

Francis Slakey
Associate Director of Public Affairs
American Physical Society
529 14th Street, #1050
Washington, DC 20045

Dear Dr. Slakey:

I am responding to the petition for rulemaking (PRM) received on November 10, 2010 (Agencywide Documents Access and Management System Accession (ADAMS) No. ML103260300), which you submitted to the U.S. Nuclear Regulatory Commission (NRC) on behalf of the American Physical Society (APS). Your petition was docketed as PRM-70-9. In the petition, APS requests that the NRC require applicants for an enrichment or reprocessing (ENR) facility license to provide an assessment of the proliferation risks associated with the construction and operation of the proposed facility. More specifically, the petition requests that Part 70 of Title 10 of the *Code of Federal Regulations*, "Domestic Licensing of Special Nuclear Material," be amended to add the following:

§ 70.22 Contents of applications.

(o) Nuclear proliferation assessment. Each applicant for the license of an enrichment or reprocessing facility shall include an assessment of the proliferation risks that construction and operation of the proposed facility might pose.

The notice of receipt and request for comment of the petition was published in the *Federal Register* on December 23, 2010 (75 FR 80730). The comment period closed on March 8, 2011, and the NRC received 2,389 comment letters. Most of these responses were identical form e-mails from individuals who supported the petition. There were also 50 comment letters from individuals, members of Congress, and interested groups that supported the petition. Two comment letters, one from a nuclear industry representative and one from an individual, opposed the petition.

The NRC has considered the petition, and the arguments raised therein, as well as the comments received in response to the petition. For the reasons stated in the enclosed *Federal Register* notice, your petition for rulemaking is denied. In summary, while the NRC appreciates and shares your concern about the risk of nuclear proliferation, the NRC has concluded that requiring applicants for an NRC ENR facility license to perform an assessment of proliferation risks would not enhance NRC efforts in carrying out its statutory responsibilities. The NRC's comprehensive licensing framework, which includes 1) extensive regulatory requirements, 2) ongoing oversight, and 3) active interagency cooperation, adequately addresses proliferation risks and concerns associated with the construction and operation of an ENR facility in the United States. To the extent that your petition is concerned about a spread of proliferation-sensitive technology beyond the United States, Federal agencies within the Executive Branch with intelligence arms and foreign policy expertise have primary responsibility for developing and promoting global implementation of the U.S. Government's policies and

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goals relating to nonproliferation. These agencies have both the responsibility and the expertise to work through diplomatic and other channels to deter such efforts.

The *Federal Register* notice denying the petition is being transmitted to the Office of the Federal Register for publication.

Sincerely,

Annette Vietti-Cook
Secretary of the Commission

Enclosure:
Federal Register notice Denying Petition

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