

“substantial safety hazard).” Therefore, the Commission believes that, in the context of the risk-informed regulatory approach embodied in § 50.69, it is reasonable for the Commission to interpret “substantial safety hazard” as applying to RISC-1 SSCs and that reporting under Section 206 may be limited to RISC-1 SSCs.

The Commission considered two alternative approaches for limiting the reporting requirements in part 21 and § 50.55(e) to RISC-1 SSCs: (i) Interpreting “basic component” to encompass a risk-informed view of what SSCs the term encompasses, and (ii) including a second definition of “basic component” in § 21.3, which would apply only to those portions of a plant which have been categorized in accordance with § 50.69, and would be defined as an SSC categorized as RISC-1 under § 50.69.

The Commission does not believe that the part 21 definition of “basic component” may easily be read as simultaneously permitting both a deterministic concept of basic component and risk-informed concept, inasmuch as the part 21 definition was drawn from, and was intended to be consistent with the definition of “safety-related SSC” in § 50.2. The § 50.2 definition of “safety-related SSC” refers to the ability of the SSC to remain functional during “design basis events.” The term, “design basis events” in Commission practice has referred to the deterministic approach of defining the events and conditions (e.g., shutdown, normal operation, accident) for which an SSC is expected to function (or not fail). Identification of design basis events is inherently different conceptually when compared to a risk-informed approach, which attempts to identify all possible outcomes (or a reasonable surrogate) and assign a probability to each outcome and consequence before integrating the probability of the total set of outcomes. The Commission rejected the second approach of adopting an alternative definition of “basic component,” because a change to the definition in § 21.3 could be misunderstood as a change to the reporting requirements for licensees who choose not to comply with § 50.69.

III.4.1.2 Reporting Obligations of Vendors for RISC-3 SSCs

The reporting requirements of Section 206 apply to individuals, directors and responsible officers of a firm constructing, owning, operating or supplying the basic components of any NRC-licensed facility or activity. Nuclear power plant licensees and

nuclear power plant construction permit holders are subject to reporting under Section 206, and part 21 and § 50.55(e) will continue to provide for such reporting by those entities. Section 206 also imposes a reporting obligation on “vendors” (*i.e.*, firms who supply basic components to nuclear power plant licensees and construction permit holders). The Commission does not intend to change the reporting obligations under part 21 or § 50.55(e) for licensees, construction permit holders, or vendors with respect to RISC-1 SSCs, and the Commission does not intend to require reporting under part 21 and § 50.55(e) for RISC-2, RISC-3 or RISC-4 SSCs.

Thus, a vendor who supplied a safety-related component to a licensee that was subsequently classified by the licensee as RISC-3 would no longer be legally obligated to comply with part 21 or § 50.55(e) reporting requirements. However, as a practical matter that vendor would likely continue to comply with part 21 or § 50.55(e). Vendors are informed of their part 21 or § 50.55(e) obligations as part of the contract supplying the basic component to the licensee/construction permit holder. Vendors supplying basic components that have been categorized as RISC-3 at the time of contract ratification would know that they have no part 21 or § 50.55(e) obligations. However, vendors that provide (or in the past provided) safety-related SSCs would not know, absent communication from the licensee or construction permit holder implementing § 50.69, whether the SSCs which they provided under contract as safety-related are now categorized as RISC-3, thereby removing the vendor’s reporting obligation under either part 21 or § 50.55(e). Failing to inform a vendor that a safety-related SSC which it provided is no longer subject to part 21 or § 50.55(e) reporting because of its reclassification as a RISC-3 SSC could result in unnecessary reporting to the licensee and the NRC. It may also result in unnecessary expenditure of resources by the vendor in determining whether a problem with a supplied SSC rises to the level of a reportable defect or noncompliance under the existing provisions of part 21 and § 50.55(e).

To address the potential for unnecessary reporting under proposed § 50.69, the Commission considered including a new requirement in either proposed § 50.69, or part 21 and § 50.55(e). The new provision would require the licensee or construction permit holder to inform a vendor that a safety-related SSC which it provided has been categorized as RISC-3. After consideration, the Commission believes

that it is unlikely that such a provision would result in any great reduction in the potential scope of reporting by vendors. The NRC does not receive many part 21 reports, so the overall reporting burden to be reduced may be insubstantial. Furthermore, the Commission believes that the proposal could cause confusion, inasmuch as a vendor may supply many identical components to a licensee/holder, with some of the items intended for use in SSCs categorized as RISC-3, and other items intended in non-safety-related applications. A vendor would have some difficulty in determining whether the problem with the supplied SSC potentially affects the SSC recategorized as RISC-3 (as opposed to the supplied SSC used in nonsafety-related applications). The Commission also believes there may be some value in notification of the NRC when defects are identified, as they may reveal issues about the quality processes, or implications for basic components at other facilities. Finally, the NRC notes that the vendor has already been compensated by the licensee for the burden associated with part 21 and § 50.55(e) as part of the initial procurement process. For these reasons, the Commission does not propose to adopt a provision in § 50.69, part 21 or § 50.55(e) requiring a licensee or construction permit holder to inform a vendor of safety-related SSCs that its SSCs have been categorized as RISC-3.

III.4.1.3 Criminal Liability Under Section 223.b. of the AEA

As discussed earlier, Section 206 of the AEA authorizes the imposition of civil penalties for a licensee’s and vendor’s failure to report instances of noncompliance or defects in “basic components” that create a “substantial safety hazard.” However, in addition to the civil penalties authorized by Section 206, criminal penalties may be imposed under Section 223.b. of the AEA on an individual director, officer or employee of a firm that supplies components to a nuclear power plant, that knowingly and willfully violate regulations that results (or could have resulted) in a “significant impairment of a basic component * * *.” Licensees, applicants and vendors should note the difference in the definition of “basic component” in part 21, versus the definition set forth in Section 223.b:

For the purposes of this subsection, the term “basic component” means a facility structure, system, component or part thereof necessary to assure—

(1) The integrity of the reactor coolant pressure boundary,