

10 CFR 31.6 COMPATIBILITY RESOLUTION
CLARIFICATION OF OFFSHORE WATERS

ISSUE:

The Generally Licensed (GL) Device regulation in 10 CFR 31.6 grants a general license to holders of certain specific Agreement State licences authorizing the manufacture, installation, or servicing of devices described in § 31.5. The general license granted in § 31.6 allows these Agreement State licensees to install and service these devices in non-Agreement States and in “offshore waters.” The Conference of Radiation Control Program Directors, Inc. (CRCPD), in their Suggested State Regulations (SSR) Part C, “Licensing of Radioactive Materials,” Subparagraph C.90a.(ii) does not include “offshore waters,” but grants the general license to persons undertaking the specified activities “in this State.” There has been uncertainty as to the acceptability of the SSR wording for coastal Agreement States since 10 CFR 31.6 is designated as Compatibility Category B. Many Agreement States have modeled their regulations after the SSRs, which have been available for State use since 1991.

DISCUSSION:

The State of Rhode Island, as a coastal Agreement State, has offshore jurisdiction but did not explicitly authorize offshore servicing of certain devices under its General License provisions when the Program submitted regulations corresponding to 10 CFR 31.6. Rhode Island used guidance from CRCPD’s SSR and many other States use the same language.

The relevant portion of the GL Device regulation in 10 CFR 31.6 reads:

Any person who holds a specific license issued by an Agreement State authorizing the holder to manufacture, install, or service a device described in § 31.5 within such Agreement State is hereby granted a general license to install and service such device in any non-Agreement State and a general license to install and service such device in offshore waters, as defined in § 150.3(f) of this chapter: *Provided*, That:

The term “offshore waters,” as defined in 10 CFR 150.3, “means that area of land and water, beyond Agreement States’ Submerged Lands Act jurisdiction, on or above the U.S. Outer Continental Shelf.” The NRC has jurisdiction over the installation and servicing of GL devices in “offshore waters.”

The relevant portion of Subparagraph C.90a.(ii) of the SSR reads:

Notwithstanding the provisions of Subparagraph C.90a.i., any person who holds a specific license issued by the NRC or an Agreement State authorizing the holder to manufacture, transfer, install, or service a device described in Subparagraph C.22d.i. within areas subject to the jurisdiction of the licensing body is hereby granted a general license to install, transfer, demonstrate, or service such a device in this State provided that:

In § 31.6, the NRC grants a general license to holders of certain specific licenses issued by Agreement States. The general license granted in § 31.6 allows these Agreement State licensees to install and service GL devices at locations subject to NRC jurisdiction, namely in non-Agreement States and in “offshore waters.” In the same way, Subparagraph C.90a.(ii) of the SSR allows an Agreement State promulgating the SSR to grant a general license to holders of certain specific licenses issued by the NRC and other Agreement States. Like § 31.6, subparagraph C.90a.(ii) allows these Agreement State and NRC licensees to install and service GL devices at locations subject to the promulgating Agreement State’s jurisdiction, namely at locations in the promulgating Agreement State (i.e. “in this State”).

Coastal Agreement States may exercise offshore jurisdiction under the Submerged Lands Act (43 U.S.C. 1301, et. seq.) and state law establishing the seaward boundaries of such states. While Subparagraph C.90a.(ii) of the SSR does not explicitly authorize offshore installation and servicing of generally licensed devices, the language of that provision can be read to allow such activities. Specifically, the NRC interprets the phrase “in this State” to mean within the territorial jurisdiction, including any offshore jurisdiction, of the Agreement State promulgating Subparagraph C.90a.(ii). Therefore, a coastal Agreement State adopting Subparagraph C.90a.(ii) of the SSR does not have to explicitly reference its offshore jurisdiction to comply with the Compatibility Category B designation assigned to § 31.6.

CONCLUSION:

The NRC staff concludes that it is not necessary for a coastal Agreement State to explicitly reference its offshore jurisdiction when adopting Subparagraph C.90a.(ii) of the SSR in order to meet the Compatibility Category B designation assigned to 10 CFR 31.6

<u>8/18/2006</u>	<u>/RA/</u>
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<u>8/16/2006</u>	<u>/RA/</u>
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