

Honeywell International

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October 12, 2009

DOCKETED
USNRC

Secretary, U.S. Nuclear Regulatory Commission
Attn: Rulemakings and Adjudications Staff
Washington, DC 20555-0001

October 16, 2009 (3:15pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Subject: Docket ID: NRC-2008-0272

Dear Secretary:

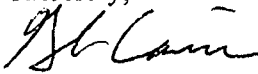
Please find attached comments from Honeywell International, Inc. on proposed regulations in NRC-2008-0272, 'Limiting the Quantity of Byproduct Material in a Generally Licensed Device'.

I and my staff would be willing to meet with you to discuss the comments and the proposed regulations. I previously served as an industry expert during the last rulemaking involving 10CFR31.5 and 10CFR31.6 during the public meetings. I would be willing to serve again if provided the opportunity.

Honeywell is recommending that no final decision be made regarding these proposed changes without holding a series of public meetings and providing the availability of open forums to discuss the need for changes and to fully evaluate the impact of the proposed changes. During previous rulemakings involving 10CFR31.5 and 10CFR31.6 the NRC has always had open meetings with representatives from the NRC, Agreement States, Distributors, Manufacturers, General Licensees and members of the General Public invited to participate and advance and discuss ideas.

If you have any questions, please don't hesitate to contact me by E-mail at gary.caines@honeywell.com or by telephone at 770-689-0186.

Sincerely,



Gary L. Caines,
Radiological Operations Program Manager

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Template = SECY-067

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Specific Questions for Comment

(1) Whether the 1/10 of IAEA Category 3 limit is the appropriate threshold level of byproduct material below which general licenses would still apply;

The NRC has proposed limiting the quantity of byproduct material in devices under 10CFR31.5 to 1/10 of the IAEA's Category 3 thresholds. This would in fact create additional burden for both licensees and regulatory resources. However, Honeywell does not believe that this additional regulatory burden is significant and therefore Honeywell has no objections to this new upper limit.

(2) Whether there should be additional protection against aggregation of sources by either requiring that if the aggregated amount of byproduct material that a general licensee possesses in devices exceeds 1/10 of IAEA Category 3, then the general licensee must obtain an SL, or more simply, by using the IAEA Category 4 threshold level as the limit for the GL;

We agree with the NRC that the proposed rule reflects the changed domestic and international threat environments and related US Government –supported international initiatives in the nuclear security area and that the burden on licensees and regulatory Agencies would not be significant.

We also agree that the General License registration program as it currently exists for general licensees is still valid because it makes the general licensees more aware of applicable regulatory requirements and further reduces the potential for improper handling or disposal of devices due to lack of knowledge. We believe that when general licensees are aware of their responsibilities they are more likely to comply with the requirements for proper handling of generally licensed devices.

Honeywell agrees that 1/10 of IAEA Category 3 should be the upper limit for the sum of aggregated source activities in one 10 CFR 31.5 device.

(3) Whether an even lower threshold limit for requiring licensees to obtain a SL should be used, such as the registration levels in 10 CFR 31.5(c)(13)(i). In providing support for this approach, the NRC is interested in whether there is specific information (*i.e.*, lack of accountability due to generally licensed devices being lost and/or abandoned) that would indicate that the GL registration program as instituted in the 1999 and 2000 rulemakings (see Section II.A.4.2 of this document) is no longer working satisfactorily from the standpoint of protecting the public health and safety from routine use of these devices by general licensees; or

Honeywell does not support an even lower threshold limit. It is the opinion of Honeywell that lack of accountability of 10 CFR 31.5 devices due to generally licensed devices being lost and abandoned is largely due to lack of accountability and control on the parts of the NRC and the Agreement States. Distributors of

Generally Licensed devices have historically provided information to the NRC and Agreement States for all 10 CFR 31.5 devices distributed to General Licensees during the previous calendar quarter. These reports include specific information on the Generally Licensed device and the licensee, including the device itself, date of distribution, company name, contact name and contact information. The regulatory bodies actually have more information on GL devices at their disposal than for SL devices. Unfortunately, the NRC and many of the Agreement States have not safeguarded this information or used the data to track GL devices or to perform periodic inspections on licensees possessing GL devices.

(4) Whether the approach regarding Compatibility Categories laid out in Section II.B of this document, *i.e.*, in which States have flexibility to adopt more rigorous requirements for general licensees, based on their circumstances and needs, can work satisfactorily. In particular, will there be any significant transboundary issues related to this approach or, will such an approach not have direct and significant effect on the transportation of the devices or on their movement in and out of States? Concerning the proposal discussed in Section C of this document which would prohibit specific licensees from using GL devices under 10 CFR 31.5 and would require these devices to be possessed and used under an SL, the Commission requests comments to assist in its evaluation of the impacts of such a change on specific licensees and on how best to implement the change. Specific questions for comment:

(A) How should this change be applied in the case of devices used by a specific licensee at different locations? Would there be difficulties in determining which devices used by a given entity must be under the specific license, if the applicability of 10 CFR 31.5 were to be determined by the location of use, as suggested?

Honeywell is against mandatory conversion any Generally Licensed devices into Specifically Licensed devices because the licensee also possesses a Specific License. However, the conversion of a 10 CFR 31.5 device into a Specifically Licensed device on a voluntary basis would be acceptable. Under current rules, Generally Licensed devices can be repaired immediately without waiting for Reciprocal Recognition of the Manufacturer's or Distributor's license to be granted. I don't believe most General Licensees are aware of the resultant delay in servicing of their devices and the significant adverse economic impact this change would have on their bottom line.

(B) How much time should be allowed for the specific licensees to transfer their currently held generally licensed GL devices to their SLs? Should devices currently held under the GL only be added to the SL only at the time of license renewal or amendment?

Please see (A) above. Honeywell is against mandatory transfer of devices from GL to SL status. However, if the transfer is voluntary Honeywell recommends

that the transfer be accomplished at the time of license renewal to minimize the burden on regulatory agencies.

(C) Should the details of the voluntary transfer process in 10 CFR 31.5(c)(8)(iii) become mandatory and be maintained in the regulation to assist the process?

Honeywell believes the transfer process in 10 CFR 31.5(c)(8)(m) should not become mandatory.

(D) Would there be a significant impact from the applicability of reciprocity requirements in 10 CFR 150.20 for portable gauges currently licensed under 10 CFR 31.5 and equivalent Agreement State regulations that are used in more than one jurisdiction? How would this proposal affect servicers of devices currently operating under the reciprocity provision of 10 CFR 31.6 and equivalent provisions of Agreement States?

There would be a significant negative impact on companies using portable Generally Licensed gauges in multiple jurisdictions. Fees would increase and response times for customers would increase, having a further adverse economic impact on these companies.

The NRC has proposed changing the Compatibility of 10CFR31.5 and 10CFR31.6 from Compatibility Level B to Compatibility Level C. Honeywell strenuously opposes revision of the Compatibility of both 10CFR31.5 and 10CFR31.6 from Compatibility Level B to Compatibility Level C. Currently, there is one national standard for Generally Licensed devices, covered in 10CFR31.5 and 10CFR31.6. If this "national standard" is deemed to be inferior in that the requirements are not strong enough, then 10CFR31.5 and 10CFR31.6 should be amended to increase the requirements to an acceptable level, to the satisfaction of most or all concerned parties, with the Compatibility Levels remaining unchanged from Compatibility Level B. The bottom line is that if 10CFR31.5 and 10CFR31.6 are good enough for licensees based in non-Agreement States then the regulations should be good enough for Agreement States, and if not, the regulations should be amended to correct deficiencies, but keep Compatibility Level B.

The NRC and Agreement States have implemented programs that regulate in a risk-informed manner with less and less prescriptive regulations over many years. Honeywell believes that a change in Compatibility Level to C would be a step backward and allows Agreement States to arbitrarily set limits on activity allowed in Generally Licensed devices that are not at all based on the risk to public health and safety. This would totally contradict the trend to a more risk-informed regulatory structure.

If the Compatibility Levels are changed from Compatibility Level B to Compatibility Level C, the result will be an extremely confusing situation whereby the rules are different in most of the states. The current situation is very clear and easy for device manufacturers and distributors to comply with. In addition, there are significant trans-boundary implications involving the Compatibility Level and Interstate Commerce is definitely impacted by these regulations. The NRC, and previously the AEC, have made some of our best points for us. The following two paragraphs are excerpts from (79162 Federal Register / Vol. 65, No. 243 / Monday, December 18, 2000 / Rules and Regulations 10 CFR Parts 30, 31, and 32 RIN 3150—AG03 Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material).

In implementing the Agreement State Program through the regulations in 10CFR part 150 in 1962, the Commission (then AEC) stated: “The Commission’s decision not to exercise its authority to license the transfer of products containing atomic energy materials (other than products designed for distribution to the general public) is based on the assumption that agreement States will maintain continuing compatibility between their programs and Commission programs; and that procedures will be devised assuring reasonable, reciprocal recognition of licenses and licensing requirements among such States and the Commission.”

During a previous rulemaking on 10CFR31.5 and 10CFR31.6, the NRC stated, “The Commission agrees that there are significant trans-boundary implications of these regulations. The compatibility requirements for §§ 31.5 and 31.6 are being made a Category B. After the Agreement States make the required changes to their regulations (in about three years), the distributors’ and other servicers’ problems with reciprocity for servicing will be eliminated.” (FRG 79162 Vol. 65, No. 243, Dec 18, 2000).

Another caveat is that the potential change of Compatibility Levels from B to C for 10CFR31.5 and 10CFR31.6 would have a significant adverse impact on General Licensees in Agreement States that restrict the General License issued in 10CFR31.6 to Distributors and Manufacturers of Generally Licensed devices to perform service activities. Under the current regulations, a legal service provider can perform service on a Generally Licensed device without waiting the 3 or more days for reciprocal recognition to be granted. Some states (Kansas) have already extended this to five days. During this hiatus, production at the plant where the Generally Licensed device is installed may be down completely or significantly compromised, and quality significantly impaired until the delayed repairs are completed. This would place this manufacturer in a jeopardized position when competing against competitors in other States or against international competitors. In today’s economic climate, this is not the direction we need to be going.

It is also the opinion of Honeywell that the predominant reason some Agreement States desire Compatibility Levels of C for 10CFR31.5 and 10CFR31.6 is to

generate fees through Reciprocal Recognition fees and Inspection fees, not to increase safety and security.

(E) Would it be preferable to maintain the applicability of 10 CFR 31.5, but to apply some or all of the terms and conditions of the SLs, *e.g.*, by removing the exemptions in 10 CFR 31.5(c)(10) for those holding an SL?

Honeywell believes that the exemptions from the requirements of Parts 19, 20, 21 listed in 10CFR31.5(c)(10) should not be removed.

(F) How much impact would there be to 10 CFR 32.51 licensees and Agreement State equivalent licensees to ensure that they are transferring these devices to entities without an SL?

Honeywell believes that it would be a very difficult task to ascertain that a licensee receiving a 10CFR31.5 device did not have an existing Specific License. Many licensees have very large organizations, multiple locations, etc. It could be very difficult in some situations for distributors and licensees to know the licensing situation.

(G) Should the sealed source and device registration certificates authorizing devices for use under 10 CFR 31.5 and equivalent Agreement State regulations be required to address transfers to both general and specific licensees?

Honeywell firmly believes that Sealed Source and Device Registrations should be issued for distribution as Generally Licensed devices or Specifically Licensed devices, or both. This decision should be up to the Distributor. The NRC and Agreement States should not be permitted to change the distribution classification from Generally Licensed to Specifically Licensed. If the distribution category is changed, it should be through a re-distribution process by an authorized distributor and new labels attached to the device denoting that the device is now Specifically Licensed.

Rulemaking Comments

From: Caines, Gary (GA01) [gary.caines@honeywell.com]
Sent: Friday, October 16, 2009 10:36 AM
To: Rulemaking Comments
Subject: Docket ID NRC-2008-0272 -Comments from Honeywell International
Attachments: NRC 10-12-09.pdf; NRC 10-12-09.doc

Importance: High

Please find attached comments from Honeywell International on Docket ID: NRC-2008-0272, proposed regulations in NRC-2008-0272, 'Limiting the Quantity of Byproduct Material in a Generally Licensed Device'..

Regards,
Gary

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([131.127.167.137]) by az18ip008.honeywell.com with ESMTP; 16 Oct 2009
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Disposition-Notification-To: "Caines, Gary (GA01)" <gary.caines@honeywell.com>

Subject: Docket ID NRC-2008-0272 -Comments from Honeywell International

Date: Fri, 16 Oct 2009 07:36:10 -0700

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X-MS-TNEF-Correlator:

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Thread-Index: AcpObfMQA4puKAp9Sxy7syr0OoQnmQ==

X-Priority: 1

Priority: Urgent

Importance: high

From: "Caines, Gary (GA01)" <gary.caines@honeywell.com>

To: <Rulemaking.Comments@nrc.gov>

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X-OriginalArrivalTime: 16 Oct 2009 14:36:38.0084 (UTC) FILETIME=[1185F040:01CA4E6E]