

July 11, 2000

COMMISSION VOTING RECORD

DECISION SECY-00-0106

ITEM:

TITLE: FINAL RULE: 10 CFR PARTS 30, 31, AND 32 - "REQUIREMENTS FOR CERTAIN GENERALLY LICENSED INDUSTRIAL DEVICES CONTAINING BYPRODUCT MATERIAL" AND RELATED CHANGE TO THE ENFORCEMENT POLICY

The Commission (with all Commissioners agreeing) approved the subject final rule as noted in an Affirmation Session and recorded in the Affirmation Session Staff Requirements Memorandum (SRM) of July 11, 2000.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

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Annette Vietti-Cook  
Secretary of the Commission

Attachments: 1. Voting Summary  
2. Commissioner Vote Sheets

cc: Chairman Meserve  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
OGC  
EDO  
PDR

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VOTING SUMMARY - SECY-00-0106

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X				X	6/23/00
COMR. DICUS	X				X	6/12/00
COMR. DIAZ	X				X	6/1/00
COMR. MCGAFFIGAN	X				X	6/26/00
COMR. MERRIFIELD	X				X	6/19/00

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were affirmed in an Affirmation Session as reflected in the Affirmation Session SRM issued on July 11, 2000.

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**Commissioner Comments on SECY-00-0106**

**Chairman Meserve**

I approve the notice of final rulemaking and the related revisions to the enforcement policy, as described in SECY-00-0106, subject to the following comments.

- I support the views of Commissioners Dicus, Diaz, and Merrifield for staff to 1) change the compatibility category for Agreement States for all of 10 CFR 31.5 to Compatibility Category B and 2) change the compatibility category for Agreement States for 10 CFR 31.6 to Compatibility Category B. Modification of the Federal Register notice and the Regulatory Analysis will be necessary.
- I support the views of Commissioners Dicus and Merrifield for staff to 1) report back to the Commission, after a specified period of time implementing this new rule and its registration system (e.g., one to two years), to provide its experiences and recommendations for a national database and 2) report back to the Commission, as soon as reasonably possible, on expediting the process of electronic transmittal by distributors of quarterly reports and other data.

## Commissioner Dicus

Let me first state that I strongly support the staff's initiatives and continued hard work in providing the Commission a well-balanced and thorough proposal for a final rulemaking that I believe significantly improves the accountability of generally licensed sources and devices. As the staff is well aware, there has been much attention directed by international safety organizations and national authorities at the potential radiation and environmental hazards associated with lost or misplaced sources and devices. Ensuring that radiation and environmental safety is consistent with societal expectations is a challenge to all concerned and I am pleased to be involved with one of the first agencies to make these proposed changes final as another step in ensuring the public's health and safety. This is a final rule that I heartily endorse and offer the following comments for consideration.

First, I recommend that Compatibility Category B be required for §§31.5(c)(13) and 31.6. As the staff so clearly indicates in the rulemaking package, there are significant transboundary implications associated not only with 10 CFR Section 31.5, but for specific requirements for registration (§§31.5(c)(13) and 31.6). While it is commendable that the NRC give flexibility to States that already have regulations in place for generally-licensed sources and devices, I believe that it is necessary, because of these transboundary implications, that Compatibility Category B be required. In addition, I note that if there ever is hope for a national database in this arena, the assignment of Category B is a step in the right direction.

As to the issue of a national database, I would ask that the staff be prepared to report back to the Commission, after a specified period of time implementing this new rule (e.g., one to two years), to provide its experience and recommendations for a national database.

Finally, I strongly recommend that the staff expedite the process of electronic transmittals of the quarterly report data to allow distributors to transmit this, as well as other reporting information electronically. This will not only to ease the burden of distributors, but should require significantly less NRC staff and contractor support, as well. In an era of paperless transactions, and in an agency strongly supportive of electronic media, I would request that the staff report back to the Commission on this issue as soon as reasonably possible.

Once again I highly commend the staff for their efforts and for succinctly addressing one of many important health and safety issues facing the Commission today.

## Commissioner Diaz

I continue to believe it is necessary for NRC to ensure that general licensees can ensure appropriate handling of and be accountable for their devices. I also believe that this rule is an efficient and effective mechanism for achieving this objective. Therefore, I approve the notice of final rulemaking and the revision to the enforcement policy with the following comments.

I agree with the staff's proposal that the general license requirements should be a Compatibility Category B for Agreement States. However, I disagree with the proposal that the section dealing with the registration requirements, 10 CFR 31.5(c)(13), be a Compatibility Category C for Agreement States. Allowing registration requirements to be Compatibility Category C could lead to 32 different sets of registration requirements. I believe that the transboundary implications associated with both distribution and general licensees' accountability of devices are sufficient to support Compatibility Category B for the rule in toto. Consistent regulations are necessary to ensure that distributors provide general licensees with complete and accurate information about all of their licensing requirements, including registration requirements. The main purpose of registration is to improve general licensees' accountability of devices. Allowing Agreement States to implement different registration requirements, possibly covering types of devices different than those included in 10 CFR 31.5(c)(13), could lead to different levels of assurance of accountability. This could result in lost devices, due to less stringent registration requirements in one jurisdiction, being in the public domain of another jurisdiction. Therefore, all of 10 CFR 31.5 should be a Compatibility Category B for Agreement States.

I also disagree with the proposal that the general license for servicing of devices, 10 CFR 31.6, be a Compatibility Category C for Agreement States. Specifically, this provision grants a general license for distributors to install and service devices used by general licensees. Since these activities are essential to the distribution and safe use of the devices, I believe that this regulation has significant transboundary implication. Therefore, 10 CFR 31.6 should be a Compatibility Category B for Agreement States.

The staff has noted that it needs to obtain OMB clearance for the registration form before registration can begin. The staff estimates that this process will take about 6 months. Therefore, the staff should initiate the first round of registration within 6 months of Commission approval of this final rule. If implementation needs to be delayed, the staff should notify the

Commission of the reasons for the delay.

## **Commissioner McGaffigan**

I gladly join my fellow Commissioners in approving the notice of final rulemaking to Parts 30, 31, and 32, to improve the control and accountability of certain generally-licensed devices and the related enforcement policy. I also commend the staff for their efforts to address this important program area which has implications nationwide. I offer the following comments for the staff's consideration.

I fully agree with my colleagues' comments that the compatibility designation for the requirements in 10 CFR 31.5(c)(13) and 31.6 should be changed from category C to B due to the significant transboundary implications associated with use of these devices. I also agree that the staff should keep the Commission periodically informed of the status of this program including such milestones as: 1) when the registration process has been implemented; 2) the staff's experience in establishing and using the national device database and the degree to which Agreement States are compatible with the rule; and 3) the staff's progress in allowing for electronic transmittals of required information. The Commission should also be notified if, during development of the FY 2001 fee rule, the estimated fee changes dramatically (e.g., >25%).

A brief discussion should be added to the *Background* section for the purposes of defining the term, "Agreement State" and identifying the Agreement States since this rule affects general licensees who historically may not have been aware of the distinction between NRC's jurisdiction and that of the Agreement States and may work in both jurisdictions.

I encourage the staff to promptly develop and distribute the pamphlet, briefly discussed in the Federal Register notice, that will provide basic information for general licensees to further increase the likelihood of compliance with this rule.

Finally, I offer the attached edits to the Federal Register notice for clarity.

## **Commissioner Merrifield**

I approve the notice of final rulemaking along with the related revisions to the enforcement policy as described in SECY-00-0106 with the following comments.

First, I believe the requirements in §§31.5(c)(13) and 31.6 should be compatibility category B. There are significant transboundary implications associated not only with 10 CFR 31.5, but also for specific requirements for registration contained in §§31.5(c)(13) and 31.6. In addition, if there is ever hope for a national database in this arena, the assignment of compatibility category B for these sections is a step in the right direction.

SECY-00-0106 mentions that the staff will consider developing a national database after experience is gained with the new registration system. SECY should track staff reporting back to the Commission with its experience and recommendations for a national database within a reasonable time frame (approximately two years or less) after the registration system is implemented.

I strongly recommend that the staff expedite the process of electronic transmittals of the quarterly report data to allow distributors to transmit this quarterly data, as well as other reporting information electronically. The staff should report back to the Commission on this issue as soon as reasonably possible.

Finally, I commend the staff for their efforts in addressing this issue with the coordination of input from the Agreement States. This is an important issue and the resolution is not necessarily easy to develop or implement. But the staff is doing a credible job with this rulemaking package.