

# Proposed Rules

Federal Register

Vol. 75, No. 246

Thursday, December 23, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 70

[Docket No. PRM-70-9; NRC-2010-0372]

#### Francis Slakey on Behalf of the American Physical Society; Receipt of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; notice of receipt.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or Commission) is publishing for public comment a notice of receipt of a petition for rulemaking, dated November 10, 2010, which was filed with the NRC by Francis Slakey on behalf of the American Physical Society (APS). The petition was docketed by the NRC on November 18, 2010, and has been assigned Docket No. PRM-70-9. The petitioner requests that the NRC amend its regulations regarding the domestic licensing of special nuclear material to include proliferation assessments as part of the licensing process.

**DATES:** Submit comments by March 8, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Please include Docket ID NRC-2010-0372 in the subject line of your comments. For instructions on submitting comments and accessing documents related to this action, see "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods.

*Federal rulemaking Web site:* Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2010-0372. Address questions about NRC dockets to Carol Gallagher, telephone: 301-492-3668, e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

*Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

*E-mail comments to:* [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1966.

*Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852 between 7:30 a.m. and 4:15 p.m. during Federal workdays (telephone: 301-415-1966).

*Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

**FOR FURTHER INFORMATION CONTACT:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-492-3667.

#### SUPPLEMENTARY INFORMATION:

##### Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, <http://www.regulations.gov>. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document, including the petition for rulemaking, using the following methods:

*NRC's Public Document Room (PDR):* The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

*NRC's Agencywide Documents Access and Management System (ADAMS):*

Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov).

*Federal rulemaking Web site:* Public comments and supporting materials related to this action can be found at <http://www.regulations.gov> by searching on Docket ID NRC-2010-0372.

#### Background

Francis Slakey, on behalf of APS (petitioner), submitted a petition for rulemaking dated November 10, 2010. The APS is an organization of research physicists with members in academia, national laboratories, and industry. The petitioner requests that the NRC revise its regulations regarding the domestic licensing of special nuclear material to include proliferation assessments as part of the licensing process. The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under title 10 of the Code of Federal Regulations (10 CFR), section 2.802, and the petition has been docketed as PRM-70-9. The NRC is requesting public comment on the petition for rulemaking.

#### Discussion of the Petition

The petitioner stated that on February 18, 2010, the APS Panel on Public Affairs (POPA) released a report entitled "Technical Steps to Support Nuclear Arsenal Downsizing." In the report, APS/POPA noted that over the next few years, the NRC would be reviewing license applications for new technologies, and that these new technologies could pose proliferation risks. Specifically, the report concluded that some of the enrichment and reprocessing (ENR) technologies could pose unique proliferation risks, and that these risks can best be addressed by including a Nuclear Proliferation Assessment (NPA) in the ENR licensing process. The petitioner believes that the current licensing process may be insufficient to cover all of the issues that would arise in an NPA for two reasons:

(1) By having an NPA emerge as a “net effect” of the current licensing process rather than as an explicit request, non-proliferation is not given an adequate level of attention. The petitioner states that, under the current process, proliferation issues are spread across the entire license application process. As a result, the current process may overlook some properties of the new technology which may merit attention in a proliferation context.

(2) Key questions that indicate the degree of proliferation risk of an ENR technology may not be addressed under the NRC’s “net effect” approach. The petitioner believes that a proliferation assessment would be incomplete without a consideration of these key questions, including, but not limited to:

- Could the design of the technology be altered easily to allow for diversion of nuclear material?
- Could the facility be constructed and operated in a manner that is undetectable?
- Are there unique components of the technology whose acquisition would indicate the construction of such a facility and could be easily tracked?

The petitioner proposes that the NRC amend its regulations at subpart D of 10 CFR part 70, “Domestic Licensing of Special Nuclear Material,” to include a requirement for an NPA as follows:

#### **§ 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 petitioner believes that including a specific requirement for an NPA in the NRC regulations is consistent with the NRC requirement to evaluate whether the issuance of a license “would be inimical to the common defense and security or to the health and safety of the public.”

Dated at Rockville, Maryland, this 16th day of December, 2010.

For the Nuclear Regulatory Commission,

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 2010-32242 Filed 12-22-10; 8:45 am]

**BILLING CODE 7590-01-P**

## **DEPARTMENT OF ENERGY**

### **10 CFR Part 430**

#### **Request for Exclusion of 120 Volt, 100 Watt R20 Short Incandescent Reflector Lamps**

**AGENCY:** Office of the General Counsel, Department of Energy (DOE).

**ACTION:** Petition for rulemaking; request for comment.

**SUMMARY:** On November 29, 2010, the Department of Energy received a petition for rulemaking from the National Electrical Manufacturers Association (NEMA). The petition, requests the initiation of a rulemaking regarding a certain incandescent reflector lamp. The petition seeks to exclude from the coverage of energy conservation standards for incandescent reflector lamps a 120 volt, 100 watt R20 short lamp, which is marketed for use in hot tub spas. Public comment is requested on whether DOE should grant the petition and proceed with a rulemaking procedure on this matter.

**DATES:** Comments must be postmarked no later than January 24, 2011.

**ADDRESSES:** Any comments submitted must reference “Petition for Rulemaking: Exclusion of 120 Volt, 100 Watt R20 Short Incandescent Reflector Lamps.” Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* [ShortLampsPetition-2010-PET-0047@ee.doe.gov](mailto:ShortLampsPetition-2010-PET-0047@ee.doe.gov). Include “Petition for Rulemaking” in the subject line of the message.
- *Postal Mail:* John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Please submit one signed original paper copy.

• *Hand Delivery/Courier:* John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Please submit one signed original paper copy.

**FOR FURTHER INFORMATION CONTACT:** John Cymbalsky U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 287-1692, e-mail: [john.cymbalsky@ee.doe.gov](mailto:john.cymbalsky@ee.doe.gov).

**SUPPLEMENTARY INFORMATION:** The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, provides among other things, that “[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.” (5 U.S.C. 553(e)). Pursuant to this provision of the APA, NEMA petitioned the Department of Energy for the issuance of a new rule, as set forth below. In publishing this petition for public comment, the Department of Energy is seeking views on whether it should grant the petition and undertake a rulemaking to consider the proposal contained in this petition. By seeking comment on whether to grant this petition, the Department of Energy takes no position at this time regarding the merits of the suggested rulemaking.

The proposed rulemaking sought by NEMA would exclude 120 volt, 100 watt R20 short lamps from coverage of energy conservation standards for incandescent reflector lamps. The petition requests the Department of Energy stay enforcement of its energy conservation standard as applied to this type of lamp pending the outcome of this petition. The Department of Energy seeks public comment on whether DOE should grant the petition and proceed with a rulemaking procedure on this issue.

Issued in Washington, DC, on December 17, 2010.

**Scott Blake Harris,**  
*General Counsel.*

Set forth below is the full text of the National Electrical Manufacturers Association petition:

BEFORE THE U.S. DEPARTMENT OF ENERGY

November 29, 2010

#### **Petition for Rulemaking**

U.S. Department of Energy Attention: Hon. Catherine R. Zoi Acting Under Secretary of Energy 1000 Independence Avenue, SW Washington, D.C. 20585

RE: Petition of the National Electrical Manufacturers Association To Undertake Rulemaking To Exclude 120 Volt, 100 Watt R20 Short Lamps from Coverage of Energy Conservation Standards for Incandescent Reflector Lamps. *Request for Stay of Enforcement Pending Rulemaking*

Dear Under Secretary Zoi:

The National Electrical Manufacturers Association (NEMA), on behalf of its members who distribute in commerce certain incandescent reflector lamps, petitions the Department to commence a rulemaking pursuant to the Administrative Procedure Act to (1) determine that a certain type of incandescent reflector lamp—a 120 volt, 100 watt R20 short, which is marketed exclusively for use in hot tub spas sold into specific jurisdictions that provide pools and