



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

April 4, 2016

Ms. Jenny Goodman, 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 final revisions to New Jersey Radiation Protection Rules, received by our office on March 9, 2016. 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 April 1, 2016.

As a result of our review, we have one comment that has 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 Nuclear Material Safety and Safeguards (NMSS) 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 NMSS Procedure SA-201, "Review of State Regulatory Requirements," please highlight the location of any changes made by New Jersey, in response to our comments, 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 Paul Michalak for/

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

Enclosure:

1. Compatibility Comment
2. New Jersey SRS Data Sheet

COMPATIBILITY COMMENT ON NEW JERSEY FINAL REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	7:28-1.6(f)		N/A		<p>In 7:28-1.6(f) there are three sets of requirements referenced:</p> <ol style="list-style-type: none"> 1) “the requirements of the provisions incorporated by reference from the CFR”, 2) “the rules set forth in this chapter”, and 3) “the provisions of the CFR”. <p>The burden of identifying inconsistencies and duplications between these requirements and determining which set of requirements prevail is placed on the licensee, which is likely to cause confusion and misinterpretations. This approach of requiring the licensee to identify inconsistencies and duplications between these authorities, and then to determine which requirement to apply is not compatible with NRC regulations.</p> <p>Additionally, the final sentence in 7:28-1.6(f) says that the provisions of the CFR prevail, for compatibility category A or B regulations, in the event of inconsistencies or duplications. This can be interpreted to mean that, for compatibility category A or B regulations, the provisions of the CFR will prevail for any NJ regulation that incorporates the CFR by reference with modifications, thereby negating the necessary modifications for compatible NJ regulations.</p> <p>NJ needs to address the comments above on 7:28-1.6(f) in order to be compatible with NRC regulations.</p>

STATE REGULATION STATUS

State: New Jersey

Tracking Ticket Number: 16-57

Date: 04/04/16

[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, and 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 Final ML16070A204	No Comments 10/20/2015 ML15274A372 Comments 11/17/15 ML15292A442 No Comments 04/04/16 ML16070A199	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 Final ML16070A204	Comments 01/13/2016 ML15323A228 No Comments 04/04/16 ML16070A199	
*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 Final ML16070A204	Comment 01/13/2016 ML15323A228 No Comments 04/04/16 ML16070A199	
*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 Final ML16070A204	Comment 01/13/2016 ML15323A228 No Comments 04/04/16 ML16070A199	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
*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 Final ML16070A204	Comments 01/13/2016 ML15323A228 No Comments 04/04/16 ML16070A199	
*2015-4	Miscellaneous Corrections Parts 37 and 40 80 FR 45841	09/02/2018	Proposed ML15323A231 Final ML16070A204	No Comments 01/13/2015 ML15323A228 No Comments 04/04/16 ML16070A199	
2015-5	Miscellaneous Corrections Parts 19, 20, 30, 32, 37, 40, 61, 70, 71, and 150 80 FR 74974	12/31/2018			
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 Final ML16070A204	Comments 01/13/2016 ML15323A228 Comment 04/04/16 ML16070A199	