



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

SECRETARY

August 30, 2007

COMMISSION VOTING RECORD

DECISION ITEM: SECY-07-0113

TITLE: FINAL RULE: 10 CFR PARTS 30, 31, 32, AND 150 --
EXEMPTIONS FROM LICENSING, GENERAL LICENSES,
AND DISTRIBUTION OF BYPRODUCT MATERIAL:
LICENSING AND REPORTING REQUIREMENTS (RIN
3150-AH41)

The Commission (with all Commissioners agreeing) approved the final rule as noted in an Affirmation Session and recorded in the Staff Requirements Memorandum (SRM) of August 30, 2007.

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

A handwritten signature in black ink, appearing to read "Annette Vietti-Cook", written over a horizontal line.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Klein
Commissioner McGaffigan
Commissioner Jaczko
Commissioner Lyons
OGC
EDO
PDR

VOTING SUMMARY - SECY-07-0113

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. KLEIN	X				X	8/9/07
COMR. McGAFFIGAN	X				X	8/9/07
COMR. JACZKO	X				X	8/20/07
COMR. LYONS	X				X	7/24/07

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the final rule, as noted in an Affirmation Session and reflected in the SRM issued on August 30, 2007.

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: **CHAIRMAN KLEIN**
SUBJECT: **SECY-07-0113 - FINAL RULE: 10 CFR PARTS 30, 31, 32, AND 150 - EXEMPTIONS FROM LICENSING, GENERAL LICENSES, AND DISTRIBUTION OF BYPRODUCT MATERIAL: LICENSING AND REPORTING REQUIREMENTS (RIN 3150-AH41)**

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____



SIGNATURE

8/9/07

DATE

Entered on "STARS" Yes No _____

Chairman Klein's Comments on SECY-07-0113

I approve the staff's request for publication of the final rule, subject to the following comments and edits:

1. I agree with Commissioner Lyons' comments and edits.
2. In addition to the actions proposed by Commissioner Lyons concerning the authority of specific licensees to conduct the activities permitted by this rulemaking, staff should revise the Federal Register notice as follows to more clearly distinguish between activities authorized by this rule change and those that must be authorized on the specific license when a device is transferred from use under the general license to use under the specific license:
 - A. Move the paragraph on page 25 that begins with the sentence "A necessary condition for this type of transfer is that the licensee must verify that the conditions of the specific license authorize the possession and use of the device." to page 23, after the sentence that begins "There has been some confusion about the licensee's responsibilities...."
 - B. Revise the second to last sentence of the first paragraph on page 24 as follows: "The licensee ~~should~~ must also ensure that the information on the manufacturer, model number, and serial number is retained on the labeling."
 - C. Revise the paragraph which starts at the bottom of page 24 as follows: "...A specific licensee ~~would~~ who plans to conduct its own maintenance activities, including required leak tests, ~~but may need~~ must have information concerning the appropriate methods particular to the device. This information ~~would~~ may have been provided if the device had been distributed as specifically licensed. However, because the device was generally licensed and, in some cases, the end user was not permitted to perform certain maintenance, this information may not have been provided when the device was obtained. A specific licensee who ~~wishes to~~ transfers a generally licensed device to the authority of its specific license ~~must have any information developed by the manufacturer on specific maintenance procedures. If the licensee~~ and does not already have this information, it could contact the manufacturer, a service provider, another knowledgeable licensee, or a regulatory agency to obtain information on the proper procedures for conducting leak testing and other required maintenance activities."
 - D. Revise the third sentence of the Response on page 29 as follows: "Although the specific licensee ~~should~~ must have sufficient expertise to conduct adequate maintenance activities..."

 8/9/07
Dale E. Klein Date

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MCGAFFIGAN

SUBJECT: **SECY-07-0113 - FINAL RULE: 10 CFR PARTS 30, 31, 32, AND 150 - EXEMPTIONS FROM LICENSING, GENERAL LICENSES, AND DISTRIBUTION OF BYPRODUCT MATERIAL: LICENSING AND REPORTING REQUIREMENTS (RIN 3150-AH41)**

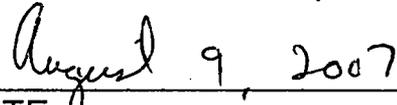
Approved X Disapproved Abstain Not Participating

COMMENTS: Below X Attached None

I approve for publication in the *Federal Register* the final amendments to Parts 30, 31, 32, and 150, which amend several regulations governing the distribution of byproduct material. I support both Commissioner Lyons' and the Chairman's thoughtful comments on the rule and the *Federal Register* notice.



SIGNATURE



DATE

Entered on "STARS" Yes X No

AFFIRMATION ITEM

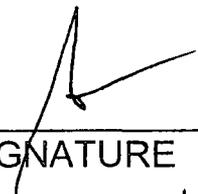
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER JACZKO
SUBJECT: **SECY-07-0113 - FINAL RULE: 10 CFR PARTS 30, 31, 32, AND 150 - EXEMPTIONS FROM LICENSING, GENERAL LICENSES, AND DISTRIBUTION OF BYPRODUCT MATERIAL: LICENSING AND REPORTING REQUIREMENTS (RIN 3150-AH41)**

Approved Disapproved Abstain

Not Participating

COMMENTS: Below Attached None



SIGNATURE

8/28/07

DATE

Entered on "STARS" Yes No

Commissioner Jaczko's Comments on SECY-07-0113

Final Rule: 10 CFR Parts 30, 31, 32, and 150 - Exemptions from Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements

I approve the staff's recommendation to publish in the *Federal Register* the final amendments to Parts 30, 31, 32, and 150, subject to the below modifications. The amendments modify the reporting requirements for licensees distributing byproduct material to persons exempt from licensing, remove obsolete provisions, clarify certain regulatory requirements, and simplify smoke detector distribution. These amendments would also modify the current requirements for transferring a generally licensed device for use under a specific license. While I support removing obsolete provisions and the modification/clarification of the regulations to make clear the Commission's expectations, I believe that in the current post September 11, 2001, environment that the agency should ensure that our licensing processes can not be easily exploited by someone seeking to use byproduct materials for malevolent purposes.

The current regulatory requirements for transferring a general license device to a specific licensee in §31.5(c)(8)(I) and (c)(8)(iii) allows the transfer under certain circumstances to specific licensees without prior Commission approval. In the event a general licensee wishes to transfer such device(s) to a specific licensee not identified in §31.5(c)(8)(I), prior approval by the Commission is required under §31.5(c)(8)(iii).

Recent events involving a General Accountability Office (GAO) investigation where the GAO obtained a license from the NRC and later altered that license to obtain radioactive materials not authorized under the original license call into question the final amendments in this proposal to allow the transfer of byproduct materials without authenticating the license. I raised concerns over the authenticity of licenses in my vote on SECY-06-0080 for the National Source Tracking System in response to an earlier GAO investigation involving the smuggling of radioactive materials across the border because I believed it raised significant security concerns.

Some of the devices transferred under these provisions would meet the Category 3 threshold levels of the International Atomic Energy Agency's Code of Conduct for the Safety and Security of Radioactive Sources. Category 3 sources will eventually be tracked by the Commission in the National Source Tracking System (NSTS). Tracking devices in the NSTS, however, may not necessarily address whether the license utilized to acquire radioactive materials via transfer is legitimate. Ultimately, the Commission should not allow the transfer of Category 3 or above radioactive materials to anyone without verifying the license. Thus, I disapprove of the provision that would permit transfers of devices that meet or exceed IAEA Code of Conduct Category 3 thresholds to another licensee without prior approval of the Commission. Accordingly, the staff should revise the final amendments to reflect this change, including making conforming changes to any other provisions of these amendments.

Finally, I would permit a licensee that possesses a generally licensed device to transfer the device to its specific license provided nothing in the license would prohibit such transfer without prior approval. I believe that the staff should review the transfers that have occurred under the current regulations to ensure that such transfers have not been made in manner that is contrary to a licensee's current license. If licensees have made transfers that contravene the provisions of the specific license, the licensee should be required to submit an amendment to resolve the conflict with transferring a generally license device to a specific license.



Gregory B. Jaczko



Date

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: **COMMISSIONER LYONS**

SUBJECT: **SECY-07-0113 - FINAL RULE: 10 CFR PARTS 30, 31, 32, AND 150 - EXEMPTIONS FROM LICENSING, GENERAL LICENSES, AND DISTRIBUTION OF BYPRODUCT MATERIAL: LICENSING AND REPORTING REQUIREMENTS (RIN 3150-AH41)**

Approved Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached None _____



SIGNATURE

7/24/07

DATE

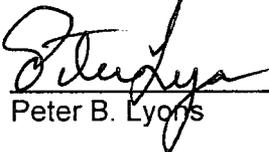
Entered on "STARS" Yes No _____

Commissioner Lyons' Comments on SECY-07-0113

I approve the staff's request to publish the final rule in the Federal Register Notice subject to the following comments and edits:

1. Staff should develop an interim process to compile, analyze, and QA incoming annual exemption summary reports to meet the objectives of evaluation of public health and safety before such a system is included in the web-based licensing.
2. The typical specific license for gauges currently issued by NRC and Agreement States would not authorize all activities now permitted with the adoption of this rulemaking. Staff should communicate with affected licensees and Regional and Agreement State licensing staff to ensure that appropriate action is taken to amend affected licenses to allow the transfer of a generally licensed device for use under a specific license.
4. Page 60 of the FRM change "device" to "products"
5. Page 66 revise 150.20(b) to delete 30.14(d).

I also concur in the staff's finding of no significant impact on small entities.

 7/24/07
Peter B. Lyons Date