UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 2, 2002

MEMORANDUM TO: Users of the NRC Regulations Handbook

FROM: Michael T. Lesar, Chief
Rules and Directives Branch
Division Administrative Services
Office of Administration

SUBJECT: ISSUANCE OF SUPPLEMENT 1 TO NUREG/BR-0053, REV. 5

The attached pages constitute Supplement 1 to the NRC Regulations Handbook (NUREG-0053, Rev. 5). This supplement implements recommendations concerning NRC's application of the direct final rule process made by the Office of the Inspector General in its audit report "Review of NRC's Dry Cask Storage Program" (OIG-01-A-11). Supplement 1 revises Part 9 - Direct Final Rules and makes conforming changes to appropriate sample documents.

Please update your copy of the NRC Regulations Handbook as indicated.

Pages to be removed	New pages to be inserted
241-255	241-256
405-426	405-426

If you have any questions concerning this matter or the NRC Regulations Handbook, please contact me at 415-7163 (MTL).

Attachment: As stated

PART 9 - DIRECT FINAL RULES

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9.1 Description.

(a) The direct final rule process is a technique for expediting the issuance of noncontroversial rules. The process may be used where the agency believes that the rule is noncontroversial and significant adverse comments will not be received. It allows the agency to issue the rule without having to go through the review process twice (i.e., at the proposed and final rule stages), while at the same time offering the public the opportunity to challenge the agency's view that the rule is noncontroversial. The former Administrative Conference of the United States (ACUS) endorsed use of the direct final rule process as a means for expediting rulemaking (see ACUS Recommendation 95-4, Procedures for Noncontroversial and Expedited Rulemaking (60 FR 43110; August 18, 1995)). Although not explicitly sanctioned by the Administrative Procedure Act (APA), this process is arguably in substantial compliance with the APA under two rationales:

(1) The process comes within the meaning of the good cause exemption of section 553(b)(B) for bypassing the usual notice-and-comment requirements when public participation is *unnecessary*; i.e., the rule is noncontroversial and unlikely to attract public comment;

(2) The process includes the essential elements of rulemaking required by the APA -- notice, an opportunity for comment, a statement of basis and purpose, and publication of the rule not less than 30 days prior to its effective date -- although these elements are not achieved exactly in the manner envisioned in the APA.

(b) NRC has adopted the direct final rule process and uses the following procedures. An NRC direct final rule becomes effective in a certain number of days, usually 75 days after publication, unless the NRC receives significant adverse comments within a prescribed comment period, usually 30 days after publication. The 45-day period between the close of the public comment period and the effective date of the direct final rule is provided to allow the NRC

sufficient time to evaluate whether any of the comments received are significant adverse comments and, if so, to prepare and publish a withdrawal of the direct final rule as discussed in paragraph (b)(3) of this section. The NRC publishes a companion proposed rule with each direct final rule and announces in the direct final rule that any significant adverse comments received will be considered as comments on the companion proposed rule and that, absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a separate comment period for the action.

(1) If no public comments are received, the NRC publishes a subsequent document that confirms the effective date (see Section 19.8 of this handbook). The direct final rule either becomes effective on the date stated in the direct final rule or at least 30 days after the publication date of the confirmation document, whichever is later, unless the direct final rule grants or recognizes an exemption or relieves a restriction, in which case it becomes effective on the date specified in the direct final rule. An example of this type of rule is a change to 10 CFR Part 72 that amends a spent fuel storage cask certificate of compliance.

(2) If public comments are received but they are not significant adverse comments, the NRC publishes a similar confirmation document. In this document, the NRC may, in special circumstances, choose to explain why the comments received were not considered to be significant adverse comments in order to achieve added transparency to its determinations.

(3) If significant adverse comments are received, the NRC publishes a document in the *Federal Register* that withdraws the direct final rule in whole or in part before the specified effective date. If the NRC desires to proceed with the rulemaking, it prepares and publishes a subsequent final rule that addresses the comments received on the companion proposed rule that was published concurrently with the direct final rule.

(4) If significant adverse comments are received and the NRC is unable to publish a document in the *Federal Register* that withdraws the direct final rule before the specified

effective date, the direct final rule goes into effect. Accordingly, the NRC must return the affected regulations to their status before the direct final rule became effective by publishing a final rule document that removes the regulatory text codified by the direct final rule from the *Code of Federal Regulations*. If the NRC wishes to proceed with the rulemaking, it prepares and publishes a subsequent final rule that addresses the comments received on the companion proposed rule that was published concurrently with the direct final rule.

9.3 Guidance for determining when to use a direct final rule.

The NRC should consider using the direct final rule process for a *noncontroversial* action on which it *does not expect to receive significant adverse comment.*

(a) The NRC staff may determine that the proposed rulemaking action is noncontroversial if --

(1) NRC's experience in using notice-and-comment rulemaking for a particular category of rulemaking reveals that no significant adverse comments are received; or

(2) There is a demonstrated consensus in favor of the rulemaking action by the stakeholders who will be affected; or

(3) NRC staff articulates a reasonable basis for assuming that significant adverse comments are unlikely.

(b) In making the finding under paragraph (a)(3), the NRC staff may determine that significant adverse comments are unlikely if staff has no reason to expect the amendments to be controversial and if the amendments being made by the rule --

(1) Are of a minor nature;

(2) Formalize an existing practice;

(3) Reflect an update to include a new, accepted technology;

(4) Adopt or update a generally accepted standard;

(5) Do not constitute a relaxation of current requirements; or

(6) Otherwise can be shown to be amendments unlikely to generate significant adverse comments.

(c) Types of NRC rulemaking for which the direct final rule process may be appropriate, include, but are not limited to --

(1) The issuance of, or amendment to, a Certificate of Compliance listing in 10 CFR 72.214 if the conditions in paragraph (a) of this section are met.

(2) Rules requiring the use of updated NRC Forms, if the conditions in paragraph (a) of this section are met.

9.5 Direct final rule document.

A direct final rule must meet the all of the procedural and format requirements outlined for final rules in Part 7 of this handbook.

(a) The direct final rule complies with all Office of the Federal Register (OFR) requirements applicable to publication of a final rule. These requirements are outlined in Part 7 of this handbook.

(1) Document headings (Section 7.5).

(2) Preamble format requirements (Section 7.7).

(3) List of subject index terms (Section 7.27).

(4) Words of issuance (Section 7.29).

(5) Amendatory language (Section 7.31).

(6) Authority citation (Section 7.33).

(7) Regulatory text: CFR codification (Section 7.35).

(8) Regulatory text: Headings (Section 7.37).

(9) Form of amendment: Section level or Part level (Section 7.39 or Section 7.41).

(b) The Supplementary Information section in a direct final rule provides the background discussion and specific information necessary to explain the basis and purpose of the regulation. The information included in the Supplementary Information section is sufficient to provide an adequate basis for the rulemaking on the record in the event of a court challenge to the final rule (see Section 7.9 of this handbook). The Supplementary Information section also explains the basis for NRC's conclusion that the rulemaking action is noncontroversial and no significant adverse comments are anticipated. In addition, the Supplementary Information section contains a paragraph describing the direct final rule process such as the following:

Example:

Because NRC considers this action to be noncontroversial, the NRC is using the direct final rule process for this rule. The amendments in this rule will become effective on (insert date 75 days after publication in the *Federal Register*). However, if the NRC receives significant adverse comments on this direct final rule by (insert date 30 days after publication in the *Federal Register*), then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this *Federal Register*. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when --

(A) The comment causes the staff to reevaluate (or reconsider) its position or conduct additional analysis;

(B) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(C) The comment raises a relevant issue that was not previously addressed or considered by the staff.

(2) The comment proposes a change or an addition to the rule and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

(c) In developing and issuing a direct final rule, the NRC complies with all the legal and procedural requirements applicable to a final rule. These issues would typically be addressed in a direct final rule document as indicated in the following paragraphs.

(1) **National Technology Transfer and Advancement Act (Section 7.13).** A direct final rule may adopt a new, generally accepted consensus standard or update a previously accepted general consensus standard. The NRC includes an appropriate version of the standard statement presented in Section 7.13 (c) of this handbook in the direct final rule.

(2) **National Environmental Policy Act (NEPA) (Section 7.15).** A direct final rule either qualifies as a categorical exclusion under 10 CFR 51.22(c) or the NRC prepares an environmental assessment and make a finding that the action has no significant impact (10 CFR 51.32, 51.33, 51.34, 51.35, and 51.119).

(i) If the direct final rule is the type of action that qualifies as a categorical exclusion, include a statement as indicated in Section 7.15 (c)(2) of this handbook.

(ii) If the direct final rule is the type of action for which an environmental assessment was prepared and a finding of no significant impact was made, include a statement as indicated in Section 7.15 (g) of this handbook.

(3) **Paperwork Reduction Act (Section 7.17).** A direct final rule does not impose a new information collection requirement or make a significant change to an existing information collection requirement.

(i) If the direct final rule does not affect Office of Management and Budget (OMB) clearance for an existing information collection requirement, the NRC inserts the statement presented in Section 7.17(e)(3) of this handbook.

(ii) If the direct final rule makes an insignificant change to existing information collection requirements, the NRC inserts the statement presented in Section 7.17(e)(4) of this handbook.

(iii) If the direct final rule and the current CFR Part do not contain an information collection requirement, the NRC inserts the statement presented in Section 7.17(e)(5) of this handbook.

(4) **Regulatory analysis (Section 7.19).** A direct final rule is the type of action for which either a limited regulatory analysis is prepared or for which a regulatory analysis may be eliminated at the discretion of the Commission, the Executive Director for Operations (EDO), a Deputy EDO, or the responsible NRC office director. The NRC either includes a statement that a regulatory analysis was not prepared and provide a brief discussion of the reason why a regulatory analysis is unnecessary or includes a statement concerning the regulatory analysis as indicated in Section 7.19(g) of this section.

(5) **Regulatory Flexibility Act (Section 7.21).** Although the Regulatory Flexibility Act does not apply to a direct final rule because a proposed rule has not been prepared for the action, the NRC typically complies with the requirements of the act to the extent that it certifies that the direct final rule will not have a significant economic impact on a substantial number of small entities. This practice is a precaution in case the NRC does receive significant adverse comment and must reissue the action as a final rule for which the companion proposed rule solicited public comment. The NRC includes a regulatory flexibility certification statement as indicated in Section 7.21 (e)(2) of this handbook.

(6) **Backfit analysis (Section 7.23).** The backfit requirements of 10 CFR Chapter I generally would not apply to the type of rulemaking action for which the direct final rule process is used successfully. The NRC includes a statement to this effect as indicated in Section 7.23 (f)(3) of this handbook.

(7) **Small Business Regulatory Enforcement Fairness Act (Section 7.25).** The congressional review provisions of the Small Business Regulatory Enforcement Fairness Act apply to a direct final rule. Therefore, a report concerning the action is submitted to each House of Congress and the Comptroller General as indicated in Section 7.25 of this handbook. The NRC also requests OMB verification of its determination that the action is not a major rule

as required by the act and include a statement to this effect as indicated in Section 7.25(d) of this handbook.

(d) For a sample direct final rule, see Section 19.6 of this handbook.

9.7 Companion proposed rule to a direct final rule document.

A companion proposed rule is published concurrently with each direct final rule document. The NRC announces in the direct final rule that any significant adverse comments received will be considered as comments on the companion proposed rule and that absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a separate comment period on the action. The companion proposed rule meets all of the procedural and format requirements outlined for proposed rules in Part 5 of this handbook.

(a) The NRC complies with all OFR requirements applicable to publication of a proposed rule. These requirements are outlined in Part 5 of this handbook.

(1) Document headings (Section 5.5).

(2) Preamble format requirements (Section 5.7).

(3) List of subject index terms (Section 5.25).

(4) Words of issuance (Section 5.27).

(5) Amendatory language (Section 5.29).

(6) Authority citation (Section 5.31).

(7) Regulatory text: CFR codification (Section 5.33).

(8) Regulatory text: Headings (Section 5.35).

(9) Form of amendment: Section level or Part level (Section 5.37 or Section 5.39).

(b) The Supplementary Information section in the companion proposed rule to a direct final rule contains a cross-reference to the direct final rule that is published concurrently for the information necessary to explain the basis and purpose of the regulation and the information concerning NRC's compliance with the legal and procedural requirements applicable to the rulemaking action. In addition, the Supplementary Information section to the companion

proposed rule also contains a paragraph describing the direct final rule process and the role of the companion proposed rule such as the following:

Example:

Because NRC considers this action noncontroversial, we are publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on (insert date 75 days after publication in the *Federal Register*). However, if the NRC receives significant adverse comments on the direct final rule by (insert date 30 days after publication in the *Federal Register*), then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action in the event the direct final rule is withdrawn.

(c) For a sample companion proposed rule to a direct final rule see Section 19.7 of this handbook.

9.9 Criteria for determining a significant adverse comment.

The following criteria may be used for determining whether a comment on a direct final rule constitutes a significant adverse comment.

(a) The NRC's definition of a significant adverse comment is taken from ACUS Recommendation 95-4. A significant adverse comment is a comment in which the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.

(b) The following guidance may be used concerning the disposition of an individual comment.

(1) A comment is not adverse if --

(i) The comment supports the rule; or

(ii) The comment is beyond the scope of the rule, that is, the comment presents issues or raises questions outside the scope of the changes being implemented by the rule.

(2) A comment is adverse, but not significant, if –

(i) The comment opposes the rule but provides no reason;

(ii) The comment opposes the rule and provides a reason but the comment does not raise an issue serious enough to warrant a substantive response in a notice-and-comment process (e.g., the reason is frivolous or nonsubstantive); or

(iii) The comment proposes a change or addition to the rule but there is no indication that the commenter would object to the rule going forward as proposed.

(3) Even if a comment is considered adverse but not significant under the criteria in paragraph (b)(2) of this section, the NRC may choose to treat comments that essentially protest or oppose an NRC action without providing a reason or issue that would warrant a substantive

response as significant adverse comments under the NRC's "increase public confidence" initiative.

(4) A comment is adverse and significant if --

(i) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when--

(A) The comment causes the staff to reevaluate (or reconsider) its position or conduct additional analysis;

(B) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(C) The comment raises a relevant issue that was not previously addressed or considered by the staff.

In sum, a comment opposing the rule which is material, i.e. relevant to the rule, and which is non-frivolous and non-trivial, is likely a significant adverse comment under these criteria.

(ii) The comment proposes a change or an addition to the rule and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(iii) The comment causes the staff to make a change (other than editorial) to the rule.

9.11 Withdrawing a direct final rule.

(a) If the NRC receives significant adverse comment on a direct final rule, it publishes a document in the *Federal Register* that withdraws the direct final rule. If the NRC desires to continue with the rulemaking action, it publishes a subsequent final rule in the *Federal Register* that reissues the action with a new, deferred effective date and responds to any comments received on the direct final rule.

(1) The NRC publishes a document in the *Federal Register* that withdraws the direct final rule before the specified effective date. See Section 19.10 of this handbook for a sample document that withdraws a direct final rule.

(2) If the NRC is unable to publish a document in the *Federal Register* that withdraws the direct final rule before the specified effective date, the NRC publishes a final rule document that withdraws the direct final rule and removes the regulatory text codified in that action from the *Code of Federal Regulations*. See Section 19.11 of this handbook for a sample document that withdraws a direct final rule after the effective date and revokes the regulatory text codified by that action.

(b) The NRC may delay the effective date of a direct final rule by publishing a document in the *Federal Register* before the specified effective date that announces the action. This document may either specify a new effective date or indicate that the effective date for the action will be established through publication of a subsequent document in the *Federal Register*. See Section 19.9 of this handbook for a sample document that delays the effective date of a direct final rule.

(c) In special circumstances, the NRC may choose to publish a document in the *Federal Register* that responds to any comments received on a direct final rule that were not considered to be significant adverse comments and, therefore, did not require that the direct final rule be withdrawn. This document responds to any questions or issues that may have been raised by the commenters and indicates why the NRC did not consider the comments to be significant adverse comments. See Section 19.12 of this handbook for a document that responds to public comments received on a direct final rule that were not considered to be significant adverse comments.

FOR A PROPOSED RULE:

WEEKLY REPORT TO THE COMMISSION

OFFICE OF ADMINISTRATION

Proposed Rule To Be Signed by EDO

On _____, 2001, the Executive Director for Operations approved a proposed rule that would amend 10 CFR Part 2 to revise the size standards that apply to whether an NRC licensee would qualify as a small entity under the Regulatory Flexibility Act. This action would establish a separate standard to be used to determine whether a licensee that is a manufacturer would qualify as a small entity, adjust the receipts-based standard to account for the effects of inflation since 1985, and eliminate the separate $1 million size standard for private practice physicians and applies the revised receipts-based standard of $5 million to this class of licensee.

The proposed rule can be found in ADAMS at ML_____.

19.6 Direct final rule.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 30, 40, 50, 60, 61, 70, and 72

RIN: 3150-EE55

EMPLOYEE PROTECTION POLICIES; MINOR AMENDMENTS

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations related to notices to workers and to employee protection policies. This action is necessary to require the use of an updated NRC Form 3, update a telephone number, and clarify the applicability of employment discrimination policies.

EFFECTIVE DATE: The final rule is effective (insert date 75 days after publication in the *Federal Register*), unless significant adverse comments are received by (insert date 30 days after publication in the *Federal Register*). A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without change. If the rule is withdrawn, timely notice will be published in the *Federal Register*.

ADDRESSES: Submit comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

Certain documents related to this rulemaking, including all public comments received, may be viewed and downloaded electronically via the NRC's rulemaking Website at http://ruleforum.llnl.gov. You may also provide comments via this Website by uploading comments as files (any format), if your Web browser supports that function. For information

about the interactive rulemaking Website, contact Ms. Carol Gallagher, (301) 415-5905 (e-mail: CAG@nrc.gov).

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. For more information, contact the NRC Public Document Room Reference staff at 1-800-397-4209, 301-415-4737, or be e-mail to pdr@nrc.gov.

Documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Public Electronic Reading Room on the Internet at http://www.nrc.gov/reading-rm.html. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1-800-397-4209, 301-415-4737, or be e-mail to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Material Safety and Safeguards, telephone (301) 415-5555, e-mail XXX@nrc.gov.

SUPPLEMENTARY INFORMATION:

Because NRC considers this action to be noncontroversial, the NRC is using the direct final rule process for this rule. The amendments in this rule will become effective on (insert date 75 days after publication in the *Federal Register*). However, if the NRC receives significant adverse comments on this direct final rule by (insert date 30 days after publication in the *Federal Register*), then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this *Federal Register*. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when --

(A) The comment causes the staff to reevaluate (or reconsider) its position or conduct additional analysis;

(B) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(C) The comment raises a relevant issue that was not previously addressed or considered by the staff.

(2) The comment proposes a change or an addition to the rule and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

Background

The purpose of these amendments to 10 CFR Part 19 and related sections is to reference the most recent revision of NRC Form 3, update a telephone number, and clarify the applicability of employment discrimination policies to 10 CFR Parts 61 and 76.

NRC regulations in § 19.11, "Posting of notices to workers," specify the June 1993 revision of NRC Form 3, "Notice to Employees," and an old NRC telephone number for obtaining NRC Form 3. A new version of the form was issued in January 1996, and because licensees and applicants are required to prominently post the most current version of NRC Form 3, § 19.11 is

being updated. Related sections in Parts 30, 40, 50, 60, 61, 70, and 72 also have the old NRC telephone number and are being updated.

The primary differences between the old and the new NRC Form 3 are related to reporting violations and safety concerns, the addition of an NRC Safety Hotline and other NRC toll-free numbers, what constitutes discrimination, the realignment of NRC regions, and the actions NRC will take for allegations of harassment, intimidation, or discrimination.

NRC regulations in § 19.20, "Employee protection," were adopted in July 1982. Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste," was adopted in 1982 (47 FR 57446; December 27, 1982), and Part 76, "Certification of Gaseous Diffusion Plants," was adopted in 1994 (59 FR 48944; September 23, 1994). Both Parts 61 and 76 adopted the July 1982 employee protection provisions incorporated in Parts 30, 40, 50, 60, 70, and 72. Section 19.20 is being updated to refer to Parts 61 and 76 for consistency and clarification of employee protection policies.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is requiring the use of an updated NRC Form 3, updating a telephone number, and clarifying the applicability of employment discrimination policies. These actions do not constitute the establishment of a standard that contains generally applicable requirements.

Environmental Impact: Categorical Exclusion

The Commission has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or an amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget (OMB), approval 3150-0044, 10 CFR Part 19; 3150-0017, 10 CFR Part 30; 3150-0020, 10 CFR Part 40; 3150-0011, 10 CFR Part 50; 3150-0127, 10 CFR Part 60; 3150-0135, 10 CFR Part 61; 3150-0009, 10 CFR Part 70; and 3150-0132, 10 CFR Part 72.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

A regulatory analysis has not been prepared for this direct final rule because this rule is considered a minor, nonsubstantive amendment; it has no economic impact on NRC licensees or the public.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact upon a substantial number of small entities.

Any small entity subject to this regulation that determines that because of its size it is likely to bear a disproportionate adverse economic impact should notify the Commission of this opinion in a comment that indicates the following:

(a) The licensee's size and how the regulation would result in a significant economic burden upon the licensee as compared to the economic burden on a larger licensee.

(b) How the regulations could be modified to take into account the licensee's differing needs or capabilities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the regulations were modified as suggested by the licensee.

(d) How the regulation, as modified, would more closely equalize the impact of regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group.

(e) How the regulation, as modified, would still adequately protect public health and safety.

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this rule, and , therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR Chapter I.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

Note: A complete List of Subjects entry was also presented for 10 CFR Parts 30, 40, 50, 60, 61, 70, and 72.

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. 552

and 553, the NRC is adopting the following amendments to 10 CFR Parts 19, 30, 40, 50, 60, 61, 70, and 72.

PART 19--NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

1. The authority citation for Part 19 continues to read as follows:

AUTHORITY: 42 U.S.C 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282, 2297f, 5841, 5851.

2. In § 19.11, the note following paragraph (c) is removed and paragraph (c) is revised to read as follows:

§ 19.11 Posting of notices to workers.

* * * * *

(c)(1) Each licensee and each applicant for a specific license shall prominently post NRC Form 3 (revision dated January 1996), "Notice to Employees."

(2) Copies of NRC Form 3 may be obtained by writing to the regional administrator of the appropriate U.S. Nuclear Regulatory Commission regional office listed in Appendix D to Part 20 of this chapter or by calling the NRC Records Management Branch at (301) 415-7230.

* * * * *

3. Section 19.20 is revised to read as follows:

§ 19.20 Employee protection.

Employment discrimination by a licensee (or a holder of a certificate of compliance issued pursuant to Part 76) or a contractor or a subcontractor of a licensee (or a holder of a certificate of compliance issued pursuant to Part 76) against an employee for engaging in protected activities under this part or Parts 30, 40, 50, 60, 61, 70, 72, 76, or 150 of this chapter is prohibited.

PART 30--RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

4. The authority citation for Part 30 continues to read as follows:

AUTHORITY: 42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282, 5841, 5842, 5846.

Section 30.7 also issued under 42 U.S.C. 5851. Section 30.34(b) also issued under 42 U.S.C. 2234. Section 30.61 also issued under 42 U.S.C. 2237.

5. In § 30.7, the note to paragraph (e)(2) is redesignated as paragraph (e)(3) and revised to read as follows:

§ 30.7 Employee protection.

* * * * *

(e) * * *

(3) Copies of NRC Form 3 may be obtained by writing to the regional administrator of the appropriate U.S. Nuclear Regulatory Commission regional office listed in Appendix D to Part 20 of this chapter or by calling the NRC Records Management Branch at (301) 415-7230.

* * * * *

NOTE: Amendments similar to those made to 10 CFR Part 30 were also presented for 10 CFR Parts 40, 50, 60, 61, 70, and 72.

Dated at Rockville, Maryland, this ___ day of _____, 2001.

For the Nuclear Regulatory Commission.

_____
William D. Travers,
Executive Director for Operations.

19.7 Direct final rule: Companion proposed rule.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 30, 40, 50, 60, 61, 70, and 72

RIN: 3150-EE55

EMPLOYEE PROTECTION POLICIES; MINOR AMENDMENTS

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations related to notices to workers and to employee protection policies. This action is necessary to require the use of an updated NRC Form 3, update a telephone number, and clarify the applicability of employment discrimination policies.

DATES: Comments on the proposed rule must be received on or before (insert date 30 days after publication in the *Federal Register*).

ADDRESSES: Submit comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

Certain documents related to this rulemaking, including all public comments received, may be viewed and downloaded electronically via the NRC's rulemaking Website at http://ruleforum.llnl.gov. You may also provide comments via this Website by uploading comments as files (any format), if your Web browser supports that function. For information about the interactive rulemaking Website, contact Ms. Carol Gallagher, (301) 415-5905 (e-mail: CAG@nrc.gov).

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland.

For more information, contact the NRC Public Document Room Reference staff at 1-800-397-4209, 301-415-4737, or be e-mail to pdr@nrc.gov.

Documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Public Electronic Reading Room on the Internet at http://www.nrc.gov/reading-rm.html. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1-800-397-4209, 301-415-4737, or be e-mail to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-5555, e-mail XXX@nrc.gov .

SUPPLEMENTARY INFORMATION:

For additional information see the direct final rule published in the Rules and Regulations section of this *Federal Register*.

Because NRC considers this action noncontroversial and routine, we are publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on (insert date 75 days after publication in the *Federal Register*). However, if the NRC receives significant adverse comments on the direct final rule by (insert date 30 days after publication in the *Federal Register*), then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when --

(A) The comment causes the staff to reevaluate (or reconsider) its position or conduct additional analysis;

(B) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(C) The comment raises a relevant issue that was not previously addressed or considered by the staff.

(2) The comment proposes a change or an addition to the rule and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

List of Subjects

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

Note: A complete List of Subjects entry was also presented for 10 CFR Parts 30, 40, 50, 60, 61, 70, and 72.

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,

the NRC is proposing to adopt the following amendments to 10 CFR Parts 19, 30, 40, 50, 60, 61, 70, and 72.

PART 19--NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

1. The authority citation for Part 19 continues to read as follows:

AUTHORITY: 42 U.S.C 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282, 2297f, 5841, 5851.

2. In § 19.11, the note following paragraph (c) is removed and paragraph (c) is revised to read as follows:

§ 19.11 Posting of notices to workers.

* * * * *

(c)(1) Each licensee and each applicant for a specific license shall prominently post NRC Form 3 (revision dated January 1996), "Notice to Employees."

(2) Copies of NRC Form 3 may be obtained by writing to the regional administrator of the appropriate U.S. Nuclear Regulatory Commission regional office listed in Appendix D to Part 20 of this chapter or by calling the NRC Records Management Branch at (301) 415-7230.

* * * * *

3. Section 19.20 is revised to read as follows:

§ 19.20 Employee protection.

Employment discrimination by a licensee (or a holder of a certificate of compliance issued pursuant to Part 76) or a contractor or a subcontractor of a licensee (or a holder of a certificate of compliance issued pursuant to Part 76) against an employee for engaging in protected activities under this part or Parts 30, 40, 50, 60, 61, 70, 72, 76, or 150 of this chapter is prohibited.

PART 30--RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

4. The authority citation for Part 30 continues to read as follows:

AUTHORITY: 42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282, 42 U.S.C. 5841, 5842, 5846.

Section 30.7 also issued under 42 U.S.C. 5851. Section 30.34(b) also issued under 42 U.S.C. 2234. Section 30.61 also issued under 42 U.S.C. 2237.

5. In § 30.7, the note to paragraph (e)(2) is redesignated as paragraph (e)(3) and revised to read as follows:

§ 30.7 Employee protection.

* * * * *

(e) * * *

(3) Copies of NRC Form 3 may be obtained by writing to the regional administrator of the appropriate U.S. Nuclear Regulatory Commission regional office listed in Appendix D to Part 20 of this chapter or by calling the NRC Records Management Branch at (301) 415-7230.

* * * * *

NOTE: Amendments similar to those made to 10 CFR Part 30 were also presented for 10 CFR Parts 40, 50, 60, 61, 70, and 72.

Dated at Rockville, Maryland, this ___ day of _____, 2001.

For the Nuclear Regulatory Commission.

_____
William D. Travers,
Executive Director for Operations.

19.8 Direct final rule: Confirmation of effective date.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN: 3150-EE77

List of Approved Spent Fuel Storage Casks: (VSC-24)
Revision, Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of a direct final rule that was published in the *Federal Register* on September 22, 1999 (64 FR 51187). This direct final rule amended the NRC's regulations to revise the Pacific Sierra Nuclear Associates (PSNA) VSC-24 cask listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to the Certificate of Compliance.

EFFECTIVE DATE: The effective date of December 6, 1999, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. These same documents may also be viewed and downloaded electronically via the rulemaking Website (http://ruleforum.llnl.gov). For information about the interactive Website, contact Ms. Carol Gallagher (301) 415-5905; e-mail CAG@nrc.gov.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-7777, e-mail XXX@nrc.gov.

SUPPLEMENTARY INFORMATION:

On September 22, 1999 (64 FR 51187), the NRC published a direct final rule amending its regulations to revise the PSNA VSC-24 cask listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to the Certificate of Compliance. In the direct final rule, the NRC stated that if no significant comments were received, the direct final rule would become effective on December 6, 1999. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this ___ day of _____, 1999.

For the Nuclear Regulatory Commission.

_____
Michael T. Lesar, Chief,
Rules and Directives Branch,
Division of Administrative Services,
Office of Administration.

19.9 Direct final rule: Delay of effective date.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN: 3150-EE77

List of Approved Spent Fuel Storage Casks: (VSC-24)
Revision, Delay of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Delay of effective date.

SUMMARY: On September 22, 1999 (64 FR 51187), the Nuclear Regulatory Commission (NRC) published a direct final rule amending its regulations to revise the Pacific Sierra Nuclear Associates VSC-24 cask listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to the Certificate of Compliance. The direct final rule was to have become effective December 6, 1999, absent significant adverse comments. The NRC is delaying the effective date of this action for 30 days to allow it sufficient time to consider the issues raised by public comment.

EFFECTIVE DATE: The effective date of this final rule has been extended to January 5, 2000.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-7777, e-mail XXX@nrc.gov.

Dated at Rockville, Maryland, this ___ day of _____, 1999.

For the Nuclear Regulatory Commission.

_____
Annette Vietti-Cook,
Secretary of the Commission.

19.10 Direct final rule: Withdrawal.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN: 3150-EE77

List of Approved Spent Fuel Storage Casks: (VSC-24)
Revision, Withdrawal of Direct Final Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a direct final rule that would have revised the Pacific Sierra Nuclear Associates (PSNA) VSC-24 cask listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to the Certificate of Compliance. The NRC is taking this action because it has received significant adverse comments in response to an identical proposed rule that was published concurrently with the direct final rule.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-7777, e-mail XXX@nrc.gov.

SUPPLEMENTARY INFORMATION:

On September 22, 1999 (64 FR 51187), the NRC published a direct final rule in the *Federal Register* amending its regulations in 10 CFR 72.214 to revise the PSNA VSC-24 cask listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to the Certificate of Compliance. Amendment No. 1 modifies the present cask system design to permit a licensee to store burnable poison rod assemblies in a VSC-24 cask along with spent fuel under the provisions of the general license issued under 10 CFR 72.210. The direct final rule was to become effective on December 9, 1999. The NRC also concurrently published an identical proposed rule on September 22, 1999 (64 FR 51270).

In the direct final rule of September 22, 1999, the NRC stated that if any significant adverse comments were received, a notice of timely withdrawal of the direct final rule would be published in the *Federal Register*. As a result, the direct final rule would not take effect.

On December 3, 1999 (64 FR 67700), the NRC published a document extending the effective date of the direct final rule from December 6, 1999, to January 5, 2000. The NRC received significant adverse comments on the direct final rule; therefore, the NRC is withdrawing the direct final rule. As stated in the direct final rule of September 22, 1999, the NRC will address the comments received on the companion proposed rule of September 22, 1999, in a subsequent final rule. The NRC will not initiate a second comment period on this action.

Dated at Rockville, Maryland, this ___ day of _____, 1999.

For the Nuclear Regulatory Commission.

_____
William D. Travers,
Executive Director for Operations.

19.11 Direct final rule: Withdrawal and revocation of regulatory text.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 70

RIN: 3150-EE99

Criticality Accident Requirements; Withdrawal of Direct Final Rule and Revocation of Regulatory text

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a direct final rule that would have amended the Commission's regulations to provide light-water nuclear power reactor licensees with greater flexibility in meeting the requirements that licensees authorized to possess more than a small amount of special nuclear material (SNM) maintain a criticality monitoring system in each area in which the material is handled, used, or stored. The NRC is taking this action because it has received significant adverse comments in response to an identical proposed rule which was concurrently published in the *Federal Register.* Because the effective date for the direct final rule has passed, the NRC is removing the regulatory text codified in that action.

EFFECTIVE DATE: February 25, 1998.

FOR FURTHER INFORMATION CONTACT: (Name of Contact Person), Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-9999, e-mail XXX@nrc.gov.

SUPPLEMENTARY INFORMATION:

On December 3, 1997 (62 FR 63825), the Nuclear Regulatory Commission published a direct final rule in the *Federal Register* that amended its regulations to provide persons licensed to construct or operate light-water nuclear power reactors with the option of either meeting the criticality accident requirements of 10 CFR 70.24(a) in handling or storage areas for SNM or electing to comply with the requirements that would be incorporated into 10 CFR

50.68. The direct final rule was to become effective on February 17, 1998. The NRC also concurrently published an identical proposed rule on December 3, 1997 (62 FR 63911). In these documents, the NRC indicated that if it received significant adverse comments in response to the action, the NRC would withdraw the direct final rule and would consider the comments received in response to the proposed rule and would address these comments in a subsequent final rule. Therefore, the Commission is withdrawing the direct final rule of December 3, 1997. The public comments received will be addressed in a subsequent document issued as either a notice of final rulemaking or in a notice of withdrawal of the proposed rule.

Because this notice of withdrawal is being published after the effective date of February 17,1998, for the direct final rule the regulatory text presented in the direct final rule of December 3, 1997, must be removed from the *Code of Federal Regulations.* Therefore, the provisions added at 10 CFR 50.68 are being removed and the text of §70.24 (d) is being restored to the text of the paragraph that was in effect before the amendment of that paragraph in the direct final rule of December 3, 1997.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, 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. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 50 and 70.

PART 50 - DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION OF FACILITIES

1. The authority citation for Part 50 continues to read as follows:

AUTHORITY: 42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2239, 5841, 5842, 5846.
Sec. 50.78 also issued under 42 U.S.C. 2152. Secs. 50.80-50.81 also issued under 42 U.S.C. 2234. Secs. 50.100-50.102 issued under 42 U.S.C. 2236.

§ 50.68 [Removed]

2. Section 50.68 is removed.

PART 70 - DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

3. The authority citation for Part 70 continues to read as follows:

AUTHORITY: 42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f, 5841, 5842, 5845, 5846.
Secs. 70.1 (c) and 70.20a(b) also issued under 42 U.S.C. 10155, 10161. Sec. 70.7 also issued under 42 U.S.C. 5851. Sec. 70.21 also issued under 42 U.S.C. 2152. Sec. 70.31 also issued under 42 U.S.C. 2077. Secs. 70.36 and 70.44 also issued under 42 U.S.C. 2234. Sec. 70.61 also issued under 42 U.S.C. 2236, 2237. Sec. 70.62 also issued under 42 U.S.C. 2138.

4. In §70.24, paragraph (d) is revised to read as follows:

§ 70.24 Criticality accident requirements.

* * * * *

(d) Any licensee who believes that good cause exists why he or she should be granted an exemption in whole or in part from the requirements of this section may apply to the Commission for the exemption. The application must specify the reason for the relief requested.

Dated at Rockville, Maryland, this ___ day of _____, 1999.

For the Nuclear Regulatory Commission.

_____
Annette Vietti-Cook,
Secretary of the Commission.