



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

August 30, 2022

Mark Horberg, Acting Director
Bureau of Environmental Sciences and Engineering
New York City Department of Health
42-09 28th Street, 14th Floor CN#56
Long Island City, NY 11101

Dear Mark Horberg:

We have reviewed the proposed revisions to the New York City Department of Health and Mental Hygiene (NYC DOHMH) regulations in Article 175, received by our office on August 4, 2022. These regulations were reviewed by comparison to the equivalent U.S. Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 19, 20, 30, 31, 35, 37, 40, 71 and Regulation Amendment Tracking System Identification Numbers (RATS IDs) 2018-1 through 2021-2 as identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with Erik Finkelstein on August 24, 2022.

As a result of our review, we have two 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 NYC DOHMH regulations meet the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the revised final regulations.

We request that when the revised final 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 NYC DOHMH 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>.

M. Horberg

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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 301-415-0275 (michelle.beardsley@nrc.gov) or Stephen Poy at 301-415-7135 (stephen.poy@nrc.gov).

Sincerely,



Signed by Anderson, Brian
on 08/30/22

Brian C. Anderson, Chief
State Agreement and Liaison Programs Branch
Division of Materials Safety, Security, State
and Tribal Programs
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. Compatibility Comments
2. NYC DOHMH SRS Data Sheet

SUBJECT: NYC DOHMH Final Regulations to 10 CFR Parts 19, 20, 30, 31, 35, 37, 40,
and 71 DATE August 30,2022

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DIR RF (22-54)

FGaskins, RSAO

NYC DOHMH File

ADAMS Accession No. ML22223A041 pkg and ML22241A095 letter

OFFICE	NMSS/MSST	NMSS/MSST	OGC	NMSS/MSST
NAME	SPoy	MBeardsley	n/a	BAnderson
DATE	08/30/2022	08/30/2022		08/30/2022

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**COMPATIBILITY COMMENTS ON NEW YORK CITY DEPARTMENT OF HEALTH AND
MENTAL HYGIENE (NYC DOHMH) FINAL REGULATIONS**

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	175.101	19.11	NA	C, except portions of paragraph (a), and all of paragraphs (b) and (e) are designated as NRC.	<p>Posting of notices to workers</p> <p>In section 175.101(b), NYC DOHMH states that 10 CFR 19.11 “(b)-(e)” are not incorporated by reference. As written, it appears that all sections from (b) through (e) are not incorporated by reference. However, subsection 19.11(d) is a Compatibility Category C and should not be excepted. NYC DOHMH needs to state that 19.11 “(b) and (e)” are not incorporated by reference.</p> <p>NYC DOHMH needs to make the change indicated above to meet the Compatibility Category C designation assigned to 10 CFR 19.11(d).</p>
2	175.	30.36	NA	H&S	<p>Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas</p> <p>NYC DOHMH omits subsections 10 CFR 30.36(d) through (k) from incorporation by reference.</p> <p>NYC DOHMH needs to exclude subsections 30.36(d) through (k) from the list of exceptions to incorporation by reference, to meet the Compatibility Category H&S designation assigned to 10 CFR 30.36(d) through (k).</p>

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
*2018-1	Medical Use of Byproduct Material – Medical Event Definitions, Training and Experience, and Clarifying Amendments Parts 30, 32 and 35	01/14/2022	Final ML22223A151	Comment 08/30/2022 ML22223A041	NYC DOHMH incorporates Parts 30 and 35 by reference. Comment is regarding 10 CFR Part 30.
*2018-2	Miscellaneous Corrections -Organizational Changes Parts 37, 40, 70 and 71	12/21/2021	Final ML22223A151	No Comments 08/30/2022 ML22223A041	NYC DOHMH incorporates Parts 37, 40, and 71 by reference.
*2018-3	Miscellaneous Corrections Parts 1, 2, 34, 37, 50, 71, 73, and 140	07/30/2022	Final ML22223A151	No Comments 08/30/2022 ML22223A041	NYC DOHMH incorporates Parts 37 and 71 by reference.
*2019-1	Miscellaneous Corrections Parts 2, 21, 37, 50, 52, 73, and 110	12/18/2022	Final ML22223A151	No Comments 08/30/2022 ML22223A041	NYC DOHMH incorporates Parts 37 by reference.
*2019-2	Organizational Changes and Conforming Amendments Parts 1, 2, 37, 40, 50, 51, 52, 55, 71, 72, 73, 74, 100, 140, and 150	12/30/2022	Final ML22223A151	No Comments 08/30/2022 ML22223A041	NYC DOHMH incorporates Parts 37, 40, and 71 by reference.
2020-1	Individual Monitoring Devices 10 CFR Parts 34, 36, and 39	06/16/2023	NA		NYC DOHMH does not have licensees subject to these 10 CFR Parts.
*2020-2	Social Security Number Fraud Prevention 10 CFR Parts 9 and 35	08/17/2023	Final ML22223A151	No Comments 08/30/2022 ML22223A041	NYC DOHMH incorporates Part 35 by reference.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
*2020-3	Miscellaneous Corrections 10 CFR Parts 1, 2, 19, 20, 21, 30, 34, 35, 40, 50, 51, 52, 60, 61, 62, 63, 70, 71, 72, 73, 74, 75, 76, 110, and 140	11/16/2023	Final ML22223A151	Comments 08/30/2022 ML22223A041	NYC DOHMH incorporates Parts 19, 20, 30, 35, 40, and 71 by reference. Comments are regarding 10 CFR Parts 19 and 30.
*2021-1	Miscellaneous Corrections 10 CFR Parts 2, 11, 20, 25, 32, 35, 37, 50, 52,55, 70, 72, 73, 95, and 110	09/08/2024	Final ML22223A151	No Comments 08/30/2022 ML22223A041	NYC DOHMH incorporates Parts 20, 35, and 37 by reference.
*2021-2	Miscellaneous Corrections 10 CFR Parts 9, 37, 40, 50, 51, 52, 55, 71, 73, and 110	12/30/2024	Final ML22223A151	No Comments 08/30/2022 ML22223A041	NYC DOHMH incorporates Parts 37, and 40 by reference.
2022-1	Miscellaneous Corrections 10 CFR 1, 2, 20, 30, 40, 50, 55, 70, 73, and 170	none			Provisions are not required for compatibility.
*N/A	Parts 19, 20, 30 and 35 Provisions not associated with a RATS ID	N/A	Proposed ML16063A457 Final ML22223A151	Comments 05/09/2016 ML16063A445 Comments 08/30/2022 ML22223A041	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
*NA	Part 19	NA	Proposed 2/15/2017 ML17055A656 Final ML22223A151	Comments 05/12/2017 ML17055A654 Comment 08/30/2022 ML22223A041	
*NA	Part 20	NA	Proposed 2/15/2017 ML17055A656 Final ML22223A151	Comments 05/12/2017 ML17055A654 No Comments 08/30/2022 ML22223A041	
*NA	Part 30	NA	Proposed 2/15/2017 ML17055A656 Final ML22223A151	Comments 05/12/2017 ML17055A654 Comment 08/30/2022 ML22223A041	
*NA	Part 31	NA	Proposed 2/15/2017 ML17055A656 Final ML22223A151	Comments 05/12/2017 ML17055A654 No Comments 08/30/2022 ML22223A041	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
NA	Part 32	NA	Not Applicable	Not Applicable	NYC DOHMH does not regulate material under an equivalent to Part 32 for its portion of the Agreement.
*NA	Part 33	NA	Proposed 2/15/2017 ML17055A656 Final ML22223A151	No Comments 05/12/2017 ML17055A654 No Comments 08/30/2022 ML22223A041	
NA	Part 34	NA	Not Applicable	Not Applicable	NYC DOHMH does not regulate material under an equivalent to Part 34 for its portion of the Agreement.
*NA	Part 35	NA	Proposed 2/15/2017 ML17055A656 Final ML22223A151	No Comments 05/12/2017 ML17055A654 No Comments 08/30/2022 ML22223A041	
NA	Part 36	NA	Not Applicable	Not Applicable	NYC DOHMH does not regulate material under an equivalent to Part 36 for its portion of the Agreement.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
*NA	Part 37	NA	Proposed 2/15/2017 ML17055A656 Final ML22223A151	No Comments 05/12/2017 ML17055A654 No Comments 08/30/2022 ML22223A041	
NA	Part 39	NA	Not Applicable	Not Applicable	NYC DOHMH does not regulate material under an equivalent to Part 39 for its portion of the Agreement.
*NA	Part 40	NA	Proposed 2/15/2017 ML17055A656 Final ML22223A151	Comments 05/12/2017 ML17055A654 No Comments 08/30/2022 ML22223A041	
NA	Part 61	NA	Not Applicable	Not Applicable	NYC DOHMH does not regulate material under an equivalent to Part 61 for its portion of the Agreement.
NA	Part 70	NA	Not Applicable	Not Applicable	NYC DOHMH does not regulate material under an equivalent to Part 70 for its portion of the Agreement.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
*NA	Part 71	NA	Proposed 2/15/2017 ML17055A656 Final ML22223A151	Comment 05/12/2017 ML17055A654 No Comments 08/30/2022 ML22223A041	
NA	Part 150	NA	Not Applicable	Not Applicable	NYC DOHMH does not regulate material under an equivalent to Part 150 for its portion of the Agreement.