

August 4, 2009

ALL AGREEMENT STATES, MICHIGAN, NEW JERSEY

OPPORTUNITY TO COMMENT ON PROPOSED RULE ON "LIMITING THE QUANTITY OF BYPRODUCT MATERIAL IN A GENERALLY LICENSED DEVICE," (FSME-09-066)

Purpose: To provide an opportunity to comment on the subject proposed rule. You may submit comments on the rule by one of the several methods, identified in the *Federal Register* notice on August 3, 2009. To inform Agreement States of the U.S. Nuclear Regulatory Commission's (NRC's) efforts in sending copies of *Federal Register* notice to certain NRC general licensees and specific licensees and encourage Agreement States to do so.

Background: In a Staff Requirements Memorandum (SRM) dated May 1, 2009, the Commission approved the staff's draft proposed rule on Limiting the Quantity of Byproduct Material in a Generally Licensed Device. The draft proposed rule was contained in SECY-08-0137; a prior draft of the proposed rule was provided to the States for review and comment on April 30, 2008. Based on the Commission's direction in the SRM, the proposed rule was published in the *Federal Register* on August 3, 2009 (74 FR 38372). A copy of the *Federal Register* notice has been enclosed for your convenience. It can also be accessed at the following internet address:

<http://edocket.access.gpo.gov/2009/pdf/E9-18438.pdf>

Discussion: The proposed rule would require individuals possessing generally licensed devices with byproduct material equal to or exceeding 1/10 of IAEA Category 3 threshold values to apply for and obtain a specific license for those devices. The proposed rule also would add a new paragraph 10 CFR 31.5(b)(3) to clarify the requirements that apply when a device authorized to be used under the general license is instead held under a specific license. Finally, the proposed rule would modify the Compatibility Categories contained in the current regulations from Category "B" to Category "C."

Two letters are also enclosed for your information: (1) a copy of a letter that the NRC is sending to general licensees who would be affected by the amendment, and (2) a copy of a letter that NRC is sending to NRC specific licensees who are authorized to manufacture and/or distribute these generally licensed devices. The purpose of sending these letters is for NRC to inform those licensees of the proposed rule and the opportunity to provide public comments on the rule. Agreement States are encouraged to do so for their respective licensees who could be impacted by this rule. Note that since Agreement States could impose more restrictive requirements for amendments under Compatibility Category C, you may consider informing a broader group of general licensees than those under NRC jurisdiction.*

* This information request has been approved by OMB 3150-0029, expiration 08/31/2010. The estimated burden per response to comply with this voluntary collection is approximately 8 hours. Send comments regarding the burden estimate to the Records and FOIA/Privacy Services Branch (T-5F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet e-mail to infocollects@nrc.gov, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0029), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

If you have any questions regarding this correspondence, please contact me at 301-415-7278 or the individual named below. Please note the comment period on the proposed rule ends on October 19, 2009.

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/RA/

Mark R. Shaffer, Director
Division of Intergovernmental Liaison
and Rulemaking
Office of Federal and State Materials
and Environmental Management Programs

Enclosures:

1. *Federal Register* Notice
2. Letter to NRC General Licensees
3. Letter to GL Device Manufacturers and/or Distributors

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