

January 24, 2012

ALL AGREEMENT STATES

CLARIFICATION OF THE DIFFERENCE BETWEEN CLASS EXEMPTIONS AND EXEMPTIONS BASED UPON EXEMPT CONCENTRATIONS OR EXEMPT QUANTITIES WITH REGARD TO EXEMPT DISTRIBUTION LICENSES (FSME-12-007)

Purpose: To provide the Agreement States a clarification on the applicability of exemptions based upon exempt quantities, exempt concentrations, or other exemptions under Nuclear Regulatory Commission (NRC) regulations.

Background: An issue has been raised by an Agreement State that certain devices were not being allowed to be distributed as exempt products because the quantity of byproduct material specified exceeded the quantity limits listed in the Agreement State's equivalent of 10 CFR §30.71. These devices had been authorized by the NRC under 10 CFR §32.26 for distribution to persons exempt from licensing pursuant to 10 CFR §30.20.

Discussion: Exempt distribution licenses authorize the initial distribution of byproduct material to persons exempt from the requirements for an NRC license. Exempt distribution licenses are based on the types of products to be distributed according to six different categories of exemptions. Among these, there are a number of products that are distributed to recipients under exemptions specifying certain classes or groups of products (i.e., 10 CFR §30.15, §30.19, §30.20 and §30.21), and these exemptions have corresponding specific licensing requirements in 10 CFR Part 32. The products at issue were licensed pursuant to these requirements (i.e., section 32.26 and 32.27) for distribution to persons under one of these exemptions; i.e., the exemption in section 30.20 for gas and aerosol detectors containing byproduct material.

The limits of 10 CFR §30.70, Schedule A, *Exempt Concentrations*, are only applicable to a product or material into which a byproduct material has been introduced and NRC has licensed for distribution under 10 CFR §32.11. The limits of 10 CFR §30.71, Schedule B, *Exempt Quantities*, are only applicable to byproduct materials that NRC has licensed and authorized for distribution under 10 CFR §32.18. Because the devices at issue meet the requirements in 10 CFR §32.26 and the safety criteria in 10 CFR §32.27 and are authorized for distribution under 10 CFR §30.20 (not the requirements in 10 CFR §32.11 or 10 CFR §32.18), neither the exempt concentration limits of 10 CFR §30.70 nor the exempt quantity limits in 10 CFR §30.71 apply.

Additional information on distribution to persons exempt under the regulations and the application of the limits in 10 CFR §30.70, Schedule A, and 10 CFR §30.71, Schedule B, may be found in NUREG 1556 Volume 8, Consolidated Guidance About Materials Licenses, Program Specific Guidance About Exempt Distribution Licenses.

In summary, the limits in Schedule A and B were not intended to be universally applied to all exempt distribution products. The limits in Schedule A or Schedule B do not apply to exempt products that are covered by, or meet the definition and criteria of, another exemption.

If you have any questions regarding the correspondence, please contact me at 301-415-3340 or the individual named below.

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