

IN RESPONSE, PLEASE
REFER TO: M070830

August 30, 2007

MEMORANDUM FOR: Luis A. Reyes
Executive Director for Operations

John F. Cordes, Director
Office of Commission Appellate Adjudication

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 9:00 A.M.,
THURSDAY, AUGUST 30, 2007, COMMISSIONERS'
CONFERENCE ROOM, ONE WHITE FLINT NORTH,
ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I. 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)

The Commission¹ approved a final rule amending 10 CFR Parts 30, 31, 32, and 150 governing the distribution of byproduct material. This final rule affects distributors of byproduct material to exempt persons, some general licensees, and some users of exempt products. The Commission has voted to approve the publication and implementation of this final rule, subject to the comments and changes noted in the attachment.

Following incorporation of these changes, the Federal Register notice should be reviewed by the Rules Review and Directives Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.

(EDO)

(SECY Suspense:

9/28/07)

The 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.

¹ Section 201 of the Energy Reorganization Act, 42 U.S.C. Section 5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioners Jaczko and Lyons were present in the Conference Room. Chairman Klein participated in the meeting via speakerphone. Commissioner McGaffigan was not present when this item was affirmed. Accordingly the formal vote of the Commission was 3-0 in favor of the decision. Commissioner McGaffigan, however, had previously indicated that he would approve this Order and had he been present he would have affirmed his prior vote.

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. The 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.

II. SECY-07-0137 - Southern Nuclear Operating Co. (Early Site Permit for Vogtle ESP Site) – Certified Question Regarding Conduct of Mandatory Hearing

The Commission¹ approved a Memorandum and Order responding to a certified question to the Commission from the Atomic Safety and Licensing Board on whether the Commission wanted the Licensing Board to conduct the Vogtle ESP mandatory hearing. The Memorandum and Order affirms the Commission's original delegation to the Board and asks the Board to conduct the mandatory hearing in this proceeding, as originally planned.

(Subsequently, on August 30, 2007, the Secretary signed the Memorandum and Order.)

Attachment: Comments and Changes to the Final Rule in SECY-07-0113

cc: Chairman Klein
 Commissioner McGaffigan
 Commissioner Jaczko
 Commissioner Lyons
 EDO
 OGC
 CFO
 OCAA
 OCA
 OIG
 OPA
 Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
 PDR

Comments and Changes to the Final Rule in SECY-07-0113

1. 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....”
2. 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.”
3. 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 transfer~~ **s** 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.”
4. 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...”
5. Page 60, line 1 from the top, change “device” to “products”.
6. Page 66, revise 150.20(b) to delete 30.14(d).