



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005**

August 22, 2006

Rocky Mountain Mobile PET
ATTN: Lyle Johnson
President
418 East College Drive
Cheyenne, WY 82007

**SUBJECT: RESPONSE TO REQUEST TO CONDUCT MOBILE PET IN THE
STATE OF WYOMING**

Mr. Johnson:

This is in response to your request letter dated July 31, 2006, to operate under reciprocity within the State of Wyoming. The regulation under 10 CFR 150.20 grants a general license to conduct the same activity to any person who holds a specific license from an Agreement State for activities at temporary jobsites and for activities which are subject to the provisions of Atomic Energy Act of 1954, as amended. The specific activity under your State of Colorado license authorizes a mobile PET service. Since the activity authorized on your specific license from the State of Colorado is not currently regulated under the Act, then a general license can not be issued for such activity. However, regulations are being promulgated since the President of the United States signed the Energy Policy Act of 2005 (EPAcT) on August 8, 2005.

The EPAcT expanded the definition of byproduct material to also include: (1) any discrete source of radium-226 that is produced, extracted, or converted after extraction (before, on, or after August 8, 2005) for use for a commercial, medical, or research activity; and (2) any material that has been made radioactive by use of a particle accelerator and is produced, extracted, or converted after extraction (before, on, or after August 8, 2005) for use for a commercial, medical, or research activity. In addition, section 11 e.(4) expands the definition to include any discrete source of naturally occurring radioactive material, other than source material, if certain conditions are met.

The provisions of the EPAcT became effective immediately; and therefore, the states that had been regulating these types of activities, no longer had the authority to regulate the newly covered byproduct material, except as authorized to do so under the EPAcT. The EPAcT allowed the agency to issue waivers which allowed those states to continue to regulate the respective byproduct material. The waivers may be effective until August 7, 2009; however, they may be terminated sooner. For those states that do not have a Section 274i Agreement State regulatory program, such as Wyoming, the waiver period will allow the state to decide whether they want to enter into an agreement with the NRC, to appropriately address the newly defined byproduct material and subsequently regulate those activities.

The Energy Policy Act of 2005 gave the Commission 18 months after the date of enactment to issue final regulations for the newly covered byproduct material. Once the regulations become final, then the effective date is 60 days from the date of the final rule. Proposed license amendments should then be submitted within 6 months from the effective date or waiver termination and new license applications should be submitted within 1 year from the effective date or waiver termination. The proposed regulations are currently out for public comment with a comment expiration date of September 11, 2006. The proposed rules may be located on the following website: <http://ruleforum.llnl.gov> - then select "Proposed Rules."

Until such time as the regulations and transition plan have been completed and are in place, persons who engage in activities involving the newly defined byproduct material should continue with their activities. Therefore, since the regulations do not yet cover your activities for mobile PET in the State of Wyoming, you may continue to perform your activities as stated in your letter. Once the regulations become effective, then you should file reciprocity to conduct your activities involving mobile PET imaging in the State of Wyoming with either the NRC or with the State of Wyoming, if they agree to have a Section 274i regulatory program which covers the respective activity.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

If there are any questions regarding this letter or other aspects of working in NRC jurisdiction, please contact me at 817-276-6552.

Sincerely,

/RA/

Rachel S. Browder, Health Physicist
Nuclear Materials Licensing Branch

cc:
Wyoming Radiation Control Program Director