



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

June 4, 2015

Augustinus Ong, Administrator
Radiological Health Section
Division of Public Health Services
Department of Health and Human Services
29 Hazen Drive
Concord, NH 03301-6504

Dear Mr. Ong:

We have reviewed the proposed revisions to the New Hampshire regulations, Parts He-P 4003, He-P 4030, and He-P 4032, received by our office on May 12, 2015. These regulations were reviewed by comparison to the equivalent U.S. Nuclear Regulatory Commission (NRC) rules and the requirements of the one amendment identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with you on June 4, 2015.

As a result of our review, we have six 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 Hampshire 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 Hampshire regulations. However, we have determined that if your proposed regulations were adopted, 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 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 Hampshire 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 Web site: <http://nrc-stp.ornl.gov/rulemaking.html>.

A. Ong

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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 Stephen Poy at (301) 415-7135 (stephen.poy@nrc.gov).

Sincerely,

/RA Chris Einberg for/

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 Hampshire SRS Data Sheet

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DISTRIBUTION: SP05
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NH File

OFFICE	Region I	ASPB	OGC	ASPB:BC	MSTR:DD
NAME	SPoy	MBeardsley	SClark	CEinberg	CEinberg for PHenderson
DATE	5/21/15	5/21/15	6/3/15	6/4/15	6/4/15

ML15159A998

OFFICIAL RECORD COPY

Package ML15159A989

COMPATIBILITY COMMENTS ON NEW HAMPSHIRE PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	He-P 4030.03 (d)	§30.20	2012-4	B	<p>Gas and aerosol detectors containing byproduct material</p> <p>New Hampshire needs to replace the references in the following statement in He-P 4030.03(d), to read as follows:</p> <p>“Except for persons who manufacture, process, produce, or initially transfer for sale or distribution gas and aerosol detectors containing byproduct material, any person is exempt from the requirements in He-P 4019, He-P 4020, He-P 4021, and He-P 4030 through He-P 4036, and He-P 4039 to the extent . . .,”</p> <p>New Hampshire needs to make the above change in order to meet the Compatibility Category B designation assigned to 10 CFR 30.20.</p>
2	He-P 4030.03 (m)	§30.22	2012-4	B	<p>Certain industrial devices</p> <p>New Hampshire omits the following statement from the end of He-P 4030.03 (m),</p> <p>“This exemption does not cover sources not incorporated into a device, such as calibration and reference sources.”</p> <p>New Hampshire needs to add the above statement in order to meet the Compatibility Category B designation assigned to 10 CFR 30.22.</p>
3	He-P 4032.14 (a)(4)	§32.57(d)(2)	2012-4	B	<p>Calibration or reference sources containing americium-241 or radium-226: Requirements for license to manufacture or initially transfer</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>New Hampshire needs to replace the reference in He-P 4032.14(a)(4), to read as follows:</p> <p>“The source has been subjected to and has satisfactorily passed appropriate tests prescribed by He-P 4032.14(d).”</p> <p>New Hampshire needs to make the above change in order to meet the Compatibility Category B designation assigned to 10 CFR 32.57.</p>
4	He-P 4032.14 (c)	§32.59	2012-4	B	<p>Same: Leak testing of each source</p> <p>New Hampshire needs to replace the reference in He-P 4032.14(c) to read as follows:</p> <p>“If a source has been shown to be leaking or losing more than 0.185 kilobecquerel (0.005 microcurie) of americium-241 or radium-226 by the methods described in He-P 4032(c).”</p> <p>New Hampshire needs to make the above change in order to meet the Compatibility Category B designation assigned to 10 CFR 32.59.</p>
5	He-P 4032.11 (e)	§32.210(g)	2012-4		<p>Registration of product information</p> <p>New Hampshire’s regulation as written does not properly implement 32.210(g) by reference. New Hampshire needs to change the rule to read “<u>may</u> be provided ... <u>as</u> described in 10 CFR 32.210(g).”</p> <p>In addition,</p> <p>New Hampshire’s regulation states, “Authority to manufacture or initially distribute a sealed source or device to specific licensees shall be provided in the license...”. As written New Hampshire’s regulation is more</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>restrictive. New Hampshire needs to replace the word "shall" with the word "may":</p> <p>New Hampshire needs to make the changes described above in order to meet the Compatibility Category B designation assigned to 10 CFR 32.210(g).</p>
6	He-P 4032.11 (g)	§32.211	2012-4	B	<p>Inactivation of certificates of registration of sealed sources and devices</p> <p>New Hampshire asserts that it will merely use the criteria of 32.211 however as written this does not fully incorporate the requirements of 32.211 which makes requesting inactivation mandatory.</p> <p>New Hampshire needs to incorporate the requirements of 32.211 which makes requesting inactivation mandatory in order to meet the Compatibility Category B designation assigned to 10 CFR 32.211.</p>

STATE REGULATION STATUS

State: New Hampshire

Tracking Ticket Number: 15-39

Date: June 4, 2015

[1 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	Safety Requirements for Radiographic Equipment Part 34 55 FR 843 (Superseded by 1997-5)	01/10/1994	Final	No Comments	New Hampshire has adopted Final Regulations equivalent to RATS ID: 1997-5.
1991-2	ASNT Certification of Radiographers Part 34 56 FR 11504 (Superseded by 1997-5)	none	Not Required	Not Required	New Hampshire 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	
1991-4	Notification of Incidents Parts 20, 30, 31, 34, 39, 40, 70 56 FR 64980;	10/15/1994	Final	No Comments	
1992-1	Quality Management Program and Misadministrations Part 35 56 FR 34104 (Superseded by 2002-2)	01/27/1995	Final	No Comments	New Hampshire 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.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	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	No Comments	
1993-2	Licensing and Radiation Safety Requirements for Irradiators Part 36 58 FR 7715	07/01/1996	Final ML092710010	No Comments 10/23/2009 ML092800057	
1993-3	Definition of Land Disposal and Waste Site QA Program Part 61 58 FR 33886	07/22/1996	Not Applicable ⁱ	Not Applicable	New Hampshire 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	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	New Hampshire does not have the 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 ML061990609	No Comments 08/10/2006 ML062220004	
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 02/1999	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
1995-2	Frequency of Medical Examinations for Use of Respiratory Protection Equipment Part 20 60 FR 7900	03/13/1998	Final	No Comments 08/1998	
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 08/1998	
1995-4	Performance Requirements for Radiography Equipment Part 34 60 FR 28323 (Superceded by 1997-5)	06/30/1998	Final	No Comments	New Hampshire has adopted Final Regulations equivalent to RATS ID: 1997-5.
1995-5	Radiation Protection Requirements: Amended Definitions and Criteria Parts 19, 20 60 FR 36038	08/14/1998	Final	No Comments	
1995-6	Clarification of Decommissioning Funding Requirements Parts 30, 40, 70 60 FR 38235	11/24/1998	Final	No Comments	
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	Final	No Comments	New Hampshire has not yet adopted Final Regulations equivalent to RATS IDs: 2002-2 and 2005-2.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
1996-1	Compatibility with the International Atomic Energy Agency Part 71 60 FR 50248; 61 FR 28724 (Superceded by 2004-1)	04/01/1999	Final	No Comments	New Hampshire has not yet adopted Final Regulations equivalent to RATS IDs: 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 ML061990609	No Comments 08/10/2006 ML062220004	
1997-1	Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act Part 20 61 FR 65120	01/9/2000	Final ML061990609	No Comments 08/10/2006 ML062220004	
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 ML061990609	No Comments 08/10/2006 ML062220004	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
1997-3	Criteria for the Release of Individuals Administered Radioactive Material Parts 20, 35 62 FR 4120	05/29/2000	R ² ML12171A302 License Condition ML12171A302 Proposed ML12341A216	No Comments 07/24/2012 ML12200A082 No Comments 07/24/2012 ML12200A082 Comments 03/28/2013 ML13035A121	Part 35 only
1997-4	Fissile Material Shipments and Exemptions Part 71 62 FR 5907 (Superceded 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	Final	No Comments	
1997-6	Radiological Criteria for License Termination Parts 20, 30, 40, 70 62 FR 39057	08/20/2000	Final ML061990609	No Comments 08/10/2006 ML062220004	
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	No Comments	
1998-1	Deliberate Misconduct by Unlicensed Persons Parts 30, 40, 61, 70, 71, 150 63 FR 1890; 63 FR 13773	02/12/2001	Final ML061990609	No Comments 08/10/2006 ML062220004	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
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	Final ML073040535 License Condition ML082660012	Comments 11/20/2007 ML073240267 No Comments 10/07/2008 ML082730093	
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 ML061990609	No Comments 08/10/2006 ML062220004	
1998-6	Transfer for Disposal and Manifests: Minor Technical Conforming Amendment Part 20 63 FR 50127	11/20/2001	Final ML061990609	No Comments 08/10/2006 ML062220004	
1999-1	Radiological Criteria for License Termination of Uranium Recovery Facilities Part 40 64 FR 17506	06/11/2002	Not Applicable	Not Applicable	New Hampshire does not have authority to regulate this material under its Agreement.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
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 ML061990609	No Comments 08/10/2006 ML062220004	
2000-1	Energy Compensation Sources for Well Logging and Other Regulatory Clarifications Part 39 65 FR 20337	05/17/2003	Final ML042720491 ML042660535	No Comments 10/25/2004 ML043010014	
2000-2	New Dosimetry Technology Parts 34, 36, 39 65 FR 63750	01/08/2004	License Condition ML042720491 ML042660535	No Comments 10/25/2004 ML043010014	
2001-1	Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material Parts 30, 31, 32 65 FR 79162	02/16/2004	R ² ML14093A273	Comments 07/24/2014 ML14093A168	
2002-1	Revision of the Skin Dose Limit Part 20 67 FR 16298	04/05/2005	Final ML061990609	No Comments 08/10/2006 ML062220004	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
2002-2	Medical Use of Byproduct Material Parts 20, 32, 35 67 FR 20249	10/24/2005	Proposed ML12341A216	Comments 03/28/2013 ML13035A121	Part 35 only
			Proposed ML14093A273	Comments 07/24/2014 ML14093A168	Part 20 and 32
2003-1	Financial Assurance for Materials Licensees Parts 30, 40, 70 68 FR 57327	12/03/2006	License Condition ML083390515	No Comments 12/19/2008 ML083460317	
2004-1	Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments Part 71 69 FR 3697	10/01/2007	License Condition ML083390515	No Comments 12/19/2008 ML083460317	
			Proposed ML092600622	Comments 11/20/2009 ML092960157	
2005-1	Security Requirements for Portable Gauges Containing Byproduct Material Part 30 70 FR 2001	07/11/2008	License Condition ML073040537	No Comments 11/26/2007 ML073300061	
2005-2	Medical Use of Byproduct Material - Recognition of Specialty Boards Part 35 70 FR 16336; 71 FR 1926	04/29/2008	Proposed ML12341A216	Comments 03/28/2013 ML13035A121	Part 35 only
2005-3	Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) 70 FR 72128	12/01/2005	License Condition ML053190108	No Comments 11/17/2005 ML053220519	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
2006-1	Minor Amendments Parts 20, 30, 32, 35, 40 and 70 71 FR 15005	03/27/2009	Proposed ML12341A216	Comments 03/28/2013 ML13035A121	Part 35 only
			Proposed ML14093A273	Comments 07/24/2014 ML14093A168	Parts 20, 30, 32, 40, & 70
2006-2	National Source Tracking System - Serialization Requirements Part 32 with reference to Part 20 Appendix E 71 FR 65685	02/06/2007	License Condition ML092860062	No Comments 11/03/2009 ML092870528	
			Proposed ML14093A273	No Comments 07/24/2014 ML14093A168	
2006-3	National Source Tracking System Part 20 71 FR 65685, 72 FR 59162	01/31/2009	License Condition ML083370040	No Comments 12/17/2008 ML083390033	
			Proposed ML14093A273	Comments 07/24/2014 ML14093A168	
2007-1	Medical Use of Byproduct Material - Minor Corrections and Clarifications Parts 32 and 35 72 FR 45147, 54207	10/29/2010	Proposed ML12341A216	Comments 03/28/2013 ML13035A121	Part 35
			Proposed ML14093A273	Comments 07/24/2014 ML14093A168	Part 32

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
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	Proposed ML14093A273	Comments 07/24/2014 ML14093A168	
2007-3	Requirements for Expanded Definition of Byproduct Material Parts 20, 30, 31, 32, 33, 35, 61, 150 72 FR 55864	11/30/2010	Proposed ML12341A216 Proposed ML14093A273	Comments 03/28/2013 ML13035A121 Comments 07/24/2014 ML14093A168	Part 35 only Parts 20, 30, 31, 32, 33, 61, & 150
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 ML081270603 ML081350723	No Comments 05/14/2008 ML081350459	
2008-1	Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent Parts 19, 20 72 FR 68043	02/15/2011	Proposed ML14093A273	No Comments 07/24/2014 ML14093A168	
2009-1	Medical Use of Byproduct Material – Authorized User Clarification Part 35 74 FR 33901	09/28/2012	Proposed ML12341A216	Comments 03/28/2013 ML13035A121	Part 35 only
2011-1	Decommissioning Planning Parts 20, 30, 40, 70 76 FR 35512	12/17/2015	Proposed ML14093A273	No Comments 07/24/2014 ML14093A168	Parts 20, 30, 40, 70

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
2011-2	Licenses, Certifications, and Approvals for Materials Licensees Parts 30, 36, 39, 40, 70, and 150 76 FR 56951	11/14/2014	Proposed ML14325A633	Comments 12/31/2014 ML14342A832	
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	Proposed ML14093A273	Comments 07/24/2014 ML14093A168	
2012-2	Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste Part 71 77 FR 34194	08/10/2015	Proposed ML15042A534	Comments 03/10/2015 ML15042A264	Note: NH incorporated Part 71 by reference. Comments were related to provisions that were not part of the RATS ID
2012-3	Technical Corrections Part 30, 34, 40 and 71 77 FR 39899	08/06/2015	Proposed ML15099A764	No Comments 05/13/2015 ML15099A761	
*2012-4	Requirements for Distribution of Byproduct Material Parts 30, 31, 32, 40 and 70 77 FR 43666	10/23/2015	Proposed ML15133A476	Comments 06/04/15 ML15159A989	
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 Parts 30, 40, and 70 78 FR 32310	08/27/2016			

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
2015-1	Domestic Licensing of Special Nuclear Material – Written Reports and Clarifying Amendments Part 70 79 FR 57721, 80 FR 143	01/26/2018			
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			

ⁱ IMPEP Team: verify that New Hampshire does not have any licensees subject to these regulations during each review.

² R means proposed revision to a final rule