

July 28, 2008

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

Dear Mr. Whatley:

We have received Mr. Walter's July 11, 2008 letter requesting a legal interpretation that specifies what essential objectives of 10 CFR 30.34(i) are not met by Alabama's license condition for security requirements for portable gauges. The text of NRC's regulation and your license condition are as follows:

NRC 10 CFR 30.34(i):

Each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Alabama's license condition:

The licensee shall assure that all portable devices containing radioactive material shall be supplied with two (2) independent physical controls (not including any lock on the device or the carrying case containing the device) while the device is in storage or transit, and when an authorized user is not physically present. The controls shall be designed to limit public access to the device or the carrying case containing the device.

Alabama's license condition does not meet NRC's essential objectives in two areas. The phrase "when an authorized user is not physically present" does not meet the essential objectives of "not under the control and constant surveillance of the licensee." The Statement of Consideration for the proposed 10 CFR 30.34 (i) discussed the meaning of constant control and surveillance (68 FR 45175, as adopted as a final rule without changes, 70 FR 2001):

"The NRC staff interprets 'control and maintain constant surveillance' of portable gauges to mean being immediately present or remaining in close proximity to the portable gauge so as to be able to prevent the unauthorized removal of the gauge."

Based on this statement, we believe that the two essential objectives necessary to establish control and constant surveillance are:

- (1) Physical presence ("being immediately present or in close proximity"); and
- (2) being "able to prevent the unauthorized removal of the gauge."

The last sentence of your license condition requires that the controls be designed to limit public access to the device and carrying case. NRC's regulation does not address the design, but limiting public access is less restrictive than preventing the unauthorized removal of the gauge.

If the Alabama license condition is revised as follows, it will incorporate the essential objectives of 10 CFR 30.34(i), and will meet the Compatibility Category C designation assigned to this provision:

The licensee shall assure that all portable devices containing radioactive material shall be supplied with two (2) independent physical controls (not including any lock on the device or the carrying case containing the device) while the device is in storage or transit, and when an authorized user is not physically present **to prevent the unauthorized removal of the portable device**. The controls shall be designed to **secure portable devices from unauthorized removal**. ~~limit public access to the device or the carrying case containing the device.~~

If you have any questions regarding the analysis, please contact Kathleen Schneider, State Regulation Review Coordinator at (301) 415-2320 (email: kathleen.schneider@nrc.gov.)

Sincerely,

James G. Luehman, Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials and
Environmental Management Programs

Enclosures: As stated

The last sentence of your license condition requires that the controls be designed to limit public access to the device and carrying case. NRC's regulation does not address the design, but limiting public access is less restrictive than preventing the unauthorized removal of the gauge.

If the Alabama license condition was revised as follows, we believe that the license condition would incorporate the essential objectives of 10 CFR 30.34(i) in order to meet the Compatibility Category C designation assigned to this provision:

The licensee shall assure that all portable devices containing radioactive material shall be supplied with two (2) independent physical controls (not including any lock on the device or the carrying case containing the device) while the device is in storage or transit, and when an authorized user is not physically present **to prevent the unauthorized removal of the portable device**. The controls shall be designed to **secure portable devices from unauthorized removal**. ~~limit public access to the device or the carrying case containing the device.~~

If you have any questions regarding the analysis, please contact Kathleen Schneider, State Regulation Review Coordinator at (301) 415-2320 (email: kathleen.schneider@nrc.gov.)

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