

July 29, 2013

Michael Ortiz, Bureau Chief
Radiation Control Bureau
Environmental Protection Division
New Mexico Environmental Department
11 St. Francis Drive, Suite 1211
P.O. Box 5469
Santa Fe, New Mexico 87502-5469

Dear Mr. Ortiz:

We have reviewed the final revision to the New Mexico Radiation Protection Rules contained in part 20.3.15 NMAC "Licenses and Radiation Safety Requirements for Radiators," received by our office on May 3, 2013. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Part 36 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 you on July 16, 2013.

As a result of our review, we have four 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 Mexico, 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 Mexico 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>.

M. Ortiz

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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 Gary Comfort at 301-415-8106 (Gary.Comfort@nrc.gov).

Sincerely,

/RA A.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 Comments
2. New Mexico SRS Data Sheet

M. Ortiz

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OFFICE	DILR	ASPB	OGC	ASPB:BC	MSSA:DD
NAME	GComfort	KSchneider	BJones / jpb	DWhite	PHenderson / ADW for
DATE	07/02/13	07/02/13	07/15/13	07/24/13	07/29/13

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OFFICIAL RECORD COPY

Package ML13182A285

COMPATIBILITY COMMENTS ON NEW MEXICO FINAL REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	20.3.15.1506	36.21	1993-2	B	<p>Performance criteria for sealed sources</p> <p>In Subsection A of 20.3.15.1506 NMAC, New Mexico has omitted a provision equivalent to 10 CFR 36.21(a)(1).</p> <p>In Paragraph (4) of Subsection A of 20.3.15.1506A.NMAC, "...described in Subsections B and G..." needs to be replaced with "...described in Subsections B through G..."</p> <p>New Mexico needs to make the above changes in order to meet the Compatibility Category B designation assigned to Section 10 CFR 36.21.</p>
2	20.3.15.1515	36.39	1993-2	H&S	<p>Design requirements</p> <p>In Subsection D of 20.3.15.1515 NMAC, the requirement needs to refer to Subsection E of 20.3.15.1512 NMAC, not Subsection B as currently written.</p> <p>New Mexico needs to make the above change in order to meet the Category H&S designation assigned to Section 10 CFR 36.39.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
3	20.3.15.1518	36.53	1993-2	H&S	<p>Operating and emergency procedures</p> <p>In Paragraph (8) of Subsection A of 20.3.15.1518 NMAC, the requirement needs to refer to 20.3.15.1507 NMAC, not 20.3.15.1517 NMAC as currently written.</p> <p>New Mexico needs to make the above change in order to meet the Category H&S designation assigned to Section 10 CFR 36.53.</p>
4	20.3.15.1524	36.65	1993-2	H&S	<p>Attendance during operation</p> <p>Subsection B of 20.3.15.1524 NMAC needs to add "must be onsite" to the end of the sentence.</p> <p>New Mexico needs to make the above change in order to meet the Category H&S designation assigned to Section 10 CFR 36.65.</p>

STATE REGULATION STATUS

State: New Mexico

Tracking Ticket Number: 13-19
Date: July 29, 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 (Superceded by 1997-5)	01/10/1994	Final	No Comments 09/15/1997	New Mexico 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	New Mexico 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 08/18/1997	
1991-4	Notification of Incidents Parts 20, 30, 31, 34, 39, 40, 70 56 FR 64980	10/15/1994	Final	No Comments 09/15/1997	
1992-1	Quality Management Program and Misadministrations Part 35 56 FR 34104 (Superceded by 2002-2)	01/27/1995			New Mexico 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.

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	No Comments 07/14/2000	
*1993-2	Licensing and Radiation Safety Requirements for Irradiators Part 36 58 FR 7715	07/01/1996	Final ML 13123A091	Comments 07/29/2013 ML 13182A285	
1993-3	Definition of Land Disposal and Waste Site QA Program Part 61 58 FR 33886	07/22/1996	Not Applicable ¹	Not Applicable	New Mexico 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	Final	No Comments 07/14/2000	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	New Mexico 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	No Comments 07/14/2000	
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 07/14/2000	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1995-2	Frequency of Medical Examinations for Use of Respiratory Protection Equipment Part 20 60 FR 7900	03/13/1998	Final	No Comments 07/14/2000	
1995-3	Low-Level Waste Shipment Manifest Information and Reporting Parts 20, 61 60 FR 15649; 60 FR 25983	03/01/1998	Final	No Comments 07/14/2000	
1995-4	Performance Requirements for Radiography Equipment Part 34 60 FR 28323 (Superseded by 1997-5)	06/30/1998	Final ML021550112	No Comments 06/12/2002 ML021650055	New Mexico has adopted Final Regulations equivalent to RATS ID: 1997-5.
1995-5	Radiation Protection Requirements: Amended Definitions and Criteria Parts 19, 20 60 FR 36038	08/14/1998	Final	No Comments 07/14/2000	
1995-6	Clarification of Decommissioning Funding Requirements Parts 30, 40, 70 60 FR 38235	11/24/1998	Final	No Comments 07/14/2000	
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 07/14/2000	New Mexico has adopted Final Regulations equivalent to RATS IDs: 2002-2 and 2005-2.
1996-1	Compatibility with the International Atomic Energy Agency Part 71 60 FR 50248; 61 FR 28724	04/01/1999	Final	No Comments 07/14/2000	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
	(Superceded 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	No Comments 07/14/2000	
1997-1	Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act Part 20 61 FR 65120	01/19/2000	Final ML040640597	No Comments 03/11/2004 ML040760219	
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 ML052020072	No Comments 08/23/2005 ML052360017	
1997-3	Criteria for the Release of Individuals Administered Radioactive Material Parts 20, 35 62 FR 4120	05/29/2000	Final	No Comments 07/14/2000	
1997-4	Fissile Material Shipments and Exemptions Part 71 62 FR 5907 (Superceded 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	06/27/2000	Final ML021550112	No Comments 06/12/2002 ML021650055	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
	62 FR 28947				
1997-6	Radiological Criteria for License Termination Parts 20, 30, 40, 70 62 FR 39057	08/20/2000	Final ML040640597	No Comments 03/11/2004 ML040760219	
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 ML040640597	No Comments 03/11/2004 ML040760219	
1998-1	Deliberate Misconduct by Unlicensed Persons Parts 30, 40, 61, 70, 71, 150 63 FR 1890; 63 FR 13773	02/12/2001	Final ML040640597	No Comments 03/11/2004 ML040760219	
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	Final ML021550112	No Comments 06/12/2002 ML021650055	
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	Final ML040640597	No Comments 03/11/2004 ML040760219	
1998-6	Transfer for Disposal and Manifests: Minor	11/20/2001	Final	No Comments	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
	Technical Conforming Amendment Part 20 63 FR 50127		ML040640597	03/11/2004 ML040760219	
1999-1	Radiological Criteria for License Termination of Uranium Recovery Facilities Part 40 64 FR 17506	06/11/2002	Not Applicable	Not Applicable	New Mexico does not have 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 ML052020072	No Comments 08/23/2005 ML052360017	
2000-1	Energy Compensation Sources for Well Logging and Other Regulatory Clarifications Part 39 65 FR 20337	05/17/2003	Final ML052020072	No Comments 08/23/2005 ML052360017	
2000-2	New Dosimetry Technology Parts 34, 36, 39 65 FR 63750	01/08/2004	Final ML052020072	No Comments 08/23/2005 ML052360017	
2001-1	Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material Parts 30, 31, 32 65 FR 79162	02/16/2004	Final ML052020072	No Comments 08/23/2005 ML052360017	
2002-1	Revision of the Skin Dose Limit Part 20 67 FR 16298	04/05/2005	Final ML052020072	No Comments 08/23/2005 ML052360017	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
2002-2	Medical Use of Byproduct Material Parts 20, 32, 35 67 FR 20249	10/24/2005	Final ML091280050	No Comments 07/16/2009 ML091680237	
2003-1	Financial Assurance for Materials Licensees Parts 30, 40, 70 68 FR 57327	12/03/2006	Final ML091280050	No Comments 07/16/2009 ML091680237	Currently in place as a LC see NRC response letter ML072470593 dated 09/05/2007.
2004-1	Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments Part 71 69 FR 3697	10/01/2007	Final ML12157A103	No Comments 06/29/2012 ML12166A296	
2005-1	Security Requirements for Portable Gauges Containing Byproduct Material Part 30 70 FR 2001	07/11/2008	Final ML091280050	No Comments 07/16/2009 ML091680237	
2005-2	Medical Use of Byproduct Material - Recognition of Speciality Boards Part 35 70 FR 16336; 71 FR 1926	04/29/2008	Final ML091280050	No Comments 07/16/2009 ML091680237	
2005-3	Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) 70 FR 72128	12/01/2005	License Condition ML080650711	No Comments 03/27/2008 ML080870430	New Mexico chose to revise its IC License Condition at the time of the Fingerprinting Order EA-07-305 License Condition Implementation. These were only minor editorial updates. The original license condition can be seen at ML053070159. The response letter sent 11/03/2005 can be seen at ML053080022

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
2006-1	Minor Amendments Parts 20, 30, 32, 35, 40 and 70 71 FR 15005	03/27/2009	Final ML091280050	No Comments 07/16/2009 ML091680237	
2006-2	National Source Tracking System - Serialization Requirements Part 32 with reference to Part 20 Appendix E 71 FR 65685	02/06/2007	Final ML091280050	No Comments 07/16/2009 ML091680237	
2006-3	National Source Tracking System Part 20 71 FR 65685, 72 FR 59162	01/31/2009	Final ML091280050 License Condition ML083080004	No Comments 07/16/2009 ML091680237 No Comments 11/18/2008 ML083120010	
2007-1	Medical Use of Byproduct Material - Minor Corrections and Clarifications Parts 32 and 35 72 FR 45147, 54207	10/29/2010	Final ML091280050	No Comments 07/16/2009 ML091680237	
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	Final ML091280050	No Comments 07/16/2009 ML091680237	
2007-3	Requirements for Expanded Definition of Byproduct Material Parts 20, 30, 31, 32, 33, 35, 61, 150 72 FR 55864	11/30/2010	Final ML12157A103	No Comments 06/29/2012 ML12166A296	
2007-4	Order Imposing Fingerprinting Requirements and Criminal History Records Check Requirements for	06/05/2008	License Condition	No Comments 03/27/2008	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
	Unescorted Access to Certain Radioactive Material NRC Order EA-07-305 72 FR 70901		ML080650711	ML080870430	
2008-1	Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent Parts 19, 20 72 FR 68043	02/15/2011	Final ML12157A103	No Comments 06/29/2012 ML12166A296	
2009-1	Medical Use of Byproduct Material – Authorized User Clarification Part 35 74 FR 33901	09/28/2012	Final ML12157A103	No Comments 06/29/2012 ML12166A296	
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			
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			
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			

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
2012-4	Requirements for Distribution of Byproduct Material Parts 30, 31, 32, 40 and 70 77 FR 43666	10/23/2015			
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			
2013-2	Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions, 10 CFR Parts 30, 40, and 70 78 FR 32310	08/27/2016			
N/A	10 CFR 39	N/A	Final ML12157A103	No Comments 06/29/2012 ML12166A296	

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