

June 12, 2006

Tobias A. Lickerman  
Chief of Radioactive Materials Division  
New York City Department of Health  
2 Lafayette St. 11<sup>th</sup> 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](mailto: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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***IRA By KNSchneider For***

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

Enclosures: As stated

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| 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><b>Definition: “Member of Public”</b></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><b>Definition: “Occupational Dose”</b></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><b>Recognition of Agreement State licenses</b></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><b>Definition: “Background radiation”</b></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><b>Definition: “Critical group”</b></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><b>Definition: “Decommission”</b></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><b>Definition: “Distinguishable from background”</b></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><b>Definition: “Residual radioactivity”</b></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 ★ 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) <sup>1</sup> Rule <sup>1</sup> / License Condition (LC) ML # <sup>5</sup> | NRC Review / Y, N <sup>2</sup> / Date /ML # <sup>5</sup> | Final State Regulation <sup>1</sup> (Effective Date) |
|--|--|---------|--|--|--|
| Safety Requirements for Radiographic Equipment-Part 34   | 55 FR 843 (1/10/94)  | 1991-1  |  |  | Not required <sup>3</sup>                            |
| ASNT Certification of Radiographers-Part 34  | 56 FR 11504 (none)   | 1991-2  |  |  | Not required <sup>3</sup>                            |
| Standards for Protection Against Radiation-Part 20   | 56 FR 23360<br>56 FR 61352<br>57 FR 38588<br>57 FR 57877<br>58 FR 67657<br>59 FR 41641<br>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 <sup>3</sup>                            |
| 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 <sup>4</sup>              |
| Definition of Land Disposal and Waste Site QA Program-Part 61  | 58 FR 33886 (7/22/96)  | 1993-3  |  |  | Not applicable SECY-95-112 <sup>4</sup>              |
| Self-Guarantee as an Additional Financial Mechanism- Parts 30, 40, 70  | 58 FR 68726<br>59 FR 1618 (none)   | 1994-1  |  |  | Not required <sup>3</sup>                            |
| 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 <sup>4</sup>              |

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|---|--|---------|--|--|--|
| ★ Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70  | 59 FR 36026 (8/15/97)                            | 1994-3  | 5/1/06<br>ML061290502  | N 6/12/06<br>ML061630264                                 |  |
| Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use-Parts 30, 32, 35 | 59 FR 61767<br>59 FR 65243<br>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<br>ML061220177  | N 6/ 1/2006<br>ML061530099                               |  |
| Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61  | 60 FR 15649<br>60 FR 25983 (3/1/98)              | 1995-3  |  |  | Not applicable SECY-95-112 <sup>4</sup>              |
| Performance Requirements for Radiography Equipment-Part 34  | 60 FR 28323 (6/30/98)                            | 1995-4  |  |  | Not applicable SECY-95-112 <sup>4</sup>              |
| ★ Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20                                | 60 FR 36038 (8/14/98)                            | 1995-5  | F 5/1/06<br>ML061290502  | Y 6/12/06<br>ML061630264                                 |  |
| ★ Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70  | 60 FR 38235 (11/24/98)                           | 1995-6  | F 5/1/06<br>ML061290502  | N 6/12 /06<br>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<br>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 <sup>3</sup>                            |
| ★ 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<br>ML061290502  | N 6/12/06<br>ML061630264                                 |  |
| Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20               | 61 FR 65119 (1/9/00)                             | 1997-1  |  |  |  |

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|---|---|---------|--|--|--|
| ★ 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<br>ML061290502  | Y 6/12/06<br>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 (none)                             | 1997-4  |  |  | Not required <sup>3</sup>                            |
| 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 <sup>4</sup>              |
| ★ Radiological Criteria for License Termination-Parts 20, 30, 40, 70  | 62 FR 39057 (8/20/00)                         | 1997-6  | F 5/1/06<br>ML061290502  | Y 6/12/06<br>ML061630264                                 |  |
| Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30                                     | 62 FR 63634 (1/02/01)                         | 1997-7  |  |  |  |
| ★ Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 150   | 63 FR 1890<br>63 FR 13773 (2/12/01)           | 1998-1  | F 5/1/06<br>ML061290502  | N 6/12/06<br>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 <sup>3</sup>                            |
| License Term for Medical Use Licenses- Part 35  | 63 FR 31604 (none)                            | 1998-3  |  |  | Not required <sup>3</sup>                            |
| 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 <sup>4</sup>              |
| Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36   | 63 FR 39347<br>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  |  |  |  |

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|--|--|----------------|--|---|--|
| Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40   | 64 FR 17506 (6/11/02)                                | 1999-1         |  |   | Not applicable SECY-95-112 <sup>4</sup>                    |
| 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 <sup>3</sup>                                  |
| Respiratory Protection and Controls to Restrict Internal Exposure - Part 20  | 64 FR 54543<br>64 FR 55525 (2/2/03)                  | 1999-3         | F 5/5/06<br>ML061220177  | N 6/1/2006<br>ML061530099                                     |  |
| 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<br>ML061220177  | N 6/1/2006<br>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<br>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         |  |   |  |

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|--|---|---------|--|--|--|
| Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) <sup>6</sup> | 70 FR 72128; (12/1/05)                        | 2005-3  | LC<br>ML052910113  | 10/20/05<br>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.