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To: <FCC@nrc.gov>
Date: 1/19/01 2:13PM
Subject: 902 KAR 100:065

<<CABINET FOR HEALTH SERVICES.htm>>

Fred,

Since Vicki and I are getting old, we can't remember whether this was sent to you. If you have trouble opening this document let me know. I will be sending you another reg in a few minutes.

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CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Public Health Protection and Safety

(Amendment)

902 KAR 100:065. Reciprocal recognition.

RELATES TO: KRS 211.842 to 211.852, 211.990(4), 10 CFR 150.20

STATUTORY AUTHORITY: KRS 13B.170, 194A.050, 211.090, 211.842

NECESSITY, FUNCTION, AND CONFORMITY: [The Cabinet for Human Resources is authorized by] KRS 211.844 requires the Cabinet for Health Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides for the reciprocal recognition of radioactive material licenses issued by the United States Nuclear Regulatory Commission or another Agreement State.

Section 1. [Applicability. This administrative regulation apply to persons who possess, use or transfer radioactive material in Kentucky as authorized in a license issued by the United States Nuclear Regulatory Commission or another Agreement State.

Section 2.] Reciprocal Recognition of Licenses. (1) Subject to 902 KAR Chapter 100 [these administrative regulations], a person who holds a specific license from the United States Nuclear Regulatory Commission or an Agreement State, and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, shall be [is hereby] granted a general license to conduct the activities authorized in the licensing document within the Commonwealth of Kentucky, except in areas of exclusive federal jurisdiction, for a period of 180 days in a calendar year if:

(a) The licensing document does not limit the activity authorized by the document to specified installations or locations;

(b)1. The out-of-state licensee notifies the cabinet in writing at least three (3) days prior to engaging in the activity. The notification shall include:

a. [indicate] The date of arrival;

b. The duration of use;

c. Nature and scope of the use;

d. The company where the radioactive material is to be used;

e. The person in charge;

f. The exact location and type of proposed possession within this state; and

g. [shall be accompanied by] A copy of the pertinent licensing document.

2. If, for a specific case, the three (3) day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the cabinet, obtain permission to proceed sooner.

3. The cabinet may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities under the general license provided in this section;

(c) The out-of-state licensee complies with 902 KAR Chapter 100 [all applicable administrative regulations of the cabinet] and with [all] the terms and conditions of his licensing document, except the terms and conditions which may be inconsistent with 902 KAR Chapter 100 [applicable administrative regulations of the cabinet];

(d) [Provided further that the cabinet may require] The out-of-state licensee supplies [to supply other] information as the cabinet may reasonably request;

(e) The licensee does not establish a permanent office in this state; and

(f) The out-of-state licensee does [shall] not transfer or dispose of radioactive material possessed or used in accordance with [under] the general license provided in this section except by transfer to a person:

1. Specifically licensed by the cabinet or by the United States Nuclear Regulatory Commission to receive the material; or

2. Exempt from the requirements for a license for [the] material specified in 902 KAR Chapter 100; and

(g) The out-of-state licensee pays an annual fee in accordance with 902 KAR 100:012. [under these administrative regulations.]

(2) In addition to the provisions of subsection (1) of this section, a person who holds a specific license or equivalent licensing document issued by the United States Nuclear Regulatory Commission or an Agreement State authorizing the holder to manufacture, transfer, install or service a device described in 902 KAR 100:050, Section 3(3)(a), relating to the general licensing of certain uses of radioactive material and specific devices containing radioactive material within areas subject to the jurisdiction of the licensing body shall be [is hereby] granted a general license to install, transfer, demonstrate or service the device in the Commonwealth of Kentucky if:

(a) The person satisfies [shall satisfy] the requirements of 902 KAR Chapter 200 [these administrative regulations];

(b) The device has been manufactured, labeled, installed and serviced in accordance with applicable provisions of the specified license issued to the person by the United States Nuclear Regulatory Commission or an Agreement State;

(c) The person assures [shall assure] that labels required to be affixed to the device in accordance with [under] administrative regulations of the authority which licensed the manufacture of the device bears [bear] a statement that "removal of this label is prohibited;"

(d) The holder of the specific license furnishes [shall furnish] to a [each] licensee to whom he transfers a device or on whose premises he installs a device a copy of the general license contained in 902 KAR 100:050, Section 3(3), relating to the general licensing of certain uses of radioactive materials and specific devices containing radioactive material; and

(e) The person files [shall file] a report with the cabinet within thirty (30) days after the end of a [each] calendar quarter in which a device is transferred to a person or installed in a location within the jurisdiction of the cabinet. A [Each] report shall identify a [each] licensee to whom the a device is transferred by:

1. Name and address;
2. The type of device transferred; and
3. The quantity and type of radioactive material contained in the device.

(3) The cabinet may withdraw, limit, or qualify its acceptance of a specific license or equivalent licensing document issued by another agency, or of a product distributed as authorized by a licensing document, upon determining that the action is necessary in order to prevent undue hazard to public health and safety and property.

RICE C. LEACH, M.D., Commissioner

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: November 14, 2000

FILED WITH LRC: November 15, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held December 21, 2000 at 9 a.m. in the Cabinet for Health Services Auditorium, 1st floor, Department for Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by December 14, 2000. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Jill Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Volpe, Ph.D., 564-3700

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides for the reciprocal recognition of radioactive material licensees issued by the U.S. Nuclear Regulatory Commission and Agreement States.

(b) The necessity of this administrative regulation: This regulation provides equivalent requirements to those of the U.S. Nuclear Regulatory Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.844 requires the cabinet to provide regulations for the licensing and registration of sources of radiation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the requirements for obtaining recognition of a license issued by the U.S. Nuclear Regulatory Commission and other Agreement States.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment provides clarification of the existing regulation by excluding areas of exclusive federal jurisdiction.

(b) The necessity of the amendment to this administrative regulation: This regulation provides equivalent requirements to those of the U.S. Nuclear Regulatory Commission.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.844 requires the cabinet to provide regulations for the licensing and registration of sources of radiation.

(d) How the amendment will assist in the effective administration of the statutes: This regulation provides the requirements for obtaining recognition of a license issued by the U.S. Nuclear Regulatory Commission and other Agreement States.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 40 out-of-state radioactive material licensees request reciprocity annually.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment clarifies the requirement for reciprocal recognition of other states' licenses by excluding areas of exclusive federal jurisdiction.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees from granting reciprocity to out-of-state radioactive material licensee.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this amendment to the regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Atomic Energy Act of 1954, as amended, and 10 CFR 150.20 as promulgated by the U.S. Nuclear Regulatory Commission.

2. State compliance standards. Administrative regulation provides reciprocity for out-of-state radioactive material licensees who use radioactive materials.

3. Minimum or uniform standards contained in the federal mandate. The amendment brings about compatibility with U.S. Nuclear Regulatory Commission's requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Administrative regulation provides equivalent requirements for reciprocity as those of the U.S. Nuclear Regulatory Commission.