

October 29, 2007

Karen Beckley, Supervisor
Bureau of Health Protection Services
Nevada State Health Division
1179 Fairview Drive, Suite 201
Carson City, NV 89701-5405

Dear Ms Beckley:

We have reviewed the final revision to the Nevada Regulations Administrative Code NAC 459, received by our office on August 21, 2007. 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, 40, 70 and the requirements of the eight amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with you on October 25, 2007.

As a result of our review, we have ten 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 Federal and State Materials and Environmental Management Programs (FSME) 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 FSME Procedure [SA-201](#), "Review of State Regulatory Requirements," please highlight the location of any changes made by Nevada, in response to our comments and provide a copy to FSME.

The SRS Data Sheet summarizes our knowledge of the status of other Nevada 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 FSME website: <http://www.hsrdr.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 Kathleen Schneider, State Regulation Review Coordinator at (301) 415-2320 (email: kxs@nrc.gov) or Jenny Tobin at (301) 415-2328 (email: jct1@nrc.gov).

Sincerely,

IRA By ADWhite For

Robert J. Lewis, Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials and
Environmental Management Programs

Enclosures: As stated

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Bureau of Health Protection Services-Nevada State Health Division
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Enclosures: As stated

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COMPATIBILITY COMMENTS ON NEVADA FINAL REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	n/a	20.1003	1999-3	B	<p>Definitions: Air-purifying respirator</p> <p>Nevada did not include a definition of air-purifying respirator in their regulations.</p> <p>Nevada needs to add a definition for air-purifying respirator to NAC 459 to meet the Compatibility Category B designation assigned to this definition in 10 CFR 20.1003.</p>
2	n/a	20.1003	1999-3	B	<p>Definitions: Disposable respirator</p> <p>Nevada did not include a definition of disposable respirator in their regulations.</p> <p>Nevada needs to add a definition for disposable respirator to NAC 459 to meet the Compatibility Category B designation assigned to this definition in 10 CFR 20.1003.</p>
3	n/a	20.1003	1999-3	B	<p>Definitions: Filtering facepiece</p> <p>Nevada did not include a definition of filtering facepiece in their regulations.</p> <p>Nevada needs to add a definition for filtering facepiece to NAC 459 to meet the Compatibility Category B designation assigned to this definition in 10 CFR 20.1003.</p>
4	n/a	20.1003	1999-3	B	<p>Definitions: Helmet</p> <p>Nevada did not include a definition of helmet in their regulations.</p> <p>Nevada needs to add a definition for helmet to NAC 459 to meet the Compatibility Category B designation assigned to this definition in 10 CFR 20.1003.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
5	n/a	20.1003	1999-3	B	<p>Definitions: Hood</p> <p>Nevada did not include a definition of hood in their regulations.</p> <p>Nevada needs to add a definition for hood to NAC 459 to meet the Compatibility Category B designation assigned to this definition in 10 CFR 20.1003.</p>
6	n/a	20.1003	1999-3	B	<p>Definitions: Loose-fitting Facepiece</p> <p>Nevada did not include a definition of loose-fitting facepiece in their regulations.</p> <p>Nevada needs to add a definition for loose-fitting facepiece to NAC 459 to meet the Compatibility Category B designation assigned to this definition in 10 CFR 20.1003.</p>
7	NAC 459.218	31.6	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>The State places a 30 day reporting requirement in their equivalent rule to 31.6. This requirement does not appear in 31.6(a)-(c).</p> <p>Nevada's rule has the essential elements of the NRC, but is more restrictive than the NRC's GL rule. As noted in the September 28, 2005 All Agreement States Letter FSME-07-087, the determination on this provision will be held in abeyance until such time that the NRC completes the GL device rulemaking initiated in August 2007.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
8	Sec. 62 NAC 459.300	32.72(b)(1) &(b)(2)(ii)	2002-2	B	<p>Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing byproduct material for medical use under Part 35</p> <p>Nevada has omitted the requirements that allow an individual to prepare radioactive drugs under the supervision of an authorized nuclear pharmacist.</p> <p>Nevada needs to adopt this provision to Section 62 to meet the Compatibility Category B designation assigned to Sections 32.72(b)(1)&(b)(2)(ii).</p>
9	Sec. 62 NAC 459.300	32.72(b)(2)(i)	2002-2	B	<p>Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing byproduct material for medical use under Part 35</p> <p>Nevada does not allow a pharmacist, who may not be an authorized nuclear pharmacist but qualifies under 35.2 to work as an authorized nuclear pharmacist.</p> <p>Nevada needs to add these provisions to Section 62 to meet the Compatibility Category B designation assigned to Section 32.72(b)(2)(i)</p>
10	Sec. 65 NAC 459.306	32.74(a)(3)	2002-2	B	<p>Manufacture and distribution of sources or devices containing byproduct material for medical use</p> <p>Nevada incorrectly referenced 35.57 in Section 65 instead of 35.65.</p> <p>Nevada needs to change the reference to 35.65 to meet the Compatibility Category B designation assigned to Section 32.74.</p>

STATE REGULATION STATUS

State: Nevada

(8 Amendments reviewed were identified by a ★ at the beginning of equivalent NRC regulation.)

Tracking Ticket Number: 7-67 & 7-68
Date: October 29, 2007

NRC Chronology Identification	FR Notice (Date Due For State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / 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	F	N 9/21/94	12/8/93
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	N 12/15/97	12/8/93
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	F	N 9/21/94	12/8/93
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1			Superseded by 2002-2
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 ML050960361	Y 5/19/05 ML051390275	
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

NRC Chronology Identification	FR Notice (Date Due For State Implementation)	RATS ID	Proposed (P) / Final (F)¹ Rule / License Condition (LC) ML #⁵	NRC Review / Y, N² / Date / ML #⁵	Final State Regulation¹ (Effective Date)
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	F ML050960361	N 5/19/05 ML051390275	
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	P	Y 3/10/99	1/99
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	P	N 3/10/99	1/99
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3	P	Y 3/10/99	1/99
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	P	N 3/10/99	1/99
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	P	N 3/10/99	1/99
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	P	N 3/10/99	1/99
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	P	Y 3/10/99	1/99
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28723 (4/1/99)	1996-1	P	Y 3/10/99	1/99
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
Termination or Transfer of Licensed Activities: Recordkeeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3	F ML033210100	N 12/23/03 ML033580078	
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	F ML050960361	N 5/19/05 ML051390275	

NRC Chronology Identification	FR Notice (Date Due For State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / License Condition (LC) ML # ⁵	NRC Review / Y, N ² / Date / ML # ⁵	Final State Regulation ¹ (Effective Date)
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 ML033210100	N 12/23/03 ML033580078	
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	F ML033210100	N 12/23/03 ML033580078	
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 28948; (6/27/00)	1997-5	F ML033210100	N 12/23/03 ML033580078	
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39058; (8/20/00)	1997-6	F ML033210100	N 12/23/03 ML033580078	
Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7	F ML033210100	N 12/23/03 ML033580078	
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1	F ML033210100	N 12/23/03 ML033580078	
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	F ML033210100	N 12/23/03 ML033580078	
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393 (10/26/01)	1998-5	F ML033210100	N 12/23/03 ML033580078	
★Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	F ML072490051	N 10/29/07 ML073020215	

NRC Chronology Identification	FR Notice (Date Due For State Implementation)	RATS ID	Proposed (P) / Final (F)¹ Rule / License Condition (LC) ML #⁵	NRC Review / Y, N² / Date / ML #⁵	Final State Regulation¹ (Effective Date)
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1			Not required ³
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	F ML072490051	Y 10/29/07 ML073020215	
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1	LC ML031970217	N 07/30/03 ML032120269	
★New Dosimetry Technology-Parts 34, 36, 39	65 FR 63749; (1/8/04)	2000-2	F ML072490051	N 10/29/07 ML073020215	
★Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	F ML072490051	Y 10/29/07 ML073020215	
★Revision of the Skin Dose Limit -Part 20	67 FR 16298; (4/5/05)	2002-1	F ML072490051	N 10/29/07 ML073020215	
★Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; (4/24/05)	2002-2	F ML072490051	Y 10/29/07 ML073020215	
★Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1	F ML072490051	N 10/29/07 ML073020215	
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	F ML072490051	N 10/29/06 ML073020215	
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 ML053130011	11/10/05 ML053180009	12/2/05

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Minor Amendments - Parts 20, 30, 32, 35, 40, and 70	71 FR 15005 (3/27/09)	2006-1			
National Source Tracking System - Serialization Requirements - Part 32 with reference to Part 20 Appendix E	71 FR 65685 (2/6/07)	2006-2			
National Source Tracking System - Part 20	71 FR 65865 (11/15/07) & (11/30/07)	2006-3 ⁷			

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.
7. RATS ID 2006-3 will not be considered under the Non-Common Performance Indicator "Compatibility Requirements" for IMPEP reviews until such time as the National Source Tracking System is ready for use Revisions in the implementation date for Agreement States will be provided to the States under separate correspondence and the SRS sheet will be revised as appropriate.