

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

Reply to the Attention of:



FRIB

FFR 1 1999

Director Carl J. Paperillo
Office of Nuclear Material Safety
and Safeguards
Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Mr. Paperillo:

The Occupational Safety and Health Administration appreciates the opportunity to comment on the U.S. Nuclear Regulatory Commission's (NRC) process to amend its regulation (10 CFR Part 70) for domestic licensing of special nuclear material.

After reviewing your regulatory amendments of 10 CFR Part 70, OSHA has several comments we would like to discuss.


The Agency's comments are as follows:

- The Agency strongly believes once NRC puts into effect a final rule which generically addresses chemical hazards at NRC-licensed facilities, OSHA would be preempted from enforcing any of its standards, rules or other requirements with respect to chemical hazards at these facilities. This preemption would extend not only to Process Safety Management but most likely to other rules relating to hazards of flammable, explosive, corrosive or toxic chemicals, including requirements for such things as respiratory protection, confined space entry, lockout/tagout, etc. (e.g. p. 5, (c)(2) & (3)). A generic NRC requirement for worksite hazard analyses or safety programs would be even more preemptive of OSHA, calling into question almost any assertion of OSHA responsibility for worker safety at NRC-licensed facilities. OSHA understands that NRC's proposed is not intended to intentionally preempt OSHA, but only to supplement our requirements. Unfortunately, we believe that the NRC's latest draft continues to preempt OSHA on important matter.
- NRC has made certain additions to this rule for the express purpose of matching the provisions in OSHA's Process Safety Management rule. Statements by NRC of intent to "supplement" rather than replace OSHA chemical regulation will not cure the problem; the case law under OSH Act (4)(b)(1) makes it quite clear that two agencies cannot regulate the same working condition. Under (4)(b)(1), two agencies cannot agree to "share" jurisdiction; what NRC covers, it preempts.

- In developing its proposal, NRC may want to rely less on the 1988 Memorandum Of Understanding (MOU) and more on the law itself and how 4(b)(1) has been interpreted by the courts. The MOU is a set of self-developed guidelines for OSHA and NRC to use in attempting to divide jurisdiction in a practical way. Once NRC issues a regulation addressing chemical hazards, an MOU would be of no use to OSHA and no benefit to the workers at NRC facilities. MOU's can sometimes be useful in delineating what subject matter each agency covers, or for establishing a process for agencies to confer and clarify their respective jurisdiction in particular cases, but if an NRC rule clearly addresses chemical hazards OSHA is preempted by operation of law. The language in an MOU cannot override such a statutory preemption. It should be noted, the MOU may not reflect OSHA's current position on how much coverage we should assume at NRC-licensed facilities
- The Agency has concerns with the decommissioning of a facility (p.4, (a)(3)). Does this include demolition? While there may be some exposure to chemicals during decontamination, a company could argue that the entire demolition operation belongs to NRC. Many, if not most, of the hazards found at a demolition site would be better addressed by OSHA expertise.
- In the Release Notes (top of page 2), the NRC mentions that the document "does not reference the quantitative Emergency Response Planning Guidelines (ERPG) and Acute Exposure Guideline Limits (AEGL) chemical consequence standards, but adopts equivalent language". The annotation on page 3, however, states that "The ERPG and AEGL would be identified as acceptable standards in the SRP". The exposure limits found in the AEGL should not be permit exposures in excess of the OSHA PELs. There should also be a mechanism in the AEGL document to assure that the limits are kept up to date with any changes in corresponding OSHA PEL's.

The Agency again would like to thank the Nuclear Regulatory Commission for allowing us to comment on this important regulation. If you have any questions concerning our comments, please contact me at (202) 693-2400.

Sincerely,



Craig Obey
Director, Office of Intra-governmental Affairs
Directorate of Policy