



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

August 13, 2013

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-13-0069

TITLE: DENIAL OF PETITION FOR RULEMAKING (PRM-32-7)

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of August 13, 2013.

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 Macfarlane
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
EDO
PDR

SECY NOTE: This SRM, the Voting Record, and the subject SECY paper will be released to the public 5 working days after dispatch of the letter to the petitioner.

VOTING SUMMARY - SECY-13-0069

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MACFARLANE	X				X	8/5/13
COMR. SVINICKI	X				X	7/26/13
COMR. APOSTOLAKIS	X				X	7/16/13
COMR. MAGWOOD	X					7/24/13
COMR. OSTENDORFF	X				X	7/8/13

NOTATION VOTE

RESPONSE SHEET


TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN MACFARLANE
SUBJECT: SECY-13-0069 – DENIAL OF PETITION FOR
RULEMAKING (PRM-32-7)

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below X Attached X None

I approve the staff's recommendation to deny the petition for rulemaking. I also approve publication of the *Federal Register* notice and the draft letter to the petitioner, subject to the attached edits.



SIGNATURE
8/5/13

DATE

Entered on "STARS" Yes X No

NUCLEAR REGULATORY COMMISSION

10 CFR Part 32

[Docket No. PRM-32-7; NRC-2012-0127]

Compatibility of Generally Licensed and Exempt Devices

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM), dated May 7, 2012, submitted by Mr. Sean Chapel (the petitioner) on behalf of the Association of Device Distributors and Manufacturers (ADDMM). The petition was docketed by the NRC on May 24, 2012, and was assigned Docket No. PRM-32-7. The petitioner requested that the NRC create a new regulation for exempt devices similar to the NRC regulations for generally licensed devices. The petitioner also requested that the NRC ~~to~~ change the Agreement State compatibility designation of ~~general licenses to install generally licensed devices~~ 10 C.F.R. 31.6 from "C" to "B". The NRC is denying the petition because the petitioner fails to present any significant new information or arguments that would support the requested changes, nor has he demonstrated a need for a new provision for exempt devices.

reference to the change in compatibility, the petitioner is “not asking that the regulations be re-written, only that they be enforced as written.”

In support of the second request, the petitioner cited a PRM dated June 27, 2005 (ADAMS Accession No. ML051940187), from the Organization of Agreement States (OAS), which requested that the compatibility of 10 CFR 31.6 be revised from “C” to “B.” The petitioner also noted that the OAS petition “stated that the reason for changing the compatibility of 10 CFR 31.6 was to assist the tracking and movement of companies and individuals that service these devices.” The NRC staff asked the petitioner, by telephone, to clarify that the reference was to an OAS PRM requesting that the compatibility of 10 CFR 31.6 be revised from “B” to “C,” and if so, to resubmit a letter correcting their PRM. By letter dated August 3, 2012 (ADAMS Accession No. ML12219A085), the petitioner corrected their reference to the OAS PRM.

II. Background Discussion

Reciprocity for Exempt Devices

Section 31.6 of 10 CFR provides a general license ~~to for~~ persons holding a specific license issued by an Agreement State that authorizes manufacture, installation, or servicing of a device described in 10 CFR 31.5 within ~~an the~~ Agreement State. The general license issued under 10 C.F.R. 31.6 allows such persons to install and service these devices in any non-Agreement State and ~~a general license to install and service these devices~~ in offshore waters. The NRC adopted this regulation in 1962 (originally in 10 CFR 30.21(c)(6)) at the same time 10 CFR Part 150, “Exemptions And Continued regulatory authority In Agreement States and in offshore waters under Section 274,” was issued as part of implementing the Agreement State program.

In accordance with 10 CFR 150.15(a)(6), only the NRC can issue licenses for the

manufacture, processing, or production of any equipment, device, commodity, or other product containing source material or byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from licensing and regulatory requirements. Thus, the Agreement States do not issue licenses to manufacture, install, or service exempt devices. Further, servicing exempt devices does not require a license. Any refurbishing not covered by the exemption, such as replacement of a source in a device, would require an NRC license, and ~~/or would not be covered~~ an Agreement State license. Therefore, a general license is not required to install or service exempt devices, and the petitioner's requested change to the regulations is not needed.

Compatibility of 10 CFR 31.6

On January 25, 2012, the NRC published a *Federal Register* notice (FRN) (77 FR 3640) to withdraw a proposed rule and to close PRM-31-5 (NRC-2005-0018; NRC-2008-0272). PRM-31-5 requested that the NRC amend its regulations to strengthen the regulation of radioactive materials by requiring a specific license for higher-activity devices that are currently available under a general license, and by changing the compatibility designation of 10 CFR 31.6 from category "B" to category "C." In this FRN, the NRC also addressed a related request filed by the Florida Department of Health, Bureau of Radiation Control, in conjunction with the OAS petition to change the compatibility category of a certain part of the applicable regulations from category "B" to category "C."

In response to PRM-31-5, the NRC developed a proposed rule that would have limited the quantity of byproduct material contained in a generally licensed device to below one-tenth of the International Atomic Energy Agency Category 3 thresholds. It would also have changed the compatibility of the applicable regulations.

The compatibility change requested in PRM-31-5 was filed in response to the 2000 general-license rule (65 FR 79162; December 18, 2000), which designated the requirements in

10 CFR 31.5 and 10 CFR 31.6 as compatibility category "B." The general license rule adopted compatibility B for these regulations because the Commission was concerned that essentially identical regulations were needed to ensure reciprocal recognition of licenses and licensing requirements among Agreement States and the NRC. After evaluating the post-2000 general license regulations in response to PRM-31-5, the NRC reassessed its position. The NRC found that since 2000, Agreement States took a variety of actions that were not consistent with the rule, despite its designation as compatibility category "B." Many Agreement States adopted stricter regulations of generally licensed devices, including registration with annual reporting requirements and periodic inspection; expanded registration of more types of generally licensed devices; specific licensing of certain generally licensed devices; and specific licensing of all generally licensed devices currently registered by the NRC. However, the NRC did not observe any transboundary problems from these different practices that would have supported the continued use of compatibility B for 10 CFR 31.5 and 31.6. Further, complexity and cost are not aspects of determining significant transboundary health and safety impacts under the Commission's 1997 Policy Statement on Adequacy and Compatibility of Agreement State Programs (62 FR 46517; September 3, 1997). Therefore, the NRC believed it was appropriate to change the compatibility category from "B" to "C" for 10 CFR 31.5 and 10 CFR 31.6. This action allowed many Agreement States to continue the practices they had already implemented and to take additional steps they deem appropriate based on local circumstances, including retaining the use of tools to track the location and movement of devices, manufacturers, and service providers within the State; addressing issues specific to their jurisdictions; continuing programs that have proven beneficial; and adopting requirements based on their specific circumstances and needs.

After further review, the Commission addressed the compatibility-related issues raised in PRM-31-5. Although, the Commission disapproved publication of the final rule and withdrew the

AMM edits

Sean Chapel
Association of Device Distributors
and Manufacturers
P.O. Box 91377
San Diego, CA 92169

Dear Mr. Chapel:

I am responding to your letter dated May 7, 2012, to the U.S. Nuclear Regulatory Commission (NRC) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12146A083), by which you submitted to the NRC a petition for rulemaking (PRM), asking the NRC to change the compatibility of § 31.6 of Title 10 of the *Code of Federal Regulations* (10 CFR) and to add a new provision regarding the installation and servicing of exempt devices. The petition was docketed as PRM-32-7.

The NRC has determined that your petition should be denied. The NRC is denying your request to add a new general license for the installation and servicing of exempt devices because a license is not needed to service and install these devices. The NRC is denying your request to change the compatibility of 10 CFR 31.6 because the compatibility was recently changed, and you have not identified any new information that would cause the NRC to reconsider its position. The reasons for the denial are outlined in this letter, and discussed in detail in the enclosed notice, which has been submitted for publication in the *Federal Register*.

This petition, Docket No. PRM-32-7, is considered closed.

Any questions you may have regarding this matter should be directed to Solomon Sahle, at 301-415-3781 or by e-mail to Solomon.Sahle@nrc.gov.

Sincerely,

Annette L. Vietti-Cook
Secretary of the Commission

Enclosure:
Federal Register notice

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: SECY-13-0069 – DENIAL OF PETITION FOR RULEMAKING (PRM-32-7)

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below XX Attached XX None _____

I approve staff's recommendation to deny the petition for rulemaking. I approve publication of the *Federal Register* notice, subject to the attached edits. I also propose two minor edits to the draft letter to the petitioner, as attached.



SIGNATURE

07/26/13

DATE

Entered on "STARS" Yes No _____

NUCLEAR REGULATORY COMMISSION

10 CFR Part 32

[Docket No. PRM-32-7; NRC-2012-0127]

Compatibility of Generally Licensed and Exempt Devices

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM), dated May 7, 2012, submitted by Mr. Sean Chapel (the petitioner) on behalf of the Association of Device Distributors and Manufacturers (ADDM). The petition was docketed by the NRC on May 24, 2012, and was assigned Docket No. PRM-32-7. The petitioner requested that the NRC create a new regulation for exempt devices similar to the NRC regulations for generally licensed devices. The petitioner also requested the NRC to change the Agreement-State-compatibility designation of general licenses to install generally licensed devices 10 C.F.R. § 31.6 from "C" to "B". The NRC is denying the petition because the petitioner fails to present any significant new information or arguments that would support the requested changes, nor has he demonstrated a need for a new provision for exempt devices.

ADDRESSES: Please refer to Docket ID NRC-2012-0127 when contacting the NRC about the availability of information for this petition. You may access information related to this petition, which the NRC possesses and is publicly available, by any of the following methods:

reference to the change in compatibility, the petitioner is “not asking that the regulations be re-written, only that they be enforced as written.”

In support of the second request, the petitioner cited a PRM dated June 27, 2005 (ADAMS Accession No. ML051940187), from the Organization of Agreement States (OAS), which requested that the compatibility of 10 CFR 31.6 be revised from “C” to “B.” The petitioner also noted that the OAS petition “stated that the reason for changing the compatibility of 10 CFR 31.6 was to assist the tracking and movement of companies and individuals that service these devices.” The NRC staff asked the petitioner, by telephone, to clarify that the reference was to an OAS PRM requesting that the compatibility of 10 CFR 31.6 be revised from “B” to “C,” and if so, to resubmit a letter correcting their PRM. By letter dated August 3, 2012 (ADAMS Accession No. ML12219A085), the petitioner corrected their reference to the OAS PRM.

II. **Background**Discussion

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In accordance with 10 CFR 150.15(a)(6), only the NRC can issue licenses for the

manufacture, processing, or production of any equipment, device, commodity, or other product containing source material or byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from licensing and regulatory requirements. Thus, the Agreement States do not issue licenses to manufacture, install, or service exempt devices. Further, servicing exempt devices does not require a license. Any refurbishing not covered by the exemption, such as replacement of a source in a device, would require an NRC license, ~~and would not be covered or~~ an Agreement State license. Therefore, a general license is not required to install or service exempt devices, and the petitioner's requested change to the regulations is not needed.

Compatibility of 10 CFR 31.6

On January 25, 2012, the NRC published a *Federal Register* notice (FRN) (77 FR 3640) to withdraw a proposed rule and to close PRM-31-5 (NRC-2005-0018; NRC-2008-0272). PRM-31-5 requested that the NRC amend its regulations to strengthen the regulation of radioactive materials by requiring a specific license for higher-activity devices that are currently available under a general license, and by changing the compatibility designation of 10 CFR 31.6 from category "B" to category "C." In this FRN, the NRC also addressed a related request filed by the Florida Department of Health, Bureau of Radiation Control, in conjunction with the OAS petition to change the compatibility category of a certain part of the applicable regulations from category "B" to category "C."

In response to PRM-31-5, the NRC developed a proposed rule that would have limited the quantity of byproduct material contained in a generally licensed device to below one-tenth of the International Atomic Energy Agency Category 3 thresholds. It would also have changed the compatibility of the applicable regulations.

The compatibility change requested in PRM-31-5 was filed in response to the 2000 general-license rule (65 FR 79162; December 18, 2000), which designated the requirements in



UNITED STATES
NUCLEAR REGULATORY COMMISSION
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Sean Chapel
Association of Device Distributors
and Manufacturers
P.O. Box 91377
San Diego, CA 92169

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This petition Docket No., PRM-32-7, is considered closed.

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Sincerely,

Annette L. Vietti-Cook
Secretary of the Commission

Enclosure:
Federal Register notice

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Apostolakis
SUBJECT: SECY-13-0069 – DENIAL OF PETITION FOR
RULEMAKING (PRM-32-7)

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below X Attached X None _____

I approve staff's recommendation to deny the petition for rulemaking subject to the attached edits.



SIGNATURE

7/16/13

DATE

Entered on "STARS" Yes ✓ No _____

NUCLEAR REGULATORY COMMISSION

10 CFR Part 32

[Docket No. PRM-32-7; NRC-2012-0127]

Compatibility of Generally Licensed and Exempt Devices

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM), dated May 7, 2012, submitted by Mr. Sean Chapel (the petitioner) on behalf of the Association of Device Distributors and Manufacturers (ADDM). The petition was docketed by the NRC on May 24, 2012, and was assigned Docket No. PRM-32-7. The petitioner requested that the NRC create a new regulation for exempt devices similar to the NRC regulations for generally licensed devices. The petitioner also requested the NRC to change the compatibility of general licenses to install generally licensed devices. The NRC is denying the petition because the petitioner fails to present any significant new information or arguments that would support the requested changes, nor has he demonstrated a need for a new provision for exempt devices.

ADDRESSES: Please refer to Docket ID NRC-2012-0127 when contacting the NRC about the availability of information for this petition. You may access information related to this petition, which the NRC possesses and is publicly available, by any of the following methods:

containing source material or byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from licensing and regulatory requirements. Thus, the Agreement States do not issue licenses to manufacture, install, or service exempt devices. Further, servicing exempt devices does not require a license. Any refurbishing not covered by the exemption, such as replacement of a source in a device, would require an NRC license, and/or ~~would not be covered~~ an Agreement State license. Therefore, a general license is not required to install or service exempt devices, and the petitioner's requested change to the regulations is not needed.

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In response to PRM-31-5, the NRC developed a proposed rule that would have limited the quantity of byproduct material contained in a generally licensed device to below one-tenth of the International Atomic Energy Agency Category 3 thresholds. It would also have changed the compatibility of the applicable regulations.

The compatibility change requested in PRM-31-5 was filed in response to the 2000 general-license rule (65 FR 79162; December 18, 2000), which designated the requirements in 10 CFR 31.5 and 10 CFR 31.6 as compatibility category "B." The general license rule adopted

NOTATION VOTE


RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MAGWOOD
SUBJECT: SECY-13-0069 – DENIAL OF PETITION FOR
RULEMAKING (PRM-32-7)

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached _____ None X



SIGNATURE

24 July 2013

DATE

Entered on "STARS" Yes X No _____

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER OSTENDORFF
SUBJECT: SECY-13-0069 – DENIAL OF PETITION FOR
RULEMAKING (PRM-32-7)

Approved Disapproved Abstain

Not Participating

COMMENTS: Below Attached None

W. Ostendorff
SIGNATURE

7/8/13
DATE

Entered on "STARS" Yes No

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