



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 12, 2014

Christopher Boyd, Assistant Commissioner
Environmental Sciences and Engineering
New York City Department of Health and Mental Hygiene
42-09 28th Street, 14th Floor CN#56
Long Island City, NY 11101

Dear Mr. Boyd:

We have reviewed the final consolidated revision to the New York City Department of Health and Mental Hygiene regulations in Article 175 of the New York City Health Code "Radiation Control," adopted in June 28, 2013, as amended September 10, 2013, received by our office on March 13, 2014. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 19, 20, 30, 31, 32, 33, 35, 36, 39, 61, 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 Tobias Lickerman on June 12, 2014.

As a result of our review, we have seven 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, 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>.

C. Boyd

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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 or by email at kathleen.schneider@nrc.gov or Torre Taylor at (301) 415-7900 or by email at torre.taylor@nrc.gov.

Sincerely,

/RA Duncan White for/

John M. Moses, Acting Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

Enclosures:

1. Compatibility Comments
2. NYC SRS Data Sheet

C. Boyd

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Sincerely,

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John M. Moses, Acting Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials
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2. NYC SRS Data Sheet

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OFFICE	ASPB	ASPB	OGC	ASPB:BC	MSSA:DD
NAME	TTaylor	KSchneider	BJones/ jwo	DWhite	JMoses/ adw
DATE	05/19/14	05/28/14	06/11/14	06/12/14	06/12/14

ML14139A168

OFFICIAL RECORD COPY

Package ML14083A469

COMPATIBILITY COMMENTS ON NEW YORK CITY FINAL REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	175.02	20.1003	2002-2	A	<p>Definitions: Public dose</p> <p>NYC's June 28, 2013 regulations had addressed July 7, 2011, NRC comment on the definition of public dose. NYC deleted the definition of public dose in the September 10, 2013, amendments to Article 175.02.</p> <p>NYC needs to add the definition of public dose in order to meet the Compatibility Category A designation assigned to 10 CFR 20.1003 Definition Public Dose.</p> <p>Comment revised from NRC's letter dated July 7, 2011.</p>
2	175.03 (c)(3)(i)	20.1203	1998-5	A	<p>Determination of external dose from airborne radioactive material</p> <p>The derived air concentration (DAC) unit listed in footnote 2, which is referenced in this section, is incorrect. The DAC unit is listed as "1E-7 mCi/ml." The correct DAC unit for footnote 2 is "1E-7 uCi/ml."</p> <p>NYC needs to make the above change to meet the Compatibility Category A designation assigned to 10 CFR 20.1203.</p> <p>Comment stands from NRC's letter dated March 28, 2013.</p>
3	175.101 (c)(3)	30.15	2007-2 2007-3	B	<p>Certain items containing byproduct material</p> <p>NYC needs to make the following changes:</p> <p>a) NYC needs to remove 175.101(c)(3)(i) from their</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>regulations as proposed in the revisions to address RATS ID 2007-3. This additional language makes NYC's regulation less restrictive than NRC's regulation since 10 CFR 30.15 does not contain equivalent language.</p> <p>b) NYC lists incorrect units in 175.101(c)(3)(vii) [Electron tubes]. NYC needs to make the following changes: (vii)(B) "37kBq (1mCi)..." to "37 kBq (1 uCi)..." ; (vii)(C) "185kBq (5mCi)..." to "185 kBq (5 uCi)..." ; (vii)(D) "1.11MBq (30mCi)..." to "1.11 MBq (30 uCi)..." ; (vii)(E) "185kBq (5mCi)..." to "185 kBq (5 uCi)..." ; and (vii)(F) "1.11MBq (30mCi)..." to "1.11 MBq (30 uCi)..."</p> <p>c) NYC lists incorrect units in 175.101(c)(3)(viii)(C). NYC needs to change "1.85kBq (0.05mCi) of americium-241" to "1.85 kBq (0.05 uCi) of americium-241."</p> <p>NYC needs to make the above changes to meet the Compatibility Category B designation assigned to 10 CFR 30.15.</p> <p>Partial comment stands from NRC's letter dated January 11, 2013.</p>
4	175.101 (c)(2)	30.18	2007-2 2007-3	B	<p>Exempt quantities</p> <p>NYC needs to change the codification in the proposed amendment to implement RATS ID 2007-3 for 30.18(b) from 175.101(c)(2)(iv) to 175.101(c)(2)(v). NYC did not carry forth the 175.101(c)(2)(iv) changes proposed for RATS IDs 2007-2 into the revision for 2007-3.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>Comment stands from NRC's letter dated January 11, 2013</p> <p>Article 175.101(c)(2)(iv) states that "...exempt from the requirements for a license in Section 81 of the Act and the regulations in 10 CFR Parts..." NYC needs to delete "Section 81 of the Act and the regulations in 10 CFR Parts..." and replace this language with the corresponding NYC reference.</p> <p>NYC needs to make the above changes to meet the Compatibility Category B designation assigned to 10 CFR 30.18.</p>
5	175.101 Appendix B	30.71	2007-3	B	<p>Schedule B</p> <p>NYC did not include the information in the Note in 10 CFR 30.71, Appendix B, regarding combination of isotopes and the sum of ratios not exceeding unity.</p> <p>NYC needs to include the information in the Note in Appendix B to meet the Compatibility B Designation of 10 CFR 30.71.</p>
6	175.102 (g)(4)	31.5	2007-2 2007-3	C	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>NYC needs to make the following changes:</p> <ul style="list-style-type: none"> a) Change "parts 30 and 32 of this chapter" to "10 CFR Parts 30 and 32" in (iii)(E). b) Change "19 CFR" to "10 CFR". c) Delete "or U.S. Nuclear Regulatory Commission" from (iii)(K) (respond to written requests from the Department).

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>NYC needs to make the above changes to meet the Compatibility Category C designation assigned to 10 CFR 31.5.</p> <p>Partial comment stands from NRC's letter dated January 11, 2013.</p>
7	175.102 (g)(5) (ii)(D)	32.59	2007-3	B	<p>Same: Leak testing of each source</p> <p>NYC needs to insert "10 CFR" before "§32.57" in 175.102(g)(5)(ii)(D).</p> <p>NYC needs to change "...under § 31.8 of this chapter or equivalent regulations of an Agreement State" to "... under 10 CFR 31.8 or equivalent regulations of an Agreement State" in 175.102(g)(5)(ii)(D).</p> <p>NRC staff could not evaluate the resolution of this comment because NYC'S regulations in Article 175, adopted in June 2013, do not appear to include provisions equivalent to 10 CFR 32.59.</p> <p>NYC needs to include an equivalent provision of 10 CFR 32.59 in Article 175 to meet the Compatibility B designation of 10 CFR 32.59.</p> <p>Comment stands from NRC's letter dated January 11, 2013.</p>

STATE REGULATION STATUS

State: New York City Department of Health & Mental Hygiene

Tracking Ticket Number: 14-14

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

Date: June 12, 2014

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	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 (Superceded 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 (Superceded 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 of the Agreement

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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	
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 (Superceded 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 (Superceded 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 60 FR 50248; 61 FR 28724 (Superceded by 2004-1)	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
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 Parts 30, 34, 71, 150 62 FR 28947	06/27/2000	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
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	Final ML14083A492	Comments 06/12/2014 ML14083A469	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
*1998-6	Transfer for Disposal and Manifests: Minor Technical Conforming Amendment Part 20 63 FR 50127	11/20/2001	Final ML14083A492	No Comments 06/12/2014 ML14083A469	
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 Part 20	04/05/2005	Final ML061290502	No Comments 06/01/2006	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
	67 FR 16298			ML061530099	
*2002-2	Medical Use of Byproduct Material Parts 20, 32, 35 67 FR 20249	10/24/2005	Final ML14083A492	No Comments 06/12/2014 ML14083A469	
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 ML14083A492	No Comments 06/12/2014 ML14083A469	
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	
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.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
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	Final ML14083A492	Comments 06/12/2014 ML14083A469	
*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 ML14083A492	Comments 06/12/2014 ML14083A469	
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	Final ML14083A492	No Comments 06/12/2014 ML14083A469	
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	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
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 71 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			
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			

