

September 28, 2005

ALL AGREEMENT STATES, MINNESOTA, PENNSYLVANIA

EVALUATION OF AGREEMENT STATE IMPLEMENTATION OF THE GENERALLY LICENSED DEVICE RULE (STP-05-072)

In June 2005, the U.S. Nuclear Regulatory Commission (NRC) received the Organization of Agreement States, Inc. (OAS) Petition for Rulemaking and the State of Florida's request for Compatibility Category Change concerning the General Licensing (GL) Device rule. The OAS petition proposes revisions to 10 CFR 31 and that the compatibility category of 10 CFR 31.6 be revised from Compatibility Category "B" to "C." The State of Florida's request proposes a compatibility change to allow States to have more restrictive criteria for GL devices.

In the interim time, while NRC completes review and response to the petition and requests to change compatibility, the Commission has approved that the NRC staff should continue to review Agreement State GL Device proposed and final rules but should hold in abeyance any determination on those rules and compatibility of those rules if the Agreement State has the essential elements of the NRC's rule, but is more restrictive than the NRC's rule. For Agreement States without a GL Device rule or a GL Device rule less restrictive than the NRC rules, the staff will factor this determination into results of the NRC's review of the State's proposed and final rules and the compatibility findings during Integrated Materials Performance Evaluation Program (IMPEP) reviews. This practice will continue until the Commission determines the course of action on the Petition for Rulemaking and request for change in compatibility.

As noted in All Agreement States letter STP-05-059, dated July 28, 2005, NRC staff will continue to provide States opportunity for participation in our rulemaking process. The Commission has also requested Agreement States should continue to take every opportunity to provide their views on compatibility or any other issue to the Commission, whether they are participating on working groups or interacting with NRC staff in the development of new rules. Agreement State issues related to implementation of those rules should be brought promptly to the Commission's attention prior to the time in which a compatible rule should be adopted.

If you have any questions regarding this correspondence, please contact me or the individual named below.

POINT OF CONTACT: Jenny Tobin
TELEPHONE: (301) 415-2328

INTERNET: JCT1@NRC.GOV
FAX: (301) 415-3502

/RA/

Paul H. Lohaus, Director
Office of State and Tribal Programs

STP-05-072

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