UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

COMSECY-05-0036

REQUEST REPLY BY: 8/26

Approved.

August 11, 2005

Nils J. Diaz 8/23/2005

MEMORANDUM TO: Chairman Diaz
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

FROM: Luis A. Reyes
Executive Director for Operations

SUBJECT: EVALUATION OF AGREEMENT STATE IMPLEMENTATION OF THE GENERALLY LICENSED DEVICE AMENDMENT

The purpose of this memorandum is to inform the Commission how the staff will address Agreement State Generally Licensed (GL) Device rules through the Integrated Materials Performance Evaluation Program (IMPEP) while the U.S. Nuclear Regulatory Commission (NRC) determines the course of action on the Organization of Agreement States, Inc. (OAS) Petition for Rulemaking and the OAS' and the State of Florida's "Request for Compatibility Category Change to the GL Rule."

Some Agreement States, including Florida, Illinois, and Mississippi, do not plan on adopting the GL Device rule as issued by NRC in 2001. These Agreement States already have GL Device rules in place that are more restrictive than NRC's. Staff conducted a re-review of Agreement State GL Device rules to verify the adoption of rules equivalent to 10 CFR Part 31.5 and 31.6. Upon re-review, staff has identified that 13 Agreement States have GL Device rules that are inconsistent with the compatibility criteria.

In June 2005, the Commission received an OAS Petition for Rulemaking and OAS' and the State of Florida's request for Compatibility Category change concerning the GL Device rule. A working group was formed to examine options for processing the State of Florida's request for Compatibility Category change. The OAS Petition for Rulemaking has been docketed and will be published for public comment.

CONTACT: William R. Rautzen, STP
301-415-7206

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August 11, 2005

Approved. See attached comments.

Gregory B. Jaczko 9/9/05
Date

MEMORANDUM TO: Chairman Diaz
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

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Executive Director for Operations

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Commissioner Jaczko's Comments on COMSECY-05-0036
Evaluation of Agreement State Implementation
of the Generally Licensed Device Amendment

I approve of the staff's recommendation to hold in abeyance any determination on Agreement States rules related to the adoption of the NRC's Generally License (GL) Device amendment, and the compatibility of those rules, if the Agreement State program is more restrictive than the NRC's program.

That being said, I believe that Agreement States should take every opportunity to provide their views on compatibility or any other issue to the Commission, whether they are participating on working groups or interacting with NRC staff during the very open rulemaking process, in the development of new rules. Given the three year time frame that Agreement States have to adopt new rules, issues related to implementation of those rules should be brought to the Commission's attention prior to the time in which a compatible rule should be adopted.

Therefore, while I recognize the potential benefits of having a more restrictive GL program, Agreement States are nonetheless required to adopt the new rules consistent with the Commission's compatibility determination for the rule. Ultimately, the Commission is responsible for ensuring that Agreement State programs remain compatible with the Commission's program for regulating the Nation's civilian use of byproduct, source, and special nuclear materials.

7/4/05

Gregory B. Jaczko Date

UNITED STATES
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WASHINGTON, D.C. 20555-0001

COMSECY-05-0036

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August 11, 2005

Approved. Peter Lyons 8/15/05

MEMORANDUM TO: Chairman Diaz
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FROM: Luis A. Reyes
Executive Director for Operations

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The OAS Petition for Rulemaking proposes change in rule text to 10 CFR 31.5, "Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere." Specifically, the OAS has proposed rule text change to 10 CFR 31.5(a) that would require specific licensing for devices currently distributed under general license and subject to a registration requirement and fees. The proposed amendments would correspondingly delete the current registration requirements in 10 CFR 31.5(c)(13).

A portion of the OAS submission proposes a Compatibility Category change to 10 CFR 31.6, "General license to install devices generally licensed in 31.5." The OAS proposes a change from Compatibility Category B to C to allow States to track the location and movement of device manufacturers and service providers in their States.

The State of Florida submitted to the Commission a request for change from Compatibility Category B to Compatibility Category C for 10 CFR 31.5(c)(13)(i), which would allow States to register additional types and quantities of GL devices beyond what the NRC requires. A working group consisting of staff from the Offices of State and Tribal Programs, Nuclear Material Safety and Safeguards, Administration, and General Counsel has been formed to process the State of Florida's request. Staff is currently working on a draft Commission paper on this issue.

NRC has precedents for holding NRC actions in abeyance where additional revisions to the regulations are under consideration or a petition for rulemaking has been submitted. The examples include the medical quality management requirements in the 1997 Staff Requirements Memorandum on the Compatibility Policy Statement and the "Two Person" radiographer rule where the Agreement States are implementing the rule consistent with Texas' implementation while OAS develops a petition for rulemaking. (The petition is expected in September 2005.)

Staff will continue to review Agreement State GL Device proposed and final rules and hold in abeyance any determination on those rules and compatibility of those rules if the Agreement State has the essential elements of the NRC's rules, but is more restrictive than the NRC's program. Agreement States without the GL Device rule or a GL Device rule less restrictive than the NRC would have this determination factored into results of the NRC's review of the State's proposed and final rules and the compatibility findings during IMPEP reviews.

SECY, please track.

cc: SECY
OGC
DOC
OCA
OPA
CFO