

NUCLEAR REGULATORY COMMISSION

10 CFR Part 1

RIN 3150-AI17

Emergency Preparedness Policies Developed for Nuclear Materials Facilities

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations that govern organization and functions of NRC offices. This action is necessary to clarify emergency preparedness program responsibilities of the Office of Nuclear Security and Incident Response. The current limiting reference of "nuclear reactors" will be replaced with the phrase "nuclear facilities."

**DATES:** The final rule is effective on [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 a change. If the NRC receives any significant adverse comments, the NRC will publish a document that withdraws the direct final rule and addresses the comments received in a final rule as a response to the companion proposed rule published elsewhere in this issue of the *Federal Register*.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number (RIN 3150-A117) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: [SECY@nrc.gov](mailto:SECY@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking website to Carol Gallagher (301) 415-5905; e-mail [cag@nrc.gov](mailto:cag@nrc.gov).

Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415-1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Document 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 PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Kevin R. O'Sullivan, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-8112, e-mail [kro2@nrc.gov](mailto:kro2@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The NRC's regulations at 10 CFR Part 1 identify the responsibilities of NRC program offices. On November 16, 2005 (70 FR 69422), the NRC amended 10 CFR Part 1 to add, in a new § 1.46, the program responsibilities of the Office of Nuclear Security and Incident Response (NSIR). Section 1.46(c) specifies that NSIR develops emergency preparedness policies, regulations, programs, and guidelines for currently licensed nuclear reactors and potential new nuclear reactors.

The only revision to 10 CFR 1.46 now being made is to 10 CFR 1.46(c) to remove reference to "nuclear reactors" and add the term "nuclear facilities."

## **Discussion**

Section 1.46(c) specifies that NSIR develops emergency preparedness policies, regulations, programs, and guidelines for both currently licensed nuclear reactors and potential new nuclear reactors. The emergency preparedness programs for other nuclear facilities, including fuel cycle, spent fuel storage, transportation, waste, and various non-fuel cycle materials facilities, have been the responsibility of the Office of Nuclear Material Safety and Safeguards (NMSS). In January 2004, the Commission announced the consolidation of emergency preparedness and incident response functions within NSIR to centralize policy and program oversight of these activities.

This rule removes the limiting reference of “nuclear reactors” and adds the phrase “nuclear facilities” to the end of § 1.46(c).

This revision clarifies that NSIR has the programmatic responsibility for emergency preparedness policies, regulations, programs, and guidelines for all of the nuclear facilities that are under NRC jurisdiction. The transfer of certain emergency preparedness program responsibilities from NMSS to NSIR is being undertaken consistent with those Offices’ management commitments.

## **Procedural Background**

Because the NRC considers this action to be non-controversial, the NRC is using the direct final rule process for this rule. 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], the NRC will publish a document that withdraws the direct final rule and address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this issue of the *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 NRC 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 NRC 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.

### **Voluntary Consensus Standards**

The National Technology Transfer 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 the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC is amending its regulations to clarify NSIR emergency preparedness program responsibilities. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

### **Agreement State Compatibility**

Under the “Policy Statement on Adequacy and Compatibility of Agreement State Programs” approved by the Commission on June 30, 1997, and published in the Federal Register on September 3, 1997 (62 FR 46517), this portion of regulations is designated Category “NRC” and therefore, is not a matter of Compatibility. Although an Agreement State may not adopt program elements reserved for NRC, it may inform its licensees of certain requirements through a mechanism that is consistent with the particular States administrative procedures laws, but does not confer regulatory authority on the State.

### **Plain Language**

The Presidential Memorandum dated June 1, 1998, entitled, “Plain Language in Government Writing” directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading ADDRESSES above.

### **Environmental Impact: Categorical Exclusion**

The NRC has determined that this direct final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this direct final rule.

### **Paperwork Reduction Act Statement**

This direct final rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

### **Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

### **Regulatory Analysis**

A regulatory analysis has not been prepared for this direct final rule because this rule is considered a minor non-substantive amendment; it has insignificant economic impact on NRC licensees and 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 on a substantial number of small entities. This rule merely clarifies NSIR programmatic responsibilities.

## **Backfit Analysis**

The NRC has determined that the backfit rule does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

## **Congressional Review Act**

As required by the Congressional Review 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 in 10 CFR Part 1**

Organization and function (Government agencies).

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 Part 1.

**PART 1 – STATEMENT OF ORGANIZATION AND GENERAL INFORMATION**

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

AUTHORITY: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85-256, 71 Stat. 579, Pub. L. 95-209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat.1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

2. In § 1.46, paragraph (c) is revised to read as follows:

§ 1.46 Office of Nuclear Security and Incident Response.

\* \* \* \* \*

(c) Develops emergency preparedness policies, regulations, programs, and guidelines for nuclear facilities;

\* \* \* \* \*

Dated at Rockville, Maryland, this 8<sup>th</sup> day of May, 2007.

For the Nuclear Regulatory Commission.

/RA/  
Martin J. Virgilio,  
Acting Executive Director for Operations.

\* \* \* \* \*

Dated at Rockville, Maryland, this 8<sup>th</sup> day of May, 2007.

For the Nuclear Regulatory Commission.

/RA/

Martin J. Virgilio,  
Acting Executive Director for Operations.

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