

(STP-05-057, July, Other, GI Devices)

July 20, 2005

ALL AGREEMENT STATES, MINNESOTA, PENNSYLVANIA

NOTICE OF COMPATIBILITY RESOLUTION ON REPORTING REQUIREMENTS FOR PERSONS GENERALLY LICENSED TO SERVICE AND INSTALL GL DEVICES (STP-05-057)

U.S. Nuclear Regulatory Commission (NRC) staff has prepared the enclosed Compatibility Resolution CR-05-01 dealing with 10 CFR Parts 31.6 and 150.20 regarding the reporting requirements of persons generally licensed to service and install Generally Licensed (GL) devices. The Conference of Radiation Control Program Directors, Inc., (CRCPD), in their Suggested State Regulation (SSR) Part C, "Licensing of Radioactive Material," combined the requirements of the NRC Sections 150.20, "Recognition of Agreement State Licenses," and 31.6, "General License to Install Devices Generally Licensed in 31.5," under SSR Sections C.90a(i) and C.90a(ii), "Reciprocal Recognition of Licenses, Licenses of Byproduct, Source, and Special Nuclear Material in Quantities Not Sufficient to Form a Critical Mass." The word "notwithstanding" links the two Sections [C.90a(i) to C.90a(ii)] which led to confusion over how Section C.90a(ii) should be interpreted. The NRC staff analyzed the linkage and concluded that the use of the word "notwithstanding" disconnects the requirements in each Section such that the requirements in the first Section [C.90a(i)] do not apply to the second Section [C.90a(ii)].

Please note that we have a Petition For Rulemaking from the Organization of Agreement States (OAS) currently under review by NRC staff, and 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.

If you have any questions regarding this correspondence, please contact me or the individual named below.

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/RA/

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

Enclosure:
Compatibility Resolution CR-05-01

**SSR/10 CFR 31.6 and 10 CFR 150.20 COMPATIBILITY RESOLUTION
REPORTING REQUIREMENTS OF PERSONS GENERALLY LICENSED TO SERVICE AND
INSTALL GL DEVICES**

ISSUE:

The Conference of Radiation Control Program Directors (CRCPD), in their Suggested State Regulation (SSR) Part C, "Licensing of Radioactive Material," combined the requirements of the U.S. Nuclear Regulatory Commission (NRC) Sections 150.20, "Recognition of Agreement State Licenses", and 31.6, "General License to Install Devices Generally Licensed in 31.5" under SSR Sections C.90a(i) and C.90a(ii), "Reciprocal Recognition of Licenses, Licenses of Byproduct, Source, and Special Nuclear Material in Quantities Not Sufficient to Form a Critical Mass." The word "notwithstanding" links the two Sections [C.90a(ii) to C.90a(i)] which led to confusion over how Section C.90a(ii) should be interpreted. One interpretation would be consistent with the provisions of equivalent NRC Section 31.6. A second interpretation linking the two Sections together would not be consistent with NRC Section 31.6 because it would require prior notification and a 180-day reciprocity limit. These Sections, as written, have been in the SSR since at least 1991 and possibly longer. Many Agreement States have modeled their regulations after the SSRs.

DISCUSSION:

Upon review of Alabama's Generally Licensed (GL) Device regulations, NRC staff identified potential for misinterpretation of Alabama's regulations for the reporting requirements of persons generally licensed to service and install GL devices. Section 420-3-26-.02(20) of Alabama's regulations combines Section 31.6, "General License to Install Devices Generally Licensed in 31.5," and Section 150.20, "Recognition of Agreement State Licenses," Alabama modeled this part of its GL rule after that of the reciprocity Sections C.90a(i) and C.90a(ii) of CRCPD's SSR for Licensing of Radioactive Material.

If, when combining these Sections, Alabama meant for the SSR Section C.90a(i) requirements to apply to the service providers and installers of GL devices identified in NRC equivalent Section 31.6, the Alabama rule would then require more than the equivalent NRC Section 31.6. If this were the case, the Alabama regulation would have required 3-day prior notification, a 30-day reciprocity period, and an additional separate report to be filed within 30 days of the end of the calendar quarter by a licensee transferring or installing a GL device. These requirements would be more restrictive than NRC requirements given the limitations imposed by the Compatibility Category B designation assigned to NRC Section 31.6.

Alabama, however, does not interpret this section of their GL rule in this manner. Alabama indicated they do not apply their equivalent to SSR Section C.90a(i) requirements to their service providers and installers of GL devices covered by their equivalent to C.90a(ii). In Alabama's view, use of the word "notwithstanding" disconnects the two Sections by making clear that the requirements in the first Section [C.90a(i)] do not apply to the second Section [C.90a(ii)].

CONCLUSION:

NRC staff concludes that although it would be clearer if Sections C.90a(i) to C.90a(ii) were codified separately, the interpretation used by Alabama preserves the separate requirements in each Section and meets the Compatibility Category B designation assigned to Section C.90a(ii). Use of the word “notwithstanding” disconnects the requirements in each Section such that the requirements in the first Section [C.90a(i)] do not apply to the second part [C.90a(ii)].

Alabama’s interpretation of the language in the SSR should be adopted by NRC for review of any State GL rule that is modeled after the CRCPD’s SSR with respect to NRC’s acceptance of the model language as written and implemented in the same manner as Alabama as meeting the Category B designation for the requirements for service providers and installers under NRC Section 31.6. As of the date of this compatibility resolution, NRC will interpret the word “notwithstanding,” when used in a section of a State’s regulations related to the State’s GL rule, to mean that the requirements before the word “notwithstanding” do not effect any section that may follow the word “notwithstanding.”

7/11/05
Date

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

7/11/2005
Date

/RA/
Stuart A. Treby, Assistant General Counsel
for Rulemaking and Fuel Cycle
Office of the General Counsel

CR-05-01

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