

PR 31
(74FR38372)

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TEXAS DEPARTMENT OF STATE HEALTH SERVICES

DAVID L. LAKEY, M.D.
COMMISSIONER

DOCKETED
USNRC

October 26, 2009 (10:00am)

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October 16, 2009

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Mark R. Shaffer, Director
Division of Intergovernmental Liaison
and Rulemaking
Office of Federal and State Materials
and Environmental Management Programs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Opportunity to Comment on Proposed Rule on "Limiting the Quantity of Byproduct Material in a Generally Licensed Device" (FSME-09-066)

Dear Mr. Shaffer:

Staff members of the Texas Department of State Health Services, Radiation Control Program, have reviewed the proposed rule and offer the following comments for consideration.

We are in agreement with the proposed changes to designate 10 CFR 31.5(a), (c)(13)(i) and 31.6 as Compatibility Category C. We strongly support a Compatibility Category C designation for 10 CFR 31.5(b)(3), but offer a recommendation for a wording change that is described below. We also support the Organization of Agreement State's comment that these proposed compatibility designations must be in the final rule for it to have our support. This compatibility designation allows Agreement State Programs to be more stringent with their regulatory framework for these generally-licensed devices in order to address the public health and safety concerns of their state.

We have a concern with 10 CFR 31.5(b)(3) as proposed. For this to be very clear, we suggest the following wording be added; "For devices meeting the criteria of this general license, but instead held under the authority of a specific license and listed on a specific license because the devices contain byproduct material in quantities greater than 1/100th of the thresholds listed in Appendix E of 10 CFR Part 20 for Category 2, all terms and conditions of the specific license apply in lieu of the provisions in this general license." We believe this wording will help to clarify that not all devices issued a general license under 10 CFR 31.5(a) will be required to be held under the authority of a specific license.

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With regard to the specific questions for comment contained in the proposed rulemaking, we offer the following.

1. We understand the reasoning behind placing the threshold level at 1/10 of Category 3 based on the security enhancement gained versus the cost of implementing at lower threshold levels. Some Agreement States have other methods for addressing regulation of GLs and have been successful with those methods. We should not lose sight of those successes.
2. We do not believe the Category 4 limits should be the threshold as the limit for a GL. The discussion of the proposed rule already explains the significant additional costs to all parties if the level is set at limits lower than 1/10 of Category 3 and the costs are not justified. We do not believe aggregation should be taken into account. From a compliance standpoint, this can be very difficult to monitor and is often a moving target. As devices are moved, changed out, repositioned, etc, aggregation may be an issue for a limited period of time and at any given time. This is not realistically enforceable because of the potential inconsistency.

For example, we have what may be a unique situation with regard to the amount of well logging industry activities in Texas. Vehicles associated with the well logging industry (pump trucks, etc.) transport generally-licensed devices with up to 200 mCi of Cs-137. More than one truck may be present on a job site, at a yard, or even in a parking lot at any given time. Often, these circumstances are not predictable and can create difficulties in determining compliance and in subsequent enforcement.

3. We believe the registration levels in 10 CFR 31.5(c)(13)(i) are too low to be used as the threshold levels for requiring a GL to obtain a specific license, for the cost versus benefit reasons stated under question #1.

4. As stated above, we believe compatibility must be maintained at Compatibility Category C.

4.A. We estimate that 39 of our general license acknowledgement holders (those GLs with material in a device above the registration levels) will be required to obtain a specific license in accordance with this proposed rule because they are not associated with an existing specific licensee. Of those 39, the majority are entities with a single location. Therefore, we don't anticipate difficulties with specific licensees with multiple locations. For those specific licensees that have GL devices at the registration levels, most have already added those GL devices on the specific license. It creates less confusion.

4.B. The amount of time allowed for specific licenses to be issued/amended is going to depend on each state's resources and workload. With some of these specific licenses having a 10-year renewal period, adding the GL devices at the time of renewal is not practical. Also, from an inspection standpoint, having this requirement implemented as amendments are done is not efficient. We believe the most effective way to add the GL devices to a specific license is to set a deadline for that incorporation or issuance of a specific license.

4.C. We do not believe the voluntary transfer process under 10 CFR 31.5(c)(8)(iii) should become mandatory at this time. Again, this creates an additional workload burden and will impact Agreement State programs to varying degrees.

4.D. There are currently transboundary issues associated with reciprocity of GL devices and this proposed rule won't change that. We do recognize there is more uniformity to granting/recognizing reciprocity for specific licensees.

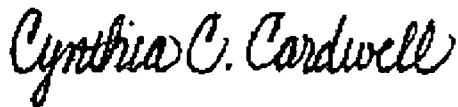
4.E. No. We believe the more exceptions you have, the more inconsistency you create.

4.F. No comment.

4.G. We do believe the sealed source and device registration certificates should be amended to address transfers. For Texas, we estimate 25 sealed source and device certificates would need to be amended.

We appreciate the opportunity to provide comments. If you have any questions, please contact me at Cindy.Cardwell@dshs.state.tx.us.

Sincerely,

A handwritten signature in black ink that reads "Cynthia C. Cardwell". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Cynthia C. Cardwell, Manager
Radiation Policy, Standards and Quality Assurance Group
Department of State Health Services

Mark R. Shaffer, Director

October 16, 2009

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Rulemaking Comments

From: Sahle, Solomon
Sent: Monday, October 26, 2009 9:29 AM
To: Rulemaking Comments; Ngbea, Evangeline
Cc: Hsueh, Kevin
Subject: FW: Comments on FSME-09-066
Attachments: CommentsNRCpropGLrule.doc

Evan,

This comment was sent to Merri by mistake. It is a GL proposed rule comment from State of Texas.

From: Horn, Merri
Sent: Monday, October 26, 2009 9:03 AM
To: Sahle, Solomon
Subject: FW: Comments on FSME-09-066

Solomon,

I got this 1 by mistake.

From: Shaffer, Mark
Sent: Monday, October 19, 2009 4:29 PM
To: Horn, Merri; Delligatti, Mark
Subject: FW: Comments on FSME-09-066

From: Cardwell, Cindy [mailto:Cindy.Cardwell@dshs.state.tx.us]
Sent: Friday, October 16, 2009 3:36 PM
To: Shaffer, Mark
Subject: Comments on FSME-09-066

Mark,

Here are the comments from Texas Department of State Health Services. Let me know if you have any questions.

Thanks,
Cindy

Cindy Cardwell, Manager
Radiation Group
Policy, Standards and Quality Assurance Unit
Texas Department of State Health Services
Phone: 512-834-6770, ext. 2239
Fax: 512-834-6708

Received: from HQCLSTR02.nrc.gov ([148.184.44.77]) by TWMS01.nrc.gov
([148.184.200.145]) with mapi; Mon, 26 Oct 2009 09:29:17 -0400
Content-Type: application/ms-tnef; name="winmail.dat"
Content-Transfer-Encoding: binary
From: "Sahle, Solomon" <Solomon.Sahle@nrc.gov>
To: Rulemaking Comments <Rulemaking.Comments@nrc.gov>, "Ngbea, Evangeline"
<Evangeline.Ngbea@nrc.gov>
CC: "Hsueh, Kevin" <Kevin.Hsueh@nrc.gov>
Date: Mon, 26 Oct 2009 09:29:14 -0400
Subject: FW: Comments on FSME-09-066
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