



State of New Mexico
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May 5, 2009

Terrence Reis, Deputy Director
Division Materials Safety and State Agreements
Office of Federal and State Materials and
Environmental Management Programs
U.S. Nuclear Regulatory Commission
T8-E24
Washington, D.C. 20555-0001

Dear Mr. Reis:

Enclosed is a copy of the final revisions to the New Mexico Radiation Protection Rules contained in the following parts: 20.3.1 NMAC "General Provisions", 20.3.3 NMAC "Licensing of Radioactive Materials", 20.3.4 NMAC "Standards for Protection against Radiation", and 20.3.7 NMAC "Medical Use of Radionuclides." The revisions to the New Mexico rules correspond to the following RATS IDs:

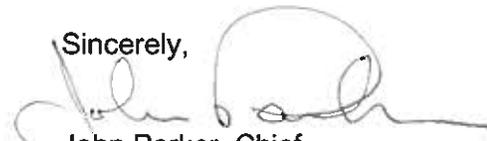
<u>RATS ID</u>	<u>Title</u>	<u>State Section</u>
2002-2	Medical Use of Byproduct Material - Parts 20, 32, and 35	20.3.3 NMAC, 20.3.4 NMAC, and 20.3.7 NMAC
2003-1	Financial Assurance for Materials Licensees – Parts 30, 40, 70	20.3.3.311 NMAC
2004-1	Compatibility with IAEA Transportation Safety Standards and Other Transportation Safety Amendments - Part 71	20.3.3.306 NMAC
2005-1	Security Requirements for Portable Gauges Containing Byproduct Material - Part 30	20.3.3.307 NMAC
2005-2	Medical Use of Byproduct Material - Recognition of Specialty Boards - Part 35	20.3.7 NMAC
2006-1	Minor Amendments - Parts 20, 30, 32, 35, 40 and 70	20.3.3 NMAC, 20.3.4 NMAC, and 20.3.7 NMAC
2006-2	National Source Tracking System - Serialization Requirements - Part 32 with reference to Part 20 Appendix E	20.3.3 NMAC
2006-3	National Source Tracking System - Part 20	20.3.4 NMAC
2007-1	Medical Use of Byproduct Material - Minor Corrections and Clarifications - Parts 32 and 35	20.3.3 NMAC and 20.3.7 NMAC

2007-2	Exemptions From Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements - Parts 30, 31, 32, 150	20.3.3 NMAC
2007-3	Requirements for Expanded Definition of Byproduct Material - Parts 20, 30, et al.	20.3.1 NMAC, 20.3.3 NMAC, 20.3.4 NMAC, and 20.3.7 NMAC

We believe that adoption of these revisions satisfies the compatibility and health and safety categories established in the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-200.

Enclosure 1 submitted with this letter lists the actions that New Mexico has taken with respect to the NRC Comments on the proposed revisions dated June 25, 2008 (ML081770231).

If you have any questions, please feel free to contact me at 505-827-1080 or Daniela Bowman of my staff at 505-476-3061 or daniela.bowman@state.nm.us.

Sincerely,

 John Parker, Chief
 Radiation Control Bureau

Enclosure 1

ENCLOSURE 1

State Section		NRC Section	RATS ID	Category	Subject and NRC Comments	State Actions
1	20.3.7.704	35.10	2002-2 2005-5 2006-1	H&S	<p>Use of unsealed byproduct material for uptake, dilution, and excretion studies for which a written directive is not required</p> <p>New Mexico lists the wrong references in 20.3.7.704.B(2). The cross references should be “in either subsection G of 20.3.7.714 NMAC, incorporating 10 CFR 35.290, or Subsection H of 20.3.7.714 NMAC, incorporating 10 CFR 35.390, and Subsection G of 20.3.7.714 NMAC, incorporating 10 CFR 290(c)(1)(ii)(G); ...”</p> <p>New Mexico needs to make the above change in order to meet the Compatibility Category H&S designation assigned to 10 CFR 35.100.</p>	New Mexico corrected the erroneous references in the final rule in 20.3.7.704 NMAC.
2	20.3.7.705	35.200	2002-2 2005-5 2006-1	H&S	<p>Use of unsealed byproduct material for imaging and localization studies for which a written directive is not required</p> <p>New Mexico lists the wrong references in 20.3.7.705.B(2). The cross references should be “in either subsection G of 20.3.7.714 NMAC, incorporating 10 CFR 35.290, or Subsection H of 20.3.7.714 NMAC, incorporating 10 CFR 35.390, and Subsection G of 20.3.7.714 NMAC, incorporating 10 CFR 290(c)(1)(ii)(G); ...”</p>	New Mexico corrected the erroneous references in the final rule in 20.3.7.705 NMAC.

State Section		NRC Section	RATS ID	Category	Subject and NRC Comments	State Actions
					New Mexico needs to make the above change in order to meet the Compatibility Category H&S designation assigned to 10 CFR 35.200.	
3	20.3.7.708	20.1003 ¹	2002-2 2006-1	H&S	<p>Use of unsealed byproduct material for which a written directive is required</p> <p>New Mexico lists the wrong references in 20.3.7.708.B(2). The cross references should be “in either subsection G of 20.3.7.714 NMAC, incorporating 10 CFR 35.290, or Subsection H of 20.3.7.714 NMAC, incorporating 10 CFR 35.390,[and Subsection G of 20.3.7.714 NMAC, incorporating 10 CFR 290(c)(1)(ii)(G);²]...”</p> <p>New Mexico needs to make the above change in order to meet the Compatibility Category H&S designation assigned to 10 CFR 35.300.</p>	New Mexico corrected the erroneous references in the final rule in 20.3.7.708 NMAC with the exception of the highlighted text (see footnote).
4	20.3.3.306	10 CFR 71 (multiple)	2004-1	NRC	<p>Compatibility with IAEA Transportation Safety Standards (TS-R-1) and Other Transportation Safety Amendments</p> <p>New Mexico adopted 10 CFR 71 in its entirety in 20.3.3.306, including all sections reserved to NRC jurisdiction. New Mexico’s regulations should not include sections designated Compatibility Category NRC as incorporated by reference</p>	New Mexico corrected the final rule in 20.3.3.306 NMAC to exclude all regulations with Compatibility Category NRC from the incorporated 10 CFR 71.

¹ The reference must be 35.300.

² The highlighted regulation is not listed in 10 CFR 35.300, and, therefore, New Mexico did not correct the final rules according to the highlighted part of the comment

State Section		NRC Section	RATS ID	Category	Subject and NRC Comments	State Actions
					New Mexico needs to add 71.14(b), 71.19, 71.31, 71.33, 71.35, 71.37, 71.38, 71.39, 71.41, 71.43, 71.45, 71.51, 71.55, 71.59, 71.61, 71.63, 71.64, 71.65, 71.71, 71.73, 71.74, 71.75, 71.77, 71.101(c)(2), (d), and (e), 71.107, 71.109, 71.111, 71.113, 71.115, 71.117, 71.119, 71.121, 71.123, and 71.125 to a list of items not incorporated by reference in 20.3.3.306 in order to meet the Compatibility Category NRC designation assigned to the above listed sections.	
5	20.3.4.467	10 CFR 20 Appendix E	2006-2 2006-3	C	<p>Nationally tracked sources threshold</p> <p>New Mexico has an error in the Ytterbium-169 line in their table. Column Category 2 terabecquerel should read “3” instead of “200” and Column Category 2 curie should read “81” instead of “5,400”.</p> <p>New Mexico needs to make the above change in order to meet the Compatibility Category B designation assigned to 10 CFR 20 Appendix E.</p>	New Mexico corrected the erroneous numbers in the final rule in 20.3.4.467 NMAC in order to meet the Compatibility Category B designation assigned to 10 CFR 20 Appendix E.
6	20.3.4.437.C	20.2008	2007-3	B	<p>Disposal of 11e.(3) and 11e.(4) byproduct material</p> <p>New Mexico states in 20.3.4.437.C “...as defined in paragraphs (3), (4), and (5) of the definition of byproduct material...”. This should actually read “...as defined in paragraphs (2), (3), and (4) of the definition of byproduct</p>	New Mexico did not change the final rule in 20.3.4.437.C(1) NMAC as commented in the highlighted part of the NRC comment because the language “...as

State Section		NRC Section	RATS ID	Category	Subject and NRC Comments	State Actions
					<p>material...”. Also New Mexico omits an equivalent paragraph to 10 CFR 20.2008(b).</p> <p>New Mexico needs to make the above change and add a paragraph essentially identical to 20.2008(b) in order to meet the Compatibility Category B designation assigned to 10 CFR 20.2008.</p>	<p>defined in paragraphs (3), (4), and (5) of the definition of byproduct material set forth in 20.3.1.7...” is equivalent to the language in 10 CFR 20.2008(a). New Mexico added to the final rule in 20.3.4.437.C(2) NMAC the paragraph in 10 CFR 20.2008(b) in order to meet the Compatibility Category B designation assigned to 10 CFR 20.2008.</p>
7	20.3.3.302.C(4)	30.20(a)	2007-3	B	<p>Gas and aerosol detectors containing byproduct material</p> <p>New Mexico states in 20.3.3.302.C(4) “...with a specific license issued by the NRC or an agreement state, pursuant to 10 CFR 32.26 or comparable agreement state provision...”. 10 CFR 32.26 is a Compatibility Category NRC and therefore would not have an equivalent agreement state provision. This section should read “...with a specific license issued by the NRC pursuant to 10 CFR 32.26, which</p>	<p>New Mexico corrected the language in the final rule of 20.3.3.302.C(4) NMAC in order to meet the Compatibility Category NRC designation to 10 CFR 30.20(a).</p>

State Section		NRC Section	RATS ID	Category	Subject and NRC Comments	State Actons
					<p>authorizes...”.</p> <p>New Mexico needs to make the above change in order to meet the Compatibility Category B designation assigned to 10 CFR 30.20(a).</p>	
8	20.3.3.315.J	32.72	2007-3	B	<p>Manufacture, preparation, or transfer for commercial distribution of radioactive drugs, containing byproduct material for certain in vitro clinical or laboratory testing under general license</p> <p>New Mexico omits all other pharmacies from 20.3.3.315.J(2)(d)(ii) and 20.3.3.315.J(2)(f)(v). NRC equivalent 10 CFR 32.72(b)(4)(ii) and (b)(5)(v). This is a transboundary issue and therefore not compatible.</p> <p>New Mexico needs to make the above change in order to meet the Compatibility Category B designation assigned to 10 CFR 32.72.</p>	<p>New Mexico added the following lanuguage to the final rule in 20.3.3.315.J(2) “...or at all other pharmacies in non-licensing states, as defined in 20.3.1.7 NMAC, before August 8, 2009, or an earlier date as noticed by the NRC;...” in order to meet the Compatibility Category B designation assigned to 10 CFR 32.72.</p>
9	N/A	35.2	2007-3	H&S	<p>Definition: Positron Emission Tomography (PET) radionuclide production facility</p> <p>New Mexico omits the definition of Positron Emission Tomography radionuclide production facility from their regulations.</p> <p>New Mexico needs to add this</p>	<p>New Mexico added this definition to the final rule in 20.3.7.7 NMAC</p>

State Section	NRC Section	RATS ID	Category	Subject and NRC Comments	State Actons
				definition in order to meet the Compatibly Category H&S assigned to 10 CFR 35.2 Definition Positron Emission Tomography radionuclide production facility	