



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

AB46-1

PDR

MAY 14 1984

MEMORANDUM FOR: Richard C. DeYoung, Director, IE
Guy H. Cunningham, ELD
Clemens J. Heltemes, Director, AEOD
Patricia Norry, Director, ADM ✓
Joseph Fouchard, Director, PA

FROM: John G. Davis, Director
Office of Nuclear Material Safety and Safeguards

SUBJECT: PROPOSED REVISIONS TO 10 CFR 73.71,
SAFEGUARDS REPORTING REQUIREMENTS

The subject rulemaking has been revised in response to office comments. Please review the attached revised rule package. I would appreciate your concurrence by May 21, 1984. Ms. Priscilla A. Dwyer, Ext. 74010 is the NMSS contact on this matter. NRR and RES have concurred on the package.

John G. Davis, Director
Office of Nuclear Material Safety
and Safeguards

Attachment:
As stated

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73 50FR34708 PDR

For: The Commissioners

From: William J. Dircks
Executive Director for Operations

Subject: PROPOSED REVISIONS TO 10 CFR § 73.71, NOTIFICATION REQUIREMENTS FOR SAFEGUARDS EVENTS

Purpose: To present for Commission consideration proposed amendments to 10 CFR § 73.71 designed to improve the clarity and effectiveness of the present rule dealing with reporting of safeguards events.

Discussion: The safeguards event reporting requirements of 10 CFR § 73.71 were established to ensure that the Commission is informed in a timely manner of significant incidents involving the security of certain nuclear facilities and activities. The staff believes that the categories of reportable events can be simplified without affecting the NRC's ability to respond to incidents and collect data on possible generic safeguards problems. At the same time, more detailed information is needed on the events that are reported. Accordingly, certain categories of safeguards events have been eliminated in the proposed rule such as moderate and major losses, and explicit and potential threats. These events have been redefined in less abstract terms to aid the licensee in responding to the

Contact:
P. A. Dwyer, SGPR
42-74010

requirements. Also, the current twenty-four hour telephonic notification requirements for certain events have been eliminated. Events that must be reported are described in a new Appendix G to Part 73.

A revised regulatory guide is proposed in support of the proposed amendments that provides a format for making written reports and specifies the level of information needed by the NRC. This will increase the uniformity of reports, in addition to providing the NRC with the more detailed data base necessary for assessing generic safeguards problems.

✓ The proposed revision to § 73.71 will result in an
Estimated total increase in cost for the industry of \$495K ✓
per year. Annual NRC costs are estimated to increase by
\$21.6K. The additional costs are mainly attributable to the
increased level of detail needed in event reports.

Recommendations: That the Commission:

1. ✓ Approve the amendments as set forth in Attachment 1 for publication as a proposed rule revision in the Federal Register, with a 90-day public comment period.
2. In order to satisfy the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), certify that this rule will not have a significant economic impact on a substantial number of small entities. ✓
3. Note:
 - a. That the regulatory analysis appearing in Attachment 3 will be placed in the NRC Public Document Room.

*Please
see
attachment
for new
boilerplate. ✓*

- b. That the notice of proposed rulemaking will be distributed to affected licensees and other interested persons and that the revised regulatory guide will be issued concurrently with publication of this amendment.
- c. ~~That, in accordance with 10 CFR 51.5(d)(3), neither environmental impact statements nor negative declarations need to be prepared since the proposed amendments are not significant from the standpoint of environmental impact.~~
- d. That these amendments contain collection and reporting requirements that are subject to review by the Office of Management and Budget. Upon Commission affirmation, formal request for OMB review and clearance will be initiated. OMB review may take 60-90 days from the date of publication in the Federal Register. If approval is denied by OMB, the Commission will be notified.
- e. That a public announcement will be issued. See draft Public Announcement, Attachment 4.
- f. That appropriate Congressional Committees will be advised of these actions. See draft Congressional Letter, Attachment 5.
- g. That the Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification and the reasons for it as required by the Regulatory Flexibility Act.

*Did you decide not to use the
recommended ACRS statement?*

Scheduling: The staff requests scheduling at an early policy session.

William J. Dircks

E — D — O —

✓

Attachments:

1. Federal Register Notice
2. Revised Regulatory Guide
3. Regulatory Analysis
4. Draft Public Announcement
5. Draft Congressional Letter
6. Supporting Statement for Recordkeeping and Reporting Requirements

ATTACHMENT 1

Federal Register Notice

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

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 events data base by requiring more uniform safeguards events reports. The NRC uses the reported information to respond to incidents and to identify potentially generic safeguards problems.

The sentence used at 1.4 of your reg. analysis, p. 4 at 3, would be good here.

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.

Secretary

ADDRESSES: Send comments to: [^] 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.

On the copy of 10 CFR for publication, leave a blank space with no asterisks or footnote & indicate in your transmittal memo to DER the length of comment period.

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

FOR FURTHER INFORMATION CONTACT: Priscilla A. Dwyer, Regulatory Activities Section, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 427-4010.

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 lessen 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 were frequently misinterpreted, that reports submitted pursuant to the ^{regulation} ~~rule~~ lack uniformity, and that insufficient detail is reported for NRC analysis. Unless these problems can be corrected, the usefulness of ^{these} ~~such~~ 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 applicable 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."

The primary impact of the revised reporting requirements on licensees will be an increase in the level of detail required in the reporting of events. However, recurring events of the same type can be consolidated into a single report. Also, the number of telephonic notifications to the NRC is expected to decrease by approximately 80 percent because the twenty-four hour telephonic notification requirement has been deleted. The twenty-four hour requirement has been dropped because the revised requirements will ensure that all events of significance will be reported within one hour.

The requirements of § 73.71 are not intended to be duplicative or inconsistent 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 security impact, are reportable under Part 50 requirements.

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 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. There is a possibility that some transporters, importers, and exporters of strategic special nuclear material (SSNM) and spent fuel will be affected by this rule. If they feel it will have an adverse impact on them, we invite comments to that effect. The proposed

NEPA

Boilerplate
Should precede
paperwork
stmt.

See
attached
sheet

Regulatory
Analysis -
a brief paragraph
summary of attachment
3 precedes Reg Flex. Cert.

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 21.

This was correct in your earlier draft - it should be 121.

LIST OF SUBJECTS IN 10 CFR PART 73

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

and record keeping

Note - newly expanded index term

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. 1611, 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. 1610, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 73.71 is revised to read as follows:

* * * * *

§ 73.71 Reports of unaccounted for shipments, suspected thefts, or unlawful diversion [~~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 NRE 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 NRE Operations Center;--Each licensee who conduct a trace investigation of a lost or unaccounted for shipment pursuant to~~

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

*Please note
comment about
underlining on
our marked
copy sent to
you on 3/84.*

*also
comment on this
footnote*

§-73:67(e)(3)(vi)-or-§-73:67(g)(3)(iii)-shall-notify-the-NRE-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 NRE-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-NRE-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-NRE-Operations Center.--The-initial-notification-must-be-followed-within-a-period-of fifteen-(15)-days-by-a-written-report;-submitted-to-the-appropriate-NRE 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 NRC Operations Center via the Emergency Notification System as soon as possible, and at 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 NRC 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 NRC 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-§-73.71---licensees-need-not-report-any-event
which-is-designated-as-not-reportable-in-their-security-or-contingency
plans.]~~

73.71(a)(1) Each licensee who conducts a trace investigation of a
lost or unaccounted for shipment pursuant to §§ 73.27(c), 73.67(e)(3),
or 73.67(g)(3) shall notify the NRC Operations Center within one hour
after discovery of the loss of the shipment, and within one hour after
recovery of or accountability for the lost shipment.

(2) This notification shall 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 unavail-
able, 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
Center 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, NMSS Docket Room, Washington, DC 20555.
The licensee shall also submit an additional copy to the appropriate NRC
Regional Office listed in Appendix A to this part.

(5) Substantive additional information which becomes available after
the submission of the written report shall be telephonically reported by
the licensee to the appropriate Regional Office.

no ✓ Is (5) subject to a
time frame as well?

(b)(1) Each licensee subject to the provisions of §§ 73.20, 73.37, 73.50, and 73.55 shall notify the NRC Operations Center within one hour of the safeguards events described in paragraphs I.(a), (b) and (c) of Appendix G to this part. The one-hour time period begins upon discovery of the event by a licensee employee or member of the licensee security organization.

(2) This notification shall be made in accordance with the requirements of paragraphs (a)(2), (3), (4), and (5) of this section with the exception that licensees subject to the provisions of § 73.55 shall submit written reports to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555 and an additional copy to the appropriate Regional Office listed in Appendix A to this part.

(c)(1) Each licensee subject to the provisions of §§ 73.20, 73.37, 73.50, and 73.55 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 security organization.

(2) Every three months, each licensee shall submit to the NRC copies of all safeguards event log entries not previously submitted. Licensees subject to the provisions of §§ 73.20, 73.37, and 73.50 shall submit the log to the U.S. Nuclear Regulatory Commission, NMSS Docket Room, Washington, DC 20555. Licensees subject to the provisions of § 73.55 shall submit the log to U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555. All licensees shall submit an additional copy of their log to the appropriate Regional Office listed in Appendix A to this part.

So this one
Copy of -
any
report? ✓

The licensees shall submit to The Commission ✓

(d) ~~The written reports and copies of the safeguards event logs~~ ✓
~~that the licensees are required to submit to the Commission under the~~
~~provisions of this section shall be~~ *that are* ✓ of a quality which will permit
 legible reproduction and micrographic processing. *Each licensee shall prepare* ✓
~~The written report~~
~~shall be prepared~~ on Form NRC 366 and include the information described
 in the Appendix to Regulatory Guide 5.62, Rev. 1. Copies of this guide
 may be purchased from the GPO Sales Program, U.S. Nuclear Regulatory
 Commission, Division of Technical Information and Document Control,
 Washington, DC 20555.

(e) Events reported in accordance with §§ 50.72 and 50.73 of this chapter need not be reported under this section.

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

Appendix G

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, and 73.55
shall report or log, as appropriate, the following safeguards events.

I. Items to be reported within one hour

(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 cred-
ible threat to commit or cause:

- (1) A theft or unlawful diversion of special nuclear material, or
- (2) Physical damage to any licensed facility or its equipment or
carrier equipment transporting nuclear fuel or spent nuclear fuel, or to
the nuclear fuel or spent nuclear fuel the facilities or carriers are
licensed to possess, 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 the safeguards system or discovered vulnerability in that system that could allow unauthorized and undetected access to a protected area, material access area, controlled access area, or vital area, or to spent nuclear fuel or formula quantities of SSNM in transit, for which proper compensatory measures have not been established.

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

(d) A "proper compensatory measure" as used in this Appendix means a measure that is specified in a security or contingency plan or security procedure. If the event is not specified 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.

II. Items to be recorded in quarterly-submitted log

(a) Any failure of the safeguards system or discovered vulnerability in that system that could allow unauthorized and undetected access to a protected area, material access area, controlled access area, or vital area, or to spent nuclear fuel or formula quantities of SSNM in transit, for which proper compensatory measures have been established.

(b) Any failure of the physical protection plan not included in
paragraph II.(a) of this appendix if ^{the} such failure degrades the effective-
ness of the system. ✓

* * * * *

Dated at Washington, DC this _____ day of _____, 1984.

For the Nuclear Regulatory Commission (C) ✓

Samuel J. Chirik[^]
Secretary of the Commission. ✓

CONCURRENCE SUMMARY ON 10CFR 73.71

ADMIN - by memo, 5-22-84

AEOD - by memo, 5-24-84

ELD - Fonner by phone, 5-24-84

IE - by memo, 5-25-84

NRR -- by memo, 3-5-84

GPA - by memo, 2-24-84

RES - by memo, 3-7-84