

Revision of Administrative Requirements **(Rule 1)**

Regulation

This proposed rulemaking would affect several parts in Title 10 of the *Code of Federal Regulations* (10 CFR). The majority of the changes are in 10 CFR Part 20, "Standards for Protection Against Radiation"; 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material"; 10 CFR Part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material"; 10 CFR Part 40, "Domestic Licensing of Source Material"; 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities"; 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants"; 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material"; 10 CFR Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste"; and 10 CFR Part 100, "Reactor Site Criteria."

Regulatory Issue

The U.S. Nuclear Regulatory Commission (NRC) initiated a retrospective review of its administrative requirements in fall 2017 (announced in an NRC press release on August 11, 2017 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML17243A126)), with the goal of making information submission, recordkeeping, and reporting processes more efficient and potentially reducing the regulatory burden on the NRC, applicants, and regulated entities without having an adverse impact on the NRC's mission. This rulemaking would focus on regulatory changes that the staff anticipates would have broad stakeholder support, have no policy implications, and be administrative in nature. Accordingly, this rulemaking will use a streamlined process for notice and comment rulemaking, which would not include the development of a regulatory basis. This rulemaking would make regulatory changes to six topical areas:

1. Requirements Relating to 30-day Follow-up Reports
 - 10 CFR 20.2201(a)(1)(ii), 10 CFR 20.2201(b), 10 CFR 20.2201(d)
 - 10 CFR 30.50(c)(2)
 - 10 CFR 37.57(c), 10 CFR 37.81(g), 10 CFR 37.81(h)
 - 10 CFR 40.60(c)(2)
 - 10 CFR 50.54(q)(5)
 - 10 CFR 70.50(c)(2), 10 CFR 70.72(d)(3)
 - 10 CFR 72.212(b)(2), 10 CFR 72.212(b)(4)
2. Requirements Relating to Annual Inventory Reconciliation Reports
 - 10 CFR 20.2207(g)
3. Requirements Relating to Final Safety Analysis Reports (FSARs) and License Amendment Request State Consultation
 - 10 CFR 50.4(b)(6), 10 CFR 50.71(e), 10 CFR 50.71(e)(5), 10 CFR 50.91(b)(4)
 - 10 CFR 72.248(c)(1), 10 CFR 72.248(c)(2), 10 CFR 72.248(c)(3)

4. Requirements Relating to NRC Forms 540, 541, and 542
 - 10 CFR Part 20, Appendix G, “Requirements for Transfers of Low-Level Radioactive Waste Intended for Disposal at Licensed Land Disposal Facilities and Manifests”
5. Requirements Relating to Written Communications
 - 10 CFR 50.4
 - 10 CFR 52.3
 - 10 CFR 100.4
6. Requirement Relating to Financial Reports
 - 10 CFR 50.75(e)(3)

Affected entities include the following:

- those licensed for—
 - possession of byproduct material
 - possession of source material
 - possession of special nuclear material
 - possession of Category 1 or 2 radioactive materials (as defined in 10 CFR Part 37)
 - possession of high-level radioactive waste or spent nuclear fuel
- fuel facilities
- low-level radioactive waste (LLRW) generators, shippers, and processors
- LLRW disposal facilities
- nuclear power plants

Existing Regulatory Framework

The following describes the existing regulatory framework (administrative requirements and any associated implementing guidance) that will be amended by the stakeholder-recommended changes contemplated in this rulemaking plan:

(1) Requirements Relating to 30-Day Follow-up Reports

The regulations in 10 CFR 20.2201(a)(1)(ii), 10 CFR 20.2201(b), and 10 CFR 20.2201(d) require licensees to report by telephone immediately after they become aware of lost, stolen, or missing licensed material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in Appendix C, “Quantities of Licensed Material Requiring Labeling,” to 10 CFR Part 20 under such circumstances that it appears to the licensee that an exposure could result to persons in unrestricted areas. Licensees are required to submit a written report within 30 days following the discovery of, and within 30 days of learning additional information regarding, lost, stolen, or missing licensed material.

The regulations in 10 CFR 37.57(c), 10 CFR 37.81(g), and 10 CFR 37.81(h) require licensees to submit a written report to the NRC within 30 days of notifying the NRC of (1) an unauthorized entry that resulted in an actual or attempted theft, sabotage, or

diversion of a Category 1 or Category 2 quantity of radioactive material, and (2) a lost or missing shipment of Category 1 and Category 2 quantities of radioactive material. NUREG-2155, draft Revision 2, "Implementation Guidance for 10 CFR Part 37, 'Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material,'" issued October 2019 (ADAMS Accession No. ML19298A303), provides guidance on the implementation of these requirements.

The regulations in 10 CFR 50.54(q)(5) direct licensees to retain records of each change to the emergency plan made without prior NRC approval for 3 years and to submit a report on each such change within 30 days of it becoming effective. Regulatory Guide (RG) 1.219, "Guidance on Making Changes to Emergency Plans for Nuclear Power Reactors," issued December 2010 (ADAMS Accession No. ML102790357), provides guidance on this requirement.

The regulations in 10 CFR 30.50, 10 CFR 40.60, and 10 CFR 70.50 require immediate reports, 24-hour reports, and written follow-up reports within 30 days, for a number of occurrences. NUREG-1556, "Consolidated Guidance About Materials Licenses," Volume 9, Revision 3 (September 2019; ADAMS Accession No. ML19256C219), provides guidance for implementing the requirements of 10 CFR 30.50. NUREG-1520, "Standard Review Plan for Fuel Cycle Facilities License Applications," issued June 2015 (ADAMS Accession No. ML15176A258), provides guidance on the implementation of 10 CFR 70.50 requirements.

The regulations in 10 CFR 70.72(d)(3) require that, for all changes that affect the integrated safety analysis summary, the licensee submit to the NRC annually, within 30 days after the end of the calendar year in which the changes occurred, revised integrated safety analysis summary pages. NUREG-1520, "Standard Review Plan for Fuel Cycle Facilities License Applications," Revision 2 (June 2015; ADAMS Accession No. ML15176A258), provides guidance on the implementation of 10 CFR 70.72(d)(3) requirements.

The regulations in 10 CFR 72.212(b)(2) and 10 CFR 72.212(b)(4) require cask registration no later than 30 days after a cask is used to store spent fuel and no later than 30 days after applying changes authorized by an amended certificate of compliance.

The NRC has no implementing guidance for the requirements in 10 CFR Part 20, 10 CFR 40.60, and 10 CFR Part 72 under this topic.

(2) Requirements Relating to Annual Inventory Reconciliation Reports

The regulations in 10 CFR 20.2207(g) require licensees to submit reconciliation reports, during the month of January in each year, reconciling the inventory of nationally tracked sources possessed by the licensee against that licensee's data in the National Source Tracking System (NSTS). By January 31 of each year, licensees are required to submit confirmation that the data in the NSTS is correct.

The following NUREG-1556 volumes provide guidance to update transactions in the NSTS, including an annual inventory reconciliation required by 10 CFR 20.2207(g):

NUREG-1556:

- Volume 2, Revision 1 (February 2016; ADAMS Accession No. ML16062A091)
- Volume 4, Revision 1 (July 2016; ADAMS Accession No. ML16188A048)
- Volume 5, Revision 1 (June 2018; ADAMS Accession No. ML18176A007)
- Volume 6, Revision 1 (January 2018; ADAMS Accession No. ML18026A698)
- Volume 7, Revision 1 (February 2018; ADAMS Accession No. ML18065A006)
- Volume 9, Revision 3 (September 2019; ADAMS Accession No. ML19256C219)
- Volume 11, Revision 1 (February 2017; ADAMS Accession No. ML17059D332)
- Volume 12, Revision 1 (May 2018; ADAMS Accession No. ML18136A704)
- Volume 13, Revision 2 (March 2019; ADAMS Accession No. ML19079A207)
- Volume 14, Revision 1 (April 2018; ADAMS Accession No. ML18120A129)
- Volume 17, Revision 1 (July 2018; ADAMS Accession No. ML18190A207)
- Volume 18, Revision 1 (August 2017; ADAMS Accession No. ML17242A055)

(3) Requirements Relating to FSARs

The regulations in 10 CFR 50.71(e) and 10 CFR 72.248(a) and (c)(1)-(3) require licensees to periodically update the FSAR that was originally submitted as part of the application for the license, to assure that the information included in the report contains the latest information developed by the licensee. The regulations include an option for licensees to submit paper copy replacement pages, accompanied by a list that identifies the current pages of the FSAR following page replacement.

RG 1.70, Revision 3, "Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants, LWR Edition," issued 1978 (ADAMS Package Accession No. ML011340122), provides guidance on regulations in 10 CFR 50.71(e).

(4) Requirements Relating to NRC Forms 540, 541, and 542

The regulations in 10 CFR Part 20, Appendix G, require a waste generator, collector, or processor that transports, or offers for transportation, LLRW intended for ultimate disposal at a licensed low-level radioactive waste land disposal facility to prepare a manifest (Office of Management and Budget Control Numbers 3150-0164, 3150-0165, and 3150-0166) reflecting information requested on applicable NRC Form 540, "Uniform Low-Level Radioactive Waste Manifest Shipping Paper," and Form 541, "Uniform Low-Level Radioactive Waste Manifest Container and Waste Description," and, if necessary, on an applicable NRC Form 542, "Uniform Low-Level Radioactive Waste Manifest Index and Regional Compact Tabulation." NRC Form 540 and Form 540A, "Uniform Low-Level Radioactive Waste Manifest Shipping Paper (Continuation)," must be completed and must physically accompany the pertinent low-level waste shipment.

The regulations in Appendix G also state that "Licensees need not use originals of these NRC Forms as long as any substitute forms are equivalent to the original documentation in respect to content, clarity, size, and location of information." Further, the regulations include information requirements for the physical, chemical, and radiological properties of the waste and the waste classification, as well as requirements for certification, control, and tracking, and maintenance of records for each shipment.

NUREG/BR-0204, Revision 3, "Instructions for Completing the U.S. Nuclear Regulatory Commission's Uniform Low-Level Radioactive Waste Manifest," issued June 2020 (ADAMS Accession No. ML20178A433), provides instructions for completing these forms.

(5) Requirements Relating to Written Communications

The regulations in 10 CFR 50.4, 10 CFR 52.3, and 10 CFR 100.4 require holders of operating licenses or construction permits issued under 10 CFR Part 50 and applicants, licensees, or holders of combined license issued under 10 CFR Part 52, to submit all required written communications to the NRC's Document Control Desk, except as otherwise specified in 10 CFR 50.4(b)(2) through (b)(7), and to submit a copy to the appropriate regional office, and a copy to the appropriate NRC resident inspector, if one has been assigned to the facility.

The NRC has no implementing guidance for these requirements under this topic.

(6) Requirement Relating to Financial Reports

The regulations in 10 CFR 50.75(e)(3) require that each holder of a combined license under Subpart C of 10 CFR Part 52, submit a report to the NRC containing a certification updating the information related to certification of financial assurance for decommissioning described in 10 CFR 50.75(b)(1), including a copy of the financial instrument to be used, 2 years before and 1 year before the scheduled date for the initial loading of fuel.

The NRC has no implementing guidance for these requirements under this topic.

Description of Rulemaking: Scope

The rulemaking scope would include implementing the following six actions with the intent of reducing unnecessary regulatory burden while preserving the capability to meet the NRC's mission:

- (1) Modify the requirements relating to the submittal timeframe for follow-up reports from 30 days to 60 days. The agency could make the requirements less burdensome by adopting a uniform 60-day response time for the completion/submittal of these written follow-up reports. This uniform deadline would simplify licensees' management of the production of these reports to a common timeline. The changes to these requirements would still provide the NRC with the capability to collect information, accurately assess it, and take the necessary actions, including potentially informing other agencies in the homeland security and intelligence communities for recovery of radioactive materials.
- (2) Eliminate the requirement to submit to the NRC an annual inventory reconciliation report. The requirement in 10 CFR 20.2207(g) is no longer needed because the NRC's regulations already require licensees to conduct physical inventories either annually, semiannually, or quarterly, depending on the type of license. Licensees are also required to report all source transactions in NSTS, which provides an automated accountability of sealed sources. These requirements did not exist when the NRC issued the mandate.

- (3) Eliminate and modify requirements relating to paper page replacement for FSARs. The agency could make the requirements less burdensome by allowing licensees the flexibility to provide FSAR page updates.
- (4) Modify requirements mandating the use of official NRC Forms 540, 541, and 542 for LLRW disposal. The agency could make the requirements less burdensome by allowing licensees the flexibility to provide and maintain the information in a format other than NRC Forms 540, 541, and 542. The agency would revise the requirements to reflect that licensees may use the NRC forms included in the guidance as templates to develop their own forms and need not generate equivalent versions of the NRC forms. The generation of the required information by waste shippers provides the waste collectors, processors, and land disposal facilities with the information they need to manage the waste safely before its disposal. The required information also provides the land disposal facilities with the information that they need to complete a performance assessment of the potential dose from the waste disposed at its facility, which is needed to ensure the risk from the waste is acceptable and which is required in 10 CFR Part 61, "Licensing Requirements for Land Disposal of Radioactive waste." The guidance would explicitly allow for the use of alternative methods (i.e., other than the use of NRC Forms 540, 541, and 542) for meeting the information reporting requirements of 10 CFR Part 20, Appendix G.
- (5) Modify requirements relating to written communications to streamline the document submittal process for NRC licensees. The agency could make the requirements less burdensome by requiring only one submission of the same document from licensees to the NRC's Document Control Desk and no longer requiring that they also submit the same document to the regional office and NRC resident inspector. The NRC Document Control Desk would then internally disseminate that same document to the regional office and NRC resident inspector.
- (6) Modify requirements relating to the submittal frequency of financial reports for combined license holders before decommissioning. The agency could make the requirements less burdensome by eliminating reporting 2 years before initial fuel load. The report that would still be required 1 year before initial fuel load would provide the NRC with reasonable decommissioning assurance. Reducing the reporting time period to one year before initial fuel load still provides the NRC staff sufficient time to review the financial report and the licensee sufficient time to address any funding shortfalls or other financial assurance issues prior to fuel load.

The rulemaking scope also includes necessary conforming changes that the staff may identify during the rulemaking process.

Description of Rulemaking: Preliminary Backfitting and Issue Finality Analysis

The staff will conduct a case-by-case analysis of the proposed revisions to, 10 CFR Part 50, 10 CFR Part 52, 10 CFR Part 70, and 10 CFR Part 72 to determine whether they would constitute backfitting as defined in 10 CFR 50.109, 10 CFR 70.76, or 10 CFR 72.62, all titled "Backfitting," and whether they would be consistent with the applicable issue finality provisions in 10 CFR Part 52. Further, the staff will consult with the NRC's Backfitting and Forward Fitting Community of Practice and Committee to Review Generic Requirements, as necessary. Additionally, for revisions affecting applicants or licensees under 10 CFR Part 30 and 10 CFR Part

40, the Commission's backfitting and issue finality provisions in 10 CFR Parts 50, 52, 70, 72, and 76 do not apply.

Description of Rulemaking: Estimated Schedule

The staff will provide the proposed rule to the Executive Director for Operations (EDO) approximately 9 months after receipt of the Commission's staff requirements memorandum.

The staff will provide the final rule to the EDO approximately 9 months after the proposed rule comment period closes.

Description of Rulemaking: Preliminary Recommendation on Priority

Based on the Common Prioritization of Rulemaking methodology (ADAMS Accession No. ML18263A070), the preliminary priority for this rulemaking activity is medium. This rulemaking is estimated to score 21 points out of 50 points (medium priority) because (1) it would be a low contributor toward the NRC Strategic Plan safety goal and would implement one of the plan's safety strategies, (2) it would be a moderate contributor to implementing the Principles of Good Regulation, (3) it would be a high contributor to Government priority because of the future regulatory benefit strategy, and (4) it would be a high contributor to public priority because of the burden reduction and stakeholder interest strategies. This estimate is consistent with the priority assigned to rulemakings that do not raise an immediate safety, environmental, or security concern. The priority for a rulemaking activity can change over time. Common reasons for a change in priority are new Commission or senior management direction or changes in the rulemaking scope.

Cumulative Effects of Regulation

The staff's preliminary assessment of the cumulative effects of rulemaking concludes that (1) the rulemaking will reduce the regulatory burden for licensees and (2) no known activities or affected entities will significantly impact the implementation of the proposed changes. The staff notes that, due to limited information collection program staff and other ongoing information collection activities at the agency, the ability to work on parallel information collection activities by the program staff may impact the rulemaking schedule.

The NRC conducted public meetings on March 5, 2020 (ADAMS Accession No. ML20069A022), and March 24, 2020 (ADAMS Accession No. ML20085H593), to facilitate public comments. Additionally, the NRC conducted a public meeting on August 27, 2020 (ADAMS Accession No. ML20264E691), to discuss the comments received. The NRC conducted a public meeting on June 30, 2021 (ADAMS Accession No. ML21139A333), and on August 19, 2021 (ADAMS Accession No. ML21208A374), to discuss the process and results of the Retrospective Review of Administrative Requirements evaluation. (The meeting summaries and presentation slides are available at ADAMS Package Accession Nos. ML21142A003 and ML21208A416.)

The staff is not aware of any recently imposed regulatory requirements for which this rulemaking would adversely affect ongoing licensee implementation efforts. The staff plans to request stakeholder input on this issue during the proposed rule and final rule phases.

Agreement State Considerations

This rulemaking would include several administrative regulations in 10 CFR Part 20, 10 CFR Part 30, 10 CFR Part 37, 10 CFR Part 40, and 10 CFR Part 70 that have compatible Agreement State regulations. The staff reached out to the Organization of Agreement States (OAS) to offer an opportunity for the Agreement States to participate on the working group drafting the rulemaking plan. In accordance with NRC guidance, "Agreement State Participation in Rulemaking Working Groups SA-801A," dated January 16, 2019 (ADAMS Accession No. ML18263A239), the staff also provided the OAS with a charter that describes the project background and roles and responsibilities for working group members. The Agreement States did not find it necessary to participate in the rulemaking plan development stage as a formal working group member. The staff issued a State and Tribal Communication letter dated June 8, 2019 (ADAMS Accession No. ML21118B074), to convey the status of the Retrospective Review of Administrative Requirements initiative and notify the Agreement States of an upcoming public meeting. The staff continued to conduct outreach to the OAS throughout the development of the rulemaking plans to ensure Agreement States were fully informed.

Under the "Agreement State Program Policy Statement" approved by the Commission on May 19, 2017, and published in the *Federal Register* on October 18, 2017 (82 FR 48535), this rule would be a matter of compatibility between the NRC and Agreement States, which would ensure consistency between the Agreement State requirements and the NRC requirements. The staff will continue to seek collaboration with the Agreement States on this rulemaking. The staff intends to rely on the operational experience of Agreement State regulators and consider Agreement State regulations to inform the NRC rulemaking. The NRC staff would analyze the proposed rule language in accordance with the procedure established in Part III, "Categorization Process for NRC Program Elements," of the Handbook of Management Directive 5.9, "Adequacy and Compatibility of Program Elements for Agreement State Programs," dated April 26, 2018 (ADAMS Accession No. ML18081A070). As provided in the NRC's rulemaking process, all Agreement States would have an opportunity to comment on the rulemaking before its submission to the EDO, and any unresolved issues identified by the Agreement States would be communicated to the EDO.

Guidance

The staff estimates that it would update the following guidance documents in parallel with the rulemaking:

Topic 1:

- NUREG-2155, Revision 2, "Draft Implementation Guidance for 10 CFR Part 37," issued October 2019, would be updated to align with the rulemaking for 10 CFR 37.57(c), 10 CFR 37.81(g), and 10 CFR 37.81(h).
- NUREG-1520, "Standard Review Plan for Fuel Cycle Facilities License Applications," issued June 2015, would be updated in parallel with the rulemaking for 10 CFR 70.50 and 10 CFR 70.72(d)(3).
- RG 1.219, "Guidance on Making Changes to Emergency Plans for Nuclear Power Reactors," issued July 2016, would be updated to align with the rulemaking for 10 CFR 50.54(q)(5).

Topic 2:

- Conforming updates would be needed to 12 volumes of NUREG-1556, "Consolidated Guidance About Materials Licenses," which would be updated to align with the rulemaking for 10 CFR 20.2207(g).

Topics 3, 4, 5, and 6:

- No guidance updates are needed for the regulatory changes under these topics.

Advisory Committee on Reactor Safeguards Review

The staff would determine whether actions taken on administrative regulatory changes (i.e., amendments to 10 CFR Part 20, 10 CFR Part 50, and 10 CFR Part 70) fall within the scope of the Advisory Committee on Reactor Safeguards charter as the requirements and guidance are developed. The staff recommends that rulemaking relating to 10 CFR Part 37 and 10 CFR Part 72 be considered as outside the scope of the charter, and thus review by the committee would not be necessary.

Committee to Review Generic Requirements Review

The staff will consult with the Committee to Review Generic Requirements, as necessary, to determine whether the proposed revisions to 10 CFR Part 30, 10 CFR Part 40, 10 CFR Part 50, 10 CFR Part 52, 10 CFR Part 70, and 10 CFR Part 72 constitute backfitting.

Advisory Committee on the Medical Use of Isotopes Review

The staff will evaluate the need for the Advisory Committee on the Medical Use of Isotopes' review of the rulemaking.

Analysis of Legal Matters

The Office of the General Counsel has reviewed this rulemaking plan and has not identified any issues necessitating a separate legal analysis at this time.

Resources

Enclosure 3 includes an estimate of the resources needed to complete this rulemaking (Rule 1). Resource estimates in Enclosure 3 are not publicly available.