

July 16, 2009

John Parker, Chief  
Radiation Control Bureau  
Field Operations Division  
Environment Department  
Harold S. Runnels Building  
1190 St. Francis Drive, Room S2100  
P.O. Box 5469  
Santa Fe, NM 87502-5469

Dear Mr. Parker:

We have reviewed the final revision to the New Mexico regulations parts: 20.3.1 NMAC "General Provisions," 20.3.3 NMAC "Licensing of Radioactive Materials," 20.3.4 NMAC "Standards for Protection against Radiation," and 20.3.7 NMAC "Medical use of Radionuclides," received by our office on May 5, 2009. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 40, 61, 70, 71, and 150 and the requirements of the eleven amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with Daniela Bowman on July 14, 2009.

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. 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](#).

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 and legally binding requirements, 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>.

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 Lucieann Vechioli at 301-415-0705 (Lucieann.Vechioli@nrc.gov)

Sincerely,

*/RA/*

Terrence Reis, Deputy Director  
Division of Materials Safety and State Agreements  
Office of Federal and State Materials  
and Environmental Management Programs

Enclosures:  
As stated

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 Lucieann Vechioli at 301-415-0705 (Lucieann.Vechioli@nrc.gov)

Sincerely,

*/RA/*

Terrence Reis, Deputy Director  
 Division of Materials Safety and State Agreements  
 Office of Federal and State Materials  
 and Environmental Management Programs

Enclosure:  
 As stated

Distribution:  
 DIR RF (9-22)  
 DCD (SP08)  
 LMcLean, RIV  
 BRautzen, FSME/MSSA  
 JKatanic, FSME/MSSA  
 NM File

**SUNSI Review Complete**

- Publicly Available       Non-Publicly Available
- Non-Sensitive             Sensitive

**DOCUMENT NAME: G:\DMSSA\SAISB\REGULATION TOOLBOX\States\New Mexico\9-22**

**ML of Incoming Document: ML091280050**

**To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy**

OFFICE	ASPB	ASPB	OGC	ASPB:BC	MSSA:DD
NAME	LVechioli	KSchneider	BJones	DWhite	TReis
DATE	06/ 22 /09	06/ 26 /09	07/ 09 /09	07/ 15 /09	07/ 16 /09

**ML091680278**

**OFFICIAL RECORD COPY**

**Package ML091680237**

COMPATIBILITY COMMENTS ON *NEW MEXICO* FINAL REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	20.3.3.302 C(4)	30.20(a)	2007-3	B	<p><b>Gas and aerosol detectors containing byproduct material</b></p> <p>New Mexico needs to include “non-agreement states” in “...or before November 30, 2007 in accordance with a specific license issued by the department or agreement state under...” Non-Agreement States before November 30, 2007 regulated NARM Material and should be included in this section.</p> <p>New Mexico needs to make the above change in order to meet the Compatibility Category B designation assigned to 10 CFR 30.20(a).</p>
2	20.3.3.306	71.74	2004-1	NRC	<p><b>Compatibility With IAEA Transportation Safety Standards (TS-R-1) and Other Transportation Safety Amendments</b></p> <p>New Mexico incorporates 10 CFR 71.74 by reference. 10 CFR 71.74 is a Compatibility Category NRC and is therefore not regulated by New Mexico. New Mexico needs to add 10 CFR 71.74 to 20.3.3.306 D, which lists sections not incorporated by reference.</p> <p>New Mexico needs to add 10 CFR 71.74 to 20.3.3.306 D in order to meet the Compatibility category NRC assigned to 10 CFR 71.4.</p>

**STATE REGULATION STATUS**

State: New Mexico

Tracking Ticket Number: 9-22

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

Date: July 16, 2009

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 <b>(Superceded by 1997-5)</b>	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 <b>(Superceded by 1997-5)</b>	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 <b>(Superceded by 2002-2)</b>	01/27/1995			New Mexico has not yet 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.
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	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1993-2	Licensing and Radiation Safety Requirements for Irradiators Part 36 58 FR 7715	07/01/1996	Not Applicable <sup>1</sup>	Not Applicable	New Mexico does not have any licensees subject to these regulations. (See SECY-95-112)
1993-3	Definition of Land Disposal and Waste Site QA Program Part 61 58 FR 33886	07/22/1996	Not Applicable <sup>1</sup>	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	
1995-2	Frequency of Medical Examinations for Use of Respiratory Protection Equipment	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 <b>(Superceded by 1997-5)</b>	06/30/1998	Final ML021550112	No Comments 06/12/2002 ML021650055	New Mexico has adopted Final Regulations equivalent to RATS ID: 1997-5.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
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 <b>(Superceded by 2002-2 and 2005-2)</b>	10/20/1998	Final	No Comments 07/14/2000	New Mexico has not yet 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 <b>(Superceded by 2004-1)</b>	04/01/1999	Final	No Comments 07/14/2000	New Mexico has not yet adopted Final Regulations equivalent to RATS ID: 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	01/9/2000	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	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
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 <b>(Superseded by 2004-1)</b>	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	Final ML021550112	No Comments 06/12/2002 ML021650055	
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,	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 <b>(Superseded by 2002-2)</b>	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	



RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1998-5	Minor Corrections, Clarifying Changes, and a Minor Policy Change Parts 20, 35, 36 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 Technical Conforming Amendment Part 20 63 FR 50127	11/20/2001	Final ML040640597	No Comments 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	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 ML091280050	Comments 07/16/2009 ML091680237	
★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 Specialty Boards Part 35	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
★2006-1	Minor Amendments Parts 20, 30, 32, 35, 40 and 70	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	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
★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 ML091280050	Comments 07/16/2009 ML091680237	
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	License Condition ML080650711	No Comments 03/27/2008 ML080870430	
2008-1	Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent Parts 19, 20 72 FR 68043	02/15/2011			

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