

October 27, 2006

Marie Stoeckel, Chief
Office of Occupational & Radiological Health
Rhode Island Department of Health
3 Capitol Hill, Room 206
Providence, RI 02908

Dear Ms. Stoeckel:

We have reviewed the final revisions to the Rhode Island regulations in Rules and Regulations for the Control of Radiation [R23-1.3-RAD], received by our office on September 27, 2006. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 30, 31, 32, 40, 70 and the requirements of the three amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with Jack Ferruolo on October 25, 2006.

As noted in All Agreement States letter STP-05-072, dated September 28, 2005, NRC staff will continue to hold in abeyance any determination on those rules and compatibility of 10 CFR 31.5 and 31.6, if the Agreement State has the essential elements of the NRC's rule and is more restrictive than the NRC's rule.

We transmitted the results of our re-review of the GL amendment to you August 31, 2006 and appreciate the additional information provided in e-mail dated September 27, 2006. The three comments that have been identified in the enclosure still stand. Comment 2 indicates that the State's regulation is more restrictive than the NRC's regulation, and there is no corrective action required for this comment at this point. However, Comments 1 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 amended version of Rhode Island regulations are 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.

As a result of our review of the other rules, we have no comments. Please note that we have limited our review to regulations required for compatibility and/or health and safety. However, we have determined that these comments must be addressed to meet the compatibility and health and safety categories established in the Office of State and Tribal Programs (STP) Procedure SA-200, Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements.

The SRS Data Sheet summarizes our knowledge of the status of other Rhode Island 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.hrdsd.ornl.gov/nrc/rulemaking.htm>.

If you have any questions regarding the review results, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact me, or Jenny Tobin at (301)415-2328 or by e-mail at jct1@nrc.gov.

Sincerely,

IRA By S.W. Moore

Scott W. Moore, Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials and
Environmental Management Programs

Enclosures:
As stated

If you have any questions regarding the review results, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact me, or Jenny Tobin at (301)415-2328 or by e-mail at jct1@nrc.gov.

Sincerely,

\RA By S.W. Moore

Scott W. Moore, Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials and
Environmental Management Programs

Enclosures: As stated

Distribution:

DIR RF (6-266)

DCD (SP05)

Duncan White, RSAO

O.Siurano, ASPO

Washington File

SUNSI Review Complete

Publicly Available

Non-Sensitive

Non-Publicly Available

Sensitive

DOCUMENT NAME: C:\FileNet\ML063030281.wpd

ML of Incoming Document:ML062700535

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE		SAIS		OGC		SAIS:DD	
NAME	JTobin	KSchneider		STreby		SMoore	
DATE	9-29-06*	10/10/06*		10/25/06*		10/27/06*	

ML063030281

OFFICIAL RECORD COPY

MLPkg.ML063030278

COMPATIBILITY COMMENTS ON RHODE ISLAND FINAL REGULATIONS

	STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	C.4.2(b)(6)(ii)	31.5(c)(11)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Rhode Island has omitted a portion of the requirements in 10 CFR 31.5(c)(11), regarding general license response to information requests within 30 calendar days. Rhode Island regulation C.4.2(b)(6)(ii) doesn't require that the registration be written or provide a contingency should the requester be unable to meet the 30 day requirement.</p> <p>Rhode Island needs to adopt the requirements of 10 CFR 31.5(c)(11) to C.4.2(b)(3) to meet the Compatibility Category B designation assigned to 10 CFR 31.5(c)(11).</p>

	STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
2	C.4.2(b)(6)	31.5(c)(13)(iv)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Rhode Island has omitted a portion of the provisions 10 CFR 31.5(c)(13)(iv), regarding the applicability of the registration requirements for the GL devices licensed by an Agreement State or by the NRC, that are used in Rhode Island for less than 180 days.</p> <p>Rhode Island's rule has the essential elements of the NRC, but is 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
3	C.4.2(b)	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>Rhode Island has omitted the requirement of 10 CFR 31.5(d) regarding the manufacturing or importing of GL devices that contain byproduct material. Even though the authority to import is reserved to the NRC, Rhode Island must adopt the language in 31.5(d) for not allowing a general licensee to manufacture or import devices containing byproduct material.</p> <p>Rhode Island needs to add the requirements of 10 CFR 31.5(d) to C.4.2(b) to meet the Compatibility Category B designation assigned to 10 CFR 31.5(d).</p>

STATE REGULATION STATUS

State: RHODE ISLAND

**(3 amendments reviewed identified by a ★
at the beginning of equivalent NRC requirement)**

Tracking Ticket Number: 6-266

Date: October 27, 2006

NRC Chronology Identification	FR Notice (Date Due for State Implementation))	RATS ID	Proposed (P) / Final (F) ¹ Rule / License Condition (LC) ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1			superceded by 1997-5
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	N 10/16/97	4/21/95
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	F	N 9/22/99	6/95
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1	F	N 9/22/99	6/95
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions-Parts 30,35	57 FR 45566; (none)	1992-2			Not required ³
Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]-Parts 30, 40	58 FR 39628; (10/25/96)	1993-1	F	N 3/27/00	7/99
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2			Not applicable ⁴
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3			Not applicable ⁴
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618 (none)	1994-1	F	N 3/27/00	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 ⁴
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	F	N 3/27/00	7/99
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	N 3/27/00	7/99
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	F	N 3/27/00	7/99
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3	F	N 3/27/00	7/99

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / License Condition (LC) ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	F	N 3/27/00	7/99
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	F	Y 3/27/00	7/99
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F	N 3/27/00	7/99
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	F	N 3/27/00	7/99
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28723 (4/1/99)	1996-1	F ML042520322	Y 10/25/04 ML043010048	
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	F	N 3/27/00	7/99
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	F ML042520322	N 10/25/04 ML043010048	
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	P ML041590261	N 8/02/04 ML042160220	
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	F	N 3/27/00	7/99
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 28948; (6/27/00)	1997-5	F	N 3/27/00	7/99
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39058; (8/20/00)	1997-6	F ML042520322	Y 10/25/04 ML043010048	
Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7	F	N 3/27/00	7/99
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1	F ML042520322	N 10/25/04 ML043010048	
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

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / License Condition (LC) ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34	63 FR 37059; (7/9/01)	1998-4	F	N 3/27/00	7/99
Minor Corrections, Clarifying Changes, and a Minor Policy Change - Parts 20, 35, 36	63 FR 39347; 63 FR 45393 (10/26/01)	1998-5	F	N 3/27/00	7/99
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	F	N 3/27/00	7/99
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1			Not applicable ⁴
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 ML042520322	N 10/25/04 ML043010048	
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1	F ML042520322	N 10/25/04 ML043010048	
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63749; (1/8/04)	2000-2	F ML042520322	N 10/25/04 ML043010048	
★Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	F ⁷ ML062700535	Y 10/27/06 ML063030281	
Revision of the Skin Dose Limit -Part 20	67 FR 16298; 4/5/05	2002-1	F ML042520322	N 10/25/04 ML043010048	
Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; 10/24/05	2002-2	F ML042520322	N 10/25/04 ML043010048	
★Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1	F ML062700535	N 10/27/06 ML063030281	
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	F ML062700535	N 10/27/06 ML063030281	
Medical Use of Byproduct Material - Recognition of Specialty Boards - Part 35	70 FR 16336; 71 FR 1926 (4/29/08)	2005-2	F ML062350571	N 9/01/06 ML062490383	

NRC Chronology Identification	FR Notice (Date Due for State Implementation))	RATS ID	Proposed (P) / Final (F) ¹ Rule / License Condition (LC) ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) ⁶	70 FR 72128; (12/1/05)	2005-3	LC ML052570551	N 9/15/05 ML052630170	
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 the regulation. See: "Final Policy Statement on Adequacy and Compatibility of Agreement State Programs," III.1. Time From 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 change in compatibility of 31.5 and 31.6. More information can be found in the All Agreement States letter STP 05-072.