

December 16, 2011

MEMORANDUM TO: R. W. Borchardt
Executive Director for Operations

FROM: Mark A. Satorius, Director **/Cynthia Carpenter RA for/**
Office of Federal and State Materials
and Environmental Management Programs

SUBJECT: CLOSURE OF A PETITION FROM THE ORGANIZATION OF
AGREEMENT STATES, INC., AND A REQUEST FROM THE
STATE OF FLORIDA

Your approval and signature are requested on the enclosed letters to the petitioner and requester, and the enclosed *Federal Register* Notice (FRN) (Enclosures 1, 2 and 3). The notification for the Commission is Enclosure 4.

The U.S. Nuclear Regulatory Commission (NRC or Commission) received a petition for rulemaking (PRM) from the Organization of Agreement States, Inc. (OAS), dated June 27, 2005. The petition was assigned Docket Number PRM-31-5. The petitioner requested that the NRC amend its regulations to strengthen the regulation of radioactive materials by requiring a specific license for higher-activity devices that are currently available under the general license in Title 10 of the *Code of Federal Regulations* (10 CFR) 31.5, and by changing the compatibility category designation of 10 CFR 31.6 from B to C. The NRC also received a request from the Bureau of Radiation Control of the Florida Department of Health, dated June 3, 2005, requesting that the NRC change its compatibility category designation of 10 CFR 31.5(c)(13)(i) from B to C. This request was included with the OAS petition under PRM-31-5. The notice of receipt of the petition and request was published on December 20, 2005 (70 FR 75423). The comment period closed on March 6, 2006. Four comment letters were received.

The NRC considered the petition request and supporting rationale, determined that the issues and concerns raised merited further consideration, and initiated a rulemaking. On August 3, 2009, the NRC published a proposed rule, "Limiting the Quantity of Byproduct Material in a Generally Licensed Device" (74 FR 38372). The proposed rule would have amended the NRC regulations to limit the quantity of certain byproduct material allowed in a generally licensed device to below 1/10 of the International Atomic Energy Agency's Category 3 thresholds; licensees with devices containing byproduct material at or above this limit would have been required to obtain a specific license. The proposed rule also would have changed the compatibility category of 10 CFR 31.5(a), 10 CFR 31.5(c)(13)(i) and 10 CFR 31.6 from Category B to C.

CONTACT: Solomon Sahle, FSME/DILR
301-415-3781

The comment period for the proposed rule ended on October 19, 2009, and 55 comment letters were received. The commenters on the proposed rule included Federal agencies, States, licensees, industry organizations, environmental advocacy groups, and individuals. Staff sent a final rule paper, SECY-10-0105, entitled "Limiting the Quantity of Byproduct Material in a Generally Licensed Device," to the Commission on August 10, 2010.

However, in a Staff Requirements Memorandum (SRM), dated December 2, 2010, the Commission disapproved the publication of the final rule, but approved revising the compatibility categories of 10 CFR 31.5 and 31.6 from B to C.

For the reasons provided in the enclosed FRN and consistent with the Commission's SRM, the NRC recommends that PRM-31-5 be denied in part, but that the compatibility designations for 10 CFR 31.5 and 10 CFR 31.6 be changed from B to C. In summary, the petition is recommended for partial denial because the Commission determined that there is not a clear safety risk reduction or security enhancement that would justify the proposed threshold for requiring a specific license. The appropriate Congressional committees will be informed.

Enclosures:

1. Letter to Petitioner
2. Letter to Requester
3. *Federal Register* Notice
4. Notice of Petition Closure

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Enclosures:

1. Letter to Petitioner (OAS)
2. Letter to Requester (FL)
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