

Rulemaking Comments

From: Frazee, Terry (DOH) [Terry.Frazee@DOH.WA.GOV]
 Sent: Monday, October 19, 2009 8:42 PM
 To: Rulemaking Comments
 Cc: Robertson, Gary (DOH); Scroggs, Arden (DOH); Fordham, Earl W (DOH); Erickson, Randy; Shaffer, Mark
 Subject: WA Comments on Proposed GL Rule

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October 19, 2009

ATTN: Rulemakings and Adjudications Staff

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Secretary, U.S. Nuclear Regulatory Commission,

Washington, DC 20555-0001

Re: NRC-2008-0272 / RIN 3150-AI33

These are comments from the state of Washington on Proposed Rule 10 CFR 31 "Limiting the Quantity of Byproduct Material in a Generally Licensed Device".

We are concerned that NRC is missing an opportunity with this rule making. The rule as proposed simply requires a limited number of generally licensed gauges to become specifically licensed. It does not improve the General License (GL) registration program which was intended to and could still "fix" many of our GL concerns.

- The current registration program needs to be enhanced - becoming essentially a simplified specific license, to ensure accountability, security, proper maintenance and handling, timely notification of transfer, loss or disposal, etc.
- Enforcement of existing regulations needs to be emphasized.
- The proposed GL rule does not apply to the 50 and 100 mCi gauges that may be the most common source of users or manufacturers losing track of GL devices.
- The proposed GL rule lists numerous nuclides that are not registerable under NRC's 10 CFR 31.5 (c)(13)(i). These include 227Ac, 153Gd, 192Ir, 210Po, 147Pm, 75Se, 228/229Th, 170Tm, and 169Yb. It seems inconsistent that these are on the list of nuclides that present safety concerns, yet have no GL registration limits. Is omitting those nuclides a possible vulnerability?

The proposed 31.5 (a) would limit general licensed devices to less than 1/100 of Category 2 as found in Appendix E of 10 CFR 20. This effectively requires that a specific license be obtained for any device with byproduct material equal to or exceeding 1/10 of IAEA Category 3 threshold values. There is no "grandfathering in" of existing GL; the rule applies to devices already in service. This means their general license or general license registration is no longer valid, and they must get specific licenses. Washington is concerned:

- This rule is inconsistent with IAEA's categorization of a "dangerous source", which is Category 3, not 1/10 Category 3.

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- This rule places a large additional burden on our state resources in the form of additional licensing work and inspections at a time when funding is uncertain.
- This rule places a significant demand on regulators and manufacturers to immediately amend the sealed source and device registry for all affected sources.
- This rule is likely to have serious negative impact on some general licensed source users. Specific license requirements having significant burden include: hiring a radiation safety officer, hiring and training radiation safety personnel including authorized users, and providing additional routine training.
- There is no implementation period specified once the rule becomes effective.
- The rule does have the beneficial effect of eliminating SS&Ds which allow both SL and GL applications.

Proposed new 31.5 (b)(3) requires that generally license devices “held under the authority of a specific license” be subject to all of the terms and conditions of the specific license rather than the provisions of the general license.

- The proposed rule is unclear in its intent. Does the specific licensee have the choice to still have GLs, or must a specific licensee now add all its GLs to its SL?
- This rule is very broad and could encompass huge numbers of relatively small gauges, ECDs, and other low risk devices. These devices would need to meet specific license requirements such as access control, additional personnel training, scheduled inventory, specific written user procedures, and license amendment for any changes. This is an additional, and arguably unreasonable, burden on specific licensees that general licensees won’t have.

Proposed rule would modify the Compatibility Categories contained in the current regulations from Category “B” to Category “C”.

- Washington supports the rights of states to add requirements to address state specific issues and therefore supports the change to Category C.

Thank you for the opportunity to comment. We appreciate NRC’s efforts to manage effectively the GL program.

Public Health - Always Working for a Safer and Healthier Washington

This message from Terry C. Frazee

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Also, visit our Home Page at

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