

DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH

NOTICE OF INTENTION TO AMEND VARIOUS PROVISIONS OF ARTICLE 175
OF THE
NEW YORK CITY HEALTH CODE

NOTICE OF PUBLIC HEARING

In compliance with Section 1043(b) of the New York City Charter and pursuant to the authority granted to the Board of Health by Section 558 of said Charter, notice is hereby given of the proposed amendment of various provisions of Article 175 of the New York City Health Code.

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT WILL HOLD A PUBLIC HEARING ON THE PROPOSAL ON THURSDAY, JANUARY 20, 2005 FROM 10A.M. TO 12P.M. IN THE THIRD FLOOR BOARDROOM (ROOM 330) AT 125 WORTH STREET, NEW YORK, NEW YORK 10013.

PERSONS INTERESTED IN PRE-REGISTERING TO SPEAK SHOULD NOTIFY, IN WRITING, RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK; (212) 788-5010 BY WEDNESDAY, JANUARY 19, 2005. PLEASE INCLUDE A TELEPHONE NUMBER WHERE, IF NECESSARY, YOU MAY BE REACHED DURING NORMAL WORKING HOURS. SPEAKERS WILL BE LIMITED TO FIVE (5) MINUTES.

PERSONS WHO REQUEST THAT A SIGN LANGUAGE INTERPRETER OR OTHER FORM OF REASONABLE ACCOMMODATION FOR A DISABILITY BE PROVIDED AT THE HEARING ARE ASKED TO NOTIFY RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013; (212) 788-5010 BY THURSDAY, JANUARY 6, 2005.

REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 10A.M. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO PREREGISTER.

WRITTEN COMMENTS REGARDING THE PROPOSAL MUST BE SUBMITTED TO RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013 OR BY EMAIL TO THIS ADDRESS, PUBLICCOMMENTS@HEALTH.NYC.GOV, OR BY FAX ADDRESSED TO RENA BRYANT AT (212) 788-4315, ON OR BEFORE JANUARY 19, 2005.

WRITTEN COMMENTS RECEIVED BY THE SECRETARY TO THE BOARD OF HEALTH AND A TRANSCRIPT OF THE PUBLIC HEARING WILL BE AVAILABLE FOR PUBLIC INSPECTION WITHIN A REASONABLE TIME AFTER RECEIPT, BETWEEN THE HOURS OF 9:00 A.M. AND 5:00 P.M. AT THE OFFICE OF THE SECRETARY

STATUTORY AUTHORITY

These amendments to the New York City Health Code (“Health Code”) are promulgated pursuant to Sections 556, 558 and 1043 of the New York City Charter (“Charter”). Section 556 of the Charter grants the Department of Health and Mental Hygiene (the “Department”) jurisdiction to regulate matters affecting health in the City of New York. Section 556(s) of the Charter specifically empowers the Department to regulate radioactive materials. Section 558(b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department’s authority extends. Section 1043 of the Charter grants the Department of Health rule making powers.

STATEMENT OF BASIS AND PURPOSE

The New York City Department of Health’s Office of Radiological Health supervises and regulates the public health aspects of ionizing radiation, including the handling and disposal of radioactive waste and responding to emergencies involving sources of ionizing radiation. The Office of Radiological Health carries out its mandate through its registration, licensing, inspection, emergency response and public education programs.

The New York City Charter [Section 556(s)] empowers the Department to regulate all aspects of ionizing radiation within the five boroughs of New York City. The New York State Sanitary Code [10 N.Y.C.R.R. Part 16] delegates ionizing radiation material regulation and oversight to those municipalities having a population of more than 2,000,000. The Federal Atomic Energy Act of 1954 [Section 274(o)], as amended, authorizes State regulation of byproduct material, source material and special nuclear material in quantities not sufficient to form a critical mass pursuant to an Agreement with the U.S. Nuclear Regulatory Commission (NRC) (formerly the Atomic Energy Commission). The New York City Department of Health and Mental Hygiene, as part of the New York State Agreement, therefore exercises regulatory authority for radioactive material within the City.

Several amendments to Article 175 are proposed in order to achieve consistency with federal regulations. Each Agreement State (there are currently 31) program is required to maintain compatibility with the NRC regulatory program. The NRC ensures an adequate level of compatibility through the Integrated Materials Performance Evaluation Program (IMPEP) and conducts a quadrennial review of Agreement State programs. The latest IMPEP review of the New York State program took place in July of 2002.

In the July 2002 IMPEP review, the NRC evaluated each of the four participants of the New York State Agreement, which consist of the New York State Department of Health, New York State Department of Labor, New York State Department of Environmental Conservation, and the New York City Department of Health and Mental Hygiene. NRC findings were presented in their Final Report dated November 12, 2002.

The NRC IMPEP report concluded that in order to comply with the report and to be compatible with NRC regulations, it is proposed that Article 175 of the New York City Health Code had to be amended as follows.

It is proposed that Section 175.02 (141) and (161) be amended to add language to the definitions of "Occupational dose" and "Public dose" to clarify that these doses do not include exposure to individuals administered radioactive material and released under Section 175.103(c) (9).

It is proposed that Section 175.03(f)(2)(B) be amended to reflect the language found in 10 CFR Part 20 which would raise the personnel monitoring requirement for minors and declared pregnant women from 0.05rem (0.5 mSv) to 0.1 rem (1 mSv). The 0.1 rem (1 mSv) in a year deep dose equivalent monitoring criterion is consistent with the public dose limit and represents a quantity more consistent with the measurement sensitivity of individual personnel dosimetry.

It is proposed that Section 175.04 (c) be amended to reflect the language in CFR Parts 19 and 20 which now requires licensees to provide radiation protection training to all individuals who in the course of employment, are likely to receive an occupational dose in excess of 100 mrem (1mSv).

It is proposed that Section 175.101(h)(4)(vi) be amended to address the specific language found in 10 CFR Part 30 "Timeliness in Decommissioning Material Facilities". The proposed language would be added to assure that licensees who wish to terminate licensed activities, perform decommissioning within timeframes prescribed by the Department.

It is also proposed that Section 175.101(h)(viii)(B) be amended to include the language found in 10 CFR Part 20 "Radiological Criteria for License Termination". This amendment deals with specific dose limits to members of the public from sites released for unrestricted use.

It is proposed that a new subparagraph (viii) be added to subsection (k) of Section 175.101 to reflect the language found in 10 CFR Part 30 "Deliberate Misconduct by Unlicensed Persons". The proposed language would be added to allow the Department to conduct enforcement actions against individuals who provide inaccurate or incomplete information to the Department.

Section 175.101(m) covers reciprocity. It is proposed that a new paragraph (2) be added to subsection (m) of Section 175.101 to address the specific language found in 10 CFR Part 150 "Recognition of Agreement State Licensees in Areas Under Exclusive Federal Jurisdiction Within an Agreement State". The proposed language would be added to clarify the fact that Agreement State Licensees can seek reciprocal recognition of their license from the Nuclear Regulatory Commission when working within areas of exclusive Federal jurisdiction in New York City.

It is proposed that Section 175.101(n)(1) be amended to remove a redundant "of the" in the first paragraph and to reflect the language found in 10 CFR Section 30.35 by adding a new paragraph to Section 175.101 (n)(1), which would require licensees that are authorized to possess sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding 10 to the 12th times the applicable quantities set forth in Appendix B, to submit a decommissioning funding plan as described in Section 175.03(n)(4) of this section.

It is proposed that Section 175.101(n)(5) be amended to add language found in 10 CFR Section 30.35 concerning adjusting cost estimates for decommissioning at intervals not to exceed 3 years; and

It is proposed that the first sentence of Section 175.101(n)(7) be amended to add language found in 10 CFR Section 30.35 which requires licensees to keep records of decommissioning until the site is released for unrestricted use.

It is proposed that Appendix B (Exempt Quantities) of Section 175.101 be amended to include americium, plutonium and any alpha radionuclide not listed above or mixtures of alpha emitters to be consistent with 10 CFR Part 30 Appendix B.

STATEMENT PURSUANT TO SECTION 1042- REGULATORY AGENDA

This proposal was not included in the Regulatory Agenda because it is the result of an analysis conducted by the Department to ensure consistency with the NRC requirements.

The proposal is as follows:

Note- matter in brackets [] to be deleted
matter underlined is new

RESOLVED, that subsection (a) of Section 175.02 of the New York City Health Code as last amended by resolution, on the 12th day of December, two thousand and two,

be and the same hereby is amended, to be printed together with explanatory notes, to read as follows:

§175.02 Definitions

• • •

(141) “Occupational dose” means the dose received by an individual in the course of employment in which the individual’s assigned duties involve exposure to sources of radiation, whether in possession of the licensee, registrant, or other person. Occupational dose does not include doses received: from background radiation, exposure to individuals administered radioactive material and released under § 175.103 (c)(9), as a patient from medical practices, from voluntary participation in medical research programs, or as a member of the public.

(161) “Public dose” means the dose received by a member of the public from exposure to sources of radiation. It does not include occupational dose, dose received from background radiation, exposure to individuals administered radioactive material and released under § 175.103 (c)(9), dose received as a patient from medical practices, or dose from voluntary participation in medical research programs.

Notes: Paragraph (141) and (161) of subsection (a) of Section 175.02 of the New York City Health Code was amended on _____ to reflect 10 CFR Section 20.1003, which provides definitions for 10 CFR Part 20.

RESOLVED, that paragraph (2) of subsection (f) of Section 175.03 of the New York City Health Code as amended by resolution, on the 21st day of March, two thousand and one, be and the same hereby is amended, to be printed together with explanatory notes, to read as follows:

175.03 Standards for protection against radiation.

• • •

(f) Surveys and monitoring.

(2) Personnel monitoring.

(i) External radiation sources. Each person who possesses any radiation source shall supply and require the proper use of appropriate, calibrated and operable individual monitoring devices by:

(B) minors and declared pregnant women likely to receive, in 1 year from sources external to the body, a dose in excess of [10 percent of any of the applicable limits in 175.03(c)(8)] 0.1 rem (1mSv); and

Notes: Subparagraph (i)(B) of paragraph (2) of subsection (f) of Section 175.03 of the New York City Health Code was amended on _____ to reflect 10 CFR Section 20.1502, which raises the personnel monitoring requirement for minors and declared pregnant women.

RESOLVED, that Section 175.04 of the New York City Health Code as last amended by resolution, on the 27th day of June, nineteen hundred and ninety-four, be and the same hereby is amended, to be printed together with explanatory notes, to read as follows:

175.04 Notices, Instructions and Reports to Workers; Inspections.

• • •

(c) Instructions to workers.

(1) All individuals [working in or frequenting any portion of a restricted area] who in the course of employment are likely to receive in a year an occupational dose in excess of 100 mRem (1mSv):

Notes: Paragraph (1) of subsection (c) of Section 175.04 of the New York City Health Code was amended on _____ to reflect federal regulation 10 CFR Section 19.12 and 10 CFR Section 20.1502, which now requires licensees to provide radiation protection training to all individuals who in the course of employment, are likely to receive an occupational dose in excess of 100 mrem (1mSv).

RESOLVED, that Section 175.101 of the New York City Health Code as last amended by resolution, on the 27th day of June, nineteen hundred and ninety-four, be and the same hereby is amended, to be printed together with explanatory notes, to read as follows:

§175.101 General requirements for radioactive materials licenses.

• • •

(h) Expiration, renewal and termination of licenses.

(4) If a licensee does not submit an application for renewal pursuant to §175.101(h)(1), the licensee shall on or before the expiration date stated in the license:

(vi) If the information submitted pursuant to §175.101(h)(4)(v) does not adequately demonstrate that the premises are suitable [release] for unrestricted use, the Department shall inform the licensee of the appropriate further actions required for the termination of the license, including, but not limited to, decontamination of the licensed premises to such levels and within such time frames as the Department may prescribe.

Notes: Subparagraph (vi) of paragraph (4) of subsection (h) of Section 175.101 of the New York City Health Code was amended on _____ to reflect 10 CFR Section 30.36 in assuring that licensees who wish to terminate licensed activities must perform decommissioning within timeframes prescribed by the Department.

RESOLVED, that Section 175.101 of the New York City Health Code as last amended by resolution, on the 27th day of June, nineteen hundred and ninety-four, be and the same hereby is amended, to be printed together with explanatory notes, to read as follows:

§175.101 General requirements for radioactive materials licenses.

• • •

(h) Expiration, renewal and termination of licenses.

(4) If a licensee does not submit an application for renewal pursuant to §175.101(h)(1), the licensee shall on or before the expiration date stated in the license:

(viii) The Department will approve a request for termination of a specific license, and issue an amendment terminating such license, when the Department determines that:

(A) radioactive material has been properly disposed; and

(B) premises have been decontaminated to such levels [as the Department has prescribed] that the total effective dose equivalent (TEDE) from residual radioactivity distinguishable from background radiation, to an average member of the public will not exceed 25 mrem (0.25 mSv) per year;

Notes: Subparagraph (viii)(B) of paragraph (4) of subsection (h) of Section 175.101 of the New York City Health Code was amended on _____ to reflect 10 CFR Section 20.1403, which provides specific dose limits to members of the public from sites released for unrestricted use.

RESOLVED, that Section 175.101 of the New York City Health Code as last amended by resolution, on the 27th day of June, nineteen hundred and ninety-four, be and the same hereby is amended, to be printed together with explanatory notes, to read as follows:

§175.101 General requirements for radioactive materials licenses

• • •

(k) Conditions of specific licenses.

(1) Each of the following is hereby made a condition of each specific license:

(viii) A licensee, employee of a licensee, contractor, subcontractor, or employee of a contractor or subcontractor shall not:

(A) engage in a deliberate misconduct that causes or would have caused if not detected, a licensee or applicant to be in violation of any provision of this Code or license condition issued by the Department; or

(B) deliberately submit to the Department information that the person submitting the information knows to be incomplete or inaccurate in some respect to the Department.

Notes: Subparagraph (viii) of paragraph (1) of subsection (k) of Section 175.101 of the New York City Health Code was added on _____ to reflect federal regulation 10 Section 30.10 which enables the Department to conduct enforcement actions against individuals who provide inaccurate information to the Department.

RESOLVED, that Section 175.101 of the New York City Health Code as last amended by resolution, on the 27th day of June, nineteen hundred and ninety-four, be and the same hereby is amended, to be printed together with explanatory notes, to read as follows:

§175.101 General requirements for radioactive materials licenses

• • •

(m) Reciprocity.

(2) The holder of a license issued by the New York State Department of Labor, the New York State Department of Health, the New York City Department of Health and Mental Hygiene or an Agreement State must obtain reciprocity approval from the U.S. Nuclear Regulatory Commission to conduct licensed activity in areas of exclusive federal jurisdiction within New York City.

Notes: Paragraph (2) of subsection (m) of Section 175.101 of the New York City Health Code was added on _____ to reflect 10 CFR Section 150.20 which clarifies that Agreement State licensees can seek reciprocal recognition of their license from the NRC when working within areas of exclusive Federal jurisdiction in New York City.

RESOLVED, that Section 175.101 of the New York City Health Code as last amended by resolution, on the 27th day of June, nineteen hundred and ninety-four, be and

the same hereby is amended, to be printed together with explanatory notes, to read as follows:

§175.101 General requirements for radioactive materials licenses.

• • •

(n) Financial assurance and recordkeeping for decommissioning.

(1)(a) Each applicant for a specific license authorizing the possession and use of unsealed radioactive material of half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in Appendix B to this section shall submit a decommissioning funding plan as described in §175.101(n)(5). The decommissioning funding plan must also be submitted when a combination of isotopes is involved if R divided by 10^5 is greater than one (1) (unity rule)[.], where R is defined here as the sum of the ratios of the [of the] quantity of each isotope to the applicable value in Appendix B.

(1)(b) Each holder of, or applicant for, any specific license authorizing the possession and use of sealed sources or plated foils half-life greater than 120 days and in quantities exceeding 10^{12} times the applicable quantities set forth in Appendix B shall submit a decommissioning funding plan as described in §175.101(n)(5). The decommissioning funding plan must also be submitted when a combination of isotopes is involved of R divided by 10^{12} is greater than one (1) unity rule, where R is defined as the sum of the ratios of the quantity of each isotope to the applicable value in Appendix B.

Notes: Paragraph (1)(b) of subsection (n) of Section 175.101 of the New York City Health Code was added on _____ to reflect 10 CFR Section 30.35 which requires licensees that are authorized to possess sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding 10 to the 12th times the applicable quantities set forth in Appendix B of the New York City Health Code to submit a decommissioning funding plan.

RESOLVED, that Section 175.101 of the New York City Health Code as last amended by resolution, on the 27th day of June, nineteen hundred and ninety-four, be and the same hereby is amended, to be printed together with explanatory notes, to read as follows:

§175.101 General requirements for radioactive materials licenses.

• • •

(n) Financial assurance and recordkeeping for decommissioning.

(5) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from §175.101(n)(6), including means of adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates must be adjusted at intervals not to exceed 3 years. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of §175.101(n)(6).

Notes: Paragraph (5) of subsection (n) of Section 175.101 of the New York City Health Code was amended on _____ to reflect 10 CFR Section 30.35, which addresses adjusting cost estimates for decommissioning at intervals not to exceed 3 years.

RESOLVED, that Section 175.101 of the New York City Health Code as last amended by resolution, on the 27th day of June, nineteen hundred and ninety-four, be and the same hereby is amended, to be printed together with explanatory notes, to read as follows:

§175.101 General requirements for radioactive materials licenses.

• • •

(n) Financial assurance and recordkeeping for decommissioning.

(7) Each licensed person shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the Department and the site is released for unrestricted use. If records of relevant information are kept for other purposes, reference to these records and their location may be used. Information the Department considers important to decommissioning consists of:

Notes: Paragraph (7) of subsection (n) of Section 175.101 of the New York City Health Code was amended on _____ to reflect 10 CFR Section 30.35.

RESOLVED, that Appendix B of Section 175.101 of the New York City Health Code as last repealed and re-enacted by resolution, on the twenty-first day of March, two thousand and one, be and the same hereby is amended, to be printed together with explanatory notes, to read as follows:

§175.101 General requirements for radioactive materials licenses.

• • •

Appendix B

Exempt Quantities

Radioactive material	Microcuries¹
<u>Americium 241</u>	<u>.01</u>
Antimony 122 (Sb 122)	100
Antimony 124 (Sb 124)	10
Antimony 125 (Sb 125)	10

Arsenic 73 (As 73)	100
Arsenic 74 (As 74)	10
Arsenic 76 (As 76)	10
Arsenic 77 (As 77)	100
Barium 131 (Ba 131)	10
Barium 133 (Ba 133)	10
. . .	
Platinum 193 (Pt 193)	100
Platinum 197m (Pt 197m)	100
Platinum 197 (Pt 197)	100
<u>Plutonium 239</u>	<u>.01</u>
. . .	
Zirconium 97 (Zr 97)	10
<u>Any alpha radionuclide not listed above or mixtures of alpha emitters of unknown composition</u>	<u>0.1</u>

Notes: Appendix B was amended on _____ to be consistent with 10 CFR Part 30 Appendix B.