December 22, 2011

Mr. William A. Passetti, Chief
Bureau of Radiation Control
Florida Department of Health
4052 Bald Cypress Way, Bin C21
Tallahassee, FL 32399-1741

Dear Mr. Passetti:

I am responding to the request that you submitted to the U.S. Nuclear Regulatory Commission (NRC or the Commission), dated June 3, 2005, on behalf of the Bureau of Radiation Control of the Florida Department of Health. You requested that NRC change its compatibility designation of Title 10 of the *Code of Federal Regulations* (10 CFR) 31.5(c)(13)(i) from Category B to C. Your request was considered together with a related petition for rulemaking (PRM) received from the Organization of Agreement States, Inc. (OAS) and docketed as PRM-31-5.

The notice of receipt of the OAS PRM was published in the *Federal Register* on December 20, 2005 (70 FR 75423). The comment period closed on March 6, 2006. Four comment letters were received. The NRC considered the petition and the supporting rationale, determined that issues and concerns raised in the petition merited further consideration and initiated a rulemaking. On August 3, 2009, the NRC published a proposed rule, "Limiting the Quantity of Byproduct Material in a Generally Licensed Device" (74 FR 38372). The proposed rule would have amended the NRC regulations to limit the quantity of certain byproduct material allowed in a generally licensed device to below 1/10 of the International Atomic Energy Agency's Category 3 thresholds; licensees with devices containing byproduct material at or above this limit would be required to obtain a specific license. The proposed rule also would have changed the compatibility designation of 10 CFR 31.5(a), 10 CFR 31.5(c)(13)(i) and 10 CFR 31.6 from Category B to C.

The comment period for the proposed rule ended on October 19, 2009, and 55 comment letters were received. The commenters on the proposed rule included Federal agencies, States, licensees, industry organizations, environmental advocacy groups, and individuals. Staff sent a final rule paper, SECY-10-0105, entitled "Limiting the Quantity of Byproduct Material in a Generally Licensed Device," to the Commission on August 10, 2010.

In the Staff Requirements Memorandum (SRM), dated December 2, 2010, the Commission approved revising the compatibility designations of 10 CFR 31.5 and 10 CFR 31.6 from Category B to C, but disapproved the publication of the final rule.

The compatibility Category C designation will allow Agreement States the flexibility to enhance accountability; retain use of tools to track the location and movement of devices, manufacturers and service providers within the State limit; address issues specific to their jurisdictions; continue programs that have proven beneficial; and adopt requirements based on their specific circumstances and needs. The NRC Commission plans to evaluate the degree to which the Agreement States modify their programs as a result of the change in compatibility category and

analyze any transboundary impacts to regulated entities, particularly those operating on a multistate basis. The Commission also plans to consider updates to the Policy Statement on Adequacy and Compatibility of Agreement State Programs and associated guidance documents to include both safety and source security considerations in the determination process.

Therefore, for the reasons provided in the *Federal Register* Notice (FRN) and consistent with the Commission's SRM, the NRC is granting your request to change the compatibility designation of 10 CFR 31.5(c)(B)(i) from Category B to C.

The FRN closing the petition is being transmitted to the Office of the Federal Register for publication. The appropriate Congressional committees will be informed.

Sincerely,

***/RA/***

R. W. Borchardt
Executive Director
for Operations

Enclosure:
*Federal Register* Notice

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