

August 1, 2005

Mr. Kirksey E. Whatley, Director
Office of Radiation Control
Alabama Department of Public Health
201 Monroe Street, P. O. Box 303017
Montgomery, Alabama 36130-3017

Dear Mr. Whatley:

We have reviewed the proposed changes to the Alabama regulations, 420-3-26-.02, "*Licensing*", and 420-3-26-.12, "*Radiation Safety Requirements For Wireline Service Operations and Subsurface Tracer Studies*", received by our office on January 12, 2005. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 30, 31, 32, 39 and the requirements of the two amendments identified in the enclosed States Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with you on January 25, 2005.

As a result of our review, we have seven 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 Alabama 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 Alabama 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 State and Tribal Programs (STP) Procedure SA-200.

As noted in the enclosure, the comments address Alabama's proposed regulations for generally licensed (GL) devices. Please note that we have a Petition For Rulemaking from the Organization of Agreement States (OAS) currently under review by NRC staff, as well as a request from OAS and the State of Florida to change the Compatibility Category assigned to sections of the GL rule. Staff is examining whether there may be need for additional guidance to Agreement States regarding the status of some Agreement State GL rules during the interim time the NRC will require to complete action on the Petition and request. We will correspond separately with you on this issue in the near future.

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 STP Procedure SA-201, "Review of State Regulatory Requirements," please highlight the final changes and provide a copy to STP.

The SRS Data Sheet summarizes our knowledge of the status of other Alabama 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.hrsd.ornl.gov/nrc/rulemaking.htm>.

Mr. Kirksey E. Whatley

-2-

August 1, 2005

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 Bill Rautzen at (301) 415-7206 or by e-mail at WRR@NRC.GOV.

Sincerely,

IRA BY KNSchneider For

Paul H. Lohaus, 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 Bill Rautzen at (301) 415-7206 or by e-mail at WRR@NRC.GOV.

Sincerely,

IRA BY KNSchneider For

Paul H. Lohaus, Director
Office of State and Tribal Programs

Enclosures:
As Stated

SISP Review Complete

- : Publicly Available Non-Publicly Available
- : Non-Sensitive Sensitive

Distribution:

DIR RF[5-15] DCD (SP06) PDR (YES_T) Response to Incoming Document: **ML050130295**
Sheri Minnick/Duncan White, RSAO Shawn Smith, ASPO BUilton Alabama File
Document Name:E:\Filenet\ML052160100.wpd (ML052160146, ML052160100)

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	STP		OGC		STP:D	
NAME	WRautzen		STreby		PLohaus	
DATE	7/18/05*		7/29/05*		8/01/05*	

ML052160098

OFFICIAL RECORD COPY

**COMPATIBILITY COMMENTS FOR
PROPOSED ALABAMA REGULATIONS**

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	420-3-26-.02(7)(b)2.(ii)	31.5(b)	2001-1	<p>Certain Detecting, Measuring, Gauging, or Controlling Devices and Certain Devices for Producing Light or an Ionized Atmosphere</p> <p>Section 420-3-26-.02(7)(b)2.(ii) uses the words “and which will be possessed and used at a single physical location.” This language is more restrictive in that it prohibits the general licensing of portable devices that is authorized under 31.5(b)(2) of the NRC regulations. In addition, the following sections will also need revision to be consistent to allow the general licensing of portable devices: 420-3-26-.02(7)(b)2.(iii), 420-3-26-.02(7)(b)3.(xv), 420-3-26-.02(7)(b)3.(xvi).</p> <p>Alabama needs to add provisions to their rules to allow the use of portable devices under the general license Part 31.5 equivalent. This change is needed to meet the Compatibility Category B designation assigned to Section 31.5.</p>
2	420-3-26-.02(7)(b)2.(iii)	31.5(b)	2001-1	<p>Certain Detecting, Measuring, Gauging, or Controlling Devices and Certain Devices for Producing Light or an Ionized Atmosphere</p> <p>See Comment 1.</p>
3	420-3-26-.02(7)(b)3.(v)	31.5(c)(5)	2001-1	<p>Certain Detecting, Measuring, Gauging, or Controlling Devices and Certain Devices for Producing Light or an Ionized Atmosphere</p> <p>Section 420-3-26-.02(7)(b)3.(v) is missing the phrase “or any indication of a possible failure or damage to” from the first sentence.</p> <p>Alabama needs to add this phrase to Section 420-3-26-.02(7)(b)3.(v) to meet the Compatibility Category B designation assigned to Section 31.5.</p>

**COMPATIBILITY COMMENTS FOR
PROPOSED ALABAMA REGULATIONS**

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
4	420-3-26-.02(7)(b)3.(xv)	31.5(c)(13)	2001-1	B	<p>Certain Detecting, Measuring, Gauging, or Controlling Devices and Certain Devices for Producing Light or an Ionized Atmosphere</p> <p>See Comment 1</p>
5	420-3-26-.02(7)(b)3.(xvi)	31.5(c)(14)	2001-1	B	<p>Certain Detecting, Measuring, Gauging, or Controlling Devices and Certain Devices for Producing Light or an Ionized Atmosphere</p> <p>See Comment 1</p>
6	420-3-26-.02(20)(b)	31.6	2001-1	B	<p>General license to install devices generally licensed in § 31.5</p> <p>Section 420-3-26-.02(20)(b) is missing the provision allowing the installation and service of GL devices in offshore waters.</p> <p>Alabama needs to add this phrase to Section 420-3-26-.02(20)(b) to meet the Compatibility Category B designation assigned to Section 31.5.</p>
7	420-3-26-.02(10)(f)1.(iv)	32.51(a)(4) and (5)	2001-1	B	<p>Byproduct material contained in devices for use under Sec. 31.5; requirements for license to manufacture, or initially transfer.</p> <p>Section 420-3-26-.02(10)(f)1.(iv) is missing the phrase “and serial number” from the requirements of what should be on the source housing.</p> <p>Alabama needs to add this phrase to Section 420-3-26-.02(10)(f)1.(iv) to meet the Compatibility Category B designation assigned to Section 32.51.</p>

STATE REGULATION STATUS

State: Alabama
 (Two amendments reviewed identified by a I
 at the beginning of equivalent NRC regulation.)

Tracking Ticket Number: 5-15
 Date: August 1, 2005

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / 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	F	N 4/2/94	4/22/94
ANT 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 11/19/97	12/21/93
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	F	N 4/2/94	4/22/94
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1	F	N 4/2/94	12/18/96
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 6/5/98	3/18/98
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2	F	N 6/5/98	3/18/98
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
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618 (none)	1994-1	F	N 6/5/98	3/18/98
Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2			Not Applicable to AL
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	F	N 6/5/98	3/18/98
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 6/5/98	3/18/98
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	F	N 6/5/98	3/18/98
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3	F	N 6/5/98	3/18/98
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	F		Superseded by 62 FR 28948 due 6/27/00
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	F	N 6/5/98	3/18/98

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F	N 6/5/98	3/18/98
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	F	N 8/29/00	5/25/00
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	N 8/29/00	5/25/00
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: Record keeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3	F	N 8/29/00	5/25/00
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 8/29/00	5/25/00
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	N 8/29/00	5/25/00
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	F	N 8/29/00	5/25/00
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	N 8/29/00	5/25/00
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6	F	N 8/29/00	5/25/00
Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7	F	N 6/5/98	3/18/98
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1	F	N 10/1/01	8/16/01
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	N 8/29/00	5/25/00
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	N 8/29/00	5/25/00
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	F	N 8/29/00	5/25/00
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1			Not Applicable to AL

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
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	P ML020650412 F ML021090092	Y 4/25/02 N 4/25/02 ML021160517	
¹ Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1	P ML050130295	N 08/1/05 ML052160098	
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2			
¹ Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	P ML050130295	Y 08/1/05 ML052160098	
Revision of the Skin Dose Limit -Part 20	67 FR 16298; (4/5/05)	2002-1			
Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; (10/24/05)	2002-2			
Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1			
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 Specialty Boards - Part 35	70 FR 16336; (4/29/08)	2005-2			

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.