

August 31, 2006

Mr. Lawrence E. Nanney, Director
Division of Radiological Health
Department of Environment and Conservation
L & C Annex, Third Floor
401 Church Street
Nashville, TN 37243-1532

Dear Mr. Nanney:

By letter dated March 25, 2004, we sent you the results of our review of the proposed changes to the Tennessee regulations which were submitted to the NRC by letter dated February 13, 2004. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 30, 31, and 32, and the requirements of the General License (GL) amendment identified in the enclosed State Regulation Status (SRS) Data Sheet. The review we conducted omitted a specific review of Sections 10 CFR Parts 31.5 and 31.6. The text of these sections was not revised by the GL amendment, but the compatibility designations were changed from Compatibility Categories C and D respectively, to Category B.

As noted in All Agreement States letter STP-05-072, dated September 28, 2005, NRC staff will continue to review Agreement State GL Device proposed and final rules but will 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 and 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.

We discussed our review of the GL Amendment with Beth Murphy on August 21, 2006. Although we had only one comment for the 2001-1 amendment stated in the March 25, 2004 letter, as a result of our re-review against the Compatibility Category B designation, we have three comments that have been identified in the enclosure. Comment 1 indicates that the State's regulation is more restrictive than the NRC's regulations, and there is no corrective action required for this comment at this point. However, Comments 2 and 3 indicate that the State's regulations are less restrictive than the NRC's regulations, and they need to be addressed in the State's future rulemaking process. We request that when a final version of Tennessee regulations is adopted and published in response to our comments, that a copy of the "as published" regulations be provided to us for review as requested in STP Procedure SA-201, Review of State Regulatory Requirements.

Please note that we have limited our review to regulations required for compatibility and/or health and safety. The SRS Data Sheet summarizes our knowledge of the status of other Tennessee regulations, as indicated. Please let us know if you note any inaccuracies, or have any comments on the information contained in the SRS Data Sheet. This letter, including the SRS Data Sheet, is posted on the STP website: <http://www.hsrdr.gov/nrc/rulemaking.htm>.

Lawrence E. Nanney

August 31, 2006

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 Ms. Monica Orendi at (301) 415-3938 or by e-mail at MLO1@nrc.gov.

Sincerely,

Dennis K. Rathbun, Deputy Director
Office of State and Tribal Programs

Enclosures:
As stated

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 Ms. Monica Orendi at (301) 415-3938 or by e-mail at ML01@nrc.gov.

Sincerely,

IRA By KNSchneider For

Dennis K. Rathbun, Deputy Director
Office of State and Tribal Programs

Enclosures:

As stated

Distribution:

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**COMMENTS ON PROPOSED TENNESSEE REGULATIONS
AGAINST COMPATIBILITY AND HEALTH AND SAFETY CATEGORIES**

	STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	1200-2-10- .10(2)(c)13	31.5(c) (13)(i) and (iv)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Tennessee's regulation requires registration of all the GL devices, while 10 CFR 31.5(c)(13)(i) only require registration of certain devices. Also, Tennessee's regulation does not have registration exemption of devices that are used for less than 180 days from registration, while 10 CFR 31.5(c)(13)(iv) does.</p> <p>Tennessee's rules have the essential elements of the NRC, but are more restrictive than the NRC's GL rule.</p> <p>As noted in the September 28, 2005 All Agreement States Letter STP-05-072, the determination on this provision will be held in abeyance until such time that the NRC completes its review and response to the Organization of Agreement State petition and State of Florida's request on compatibility changes for the GL rule.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
2	1200-2-10-.10(2)(c)13	31.5(c)(13)(ii) and (iii)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Tennessee has omitted the annually registration requirement of these devices stated in 10 CFR 31.5(c)(13)(ii). The reference to 10 CFR 31.5(c)(12) in 1200-2-10-.10(2)(c)13.(iii)(III) should be under part (c)(12), instead of (b)(12).</p> <p>Tennessee needs to add the requirements of 10 CFR 31.5(c)(13)(ii) to 1200-2-10-.10(2)(c)13 and correct the reference in 1200-2-10-.10(2)(c)13.(iii)(III) to meet the Compatibility Category B designation assigned to 10 CFR 31.5(c)(13).</p>
3	1200-2-10-.10(2)(e)	31.5(d)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Tennessee has omitted the phrase “or import” after the phrase “authorize the manufacture” in 1200-2-10-.10(2)(e).</p> <p>Tennessee needs to add the phrase to meet the Compatibility Category B designation assigned to 10 CFR 31.5(d).</p>

STATE REGULATION STATUS

State: TENNESSEE

[1 Amendment reviewed identified by a ★
at the beginning of the equivalent NRC requirement.]

Tracking Ticket Number: 6-16

Date: August 31, 2006

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) / Final (F) ¹ Rule / License Condition (LC) ML # ⁵	NRC Review / Y, N ² / Date / ML # ⁵	Final State Regulation ¹ (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1			Superseded by 97-5
ASNT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2			Not required ³
Standards for Protection Against Radiation-Part 20	56 FR 23360; 56 FR 61352; 57 FR 38588; 57 FR 57877; 58 FR 67657; 59 FR 41641; 60 FR 20183; (1/1/94)	1991-3	F F ML062130090	N 12/8/97 N 08/ /06 ML	
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	F	N 12/2/96	12/28/96
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1			Superseded by 2002-2
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions-Parts 30,35	57 FR 45566; (none)	1992-2			Not required ³
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2			Not applicable SECY-95-112 ⁴
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3	F	N 12/2/96	12/28/96
Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]-Parts 30, 40	58 FR 39628; (10/25/96)	1993-1			1997-Current LBR adequate per MRB
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618 (none)	1994-1			Not required ³
Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2			Not applicable to TN
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	P 2/13/04 ML040540516	N 3/25/04 ML040850212	
Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use-Parts 30, 32, 35	59 FR 61767; 59 FR 65243 60 FR 322; (1/1/98)	1995-1	F ML020320229	N 2/1/02 ML020360223	10/02/02
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	F ML020320229	N 2/1/02 ML020360223	10/02/02

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Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3	F ML020320229	N 2/1/02 ML020360223	10/02/02
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	F ML020320229	N 2/1/02 ML020360223	10/02/02
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	F ML020320229	N 2/1/02 ML020360223	10/02/02
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6			Not required ³
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	F ML040980538	N 5/06/04 ML041270512	10/02/02
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28724 (4/1/99)	1996-1	F ML020320229	N 2/1/02 ML020360223	10/02/02
One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses-Parts 30, 40, 70	61 FR 1109; (none)	1996-2			Not required ³
Termination or Transfer of Licensed Activities: Recordkeeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3			
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	F ML020320229	N 2/1/02 ML020360223	10/02/02
Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State-Part 150	62 FR 1662; (2/27/00)	1997-2	F ML020320229	N 2/1/02 ML020360223	10/02/02
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	F ML020320229	N 2/1/02 ML020360223	10/02/02
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4			Not required ³
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations-Parts 30, 34, 71, 150	62 FR 28947; (6/27/00)	1997-5	F ML020320229	N 2/1/02 ML020360223	10/02/02
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6	F ML040980538	Y 5/06/04 ML041270512	10/02/02
Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7	F ML020320229	N 2/1/02 ML020360223	10/02/02

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Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1	F ML020320229	N 2/1/02 ML020360223	10/02/02
Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees- Parts 30, 40, 70	63 FR 29535; (none)	1998-2			Not required ³
License Term for Medical Use Licenses-Part 35	63 FR 31604; (none)	1998-3			Not required ³
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34	63 FR 37059; (7/9/01)	1998-4	F ML040980538	N 5/06/04 ML041270512	10/02/02
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393 (10/26/01)	1998-5	F ML062130094	N 8/ /06 ML	
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	F ML062130094	N 8/ /06 ML	
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1			Not applicable to TN
Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information-Part 31	64 FR 42269; (none)	1999-2			Not required ³
Respiratory Protection and Controls to Restrict Internal Exposure-Part 20	64 FR 54543; 64 FR 55524 (2/2/03)	1999-3	F ML062130094	N 8/ /06 ML	
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1	F ML062130094	N 8/ /06 ML	
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2	F ML062130094	N 8/ /06 ML	
★Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	P ⁷ 2/13/04 ML040540516	Y 8/31/06 ML062410102	
Revision of the Skin Dose Limit - Part 20	67 FR 16298; (4/5/05)	2002-1	P 2/13/04 ML040540516	Y 03/25/04 ML040850212	
Medical Use of Byproduct Material - Parts 20, 32, and 35	67 FR 20249; (4/24/05)	2002-2			
Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327 12/3/06	2003-1			

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Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments – Part 71	69 FR 3697; (10/01/07)	2004-1			
Security Requirements for Portable Gauges Containing Byproduct Material - Part 30	70 FR 2001; (7/11/08)	2005-1			
Medical Use of Byproduct Material - Recognition of Speciality Boards - Part 35	70 FR 16336; 71 FR 1926 (4/29/08)	2005-2			
Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) ⁶	70 FR 72128; (12/1/05)	2005-3	LC ML052590043	N 9/19/2005 ML052630474	
Minor Amendments-Parts 20, 30, 32, 35, 40 and 70	71 FR 15005 (3/27/09)	2006-1			

1. Or other generic Legally Binding Requirements.
2. (Y/N) Y means “Yes,” there are comments in the review letter that the State needs to address. N means “No,” there are no comments in the review letter.
3. Not required means these regulations are not required for purposes of compatibility.
4. A State need not adopt a specific regulation if the State has no licensees that would be subject to that regulation. See: “Final Policy Statement on Adequacy and Compatibility of Agreement State Programs,” Ill.1. Time Frame for Adoption of Compatible State Regulations, p. 6, SECY-95-112, May 3, 1995.
5. ADAMS ML Number.
6. By letter dated September 2, 2005, from Paul H. Lohaus, Director, Office of State and Tribal Programs, Agreement States were given 90 days to issue legally binding requirements satisfying the requirements of NRC Order EA-05-090.
7. A re-review was completed on this item due to the change in compatibility category of 31.5 and 31.6. More information can be found in the All Agreement States letter STP 05-072