

January 20, 2006

Mr. George F. Johns, Jr., Supervisor
Radiation Control Unit
Minnesota Department of Health
625 Robert Street N-PO Box 64975
St. Paul MN 55164-0975

Dear Mr. Johns:

We have reviewed the proposed changes to the Minnesota Department of Health Radiation Rules, Chapter 47341, received by our office on November 28, 2005. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 30, 31 and 71 and the requirements of the three amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with you on January 19, 2006.

As a result of our review, we have six 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 Minnesota 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 Minnesota 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 State and Tribal Programs (STP) 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 STP Procedure SA-201, "Review of State Regulatory Requirements," please highlight the final changes and provide a copy to STP.

The SRS Data Sheet summarizes our knowledge of the status of other Minnesota 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.hrsd.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 Mr. Osiris Siurano at 301-415-2307 or by e-mail at osp@nrc.gov.

Sincerely,

IRA By KNSchneider For

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

Enclosures:
As stated

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Distribution:

DIR RF (5-362) **SISP Review Complete**

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|--------|------------|--|------------|--|-------------------------|--|
| OFFICE | STP | | OGC | | STP:DD | |
| NAME | O.Siurano | | STreby | | KSchneider for DRathbun | |
| DATE | 1/17/2006* | | 1/18/2006* | | 1/20/2006* | |

ML060200281

OFFICIAL RECORD COPY

COMPATIBILITY COMMENTS ON MINNESOTA PROPOSED REGULATIONS

| STATE SECTION | | NRC SECTION | RATS ID | CATEGORY | SUBJECT and COMMENTS |
|---------------|-----------|-------------|---------|----------|---|
| 1 | 4731.4412 | §35.51 | 2005-2 | B | <p>Training for an Authorized Medical Physicist</p> <p>Minnesota's proposed regulations have incorrectly referenced training requirements for an Authorized Medical Physicist.</p> <p>Minnesota needs to change State regulations in 4731.4412 from requirements included in (A)(2) to also include parts C and D. This change needs to be made to meet the Compatibility Category B designation assigned to Section 10 CFR 35.51.</p> |
| 2 | 4731.4445 | §35.394 | 2005-2 | B | <p>Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 gigabecquerels (33 millicuries).</p> <p>Minnesota's proposed regulations have omitted the reference to the training requirement in item E of 4731.4445.</p> <p>Minnesota needs to add the reference to item E in 4731.445. This addition needs to be made to meet the Compatibility Category B designation assigned to Section 10 CFR 35.394.</p> |
| 3 | 4731.0402 | §71.5(a) | 2004-1 | B | <p>Transportation of Licensed Material</p> <p>Minnesota's proposed regulations exclude language requiring compliance with 49 CFR Parts 107 and 390-397.</p> <p>Minnesota needs to add these references to 4731.0402 to meet the Compatibility Category B designation assigned to Section 10 CFR 71.5.</p> |

| STATE SECTION | | NRC SECTION | RATS ID | CATEGORY | SUBJECT and COMMENTS |
|---------------|---------------------|------------------|---------|----------|--|
| 4 | 4731.0402 | §71.5(a)(a)(ii) | 2004-1 | B | <p>Transportation of Licensed Material</p> <p>Minnesota's proposed regulations excluded the reference to 10 CFR 172.441 concerning marking and labeling with regard to transportation of licensed material.</p> <p>Minnesota needs to add the reference to Section to 172.441 to 4731.0402 to meet the Compatibility Category B designation assigned to Section 10 CFR 71.5.</p> |
| 5 | 4731.0402 | §71.5(a)(1)(vii) | 2004-1 | B | <p>Transportation of Licensed Material</p> <p>Minnesota's proposed regulations excluded a provision for the security plan requirement for the transportation of licensed material.</p> <p>Minnesota needs to add the requirements of §71.5(a)(1)(vii) to 4731.0402 to meet the Compatibility Category B designation assigned to Section 10 CFR 71.5.</p> |
| 6 | 4731.0403 Part 2 | §71.14 | 2004-1 | B | <p>Exemption for Low-level Materials</p> <p>Minnesota's proposed regulations for exemption for low-level materials incorrectly references subpart 6 of 4731.0423.</p> <p>Minnesota needs to change the reference from 4731.0423 subpart 6 to 4731.0422 subpart 3 in 4731.0403 part 2(A). This change must be made to meet the Compatibility Category B designation assigned to Section 10 CFR 71.14(a).</p> |

STATE REGULATION STATUS

State: Minnesota

[3 amendments reviewed identified by a i
at the beginning of the equivalent NRC requirement.]

Tracking Ticket Number: 5-362

Date:1/20/06

| NRC Chronology Identification | FR Notice (State Due Date) | RATS ID | Proposed (P) / Final (F) ¹ Rule /License Condition/ 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 ML050140452 | 03/04/05 ⁶ ML050690100 | |
| 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 ML050140452 | 03/04/05 ⁶ ML050690100 | |
| Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70 | 56 FR 64980; (10/15/94) | 1991-4 | F ML050140452 | 03/04/05 ⁶ ML050690100 | |
| Quality Management Program and Misadministrations-Part 35 | 56 FR 34104; (1/27/95) | 1992-1 | F ML050140452 | 03/04/05 ⁶ ML050690100 | |
| 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 ML050140452 | 03/04/05 ⁶ ML050690100 | |
| Licensing and Radiation Safety Requirements for Irradiators-Part 36 | 58 FR 7715; (7/1/96) | 1993-2 | F ML050140452 | 03/04/05 ⁶ ML050690100 | |
| 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 |
| 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 ML050140452 | 03/04/05 ⁶ ML050690100 | |
| 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 ML050140452 | 03/04/05 ⁶ ML050690100 | |
| Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part | 60 FR 7900; (3/13/98) | 1995-2 | F | 03/04/05 ⁶ | |

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|---|---------------------------------------|------------|--|---|---|
| 20 | | | ML050140452 | ML050690100 | |
| Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61 | 60 FR 15649; 60 FR 25983; (3/1/98) | 1995-3 | F ML050140452 | 03/04/05 ⁶ ML050690100 | |
| Performance Requirements for Radiography Equipment-Part 34 | 60 FR 28323; (6/30/98) | 1995-4 | F ML050140452 | 03/04/05 ⁶ ML050690100 | |
| Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20 | 60 FR 36038; (8/14/98) | 1995-5 | F ML050140452 | 03/04/05 ⁶ ML050690100 | |
| Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70 | 60 FR 38235; (11/24/98) | 1995-6 | F ML050140452 | 03/04/05 ⁶ ML050690100 | |
| Medical Administration of Radiation and Radioactive Materials-Parts 20, 35 | 60 FR 48623; (10/20/98) | 1995-7 | F ML050140452 | 03/04/05 ⁶ ML050690100 | |
| 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 ML050140452 | 03/04/05 ⁶ ML050690100 | |
| 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 ML050140452 | 03/04/05 ⁶ ML050690100 | |
| Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20 | 61 FR 65120; (1/9/00) | 1997-1 | F ML050140452 | 03/04/05 ⁶ ML050690100 | |
| 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 ML050140452 | 03/04/05 ⁶ ML050690100 | |
| Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35 | 62 FR 4120; (5/29/00) | 1997-3 | F ML050140452 | 03/04/05 ⁶ ML050690100 | |
| 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 ML050140452 | 03/04/05 ⁶ ML050690100 | |
| Radiological Criteria for License Termination-Parts 20, 30, 40, 70 | 62 FR 39057; (8/20/00) | 1997-6 | F ML050140452 | 03/04/05 ⁶ ML050690100 | |
| Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30 | 62 FR 63634; (1/02/01) | 1997-7 | F ML050140452 | 03/04/05 ⁶ ML050690100 | |
| Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150 | 63 FR 1890; 63 FR 13773; (2/12/01) | 1998-1 | F ML050140452 | 03/04/05 ⁶ ML050690100 | |
| 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 |

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|--|---|------------|--|---|---|
| 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 | F ML050140452 | 03/04/05 ⁶ ML050690100 | |
| Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20 | 63 FR 39477; 63 FR 45393; (10/26/01) | 1998-5 | F ML050140452 | 03/04/05 ⁶ ML050690100 | |
| Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20 | 63 FR 50127; (11/20/01) | 1998-6 | F ML050140452 | 03/04/05 ⁶ ML050690100 | |
| 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 | F ML050140452 | 03/04/05 ⁶ ML050690100 | |
| Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39 | 65 FR 20337; (5/17/03) | 2000-1 | F ML050140452 | 03/04/05 ⁶ ML050690100 | |
| New Dosimetry Technology-Parts 34, 36, 39 | 65 FR 63750; (1/8/04) | 2000-2 | F ML050140452 | 03/04/05 ⁶ ML050690100 | |
| Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32 | 65 FR 79162; (2/16/04) | 2001-1 | F ML050140452 | 03/04/05 ⁶ ML050690100 | |
| Revision of the Skin Dose Limit-Part 20 | 67 FR 16298 (4/5/05) | 2002-1 | F ML050140452 | 03/04/05 ⁶ ML050690100 | |
| Medical Use of Byproduct Material-Parts 20, 32, and 35 | 67 FR 20249 (10/24/05) | 2002-2 | F ML050140452 | 03/04/05 ⁶ ML050690100 | |
| Financial Assurance for Materials Licensees - Parts 30, 40, 70 | 68 FR 56327 (12/3/06) | 2003-1 | | | |
| i Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments – Part 71. | 69 FR 3697; (10/01/07) | 2004-1 | P ML060200165 | Y 1/20/06 ML060200281 | |

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|--|---------------------------------------|------------|--|---|---|
| i Security Requirements for Portable Gauges Containing Byproduct Material - Part 30 | 70 FR 2001; (7/11/08) | 2005-1 | P ML060200165 | N 1/20/06 ML060200281 | |
| i Medical Use of Byproduct Material - Recognition of Specialty Boards - Part 35 | 70 FR 16336; 71 FR 1926; (4/29/08) | 2005-2 | P ML060200165 | Y 1/20/06 ML060200281 | |
| Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) ⁷ | 70 FR 72128; (12/1/05) | 2005-3 | LC ML053220236 | 11/18/2005 ML053220444 | |

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. The Minnesota proposed final regulations were submitted and reviewed on this date as part of their Agreement State application package.
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.