

August 15, 2006

Ms. Beverly O. Hall, Chief
Radiation Protection Section
Division of Environment Health
Department of Environment and Natural Resources
3825 Barrett Drive
Raleigh, NC 27609-7221

Dear Ms. Hall:

We have reviewed the final revision to the North Carolina Radiation Protection Regulations, received by our office on July 17, 2006. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 20, 30, 31, 32, 34, 35, 36, 39, 40, 61, 70 and 150 and the requirements of six amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with you today, August 15, 2006.

As noted in All Agreement States letter STP-05-072, dated September 28, 2005, NRC staff will continue 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. For Agreement States without a GL Device rule or a GL Device rule less restrictive than the NRC rules, the staff will factor this determination into results of the NRC's review of the State's proposed and final rules and the compatibility findings during Integrated Materials Performance Evaluation Program (IMPEP) reviews.

We note that the 14 comments including seven on the GL rule from the March 16, 2004 letter were addressed. However, as a result of our re-review of the GL device rule against the Compatibility Category B designation, we have seven new comments that have been identified in the enclosure. Comments 3 and 6 indicate that the State's regulations are more restrictive than the NRC's regulations, and there is no corrective action required for this comment at this time. However, Comments 1, 2, 4, 5 and 7 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.

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. We have determined that if these regulations are revised, 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.

We request that when you revise your regulations to address our comments, 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 location of any changes made by North Carolina, in response to our comments and provide a copy to STP.

The SRS Data Sheet summarizes our knowledge of the status of other North Carolina 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.hsr.d.ornl.gov/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 me, or Sandra Lai at 301-415-4012 or by e-mail at SXL5@nrc.gov.

Sincerely,

IRA By KNSchneider For

Dennis K. Rathbun, Deputy Director
Office of State and Tribal Programs

Enclosures:
As stated

The SRS Data Sheet summarizes our knowledge of the status of other North Carolina 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.hsrp.ornl.gov/nrc/rulemaking.htm>.

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IRA By KNSchneider For

Dennis K. Rathbun, Deputy Director
Office of State and Tribal Programs

Enclosures:
As stated

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DIR RF(6-200) DCD (SP06)

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Response to Incoming Document: ML061990608

DWhite, SMinnick , RSAO; WRautzen, ASPO; SLai; BUSilton; North Carolina File

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**COMMENTS ON NORTH CAROLINA REGULATIONS
AGAINST COMPATIBILITY AND HEALTH AND SAFETY CATEGORIES**

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	15A NCAC11.030 9(c)(4)	31.5(c)(4)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>North Carolina's regulations require records of tests for leakage of radioactive material and tests for on-off mechanism to be maintained for 1 year; records for other testing to be maintained for 2 years before transferring or disposing the device. However, the NRC's regulations require all the records to be retained for 3 years.</p> <p>North Carolina needs to revise the record retention period in 15A NCAC11.0309(c)(4) to meet the Compatibility Category B designation assigned to 10 CFR 31.5(c)(4).</p>
2	N/A	31.5(c)(7)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>North Carolina has omitted the provision of 10 CFR 31.5(c)(7) regarding the export of the device containing byproduct material. Omitting this provision also caused a missing reference to 10 CFR 31.5(c)(7) and the phrase "or export" in 15A NCAC11.0309(c)(7).</p> <p>North Carolina needs to adopt the provision and add the equivalent phrase and reference to 15A NCAC11.0309(c)(7) to meet the Compatibility Category B designation assigned to 10 CFR 31.5(c)(7).</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
3	N/A	31.5(c)(7), (8)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>North Carolina has requirements for the report to be furnished prior to transfer in NCAC11.0309(c)(7) instead of the 30-day transfer period included in 10 CFR 31.5(c)(8)(ii).</p> <p>North Carolina'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>
4	15A NCAC11.0309(c)(7)(B)	31.5(c)(8)(ii)(B)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>North Carolina has omitted the phrase "(license number not applicable if exported)" in 15A NCAC11.0309(c)(7)(B) that appears in 10 CFR 31.5(c)(8)(ii)(B). This phrase provides a mechanism for tracking this material into and out of North Carolina jurisdiction.</p> <p>North Carolina needs to add the phrase "(license number not applicable if exported)" to NCAC11.0309(c)(7)(B) to meet the Compatibility Category B designation assigned to 10 CFR 31.5(c)(8)(ii)(B).</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
4	N/A	31.5(c)(8)(iii)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>North Carolina has omitted the requirement in 31.5(c)(8)(iii) regarding written approval of the agency before transferring the device.</p> <p>North Carolina needs to adopt the requirement to meet the Compatibility Category B designation assigned to 10 CFR 31.5(c)(8)(iii).</p>
5	15A NCAC11.030 9(c)	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>North Carolina has omitted the requirement of 10 CFR 31.5(c)(11), regarding general license response to information requests within 30 calendar days.</p> <p>North Carolina needs to add the requirement to 15A NCAC11.0309(c), 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
6	N/A	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>North Carolina does not have the provision that relieves the licensee from registering the devices if the devices are used in areas subject to NRC jurisdiction for a period less than 180 days in any calendar year.</p> <p>North Carolina regulations in NCAC11.0309(c)(ii) include additional registration requirements not included in 10 CFR 31.5(c)(13)(iv).</p> <p>North Carolina's rules have the essential elements of the NRC, but are 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>
7	15A NCAC11.030 9(d)	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>North Carolina uses the word "distribution" instead of "import" after "does not authorize" in 15A NCAC11.0309(d).</p> <p>North Carolina needs to replace the word "distribution" by the word "import" to meet the Compatibility Category B designation assigned to 10 CFR 31.5(d).</p>

STATE REGULATION STATUS

State: NORTH CAROLINA

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

Tracking Ticket Number: 6-200

Date: August 15,2006

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	F	N 8/18/00	8/1/98
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 10/25/95	8/1/98
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	F	N 8/18/00	8/1/98
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1	F	N 8/18/00	8/1/98
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 8/18/00	8/1/98
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2	F	N 8/18/00	8/1/98
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3	F	N 8/18/00	8/1/98
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618 (none)	1994-1	F	N 8/18/00	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 SECY-95-112 ⁴
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	F	N 8/18/00	8/1/98
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 8/18/00	8/1/98

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Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	F	N 8/18/00	8/1/98
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3	F	N 8/18/00	4/1/99
Performance Requirements for Radiography Equipment-Part 34	60 FR 28324; (6/30/98)	1995-4	F	N 8/18/00	8/1/98
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	F	N 8/18/00	8/1/98
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F	N 8/18/00	8/1/98
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	F	N 8/18/00	8/1/98
10 CAR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28724 (4/1/99)	1996-1	F	N 8/18/00	8/1/98
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 8/18/00	8/1/98
Resolution Dual Regulation of Airborne Effluents of Radioactive Materials;Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	F	N 8/18/00	8/1/98
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 8/18/00	4/1/99
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	F	N 8/18/00	8/1/98
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 8/18/00	8/1/98
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6	F	N 8/18/00	8/1/98
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 8/18/00	8/1/98
★ Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1	F ML061990608	N 8/15/06 ML062280005	

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)
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			
★ 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 ML061990608	N 08/15/06 ML062280005	
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	F 8/19/04 ML042320535	N 9/02/04 ML042460091	
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1			Not required ³
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 ML061990608	N 08/15/06 ML062280005	
★ Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1	F ML061990608	N 08/15/06 ML062280005	
★ New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2	F ML061990608	N 08/15/06 ML062280005	
★ Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	F ML061990608	Y 08/15/06 ML062280005	
Revision of the Skin Dose Limit-Part 20	67 FR 16298; 4/5/05	2002-1	F 6/27/05 ML061790305	N 8/04/06 ML062160419	
Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; 4/24/05	2002-2			
Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327 12/3/06	2003-1	F 6/27/05 ML061790305	N 8/04/06 ML062160419	
Compatibility with IAEA Transportation Safety Standards and Other Transportation Safety Amendments - Part 71	69 FR 3697; (10/01/07)	2004-1			

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)
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; 71 FR 1926 (4/29/08)	2005-2			
Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) ⁶	70 FR 72128; (12/1/05)	2005-3	LC ML 052720130	N 10/04/05 ML 052780077	
Minor Amendments - Part 20,30,32,35,40 and 70	71FR15005; (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 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.