

September 12, 1995

Note to WG Agreement State Members

From Joel Lubenau

Re Agreement State Programs for GLs

The Working Group charter and meeting announcement should be issued today or tomorrow; we're still ironing out details for the meeting rooms. Also going into the mail soon will be an information package for the meeting for WG members. In the meantime we're developing the agenda for the initial meeting. One of the issues that we will need to review is the regulatory approach for devices containing RAM especially GL devices. Each of your States has implemented or is implementing a regulatory program for GLs that is significantly different from that of the NRC and it would be useful to learn about your State's experiences. I'd like to ask each of you to make an informal (oral) report on your State's program: Why the State undertook the program, how it functions, how do you measure success and how much does it cost? Would 20 minutes each be enough for such a presentation? Regarding documentation, I think a list of pertinent statutes, regulations and reports together with a single copy of each would be sufficient. Let me know by fax or e-mail by Monday, September 18th if this is do-able. Thanks.

Radioactive Materials and Devices Sought  
CRCPD Notes\* of November 1995

H <sup>3</sup>	>1 kCi; Tom Cantey, Savannah River Lab, 803/725-7301
H <sup>3</sup> Exit signs	gas; Bebig Inc., Scott Kangas, 312/251-0611 John Lash, Chem-Nuclear, 803/259-1119, fax 803/541-7302 Self Powered Lighting, Joe Zanfordino, 914/592-8230
Co <sup>60</sup>	J. L. Shepard & Assoc., 818/898-2361, fax 818/361-8095 Joe Tenorio, G.E. Vallecitos Lab, 510/862-4256
Kr <sup>85</sup>	Qual-X Corp., Art Mahon, 614/881-5543 Bebig Inc., Scott Kangas, 312/251-0611
Sr <sup>90</sup> /Y <sup>90</sup>	>10 mCi; Bebig Inc., Scott Kangas, 312/251-0611 J. L. Shepard & Assoc., 818/898-2361, fax 818/361-8095 ~1 Ci; Jeff Cromwell, 510/794-0806
Cs <sup>137</sup>	North American Scientific, Al Zirkes, 818/503-9201 J. L. Shepard & Assoc., 818/898-2361, fax 818/361-8095 >3 Ci soluble compound; Karl Amlauer, Isotope Products, 818/843-7000, fax -6168 >10 mCi; Bebig Inc., Scott Kangas, 312/251-0611 25-40 mCi needles or tubes; Jeff Cromwell, 510/794-0806
Ru <sup>106</sup> , Ce <sup>144</sup> , Isotopes > Pb <sup>210</sup>	et al unusual radioisotopes; North American Scientific, Al Zirkes, 818/503-9201 >50 mCi; unsealed & soluble, Karl Amlauer, Isotope Products, 818/843-7000
Ra <sup>226</sup>	>50 mg; Robert Schenter, Westinghouse Hanford, 509/376-3935, fax -6933
Ra <sup>228</sup>	Al Zirkes, North American Scientific, 818/503-9201
Ac <sup>227</sup> , Th <sup>229</sup>	Robert Schenter, Westinghouse Hanford, 509/376-3935
Th <sup>228</sup>	North American Scientific, Al Zirkes, 818/503-9201
U <sup>232</sup>	North American Scientific, Al Zirkes, 818/503-9201
U	Nat., Dep., or Enr., but unirradiated; Tom Winn, 615/576-0630
Pu <sup>238</sup>	North American Scientific, Al Zirkes, 818/503-9201 ~50 mCi soluble; Karl Amlauer, Isotope Products, 818/843-7000, fax -6168 ~1 mCi; Jim Williams, American Ecology, 713/624-1900
Pu <sup>238</sup> n sources	Register with Sherry Jones, Los Alamos, 505/665-2712
Pu <sup>239</sup>	North American Scientific, Al Zirkes, 818/503-9201
Pu <sup>239</sup> n sources	Register with Tom Cantey, Savannah River, 803/725-7301, fax -8272 Sherry Jones, Los Alamos, 505/665-2712
Am <sup>241</sup>	>1 Ci sources; Allied Ecology, 510/463-9280 >5 mCi; Bebig Inc., Scott Kangas, 312/251-0611 ~1 Ci soluble; Karl Amlauer, Isotope Products, 818/843-7000, fax -6168 ~1 Ci; J. L. Shepard & Assoc., 818/898-2361, fax 818/361-8095 ~1 Ci; Jeff Cromwell, 510/794-0806
Am <sup>241</sup> n sources	Register with Sherry Jones, Los Alamos, 505/665-2712
Am <sup>241</sup> Be n sources	>1 Ci; J.L. Shepard & Assoc., 818/898-2361, fax 818/361-8095 >1 Ci; Bebig Inc., Scott Kangas, 312/251-0611
Cf <sup>250</sup>	North American Scientific, Al Zirkes, 818/503-9201
Cf <sup>252</sup>	J. L. Shepard & Assoc., 818/898-2361, fax 818/361-8095 Joe Tenorio, G.E. Vallecitos Lab, 510/862-4256 Tom Winn, Oak Ridge Operations, 615/576-0630, fax -5401
TRU > Am	Tom Winn, Oak Ridge Operations, 615/576-0630, fax -5401
Medical devices	Cari Borrás, Pan Am World Health Organization, 202/861-3222
Therapy devices	Troy Hedger, Alpha Omega Services Inc., 800/346-7894
(diverse)	Electronic bulletin boards, radsafe@romulus.ohs.uiuc.edu and 'National Materials Exchange Network,' 509/466-1019

CRCPD also maintains a list of radioactive materials and devices available for adoption.  
For additions or corrections to these lists, telephone Terry Devine, 502/227-4543.

\* This information is not to be construed as an endorsement by the CRCPD of the services listed here.

November 22, 1995

Note to file

Re Derivation of gauge population estimates for SMA

In response to a request from Chris Stacey of the Steel Manufacturers Association (SMA) I provided the following estimates of the numbers of licensed nuclear gauges distributed in the US (attachment):

<u>Total</u>	<u>Excluding "Small" Gauges</u>
Specifically licensed...32,000.....	28,000
Generally Licensed.....129,000.....	58,000
Total.....	161,000.....86,000.

These estimates were accompanied by a number of caveats which, in sum, emphasized that the values were estimates only and subject to further refinement or correction.

The estimates were derived from data provided by and in consultation with Steve Baggett.

In 1993 it was estimated that there were 2,300 specific licensees authorized to use nuclear gauges. Such licensees may have anywhere from one to several hundred gauges; Baggett provided an estimate of 4.7 gauges per license based on limited survey data. Multiplying 2,300 by 4.7 yields 10,810 gauges under NRC jurisdiction.

To account for gauges used in the Agreement States, note was made of the ratio of all NRC materials specific licenses to Agreement State specific licenses, 7,000+/15,000 or roughly, 1:2. It was assumed that this same ratio would apply to gauge licenses leading to a total for the U.S. of 10,810 x 3 or 32,430 (rounded off to 32,000).

In 1993 it was estimated that there were 31,600 persons possessing 450,000 radioactive devices under the general license in 10 CFR 31.5. Of these, 42,900 were nuclear gauges as follows:

<u>Isotope</u>	<u>Number</u>	<u>Max Ci</u>
<sup>137</sup> Cs	10,590	4
<sup>241</sup> Am	5,860	5
<sup>90</sup> Sr	2,450	1
<sup>85</sup> Kr	330	1.5
<sup>60</sup> Co	50	1
Other	23,620	-


To again account for gauges licensed in the Agreement States, the number of gauges under NRC jurisdiction, 42,900 was multiplied by 3 yielding 128,700 gauges distributed to general licensees in the U.S. (rounded off to 129,000).

The total population of nuclear gauges is then the sum of the SL and GL gauges or 161,000.

It can be argued that an estimate of gauge populations should not include the smaller gauges because they do not present significant radiological hazards to that metal recyclers that encounter them (although if found they must be secured and arrangements made for proper transfer or disposal which will cost money). If these gauges are excluded, then the estimates of this population of licensed nuclear gauges distributed are derived as follows:

Of the 2,300 specifically licensed NRC gauge licenses, 300 are for relatively small quantities of radioactive materials in devices such as gas chromatographs that would present minimal radiation hazards. Deducting these leaves a population of 2,000 licensees. This leads to an estimate of  $2,000 \times 4.7$  or 9,400 specifically licensed nuclear gauges under NRC jurisdiction. Accounting for the Agreement States and rounding of yields an estimate of 28,000.

The total of 42,900 generally licensed gauges under NRC jurisdiction includes 23,620 "other" gauges of the same types of small gauges excluded from the specific license estimate. Deducting these leaves a population of 19,280 GL gauges under NRC jurisdiction. Using the same assumption as before to account for Agreement State GL gauges produced an estimate of  $19,280 \times 3$  or 57,840 GL gauges in the US (rounded off to 58,000).



Joel C. Lubenau  
Senior Health Physicist

[Federal Register: January 24, 1996 (Volume 61, Number 16)]

[Proposed Rules]

[Page 1857-1860]

From the Federal Register Online via GPO Access [wais.access.gpo.gov]

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**NUCLEAR REGULATORY COMMISSION**

**10 CFR Parts 2 and 150**

[Docket No. PRM-150-3]

**Measurex Corp.; Denial of Petition for Rulemaking**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Denial of petition for rulemaking.

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**SUMMARY:** The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by the Measurex Corporation. The petition was docketed by the Commission, and was assigned Docket No. PRM-150-3. The petitioner requested that the NRC amend its regulations concerning Agreement State regulation of byproduct material to require Agreement States to notify the NRC of proposed and completed regulatory actions and to require that the NRC publish notices of Agreement States' proposed and completed rulemakings. The NRC is denying the petition because there would be no safety benefit by NRC actions to consolidate and further disseminate this information; the process of collecting and disseminating this information would place a significant administrative and economic burden on the NRC and the Agreement States; and the information sought by the petitioner on proposed and completed Agreement State rulemakings is already available from a number of sources.

**ADDRESSES:** Copies of the petition for rulemaking, the public comments received, the petitioner's response to these comments, the NRC's letter of denial to the petitioner, and the Congressional letters are available for public inspection or copying in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tony DiPalo, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, T9F31, Washington, DC 20555-0001. Telephone: 301-415-6191.

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8m



## SUPPLEMENTARY INFORMATION:

### Background

The Nuclear Regulatory Commission (NRC) received a petition for rulemaking dated April 7, 1994, submitted by Ms. Elsa Nimmo for the Measurex Corporation, a manufacturer, distributor, and supplier of services for process control sensors used by NRC and Agreement State licensees throughout the United States. The petition was docketed as PRM-150-3 on April 12, 1994.

The NRC published a notice that announced the receipt of the petition and requested public comment on the suggested amendments in the Federal Register of October 5, 1994 (59 FR 50706). The petitioner requested that the NRC amend its regulations in 10 CFR part 150 that concern Agreement State regulation of byproduct material. Specifically, the petitioner sought an amendment to 10 CFR 150.31 that would have required each Agreement State to notify the NRC of proposed and completed changes to that State's regulations.

The petitioner also sought an amendment to 10 CFR part 2 that would have required the NRC to publish notices of these regulatory changes in the Federal Register. The petitioner noted that current NRC requirements contained in Secs. 2.804 through 2.807 of Title 10 of the Code of Federal Regulations establish a procedure for the publication of proposed changes, participation by interested persons, and notification of changes; however, the petitioner believes that a less detailed set of rulemaking and notification procedures is specified in 10 CFR 150.31. The petitioner also states that, in their experience, the 10 CFR 150.31 rulemaking and notification procedure fails to provide a mechanism for persons located outside any particular Agreement State to learn about proposed changes in that State's regulations. In the absence of such a mechanism, the petitioner believes that they and others are excluded from the opportunity clearly intended by 10 CFR 150.31 to participate in discussion of the proposed rules.

The petitioner indicated that although it makes a substantial effort to learn about proposed regulatory changes and to maintain current copies of NRC and Agreement State regulations, it is not always notified of actual changes that may directly affect it and its customers in the Agreement States. For example, the Petitioner noted that under both its specific license for device distribution issued by the Agreement State of California, and the general license issued by other Agreement States, it is required to provide generally licensed device recipients with a copy of the applicable Agreement State regulations. The petitioner believed that the proposed amendments to 10 CFR parts 2 and 150 would alert the NRC and Agreement State licensees of all relevant Agreement State requirements and permit them to more fully participate in the rulemaking process.

### Discussion of the Petition

The petitioner's primary concern is that it and other NRC licensees are not always notified of proposed and completed changes in Agreement State regulations that may affect licensees and their customers in those Agreement States. The petitioner is also concerned that because it is often not aware of Agreement State regulatory actions, it does not have the opportunity to fully participate in the rulemaking process as is intended by NRC regulations. As

part of the petition for rulemaking, the petitioner included copies of correspondence with Agreement State radiation control boards and the NRC, and cited specific cases with the Agreement States of Oregon and Texas that it believed illustrated why the current rules are deficient and in need of revision.

In Oregon, for example, regulatory changes were proposed that would have eliminated the general license authorizing the petitioner to install, transfer, demonstrate, or provide service and would require the petitioner to obtain a specific license from Oregon in order to conduct business. These regulatory changes were never approved. Nevertheless, the petitioner states that had Oregon's proposed regulations been adopted, it would be able to ship sensors to a customer in Oregon only after confirming that the customer has an appropriate specific license. The petitioner was concerned that interested parties were not provided ample opportunity to comment on Oregon's proposed rules or to participate in their rulemaking process. The petitioner felt that although it attempted to learn about any proposed or adopted regulatory changes by writing to the Oregon Radiation Control Section on several occasions (between June 1991 and January 1994), it did not receive a response. Lack of response led the petitioner to believe that Oregon had not modified its 1987 radiological control regulations even though the current version of the Oregon Administrative Rules for the Control of Radiation was adopted in 1991. The petitioner indicated that it only became aware of the proposed changes to Oregon's regulations in February 1994 when informally contacted by an out-of-state health physics colleague.

In the case of Texas, the petitioner indicated that they did not learn about certain regulatory modifications adopted in 1993 by the Agreement State of Texas until after these rules became effective. At that time, the petitioner believed that the involved agency, in this case the Texas Department of Health, Division of Licensing, Registration and Standards, Bureau of Radiation Control, knew these changes would affect out-of-State firms since the petitioner was notified in writing by this agency in September 1993 about some of the changes after they had been adopted. However, the petitioner felt they had no opportunity to participate in the rulemaking process and also believed these regulatory modifications would directly affect its business in Texas.

The petitioner noted that some State's radiation control agencies are conscientious in notifying out-of-state distributors or service groups about proposed and completed regulatory changes, but many do not make such an effort. For these reasons, the petitioner indicated that it and other similar service groups have no way of knowing when copies of a State's regulations are no longer valid and, consequently, have no opportunity to participate in the rulemaking process. The petitioner also felt that its effort to gain information regarding Agreement State regulatory changes was costly, time-consuming, and often ineffective.

To alleviate this situation, the petitioner proposed that 10 CFR 150.31 be amended to require Agreement States to notify the NRC of both proposed and completed regulatory actions to adopt, amend, or repeal regulations and that 10 CFR Part 2 be amended to require the NRC to publish Agreement State notices of proposed and completed rulemakings in the Federal Register. However, with

regard to 10 CFR 150.31 the staff noted that this requirement applies only to AEA 11 (e) 2 byproduct material (Uranium Mill Tailings) rather than regular "Byproduct Materials."

#### Summary of Public Comments

The October 5, 1994, Notice of receipt invited interested parties to submit written comments concerning the petition. The NRC received 17 comment letters. Ten comment letters were received from States represented by their Departments of Health, Natural Resources, Environmental Quality, and Nuclear Safety; 4 came from industry representing distributors and suppliers of services for individual process measurement systems; 1 from a private consultant, 1 from a citizens group, and 1 joint comment representing two professional groups.

The petition proposed two amendments. The first was to amend 10 CFR 150.31 to (in most cases) require Agreement States to notify the NRC of both proposed and completed action to adopt, amend, or repeal regulations. The second was to amend 10 CFR Part 2 to require the NRC to publish in the Federal Register the Agreement State Notices of proposed and completed rulemakings.

Of the 17 comments received, 11 opposed the petition, 5 favored granting the petition through rulemaking, and 1 supported the petition's request but, preferred a simpler approach as an alternative to rulemaking. The commenters opposed to the petition did so on the following basis:

(I) A State respondent indicated that its State properly and routinely notifies the NRC of proposed and completed regulatory actions at both the headquarters and regional level. The respondent also indicated that its State routinely seeks comments from the NRC before promulgation of a State regulation to ensure the NRC is aware of these revisions.

(ii) A State respondent cited an example given by the petitioner of a misunderstanding about notification of a proposed rule the State was developing that was successfully resolved. The respondent indicated that the State not only gave the party involved (in this case the Measurex Corporation) the information requested, but the comment period was extended to allow the petitioner time to formulate comments for submittal to the Oregon State Public Hearing Officer. The petitioner's comments were reflected in the final rule. Oregon, has modified its computerized mailing lists and, in the future, the petitioner will receive routine mailings of all regulatory notices.

(iii) A State respondent indicated that it can be safely assumed that all Agreement States have some minimum notice requirement for the purpose of due process, and that seeking local relief is far preferable to a national rule. Therefore, if the petitioner has a problem with the due process requirements of a particular State, relief lies with that State's officials and the State's legislative/political process. Along this line, several State respondents indicated that they have their own laws and administrative procedures which they follow for rulemaking. Under these requirements, Agreement States maintain registers in which proposed and completed regulations are published and to which interested parties can subscribe. One State commenter noted that under its public records law it is required to make copies available on request of its proposed and completed regulations. Another State respondent



indicated that the name, address, and telephone number of Agreement State officials can be found in the Conference of Radiation Control Program Directors' Directory of Personnel Responsible for Radiological Health Programs.

(iv) One State respondent indicated that under its Administrative Procedure Act it is required to notify interested parties of rule changes and to hold public hearings to receive comments which can also be delivered in writing.

(v) A joint response from two professional groups indicated they were concerned with the rising cost of doing business with both the NRC and the Agreement States and therefore, were opposed to any effort that would effect further increases. They believed the information requests of the petition reflect the cost of doing business with the various Agreement States and that the petitioner should utilize its own resources in gathering the information necessary to become aware of a State's relevant requirements. One State respondent indicated that the petition would increase costs to State and Federal Governments and to those they regulate because Agreement States and the NRC obtain revenues from fees and/or general fund monies. Thus, the cost of promulgating proposed State regulations in the Federal Register will ultimately be born by all radioactive material licensees and the general public. Because this expenditure will only benefit a small number of service groups that distribute generally licensed devices, it would be more economical if these groups requested copies of the desired information from the States within which they plan to do business. A State respondent indicated that the cost to the petitioner for producing a periodic form letter and postage would be small compared to the added bureaucracy if the NRC was required to develop a program to gather the desired information from the Agreement States and publish it in the Federal Register.

(vi) Several State respondents expressed concern over the additional administrative and economic burden that would be imposed on the Agreement States because of proposed new procedural requirements in the petition. Furthermore, these proposed requirements may create conflict with existing State statutes concerning rulemaking time frames, or may further delay an already lengthy rulemaking process. One State respondent indicated that it was doubtful that their State General Assembly would consider an amendment to a State statute that only accommodates one agency.

The commenters favoring the petition did so on the following basis:

(i) One industry respondent indicated that some Agreement States maintain an effective communication program of notifying interested parties of proposed and completed regulatory actions in their States, but others may not. Thus, companies like the petitioner's must make a substantial effort to acquire the desired information. Another industry respondent indicated it had difficulty obtaining copies of current regulations and any information on proposed regulatory changes from some Agreement States.

(ii) An industry respondent indicated that early notification of potential revisions in Agreement State regulations would alert the NRC to possible rule inconsistencies and non-compatibility problems before changes become final, which would facilitate a greater awareness and understanding of the changes.

(iii) A public interest group expressed concern that the difficulties encountered by the petitioner may stem from State government favoritism toward

in-State businesses to the detriment of out-of-State entities who are affected by the State's actions.

(iv) One respondent, a private consultant, indicated that without a mechanism for learning about proposed and completed regulatory actions in Agreement States, it was too time consuming and expensive for individuals to obtain this information.

(v) One industry respondent indicated that although there were a number of ways interested parties could obtain the desired regulatory information requested by the petition, they did not assume that these parties would be informed. In addition, it is believed there is a lack of uniformity and consistency among the Agreement States in how interested parties are notified of proposed and completed regulations. This respondent, while supporting the petition, indicated he preferred a simpler solution (unspecified) for providing uniform and timely information to parties interested in Agreement State regulations. He also believed the Organization of Agreement States was in the best position to develop such a solution.

#### Reasons for Denial

The NRC reviewed the amendments proposed in the petition, considered the comments received, and concluded that the arguments made by the petitioner are not sufficient to warrant amending 10 CFR parts 2 and 150. The reasons for denial are as follows:

1. The petition does not discuss any situation in which the public health and safety is an issue or any apparent safety benefit that will be derived by collecting and disseminating the information requested by the petition. Thus, the NRC foresees no basis for the additional administrative burden or increased costs to collect and disseminate this information in the manner suggested by the petition.

2. The process of collecting and disseminating the information pursuant to the petition would place an administrative and economic burden on both the NRC and Agreement States. The petitioner did not address the costs for developing the information system that would be necessary to implement the proposed amendments in the petition or consider the reporting burdens that would be imposed on both the Agreement States and the NRC to support the operation of such a system. The petitioner did not consider the costs associated with system operational problems, the need for additional staff resources at both the NRC and Agreement States, the need for administrative procedures for tracking information and documentation system instructions, and the costs for periodically publishing notices of the information under NRC auspices in the Federal Register.

3. The information sought by the petitioner is already available through other mechanisms. Based on a review of the public comments, several means presently exist by which interested parties who are not licensed in a particular Agreement State can access information on proposed or completed regulation changes in a particular Agreement State. As previously mentioned, several Agreement State respondents indicated that, as required by State

statute, they maintain state registers in which proposed and completed regulatory actions of that State are published. The information on the State Registers is available to interested parties on a subscription basis, by mail, or by telephone.

The Conference of Radiation Control Program Directors, Inc., also maintains a directory that includes the name, address, and telephone number of Agreement State public officials responsible for radiological health programs. By making a telephone call to the appropriate Agreement State public official, a requester can obtain information about the latest proposed and completed regulatory actions in that State. In addition, the NRC maintains a list of Agreement State contacts that includes telephone and facsimile numbers and addresses. Interested parties can call or write to the NRC to obtain this information. The NRC also sponsors open meetings twice a year to discuss Agreement State and NRC regulatory matters.

Because of the potential administrative burden and added costs associated with the development and operation of an information system to support the requests in the petition without an accompanying health and safety benefit, and because alternative means are currently available to the petitioner and interested parties to acquire the desired information about Agreement State regulatory activities, the petition for rulemaking filed by the Measurex Corporation (PRM-150-3) is denied.

Dated at Rockville, MD, this 26th day of December 1995.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Acting Executive Director for Operations.

[FR Doc. 96-965 Filed 1-23-96; 8:45 am]

65-64

From: Richard Bangart  
To: PHL,KJK  
Date: 12/29/95 7:39am  
Subject: daily for 12/27/95 -Forwarded -Forwarded

Paul,

When this Measurex denial is published in the Federal Register, please have somebody (Rosetta?) prepare an All Agreement States letter transmitting it to them. Thanks.

Kathalean,

Please establish a ticket for this action, so it doesn't fall into a crack. Thanks.

pw PHL  
RWB

December 27, 1995

MEMORANDUM TO: Chairman Jackson  
Commissioner Rogers

FROM: James M. Taylor  
Executive Director for Operations

SUBJECT: DAILY STAFF NOTE

Denial of Petition for Rulemaking from Measurex Corporation

On December 26, 1995, the Executive Director for Operations approved a denial of petition for rulemaking from Measurex Corporation to amend the regulations in 10 CFR Parts 2 and 150. The petition requested an amendment governing Agreement State regulation of byproduct material that would require Agreement States to notify the NRC of their proposed and completed regulatory actions. Also, the petition requested an amendment which would require the NRC to publish notice of these Agreement State proposed and completed rulemakings.

This constitutes notice to the Commission that, in accordance with the rulemaking authority delegated to the EDO, the EDO has signed this final rule and proposes to forward it on January 4, 1996, to the Office of the Federal Register for publication, unless otherwise directed by the Commission.

###



From: Paul Lohaus  
To: KJK  
Date: 12/29/95 8:29am  
Subject: daily for 12/27/95 -Forwarded -Forwarded -Forwarded

Kathaleen:

Please combine the attached with Ticket S-312. We'll use the action sending the petition out to close ticket No. S-312.

Thanks

paul

CC: RLB

9604020276 960214  
PDR STPRG ESGGEN  
PDR

## EXECUTIVE TASK MANAGEMENT SYSTEM

&lt;&lt;&lt; PRINT SCREEN UPDATE FORM &gt;&gt;&gt;

TASK # - S-312

DATE- 10/31/94

MAIL CTRL. - 1994

TASK STARTED - 10/31/94

TASK DUE - 11/30/94

TASK COMPLETED - / /

TASK DESCRIPTION - LICENSEES IN AGREEMENT STATES

REQUESTING OFF. - RIV

REQUESTER - R. DODA

WITS - 0 FYP - N

PROG. - ~~PHL~~  
RLE

PERSON -

STAFF LEAD - PHL

PROG. AREA -

PROJECT STATUS - OSP DUE DATE 11/30/94

PLANNED ACC. - N

LEVEL CODE - 1

This action was combined with the consideration of the petition for rulemaking from Measurix Corporation. (Docket PRM-150-3; OSP action, 65-04; FR notice 61 FR 1857)

As in Measurix, staff concludes that the procedures in 10CFR Part 2 provide adequate notice to all licensees, not just NRC licensees. No safety benefit would be derived from requiring additional notice by AIS programs.

TK

(FYI)

RLB2  
PHL  
SCD

EXECUTIVE TASK MANAGEMENT SYSTEM

<<< PRINT SCREEN UPDATE FORM >>>

TASK # - 6S-04

DATE- 01/17/96

MAIL CTRL. - 1996

TASK STARTED - 01/16/96

TASK DUE - / /

TASK COMPLETED - / /

TASK DESCRIPTION - DENIAL OF PETITION FOR RULEMAKING FROM MEASUREX CORP.  
PUB. IN FED REG; SEND LTR TO ALL A/S

REQUESTING OFF. - RLB2

REQUESTER - OSP

WITS - 0 FYP - N

PROG.- RLB

PERSON -

STAFF LEAD - RLB

PROG. AREA -

PROJECT STATUS -

ACTION S-312 FROM R. DODA/RIV REGARDING LICENSEES IN

PLANNED ACC. - N AGREEMENT STATES COMBINED W/THIS ACTION

LEVEL CODE - 1

From: Bob J. Doda (BJD)  
To: PHL  
Date: Tuesday, August 23, 1994 11:03 am  
Subject: LICENSEES IN AGREEMENT STATES

One discussion at the recent Texas Conference on the Regulation of Radiation (August 18-19, 1994), highlighted a situation that exists where Agreement State licensees have little chance to comment on NRC regulations that are matters of compatibility.

The problem is this. NRC provides Agreement States with, "early and substantive" involvement with draft compatibility regulations. The Agreement States have opportunity to comment. After NRC adopts the regulations, the Agreement States have three years to adopt similar regulations. Now, during the public input portion of the Agreement State adoption process, these regulations are listed as matters of compatibility and state licensee comments have no impact on the final regulations that are adopted by the state (because the regulations must be compatible with the NRC regulations).

Even if Agreement State licensees were diligent and read the Federal Register notices concerning NRC regulations, they might still be unaware of the significance of the regulations to them because the notices refer to the effect on NRC licensees.

The conclusion is this: Over 2/3 of the radioactive material licensees in the country do not have a reasonable opportunity to comment on draft compatibility regulations.

CC: RLB2, CAH

November 22, 1995

Note to Chris Stacey, Steel Manufacturers Association

Re Estimate of Nuclear Gauges In the US

The following estimates are exactly that, estimates. Some of the caveats to be kept in mind:

o There are two kinds of licenses under which gauges can be used, specific (SL) and general (GL). We require vendors of SL gauges to maintain records of sales and leases of gauges to SLs and we require SLs to maintain inventories and records of transfers, but we do not require this information be sent to the NRC. Thus the number of SL gauges is an estimate, primarily based upon some limited surveys of SLs conducted by the NRC. Vendors of GL devices must report sales and leases of GL devices to GLs to the NRC (or the States). However, estimates of GL devices thus derived do not account for returned, disposed or lost devices.

o Data bases for the estimates are derived from a number of sources including unpublished results of NRC surveys which were conducted for a variety of purposes in different time frames. The different purposes and different time frames can be sources of errors.

o We continue to try to refine and update our estimates. As a consequence, some earlier estimates have been revised. For example, the 1991 FR notice of a proposed rule estimated 600,000 GL devices under NRC jurisdiction that were distributed under 10 CFR 31.5. Staff later reduced this estimate to 450,000.

o Records of specific licenses for gauges issued by Agreement States and records of transfers of devices by vendors to State GL users are not centrally filed in a national data base. As a consequence, the number of State gauges must be estimated. To estimate the number of Agreement State gauges we take note of the ratio of all NRC SLs to all Agreement State SLs which is 1:2 and assume that a similar ratio exists for gauges, both SL and GL. This may be one of our largest uncertainty factors.

o The U.S. Department of Energy (DOE) uses radioactive materials under its own authority and safety requirements and is not subject to either NRC or State licensing. Thus, we have no regulatory information on the types and numbers of devices containing radioactive materials used by the DOE.



o Devices containing radium have been manufactured and distributed in the past. Limited numbers of these devices are still in use, have become mixed with metal scrap and have been smelted in aluminum smelters. Although the Agreement States license radium devices, the Atomic Energy Act does not extend to radium sources. Therefore, our estimates do not include radium devices.

o Lastly, some nuclear gauges contain quantities of radioactive materials in such small amounts that we do not believe that they would present significant radiological hazards to metal recyclers (although metal recyclers who find them could be faced with costs for securing and properly disposing of them). Excluding these gauges would result in an estimate of a population that, while smaller, is of the greatest concern to metal recyclers. Thus, two estimates are provided, one for the total number of licensed gauges distributed in the U.S. and, a second estimate that excludes "small" gauges.

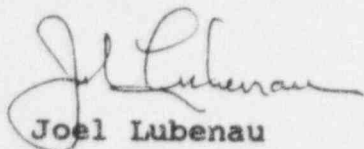
Subject to these caveats, our estimates of the numbers of licensed nuclear gauges distributed in the U.S. are:

<u>All Licensed Gauges</u>	<u>Excluding "Small" Gauges</u>
Specifically licensed...32,000.....	28,000
Generally Licensed.....129,000.....	58,000
<b>Total.....161,000.....</b>	<b>86,000</b>

Current plans for the Working Group meeting on December 19-20 call for NRC staff to brief the Working group on NRC data bases relating to radioactive devices, their applications and limitations. At that time, staff may have more refined estimates of the numbers of gauges in the U.S.

Keep in mind that other types of devices can and have shown up in metal scrap, e.g., radiography cameras, static eliminators, self-luminous devices, thorium alloys, etc. Nuclear gauges are thought to be the most significant group of devices for the metal recycling industry by virtue of the combination of the large number of them and the radiological characteristics of the radioactive sources used in them.

I hope that this information is helpful.



Joel Lubenau

cc: WG Members  
WG liaisons  
DCD  
PDR  
S. Baggett