

POLICY ISSUE NOTATION VOTE

June 21, 2013

SECY-13-0069

FOR: The Commissioners

FROM: R. W. Borchardt
Executive Director for Operations

SUBJECT: DENIAL OF PETITION FOR RULEMAKING (PRM-32-7)

PURPOSE:

To obtain Commission approval to deny a petition for rulemaking (PRM-32-7). This paper does not address any new commitments or resource implications.

BACKGROUND:

By letter dated May 7, 2012, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12151A083), Mr. Sean Chapel (the petitioner), president of the Association of Device Distributors and Manufacturers (ADDM), submitted a petition for rulemaking (PRM-32-7) requesting the U.S. Nuclear Regulatory Commission (NRC) to revise its regulations by adding a new general license to install and service exempt devices, similar to the existing general license to install and service generally licensed devices. The petitioner also asked the NRC to change the Agreement State compatibility designation of Title 10 of the *Code of Federal Regulations* (10 CFR) 31.6, "General license to install devices generally licensed in § 31.5" from "C" to "B."

In the original petition, dated May 7, 2012, the petitioner stated incorrectly that "[i]n the petition for regulation dated June 27, 2005 (ADAMS Accession No. ML051940187), the Organization of Agreement States (OAS) requested that the compatibility of 10 CFR 31.6 be revised from 'C' to 'B.'" (PRM-31-5). On August 3, 2012 (ADAMS Accession No. ML12219A085), the petitioner submitted a letter correcting the original petition, that the OAS had requested that the compatibility be changed from "B" to "C." This letter did not change the petitioner's original request.

CONTACT: Solomon Sahle, FSME/DILR
301-415-3781

SECY NOTE: THIS SECY PAPER TO BE RELEASED TO THE PUBLIC 5 WORKING DAYS AFTER DISPATCH OF THE LETTER(S).

The NRC elected not to request public comment on PRM-32-7 because no new regulation is necessary to accomplish the petitioner's request. Accordingly, there were no public comments on this petition.

DISCUSSION:

General License for Exempt Devices

The petitioner requested that a general license similar to 10 CFR 31.6 be included in 10 CFR Part 32 for the installation and servicing of exempt devices. The petitioner stated that it does not make sense that generally licensed devices can be serviced without filing for reciprocity, but exempt devices, which have a lower radiation dose potential, cannot be. The petitioner provided suggested rule text for a provision to be added to 10 CFR Part 32.

In accordance with 10 CFR 150.15(a)(6), only the NRC issues licenses for the manufacture, processing, or production of any equipment, device, commodity, or other product containing source material or byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from licensing and regulatory requirements under 10 CFR parts 30 and 40. Thus, no Agreement States issue specific licenses to manufacture, install, or service exempt devices. Further, the installation or servicing of exempt devices does not require a license. Any work not covered by the exemption, such as replacement of a source in a device, would be covered by an NRC license, and not by an Agreement State license. As a result, no license, whether general or specific, is needed to service or install exempt devices, except as described above.

Compatibility of 10 CFR 31.6

The petitioner stated that in 2000, the NRC changed the compatibility of 10 CFR 31.6 from "C" to "B" "in acknowledgement of the problems caused by incompatible State reciprocity regulations." The petitioner also noted that PRM-31-5 "stated that the reason for changing the compatibility of 10 CFR 31.6 was to assist the tracking and movement of companies and individuals that service these devices."

The petitioner stated that "[t]he Commission voted to decrease the compatibility in December 2010, stating that they thought it appropriate for Agreement States to regulate devices in their jurisdiction as they saw fit." The petitioner asserts that "[i]n the Commission ruling, there is no evidence that they fully reviewed the original decision in 2000 to increase the compatibility rating." The petitioner noted that "reciprocity regulations must be standardized at the national level" to avoid the type of chaos that "would be caused if each State had different regulations for occupational radiation doses, nuclear power plant operation, or high and low level radioactive waste." The petitioner asserted that "[t]his is the type of disorder that reciprocity applicants are forced to endure on a daily basis."

The staff has considered the petition and its supporting rationale. For the reasons set forth below and, in the enclosed draft *Federal Register* notice (Enclosure 1), the staff recommends denial of the petition.

The staff recommends denying the petition because the petitioner did not present a need for any revision of the regulations to add a general license for installation and servicing of exempt devices. No license of any kind is required now; contrary to the petitioner's claims, a general license would not simplify the servicing and installation of exempt devices.

As to the request for a compatibility change for 10 CFR 31.6, the issues concerning this categorization were considered and addressed by the Commission in a recent decision (77 FR 3640, January 25, 2012). Further, the petition fails to present any significant new information or arguments that would warrant the requested change.

RECOMMENDATIONS:

That the Commission:

1. Approve the denial of the petition for rulemaking and publication of the *Federal Register* notice announcing the denial;
2. Inform appropriate congressional committees; and
3. Note that a letter is enclosed for the Secretary's signature (Enclosure 2), informing the petitioner of the Commission's decision on the petition.

COORDINATION:

The Office of the General Counsel has no legal objection to the denial of this petition.

/RA by Michael F. Weber for/

R. W. Borchardt
Executive Director
for Operations

Enclosures:

1. *Federal Register* notice
2. Letter to the Petitioner

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OFC	OGC	Tech Editor	FSME	EDO
NAME	JBiggins	PTressler	MSatorius	RWBorchardt (MWeber for)
DATE	6/5/13	5/22/13	6/13/13	6/21/13

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