection, ECCS injection was a factor in launching at least three reactive inspections since 2013. While a reactive inspection is not the only action the NRC takes in response to immediate notifications, the regulatory basis document for this proposed rule established this as the primary benchmark for determining that action was taken, and this criterion meets the threshold.

Furthermore, reactive inspection is not the only agency action that can be taken. Contrary to the statement in the proposed rule, ECCS injection that does not result in a reactor trip, for instance injection to a cold, shutdown plant, is not necessarily a low-risk event. Injection of water in solid plant conditions poses pressurized thermal shock risks that need to be recognized and evaluated prior to plant heatup and startup. In this case, notification at 60 days would be too late to ensure NRC review of licensee verification that the reactor coolant system meets licensing basis requirements for fracture prevention of the reactor coolant pressure boundary.

It was also noted in the regulatory basis document that this report was duplicative with the eight-hour notification under 10 CFR 50.72(b)(3)(iv)(A) for valid system actuations. If that criterion were being kept, this could mitigate the effects of eliminating this criterion, but the valid system actuation reporting criterion is also proposed for elimination, without circling back to note the impact on ECCS injection.

10 CFR 50.72(b)(2)(xi)

Any event or situation related to the health and safety of the public or protection of the environment for which a news release is planned, or notification to other government agencies has been made.

The original justification for this reporting criterion as a 4-hour notification in the 1983 final rule ([48 FR 39039](#)) explicitly states that it captures events that would not otherwise warrant NRC attention, but is necessary because the NRC will need to respond to media or public attention. The justification for eliminating this requirement includes:

- NRC has never initiated an inspection or investigation as a result of these reports;
- Removal would not affect NRC's regulatory responsibilities.

As discussed above, a reactive inspection is not the only action that NRC takes to respond to 10 CFR 50.72 reports. The justifications for eliminating this criterion fail to address the basis for including it in the first place. Unless it can be shown that NRC does not need to respond to media or public attention, or that NRC can respond without placing additional burden on the resident inspectors, then elimination of this criterion has not been justified. While inspectors do provide background information that helps inform current NRC response to these reports, the existence of the event report places the burden on NRC officials responding to media inquiries and interacting with other government agencies to identify for the inspectors what amplifying information is needed. Absent the event report, this burden now shifts to the inspector to identify

that a press release/notification is planned, why it is being made, and what the potential impacts are, and then to elevate the concern.

The opening paragraphs of the Background section of this document quote from notice for the original 10 CFR 50.72 final rule:

The majority of events occurring throughout the nuclear industry pose little or no serious or immediate threats to the public health and safety; however, certain events do pose such threats or generate fear or unusual concern.

... Not only must [the] NRC act promptly to prevent or minimize possible injury to the public, it must also take appropriate action to alleviate fear or concern created as a result of such events.

Elimination of this reporting criterion significantly impedes the NRC's ability to meet this stated obligation.

10 CFR 50.72(b)(3)(iv)(A)

Any event or condition that results in valid actuation of specified safety systems

The systems specified are spelled out in 10 CFR 50.72(b)(3)(iv)(B) and include:

- RPS (for reactors that are already shutdown; a critical actuation will continue to be reported under 10 CFR 50.72(b)(2)(iv)(B));
- Containment isolation;
- Various emergency core cooling systems specified by whether they apply to boiling or pressurized water reactors;
- Auxiliary/emergency feedwater for pressurized water reactors;
- Containment heat removal;
- Emergency AC electrical power.

The original justification for this reporting criterion as a 4-hour notification in the 1983 final rule ([48 FR 39039](#)) states, "[Engineered safeguards features] ESFs are provided to mitigate the consequences of the event; therefore, (1) they should work properly when called upon and (2) they should not be challenged unnecessarily. The Commission is interested both in events where an ESF was needed to mitigate the consequences of the event (whether or not the equipment performed properly) and events where an ESF operated unnecessarily."

The 1992 final rule ([57 FR 41378](#)) notes the distinction between valid actuations, which are initiated manually or in response to actual plant conditions, and invalid actuations, and determined that 60-day notification was adequate for invalid actuations. The 2000 final rule ([65 FR 63769](#)) shifted the reporting timeframe for valid actuations from four hours to eight hours as, "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." The justification for eliminating this requirement includes:

- The number of reports is infrequent (occurring 1,413 times from 2000-2022);
- Notification under 50.73(a)(2)(iv) 60 days after the event provides adequate information to inform longer-term actions and response.

As discussed above, the frequency of the report has no bearing on whether the NRC requires timely notification to take action when the event does occur. Furthermore, while not necessarily disqualifying, quantifying 1,413 as “infrequent” in the same manner as 89 reports under 10 CFR 50.72(b)(2)(iv)(A) challenges the credibility of the argument. Approximately one report a year per reactor site is not generally considered “infrequent” in other events analysis applications, such as probabilistic risk assessment.

The regulatory basis provides an analysis of reactive inspections and management directive (MD) 8.3 reviews, determining that not only were there no reactive inspections initiated for events that were only reported under this criterion, but there do not appear to have been any MD 8.3 evaluations initiated for events that were only reported under this criterion. While the regulatory justification for the 2000 final rule specifically calls out special inspections as an action that would require NRC notification within a day, this does not mean this is the only action that NRC might take to respond to this type of event.

Furthermore, the actual system that actuated makes a difference in the significance of the events under consideration. There have been special inspections chartered to review reactor trips (that would continue to be reported under 10 CFR 50.72(b)(2)(iv)(B)) because of complications that were indicated by actuation of emergency AC power sources or ECCS. As most Westinghouse and General Electric light water reactors have auxiliary feedwater actuation or high pressure coolant injection actuation as an expected response to a RPS actuation from full power, basic data analysis of these 10 CFR 50.72 reports will not easily distinguish between those events where the valid system actuation was part of the expected plant response, and those where it was a more complex event that was a factor in chartering a reactive inspection.

For this reason, it is clear that there has been agency action, even if the term is restricted to special inspections, because of reporting under this criterion, even if the event is also reported as a RPS actuation. NRC procedures and reporting guidance would need to be updated to ensure that when scrams are reported, additional information is also collected about what other safety system actuations occurred (including Group 1 containment isolation that results in a loss of condenser heat sink or emergency AC power actuation on loss of power to a safety bus). Elimination of this reporting requirement risks placing the burden on the resident inspector to identify and communicate system actuations that occurred that may necessitate additional NRC action prior to receipt of the LER.

Finally, one of the most risk significant initiating events for most currently-operating reactor plants is a loss of offsite power. As offsite power is not a safety system, its loss is not (and has not been) reportable. Plant impacts from the loss of offsite power, including a RPS actuation if the reactor is critical, would be reportable, but currently the NRC notification of a potential loss of offsite power is from the actuation of emergency AC power systems. While an extended, complete loss of offsite power will likely trigger emergency notifications under 10 CFR 50.72(a)(1)(i), loss of offsite power to a safety bus on a shutdown reactor (or as applicable to the AP1000 and potentially newer designs – a loss of offsite power to a plant capable of operating in island mode, where the generator output supplies all necessary non-safety loads for continued operation) would not be reportable. While a shutdown reactor may generally be in a lower risk condition than an operating reactor, there are high risk evolutions that occur in shutdown conditions, particularly when the reactor coolant system is in a reduced inventory condition or redundant equipment is out of service.

10 CFR 50.72(b)(3)(v)

Any event or condition that could have prevented fulfillment of the safety condition of structures and systems needed to shut down and maintain the reactor in a safe condition, remove residual heat, control the release of radioactive material, and mitigate the consequences of an accident

The original justification for this reporting criterion as a 4-hour notification in the 1983 final rule ([48 FR 39039](#)) states that this report is necessary as safety systems and structures are intended to mitigate the consequences of an accident. The 2000 final rule ([65 FR 63769](#)) shifted the reporting timeframe for valid actuations from four hours to eight hours as, "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." The justification for eliminating this requirement includes:

- Routine inspector follow-up within about a day can ensure appropriate short-term response;
- Notification via LER under 10 CFR 50.73(a)(2)(v).

The loss of a safety function is one of the deterministic criteria used to evaluate the need for a special inspection. The proposal to eliminate the reporting requirement fails to justify how the basis for requiring this report is still met. Since 2011, there have been at least six reactive inspections chartered in response to 10 CFR 50.72(b)(3)(v) reports that were not reported under any other criteria.

As discussed above, inspector follow-up implies that the burden of the communication is shifting to the inspector. Regardless of whether the inspector (assuming there is an inspector onsite) identifies the issue via a corrective action program record initiated in a timely fashion or from voluntary notification made by the licensee, by eliminating the reporting requirement, the notification and communication burden is shifted to the resident inspector, contrary to the direction of the SRM.

In the event that technical specifications (TS) limiting conditions for operation are reached, NRC would still receive notification under 10 CFR 50.72(b)(2)(i) of a TS-required shutdown, if the reactor was operating. However, this may be days, weeks, or even a month or more with a safety function inoperable, especially given the increasing application of risk informed completion times to TS, and no guarantee of notification before the LER is received.

In the regulatory basis discussion for maintaining the requirement for notification under 10 CFR 50.72(b)(2)(i), the assessment notes that eliminating the requirement would require the NRC to depend on resident inspector plant status reviews, which could delay NRC awareness for up to five days. For that criterion it was recognized that failing to ensure that inspectors knew to respond promptly to the site could jeopardize meeting the original basis for the reporting requirement. On the contrary, for 10 CFR 50.72(b)(3)(v), even though the basis for the notification is also response within about one day, the recognition that there might not be an inspector onsite for up to five days was not evaluated against that difference.

10 CFR 50.72(b)(3)(xii)

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

The original justification provided in the final rule in 1983 states that such events require the NRC to respond because of media or public attention. The justification for eliminating this requirement includes:

- These events are generally not related to safety and, therefore, are not a threat to public health and safety.
- Agency records indicate that the NRC has never initiated an inspection or investigation in response to these events.

While licensees are required to have arrangements for medical transportation in their emergency plans per 10 CFR 50.47(b)(12), there is no requirement for the notification to the NRC in order to respond to heightened public interest or media inquiry. The justifications for eliminating this criterion fail to address the basis for including it in the first place.

Eliminating this requirement will predictably lead to the scenario in which the NRC is contacted by media, intervenor groups, members of the public, or state/local governments to respond to a situation for which a press release has been made public but the NRC is not yet aware.

Unless it can be shown that NRC does not need to respond to media or public attention, or that NRC can respond without placing additional burden on the resident inspectors, then elimination of this criterion has not been justified. The NRC has received 29 reports under this criterion from 2011-2021.

10 CFR 50.72(b)(3)(xiii)

Any event that results in a major loss of emergency assessment capability, offsite response capability, or offsite communications capability (e.g., significant portion of control room indication, Emergency Notification System, or offsite notification system)

The original justification provided in 1983 states that this criterion “covers those events that would impair a licensee’s ability to deal with an accident or emergency. Notifying the NRC of these events may permit the NRC to take some compensating measure and to more completely assess the consequences of such a loss should it occur during an accident.” It also gave examples that this criterion is intended to cover. The justification for eliminating this requirement includes:

- The reports are infrequent (occurring 1,419 times from 2001-2014; an average of 25 times per year from 2015-2021);
- The NRC has not activated its response plan or performed reactive inspections as a result of reports received under this criterion.

The justification also states that there are standard emergency classification and action level schemes and so a duplicative 8-hour non-emergency notification is not required. However, this fails to address the basis for including it in the first place.

There was an update to the guidance document for this reporting criterion in September of 2014 in the form of Supplement 1 to NUREG-1022 Revision 3, in addition to the NUREG-1022 Revision 3 guidance update. That update gave clearer guidance as to which particular equipment needed to be reported and delineated unplanned vs. planned equipment out of service. This guidance update provides the reason for the drastic change in the number of reports received in the ~2015 timeframe, which more appropriately clarified the reporting

requirement so the NRC could receive the information it actually needed. This did not require a rule change at the time as the rule was already clear. However, this criterion could benefit from further guidance updates as more data and experience has been collected and new technologies have been developed, which could potentially remove parts of the criterion for major loss of all offsite and onsite communications capabilities and major loss of offsite response capabilities. The NRC knowing about a major loss of emergency assessment capability remains an item that should be maintained for situational awareness.

As discussed above, the frequency of the report has no bearing on whether the NRC requires timely notification to take action when the event does occur. Furthermore, while not necessarily disqualifying, quantifying 1,419 as “infrequent” in the same manner as 89 reports under 10 CFR 50.72(a)(2)(iv)(A) challenges the credibility of the argument. On the other hand, when a licensee has a major loss of emergency assessment capability, such as major loss of control room indication and plant monitors necessary for accident assessment, this is important information for determining the level of agency response needed.

For additional information regarding this reporting requirement, please see attached non-public document.

Summary

NUREG 2165, *Safety Culture Common Language*, states, “Nuclear is recognized as special and unique. Individuals understand that complex technologies can fail in unpredictable ways.” The reporting criteria that remain after three previous revisions reflect the 40 years’ experience of responding to a wide variety of events and failures, as well as the media and stakeholder interactions that result. As stated in the original final rule, published in 1980 ([45 FR 13434](#)) in the aftermath of the Three Mile Island accident, “NRC has an important 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.”

Both the regulatory basis and the justifications in the proposed final rule acknowledge that the NRC needs the information delivered by the 50.72 sections proposed for deletion in order to successfully regulate. The argument for deleting them is that the same information will be provided by the resident inspectors, but this fundamentally misunderstands the role of the resident inspectors and the oversight program in general.

There are those who advocate for alleviating public concerns by not informing them of these low-significance events in the first place. This does a dis-service to the public we serve, and ultimately undermines our ability to maintain their trust when more significant events occur. In an age where information, accurate or not, can reach millions around the world in minutes, not every event is going to remain secret. The inability of the NRC to be able to provide satisfactory answers to other Federal agencies, Tribes, local government, media organizations, or Congressional stakeholders following an event at a nuclear power plant would pose a reputational risk to the NRC and undermine the confidence of the public and Congressional oversight in our ability to meet our mission.

This in turn can undermine public confidence in the safety of nuclear power operations.

The historical transparency of the NRC, with the full scope of 10 CFR 50.72 event reports available to the public, fosters a climate of trust that commercial nuclear operations are in fact

safe, under the oversight of an independent regulator with nothing to hide, while reflecting the NRC values of excellence, commitment, and reliability. Once trust is lost, it is difficult to regain, as the nuclear industry worldwide has experienced. After four decades pursuing excellence, the U.S. nuclear industry is viewed very differently by the American public now than it was in 1980. It would behoove the NRC, as it pursues a mission that NRR has defined as, "Make the safe use of nuclear technology possible," to remember that a strong, respected, independent regulator played a vital role in that evolution.

Proposed Alternatives

This section provides some proposed alternatives that address some of the concerns raised above. One or more than one could/should be implemented for this proposed rulemaking.

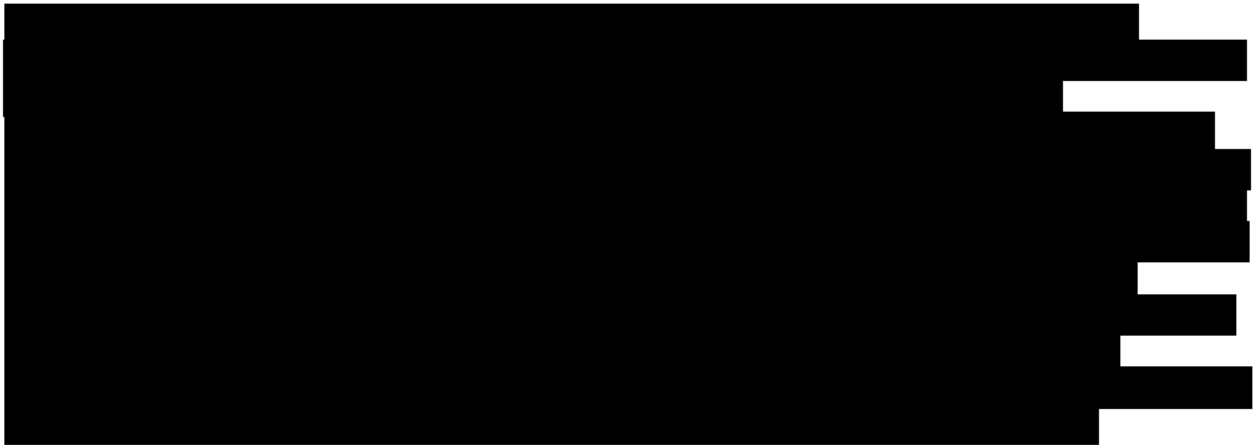
- 1) Discontinue this current proposed rulemaking as currently written and replace it with a direct final rule that only adds the technological alternative method for notifying the NRC of nonemergency events. This solution would reduce the burden on licensees, be more cost effective than the current proposed rulemaking, not degrade situational awareness, continue to meet the intent of the rule, and not shift the burden onto resident inspectors. While this alternative does not address the new/advanced reactors consideration, it is recognized that 50.72 would need to be updated later once part 53 is promulgated. That consideration could be given at that time so the current operating reactor licensees could benefit from some reduced burden in the near-term.

AND

- 2) Update NUREG-1022 to provide clarifications of reporting requirements.

Section A Attachment

Attachment for 10 CFR 50.72 Non-Concurrence



Section B Attachment

Additional Part B Response to NCP-2004-001

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Michael Waters – 02/29/24

Section B Attachment

I want to thank those that submitted the non-concurrence (NC) for taking the time to develop their concerns and submit them through this process. Many of the concerns reflect topics discussed in depth by the 10 CFR 50.72 Non-Emergency Reporting Requirements Rulemaking Working Group. Some also reflect my personal concerns. While I will not address each topic presented in the NC, I'd like to focus on what I believe are the main points. These are concerns associated with whether the elimination of any of the criteria would:

1. Unacceptably degrade NRC situational awareness,
2. Increase resident inspectors' burden/workload, and
3. Negatively impact the NRC's goal of Openness.

The concerns in the NC are valid and the many working group members across 7 Offices and Regions assessing these and many others in developing the [Regulatory Basis](#). To apply a systematic and structured process, the working group applied a decisionmaking tool, discussed in depth in the [Regulatory Basis](#). In addition, senior leadership in the 50.72 Rulemaking Steering Committee and NRR provided significant input on this decisionmaking tool.

Concerning unacceptably degrading NRC's situational awareness

Many staff and leadership at NRC Headquarters assume that if the Headquarters Operations Center (HOC) is not informed of non-emergency events by the 10 CFR 50.72(b) requirement, then the NRC as an agency will lose situational awareness. Yet, this disregards the purpose of the Reactor Oversight Process (ROP) and the resident inspectors at each site tasked with ensuring operating reactors are being operated safely. Resident inspectors are on-site to maintain awareness of plant safety conditions and execute the ROP. They are the NRC's 'eyes and ears' and will continue to maintain situational awareness regardless of the reporting criteria imposed on licensees. They will continue to track and communicate safety significant issues to regional management under existing processes. Regional management will continue to be the primary decision-makers for any prompt NRC actions related to non-emergency events and to track and communicate concerns to other stakeholders as appropriate. The NRC will not lose situational awareness; and for low safety-significant, non-emergency conditions, they will continue to be addressed by the appropriate NRC staff.

For those non-emergency events proposed for elimination, if the criteria presented in the decisionmaking tool are flawed and senior HQ leadership or the HOC need this information within hours of occurrence to take action, then those criteria should not be eliminated. The Regulatory Basis discusses that NRC action beyond communicating for awareness has not taken place for the eliminated criteria. The decisionmaking criteria specified that NRC awareness without action, *by itself*, was not a reason to retain a requirement. On the contrary, for example, the required report under 10 CFR 50.72(b)(1) Deviation from TS under 10 CFR 50.54(x) could involve the NRC's need to know about safety-significant conditions. There have been few reports under this criterion and no NRC actions taken; however, this was retained because there is a clear tie to awareness of unforeseen events and the potential need for immediate response. This requirement was considered the 'backstop' of 50.72(b) notifications and is most likely to capture non-emergency safety-significant issues that need to be reported immediately for prompt NRC awareness and potential action.

Concerning increasing the burden on resident inspectors

The idea that eliminating non-emergency reporting criteria will increase the burden on resident inspectors assumes 1) that non-emergency reports drive regulatory actions by the regions and resident inspectors, and 2) that HQ must have immediate - within hours - awareness of the non-emergency events proposed for elimination.

For 1) The premise that additional oversight activities are driven by Event Notifications (ENs) submitted under 10 CFR 50.72(b) is not accurate. Regional evaluations of additional oversight activities needed (per MD 8.3) are rarely based on an EN. The ENs do not initiate these evaluations, they are typically an additional task that residents must inspect as part of the baseline inspections. Elimination of the proposed criteria will not impact the regional MD 8.3 evaluations and will give the resident inspectors freedom to follow-up on the underlying issue as they see fit, commensurate with safety significance, rather than requiring follow-up actions.

For 2) As previously stated, if senior HQ leadership need the reports slated for elimination within hours of occurrence for situational awareness, then those criteria should not be eliminated. If, however, as determined during development of the Regulatory Basis, that normal regional tracking and communication of non-emergency events and conditions is appropriate, then the rulemaking should progress as proposed. The ROP and regional staff/management will continue to track these issues and communicate to leadership as appropriate and commensurate with safety significance, as is currently done for all issues whether reportable or not.

Concerning impacts to the NRC goal of Openness

There are potential impacts as discussed in the NCP, most significantly a delay in HQ responding to stakeholder questions about non-emergency plant conditions. The NRC staff in the regions, including Office of Public Affairs and State Liaison Officers, will continue to provide information and answer HQ and public inquiries, as needed. The criteria developed to make decisions placed a threshold on imposing regulatory burden balanced with meeting the NRC mission. Prompt awareness without definitive impacts to the ability to execute an oversight, event response or other function would not, by itself, warrant imposing a reporting requirement on licensees and the NRC.

In conclusion, many focus on the data discussed for each criterion and assume incorrectly that data drove the working group's decisions. This is not correct; the data was one piece of the puzzle. The MD 8.3 reports were the most complete, reliable dataset we had to determine which ENs prompted NRC actions beyond routine communications (like emails to senior leadership from the HOOs). It is not perfect data and, in some cases, did not prove useful, but we gleaned what insights we could and used our other criteria to drive the decision. The bottom line is that in the 20 plus years of ENs, the NRC has taken very few actions within hours or even days of non-emergency events for the criteria recommended for elimination, and most of those actions were not because of an EN, but due to normal regional oversight. The criteria proposed for elimination represent information that we like to have but does not warrant a regulatory requirement and burden on the NRC and licensees.

Section C Attachment: Summary of Issue

Summary of Concerns from NCP 2024-001

1. During the five-year period from 2019-2023, there was an average of less than 160 initial notifications made per year. This indicates that even without any rulemaking, adjustments to guidance and processes have significantly reduced the reporting burden, as discussed in the Regulatory Basis.
2. The elimination of publicly available information about reactor events, including (and perhaps especially) those with minimal safety significance, runs directly counter to the principle of openness.
3. Eliminating reporting requirements has a detrimental effect on public transparency. Transparency allows the public to better understand and scrutinize NRC response to events, and to place new events in the proper safety context.
4. *10 CFR 50.72(b)(2)(xi)* Not only must [the] NRC act promptly to prevent or minimize possible injury to the public, it must also take appropriate action to alleviate fear or concern created as a result of such events. Elimination of this reporting criterion significantly impedes the NRC's ability to meet this stated obligation.
5. The justifications for eliminating this criterion fail to address the basis for including it in the first place (i.e., insufficient technical basis for eliminating the reporting criteria.)
6. As noted in SECY 20-0109, "the staff does not consider the industry's voluntary reporting practice as elaborated in the petition to be a sufficient basis for eliminating the 10 CFR 50.72 requirement to notify the NRC Headquarters Operations Center for nonemergency events." Licensee procedures for notifying resident inspectors of events are non-quality procedures that may be modified or eliminated without NRC approval or even notification. The resident inspector program is not delineated in the regulations and may very well be subject to modification in the future.
7. The eliminated criteria shift burden to resident inspectors, contrary to the SRM direction.
8. While elimination is not necessarily adding burden to the resident inspectors, it is shifting the burden of responsibility for the identification and communication of these events to the inspectors and to the Regions.
9. It is not the job of the inspector to identify every reportable condition to ensure that appropriate NRC actions can be taken.
10. Removal of these reporting requirements reduces the ability of resident inspectors to assess the situation in a timely manner.
11. Removal of these reporting requirements will likely lead to a delay of inspector response of a shift, a weekend, or possibly 60 days if there is an associated LER. If there is no associated LER, which is the case for 3 of the 6 proposed eliminated reports, it is not guaranteed that the NRC will hear of the event.
12. The assumption needs to be that the NRC will not hear about events until the LER is received 60 days after the event. If follow-up truly is required "within about a day or so," as stated in the basis for eight-hour reporting timeline in the 2000 final rule language ([65 FR 63769](#)), LER notification is not adequate for ensuring timely NRC action.
13. In the regulatory basis discussion to justify maintaining the requirement for notification under 10 CFR 50.72(b)(2)(i), the assessment notes that eliminating the requirement would require the NRC to depend on resident inspector plant status reviews, which could delay NRC awareness for up to five days, impacting the original basis expecting NRC action within about a day. On the contrary, for 10 CFR 50.72(b)(3)(v), even though the basis for the notification is also response within about one day, the recognition that there might not be an inspector onsite for up to five days was not evaluated against that difference.
14. The justifications for elimination included in the proposed rule appear to have been

applied differently across the various criteria. The standard of 'performance of a reactive inspection' is applied to delineate agency action, but then criteria with three or even six reactive inspections in the past several years are discarded as not enough action to prevent elimination.

15. The frequency of the number of reports does not have any bearing on whether immediate notification of the NRC is necessary for making timely decisions to ensure adequate protection of public health and safety, as well as to respond to stakeholder inquiries to alleviate unnecessary fear or concern.
16. The original justification for this reporting criterion as a 1-hour notification in the 1983 final rule ([48 FR 39039](#)), includes discussion that events involving ECCS discharge are more serious than simple actuations (that may or may not result in discharge), resulting in a need for more timely reporting.
17. ECCS injection that does not result in a reactor trip, for instance injection to a cold, shutdown plant, is not necessarily a low-risk event. Injection of water in solid plant conditions poses pressurized thermal shock risks that need to be recognized and evaluated prior to plant heat up and startup. In this case, notification at 60 days would be too late to ensure NRC review of licensee verification that the reactor coolant system meets licensing basis requirements for fracture prevention of the reactor coolant pressure boundary.
18. The regulatory basis does not demonstrate that the degradation in NRC situational awareness can be mitigated without relying on resident inspectors.
19. None of the justifications provided in the proposed rule address the SRM direction to ensure that NRC situational awareness is not degraded.
20. Resident inspectors may receive voluntary reports from licensees but are not always available and are not expected to perform the communication duties assumed by the NRC Headquarters Operations Center. Headquarters Operations Officers 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.
21. "When applying engineering judgment, and there is a doubt regarding whether to report or not, the Commission's policy is that licensees should make the report." There is no regulatory penalty for over-reporting. Making an initial report does not in itself incur any additional oversight or inspection action, nor is it counted against a licensee in the assessment process.
22. The proposed changes to the rule ignored the opportunity, despite SECY-20-0109 stating it would, to more fully consider new reactor designs under Part 50 or Part 52, including NuScale, or the language of Part 53, which will necessitate an additional round of rulemaking for 10 CFR 50.72 just within the next few years.
23. The proposed rule did not include the consideration of new/advanced applicants/licensees during the rulemaking process. There is no evidence in the regulatory basis or notice for the proposed rule that consideration was given to the very different types of events that are significant in some of these different designs.
24. The NRC assumes a reputational risk by considering elimination of the significant non-emergency events in the proposed rule.
 - Sends a message that awareness of off-normal conditions outside the expected licensing basis assumed for event response is not a priority.

Section C Attachment: Evaluation

NCP 2024-001 Response

I would like to commend the authors of the non-concurrence for their thoughtful and thorough summary of concerns with the proposed 10 CFR 50.72 rulemaking. The Commission has stated often that it greatly values alternative views raised by staff when considering vote papers and I'm confident that they will appreciate the alternative views raised in this non-concurrence.

The petition for rulemaking was initiated by industry to reduce regulatory burden associated with making non-emergency event notifications which also divert licensee staff from dealing with a potentially safety significant event while complying with an NRC administrative requirement. In concern number 1, the authors of the non-concurrence state that from 2001-2023, there were an average of about 370 initial notifications per year made under 10 CFR 50.72, while during the five-year period from 2019-2023, there was an average of less than 160 initial notifications made per year. This indicates that even without any rulemaking, adjustments to guidance and processes have significantly reduced the reporting burden, as discussed in the Regulatory Basis.

- The data supports this assertion. However, it is not justification for terminating this rulemaking effort since the petition was accepted and the Commission approved the staff recommendation to initiate rulemaking.

The submitters have made several arguments in concerns 2, 3, and 4 regarding the negative impact to transparency and openness, one of the Principles of Good Regulation, due to elimination of the reporting criteria, ultimately leading to an erosion of trust by stakeholders. They further state that transparency allows the public to better understand and scrutinize NRC response to events, and to place new events in the proper safety context. Additionally, they state in concern 5 that justification for elimination of criterion 50.72(b)(2)(xi) fails to address the basis for including it in the first place.

- Immediate notification under 10 CFR 50.72 does not allow scrutiny of NRC response to events. Understanding the scope of the NRC response occurs after the staff documents the review in a publicly available inspection report. The public would have difficulty determining the proper safety context for new events identified by a 50.72 event notification since there are very few facts known at the time of reporting. The NRC may not understand the immediate safety context until inspectors gather the necessary information to make a determination.
- Three of the six criteria recommended for elimination require reporting under 10 CFR 50.73. Openness can be achieved through publishing of the 50.73 report which provides substantially more detail of the event. Additionally, inspectors will review the event either through an appropriate baseline inspection procedure, or through a reactive inspection which will be documented in an inspection report. The event may also be documented in an inspection report under Inspection Procedure 71153, "Event Response," or as a sample under the problem identification and resolution inspection procedure. This information will help ensure that stakeholders understand the proper safety context.
- For the events where 50.73 does not apply, such as any event or situation related to the health and safety of the public or protection of the environment for which a news release is planned, or notification to other government agencies has been made, the non-concurrence references the Statements of Consideration for the original rule in 1983 which states that it captures events that would not otherwise warrant NRC attention, but

is necessary because the NRC will need to respond to media or public attention. If the newsworthy event would not otherwise warrant NRC attention beyond public inquiries, the NRC already has mechanisms in place to respond. For example, the NRC routinely refers stakeholders to the licensee public affairs office for additional information. The non-concurrence refers to the original rule, "Not only must [the] NRC act promptly to prevent or minimize possible injury to the public, it must also take appropriate action to alleviate fear or concern created as a result of such events." Assuming the issue does not normally warrant NRC attention, OPA likely has a communication plan or can develop one with responses to frequently asked questions for unusual circumstances at operating nuclear plants to assure the public of plant safety. The regulatory basis does state that responses could be developed and coordinated through the Office of Public Affairs. There are times when we may not know the answer to a question from the public on a specific event, especially given the limited information contained in a 50.72 notification. It is acceptable to state that we don't have an answer to a question, but that we will find out and provide a response when we do.

- The staff recommended that 50.72(b)(3)(xiii), the major loss of emergency assessment capability, offsite response capability, or loss of offsite communication capability, be eliminated from 50.72 reporting requirements. This event is not subject to 50.73 reporting. If this situation occurs, the licensee will implement compensatory actions immediately and has protocols to notify stakeholders affected by these lost capabilities. In addition, major loss of emergency response capabilities is captured in the licensee's Emergency Action Levels (e.g., loss of Control Room indications greater than 15 minutes, loss of offsite communications), in which case they would be reported to the NRC within 15 minutes of the declaration in addition to a one-hour reporting requirement. For a major loss of emergency assessment capability, the staff reviewed the implementing guidance in NUREG-1022, Revision 3 and NEI 99-01, "Development of Emergency Action Levels for Non-Passive Reactors," Revision 6. The revised guidance has provided licensees the clarity to eliminate reporting of events if there are backup methods, or alternative measures, in lieu of the primary method(s) for assessment, communication, and response capabilities. The NRC considers the selective failure of several primary and backup (alternative) assessment equipment, which would also not be reportable under other requirements and not further observed by a resident inspector, to be highly improbable given the criteria in NEI 13-01, "Reportable Action Levels for Loss of Emergency Preparedness Capabilities," Revision 0, the diversity and redundancy provided in licensee emergency plans, and the review of past event reports.
 - I interviewed the Headquarters Operations Officer (HOO) to discuss actions for when a licensee loses offsite communications capability. The HOO initiates a call with each licensee every morning to verify ENS operability. If a licensee is aware of a degradation in communications, they notify the HOC so the HOO is aware. In the event the HOO needs to contact a licensee in an emergency, they have several phone numbers to contact the licensee. NEI 99-01 states: "This IC addresses a significant loss of on-site or offsite communications capabilities. While not a direct challenge to plant or personnel safety, this event warrants prompt notifications to OROs [offsite response organizations] and the NRC."
- In summary, for a major loss of emergency assessment capability, offsite response capability, or loss of offsite communication capability, the licensee will notify offsite response organizations and the NRC, and likely result in the licensee entering their EALs.
- The staff used the Be riskSMART risk assessment tool in the regulatory basis to recommend elimination of the reporting requirement for events related to public health

and safety for which a news release is planned or notification to other government agencies.

- The analysis references the original basis for the four-hour report in that no event has ever resulted in partial activation of the response plan.
- The analysis further concludes that elimination of the report would not impact the NRCs regulatory oversight responsibilities.
- The analysis states that absent a licensee voluntarily notifying the resident inspector of such an event, there may be a delay in the NRC taking action. However, a news release would eliminate delays in NRC awareness of the newsworthy event. The analysis did not specifically address one aspect of the original basis for the reporting requirement: “it [the NRC] must also take appropriate action to alleviate fear or concern created as a result of such events.” Specifically, the analysis did not address the potential impact to the reputation of the NRC with regards to public trust if we are unable to respond to questions from stakeholders. The regulatory basis does state that for issues of public interest, responses could be developed and coordinated through the Office of Public Affairs. This should address the concern over alleviating fear and maintaining the public trust.
- Unless the newsworthy event is related to plant safety, inspector review of the event may not be documented in an inspection report, and there is no required 50.73 report. The concern over openness is eliminated because of the news release itself.
- The submitters further argue that the staff did not provide an adequate basis to eliminate the reporting requirement for the event requiring transport of a radioactively contaminated person to an offsite medical facility, specifically that without the notification, the NRC would not be able to respond to media or public inquiries regarding the event.
 - Similar to newsworthy events, inquiries could be directed to licensee public affairs, or OPA could have prepared messages with assurances that there is no threat to public health and safety.
 - As stated in the Regulatory Basis, these events are rarely related to plant safety, and therefore do not require NRC response within a day.
 - There would likely be an inspection sample reviewing the event under the occupational radiation safety cornerstone, which would be documented in an inspection report, including any findings, if any, so openness is still achieved.

According to concern 6, SECY-20-0109 specifically states: “The petitioner claims that the purpose and objectives of 10 CFR 50.72 will continue to be fully met if the requested amendments are made because of the industry’s voluntary practice of informing NRC resident inspectors of non-emergency events. The NRC staff agrees that there may be alternatives to the current 10 CFR 50.72 notification process; however, the staff does not consider the industry’s voluntary reporting practice as elaborated in the petition to be a sufficient basis for eliminating the 10 CFR 50.72 requirement to notify the NRC Headquarters Operations Center for non-emergency events. More effort to determine alternatives, benefits, burden, and stakeholder feedback on safety and openness concerns would be addressed in the rulemaking process.” The concern further elaborates that licensee procedures for notifying resident inspectors of events are non-quality procedures that may be modified or eliminated without NRC approval or even notification. The resident inspector program is not delineated in the regulations and may very well be subject to modification in the future.

- The submitters raised a concern the Regulatory Basis continues to rely on voluntary notification of resident inspectors and does not suggest any alternatives to ensure NRC situational awareness. However, the basis for recommending elimination of the subject event reports does not rely solely on voluntary reporting to resident inspectors. In addition, the staff completed a Be riskSMART risk assessment of events requiring notification under 50.72, developing several questions on whether eliminating the event notification would impact the NRC's ability to successfully execute its oversight, event response, or other NRC regulatory functions, or significantly degrade the NRC's ability to track or trend data associated with this criterion.
- The submitters raised a concern about the voluntary practice of licensees notifying resident inspectors when something unusual relating to plant operations occurs, stating licensee procedures for notifying resident inspectors of events are non-quality procedures that may be modified or eliminated without NRC approval or even notification. This is an accurate statement. However, these voluntary notifications are a result of the cooperative relationship resident inspectors have created with licensee staff and have become inculcated into the safety culture. Licensees are not required to notify resident inspectors of these events by regulation, but they do it in addition to their 50.72 reporting requirements as a courtesy, even though resident inspector notification is redundant. NEI in their petition provide the statistics on 50.72 reports that indicate that the resident inspectors had already been notified or were being notified; there were very few that did not overtly state that notifications were made. The concern raised that these communications may stop because they are not a regulatory requirement is speculative. However, as discussed in concern 10 of this response, the basis for elimination of the selected reporting requirements also includes several other opportunities for the NRC to become aware of the events in an acceptable timeframe which were considered as defense in depth considerations in the Be RiskSMART evaluation.

The submitters state in concern 7 that eliminating the reporting requirements for the listed criteria shifts the burden of gathering, verifying, and communicating non-emergency events to resident inspectors, contrary to the SRM direction. In concern 8 they clarify that position, stating while elimination is not necessarily adding burden to the resident inspectors, it is shifting the burden of responsibility for the identification and communication of these events to the inspectors and to the Regions.

- IMC 2515, "Light Water Reactor Inspection Program," states the resident inspectors provide the major onsite NRC presence for direct observation and verification of licensees' ongoing activities. Appendix D, "Plant Status," outlines the responsibilities of resident inspectors for being aware of major activities and the current status of the plant as NRC's onsite representative. **The resident inspectors also are primary NRC onsite evaluators for events or incidents.** The greater part of initial event-related inspection effort will be performed by the resident inspectors, who may be augmented by other inspectors depending on the type and significance of the event. Whether an immediate event notification is made or not made has no bearing on the resident inspector's responsibility to gather and verify information on activities that potentially impact the safe operation of the plant.
- With elimination of the reporting requirements to the HOC and reliance on the voluntary notification to resident inspectors and without the benefit of additional context, it could appear that the burden of communicating these non-emergency events to the NRC being shifted to the resident inspectors is contrary to the Commission direction in SRM-SECY-20-0109. However, resident inspectors do, in fact, communicate unusual or

safety-significant activities and events to their Branch Chiefs, nearly daily, as well as enter significant issues into NITA, the NRC Issue Tracking Application, as part of their normal duties. This does not increase the burden on resident inspectors. It does still bring into question who notifies the HOO for their situational awareness. Notification could be made by the region-based project engineer or Branch Chief responsible for the plant, and the HOO could contact the plant if they needed further information, which would not conflict with the SRM direction.

- Some staff have suggested that elimination of these reports is moving the NRC towards a single-point vulnerability, relying solely on the resident inspectors to identify an off-normal condition at a plant and recognize that an immediate response might be necessary. They could cite historical examples where NRC inspectors did not recognize (or were not informed) of important operational events.
 - I agree with this position, in principle. NRC inspectors may miss something out-of-the-ordinary. Much also depends on the level of experience the inspectors have and knowledge of unique plant features, especially for those inspectors who are temporarily backfilling for permanent resident inspectors. The data indicates that for the non-emergency events being recommended for elimination from 50.72 reporting requirements which do not also meet other reporting criteria, the typical prompt agency response is inspectors reviewing the event utilizing the most appropriate baseline inspection procedure. If the event were safety significant, a reactive inspection would likely be initiated. The licensee and licensed operators are responsible for the safe operation of their plants, and NRC inspectors are there to observe and verify that the licensee is complying with NRC regulations and their facility operating license. It would only be happenstance if an inspector was in the control room when one of these non-emergency events occurred, so their review will likely occur after the event concludes. If inspectors missed one of these events because it was not reported under 50.72, three of the events would be reported under 50.73. The event will not be closed out until after the 50.73 report is made so that inspectors can review the licensee's causal analysis and corrective actions. There may be a delay in initially following up on the event, but the inspectors would have all the information they needed to identify any performance deficiencies prior to closing out the 50.73 report.
 - This concern is moot for events related to the health and safety of the public for which a news release is planned, since the news release itself notifies the NRC.
 - For the major loss of emergency assessment capability, offsite response capability, or offsite communications capability, the licensee will initiate compensatory actions and notify the NRC, and if the loss meets the criteria for entry into their Emergency Action Levels, the NRC will be notified within 15 minutes of the emergency declaration.
 - For the event requiring transport of a radioactively contaminated individual to an offsite medical facility, if there are public inquiries, the impacted Region would be made aware. If there were no inquiries and licensees did not voluntarily notify the resident inspectors, and the inspectors failed to notice the event while reviewing the control room logs or daily review of corrective action reports, it is possible the NRC could be unaware of the event occurring, since no 50.73 report would be forthcoming. This might be a missed inspection opportunity if there was a performance deficiency that resulted in the contamination. However, licensees would still be required to enter the incident into their corrective action program, perform a causal evaluation, and implement corrective actions, so the result would be the same as if an NRC inspection were performed.

In concern 9, the submitters state that it is not the job of the resident inspectors to identify every degraded condition in the plant or to recognize the safety significance of every item entered into the licensee's corrective action program during their daily review.

- I agree that it would not be prudent to expect inspectors to identify potentially safety significant issues solely through the review of condition reports. However, these events are also captured in control room logs that are reviewed daily by resident inspectors and they are very likely to be discussed in daily plant status meetings, also attended by resident inspectors. Therefore, it is highly unlikely that the NRC would not be aware of these events prior to the 60-day Licensee Event Report notification. If inspectors are absent from their site when an event occurs, they will also review the control room logs when they return from their absence and become aware of these non-emergency events, assuming they were not already informed by the licensee.

Concern 10 states that removal of these reporting requirements reduces the ability of resident inspectors to assess the situation in a timely manner. The submitters further assert in concerns 11, 12, and 13 that removal of these reporting requirements will "likely" lead to a delay of inspector response of a shift, a weekend, or possibly 60 days, and that removal of these reporting requirements reduces the ability of resident inspectors to assess the situation in a timely manner. They further argue that in this time the resident inspectors will have lost the chance to observe and talk to the crew on shift, ask timely questions of plant personnel, and engage NRC resources when needed. Additionally, the assumption needs to be that the NRC will not hear about events until the LER is received 60 days after the event. If follow-up truly is required "within about a day or so," as stated in the basis for the eight-hour reporting timeline in the 2000 final rule language ([65 FR 63769](#)), LER notification is not adequate for ensuring timely NRC action. A concern was also raised that resident inspectors could be absent for up to five days, and without the 50.72 report, they would not be able to respond to the event "within about a day," as described in the basis for the 2000 revision of the rule.

- If the licensee did not communicate these events directly to the resident inspectors, which would normally be done through notification by the control room or Regulatory Affairs staff, the inspectors would likely be made aware during participation in daily plant meetings, a review of control room logs, daily walkdown of the control room, and daily review of all issues entered into the licensee's corrective action program.
 - A concern was raised that reliance on daily review of licensee condition reports should not be relied upon for inspectors to identify that one of these events has occurred; sometimes the reviews are cursory, or the inspector may not immediately recognize the significance of the condition report. If the event was not identified by inspectors during their daily review of condition reports, they would see an entry in the control room logs, and it would certainly be discussed during the daily plant status meeting held by the licensee and normally attended by the resident inspector.
 - Some staff have noted that the 50.73 reports, submitted 60 days following an event can, in many cases, impact our ability to conduct a prompt, timely, and effective inspection and assessment of a licensee event or condition and thus negatively impact our ability to assess licensee performance. The Regulatory Basis concluded that inspectors normally follow up promptly using the most appropriate baseline inspection procedure when any significant off normal event occurs (these events are a subset of those). However, these events will remain open for several months because inspectors will review the 50.73 reports, and

the licensee's causal evaluation and corrective actions before closing the issue out in an inspection report.

- The Regulatory Basis acknowledges that there is a potential for no inspector site coverage for up to five days, so that if some action "within about a day" were necessary, as described in the original basis for reporting, there could be a delay. IMC 2515 states that site coverage by someone qualified as an inspector should not be interrupted for more than three consecutive NRC working days. In limited circumstances, site coverage absences may be extended beyond three days to facilitate resident inspector attendance at mandatory training courses that are held either immediately before or after inspector seminar meetings. Exceptions to the site coverage guidance require approval by the Regional Administrator.
 - The rulemaking did not specifically address the reason why the original basis, which stated that the event may require some action within about a day such as a special inspection or investigation, no longer exists. It included data showing that very few special inspections were initiated because of these events. The mention of a special inspection or investigation in the 2000 basis was not intended to be the exclusive response within a day but could include other actions NRC inspectors deemed necessary for event follow-up.
 - The staff provided data in the regulatory basis that there were two special inspections initiated based on a notification under 50.72(b)(2)(iv)(a), ECCS discharge into the RCS, and those inspections were initiated approximately five days after the event. The majority of special inspections initiated as a result of the non-emergency events in question were launched several days after events occur because of the MD 8.3 reviews, development of a team charter, and completing logistics plans. Based on operating experience, this data seems to refute the need to respond to these non-emergency events within about a day. The resident inspectors will likely be gathering information as soon as possible after the event occurs to understand the safety significance of the event and to identify follow-up actions, as they normally do with any off-normal event.
 - While not specifically addressed in the rulemaking, technology has improved to the point that events can be recreated using plant computers well after they occur, reducing the need to gather information within a day. If circumstances warrant, the resident or senior resident inspector will return to the plant immediately to start gathering information. Inspectors also have remote access to monitor plant parameters when not onsite to help them determine if there is a need for immediate follow-up.
 - The HOO obtains and publishes reactor unit power levels every morning. For several of the events being recommended for elimination of reporting requirements, there is a high probability that the reactor will be shutdown. Regional review of power status would bring attention to units that are shutdown, and inspectors would respond. The submitters stated that no one would likely check those power levels over a weekend under the assumption that the licensee would not voluntarily notify the resident inspector. Therefore, it could be two or three days before someone from the Region recognized a plant was shut down for an event currently requiring a 50.72 report. Although not discussed in the rulemaking, this check could be added to the responsibilities of the Regional Duty Officers for their situational awareness. Again, these events by themselves have historically not required an immediate NRC response.

Concern 14 states that the justifications for elimination included in the proposed rule appear to have been applied differently across the various criteria. The standard of 'performance of a

reactive inspection' is applied to delineate agency action, but then criteria with three or even six reactive inspections in the past several years are discarded as not enough action to prevent elimination. Similarly, in concern 15, the submitters have challenged the technical justification for elimination of the reporting criteria. Specifically, the frequency of the number of reports does not have any bearing on whether immediate notification of the NRC is necessary for making timely decisions to ensure adequate protection of public health and safety, as well as to respond to stakeholder inquiries to alleviate unnecessary fear or concern. They also challenged the wide disparity of the term "infrequently" when referring to the numbers of reports generated from these events, ranging from 73 times for 50.72 (b)(3)(xii) to 1,413 times for 50.72 (b)(3)(xiii), depending on the event type.

- I agree with the comment regarding the numbers of reactive inspections, in principle. The decision to eliminate a specific reporting criterion should not be based solely on the relatively few numbers of reactive inspections initiated. However, based on operating experience, even when a reactive inspection is initiated, the typical response time is several days after the event which would refute the original basis for responding within a day for these type events. While initiating a reactive inspection indicates that there is potentially some risk significance to the event, very few safety-significant inspection findings have resulted. Events with greater safety significance are generally accompanied by other 50.72 required reports that are not being recommended for elimination.
- I also agree, in principle, with concern 15; the relative frequency of reporting of a specific event notification (EN) should not be the sole factor in the justification for elimination of the requirement. In some cases, the relative frequency of reports is low, challenging the basis described in the petition about the administrative burden on licensees. Conversely, for those events where there were a relatively greater number of reports, the staff has provided data that there were few reactive inspections initiated and most follow-up was conducted by resident inspectors under the baseline inspection program, which could indicate that the risk significance of these events is low. In a Be riskSMART framework, the data tells us how likely these events occur. The original bases for the four- and eight-hour reporting requirements were a function of the need for timely action in response to the event, essentially relating to the safety significance of the event. Events that are deemed to be of higher safety significance would be expected to get a more immediate NRC response. A more compelling justification for eliminating the reporting requirements for these non-emergency events would have been based on our understanding of risk insights that have improved over the years, the advances in technology for communication between licensees and NRC inspectors and in plant process computers better equipped to reconstruct events after the fact, and operating experience that seems to indicate that immediate NRC response to these non-emergency events is no longer necessary. The staff has provided operating experience information with the introduction of reporting data. The inclusion of the numbers of reactive inspections initiated due to the event notifications does provide risk insights; unless deterministic criteria are identified, the decision to initiate a reactive inspection would be primarily based on conditional core damage probability. The relatively few reactive inspections initiated over the 22-year period would suggest that these events may not be as risk-significant as we thought in 1983, or even 2000. Additionally, there have been very few instances identified by the staff review where a safety-significant inspection finding resulted.

The submitters raised concerns about the technical justifications for recommending elimination of certain non-emergency event notifications. In concern 16, they state that the original

justification for the ECCS actuation reporting criterion as a one-hour notification in the 1983 final rule ([48 FR 39039](#)), includes discussion that events involving ECCS discharge are more serious than simple actuations (that may or may not result in discharge), resulting in a need for more timely reporting. The submitters stated that justifications for eliminating this criterion fail to address the basis for including it in the first place (i.e., insufficient technical basis for eliminating the reporting criteria.)

- The 2000 revision to the final rule ([65 FR 63769](#)) states that four-hour reports, which include ECCS discharge into the RCS, are for 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. It further states that eight-hour reports are for those 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.
 - Reactive inspections are rarely initiated within a day of a non-emergency event unless it is determined that there is some immediate safety significance. They are typically initiated several days after an event occurs pending the MD 8.3 evaluation of the event and development of an inspection team charter. I reviewed 52 reactive inspection reports issued during the last 10 years and found that the average time from an event occurring until the reactive inspection team was onsite was 19.6 days. Two inspection teams were onsite within one day, and they were both related to security incidents. Twenty of those 52 inspections were initiated within one week of the event occurrence.
- In the Regulatory Basis, the staff discusses the bases for the original rule with respect to the need for prompt NRC response. While there was no discussion in the Regulatory Basis under the review of 50.72(b)(2)(iv)(a) as to how many times the NRC partially activated the response plan based on this report alone, a records review dating back to the late 1990s showed that there were no instances where the NRC partially activated the response plan to monitor a four-hour reportable event absent an emergency declaration, which refutes the 1983 basis. The staff notes that only two reactive inspections resulting from this type of event have occurred with no inspection findings more than very low safety significance which would indicate that the risk significance associated with ECCS discharge into the RCS when unaccompanied by any other reporting criteria is low. The staff further points out that the NRC has typically not immediately responded to these reports beyond routine inspector follow-up, which challenges the original basis for the need for prompt response.
 - The staff states that the NRC has never activated the response plan solely for notifications made under 50.72(b)(2)(xi), News Release or Notification of Other Government Agencies, which is another 4-hour report; 50.72(b)(3)(iv)(a), System Actuation, which is an 8-hour reportable event; and 50.72(b)(3)(xiii), Major Loss of Emergency Assessment, Offsite Response, or Offsite Communications Capability, another 8-hour reportable event.
- While the staff concluded in the Regulatory Basis that prompt action has not been necessary for the majority of these non-emergency events, the rulemaking did not address other possible reasons for the one-day response expectation as no longer being necessary, such as:
 - Technology has improved to the point that events can be recreated using plant computers well after they occur, reducing the need to gather information within a day.
 - Resident inspectors can monitor plant parameters remotely to help determine if immediate NRC actions may be necessary.
 - Every reactive inspection team charter requires that the team develop a timeline

of the event, including operator actions, and this is developed several days after the event.

- Licensees conduct their own causal analysis (root cause or apparent cause) which are normally due 30 days after an event occurs and will be reviewed by NRC inspectors.

Concern 17 states that ECCS injection that does not result in a reactor trip, for instance injection to a cold, shutdown plant, is not necessarily a low-risk event. Injection of water in solid plant conditions poses pressurized thermal shock risks that need to be recognized and evaluated prior to plant heat up and startup. In this case, notification at 60 days would be too late to ensure NRC review of licensee verification that the reactor coolant system meets licensing basis requirements for fracture prevention of the reactor coolant pressure boundary.

- I agree with the assertion that notification of such an event 60 days later is too late for NRC review. However, if a plant is shut down for refueling, inspector coverage is normally robust due to the potential for risk-significant activities being conducted, and a five-day absence would not be approved. Resident inspectors typically work nights and weekends during refueling outages because they need to react to the licensee's outage schedule. Inspectors also review licensee outage schedules to ensure they cover activities with increased risk significance, so it is unlikely that inspectors would be unaware if such an event should occur. If the plant experienced an unplanned shutdown required by Technical Specifications or RPS actuation, a 50.72 notification would be required and resident inspectors notified, either through voluntary notification by the licensee, or by the Regional Duty Officer. If the plant was shut down and the licensee schedule called for filling the pressurizer solid, the resident inspectors would recognize this as a risk-significant activity and would monitor it. If the plant was not scheduled to have the pressurizer solid, then it is likely a safety-significant reportable event has occurred simultaneously.

Non-concurrence concern 18 states that the Regulatory Basis does not demonstrate that the degradation in NRC situational awareness can be mitigated without relying on resident inspectors. Similarly, concern 19 states that none of the justifications provided in the proposed rule address the SRM direction to ensure that NRC situational awareness is not degraded.

- The Commission direction in the SRM states that the rulemaking should be discontinued if it would “unacceptably” degrade the NRC’s situational awareness. A critical agency function in the NRC’s regulatory framework is maintaining continuous situational awareness. The NRC obtains and analyzes event information to assess an event’s potential impact on public health and safety. Event reporting, whether emergency or non-emergency, is a key element in that. The submitters assert that resident inspectors are not onsite 24/7 so they cannot fulfill this function to maintain continuous situational awareness. They further state that resident inspectors may receive voluntary reports from licensees but are not always available and are not expected to perform the communication duties assumed by the NRC Headquarters Operations Center. 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.
 - I agree with the assertion that resident inspectors may not always be available. However, with the proliferation of mobile phones as a primary means of communication, this situation is relatively rare. It is true that resident inspectors do not have the communication tools available to the HOO, but they do communicate up the chain-of-command, starting with the Branch Chief, who will

contact the Division Director in the case of a safety-significant event.

- During my review, I was unable to definitively determine what constitutes minimally acceptable situational awareness. The Regulatory Basis relies upon a subjective assessment to determine when or if situational awareness has been “unacceptably” degraded, and was informed by the expertise of a diverse rulemaking working group, consisting of members from across the agency. Licensees are not required to issue a 50.72 notification if a reactor shuts down for reasons other than a Technical Specifications required shutdown, or valid actuation of ECCS or RPS. If a reactor unit is shut down for reasons other than those requiring a 50.72 report, and it is currently acceptable for the HOO to not know that until the morning status call to test the Emergency Notification System, it becomes more difficult to justify the required reports based on situational awareness. If the HOO finds a reactor unit shutdown during the routine morning status calls for which there was no notification, they will likely ask the licensee for a reason for the plant status, so they would be able to answer the questions they will be asked by NRC Commissioners and senior management.
- Situational awareness can mean different things to different people. Situational awareness has specific meaning with respect to the duties of the HOO, and it consists of many aspects, including awareness of plant status and reportable events, in addition to their many responsibilities for event response and communications with other Federal and State government entities, as well as keeping Commissioners, Commission staff, and NRC senior management apprised for their situational awareness. The Regions maintain more detailed situational awareness of what is happening with the licensees under their cognizance because they have a closer oversight role.

In concern 21 regarding the reporting burden raised by the petitioner, the submitters refer to NRC policy that “when applying engineering judgment, and there is a doubt regarding whether to report or not, the Commission's policy is that licensees should make the report.” There is no regulatory penalty for over-reporting. Making an initial report does not in itself incur any additional oversight or inspection action, nor is it counted against a licensee in the assessment process.

- While there is no regulatory penalty for over-reporting, the petitioner does make a valid argument that operators must divert their attention from dealing with the event and ensuring the plant is in a safe condition while dealing with an NRC administrative requirement. As a risk-informed agency where our focus should be on issues with greatest risk significance, we expect the same from our licensees. Distracting operators from their duties to ensure safe operation of the plant to address NRC reporting requirements for a non-emergency event that is not important to safety, does not require prompt NRC action, or can be tracked using other existing agency processes is inconsistent with that philosophy.

In concerns 22 and 23, the submitters stated that the proposed changes to the rule ignored the opportunity, despite SECY-20-0109 stating it would more fully consider new reactor designs under Part 50 or Part 52, including NuScale, or the language of Part 53, which will necessitate an additional round of rulemaking for 10 CFR 50.72 just within the next few years. The proposed rule did not include the consideration of new/advanced applicants/licensees during the rulemaking process. There is no evidence in the regulatory basis or notice for the proposed rule that consideration was given to the very different types of events that are significant in some of these different designs.

- The actual language in SECY-20-0109 stated: “In addition, the staff will consider in the rulemaking process whether the reporting requirements should be modified to address non-traditional reactors (e.g., AP1000, small modular reactors).” While neither Part 53 nor new or advanced reactors were specifically mentioned, this may have been a missed opportunity. No members from the Division of New and Renewed Licenses (DNRL) or the Division of Advanced Reactors and Non-Power Production and Utilization Facilities (DANU) were represented on the working group.
- Applicability of 10 CFR 50.72 and 50.73 to Vogtle Units 3 and 4 (AP1000) was considered while those units were under construction. A memorandum was issued on December 18, 2020 for applicability to Vogtle Units 3 and 4 Core and Containment Cooling Systems ([ML20318A242](#)). A reference to this memo has been added to the FRN.
- It is likely that this rule may need to be revised again to address SMRs and new technologies that will likely be licensed under Part 53. The authors of the Part 53 rule recognize that conforming changes may be necessary for other regulations, including 50.72, so another revision to 10 CFR 50.72 will be considered in the future. However, that should not halt the current rulemaking process as new technologies affecting NRC regulations are a fact of life and must be addressed at the appropriate time.
- Additional discussion was added to the rulemaking package to more explicitly address how non-traditional reactors were considered in the proposed rule. This additional language was developed in coordination with DNRL and DANU staff.

In a separate discussion with the submitters, an additional concern was raised that elimination of these non-emergency event notifications under 50.72 might potentially be inconsistent with reporting requirements for licensees not regulated under Part 50 or 52, specifically for those licensees under Part 40.

- This is a valid point. There is a substantial difference in the safety significance based on risk between operating nuclear power plants and radioactive materials users, so the inconsistent treatment of reportability of similar types of events, e.g., transport of a radioactively contaminated person, may be justified. But it is a consideration not recognized or addressed explicitly in the 50.72 rulemaking. The FRN specifically notes that the staff is not proposing changes to reporting requirements for 10 CFR Parts 30, 40, or 70.

In concern 24, the submitters state that the NRC assumes a reputational risk by considering elimination of the significant non-emergency events in the proposed rule, and it sends a message that awareness of off-normal conditions outside the expected licensing basis assumed for event response is not a priority.

- Management Directive 8.3, “NRC Incident Investigation Program,” defines a significant event as any radiological, safeguards, security, or other event at an NRC-licensed facility that poses an actual or potential hazard to public health and safety, common defense and security, property, or the environment. I believe the working group in the Regulatory Basis was making a case that the events recommended for elimination alone are not as safety significant as we once believed, unless they are accompanied by additional required event notifications, such as RPS actuation, reactor shutdown required by technical specifications, or an emergency declaration.
- The publishing of these events on the public website imparts a perceived safety significance to the public, even if in reality the event may not be safety significant. This

perception contributes to potential fear or concern which seems contrary to the basis for the original rule that "it [the NRC] must also take appropriate action to alleviate fear or concern created as a result of such events."

I would like to thank the submitters of this non-concurrence for expressing their views in a professional and competent manner. Their presentation inspired many thought-provoking questions on my part and resulted in a number of edits and additions to improve the rulemaking package. While my decision to continue to support the elimination of the 50.72 reporting criteria of concern may not be satisfying to the submitters, hopefully they recognize that there is value in using this process. Specifically, the Commission will have the benefit of considering their thoughts and insights as they review and evaluate the staff's arguments in the rulemaking package.