October 14, 2004

Mr. Jay Hyland, P.E., Manager
Radiation Control Program
Division of Health Engineering
10 State House Station
Augusta, ME 04333

Dear Mr. Hyland

We have reviewed your request, dated May 15, 2003, to review the compatibility category for 10 CFR 31.5(c)(13), and 10 CFR 31.6. We have determined that the NRC compatibility levels associated with the General Licensed (GL) device rule, RATS ID # 2001-1, are appropriate and reflect the Commission's views in regards to the amended sections. Therefore, the enclosed comments, stemming from the NRC review of the Maine GL rule, will need to be addressed for the Maine rules to be compatible with NRC's requirements.

Specifically, three questions related to the registration and service of sources were considered. First, regarding reciprocity and the 180 day limit for non registration of GL devices used within an Agreement State, the question considered was "Can the States require a registration or notification of entry of GL devices, for general knowledge of activities within a State, or to assess a fee for GL users in their State?" Section § 31.5(c)(13)(iv) exempts GL devices used for a period of less than 180 days from registration requirements. Based on the fact that §31.5(c)(13) is classified as Compatibility Category B, a State cannot require registration or notification of GL devices used within the State for a period of less than 180 days in any calendar year. If a State required the registration of GL devices used in the State less than 180 days, then the State's regulation would require more than the NRC's regulation, which the classification of Compatibility Category B prohibits. Furthermore, all of the Commissioners were in agreement that the registration requirements of §31.5(c)(13)(iv) have significant transboundary implications that necessitated a classification of Compatibility Category B. The State's reasoning for requiring registration or notification, such as having general knowledge of activities within the State or for accessing fees, does not expunge the transboundary implications the Commission found associated with §31.5(c)(13). Therefore, only if the GL devices are used in the State for more than 180 days can the State require their registration.

Second, "Can the States require registration of smaller quantities and for radioisotopes other than those established in 31.5(c)(13)(i)?". Section §31.5(c)(13)(i) establishes the quantities of certain radioisotopes for which registration and a fee is required because §31.5(c)(13)(i) is classified as Compatibility Category B, States are prohibited from requiring the registration of smaller quantities, or for other radioisotopes than those established in §31.5(c)(13)(i). If States were allowed to augment the requirements in §31.5(c)(13)(i), the States would be requiring more than the NRC and transboundary implications would exist.

Third, related to §31.6 and the requirement for notification and registration when installing and servicing devices in an Agreement State, the question considered was "Does the GL license to install and service in 31.6, preclude the State from requiring the service licensee to provide notification or registration or payment of fees to an Agreement State when doing work in that State?" Section §31.6 states that "any person who holds a specific license issued by an Agreement State . . . is hereby granted a general license . . . in any non-Agreement state. . . .". In May 15, 2000, when the Commission decided to change the compatibility classification of §31.5 from Compatibility Category C to B, the Commission explicitly left §31.5(c)(13) and 31.6 as Compatibility Category C. The Commission explained that by keeping §31.6 as Compatibility Category C, "it . . . continues the flexibility for Agreement States to require prenotification for servicers licensed in different jurisdictions." Because the Commission originally contemplated keeping §31.6 as Compatibility Category C, in order to give the States the flexibility to require notification, the Commission's silence, as to notification when it later reclassified § 31.6 as Compatibility Category B in June 2000, indicates that the States are not permitted to require notification from service licensees. Therefore, if States required notification, they would be requiring more than the NRC, which is not permitted for Compatibility Category B regulations, and transboundary issues that the Commission associated with §31.6 may arise.

Consistant with the discussion above, there are two remaining comments resulting from our April 4, 2003 review of Maine's GL device rules. Please provide a final, amended version of your rules showing the location of any changes made in response to our comments. If there are any comments which the State believes are in error, Maine should identify the section of their regulations that meet the designated compatibility category.

If you have any questions regarding the comments, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact me, or John Zabko (301) 415-2308 or JGZ@NRC.GOV.

Sincerely,

\RA By Josephine M. Piccone

Josephine M. Piccone, Deputy Director
Office of State and Tribal Programs

Enclosure:
As stated

cc: William A. Passetti, Chief

COMMENTS ON MAINE REGULATIONS AGAINST
COMPATIBILITY AND HEALTH AND SAFETY CATEGORIES

State Regulation	NRC Regulation	RATS ID	Category	Subject and Comments
C.6.B	31.5 (c)(13)(iv)	2001-1	B	**Certain detecting, measuring gauging or controlling devices.** The State requires all devices to be registered when the device enters into Maine under reciprocity regardless of the number of days. This rule is more restrictive than 10 CFR 31.5 (c) (13) (iv) The State needs to incorporate 31.5(c)(13) (iv) as written to allow for 180 days of reciprocity to achieve compatibility.
C.6.B	31.5 (c) (13) (i)	2001-1	B	**Certain detecting, measuring gauging or controlling devices.** The State requires all devices used in Maine to be registered regardless of source type and quantity. This rule is more restrictive than 10CFR 31.5 (c) (13) (i). The State needs to incorporate the essential objectives of 31.5(c)(13) (i) to only include the stated source types and quantities of material, to achieve compatibility.

Third, related to §31.6 and the requirement for notification and registration when installing and servicing devices in an Agreement State, the question considered was "Does the GL license to install and service in 31.6, preclude the State from requiring the service licensee to provide notification or registration or payment of fees to an Agreement State when doing work in that State?" Section §31.6 states that "any person who holds a specific license issued by an Agreement State . . . is hereby granted a general license . . . in any non-Agreement state. . . .". In May 15, 2000, when the Commission decided to change the compatibility classification of §31.5 from Compatibility Category C to B, the Commission explicitly left §31.5(c)(13) and 31.6 as Compatibility Category C. The Commission explained that by keeping §31.6 as Compatibility Category C, "it . . . continues the flexibility for Agreement States to require prenotification for servicers licensed in different jurisdictions." Because the Commission originally contemplated keeping §31.6 as Compatibility Category C, in order to give the States the flexibility to require notification, the Commission's silence, as to notification when it later reclassified § 31.6 as Compatibility Category B in June 2000, indicates that the States are not permitted to require notification from service licensees. Therefore, if States required notification, they would be requiring more than the NRC, which is not permitted for Compatibility Category B regulations, and transboundary issues that the Commission associated with §31.6 may arise.

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Sincerely,

***RA By Josephine M. Piccone**\

Josephine M. Piccone, Deputy Director
Office of State and Tribal Programs

Enclosure: As stated
cc: William A. Passetti, Chief

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