

November 28, 2007

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

Dear Mr. Passetti:

We have reviewed the proposed changes to the Florida regulations Control of Radiation Hazard Regulations, Chapter 64E-5, received by our office on October 4, 2007. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 20, 30, 31, 32, 34, 39, 71, 150 and the requirements of the seven amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with Mike Stephens on November 1, 2007.

As a result of our review, we have two comments which stand from letter dated April 23, 2007 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 Florida 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 Florida 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 final changes, and provide a copy to Division of Materials Safety and State Agreements, FSME.

The SRS Data Sheet summarizes our knowledge of the status of other Florida 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://www.hsrp.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 Kathleen Schneider, State Regulation Review Coordinator at (301) 415-2320 (email: kxs@nrc.gov) or Monica Orendi at (301) 415-3938 (email: mlo1@nrc.gov).

Sincerely,

IRA By A.D. White For

Robert J. Lewis, 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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Sincerely,

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Office of Federal and State Materials and
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Enclosures:
As stated

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RESPONSES TO ISSUES IDENTIFIED IN THE OCTOBER 3, 2007 LETTER FROM MICHAEL STEPHENS, FLORIDA

1) Florida's response to Comment 11 from letter dated April 23, 2007: While this section of the General License Rule is held in abeyance, the action limits NRC indicated missing are in 64E-5.206(4)(c)(5).

Per a discussion with Mr. Stephens it was discovered that Florida applies the 0.005uCi or more removable radioactive material limit to the entire regulation and does not need to repeat its value as originally stated in NRC's comment 11 from letter dated April 23, 2007. Outcome: Comment 11 resolved 64E-5.206(4)(c)(5).

2) Florida's response to Comment 7 from letter dated April 23, 2007: The change requested to 64E-5.319(g)(1) and (2) is correct in our current rule. Enclosed is a copy of the rule from the Florida Administrative Code website.

After review of the submitted regulation it has been determined that the error has been corrected. Outcome: Comment 7 resolved: 64E-5.319.

3) Florida's response to Comment 21 from letter dated April 23, 2007: Please note that 64E-5.210(4)(i)(8) is essentially identical to 10 CFR 32.52(a)(5).

After re-review of Florida's regulations it has been determined that 64E-5.210(4)(i)(8) is essentially identical to 10 CFR 32.52(a)(5). Outcome: Comment resolved: 64E-5.210(4)(i)(8).

4) Florida's response to Comment 3 from letter dated April 23, 2007: In Florida's letter dated February 4, 2002 which we submitted final rules for RATS 1995-1, 1997-5, 1998-4, 1997-6, we clearly identified a major deviance from 10 CFR Part 34 was the temporary job site definition (RATS 1997-5). We stated, "Florida's temporary job site definition that was adopted in 1993 applies to all licensees, not just industrial radiography. This definition is "a site, base or facility that is created and maintained to support a single job lasting for less than 2 years." Florida regulations also require a separate license for sites that do not meet our definition of temporary job site, 64E-5.213(6). This definition has been in place since 1993 to recover the Bureau's program costs and it addresses health and safety issues that come with extended use of radioactive materials of all licensees at job sites."

NRC's April 24, 2002 reply to this rule package only identified minor changes needed to sections 64E-5.429 (Utilization logs) and 64E-5.434 (Training). These changes became effective September 28, 2006. Our 1993 definition addresses our belief that *any* licensee that is at a single location for more than two years must obtain a separate license to adequately address health and safety concerns. We also believe that any licensee that dispatches multiple jobs from a single location is not a temporary job site. In order to adequately address health and safety concerns, we require a separate license for the location from which multiple jobs are dispatched. This requirement has been in place since 1993 for all licensees.

We do not think it is appropriate to set a different, less *restrictive*, standard for industrial radiography (an *Increased Control licensee*) at temporary job sites, than those imposed on lower risk licensees such as portable gauge licensees.

NRC's definition of temporary jobsite is designated as a Compatibility Category B. This means that Agreement States should adopt an essentially identical definition to the definition listed in 10 CFR 34.3. 10 CFR 34.3 lists this definition as "a location where radiographic operations are conducted and where licensed material may be stored other than those location(s) of use authorized on the license." NRC's definition does not specify a specific time limit. By adding the requirement that a temporary jobsite is "a site, base, or facility that is created and maintained to support a single job lasting less than **2 years**" Florida makes their definition more restrictive than NRC's definition. In order to meet the Compatibility Category B designation assigned to the definition of temporary jobsite Florida would have to remove the "less than 2 years" requirement from their definition. Outcome: Comment stands: 64E-5.101(154).

COMPATIBILITY COMMENTS ON FLORIDA PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	64E-5.101(154)	34.3	1997-5	B	<p>Definitions: Temporary Jobsite</p> <p>Florida's definition is more restrictive than NRC's definition for "temporary jobsite." Florida's definition specifies that the site supports a "single job lasting for less than 2 years." NRC's definition does not quantify a time frame.</p> <p>Florida needs to remove the requirement for less than 2 years to meet the Compatibility Category B designation assigned to 10 CFR 34.3 Definition Temporary jobsite.</p> <p>Comment Stands: From letter dated April 23, 2007.</p>
2	64E-5.206(4)(c)(12)	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>64E-5.206(4)(c)(12)(a) indicates that all devices need to be registered, except tritium exit signs. Under 31.5(c)(13)(i), only those devices containing certain isotopes above a certain threshold activity level need to be registered. By not listing the specific isotopes and their threshold activities Florida's regulation is more restrictive.</p> <p>Florida needs to add the isotopes and their threshold activities indicated in 31.5(c)(13)(i) to meet the Compatibility Category B designation assigned to section 31.5(c)(13).</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 on compatibility changes for the GL rule.</p> <p>COMMENT STANDS: FROM LETTER DATED April 23, 2007</p>

STATE REGULATION STATUS

State: Florida

[7 Amendments were reviewed and identified by a ★
at the beginning of each equivalent NRC requirement.]

Tracking Ticket Number: 7-77

Date: November 28, 2007

NRC Chronology Identification	FR Notice (Date due for State)	RATS ID	Proposed (P) / Final (F) 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 11/8/00	1/1/94
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 ⁶ ML010250079	N 2/8/01 ML010430124	10/8/00
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	F	N 11/8/00	1/1/94
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1	F	N 11/8/00	1/1/94
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 11/8/00	8/14/96
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2	F	N 11/8/00	8/14/96
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			Not required ³

NRC Chronology Identification	FR Notice (Date due for State)	RATS ID	Proposed (P) / Final (F) Rule License Condition (LC) ML # ⁵	NRC Review / Y, N ² / Date /ML # ⁵	Final State Regulation ¹ (Effective Date)
Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2			Not applicable to Florida
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	F	N 11/8/00	5/18/98
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 ML020460297	N 4/24/02 ML021150491	8/6/01
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	F	N 11/8/00	5/18/98
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983; (3/1/98)	1995-3	F	N 11/8/00	5/18/98
Performance Requirements for Radiography Equipment- Part 34	60 FR 28323; (6/30/98)	1995-4	F	N 11/8/00	5/18/98
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	F	N 11/8/00	5/18/98
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F	N 11/8/00	5/18/98
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	F ML010250079	N 2/8/01 ML010430124	10/8/00
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 ML010250079	N 2/8/01 ML010430124	10/8/00
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

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Termination or Transfer of Licensed Activities: Recordkeeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3	F ML010250079	N 2/8/01 ML010430124	10/8/00
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	F ML010250079	N 2/8/01 ML010430124	10/8/00
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 ML010250079	N 2/8/01 ML010430124	10/8/00
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	F ML010250079	N 2/8/01 ML010430124	10/8/00
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	R ⁸ ML072780580	Y 11/28/07 ML073320022	9/28/06
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6	F ML020460297	N 4/24/02 ML021150491	8/6/01
Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7	F ML010250079	N 2/8/01 ML010430124	10/8/00
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 150	63 FR 1890; 63 FR 13773; (2/12/01)	1998-1	F ML010250079	N 2/8/01 ML010430124	10/8/00
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

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Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part34	63 FR 37059; (7/9/01)	1998-4	F ML020460297	N 4/24/02 ML021150491	9/28/06
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 ML010250079	N 2/8/01 ML010430124	10/8/00
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	F ML070510098	N 4/23/07 ML071100132	
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1			Not applicable SECY-95-112 ⁴
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	R ⁸ ML072780580	N 11/28/07 ML073320022	9/28/06
★Energy Compensation Sources for Well Logging and Other Regulatory Clarifications - Part 39	65 FR 20337; (5/17/03)	2000-1	R ⁸ ML072780580	N 11/28/07 ML073320022	9/28/06
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2	F ML070510098	N 4/23/07 ML071100132	10/08/00
★Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	R ⁸ ML072780580	Y 11/28/07 ML073320022	9/28/06
Revision of the Skin Dose Limit-Part 20	67 FR 16298; 4/5/05	2002-1	F ML070510098	N 4/23/07 ML071100132	9/28/06

NRC Chronology Identification	FR Notice (Date due for State)	RATS ID	Proposed (P) / Final (F) Rule License Condition (LC) ML # ⁵	NRC Review / Y, N ² / Date /ML # ⁵	Final State Regulation ¹ (Effective Date)
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	F ML070510098	N 4/23/07 ML071100132	
★Compatibility with IAEA Transportation Safety Standards and Other Transportation Safety Amendments - Part 71	69 FR 3697; (10/01/07)	2004-1	R ⁸ ML072780580	N 11/28/07 ML073320022	9/28/06
Security Requirements for Portable Gauges Containing Byproduct Material - Part 30	70 FR 2001; (7/11/08)	2005-1	F ML070510098	N 4/23/07 ML071100132	9/28/06
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) ⁷	70 FR 72128; (12/1/05)	2005-3	LC ML052700048	N 9/28/05 ML052720029	
Minor Amendments - Parts 20, 30, 32, 35, 40, and 70	71 FR 15005 (3/27/09)	2006-1			
★National Source Tracking System - Serialization Requirements - Part 32 with reference to Part 20 Appendix E	71 FR 65685 (2/6/07)	2006-2	P ML072780580	N 11/28/07 ML073320022	
★National Source Tracking System - Part 20	71 FR 65865 72 FR 59162 (01/31/09)	2006-3	P ML072780580	N 11/28/07 ML073320022	

NRC Chronology Identification	FR Notice (Date due for State)	RATS ID	Proposed (P) / Final (F) Rule License Condition (LC) ML # ⁵	NRC Review / Y, N ² / Date /ML # ⁵	Final State Regulation ¹ (Effective Date)
Medical Use of Byproduct Material - Minor Corrections and Clarifications - Parts 32 and 35	72 FR 45147, 54207 (10/29/10)	2007-1			

1. Or other generic Legally Binding Requirements.
2. (Y/N) 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. Proposed modifications were made to be compatible with Part 20 as requested in NRC letter dated 11/24/97.
7. 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.
8. R stands for proposed changes made to final regulations.