



Iowa Department of Public Health

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Director

October 19, 2004

Jared Thompson, Program Leader
Radioactive Materials Program
Radiation Control and Emergency Management
Arkansas Department of Health
4815 West Markham Street, Slot #30
Little Rock, AR 72205-3867

Dear Mr. ^{Jared} Thompson:

This correspondence contains a request for action on the part of the OAS Board. At the recent OAS Meeting, the change in compatibility category for 10 CFR 31.5 (c) (13) and 31.6, regulations concerning the use of generally licensed material, from C to B provoked strong reactions from many of the members. Today I received a copy of a letter from Josephine Piccone, Deputy Director of the Office of State and Tribal Programs, to Jay Hyland, Manager of Maine's radiation control program. That letter, a copy of which I have attached, contains NRC's response to Maine's request to review that compatibility category of these two regulations. NRC's OGC interprets the Commission's intent to assign the B compatibility level as appropriate. We in Iowa strongly disagree with this position and are asking the OAS Board, acting as a collective voice, to poll its member states and submit a letter, which outlines the states' position, to the Commission.

10 CFR 31.5 (c) (13) i states:

[A person using a general license] Shall register, in accordance with paragraphs (c)(13)(ii) and (iii) of this section, devices containing at least 370 MBq (10 mCi) of cesium-137, 3.7 MBq (0.1 mCi) of strontium-90, 37 MBq (1 mCi) of cobalt-60, or 37 MBq (1 mCi) of americium-241 or any other transuranic (i.e., element with atomic number greater than uranium (92)), based on the activity indicated on the label.

Paragraph 3 of the enclosed letter states:

...§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).

In a sudden, unexpected reversal, over the recommendations of the NRC staff and without the input of the Agreement States, the Commission changed the recommended compatibility category from C to B. This unilateral, and largely unsupported, decision, coupled with the OGC's interpretation, seriously impedes the states' ability to achieve their rightful mission of protecting public health and safety.

Promoting and protecting the health of Iowans

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Prohibiting the states to register and track isotopes not mentioned and activities lower than provided in 35.5 (c)(13)i is not consistent with the heightened security measures and concerns as a result of the attacks of September 11, 2001. The Commission made the decision to change the compatibility category, therefore prohibiting the states from providing the necessary security for some activities and isotopes, in December 2000—approximately ten months before the attacks.

Although overshadowed by health, safety and security concerns, the Commission's decision disregarded the opinions of the Agreement States. During the comment period, no Agreement State commented negatively on the proposed compatibility category. It seems inconsistent to subjugate the opinions of equal regulatory partners to the opinions of industry.

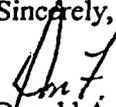
We are asking the OAS boards to poll the member states, including those who specifically license all sources, with the following items:

1. How many states agree with the change in compatibility category from C to B?
2. How many states only allow a specific license for devices that may be generally licensed?
3. How many states plan to not adopt the regulation and address the compatibility through the MRB process?
4. How many states plan to adopt the regulation as is?
5. With the proviso that each state is still free to voice its opinion individually, how many states would allow the OAS board to speak with a collective voice?

We further ask that the OAS submit to the Commission a Petition for Rulemaking, which includes the result of this poll, any specific comments that any state wishes to add or any comments to which the states agree.

We in Iowa feel quite strongly about the issues generated by the Commissions decision and strongly urge the OAS board to take this action.

Sincerely,


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✓cc: Paul Lohaus, OSP/NRC
All Agreement States

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RADIATION



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