



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

January 13, 2016

Ms. Jenny Goodman, Acting Manager
Bureau of Environmental Radiation
New Jersey Department of Environmental Protection
P.O. Box 420, Mail Code 25-01
Trenton, NJ 08625-0420

Dear Ms. Goodman:

We have reviewed the proposed revisions to the New Jersey Radiation Protection Rules, received by our office on November 17, 2015. These regulations were reviewed by comparison to the equivalent U.S. Nuclear Regulatory Commission (NRC) rules 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 you on January 11, 2016.

As a result of our review, we have 11 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.

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 NMSS Procedure SA-201, "Review of State Regulatory Requirements," please highlight the final changes, and provide a copy to Division of Material Safety, State, Tribal, and Rulemaking Programs, NMSS.

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 NMSS State Communication Portal: <https://scp.nrc.gov/rulemaking.html>.

J. Goodman

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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 Michelle Beardsley, State Regulation Review Coordinator, at (610) 337-6942 (Michelle.Beardsley@nrc.gov) or David Spackman at (301) 415-6389 (David.Spackman@nrc.gov).

Sincerely,

*/RA/
PMichalak for PHenderson*

Pamela J. Henderson, Deputy Director
Division of Material Safety, State, Tribal
and Rulemaking Programs
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. Compatibility Comments
2. New Jersey SRS Data Sheet

J. Goodman

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Sincerely,

Pamela J. Henderson, Deputy Director
Division of Material Safety, State, Tribal
and Rulemaking Programs
Office of Nuclear Material Safety
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DISTRIBUTION: SP05
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New Jersey File

OFFICE	ASPB	ASPB	OGC	ASPB:BC	MSTR:DD
NAME	DSpackman	MBeardsley	SClark	PMichalak	PMichalak for PHenderson
DATE	12/15/15	12/15/15	1/11/16	1/13/16	1/13/16

ML15350A150

OFFICIAL RECORD COPY

Package ML15323A228

COMPATIBILITY COMMENTS ON NEW JERSEY PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	7:28-1.6(f)		N/A		<p>General comment regarding proposed rule language:</p> <p>As written, the requirements in 7:28-1.6(f) could result in NJ regulations prevailing that are more stringent than NRC regulations which are assigned compatibility category A or B in cases where there are inconsistencies or duplications. This would make the NJ regulations incompatible with the NRC regulations.</p> <p>NJ needs to amend 7:28-1.6(f) to address the comments above in order to be compatible with NRC regulations.</p>
2	7:28-1.6(h)(1)		N/A		<p>General comment regarding proposed rule language:</p> <p>The requirement in 7:28-1.6(h)(1) states that the NRC website should be used to identify those regulations that are assigned a compatibility category NRC designation and need to be excluded from adoption by reference. This web address, http://nrc-stp.ornl.gov/regsumsheets_newregs.html, is not the appropriate source for determining the compatibility of NRC regulations; the correct source for this information can be found in the Federal Register. In the event that the listed website becomes unavailable, NJ's regulations would cease to exclude category NRC rules, and as such would exceed NJ's agreement.</p> <p>NJ needs to amend 7:28-1.6(h)(1) to address the comments above in order to be compatible with NRC regulations.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
3	7:28-1.6(m)		N/A		<p>General comment regarding proposed rule language:</p> <p>The requirements in 7:28-1.6(m) replace any NRC contact information with the contact information in N.J.A.C. 7:28-1.5(b). This removal of NRC contact information causes the NJ regulations to be incompatible in some cases. For example, the NRC contact information in 10 CFR 71.97 should be retained because 71.97 is assigned Compatibility Category B.</p> <p>NJ needs to amend 7:28-1.6(m) to address the comment above in order to be compatible with NRC regulations.</p>
4	7:28-60.1(a)	Appendix A, 10 CFR Part 70	2015-1	NRC	<p>Reportable safety events</p> <p>NJ incorporates Appendix A, 10 CFR Part 70 by reference in 7:28-60.1(a). NJ needs to specifically not adopt Appendix A, 10 CFR Part 70 by reference.</p> <p>NJ needs to address the comment above in order to meet the Compatibility Category NRC designation assigned to Appendix A to 10 CFR Part 70.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
5	7:28-65.1(a) 7:28-65.1(c)(7)	37.43(d)(1)	2015-2	C	<p>General security program requirements</p> <p>The changes to 10 CFR 37.43(d)(1) specified in 7:28-65.1(c)(7) should be removed because 37.43(d)(1) has been revised to remove the reference to 37.43(d)(9).</p> <p>NJ needs to address the comment above in order to meet the Compatibility Category C designation assigned to 10 CFR 37.43(d)(1).</p>
6	7:28-61.1(a) 7:28-1.6(i)	71.4, <i>Special form radioactive material</i>	2015-3	[B]	<p>Definition: Special form radioactive material</p> <p>NJ regulation 7:28-1.6(i) substitutes the term “N.J.A.C. 7:28-61” for “Part 71” in 10 CFR 71.4, <i>Special form radioactive material</i>.</p> <p>NJ needs to amend their regulations so that references to past versions of Part 71 are not replaced with references to N.J.A.C. 7:28-61 in 10 CFR 71.4, <i>Special form radioactive material</i>.</p> <p>NJ needs to address the comment above in order to meet the Compatibility Category [B] designation assigned to 10 CFR 71.4, <i>Special form radioactive material</i>.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
7	7:28-61.1(a) 7:28-1.6(i)	71.17	2015-3	B	<p>General license: NRC approved package</p> <p>NJ regulation 7:28-1.6(i) substitutes the term “Department” for “NRC” in three places in 10 CFR 71.17, including the title.</p> <p>NJ needs to amend their regulations to specify that in 10 CFR 71.17, the term “NRC” means “NRC” in all three instances.</p> <p>NJ needs to address the comment above in order to meet the Compatibility Category B designation assigned to 10 CFR 71.17.</p>
8	7:28-1.6(h) 7:28-61.1(c)(1)(iii)	71.85(c)	2015-3	NRC	<p>Preliminary determinations</p> <p>NJ incorporates 10 CFR 71.85(c) by reference at 7:28-61.1(c)(1)(iii). NJ should delete 7:28-61.1(c)(1)(iii) from 7:28-61.1(c)(1) as this regulation is assigned a compatibility category “NRC”.</p> <p>NJ needs to address the comment above in order to meet the Compatibility Category NRC designation assigned to 10 CFR 71.85(c).</p>
9	7:28-61.1(a) 7:28-61.1(c)(1)(ix)	71.106	2015-3	C	<p>Changes to quality assurance program</p> <p>NJ needs to delete 7:28-61.1(c)(1)(ix) so that “NRC” is substituted with “Department” in 71.106.</p> <p>NJ needs to address the comment above in order to meet the Compatibility Category C designation assigned to 10 CFR 71.106.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
10	7:28-58.1(a) 7:28-1.6(i)	40.22(c)	2013-2	C	<p>Small quantities of source material</p> <p>NJ needs to replace the NRC contact information in 10 CFR 40.22(c), "Director of the Office of Nuclear Material Safety and Safeguards by an appropriate method listed in § 40.5(a)," with equivalent NJ contact information.</p> <p>NJ needs to address the comment above in order to meet the Compatibility Category C designation assigned to 10 CFR 40.22(c).</p>
11	7:28-58.1(a) 7:28-1.6(i)	40.55(d)(1)	2013-2	B	<p>Conditions of licenses to initially transfer source material for use under the 'small quantities of source material' general license: Quality control, labeling, safety instructions, and records and reports</p> <p>NJ needs to replace the NRC contact information in 10 CFR 40.55(d)(1), "Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555," with equivalent NJ contact information.</p> <p>NJ needs to address the comment above in order to meet the Compatibility Category B designation assigned to 10 CFR 40.55(d)(1).</p>

STATE REGULATION STATUS

State: New Jersey

Tracking Ticket Number: 16-19

Date: 1/13/2016

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

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	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 Final ML14148A131	Comments 03/13/09 ML090510003 No Comments 08/13/2014 ML14148A028	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 comment letter are addressed in the 4/18/2013 submission And response (see ML13108A246 and ML13119A402).
2009-1	Medical Use of Byproduct Material – Authorized User Clarification Part 35 74 FR 33901	09/28/2012	Final ML14148A131	No Comments 08/13/2014 ML14148A028	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
*2011-1	Decommissioning Planning Parts 20, 30, 40, 70 76 FR 35512	12/17/2015	Final ML14148A131 Revised Final ML15323A231	Comments 08/13/2014 ML14148A028 No Comments 01/13/2016 ML15323A228	
2011-2	Licenses, Certifications, and Approvals for Materials Licensees Parts 30, 36, 39, 40, 70, and 150 76 FR 56951	11/14/2014	Final ML14148A131	No Comments 08/13/2014 ML14148A028	
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	05/23/2014 ML14148A131	No Comments 08/13/2014 ML14148A028	
2012-2	Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste Part 71 77 FR 34194	08/10/2015	Final ML14148A131	No Comments 08/13/2014 ML14148A028	
2012-3	Technical Corrections Parts 30, 34, 40 and 71 77 FR 39899	08/06/2015	Final ML14148A131	No Comments 08/13/2014 ML14148A028	
2012-4	Requirements for Distribution of Byproduct Material Parts 30, 31, 32, 40 and 70 77 FR 43666	10/23/2015	Final ML14148A131	No Comments 08/13/2014 ML14148A028	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
2013-1	Physical Protection of Byproduct Material Parts 20, 30, 32, 33, 34, 35, 36, 37, 39, and 71 78 FR 16922	03/19/2016	Proposed License Condition ML15274A377 Proposed ML15292A555	No Comments 10/20/2015 ML15274A372 Comments 11/17/15 ML15292A442	NJ addressed Part 37 only
*2013-2	Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions Parts 30, 40, and 70 78 FR 32310	08/27/2016	Proposed ML15323A231	Comments 01/13/2016 ML15323A228	
*2015-1	Domestic Licensing of Special Nuclear Material – Written Reports and Clarifying Amendments Part 70 79 FR 57721, 80 FR 143	01/26/2018	Proposed ML15323A231	Comment 01/13/2016 ML15323A228	
*2015-2	Safeguards Information - Modified Handling Categorization, Change for Materials Facilities Parts 30, 37, 73, and 150 79 FR 58664, 80 FR 3865	01/28/2018	Proposed ML15323A231	Comment 01/13/2016 ML15323A228	
*2015-3	Revisions to Transportation Safety Requirements and Harmonization with International Atomic Energy Agency Transportation Requirements Part 71 80 FR 33987	07/13/2018	Proposed ML15323A231	Comments 01/13/2016 ML15323A228	
*2015-4	Miscellaneous Corrections Parts 37 and 40 80 FR 45841	09/02/2018	Proposed ML15323A231	No Comments 01/13/2015 ML15323A228	

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N/A	10 CFR 19.4, 32.1, 35.60 and 70.73	N/A	Final ML14148A131	No Comments 08/13/2014 ML14148A028	
*N/A	N.J.A.C. 7:28-1.5 and 1.6	N/A	Proposed ML15323A231	Comments 01/13/2016 ML15323A228	