

January 26, 2009

B. J. Smith, Radiation Materials Director
Division of Radiological Health
State Department of Health
3150 Lawson Street
P.O. Box 1700
Jackson, MS 39215-1700

Dear Mr. Smith:

We have reviewed the proposed revision to the Mississippi regulations, Sections 100, 300, 400, 700, 1000 and 1300 of the Mississippi Regulations for Control of Radiation, received by our office on November 21, 2008. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 19, 20, 30, 31, 32, 35, 71 and the requirements of the 11 amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with you on January 26, 2009.

As noted in All Agreement States letter FSME-07-087, dated September 20, 2007, NRC staff will continue to hold in abeyance any determination on those rules and compatibility of 10 CFR 31.5 and 31.6, if the Agreement State has the essential elements of the NRC's rule and is more restrictive than the NRC's rule.

As a result of our review against the GL Device Rule Compatibility Category B designation, we have one comment as listed in the enclosure. Comment one indicates 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.

As a result of the rest of our review, we have 11 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 Mississippi 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 Mississippi 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 location of any changes made by Mississippi, in response to our comments, and provide a copy to Division of Materials Safety and State Agreements, FSME.

B. J. Smith

The SRS Data Sheet summarizes our knowledge of the status of other Mississippi 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://nrc-stp.ornl.gov/rulemaking.html>.

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 (kathleen.schneider@nrc.gov) or Leira Cuadrado at (301) 415-0707 (leira.cuadrado@nrc.gov).

Sincerely,

/RA/

Terrence Reis, Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

Enclosures:
As stated

B. J. Smith

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Sincerely,

/RA/

Terrence Reis, Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

Enclosures: As stated

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COMPATIBILITY COMMENTS ON MISSISSIPPI FINAL REGULATIONS

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	300.06 (4)(c)(xiii)(i)	31.5(c)(13)(i)	2001-1	<p>Certain detecting, measuring, gauging, or controlling devices</p> <p>Mississippi requires all general devices to be register regardless of activity. This is more restrictive than NRC's regulation 10 CFR 31.5(c)(13)(i).</p> <p>Mississippi omits equivalent regulation text to NRC's 10 CFR 31.5(c)(iv). By not adding equivalent text Mississippi's regulation becomes more restrictive than NRC's regulation.</p> <p>Mississippi needs to change the above in order to meet the Compatibility Category B designation assigned to 10 CFR 31.5.</p> <p>Mississippi's rule has the essential elements of the NRC's GL rule but is more restrictive. As noted in the September 20, 2007 All Agreement State's letter FSME-07-087 the determination on this provision will be held in abeyance until such time that the NRC completes the GL device rulemaking initiated in August 2007.</p>
2	300.12(4)(d) (i)	32.51a(a)	2001-1	<p>Conditions of licenses</p> <p>Mississippi omits an equivalent regulation section to 10 CFR 32.51a(a)(5).</p> <p>Mississippi needs to add an equivalent section to 10 CFR 32.51a(a)(5) in order to meet the Compatibility Category B designation assigned to 10 CFR 32.51a(a).</p>
3	300.12(4)(d) (ii)	32.51a(b)	2001-1	<p>Conditions of licenses</p> <p>Mississippi omits in 300.12(4)(d)(ii)(i) equivalent references to 10 CFR 30.51</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					Mississippi needs to add an equivalent reference to 10 CFR 30.51 in order to meet the Compatibility Category B designation assigned to 10 CFR 32.51a(b).
4	1300.02	71.4	2004-1	[B]	<p>Definitions</p> <p>Mississippi needs to remove “other than fissile material” from the third section of LSA-1.</p> <p>Mississippi omits the word “estimated” in the third section of LSA-III.</p> <p>Mississippi needs make the above changes to their definition of Low specific activity in order to meet the Compatibility Category [B] designation assigned to 10 CFR 71.4 definition Low specific activity.</p>
5	1300.05	71.5	2004-1	[B]	<p>Transportation of licensed material</p> <p>Mississippi omitted equivalent regulation text to §71.5 (a)(1)(vii) in 1300.05(1)(a).</p> <p>In Section 1300.05(1)(a)(ii) Mississippi has “(172.436 through 172.440, and Subpart E)” instead of “Sec. 172.436 through 172.441 of subpart E”.</p> <p>In 1300.05 (2) Mississippi quoted incorrect sections of DOT. The DOT sections should be listed as “49 CFR parts 107, 171 through 180, and 390 through 397”.</p> <p>Mississippi needs to make the above changes In order to meet the compatibility category [B] designation assigned to 10 CFR 71.5.</p>
6	1300.15 (10) & (11)	71.47	2004-1	[B]	<p>External radiation standards for all packages</p> <p>Mississippi omits “Except as provided in paragraph (b) of this section, each package of radioactive materials offered for transportation must be designed and prepared for shipment</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>so that under conditions normally incident to transportation the radiation level does not exceed...”.</p> <p>In 1300.15(11) Mississippi omits “A package that exceeds the radiation level limits specified in paragraph 1300.15(10) of this section must be transported by exclusive use shipment only...”</p> <p>Mississippi needs to make the above changes in order to meet the compatibility category [B] designation assigned to 10 CFR 71.47.</p>
7	1300.15	71.87	2004-1	[B]	<p>Routine determinations</p> <p>Mississippi omitted “...the licensee shall ensure that the package with its contents satisfies the applicable requirements of this part and of the license.” From the first sentence of 1300.15.</p> <p>Mississippi needs to include the above sentence in the first sentence of 1300.15 in order to meet the compatibility category [B] designation assigned to 10 CFR 71.87.</p>
8	1300.16	71.88	2004-1	[B]	<p>Air transport of plutonium</p> <p>Mississippi omits equivalent regulation text to 10 CFR 71.88(b) from 1300.16.</p> <p>Mississippi needs to make the above change in order to meet the compatibility category [B] designation assigned to 10 CFR 71.88.</p>
9	1300.20	71.101(g)	2004-1	C	<p>Quality assurance requirements</p> <p>Mississippi incorrectly references 1300.05(2)(d) which does not exist. The correct reference is 1300.07.</p> <p>The reference to 1300.20(1) is correct if Mississippi renumbers it's newly added paragraphs correctly. Newly added paragraph 6 should become</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>paragraph 1 once the deletions are deleted.</p> <p>Mississippi needs to make the above changes in order to meet the compatibility category C designation assigned to 10 CFR 71.101(g).</p>
10	1300 Appendix A	Appendix A to Part 71	2004-1	[B]	<p>Air transport of plutonium</p> <p>Mississippi needs to remove paragraph 2 from 1300 Appendix A and add equivalent text to 10 CFR 71 Appendix A II(c) in order to meet the compatibility category [B] designation assigned to 10 CFR 71 Appendix A.</p>
11	700.20	35.51	2005-2 2006-1	B	<p>Training for an authorized medical physicist</p> <p>In 700.20(1) Mississippi makes an incorrectly references 700.20(2)(c) which does not exist. This reference should actually be 700.20(3).</p> <p>Mississippi needs to make the above change in order to meet the compatibility category B designation assigned to 10 CFR 35.51.</p>
12	700.22	35.57	2005-2	B	<p>Training for experienced Radiation Safety Officer, teletherapy or medical physicist, authorized medical physicist, authorized user, nuclear pharmacist, and authorized nuclear pharmacist</p> <p>Mississippi omits authorized medical physicists and authorized nuclear pharmacists from 700.22(1).</p> <p>In 700.22(2) Mississippi omits training requirements equivalent to 10 CFR §35.392, §35.394, §35.396.</p> <p>Mississippi needs to make the above changes in order to meet the compatibility category B designation assigned to 10 CFR 35.57.</p>

STATE REGULATION STATUS

State: Mississippi
 [11 amendment(s) reviewed is identified by a ★
 at the beginning of the equivalent NRC requirement.]

Tracking Ticket Number: 8-111
 Date: January 26, 2009

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1991-1	Safety Requirements for Radiographic Equipment Part 34 55 FR 843 (Superceded by 1997-5)	01/10/1994	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	Mississippi has adopted Final Regulations equivalent to RATS ID: 1997-5.
1991-2	ASNT Certification of Radiographers Part 34 56 FR 11504 (Superceded by 1997-5)	none	Not Required	Not Required	Mississippi has adopted Final Regulations equivalent to RATS ID: 1997-5.
1991-3	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;	01/01/1994	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	
1991-4	Notification of Incidents Parts 20, 30, 31, 34, 39, 40, 70 56 FR 64980;	10/15/1994	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	
1992-1	Quality Management Program and Misadministrations Part 35 56 FR 34104 (Superceded by 2002-2)	01/27/1995	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	Mississippi has adopted Final Regulations equivalent to RATS ID: 2002-2.
1992-2	Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions Parts 30, 35 57 FR 45566	none	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1993-1	Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites] Parts 30, 40 58 FR 39628	10/25/1996	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	
1993-2	Licensing and Radiation Safety Requirements for Irradiators Part 36 58 FR 7715	07/01/1996	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1993-3	Definition of Land Disposal and Waste Site QA Program Part 61 58 FR 33886	07/22/1996	Not Applicable ²	Not Applicable	Mississippi does not have any licensees subject to these regulations. (See SECY-95-112)
1994-1	Self-Guarantee as an Additional Financial Mechanism Parts 30, 40, 70 58 FR 68726; 59 FR 1618	none	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	These regulation changes are not required to be adopted for purposes of Compatibility.
1994-2	Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards Part 40 59 FR 28220	07/01/1997	Not Applicable	Not Applicable	Mississippi does not have authority to regulate this material under its Agreement.
1994-3	Timeliness in Decommissioning Material Facilities Parts 30, 40, 70 59 FR 36026	08/15/1997	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	
1995-1	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	01/01/1998			
1995-2	Frequency of Medical Examinations for Use of Respiratory Protection Equipment Part 20 60 FR 7900	03/13/1998	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	
1995-3	Low-Level Waste Shipment Manifest Information and Reporting Parts 20, 61 60 FR 15649; 60 FR 25983	03/01/1998	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	
1995-4	Performance Requirements for Radiography Equipment Part 34 60 FR 28323 (Superseded by 1997-5)	06/30/1998	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	Mississippi has adopted Final Regulations equivalent to RATS ID: 1997-5.
1995-5	Radiation Protection Requirements: Amended Definitions and Criteria Parts 19, 20 60 FR 36038	08/14/1998	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	
1995-6	Clarification of Decommissioning Funding Requirements Parts 30, 40, 70 60 FR 38235	11/24/1998	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1995-7	Medical Administration of Radiation and Radioactive Materials Parts 20, 35 60 FR 48623 (Superceded by 2002-2 and 2005-2)	10/20/1998			Mississippi has not yet adopted Final Regulations equivalent to RATS ID: 2005-2.
1996-1	Compatibility with the International Atomic Energy Agency Part 71 60 FR 50248; 61 FR 28724 (Superceded by 2004-1)	04/01/1999	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	Mississippi has not yet adopted Final Regulations equivalent to RATS ID: 2004-1.
1996-2	One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses Parts 30, 40, 70 61 FR 1109	02/15/1999	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1996-3	Termination or Transfer of Licensed Activities: Record keeping Requirements Parts 20, 30, 40, 61, 70 61 FR 24669	06/17/1999	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	
1997-1	Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act Part 20 61 FR 65120	01/9/2000	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	
1997-2	Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State Part 150 62 FR 1662	02/27/2000	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	
1997-3	Criteria for the Release of Individuals Administered Radioactive Material Parts 20, 35 62 FR 4120	05/29/2000	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	
1997-4	Fissile Material Shipments and Exemptions Part 71 62 FR 5907 (Superceded by 2004-1)	02/10/2000	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility. (See STP-97-078)

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1997-5	Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations Parts 30, 34, 71, 150 62 FR 28947	06/27/2000	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	
1997-6	Radiological Criteria for License Termination Parts 20, 30, 40, 70 62 FR 39057	08/20/2000	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	
1997-7	Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea Part 30 62 FR 63634	01/02/2001	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	
1998-1	Deliberate Misconduct by Unlicensed Persons Parts 30, 40, 61, 70, 71, 150 63 FR 1890; 63 FR 13773	02/12/2001	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	
1998-2	Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees Parts 30, 40, 70 63 FR 29535	07/01/2001	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1998-3	License Term for Medical Use Licenses Part 35 63 FR 31604 (Superseded by 2002-2)	07/10/2001	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility. (See STP-98-074) Mississippi has adopted Final Regulations equivalent to RATS ID: 2002-2.
1998-4	Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations Part 34 63 FR 37059	07/09/2001	Final ¹ ML010590507	Comments 11/16/2001 ML013230431	
1998-5	Minor Corrections, Clarifying Changes, and a Minor Policy Change Parts 20, 35, 36 63 FR 39477; 63 FR 45393	10/26/2001	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	
1998-6	Transfer for Disposal and Manifests: Minor Technical Conforming Amendment Part 20 63 FR 50127	11/20/2001	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1999-1	Radiological Criteria for License Termination of Uranium Recovery Facilities Part 40 64 FR 17506	06/11/2002	Not Required	Not Required	Mississippi does not have the authority to regulate this material under its Agreement.
1999-2	Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information Part 31 64 FR 42269	10/04/2002	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1999-3	Respiratory Protection and Controls to Restrict Internal Exposure Part 20 64 FR 54543; 64 FR 55524	02/02/2003	Final ¹ ML010590507	No Comments 11/16/2001 ML013230431	
2000-1	Energy Compensation Sources for Well Logging and Other Regulatory Clarifications Part 39 65 FR 20337	05/17/2003	Final ML040290385	No Comments 02/03/2004 ML040340553	
2000-2	New Dosimetry Technology Parts 34, 36, 39 65 FR 63750	01/08/2004	Final ML040290385	No Comments 02/03/2004 ML040340553	
★2001-1	Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material Parts 30, 31, 32 65 FR 79162	02/16/2004	Proposed ML083260435	Comments 01/26/2009 ML083530751	
2002-1	Revision of the Skin Dose Limit Part 20 67 FR 16298	04/05/2005	Final ML051380417	No Comments 06/15/2005 ML051660091	
2002-2	Medical Use of Byproduct Material Parts 20, 32, 35 67 FR 20249	10/24/2005	Final ML051380417	No Comments 06/15/2005 ML051660091	
★2003-1	Financial Assurance for Materials Licensees Parts 30, 40, 70 68 FR 57327	12/03/2006	Proposed ML083260435	No Comments 01/26/2009 ML083530751	
★2004-1	Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments Part 71 69 FR 3697	10/01/2007	Proposed ML083260435	Comments 01/26/2009 ML083530751	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
★2005-1	Security Requirements for Portable Gauges Containing Byproduct Material Part 30 70 FR 2001	07/11/2008	Proposed ML083260435	No Comments 01/26/2009 ML083530751	
★2005-2	Medical Use of Byproduct Material - Recognition of Specialty Boards Part 35 70 FR 16336; 71 FR 1926	04/29/2008	Proposed ML083260435	Comments 01/26/2009 ML083530751	
2005-3	Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) 70 FR 72128	12/01/2005	License Condition ML053110130	No Comments 11/07/2005 ML053120172	
★2006-1	Minor Amendments Parts 20, 30, 32, 35, 40 and 70 71 FR 15005	03/27/2009	Proposed ML083260435	Comments 01/26/2009 ML083530751	
★2006-2	National Source Tracking System - Serialization Requirements Part 32 with reference to Part 20 Appendix E 71 FR 65685	02/06/2007	Proposed ML083260435	No Comments 01/26/2009 ML083530751	
★2006-3	National Source Tracking System Part 20 71 FR 65685, 72 FR 59162	01/31/2009	Proposed ML083260435	No Comments 01/26/2009 ML083530751	
★2007-1	Medical Use of Byproduct Material - Minor Corrections and Clarifications Parts 32 and 35 72 FR 45147, 54207	10/29/2010	Proposed ML083260435	No Comments 01/26/2009 ML083530751	
★2007-2	Exemptions From Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements Parts 30, 31, 32, 150 72 FR 58473	12/17/2010	Proposed ML083260435	No Comments 01/26/2009 ML083530751	
2007-3	Requirements for Expanded Definition of Byproduct Material Parts 20, 30, 31, 32, 33, 35, 61, 150 72 FR 55864	11/30/2010			

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
2007-4	Order Imposing Fingerprinting Requirements and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material NRC Order EA-07-305 72 FR 70901	06/05/2008	License Condition ML081090337	No Comments 05/01/2008 ML081220282	
★2008-1	Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent Parts 19, 20 72 FR 68043	02/15/2011	Proposed ML083260435	Comments 01/26/2009 ML083530751	

¹ Mississippi submitted a final version of these regulations during the time frame in which the proposed version of these regulations was being reviewed. Staff then continued the review with the submitted final regulations. The outgoing letter (ML013230431) incorrectly states that only the proposed regulations were reviewed.

² IMPEP Team: verify that Mississippi does not have any licensees subject to these regulations during each review.