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**From:** <TConley@kdhe.state.ks.us>
**To:** "Jennifer Tobin" <JCT1@nrc.gov>
**Date:** Thu, Jul 12, 2007 9:04 AM
**Subject:** Kansas comments on draft NARM guidance

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Kansas concurs with the comments submitted by Cheryl Rogers of Wisconson.

In addition, Kansas has the following two additional comments:
Comment 1:
The note in Appendix P of Nureg 1556 volume 21 stating it only applies to educational and federal institutions should be stricken. There are existing consortiums which meet the criteria in the guidance for consortiums but are neither educational nor federal institutions. Appendix P should apply to these private non-commercial consortiums also.

Comment 2:
The example license in Appendix D of Nureg 1556 volume 21 includes an authorization for the possession of activation products incident to the production of the primary isotopes produced. See line L of items 6, 7, 8 and 9 of the example license:

L. Any byproduct material with atomic numbers 1 through 83 total possession, except as noted — L. Activated Components, Associated Equipment, — L. 50 millicuries per nuclide, 1 curie

and/or

Building Materials
L. For storage and disposal of byproduct materials incidental to the production of radionuclides.

This line item should be stricken from the example license. The Energy Policy Act of 2005 specifically excludes accellerator produced activation products from the revised definition of byproduct material. The following excerpt from Section 170H(e) of the EPAct illustrates:
"(i) has been made radioactive by use of a particle accelerator; and
(ii) is produced, extracted, or converted after extraction, before, on, or after the date of enactment of this paragraph for use for a commercial, medical, or research activity;"
It is clear there are two tests that accelerator produced radioactive material must meet before they can be considered "byproduct material" under the new definition. First, the material must be made raddioactive by use of a particle accelerator, and second the material must be "produced..... for a commercial, medical, or research activity."
The first test is clearly met, however, since activation products referenced in line L of the example license are not specifically produced for a commercial, medical or research activity they do not meet the second test and therefore cannot be considered "byproduct material" and do not fall under the authority of the Nuclear Regulatory Commission as granted by the EPAct.

If this is not stricken from the example license then NRC should seek an OGC opinion clarifying the intent of the EPAct and justifying the inclusion of these activation products in thier regulatory authority.

Thank you for the opportunity to comment on this guidance.

SUNSI Review Complete
Template = ADM-013

ERIDS = ADM-03
Add = T. Taylor (TMT)
J. Tobin (JCT1)
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