

June 12, 2006

Tobias A. Lickerman
Chief of Radioactive Materials Division
New York City Department of Health
2 Lafayette St. 11th fl., NY NY 10007

Dear Mr. Lickerman:

We have reviewed the final revision to the New York City Department of Health regulations in Article 175 of the New York City Health Code "Radiation Control", received by our office via e-mail on May 1, 2006. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 30, 40, 50, 52, 60, 61, 70, 72 and 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 you on May 24, 2006.

As a result of our review, we have eight 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. We have determined that if these regulations are revised, 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 you revise your regulations to address our comments, 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 location of any changes made by New York City Department of Health, in response to our comments and provide a copy to STP.

The SRS Data Sheet summarizes our knowledge of the status of other New York City Department of Health 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.hsrdo.org/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 Jenny Tobin at 301-415-2328 or by e-mail at jct1@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 (6-120) **SUNSI Review Complete**
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DWhite, RSAO : Non-Sensitive Sensitive **New York File**

DOCUMENT NAME: E:\Filenet\ML061630264.wpd

ML of Incoming Document:ML061220177

OFFICE	STP		OGC		STP:DD	
NAME	JTobin		STreby		KNSchneider for DRathbun	
DATE	05/15/06*		06/08 /06*		06/12/06*	

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**COMPATIBILITY COMMENTS ON NEW YORK CITY DEPARTMENT OF
HEALTH (NYCDH) PROPOSED REGULATIONS**

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	175.02(132)	20.1003	1995-5	A	<p>Definition: “Member of Public”</p> <p>NYCDH definition of “member of public” does not include all of the essential elements of the reference to occupational dose contained in NRC’s definition.</p> <p>NYCDH needs to include the phrase “occupational dose” to 175.02(132) to meet the Compatibility Category A designation assigned to this definition in Section 10 CFR 20.1003.</p>
2	175.02(141)	20.1003	1995-5	A	<p>Definition: “Occupational Dose”</p> <p>NYCDH definition of “occupational dose” does not differentiate between licensed and unlicensed sources compared to NRC’s definition.</p> <p>NYCDH needs to revise the definition of “occupational dose” to include both licensed and unlicensed sources of radiation add the phrase to 175.02(141) to meet the Compatibility Category A designation assigned to this definition in Section 10 CFR 20.1003.</p>
3	175.101(m)	150.20	1997-2	C	<p>Recognition of Agreement State licenses</p> <p>NYCDH has omitted the 3-day advance notice about initially engaging in the activity outside of NYCDH’s jurisdiction.</p> <p>NYCDH needs to include a reference to advanced notification in 175.101(m) to meet the Compatibility Category C designation assigned to Section 10 CFR 150.20.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
4	175.02(20)	20.1003	1997-6	A	<p>Definition: “Background radiation”</p> <p>NYCDH definition of “background radiation” omits the phrase “or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under control of the licensee” compared to NRC’s definition.</p> <p>NYCDH needs to add the phrase “or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under control of the licensee” to 175.01(20) to meet the Compatibility Category A designation assigned to this definition in Section 10 CFR 20.1003.</p>
5	N/A	20.1003	1997-6	B	<p>Definition: “Critical group”</p> <p>NYCDH omitted a definition for “critical group” compared to NRC’s regulations.</p> <p>NYCDH needs to add the definition to 175.02 to meet the Compatibility Category B designation assigned to this portion of Section 10 CFR 20.1003.</p>
6	N/A	20.1003	1997-6	C	<p>Definition: “Decommission”</p> <p>NYCDH omitted a definition for “decommission” compared to NRC’s regulations.</p> <p>NYCDH needs to add the definition to 175.02 to meet the Compatibility Category designations assigned to these portions 10 CFR 20.1003, 30.4, 40.4 and 70.4.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
7	N/A	20.1003	1997-6	B	<p>Definition: “Distinguishable from background”</p> <p>NYCDH omitted a definition for “distinguishable from background” compared to NRC’s regulations.</p> <p>NYCDH needs to add the definition to 175.02 to meet the Compatibility Category B designation assigned to this portion of Section 10 CFR 20.1003.</p>
8	N/A	20.1003	1997-6	B	<p>Definition: “Residual radioactivity”</p> <p>NYCDH omitted a definition for “residual radioactivity” compared to NRC’s regulations.</p> <p>NYCDH needs to add the definition to 175.02 to meet the Compatibility Category B designation assigned to this portion of Section 10 CFR 20.1003.</p>

STATE REGULATION STATUS

State: New York City Bureau of Health
 [7 amendments reviewed identified by a i at
 the beginning of the equivalent NRC requirement.]

Tracking Ticket Number: 6-120
 Date: 6/12/2006

NRC Chronology Identification	FR Notice (Date Due For State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule ¹ / 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			Not required ³
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			
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980 (10/15/94)	1991-4			
Quality Management Program and Misadministrations-Part 35	56 FR 34104 (1/27/95)	1992-1			
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			
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715 (7/1/96)	1993-2			Not applicable SECY- 95-112 ⁴
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
i Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026 (8/15/97)	1994-3	5/1/06 ML061290502	N 6/12/06 ML061630264	

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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			
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900 (3/13/98)	1995-2	F 5/5/06 ML061220177	N 6/ 1/2006 ML061530099	
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649 60 FR 25983 (3/1/98)	1995-3			Not applicable SECY-95-112 ⁴
Performance Requirements for Radiography Equipment- Part 34	60 FR 28323 (6/30/98)	1995-4			Not applicable SECY-95-112 ⁴
i Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038 (8/14/98)	1995-5	F 5/1/06 ML061290502	Y 6/12/06 ML061630264	
i Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235 (11/24/98)	1995-6	F 5/1/06 ML061290502	N 6/12 /06 ML061630264	
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623 (10/20/98)	1995-7			
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248 61 FR 28724 (4/1/99)	1996-1	P	N 2/9/99	4/99
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
i Termination or Transfer of Licensed Activities: Recordkeeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669 (6/17/99)	1996-3	F 5/1/06 ML061290502	N 6/12/06 ML061630264	
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65119 (1/9/00)	1997-1			
i 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 5/1/06 ML061290502	Y 6/12/06 ML061630264	
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120 (5/29/00)	1997-3			
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907	1997-4			Not required ³

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	(none)				
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations-Parts 30, 34, 71, 150	62 FR 28948 (6/27/00)	1997-5			Not applicable SECY-95-112 ⁴
i Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057 (8/20/00)	1997-6	F 5/1/06 ML061290502	Y 6/12/06 ML061630264	
Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30	62 FR 63634 (1/02/01)	1997-7			
i Deliberate Misconduct by Unlicensed Persons- Parts 30, 40, 61, 70, 150	63 FR 1890 63 FR 13773 (2/12/01)	1998-1	F 5/1/06 ML061290502	N 6/12/06 ML061630264	
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
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34	63 FR 37059 (7/9/01)	1998-4			Not applicable SECY-95-112 ⁴
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39347 63 FR 45393 (10/26/01)	1998-5			
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127 (11/20/01)	1998-6			
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 55525	1999-3	F 5/5/06 ML061220177	N 6/1/2006 ML061530099	

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			Rule ⁴ / License Condition (LC) ML # ⁵	/ML # ⁵	
	(2/2/03)				
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1			
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63749; (1/8/04)	2000-2			
Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material-Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1			
Revision of the Skin Dose Limit-Part 20	67 FR 1629; (4/5/05)	2002-1	F 5/5/06 ML061220177	N 6/1/2006 ML061530099	
Medical Use of Byproduct Material-Parts 20, 32, 35	67 FR 20249; (4/24/05)	2002-2			
Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327 12/3/06	2003-1			
Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments – Part 71.	69 FR 3697; (10/01/07)	2004-1			
Security Requirements for Portable Gauges Containing Byproduct Material - Part 30	70 FR 2001; (7/11/08)	2005-1			
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) ⁶	70 FR 72128; (12/1/05)	2005-3	LC ML052910113	10/20/05 ML052940009	12/2/05

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. 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.