



June 3, 2005

The Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attn: Rulemakings and Adjudications Staff

Dear Sirs:

In accordance with 10 CFR 2.802, attached is a Petition for Rulemaking submitted on behalf of the Florida Department of Health, Bureau of Radiation Control.

If you have any questions or require additional information, please contact me at 850-245-4266.

Sincerely,

A handwritten signature in cursive script, reading "William A. Passetti".

William A. Passetti, Chief
Bureau of Radiation Control
Florida Department of Health

PETITION FOR RULEMAKING TO CHANGE COMPATIBILITY OF 10 CFR 31.5(c)(13)(i)

I. ISSUE

The Florida Department of Health, Bureau of Radiation Control (BRC) requests the Nuclear Regulatory Commission (NRC) to change the compatibility of 10 CFR 31.5(c)(13)(i) from category "B" to category "C".

The Florida BRC believes that the decision of whether and how to register additional types and quantities of generally licensed (GL) devices beyond what the NRC requires should be a decision left to the state with the authority for regulating these devices. Florida has had well-established requirements for the registration and regulation of GL devices for many years prior to the NRC adopting regulations to register certain GL devices. The NRC's decision to assign a compatibility category "B" for 10 CFR 31.5(c)(13)(i), will require Florida to reduce its current health, safety, and security regulatory control of GL devices in order to be compatible with the less stringent NRC regulations.

II. STATEMENT OF PETITIONER'S INTEREST

Florida entered into an agreement with the NRC, formerly the Atomic Energy Commission, under subsection 274b of the Atomic Energy Act on July 1, 1964. Florida issues and currently regulates over 1500 radioactive material licenses, promulgates regulations and enforces these regulations under the authority of Chapter 404, Florida Statutes, and Chapter 64E-5, Florida Administrative Code. The NRC periodically reviews the performance of Florida's program thereby assuring compatibility with the NRC's regulatory requirements.

III. BACKGROUND

Florida has had a GL program since 1979 which requires registration of all GL devices with the exception of some tritium exit signs. The program includes source registration, fees, annual inventories and inspections. This program was put in place for many reasons including: protection of the public health & safety; protection of the environment, and; to keep sources out of the scrap metal, and other undesirable streams. Florida has been one of several states that have encouraged the NRC over the years to adopt a similar program.

On February 16, 2001, the NRC revised portions of 10 CFR Parts 30, 31, and 32 to add new requirements for manufacturers, distributors and users of generally licensed devices. The combined changes were called the Generally Licensed Device Rule. As part of this revision, the NRC established a new registration program for certain GL devices in 10 CFR 31.5(c)(13) and assigned a compatibility category of "B". The Florida BRC has instituted a number of changes required by this rule as legally binding license conditions. Florida BRC is also working on promulgating rules to address these issues with the exception of the new registration requirements that would force the Florida BRC to adopt less stringent registration and accountability standards for certain GL devices containing radioactive material.

IV. PROPOSED ACTIONS

The Florida BRC proposes that the compatibility category for 10 CFR 31.5(c)(13)(i) be changed from "B" to "C".

V. JUSTIFICATION

NRC's procedures found in Management Directive 5.9, for categorizing program elements or regulations, states that to be included in Category "B", an NRC program element is to be one that applies to activities that have **direct and significant effects** in multiple jurisdictions (emphasis added). Examples include; transportation requirements, approval of products that are distributed nationwide, and definitions of products. The registration of additional GL devices by Florida BRC does not have a direct and significant effect in multiple jurisdictions.

States and the NRC have had different GL requirements for years with little discussion of any transboundary problems. Any actions concerning the registration of additional GL devices in Florida would be between the state and individuals in Florida. This registration process does not have any direct and significant effect on device manufacturers or distributors, the transportation of the devices, the requirements for approval, or the movement of devices into or out of Florida.

Florida's ability to register, inventory, and inspect all GL devices provides many benefits for the safety and security of Florida's citizens and visitors. An example of this that would not have occurred if Florida BRC didn't have its current GL program was when a large number of polonium static eliminators malfunctioned causing significant contamination in many facilities around the country. The fact that Florida BRC had these devices registered allowed quick and efficient response to Florida facilities for monitoring and clean-up. In addition, Florida BRC uses its GL program as one means to enhance the security of radioactive sources. If required to move to NRC's registration scheme, Florida would cease to be able to register and account for over 1,000 radioactive sources in GL devices currently being regulated. The Florida BRC feels that the assignment of compatibility category "B" for 10 CFR 31.5(c)(13)(i) is not appropriate.

NRC's categorization criteria further states that for a program element to be included in Category "C", it should be one that the essential objective should be adopted by an Agreement State to avoid conflicts, duplications, or gaps in the regulation of agreement material on a nationwide basis and that, if not adopted, would result in an undesirable consequence.

The Florida BRC believes that its ability to continue to register all GL devices clearly meets the essential objective of NRC's Generally Licensed Device Rule. We further believe that 10 CFR 31.5(c)(13)(i) meets the criteria for, and should be categorized as, compatibility category "C" in accordance with Management Directive 5.9.

VI. CONCLUSION

The Florida BRC strongly believes that there should be a minimum standard for registering and regulating certain GL devices containing radioactive material throughout the country. However, states such as Florida should not be forced to relax existing health, safety, and security regulatory controls for the sake of being identical with that minimum standard. Registering additional GL devices in Florida beyond what is required in 10 CFR 31.5(c)(13)(i) does not have direct and significant transboundary implications and therefore the assigned compatibility category for this NRC rule should be changed to "C".