

February 23, 2007

Melanie Rasmussen, Chief
Bureau of Radiological Health
Iowa Department of Public Health
Lucas Office Building - 5th Floor
321 East 12th Street
Des Moines, IA 50319

Dear Ms. Rasmussen:

We have reviewed the proposed changes to the Iowa Radiation Machines and Radioactive Materials regulations received by our office on January 16, 2007. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 20 and 35, the changes associated with the Iowa annual review for compatibility, 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 Dan McGhee on February 20, 2007.

Please note that one comment identified in the enclosure discusses a proposed change to a final Iowa regulation which had previously been determined to be compatible with NRC's regulations. This provision implemented the General License (GL) amendment. By letter dated August 31, 2006, the NRC provided Iowa the results of our compatibility review of the final Iowa GL amendment which was determined to meet the compatibility requirements of the equivalent NRC regulations. The proposed changes to the Iowa GL amendment are more restrictive. As noted in All Agreement States letter STP-05-072, dated September 28, 2005, NRC staff is continuing 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. Thus, if Iowa proceeds with the revision the State's regulation will be more restrictive than the NRC's regulation. Until such time as a decision on the petition for rulemaking, as discussed in STP-05-072, is reached, no corrective action will be required for this comment.

As a result of the remainder of our review, we have three additional comments that have been identified in the enclosure. Please note that we have limited our review to regulations required for compatibility and/or health and safety. Under our current procedure, a finding that the Iowa regulations meet the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final Iowa regulations. However, we have determined that if your proposed regulations were adopted, incorporating our comments and without other significant change, they would meet the compatibility and health and safety categories established in the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-200.

We request that when the proposed regulations are adopted and published as final regulations, a copy of the "as published" regulations be provided to us for review. As requested in FSME Procedure SA-201, "Review of State Regulatory Requirements," please highlight the final changes, and provide a copy to Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs (see letter FSME 06-94 dated October 6, 2006 for further information).

The SRS Data Sheet summarizes our knowledge of the status of other Iowa 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 FSME website: <http://www.hsrdr.org/nrc/rulemaking.htm>.

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 Kathleen Schneider, State Regulation Review Coordinator at 301-415-2320 (email: kxs@nrc.gov) or Andrew Mauer at 301-415-3962 (email: anm@nrc.gov).

Sincerely,

IRA By KNSchneider For

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

cc: Dan McGhee
Charlene Craig

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Sincerely,

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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
 cc: Dan McGhee
 Charlene Craig

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COMPATIBILITY COMMENTS ON IOWA PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	39.4(22)"d" "(3)13	§31.5(c)(13)(i)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Iowa is requiring the registration of smaller quantities of radioactive material than NRC. Iowa's rule has the essential elements of the NRC rule, but is more restrictive than the NRC's GL rule.</p> <p>Iowa needs to change the quantities listed in 39.4(22)"d"(3)13 to match those listed in 10 CFR 31.5(c)(13)(i) in order to meet the Compatibility Category B designation assigned to 10 CFR 31.5 (c).</p> <p>As noted in the September 28, 2005 letter to all Agreement States (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 States' petition and the State of Florida's request on compatibility changes for the GL rule.</p>
2	41.2(67)	§35.190	2005-2	B	<p>Training for uptake, dilution, and excretion studies</p> <p>The reference inserted by Iowa of 41.2(76) needs to be removed. 41.2(76) references a 3-month training program which the NRC does not recognize.</p> <p>Iowa needs to remove the reference to 41.2(76) from 41.2(67) in order to meet the Compatibility Category B designation assigned to 10 CFR 35.190.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
3	41.2(68)	§35.290	2005-2	B	<p>Training for imaging and localization studies</p> <p>The reference inserted by Iowa of 41.2(76) needs to be removed. 41.2(76) references a 3-month training program which the NRC does not recognize.</p> <p>Iowa needs to remove the reference to 41.2(76) from 41.2(68) in order to meet the Compatibility Category B designation assigned to 10 CFR 35.290.</p>
4	41.2(76)	N/A	N/A	N/A	<p>Iowa's regulation regarding Physician training in a three-month program should be removed from Iowa's regulations. NRC does not currently recognize this as an accepted training program and feels that currently any person to whom this rule applied will be covered by 10 CFR 35.57 (Iowa equivalent 41.2(75)).</p> <p>Iowa should remove 41.2(76) from its regulations to meet the Compatibility B designation assigned to 10 CFR 35.190 and 35.290.</p>

STATE REGULATION STATUS

State: Iowa

[3 amendments reviewed identified by a ★ at the beginning of the equivalent NRC requirement]

Tracking Ticket Number:7-7

Date: February 23, 2007

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 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 11/6/97	10/6/96
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4			
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			Not applicable SECY-95-112 ⁴
Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]-Parts 30, 40	58 FR 39628; (10/25/96)	1993-1			
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 SECY-95-112 ⁴
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3			

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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	R ⁸ ML003692594	N 3/21/00 ML003694911	
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	F	N 1/14/00	
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3	F	Y 1/14/00 ML003683660	
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	R ⁸ ML003692594	Y 3/21/00 ML003694911	
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	F	N 1/14/00 ML003683660	
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F	N 1/14/00 ML003683660	
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	F	N 1/14/00 ML003683660	
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 ML033640452	N 2/04/04 ML040360241	
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 1/14/00 ML003683660	
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	F	N 1/14/00 ML003683660	
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 ML033640452	N 2/04/04 ML040360241	
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	F ML033640452	N 2/04/04 ML040360241	
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4	F ML033640452	N 2/04/04 ML040360241	Not required ³

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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 ML050320039	N 4/06/05 ML050960431	
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6	F ML033640452	N 2/04/04 ML040360241	
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 1/14/00 ML003683660	
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1	F ML033640452	N 2/04/04 ML040360241	
Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees- Parts 30, 40, 70	63 FR 29535; (none)	1998-2	F ML033640452	N 2/04/04 ML040360241	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	R ⁸ ML003692594	N 3/21/00 ML003694911	
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 ML033640452	N 2/04/04 ML040360241	
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	F ML033640452	N 2/04/04 ML040360241	
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1			Not applicable SECY-95-112 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 ML033640452	N 2/04/04 ML040360241	
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1	F ML033640452	N 2/04/04 ML040360241	

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New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2	F ML033640452	N 2/04/04 ML040360241	
★Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	R ^{7,8} ML070030087	Y 2/23/07 ML070400210	
Revision of the Skin Dose Limit - Part 20	67 FR 16298; (4/5/05)	2002-1	F ML033640452	N 2/04/04 ML040360241	
Medical Use of Byproduct Material - Parts 20, 32, and 35	67 FR 20249; (10/24/05)	2002-2	F ML033640452	Y 2/04/04 ML040360241	
Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327 (12/3/06)	2003-1	P ML053550019	N 01/19/06 ML060200518	
Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments – Part 71.	69 FR 3697; (10/01/07)	2004-1	P ML053550019	N 01/19/06 ML060200518	
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	R ⁸ ML070030087	Y 02/23/07 ML070400210	
Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) ⁶	70 FR 72128; (12/1/05)	2005-3	P ML053550019 LC ML052520149	N 01/19/06 ML060200518 N 09/14/05 ML052570342	
Minor Amendments - Parts 20, 30, 32, 35, 40, and 70	71 FR 15005 (3/27/09)	2006-1			

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National Source Tracking System - Serialization Requirements - Part 32 with referenece to Part 20 Appendix E	71 FR 65685 (2/6/07)	2006-2			
★National Source Tracking System - Part 20	71 FR 65865 (11/15/07) & (11/30/07)	2006-3	P ML070030087	N 02/23/07 ML070400210	

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," III.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 change in compatibility of 31.5 and 31.6. More information can be found in the All Agreement States letter STP 05-072.
8. R stands for proposed changes to a "final" rule that had previously been reviewed by NRC. The State will need to submit a copy of the "as published" regulations of these changes for NRC review as a final regulation.