[7590-01]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 30

Amendment of Exemption for Ionizing Radiation Measuring Instruments

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is considering amending its rules of general applicability to domestic licensing of byproduct material so that persons exempt from licensing and regulatory requirements may receive, use, and transfer ionizing radiation measuring instruments containing multiple internal calibration or standardization sources of byproduct material. The amendments are being proposed in response to a petition for rulemaking filed by General Atomic Company to permit distribution to exempt persons of multiple function instruments important to monitoring radiation and radioactive materials in and around major nuclear facilities. The proposed action would relieve all persons from the requirement to obtain a specific license to the extent that they receive, use, or transfer radiation ionizing measuring instruments containing, for purposes of internal calibration or standardization, sources of byproduct material each not exceeding the pertinent exempt quantity.

DATES: Comment period expires . Comments received after will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before

ADDRESSES: All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed amendments should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of correspondence cited below and comments on the proposed amendments may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. J. J. Henry, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (301)-443-5946.

SUPPLEMENTARY INFORMATION: By letter dated August 5, 1980, Mr. William R. Mowry, on behalf of General Atomic Company, filed a request for administrative clarification of the Commission's regulation 10 CFR 30.15(a)(9) so that a person exempt from licensing and regulatory requirements may receive, use, and transfer an ionizing radiation measuring instrument containing, for purposes of internal calibration or standardization, more than one source of byproduct material each not exceeding an applicable exempt quantity.

Rulemaking Initiation

The letter from General Atomic was filed following a meeting between the staff and the company on June 26, 1980, to review various alternatives in light of a position expressed in a letter dated June 11, 1980, to General Atomic in which the staff indicated that the Commission could not license the company to distribute certain ionizing radiation

measuring instruments to persons exempt from regulation because those instruments contain more than one source of byproduct material.

In the June 11, 1980, letter, the staff stated the following view:

> . . . the exemption specified in section 30.15(a)(9) of 10 CFR 30 only refers to ionizing radiation measuring instruments containing a source of byproduct material.

On September 9, 1980, the letter from General Atomic was assigned Docket No. PRM 30-57 as a petition for rulemaking requesting the Commission to amend its regulations in 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material."

Basis for Request

In support of the petition, General Atomic stated, in part:

> . . . it seem(s) evident that the particular language of the regulations, read to limit licenses of instruments containing byproduct material to persons exempt from regulation to a single source per instrument, was in effect the result of a situation not envisioned at the time of drafting . . .

General Atomic also stated that the petitioner's ionizing radiation measuring instruments are devices that perform several radiation monitoring functions, and:

> . . . the instruments would have to be redesigned, each as a single function instrument with a single exempt quantity byproduct source. To do so would increase costs and delay delivery of instrumentation important to monitoring radiation and radioactive materials in and around major nuclear facilities. There is no compromise of public health and safety by permitting use of more than one source in a single multi-functional device.

Request for Comments on Petition

A notice of filing of petition for rulemaking was published in the FEDERAL REGISTER on October 14, 1980 (45 FR 67673). The comment period

expired December 15, 1980. No letters of comment were received in response to the notice.

Previous Actions

On April 22, 1970, the Atomic Energy Commission (the predecessor of the NRC) published in the FEDERAL REGISTER (35 FR 6426) new 10 CFR 30.18, "Exempt quantities," exempting from licensing requirements the receipt, possession, use, transfer, ownership, or acquisition of byproduct material in individual quantities each of which does not exceed the applicable quantity set forth in new 10 CFR 30.71, "Schedule B." A conforming amendment, new 10 CFR 32.18, "Manufacture, distribution and transfer of exempt quantities of byproduct material: requirements for license," indicated clearly the types of material that commercial suppliers may distribute as exempt quantities and also prohibited incorporation of exempt quantities of byproduct material in any manufactured or assembled commodity, product, or device for commercial distribution.

As one consequence of the above prohibition, the Commission added another conforming amendment, new 10 CFR 30.15(a)(9), to provide an exemption from licensing requirements for possession and use of ionizing radiation measuring instruments containing internal calibration or standardization sources of byproduct material in amounts not exceeding the pertinent schedule of exempt quantities. In the preamble to the final rule, the Commission stated:

> Such sources, when installed inside instruments, constitute a smaller risk than as separate quantities, and specific provision for their use under exemption is warranted.

The final rule, 10 CFR 30.15(a)(9), states:

§ 30.15 Certain items containing byproduct material.

(a) Except for persons who apply byproduct material to, or persons who incorporate byproduct material into, the following products, or persons who initially transfer for sale or distribution the following products containing byproduct material, any person is exempt from the requirements for a license set forth in Section 81 of the Act and from the regulations in Parts 20 and 30-35 of this chapter to the extent that such person receives, possesses, uses, transfers, owns, or acquires the following products:

* * * * *

(9) Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, a source of byproduct material not exceeding the applicable quantity set forth in § 30.71, Schedule B.

Proposed Action

The Commission considers that multiple sources, when installed inside instruments, would be consistent with both the language and the intent of the preamble published April 22, 1970, that set out the basis for the exemption of ionizing radiation measuring instruments.

Accordingly, the Commission is proposing to amend the language of the exemption for ionizing radiation measuring instruments to refer to sources of byproduct material each not exceeding the applicable quantity set forth in 10 CFR 30.71, "Schedule B."

Conforming Amendment

The Commission recognizes that 10 CFR 32.14, "Certain items containing byproduct material: requirements for license to apply or initially transfer," sets out a requirement that each product specified in 10 CFR 30.15 must contain no more than the quantity of byproduct material specified for that product in 10 CFR 30.15.

To assure that each ionizing radiation measuring instrument contains a specified quantity of byproduct material, the Commission is proposing a conforming amendment of 10 CFR 30.71 to add a new note stating in effect that, for purposes of 10 CFR 30.15(a)(9), where an ionizing radiation measuring instrument contains a combination of radionuclides, the instrument will contain no more than one exempt quantity of a single radionuclide or no more than ten exempt quantities of a combination of radionuclides.

Findings

In the preamble to the final rule published in the FEDERAL REGISTER on April 22, 1970 (35 FR 6427), the Commission found that the exemption from licensing of ionizing radiation measuring instruments containing certain internal calibration or standardization sources under the conditions set forth in 10 CFR 30.15(a)(9) will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public.

The Commission is considering a finding that the proposed amendments set forth below are of a minor or nonpolicy nature, do not substantially modify existing regulations, and will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public.

Regulatory Flexibility Certification

Based upon the limited information available to it concerning the size and nature of entities likely to be affected by this

amendment, the Commission, in accordance with sec. 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), hereby certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule will affect General Atomic Company (the petitioner for the action being proposed) and its customers who need ionizing radiation measuring instruments that are the subject of the proposed action. General Atomic Company is an affiliate of Gulf Oil Corporation and Royal Dutch/ Shell Group. General Atomic Company was worth $56 million, had $100 million in sales, and had 2400 employees in 1979 (information from EIS INDUSTRIAL PLANTS data base). The customers consist of less than ten companies which have construction permits to build nuclear power plants. These companies are dominant in their service areas, and do not fall within the scope of the definition of "small entities" set forth in section 601(3) of the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

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Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Part 30 is contemplated.

PART 30 - RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. In § 30.15, paragraph (a)(9) is revised to read as follows:

§ 30.15 Certain items containing byproduct material

(a) * * *

(9) Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, sources of byproduct material each not exceeding the applicable quantity set forth in § 30.71, Schedule B, Note 1.

* * * * *

2. In § 30.71, a new Note 1 is added immediately following the table to read as follows:

§ 30.71 Schedule B.

* * * * *

Note 1. For purposes of § 30.15(a)(9) where there is involved a combination of radionuclides, the limit for the combination should be derived as follows: Determine for each radicnuclide in an ionizing radiation measuring instrument the ratio between the quantity present in the instrument and the exempt quantity established in Schedule B for the specific radionuclide when not in combination. No ratio is to exceed one (1) and the sum of the ratios must not exceed ten (10).

Examples:

$$\frac{\text{Quantity of Radionuclide A in Instrument}}{\text{Exempt Quantity of Radionuclide A}} \leq 1$$

$$\frac{\text{Quantity of Radionuclide A in Instrument}}{\text{Exempt Quantity of Radionuclide A}} +$$

$$\frac{\text{Quantity of Radionuclide B in Instrument}}{\text{Exempt Quantity of Radionuclide B}} \leq 2$$

$$\frac{\text{Quantity of Radionuclide A in Instrument}}{\text{Exempt Quantity of Radionuclide A}} + \ldots +$$

$$\frac{\text{Quantity of ith Radionuclide in Instrument}}{\text{Exempt Quantity of ith Radionuclide}} \leq 10$$

(Secs. 81, 161i, Pub. L. 83-703, 68 Stat. 935, 948 (42 U.S.C. 2111, 2201i); sec. 201, Pub. L. 93-438, 88 Stat. 1242, Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5841).

Dated at BETHESDA MD this 17th day of February, 1981.

For the Nuclear Regulatory Commission.

William J. Dircks
Executive Director for Operations