

April 24, 2013

Gene Miskin, Director
Office of Radiological Health
New York City Department of Health and Mental Hygiene
42-09 28th Street
14th Floor, CN 60
Long Island City, New York 11101

Dear Mr. Miskin:

We have reviewed the final revision to the New York City regulations New York City Health Code Article 175.103 received by our office on March 22, 2013. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Part 35 and the requirements of the one amendment identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with Tobias Lickerman on April 23, 2013.

As a result of our review, we have three 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, "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements."

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 New York City, 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 New York City 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>.

G. Miskin

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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 Monica Orendi at (610) 337-5214 (monica.orendi@nrc.gov).

Sincerely,

/RA D. White for/

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

Enclosures:

1. Compatibility Comment Table
2. New York City SRS Data Sheet

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OFFICE	RI/RSAO	ASPB	OGC	ASPB:BC	MSSA:DD
NAME	MOrendi	KSchneider	BJones/jolmstead	ADWhite	PHenderson
DATE	04/10/13	04/10/13	04/22/13	04/24/13	04/24/13

ML13099A014

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Package ML13093A335

COMPATIBILITY COMMENTS ON NEW YORK CITY FINAL REGULATIONS

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	175.103(j)(2)	35.51	2009-1	<p>B</p> <p>Training for an authorized medical physicist</p> <p>NYC's 175.103(j)(2)(e) is not essentially identical to 10 CFR 35.51(b)(2). 175.103(j)(2)(e)'s first sentence reads "Has obtained written attestation that the individual has satisfactorily completed the requirements in item (f) of clause (D) of subparagraph (i) and clauses (A) and (B) of subparagraph (i), or clause (D) of subparagraph (i) of this paragraph, and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status." However 175103(j)(2)(e)'s first sentence should read "Has obtained written attestation that the individual has satisfactorily completed the requirements in item (f) of clause (D) of subparagraph (i) and clauses (A) and (B) of subparagraph (i), or (f) of clause (D) of subparagraph (i) and clause (D) of subparagraph (i) of this paragraph, and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status.</p> <p>NYC needs to make the above change to 175.103(j)(2)(e) in order to meet the Compatibility Category B designation assigned to 10 CFR 35.51.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
2	175.103(j)(14)	35.57	2009-1	B	<p>Training for experienced Radiation Safety Officer, teletherapy or medical physicist, authorized medical physicist, authorized user, nuclear pharmacist, and authorized nuclear pharmacist</p> <p>NYC needs to make the following change: In 175.103(j)(14)(ii)(A), (B), and (C) the references to Subparts D through H of 10 CFR Part 35 should be changed to the equivalent NYC regulations 175.103.</p> <p>NYC needs to make the above change in order to meet the Compatibility Category B designation assigned to 10 CFR 35.57.</p>
3	175.103(j)(6)	35.390	2009-1	B	<p>Training for use of unsealed byproduct material for which a written directive is required</p> <p>NYC needs to change 175.103(j)(6)(ii)(A)(b)(VII)(2) to remove the added "2" from I-131 and also add the following after "...of sodium I-131"; "(Experience with at least 3 cases in Category (VII)(2) also satisfies the requirements in Category (VII)(1).)"</p> <p>NYC needs to make the above changes in order to meet the Compatibility Category B designation assigned to 10 CFR 35.390.</p>

STATE REGULATION STATUS

State: New York City Department of Health & Mental Hygiene

Tracking Ticket Number: 13-12
Date: April 24, 2013

[1 amendment(s) reviewed is identified by a * at the beginning of the equivalent NRC requirement.]

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 (Superseded by 1997-5)	01/10/1994	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
1991-2	ASNT Certification of Radiographers Part 34 56 FR 11504 (Superseded by 1997-5)	none	Not Required	Not Required	These regulations are not required to be adopted for purposes of Compatibility.
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 10/14/1997	
1991-4	Notification of Incidents Parts 20, 30, 31, 34, 39, 40, 70 56 FR 64980	10/15/1994	Final ML113040041	Comments 12/05/2011 ML113110368	
1992-1	Quality Management Program and Misadministrations Part 35 56 FR 34104 (Superseded by 2002-2)	01/27/1995			
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.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1993-1	Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites] Parts 30, 40 58 FR 39628	10/25/1996	Final ML112260003	No Comments 09/22/2011 ML112450346	
1993-2	Licensing and Radiation Safety Requirements for Irradiators Part 36 58 FR 7715	07/01/1996	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
1993-3	Definition of Land Disposal and Waste Site QA Program Part 61 58 FR 33886	07/22/1996	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
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	NYCDH does not have authority to regulate this material under its portion of the Agreement.
1994-3	Timeliness in Decommissioning Material Facilities Parts 30, 40, 70 59 FR 36026	08/15/1997	Final ML061290502	No Comments 06/12/2006 ML061630264	
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 (Part 35 Requirements Superseded by 2002-2)	01/01/1998	Not Applicable	Not Applicable	NYCDH has adopted final regulations equivalent to RATS IDs: 2002-2 and 2005-2. NYCDH does not have authority for the Part 32 activity under its portion

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1995-2	Frequency of Medical Examinations for Use of Respiratory Protection Equipment Part 20 60 FR 7900	03/13/1998	Final ML061290502	No Comments 06/12/2006 ML061630264	of the Agreement
1995-3	Low-Level Waste Shipment Manifest Information and Reporting Parts 20, 61 60 FR 15649; 60 FR 25983	03/01/1998	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
1995-4	Performance Requirements for Radiography Equipment Part 34 60 FR 28323 (Superseded by 1997-5)	06/30/1998	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
1995-5	Radiation Protection Requirements: Amended Definitions and Criteria Parts 19, 20 60 FR 36038	08/14/1998	Final ML070290581	No Comments 02/23/2007 ML070520527	
1995-6	Clarification of Decommissioning Funding Requirements Parts 30, 40, 70 60 FR 38235	11/24/1998	Final ML061290502	No Comments 06/12/2006 ML061630264	
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			NYCDH has adopted final regulations equivalent to RATS IDs: 2002-2 and 2005-2.
1996-1	Compatibility with the International Atomic Energy Agency Part 71	04/01/1999	Proposed	No Comments 02/09/1999	NYCDH has adopted final regulations equivalent to RATS ID: 2004-1.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
	60 FR 50248; 61 FR 28724 (Superseded by 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 ML061290502	No Comments 06/12/2006 ML061630264	
1997-1	Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act Part 20 61 FR 65120	01/9/2000	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
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 ML070290581	No Comments 02/23/2007 ML 070520527	
1997-3	Criteria for the Release of Individuals Administered Radioactive Material Parts 20, 35 62 FR 4120	05/29/2000	Final ML100120050	Comments 03/08/2010 ML100330046	
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	06/27/2000	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
	Parts 30, 34, 71, 150 62 FR 28947				portion of the Agreement.
1997-6	Radiological Criteria for License Termination Parts 20, 30, 40, 70 62 FR 39057	08/20/2000	Final ML070290581	No Comments 02/23/2007 ML070520527	
1997-7	Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea Part 30 62 FR 63634	01/02/2001	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
1998-1	Deliberate Misconduct by Unlicensed Persons Parts 30, 40, 61, 70, 71, 150 63 FR 1890; 63 FR 13773	02/12/2001	Final ML061290502	No Comments 06/12/2006 ML061630264	
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)
1998-4	Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations Part 34 63 FR 37059	07/09/2001	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
1998-5	Minor Corrections, Clarifying Changes, and a Minor Policy Change Parts 20, 32, 35, 36, 39 63 FR 39477; 63 FR 45393	10/26/2001	Proposed ML13042A080	Comments 03/28/2013 ML13066A578	

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1998-6	Transfer for Disposal and Manifests: Minor Technical Conforming Amendment Part 20 63 FR 50127	11/20/2001	Proposed ML13042A080	No Comments 03/28/2013 ML13066A578	
1999-1	Radiological Criteria for License Termination of Uranium Recovery Facilities Part 40 64 FR 17506	06/11/2002	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the 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 ML061290502	No Comments 06/01/2006 ML061530099	
2000-1	Energy Compensation Sources for Well Logging and Other Regulatory Clarifications Part 39 65 FR 20337	05/17/2003	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
2000-2	New Dosimetry Technology Parts 34, 36, 39 65 FR 63750	01/08/2004	Final ML100050662	No Comments 03/08/2010 ML100321001	
2001-1	Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material Parts 30, 31, 32 65 FR 79162	02/16/2004	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
2002-1	Revision of the Skin Dose Limit	04/05/2005	Final	No Comments	

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	Part 20 67 FR 16298		ML061290502	06/01/2006 ML061530099	
2002-2	Medical Use of Byproduct Material Parts 20, 32, 35 67 FR 20249	10/24/2005	Final ML111390264	Comments 07/07/2011 ML111580570	
2003-1	Financial Assurance for Materials Licensees Parts 30, 40, 70 68 FR 57327	12/03/2006	Final ML092010319	No Comments 08/17/2009 ML092100446	
2004-1	Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments Part 71 69 FR 3697	10/01/2007	Final ML092010319	Comments 08/17/2009 ML092100446	
2005-1	Security Requirements for Portable Gauges Containing Byproduct Material Part 30 70 FR 2001	07/11/2008	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
2005-2	Medical Use of Byproduct Material - Recognition of Specialty Boards Part 35 70 FR 16336; 71 FR 1926	04/29/2008	Final ML111390264	Comments 07/07/2011 ML111580570	
2005-3	Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) 70 FR 72128	12/01/2005	License Condition ML052910113	No Comments 10/20/2005 ML052940009	
2006-1	Minor Amendments Parts 20, 30, 32, 35, 40 and 70 71 FR 15005	03/27/2009	Final ML111390264	Comments 07/07/2011 ML111580570	

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	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
2006-3	National Source Tracking System Part 20 71 FR 65685, 72 FR 59162	01/31/2009	License Condition ML090080848	No Comments 01/22/2009 ML090120617	
2007-1	Medical Use of Byproduct Material - Minor Corrections and Clarifications Parts 32 and 35 72 FR 45147, 54207	10/29/2010	Final ML111390264	Comments 07/07/2011 ML111580570	
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	Proposed ML12325A757	Comments 01/11/2013 ML12338A241	
2007-3	Requirements for Expanded Definition of Byproduct Material Parts 20, 30, 31, 32, 33, 35, 61, 150 72 FR 55864	11/30/2010	Proposed ML12325A757	Comments 01/11/2013 ML12338A241	
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	Final ML092010319	No Comments 08/17/2009 ML092100446	
2008-1	Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent Parts 19, 20 72 FR 68043	02/15/2011	Proposed ML12353A191	Comments 01/30/2013 ML13002A433	

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*2009-1	Medical Use of Byproduct Material – Authorized User Clarification Part 35 74 FR 33901	09/28/2012	Final ML13081A469	Comments 04/24/2013 ML13093A335	
2011-1	Decommissioning Planning Parts 20, 30, 40, 70 76 FR 35512	12/17/2015			
2011-2	Licenses, Certifications, and Approvals for Materials Licensees Parts 30, 36, 39, 40, 70, and 150 76 FR 56951	11/14/2014	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement
2012-1	Change of Compatibility of 10 CFR 31.5 and 31.6 (See RATS ID: 2001-1 for Rule text) 77 FR 3640	01/25/2015	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement
2012-2	Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste Part 71 77 FR 34194	08/10/2015			
2012-3	Technical Corrections Part 30, 34, 40 and 70 77 FR 39899	08/06/2015			
2012-4	Requirements for Distribution of Byproduct Material Parts 30, 31, 32, 40 and 70 77 FR 43666	10/23/2015			