

NUCLEAR REGULATORY COMMISSION
10 CFR Parts 70, 72, 73, and 74
Changes to Safeguards Reporting Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend its regulations for the reporting of safeguards events. The proposed rule would clarify the reporting requirements for NRC licensees and would improve the NRC safeguards event data base by requiring more uniform safeguards event reports. Licensees who will be affected are power and nonpower reactors, fuel cycle facilities, and some transporters, importers and exporters of special nuclear material. The NRC uses the reported information to respond to incidents and to identify potentially generic safeguards problems. The benefits to be derived from this action are the elimination of unnecessary reporting (which will result in significant savings for affected licensees and the NRC) and a more uniform and detailed reporting and data analysis system which will provide feedback to the industry for improving safeguards systems.

DATES: Submit comments by _____.* Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given unless comments are received on or before this date.

ADDRESSES: Send comments to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to: Room 1121, 1717 H Street NW., Washington, DC, between 8:15 am and 5:00 pm.

*Insert 90 days after date of publication in the Federal Register.

Examine comments received and the regulatory analysis at: The NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Dwyer, (301) 427-4773 Regulatory Activities Section, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION: 10 CFR 73.71 establishes an event reporting program to inform the Commission of safeguards events to permit timely response to incidents. The data from this reporting program allows the Commission to determine the significance of events to identify possible generic problems in safeguards systems.

Paragraphs (a) and (b) of § 73.71 were first published in December 1973 (38 FR 35430). They require reports of unaccounted for shipments of special nuclear material, incidents or attempts of theft or unlawful diversion of special nuclear material, and incidents or attempts of sabotage. Subsequently, the Commission determined that it also needed reports of events which could be indicative of a loss of safeguards capability or circumstances which could be part of an overall plan to commit an act of theft or sabotage. In response to the Commission concern that a substantial public hazard could occur as a result of a deficiency in a given licensee's safeguards program, an amendment to 10 CFR 73.71 was proposed in October 1979 (44 FR 60743) that requires reports of events that threaten certain nuclear activities or lessens the effectiveness of a safeguards system. This amendment was published in January 1981 (46 FR 4858) in final form, as a new paragraph (c) to § 73.71.

Since the promulgation of 10 CFR 73.71, the NRC staff has found that the requirements are frequently misinterpreted, that reports submitted pursuant to the regulation lack uniformity, and that insufficient detail is reported for NRC analysis. Unless these problems can be corrected, the usefulness of these reports in developing an adequate data base for generic analysis is limited. For these reasons, the Commission is proposing clarifying amendments to 10 CFR 73.71, and issuing revised guidance to assist licensees in determining which events should be reported and to provide a format for doing so.

For clarity, the distinction between an explicit and a potential threat has been removed. This distinction is now made clearer in the descriptions of reportable events. The categories of major and moderate losses have been eliminated and replaced by the descriptions of each type of loss. The losses are: "failures of the safeguards system that could allow unauthorized and undetected access" and "failures that degrade the effectiveness of the system." Events that must be reported are described in a new Appendix G to Part 73.

The primary impact of the revised reporting requirements on licensees will be an approximate 80% decrease in the number of telephonic and written reports to the NRC because the twenty-four hour telephonic notification and associated follow-up written report requirement has been deleted. This requirement can be deleted because the revised requirements will ensure that all events requiring immediate NRC response will be reported within one hour and those pertinent to NRC analysis activities will be logged for quarterly submittal.

The requirements of § 73.71 are consistent with those of §§ 50.72 and 50.73. Events reported under §§ 50.72 and 50.73 are safety-oriented in nature; those reported under § 73.71 are security-oriented. Proposed changes to § 73.71 do not alter commitments made in response to the requirements of Part 50. Events of a dual nature, having both safety and safeguards impact, do not require duplicate reports. Information on how to report events of a dual nature is provided in a revised Regulatory Guide.

This proposed rulemaking also contains conforming amendments to 10 CFR 70.52, 72.52, 73.67, and 74.11 to provide further consistency among reporting requirements.

The Commission received a petition for rulemaking assigned Docket No. PRM 50-36 from the Nuclear Utility Backfitting and Reform Group, (NUBARG). As discussed below this proposed rule would grant a portion of the petition. The petitioner has requested that the Nuclear Regulatory Commission amend 10 CFR §§50.54(p); 50.54(q); 50.55(e); 50.59(b); 50.72(a); Part 50, Appendix E, Section V; section 73.71; and the Commission's NUREGs on Standard Technical Specifications with respect to certain reporting requirements. The members of this petitioner are construction and/or operating nuclear power reactors used for the production of electricity under

licenses issued by the NRC. Utilities licensed by the NRC to operate nuclear power reactors are currently subject to a variety of reporting requirements in connection with licensed activities. The petitioner suggests that the majority of these reporting requirements are valid and the purpose they serve justifies the considerable time which must be devoted to meeting them. However, some of these requirements are, in the opinion of the petitioner, excessive and/or duplicative. Accordingly, the petitioner has proposed that the Commission modify the various reporting requirements discussed in PRM 50-36 in order to promote more efficient use of licensee time and resources. This proposed rulemaking responds specifically to Section VI of the petition, Reporting Requirements Associated with 10 CFR 73.71. In this section, the petitioner suggests that this regulation be amended to provide that the required written reports be submitted by the licensee within 30 days of initial notification rather than within 15 days. According to the petitioner, this would allow the licensee's staff more time during the critical period immediately following such occurrence to devote to the resolution of the problem itself and would minimize interference with daily operations. The Commission agrees that it is desirable to extend this particular reporting period from 15 to 30 days and has included provisions to do so in this proposed rulemaking.

ENVIRONMENTAL IMPACT: CATEGORICAL EXCLUSION

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

PAPERWORK REDUCTION STATEMENT

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

REGULATORY ANALYSIS

The costs to industry will decrease from the current cost of \$972,000 per year to \$317,800 per year, or a net decrease of over 66 percent. This is due to the decrease in the number of reports that must be made or submitted by affected licensees. The costs to the NRC will decrease from the current cost of \$72,000 per year to \$46,800 per year, or a net decrease of 35 percent. This is due to the reduction in telephone and written reports which will result in less time spent by the NRC in documenting and analyzing the submittals.

REGULATORY FLEXIBILITY CERTIFICATION

Based on the information available at this stage of the rulemaking proceeding and in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that if promulgated, this rule will not have a significant economic impact upon a substantial number of small entities and should result in a reduction in burden to affected licensees. Some transporters, importers, and exporters of strategic special nuclear material (SSNM) and spent fuel may be affected by this rule. Each year out of approximately 600 reported events, about 3 come from this group which includes small entities. The NRC invites comments from these parties.

The proposed rule also affects licensees who operate nuclear power plants and fuel facilities under 10 CFR Parts 50 and 73. The companies that own these plants and facilities do not fall within the scope of the definition of "small entities" set forth in § 605(b) of the Regulatory Flexibility Act of 1980, or within the definition of Small Business Size Standards set out in regulations issued by the Small Business Administration in 13 CFR Part 121.

LIST OF SUBJECTS IN 10 CFR PARTS 70, 72, 73, AND 74

Part 70 - Hazardous materials - transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and

recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

Part 72 - Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

Part 73 - Hazardous materials - transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Security measures.

Part 74 - Accounting, Material control and accounting, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, notice is hereby given that adoption of the following amendments to 10 CFR Parts 70, 72, 73, and 74 is contemplated.

PART 70 - DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 70 is revised to read as follows:

AUTHORITY: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851), Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.19(c), 70.21(c), 70.22(a), (b), (d)-(k), 70.24(a) and (b), 70.32(a)(3), (5), (6), (d), and (i), 70.36, 70.39(b) and (c), 70.41(a), 70.42(a) and (c), 70.56, 70.57(b), (c), and (d), 70.58(a)-(g)(3),

and (h)-(j) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 70.7, 70.20a(a), and (d) 70.20b (c); and (e), 70.21(c), 70.24(b), 70.32(a)(6), (c), (d), (e), and (g). 70.36, 70.51(c)-(g), 70.56, 70.57(b) and (d), 70.58(a)-(g)(3) and (h)-(j) are issued under sec. 161f, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.20b(d) and (e), 70.38, 70.51(b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58(g)(4), (k), and (l), 70.59, and 70.60(b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 70.52 is revised to read as follows:

§ 70.52 Reports of accidental criticality or loss or theft or attempted theft of special nuclear material.*

~~[(a)--Each licensee shall report immediately to the appropriate NRC Regional Office listed in Appendix A of Part 73 of this chapter by phone and telegraph; mailgram; or facsimile any case of accidental criticality and any loss, other than normal operating loss of special nuclear material;~~

~~(b)--Each licensee who possesses 1 gram or more of contained uranium-235, uranium-233, or plutonium shall report any theft or attempted theft according to the requirements set out in § 74.11 of this chapter.]~~

(a) Each licensee shall notify the NRC Operations Center listed in Appendix A of Part 73 of this chapter within one hour after discovery of any case of accidental criticality or any loss, other than normal operating loss, of special nuclear material.

(b) Each licensee who possesses 1 gram or more of contained uranium-235, uranium-233, or plutonium shall notify the NRC Operations Center listed in Appendix A of Part 73 of this chapter within one hour after discovery of any loss or theft or unlawful diversion of special nuclear material which the licensee is licensed to possess or any incident in which an attempt has been made or is believed to have been made to commit a theft or unlawful diversion of such material.

*Comparative text; additions to existing regulations are underlined and deletions are dashed through and enclosed in brackets.

(c) This notification must be made to the NRC Operations Center via the Emergency Notification System if the licensee is party to that system. If the Emergency Notification System is inoperative or unavailable, the licensee shall make the required notification via commercial telephonic service or other dedicated telephonic system or any other method that will ensure that a report is received by the NRC Operations Center¹ within one hour. The exemption of §73.21(g)(3) applies to all telephonic reports required by this section.

(d) Reports required under §73.71 need not be duplicated under the requirements of this section.

PART 72 - LICENSING REQUIREMENTS FOR THE STORAGE OF SPENT FUEL AT AN INDEPENDENT SPENT FUEL STORAGE INSTALLATION

1. The authority citation for Part 72 is revised to read as follows:
AUTHORITY: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 167, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2239, 2282); sec. 274, 73 Stat. 688, as amended (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332).

Section 72.10 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

2. Section 72.52 is revised to read as follows:
§ 72.52 Reports of accidental criticality or loss of special nuclear material.

* * * * *

~~[Each licensee shall report immediately to the appropriate NRC regional office specified in Appendix B of Part 20 of this chapter by telephone and telegram or teletype; any case of accidental criticality and any loss of special nuclear material.]~~

¹Commercial telephone number of the NRC Operations Center is (202) 961-0550.

(a) Each licensee shall notify the NRC Operations Center listed in Appendix A of Part 73 of this chapter within one hour of discovery of accidental criticality or any loss of special nuclear material.

(b) This notification must be made to the NRC Operations Center via the Emergency Notification System if the licensee is party to that system. If the Emergency Notification System is inoperative or unavailable, the licensee shall make the required notification via commercial telephonic service or any other dedicated telephonic system or any other method that will ensure that a report is received by the NRC Operations Center¹ within one hour. The exemption of § 73.21 (g)(3) applies to all telephonic reports required by this section.

(c) Reports required under § 73.71 need not be duplicated under the requirements of this section.

PART 73 - PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for 10 CFR Part 73 is revised to read as follows:

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

Section 73.37(f) is also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 73.21, 73.37(g), 73.55 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 73.20, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, 73.67 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 73.20(c)(1), 73.24(b)(1), 73.26(b)(3), (h)(6), and (k)(4), 73.27(a) and (b), 73.37(f), 73.40(b) and (d), 73.46(g)(6) and (h)(2), 73.50(g)(2), (3)(iii)(B) and (h), 73.55(h)(2), and (4)(iii)(B), 73.70, 73.71, 73.72 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

¹Commercial telephone number of the NRC Operations Center is (202) 951-0550.

2. Section 73.67 is revised to read as follows:

§ 73.67 Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance.

* * * * *

(e) ***

(3) ***

(vii) [~~Notify immediately the Administrator of the appropriate Nuclear Regulatory Commission Regional Office listed in Appendix A of this part of the action being taken to trace the shipment.~~]

Notify the NRC Operations Center within one hour after the discovery of the loss of the shipment and within one hour after recovery of or accountability for such lost shipment in accordance with the provisions of § 73.71 of this part.

* * * * *

(g) ***

(3) ***

(iii) Conduct immediately a trace investigation of any shipment that is lost or unaccounted for after the estimated arrival time and [~~report to the Nuclear Regulatory Commission as specified in § 73.71 and to the shipper or receiver as appropriate. The licensee who made the physical protection arrangements shall also immediately notify the Administrator of the appropriate Nuclear Regulatory Commission Regional Office listed in Appendix A of the action being taken to trace the shipment.~~] notify the NRC Operations Center within one hour after the discovery of the loss of the shipment and within one hour after recovery of or accountability for such lost shipment in accordance with the provisions of § 73.71 of this part.

3. Section 73.71 is revised to read as follows:

* * * * *

§ 73.71 Reports of unaccounted for shipments, suspected thefts, or unlawful diversions [radiological sabotage or events which significantly threaten or lessen the effectiveness of safeguards] and other safeguards events.

[(a)--Each licensee who conducts a trace investigation of a lost or unaccounted-for shipment pursuant to § 73.27(c) shall notify the NRC Operations Center via the Emergency Notification System as soon as possible; and in all cases within one hour; of the details and results of its trace investigation;--if the Emergency Notification System is inoperative or unavailable; the licensee shall make the required notifications via commercial telephone service; other dedicated telephone systems; or any other method which will ensure a report being made promptly to the NRC Operations Center;--Each licensee who conduct a trace investigation of a lost or unaccounted-for shipment pursuant to § 73.67(e)(3)(vi) or § 73.67(g)(3)(iii) shall notify the NRC Operations Center via commercial telephone using the number provided in Appendix A as soon as possible; and in all cases within one hour of the details and results of its trace investigation;--The licensee shall also file within a period of fifteen (15) days a written report to the appropriate NRC Regional Office setting forth the details and results of the trace investigation;--A copy of this written report must be sent to the Director, Office of Inspection and Enforcement; U.S. Nuclear Regulatory Commission; Washington; DC--20555.]

[(b)--Each licensee shall notify the NRC Operations Center via the Emergency Notification System as soon as possible; and in all cases within one hour; of any incident in which an attempt has been made; or is believed to have been made; to commit a theft or unlawful diversion of special nuclear material which it is licensed to possess; or to commit an act of radiological sabotage against its plant or transportation system;--if the Emergency Notification System is inoperative or unavailable; the licensee shall make the required notifications via commercial telephone service; other dedicated telephone systems; or any other method which will ensure a report being made promptly to the NRC Operations Center;--The initial notification must be followed within a period of fifteen (15) days by a written report; submitted to the appropriate NRC Regional Office shown in Appendix A of this part setting forth the details of the incident;--Copies of the written report are to be sent to the Director of Inspection and Enforcement; U.S. Nuclear Regulatory Commission; Washington; DC--20555;--After the submission of the written report required by this paragraph; a licensee shall immediately inform the

appropriate Regional Office by means of a written report of any substantive additional information which becomes available to the licensee concerning the incident.]

[(c)--Each licensee under either a specific or general license shall notify the NRE Operations Center via the Emergency Notification System as soon as possible, and all cases within one hour, of any event which significantly threatens or lessens the effectiveness of a physical security system as established by regulations in this chapter, or by the licensee's approved physical security, contingency, and security personnel qualification and training plans, or by both--If the Emergency Notification System is inoperative or unavailable, the licensee shall make the required notifications via commercial telephone service, other dedicated telephone systems, or any other method which will ensure a report being made promptly to the NRE Operations Center--This notification must be made within the time period specified below--The time period begins upon discovery of the event by any member of the security organization or any other employee of the licensee--The licensee shall submit a written report to the appropriate NRE Regional Office, listed in Appendix A of this part, describing the event in detail within 5 days of the time of discovery--A copy of this written report must be sent to the Director of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555--This notification and these reports satisfy both the notification requirements of Part 21 of this chapter, if the event is also reportable under Part 21, and § 50.72(a)(4) of this chapter, if applicable--A separate log must be maintained to record events reportable under § 50.71--Licensees need not report any event which is designated as not reportable in their security or contingency plans.]

REPORTING OF PHYSICAL SECURITY EVENTS

NOTE: This table should be used in conjunction with the Responsibility Matrix developed under the requirements of 10 CFR Part 73, Appendix C—Licensee Safeguards Contingency Plans.

Event	Reporting time to NRC
Explicit threat ¹	Within 1 hour.
Major loss of physical security effectiveness ²	Within 1 hour.
Potential threat ³	Within 24 hours.
Major loss of physical security effectiveness which has been properly compensated ⁴	Within 24 hours.
Moderate loss of physical security effectiveness ⁵	Within 24 hours.
Moderate loss of physical security effectiveness which has been properly compensated	No requirement; log in licensee's records.

¹ Explicit threat: An explicit threat is information received by a security organization that an act of theft or radiological sabotage will be attempted. All licensees may be subject to this event.

² Major loss of physical security effectiveness: A major loss of physical security effectiveness occurs (1) when security features break down without proper compensation allowing unauthorized or undetected access to material access or vital areas, to shipments of formless quantities of SSNM or irradiated reactor fuel, or all facilities licensed to possess formless quantities of SSNM, or (2) when the communication systems used to summon offsite response become inoperative without proper compensation. Licensees which are required to meet the requirements of 10 CFR 73.20, 73.37, 73.50, and 73.55 may be subject to this event.

³ Potential threat: A potential threat is information received by a security organization which supports a belief that an act of theft or radiological sabotage will be attempted. All licensees may be subject to this event.

⁴ Properly compensated: Properly compensated means measures as specified in a security or contingency plan or, if the event is not specified in either of these plans, it means measures implemented within 10 minutes of an event's occurrence that provide a level of security equivalent to that existing before the event. Licensees which are required to meet the requirements of 10 CFR 73.20, 73.37 and 73.50 may be subject to this event.

⁵ Moderate loss of physical security effectiveness: A moderate loss of physical security effectiveness occurs when: (1) A major loss of effectiveness occurs but is properly compensated; (2) security features breakdown which allow unauthorized or undetected access to protected or controlled access areas or shipments of moderate strategic significance nuclear material; (3) a breakdown in security features protecting material access or vital areas occurs which leaves these areas under the protection of only one security system. (This includes loss of either alarm station.) All licensees may be subject to this event.

NOTE: The above table is deleted in its entirety.

73.71(a)(1) Each licensee subject to the provisions of §§ 73.25, 73.26, 73.27(c), 73.37, 73.67(e), or 73.67(g) shall notify the NRC Operations Center within one hour after discovery of the loss of any shipment of SNM or spent fuel, and within one hour after recovery of or accountability for such lost shipment.

(2) This notification must be made to the NRC Operations Center listed in Appendix A of Part 73 of this chapter via the Emergency Notification System, if the licensee is party to that system. If the Emergency Notification System is inoperative or unavailable, the licensee shall make the required notification via commercial telephonic service or other dedicated telephonic systems or any other method that will ensure that a report is received by the NRC Operations Center¹ within one hour. The exemption of § 73.21(g)(3) applies to all telephonic reports required by this section.

(3) The licensee shall, upon request of the NRC, maintain an open and continuous communications channel with the NRC Operations Center.

(4) The initial telephonic notification must be followed within a period of thirty (30) days by a written report submitted to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555. The licensee shall also submit one copy each to the appropriate NRC Regional Office listed in Appendix A to this part and if applicable the appropriate NRC Resident Inspector.

(5) Significant supplemental information which becomes available after the initial telephonic notification to the NRC Operations Center or after the submission of the written report must be telephonically reported to the NRC Operations Center listed in Appendix A of Part 73 of this chapter and also submitted in a revised written report to the Regional Office, the Document Control Desk and if applicable the appropriate Resident Inspector. Errors discovered in a written report must be corrected in a revised report. The revised report must replace the previous report; therefore, the update must be a complete entity and not contain only supplementary or revised information. Each licensee shall maintain a copy of the written report of an event submitted under this section as a record for a period of three years from the date of the report.

¹Commercial telephone number of the NRC Operations Center is (202) 951-0550.

(b)(1) Each licensee subject to the provisions of §§ 73.20, 73.37, 73.50, 73.55, 73.60, and 73.67 shall notify the NRC Operations Center listed in Appendix A of Part 73 of this chapter within one hour of discovery of the safeguards events described in paragraph (I)(a)(1) of Appendix G to this part. Licensees subject to the provisions of § 73.20, 73.37, 73.55, 73.60 and each licensee possessing strategic special nuclear material (SSNM) and subject to §§ 73.67(d) and (e) shall notify the NRC Operations Center within one hour after discovery of the safeguards events described in paragraphs I(a)(2), (3), (b), and (c) of Appendix G to this part.

(2) This notification must be made in accordance with the requirements of paragraphs (a)(2), (3), (4), and (5) of this section.

(c)(1) Each licensee subject to the provisions of §§ 73.20, 73.37, 73.50, 73.55, 73.60, and each licensee possessing SSNM and subject to §§ 73.67(d), and 73.67(e) shall maintain a current log and record the safeguards events described in paragraphs II.(a) and (b) of Appendix G to this part within 24 hours of discovery by a licensee employee or member of the licensee's contract security organization. The licensee shall retain the log of events recorded under this section as a record for three years after the last entry is made in each log.

(2) Every three months, each licensee shall submit to the NRC copies of all safeguards event log entries not previously submitted. Each licensee shall submit one copy each of their log entries to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, and if applicable the appropriate NRC Resident Inspector.

(d) Each licensee shall submit to the Commission the 30-day written reports and copies of the safeguards event log entries required under the provisions of this section that are of a quality which will permit legible reproduction and micrographic processing. If the facility is subject to § 50.73 of this chapter, the licensee shall prepare the written report on NRC Forms 366 and 366A. If the facility is not subject to § 50.73 of this chapter, the licensee shall not use these forms but shall prepare the written report in letter format. In either case the report must include sufficient information for NRC analysis and evaluation.

(e) Duplicate reports are not required for events that are also reportable in accordance with §§ 50.72 and 50.73 of this chapter.

4. A new Appendix G is added to read as follows:

Appendix G - Reportable Safeguards Events

Pursuant to the provisions of 10 CFR § 73.71(b) and (c), licensees subject to the provisions of 10 CFR §§ 73.20, 73.37, 73.50, 73.55, 73.60, and 73.67 shall report or record, as appropriate, the following safeguards events.

I. Events to be reported within one hour after discovery, followed by a written report within thirty days.

(a) Any event in which there is reason to believe that a person has committed or caused, or attempted to commit or cause, or has made a credible threat to commit or cause:

(1) A theft or unlawful diversion of special nuclear material; or

(2) Significant physical damage to any facility possessing SSNM or its equipment or carrier equipment transporting nuclear fuel or spent nuclear fuel, or to the nuclear fuel or spent nuclear fuel a facility or carrier possesses; or

(3) Interruption of normal operation of a licensed nuclear power reactor through the unauthorized use of or tampering with its machinery, components, or controls including the security system.

(b) Any failure of a safeguards system or discovered non-inherent vulnerability in a system that could allow unauthorized or undetected access to a protected area, material access area, controlled access area, vital area, or transport for which proper compensatory measures have not been established. A "proper compensatory measure" for a particular safeguards event as used in this Appendix means a measure that is specified in a security or contingency plan or security procedure. If the particular safeguards event is not described in a plan or procedure, then a "proper compensatory measure" means a measure implemented within 10 minutes of an event's discovery that provides a level of security essentially equivalent to that existing before the event.

(c) Any unauthorized entries through a required barrier (whether or not the event is properly compensated.)

II. Events to be recorded within 24 hours and submitted in quarterly log

(a) Any failure of a safeguards system or discovered non-inherent vulnerability in a system that could allow unauthorized or undetected access to a protected area, material access area, controlled access area, vital area, or transport for which proper compensatory measures have been established.

(b) Any other failure of a safeguards system not included in paragraph II.(a) of this appendix if the failure degrades the effectiveness of the system.

PART 74 - MATERIAL CONTROL AND ACCOUNTING OF
SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 74 continues to read as follows:

AUTHORITY: Secs. 53, 57, 151, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended, sec. 234, 93 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 74.31, 74.81, and 74.82 are issued under secs. 161b and 161f, 68 Stat. 948, 949, as amended (42 U.S.C. 2201(b), 2201(f)); and §§ 74.11, 74.13, and 74.15 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 74.11 is revised to read as follows.

§ 74.11 Reports of loss or theft or attempted theft of special nuclear material.

(a) Each licensee who possesses 1 gram or more of contained uranium-235, uranium-233, or plutonium shall ~~[report-immediately-to-the appropriate-NRE-Regional-Office-listed-in-Appendix-A-of-Part-73-of-this chapter-by-telephone-and-telegraph;-mailgram;-or-facsimile]~~ notify the NRC Operations Center listed in Appendix A of Part 73 of this chapter within 1 hour of discovery of any loss or theft or other unlawful diversion of special nuclear material which it is licensed to possess, or any

incident in which an attempt has been made to commit a theft or unlawful diversion of special nuclear material [~~in accordance with the procedures in § 73.71 of this chapter~~]. This requirement does not pertain to measured discards or inventory difference quantities.

(b) This notification must be made to the NRC Operations Center via the Emergency Notification System if the licensee is party to that system. If the Emergency Notification System is inoperative or unavailable, the licensee shall make the required notification via commercial telephonic service or other dedicated telephonic system or any other method that will ensure that a report is received by the NRC Operations Center¹ within one hour. The exemption of § 73.21(g)(3) applies to all telephonic reports required by this section.

(c) Reports required under § 73.71 need not be duplicated under the requirements of this section.

Dated at Bethesda, Maryland this _____ day of _____, 1985.

For the Nuclear Regulatory Commission.

William J. Dircks,
Executive Director for Operations.

¹Commercial telephone number of the NRC Operations Center is (202) 951-0550.

REGULATORY ANALYSIS

1. PROPOSED ACTION1.1 Description

The Commission proposes to revise 10 CFR Part 73 to clarify and improve the reporting requirements for safeguards events. This effort includes conforming amendments to 10 CFR Parts 70, 72, 73 and 74.

1.2 Background of and Need for Proposed Action

In 1973, the Commission established safeguards reporting requirements in order to be kept informed of events potentially inimical to public health and safety. These requirements solicited specific reports of unaccounted for shipments, incidents and attempts of theft or unlawful diversion of special nuclear material, or incidents and attempts of sabotage. It was determined, however, at a later date, that the Commission required reports of events that represent a loss of safeguards capability or are indicative of an overall plan to commit an act of theft or sabotage. The Commission was concerned that a substantial safety hazard could occur as a result of a deficiency in the safeguards system. In response to this concern, an amendment to 10 CFR § 73.71 was proposed in October 1979 (44 FR 60743) requiring reports of events threatening or lessening the effectiveness of the safeguards system. This amendment was published in January 1981 (46 FR 4858) as a new paragraph (c) to § 73.71. The purpose of paragraph (c) is to provide information concerning security system failures whereby the NRC could identify recurrent safeguards problems and generic issues. The intention is to keep pertinent NRC Offices informed of problems at facilities, so that security problems can be identified and eliminated.

Since the promulgation of § 73.71, licensees have commented that the reporting requirements are confusing. This has led to inconsistencies in what is reported and the level of detail provided. Without some level of uniformity and detail, the usefulness of such reports is limited because an adequate data base cannot be established for generic analysis. To reduce this confusion, the

NRC is proposing revisions to § 73.71 along with conforming amendments to §§ 70.52, 72.52, 73.67, and 74.11 and issuing a revised regulatory guide (5.62) to assist licensees in determining what should be reported and to provide a format for doing so.

1.3 Value Impact of Proposed Action

1.3.1 NRC Operations

The proposed revisions and associated guidance will facilitate analysis of safeguards events by requiring standardized reporting. NRC costs will be decreased because of the decrease in number of telephonic and written reports notwithstanding an increase in time to analyze more detailed written reports. Reports of transportation/import/export events are so infrequent (comprising .5% of the events) that a separate cost analysis was not done. These events are included as part of the 600 safeguards event reports received annually by the NRC.

Current NRC headquarters costs are estimated to be:

Documenting and analyzing reports (600 telephonic reports/yr/
0.5 hr/report x \$60/hr) + (600 written reports/yr x 1.0 hr/
report x \$60/hr) + (600 log entries/yr/0.5 hr/entry x \$60/hr)..... \$72K

NRC costs after revisions to 10 CFR § 73.71 are estimated to be:

(assuming an 80% reduction in telephonic and written reporting,
and a 20% reduction in log entries) (120 telephone reports/yr/
0.5 hr/report x \$60/hr) + (120 written reports/yr x 4.0 hrs/
report x \$60/hr) + (480 log entries/yr x 0.5 hr/entry x \$60/hr)..... \$46.8K*

1.3.2 Industry Operations

The proposed revisions to 10 CFR § 73.71 are expected to reduce the burden on the licensees due to the reduction in telephonic and written report notwithstanding an increase in written report content.

*The \$25.2K difference represents less than 0.5 man-years of effort distributed over headquarters IE, NMSS, AEOD, and the Regions. Therefore this amendment should not require formal changes to office budgets.

Current Costs to the Industry

(Assuming 600 reports made annually to the NRC pursuant to § 73.71 divided by 61 sites--approximately 9.8 reports/site/year are filed.) The number of reports made by other licensed facilities and carriers is negligible.

Telephonic Reports

(Assuming 1.5 hrs/report x 9.8 reports/site x \$60/hr)
 site cost/year \$1.88K
 Industry Cost/year \$54K

Written Reports

(Assuming 25 hours/report X 9.8 reports/site
 X \$60/hour) site cost/year \$14.7K
 Industry Cost/year \$900K

Log Entries

(Assuming 0.5 hrs/report x 9.8 reports/site x \$60/hr)
 site cost/yr..... \$0.3K
 Industry cost/yr..... \$19K
 Total Costs/Site..... \$15.9K
 Total Costs (Industry)..... \$972K

New Estimated Costs to the Industry

Telephonic Reports

(Assuming an 80% reduction in telephonic reports -
 2.0 reports/site x 1.5 hrs x \$60) site cost/year..... \$0.18K
 Industry Cost/yr..... \$11K

Written Reports

(Assuming an 80% reduction in written reports and 40 hrs/
report - 2.0 reports/site x 40 hrs x \$60) site cost/yr..... \$4.8K
Industry cost/yr..... \$292.8K

Log Entries

(Assuming an 20% reduction in log entries and 0.5 hrs/entry -
7.8 entries/site/0.5 hr/entry x \$60) site cost/yr..... \$0.23K
Industry cost/yr..... \$14.0K

Total Cost/Site..... \$5.21K
Total Costs (Industry)..... \$317.8K

Total Decrease (Industry/yr)..... \$654.2K

1.3.3 Other Government Agencies

The proposed action is not expected to affect other government agencies.

1.3.4 The Public

The benefit to the public is reduced cost and better protection of nuclear power facilities because the NRC's ability to assess generic shortcomings of security systems and thereby recommend or initiate improvement is increased.

1.4 Decision on Proposed Action

The benefit to be derived from this action is (1) a reduction in burden to the industry, and (2) a more uniform and detailed data analysis system which would provide feedback to the industry for improving their safeguards systems.

2. STATUTORY CONSIDERATIONS

2.1 NRC Authority

The Atomic Energy Act of 1954, as amended, Section 161(B) provides authority for the Commission to prescribe regulations designed to protect the public health and minimize danger to life or property.

2.2 Need for Environmental Assessment

This proposed rule is the type of action described in categorical exclusion 10 CFR 51.55(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

2.3 Relationship to Other Existing or Proposed Regulations

These proposed regulations have been developed to be consistent and compatible with the present event reporting requirements for power reactors (10 CFR 50.72 and 50.73) and to establish a comparable level for licensees authorized to utilize or possess SNM. Evolving proposed NRC regulations have been considered to the extent practicable.