

April 13, 2005

Mr. William A. Passetti, Chief  
Bureau of Radiation Control  
Florida Department of Health  
4052 Bald Cypress Way, Bin C21  
Tallahassee, Florida 32399-1741

Dear Mr. Passetti:

I am responding to your letter of February 25, 2005, expressing concerns regarding the Nuclear Regulatory Commission's (NRC's) Generally Licensed (GL) Device Rule. In particular, you expressed concern about the NRC-assigned compatibility category B for 10 CFR 31.5(c)(13) and the status of Florida's adoption of the GL Device Rule. Additionally, you requested that the NRC consider allowing Florida to continue its GL program.

While the NRC recognizes that Florida's existing GL program is more restrictive than the NRC's GL Device Rule (i.e., Florida registers all generally licensed devices regardless of the quantity of radioactive material or type of device), the Commission determined in July of 2000 that a compatibility category B should be assigned to 10 CFR 31.5(c)(13). The Commission's decision to change the compatibility category from C to B for 10 CFR Parts 31.5(c)(13) and 31.6 was made to ensure that transboundary implications of differing Agreement State requirements would be eliminated. The Commission's decision was not made to override the Agreement States' ability to ensure and protect public health and safety within their respective States. The allowance of different Agreement State registration requirements, covering different types of devices and quantities of material than those included in 10 CFR 31.5(c)(13), could lead to different levels of radioactive source or device accountability. For these reasons, the Commission directed that all of 10 CFR 31.5 should be set at compatibility category B for Agreement States.

In response to your request that a change be considered to allow Florida to continue operating its GL program, please note that Florida, as well as any interested person, may petition the Commission to issue, amend, or rescind any regulation, as outlined in the Commission's regulations contained in 10 CFR 2.802, "Petition for Rulemaking." This includes the assigned compatibility category associated with the GL Device Rule. For your reference, I have enclosed Section 15 of the NRC Regulations Handbook (NUREG/BR-0053) that contains information on the petition for rulemaking process.

The NRC is also in receipt of a letter, dated February 24, 2005, from the Chair of the Organization of Agreement States, Inc. (OAS) and the Chairperson of the Conference of Radiation Control Program Directors, Inc. (CRCPD) which, among other topics, raises similar concerns regarding the GL Device Rule. Commissioners will be meeting individually with representatives from OAS and CRCPD in the near future to discuss this and other issues in further detail.

The NRC appreciates receiving Florida's input and views regarding NRC's GL Device Rule. If you have any additional questions regarding the compatibility categories, or any of the NRC regulations associated with the GL Device Rule, please contact Paul H. Lohaus, at (301) 415-3340 or [PHL@NRC.GOV](mailto:PHL@NRC.GOV).

Sincerely,

***/RA By Ellis W. Merschoff Acting for/***  
Luis A. Reyes  
Executive Director  
for Operations

Enclosure:  
NUREG/BR-0053, Revision 5  
(Section 15)

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