RULEMAKING ISSUE
(NEGATIVE CONSENT)

March 27, 2001 SECY-01-0054

FOR: The Commissioners

FROM: William D. Travers
Executive Director for Operations

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

PURPOSE:

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

BACKGROUND:

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

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

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- 10 CFR 72.75 contains the requirement for a 4-hour report and 30-day written follow-up report. Revise this requirement to 8 hours and 60 days similar to changes proposed for 10 CFR 50.72 and 50.73.

- 10 CFR 73.71 and Appendix G to Part 73 contain requirements for 1-hour reports. Amend these requirements to 8 hours similar to changes proposed for 10 CFR 50.72.

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

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

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

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

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

DISCUSSION:

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

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

Currently, the revised event notification reporting requirements in Part 50, approved by the Commission, require written notification within 60 days and verbal notification within 1 hour (emergency events), 4 hours (nonemergency events), and 8 hours (nonemergency events). The need for a 4-hour versus an 8-hour nonemergency notification is based on the urgency of the situation and the NRC's need to take prompt action. However, the current event notification reporting requirements in Parts 72 and 73 are somewhat different than the requirements in Part 50, and the staff believes that some requirements should be changed (e.g., the current 30-day written requirement) while others should remain the same (e.g., some of the verbal notification requirements). To provide historical perspective, the staff has reviewed past records of verbal reports for the period between 1985 and 2000 made to the NRC Operations Center for Parts 72 and 73. For spent fuel storage activities, one information-only and four nonemergency reports were made to the NRC during this period under the then applicable reporting requirements [10

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

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

RESOURCES:

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

COORDINATION:

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

RECOMMENDATION:

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

/RA/

William D. Travers
Executive Director
For Operations

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

Rulemaking Plan

10 CFR Parts 72 and 73

CONFORMING REQUIREMENTS OF EVENT NOTIFICATION

Regulatory Issues

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

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- 10 CFR 72.75 contains the requirement for a 4-hour report and 30-day written follow-up report. Revise this requirement to 8 hours and 60 days similar to changes proposed for 10 CFR 50.72 and 50.73.

- 10 CFR 73.71 and Appendix G to Part 73 contain requirements for 1-hour reports. Amend these requirements to 8 hours similar to changes proposed for 10 CFR 50.72.

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

should go forward, the staff should consider at that time whether additional conforming changes to Part 72 would be appropriate.

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

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

Existing Regulatory Framework

Currently, Parts 72 and 73 have event reporting requirements that apply to licensees (general and specific) and certificate holders. Because of the Commission's recent approval of a final rule amending the reporting requirements of 10 CFR 50.72 and 50.73, there appears to be, in some instances, a lack of consistency between the reporting of reactor events and materials events that may cause confusion. The current event notification reporting requirements for events under 10 CFR 72.75 and 73.71 are provided below:

PART 72: Verbal and written event reports are required for certain events or conditions listed in 10 CFR 72.75. These requirements apply to Part 72 general and specific licensees. Verbal reports to the NRC Operations Center are required for emergency (1-hour) and nonemergency (4-hour and 24-hour) events. A 30-day written report is required for any event requiring a verbal report. The nonemergency verbal reports are similar to verbal nonemergency reports required under Parts 50 and 70 (i.e., 10 CFR 50.72 and 70.50); and the written report requirements are similar to the requirements in Part 50 (i.e., 10 CFR 50.73). The staff notes that the 4-hour nonemergency reports generally correspond with the Part 50 nonemergency reporting requirements and the 24-hour nonemergency reports generally correspond with the 24-hour reporting requirements in Part 70.

Section 72.216 is a cross-referencing section to inform general licensees that they must comply with the accidental criticality and event reporting requirements of 10 CFR 72.74 and 72.75, respectively. Section 72.13 identifies which sections in Part 72 are applicable to a Part 72 specific licensee, general licensee, or certificate holder.

PART 73: Section 73.71 requires 1-hour initial verbal reports of safeguards events in which the NRC may need to take immediate action or be prepared to support licensees or other agencies; and 30-day written follow-up reports to 1-hour verbal reports. Sections 73.67(e)(3)(vii) and 73.67(g)(3)(iii) reference the 10 CFR 73.71 one-hour reporting requirement for the discovery of the loss of a shipment of special nuclear material of low or moderate strategic significance and within 1 hour after recovery of or accounting for such lost shipment.

How the Regulatory Problems Will be Addressed By Rulemaking

The purpose of this rulemaking is to consider amending the event notification reporting requirements for Parts 72 and 73 and make conforming changes, where appropriate, to align them with the current reporting requirements of 10 CFR 50.72 and 50.73, approved by the Commission in an SRM dated July 11, 2000. The staff evaluated the issues and concerns of the Part 50 final rule, and considered its regulatory framework as a basis for concluding that conforming changes to the event notification reporting requirements in Parts 72 and 73 were also warranted. Staff believes that because most of the facilities subject to the event notification requirement in Parts 72 and 73 are: (1) either physically collocated with reactor facilities or are reactor facilities, (2) share the same management structure, and (3) share the same emergency preparedness organization; it is appropriate to conform and harmonize the Parts 72 and 73 event notification regulations. Conforming the reporting requirements to the revised Part 50 event notification requirements will maintain safety, and take advantage of the work already performed to relate risk to reporting requirements on these types of facilities. The added resources to conduct additional risk-informing analysis would not result in increased safety, nor would they contribute to efficiency, effectiveness, or a reduction in unnecessary regulatory burden.

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

The revised Part 50 reporting requirements specifically changed 30-day written notification of reportable events to 60 days and, for some nonemergency events, 4-hour verbal notification to 8 hours. The specific purposes of the rulemaking are to: (1) conform Parts 72 and 73 to Part 50 to improve overall regulatory efficiency and effectiveness; i.e., to provide more consistency among these parts; (2) reduce the regulatory burden, i.e., to examine the events for which notification is required in Part 72, and the time limits for notification, to determine whether reports are needed and when; (3) base revised reporting requirements on importance to safety such that the reporting times will be consistent with the time that information is needed for appropriate NRC action; i.e., this could allow having a 24-hour report for Part 72 even if Part 50 required an 8-hour report; and (4) bring Part 72 into greater harmony with Part 50 by adding requirements.

Further, the staff recommends that some additional reporting requirements be added to Part 72 to bring them into greater harmony with Part 50 (e.g., emergency notification requirements). The staff would also propose deleting 10 CFR 72.216 from Part 72 because new direction has been provided in the regulations under 10 CFR 72.13(c) for reporting requirements for general licensees. A specific list of staff recommendations is provided in the table attached to this rulemaking plan.

Rulemaking Options

The options considered by the staff are discussed below:

- **Option 1 - Conduct rulemaking** to amend the notification reporting requirements for significant events in Parts 72 and 73 to conform, where appropriate, to the reporting requirements of Part 50; to eliminate the unnecessary reporting burden associated with reporting events of little or no safety significance; to base revised reporting requirements on importance to risk; and to bring the Part 72 reporting requirements into greater harmony with the Part 50 reporting requirements.

  A. Part 72:

  1. Rulemaking only to provide basic consistency with Part 50.

     One alternative would be to revise the verbal and written event notification requirements in 10 CFR 72.75 to conform to the recent changes made to the event reporting requirements in 10 CFR 50.72 and 50.73. These changes would include: (1) limiting reportable events to within 3 years of discovery; (2) removing 4-hour nonemergency reports of fires and explosions; (3) changing to 8-hour reports, the identification of a defect in important-to-safety systems, structures, and components (SSC), a significant reduction in confinement system effectiveness, or offsite treatment of a contaminated individual; (4) extending the allowable time for submitting a written report from 30 to 60 days; and (5) revising the information required in written reports relating to events with human performance issues. The staff's preliminary estimate is that these changes would result in a small burden reduction for Part 72 licensees.

  2. Rulemaking to achieve greater harmony between the event reporting

requirements in Parts 50 and 72.

A second alternative would be to revise the verbal and written event notification requirements in 10 CFR 72.75 to make the conforming changes in Option A.1 and to make additional changes that, in some cases, add a minor burden, but would achieve greater harmony between the event reporting requirements in Parts 50 and 72. These additional changes would include: (1) adding a 4-hour notification if the licensee issues a press release or notifies another government agency; (2) adding an 8-hour notification that the licensee's ability to respond to an emergency is degraded; (3) adding a requirement to identify the declared emergency class; (4) adding a requirement to notify the NRC, during an emergency, of worsening conditions, a change to the emergency class, termination of the emergency, effectiveness of response or protective measures, and ISFSI behavior that is not understood; (5) requiring that a continuous open communications channel be established during an emergency; (6) requiring the licensee to submit supplemental information if an event is not completely understood and is unusually complex or significant, and (7) requiring a minimum level of legibility for written reports. Furthermore, these changes would result in a small burden increase for Part 72 licensees; however, staff believes that these new requirements are necessary to permit the NRC to respond to media inquiries and be properly informed of degrading conditions during an emergency. The staff's preliminary estimate is that these new requirements would increase the burden on Part 72 licensees by less than 5 percent of the current total Part 72 burden.

3. Rulemaking to achieve the objectives of Options 1 and 2 and to reexamine the need for reporting events and the time limits for reporting, and to make other changes to reduce burden and confusion.

The third and preferred alternative would be to revise the verbal and written event notification requirements in 10 CFR 72.75 to make the conforming changes in Options A.1, the harmonizing changes in A.2, and to make further changes that would reduce burden and confusion, and remove unnecessary regulations. These further changes would include: (1) removing reporting of unplanned contamination events that require the imposition of additional radiological controls for more than 24 hours because they are unnecessary at ISFSIs, (2) requiring 24-hour reports which are due outside of normal NRC working hours to be submitted the next working day to reduce burden, (3) adding applicability language to clarify when a Part 72 general licensee must begin reporting events under 10 CFR 72.75 to reduce confusion, and (4) removing 10 CFR 72.216 because the need for this section has been eliminated with the recent addition of 10 CFR 72.13. These changes would result in a small burden reduction for licensees. Overall, options A.1, A.2, and A.3 would result in either no change, or a very small burden impact.

B Part 73

1. Issue revised guidance.

One alternative to conforming the Part 73 reporting requirements by rulemaking is to continue to rely on guidance documents to clarify which physical protection events need to be reported. Under this option, NRC staff resources would be used to complete Revision 2 to Regulatory Guide 5.62, "Reporting of Safeguards Events," which NRC issued as DG-5008 (http://ruleforum.llnl.gov/cgi-bin/downloader/rg_lib/123-0072.htm) on January 5, 1998. This revision would (1) incorporate pertinent points of Generic Letter 91-03 ("Reporting of Safeguards Events," March 6, 1991, http://www.nrc.gov/NRC/GENACT/GC/GL/1991/gl91003.txt), (2) incorporate previous changes to the regulations, such as the rescission of the requirement to submit quarterly event logs to the NRC, and (3) clarify reporting requirements that may have been misunderstood by the industry in the past as requiring more prompt reporting than intended by the regulation. Generic Letter 91-03 has already eliminated much of the unnecessary prompt reporting of certain safeguards events and reduced the reporting burden on licensees.

Although this option would help to alleviate licensees' concerns about the scope of 1-hour reports, it would leave the rule language unchanged. Moreover, the 30-day period for written reports to follow up the 1-hour reports would remain nonconforming with the 60-day period for reactor safety incident written reports.

2. Rulemaking only for written reports.

Another alternative, the preferred option, would be to amend the rule to substitute 60 days where the rule currently requires 30 days. Because this revision would be combined with the revision to Part 72, the added staff resource requirements to accomplish this revision would be minimal. This option is preferred because it would accomplish the objectives of reducing the reporting burden and conforming Part 73 reporting requirements to those of reactor safety events while minimizing staff resources needed to accomplish the objective. It also can be accomplished in a shorter timeframe than Option 3.

The staff believes that revision of Regulatory Guide 5.62 would provide additional clarification to the Part 73 reporting requirements. However, because of resource limitations and priorities, the staff is unable to prioritize Regulatory Guide 5.62 on the same schedule as the rulemaking. The staff will schedule completion of R.G. 5.62 through its Planning, Budgeting, and Performance Management (PBPM) program and inform the Commission of the schedule at the time of the proposed rule.

With respect to the comment made in response to the ANPR, that 10 CFR 73.71 and Appendix G 1-hour reports be amended to 8 hours similar to changes proposed for 10 CFR 50.72, the staff notes that the events in 10 CFR 50.72 that were proposed in the ANPR for changing to 8-hour reporting were those for which an immediate need for NRC action was found not to be needed to protect public safety or to provide information to address heightened public concern. The events in 10 CFR 73.71 and Appendix G that require 1-hour reports, on the other hand, do include types of events for which prompt NRC action may be

required. Moreover, the final 10 CFR 50.72 rule employs three levels of prompt reporting times (1 hour, 4 hours, and 8 hours), in order to allow more flexibility in matching the required reporting time to the potential need for NRC action. It includes reporting of certain nonemergency events in 1- and 4-hour timeframes rather than limiting 1-hour reports to the declaration of an emergency class. Therefore, conformance with the final 10 CFR 50.72 does not necessarily mean making all immediate notifications 8-hour events other than the declaration of an emergency class.

The staff does not believe Option 2 poses a conflict with other NRC requirements, although requirements for reporting physical security incidents of theft or diversion of special nuclear material (10 CFR 73.71(a)(1), (b)(1), and Appendix G(I)(a)(1)) are also contained in 10 CFR Parts 20, 70, and 74.

Paragraphs (a) and (b) of 10 CFR 20.2201 require reporting of certain quantities of lost, stolen, or missing licensed material, with a follow-up written report within 30 days after making the telephone report. However, 10 CFR 20.2201(c) reads: "A duplicate report is not required under paragraph (b) of this section if the licensee is also required to submit a report pursuant to 10 CFR 30.55(c), 40.64(c), 50.72, 50.73, 70.52, 73.27(b), 73.67(e)(3)(vi), 73.67(g)(3)(iii), 73.71, or 150.19(c) of this chapter."

The requirements in 10 CFR 70.52, "Reports of accidental criticality or loss or theft or attempted theft of special nuclear material," and in 10 CFR 74.11, "Reports of loss or theft or attempted theft or unauthorized production of special nuclear material," deal only with immediate reports and do not specify follow-up written reports.

3. Rulemaking to fully risk-inform physical protection event reporting requirements.

A third alternative would be to include, in the rulemaking to amend Part 73 incident reports, amendments to 10 CFR 73.71 and Appendix G to Part 73. The amendments would fully conform Part 73 with the reporting requirements of 10 CFR 50.72 and 50.73. In addition to amending the rule to substitute 60 days where the rule currently requires 30 days, Appendix G would be modified to conform with the risk-informed policy behind the revisions to Part 50. Prompt telephone reports would be required only for those events (a) that could endanger public health and safety by exposure to radiation, (b) for which immediate NRC action may be needed, or (c) for which a press release is planned about which the NRC could be expected to comment. For example, 10 CFR 73.71(a)(1) could be changed to read: "(1) 1 hour after discovery of the loss of any shipment of SNM or spent fuel that has the potential for posing a significant risk to the public health and safety or to the common defense and security, and within 1 hour after recovery of or accounting for such lost shipment; and (2) 4 hours after discovery of the loss of any shipment of SNM or spent fuel that does not have the potential for posing a significant risk but for which a news release is planned or notification to other government agencies has been or will be made; and (3) 8 hours after discovery of the loss of any other shipment of SNM or spent fuel. Under option 3, Regulatory Guide 5.62 would be revised to

conform to the revised regulation.

Although this option may meet the risk screening criteria, it is not recommended at this time because of the advanced state of the revision to Regulatory Guide 5.62 and the revision that has been initiated to revise physical protection requirements for power reactors. NRR and NMSS staff resources assigned to these activities would be the same resources that would need to be involved in amendments to the reporting requirements. Resources to support major amendments to 10 CFR 73.71 and Appendix G have not been included in the FY 2001 budget plans. Furthermore, risk-informing the immediate notice requirements of Part 73 could result in conflicts with other NRC reporting requirements in Parts 20, 70, and 74. Avoiding such conflict may require devoting resources to risk-informing the reporting requirements in those Parts as well.

- **Option 2 - No action.**

  The benefit of the no action alternative is that NRC resources would be conserved because no rulemaking will be conducted. The impact of this alternative would be that the regulatory problems described above will not be addressed and will continue to persist. Staff's review of NRC Operations Center notifications indicated that 5 reports were received on Part 72 activities, and approximately 3,600 reports were received on Part 73 activities, in the period from 1985 to 2000. More currently, Part 73 event reports have averaged 60 per year from 1995 onward.

Preferred Option

The recommended action for consideration is to adopt Option 1 to conduct rulemaking as described in suboptions (A3) and (B2). This will be accomplished by specifying clearly what the event notification requirements are and under what conditions they apply. In addition, reporting of events will be based on safety significance consistent with the information needed for prompt NRC action. In this case, relaxing the event reporting requirements in 10 CFR 72.75 and 73.71 will not reduce the quality of information needed for NRC to take prompt action, nor will it reduce the level of safety imposed on licensees. The staff believes that implementing this preferred option will (1) conform Parts 72 and 73 to Part 50 to improve overall regulatory efficiency and effectiveness; i.e., to provide more consistency among these parts; (2) reduce the regulatory burden, i.e., to examine the events for which notification is required in Part 72, and the time limits for notification, to determine whether reports are needed and when; (3) base revised reporting requirements on importance to risk such that the reporting times will be consistent with the time that information is needed for appropriate NRC action; i.e., this could allow having a 24-hour report for Part 72 even if Part 50 required an 8-hour report; and (4) bring Part 72 into greater harmony with Part 50 by adding requirements.

Office of General Counsel Legal Analysis

This proposed rulemaking is intended to modify the event notification requirements in 10 CFR 72.75 and 73.71 to make sure that these provisions only require reporting of those events for

which notification is needed for regulatory purposes and that reporting times are consistent with regulatory need. In particular, the rulemaking is designed to achieve consistency between these sections and recent amendments to 10 CFR 50.72 and 50.73. The proposed rulemaking will not require an environmental assessment because there is a categorical exclusion at 10 CFR 51.22(c)(3)(iii) for amendments to Parts 72 and 73 relating to reporting requirements. A backfit analysis is not required under 10 CFR 72.62 because the backfit rule does not apply to reporting requirements. The proposed rule will both add and subtract event notification reporting requirements and, accordingly, will require OMB review for purposes of the Paperwork Reduction Act. In sum, OGC has determined that there are no known bases for legal objection to the contemplated rulemaking.

Impact On Licensees

This rulemaking would give licensees more flexibility for reporting significant events and subsequently reduce the burden for reporting. However, it should be recognized that the proposed changes to Part 72 for event notification reporting contain verbal and written reporting requirements that, in some cases, are an added burden, and in others a burden decrease. The staff believes that the net burden effects from the changes to Part 72 are insignificant because many of the affected licensees already have reporting systems in place to meet similar reporting requirements for Part 50 licensees.

Backfit Analysis

A backfit analysis is not required. The NRC has determined that a backfit rule, 10 CFR 50.109, does not apply to information collection and reporting requirements such as those contained in the final amendments to 10 CFR 50.72 and 50.73 because they do not impose backfits as defined in 10 CFR 50.109(a)(1). Similarly, backfit requirements of 10 CFR 70.76 and 72.62 are not applicable. Therefore, a backfit analysis has not been prepared. However, the NRC will prepare a regulatory analysis for the proposed rule, which examines the costs and benefits of the proposed requirements in this rule. The NRC regards the regulatory analysis as a disciplined process for assessing information collection and reporting requirements to determine that the burden imposed is justified in light of the potential safety significance of the information to be collected.

Paperwork Reduction Act

While it appears at this time that the net burden impact of the proposed rulemaking on licensees is insignificant, the rulemaking would have some additional information collection requirements that may require Office of Management and Budget (OMB) review and approval.

Agreement State Implementation Issues

This rule is classified as compatibility category “NRC” and addresses areas of exclusive NRC regulatory authority.

Major Rule

This is not a major rule.

Supporting Documents Needed

An OMB Clearance package for this rulemaking will be prepared and submitted to OMB for review and approval prior to publication of the proposed rule in the Federal Register.

Table of conforming changes attached.

A regulatory analysis will be prepared for this rulemaking.

An environmental impact statement will not be prepared for this rulemaking because there is a categorical exclusion for amendments to Parts 72 and 73 relating to reporting requirements [10 CFR 51.22(c)(3)(iii)].

Issuance by Executive Director for Operations

NMSS recommends EDO issuance.

Small Business Regulatory Enforcement Fairness Act

In accordance with NRC guidance (Section 5.23 of the NRC "Regulations Handbook," NUREG/BR-0053, Rev. 4, 1997), the staff will make recommendation to OMB as to whether the rulemaking constitutes a major rule pursuant to the Small Business Regulatory Enforcement Fairness Act (SBREFA). The staff will give further consideration to what its recommendation will be once a proposed rule has been developed.

NRC Resources Needed to Complete Rulemaking

Resources to complete and implement the preferred option in the rulemaking plan are covered in the budgets for FY 2001 and FY 2002. The recommended option is for the Commission to go with rulemaking. Resources to complete and implement the rulemaking include 0.5 FTE in FY 2001 and 0.5 FTE in FY 2002. Approximately $54K is included in FY 2001, and $40K in FY 2002, to support development of the proposed and final rules. The other option is to take no action, which would require no resources, but would leave the stated problems unaddressed.

- NMSS 0.8 FTE
- OGC 0.1 FTE
- Other 0.1 FTE

NRC Strategic Plan Performance Goals

This planned rulemaking would maintain safety and is consistent with two of NRC's strategic performance goals: (1) to reduce unnecessary regulatory burden on stakeholders, and (2) to

increase public confidence in NRC's regulatory process. The changes proposed by this rulemaking will better align the reporting requirements with NRC's current needs to carry out its safety mission.

Staff Level Working Group

Tony DiPalo, Task Leader, NMSS
P. Brochman, SFPO
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Management Steering Group

A steering group is not required for this rulemaking.

Public Participation

Enhanced public participation is not needed in this rulemaking. This rulemaking plan will be placed on the rulemaking interactive website following EDO review and approval.

ADAMS Accession Number

ML010470384

Schedule

Proposed Rule to EDO..... ...9* months after approval of rulemaking plan.
Final Rule to EDO ..... 6 months after the public comment period closes.

* OMB is allowed 60 days for its review and approval of the information collections contained in the proposed rule.

§ 72.75 Reporting requirements for specific events and conditions

Currently: Verbal reports: 1-hour emergency, 4-hour nonemergency (NE), 24-hour NE
Written Reports: 30 days

New Approach Verbal Reports: 1-hour emergency, 4-hour NE, 8-hour NE, 24-hour or next working day NE
Written Reports: 60 days

Current § 72.75 requirement	**Consideration**
(a) Emergency declaration (1 hour). Equivalent to § 50.72(a)(1) & (a)(3).	No change needed.
None. § 50.72(a)(1)(ii) - General requirement to limit the reportability of nonemergency events to events occurring within 3 years of discovery.	Add requirement to conform and reduce burden.
(b)(1) NE (4 hour) - An event that prevents immediate actions to avoid exposures or releases that could exceed reg limits (e.g., fires or explosions). No equivalence with Part 50. Identical to § 70.50(a).	Remove. The events (e.g., a fire or explosion) that would trigger this report are already reported as 1-hour emergency notifications under § 72.75(a). The occurrences of these minor events are things that the staff does not consider to be necessary for reports; thus, it is considered a reduction in burden.
(b)(2) NE (4 hour) Defect in important to safety structures, systems, and components (SSCs). Similar to § 50.72(b)(3)(v) [8 hour] - Condition that could have prevented the fulfillment of a safety function.	Change to 8-hour to conform and reduce burden.
(b)(3) NE (4 hour) Significant reduction in spent fuel storage confinement system effectiveness. Similar to § 50.72(b)(3)(ii) [8 hour] - Principal safety barriers being seriously degraded.	Change to 8-hour to conform and reduce burden.
(b)(4) NE (4 hour) Departure from the Certificate of Compliance (CoC) or Technical Specification (TS) in an emergency. Similar to § 50.72(b)(1) [1 hour] - § 50.54(x).	No change needed. Retain the current less-burdensome 4-hour report.

(b)(5) NE (4 hour) Offsite treatment of an individual with contaminated skin or clothing. Similar to § 50.72(b)(3)(xii) [8 hour] - offsite transport of a contaminated worker.	Change to 8-hour to conform and to reduce burden.
(b)(6) NE (4 hour) Unplanned fire or explosion damaging spent fuel or a cask. Eliminated in § 50.72 because events are covered under EP plan declarations for fire and explosion.	Remove to conform. The events (e.g., fire or explosion) that would trigger this report are already reported as 1-hour emergency notifications under § 72.75(a). The occurrences of these minor events are things that the staff does not consider to be necessary for reports; thus, it is considered a reduction in burden.
None. § 50.72(b)(2)(xi) [4 hour] -Press release or notification of another government agency.	Add requirement at 4 hours to harmonize and to improve the NRC's ability to respond to public and press inquiries.
(c)(1) NE (24 hour) Unplanned contamination event that restricts access to the contaminated area for more than 24 hours by imposing additional controls or prohibiting entry. None with Part 50. Identical to § 70.50(b)(1)(i).	Remove. Implementation of additional contamination controls at an ISFSI for more than 24 hours is not significant and does not warrant notification, because this requirement is more applicable to a fuel facility rather than an ISFSI. Staff would expect minor contamination events to be addressed by the licensee's radiation protection program.
(c)(2) NE (24 hour) Event in which safety equipment is disabled or fails to function as designed. Similar to § 50.72(b)(3)(v) [8 hour] - An event or condition that could have prevented the fulfillment of a safety function for an important to safety SSC.	Reduce the burden to 24 hours or next business day.[1]

(d)(1)(i) - (v) - Verbal notification requirements (caller identification, event description,, event location, quantities and physical and chemical form of the spent fuel or HLW, and personnel radiation exposure data). Identical to § 70.50(c)(1). No requirement similar to § 50.72(a)(5) - identification of the emergency class declared or the nonemergency event requiring the notification.	Add requirement for the licensee to identify the declared emergency class or non-emergency event to harmonize. Retain the requirement on requiring information on caller's identification, event description, location, etc., because this information is useful to the NRC.
None. § 50.72(c)(1) - Followup notification on worsening of conditions, changing the Emergency class, and termination of the Emergency class	Add similar followup requirement to harmonize and improve the NRC's ability to follow an ongoing emergency.
None. § 50.72(c)(2) - Followup notification on ensuing evaluations, the effectiveness of response or protective measures taken, and information related to plant behavior that is not understood.	Add similar followup requirement to harmonize and improve the NRC's ability to follow an ongoing emergency.
None. § 50.72(c)(3) - Maintain an open continuous communication channel if requested by the NRC.	Add similar open channel requirement to harmonize and improve the NRC's ability to follow an ongoing emergency.
(d)(2) Submit written event report in 30 days. § 50.73(a) - Submit written report in 60 days for events that occurred within 3 years of the date of discovery. Note: A written report will not be required following verbal notification of issuance of a press release or government notification.	Conform to a 60-day report for events that occurred within 3 years of the date of discovery to harmonize.
(d)(2)(i) and (ii)(A) - (E) Written notification requirements. Identical to § 50.73(b)(1) and (2)(ii)(A) - (E).	No change needed.
(d)(2)(ii)(F) List of components and secondary functions affected. Similar to § 50.73(b)(2)(ii)(F) - EIS identifier for affected components and (b)(2)(ii)(G) identification of affected secondary functions.	No change needed. The EIS identifier does not apply to ISFSI components and is not needed.
(d)(2)(ii)(G) Estimate of elapsed time for an inoperable train (wet ISFSI only). Similar to § 50.73(b)(2)(ii)(H) - estimate of elapsed time for an inoperable train.	No change needed.
(d)(2)(ii)(H) Method of discovery. Identical to § 50.73(b)(2)(ii)(I).	No change needed.
(d)(2)(ii)(I)(1) and (d)(2)(ii)(I)(2)(i) - (iv) Personnel error information. Similar to § 50.73(b)(2)(ii)(J) - human performance events root causes.	Add human performance information requirements to conform.
(d)(2)(ii)(J) Automatic and manual safety system responses (wet ISFSI only). Identical to § 50.73(b)(2)(ii)(K).	No change needed.

(d)(2)(ii)(K) Information on failed components. Identical to § 50.73(b)(2)(ii)(L).	No change needed.
(d)(2)(ii)(L) Quantities and physical form of spent fuel or HLW involved. None with Part 50. Similar to 70.50(c)(2)(i).	No change needed.
(d)(3) Assessment of the safety consequences and implications. Identical to § 50.73(b)(3).	No change needed.
(d)(4) Corrective actions. Identical to § 50.73(b)(4).	No change needed.
(d)(5) Previous similar events. Identical to § 50.73(b)(5).	No change needed.
(d)(6) Cognizant person. Identical to § 50.73(b)(6).	No change needed.
(d)(7) Individual exposure information. None with Part 50. Similar to § 70.50(c)(1)(iii)(B).	No change needed.
None. § 50.73(c) - Supplemental information. The NRC can require a licensee to submit specific additional information beyond that required by § 50.73 if the information is necessary to completely understand an unusually complex or significant event.	Add requirement to harmonize and to indicate that the NRC can require a licensee to provide supplemental information if necessary.
(d)(2) Report submission. § 50.73(d) - Contains similar requirements	No change needed.
None. § 50.73(e) - Report legibility. § 50.73(f) - Exemptions was deleted as unnecessary.	Add requirement to harmonize and to indicate that the report must be legible.
No provisions are contained in § 72.75 indicating when a Part 72 general licensee should apply the requirements of this section.	Add an applicability paragraph to reduce licensee confusion.

[1] 24-hour verbal reports under § 72.75 would be due within 24 hours of discovery of the event. However, if the end of the 24-hour period occurs outside of the NRC's normal working hours (7:30 a.m. to 5:00 p.m. Eastern Time (ET)), on a weekend, or on a holiday; then the verbal report is due by 8:00 a.m. ET on the next working day.

§ 73.71 reporting requirements:

Part 73 requirement	Consideration
§ 73.71 (a)(1) - 1 hour after discovery of the loss of any shipment of SNM or spent fuel, and within 1 hour after recovery of or accounting for such lost shipment.	No change. Somewhat similar to emergency notification of § 50.72. Immediate NRC action may be required. 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 or to ensure that the FBI and the Nuclear Emergency Search Team (NEST) have been notified, if appropriate. After the final issuance and implementation of Revision 2 to Regulatory Guide 5.62, "Reporting of Safeguards Events," which NRC issued as DG-5008 on January 5, 1998 (http://ruleforum.llnl.gov/cgi-bin/downloader/rg_lib/123-0072.htm), staff will evaluate if additional burden relief is still needed.
§ 73.71 (a)(4) - The initial telephonic notification must be followed within a period of 30 days by a written report.	Change to 60 days to harmonize with revision to Licensee Event Report (LER) requirements of § 50.73.
§ 73.71 (b) - Report within one hour of discovery the safeguards events described in paragraphs I(a), I(b), I(c), or I(d) of Appendix G to Part 73.	No change. Somewhat similar to emergency notification of § 50.72. Immediate NRC action may be required. 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 or to ensure that the FBI has been notified, if appropriate. In addition, some of these safeguards events could significantly hamper site personnel in the performance of duties necessary for safe operation. After the final issuance and implementation of Revision 2 to Regulatory Guide 5.62, "Reporting of Safeguards Events," which NRC issued as DG-5008 on January 5, 1998, staff will evaluate if additional burden relief is still needed.
§ 73.71(c) - Log and record the safeguards events described in paragraphs II(a) and II(b) of Appendix G within 24 hours of discovery.	No change. This recordkeeping requirement has no parallel in § 50.72 or § 50.73.