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ENVIRONMENTAL PROTECTION

ENVIRONMENTAL MANAGEMENT

DIVISION OF ENVIRONMENTAL SAFETY AND HEALTH

COMMISSION ON RADIATION PROTECTION

Radiation Protection Programs, N.J.A.C. 7:28

Proposed Amendments, N.J.A.C. 7:28-1.5, 2.3, 2.5, 2.8, 2.13, 3.2, 3.3, 3.12, 4.1, 4.3, 4.4 through 4.7, 4.9, 4.16 through 4.18, 4.24, 4.26, 4.27, 6.1, 12.12, 18.1, 19.2, 19.10, 19.13 through 19.15, 19.17, 20.1, 20.6, 20.11, 20.12, 22.2 through 22.10, 22.12, 22.13, 24.8, 41.2, 41.3, 41.4, 50.1, 51.1, 52.1, 53.1, 54.1, 55.1, 56.1, 57.1, 58.1, 59.1, 60.1, 61.1, 62.1, 63.1, 64.2 and 64.4

Proposed Repeals: N.J.A.C. 7:28-4.8 and 22.14

Authorized By: Bob Martin, Commissioner, Department of Environmental Protection

Julie K. Timins, M.D., Chair, Commission on Radiation Protection

Authority: N.J.S.A. 13:1B-1 et seq., 13:1D-1 et seq. and 26:2D-1 et seq.

DEP Docket Number: 03-13-03

Calendar Reference: See Summary below for explanation of exception to calendar requirement

Proposal Number:

Submit comments by (60 days after publication) electronically at <http://www.nj.gov/dep/rules/comments>. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

The Department of Environmental Protection (Department) encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Alice A. Previte, Esq.

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Attention: DEP Docket Number 03-13-03
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 4th Floor
Mail Code 401-04L
P.O. Box 402
Trenton, New Jersey 08625-0402

The rule proposal may be viewed or downloaded from the Department's website at <http://www.nj.gov/dep/rules>.

The agency proposal follows:

Summary

As the Commission on Radiation Protection (Commission) and the Department have provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

In 1958, the Radiation Protection Act (the Act), N.J.S.A. 26:2D-1 et seq., was enacted. The Act regulates the possession, handling, and use of sources of radiation within the State of New Jersey. The Act also created the Commission and vested in that body the power to promulgate rules and regulations as may be necessary to prohibit and prevent unnecessary radiation. Additionally, the Act at N.J.S.A. 26:2D-9 authorizes the Department to establish and charge fees for the services it performs under the Act. These fees reflect the actual or projected expenses incurred by the Department in performing the activities for which fees are charged.

Regulations implementing the Act were first promulgated in 1960 and the State began registering possessors of naturally occurring or accelerator produced radioactive materials (NARM). Accelerators use magnetic and electric fields to impart large kinetic energy to charged particles, such as electrons, protons, deuterons and helium ions. These particles bombard a target element,

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which transforms it into a radionuclide. These radionuclides are used primarily in nuclear medicine procedures, certain industries, and for research. Naturally occurring radioactive materials (NORM) include uranium, thorium, and radium and their progeny. These radionuclides are present in rocks, soil, and groundwater and are part of the Earth's natural environment. When any human activity increases the concentration of NORM or increases the potential for human exposure, the radionuclides are then referred to as technologically enhanced radioactive materials (TENORM).

Through the Act and the Radiation Protection Programs rules, N.J.A.C. 7:28, New Jersey has a comprehensive radiation protection program encompassing x-ray machines, NARM, radon, clean-up of radioactively contaminated sites, monitoring around nuclear power plants, emergency preparedness and response to radiological incidents including transportation accidents, and requirements for non-ionizing sources of radiation. Additionally, there are requirements for licensure and certification of people – radiologic technologists, nuclear medicine technologists, radon testers and mitigators, and qualified medical physicists.

New Jersey has assumed responsibility for regulation of radioactive materials that are governed under the Atomic Energy Act (AEA) through an agreement between the Governor of the State and the Nuclear Regulatory Commission (NRC). (See 42 U.S.C. § 2021.) This is known as becoming an Agreement State. The AEA requires that an Agreement State's regulations be compatible with the NRC's regulations, and that the state's regulations be adequate to protect the public health and safety, with respect to such materials. (See 42 U.S.C. § 2021(d).) New Jersey notified the NRC of its decision to become an Agreement State by letter dated May 23, 2006, from then-Governor Corzine to NRC Chairman Nils J. Diaz. New Jersey obtained approval from the NRC to regulate source, certain special nuclear, and byproduct material. When the NRC granted New Jersey Agreement State status, New Jersey became authorized to regulate these materials

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instead of the NRC. In 2008 the Department and the Commission promulgated rules consistent with the Agreement State process. In order that New Jersey's rules are "adequate and compatible" with the Federal rules, as the Federal rules require an Agreement State's rules to be, the 2008 rulemaking incorporates by reference substantial portions of the Federal rules. The Department and the Commission propose the within amendments to N.J.A.C. 7:28 in order that the State's rules are compatible with the Federal rules. The proposed amendments also update contact information, adjust fees, and affect financial assurance requirements related to diffuse NARM licensees and remediation of radiation-contaminated sites.

Throughout the chapter, proposed amendments update the Department's address and the designation of the various Department programs. The proposed amendments also update cross references throughout the chapter, which are necessary as a result of recodifications in this proposal, and from errors, such as references to incorrect chapters (N.J.A.C. 7:27, Air Pollution Control, and 7:29, Noise Control, rather than N.J.A.C. 7:28) and rules that do not exist (for example, N.J.A.C. 7:28-6.2, and subchapters 9 and 11, repealed as part of the Agreement State process).

Subchapter 2: Use of Sources of Ionizing Radiation and Special Exemptions

The proposed amendment to N.J.A.C. 7:28-2.3(b) adds a reference to N.J.A.C. 7:28-6.1, Standards for protection against radiation, applicable to licensees. The existing reference to N.J.A.C. 7:28-7.4(a)4 applies only to visitors to facilities maintained by registrants. Because N.J.A.C. 7:28-2.3(b) applies to visitors at any controlled area, it is appropriate that the provision contain references to rules governing licensees as well as registrants.

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N.J.A.C. 7:28-2.5(a) is proposed to be amended to correct a cross reference. The rule relates to operation of radiation producing machines or use of radioactive materials. The reference should be to the standards for protection against radiation at N.J.A.C. 7:28-6.1, which incorporates by reference the Federal standards for protection against radiation.

Proposed new N.J.A.C. 7:28-2.5(c) specifies that if a device, system, or mechanism designed for the protection against radiation is malfunctioning, then the radiation-producing machine or radioactive materials may not be utilized. For example, if one or more of the leaves of a lead drape utilized to minimize radiation scatter from a fluoroscopic x-ray unit's image intensifier is missing, then the unit may not be used until the leaf is replaced. The fluoroscopic x-ray unit with the missing lead leaf will emit more scatter radiation into the room, thus increasing patient and worker radiation exposure.

N.J.A.C. 7:28-2.8 is proposed to be amended to clarify the requirements to obtain an exemption from the Radiation Protection Programs rules. The Commission may grant an exception based on hardship or compelling need, provided the exemption will not result in any exposure to radiation in excess of the limits permitted by N.J.A.C. 7:28-6, Standards for protection against radiation. Because there are also dose limits that apply to decommissioned sites in Subchapter 12, the Commission and the Department are proposing to amend the rule to include a reference to Subchapter 12, which contains remediation standards for radioactive materials, including the dose limits applicable to license terminations and site cleanups. The Commission considers dose limits to be among the standards for protection against radiation.

The Commission and the Department propose new N.J.A.C. 7:28-2.13(c) to state that the Department will not approve an application to terminate a license under N.J.A.C. 7:28-12,

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Remediation Standards for Radioactive Materials, until the licensee has satisfied all outstanding civil penalty assessments. Until a license is terminated, the licensee's obligations under the license continue. Moreover, the licensee may not sell or lease the property until the licensee receives a termination letter from the Department. The Department anticipates that the proposed amended rule will encourage facilities to resolve outstanding violations and penalties.

Subchapter 3: Registration of Ionizing Radiation-Producing Machines

Subchapter 3 establishes the requirements for registering ionizing radiation-producing machines in the State of New Jersey. These requirements include the application process, notification of amendments to the registration, the process for temporary registration and the notification requirements of the sale, installation, relocation or disposal of a machine source of radiation. The subchapter also lists those machine sources that are exempt from the registration process.

The registration requirements for ionizing radiation-producing machines are in N.J.A.C. 7:28-3.3. Existing N.J.A.C. 7:28-3.3(b) and (c) state that the registration expiration date for such machines is May 19. This date contradicts existing N.J.A.C. 7:28-3.12(f), which provides that the expiration of the yearly registration is based on the first letter of the registrant name. Accordingly, proposed amended N.J.A.C. 7:28-3.3(b) and (c) replace the May 19 date with a reference to N.J.A.C. 7:28-3.12(f).

Application and annual registration fees for ionizing radiation-producing machines are set forth in N.J.A.C. 7:28-3.12. At N.J.A.C. 7:28-3.12(d)2, in the table of fees for Non-Hospital Facilities, the fees for particle accelerators that are below and above 30 kVp, (Machine Categories

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and Descriptions 24N and 25N), are reversed. The fee for a particle accelerator machine (non-medical use) ≤ 30 kV should be \$185.00, and the fee for particle accelerator machine (non-medical use) > 30 kV should be \$196.00. In general, units that operate at higher energies emit greater levels of radiation. Historically, the Department has assessed higher fees to those that emit greater levels of radiation. For such emitters, greater controls and evaluation of the installation are necessary. The proposed amendment is consistent with this practice.

N.J.A.C. 7:28-3.12(f)1 is proposed to be amended to correct an omission in the expiration date schedule. The existing rule does not account for facilities whose names begin with a numeric character. The amended rule includes such facilities with the A through F group, whose licenses expire on August 31 each year.

Under proposed new N.J.A.C. 7:28-3.12(k), registration fees submitted to the Department are non-refundable, because the services that these fees cover have already been provided. For example, a facility may register a certain x-ray machine, then ask to cancel that registration and obtain a refund of the fees. The Department has already taken action based on the registration (e.g. review of the registration and data input of registration information). Further, the annual registration fee is not pro-ratable, even if the machine is used for only a portion of the registration period, used sparingly throughout the registration period, or used every day.

Subchapter 4: Licensing of Diffuse Naturally Occurring or Diffuse Accelerator Produced Radioactive Materials

Subchapter 4 contains the licensing requirements for diffuse sources of NARM or diffuse accelerator produced radioactive materials. Congress amended the Energy Policy Act to change the definition of byproduct material to include discrete sources of NARM; consequently, the State

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amended Subchapter 4 to encompass diffuse sources of NARM, in order that these sources are regulated. The amendments were part of the Agreement State process. (40 N.J.R. 2309(a), 40 N.J.R. 5196(b), 41 N.J.R. 3415(a))

Diffuse NARM is a radionuclide that has become concentrated, but not for the purpose of use in commercial, medical, or research activities. An example of diffuse NARM is the concentrated naturally occurring radioactive materials in a waste pile from a mineral extraction facility. In the process of extracting one or more non-radioactive minerals from soil, the naturally occurring radioactive materials become concentrated above licensing criteria in the waste pile. Because the waste has no use in commercial, medical, or research activities, it is not discrete and, therefore, not regulated under Subchapters 50 through 57, 59, and 61 through 63, which regulate discrete NARM.

Prior to the Agreement State amendments, Subchapter 4 was entitled “Licensing of Naturally Occurring or Accelerator Produced Radioactive Materials,” and applied to both diffuse and discrete sources of NARM. When the subchapter was amended as part of the Agreement State process, the intention was to limit the subchapter to only diffuse sources of NARM; however, not all language in the subchapter relating to discrete sources of NARM was deleted. This has the effect of discrete sources of NARM being redundantly regulated in several subchapters within N.J.A.C. 7:28. The Commission and the Department propose to eliminate the redundancy by removing all references to discrete sources of NARM from Subchapter 4.

The pre-Agreement State rules included references to devices (which could be used in commercial, medical or research applications), and to manufacturing. Because diffuse sources of NARM are not used in commercial, medical, or research activities, all references to devices are

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proposed to be deleted. (See N.J.A.C. 7:28-4.1(a) through (c), 4.3(a)3 and (c), 4.4, 4.5(a), (b), (e) and (g), 4.6, 4.7, and 4.8(d) and (e).) A device containing NARM is considered byproduct material, regulated under Subchapters 50 through 57, 59, and 61 through 63. The proposed amendments also remove references to “manufacturing.” Sources of byproduct material that are manufactured are regulated under Subchapters 50 through 57, 59, and 61 through 63.

N.J.A.C. 7:28-4.1 sets forth the scope and general provisions of the subchapter. The proposed amendments to N.J.A.C. 7:28-4.1(a) and (b) make the list of regulated activities consistent with N.J.A.C. 7:28-2.1(a) and (b) by adding “transport, store, and dispose.” N.J.A.C. 7:28-4.1(c) is proposed to be deleted because it applies only to devices containing NARM. These devices are regulated elsewhere in the chapter.

N.J.A.C. 7:28-4.4 describes the various types of licenses related to diffuse sources of NARM or diffuse accelerator produced radioactive materials. Proposed new N.J.A.C. 7:28-4.4(c) describes a general license requiring registration, discussed in the summary of amendments to N.J.A.C. 7:28-4.5 below.

N.J.A.C. 7:28-4.5 contains the requirements for general licenses for the transfer, distribution or arrangement for distribution, release, receipt, acquisition, ownership, possession or use of diffuse naturally occurring or diffuse accelerator produced radioactive materials. The proposed amendments to N.J.A.C. 7:28-4.5 include removing all references to discrete sources of NARM (for example, devices and equipment containing radioactive materials), such as in N.J.A.C. 7:28-4.5(a) and (b), and in the heading of the section. If NARM were incorporated into a sealed source, it would be for use in medical, research or manufacturing and would be regulated under N.J.A.C. 7:28-50 through 57, 59, and 61 through 63. Column B is proposed to be deleted from N.J.A.C. 7:28-4.5(c) (recodified as 7:28-4.5(b)) because it refers to sealed sources and there are no sealed

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sources of diffuse NARM. Because there would be no Column B, the designation “Column A” is proposed to be removed.

Under existing N.J.A.C. 7:28-4.5(c), proposed to be recodified as (a), a facility is eligible for a general license if the quantity of radioactive material, when obtained from diffuse naturally occurring materials or diffuse accelerator produced radioactive materials, does not exceed 10 microcuries (μCi). Existing N.J.A.C. 7:28-4.5(d) specifies that there are no generally licensed quantities for alpha-emitting materials, other than those set forth in proposed recodified N.J.A.C. 7:28-4.5(a). As amended, proposed N.J.A.C. 7:28-4.5(b) adds certain water systems to the facilities with alpha-emitting materials that are eligible for general licenses; the general license available to the water systems requires the water system to register with the Department.

Community and non-community water systems are categories of water treatment systems, defined by the United States Environmental Protection Agency (USEPA) at 40 CFR Part 141. (See “water treatment system,” N.J.A.C. 7:28-1.4.) As of the date of this proposal, some water systems in the State have specific radioactive materials licenses for possession of radium as a result of treating their drinking water. Under the proposed amended rules, a non-community water system that treats for radium may register for a general license under N.J.A.C. 7:28-4.5 (rather than obtain a specific license) if it meets the quantity restrictions of no more than 10 μCi of radium at proposed amended N.J.A.C. 7:28-4.5(b). A radium treatment system that contains more than 10 μCi is not eligible for a general license, but must obtain a specific license. This is similar to the treatment of any other facility eligible for a general license under proposed amended N.J.A.C. 7:28-4.5(a), except that the non-community or community water system must also register with the Department in accordance with proposed new N.J.A.C. 7:28-4.5(c). Thus, a non-community or community water system with a relatively low quantity of radium is eligible for a “general license requiring

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registration,” as set forth at proposed new N.J.A.C. 7:28-4.4(c). As a practical matter, however, a community water system is unlikely to be eligible for the general license requiring registration, because of the large quantity of water being treated. The amount of radium in the water system would likely exceed the eligibility limit in the proposed rule; therefore, the community water system would require a specific license as it does under the existing rules.

A non-community or community water system that treats for uranium is also eligible for a general license requiring registration, as long as the quantity of uranium is less than specified at N.J.A.C. 7:28-58.1, Domestic Licensing of Source Material, as requiring a specific license. By definition, “source material” is “(1) Uranium or thorium, or any combination thereof, in any physical or chemical form, or (2) ores which contain by weight one-twentieth of one percent (0.05%) or more of: (i) Uranium, (ii) thorium or (iii) any combination thereof,” but does not include special nuclear material. (10 CFR 40.4, Definitions, incorporated by reference at N.J.A.C. 7:28-58.1.) Therefore, if the treatment media contain more than 15 pounds of uranium that is greater than 0.05 percent by weight, a specific license is required, in accordance with Subchapter 58, Domestic Licensing of Source Material (10 CFR Part 40, incorporated by reference). None of the several uranium treatment systems in New Jersey has, to date, possessed a sufficient quantity of uranium greater than 0.05 percent by weight, such that it would be subject to a specific license.

In addition to the requirements for a general license, proposed new N.J.A.C. 7:28-4.5(c) adds criteria for the “requiring registration” portion of the “general license requiring registration.” The water system must submit to the Department an annual registration that includes the name and address of the facility, the type of treatment system, a copy of a current water treatment maintenance agreement or proof that the system has been maintained properly during the previous year, and any changes in the system components, backwash frequency, or water use at the facility

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over the preceding year. For a uranium treatment system, the proposed rule contains an additional requirement to determine the accumulated amount of uranium to ensure that it remains under 15 pounds. The requirement that the facility submit an annual registration is unique to water systems that treat for radium and uranium (other general licensees under this Subchapter need not submit annual certifications); however, the annual registration is necessary in order that the Department can determine that the water systems are working properly and are not accumulating radioactive materials that would pose a risk to health.

Most diffuse NARM is considered waste and would not have potential health consequences at these levels because waste is generally not located in occupied structures. In contrast, water treatment systems are typically installed inside occupied structures. The general license requiring registration provisions are comparable to the Federal rule at 10 CFR 31.5(c)(13), incorporated by reference at N.J.A.C. 7:28-52, General Domestic Licenses for Byproduct Material, which describes the NRC requirements for byproduct material registered under a general license requiring registration.

N.J.A.C. 7:28-4.6 governs applications for and renewal of specific licenses. The proposed amendment to the heading of the section deletes “use” as a basis for a specific license. The presence of the term in the heading is misleading, implying that the specific license applies only to the “use” of the material. The specific license applies not only to those who use, but to all categories identified in N.J.A.C. 7:28-4.1: those who produce, transfer, distribute or arrange for the distribution, sell, lease, receive, acquire, own, transport, store, dispose, possess, or use the material. The proposed amendments to the heading of N.J.A.C. 7:28-4.7 and to N.J.A.C. 7:28-4.7(a) and (a)1 are for the same reason. One does not “use” diffuse NARM, but merely manages it.

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Proposed amended N.J.A.C. 7:28-4.6(f) allows specific radioactive materials licensees to incorporate by reference material previously submitted to the Department in applications, statements or reports. This is consistent with the Federal regulation for source, special nuclear, and byproduct material at 10 CFR 30.32(a), which allows applicants to refer to previously submitted material.

Existing N.J.A.C. 7:28-4.6(h) states that the Department will make certain records related to applications for and renewal of special licenses available for public inspection. N.J.A.C. 7:1D-3.2(b) exempts from disclosure records that, if disclosed, would substantially interfere with the State's ability to protect and defend the State and its citizens against acts of sabotage or terrorism, or would materially increase the risk or consequences of potential acts of sabotage or terrorism. Among the categories of records protected in the rule are those relating to radioactive materials licenses issued by the NRC (or by extension, by the State under the Agreement State program). (See N.J.A.C. 7:1D-3.2(b)8.) As discussed above, licenses for diffuse NARM are not governed under the Agreement State rules, but are governed under State law. However, the Department has determined that the risk posed by disclosure of records relating to such licenses is comparable to the risk from disclosure of records covered by N.J.A.C. 7:1D-3.2(b)8. Accordingly, N.J.A.C. 7:28-4.6(h) is proposed to be deleted.

The reference to existing N.J.A.C. 7:28-4.8 at N.J.A.C. 7:28-4.7(a)3 is proposed to be deleted, in light of the proposed repeal of N.J.A.C. 7:28-4.8. Existing N.J.A.C. 7:28-4.8, Special requirements for approval of an application for an initial specific license or renewal of a specific license for use of diffuse naturally occurring or diffuse accelerator produced radioactive materials, addresses special requirements for multiple quantities or types of radioactive materials, more commonly known as a broad scope license. Broad scope licensees are given more latitude in the

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quantities and types of radioactive materials they are allowed to possess because they are required to appoint a radiation safety committee to oversee all aspects of work with radioactive materials, in addition to the requirement of a radiation safety officer. These types of licenses are generally issued to large manufacturing or research facilities, or academic institutions. This type of license does not apply to diffuse NARM; therefore, it is proposed to be repealed. Existing N.J.A.C. 7:28-4.8(a)4, which requires a licensee to appoint a radiological safety officer is proposed to be relocated to N.J.A.C. 7:28-4.7(a)3. The remaining sections in Subchapter 4 are proposed to be recodified.

N.J.A.C. 7:28-4.9 (proposed to be recodified as N.J.A.C. 7:28-4.8) contains the terms and conditions of general and specific licenses. The Commission and Department propose amended N.J.A.C. 7:28-4.9(b) to allow transfers and assignments of licenses, provided sufficient information is given to the Department by the licensee to determine that such transfers or assignments are appropriate. The proposed new language is taken directly from the NRC rule for byproduct material licensees at 10 CFR 30.34(b). N.J.A.C. 7:28-4.9(e) applies to distribution of devices as authorized by N.J.A.C. 7:28-4.8(c), proposed to be repealed. As explained above, diffuse NARM is not contained in any device, otherwise it would be classified as byproduct material and regulated elsewhere in the chapter. Accordingly, N.J.A.C. 7:28-4.9(e) is proposed to be deleted.

Existing N.J.A.C. 7:28-4.16 (proposed to be recodified as N.J.A.C. 7:28-4.15) incorporates by reference the Federal financial assurance requirements for diffuse NARM licensees. The Commission and the Department propose to amend the financial assurance requirements to apply only to unsealed sources of diffuse NARM. Sealed sources of diffuse NARM are manufactured, and are thus considered byproduct material. Financial assurance requirements for sealed sources are provided in N.J.A.C. 7:28-51.1, making the provisions of existing N.J.A.C. 7:28-4.16 redundant.

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Accordingly, proposed new N.J.A.C. 7:28-4.15(b) and (c)4 and 7 exclude from incorporation by reference the provision of the Federal rule that relates to sealed sources of diffuse NARM.

In addition, the Commission and the Department have considered the financial burden to small businesses that own water treatment facilities and have determined that instead of requiring all diffuse NARM licensees to provide financial assurance, the Department can determine this requirement on a case by case basis during its routine inspections. For example, some water treatment systems are set up and operated so that the treatment system provider is responsible for the disposal of the spent media. In addition, the buildings and grounds are periodically inspected for leakage. Some treatment systems, however, may contain treatment components that are subject to overflow and the treatment system provider is not responsible for disposing of the spent resin or providing any decommissioning services. In these situations, the Department will require the licensee to follow the financial assurance requirements of proposed amended N.J.A.C. 7:28-4.15. Therefore, proposed new N.J.A.C. 7:28-4.15(c)1 modifies the NRC provisions incorporated by reference to allow the Department to determine if financial assurance is required.

Subchapter 6: Standards for Protection against Radiation

Subchapter 6 establishes requirements for radiation protection programs, occupational dose limits, dose limits for members of the public, surveys and monitoring, access control for restricted areas, respiratory protection controls, storage and control of licensed material, labeling and posting, waste disposal, recordkeeping, reporting, and allowed concentrations in effluents from controlled areas.

As part of the Agreement State process, the Department and Commission incorporated 10 CFR Part 20 (Standards for Protection against Radiation) into Subchapter 6; however, provisions

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that relate to jurisdiction that remains with the NRC were inadvertently included, such as those relating to nuclear power plants. Accordingly, proposed new N.J.A.C. 7:28-6.1(c)8 and 12 through 15 except from the incorporation by reference those portions of 10 CFR Part 20 that remain within the NRC's jurisdiction. Existing N.J.A.C. 7:28-6.1(c)13, which excludes 10 CFR 20.2402, Criminal penalties, is proposed to be deleted. When the Agreement State rules were promulgated, the Department and Commission inadvertently excluded the criminal penalty provision at N.J.A.C. 7:28-6.1(c)13, and also incorporated it with changes at N.J.A.C. 7:28-6.1(d)25. The amended rule retains the incorporation with changes at proposed N.J.A.C. 7:28-6.1(d)27.

Proposed new N.J.A.C. 7:28-6.1(d)9 amends the definition of "person" as incorporated by reference from the NRC rules. The NRC definition refers to the Department of Energy. Because the Department and Commission have no jurisdiction over the Department of Energy, references to it in the definition are proposed to be removed.

Proposed new N.J.A.C. 7:28-6.1(d)19 incorporates 10 CFR 20.1406(c) with changes. The Federal rule, published in the Federal Register in June 2011 (76 Fed.Reg. 35512, June 17, 2011), and which was effective on December 17, 2012, requires that licensees conduct operations to minimize contamination into the ground and water during normal operations. The provision includes a reference to the Federal license termination requirements in Subpart E of the Federal rules. Because New Jersey has its own license termination requirements, proposed new N.J.A.C. 7:28-6.1(d)19 excludes Subpart E from the incorporation by reference. Instead, the new paragraph refers to N.J.A.C. 7:28-12, which contains New Jersey's license termination provisions.

Existing N.J.A.C. 7:28-6.1(d)22 and 25 through 27 reference the Supervisor, Radioactive Materials Section. There is currently no Radioactive Materials "Section." The Radioactive

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Materials Program within the Bureau of Environmental Radiation consists of two sections: Medical, and Non-Medical or Industrial. The proposed amendments correct the designation.

The proposed amendment to recodified N.J.A.C. 7:28-6.1(d)25 deletes the reference to “New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.” The NRC rule states, “Each report filed pursuant to paragraph (a) of this section must include for each occupationally overexposed individual: the name, Social Security account number, and date of birth. The report must be prepared so that this information is stated in a separate and detachable part of the report and must be clearly labeled ‘Privacy Act Information: Not for Public Disclosure.’” Removal of “Privacy Act Information” is sufficient, without the addition of a reference to the State’s Open Public Records Act.

Subchapter 12: Remediation Standards for Radioactive Materials

Subchapter 12 establishes requirements for decommissioning, terminating radioactive material licenses, and remediating contaminated sites that are either licensed or unlicensed. The NRC promulgated amendments to Subpart E of 10 CFR Part 20, which is Radiological Criteria for License Termination (license termination rule). Chapter 12 incorporates 10 CFR 20.1403(c), financial assurance requirements for sites that are released with engineering and institutional controls. The NRC amended 10 CFR 20.1403(c) to allow a one percent real rate of return on investments. (76 Fed.Reg. 35512, June 17, 2011) (effective December 17, 2012) The Department commented on the NRC proposal that this rate of return was not adequate for long lived radionuclides that will be hazardous into the far distant future, and instead suggested a sliding rate of return. The NRC did not choose to follow the suggestion in the comment, so the Department and Commission are proposing to amend the incorporation of 10 CFR 10.1403(c) by reference at

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N.J.A.C. 7:28-12.12(b)2 and 3. The NRC has designated this section of the regulations as compatibility category C for Agreement States, which means the Agreement State has discretion whether to incorporate the Federal rule into the state's rules.

In place of the verbatim incorporation of 10 CFR 10.1403(c)(1), proposed new N.J.A.C. 7:28-12.12(b)2 and 3 provides an alternative to the one percent rate of return in the Federal rules, under certain circumstances. As in the Federal rule, among the requirements for a site to be considered acceptable for license termination under restricted conditions is that the licensee provide sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site. The Federal rule states that one means of demonstrating sufficient financial assurance is to place funds into a trust segregated from the licensee's assets and outside the licensee's administrative control, and in which the adequacy of the trust funds is to be assessed based on an assumed annual one percent real rate of return on investment. (10 CFR 10.1403(c)(1)).

The proposed rule presumes an annual one percent real rate of return on investment only for those radionuclides that are short-lived (have half-lives of less than 30 years). The real rate of return may be greater than one percent, if the licensee demonstrates that a higher rate is justified based upon site-specific conditions. For longer-lived radionuclides, a one percent real rate of return may not be adequate. Decommissioned sites containing these materials may require financial assurance to endure for the thousands of years that the waste remains a hazard. Because of the uncertainty of predicting future interest rates, the Department incorporates this uncertainty into its methodology by presuming a declining real rate of return that may eventually go below one percent. An example of a declining rate of return is four percent in the first five years, three percent in years six through 25, two percent in years 26 through 75, one percent in years 75 through 300, and zero

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percent beyond year 300. The particular rate or rates of return on investment that the Department will use will be based on site-specific engineering controls and environmental conditions, and the half-lives of radionuclides of concern, in order that the Department can ensure that sufficient assets are available in the trust funds to maintain engineering controls for an appropriate period of time. “Appropriate period of time” is defined at N.J.A.C. 7:28-12.3 as “the length of time determined by the Department taking into consideration the radioactive half-life, total activity, concentration, and physical condition of the residual radioactivity, geologic stability of the area, and current and projected future demographics.”

Subchapter 18: Major Nuclear Facilities

Existing N.J.A.C. 7:28-18.1(c), which discusses the intent of the subchapter, cites to N.J.A.C. 7:28-6.1 and 6.2, and refers to the sections by the headings that were used prior to the Agreement State amendments. Subchapter 6, as amended as part of the Agreement State process, incorporates the Federal rules regarding standards for protection against radiation, 10 CFR Part 20. Therefore, the cites to sections 6.1 and 6.2 are no longer appropriate; N.J.A.C. 7:28-6.1 incorporates 10 CFR Part 20, with changes specified, and N.J.A.C. 7:28-6.2 no longer exists. Accordingly, proposed amended N.J.A.C. 7:28-18.1(c) cites generally to Subchapter 6, Standards for Protection against Radiation.

Subchapter 19: Medical Exposure to Ionizing Radiation by Radiologic Technologists

Subchapter 19 establishes rules to prevent unnecessary radiation exposure resulting from medical radiology procedures by requiring appropriate education, examination and licensing of

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individuals participating in radiologic technology. Among the duties of a Radiologic Technologist is positioning patients for certain procedures. The proposed amendments to the definition of “position patients” or “positioning patients” at N.J.A.C. 7:28-19.2 are intended to make it clear that the term is not limited to moving or placing the x-ray tube or image receptor, but also includes moving the patient, generally. The existing term limits allowable movement to only the area of the patient that is exposed to ionizing radiation. The amended term specifies that the movement of the patient, x-ray tube or image receptor is to achieve a radiographic or fluoroscopic image of human anatomy. Similarly, the portion of the definition relating to radiation treatment is proposed to be amended to refer to movement or placement of the radiation source or the patient, in order to deliver the prescribed radiation treatment. The amended definition more accurately reflects the tasks that a radiologic technologist performs.

The requirements for schools of radiologic technology are set forth at N.J.A.C. 7:28-19.13. The Radiologic Technology Board of Examiners (Board) monitors and tracks trends in the field of radiologic technology and establishes performance standards and curriculum requirements for schools of radiologic technology based these trends. (N.J.S.A. 26:2D-29c) Any changes to school performance standards and curriculum requirements are discussed in open public meetings of the Board and communicated to affected parties in writing and to the public via the Bureau of X-ray Compliance website. The proposed amendment to N.J.A.C. 7:28-19.13(f)18 replaces the numerical requirement for minimum first-time mean score and pass rate with a reference to the Board’s published minimum standards, and specifies where the standards are published. Under existing N.J.A.C. 7:28-19.13(g), schools of diagnostic radiologic technology and radiation therapy technology shall comply with the Joint Review Committee in Education for Radiologic Technology (JRCERT) Standards for an Accredited Educational Program in Radiography and Standards for an

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Accredited Program in Radiation Therapy. The proposed amended rule allows the Board to recognize other national accrediting agencies for schools of radiologic technology, if the Board determines that the national accrediting agency's standards are equivalent to the Board's standards.

Subchapter 20: Particle Accelerators for Industrial and Research Use

Subchapter 20 governs particle accelerators for Industrial and Research Use. Proposed amendments to N.J.A.C. 7:28-20.1(c), 20.6(a)7, 20.11(e), 20.11(f) and 20.12 correct cross references to Subchapters 9 and 11, which are reserved in the existing rules. Subchapter 9, prior to the Agreement State amendments, contained rules governing radioactive contamination control. Subchapter 11 contained requirements for disposal of radioactive materials. The contents of both are included in Subchapter 6, Standards for Protection against Radiation. Accordingly, references to the former subchapters are proposed to be amended to Subchapter 6.

Subchapter 22: Quality Assurance Programs for Medical Diagnostic X-ray Installations

Subchapter 22 establishes requirements for facilities to develop and implement quality assurance programs to ensure that registrants of diagnostic x-ray equipment who perform diagnostic x-ray procedures in the healing arts achieve consistent high quality imaging and improved diagnosis while reducing unnecessary radiation to the patients and workers.

At N.J.A.C. 7:28-22.2 the proposed amendments to the definition of "initially" and to N.J.A.C. 7:28-22.3(a) remove cross references to N.J.A.C. 7:28-22.14. The compliance date at N.J.A.C. 7:28-22.14 for initially implementing the quality assurance regulations has passed. Facilities will continue to have 60 days from the date of acquiring new x-ray equipment to implement quality assurance programs.

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Proposed amended N.J.A.C. 7:28-22.4(a)7 specifies that the registrant must have a quality assurance program and manual that describe how the registrant and the qualified medical physicist will review the quality assurance (QA) program annually. This QA review should be performed at the same time as the annual medical physicist's radiographic quality control (QC) survey, which is governed under N.J.A.C. 7:28-22.8. The proposed amendment adds "not to exceed 14 months" to the time requirement for the QA annual review to align with the annual requirement of the medical physicist's radiographic QC survey.

Proposed amendments to N.J.A.C. 7:28-22.5(j), 22.6(i) and 22.7(j) indicate the length of time that QC test records, including films and digital images, must be maintained by the registrant. Proposed new N.J.A.C. 7:28-22.5(j)1, 22.6(j)1 and 22.7(j)1 continue the requirements of existing 22.5(j), 22.6(j) and 22.5(j) that test records for certain radiographic quality control requirements be maintained for at least a year. Proposed new N.J.A.C. 7:28-22.5(j)2, 22.6(j)2 and 22.7(j)2 and N.J.A.C. 7:28-22.5(j)3, 22.6(j)3 and 22.7(j)3 refer to test films and digital images produced in the performance of these QC tests. Films and digital images produced during the performance of daily QC tests must be maintained for only 30 days (N.J.A.C. 7:28-22.5(j)2, 22.6(j)2 and 22.7(j)2). The Department realizes that maintaining daily QC test films and digital images for an entire year would be burdensome on the registrant. Films and digital images relating to tests that are taken less frequently (N.J.A.C. 7:28-22.5(j)3, 22.6(j)3 and 22.7(j)3) must be kept for one year. The proposed new rules at N.J.A.C. 7:28-22.5(j), 22.6(j) and 22.7(j) require the quality control data to be recorded on a form available from the Department, or a comparable form containing the same information. The Department makes QC forms available at www.xray.nj.gov. Various physics groups, imaging companies and accreditation bodies have developed forms that are also acceptable.

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Medical physicist's radiographic QC surveys are regulated under N.J.A.C. 7:28-22.8.

Existing N.J.A.C. 7:28-22.8(f)4 requires the medical physicist to review the completed QC test records that have been performed properly by the registrant, in order to ensure that the tests were performed. In fact, the medical physicist must review all the QC test records (not just those that were properly performed) in order to determine whether the tests were performed properly. The proposed amendment to N.J.A.C. 7:28-22.8(f)4 makes the correction.

N.J.A.C. 7:28-22.8(f)5 governs the medical physicist's report regarding the overall quality assurance program being carried out by the registrant. Existing N.J.A.C. 7:28-22.8(f)5i requires that the report contain "raw data, results and recommendations of the medical physicist's equipment tests." Equipment tests cannot give recommendations; accordingly, the proposed amended rule requires the report to contain the raw data and results of the tests, and the medical physicist's recommendations based on those tests. Similarly, proposed amended N.J.A.C. 7:28-22.8(f)5ii requires the report to contain recommendations based on the medical physicist's review. The proposed amendments to N.J.A.C. 7:28-22.9(f)3i and ii, applicable to the medical physicist's fluoroscopic QC survey, and N.J.A.C. 7:28-22.10(e)5i and ii are the same as proposed for N.J.A.C. 7:28-22.8(f)5i and ii.

N.J.A.C. 7:28-22.9 governs the medical physicist's fluoroscopic QC survey. Under existing N.J.A.C. 7:28-22.9(b)1, a medical physicist may not delegate performance testing for the half-value layer (item 8 in Table 5) to anyone, including a medical physicist assistant (MPA). The Commission has determined that MPAs are qualified to perform this test and the Commission has permitted this practice since 2007 through an approved exemption under N.J.A.C. 7:28-2.8, Special exemptions. The proposed amendment will eliminate the need for MPAs to request this exemption.

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Existing N.J.A.C. 7:28-22.9(b)2 prohibits a medical physicist from delegating performance testing under Table 5 for fluoroscopic equipment that is digital or located in a dedicated interventional special procedure suite. The proposed amendment allows delegation of performance testing on digital equipment that is not located in a dedicated interventional special procedure suite. This proposed amendment is consistent with an existing exemption issued by the Commission for properly trained MPAs in accordance with N.J.A.C. 7:28-2.8, Special exemptions.

Proposed amendments to N.J.A.C. 7:28-22.9(f)3ii and 22.10(e)5ii correct references to items listed in the Tables for the medical physicist fluoroscopic and computed tomography surveys. The intent of the medical physicist's review is to evaluate the facility's quality assurance program and make any recommendations for improvement. This review is referenced in Table 5 as test item 11 and Table 6 as test item 13. The existing regulations incorrectly refer to Table 5 item 12 and Table 6 item 14, which are different tests.

Qualifications of medical physicists and MPAs are set forth at N.J.A.C. 7:28-22.12. Under N.J.A.C. 7:28-22.12(d), a qualified MPA must meet certain requirements before he or she may perform the duties as a qualified MPA in fluoroscopy. Among the requirements is documenting to the satisfaction of the Department that the individual has received training and instruction on performing QC tests and has performed quality control tests 1 through 7, 9 and 10 of Table 5. Item 8 of Table 5 is not among the existing requirements, because a medical physicist is not allowed under existing N.J.A.C. 7:28-22.9(b)1 to delegate that task. The proposed amendment adds item 8 to the requirements of N.J.A.C. 7:28-22.12(d) to correspond to proposed amended N.J.A.C. 7:28-22.9(b)1.

N.J.A.C. 7:28-22.14, Compliance schedule, is proposed to be repealed. The rule provides a schedule for implementing the quality assurance regulations. The implementation time period has

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passed. The remaining provisions of the subchapter allow facilities with new x-ray equipment 60 days from the date the equipment is acquired to implement a QA program. (See N.J.A.C. 7:28-22.2, definition of “initially”; 7:28-22.5, Table 1; 7:28-22.6, Table 2; and 7:28-22.7, Table 3.)

Subchapter 41: Mercury Vapor Lamps

Subchapter 41 establishes safety requirements for the installation and use of mercury vapor lamps in indoor and outdoor areas that may be occupied by people. The definition of “new facility” at N.J.A.C. 7:28-41.2 is proposed to be deleted. The term is not used in the subchapter. N.J.A.C. 7:28-41.3(b) and 7:28-41.4(c) require the provisions of the respective sections to be met within a year of the operative date of the subchapter. Because the subchapter was operative in 1981, the compliance date has long passed; therefore, these sections are no longer relevant and all facilities should be in compliance with the subchapter.

Subchapters 50 through 64: Agreement State regulations for licensees with source, certain special nuclear, and byproduct materials.

Subchapters 50 through 64 incorporate the NRC regulations by reference. Some proposed amendments to Subchapters 51 through 63 are similar; therefore, they will be discussed at once, rather than repeated in each subchapter summary. Only amendments unique to a specific subchapter are identified in the summary of the subchapter.

Common corrections affecting Subchapters 50 through 63

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When Subchapters 50 through 63 were adopted as part of the Agreement State process, they included provisions pertaining to nuclear power plants, gaseous diffusion plants, Federal agencies, Federal facilities, or Indian tribes that were inadvertently left in the original incorporation. The State does not regulate nuclear power plants, gaseous diffusion plants, Federal agencies, Federal facilities, or Indian tribes; accordingly, proposed amendments remove references that relate to such entities. For example, proposed new N.J.A.C. 7:28-50.1(b)3 removes 10 CFR 19.11(b) from incorporation by reference because it refers to nuclear power plants. (See proposed amended N.J.A.C. 7:28-50.1 (b)3 and 4; 50.1(c)4, 10, 13, 17, 19, 21; and N.J.A.C. 7:28-51.1(b)1; and 51.1(c)4, 5, 72, and 73.) Other proposed amendments replace references to the Federal rules with references to subchapters of the Radiation Protection Program rules, N.J.A.C. 7:28, update address and telephone information, and replace references to the Radioactive Materials Section with the new designation, "Radioactive Materials Program." References to the NRC Reorganization Act are proposed to be replaced by the Radiation Protection Act of 1958, N.J.S.A. 26-2D-1 et seq. References to NRC Form 3, "Notice to Employees," are proposed to be replaced with references to the Department's Form RPP-14, "Notice to Employees, Standards for Protection Against Radiation."

When the NRC changed the Atomic Energy Act to include discrete sources of radium-226 and accelerator-produced radioactive materials under the definition of byproduct material, there was a waiver issued to states that were not yet Agreement States so that they could continue to regulate these materials until August of 2009. As New Jersey became an Agreement State in September 2009, and August 2009 has passed, proposed amendments remove the incorporation by reference of the waiver provision. (See proposed amended N.J.A.C. 7:28-51.1(b)1, 53.1(b)1 and 55.1(b)1 and (b)4.)

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The existing rules are not consistent in incorporating definitions by reference. In some subchapters, the existing rules did not incorporate by reference the Federal definition if the term is also defined in Subchapter 1, although this is not the case in all Agreement State subchapters (Subchapters 50 through 63). The Department and Commission propose to incorporate Federal definitions into individual subchapters, even though the same term may also be defined in N.J.A.C. 7:28-1. See, for example, proposed amended N.J.A.C. 7:28-51.1(b)2. As proposed to be amended, the rules allow the regulated community to refer to the Federal rules for both the definitions and the substantive provisions of Subchapters 50 through 63. Where there is a conflict between the definition in N.J.A.C. 7:28-1 and the Federal rule, the Commission and Department do not incorporate the Federal definition, but will modify the language of the Federal rule as incorporated by reference. For example, “Act” is defined at N.J.A.C. 7:28-1.4 as the New Jersey Radiation Protection Act, N.J.S.A. 26:2D-1 et seq. When the Federal rule refers to “Act,” it means the Atomic Energy Act of 1954 (68 Stat. 919). Therefore, the proposed amendments do not incorporate the definition of “Act” by reference. See, for example, proposed amended N.J.A.C. 7:28-51.1(b)2.

In some instances the Federal rules incorporated by reference refer to “equivalent regulations of an Agreement State.” See, for example, proposed N.J.A.C. 7:28-63.1(c)32, incorporating 10 CFR Part 34, Licenses for Industrial Radiography Using Sealed Sources and Radiation Safety Requirements for Such Industrial Radiographic Operations. The proposed amendments add “or the US NRC.” Because some states, such as Delaware, are not Agreement States, their radioactive materials are regulated under NRC regulations; therefore, New Jersey’s rules must state that the NRC rules, as well as another Agreement State, are equivalent to New Jersey’s rules.

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The State's rules concerning violations are set forth at N.J.A.C. 7:28-2.13, Violations. The Radiation Protection Act at N.J.S.A. 26:2C-22 provides for criminal sanctions. Accordingly, it is not necessary for the rules to incorporate by reference Federal rules regarding violations or criminal sanctions. The proposed amendments remove from incorporation by reference the Federal provisions regarding violations and criminal sanctions, and replace them with reference to State provisions. Similarly, NRC regulations refer to civil penalties or orders issued under 10 CFR Part 2, Subpart B. The Commission and the Department propose to delete the reference to subpart B of part 2 because the Department has its own rules regarding civil penalties and orders. (See, for example proposed N.J.A.C. 7:28-50.1(c)14.)

In instances where the NRC regulations refer to non-Agreement States, proposed amendments replace "any non-Agreement State" with "the State of New Jersey, where the Department maintains jurisdiction." This language is necessary because if it were not inserted, there would be no reference to the Department's authority in these sections. For example, in 10 CFR 31.6, a specific licensee in another Agreement State is granted a general license to perform specific functions in any non-Agreement State. The proposed amendments at N.J.A.C. 7:28-52.1(c)14 and 15 allow someone granted a specific license by an Agreement State or the NRC to perform specific functions in New Jersey's jurisdiction. The proposed incorporated and modified Federal rule provides, "Any person who holds a specific license issued by an Agreement State or the NRC authorizing the holder to manufacture, install, or service a device described in § 31.5 within such Agreement State or within NRC jurisdiction is hereby granted a general license to install and service such device in [any non-Agreement State] the State of New Jersey, where the Department maintains jurisdiction..." (Proposed additions are indicated with underlines, deletions with brackets).

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The Department and Commission propose to replace NRC exemptions with Department requirements for exemptions; specifically, exemptions will be granted by the Department with approval from the Commission, as long as they comply with the requirements of N.J.A.C. 7:28-2.8, Special exemptions.

When the NRC regulations refer to an Agreement State that regulates radioactive material pursuant to an agreement under section 274 of the Act, the proposed amendments clarify that in these instances, “Act” refers to the Atomic Energy Act of 1954 (68 Stat. 919), including any amendments. “Act” would not mean the Radiation Protection Act in these instances, as it does elsewhere in the chapter.

Where agency contact information is provided, the proposed amendments refer to N.J.A.C. 7:28-1.5, Communications, which contains the Department’s address, phone number, and 24 hour contact information in case of emergencies. Also, wherever the Director of the Office of Federal and State Materials and Environmental Management Programs is referred to in the NRC regulations, the proposed amendments replace this wording with “Radioactive Materials Program,” which is the relevant State program.

The existing rules replace citations to NRC regulations with citations to relevant subchapters of the State’s rules. For example, existing N.J.A.C. 7:28-58, which incorporates 10 CFR Part 40, Domestic Licensing of Source Material, at N.J.A.C. 7:28-58.1(c)20 replaces a reference to 10 CFR Part 30 with Subchapter 51 (N.J.A.C. 7:28-51), which incorporates 10 CFR Part 30 by reference. The proposed amended rules continue to replace references to entire subparts of the Federal rules with references to the relevant subchapter of the State’s rules. However, if a specific Federal rule applies, the proposed amendments delete the general New Jersey Administrative Code subchapter references. For example, existing N.J.A.C. 53.1(c)5 replaces the cite to 10 CFR 20.1201(a) with a

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general reference to N.J.A.C. 7:28-6, where 10 CFR Part 20, Standards for Protection Against Radiation, is incorporated by reference. Proposed amendments to N.J.A.C. 53.1 delete general reference to N.J.A.C. 7:28-6, leaving the specific reference in the Federal rules intact. The rule remains incorporated into the State's rules, but there is no need for the regulated community to refer back to N.J.A.C. 7:28-6, which tells the reader to refer to 10 CFR Part 20. In instances such as at proposed N.J.A.C. 7:28-51.1(c)49, where the specific NRC citation is not incorporated by reference, the State's rule will continue to refer to the relevant subchapter of Radiation Protection Program rules, which in this example is N.J.A.C. 7:28-12, Remediation Standards for Radioactive Materials.

Subchapter 50: Notices, Instructions and Reports to Workers: Inspection and Investigations

Subchapter 50 incorporates by reference the Federal regulations at 10 CFR Part 19, Notices, Instructions and Reports to Workers: Inspection and Investigations. The subchapter establishes requirements for notices, instructions, and reports by licensees to individuals participating in licensed activities.

Proposed N.J.A.C. 7:28-50.1(b)4 adds 10 CFR 19.14(a) to the sections not incorporated by reference. The Federal rule at 10 CFR 19.14(a) is applicable only to nuclear power plants. Because the NRC retains jurisdiction over nuclear power plants, it is not incorporated into the State's rules. (See the NRC's Compatibility Tables at <http://nrc-stp.ornl.gov/regulationtoolbox/10cfr19.pdf>.)

Existing N.J.A.C. 7:28-19.1(c)1 is proposed to be recodified as 19.1(c)3. Proposed N.J.A.C. 7:28-19.1(c)1, replacing references to the Atomic Energy Act of 1954 with the Radiation Protection Act of 1958, is new. This amendment places the general replacements in the chapter first, and the specific changes later. Proposed N.J.A.C. 7:28-50.1(c)5 deletes from incorporation by reference

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the provision regarding subpoenas issued under NRC regulations. This provision does not apply to the Department.

The remaining proposed amendments to the subchapter are discussed in the summary of general changes to Subchapters 50 through 63, above.

Subchapter 51: Rules of General Applicability to Domestic Licensing of Byproduct Material

Subchapter 51, Rules of General Applicability to Domestic Licensing of Byproduct Material, incorporates by reference provisions of 10 CFR Part 30, which contains rules generally applicable to domestic licensing of byproduct material. The subchapter establishes requirements for exemptions, specific and general licensing, inspections, record keeping, testing and reporting, and includes enforcement provisions.

Proposed amended N.J.A.C. 7:28-51(b) restores the definitions of “byproduct material,” “curie,” “decommission,” “effective dose equivalent,” “government agency,” “license,” “medical use,” “person,” “source material” and “special nuclear material” to the definitions incorporated by reference. As explained in the summary of common amendments above, this approach will assist the regulated community by having all the definitions pertinent to a subchapter available at that subchapter, rather than requiring the reader to refer to Subchapter 1 for a definition.

Proposed new N.J.A.C. 7:27-28-51.1(b)6 exempts 10 CFR 30.11(b) and (c) from incorporation by reference because the provisions of the Federal rule refer to entities under NRC’s sole jurisdiction (spent nuclear fuel, high-level radioactive waste, and reactor-related greater than class C waste; and the U.S. Department of Energy). Proposed new N.J.A.C. 7:28-51.1(b)8 and 9 add 10 CFR 30.32(f) and 30.33(a)(5) to those items not incorporated by reference. Both of these

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sections refer to the Federal requirements of the National Environmental Policy Act and do not apply to the State.

Because the NRC repealed 10 CFR 30.16, existing N.J.A.C. 7:27-51.1(c)10, which relates to the Federal provision, is proposed to be deleted. Proposed N.J.A.C. 7:28-51.1(c)17 clarifies that in 10 CFR 30.12 “Department” refers to the Department of Energy, and “Commission” refers to the NRC. This proposed rule exempts prime contractors of the Department of Energy from the requirement to obtain a license with New Jersey. Similarly, proposed N.J.A.C. 7:28-51.1(c)36 specifies that in this instance Commission refers to the NRC. The relevant Federal rule refers to sealed source devices that have been evaluated by either the NRC or an Agreement State. Because New Jersey did not accept responsibility for evaluating sealed source devices, the NRC retains jurisdiction over this function.

Proposed N.J.A.C. 7:28-51.1(c)41 deletes the NRC form reference. No corresponding State form number is provided because the Department does not have a form number for its licenses. Proposed N.J.A.C. 7:28-51.1(c)50 replaces NRC with NJRAD, to indicate that the licensee must use the Department’s form for disposition of materials. In many cases, the Department retains the NRC’s form numbers, but uses the designation “NJRAD” to indicate that it is a Department form.

Proposed N.J.A.C. 7:28-51.1(c)57 specifies that “Department” means Department of Energy. Elsewhere in the chapter, “Department” refers to the New Jersey Department of Environmental Protection. This section of the NRC regulations allows the transfer of byproduct materials to the Department of Energy without the need for a radioactive materials license. Proposed N.J.A.C. 7:28-51(c)62 requires submission of immediate and 24 hour reports to the Department, rather than the NRC Operations Center. Proposed N.J.A.C. 7:28-51.1(c)70 deletes

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“section 182” because that section of the Federal rule refers to the Atomic Energy Act. As replaced for purposes of this subchapter, “Act” means the Radiation Protection Act, N.J.S.A. 26:2C-1, et seq. The information the NRC regulation refers to is provided in section 9 of the Radiation Protection Act and in the Radiation Protection Program rules, N.J.A.C. 7:28.

The remaining proposed amendments to the subchapter are discussed in the summary of general changes to Subchapters 50 through 63.

Subchapter 52: General Domestic Licenses for Byproduct Material

Subchapter 52, General Domestic Licenses for Byproduct Material, incorporates by reference 10 CFR Part 31, which contains rules establishing general licenses for the possession and use of byproduct material and a general license for ownership of byproduct material. The subchapter establishes requirements for general licenses for certain detecting, measuring, gauging, controlling, and certain devices for producing light or an ionized atmosphere; luminous safety devices; calibration or reference sources; ice detection devices; in vitro clinical or laboratory testing; and self-luminous products containing radium-226.

Proposed new N.J.A.C. 7:28-52.1(c)32 replaces “part 110 of this chapter” with a citation to 10 CFR Part 110. A general reference to “this chapter” is confusing, and could refer either to the Federal rules or the State’s Radiation Protection Program rules at N.J.A.C. 7:28. The NRC retains jurisdiction over the export of radioactive materials, to which 10 CFR Part 110 applies.

The remaining proposed amendments to the subchapter are discussed in the summary of general changes to Subchapters 50 through 63.

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Subchapter 53: Specific Domestic Licenses to Manufacture or Transfer Certain Items

Containing Byproduct Material

Subchapter 53, Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material, incorporates by reference 10 CFR Part 32, which prescribes requirements for the issuance of specific licenses to manufacture or transfer certain items containing byproduct material. In particular, the subchapter applies to specific licenses for persons who manufacture or initially transfer items containing byproduct material for sale or distribution to persons exempted from the licensing requirements of 10 CFR Part 30, incorporated by reference at proposed N.J.A.C. 7:28-51, or persons generally licensed under 10 CFR Part 31 or 10 CFR Part 35, incorporated by reference at proposed N.J.A.C. 7:28-52 and 55, respectively. The subchapter prescribes certain regulations governing holders of these licenses and addresses exempt concentrations and items, generally licensed items, and specifically licensed items.

The Commission and the Department propose to delete existing N.J.A.C. 7:28-53.1(b)19, which excludes 10 CFR 32.40, Schedule A-Prototype tests for automobile lock illuminators, from incorporation by reference. This section was removed from NRC regulations on October 16, 2007; therefore, it is unnecessary for it to be excluded from incorporation by reference.

Proposed amended N.J.A.C. 7:28-53.1(c)9 replaces the NRC reference to “§ 32.11” with the full citation to 10 CFR 32.11. The Federal rule pertains to introducing exempt concentrations of byproduct materials into products, over which the NRC retains jurisdiction. The use of the full citation makes it clear that the section at issue is in the Federal rule.

The remaining proposed amendments to the subchapter are discussed in the summary of general changes to Subchapters 50 through 63.

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Subchapter 54: Specific Domestic Licenses of Broad Scope for Byproduct Material

Subchapter 54, Specific Domestic Licenses of Broad Scope for Byproduct Material, incorporates by reference 10 CFR Part 33. The proposed amendments to the subchapter are discussed in the summary of general changes to Subchapters 50 through 63.

Subchapter 55: Medical Use of Byproduct Material

Subchapter 55, Medical Use of Byproduct Material, contains the requirements and provisions for the medical use of byproduct material and for issuance of specific licenses authorizing the medical use of this material. These requirements and provisions provide for the radiation safety of workers, the general public, patients, and human research subjects.

Proposed new N.J.A.C. 7:28-55.1(c)10 changes the designation of the form required for initial application or renewal of a license. In many cases, the Department retains the NRC's form numbers, but uses the designation "NJRAD" to indicate that a Department form is required, rather than the NRC's form. Proposed new N.J.A.C. 7:28-55.1(c)11 states that the Department will accept either a letter or an application for an amendment request, but requires NJRAD Form 313 for a renewal request. NRC requires the NRC Form 313 for an amendment or renewal.

Proposed new N.J.A.C. 7:28-55.1(c)20 adds a cross reference to N.J.A.C. 7:28-2.8, Special exemptions, which applies to Department exemption requests. The Federal rules regarding exemptions are not applicable.

The remaining proposed amendments to the subchapter are discussed in the summary of general changes to Subchapters 50 through 63.

Subchapter 56: Licenses and Radiation Safety Requirements for Irradiators

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Subchapter 56 incorporates by reference 10 CFR Part 36, which provides requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials using gamma radiation. The proposed amendments to the subchapter are discussed in the summary of general changes to Subchapters 50 through 63.

Subchapter 57: Licenses and Radiation Safety Requirements for Well Logging

Subchapter 57, Licenses and Radiation Safety Requirements for Well Logging, incorporates by reference the Federal regulations at 10 CFR Part 39, which set forth the requirements for well logging including the application process, inspection and maintenance of equipment, radiation safety requirements, and security, records and notification requirements.

At proposed N.J.A.C. 7:28-57.1(c)1i and ii, the Commission and the Department are correcting an omission from the previous adoption that clarifies that “Commission” means the NRC in 10 CFR 39.41(f), Design and performance criteria for sources in regards to registration of energy compensation sources, and in 10 CFR 39.63(l), Operating and emergency procedures with regard to identifying and reporting to the NRC defects and noncompliance as required by 10 CFR Part 21. The Commission and the Department did not adopt 10 CFR Part 21 by reference. Accordingly, the substitutions at existing N.J.A.C. 7:28-57.1(c) should not apply, as they would in the absence of the proposed new provisions.

The remaining proposed amendments to the subchapter are discussed in the summary of general changes to Subchapters 50 through 63.

Subchapter 58: Domestic Licensing of Source Material

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Subchapter 58, Domestic Licensing of Source Material, incorporates by reference 10 CFR Part 40, which governs domestic licensing of source material including exemptions, general and specific license requirements, timeliness of decommissioning, financial assurance requirements for decommissioning, transfer of source material, and requirements pertaining to records, reports, and inspections. In its agreement with the NRC, the Department did not accept responsibility for byproduct material as defined in section 11(e)2 of the Atomic Energy Act. The Federal definition of byproduct material under 10 CFR Part 40 means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content. Therefore, any regulation related to this material was not incorporated into the State's rules.

As explained above, the existing rules are inconsistent regarding incorporation of definitions from the Federal rules. The proposed amendments to N.J.A.C. 7:28-58.1(b)2 incorporate the definitions of "decommission" and "license" even though they are defined in N.J.A.C. 7:28-6, in order that the regulated community can reference the relevant definitions in one place (the Federal rule). In addition, proposed N.J.A.C. 7:28-58.1(b)2 removes "byproduct material" as defined in 10 CFR Part 40. As explained above, because the Department did not assume regulatory authority for byproduct material as defined in 10 CFR Part 40, it does not apply to New Jersey's licensees. For the same reason, proposed new N.J.A.C. 7:28-58.1(c)3 replaces "source and byproduct material" in 10 CFR Part 40 with only source material.

The Commission and the Department propose to include 10 CFR 40.31(m) in N.J.A.C. 7:28-58.1(b), which contains those sections not incorporated by reference. The Federal rule was promulgated on October 24, 2008, after the Department incorporated the Federal rules as part of the

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Agreement State process. The Federal rule applies to security requirements of uranium hexafluoride production or conversion facilities, for which the NRC retains jurisdiction.

The remaining proposed amendments to the subchapter are discussed in the summary of general changes to Subchapters 50 through 63.

Subchapter 59: Licensing Requirements for Land Disposal of Radioactive Waste

Subchapter 59, Licensing Requirements for Land Disposal of Radioactive Waste governs the licensing requirements for land disposal of radioactive waste, and incorporates by reference 10 CFR Part 61. The proposed amendments to the subchapter are discussed in the summary of general changes to Subchapters 50 through 63.

Subchapter 60: Domestic Licensing of Special Nuclear Material

Subchapter 60, Domestic Licensing of Special Nuclear Material, incorporates by reference 10 CFR Part 70, which governs domestic licensing of special nuclear material. Proposed N.J.A.C. 7:28-60.1(b)15 specifies that only 10 CFR 70.25(a)(1) is not incorporated by reference. The existing rule indicates that all of 10 CFR 70.25(a) is not incorporated. The Federal rule at 10 CFR 70.25(a) refers to the calculations necessary to determine if financial assurance is required. This section is necessary for the State's special nuclear material licensees. The Department does not regulate uranium enrichment facilities, which are discussed at 10 CFR 70.25(a)(1).

Existing N.J.A.C. 7:28-60.1(b)24 erroneously excepted 10 CFR 70.56, Tests, from incorporation by reference. The Federal rule refers to requirements for the licensee, or the Department, to perform such tests as necessary for the administration of the regulations, including

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the testing of radiation detection and monitoring equipment. Similar sections were adopted by the Department for byproduct material (10 CFR Part 30) and source material (10 CFR Part 40).

Therefore, the Commission and the Department propose to delete it from N.J.A.C. 7:28-60.1(b).

The modification of the Federal rule at existing N.J.A.C. 7:28-60.1(c)24 remains.

Proposed amendments to N.J.A.C. 7:28-60.1(c)24 delete “produce” and “production” from 10 CFR 70.56 because the NRC retains jurisdiction over facilities that produce special nuclear materials.

The remaining proposed amendments to the subchapter are discussed in the summary of general changes to Subchapters 50 through 63.

Subchapter 61: Packaging and Transportation of Radioactive Material

Subchapter 61, Packaging and transportation of radioactive material, establishes requirements for packaging, preparation for shipment, and transportation of licensed material, and incorporates by reference 10 CFR Part 71. The Commission and the Department propose to add the heading of 10 CFR Part 71.0, which is “Purpose and Scope.” The heading was inadvertently left out of the existing rule at N.J.A.C. 7:28-61.1(c)1i.

The remaining proposed amendments to the subchapter are discussed in the summary of general changes to Subchapters 50 through 63.

Subchapter 62: Reciprocity

Subchapter 62, Reciprocity, incorporates by reference only the portions of the Federal regulation at 10 CFR Part 150 that relate to reciprocity. Other sections that are incorporated, such

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as definitions, are an integral part of the requirements of reciprocity. 10 CFR Part 150 also defines activities in the State and in offshore waters, over which the NRC retains authority.

Proposed amended Subchapter 62 is retitled “Reciprocity,” to more accurately describe the contents of the subchapter. Only the reciprocity provisions of 10 CFR Part 150 are incorporated by reference into the subchapter. The proposed amended heading is intended to assist the regulated community by indicating where in the rules the reciprocity requirements are located.

Amendments proposed throughout the subchapter indicate that New Jersey will recognize specific licenses from other Agreement States or the NRC. Recognition of these licenses from other jurisdictions will allow these licensees to work in New Jersey temporarily. Proposed amendments remove all references to areas of exclusive Federal jurisdiction and offshore waters. Government facilities, such as military bases, and veterans administration hospitals remain under NRC regulatory authority, as do any licensed operations in offshore waters.

Proposed amendments to N.J.A.C. 7:28-62.1(b)1 remove definitions that do not pertain to reciprocity, but apply only to those functions that are exclusively regulated by the NRC, including operations in off shore waters, operations involving byproduct material as defined in section 11(e)(2) of the Atomic Energy Act, and special nuclear material in quantities sufficient to form a critical mass. Proposed new N.J.A.C. 7:28-62.1(c)10 indicates that Form 241 refers to a Department form and not a NRC form.

The remaining proposed amendments to the subchapter are discussed in the summary of general changes to Subchapters 50 through 63.

Subchapter 63: Licenses for Industrial Radiography Using Sealed Sources and Radiation Safety Requirements for such Industrial Radiography Operations

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Subchapter 63, Licenses for Industrial Radiography Using Sealed Sources and Radiation Safety Requirements for such Industrial Radiography Operations, prescribes requirements for the issuance of licenses for the use of sealed sources containing byproduct material and radiation safety requirements for persons using these sealed sources in industrial radiography. The subchapter incorporates by reference the Federal regulations at 10 CFR Part 34.

Existing N.J.A.C. 7:28-63.1(c)7 could be interpreted as requiring multiple copies of a test that reveals a leaking source to be sent to the Department, because the existing replacement language at 10 CFR 34.27(d) instructs that a copy be sent to the Manager, Bureau of Environmental Radiation, instead of to the NRC's Regional Office. The remaining provisions of 10 CFR 34.27(d) require a copy to be sent to the Director, Nuclear Material Safety and Safeguards (amended in 2011 to Director, Office of Federal and State Materials and Environmental Management Programs), which is replaced at existing N.J.A.C. 7:28-63.1(c)6 with Manager, Bureau of Environmental Radiation. The Department requires only one copy. Accordingly, proposed amended N.J.A.C. 7:28-63.1(c)13 removes the requirement of a second copy.

The Commission and the Department propose to amend 10 CFR 34.41(c) to delete the reference to underwater radiography in offshore waters. The NRC has retained jurisdiction over operations involving radioactive materials in offshore waters; therefore, the Commission and the Department propose to delete "offshore platform" from this section of the regulation.

The remaining proposed amendments to the subchapter are discussed in the summary of general changes to Subchapters 50 through 63.

Subchapter 64: Radioactive Materials License Fees

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Subchapter 64, Radioactive Materials License Fees, establishes the fees associated with each licensing category. Categories are incorporated by reference from 10 CFR 171.16. The calculation of fees was discussed in the Economic Impact when the Agreement State rules were proposed. (See 40 N.J.R. 2360-2366.)

The existing rule incorrectly includes references to NRC regulations in the fee table when the references should have been replaced by relevant citations to N.J.A.C. 7:28. Proposed amendments to N.J.A.C. 7:28-64.2 make the corrections.

Proposed new N.J.A.C. 7:28-64.2(h) explains certain fees in Tables 1 and 2 of N.J.A.C. 7:28-64.2, Schedule of fees. The Radiation Protection Act at N.J.S.A. 26:2D-9 authorizes the Department to establish and charge fees for the services it performs. The calculation of fees may be based on the actual or projected expense to be incurred by the Department in the performance of services. Where a specific annual fee can be calculated, Tables 1 and 2 provide for a fixed sum. The calculation of the fees was set forth in the Economic Impact of the Agreement State rules, 40 N.J.R. at 2360. However, some of the fees set forth in the table do not lend themselves to either an annual fee, or a fixed sum, because the activities for which the fees are charged take place infrequently or at unpredictable times, or vary in the amount of time that they take, such that a fixed fee is inappropriate. For these categories of fees existing Tables 1 and 2 at N.J.A.C. 7:28-64.2 identify the fee as “full cost,” rather than a fixed sum; however, “full cost” is not defined. Proposed new N.J.A.C. 7:28-64.2(h) states that for a fee identified as “full cost,” the licensee shall pay the actual costs of the Department in providing the service, the components of which include labor (including fringe and indirect costs), transportation, per diem, materials, legal fees, and monitoring costs. The components of “full cost” as identified in the proposed rule are consistent with the components of the fixed fees, as set forth in the Economic Impact for the Agreement State rules, in

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which the Department discussed the salary of relevant full time employees, fringe benefits and indirect costs. (40 N.J.R. at 2363)

Table 2 of the Schedule of Radioactive Materials Annual Fees is proposed to be amended to correspond with the proposed amendments to Subchapter 4 regarding general licenses for community and non-community water systems. The fee categories for non-transient non-community water systems treating equal to or less than 1000 gallons per day and non-transient non-community water systems treating more than 1000 gallons per day are proposed to be amended to add a condition “with accumulated activity of radium greater than or equal to 10 uCi. If the accumulated activity is less than 10 uCi of radium, the system is eligible for registration under a general license, which is a new category added to Table 2, at item 6, General License Registration for Community or Non-Community Water Treatment Systems. As discussed in the summary of proposed amended N.J.A.C. 7:28-4.5, the Department does not anticipate that a community water system that treats for radium will be eligible for the general license requiring registration, because the amount of radium in the water system would likely exceed the minimum; nevertheless, the Department is including such systems in the proposed amended fee description.

Proposed amended Table 2 contains two new categories of X-ray fluorescence devices. Prior to the Agreement State amendments in 2008, N.J.A.C. 7:28-4 prescribed fees for the categories of X-ray fluorescence devices, but the categories were omitted from Table 2 during the Agreement State process. (40 N.J.R. 2309-2399) The proposed amended fee categories are a government body, department, agency, authority, or any other unit of any state, Federal, county or local government using X-ray fluorescence devices, mainly for lead paint analysis; and all others using X-ray fluorescence devices. The addition of the new categories has the effect of lowering the annual fee for all X-ray fluorescence devices by at least 40 percent. Because there is no specific

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category for X-ray fluorescence devices in the existing rule, the equipment falls within the category 3P -All other specific byproduct material licenses, for which the fee is \$2,065.

The Commission and the Department propose to amend the description of the fee at Table 2, number 5, from “Generally Licensed Devices” to “Devices under a General License Requiring Registration.” The fee remains applicable solely to those devices requiring registration. The Department maintains a list of more than 100,000 generally licensed devices, including tritium exit signs. The Department does not charge a fee for these devices. The fee is only for those devices requiring registration under N.J.A.C. 7:28-52.1, which incorporates by reference the Federal rules applicable to general domestic licenses for byproduct material.

Amendments are proposed regarding terminated licenses. Existing N.J.A.C. 7:28-64.4(d) specifies that no refund will be provided if a license is terminated. Because the Department bills licensees prospectively, the proposed amended rule allows for a refund based on the day that sufficient information is provided that allows the Department to terminate the license. If a licensee provides sufficient information during the first half of the fiscal year for the Department to determine that a facility can be released for unrestricted use, the Department will refund half of the annual assessment paid. No refund will be provided if the licensee provides the information during the second half of the fiscal year. This approach may have an added benefit of encouraging licensees to expeditiously complete the steps to allow facilities to be released for unrestricted use. Until a licensee pays its applicable annual fee, as well as any outstanding penalty assessments, the Department will not approve an amendment request to terminate a license or release a facility for unrestricted use. As noted in the summary of proposed amendments to N.J.A.C. 7:28-2.13 above, until a license is terminated, the licensee’s obligations under the license continue. Moreover, the licensee may not sell or lease the property.

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Social Impact

N.J.A.C. 7:28 was first promulgated in 1969 to protect the public and radiation workers from unnecessary exposure to radiation. Radiation is known to cause cancer and other adverse health effects in humans, and there are ongoing legitimate concerns about the adverse effects caused by overexposure to radiation, particularly as the use of radioactive materials and the use of ionizing and nonionizing radiation-producing machines for industrial, commercial, and medical applications continues to rise. The increased use of such materials and devices results in increased exposure to radiation and increased associated risks.

Radiation is ubiquitous and in some cases its use is necessary or even desirable. The goal of the radiation protection regulatory program is to prohibit and prevent the use or presence of unnecessary radiation in such a manner as to be, or tend to be, injurious or dangerous to the health of the people, the ecology, wildlife, agriculture and industry of the State. The proposed repeals and amended rules continue to require that regulated sources of radiation be shielded, transported, handled, used and kept in such a manner as to prevent users and the general public from receiving unnecessary exposures. The chapter as a whole has a positive social impact, which will not be lessened by the proposed amendments. The proposed amendments have a neutral social impact.

Economic Impact

The proposed repeals and amendments will have an economic impact on some regulated facilities. The costs of compliance include fees for registration, certification or licensing, expenses

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for personnel and equipment monitoring, and the costs associated with reporting and recordkeeping, and training costs. The overall economic impact from the proposed rules is positive.

At proposed amended N.J.A.C. 7:28-3.12(d)2, Non-Hospital Facilities, the fees for machine categories 24N and 25N are corrected. They are reversed in the existing rules. The difference between the fees for the two categories is \$9.00. The proposed correction will have an impact on 21 facilities in the State. Four facilities will see a decrease of \$9.00 in the annual registration fee, and 17 will see a \$9.00 increase.

Proposed amended N.J.A.C. 7:28-4.15 allows the Department to determine on a case by case basis whether financial assurance is necessary for diffuse NARM licensees. As discussed in the summary of amendments to Subchapter 4 above, the operation of some facilities is such that financial assurance is not required. This will result in a savings for some in the regulated community. The range of savings could from \$225,000 to as much as \$1,125,000 per facility. There are eight such facilities.

As discussed in the summary of amendments to N.J.A.C. 7:28-64, Table 2, because in the existing rule there is no specific category of fees for facilities using X-ray fluorescence devices, facilities and individuals licensing such equipment fall within the category 3P, with a fee of \$2,065. The proposed amended fee table imposes a fee of \$205.00 for government bodies, and \$1,032 for all others. This is a savings of \$1,033 for approximately 30 licensees and \$1,860.00 for approximately 15 licensees.

Proposed amendments to Subchapter 4 provide general licenses requiring registration for certain non-community water systems and community water systems. Non-community and community water systems that have radium-containing water treatment media may register for a general license, provided the amount of radium is less than 10 μ Ci. The fee for registration under a

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general license is \$205.00. (See proposed N.J.A.C. 7:28-64.2, Table 2, category 6.) This is either comparable to or less than the cost of a specific license, which could range from \$205.00 to \$1,275. Three facilities in the State, each a non-community water system, would be affected. Not only would an eligible facility save on the licensing fee, but also it would save the costs of training and/or hiring a qualified radiation safety officer, estimated at up to \$1,000 per facility per year. A safety officer is required under N.J.A.C. 7:28-4.8, Special requirements for approval of an application for an initial specific license or renewal of a specific license for use of diffuse naturally occurring or diffuse accelerator produced radioactive materials.

Community and non-community water systems that treat for uranium may also register for a general license, provided the quantity of accumulated uranium is less than set forth at N.J.A.C. 7:28-58, Domestic Licensing of Source Material. If the quantity is greater, then the water treatment system will need a specific license. The facility must also determine the accumulated amount of uranium to ensure that it remains under the threshold amount for a specific license. There are currently only three facilities in New Jersey that treat for uranium and are eligible for the general license.

Proposed amended N.J.A.C. 7:28-64.3(d) allows for refunds of license fees, when terminating a license. Those facilities that qualify for a refund of half of the license fee will realize an economic benefit.

Environmental Impact

The proposed repeals and amendments continue the positive effect of the existing rules, in that they will continue to limit the amount of radiation allowed in the environment. Human

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exposure to radiation causes cancer and other adverse health effects. Limits on the amount of radiation allowed in the environment continue to have a positive effect on the health of humans. A fundamental tenet of radiation protection has been the assertion that populations of non-human biota are protected in situations where exposure levels are protective of humans (National Council on Radiation Protection Report No. 109, 1991). Plant, animal and aquatic life benefit from the proposed amendments insofar as the proposed amendments ensure that the standards that prevent or reduce unnecessary radiation exposure will continue in effect.

Federal Standards Analysis

Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis.

The proposed amendments and repeals, except as discussed below, are promulgated in order to comply with the Federal requirements for Agreement States. Accordingly, except as discussed below, the proposed rules do not exceed Federal standards.

As discussed above in the summary of proposed amendments to Subchapter 12, Remediation Standards for Radioactive Materials, the Department and the Commission propose to amend the incorporation by reference of 10 CFR 20.1403(c), which mandates a one percent real rate of return on investments for financial assurance for decommissioning. Instead, proposed new N.J.A.C. 7:28-12.12(b)2 and 3 allow the Department flexibility to use a one percent real rate of return for short-lived radionuclides, but a declining real rate of return for longer-lived radionuclides.

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The provision in the Federal rule is among those that Agreement States are given discretion on whether to incorporate.

It is not possible at this time to determine the economic impact of proposed new N.J.A.C. 7:28-12.12(b)2 and 3. For facilities containing short-lived nuclides, the proposed amendment is the same as the Federal rule. For facilities with long-lived radionuclides, the rate of return on investments for financial assurance in the decommissioning of a facility will be based on site-specific conditions. Thus, there is no accurate way to determine whether or not the proposed amendment relating to long-lived radionuclides is more stringent than the Federal standard. The policy rationale for proposed new N.J.A.C. 7:28-12.12(b)2 is discussed in the Summary of the proposed amendment, above.

Jobs Impact

The proposed rules regulate the possession, handling and use of sources of radiation within the State. The Commission and the Department do not anticipate that the proposed repeals and amendments will have an impact on employment in New Jersey, including the generation or retention of jobs.

Agricultural Impact Statement

None of the proposed repeals and amendments is anticipated to impact the agriculture industry in New Jersey; rather, the proposed rules regulate the possession, handling and use of sources of radiation within the State.

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Regulatory Flexibility Statement

As required by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Commission and the Department have evaluated the proposed repeals and amendments to N.J.A.C. 7:28. The rules affect owners, possessors and users of radioactive materials, machine sources of ionizing radiation, and users of mercury vapor lamps. The Department estimates that at least 80 percent of those affected by the proposed amendments meet the definition of “small businesses” under the New Jersey Regulatory Flexibility Act.

The fees in the chapter are not based upon whether a facility is classified as a small business; however, as discussed in the summary of amendments to Subchapter 4 and in the Economic Impact above, proposed amended N.J.A.C. 7:28-4.15 allows the Department to determine on a case by case basis the necessity for financial assurance for diffuse NARM licensees, many of which are small businesses. The size of a business may impact the financial assurance that the Department requires.

The proposed amendments to Subchapter 64 will have the effect of reducing fees for small businesses because most of the non-government users of X-ray fluorescence devices are small businesses. Also, most of the non-transient non-community water systems that will be eligible for general license registration are small businesses, such as daycare centers and restaurants.

Reporting requirements for non-transient non-community water systems that treat for radium or uranium will increase slightly under the proposed rules. Although a non-community or community water system that treats for radium must obtain a specific license under the existing rules, reporting and recordkeeping requirements are minimal. A non-community or community water system that treats for uranium must report the accumulated amount of uranium under its general license, a requirement that does not change under the proposed amendments. Under the

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proposed amendments, these general licensees will be required to complete an annual registration form which will take less than an hour to complete. Under the current rules, the specific licensees must either take basic radiation training or retain the services of a Radiation Safety Officer. This is not required under the proposed amended rules, which will result in reduced costs for those affected.

In proposing these amendments, the Commission and the Department have evaluated the need to protect the public from unnecessary exposure to radiation against the economic impact of the rules and have determined that to minimize the standards for all small businesses would endanger the environment and public health and safety. The hazard posed by radiation is the same whether or not the owner of the source is a small business. Therefore, no reduction in compliance standards is provided based on small business status.

Housing Affordability Impact

Pursuant to N.J.S.A. 52:14B-4.1b, the Commission and the Department have evaluated the proposed rules to determine their impact, if any, on the affordability of housing. The rules govern the possession, handling, and use of sources of radiation within the State of New Jersey, which do not relate to housing. Accordingly, the Commission and the Department have determined that the proposed amendments and repeals are extremely unlikely to evoke a change in the average costs associated with housing in the State.

Smart Growth Development Impact

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In accordance with N.J.S.A. 52:14B-4.1b, the Commission and the Department have evaluated the proposed rules to determine their impact, if any, on housing production within Planning Area 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. None of the proposed rules is expected to impact the residential sector; rather, they regulate the possession, handling and use of sources of radiation within the State. Therefore, the rules will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:28-4.8.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

7:28-1.5 Communications

(a) Communications concerning this chapter, or matters relating to radiation protection, may be addressed to the New Jersey Department of Environmental Protection, Radiation Protection and Release Prevention [Element], **Mail Code 25-01**, PO Box [415]**420**, Trenton, New Jersey 08625-[0415]**0420**. Telephone: (609) 984-5636, Fax: (609) 633-2210. The physical location of the office is 25 Arctic Parkway, Ewing, New Jersey 08638. Applications and forms may be obtained from the website at <http://www.state.nj.us/dep/rpp/index.htm>.

(b) (No change.)

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SUBCHAPTER 2. USE OF SOURCES OF IONIZING RADIATION AND SPECIAL EXEMPTIONS

7:28-2.3 Instruction

(a) (No change.)

(b) All visitors to controlled areas shall be instructed or escorted to prevent unnecessary exposure to radiation. See **N.J.A.C. 7:28-6.1 (Standards for protection against radiation)** and N.J.A.C. 7:28-7.4(a)4 (Use of personnel monitoring equipment for visitors).

7:28-2.5 Protective devices, systems or mechanisms

(a) No person shall operate a radiation-producing machine or utilize radioactive material whenever shielding for the source of radiation permits levels of radiation that exceed or have the potential to exceed the radiation limits specified in [N.J.A.C. 7:28-6.2 (Radiation levels outside controlled areas)]**N.J.A.C. 7:28-6.1 (Standards for protection against radiation)**.

(b) (No change.)

(c) No person shall operate a radiation-producing machine or utilize a radioactive material whenever any device, system or mechanism designed for the protection against radiation provided at the time of manufacture, installation or retrofitted to the equipment is not operating properly.

7:28-2.8 Special Exemptions

The Department, upon application and a showing of hardship or compelling need, with the approval of the Commission, may grant an exemption from any requirement of these rules should it

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determine that such exemption will not result in any exposure to radiation in excess of the limits permitted by N.J.A.C. 7:28-6, Standards for protection against radiation, **or N.J.A.C. 7:28-12,**

Remediation standards for radioactive materials.

7:28-2.13 Violations

- (a) (No change.)
- (b) The Department may impose a civil penalty for a violation of:
 - 1. and 2. (No change.)
 - 3. A revocation under N.J.A.C. 7:28-4.[17]**16**, 51 through 60, and 63.
- (c) The Department shall not approve an amendment request to terminate a license or release a facility for unrestricted use in accordance with N.J.A.C. 7:28-12 until the licensee has satisfied all outstanding civil penalties imposed in accordance with this chapter.**

SUBCHAPTER 3. REGISTRATION OF IONIZING RADIATION-PRODUCING MACHINES

7:28-3.2 Exemptions from registration for possession of ionizing radiation-producing machines

- (a) (No change.)
- (b) Electrical equipment that is not primarily intended to produce radiation and that does not produce radiation greater than 0.5 millirem per hour at any readily accessible point five centimeters from its surface is exempt from registration. Production-testing facilities for such equipment shall not be exempt if any individual might receive a radiation dose exceeding the limits established in N.J.A.C. 7:28-[6.2]**6.1**.

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(c) (No change.)

7:28-3.3 Registration of ionizing radiation-producing machines

(a) (No change.)

(b) All registrations issued for ionizing radiation-producing machines shall expire [on May 19 of each renewal year] **pursuant to the schedule at N.J.A.C. 7:28-3.12(f)** or shall expire one year from the date of initial application as determined by the Department. Registrations are renewable by the registrant for a period of one year upon payment of the fee provided in N.J.A.C. 7:28-3.12.

(c) Applications for new registrations for ionizing radiation producing machines will be accepted throughout the calendar year. The annual registration fee set forth in N.J.A.C. 7:28-3.12 shall be either prorated from the date the registration is issued until its expiration date [on May 19 following the date of application] **pursuant to N.J.A.C. 7:28-3.12(f)**, except that the Department may issue a registration for an additional year when an application is initially filed during the last three months of the registration year, or shall be assessed in full from the date of application until its expiration date one year later as determined by the Department.

7:28-3.12 Application and annual registration renewal fees for ionizing radiation -producing machines

(a) - (d) (No change.)

(d) Each registrant of an ionizing-radiation-producing machine used in a non-hospital facility (including but not limited to doctors' offices, medical facilities, industrial facilities, schools, and government facilities) shall pay:

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1. (No change.)

2. In each year after the expiration of the first year of registration established pursuant to (f) below, the annual registration renewal fee per X-ray tube as follows:

NON-HOSPITAL FACILITIES

Machine Category and Description	Annual Registration Renewal Fee Per X-Ray Tube
...	
24N Particle Accelerator Machine (non-medical use) ≤30 kVp	[196.00] 185.00
25N Particle Accelerator Machine (non-medical use) >30 kVp	[185.00] 196.00
...	

(e) (No change.)

(f) The expiration date of each year of registration shall be specified by the Department on the billing invoice sent to each registrant. The registration expiration date shall be based on the first letter of the registrant name as follows:

1. For a registrant whose name begins with **a numeric character or A through F**, the registration expiration date shall be August 31 of each calendar year;

2. – 4. (No change.)

(g) – (j) (No change.)

(k) A fee submitted to the Department is non-refundable.

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SUBCHAPTER 4. LICENSING OF DIFFUSE NATURALLY OCCURRING OR DIFFUSE
ACCELERATOR PRODUCED RADIOACTIVE MATERIALS

7:28-4.1 Scope and General Provisions

(a) The subchapter shall apply to persons who [manufacture,] produce, transfer, distribute or arrange for the distribution, sell, lease, receive, acquire, own, **transport, store, dispose**, possess or use any diffuse naturally occurring or diffuse accelerator produced radioactive materials, including TENORM, in this State.

(b) No person shall [manufacture,] produce, transfer, distribute or arrange for the distribution, sell, lease, receive, acquire, own, **transport, store, dispose**, possess or use any diffuse naturally occurring or diffuse accelerator produced radioactive materials, including TENORM, in this State unless authorized by a specific license issued by the Department as provided by N.J.A.C. 7:28-4.7 and 4.8, a general State license as provided in N.J.A.C. 7:28-4.5, or an exemption as provided in N.J.A.C. 7:28-4.3. Excepted from this provision are byproduct, source and special nuclear materials.

[(c) A person who sells, transfers, distributes or arranges for the distribution of a device containing naturally occurring or accelerator produced radioactive materials manufactured by another person, but which is sold, transferred or distributed under its own name, shall obtain a State license in accordance with this subchapter.]

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7:28-4.3 Exemption from requirement for a State license for [manufacture,] production, transfer, distribution or arrangement of distribution, sale, lease, receipt, acquisition, ownership, possession or use of all diffuse naturally occurring or diffuse accelerator produced radioactive materials

(a) A person shall be exempt from the requirement to obtain a license for the following activities:

1. – 2. (No change.)

3. The person [manufactures,] produces, receives, possesses, uses, transfers, distributes or arranges for the distribution, sells, leases, owns or acquires [products or] materials containing diffuse naturally occurring or diffuse accelerator produced radioactive materials in concentrations not in excess of those exempted in N.J.A.C. 7:28-4.3(b);

4. – 9. (No change.)

(b) (No change.)

(c) If a person [manufactures,] produces, transfers, distributes or arranges for the distribution, sells, leases, receives, acquires, owns, possesses or uses diffuse naturally occurring radioactive materials, or diffuse accelerator-produced radioactive materials, including TENORM, in quantities less than those listed in N.J.A.C. 7:28-4.5[(c)](a), they are exempt from the requirement for a license.

7:28-4.4 Types of licenses for [manufacture,] production, transfer, distribution or arrangement for distribution, sale, lease, receipt, acquisition, ownership, possession or use of all diffuse naturally occurring or diffuse accelerator produced radioactive materials

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(a) – (b) (No change.)

(c) General licenses requiring registration, described in N.J.A.C. 7:28-4.5(b), are subject to annual certification that the material is still in the licensee’s possession and the treatment system is being maintained according to the manufacturer’s instructions.

7:28-4.5 General licenses for the transfer, distribution or arrangement for distribution, sale, lease, receipt, acquisition, ownership, possession or use of diffuse naturally occurring or diffuse accelerator produced radioactive materials [and certain devices and equipment]

[(a) Any person who uses, transfers, distributes or arranges for the distribution, sells, leases, receives, acquires, owns or possesses the following devices and equipment incorporating diffuse naturally occurring or diffuse accelerator produced radioactive material, when manufactured, tested and labeled by the manufacturer in accordance with the specifications contained in a specific license issued by the Department, or a specific license of a Federal agency or any other state, shall be deemed to have a general license:

1. Devices designed for use as static eliminators and which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 500 microcuries of Polonium 210 or 50 microcuries of Radium 226 per device;

2. Spark gap tubes and electronic tubes which contain radioactive material consisting of not more than one microcurie of Radium per tube;

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3. Devices designed for ionizing of air and which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 500 microcuries of Polonium 210 or 50 microcuries of Radium 226 per device.

(b) The devices described in (a) above shall not be transferred, abandoned or disposed of except by transfer to a person duly authorized to receive such device by a specific license issued by the Department, a Federal agency, or any other state.]

[(c)](a) The following quantities of radioactive substances, when obtained from diffuse naturally occurring materials or diffuse accelerator produced radioactive materials, are generally licensed provided that no person shall at any one time possess or use more than a total of 10 such quantities:

Radioactive Material	[Column A] Not as a Sealed Source (microcuries)	[Column B As a Sealed Source (microcuries)]
Beryllium (Be-7)	50	[50]
Bismuth 207 (Bi-207)	1	[10]
Cadmium 109-Silver 109 (Cd 109 + Ag 109)	10	[10]
Cerium 141 (Ce-141)	1	[10]
Chromium 51 (Cr-51)	50	[50]
Cobalt 57 (Co-57)	20	[20]
Germanium 68 (Ge-68)	1	[10]

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Iron 55 (Fe-55)	50	[50]
Manganese 52 (Mn-52)	1	[10]
Polonium 210 (Po-210)	0.1	[1]
Radium and daughters	0.1	[1]
Sodium 22 (Na-22)	10	[10]
Vanadium 48 (V-48)	1	[10]
Zinc 65 (Zn-65)	10	[10]
Beta and/or gamma emitting radioactive material not listed above	1	[10]

[(d)](b) There are no generally licensed quantities for alpha-emitting materials other than those set forth in N.J.A.C. 7:28-4.5[(c)](a) **except:**

1. A non-community or community water system that treats for uranium is subject to a general license requiring registration, in accordance with this section, notwithstanding the requirements of N.J.A.C. 7:28-58.1.

2. A non-community or community water system that treats for radium may register under a general license requiring registration, in accordance with this section, if the quantity of radium on the treatment media at any one time is less than 10 times the limit in (a) above.

(c) To remain eligible for a general license requiring registration under (b) above:

1. The owner of a non-community or community water system that treats for uranium shall register the system annually with the Department.

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2. The owner of a non-community or community water system that treats for radium shall register the system annually with the Department and shall pay the fee required by N.J.A.C. 7:28-64.2(e).

3. The licensee shall verify, correct, and/or supplement the information contained in the request for registration received from the Department. The annual registration information must be submitted to the Department at the address in N.J.A.C. 7:28-1.5, within 30 days of the date of the request for registration, or as otherwise indicated in the request.

4. When registering a system, the licensee shall furnish the following information and such other information pertinent to the safe operation of the water treatment system as the Department may request:

- i. The name and address of the facility;**
- ii. The type of treatment system;**
- iii. A copy of a water treatment maintenance agreement in effect at the time of registration, or proof that the system has been maintained properly during the previous year;**
- iv. An itemization of all changes in system components, backwash frequency, or water use at the facility during the previous year; and**
- v. In the case of a uranium treatment system, a mass balance calculation of the total accumulated uranium on the treatment media.**

5. A general licensee meeting the criteria of N.J.A.C. 7:28-4.3(b) shall be subject to the bankruptcy notification requirement in N.J.A.C. 7:28-51.1 (10 CFR 30.34(h) incorporated

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by reference).[(e) Any person who owns, receives, acquires, possesses or uses radioactive material when contained in a device designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition or for producing light or an ionized atmosphere, when such devices are manufactured in accordance with the specifications contained in a specific license authorizing distribution under a general license issued to the supplier by the Department, a Federal agency, or any other state, is deemed to have a general State license, provided that:

1. The device is labeled in accordance with the provisions of the specific license which authorizes the distribution of the devices;

2. The device bears a label containing the following or a substantially similar statement:

“This device contains radioactive material and has been manufactured for distribution as a generally licensed device pursuant to

.....

(identify appropriate section of the rules)

.....

(name of licensing agency and state)

License No. by (name of supplier)

This device shall not be transferred, abandoned or disposed of except by transfer to a person duly authorized to receive such device by a specific license issued by the Department, a Federal agency, or any other state.

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Removal of this label is prohibited.”; and

3. The devices requiring special installation shall be installed on the premises of the general licensee by a person authorized to install the devices under a specific license issued to the installer by the Department, a Federal agency, or any other state.]

[(f)](d) Persons who transfer, distribute or arrange for the distribution, sell, lease, receive, acquire, own, possess or use items and quantities of radioactive materials set forth in N.J.A.C. 7:28-4.5(a) [and (c)] pursuant to a general license shall not:

1. – 4. (No change.)

[(g) Persons who receive, acquire, possess or use a device pursuant to a general license specified in N.J.A.C. 7:28-4.5(a):

1. Shall not transfer, abandon or dispose of the device except by transfer to a person duly authorized to receive such device by a specific license issued by the Department, a Federal agency, or any other state;

2. Shall assure that all labels affixed to the device at the time of receipt and bearing the statement, “Removal of this label is prohibited,” are maintained thereon and shall comply with the instructions contained in such labels;

3. Shall have the device tested for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, at intervals not to exceed six months;

4. Shall have the tests required by N.J.A.C. 7:28-4.5(g)3 and all other services involving the radioactive material, its shielding and containment, performed by the supplier or other

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person duly authorized by a specific license issued by the Department, a Federal agency, or any other state to manufacture, install or service such devices;

5. Shall maintain records of all tests performed on the devices as required under N.J.A.C. 7:28-4.5(g)3, including the dates and results of the tests and the names and addresses of the persons conducting the tests;

6. Upon the occurrence of a failure of or damage to, or any indication of a possible failure of or damage to, the shielding or containment of the radioactive material or the on-off mechanism or indicator, shall immediately suspend operation of the device until it has been either:

7. Shall be exempt from the requirements of this subchapter, except the provisions of N.J.A.C. 7:28-4.4(a), 4.9, 4.14, 4.19, records of surveys, records of radioactive materials, and reports of theft, loss, or incidents pursuant to the requirements in N.J.A.C. 7:28-6, Standards for protection against radiation.]

7:28-4.6 Application for and renewal of specific licenses for [manufacture,] transfer, distribution or arrangement for distribution, sale, lease, receipt, acquisition, ownership, **or** possession [or use] of diffuse naturally occurring or diffuse accelerator produced radioactive materials

(a) – (e) (No change.)

(f) All applicants for initial and renewal applications for specific licenses shall complete the application in its entirety [with no reference to previously filed documents]. The Department may accept photocopies of previous relevant applications. **Information contained in previous applications, statements or reports filed with the Department may be incorporated by reference provided that the reference is clear and specific.**

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(g) (No change.)

[(h) Except as provided in N.J.A.C. 7:28-4.19, applications and documents submitted to the Department will be made available for public inspection.]

Recodify N.J.A.C. 7:28-4.6(i) and (j) as (h) and (i). (No change in text.)

7:28-4.7 General requirements for approval of an application for an initial specific license or renewal of a specific license for [use of] diffuse naturally occurring or diffuse accelerator produced materials

(a) If the Department determines that an applicant meets the requirements of this subchapter and the Act, it may issue an initial specific license or renew a specific license for [non-human use of] **diffuse naturally occurring or diffuse accelerator produced** radioactive materials provided:

1. The applicant is qualified by reason of training and experience to [use] **manage** the radioactive material [for the purpose] **as** requested in such a manner as to protect health, minimize danger to life or property and prevent unnecessary radiation.

2. (No change.)

3. [The applicant satisfies special requirements as may be applicable in N.J.A.C. 7:28-4.8.] **The applicant has appointed a radiological safety officer who shall be responsible for rendering advice and assistance on radiological safety.**

7:28-4.[9]8 Terms and conditions of general and specific licenses

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(a) (No change.)

(b) No licensee to possess or utilize radioactive material pursuant to this subchapter shall be transferred or assigned, **or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Department shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing.**

(c) (No change.)

(d) The Department may incorporate in any license at the time of issuance, or thereafter, all such additional requirements and conditions with respect to the licensee's [manufacture,] distribution or arrangement for the distribution, sale, lease, receipt, possession, use, ownership or transfer of radioactive material as it deems appropriate or necessary in order to assure compliance with this chapter and the Act.

[(e) Each licensee authorized under N.J.A.C. 7:28-4.8(c) to distribute certain devices to generally licensed persons shall:

1. Report to the Department all transfers of such devices to persons in New Jersey generally licensed under N.J.A.C. 7:28-4.5(a) and (c). Such report shall identify each general licensee by name and address, the type and number of device(s) transferred, and the quantity and kind of radioactive material contained in each device. The report shall be submitted within 30 days after the end of each calendar quarter in which such a device is transferred to generally licensed persons; and

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2. Furnish to each general licensee to whom such device is transferred a copy of N.J.A.C. 7:28-4.5(a), (e) and (g), 8.3 and 8.5, records of surveys and records of radioactive materials pursuant to the requirements in N.J.A.C. 7:28-6, Standards for protection against radiation.]

Recodify N.J.A.C. 7:28-4.10 through 4.15 as 7:28-4.9 through 4.14. (No change in text.)

7:28-4.[16]15 Financial assurance and recordkeeping for decommissioning

(a) (No change.)

(b) The following provisions of 10 CFR 30.35 are not incorporated by reference:

1. 10 CFR 30.35(a)(2);

[(b)](c) The following provisions of 10 CFR 30.35 are incorporated by reference with the specified changes:

1. 10 CFR 30.35(b)(1) replace “Each applicant for a specific license” with “Each applicant for or holder of a specific license, as determined by the Department,”

Recodify 1.– 2. as 2. – 3. (No change in text.)

4. 10 CFR 30.35(d) delete “Greater than 10^{10} but less than or equal to 10^{12} times the applicable quantities of appendix B to part 30 in sealed sources or plated foils (For a combination of isotopes, if R, as defined in 30.35(a)(1), divided by 10^{10} is greater than, 1, but R divided by 10^{12} is less than or equal to 1) 113,000”;

Recodify 3. – 4. as 5. – 6. (No change in text.)

7. 10 CFR 30.35(g)(3) delete “areas containing only sealed sources (provided the sources have not leaked or no contamination remains after any lead) or”;

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Recodify 5. as 8. (No change in text.)

Recodify N.J.A.C. 7:28-4.17 as 7:28-4.16. (No change in text.)

7:28-4.[18]17 Requests for an adjudicatory hearing

(a) – (b) (No change.)

(c) All requests for a contested case hearing shall be submitted in writing to the Department, at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, **Mail Code 401-04L**, [CN]PO Box 402, Trenton, New Jersey 08625-0402. The request shall contain:

1.- 4. (No change.)

(d) (No change.)

Recodify N.J.A.C. 7:28-4.19 through 4.23 as 7:28-4.18 through 4.22. (No change in text.)

7:28-4.[24]23 Disclosure of confidential information to other public agencies

(a) The Department may disclose confidential information to persons other than Department employees only as provided in this section or N.J.A.C. 7:28-4.[25]24.

(b) (No change.)

(c) Except as otherwise provided at N.J.A.C. 7:28-4.[25]24, the Department shall notify in writing the applicant who supplied the confidential information of:

1.- 4. (No change.)

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Recodify N.J.A.C. 7:28-4.25 as 4.24. (No change in text.)

7:28-4.[26]**25** Disclosure based on imminent and substantial danger

(a) Upon a finding that disclosure of confidential information would serve to alleviate an imminent and substantial danger to public health and the environment, the Department may:

1. Prescribe and make known to the applicant such shorter comment period (7:28-4.[22]**21**(c)(4), post-determination waiting period (7:28-4.[22]**21**(d)(1), or both, as it finds necessary under the circumstances; or

2. (No change.)

(b) (No change.)

7:28-4.[27]**26** Security procedures

(a) – (b) (No change.)

(c) All submissions entitled to confidential treatment as determined at 7:28-4.[22]**21** shall be stored by the Department only in locked cabinets.

(d) (No change.)

Recodify N.J.A.C. 7:28-4.28 as 4.27. (No change in text.)

SUBCHAPTER 6. STANDARDS FOR PROTECTION AGAINST RADIATION

7:28-6.1 Incorporation by reference

(a) – (b) (No change.)

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(c) The following provisions of 10 CFR Part 20 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. – 7. (No change.)

8. 10 CFR 20.1406(b)

Recodify 8. Through 10. as 9 through 11. (No change in text.)

12. 10 CFR 20.1905(g), Exemptions to labeling requirements;

13. 10 CFR 20.2201(b)(2)(i), Reports of theft or loss of licensed material;

14. 10 CFR 20.2203(c), Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the constraints or limits;

15. 10 CFR 20.2206(a)(1), (3), (4), and (5), Reports of individual monitoring;

[11.]**16. 10 CFR 20.2301, Application for exemptions; and**

[12.]**17. 10 CFR 20.2401, Violations[; and]**

[13. 10 CFR 20.2402, Criminal penalties].

(d) The following provisions of 10 CFR Part 20 are incorporated by reference with the specified changes:

1. – 8. (No change.)

9. 10 CFR 20.1003, in the definition of “person” replace “Commission” with “Department of Environmental Protection” and delete “or the Department of Energy (except that the Department shall be considered a person within the meaning of the regulations in 10 CFR chapter I to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission under section 202 of the

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Energy Reorganization Act of 1974 (88 Stat. 1244), the Uranium Mill Tailings Radiation Control Act of 1978 (92 Stat. 3021), the Nuclear Waste Policy Act of 1982 (96 Stat. 2201), and section 3(b)(2) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (99 Stat. 1842))”

Recodify N.J.A.C. 7:28-6.1(d)9 through 17 as (d)10 through (d)18. (No change in text.)

19. 10 CFR 20.1406(c), insert “of 10 CFR Part 20” after Subpart B and replace “Subpart E of this part” with “N.J.A.C. 7:28-12”;

Recodify N.J.A.C. 7:28-6.1(d)18 through 20 as (d)20 through (d)22. (No change in text.)

[21.]**23.** 10 CFR 20.2201(b)(2)(ii), replace “Administrator of the appropriate NRC Regional Office listed in Appendix D to part 20” with “Supervisor, Radioactive Materials [Section]**Program** of the Department”;

[22.]**24.** Replace the text of 10 CFR 20.2202(d) with “Reports made by licensees in response to the requirements of this section must be made to the address and telephone numbers indicated in N.J.A.C. 7:28-1.5.”;

[23.]**25.** 10 CFR 20.2203(b)(2), [replace]~~delete~~ “Privacy Act Information:” [with “New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.”];

[24.]**26.** Replace the text of 10 CFR 20.2203(d) with “All licensees, who make reports under paragraph (a) of this section shall submit the report in writing either by mail or by hand delivery to the Supervisor, Radioactive Materials [Section]**Program** of the Department at the addresses indicated in N.J.A.C. 7:28-1.5;”

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[25.]27. 10 CFR 20.2204, replace “Administrator of the appropriate NRC Regional Office listed in Appendix D to part 20” with “Supervisor, Radioactive Materials [Section]Program of the Department”;

[26.]28. 10 CFR 20.2206(c), replace the second sentence with “The licensee shall submit the report to the Supervisor, Radioactive Materials [Section]Program of the Department at the address indicated in N.J.A.C. 7:28-1.5.”; and

[27.]29. Replace the language at 10 CFR 20.2402 with “Section 26:2D-22 of the Radiation Protection Act of 1958, as amended, provides for criminal sanctions for violation of any provision of the Act.

(e) (No change.)

SUBCHAPTER 12. REMEDIATION STANDARDS FOR RADIOACTIVE MATERIALS

7:28-12.12 Requirements pertaining to institutional and engineering controls

(a) (No change.)

(b) In order for any remediation under this subchapter requiring engineering controls or institutional controls to meet the standards in N.J.A.C. 7:28-12.9, 12.10, or 12.11(a), the person responsible for conducting the remediation, or licensee, shall, in addition to meeting the provisions of N.J.S.A. 58:10B-13:

1. (No change.)

2. Provide sufficient financial assurance for the costs of implementing and maintaining the requisite active engineered or institutional controls for an appropriate period of time. Except as set forth in 3 below, acceptable financial assurance mechanisms are [set forth at]

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incorporated by reference at 10 CFR 20.1403(c)[, incorporated herein by reference] **as follows.**

At 10 CFR 20.1403(c)(1), delete “, and in which the adequacy of the trust funds is to be assessed based on an assumed annual 1 percent real rate of return on investment; and add “. **The adequacy of the the trust fund shall be based upon a rate of return to be determined by the Department, based upon site-specific conditions, such that the Department can ensure that sufficient assets are available in the trust funds to maintain engineering controls for an appropriate period of time. Site-specific conditions are the engineering controls and environmental conditions at the property, and the half-lives of radionuclides of concern.”**

i. For radionuclides that are short-lived (have half-lives of less than 30 years), a one percent annual real rate of return shall be assumed to be acceptable. A higher real annual rate of return shall apply if the licensee demonstrates to the Department that site-specific conditions exist to justify the higher real annual rate of return.

ii. For longer-lived radionuclides, a declining annual real rate of return that begins above one percent and declines below one percent shall be assumed.”

(c) (No change.)

SUBCHAPTER 18. MAJOR NUCLEAR FACILITIES

7:28-18.1 Scope

(a) - (b) (No change.)

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(c) The intent of this [Section] **subchapter** is to insure that individuals outside of these facilities receive no radiation exposures from environmental or direct radiation that are in excess of the limits of [Sections 6.1 (Exposure of individuals in controlled areas) and 6.2 (Radiation levels outside controlled areas)] **Subchapter 6, Standards for Protection against Radiation** of this Chapter.

SUBCHAPTER 19. RADIOLOGIC TECHNOLOGY

7:28-19.2 Definitions

In addition to the terms defined at N.J.A.C. 7:28-1 and N.J.S.A. 26:2D-1 et seq., the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

“Position patients” or “positioning patients” means the movement or placement of the x-ray tube, **patient** or image receptor (to include cassette, film, digital detector, image intensifier) [and the area of the patient to be exposed to ionizing radiation.] **to achieve a radiographic or fluoroscopic image of human anatomy.** For radiation therapy treatment procedures, “position patients” or “positioning patients” means the **movement or** placement [and alignment] of the ionizing radiation source [and] **or** the [area of the] patient to [be exposed to ionizing radiation] **deliver the prescribed radiation treatment.**

...

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“Temporary license” means a license issued for a limited period of time in accordance with N.J.A.C. 7:[29]28-19.8.

...

7:28-19.10 Fees

(a) – (e) (No change.)

(f) All other applications and associated fees specified in (a)1, 2 and 4 and (b) above shall be submitted to:

Department of Environmental Protection

Bureau of [Radiological Health] **X-ray Compliance**

Mail Code 25-01

25 Arctic Parkway

PO Box [415]420

Trenton, New Jersey 08625-[0415]0420

7:28-19.13 Requirements for schools of radiologic technology

(a) – (e) (No change.)

(f) Each school of radiologic technology shall:

1. Comply with N.J.A.C. 7:28-19.11 and 12 and the Board’s accreditation standards, which are available from the Department’s Bureau of [Radiological Health] **X-ray Compliance;**

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2. -17. (No change.)

18. If the school's curriculum is in chest, dental, orthopedic, podiatric or urologic radiologic technology, have no more than two consecutive years in which both the first-time mean score and pass rate [for the Board's examination are below 75 percent] **are below the Board's published minimum standards. Such standards are published on the Bureau of X-ray Compliance website, www.xray.nj.gov, and are available in hard copy upon request;** and

19. (No change.)

(g) In addition to (f) above, schools of diagnostic radiologic technology and radiation therapy technology shall comply with the JRCERT Standards for an Accredited Educational Program in Radiologic Sciences (JRCERT Standards), incorporated herein by reference, as amended and supplemented. **The Board, if it determines that a national accrediting agency's standards are equivalent to the JCERT Standards, may recognize the national agency's standards.** In case of conflict with this subchapter or the Board's accreditation standards, this subchapter and the Board's accreditation standards shall supersede the JRCERT Standards. Copies of the JRCERT Standards and the Board's accreditation standards may be obtained by contacting the Department's Bureau of [Radiological Health] **X-ray Compliance at Mail Code 25-01, PO Box [415]420, Trenton, NJ 08625-[0415]0420** or the JRCERT at 20 N. Wacker Dr., Suite 2850, Chicago, Il, 60606 or www.jrcert.org.

7:28-19.14 School of radiologic technology: process for approval; provisional approval; probationary approval; termination of approval and other general provisions

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(a) In order to be Board-approved, a school of radiologic technology shall submit to the Department a complete application, along with the appropriate fee as set forth in N.J.A.C. 7:28-19.10(b). The Department will forward all complete applications to the Board for its consideration. If the application is incomplete, the Department shall notify the school. The school will be provided an opportunity to complete the application within 90 calendar days or receipt of such notice. If after 90 days the application is still incomplete, it will be forwarded as an incomplete application for the Board's consideration. A complete application shall include:

1. – 3. (No change.)

4. A report or reports describing the school's policies and procedures in place to ensure that:

i. – ii. (No change.)

iii. The educational curriculum includes all Board required elements, in accordance with N.J.A.C. 7:[27]28-19.13.

(b) – (j) (No change.)

(k) Any Board-approved school that makes a substantial change to its approved program, including, but not limited to, a change in the level of terminal award (such as a certificate to an associate degree, or associate degree to a bachelor degree), or a change in the owner or operator of the program, will be considered a new school and will be subject to the application procedure of this section and fee specified in N.J.A.C. 7:28-19.10(b). The school must notify the Board of any change, in accordance with N.J.A.C. 7:[27]28-19.13(f)16.

(l) – (m) (No change.)

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7:28-19.15 List of approved schools

A list of approved schools of radiologic technology may be obtained [by contacting the Department's Bureau of Radiological Health at PO Box 415, Trenton, NJ 08625-0415] **from the Bureau of X-ray Compliance website at www.xray.nj.gov.**

7:28- 19.17 Procedures for requesting and conducting adjudicatory hearings

(a) – (d) (No change.)

(e) The applicant or violator shall send the request for an adjudicatory hearing to:

The Office of Legal Affairs

New Jersey Department of Environmental Protection

Mail Code 401-04L

401 East State Street, Fourth Floor

PO Box 402

Trenton, New Jersey 08625-0402

Attention: Hearing Request; and

New Jersey Department of Environmental Protection

Bureau of [Radiological Health] **X-ray Compliance**

Mail Code 25-01

25 Arctic Parkway

PO Box [415]**420**

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Trenton, New Jersey 08625-[0415]0420

Attention: Hearing Request

SUBCHAPTER 20. PARTICLE ACCELERATORS FOR INDUSTRIAL AND RESEARCH
USE

7:28-20.1 Scope

(a) - (b) (No change.)

(c) In addition to the requirements of this subchapter, all registrants of particle accelerators are subject to all other applicable requirements of N.J.A.C. 7:28-1 through [11] **8, 10** and 13.

7:28-20.6 Training program on the safe use of each particle accelerator

(a) The registrant shall establish and maintain a training program on the safe use of each particle accelerator. The registrant shall not permit any person to operate the particle accelerator until that person has successfully completed the training program consisting of the 10 items set out below. The registrant shall ensure that the training program is conducted under the direction of the PASO or an individual with equivalent qualifications in conjunction with the qualified machine operator and that the program shall include all of the following:

1. – 6. (No change.)

7. Instruction on the requirements of this subchapter and N.J.A.C. 7:28-1 through [11] **8, 10** and 13;

8. – 10. (No change.)

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(b) – (f) (No change.)

7:28-20.11 Radiation area and personnel monitoring requirements

(a) – (d) No change.

(e) If the PASO has identified removable contamination as a primary or secondary product of a particular accelerator as required pursuant to (a) above, then wipe tests shall be performed by the PASO or other qualified individual under the supervision of the PASO upon initial use of the particle accelerator and, thereafter, at least every six months to determine the degree of removable contamination in the target area and other pertinent areas to ensure compliance with N.J.A.C. 7:28-[9]6. Where wipe test results indicate noncompliance with N.J.A.C. 7:28-[9]6, use of the particle accelerator shall be immediately discontinued and remedial measures to bring the particle accelerator into compliance with N.J.A.C. 7:28-[9]6 shall be taken. Use of the particle accelerator is prohibited until such time as new wipe tests show that compliance with N.J.A.C. 7:28-[9]6 has been achieved. The results of the wipe tests shall be maintained for five years at the particle accelerator facility. Wipe test results shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

(f) Surveys shall be made by the PASO or other qualified individual under the supervision of the PASO upon initial use of the particle accelerator and, thereafter, not less than once annually, to determine the levels of radiation resulting from activation of the target and other pertinent areas to determine compliance with N.J.A.C. 7:28-6 [and 9]. Where test results indicate noncompliance with N.J.A.C. 7:28-6 [and 9], use of the particle accelerator shall be

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immediately discontinued and remedial measures to bring the particle accelerator into compliance with N.J.A.C. 7:28-6 [and 9] shall be taken. Use of the particle accelerator is prohibited until such time as test results show that compliance with N.J.A.C. 7:28-6 [and 9] has been achieved. The results of the surveys shall be maintained for five years at the particle accelerator facility. Surveys shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

(g) – (k) No change.

7:28-20.12 Ventilation systems

The registrant of a particle accelerator shall ensure that the maximum permissible average concentration of radioactive materials in air and water [shall be as specified in N.J.A.C. 7:28-6] and the concentration of radioactive materials in effluents from the controlled areas shall meet the requirements of N.J.A.C. 7:28-[11]6.

SUBCHAPTER 22. QUALITY ASSURANCE PROGRAMS FOR MEDICAL DIAGNOSTIC X-RAY INSTALLATIONS

7:28-22.2 Definitions

The words and terms listed below, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

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“Initially” means [no later than the date of the required implementation of the quality assurance program specified in N.J.A.C. 7:28-22.14 or] within 60 days of the date the x-ray machine is acquired.

...

7:28-22.3 General Provisions

(a) No person shall perform or permit the performance of a diagnostic x-ray procedure in the healing arts using radiographic, fluoroscopic, x-ray bone densitometry, or computed tomography (CT) equipment unless the registrant has developed and continues to implement a quality assurance program [in accordance with the compliance schedule in N.J.A.C. 7:28-22.14 and] that satisfies the requirements of this subchapter.

(b) – (d) (No change.)

(e) The compliance guidance documents listed in (d) above are available from the Department, and may be obtained by contacting the Department at the Bureau of [Radiological Health] **X-ray Compliance, Mail Code 25-01**, PO Box [415]420, Trenton, NJ 08625-[0415] **0420** and can be obtained from the [Radiation Protection Program] **Bureau’s** web page at [<http://www.state.nj.us/dep/rpp>]**www.xray.nj.gov**.

(f) – (o) (No change.)

7: 28-22.4 Quality Assurance Program Manual

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(a) The registrant of any diagnostic medical x-ray equipment used in the healing arts shall develop and continuously implement a quality assurance program that includes a quality assurance program manual that contains the following elements:

1. – 6. (No change.)

7. A provision describing how the registrant and the qualified medical physicist will review the QA program annually (**not to exceed 14 months**).

(b) The Department has prepared a Compliance Guidance for a Medical Diagnostic X-ray Quality Assurance Program Manual, referenced at N.J.A.C. 7:28-22.3(d) 1, which may be used by the registrants in developing and implementing the quality assurance program required by this subchapter. The compliance guidance document listed in N.J.A.C. 7:28-22.3(d)1 is available from the Department, and may be obtained by contacting the Department at the Bureau of [Radiological Health]**X-ray Compliance, Mail Code 25-01**, PO Box [415]**420**, Trenton, NJ 08625-[0415]**0420** and can be obtained from the [Radiation Protection Program] **Bureau's** web page at “<http://www.state.nj.us/dep/rpp>”**www.xray.nj.gov.**”

7:28-22.5 Quality Assurance Program for medical diagnostic radiographic equipment

(a) (No change.)

(b) The Department has prepared compliance guidance documents, listed in N.J.A.C. 7:28-22.3(d)1 and 2, which may be used by the registrants in developing and implementing the quality assurance programs required by this subchapter. The compliance guidance documents are available from the Department, and may be obtained by contacting the Department at the Bureau of [Radiological Health] **X-ray Compliance, Mail Code 25-01**, PO Box [415]**420**, Trenton, NJ

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08625-[0415]0420 and can be obtained from the [Radiation Protection Program] **Bureau's** web page at <http://www.state.nj.us/dep/rpp>**www.xray.nj.gov**.

(c) – (i) (No change.)

(j) The registrant shall ensure that [test records for items 2, 3, 5, 6, 8, 9, 10, 11, 12,13, and 14 in Table 1, Radiographic Quality Control Requirements, above are maintained for at least one year]:

1. All results of QC tests performed for items 2, 3, 5, 6, and 8 through 14 in Table 1, Radiographic Quality Control Requirements, are recorded on forms available from the Department at www.xray.nj.gov, or a comparable form containing the same information, and maintained for at least one year;

2. All images (film or digital) produced and relied upon in the performance of QC tests for items 2 and 3 in Table 1, Radiographic Quality Control Requirements, are maintained for at least 30 days; and

3. All images (film or digital) produced and relied upon in the performance of QC tests for items 8, 11, 12 and 13 in Table 1, Radiographic Quality Control Requirements, are maintained for at least one year.

(k) – (l) (No change.)

7:28-22.6 Quality assurance program for medical diagnostic fluoroscopic equipment

(a) (No change.)

(b) The Department has prepared compliance guidance documents, listed in N.J.A.C.

7:28-22.3(d)1 and 3, which may be used by the registrants in developing and implementing the

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quality assurance programs required by this subchapter. The compliance guidance documents are available from the Department, and may be obtained by contacting the Department at the Bureau of [Radiological Health] **X-ray Compliance, Mail Code 25-01**, PO Box [415]420, Trenton, NJ 08625-[0415]0420 and can be obtained from the [Radiation Protection Program] **Bureau's** web page at <http://www.state.nj.us/dep/rpp> **www.xray.nj.gov**.

(c) – (h) (No change.)

(i) The registrant shall ensure that [test records for items 2 through 6 in Table 2, Fluoroscopic Quality Control Requirements, above are maintained for at least one year]:

1. All results of QC tests performed for items 2 through 6 in Table 2, Fluoroscopic Quality Control Requirements, are recorded on forms available from the Department at www.xray.nj.gov, or a comparable form containing the same information, and maintained for at least one year;

2. All images (film or digital) produced and relied upon in the performance of QC tests for items 2, 3 and 5 are maintained for at least 30 days; and

3. All images (film or digital) produced and relied upon in the performance of QC tests for item 4 are maintained for at least one year.

(j) – (k) (No change.)

7:28-22.7 Quality assurance program for diagnostic computed tomography equipment

(a) (No change.)

(b) The Department has prepared compliance guidance documents, listed in N.J.A.C.

7:28-22.3(c)1 and 4, which may be used by the registrants in developing and implementing the

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quality assurance programs required by this subchapter. The compliance guidance documents are available from the Department, and may be obtained by contacting the Department at the Bureau of [Radiological Health] **X-ray Compliance, Mail Code 25-01, PO Box [415] 420**, Trenton, NJ 08625-[0415]**0420** and can be obtained from the [Radiation Protection Program] **Bureau's** web page at [<http://www.state.nj.us/dep/rpp>]**www.xray.nj.gov**.

(c) – (i) (No change.)

(j) The registrant shall ensure that [test records for items 2 through 11 in Table 3, Computed Tomography Quality Control Requirements, above are maintained for at least one year]:

1. All results of QC tests performed for items 2 through 11 in Table 3, Computed Tomography Quality Control Requirements, are recorded on forms available from the Department at www.xray.nj.gov, or a comparable form containing the same information, and maintained for at least one year;

2. All images (film or digital) produced and relied upon in the performance of QC tests for items 2, 3, 4 and 5 are maintained for at least 30 days; and

3. All images (film or digital) produced and relied upon in the performance of QC tests for items 6, 7 and 8 are maintained for at least one year.

(k) – (l) (No change.)

7:28-22.8 Medical Physicist's Radiographic QC Survey

(a) – (e) (No change.)

(f) For the Radiographic QC Survey:

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1. – 3. (No change.)

4. For item 11 in Table 4, Medical Physicist’s Radiographic QC Survey, the medical physicist shall review the completed QC test records that have been performed [properly] by the registrant for the previous year to ensure the tests were performed **properly** and corrective actions taken.

5. For item 12 in Table 4, Medical Physicist’s Radiographic QC Survey, [above] the medical physicist shall prepare a report that reviews the overall quality assurance program being carried out by the registrant and contains:

- i. Raw data[,] **and** results [and recommendations]of the medical physicist’s equipment tests performed in accordance with items 1 through 10 in Table 4, Medical Physicist’s Radiographic QC Survey, [above] **and recommendations based on these tests**; and
- ii. Results and recommendations [of] **based on** the medical physicist’s review performed in accordance with item 11 in Table 4, Medical Physicist’s Radiographic QC Survey, above.

7:28-22.9 Medical Physicist’s Fluoroscopic QC Survey

(a) (No change.)

(b) A qualified medical physicist for the supervision of quality assurance programs for diagnostic x-ray imaging may delegate the performance testing required for the Medical Physicist’s Fluoroscopic QC Survey in (a) above to a qualified medical physicist assistant in fluoroscopy who holds a valid certificate issued by the Department except as provided below:

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1. The qualified medical physicist for the supervision of [a] quality assurance programs for diagnostic x-ray imaging may not delegate items [8,] 11, and 12 in Table 5, Medical Physicist's Fluoroscopic QC Survey, above; and

2. The qualified medical physicist for the supervision of quality assurance program for diagnostic x-ray imaging may not delegate any items in Table 5, Medical Physicist's Fluoroscopic QC Survey, above if the fluoroscopic equipment is [digital or] located in a dedicated interventional special procedure suite.

(c) – (e) (No change.)

(f) For the Fluoroscopic QC Survey:

1. – 2. (No change.)

3. For item 12 in Table 5, Medical Physicist's Fluoroscopic QC Survey, above, the medical physicist shall prepare a report that reviews the overall quality assurance program being carried out by the registrant and contains:

i. Raw data[,] **and** results [and recommendations] of the medical physicist's equipment tests performed in accordance with items 1 through [11] **10** in Table 5, Medical Physicist's Fluoroscopic QC Survey [above] **and recommendations based on these tests**; and

ii. Results and recommendations [of] **based on** the medical physicist's review performed in accordance with item [12] **11** in Table 5, Medical Physicist's Fluoroscopic QC Survey.

7:28-22.10 Medical Physicist's Computed Tomography QC Survey

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(a) – (d) (No change.)

(e) For the Computed Tomographic QC Survey:

1. – 4. (No change.)

5. For item 14 in Table 6, Medical Physicist’s Computed Tomography QC Survey, above, the medical physicist shall prepare a report that reviews the overall quality assurance program being carried out by the registrant and contains:

i. Raw data[,] **and** results [and recommendations] of the medical physicist’s equipment tests performed in accordance with items 1 through 12 in Table 6, Medical Physicist’s Computed Tomography QC Survey[above] **and recommendations based on these tests**; and

ii. Results and recommendations [of] **based on** the medical physicist’s review performed in accordance with item [14] **13** in Table 6, Medical Physicist’s Computed Tomography QC Survey.

7:28-22.12 Qualifications of medical physicists and medical physicist assistants

(a) – (c) (No change.)

(d) Only a person who holds a valid certificate issued by the Department in accordance with N.J.A.C. 7:28-22.13(a), meets one of the criteria contained in (d)1 through 5 below and also meets the criterion in (d)6 below may perform the duties of a “qualified medical physicist assistant in fluoroscopy”:

1.-5. (No change.)

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6. In addition to the criteria in (d)1 through 5 above, the individual shall document to the satisfaction of the Department, that the individual has received, at a minimum, training and instruction on performing QC tests and has performed quality control tests 1 through [7, 9 and] 10 of Table 5, Medical Physicist's Fluoroscopic QC Survey in N.J.A.C. 7:28-22.9 on at least five fluoroscopic units while under the immediate supervision of a qualified medical physicist for the supervision of quality assurance programs for diagnostic x-ray imaging.

7:28-22.13 Certification and decertification of qualified medical physicists and qualified medical physicist assistants

(a) – (g) (No change.)

(h) The fees accompanying the application or biennial renewal application shall be in the form of a check or money order made payable to the Treasurer, State of New Jersey. Fees are non-refundable. Applications for certification are available from the Bureau of [Radiological Health] **X-ray Compliance, Mail Code 25-01**, PO Box [415]420, Trenton, NJ 08625-[0415]0420.

(i) – (j) (No change.)

[7:28-22.14 Compliance schedule

(a) Registrants required to develop and implement quality assurance programs in accordance with N.J.A.C. 7:28-22.3 shall comply with the following schedule:

1. All out-of-state registrants and registrants whose x-ray equipment is registered in Essex and Gloucester counties shall have quality assurance programs fully implemented, including a completed initial Medical Physicist QC survey, by February 28, 2001.

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2. Registrants whose x-ray equipment is registered in Bergen County shall have quality assurance programs fully implemented, including a completed initial Medical Physicist QC survey, by March 31, 2001.

3. Registrants whose x-ray equipment is registered in Hudson, Somerset, and Burlington counties shall have quality assurance programs fully implemented, including a completed initial Medical Physicist QC survey, by April 30, 2001.

4. Registrants whose x-ray equipment is registered in Union, Mercer and Cape May counties shall have quality assurance programs fully implemented, including a completed initial Medical Physicist QC survey, by June 30, 2001.

5. Registrants whose x-ray equipment is registered in Morris and Ocean counties shall have quality assurance programs fully implemented, including a completed initial Medical Physicist QC survey, by July 31, 2001.

6. Registrants whose x-ray equipment is registered in Passaic and Camden counties shall have quality assurance programs fully implemented, including a completed initial Medical Physicist QC survey, by August 31, 2001.

7. Registrants whose x-ray equipment is registered in Sussex, Monmouth, Salem, and Cumberland counties shall have quality assurance programs fully implemented, including a completed initial Medical Physicist QC survey, by October 31, 2001.

8. Registrants whose x-ray equipment is registered in Middlesex, Warren, Hunterdon, and Atlantic counties shall have quality assurance programs fully implemented, including a completed initial Medical Physicist QC survey, by November 30, 2001.]

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SUBCHAPTER 24. NUCLEAR MEDICINE TECHNOLOGY

7:28-24.8 Fees

(a) (No change.)

(b) All fees shall be in the form of a check or money order made payable to the Treasurer,

State of New Jersey.

1. The fees submitted to the Department are not refundable.
2. All examination and initial license applications and associated fees shall be

mailed to:

State of New Jersey

Department of Environmental Protection

Bureau of [Radiological Health] **X-ray Compliance**

Mail Code 25-01

PO Box [415]**420**

Trenton, New Jersey 08625-[0415]**0420**

3. (No change.)

SUBCHAPTER 41. MERCURY VAPOR LAMPS

7:28-41.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

...

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["New facility" means any building for which a certificate of occupancy has been issued subsequent to the effective date of this subchapter.]

...

7:28-41.3 General requirements for indoor installations

(a) (No change.)

[(b) The provisions of this section shall be fully met within one year after the effective date of this subchapter.]

7:28-41.4 General requirements for outdoor installations

(a) – (b) (No change.)

[(c) The provisions of this section shall be fully met within one year after the effective date of this subchapter.]

SUBCHAPTER 50. NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS:
INSPECTION AND INVESTGATIONS

7:28-50.1 Incorporation by reference

(a) (No change.)

(b) The following provisions of 10 CFR Part 19 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR 19.5, Communications; [and]
2. 10 CFR 19.8, Information collection requirements: OMB approval[.];

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3. 10 CFR 19.11(b), Posting of notices to workers;

4. 10 CFR 19.14(a), Presence of representatives of licensees and regulated entities, and workers during inspections; and

5. 10 CFR 19.30, Violations.

(c) The following provisions of 10 CFR Part 19 are incorporated by reference with the specified changes:

1. “Atomic Energy Act of 1954” as used in the provisions of Part 19 of the Code of Federal Regulations that are incorporated by reference, shall mean the Radiation Protection Act of 1958, N.J.S.A. 26:2D-1 et seq.;

[1. At 10 CFR 19.2, Scope, delete references to 10 CFR Parts 50, 52, 54, 60, 63, 72 and 76.

2. At 10 CFR 19.3, Definitions, “Commission” shall mean the New Jersey Department of Environmental Protection;]

[3]2. “Nuclear Regulatory Commission,” “NRC,” and “U.S. Nuclear Regulatory Commission,” as used in the provisions of Part 19 of the Code of Federal Regulations that are incorporated by reference, **shall** mean the New Jersey Department of Environmental Protection, except when specifically noted in this subchapter;

3. At 10 CFR 19.2, Scope, delete references to 10 CFR Parts 50, 52, 54, 60, 63, 72 and 76;

4. 10 CFR 19.2(a)(1), replace “parts 30 through 36, 39, 40, 60, 61, 63, 70 or 72 of this chapter” with “N.J.A.C. 7:28-51 through 60, and 63,” and delete “including persons licensed to operate a production or utilization facility under parts 50 or 52 of this

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chapter, persons licensed to possess power reactor spent fuel in an independent spent fuel storage installation (ISFSI) under part 72 of this chapter, and in accordance with 10 CFR 76.60 to persons required to obtain a certificate of compliance or an approved compliance plan under part 76 of this chapter”;

5. 10 CFR 19.2(b) delete “The regulations in this part do not apply to subpoenas issued under 10 CFR 2.702”;

6. 10 CFR 19.3, Definitions, “Act” shall mean the Radiation Protection Act of 1958, N.J.S.A. 26:2D-1 et seq.;

7. At 10 CFR 19.3, Definitions, “Commission” shall mean the New Jersey Department of Environmental Protection;

8. 10 CFR 19.3, in the definition of “License” replace “in parts 30 through 36, 39, 40, 60, 61, 63, 70, or 72” with “ in N.J.A.C. 7:28-51 through 60 and 63;

9. 10 CFR 19.3, in the definition of “Regulated activities” delete “or any title of the Energy Reorganization Act of 1972, as amended”;

10. 10 CFR 19.3, in the definition of “Regulated entities” delete “, including (but not limited to) an applicant for or holder of a standard design approval under subpart E of part 52 of this chapter or a standard design certification under subpart B of part 52 of this chapter.”;

[4]11. 10 CFR 19.4, [delete] replace “Except as specifically authorized by the Commission in writing, no” with “No,” and replace “by the General Counsel” with “signed and approved by the Commissioner of the Department,”;

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12. 10 CFR 19.11(a), Posting of notices to workers, delete “(except for an early site permit under subpart A of part 52 of this chapter, or a holder of a manufacturing license under subpart F or part 52 of this chapter)”;

[5]13. 10 CFR 19.11(a)(1), replace “Part 20” with “N.J.A.C. 7:28-6”;

14. 10 CFR 19.11(a)(4), replace “pursuant to subpart B of part 2 of this chapter” with “by the Department”;

15. 10 CFR 19.11(d), delete “or (b)(1) or (2)”;

16. 10 CFR 19.11(e)(1) replace “licensee,” with “licensee or,” and delete “each applicant for or holder of a standard design approval under subpart E of part 52 of this chapter, each applicant for an early site permit under subpart A of part 52 of this chapter, and each applicant for a standard design certification under subpart B of part 52 of this chapter,” replace “NRC Form 3” with form RPP-14,” and replace “August 1997” with “November 2010”;

17. 10 CFR 19.11(e)(2) replace “by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 or this chapter, by calling (301) 415-7232, via e-mail to forms@nrc.gov, or by visiting the NRC’s website at <http://www.nrc.gov> and selecting forms from the index found on the home page” with “contacting the Radioactive Materials Program at the address, phone number, or website listed in N.J.A.C. 7:28-1.5”;

18. 10 CFR 19.11(g) delete “or (b)(3)”;

19. 10 CFR 19.13(a), replace “10 CFR part 19” with “N.J.A.C. 7:28-50”;

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20. 10 CFR 19.14(a), Presence of representatives of licensees and regulated entities, and workers during inspections, replace “licensee,” with “licensee or,” and delete “each applicant for or holder of a standard design approval under subpart E of part 52 of this chapter, each applicant for an early site permit under subpart A of part 52 of this chapter, and each applicant for a standard design certification under subpart B of part 52 of this chapter”;

21. 10 CFR 19.16(a), replace “Administrator of the appropriate Commission Regional Office” with “Radioactive Materials Program”;

22. 10 CFR 19.16(a) and (b), replace all references to “Regional Office Administrator” with “Radioactive Materials Program”;

[10]23. 10 CFR 19.17(a), replace all references to “Executive Director for Operations” with “[Chief] **Manager, Bureau of Environmental Radiation of the Department,” and replace “Washington, DC 20555-0001; by hand delivery to the NRC’s offices at 11555 Rockville Pike, Rockville, Maryland” with at the address or physical location specified in N.J.A.C. 7:28-1.5(a),” and delete “ Detailed guidance on making electronic submissions can be obtained by visiting the NRC’s Web site at <http://www.nrc.gov/site-help/e-submittals.html>; by e-mail to SHD.Resource@nrc.gov; or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.”;**

[11]24. 10 CFR 19.17(a) and (b), replace all references to “Administrator of the appropriate Regional Office” with “Supervisor, Radioactive Materials [Section]Program**”;**

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[12]25. 10 CFR 19.18(b), replace “Office of the General Counsel” with “Office of the Attorney General of New Jersey,” **and replace all references to “agency” with “State”**;

[13. 10 CFR 19.20, delete references to 10 CFR Parts 50, 60, 63, 72 and 76; and]

26. 10 CFR 19.20, delete “a holder of a certificate of compliance issued under part 76 of this chapter,” and replace “parts 30, 40, 50, 52, 54, 60, 61, 63, 70, 72, 76, or 150 of this chapter” with “N.J.A.C. 7:28-51, 58, 59, 60 or 62”;

27. 10 CFR 19.31, replace “Commission” with “Department, with approval of the Commission on Radiation Protection” and replace “by law, will not result in undue hazard to life and property” with “in accordance with the provisions of N.J.A.C 7:28-2.8”;

28. 10 CFR 19.32, delete “, or under any title of the Energy Reorganization Act of 1974, as amended”;

[14. 10 CFR 19.32,] add “Allegations of discrimination are to be reported to the Division on Civil Rights, Department of Law and Public Safety, 140 East Front Street, P.O. Box 089, Trenton, New Jersey, 08625-089.”; **and**

29. 10 CFR 19.40, delete all of 10 CFR 19.40(a) and (b) and replace with “The Radiation Protection Act of 1958, N.J.S.A. 26:2D-1 et seq., provides for criminal sanctions for violation of any provision of the Act.”

(d) For those facilities whose radioactive materials are licensed solely by the Department, NRC Form 3, “Notice to Employees” shall mean the Department’s Form RPP-14, “Notice to Employees, Standards for Protection Against Radiation,” available from the Department [via the Department’s website at: www.nj.gov/dep/rpp/rms/rmsdown.htm, or by requesting a copy by telephone during business hours at (609) 984-5462.] **by contacting the**

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Radioactive Materials Program at the address, phone number, or website listed in N.J.A.C.

7:28-1.5.”

(e)-(g) (No change.)

SUBCHAPTER 51. RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING
OF BYPRODUCT MATERIAL

7:28-51.1 Incorporation by reference

(a) (No change.)

(b) The following provisions of 10 CFR Part 30 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR 30.3(b) through (d), Activities requiring license;

[1] **2. 10 CFR 30.4, Definitions, the following definitions are not incorporated by reference: “ [a]Act,” “alert,” [“byproduct material,” “curie,” “decommission,”] “[d]Department[“] and [“]Department of Energy,” [“effective dose equivalent,” “government agency,” “license,” “medical use,” “person,”] “production facility,” “site area emergency,” [“source material,” and “special nuclear material]” and “utilization facility ;**

[2] **3. 10 CFR 30.6, Communications;**

4. 10 CFR 30.7(e)(3), Employee Protection;

[3] **5. 10 CFR 30.8, Information collection requirements: OMB approval;**

6. 10 CFR 30.11(b) and (c), Specific exemptions;

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[4] 7. 10 CFR 30.21(c), Radioactive drug: Capsules containing carbon-14 urea for “in vivo” diagnostic use for humans;

8. 10 CFR 30.32(f), Application for specific licenses;

9. 10 CFR 30.33(a)(5), General requirements for issuance of specific license;

[5] **10. 10 CFR 30.34(d), (e)(1) and (e)(3), Terms and conditions of licenses;**

[6] **11. 10 CFR 30.41([a]b)(6), Transfer of byproduct material;**

12. 10 CFR 30.50(c)(3), Reporting Requirements;

[7] **13. 10 CFR 30.55, Tritium reports; and**

14. 10 CFR 30.63, Violations.

(c) The following provisions of 10 CFR Part 30 are incorporated by reference with the specified changes:

1. 10 CFR 30.1, Scope, replace “in the United States governing domestic licensing of byproduct material under the Atomic Energy Act of 1954, as amended (68 Stat. 919), and under title II of the of the Energy Reorganization Act of 1974 (88 Stat. 1242), and exemptions from the domestic licensing requirements permitted by Section 81 of the Act” with “in the State of New Jersey where the New Jersey Department of Environmental Protection maintains jurisdiction governing domestic licensing of byproduct material under the Radiation Protection Act of 1958, N.J.S.A. 26:2D-1 et seq.”;

2. 10 CFR 30.3(a), replace “part 150 of this chapter” with “N.J.A.C. 7:28-62”;

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3. **10 CFR 30.3(b)(1), replace “parts 19, 20, 21 and 71 of this chapter” with “N.J.A.C. 7:28-6, 50, and 61” and replace “10 CFR parts 33, 34, 36 or 39” with “N.J.A.C. 7:28-54, 56, 57, or 63”;**

4. **10 CFR 30.3(b)(1), (2) and (3), delete “or Federally recognized Indian Tribe”;**

5. **10 CFR 30.3(b)(3), delete “or Indian Tribe”;**

6. **10 CFR 30.3(c)(1), replace “parts 19, 20, 21 and 71 of this chapter” with “N.J.A.C. 7:28-6, 50, and 61” and replace “10 CFR parts 33, 34, 36, or 39” with “N.J.A.C. 7:28-54, 56, 57, or 63”;**

[1] 7. 10 CFR 30.4, Definitions, “Commission” shall mean the New Jersey Department of Environmental Protection;

[2] 8. “Nuclear Regulatory Commission,” “NRC,” and “U.S. Nuclear Regulatory Commission,” as used in the provisions of Part 30 of the Code of Federal Regulations that are incorporated by reference, **shall** mean the New Jersey Department of Environmental Protection, except when specifically noted in this subchapter; **and at;**

i) **10 CFR 30.4, Definitions, “Agreement State,”**

[3] 9. 10 CFR 30.5, [delete] **replace** “Except as specifically authorized by the Commission in writing, no” with “No,” **and replace “parts 31 through 36 and 39” with “N.J.A.C. 7:28-52 through 57 and 63,”** and replace “by the General Counsel” with “signed and approved by the Commissioner of the Department”;

10. **10 CFR 30.7(a), delete “The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to**

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the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.”;

11. 10 CFR 30.7(a)(3), replace “Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended” with “Radiation Protection Act of 1958, N.J.S.A. 26:2D-1 et seq.”;

12. 10 CFR 30.7(e)(1), replace “part 19” with “N.J.A.C. 7:28-50”;

[4] **13. 10 CFR 30.9(b), replace all references to “Administrator of the appropriate Regional Office” with “Supervisor, Radioactive Materials [Section]Program”;**

[5] **14. 10 CFR 30.10(b), replace “10 CFR part 2, subpart B” with “N.J.S.A. 26:2D-13”;**

15. 10 CFR 30.11(a), replace “Commission” with “Department, with approval of the Commission on Radiation Protection,” and replace “parts 31 through 36 and 39 of this chapter as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest” with “N.J.A.C. 7:28-52 through 57 and 63 as it determines are authorized in accordance with the provisions of N.J.A.C. 7:28-2.8”;

16. 30.11(d), replace all references to “part 61 of this chapter” with “N.J.A.C. 7:28-59”;

17. 10 CFR 30.12, “Department” shall mean Department of Energy “Commission” shall mean U.S. Nuclear Regulatory Commission,” and “Act” shall mean the Atomic Energy Act of 1974;

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[6. 10 CFR 30.12, replace “when the Commission determines that the exemption of the prime contractor or subcontractor is authorized by law” with “when the Commission and the Department on Radiation Protection determine that the exemption of the prime contractor or subcontractor is in accordance with N.J.A.C. 7:28-2.8”];]

18. 10 CFR 30.13, replace “parts 31 through 36 and 39 of this chapter” with “N.J.A.C. 7:28-52 through 57 and 63” and delete “section 81 of”;

19. 10 CFR 30.14(a), delete “section 81 of” and replace “parts 31 through 36 and 39 of this chapter” with “N.J.A.C. 7:28-52 through 57 and 63”;

[7] **20. 10 CFR 30.14(c), delete “section 81 of” and replace “parts 31 through 36 and 39 of this chapter” with “N.J.A.C. 7:28-52 through 57 and 63” and add “the Department or” after “holding a specific license issued by”;**

[8] **21. 10 CFR 30.14(c), “Commission” shall mean the U.S. Nuclear Regulatory Commission;**

22. 10 CFR 30.14(d), add “or the U.S. NRC” after “Agreement State” and replace “§ 32.11 of this chapter” with “N.J.A.C. 7:28-53”;

[9] **23. 10 CFR 30.15(a), delete “section 81 of” and replace “parts 20 and 30 through 36 and 39” [and add] with “[and] N.J.A.C. 7:28-6 [after “of this Chapter”] and 51 through 57”;**

[10. 10 CFR 30.16, delete “20 and” and add “and N.J.A.C. 7:28-6” after “of this Chapter”];]

24. 10 CFR 30.18(a), delete “section 81 of” and replace “parts 30 through 34, 36, and 39 of this chapter” with “N.J.A.C. 7:28-51 through 54, 56, 57 and 63”;

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25. 10 CFR 30.18(b), replace “§ 31.4 of this chapter or similar general license of a state” with “N.J.A.C. 7:28-52 or similar general license of an Agreement State or the U.S. NRC,” delete “section 81 of” and replace “parts 30 through 34, 36 and 39” with “N.J.A.C. 7:28-51 through 54, 56, 57 and 63”;

26. 10 CFR 30.18(d), add “or the U.S. NRC” after both occurrences of “Agreement State”;

[11] **27. 10 CFR 30.19(a), delete “section 81 of” and replace “parts 20 and 30 through 36 and 39 of this chapter” [and add] with “[and]N.J.A.C. 7:28-6 [after “of this Chapter”] , 51 through 57 and 63”;**

28. 10 CFR 30.19(b), add “or the U.S. NRC” after “Agreement State”;

[12] **29. 10 CFR 30.20(a), delete “section 81 of,” replace “19, 20 and 30 through 36, and 39 of this chapter” with [and add] “[and]N.J.A.C. 7:28-6 [after “of this Chapter”], 50 through 57 and 63;”**

30. 10 CFR 30.20(b), add “or the U.S. NRC” after “Agreement State”;

31. 10 CFR 30.21(b), replace “part 35 of this chapter” with “N.J.A.C. 7:28-55”;

32. 10 CFR 30.31(a), replace “parts 32 through 36, and 39” with “N.J.A.C. 7:28-53 through 57 and 63”;

[13] **33. 10 CFR 30.32(a), replace the first sentence with “Application for specific licenses and renewals from the State shall be filed with **the** Department on forms available from the Department”;**

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34. 10 CFR 30.32(d), replace “parts 32 through 35 of this chapter” with “N.J.A.C. 7:28-53 through 55 and 63”;

[14] **35. 10 CFR 30.32(e), replace all references to 10 CFR Part 170 with N.J.A.C. 7:28-64[.];**

36. 10 CFR 30.32(g)(1), “Commission” shall mean the U.S. Nuclear Regulatory Commission;

37. 10 CFR 30.32(h), replace “parts 32 through 35 of this chapter” with “N.J.A.C. 7:28-53 through 55 and 63”;

38. 10 CFR 30.32(j), replace “part 35 of this chapter” with “N.J.A.C. 7:28-55” and add “or U.S. NRC” after “Agreement State”;

39. 10 CFR 30.32(j)(1), add “or U.S. NRC” after “Agreement State”;

40. 10 CFR 30.33(a)(4), replace “parts 32 through 36 and 39” with “N.J.A.C. 7:28-53 through 57 and 63”;

[15. 10 CFR 30.33(a)(5), replace “Director, Office of Federal and State Materials and Environmental Management Program,” with “Manager, Bureau of Environmental Radiation.”]

41. 10 CFR 30.33(b), delete “(Form NRC 374, “Byproduct Material License”);

42. 10 CFR 30.34(a), replace “parts 31 through 36 and 39 of this chapter” with “N.J.A.C. 7:28-52 through 57 and 63”;

43. 10 CFR 30.34(b), replace “parts 31 through 36 and 39” with “N.J.A.C. 7:28-52 through 57 and 63”;

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44. 10 CFR 30.34(c), replace “parts 31 through 36 and 39” and “parts 31 through 36 and 39 of this chapter” with “N.J.A.C. 7:28-52 through 57 and 63”;

45. 10 CFR 30.34(c), replace “part 71 of this chapter” with N.J.A.C. 7:28-61”;

46. 10 CFR 30.34(f), replace “appropriate NRC Regional Office specified in § 30.6” with “Radioactive Materials Program”;

47. 10 CFR 30.34(h)(1), replace “appropriate NRC Regional Administrator” with “Radioactive Materials Program”;

[17] **48. 10 CFR 30.35(c)(5), replace “10 CFR Part 20” with “N.J.A.C. 7:28-12”;**

[20] **49. 10 CFR 30.35(g)(3)(iv), replace “10 CFR Part 20, subpart E,” with “N.J.A.C. 7:28-12”;**

50. 10 CFR 30.36(j)(1), replace “NRC” with “NJRAD”;

[22] **51. 10 CFR 30.36(j)(2), replace “10 CFR Part 20, subpart E” with “N.J.A.C. 7:28-12”**

[23] **52. 10 CFR 30.36(k)(3)(i), replace “10 CFR Part 20, Subpart E” with “N.J.A.C. 7:28-12”**

[24] **53. 10 CFR 30.36(k)(3)(ii), replace “10 CFR Part 20, subpart E” with “N.J.A.C. 7:28-12”;**

[25] **54. 10 CFR 30.37(a), replace the wording of (a) with “Application for renewal of a specific State license shall be filed with the Department on **NJRAD Form-313** [forms] available from the Department.”;**

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[26] **55.** 10 CFR 30.38, Change the title of the section from “Application for amendment of licenses” to “Amendment of licenses.” and [R]replace “Applications for amendment of a license shall be filed on Form NRC-313 in accordance with 30.32” with “Requests to amend a license shall be [shall be]submitted in a letter form to the Department **or on NJRAD Form-313**”;

56. 10 CFR 30.39, replace “parts 32 through 36 and 39 of this chapter” with “**N.J.A.C. 7:28-53 through 57 and 63**”;

57. 10 CFR 30.41(b)(1), add “of Energy” after “the Department”;

58. 10 CFR 30.41(b)(2), “Act” shall mean the Atomic Energy Act of 1954 (68 Stat. 919), including any amendments thereto”;

59. 10 CFR 30.41(b)(5), add “or the U.S. NRC” after “an Agreement State”;

60. 10 CFR 30.41(c), add “or the U.S. NRC” after both occurrences of “Agreement State”;

61. 10 CFR 41(d)(4) and (5), add “or the U.S. NRC” after “the Commission”;

62. 10 CFR 30.50(c)(1) replace “NRC Operations Center” with “the Department at the appropriate phone number listed in N.J.A.C. 7:28-1.5.”;

[29] **63.** 10 CFR 30.50(c)(2), replace “appropriate NRC Regional office listed in appendix D to part 20 of this Chapter” with “[Department]**Radioactive Materials Program**”;

64. 10 CFR 30.51(a), replace “parts 31 through 36 of this chapter” with “**N.J.A.C. 7:28-52 through 56 and 63**”;

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65. 10 CFR 30.51(b) and (c)(1), replace all references to “parts 31 through 36 of this chapter” with “N.J.A.C. 7:28-52 through 56 and 63”;

66. 10 CFR 30.51(c)(2) replace all references to “parts 31 through 36 and 39 of this chapter” with “N.J.A.C. 7:28-52 through 57 and 63”;

[30] **67. 10 CFR 30.51(d) and (f), replace all references to “appropriate NRC Regional Office” with “[Department]Radioactive Material Program”;**

68. 10 CFR 30.53, replace “parts 31 through 36 and 39 of this chapter” with “N.J.A.C. 7:28-52 through 57 and 63”;

69. 10 CFR 30.61(a), replace “parts 31 through 35 of this chapter” with “N.J.A.C. 7:28-52 through 55 and 63”;

70. 10 CFR 30.61(b), delete “section 182 of”;

71. 10 CFR 30.64, replace all of 10 CFR 30.64 with “The Radiation Protection Act of 1958, N.J.S.A. 26:2D-1 et seq., provides for criminal sanctions for violation of any provision of the Act”;

72. 10 CFR 30, Appendix A to Part 20 – Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Assurance of Funds for Decommissioning, II Financial Test (A)(1)(ii) and (A)(2)(ii), delete ,” or, for a power reactor licensee, at least six times the amount of decommissioning funds being assured by a parent company guarantee for the total of all reactor units or parts thereof (Tangible net worth shall be calculated to exclude the net book value of the nuclear unit(s))”;

73. 10 CFR 30, Appendix A to Part 20 – Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Assurance of Funds for

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Decommissioning, II Financial Test (A)(1)(iv) and (A)(2)(iv), delete ,” or, for a power reactor licensee, at least six times the amount of decommissioning funds being assured by a parent company guarantee for the total of all reactor units or parts therefore”; and

[35] 74. 10 CFR 30, Appendix B to Part 30—Quantities of Licensed Material Requiring Labeling, end Note, replace “§ 20.303” with “N.J.A.C. 7:28-6.”

(d) For those facilities whose radioactive materials are licensed solely by the Department, NRC Form 3, “Notice to Employees” shall mean the Department’s Form RPP-14, “Notice to Employees, Standards for Protection Against Radiation,” available from the Department [via the Department’s website at: www.nj.gov/dep/rpp/rms/rmsdown.htm, or by requesting a copy by telephone during business hours at (609) 984-5462] **by contacting the Radioactive Materials Program at the address, phone number, or website listed in N.J.A.C. 7:28-1.5.”**

(e)-(g) (No change.)

SUBCHAPTER 52. GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

7:28-52.1 Incorporation by reference

(a) (No change.)

(b) The following provisions of 10 CFR Part 31 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR [Part]31.4, Information collection requirements: OMB approval **and**
2. **10 CFR 31.22, Violations.**

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(c) The following provisions of 10 CFR Part 31 are incorporated by reference with the specified changes:

1. (No change.)
2. **10 CFR 31.1, replace “10 CFR Part 30” with “N.J.A.C. 7:28-51”;**
- [2] 3. **10 CFR 31.2, [delete] replace Parts 19, 20, and 21 of this chapter” [and add] with “[and]N.J.A.C. 7:28-6 [after “of this chapter”] and 50 ”;**
4. **10 CFR 31.5(b)(1)(ii), add “or by the U.S. Nuclear Regulatory Commission” after “Agreement State”;**
5. **10 CFR 31.5(c)(3)(ii), replace “parts 30 and 32 of this chapter” with “N.J.A.C. 7:28-51 and 53” and add “or from the U.S. Nuclear Regulatory Commission” after “Agreement State”;**
6. **10 CFR 31.5(c)(5), replace “parts 30 and 32 of this chapter” with “N.J.A.C. 7:28-51 and 53” and add “or by the U.S. Nuclear Regulatory Commission” after “Agreement State”;**
- [3] 7. **10 CFR 31.5(c)(5), replace “§ 20.1402” with “N.J.A.C. 7:28-12”;**
8. **10 CFR 31.5(c)(8)(i), replace “parts 30 and 32 of this chapter, or part 30 of this chapter” with “N.J.A.C. 7:28-51 and 53, or N.J.A.C. 7:28-51” and add “or of the U.S. Nuclear Regulatory Commission” after “Agreement State”;**
- [6] 9. **10 CFR 31.5(c)(10), [delete] replace “parts 19, 20, and 21, of this chapter,” [and add] with “and N.J.A.C. 7:28-6 [after “of this chapter”] and 50”;**

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10. 10 CFR 31.5(c)(11), replace “Director, Office of Federal and State Materials and Environmental Management Programs” with “Department” and replace “§ 30.6(a) of this chapter” with “N.J.A.C. 7:28-1.5”;

[7] **11. 10 CFR 31.5(c)(13)(ii), after “fee required by” replace “Sec.[tion] 170.31 of this chapter” with “N.J.A.C. 7:28-64”;**

[8] **12. 10 CFR 31.5(c)(13)(iv), [the terms “NRC” and “Commission” mean the U.S. Nuclear Regulatory Commission] add “or by the U.S. Nuclear Regulatory Commission” after “Agreement State”;**

[9] **13. 10 CFR 31.5(c)(14), replace “Director, Office of Federal and State Materials and Environmental Management Programs[of Nuclear Material Safety and Safeguards], ATTN: GLTS, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001” with [“Department”]”Radioactive Materials Program”;**

14. 10 CFR 31.6, add “or by the U.S. Nuclear Regulatory Commission” after “by an Agreement State” and add “or within NRC jurisdiction” after “within such Agreement State”;

15. 10 CFR 31.6, replace “any non-Agreement State” with “the State of New Jersey, where the Department maintains jurisdiction”;

16. 10 CFR 31.6(b), add “or by the U.S. Nuclear Regulatory Commission” after “Agreement State”;

17. 10 CFR 31.6(c), add “or of the U.S. Nuclear Regulatory Commission” after “Agreement State”;

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18. 10 CFR 31.7(a), add “or by the U.S. Nuclear Regulatory Commission” after all occurrences of “by an Agreement State”;

[10] **19. 10 CFR 31.7(b), [delete]replace “parts 19, 20, and 21, of this chapter” [and add] with “N.J.A.C. 7:28-6 [after “of this chapter”] and 50”;**

20. 10 CFR 31.8(a)(1), replace “a non-Agreement State” with “the State of New Jersey, where the Department maintains jurisdiction”;

21. 10 CFR 31.8(b), add “or by the U.S. Nuclear Regulatory Commission” after both occurrences of “Agreement State” ;

[12] **22. 10 CFR 31.8(c), replace “parts 19, 20, and 21, of this chapter” [and add ,” as well as] with “N.J.A.C. 7:28-6 [after the second “of this chapter”] and 50”;**

23. 10 CFR 31.10(a), add “or by the U.S. Nuclear Regulatory Commission” after both occurrences of “Agreement State”;

24. 10 CFR 31.10(b)(1), replace “part 30 or 32” with “N.J.A.C. 7:28-51 or 53” and add “or from the U.S. Nuclear Regulatory Commission” after “Agreement State”

[14] **25. 10 CFR 31.10(b)(3), [delete]replace “parts 19, 20, and 21, of this chapter” with [and add “and] “N.J.A.C. 7:28-6 and 50,”;**

26. 10 CFR 31.11(b)(1), replace with “NRC Form 483” with “NJRAD Form 483,” and replace “Director, Office of Federal and State Materials and Environmental Management Programs” with “Radioactive Materials Program,” and replace “30.6(a) of this chapter” with “N.J.A.C. 7:28-1.5”;

27. 10 CFR 31.11(b)(2), replace “part 35 of this chapter” with “N.J.A.C. 7:28-55”;

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- 28. 10 CFR 31.11(d)(1), add “or by the U.S. Nuclear Regulatory Commission” after both occurrences of “Agreement State”;**
- [1729]. 10 CFR 31.11(e), add “radioactive materials” prior to “registrant”;
- [18] **30. 10 CFR 31.11(f), [delete] replace “parts 19, 20, and 21, of this chapter” [and add]with “and N.J.A.C. 7:28-6 [after “of this chapter” and] and 50”;**
- 31. 10 CFR 31.12(b), replace “10 CFR parts 19, 20, and 21” with “N.J.A.C. 7:28-6and 50”;**
- 32. 10 CFR 31.12(c)(3), replace “part 110 of this chapter” with “10 CFR part 110”;**
- 33. 10 CFR 31.12(c)(4), replace “part 30 of this chapter” with “N.J.A.C. 7:28-51,” and add “or of the U.S. Nuclear Regulatory Commission” after “Agreement State”;**
- 34. 10 CFR 31.12(c)(5), replace “Director of the Office of Federal and State Materials and Environmental Management Programs” with “Radioactive Materials Program,” and replace “30.6(a) of this chapter” with “N.J.A.C. 7:28-1.5”; and**
- 35. 10 CFR 31.23, replace all of 10 CFR 31.23 with “The Radiation Protection Act of 1958, N.J.S.A. 26:2D-1 et seq., provides for criminal sanctions for violation of any provision of the Act.”**

(d) For those facilities whose radioactive materials are licensed solely by the Department, NRC Form 3, “Notice to Employees,” shall mean the Department’s Form RPP-14, “Notice to Employees, Standards for Protection Against Radiation,” available from the Department [via the Department’s website at www.nj.gov/dep/rpp/rms/rmsdown.htm, or by

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requesting a copy by telephone during business hours at (609) 984-5462] **by contacting the Radioactive Materials Program at the address, phone number, or website listed in N.J.A.C.**

7:28-1.5.”

(e)-(g) (No change.)

SUBCHAPTER 53. SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

7:28-53.1 Incorporation by reference

(a) (No change.)

(b) The following provisions of 10 CFR Part 32 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR 32.1(c)(1) and (2), Purpose and scope;

Recodify N.J.A.C. 7:28-53.1(b)1 through 13 as (b)2 through 14. (No change in text.)

[14] **15.** 10 CFR 32.25, Conditions of licenses issued under [Part]§ 32.22:

Quality control, labeling, and reports of transfer;

Renumber N.J.A.C. 7:28-53.1(b)15 through 17 as (b)16 through 18. (No change in text.)

[18] **19.** 10 CFR 32.29, Conditions of licenses issued under § 32.26: Quality

control, labeling, and reports of transfer;

[19. 10 CFR 32.40, Schedule A-Prototype tests for automobile lock illuminators and]

20. 10 CFR 32.210, Registration of product information[.]; **and**

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21. 10 CFR 32.301, Violations.

(c) The following provisions of 10 CFR Part 32 are incorporated by reference with the specified changes:

[1. 10 CFR 32.52(a), replace “Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001,” with “New Jersey Department of Environmental Protection, Radioactive Materials Section, P.O. Box 415, Trenton, New Jersey 08625-0415”;

2. 10 CFR 32.56, replace “Director of Nuclear Material Safety and Safeguards,” with “Department”;

[3] 1. “Commission,” “Nuclear Regulatory Commission,” “NRC,” and “U.S. Nuclear Regulatory Commission,” as used in the provisions of Part 32 of the Code of Federal Regulations that are incorporated by reference, **shall** mean the Department, except when specifically noted in this subchapter;

2. 10 CFR 32.1(a)(1), replace “part 30 of this chapter” with “N.J.A.C. 7:28-51”;

3. 10 CFR 32.1(a)(2), replace “part 31 or 35 of this chapter” with “N.J.A.C. 7:28-52 or 55” and replace “part 30 of this chapter” with “N.J.A.C. 7:28-51”;

4. 10 CFR 32.1(a)(2), add “or of the U.S. Nuclear Regulatory Commission” after “Agreement State”;

5. 10 CFR 32.1(b), replace “part 30 of this chapter” with “N.J.A.C. 7:28-51”;

6. 10 CFR 32.1(c)(2), replace “part 31 of this chapter” with “N.J.A.C. 7:28-52”;

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[4] 7. 10 CFR 32.2, in the definition of “nationally tracked source,” replace “part 20 of this Chapter” with “10 CFR part 20 as incorporated by reference in N.J.A.C. 7:28-6”;

8. 10 CFR 32.13, replace “§ 32.11” with “10 CFR 32.11” and add “or of the U.S. Nuclear Regulatory Commission” after “Agreement State”;

9. 10 CFR 32.51(a), add “or of the U.S. Nuclear Regulatory Commission” after “Agreement State”;

[5. 10 CFR 32.51(a)(2)(ii), replace “§ 20.1201(a) of this chapter” with “N.J.A.C. 7:28-6”];]

10. 10 CFR 32.51(a)(3)(iii), “U.S. NRC” shall mean U.S. Nuclear Regulatory Commission;

[6. 10 CFR 32.51(a)(4), replace “§ 20.1901 of this chapter” with “N.J.A.C. 7:28-6”];]

[7. 10 CFR 32.51(a)(5), replace “§ 20.1901 of this chapter” with “N.J.A.C. 7:28-6”];]

[8. 10 CFR 32.51(c), replace “§ 20.1201(a) of this chapter” with “N.J.A.C. 7:28-6”];]

11. 10 CFR 32.51(c), add “or of the U.S. Nuclear Regulatory Commission” after “Agreement State”;

[9. 10 CFR 32.51a(a)(2), add “and” between “31.2, and “30.51”];]

[10. 10 CFR 32.51a(a)(2), delete “20.2201, and 20.2202” and add “and N.J.A.C. 7:28-6” after “of this chapter”];]

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12. 10 CFR 32.51a(b) add, “or of the U.S. Nuclear Regulatory Commission” after “an Agreement State”;

[11. 10 CFR 32.51a(b)(1), add “and” between “31.2” and “30.51” in both locations;

12. 10 CFR 32.51a(b)(1), delete “20.2201, and 20.2202” from both locations and add “and N.J.A.C. 7:28-6 “ after “of this chapter” in both locations;]

13. 10 CFR 32.51a(b)(1), add “or U.S. Nuclear Regulatory Commission’s” after “Agreement State’s” and add “or the U.S. Nuclear Regulatory Commission” after “Agreement State”;

14. 10 CFR 32.51a(b)(4), add “or at the U.S. Nuclear Regulatory Commission” after “Agreement State regulatory agency”;

15. 10 CFR 32.51a(e), add “or the U.S. Nuclear Regulatory Commission” after “Agreement State”;

16. 10 CFR 32.52(a), replace “Director, Office of Federal and State Materials and Environmental Management Programs, ATTN: GLTS” with “Radioactive Material Program” and replace “§ 30.6(a) of this chapter” with “N.J.A.C. 7:28-1.5”;

17. 10 CFR 32.52(b), add “U.S. Nuclear Regulatory Commission's” after “Agreement State’s” in both locations and add “U.S. Nuclear Regulatory Commission” after “Agreement State agency”;

[13. 10 CFR 32.54(a), replace “§ 20.1901 of this chapter” with “N.J.A.C. 7:28-6”;

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18. 10 CFR 32.54(a), “U.S. NRC” and “NRC” shall mean U.S. Nuclear Regulatory Commission;

19. 10 CFR 32.58, “United States Nuclear Regulatory Commission” and “Commission” shall mean U.S. Nuclear Regulatory Commission;

20. 10 CFR 32.59, add “or of the U.S. Nuclear Regulatory Commission” after “Agreement State”;

21. 10 CFR 32.56, replace “Director, Office of Federal and State Materials and Environmental Management Programs” with “Radioactive Material Program” and replace “§ 30.6(a) of this chapter” with “N.J.A.C. 7:28-1.5”;

[14. 10 CFR 32.61(d), replace “§ 20.1901(a) of this chapter” with “N.J.A.C. 7:28-6”];

[15. 10 CFR 32.71(c)(2), replace “§ 20.1901(a) of this chapter” with “N.J.A.C. 7:28-6”; and]

22. 10 CFR 32.58, “U.S. Nuclear Regulatory Commission” and Commission” shall mean U.S. Nuclear Regulatory Commission;

23. 10 CFR 32.71(d), “U.S. Nuclear Regulatory Commission” and Commission” shall mean U.S. Nuclear Regulatory Commission;

[16. 10 CFR 32.71(e), replace “§ 20.2001” with “N.J.A.C. 7:29-6.”]

24. 10 CFR 32.72(a), replace “part 35 of this chapter” with “N.J.A.C. 7:28-55”;

25. 10 CFR 32.72(b)(5)(i), add “or the U.S. Nuclear Regulatory Commission” after “Agreement state”;

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26. 10 CFR 32.72(b)(5)(ii), add “or U.S. Nuclear Regulatory Commission” after “Agreement State”;

27. 10 CFR 32.72(5)(iii) and (iv), “Commission” shall mean the U.S. Nuclear Regulatory Commission;

28. 10 CFR 32.72(d), replace “other Federal, and State” with “Federal, and other State”;

29. 10 CFR 32.74(a), replace “part 35 of this chapter” with “N.J.A.C. 7:28-55”;

30. 10 CFR 32.74(a)(3), add “or the U.S. Nuclear Regulatory Commission” after “Agreement State”; and

31. 10 CFR 32.303, replace all of 10 CFR 32.303 with “The Radiation Protection Act of 1958, N.J.S.A. 26:2D-1 et seq., provides for criminal sanctions for violation of any provision of the Act.”

(d) For those facilities whose radioactive materials are licensed solely by the Department, NRC Form 3, “Notice to Employees” shall mean the Department’s Form RPP-14, “Notice to Employees, Standards for Protection Against Radiation,” available from the Department [via the Department’s website at: [www.nj.gov/dep/rpp/rms/\[rmsdown\].htm](http://www.nj.gov/dep/rpp/rms/[rmsdown].htm)], or by requesting a copy by telephone during business hours at (609) 984-5462.] **by contacting the Radioactive Materials Program at the address, phone number, or website listed in N.J.A.C. 7:28-1.5.”**

(e) - (g) (No change.)

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SUBCHAPTER 54. SPECIFIC DOMESTIC LICENSES OF BROAD SCOPE FOR
BYPRODUCT MATERIAL

7:28-54.1 Incorporation by reference

(a) (No change.)

(b) The following provisions of 10 CFR Part 33 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR 33.8, Information collection requirements: OMB approval[.]; **and**
2. **10 CFR 33.21, Violations.**

(c) The following provisions of 10 CFR Part 33 are incorporated by reference with the specified changes:

1. “Commission,” “Nuclear Regulatory Commission,” “NRC,” and “U.S. Nuclear Regulatory Commission,” as used in the provisions of Part 33 of the Code of Federal Regulations that are incorporated by reference, **shall** mean the Department.

2. **10 CFR 33.1, replace “part 30 of this chapter” with “N.J.A.C. 7:28-51”;**

[2] 3. 10 CFR 33.12, replace with “Application for specific licenses from the State and renewals shall be filed with **the** Department on forms available from the Department[.]”;

4. **10 CFR 33.16, replace “Part 30 of this chapter” with “N.J.A.C. 7:28-51”;**

5. **10 CFR 33.17(a)(3), replace “part 32, 34, or 35 of this chapter” with “N.J.A.C. 7:28-53, 55, and 63”; and**

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6. 10 CFR 33.23, replace all of 10 CFR 33.23 with “The Radiation Protection Act of 1958, N.J.S.A. 26:2D-1 et seq., provides for criminal sanctions for violation of any provision of the Act.”

(d) For those facilities whose radioactive materials are licensed solely by the Department, NRC Form 3, “Notice to Employees,” shall mean the Department’s Form RPP-14, “Notice to Employees, Standards for Protection Against Radiation,” available from the Department [via the Department’s website at: www.nj.gov/dep/rpp/rms/rmsdown.htm, or by requesting a copy by telephone during business hours at (609) 984-5462.] **by contacting the Radioactive Materials Program at the address, phone number, or website listed in N.J.A.C. 7:28-1.5.”**

(e) - (g) (No change.)

SUBCHAPTER 55. MEDICAL USE OF BYPRODUCT MATERIAL

7:28-55.1 Incorporation by reference

(a) (No change.)

(b) The following provisions of 10 CFR Part 35 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR 35.8, Information collection requirements: OMB approval; [and]
2. **10 CFR 35.11(c), License required;**
3. **10 CFR 35.12(c)(1)(ii);**
4. **10 CFR 35.13(a), License amendments;**

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[2] **5. 10 CFR 35.63(b)(2)(i) through 35.63(b)(2)(iii)[;], Determination of dosages of unsealed byproduct material for medical use;**

6. 10 CFR 35.63(c)(3)(i) through 35.63(c)(3)(ii), and

7. 10 CFR 35.4001, Violations.

(c) The following provisions of 10 CFR Part 35 are incorporated by reference with the specified changes:

1. “Commission,” “Nuclear Regulatory Commission,” “NRC,” and “U.S. Nuclear Regulatory Commission,” as used in the provisions of Part 35 of the Code of Federal Regulations, that are incorporated by reference, means the Department, except [when specifically noted in this subchapter.] **at:**

i. 10 CFR 35.2, Definitions;

ii. 10 CFR 35.13(b)(4)(iii), License amendments; and

iii. 10 CFR 35.67(b)(2), Requirements for possession of sealed sources and brachytherapy sources;

2. 10 CFR 35.1, [delete] **replace “parts 19, 20, 21, 30, 71, 170 and 171 of this chapter”** [and add “and N.J.A.C. 7:28-6” after “of this chapter”] **with “N.J.A.C. 7:28-6, 50, 51, 61 and 64”;**

3. 10 CFR 35.6(b) and (c), **replace “another Federal agency” with “a Federal agency”;**

4. 10 CFR 35.7, **replace “other Federal, and State” with “Federal, and other State”;**

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5. 10 CFR 35.10(a), delete “ A Government agency or a Federally recognized Indian Tribe that possesses and uses accelerator-produced radioactive material or discrete sources of radium-226 for which a specific medical use license is required by the Atomic Energy Act of 1954, as amended, must comply with the requirements of this part, including provisions that are specific to licensees, on November 30, 2007.” and replace “All other persons” with “All persons,” and delete “on August 8, 2009, or earlier as noticed by the NRC”;

6. 10 CFR 35.11(a), add “or the U.S. NRC” after “an Agreement State”

[3] **7. 10 CFR 35.12(b)(1), replace “[Filing an original] and one copy of NRC]Form 313, [“‘Application for Material License,’” with “[Filing an original] application for a specific license [from the State with the Department] on [forms] NJRAD Form 313 available from the Department,”;**

[4] **8. 10 C.F.R. 35.12(c), delete the wording “amendment or”;**

[5] **9. 10 CFR 35.12(c)(1), delete the wording “and one copy” and “either”;**

[6] **10. 10 CFR 35.12(c)(1)(i), [delete the wording] replace “NRC Form 313”[, ‘Application for Material License,’; or]” [and replace] with [“an initial application or renewal application form available from the Department”] “NJRAD Form 313,” and replace “Material” with “Radioactive Materials”;**

[7] **11. 10 CFR 35.12(c)(1)(ii), delete wording [“or renewal”] and replace with “A request for an amendment may be submitted on NJRAD Form 313 or by a letter addressed to the Department.”;**

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[8. 10 CFR 35.12(d), create new wording for (d) to state “A request for an amendment must be made by submitting a letter requesting the amendment with relevant supporting documentation as required by 35.610, 35.642, 35.643, and 35.645, as applicable”;

9. 10 CFR 35.12(d), change existing citation to 35.12(e);

10. 10 CFR 35.12(e), change existing citation to 35.12(f);]

12. 10 CFR 35.13(b)(4)(i) and (ii), add “or U.S. NRC” after “Agreement State”;

13. 10 CFR 35.14(a), add “or U.S. NRC” after both occurrences of “or Agreement State”;

14. 10 CFR 35.14(a), “Commission” in both occurrences of “Commission master material” shall mean U.S. NRC;

15. 10 CFR 35.14(c), replace “ § 30.6 of this chapter” with “N.J.A.C. 7:28-1.5”;

16. 10 CFR 35.15, replace “Part 33 of this chapter” with “N.J.A.C 7:28-54”;

[11] **17. At 10 CFR 35.18(a)(1), [delete the wording] replace “NRC Form 313 [Application for Material License,]” [and replace] with [“an original application for a specific license from the State]NJRAD Form 313”;**

18. 10 CFR 35.18(a)(2), replace “Part 170 of this chapter” with “N.J.A.C. 7:28-64”;

19. 10 CFR 35.18(a)(4), replace “Part 30 of this chapter” with “N.J.A.C. 7:28-51”;

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20. At 10 CFR 35.19, add “with the approval of the Commission on Radiation Protection,” after “may,” and replace “and will not endanger life or property or the common defense and security and are otherwise in the public interest” with “in accordance with the provisions of N.J.A.C. 7:28-2.8”;

[12. 10 CFR 35.24(a), replace “§ 20.1101 of this chapter” with “N.J.A.C. 7:28-6”];]

21. 10 CFR 35.49(a), replace “10 CFR Part 30” with “N.J.A.C. 7:28-51” and add “or of the U.S. NRC” after “an Agreement State”;

22. 10 CFR 35.49(b), add “or a U.S. NRC” after “Agreement State”;

23. 10 CFR 35.49(c), replace 10 CFR Part 30” with “N.J.A.C. 7:28-51” and add “or of the U.S. NRC” after “Agreement State”;

24. 10 CFR 35.50(a), add “or the U.S. NRC” after both occurrences of “Agreement State”;

25. 10 CFR 35.50(a), “NRC’s” shall mean U.S. NRC’s;

26. 10 CFR 35.50(a)(2)(ii)(A), add “or the U.S. NRC” after “Agreement State”;

27. 10 CFR 35.50(b)(1)(ii), add “or U.S. NRC” after “Agreement State”;

28. 10 CFR 35.50(b)(1)(ii), “Commission” in “Commission master material licensee” shall mean U.S. NRC;

29. 10 CFR 35.50(c)(1), add “or the U.S. NRC” after “Agreement State”;

30. 10 CFR 35.51(a), add “or the U.S. NRC” after both occurrences of “Agreement State”;

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31. 10 CFR 35.51(a), “NRC’s” shall mean U.S. NRC’s;
32. 10 CFR 35.51(a)(2)(i), add “or the U.S. NRC” after “Agreement State”;
33. 10 CFR 35.55(a), add “or the U.S. NRC” after both occurrences of “Agreement State”;
34. 10 CFR 35.55(a), “NRC’s” shall mean U.S. NRC’s;
35. 10 CFR 35.57(a)(1), add “or U.S. NRC” after both occurrences of “Agreement State”;
36. 10 CFR 33.57(a)(1), replace both occurrences of “master material license” with “U.S. NRC master material license”;
37. 10 CFR 35.57(a)(2), add “or U.S. NRC” after both occurrences of “Agreement State”;
38. 10 CFR 33.57(a)(2), replace both occurrences of “master material license” with “U.S. NRC master material license”;
39. 10 CFR 35.57(b)(1), add “or U.S. NRC” after both occurrences of “Agreement State”;
40. 10 CFR 35.57(b)(1), “Commission” in both occurrences of “Commission master material” shall mean U.S. NRC;
- [13] 41. At 10 CFR 35.61(a), replace “10 CFR Part 20” with “N.J.A.C. 7:28-6”;
42. 10 CFR 35.63(b)(2)(ii), add “or U.S. NRC” after “Agreement State”;
43. 10 CFR 35.63(b)(2)(iii), add “or U.S. NRC” after “Agreement State”;
44. 10 CFR 35.63(c)(3)(i), add “or U.S. NRC” after “Agreement State”;
45. 10 CFR 35.63(c)(3)(ii), add “or U.S. NRC” after “Agreement State”;

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46. 10 CFR 35.65(a) and (b), add “or U.S. NRC” after “Agreement State”;

47. 10 CFR 35.67(e)(1), replace “parts 20 and 30 of this chapter” with “N.J.A.C. 7:28-6 and 51”;

[14] **48. At 10 CFR 35.70(a), replace “Part 20 of this chapter” with “N.J.A.C. 7:28-6”;**

[15] **49. At 10 CFR 35.80(a)(4), replace “Part 20 of this chapter” with “N.J.A.C. 7:28-6”;**

50. 10 CFR 35.100(a)(1), add “or U.S. NRC” after “Agreement State”;

51. 10 CFR 35.100(a)(2), add “or U.S. NRC” after “Agreement State”;

52. 10 CFR 35.100(c), add “or U.S. NRC” after “Agreement State”;

53. 10 CFR 35.190(a), add “or the U.S. NRC” after both occurrences of “Agreement State”;

54. 10 CFR 35.190(a), “NRC’s” shall mean U.S. NRC’s;

55. 10 CFR 35.190(b), (c)(1)(ii), and (c)(2), add “or U.S. NRC” after “Agreement State”;

56. 10 CFR 35.200(a)(1), add “or U.S. NRC” after “Agreement State”;

57. 10 CFR 35.200(a)(2), add “or U.S. NRC” after “Agreement State”;

58. 10 CFR 35.200(c), add “or U.S. NRC” after “Agreement State”;

59. 10 CFR 35.290(a), add “or the U.S. NRC” after both occurrences of “Agreement State”;

60. 10 CFR 35.290(a), “NRC’s” shall mean U.S. NRC’s;

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- 61. 10 CFR 35.290(b), (c)(1)(ii) and (c)(2), add “or U.S. NRC” after “Agreement State”**
- 62. 10 CFR 35.300(a)(1), add “or U.S. NRC” after “Agreement State”;**
- 63. 10 CFR 35.300(a)(2), add “or U.S. NRC” after “Agreement State”;**
- 64. 10 CFR 35.300(c), add “or U.S. NRC” after “Agreement State”;**
[16. 10 CFR 35.310(a)(2)(i), replace “§ 20.1301(a)(1) of this chapter” with “N.J.A.C. 7:28-6”];
[17. 10 CFR 35.310(a)(2)(ii), replace “§ 20.1301(c) of this chapter” with “N.J.A.C. 7:28-6”];
- 65. 10 CFR 35.390(a), add “or the U.S. NRC” after both occurrences of “Agreement State”;**
- 66. 10 CFR 35.390(a), “NRC’s” shall mean U.S. NRC’s;**
- 67. 10 CFR 35.390(b)(1)(ii) and (b)(2), add “or U.S. NRC” after “Agreement State”;**
- 68. 10 CFR 35.392(a), add “or the U.S. NRC” after both occurrences of “Agreement State”;**
- 69. 10 CFR 35.392(a), “NRC’s” shall mean U.S. NRC’s;**
- 70. 10 CFR 35.392(b), (c)(2) and (c)(3), add “or U.S. NRC” after “Agreement State”;**
- 71. 10 CFR 35.394(a), add “or the U.S. NRC” after both occurrences of “Agreement State”;**
- 72. 10 CFR 35.394(a), “NRC’s” shall mean U.S. NRC’s;**

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73. 10 CFR 35.394(b), (c)(2) and (c)(3), add “or U.S. NRC” after “Agreement State”;

74. 10 CFR 35.396(a) and (b), add “or U.S. NRC” after “Agreement State”;

75. 10 CFR 35.396(c), add “or the U.S. NRC” after “Agreement State”;

76. 10 CFR 35.396(d)(2) and (d)(3), add “or U.S. NRC” after “Agreement State”;

[18. 10 CFR 35.410(a)(4)(i), replace “§ 20.1301(a)(1) of this chapter” with “N.J.A.C. 7:28-6”;

19. 10 CFR 35.410(a)(4)(ii), replace “§ 20.1301(c) of this chapter” with “N.J.A.C. 7:28-6”];

77. 10 CFR 35.490(a), add “or the U.S. NRC” after both occurrences of “Agreement State”;

78. 10 CFR 35.490(a), “NRC’s” shall mean U.S. NRC’s;

79. 10 CFR 35.490(b)(1)(ii), (b)(2) and (b)(3), add “or U.S. NRC” after “Agreement State”;

80. 10 CFR 35.491(a) and (b)(3), add “or U.S. NRC” after “Agreement State”;

81. 10 CFR 35.590(a), add “or the U.S. NRC” after both occurrences of “Agreement State”;

82. 10 CFR 35.590(a), “NRC’s” shall mean U.S. NRC’s;

83. 10 CFR 35.605(a), (b), and (c), add “or the U.S. NRC” after “Agreement State”;

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[20. 10 CFR 35.652(a), replace “§ 20.1501 of this chapter” with “N.J.A.C. 7:28-6”];

84. 10 CFR 35.655(b), add “or the U.S. NRC” after “Agreement State”;

85. 10 CFR 35.690(a), add “or the U.S. NRC” after both occurrences of “Agreement State”;

86. 10 CFR 35.690(a), “NRC’s” shall mean U.S. NRC’s;

87. 10 CFR 35.690(b)(1)(ii), (b)(2) and (b)(3), add “or the U.S. NRC” after “Agreement State”;

88. 10 CFR 35.900(b)(2), add “or the U.S. NRC” after “Agreement State”;

[21] **89. At 10 CFR 35.3045(c), replace “NRC Operations Center” with “Department”;**

90. 10 CFR 35.3045(d), replace the wording of 10 CFR 35.3045(d) with “The licensee shall submit a written report to the Department at the address or fax number listed in N.J.A.C. 7:28-1.5 within 15 days after discovery of the medical event.”

[22] **91. At 10 CFR 35.3047(c), replace “NRC Operations Center” with “Department”;**

[23] **92. At 10 CFR 35.3047(d), replace “By an appropriate method listed in § 30.6 of this chapter, the” with “The” and replace “appropriate NRC Regional Office listed in § 30.6 of this chapter” with “Department [and] at the address or fax number listed in N.J.A.C. 7:28-1.5”;**

[24] **93. At 10 CFR 35.3067, replace “appropriate NRC Regional Office listed in § 30.6 of this chapter, by an appropriate method listed in § 30.6 of this chapter” with**

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“Department at the address or fax number listed in N.J.A.C. 7:28-1.5” and delete ,” with a copy to the Director, Office of [Nuclear Material Safety and Safeguards.]**Federal and State Materials and Environmental Management Programs”**; and

94. 10 CFR 35.4002, replace all of 10 CFR 35.4002 with “The Radiation Protection Act of 1958, N.J.S.A. 26:2D-1 et seq., provides for criminal sanctions for violation of any provision of the Act.”

(d) For those facilities whose radioactive materials are licensed solely by the Department, NRC Form 3, “Notice to Employees” shall mean the Department’s Form RPP-14, “Notice to Employees, Standards for Protection Against Radiation,” available from the Department [via the Department’s website at: www.nj.gov/dep/rpp/rms/rmsdown.htm, or by requesting a copy by telephone during business hours at (609) 984-5462] **by contacting the Radioactive Materials Program at the address, phone number, or website listed in N.J.A.C. 7:28-1.5.”**

(e) - (g) (No change.)

SUBCHAPTER 56. LICENSES AND RADIATION SAFETY REQUIREMENTS FOR IRRADIATORS

7:28-56.1 Incorporation by reference

(a) (No change.)

(b) The following provisions of 10 CFR Part 36 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

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1. 10 CFR 36.8, Information collection requirements: OMB approval; **and**

2. 10 CFR 36.91, Violations.

(c) The following provisions of 10 CFR Part 36 are incorporated by reference with the specified changes:

1. (No change.)

2. 10 CFR 36.1(a), [delete] **replace “parts 19, 20, 21, 30, 71, 170 and 171 of this chapter”** [and add “N.J.A.C. 7:28-6” after “of this chapter”] **with “N.J.A.C. 7:28-6, 50, 51, 61 and 64”;**

3. 10 CFR 36.5, replace “Except as specifically authorized by the Commission in writing, no” with “No” and replace “by the General Counsel” with “signed and approved by the Commissioner of the Department,”

[3] **4. 10 CFR 36.11, replace “Form NRC 313, ‘Application for Material License,”** with “[forms available from the Department,]**NJRAD Form 313”** and delete “and one copy,” and replace “appropriate NRC Regional Office listed in appendix D to part 20 of this chapter”**” with “Department at the address or fax number listed in N.J.A.C. 7:28-1.5”;**

5. 10 CFR 36.11, replace “part 170 of this chapter” and “§ 170.31 of this chapter” with “N.J.A.C. 7:28-64”;

6. 10 CFR 36.13(g), add “or the U.S. Nuclear Regulatory Commission” after “Agreement State”;

7. 10 CFR 36.15, replace “§ 170.31” with “N.J.A.C. 7:28-64” and replace “the Atomic Energy Act of 1954, as amended” with “the Act”;

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[4] **8.** At 10 CFR 36.17, replace “Commission” with “Department, with approval of the Commission on Radiation Protection,” and replace “by law and will not endanger life or property or the common defense and security and are otherwise in the public interest” with “in accordance with the provisions of N.J.A.C. 7:28-2.8”;

[5. 10 CFR 36.23(g), replace “10 CFR 20.1902” in both locations with “N.J.A.C. 7:28-6”];]

9. 10 CFR 36.51(a)(2), replace “parts 19 and 36 of NRC regulations” with “N.J.A.C. 7:28-50 and 56”;

[6. 10 CFR 36.55(a), replace “10 CFR 20.1501(c)” with “N.J.A.C. 7:28-6”];]

[7. 10 CFR 36.57(d), replace “10 CFR part 20, table 2, column 2 or table 3 of appendix B” with “as incorporated by reference in N.J.A.C. 7:28-6; and]

10. 10 CFR 36.59(a), add “or the U.S. Nuclear Regulatory Commission” after both occurrences of “Agreement State”;

11. 10 CFR 36.59(c), add “or U.S. NRC” after both occurrences of “Agreement State”; and

[8. 10 CFR 36.59(c), replace “table 2, column 2, appendix B to part 20” with “as incorporated by reference in N.J.A.C. 7:28-6.”];]

12. 10 CFR 36.93, replace all of 10 CFR 36.93 with “The Radiation Protection Act of 1958, N.J.S.A. 26:2D-1 et seq., provides for criminal sanctions for violation of any provision of the Act.”

(d) For those facilities whose radioactive materials are licensed solely by the Department, NRC Form 3, “Notice to Employees” shall mean the Department’s Form RPP-14,

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“Notice to Employees, Standards for Protection Against Radiation,” available from the Department [via the Department’s website at: www.nj.gov/dep/rpp/rms/rmsdown.htm, or by requesting a copy by telephone during business hours at (609) 984-5462] **by contacting the Radioactive Materials Program at the address, phone number, or website listed in N.J.A.C.**

7:28-1.5.”

(e) - (g) (No change.)

SUBCHAPTER 57. LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

7:28-57.1 Incorporation by reference

(a) (No change.)

(b) The following provisions of 10 CFR Part 39 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR 39.8, Information collection requirements: OMB approval; **and**
2. **10 CFR 39.101, Violations.**

(c) The following provisions of 10 CFR Part 39 are incorporated by reference with the specified changes:

1. “Commission,” “Nuclear Regulatory Commission,” “NRC,” and “U.S. Nuclear Regulatory Commission,” as used in the provisions of Part 39 of the Code of Federal Regulations that are incorporated by reference, means the Department, except [when specifically noted in this subchapter.] **at:**

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i) 10 CFR 39.41(f), Design and performance criteria for sources; and

ii) 10 CFR 39.63(l), Operating and emergency procedures.

2. At 10 CFR 39.1(a), [delete]replace “parts 19, 20, 21, 30, 40, 70, 71, and 150 of this chapter” [and add “and N.J.A.C. 7:28-6” after “of this chapter”] with “N.J.A.C. 7:28-6, 50, 51, 58, 60, 61 and 64”;

3. 10 CFR 39.5, replace “Except as specifically authorized by the Commission in writing, no” with “No,” and replace “by the General Counsel” with “signed and approved by the Commissioner of the Department”;

3. At 10 CFR 39.11, replace “Form NRC 313”[, “Application for Material License.”] with “[forms available from the Department]NJRAD Form 313” and replace “appropriate NRC Regional Office listed in appendix D of part 20 of this chapter” with “Department at the address or fax number listed in N.J.A.C. 7:28-1.5”;

4. 10 CFR 39.11, replace “part 170 of this chapter” and “§ 170.31 of this chapter” with “N.J.A.C. 7:28-64”;

[4. 10 CFR 39.15(a)(5)(iii)(B), replace “§ 20.1901(a)” with “N.J.A.C. 7:28-6”;

5. 10 CFR 39.31(a)(1), replace “§ 20.1901(a)” with “N.J.A.C. 7:28-6”;

6. 10 CFR 39.31(a)(2), replace “§ 20.1901(a) “ with “N.J.A.C. 7:28-6”];

5. 10 CFR 39.31(a)(3), replace “10 CFR part 71” with “N.J.A.C. 7:28-61”;

[7] 6. At 10 CFR 39.33(a), replace “part 20 of this chapter” with “N.J.A.C. 7:28-6”;

7. 10 CFR 39.35(b), add “or the U.S. NRC” after both occurrences of “Agreement State”;

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8. 10 CFR 39.35(d)(1), add “or U.S. NRC” after both occurrences of “Agreement State”;

[8] **9. At 10 CFR 39.35(d)(2), replace “appropriate NRC Regional Office listed in appendix D of part 20 of this chapter” with “Department at the address or fax number listed in N.J.A.C. 7:28-1.5”;**

10. 10 CFR 39.43(c), (d) and (e), add “or U.S. NRC” after “Agreement State”;

11. 10 CFR 39.51, add “or by the U.S. NRC” after “by an Agreement State”;

[9] **12. At 10 CFR 39.61(a)(2)(i), [delete]replace “parts 19, 20, and 39 of this chapter” [and add]with “[and]N.J.A.C. 7:28-6, 50 and 57”[after “of this chapter”];**

[10] **13. At 10 CFR 39.61(b)(1), [delete]replace “parts 19 and 20 of this chapter” [and add “part 19 of this chapter and]with “N.J.A.C. 7:28-6 and 50”;**

[11. 10 CFR 39.63(h), replace “§ 20.1906 of this chapter” with “N.J.A.C. 7:28-6”];

14. 10 CFR 39.63(l), replace “Part 21” with “10 CFR part 21”;

[12. 10 CFR 39.71(b), replace “§ 20.1003 of this chapter” with “N.J.A.C. 7:28-6”];

[13] **15. At 10 CFR 39.73(a), replace “19, 20, and 39” with “N.J.A.C. 7:28-6, 50 and 57”;**

[14. 10 CFR 39.75(d), replace § 71.5” with “N.J.A.C. 7:28-61”];

[15] **16. At 10 CFR 39.75(e), add ,” or NRC” after “Agreement State”;**

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[16] **17.** At 10 CFR 39.77(a), replace “NRC Regional Office by telephone” with “Department by telephone as per N.J.A.C. 7:28-1.5” **and replace “using an appropriate method listed in § 30.6(a) of this chapter,” with “at the address or fax number listed in N.J.A.C. 7:28-1.5”;**

[17. 10 CFR 39.77 (b), replace “§§ 20.2201-20.2202, § 20.2203 and §30.50” with “N.J.A.C. 7:28-6 and N.J.A.C. 7:28-51”; and]

18. 10 CFR 39.77(c)(1), replace “appropriate NRC Regional Office” with “Department at the phone number listed in N.J.A.C. 7:28-1.5”;

19. 10 CFR 39.77(d), replace “appropriate NRC Regional Office” with “Department at the address or fax number listed in N.J.A.C. 7:28-1.5”;

[18] **20.** At 10 CFR 39.91, add “with the approval of the Commission on Radiation Protection,” after “initiative,” and replace “and will not endanger life or property or the common defense and security and are otherwise in the public interest” with “in accordance with the provisions of N.J.A.C. 7:28-2.8[.]” **and**

21. 10 CFR 39.103, replace all of 10 CFR 39.103 with “The Radiation Protection Act of 1958, N.J.S.A. 26:2D-1 et seq., provides for criminal sanctions for violation of any provision of the Act.”

([f]d) Reports that are to be submitted to the Department pursuant to this subchapter shall be submitted to the address at N.J.A.C. 7:28-1.5.

([g]e) Requests for adjudicatory hearings shall be made in accordance with N.J.A.C. 7:28-4.17, and requirements governing requests for stay of the effective date of the Department decision for which an adjudicatory hearing is requested are set forth at N.J.A.C. 7:28-4.18.

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SUBCHAPTER 58. DOMESTIC LICENSING OF SOURCE MATERIAL

7:28-58.1 Incorporation by reference

(a) Except as set forth in (b) and (c) below, this subchapter incorporates by reference 10 CFR Part 40.

(b) The following provisions of 10 CFR Part 40 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. (No change.)

2. 10 CFR 40.4 Definitions. The following definitions in 10 CFR 40.4 are not incorporated by reference: “Commission,” **and** “**byproduct material.**” [“decommission,” and “license.”]

3. – 10. (No change.)

11. 10 CFR 40.31(c), (f) through (h), (j), (k), (l), **and (m)**, Application for specific licenses;

12. – 20. (No change.)

21. 10 CFR 40.67, Requirement for advance notice for importation of natural uranium from countries that are not party to the Convention on the Physical Protection of Nuclear Material; [and]

22. 10 CFR 40.91, Violations and

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[22]23. 10 CFR 40 Appendix A, Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material from Ores Processed Primarily for Their Source Material Content.

(c) The following provisions of 10 CFR Part 40 are incorporated by reference with the specified changes:

1. – 2. (No change.)

3. “Source and byproduct material” as used in the provisions of Part 40 of the Code of Federal Regulation that are incorporated by reference, means source material, except when specifically noted in this subchapter.

[3]4. 10 CFR 40.6, [delete] “Except as specifically authorized by the Commission in writing, no” with “No,” and replace “by the General Counsel” with “signed and approved by the Commissioner of the Department,”;

5. 10 CFR 40.7(a), delete “The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.”;

6. 10 CFR 40.7(a)(3), replace “Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended” with “Radiation Protection Act of 1958, N.J.S.A. 26:2D-1 et seq.”;

7. 10 CFR 40.7(e)(1), replace “part 19” with “N.J.A.C. 7:28-50”;
Recodify N.J.A.C. 7:28-58.1(c)4 through 13 as N.J.A.C. 7:28-58.1(c)8 through 17. (No change in text.)

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[14. 10 CFR 40.34(a)(2), replace “§ 20.1201(a)” with “N.J.A.C. 7:28-6”];

Recodify N.J.A.C. 7:28-58.1(c)15 through 20 as N.J.A.C. 7:28-58.1(c)18 through 23. (No change in text.)

[21. 10 CFR 40.36(f)(3)(i), replace “10 CFR 20.1003” with “N.J.A.C. 7:28-6”];

22. 10 CFR 40.36(f)(3)(iii), replace “10 CFR 20.2108” with “N.J.A.C. 7:28-6”];

Recodify N.J.A.C. 7:28- 58.1(c)23 through 30 as 24 through 31. (No change in text.)

32. 10 CFR 40.51(b)(5) add “or the U.S. Nuclear Regulatory Commission” after “Agreement State”;

33. 10 CFR 40.51(c) add “or the U.S. Nuclear Regulatory Commission” after both instances of “Agreement State”;

[31. 10 CFR 40.60(b)(1)(ii), replace “appendix B of §§ 20.1001-20.2401 of 10 CFR part 20” with “N.J.A.C. 7:28-6”];

32. 10 CFR 40.60(b)(4)(i), replace “appendix B of §§ 20.1001-20.2401 of 10 CFR part 20” with “N.J.A.C. 7:28-6”];

[33]34. 10 CFR 40.60(c)(2), replace “NRC’s Document Control Desk” with “Department” and replace “appropriate NRC regional office listed in appendix D to part 20 of this chapter” with “Department”; **and**

[34. 10 CFR 40.61(d)(1), replace “§ 20.2002, (including burials authorized before January 28, 1981), 20.2003, 20.2004, 20.2005” with “N.J.A.C. 7:28-6”];

35. 10 CFR 40.61(d)(2), replace “§20.2103(b)(4)” with “N.J.A.C. 7:28-6”];

36. 10 CFR 40.61(e)(1), replace “§ 20.2002, 20.2003, 20.2004, 20.2005” with “N.J.A.C. 7:28-6”; and

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37. 10 CFR 40.61(e)(2), replace “§ 20.2103(b)(4)” with “N.J.A.C. 7:28-6.”]

35. 10 CFR 40.82, replace all of 10 CFR 40.82 with “The Radiation Protection Act of 1958, N.J.S.A. 26:2D-1 et seq., provides for criminal sanctions for violation of any provision of the Act.”

(d) For those facilities whose radioactive materials are licensed solely by the Department, NRC Form 3, “Notice to Employees” shall mean the Department’s Form RPP-14, “Notice to Employees, Standards for Protection Against Radiation,” available from the Department [via the Department’s website at: www.nj.gov/dep/rpp/rms/rmsdown.htm, or by requesting a copy by telephone during business hours at (609) 984-5462] **by contacting the Radioactive Materials Program at the address, phone number, or website listed in N.J.A.C. 7:28-1.5.”**

(e) - (g) (No change.)

SUBCHAPTER 59. LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

7:28-59.1 Incorporation by reference

(a) Except as set forth in (b) and (c) below, this subchapter incorporates by reference 10 CFR Part 61.

(b) The following provisions of 10 CFR Part 61 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. – 2. (No change.)

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3. 10 CFR 61.16, Other information; [and]
4. 10 CFR 61.23(i), (j), Standards for issuance of a license[.]; **and**

5. 10 CFR 61.83 Violations.

(c) The following provisions of 10 CFR Part 61 are incorporated by reference with the specified changes:

1. – 12.

13. 10 CFR 61.24(k)(1), replace “NRC Regional Administrator” with Supervisor of the Radioactive Materials [Section]**Program**”;

14. (No change.)

[15. 10 CFR 61.52(a)(6), replace “§§ 20.1301 and 20.1302 of this chapter” with “N.J.A.C. 7:28-6

[16]**15.** (No change.)

[17]**16.** 10 CFR 61.80(i)(1), delete “to the Director, Office of Federal and State Materials and Environmental Management Programs,” and replace “with a copy to the appropriate NRC Regional Office shown in appendix D to part 20 of this chapter” with “to the Department **at the address or fax number listed in N.J.A.C. 7:28-1.5**”; **and**

[18. 10 CFR 61.80(g), replace “§§30.55, 40.64” with “N.J.A.C. 7:28-51, N.J.A.C. 7:28-58 and §§”;

19. 10 CFR 61.80(j), replace “§70.52 of this chapter” with “N.J.A.C. 7:28-60”;
and

20. 10 CFR 61.80(k), replace “§§30.41, 40.51, and 70.42 of this chapter” with “N.J.A.C. 7:28-51, 58, and 60” and

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21. 10 CFR 61.80(l)(1)(i), replace “in 10 CFR part 20, appendix G” with “as is incorporated by reference in N.J.A.C. 7:28-6.”] **17. 10 CFR 61.84, replace all of 10 CFR 61.84 with “The Radiation Protection Act of 1958, N.J.S.A. 26:2D-1 et seq., provides for criminal sanctions for violation of any provision of the Act.”**

(d) For those facilities whose radioactive materials are licensed solely by the Department, NRC Form 3, “Notice to Employees” shall mean the Department’s Form RPP-14, “Notice to Employees, Standards for Protection Against Radiation,” available from the Department [via the Department’s website at: www.nj.gov/dep/rpp/rms/rmsdown.htm, or by requesting a copy by telephone during business hours at (609) 984-5462] **by contacting the Radioactive Materials Program at the address, phone number, or website listed in N.J.A.C. 7:28-1.5.”**

(e) - (g) (No change.)

SUBCHAPTER 60, DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

7:28-60.1 Incorporation by reference

(a) Except as set forth in (b) and (c) below, this subchapter incorporates by reference 10 CFR Part 70.

(b) The following provisions of 10 CFR Part 70 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1.– 6. (No change.)

7. 10 CFR 70.19(a)(1) and (2)

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Recodify N.J.A.C. 7:28-60.1(b)7 through 13 as (b)8 through 14. (No change in text.)

[14]15. 10 CFR 70.25(a)(1), Financial assurance and recordkeeping for decommissioning;

Recodify N.J.A.C. 7:28-60.1(b)15 through 23 as (b)16 through 24. (No change in text.)

[24.10 CFR 70.56(d), Tests;]

25. – 33. (No change.)

34. 10 CFR 70.76, Backfitting; [and]

35. 10 CFR 70.91, Violations; and

[35]36. 10 CFR 70.82, Suspension and operation in war or national emergency.

(c) The following provisions of 10 CFR Part 70 are incorporated by reference with the specified changes:

1. “Commission,” “Nuclear Regulatory Commission,” “NRC,” and “U.S. Nuclear Regulatory Commission,” as used in the provisions of Part 70 of the Code of Federal Regulations that are incorporated by reference, mean the Department[.] **except when specifically noted in this subchapter and at 10 CFR 70.42(b)(2);**

2. **10 CFR 70.6, Interpretations, delete “Except as specifically authorized by the Commission in writing, no” with “No,” and replace “by the General Counsel” with “signed and approved by the Commissioner of the Department,”;**

[2]3. 10 CFR 70.4, in definition of “person,” replace “Department” with “Department of Energy”;

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4. 10 CFR 70.7(a), delete “The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.”;

5. 10 CFR 70.7(a)(3), replace “Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended” with “Radiation Protection Act of 1958, N.J.S.A. 26:2D-1 et seq.”;

6. 10 CFR 70.7(e)(1), replace “part 19” with “N.J.A.C. 7:28-50”;

[3]7. 10 CFR 70.11, replace “Department” with “Department of Energy”;

[4]8. 10 CFR 70.17(a), replace “Commission” with “Department, with approval of the Commission on Radiation Protection,” and replace “by law and will not endanger life or property or the common defense and security and are otherwise in the public interest” with “in compliance with N.J.A.C. 7:28-2.8”;

9. 10 CFR 70.19(a)(3) replace “(3)” with “(1),” and replace “an Agreement State” with “New Jersey”;

10. 10 CFR 70.19(b) add “or the U.S. NRC” after both instances of “agreement State.”

[5]11. 10 CFR 70.19(c), [delete]replace ,”19, 20,” with “N.J.A.C. 7:28-50 and N.J.A.C. 7:28-6” and delete “and 21”;

[6]12. 10 CFR 70.21(d), replace “regulations contained in part 2 of this chapter” with “Open Public Records Act (N.J.S.A. 47:1A-1 et seq.)”;

[7. 10 CFR 70.25(g)(3)(i), replace “10 CFR 20.1003” with “N.J.A.C. 7:28-6”;

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[8]13. 10 CFR 70.25(g)(3)(iii), [replace “10 CFR 20.2108” with “N.J.A.C. 7:28-6,”] replace “10 CFR part 20, subpart E” with “N.J.A.C. 7:28-12” [and replace “10 CFR 20.2002” with “N.J.A.C. 7:28-6”];

[9]14. 10 CFR 70.25(g)(3)(iv) replace “10 CFR part 20, subpart E” with “N.J.A.C. 7:28-12” [and replace “10 CFR 20.2002” with “N.J.A.C. 7:28-6”];

[10]15. 10 CFR 70.38(j)(2), replace “10 CFR part 20, subpart E” with “N.J.A.C. 7:28-12”;

[11]16. 10 CFR 70.38(k)(3)(i), replace “10 CFR part 20, subpart E” with “N.J.A.C. 7:28-12”;

[12]17. 10 CFR 70.38(k)(3)(ii), replace “10 CFR part 20, subpart E” with “N.J.A.C. 7:28-12”;

[13]18. 10 CFR 70.42(b)(1), replace “Department” with “Department of Energy”;

19. 10 CFR 70.42(b)(4), add “or non-Agreement State” after “Agreement State” and add “or the U.S. NRC” after both instances of “State”;

20. 10 CFR 70.42(c), add “or the U.S. NRC” after both instances of “Agreement State”

21. 10 CFR 70.42(d)(4), add “or the U.S. NRC” after “Agreement State”;

22. 10 CFR 70.42(d)(5), add “or the U.S. NRC” after “Agreement State”;

[14. 10 CFR 70.50(b)(1)(ii), replace “Appendix B of §§20.1001-20.2401 of 10 CFR part 20” with “N.J.A.C. 7:28-6”];

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15. 10 CFR 70.50(b)(4)(i), replace “appendix B of §§20.2001-20.2401 of 10 CFR part 20” with “N.J.A.C. 7:28-6”;

[16]23. 10 CFR 70.50(c)(2), delete “to the NRC’s Document Control Desk,” and replace “with a copy to the appropriate NRC regional office listed in appendix D to part 20 of this chapter” with “to the Department **at the address or fax number listed in N.J.A.C. 7:28-1.5**”;

[17. 10 CFR 70.51(a)(1), replace “10 CFR 20.2002, (including burials authorized before January 28, 1981), 20.2003, 20.2004, 20.2005” with “N.J.A.C. 7:28-6”;

18. 10 CFR 70.51(a)(2), replace “10 CFR 20.2103(b)(4)” with “N.J.A.C. 7:28-6”;

19. 10 CFR 70.51(b)(1), replace “10 CFR 20.2002, (including burials authorized before January 28, 1981), 20.2003, 20.2004, 20.2005” with “N.J.A.C. 7:28-6”;

20. 10 CFR 70.51(b)(2), replace “10 CFR 20.2103(b)(4)” with “N.J.A.C. 7:28-6”]; and

[21]24. 10 CFR 70.56, [replace “(b) facilities wherein special nuclear material is utilized, produced or stored,” with “and.”] **delete “, produced” and “production,”**;

(d) Reports that are to be submitted to the Department pursuant to this subchapter shall be submitted to the address at N.J.A.C. 7:28-1.5.

(e) Requests for adjudicatory hearings shall be made in accordance with N.J.A.C. 7:28-4.17, and requirements governing requests for stay of the effective date of the Department decision for which an adjudicatory hearing is requested are set forth at N.J.A.C. 7:28-4.18.

(f) For those facilities whose radioactive materials are licensed solely by the Department, NRC Form 3, “Notice to Employees” shall mean the Department’s Form

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RPP-14, “Notice to Employees, Standards for Protection Against Radiation,” available from the Department by contacting the Radioactive Materials Program at the address, phone number, or website listed in N.J.A.C. 7:28-1.5.”

SUBCHAPTER 61. PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

7:28-61.1 Incorporation by reference

(a) – (b) (No change.)

(c) The following provisions of 10 CFR 71 are incorporated by reference with the specified changes:

1. “Commission,” “Nuclear Regulatory Commission,” “NRC,” and “U.S. Nuclear Regulatory Commission,” as used in the provisions of Part 71 of the Code of Federal Regulations that are incorporated by reference, means the Department, except at:

i. 10 CFR 71.0(a)2 and (d)1, **Purpose and Scope**;

ii.– viii. (No change.)

2.-5. (No change.)

6. 10 CFR 71.7(b), replace “Administrator of the appropriate Regional Office” with “[Department]**Supervisor, Radioactive Materials Program**”;

7. – 10. (No change.)

11. 10 CFR 71.13, replace “10 CFR part 35” with “N.J.A.C. 7:28-55” **and add “or the U.S. NRC” after “Agreement State”**;

[12. 10 CFR 71.47(b)(4), replace “10 CFR 20.1502” with “N.J.A.C. 7:28-6”;

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13. 10 CFR 71.89, replace “10 CFR 20.1906” with “N.J.A.C. 7:28-6”;

[14]12. 10 CFR 71.95(c), replace “§ 71.1(a)” with “N.J.A.C.7:28-1.5” and replace “to: ATTN: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards” with “to the Department”;

13. 10 CFR 71.100, replace all of 10 CFR 71.100 with “The Radiation Protection Act of 1958, N.J.S.A. 26:2D-1 et seq., provides for criminal sanctions for violation of any provision of the Act.”

15. 10 CFR 71.101(c)1, replace “§ 71.1(a)” with “N.J.A.C.7:28-1.5” and replace “to: ATTN: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards” with “to the Department”; and

16. 10 CFR 71.101(f), replace “NRC, in accordance with § 71.1” with “Department, in accordance with N.J.A.C.7:28-1.5.”

(d) - (e) (No change.)

SUBCHAPTER 62. [EXEMPTIONS AND CONTINUED NRC REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER 42 U.S.C. §2021 SECTION 274] **RECIPROCITY**

7:28-62.1 Incorporation by reference

(a) (No change.)

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(b) The following provisions of 10 CFR Part 150 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR 150.3, Definition of “Commission,” “**foreign obligation,**” “**offshore waters,**” “**production facility,**” “**reconciliation,**” “**uranium enrichment facility,**” and “**Utilization facility.**” ;

2. through 12. (No change in text.)

13. 10 CFR 150.20(a)(1)(i)(ii) and (iii), pertaining to recognition of agreement state licenses;

[13] **14. 10 CFR Part 150.21, Transportation of special nuclear material by aircraft;**

15. 10 CFR 150.30, Violations;

Recodify N.J.A.C. 7:28-63.1(b)14 and 15 as (b)16 and 17.

(c) The following provisions of 10 CFR Part 150 are incorporated by reference with the specified changes:

1. “Commission,” “Nuclear Regulatory Commission,” “NRC,” and “U.S. Nuclear Regulatory Commission,” as used in the provisions of Part 150 of the Code of Federal Regulations that are incorporated by reference, mean the Department **except at:**[; and]

i. 10 CFR 150.3, definition of “Agreement State.”

2. 10 CFR 150.3, “Act” shall mean the Radiation Protection Act of 1958, N.J.S.A. 26:2D-1 et seq.;

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3. 10 CFR 150.5, replace “Except as specifically authorized by the Commission in writing, no” with “No,” and replace “by the General Counsel” with “signed and approved by the Commissioner of the Department,”;

4. 10 CFR 150.20, add “or the U.S. Nuclear Regulatory Commission” after “Agreement State”;

6. 10 CFR 150.20(a)(1), add “or the U.S. Nuclear Regulatory Commission” after “Agreement State,” and replace “- -” with “New Jersey”;

7. 10 CFR 150.20(a)(2), add “or the U.S. Nuclear Regulatory Commission” after “Agreement State”;

8. 10 CFR 150.20(b), add “or by the U.S. Nuclear Regulatory Commission” after the first occurrence of “Agreement State,” and replace all instances of “a non-Agreement State, in an area of exclusive Federal jurisdiction within an Agreement State, or in offshore waters” with “New Jersey”;

[2] **9. 10 CFR 150.20(b), references to specific sections of 10 CFR part 30, refer to N.J.A.C. 7:28-51, sections of 10 CFR part 40, refer to N.J.A.C. 7:28-58, [and] sections of 10 CFR part 70, refer to N.J.A.C. 7:28-60, and sections of 10 CFR part 39 refer to N.J.A.C. 7:28-57. Delete “§§ 74.11, 74.15, and 74.19 of this chapter” and [R]replace “10 CFR parts 19, 20, and 71” with “N.J.A.C. 7:28-6, 50, and 61,” and replace “part 34” with “N.J.A.C. 7:28-63”[.];**

10. 10 CFR 150.20(b)(1), replace “NRC Form-241, ‘Report of Proposed Activities in Non-Agreement States’” with “NJRAD Form-241, ‘Reciprocity Application Form’,” and add “or U.S. Nuclear Regulatory Commission:” after “Agreement State”;

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11. 10 CFR 150.20(b)(1), replace “§ 170.31 of this chapter with the Regional Administrator of the U.S. Nuclear Regulatory Commission Regional Office listed on the NRC Form 241 and in appendix D to part 20 of this chapter for the Region in which the Agreement State that issued the license is located” with “N.J.A.C. 7:28-64 with the Department”;

12. 10 CFR 150.20(b)(1), replace “Regional Administrator” with “Supervisor, Radioactive Materials Program or designee”;

13. 10 CFR 150.20(b)(1)(i), replace “Region” with “Department” and replace both occurrences of “NRC Form-241” with “NJRAD Form-241”;

14. 10 CFR 150.20(b)(1)(ii), replace “Region” with “Department”

15. 10 CFR 150.20(b)(1)(iii), replace “NRC Form-241” with “NJRAD Form-241” and add “or the U.S. Nuclear Regulatory Commission” after “Agreement State”;

16. 10 CFR 150.20(b)(2), replace both occurrences of “NRC Form-241” with “NJRAD Form-241” and replace “Regional Administrator” with “Department”;

17. 10 CFR 150.20(b)(3), replace “any non-Agreement State, in an area of exclusive Federal jurisdiction within an Agreement State, or in offshore waters” with “New Jersey”;

18. 10 CFR 150.20(b)(4), replace “non-Agreement States or in areas of exclusive Federal jurisdiction within Agreement States” with “New Jersey” and replace “year, except that the general license in paragraph (a) of this section concerning activities in offshore waters authorizes that person to possess or use radioactive materials, or engage in the activities authorized, for an unlimited period of time” with “year.”;

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19. 10 CFR 150.20(b)(5), add “or the U.S. Nuclear Regulatory Commission”;

and

20. 10 CFR 150.33, replace the wording of 10 CFR 150.33 with “The Radiation Protection Act of 1958, N.J.S.A. 26:2D-1 et seq., provides for criminal sanctions for violation of any provision of the Act.”

(d) - (f) (No change.)

SUBCHAPTER 63. LICENSES FOR INDUSTRIAL RADIOGRAPHY USING SEALED SOURCES AND RADIATION SAFETY REQUIREMENTS FOR SUCH INDUSTRIAL RADIOGRAPHY OPERATIONS

7:28-63.1 Incorporation by reference

(a) Except as set forth in (b) and (c) below, this subchapter incorporates by reference 10 CFR Part 34.

(b) The following provisions of 10 CFR Part 34 are not incorporated by reference. If there is a cross reference to a Federal citation specifically entirely excluded from incorporation, then the cross referenced citation is not incorporated by virtue of the cross reference:

1. 10 CFR 34.8, Information collection requirements: OMB approval[.]; **and**
2. **10 CFR 34.121, Violations.**

(c) The following provisions of 10 CFR Part 34 are incorporated by reference with the specified changes:

1. “Commission,” “Nuclear Regulatory Commission,” “NRC,” and “U.S. Nuclear Regulatory Commission,” as used in the provisions of Part 34 of the Code of Federal

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Regulations that are incorporated by reference, mean the Department, except in [10 CFR 34.41(c), and 34.27(a) and (c)(1)] **10 CFR 34.20(a)(1) and (2).**;

2. In every instance, replace “§” or “§§” with “10 CFR”;

[2] **3. 10 CFR 34.1, replace “10 [p] Parts 19, 20, 21, 30, 71, 150, 170, and 171 of this chapter” with “10 CFR Part 21 and N.J.A.C. 7:28-6, 50, 51, 61, 62 and 64”;**

4. 10 CFR 34.3, Definitions, “ALARA,” replace “10 CFR Part 20” with “N.J.A.C. 7:28-6”;

5. 10 CFR 34.5, replace “Except as specifically authorized by the Commission in writing, no” with “No,” and replace “by the General Counsel” with “signed and approved by the Commissioner of the Department”;

[3] **6. 10 CFR 34.11, replace “on NRC Form 313, [“]’Application for Material License,’[“]in accordance with the provisions of § 30.32 of this chapter,” with “an original application for a specific State license”;**

[4. 10 CFR 34.13(a), replace “§ 30.33 of this chapter” with “N.J.A.C. 7:28-51”];

7. 10 CFR 34.20(b)(2), replace “10 CFR part 71” with “N.J.A.C. 7:28-61”;

[5] **8. 10 CFR 34.25(a), replace “10 CFR part 20 of this chapter” with “N.J.A.C. 7:28-6”;**

9. 10 CFR 34.27(a), add “New Jersey,” after “authorized to do so by”;

10. 10 CFR 34.27(b), add “or the U.S. NRC” after “an Agreement State”;

11. 10 CFR 34.27(c)(1), add “or by the U.S. NRC” after “or by an Agreement State” and add “or the U.S. NRC” after “or an Agreement State”;

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[6] **12.** 10 CFR 34.27(d), replace “Director, **Office of Federal and State Materials and Environmental Management Programs, by an appropriate method listed in § 30.6(a) of this chapter**” [of Nuclear Material Safety and Safeguards]” with “Manager, Bureau of Environmental Radiation”;

[7] **13.** 10 CFR 34.27(d), [replace] ~~delete~~ “**A copy of the report must be sent to the Administrator of the appropriate Nuclear Regulatory Commission's Regional Office listed in appendix D of 10 CFR part 20 of this chapter 'Standards for Protection Against Radiation.**” “[with “Manager, Bureau of Environmental Radiation”];

14. 10 CFR 34.27(e), add “**or the U.S. NRC**” after “**an Agreement State**”;

[8. 10 CFR 34.33(a)(1), replace “§ 20.1601(a)(1) of this chapter” with “N.J.A.C. 7:28-6”];

[9] **15.** 10 CFR 34.35(b), replace “10 CFR part 71” with “N.J.A.C. 7:28-61”;

16. 10 CFR 34.41(c), delete “**offshore platform,**” and add “**or by the U.S. NRC**” after “**by an Agreement State**”;

[10] **17.** 10 CFR 34.42(c)(1), replace “10 CFR part 20 of this chapter” and “10 CFR part 20” with “N.J.A.C. 7:28-6” in both instances;

[11. 10 CFR 34.42(c)(4), replace “§ 20.2203 of this chapter” with “N.J.A.C. 7:28-6”];

[12] **18.** 10 CFR 34.43(a)(1), replace “Director, Office of [Nuclear Material Safety and Safeguards]**Federal and State Materials and Environmental Management Programs,** by an appropriate method listed in § 30.6(a) of this chapter” with “Manager, Bureau of Environmental Radiation, by an appropriate method listed in N.J.A.C. 7:28-51”;

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[13] **19.** 10 CFR 34.43(b)(1), [replace “in §§30.7, 30.9, and 30.10” with “N.J.A.C. 7:28-51,”] replace “10 CFR parts 19 and 20, **of this chapter**” with “N.J.A.C.7:28-6 and 50,” and replace “10 CFR 71” with “N.J.A.C. 7:28-61”;

[14] **20.** 10 CFR 34.43(c)(1), [replace “in §§30.7, 30.9, and 30.10” with “N.J.A.C. 7:28-51,”] replace “10 CFR parts 19 and 20 **of this chapter**” with “N.J.A.C.7:28-6 and 50,” and replace “10 CFR part 71” with “N.J.A.C. 7:28-61”;

[15] **21.** 10 CFR 34.45(a)(1), replace “10 CFR part 20 **of this chapter**” with “N.J.A.C. 7:28-6”;

22. 10 CFR 34.45(a)(9), delete “of this chapter”;

[16] **23.** 10 CFR 34.51, replace “10 CFR part 20 **of this chapter**” with “N.J.A.C. 7:28-6”;

[17. 10 CFR 34.53, replace “§ 20.1902” with “N.J.A.C. 7:28-6” and replace “§ 20.1903 with “N.J.A.C. 7:28-6”];

[18] **24.** 10 CFR 34.89(b)(2), replace “**10 CFR parts 19, 20, and 34 of NRC regulations**” with “[and] N.J.A.C. 7:28-6, []50, and 63”;

[19. 10 CFR 34.89(b)(11), replace “§ 71.5” with “N.J.A.C. 7:28-61”

[20] **25.** 10 CFR 34.89(b)(12), [and replace “§ 150.20” with “N.J.A.C. 7:28-62”] **delete “of this chapter” and add “or the U.S. NRC” after “Agreement State”;**

[21] **26.** 10 CFR 34.101(a), replace “[§ 30.50] and under other sections of this chapter, such as § 21.21, each licensee shall send a written report to the NRC's Office of [Nuclear Material Safety and Safeguards, Division of Industrial and Medical Nuclear Safety]**Federal and State Materials and Environmental Management Programs**, by an

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appropriate method listed in § 30.6(a) of this chapter” with “[N.J.A.C. 7:28-51 and under other sections of this subchapter or Federal rule such as 10 CFR § 21.21,] each licensee shall send a written report to the Manager, Bureau of Environmental Radiation, by an appropriate method listed in N.J.A.C. 7:28-[51]**1.5**”;

[22. 10 CFR 34.101(b), replace “10 CFR 20.2203” with “N.J.A.C. 7:28-6”;]

[23] **27.** 10 CFR 34.101(c), replace “appropriate NRC regional office listed in § 30.6(a)(2) of this chapter” with “Department, **at an appropriate method listed in N.J.A.C. 7:28-1.5**”; [and]

[22] **28.** 10 CFR 34.111, replace “Commission” with “Department, with approval of the Commission on Radiation Protection,” and replace “by law and will not endanger life or property or the common defense and security and are otherwise in the public interest” with “in accordance with the provisions of N.J.A.C. 7:28-2.8”;

29. 10 CFR 34.123, replace the wording of 10 CFR 34.123 with “**The Radiation Protection Act of 1958, N.J.S.A. 26:2D-1 et seq., provides for criminal sanctions for violation of any provision of the Act.**”;

30. 10 CFR Part 34 Appendix A(I)(12), add “and/or the U.S. NRC” after “Agreement States”;

31. 10 CFR Part 34 Appendix A(II)(1), add “or U.S. NRC” after “Agreement State”;

32. A 10 CFR Part 34 Appendix A(II)(2), add “or U.S. NRC” after “equivalent Agreement State” and add “or a U.S. NRC” after “an Agreement State”; and

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33. 10 CFR Part 34 Appendix A(III)(1), add “or U.S. NRC” after

“Agreement State.”

(d) – (f) (No change.)

SUBCHAPTER 64. RADIOACTIVE MATERIALS LICENSE FEES

7:28-64.2 Schedule of fees

(a) - (b) (No change.)

(c) Insofar as the incorporated rules refer to the facilities and/or materials in (b) above, they do not apply. The following provisions of the table identified in (a) above are incorporated by reference with the specified changes:

1. In every instance, replace “§” or “§§” with “10 CFR”;

Re-number 1.- 3. as 2.-4. (No change in text.)

5. Row labeled 3.B., replace “part 30 of this chapter” with “N.J.A.C. 7:28-51”;

[4]6. Row labeled 3.C., [replace “§§ 32.72 and/or 32.74]~~delete~~ “of this chapter,” [with “N.J.A.C. 7:28-53.] **and replace “part 40 of this chapter” with “N.J.A.C. 7:28-58,” and**

[5. Row labeled 3.C.,] delete “This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 171.11(a)(1). The licenses are covered by fee under Category 3.D.”;

7. Row labeled 3.D., delete “of this chapter,” and replace “part 40 of this chapter” with “N.J.A.C. 7:28-58,” and delete “This category includes licenses issued under §§ 32.72 and/or 32.74 of this chapter to nonprofit educational institutions whose processing

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or manufacturing is exempt under §171.11(a)(1),” and replace “part 40 of this chapter” with “N.J.A.C. 7:28-58”;

8. Row labeled 3.H., delete “of this chapter” after “Subpart A of part 32,” and replace both instances of “part 30 of this chapter” with “N.J.A.C. 7:28-51”;

9. Row labeled 3.I., delete “of this chapter” after “Subpart A of part 32,” and replace both instances of “part 30 of this chapter” with “N.J.A.C. 7:28-51”;

[6]**10.** Row labeled 3.J., replace “Subpart B of part 32 of this chapter” with **“Subpart B of 10 CFR part 32[N.J.A.C. 7:28-53]”** and replace “part 31 of this chapter” with “N.J.A.C. 7:28-52”;

[7]**11.** Row labeled 3.K., replace “Subpart B of part 32 of this chapter” with [“N.J.A.C. 7:28-53,”]**“Subpart B of 10 CFR part 32,”** and replace “part 31 of this chapter” with “N.J.A.C. 7:28-52”;

[8]**12.** Row labeled 3.L., replace “parts 30 and 33 of this chapter” with “N.J.A.C. 7:28-51 and 54”;

[9]**13.** Row labeled 3.M., replace “part 30 of this chapter” with “N.J.A.C. 7:28-51”;

[10]**14.** Row labeled 3.O., **replace “part 34 of this chapter” with “N.J.A.C. 7:28-63” and** replace “part 40 of this chapter” with “N.J.A.C. 7:28-58”;

15. Row labeled 3.Q., replace “part 31 of this chapter” with N.J.A.C. 7:28-52”;

[11. Row labeled 3.R., replace “10 CFR 31.12” with “N.J.A.C. 7:28-52”;

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12. Row labeled 3.R.2., replace “10 CFR 31.12(a)(4), or (5)” with “N.J.A.C. 7:28-52”;

[13] 13. Row labeled 7.A., replace “parts 30, 35, 40, and 70 of this chapter” with “N.J.A.C. 7:28-51, 55, 58, and 60”;

[14] 17. Row labeled 7.B., replace “parts 30, 33, 35, 40, and 70” with “N.J.A.C. 7:28-51, 54, 55, 58, and 60”;

[15] 18. Row labeled 7.C., replace “parts 30, 35, 40, and 70 of this chapter” with “N.J.A.C. 7:28-51, 55, 58, and 60”;

[16] 19. Row labeled 14.A., replace “parts 30, 40, 70, 72, and 76 of this chapter” with “N.J.A.C. 7:28-51, 58, and 60”;

(d)– (f) (No change.)

(g) The fee for any category for which a fee is not provided at Table 1 below shall be calculated in accordance with N.J.A.C. 7:28-64.3([c]d) and 64.4([e]d).

(h) For a fee identified as “full cost” in Table 1 or 2 below, the licensee shall pay the Department’s actual costs associated with the activity, which costs include, but are not limited to, labor (including fringe and indirect costs), transportation, per diem, materials, legal fees, and monitoring costs, as applicable.

Table 1

Schedule of Source, Special Nuclear, and Byproduct Material Annual Fees

FEE CATEGORY	LICENSE TYPE	ANNUAL FEE (\$)
1. – 18.	(No Change.)	(No Change.)

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Table 2

Schedule of Radioactive Materials Annual Fees

FEE CATEGORY	LICENSE TYPE	ANNUAL FEE (\$)
1.	Water Treatment Facilities as defined in N.J.A.C. 7:10-3.6	
A. – D.	(No change.)	
E.	Non-Transient Non-Community Water Systems treating [equal to or less than] 1000 gallons per day or less, with accumulated activity of radium greater than or equal to 10 μCi.	\$205
F.	Non-Transient Non-Community Water Systems treating more than 1000 gallons per day, with accumulated activity of radium greater than or equal to 10 μCi.	\$510

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2. – 4.	(No change.)	
5.	[Generally Licensed]	\$360
	Devices under a General License Requiring Registration	
6.	General License	\$205
	Registration for Community or Non-Community Water Treatment Systems	
[6.]7.	(No change.)	(No change.)
8.	X-ray fluorescence devices	
A.	A government body, department, agency, authority, or any other unit of any state, Federal, county or local government using a X-ray fluorescence device.	\$205
B.	All others	\$1,032

7:28-64.4 Annual fee

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(a) - (d) (No change.)

(e) [No refund of a fee will be provided if a license is terminated.] **The Department shall not release a facility for unrestricted use until the applicable annual fee is paid.**

(f) A licensee who provides sufficient information for the Department to determine that the facility may be released for unrestricted use shall be refunded half of the annual fee, if the information is provided to the Department during the first half of the fiscal year. The first half of the fiscal year ends on midnight of December 31. No refund shall be given if the information is provided to the Department after December 31.

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order No. 27 (1994), permit the public to understand accurately and plainly the purposes and expected consequences of this proposal. I hereby authorize this proposal.

DATE: _____

Bob Martin, Commissioner
Department of Environmental Protection

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DATE: _____

Julie K. Timins, M.D., Chairperson
Commission on Radiation Protection