

May 13, 2005

Dennis P. O'Dowd
Acting Administrator
Radiological Health Section
Department of Health and Human Services
Division of Public Health Services
29 Hazen Drive
Concord, NH 03301-6504

Dear Mr. O'Dowd:

We have reviewed the proposed changes to the New Hampshire Rules for the Control of Radiation, Administrative Code He-P 4000, received by our office on March 30, 2005. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 20, 30, 31, 32, 34, 35, 36, 39, 71 and 150 and the requirements of the 10 amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with you on April 8, 2005.

As a result of our review, we have eleven 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 New Hampshire 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 New Hampshire 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 New Hampshire 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 Aaron McCraw at 301-415-1277 or by e-mail at atm@nrc.gov.

Sincerely,

IRA Byl

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

Enclosures: As stated

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Paul H. Lohaus, Director
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Enclosures: As stated

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COMPATIBILITY COMMENTS ON NEW HAMPSHIRE FINAL REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	N/A	30.35(g), 40.36(f) 70.25(g)	1996-3	H&S	<p>Financial assurance and recordkeeping for decommissioning</p> <p>New Hampshire has omitted requirements for the transfer of records pertaining to decommissioning in their regulations.</p> <p>New Hampshire needs to adopt the essential objectives of the requirements for the transfer of decommissioning records to the new licensee to meet the Category H&S designation assigned to Section 30.35(g), 40.36(f), and 70.25(g).</p>
2	N/A	30.36(k)(4), 40.42(k)(4), 70.38(k)(4)	1996-3	H&S	<p>Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas</p> <p>New Hampshire does not have exact requirements for the submission of decommissioning records required by 10 CFR 30.51 or its equivalent State regulation. New Hampshire has generic requirements for the termination of licenses, including a submittal of Form BRH-10. Without a formal review of this form, it is indeterminable whether the generic blanket statement for all license terminations will meet the essential objectives of 10 CFR 30.36(k)(4).</p> <p>New Hampshire needs to adopt the essential objectives for license terminations after decommissioning or demonstrate that their Form BRH-10 does meet the Category H&S designation assigned to Section 10 CFR 30.36(k)(4).</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
3	He-P 4024	20.1401	1997-6	C	<p>General provisions and scope</p> <p>New Hampshire has omitted the requirements of paragraph (d). This requirement mandates that the peak annual TEDE be calculated for the first 1,000 years after termination of the license. This requirement is important in determining the potential exposure to members of the public.</p> <p>New Hampshire needs to add this paragraph to He-P 4024 to meet the Compatibility Category C designation assigned to Section 10 CFR 20.1401.</p>
4	He-P 4030.09	30.35 and 40.36	1997-6	H&S	<p>Financial assurance & recordkeeping for decommissioning</p> <p>New Hampshire has omitted equivalent recordkeeping requirements to 10 CFR 30.35(g)(3) and 40.36(f)(3).</p> <p>New Hampshire needs to adopt the essential objectives of recordkeeping requirements to meet the Category H&S designation assigned to Sections 10 CFR 30.45 and 40.36.</p>
5	He-P 4003.01 (bl)	20.1003	1999-3	B	<p>Definitions</p> <p>New Hampshire's proposed definition of "fit test" omits the phrase "or quantitatively" compared to NRC's definition. Fit tests should also have protocols to provide quantitative results.</p> <p>New Hampshire needs to add the phrase to He-P 4003.01(bl) to meet the Compatibility Category B designation assigned to Section 10 CFR 20.1003.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
6	He-P 4031.04(b)	31.5	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>The New Hampshire regulations use the word “fixed.” This language is more restrictive in that it prohibits the general licensing of portable devices that is authorized under 31.5(b)(2) of the NRC regulations. In addition, the following sections will also need revision to be consistent to allow the general licensing of portable devices: He-P 4031.04 (e)(14), (15), (16), and (17)</p> <p>New Hampshire needs to revise He-P 4031.04(b) to meet the Compatibility Category B designation assigned to Section 10 CFR 31.5.</p>
7	He-P 4031.04(e)(6)	31.5(c)(5)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>The New Hampshire proposed regulations have omitted the phrase “or failure of or damage to a source likely to result in contamination “ from the reporting requirement of section 31.5(c)(5).</p> <p>New Hampshire needs to add this phrase to He-P 4031.04(e)(6) to meet the Compatibility Category B designation assigned to Section 10 CFR 31.5(c)(5).</p>
8	He-P 4031.04(e)(14), (15), and (16)	31.5(c)(13)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>See comment 6.</p>
9	He-P 4031.04(e)(14), (15), and (16)	31.5(c)(13)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>See comment 6.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
10	He-P 4031.04(e)(14)	31.5(c)(13)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>See Comment 6.</p>
11	He-P 4031.03 (old codification)	31.6	2001-1	B	<p>General license to install devices generally licensed in § 31.5</p> <p>The title and codifications for this proposed regulation needs to be revised to reflect the correct reference. Presently there are two section 4031.03 in the New Hampshire regulations as proposed and many editorial errors for the references to 4031.02 instead of 4031.04. The remaining text meets the meet the Compatibility Category B designation assigned to Section 31.6</p> <p>New Hampshire needs to revise the references in He-P 4031.03 to meet the Compatibility Category B designation assigned to Section 10 CFR 31.6.</p>

STATE REGULATION STATUS

State: New Hampshire

[Ten amendments reviewed are identified by a ★ at the beginning of each equivalent NRC regulation]

Tracking Ticket Number: 5-92
Date: May 13, 2005

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) / Final (F) ¹ Rule / 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	N	2/99
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		2/95
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	F	N	2/95
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1	F	N	2/99
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	N	2/99
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2	F (License Condition)	09/16/2004 ML042610256	Note: LC is specific to one Irradiator in NH, All Parts of 10 CFR 36 are not covered.
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 required ³
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3			
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	N	2/99

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) / Final (F)¹ Rule / ML #⁵	NRC Review / Y, N² / Date / ML #⁵	Final State Regulation¹ (Effective Date)
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	F	N	8/98
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3	F	N	8/98
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	F	N	8/98
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	F	N	8/98
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F	N	8/98
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	F	N	8/98
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28723 (4/1/99)	1996-1	F	N	8/98
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	P ML050900337	Y 5/13/05 ML051360224	
★ Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	P ML050900337	N 5/13/05 ML051360224	
★ 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	P ML050900337	N 5/13/05 ML051360224	
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; (none)	1997-4			Not required ³

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) / Final (F)¹ Rule / ML #⁵	NRC Review / Y, N² / Date / ML #⁵	Final State Regulation¹ (Effective Date)
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	F	N	2/99
★ Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39058; (8/20/00)	1997-6	P ML050900337	Y 5/13/05 ML051360224	
Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7	F	N	
★ Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1	P ML050900337	N 5/13/05 ML051360224	
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			
★ Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393 (10/26/01)	1998-5	P ML050900337	N 5/13/05 ML051360224	
★ Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	P ML050900337	N 5/13/05 ML051360224	
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1			
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 (2/2/03)	1999-3	P ML050900337	Y 5/13/05 ML051360224	
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1	F ML042720491 ML042660535 ML042520322	N 10/25/04 ML043010014	

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New Dosimetry Technology-Parts 34, 36, 39	65 FR 63749; (1/8/04)	2000-2	F (License Condition) ML042720491 ML042660535 ML042520322	N 10/25/04 ML043010014	Note: LC is specific to only radiographer in State
★ Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material-Parts 30, 31, 32	65 FR 79162 (2/16/04)	2001-1	P ML050900337	Y 5/13/05 ML051360224	
★ Revision of the Skin Dose Limit-Part 20	67 FR 16298; (4/5/04)	2002-1	P ML050900337	N 5/13/05 ML051360224	
Medical Use of Byproduct Material-Parts 20, 32 and 35	67 FR 20249; (10/24/05)	2002-2			
Financial Assurance for Materials Licensees - Parts 30, 40 and 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			

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 the regulation. See: "Final Policy Statement on Adequacy and Compatibility of Agreement State Programs," III.1.Time From For Adoption of Compatible State Regulations, p. 6, SECY-95-112, May 3, 1995.
5. ADAMS ML Number.