

September 18, 2009

Karen Beckley, Supervisor
Bureau of Health Protection
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 June 10 and July 29, 2009. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 19, 20, 30, 32, 35, 40, 61, and 70, and the requirements of the nine amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with Sneha Ravikamar on September 15, 2009.

As a result of our review, we have 14 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 Division of Materials Safety and State Agreements, 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://nrc-stp.ornl.gov/rulemaking.html>.

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 (kathleen.schneider@nrc.gov) or Michelle Beardsley at 610-337-6942 (michelle.beardsley@nrc.gov).

Sincerely,

/RA/

Terrence Reis, Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

Enclosures:
As state

Karen Beckley, Supervisor
 Bureau of Health Protection
 Nevada State Health Division
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As a result of our review, we have 14 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.

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Terrence Reis, Deputy Director
 Division of Materials Safety and State Agreements
 Office of Federal and State Materials
 and Environmental Management Programs

Enclosures: As state

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COMPATIBILITY COMMENTS ON NEVADA FINAL REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	Sec 87; 1.c.5 R084-98A (NAC459-349)	20.1703	1995-2	H&S	<p>Use of Individual Respiratory Protection Equipment</p> <p>Nevada's regulation for the use of individual respiratory protection equipment did not include the requirement to determine that an individual user is medically fit to use respiratory protection equipment before the first field use of non-face sealing respirators.</p> <p>Nevada needs to add this requirement to NAC 459 in order to meet the Category Health and Safety Compatibility designation assigned to 10 CFR 20.1703 (c)(5)(ii).</p>
2	R084-98A NAC 459-313	20.2006	1995-3	B	<p>Transfer for disposal and manifests</p> <p>Nevada omits the requirements specified in 20.2006 (a)(1)(2) and (3), (e)</p> <p>Nevada needs to add these requirements to NAC 459 in order to meet the Compatibility Category B designation assigned to 10 CFR 20.2006.</p>
3	None	61.80	1995-3	C	<p>Maintenance of records, reports and transfers</p> <p>Nevada omits the requirements specified in 10 CFR 61.80 (c), (e), (g), (h), (i)(1) and (2), (j) and (k).</p> <p>Nevada needs to incorporate the requirements listed above to NAC 459 in order to meet the Compatibility Category C designation assigned to 10 CFR 61.80</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
4	Sec 37; R084-98A	20.1003	1995-5	A	<p>Definitions</p> <p>In the definition of Occupational dose, Nevada omits the phrase “from exposure to individuals administered radioactive material and released under 35.75”.</p> <p>Nevada needs to add the above phrase to NAC 459 in order to meet the Compatibility Category A designation assigned to 10 CFR 20.1003.</p>
5	Sec 38; R084-98A	20.1003	1995-5	A	<p>Definitions</p> <p>In the definition of Public dose, Nevada omits the phrase “from exposure to individuals administered radioactive material and released under 35.75”.</p> <p>Nevada needs to add the above phrase to NAC 459 in order to meet the Compatibility Category A designation assigned to 10 CFR 20.1003.</p>
6	Sec 58; R084-98A (NAC459-200)	40.42 70.38	1995-6	H&S	<p>Expiration and termination of licenses and decommissioning of sites and separate or outdoor areas</p> <p>Nevada omits the phrase “The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to paragraph (g)(4)(v) of this section.” Nevada also omits paragraph (e) (2) from this section.</p> <p>Nevada needs to add the above phrase and paragraph to NAC 459 in order to meet the Compatibility Category H&S designation assigned to 10 CFR 40.42.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
7	None	20.1003	1999-3	B	<p>Definitions</p> <p>Nevada states that the definition of “air-purifying respirator: is omitted intentionally, since 10 Part 20 Appendix A is adopted by reference in NAC 459.3205. Nevada needs to either adopt this definition by reference or add this definition.</p> <p>Nevada needs to add a definition of “air-purifying respirator” to NAC 459 in order to meet the Category B Compatibility designation assigned to 10 CFR 20.1003.</p>
8	None	20.1003	1999-3	B	<p>Definitions</p> <p>Nevada states that the definition of “disposable respirator” is omitted intentionally, since 10 Part 20 Appendix A are adopted by reference in NAC 459.3205. Nevada needs to either adopt this definition by reference or add this definition.</p> <p>Nevada needs to add a definition of “disposable respirator” to NAC 459 in order to meet the Category B Compatibility designation assigned to 10 CFR 20.1003.</p>
9	None	20.1003	1999-3	B	<p>Definitions</p> <p>Nevada states that the definition of “filtering facepiece (dust mask)” is omitted intentionally, since 10 Part 20 Appendix A is adopted by reference in NAC 459.3205. Nevada needs to either adopt this definition by reference or add this definition.</p> <p>Nevada needs to add a definition of “filtering facepiece (dust mask)” to NAC 459 in order to meet the Category B Compatibility designation assigned to 10 CFR 20.1003.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
10	None	20.1003	1999-3	B	<p>Definitions</p> <p>Nevada states that the definition of “helmet” is omitted intentionally, since 10 Part 20 Appendix A is adopted by reference in NAC 459.3205. Nevada needs to either adopt this definition by reference or add this definition.</p> <p>Nevada needs to add a definition of “helmet” to NAC 459 in order to meet the Category B Compatibility designation assigned to 10 CFR 20.1003.</p>
11	Sec 74; R085-06 (NAC459-335 2.(b))	20.1301(a) and (c)	2002-2	A	<p>Dose limits for individual members of the public</p> <p>Nevada substitutes the term “authorized user” for “licensee” in Section 74 (2) (b).</p> <p>Nevada needs to substitute “authorized user” for “licensee” in NAC 459 in order to meet the Compatibility Category A designation assigned to 10 CFR 20.1301(c).</p>
12	Sec 30.2(a); R185-08	32.72(b)(1)& (b)(2)(i)	2002-2	B	<p>Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing byproduct material for medical use in Part 35</p> <p>Nevada omits the phrase “or an individual under the supervision of an authorized nuclear pharmacist as specified in 10 CFR 35.27” as specified in 10 CFR 32.72(b)(1).</p> <p>Nevada needs to add the above phrase to NAC 349 in order to meet the Category B Compatibility designation assigned to 10 CFR 32.72(b)(1).</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
13	Sec 31.3; R185-08	32.74(a)	2002-2	B	<p>Manufacture and distribution of sources or devices containing byproduct material for medical use</p> <p>Nevada incorrectly references 35.57 instead of 35.65 as specified in 10 CFR 32.74(a)(3).</p> <p>Nevada needs to correctly reference 35.65 in NAC 459 in order to meet the Category B Compatibility designation assigned to 10 CFR 32.74(a).</p>
14	None	20.1003	1999-3	B	<p>Definitions</p> <p>Nevada states that the definition of “hood” is omitted intentionally, since 10 Part 20 Appendix A are adopted by reference in NAC 459.3205. Nevada needs to either adopt this definition by reference or add this definition.</p> <p>Nevada needs to add a definition of “hood” to NAC 459 in order to meet the Category B Compatibility designation assigned to 10 CFR 20.1003.</p>

STATE REGULATION STATUS

State: Nevada
 [9 amendment(s) reviewed is identified by a ★
 at the beginning of the equivalent NRC requirement.]

Tracking Ticket Number: 9-30
 Date: September 18, 2009

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1991-1	Safety Requirements for Radiographic Equipment Part 34 55 FR 843 (Superceded by 1997-5)	01/10/1994	Final	No Comments 09/21/1994	Nevada has adopted Final Regulations equivalent to RATS ID: 1997-5.
1991-2	ASNT Certification of Radiographers Part 34 56 FR 11504 (Superceded by 1997-5)	none	Not Required	Not Required	Nevada has adopted Final Regulations equivalent to RATS ID: 1997-5.
1991-3	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;	01/01/1994	Final	No Comments 12/15/1997	
1991-4	Notification of Incidents Parts 20, 30, 31, 34, 39, 40, 70 56 FR 64980;	10/15/1994	Final	No Comments 9/21/94	
1992-1	Quality Management Program and Misadministrations Part 35 56 FR 34104 (Superceded by 2002-2)	01/27/1995	Not Required	Not Required	Nevada has adopted Final Regulations equivalent to RATS ID: 2002-2.
1992-2	Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions Parts 30, 35 57 FR 45566	none	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1993-1	Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites] Parts 30, 40 58 FR 39628	10/25/1996	Final ML050960361 License Condition ML092120075	Comments 05/19/2005 ML051390275 No Comments 09/03/2009 ML092260209	Nevada has addressed the outstanding comment in the final regulation through the 2009 license condition.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1993-2	Licensing and Radiation Safety Requirements for Irradiators Part 36 58 FR 7715	07/01/1996	Not Applicable ¹	Not Applicable	Nevada does not have any licensees subject to these regulations. (See SECY-95-112)
1993-3	Definition of Land Disposal and Waste Site QA Program Part 61 58 FR 33886	07/22/1996	Not Applicable ¹	Not Applicable	Nevada does not have any licensees subject to these regulations. (See SECY-95-112)
1994-1	Self-Guarantee as an Additional Financial Mechanism Parts 30, 40, 70 58 FR 68726; 59 FR 1618	none	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1994-2	Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards Part 40 59 FR 28220	07/01/1997	Not Applicable	Not Applicable	Nevada does not have authority to regulate this material under its Agreement.
1994-3	Timeliness in Decommissioning Material Facilities Parts 30, 40, 70 59 FR 36026	08/15/1997	Final ML050960361	No Comments 05/19/2005 ML051390275	
★ 1995-1	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	01/01/1998	Final	No Comments 09/18/2009 ML092230010	
★ 1995-2	Frequency of Medical Examinations for Use of Respiratory Protection Equipment Part 20 60 FR 7900	03/13/1998	Final	Comments 09/18/2009 ML092230010	
★ 1995-3	Low-Level Waste Shipment Manifest Information and Reporting Parts 20, 61 60 FR 15649; 60 FR 25983	03/01/1998	Final	Comments 09/18/2009 ML092230010	
1995-4	Performance Requirements for Radiography Equipment Part 34 60 FR 28323 (Superceded by 1997-5)	06/30/1998	Proposed	No Comments 03/10/1999	Nevada has adopted Final Regulations equivalent to RATS ID: 1997-5.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
★ 1995-5	Radiation Protection Requirements: Amended Definitions and Criteria Parts 19, 20 60 FR 36038	08/14/1998	Final	No Comments 09/18/2009 ML092230010	
★ 1995-6	Clarification of Decommissioning Funding Requirements Parts 30, 40, 70 60 FR 38235	11/24/1998	Final	Comments 09/18/2009 ML092230010	
★ 1995-7	Medical Administration of Radiation and Radioactive Materials Parts 20, 35 60 FR 48623 (Superseded by 2002-2 and 2005-2)	10/20/1998	Final	No Comments 09/18/2009 ML092230010	
1996-1	Compatibility with the International Atomic Energy Agency Part 71 60 FR 50248; 61 FR 28724 (Superseded by 2004-1)	04/01/1999	Proposed	Comments 03/10/1999	Nevada has not yet adopted Final Regulations equivalent to RATS ID: 2004-1.
1996-2	One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses Parts 30, 40, 70 61 FR 1109	02/15/1999	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1996-3	Termination or Transfer of Licensed Activities: Record keeping Requirements Parts 20, 30, 40, 61, 70 61 FR 24669	06/17/1999	Final ML033210100	No Comments 12/23/03 ML033580078	
1997-1	Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act Part 20 61 FR 65120	01/9/2000	Final ML050960361	No Comments 05/19/2005 ML051390275	
1997-2	Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State Part 150 62 FR 1662	02/27/2000	Final ML033210100	No Comments 12/23/03 ML033580078	

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1997-3	Criteria for the Release of Individuals Administered Radioactive Material Parts 20, 35 62 FR 4120	05/29/2000	Final ML033210100	No Comments 12/23/03 ML033580078	
1997-4	Fissile Material Shipments and Exemptions Part 71 62 FR 5907 (Superseded by 2004-1)	02/10/2000	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility. (See STP-97-078)
1997-5	Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations Parts 30, 34, 71, 150 62 FR 28947	06/27/2000	Final ML033210100	No Comments 12/23/03 ML033580078	
1997-6	Radiological Criteria for License Termination Parts 20, 30, 40, 70 62 FR 39057	08/20/2000	Final ML033210100	No Comments 12/23/03 ML033580078	
1997-7	Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea Part 30 62 FR 63634	01/02/2001	Final ML033210100	No Comments 12/23/03 ML033580078	
1998-1	Deliberate Misconduct by Unlicensed Persons Parts 30, 40, 61, 70, 71, 150 63 FR 1890; 63 FR 13773	02/12/2001	Final ML033210100	No Comments 12/23/03 ML033580078	
1998-2	Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees Parts 30, 40, 70 63 FR 29535	07/01/2001	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1998-3	License Term for Medical Use Licenses Part 35 63 FR 31604 (Superseded by 2002-2)	07/10/2001	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility. (See STP-98-074) Nevada has adopted Final Regulations equivalent to RATS ID: 2002-2.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1998-4	Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations Part 34 63 FR 37059	07/09/2001	Final ML033210100	No Comments 12/23/03 ML033580078	
1998-5	Minor Corrections, Clarifying Changes, and a Minor Policy Change Parts 20, 35, 36 63 FR 39477; 63 FR 45393	10/26/2001	Final ML033210100	No Comments 12/23/03 ML033580078	
1998-6	Transfer for Disposal and Manifests: Minor Technical Conforming Amendment Part 20 63 FR 50127	11/20/2001	Final ML072490051	No Comments 10/29/2007 ML073020215	
1999-1	Radiological Criteria for License Termination of Uranium Recovery Facilities Part 40 64 FR 17506	06/11/2002	Not Applicable	Not Applicable	Nevada does not have the authority to regulate this material under its Agreement
1999-2	Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information Part 31 64 FR 42269	10/04/2002	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
★1999-3	Respiratory Protection and Controls to Restrict Internal Exposure Part 20 64 FR 54543; 64 FR 55524	02/02/2003	Final	Comments 09/18/2009 ML092230010	
2000-1	Energy Compensation Sources for Well Logging and Other Regulatory Clarifications Part 39 65 FR 20337	05/17/2003	License Condition ML031970217	No Comments 07/30/2003 ML032120269	
2000-2	New Dosimetry Technology Parts 34, 36, 39 65 FR 63750	01/08/2004	Final ML072490051	No Comments 10/29/2007 ML073020215	

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2001-1	Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material Parts 30, 31, 32 65 FR 79162	02/16/2004	Final ML072490051	Comments 10/29/2007 ML073020215	
2002-1	Revision of the Skin Dose Limit Part 20 67 FR 16298	04/05/2005	Final ML072490051	No Comments 10/29/2007 ML073020215	
★2002-2	Medical Use of Byproduct Material Parts 20, 32, 35 67 FR 20249	10/24/2005	Final	Comments 09/18/2009 ML092230010	
2003-1	Financial Assurance for Materials Licensees Parts 30, 40, 70 68 FR 57327	12/03/2006	Final ML072490051	No Comments 10/29/2007 ML073020215	
2004-1	Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments Part 71 69 FR 3697	10/01/2007			
2005-1	Security Requirements for Portable Gauges Containing Byproduct Material Part 30 70 FR 2001	07/11/2008	Final ML072490051	No Comments 10/29/2007 ML073020215	
2005-2	Medical Use of Byproduct Material - Recognition of Specialty Boards Part 35 70 FR 16336; 71 FR 1926	04/29/2008			
2005-3	Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) 70 FR 72128	12/01/2005	License Condition ML053130011	No Comments 11/10/2005 ML053180009	
2006-1	Minor Amendments Parts 20, 30, 32, 35, 40 and 70 71 FR 15005	03/27/2009			

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
★2006-2	National Source Tracking System - Serialization Requirements Part 32 with reference to Part 20 Appendix E 71 FR 65685	02/06/2007	Final	No Comments 09/18/2009 ML092230010	
2006-3	National Source Tracking System Part 20 71 FR 65685, 72 FR 59162	01/31/2009	Final ML083460193	No Comments 01/22/2009 ML083530067	
2007-1	Medical Use of Byproduct Material - Minor Corrections and Clarifications Parts 32 and 35 72 FR 45147, 54207	10/29/2010			
2007-2	Exemptions From Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements Parts 30, 31, 32, 150 72 FR 58473	12/17/2010			
2007-3	Requirements for Expanded Definition of Byproduct Material Parts 20, 30, 31, 32, 33, 35, 61, 150 72 FR 55864	11/30/2010			
2007-4	Order Imposing Fingerprinting Requirements and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material NRC Order EA-07-305 72 FR 70901	06/05/2008	License Condition ML080430350	No Comments 2/28/2008 ML080580177	
2008-1	Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent Parts 19, 20 72 FR 68043	02/15/2011			

¹ IMPEP Team: verify that Nevada does not have any licensees subject to these regulations during each review.