

May 15, 2013

Patricia Gardner, Manager
Department of Environmental Protection
Bureau of Environmental Radiation
Mail Code 25-01
P.O. Box 420
Trenton, NJ 08625-0420

Dear Ms. Gardner:

We have reviewed the proposed changes to the New Jersey regulations Radiation Protection Programs, N.J.A.C. 7:28, received by our office on April 18, 2013. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 19, 20, 30, 31, 32, 34, 35, 36, 39, 40, 70, 71, 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 Jenny Goodman on May 15, 2013.

As a result of our review, we have 16 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. Under our current procedure, a finding that the New Jersey regulations meet the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final New Jersey regulations. However, we have determined that if your proposed regulations were adopted, 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 the proposed regulations are adopted and published as final regulations, 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 final changes, and provide a copy to the Division of Materials Safety and State Agreements, FSME.

The SRS Data Sheet summarizes our knowledge of the status of other New Jersey 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>.

P. Gardner

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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/

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 Comments
2. New Jersey SRS Data Sheet

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- 2. New Jersey SRS Data Sheet

DISTRIBUTION:

DIR RF (13-14)
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DJanda, RSAO
MOrendi, RSAO

Incoming Document: ML13108A246

OFFICE	RI	ASPB	OGC	ASPB:BC	MSSA:DD
NAME	MOrendi	KSchneider	BJones	DWhite	PHenderson DW for
DATE	05/02/13	05/07/13	05/14/13	05/15/13	05/15/13

ML13119A422

OFFICIAL RECORD COPY

Package ML13119A402

COMPATIBILITY COMMENTS ON NEW JERSEY PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	7:28-55.1(c) 35.-40.	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>New Jersey needs to add the following to 7:28-55.1(c) 35. through 40.: "10 CFR 35.57(b)(2), add "or U.S. NRC" after both occurrences of "Agreement State;" and "10 CFR 35.57 (b)(2), "Commission" in both occurrences of "Commission master material" shall mean U.S. NRC;."</p> <p>New Jersey needs to make the above changes in order to meet the Compatibility Category B designation assigned to 10 CFR 35.57.</p>
2	7:28 – 51.1(b)2.	30.4	2011-2	NRC	<p>Definition: Commencement of construction, paragraph 2</p> <p>New Jersey incorporates 10 CFR 30.4 Definition, Commencement of Construction - paragraph 2 by reference in 7:28-51.1. New Jersey needs to add "Commencement of Construction Paragraph 2" to 7:28-51.1(b)(2) which lists NRC's provisions not incorporated by reference.</p> <p>New Jersey needs to make the above change in order to meet the Compatibility Category NRC designation assigned to 10 CFR 30.4 Definition, Commencement of construction - paragraph 2.</p>
3	7:28 – 51.1(b)2.	30.4	2011-2	NRC	<p>Definition: Construction, paragraph 9(ii)</p> <p>New Jersey incorporates 10 CFR 30.4 Definition, Construction -</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>paragraph 9(ii) by reference in 7:28-51.1. New Jersey needs to add "Construction paragraph 9(ii)" to 7:28-51.1(b)(2) which lists NRC's provisions not incorporated by reference.</p> <p>New Jersey needs to make the above change in order to meet the Compatibility Category NRC designation assigned to 10 CFR 30.4 Definition, Construction - paragraph 9(ii).</p>
4	7:28-56.1 (b)	36.2	2011-2	NRC	<p>Definition: Commencement of construction, paragraph 2</p> <p>New Jersey incorporates 10 CFR 36.2 Definition, Commencement of construction - paragraph 2 by reference in 7:28-56.1. New Jersey needs to add "Definition - Commencement of construction paragraph 2" to 7:28-56.1(b) which lists NRC's provisions not incorporated by reference.</p> <p>New Jersey needs to make the above change in order to meet the Compatibility Category NRC designation assigned to 10 CFR 36.2 Definition, Commencement of construction - paragraph 2.</p>
5	7:28-56.1 (b)	36.2	2011-2	NRC	<p>Definition: Construction, paragraph 9(ii)</p> <p>New Jersey incorporates 10 CFR 36.2 Definition, Construction - paragraph 9(ii) by reference in 7:28-56.1. New Jersey needs to add "Definition - Construction paragraph 9(ii)" to 7:28-56.1(b) which lists NRC's provisions not incorporated by reference.</p> <p>New Jersey needs to make the above change in order to meet the Compatibility Category NRC</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					designation assigned to 10 CFR 36.2 Definition, Construction - paragraph 9(ii).
6	7:28-58.1 (b)2.	40.4	2011-2	NRC	<p>Definition: Commencement of construction, paragraph 2</p> <p>New Jersey incorporates 10 CFR 40.4 Definition, Commencement of construction - paragraph 2 by reference in 7:28-58.1. New Jersey needs to add "Commencement of construction - paragraph 2" to 7:28-58.1(b)2. which lists NRC's provisions not incorporated by reference.</p> <p>New Jersey needs to make the above change in order to meet the Compatibility Category NRC designation assigned to 10 CFR 40.4 Definition, Commencement of construction paragraph 2.</p>
7	7:28-58.1(b)2.	40.4	2011-2	NRC	<p>Definition: Construction, paragraph 9(ii)</p> <p>New Jersey incorporates 10 CFR 40.4 Definition, Construction - paragraph 9(ii) by reference in 7:28-56.1. New Jersey needs to add "Construction paragraph 9(ii)" to 7:28-58.1(b)2. which lists NRC's provisions not incorporated by reference.</p> <p>New Jersey needs to make the above change in order to meet the Compatibility Category NRC designation assigned to 10 CFR 40.4 Definition, Construction - paragraph 9(ii).</p>
8	7:28-60.1(b)	70.4	2011-2	NRC	<p>Definition: Commencement of construction, paragraph 2</p> <p>New Jersey incorporates 10 CFR 70.4 Definition, Commencement of construction - paragraph 2 by reference in 7:28-60.1. New Jersey needs to add "Definition -</p>

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					<p>Commencement of construction - paragraph 2" to 7:28-60.1(b) which lists NRC's provisions not incorporated by reference.</p> <p>New Jersey needs to make the above change in order to meet the Compatibility Category NRC designation assigned to 10 CFR 70.4 Definition, Commencement of construction - paragraph 2.</p>
9	7:28-60.1(b)	70.4	2011-2	NRC	<p>Definition: Construction, paragraph 9(ii)</p> <p>New Jersey incorporates 10 CFR 70.4 Definition, Construction - paragraph 9(ii) by reference in 7:28-60.1. New Jersey needs to add "Definition – Construction - paragraph 9(ii)" to 7:28-60.1(b) which lists NRC's provisions not incorporated by reference.</p> <p>New Jersey needs to make the above change in order to meet the Compatibility Category NRC designation assigned to 10 CFR 70.4 Definition, Construction - paragraph 9(ii).</p>
10	7:28-53.1	32.30	2012-4	NRC	<p>Certain industrial devices containing byproduct material: Requirements for license to manufacture, process, produce, or initially transfer</p> <p>New Jersey incorporates 10 CFR 32.30 by reference in 7:28-53.1. New Jersey needs to remove this incorporation by reference since this regulation is designated as a Compatibility Category NRC.</p> <p>New Jersey needs to add 10 CFR 32.30 to 7:28-53.1(b) in order to meet the Compatibility Category NRC designation assigned to 10 CFR 32.30.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
11	7:28-53.1	32.31	2012-4	NRC	<p>Certain industrial devices containing byproduct material: Safety criteria</p> <p>New Jersey incorporates 10 CFR 32.31 by reference in 7:28-53.1. New Jersey needs to remove this incorporation by reference since this regulation is designated as a Compatibility Category NRC.</p> <p>New Jersey needs to add 10 CFR 32.31 to 7:28-53.1(b) in order to meet the Compatibility Category NRC designation assigned to 10 CFR 32.31.</p>
12	7:28-53.1	32.32	2012-4	NRC	<p>Conditions of licenses issued under § 32.30: Quality control, labeling, and reports of transfer</p> <p>New Jersey incorporates 10 CFR 32.32 by reference in 7:28-53.1. New Jersey needs to remove this incorporation by reference since this regulation is designated as a Compatibility Category NRC.</p> <p>New Jersey needs to add 10 CFR 32.32 to 7:28-53.1(b) in order to meet the Compatibility Category NRC designation assigned to 10 CFR 32.32.</p>
13	7:28-50.1	19.14(a)	N/A 10 CFR Part 19	NRC	<p>Presence of representatives of licensees and workers during inspections</p> <p>New Jersey lists 10 CFR 19.14(a) as not incorporated by reference in 7:28-50.1(b)4. and as incorporated by reference with changes in 7:28-50.1(c)20. However in 7:28-50.1(c)20. it appears that New Jersey is attempting to take out the language that would make 10 CFR 19.14(a) a Compatibility Category NRC and is using the remaining language as a</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>lead in for 10 CFR 19.14(b). If this is the case New Jersey needs to remove 10 CFR 19.14(a) from 7:28-50.1(b) so that the remaining language can be incorporated by reference in 7:28-50.1(c)20. New Jersey could also choose to delete 7:28-50.1(c)20. and keep 7:28-50.1(b)4. which would then not incorporate 10 CFR 19.14(a) by reference.</p> <p>New Jersey needs to make one of the above changes to 7:28-50.1 in order to meet the Compatibility Category NRC designation assigned to 10 CFR 19.14(a).</p>
14	7:28-53.1	32.1(c)(1)	N/A 10 CFR Part 32	D	<p>Purpose and Scope</p> <p>New Jersey lists 10 CFR 32.1(c)(2) as not incorporated by reference in 7:28-53.1(b) and as incorporated by reference with changes in 7:28-53.1(c). 10 CFR 31.2(c)(2) is a Compatibility Category D so it is not required to be adopted by New Jersey.</p> <p>New Jersey needs to decide whether or not they want to incorporate 10 CFR 32.1(c)(2) by reference in 7:28-53.1 in order to meet the Compatibility Category D designation assigned to 10 CFR 32.1(c)(2).</p>
15	7:28-55.1 (b)(2)	35.63 (a), (b), (c), (d)	N/A 10 CFR Part 35	H&S	<p>Determination of dosages of unsealed byproduct material for medical use</p> <p>7:28-55.1(b) states that New Jersey does not incorporate 10 CFR 35.63(b)(2)(i) through (iii) and (c)(3)(i) through (iii) by reference. This makes New Jersey's regulation more restrictive which meets the Category H&S designation assigned to 10 CFR</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>35.63(a), (b), (c), and (d). However in 7:28-55.1(c) New Jersey appears to adopt those same sections by reference.</p> <p>New Jersey needs to decide whether or not they want to incorporate 10 CFR 35.63(b)(2)(i) through (iii) and (c)(3)(i) through (iii) by reference in 7:28-55.1 in order to meet the Category H&S designation assigned to 10 CFR 35.63(a), (b), (c), and (d).</p>
16	7:28-60.1	70.73	N/A 10 CFR Part 70	NRC	<p>Renewal of licenses</p> <p>New Jersey incorporates this section by reference. 10 CFR 70.73 is a Compatibility Category NRC and should not be incorporated by reference.</p> <p>New Jersey needs to add 10 CFR 70.73 to 7:28-60.1(b) [sections not incorporated by reference] in order to meet the Compatibility Category NRC designation assigned to 10 CFR 70.73.</p> <p>COMMENT STANDS from NRC letter dated March 13, 2009.</p>

STATE REGULATION STATUS

State: New Jersey

Tracking Ticket Number: 13-14
Date: May 15, 2013

[7 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 – 2009-1	55 FR 843; 56 FR 11504; 56 FR 23360; 56 FR 61352; 57 FR 38588; 57 FR 57877; 58 FR 67657; 59 FR 41641; 60 FR 20183; 56 FR 64980; 56 FR 34104; 57 FR 45566; 58 FR 39628; 58 FR 7715; 58 FR 33886; 58 FR 68726; 59 FR 1618; 59 FR 28220; 59 FR 36026; 59 FR 61767; 59 FR 65243; 60 FR 322; 60 FR 7900; 60 FR 15649; 60 FR 25983; 60 FR 28323; 60 FR 36038; 60 FR 38235; 60 FR 48623; 60 FR 50248; 61 FR 28724; 61 FR 1109; 61 FR 24669; 61 FR 65120; 62 FR 1662; 62 FR 4120; 62 FR 5907; 62 FR 28947; 62 FR 39057; 62 FR 63634; 63 FR 1890; 63 FR 13773; 63 FR 29535; 63 FR 31604; 63 FR 37059; 63 FR 39477; 63 FR 45393; 63 FR 50127; 64 FR 17506; 64 FR 42269; 64 FR 54543; 64 FR 55524; 65 FR 20337; 65 FR 63750; 65 FR 79162; 67 FR 16298; 67 FR 20249; 68 FR 57327; 69 FR 3697; 70 FR 2001; 70 FR 16336; 71 FR 1926; 70 FR 72128; 71 FR 15005; 71 FR 65685; 71 FR 65685; 72 FR 59162; 72 FR 45147; 72 FR 54207; 72 FR 58473; 72 FR 55864; 72 FR 70901; 72 FR 68043; 74 FR 33901	N/A	10/16/08 ML090510716	Comments 03/13/09 ML090510003	New Jersey submitted an application for Agreement State Status on October 16, 2008 (see Incoming Package ML). This package contained a final version of all New Jersey's regulations which will be used once the Agreement between NRC and New Jersey is effective. Comments from the 3/13/2009 letter are addressed in the 4/18/2013 submission and response (see ML13108A246 and ML13119A402). These comments have been addressed or carried forth in the May 15, 2013 letter.
*2009-1	Medical Use of Byproduct Material – Authorized User Clarification Part 35 74 FR 33901	09/28/2012	04/18/2013 ML13108A246	Comments ML13119A402 05/15/13	
*2011-1	Decommissioning Planning Parts 20, 30, 40, 70 76 FR 35512	12/17/2015	04/18/2013 ML13108A246	No Comments ML13119A402 05/15/13	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
*2011-2	Licenses, Certifications, and Approvals for Materials Licenses Parts 30, 36, 39, 40, 70, and 150 76 FR 56951	11/14/2014	04/18/2013 ML 13108A246	Comments ML 13119A402 05/15/13	
*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	04/18/2013 ML 13108A246	No Comments ML 13119A402 05/15/13	
*2012-2	Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste Part 71 77 FR 34194	08/10/2015	04/18/2013 ML 13108A246	No Comments ML 13119A402 05/15/13	
*2012-3	Technical Corrections Part 30, 34, 40 and 70 77 FR 39899	08/06/2015	04/18/2013 ML 13108A246	No Comments ML 13119A402 05/15/13	
*2012-4	Requirements for Distribution of Byproduct Material Parts 30, 31, 32, 40 and 70 77 FR 43666	10/23/2015	04/18/2013 ML 13108A246	Comments ML 13119A402 05/15/13	
2013-1	Physical Protection of Byproduct Material, 10 CFR Parts 20, 30, 32, 33, 34, 35, 36, 37, 39, and 71 78 FR 16922	03/19/2016			
*N/A	10 CFR 19.4, 32.1, 35.60 and 70.73	N/A	04/18/2013 ML 13108A246	Comments ML 13119A402 05/15/13	