

Revision of Administrative Requirements **(Rule 2)**

Regulation

This proposed rulemaking would affect several parts of Title 10 of the *Code of Federal Regulations* (10 CFR). The majority of the changes are in 10 CFR Part 26, "Fitness for Duty Programs"; 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material"; 10 CFR Part 40, "Domestic Licensing of Source Material"; 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities"; 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material"; and 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."

Regulatory Issue

The U.S. Nuclear Regulatory Commission (NRC) initiated a retrospective review of its administrative requirements in the fall of 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 regulatory burden for the NRC, applicants, and regulated entities without having an adverse impact on the NRC's mission. This rulemaking would implement stakeholder-recommended changes to administrative requirements. This rulemaking would focus on regulatory changes that would benefit from robust stakeholder engagement. Accordingly, this rulemaking will develop a regulatory basis that will be issued for public comment. This step affords preliminary stakeholder engagement and opportunity for consideration of the comments received on the regulatory basis. This rulemaking would make regulatory changes to six topical areas:

1. Requirements Relating to Radiological Effluent Reports
 - 10 CFR 50.36a(a)(2)
 - 10 CFR 72.44(d)(3)
2. Requirements Relating to Licensing-Basis Reports and Changes, Tests, and Experiments Regarding Final Safety Analysis Report
 - 10 CFR 50.59(d)(2), 10 CFR 50.73, 10 CFR 50.73(c)
 - 10 CFR 72.48(d)(2), 10 CFR 72.70(c)(6), 10 CFR 72.75(b), 10 CFR 72.75(c), 10 CFR 72.75(d), 10 CFR 72.75(g), 10 CFR 72.248(c)(6)
3. Requirements Relating to Emergency Preparedness Reports
 - 10 CFR 30.34(f)
 - 10 CFR 40.35(f)
 - 10 CFR 70.32(i)
 - 10 CFR 72.44(f)
4. Requirements Relating to Security Plan Change Reports
 - 10 CFR 50.54(p)(2)

- 10 CFR 70.32(c), 10 CFR 70.32(d)
 - 10 CFR 72.44(e), 10 CFR 72.186(b)
5. Requirements Relating to Fitness-for-Duty Reports
- 10 CFR 26.417(b)(1), 10 CFR 26.719(b)
6. Requirements Relating to Technical Specifications Reports
- 10 CFR 50.36(c)(1), 10 CFR 50.36(c)(2)

Affected entities include the following:

- storage of special nuclear material in Categories I, II, and III
- fuel reprocessing facilities
- gaseous diffusion plants
- nuclear power plants
- enrichment facilities

Existing Regulatory Framework

The following describes the existing regulatory framework (regulations and guidance) that will be considered in this rulemaking plan:

(1) Requirements Relating to Radiological Effluent Reports

The regulations in 10 CFR 72.44(d)(3) require licensees to submit an annual report quantifying the effluent releases over the previous 12 months of operation and specifying other such information that may be required by the Commission to estimate maximum potential radiation dose commitment to the public resulting from those releases. The regulation also requires licensees to submit the report no later than 60 days after the end of the 12-month monitoring period.

The regulations in 10 CFR 50.36a(a)(2) require nuclear power reactor licensees to submit an annual report that quantifies effluent releases during the previous 12 months, including any other information as may be required by the Commission to estimate the maximum potential annual radiation doses to the public resulting from effluent releases. The regulation also requires that the time between submission of the annual reports must be no longer than 12 months.

Section 5.6, “Reporting Requirements,” of NUREG-1433, Volume 1, Revision 4.0, “Standard Technical Specifications, General Electric BWR/4 Plants,” issued April 2012 (ADAMS Accession No. ML12104A192), and Chapter 16.0, Revision 3, “Technical Specifications” (ADAMS Accession No. ML100351425), of NUREG-0800, “Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition,” provide guidance on the implementation of 10 CFR 50.36a(a)(2) for nuclear power reactors.

(2) Requirements Relating to Licensing-Basis Reports and Changes, Tests, and Experiments Regarding Final Safety Analysis Report

The current regulations provide a range of timeframes for reporting events; submitting follow-up reports; documenting changes, tests, or experiments; and issuing safety analysis reports.

The regulations in 10 CFR 50.73 require licensees to submit a report to the NRC within 60 days after the discovery of a reportable event. The regulations in 10 CFR 50.73(c) require submittal, at the written request of the Commission, of specific additional information beyond that required by 10 CFR 50.73(b), if the Commission finds that supplemental material is necessary for the complete understanding of an unusually complex or significant event.

NUREG-1022, Revision 3, "Event Report Guidelines 10 CFR 50.72 and 50.73," issued January 2013 (ADAMS Accession No. ML13032A220), and NUREG 1022, Revision 3, Supplement 1, "Event Report Guidelines 10 CFR 50.72(b)(3)(xiii)," issued September 2014 (ADAMS Accession No. ML14267A447), are the guidance documents for event reporting under 10 CFR 50.72 and 10 CFR 50.73.

The regulations in 10 CFR 50.59(d)(2) require licensees to submit a report containing a brief description of any changes, tests, and experiments, including a summary of the evaluation of each, as specified in 10 CFR 50.4 or 10 CFR 52.3, as applicable. A report must be submitted at intervals not to exceed 24 months. For combined licenses, the report must be submitted at intervals not to exceed 6 months during the period from the date of application for a combined license to the date the Commission makes its findings under 10 CFR 52.103(g).

The regulations in 10 CFR 72.48(d)(2) require licensees and certificate holder to submit a report containing a brief description of any changes, tests, and experiments, including a summary of the evaluation of each, as specified in 10 CFR 72.4, at intervals not to exceed 24 months.

The regulations in 10 CFR 72.70(c)(6) require each specific licensee for an independent spent fuel storage installation or monitored retrievable storage installation to update periodically, as provided in paragraphs (b) and (c) of this section, the final safety analysis report (FSAR) to assure that the information included in the report contains the latest information developed. The updates shall be filed every 24 months from the date of issuance of the license.

The regulations in 10 CFR 72.75(g) require licensees who make an initial notification required by paragraphs 10 CFR 72.75(b), (c), or (d) to submit a written follow-up report to the Commission within 60 days of the initial notification. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all the necessary information and the appropriate distribution is made.

The regulations in 10 CFR 72.248(c)(6) require each certificate holder for a spent fuel storage cask design shall update periodically the FSAR to assure that the information included in the report contains the latest information developed. The updates shall be filed every 24 months from the date of issuance of the Certificate of Compliance.

The NRC has no implementing guidance for 10 CFR 50.59(d)(2) and 10 CFR Part 72 requirements under this topic.

(3) Requirements Relating to Emergency Preparedness Reports

The current regulations in 10 CFR 30.34(f), 10 CFR 40.35(f), 10 CFR 70.32(i), and 10 CFR 72.44(f) allow licensees to make changes to their approved emergency plan, so long as the changes do not decrease the plan's effectiveness. The regulations require that licensees submit a copy of changes to their emergency plan within 6 months of implementing the changes.

NUREG-1520, Revision 2, "Standard Review Plan for Fuel Cycle Facilities License Applications, Final Report," issued June 2015 (ADAMS Accession No. ML15176A258), provides guidance on the implementation of 10 CFR 70.32(i). Regulatory Guide (RG) 3.67, "Standard Format and Content for Emergency Plans for Fuel Cycle and Materials Facilities," dated April 2011 (ADAMS Accession No. ML103360487), provides guidance on the implementation of 10 CFR 30.35(f), 10 CFR 40.35(f), 10 CFR 70.32(i), and 10 CFR 72.44(f).

(4) Requirements Relating to Security Plan Change Reports

Licensee security plans, depending upon the type of licensee, can include one or more of the following: physical security plan, training and qualification plan, safeguards contingency plan, cybersecurity plan, transportation plan, and material control and accounting (MC&A) program.

The regulations for security plan changes (other than the MC&A program) in 10 CFR 50.54(p)(2); 10 CFR 70.32(d), (e), and (g); 10 CFR 72.44(e); and 10 CFR 72.186(b) allow licensees to make changes to security plans without prior Commission approval, so long as the changes do not decrease the safeguards effectiveness of the plans. The regulations also require that, within 2 months after a change is made to the security plan, the licensee submit a report to the NRC that contains a description of each change made without the Commission's prior approval.

The regulations for the MC&A program in 10 CFR 70.32 allow licensees to make changes to the MC&A program without prior Commission approval, so long as the changes do not decrease the effectiveness of the MC&A program. The regulations in 10 CFR 70.32(c)(2)(i) require the licensee to submit a report to the NRC within 2 months of a change pertaining to uranium-233, uranium-235 contained in uranium enriched 20 percent or more in the uranium-235 isotope, or plutonium, except plutonium containing 80 percent or more by weight of the isotope plutonium-238, if the change did not receive prior Commission approval. The regulations in 10 CFR 70.32(c)(2)(ii) require the licensee to submit a report to the NRC within 6 months of a change pertaining to uranium enriched to less than 20 percent in the uranium-235 isotope or plutonium containing 80 percent or more by weight of the plutonium-238, if the change did not receive prior Commission approval.

5. Requirements Relating to Fitness-for-Duty Reports

The regulations in 10 CFR 26.719(b)(2) require notification by telephone within 24 hours after any acts by any person licensed under 10 CFR Part 55, "Operators' Licenses," to

operate a power reactor, as well as any acts by strategic special nuclear material transporters, fitness-for-duty program personnel, or any supervisory personnel who are authorized under this part, if such acts (1) involve the use, sale, or possession of a controlled substance, (2) result in a determination that the individual has violated the licensee's or other entity's fitness-for-duty policy (including subversion as defined in 10 CFR 26.5), or (3) involve the consumption of alcohol within a protected area or while performing the duties that require the individual to be subject to the fitness-for-duty program.

6. Requirements Relating to Technical Specifications Reports

The regulations in 10 CFR 50.36(c)(1) and (2) require licensees to notify the Commission when safety limits are exceeded or limiting conditions for operation are not met. For reactors licensed under 10 CFR 50.21(b) or 10 CFR 50.22, these regulations require the licensee to notify the Commission as required by 10 CFR 50.72 and to submit a licensee event report to the Commission as required by 10 CFR 50.73. The reporting requirements contained in 10 CFR 50.36(c)(1) and (2) simply point to the reporting requirements in 10 CFR 50.72 and 10 CFR 50.73 and do not contain additional requirements from those located in 10 CFR 50.72 and 10 CFR 50.73. In addition, the existing reporting requirements in 10 CFR 50.72 and 10 CFR 50.73 cover every condition that would be required to be reported by 10 CFR 50.36(c)(1) and (2).

NUREG-1022 provides event reporting guidelines for notification (10 CFR 50.72) and reporting (10 CFR 50.73).

Description of Rulemaking: Scope

The rulemaking scope would include evaluating the administrative regulations with respect to the frequency of the required reports, in order to verify whether the current timeframe is necessary or if it can be relaxed to potentially reduce the burden on the licensees while maintaining the necessary regulatory oversight to provide reasonable assurance of adequate protection. It would consider implementing the following six actions:

- (1) Modify the reporting frequency and eliminate duplicative requirements relating to radiological effluent reports.
- (2) Modify the reporting frequency, report submittal timing, and submittal of supplemental information for requirements relating to licensing-basis reports and changes, tests, and experiments regarding FSAR.
- (3) Modify the report submittal timing for requirements relating to emergency preparedness plan changes.
- (4) Modify the report submittal timing for requirements relating to security plan and MC&A program changes.
- (5) Modify the reporting requirements and potentially narrow the reportability criteria with respect to "supervisory personnel" to those individuals who perform activities that a risk-informed evaluation process has shown to be significant for public health and safety relating to fitness-for-duty reports.

- (6) Modify duplicative requirements relating to technical specifications reports.

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 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.” Further, the staff will consult with the NRC’s Backfitting and Forward Fitting Community of Practice, as necessary. Additionally, for revisions affecting applicants or licensees under 10 CFR Parts 30 and 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 initiate the regulatory basis phase as soon as possible, based on availability of resources, following the completion of the first Revision of Administrative Requirements (Rule 1), but no later than 6 months after the publication of the final rule.

The staff will complete the regulatory basis approximately 12 months after initiation of the regulatory basis phase.

The staff will provide the proposed rule to the Commission approximately 12 months after the regulatory basis comment period closes.

The NRC will publish the final rule approximately 14 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 would reduce the regulatory burden for licensees, and (2) no known activities or affected entities would 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 might 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 regulatory basis development, proposed rule, and final rule phases of this rulemaking.

Agreement State Considerations

This rulemaking includes administrative regulations in 10 CFR 30.34, 10 CFR 40.35, and 10 CFR 70.32, which have compatible Agreement States 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 OAS 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 communicate 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 the Agreement States, which would ensure consistency between the Agreement State requirements and the NRC requirements. The staff would 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 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 for 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 rulemaking process, all Agreement States would have an opportunity to comment on the rulemaking before its submission for Commission consideration, and any unresolved issues identified by the Agreement States would be identified to the Commission.

Guidance

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

Topic 1:

- Standard Technical Specifications, Section 5.6, "Reporting Requirements," issued April 2012
- NUREG-0800, Section 16.0, Revision 3, "Technical Specifications," issued March 2010
- RG 1.21, Revision 2, "Measuring, Evaluating, and Reporting Radioactive Material in Liquid and Gaseous Effluents and Solid Waste," issued June 2009 (ADAMS Accession No. ML091170109)
- RG 1.23, Revision 1, "Meteorological Monitoring Programs for Nuclear Power Plants," issued March 2007 (ADAMS Accession No. ML070350028)
- RG 4.25, Revision 0, "Assessment of Abnormal Radionuclide Discharges in Ground Water to the Unrestricted Area at Nuclear Power Plant Sites," issued March 2017 (ADAMS Accession No. ML16253A333)

Topic 2:

- NUREG-1022, Revision 3, "Event Report Guidelines 10 CFR 50.72 and 50.73," issued January 2013

Topic 3:

- NUREG-1520, Revision 2, "Standard Review Plan for Fuel Cycle Facilities License Applications," issued June 2015
- RG 3.67, Revision 1, "Standard Format and Content for Emergency Plans for Fuel Cycle and Materials Facilities," issued April 2011 (ADAMS Accession No. ML103360487)

Topic 4:

- RG 5.52, Revision 3, "Standard Format and Content of a Licensee Physical Protection Plan for Strategic Special Nuclear Material at Fixed Sites," issued December 1994 (ADAMS Accession No. ML003739235)
- RG 5.55, Revision 0, "Standard Format and Content for Safeguards Contingency Plans," issued March 1978 (ADAMS Accession No. ML20218A462)
- RG 5.59, Revision 1, "Standard Format and Content of a Licensee Physical Protection Plan for Special Nuclear Material of Moderate or Low Strategic Significance," issued February 1983 (ADAMS Accession No. ML100341301)

- NUREG-1322, "Acceptance Criteria for the Evaluation of Category I Fuel Cycle Facility Physical Security Plans," issued 1991 (ADAMS Accession No. ML20085G840)
- NUREG-1456, "An Alternative Format for Category I Fuel Cycle Facility Physical Protection Plans," issued 1992 (ADAMS Accession No. ML20101K045)
- NUREG/CR-6667, "Standard Review Plan for Safeguards Contingency Response Plans for Category I Fuel Facilities," issued 2000 (ADAMS Accession No. ML003718179, non-public)
- NUREG/CR-6668, "Standard Review Plan for Training and Qualifications Plans for Security Personnel at Category I Fuel Facilities," issued May 2000 (ADAMS Accession No. ML003719803)

Topic 5:

- Inspection Procedure 81000.08, "Fitness for Duty Operational Program," issued 2012 (non-public)
- Inspection Procedure 81504, "Fitness for Duty Program for Construction," issued 2009 (non-public)
- RG 5.84, Revision 0, "Fitness-for-Duty for New Nuclear Power Plant Construction Sites," issued July 2015 (ADAMS Accession No. ML15083A412)
- Draft RG 5.89, "Urine Specimen Collection and Test Result Review Under 10 CFR Part 26, Fitness for Duty Programs," issued August 2019 (ADAMS Accession No. ML19116A077)

Topic 6:

- NUREG-1022, Revision 3, "Event Report Guidelines 10 CFR 50.72 and 50.73," issued January 2013

Advisory Committee on Reactor Safeguards Review

The staff would determine whether actions taken on administrative regulatory changes (i.e., amendments to 10 CFR Part 26, 10 CFR Part 30, 10 CFR Part 40, 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 rulemaking relating to 10 CFR Part 72 is determined to be 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 70, and 10 CFR Part 72 constitute backfitting.

Advisory Committee on the Medical Use of Isotopes Review

The rulemaking is outside the scope of the charter of the Advisory Committee on the Medical Use of Isotopes because the rulemaking is not related to the medical use of isotopes. Therefore, review by the committee would not be necessary.

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 2). Resource estimates in Enclosure 3 are not publicly available.