

6 NYCRR Part 381, Transporters of Low-Level Radioactive Waste

Express Terms

Section 381.1 through Section 381.3 remain unchanged.

Subdivision 381.4(a) is amended to read as follows:

(a) Agreement state means any state which has entered into an effective agreement with the U.S. Nuclear Regulatory Commission pursuant to section 274(b) of the Atomic Energy Act of 1954, as amended [. (See] and as incorporated by reference in section 381.18 of this Part.[.])]

Subdivision 381.4(b) through paragraph 381.5(e)(1) remain unchanged.

Paragraph 381.5(e)(2) is amended to read as follows:

(2) the waste to be transported is Class A waste as defined by the U.S. Nuclear Regulatory Commission in 10 CFR 61.55, [(see] as incorporated by reference in section 381.18 of this Part[.]);

Paragraph 381.5(e)(3) remains unchanged.

Paragraph 381.5(e)(4) is amended to read as follows:

(4) the total activity contained in a shipment does not exceed $A2/100$, where $A2$ is the activity defined in 49 CFR 173.435, as incorporated by reference in section 381.18 of this Part.

Requests for exemptions should be sent to the New York State Department of Environmental Conservation, Division of [Solid and Hazardous Materials] Materials Management, 625 Broadway, Albany, NY 12233-7250. Requests for exemptions will be considered on a case-by-case basis.

Subdivision 381.5(f) through paragraph 381.8(b)(3) remain unchanged.

Paragraph 381.8(b)(4) is amended to read as follows:

(4) Requests for variances should be sent to the New York State Department of Environmental Conservation, Division of [Solid and Hazardous Materials] Materials Management, 625 Broadway, Albany, NY 12233-7250. Requests for variances will be considered on a case-by-case basis.

Subdivision 381.8(c) through paragraph 381.10(b)(1) remain unchanged.

Paragraph 381.10(b)(2) is amended to read as follows:

(2) \$1,000,000 for the transport of low-level radioactive wastes in any vehicle which does not exceed 10,000 pounds (4,545 kilograms) maximum gross weight, except that any transporter who carries any “highway route controlled quantity” of low-level radioactive waste as defined by 49 CFR 173.403, as

incorporated by reference in section 381.18 of this Part, must have coverage as required pursuant to 49 CFR 387.9, [(see] as incorporated by reference in section 381.18 of this Part[)].

Subdivision 381.10(c) through subdivision 381.11(c) remain unchanged.

Subdivision 381.11(d) is amended to read as follows:

(d) All low-level radioactive wastes must be properly packaged and contained during transport in accordance with 49 CFR [part 173] 173.401-173.477, [and] 10 CFR [part 71] 71.0-71.137, and Appendix A to 10 CFR Part 71, [(see] as incorporated by reference in section 381.18 of this Part [)].

Subdivision 381.10(e) remains unchanged.

Subdivision 381.11(f) is amended to read as follows:

(f) A permittee must conspicuously mark or placard every vehicle, in a manner consistent with section 14-f of the New York State Transportation Law, any rules and regulations promulgated thereunder and any related Federal requirements, related to the transportation of the regulated waste and its principal hazard. Packaging, labeling and placarding of LLRW shipments must be in accordance with the provisions of 10 CFR [Part 71] 71.0-71.137, Appendix A to 10 CFR Part 71, 49 CFR [Part 172] 172.300-172.560 and 49 CFR [Part 173] 173.401-173.477, [(see] as incorporated by reference in section 381.18 of this Part[)].

Subdivision 381.11(g) through subdivision 381.12(a) remain unchanged.

Subdivision 381.12(b) is repealed and a new subdivision 381.12(b) is adopted to read as follows:

(b) All manifest documents must include all information required in 10 CFR 20.2006, 49 CFR 172.203(d), and Appendix G to 10 CFR Part 20, as incorporated by reference in section 381.18 of this Part.

Subdivision 381.12(c) through paragraph 381.13(b)(4) remain unchanged.

Subdivision 381.13(c) is amended to read as follows:

(c) The manifest must be kept in the transportation vehicle in an easily accessible place when the shipment is in transit. Manifest accessibility shall be in conformance with 49 CFR 177.817(e). (See] as incorporated by reference in section 381.18 of this Part.[]]

Subdivision 381.13(d) through paragraph 381.13(g)(3) remain unchanged.

Subdivision 381.13(h) is amended to read as follows:

(h) The transporter must within 15 business days after relinquishing possession of such low- level radioactive waste to any person authorized or licensed under the laws and regulations of either the Federal government or an agreement state to accept LLRW for treatment, storage, disposal or other services, send a legible copy of such manifest and all continuation sheets to the New York State

Department of Environmental Conservation, Division of [Solid and Hazardous Materials]Materials Management, 625 Broadway, Albany, NY 12233-7250. In the case of brokers/collectors, or any person acting as a collector, a copy of each manifest and continuation sheets which accompanies incoming LLRW shipments to the broker's/collector's facility must be sent to the department within 15 business days from the date of waste collection. Brokers/collectors acting as transporters in the moving of LLRW from their authorized facility to an authorized facility, must send the department a copy of the accompanying manifest and continuation sheets within 15 business days from the date they relinquish possession of said waste to the authorized facility. The permittee's New York State low-level radioactive waste transport permit number must be written, stamped or printed on each manifest copy sent to the department.

Subdivision 381.13(i) through Section 381.17 remain unchanged.

Section 381.18 is repealed and a new Section 381.18 is adopted to read as follows:

Section 381.18 Materials incorporated by reference.

The following materials have been incorporated by reference in this Part and are on file with the New York State Department of State. These references are available for inspection and copying at the Division of Materials Management in the department's offices, 625 Broadway, Albany, NY 12233-7250.

(a) United States Code

(1) Section 274 of the Atomic Energy Act of 1954, as amended January 4, 1983, P.L. 97-415, section 19(a), 96 Stat. 2079 (42 USC 2021).

(b) Code of Federal Regulations (CFR). Any volume of the CFR can be obtained by writing to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954. Copies of CFR sections are also available from GovInfo at <https://www.govinfo.gov/app/collection/cfr> for the date noted in the cited reference. GovInfo is a service of the United States Government Publishing Office (GPO), which is a Federal agency in the legislative branch. Additional information can be accessed about it at: <https://www.govinfo.gov/about>. The following CFR sections and appendices are referenced in this Part:

- (1) 49 CFR 172.203(d) (Title 49, Volume 2 Parts 105-185, October 1, 2004) page 348;
- (2) 49 CFR 172.300-172.560 (Title 49, Volume 2 Parts 105-185, October 1, 2004) pages 353-400;
- (3) 49 CFR 173.401-173.477 (Title 49, Volume 2 Parts 105-185, October 1, 2004) pages 608-654;
- (4) 49 CFR 177.817(e) (Title 49, Volume 2 Parts 100-177, October 1, 2021) pages 938-939;
- (5) 49 CFR 387.9 (Title 49, Volume 4 Parts 200-399, October 1, 2004) page 1055;
- (6) 10 CFR 20.2006 (Title 10, Volume 1 Parts 1-50, January 1, 2005) page 344;
- (7) Appendix G to 10 CFR Part 20, (Title 10, Volume 1 Parts 1-50, January 1, 2005), pages 414-418;
- (8) 10 CFR section 61.55 (Title 10, Volume 2 Parts 51-199, January 1, 2022) pages 235-236;
- (9) 10 CFR 71.0-71.137 (Title 10, Volume 2 Parts 51-199, January 1, 2022) pages 346-384; and
- (10) Appendix A to 10 CFR Part 71 (Title 10, Volume 2 Parts 51-199, January 1, 2022) pages 384-401.

REGULATORY IMPACT STATEMENT

Amendments to 6 NYCRR Part 381 Transporters of Low-Level Radioactive Waste

INTRODUCTION

The Department of Environmental Conservation (Department or DEC) is proposing to amend 6 NYCRR Part 381 – Transporters of Low-Level Radioactive Waste to establish regulations consistent with the Nuclear Regulatory Commission (NRC) regulations adopted in 2012, 2015, 2019, 2020, and 2021 that pertain to the transportation of radioactive materials. NRC revised its regulations and DEC is incorporating these revisions into Part 381. This rulemaking would amend Part 381 to update the references to the Code of Federal Regulations that contain the revised NRC regulations. The proposed rulemaking also includes minor revisions to the incorporation by reference provisions to be consistent with Department of State standards and to update DEC division names referenced in Part 381.

This proposal would amend Part 381 as follows:

- The references to the Division of Solid and Hazardous Materials will be replaced with the Division of Materials Management.

- In sections of Part 381 where federal rules are incorporated by reference, the language “(see section 381.18 of this Part)” will be replaced with “as incorporated by reference in section 381.18 of this Part.”
- The incorporation by reference provision, section 381.18, will be amended to be consistent with the Department of State requirements and the format of other incorporation by reference sections within Department regulations.
- The incorporation by reference provision, section 381.18, will also be amended to indicate the most recent versions of the federal regulations incorporated by reference. The only changes directly cited by Part 381 are within 10 CFR part 71. Part 381 currently references 10 CFR part 71 dated January 1, 2005. This will be updated to indicate the most recent version of part 71.
- The other federal regulations incorporated by reference will be updated to indicate the most recent version, even though the sections of the federal regulations that were changed are not specifically cited by Part 381.

The changes to the federal regulations incorporated by reference are largely ministerial in nature. The changes consist largely of miscellaneous organizational and technical corrections. There is one change to the federal regulations which adds a notification requirement for shipments of irradiated reactor fuel and certain nuclear wastes for shipments passing within or through federally recognized Indian Nations. These notification requirements are already required for state and local

government entities, so this amendment adds Indian Nations to the notification list.

1. STATUTORY AUTHORITY

DEC regulates the collection, treatment and disposal of refuse and other solid waste pursuant to Article 27 of Environmental Conservation Law (ECL) and is authorized to regulate waste transporters through permits issued in accordance with ECL 27-0305 and as authorized by the State of New York's (the State) agreement with the NRC.

ECL 1-0101 declares it a policy of the State to conserve, improve and protect its natural resources and environment and to prevent, abate and control water, land and air pollution in order to enhance the health, safety and welfare of the people and their overall economic and social well-being.

ECL 3-0301 empowers DEC to adopt regulations as may be necessary to carry out the environmental policy of the State set forth in ECL 1-0101.

ECL 27-0301 declares it to be the intent of the title to protect the environment from the mishandling and mismanagement of regulated wastes transported from the site of generation to the site of ultimate treatment, storage, or disposal.

ECL 27-0303(4) includes in its definition of regulated waste, low-level radioactive waste as defined in ECL 27-0303(9).

ECL 27-0305 sets the requirements for permits for regulated waste generated or terminating in the State and specifically requires a permit for a person who engages in the transportation of low-level radioactive waste into, within, or through the State.

2. LEGISLATIVE OBJECTIVES

The overall environmental policy of the State is to protect the State's natural resources and prevent water, land, and air pollution to enhance the health, safety, and welfare of the people by ensuring the State can continue to regulate generators and transporters of low-level radioactive waste. This rule will contribute to meeting the goals of this policy and the legislative goals of conserving, improving, and protecting the State's natural resources and environment. The amendments to Part 381 are also required for compatibility with federal regulations as detailed in section 3 below.

3. NEEDS AND BENEFITS

New York State Agreement State Program

The Atomic Energy Act of 1954 (42 U.S.C. sec. 2011 et seq.) (AEA) created the federal program for controlling the use of most radioactive materials and for limiting the public exposure to radiation resulting from that use. In general, the AEA required that those entities wanting to possess, use, store, or transfer radioactive material produced or used in a nuclear reactor must do so in accordance with a license issued by the Atomic Energy Commission (AEC), the predecessor agency of the NRC. In 1960, the AEA was amended to allow states to enter into agreements with the NRC whereby the authority to license most uses of radioactive material was relinquished to these states (see 42 U.S.C. sec. 2021). States that enter into these agreements are referred to as Agreement States.

Before an agreement can be signed, the state must certify that it has a program for the control of radiation hazards adequate to protect the public health and safety (see 42 U.S.C. sec. 2021(d)(1)). The NRC then must review the state's proposed program and find that it is compatible with the federal program and is adequate to protect the public health and safety (see 42 U.S.C. sec. 2021(d)(2)). The NRC is authorized and directed to cooperate with the states in the formulation of standards for protection against hazards of radiation to assure that state and Commission programs for protection against hazards of radiation will be coordinated and compatible. (42 U.S.C. sec. 2021(g)).

The NRC periodically reviews the radiation control programs of Agreement States to determine whether the programs continue to be adequate to protect the public and whether the state regulations are compatible with the standards set by the NRC (see 42 U.S.C. sec. 2021(j)(1)). The NRC may terminate or suspend the agreement and reassert federal licensing and regulatory authority if a program fails to meet the NRC requirements (see 42 U.S.C. sec. 2021(j)). An Agreement State may also withdraw from the program and, therefore, no longer license most uses of radioactive material in that state (see 42 U.S.C. sec. 2021(j)). The NRC conducted its most recent review of the New York State program in July 2022. One of the preliminary findings of the review was that the program was incompatible with NRC requirements, in part, due to the lack of adopting certain portions of the federal rules. This proposed rulemaking will incorporate some of the regulations required for New York's program to be compatible with NRC requirements.

New York State became the fourth Agreement State in the country on October 15, 1962. There are currently 39 Agreement States and 3 other states that intend to become Agreement States with the NRC. The State's Agreement is implemented jointly by the New York State Department of Health (NYSDOH), the New York City Department of Health and Mental Hygiene (NYCDHMH), and DEC. Prior to July 2006, the New York State Department of Labor (DOL) was also a part of the State's program, but on July 1, 2006, DOL's Radiological Health Unit was transferred to NYSDOH.

NYSDOH and NYCDHMH issue radioactive materials licenses to parties to authorize the use and possession of radioactive material. DEC regulates the environmental impacts of radioactive materials.

In 1997, the NRC adopted a new subpart, Subpart E, in 10 CFR part 20 that set standards for the decontamination and decommissioning of facilities and sites contaminated with radioactive material. These 1997 revisions to Subpart E of 10 CFR part 20 are referred to as the License Termination Rule.

DEC proposes to amend 6 NYCRR Part 381 to update the regulation to incorporate by reference the latest versions of federal rules required for the transport of low-level radioactive waste. It also updates the regulation to reflect organizational changes within DEC and to reflect current language required by the NYS Department of State for incorporations by reference.

The NRC allows Agreement States three years from the effective date of the federal regulations to adopt compatible state regulations. The NRC regulations incorporated by reference have been amended several times since 2005, which is the version of NRC regulations currently incorporated. This amendment of Part 381 is necessary to meet DEC's obligation under the State Agreement program.

The primary benefit of amending Part 381 is that it will help fulfill New York State's commitments under its agreement with the NRC. The NRC required Agreement States to adopt regulations compatible with 10 CFR Part 71. The most recent version of this NRC rule is dated December 30, 2021. If DEC does not amend the regulations, New York State could lose the authority to regulate the use and possession of most radioactive material in New York State. Should this happen, the NRC would again assume regulatory authority over the use and possession of radioactive material in New York State.

An overview of the amendments to Part 381 are as follows:

- The references to the Division of Solid and Hazardous Materials will be replaced with the Division of Materials Management.
- In sections of Part 381 where federal rules are incorporated by reference, the language "(see section 381.18 of this Part)" will be replaced with "as incorporated by reference in section 381.18 of this Part."
- The incorporation by reference provision, section 381.18, will be amended to indicate the most recent versions of federal regulations incorporated by reference. The only changes directly cited by Part 381 are within 10 CFR part 71. Part 381 currently references 10 CFR part 71 dated January 1, 2005. This will be updated to indicate the most recent version of the part dated December 30, 2021.

- The other federal rules incorporated by reference will be updated to indicate the most recent version of the rule, even though the sections of the federal rules that were changed are not specifically cited by Part 381.

The following is a list of final rules of Title 10 of the Code of Federal Regulations (10 CFR) which are proposed to be incorporated by reference into Part 381.

- A. Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste, 77 FR 34194, June 11, 2012

This amendment requires licensees to provide advance notification to participating Federally recognized Indian Nation governments regarding shipments of irradiated reactor fuel and certain nuclear wastes for any shipment that passes within or across their jurisdiction.¹ The rule extends to nation officials', their designees', and nation law enforcement personnel's relief from fingerprinting requirements required for access to Safeguards Information (SGI) (<https://www.nrc.gov/security/info-security.html>). The participating Indian Nation government is required to protect the shipment information as SGI. There are currently 8 (eight) federally recognized Indian Nations in New York State.

¹ Indian Nation as used herein is synonymous with "Indian Tribe" as that term is used by the NRC. Under NRC regulations, "Indian Tribe means an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 5130" (see 10 CFR 71.4). There are currently eight federally recognized Indian Nations in New York State. The list of Indian Nations recognized by the United States Bureau of Indian Affairs is updated annually (see 88 Fed. Reg. 54654 (August 11, 2023)).

B. Technical Corrections, 77 FR 39899, July 6, 2012

Amendments in appendix A to 10 CFR part 71, Table A-1, to revise the values for the entries Bi-205, Cm-248, Eu-150 (long lived), and Te-132 (a), for consistency with Title 49 of the Code of Federal Regulations, section 173.435. In addition, in Table A-1, footnote b was revised for clarity.

C. Miscellaneous Corrections and Organizational Changes, 83 FR 58721, November 21, 2018

This rule amended 10 CFR 71.97 to remove, wherever it appears, the title “Division of Security Policy.”

D. Miscellaneous Corrections, 83 FR 30285, June 28, 2018

This rule amended 10 CFR 71.97(c)(3) to remove the title “Division of Material Safety, State, Tribal, and Rulemaking Programs” and add in its place the title “Division of Materials Safety, Security, State, and Tribal Programs”.

E. Organizational Changes and Conforming Amendments, 84 FR 65639 November 29, 2019, and 84 FR 66561, December 5, 2019

This rule amended 10 CFR Section 71.1 to remove, wherever it appears, “Division of Spent Fuel Management” and add in its place “Division of Fuel Management”; amended Section 71.17(c)(3) to remove “Division of Spent Fuel Storage and Transportation” and add in its place “Division of Fuel Management”; and amended Section 71.95 to remove, wherever it appears, “Division of Spent Fuel Management” and add in its place “Division of Fuel Management.”

F. Miscellaneous Corrections, 85 FR 65656, October 16, 2020

This rule amended 10 CFR part 71 as follows:

Corrects Outdated Reference. This rule removed and reserved § 71.97(c)(3)(i) because the information on governors' designees is now out of date and paragraph (c)(3)(ii) provides the reference to the correct and current contact information.

Corrects Typographical Error. This final rule revises the specific activity (TBq/g) entry for Sm-147 in Table A-1-A1 and A2 Values for Radionuclides in appendix A to 10 CFR part 71 to read “8.5 x 10⁻¹⁰.”

G. Miscellaneous Corrections, 86 FR 67839, November 30, 2021

This rule amended 10 CFR 71.4 to correct a formatting error by italicizing the term licensed material.

4. COSTS

Costs to Regulated Facilities

No incremental costs to the regulated community or local governments are anticipated as a result of this rulemaking. The updates to the federal regulations incorporated by reference are largely administrative changes and corrections of typographical errors. The requirement to provide advance notification to Indian Nations regarding transportation of certain types of nuclear waste has existed in federal rules since 2012 and is not expected to add significant costs to licensees with the potential to generate the types of wastes subject to that section of the rule. The quantities of radioactive materials subject to this rule are a small subset of all radioactive materials transported under Part 381. Those few transporters of low-level radioactive waste that exceed the notification threshold are already required to notify government entities. This action simply adds the requirement to notify Indian Nation officials prior to transport through nation lands. This additional notification requirement will result in an insignificant increase in cost to Part 381 permittees.

Costs to the Department

Once this rule is amended, the additional costs to DEC will be minimal.

Costs to State and Local Governments

No additional costs to other state agencies or local governments are anticipated under the proposed amendments to this regulation.

5. LOCAL GOVERNMENT MANDATES

There are no mandates placed upon local governments because of this proposed rulemaking. The proposed revision does not place any requirements directly on local governments unless local governments are responsible for the transport of low-level radioactive waste. In that case, the cost to the local government would be the same as that to other regulated parties, also expected to be minimal.

6. PAPERWORK

Additional paperwork requirements under the proposed amendments to Part 381 are not expected to require significant changes. Most of the amendments will have no impact. The additional requirement to notify Indian Nations of transport of certain wastes through their jurisdiction will not represent significant additional paperwork, since these notifications are already required for state and local government entities.

7. DUPLICATION

Other State Regulations

As was described in Section 1.1, the New York State Agreement State program is divided among three agencies (NYSDOH, NYCDOHMH, and DEC). The two agencies other than DEC have the authority to license the possession and use of radioactive materials. It is only when that material is disposed of or released to the environment that it comes under the jurisdiction of DEC. Thus, there is no overlap between the regulatory programs of the licensing agencies and that of DEC.

Federal Regulations

Since this proposed rule utilizes incorporation by reference of applicable federal regulations, it ensures that State regulations are compatible and consistent with the federal regulations.

8. ALTERNATIVES

The no-action alternative is not consistent with New York State's Agreement with the NRC. As an Agreement State, New York has committed to implementing a radiation control program that is compatible with that of the NRC. If DEC does not adopt

compatible regulations, the NRC can suspend the Agreement with New York State and assert its own regulatory authority. Were that to take place, all NRC regulations would then be in effect in the State, including the regulations which govern transport of low-level radioactive waste.

9. FEDERAL STANDARDS

This rule will allow New York State regulations to be consistent with NRC regulations.

10. COMPLIANCE SCHEDULE

These regulations will become effective 30 days after filing with the Department of State.

SUMMARY OF REGULATORY IMPACT STATEMENT

Amendments to 6 NYCRR Part 381 Transporters of Low-Level Radioactive Waste

The Department of Environmental Conservation (Department or DEC) is proposing to amend 6 NYCRR Part 381 – Transporters of Low-Level Radioactive Waste to establish regulations consistent with the Nuclear Regulatory Commission (NRC) regulations adopted in 2012, 2015, 2019, 2020, and 2021 that pertain to the transportation of radioactive materials. NRC revised its regulations and DEC is incorporating these revisions into Part 381. This rulemaking would amend Part 381 to update the references to the Code of Federal Regulations (CFR) that contain the revised NRC regulations. The proposed rulemaking also includes minor revisions to the incorporation by reference provisions to be consistent with Department of State (DOS) standards and to update DEC division names referenced in Part 381.

This proposal would amend Part 381 as follows:

- The references to the Division of Solid and Hazardous Materials will be replaced with the Division of Materials Management.
- In sections of Part 381 where federal rules are incorporated by reference, the language “(see section 381.18 of this Part)” will be replaced with “as incorporated by reference in section 381.18 of this Part.”
- The incorporation by reference provision, section 381.18, will be amended to be consistent with the DOS requirements and the format of other incorporation by reference sections within Department regulations.
- The incorporation by reference provision, section 381.18, will also be amended to indicate the most recent versions of the federal regulations incorporated by reference. The only

changes directly cited by Part 381 are within 10 CFR part 71. Part 381 currently references 10 CFR part 71 dated January 1, 2005. This will be updated to indicate the most recent version of part 71.

- The other federal regulations incorporated by reference will be updated to indicate the most recent version, even though the sections of the federal regulations that were changed are not specifically cited by Part 381.

The changes to the federal regulations incorporated by reference are largely ministerial in nature. The changes consist largely of miscellaneous organizational and technical corrections. There is one change to the federal regulations which adds a notification requirement for shipments of irradiated reactor fuel and certain nuclear wastes for shipments passing within or through federally recognized Indian Nations. These notification requirements are already required for state and local government entities, so this amendment adds Indian Nations to the notification list.

The Department's statutory authority for these proposed regulations is found in ECL 1-0101, ECL 3-0301, ECL 27-0301, ECL 27-0303(4), and ECL 27-0305.

The overall environmental policy of New York State is to protect the State's natural resources and prevent water, land, and air pollution to enhance the health, safety and welfare of the people by ensuring the State can continue to regulate generators and transporters of low-level radioactive waste. This rule will contribute to meeting the goals of this policy and the legislative goals of conserving, improving, and protecting the State's natural resources and environment. The amendments to Part 381 are also required for compatibility with federal regulations as detailed in section 3 below.

The Atomic Energy Act of 1954 (42 U.S.C. sec. 2011 et seq.) (AEA) created the federal program for controlling the use of most radioactive materials and for limiting the public exposure to radiation resulting from that use. In general, the AEA required that those entities wanting to possess, use, store, or transfer radioactive material produced or used in a nuclear reactor must do so in accordance with a license issued by the Atomic Energy Commission (AEC), the predecessor agency of the NRC. In 1960, the AEA was amended to allow states to enter into agreements with the NRC whereby the authority to license most uses of radioactive material are relinquished to these states (see 42 U.S.C. sec. 2021). States that enter into these agreements are referred to as Agreement States.

New York State became an Agreement State on October 15, 1962. The State's Agreement is implemented jointly by the New York State Department of Health (NYSDOH), the New York City Department of Health and Mental Hygiene (NYCDHMH), and DEC. Prior to July 2006, the New York State Department of Labor (DOL) was also a part of the State's program, but on July 1, 2006, DOL's Radiological Health Unit was transferred to NYSDOH.

NYSDOH and NYCDHMH issue radioactive materials licenses to parties to authorize the use and possession of radioactive material. DEC regulates the environmental impacts of radioactive materials.

DEC proposes to amend 6 NYCRR Part 381 to update the regulation to incorporate by reference the latest versions of federal rules required for the transport of low-level radioactive waste. It also updates the regulation to reflect organizational changes within DEC and to reflect current language required by DOS for incorporations by reference.

The primary benefit of amending Part 381 is that it will help fulfill New York State's commitments under its agreement with the NRC. The NRC required Agreement States to adopt regulations

compatible with 10 CFR part 71. The most recent version of this NRC rule is dated December 30, 2021. If DEC does not amend the regulations, New York State could lose the authority to regulate the use and possession of most radioactive material in New York State. Should this happen, the NRC would again assume regulatory authority over the use and possession of radioactive material in New York State.

An overview of the amendments to Part 381 are as follows:

- The references to the Division of Solid and Hazardous Materials will be replaced with the Division of Materials Management.
- In sections of Part 381 where federal rules are incorporated by reference, the language “(see section 381.18 of this Part)” will be replaced with “as incorporated by reference in section 381.18 of this Part.”
- The incorporation by reference provision, section 381.18, will be amended to indicate the most recent versions of Federal Regulations incorporated by reference. The only changes directly cited by Part 381 are within 10 CFR part 71. Part 381 currently references 10 CFR part 71 dated January 1, 2005. This will be updated to indicate the most recent version of the part dated December 30, 2021.
- The other federal rules incorporated by reference will be updated to indicate the most recent version of the rule, even though the sections of the federal rules that were changed are not specifically cited by Part 381.

The following is a list of Final Rules of Title 10 of the Code of Federal Regulations (10 CFR) which are proposed to be incorporated by reference into Part 381.

- Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste, 77 FR 34194, June 11, 2012
- Technical Corrections, 77 FR 39899, July 6, 2012
- Miscellaneous Corrections and Organizational Changes, 83 FR 58721, November 21, 2018
- Miscellaneous Corrections, 83 FR 30285, June 28, 2018
- Organizational Changes and Conforming Amendments, 84 FR 65639 November 29, 2019, and 84 FR 66561, December 5, 2019
- Miscellaneous Corrections, 85 FR 65656, October 16, 2020
- Miscellaneous Corrections, 86 FR 67839, November 30, 2021

No incremental costs to the regulated community or local governments are anticipated because of this rulemaking. The updates to the federal regulations incorporated by reference are largely administrative changes and corrections of typographical errors. The requirement to provide advance notification to Indian Nations regarding transportation of certain types of nuclear waste has existed in federal rules since 2012 and is not expected to add significant costs to licensees with the potential to generate the types of wastes subject to that section of the rule. The quantities of radioactive materials subject to this rule are a small subset of all radioactive materials transported under Part 381. Those few transporters of low-level radioactive waste that exceed the notification threshold are already required to notify government entities. This action simply adds the requirement to notify Indian Nation officials prior to transport through nation lands. This additional notification requirement will result in an insignificant increase in cost to Part 381 permittees.

Once this rule is amended, the additional costs to DEC will be minimal. No additional costs to other state agencies or local governments are anticipated under the proposed amendments contained in this regulation.

There are no mandates placed upon local governments because of this proposed rulemaking. The proposed revision does not place any requirements directly on local governments unless local governments are responsible for the transport of low-level radioactive waste. In that case, the cost to the local government would be the same as that to other regulated parties, also expected to be minimal.

Additional paperwork requirements under the proposed amendments to Part 381 are not expected to require significant changes. Most of the amendments will have no impact. The additional requirement to notify Indian Nations of transport of certain wastes through their jurisdiction will not represent significant additional paperwork, since these notifications are already required for state and local government entities.

As was described in Section 1.1, the New York State Agreement State program is divided among three agencies (NYSDOH, NYCDOHMH, and DEC). The two agencies other than DEC have the authority to license the possession and use of radioactive materials. It is only when that material is disposed of or released to the environment that it comes under the jurisdiction of DEC. Thus, there is no overlap between the regulatory programs of the licensing agencies and that of DEC.

Since this proposed rule utilizes incorporation by reference of applicable federal regulations, it ensures that State regulations are compatible and consistent with the federal regulations.

The no-action alternative is not consistent with New York State's Agreement with the NRC. As an Agreement State, New York has committed to implementing a radiation control program that is compatible with that of the NRC. If DEC does not adopt compatible regulations, the NRC can suspend the Agreement with New York State and assert its own regulatory authority. Were that to take place, all NRC regulations would then be in effect in the State, including the regulations which govern transport of low-level radioactive waste.

This rule will allow New York State regulations to be consistent with NRC regulations. These regulations will become effective 30 days after filing with the Department of State.

Job Impact Exemption Statement

6 NYCRR Part 381, Transporters of Low-Level Radioactive Waste

In accordance with Section 201-a(2)(a) of the State Administrative Procedures Act (SAPA), a Job Impact Statement has not been prepared for this rule as it is not expected to create a substantial adverse impact on jobs and employment opportunities in New York State.

Part 381 establishes transport permit standards for transporters of low-level radioactive waste (LLRW) and standards for generators and transporters relating to the use of the LLRW manifest system and its recordkeeping requirements. A LLRW manifest document and the New York State LLRW transport permit must accompany all shipments of LLRW while in transit into, through or within New York State unless specifically exempted under Part 381. The manifest document serves as a multipurpose instrument to be used for tracking, auditing, and enforcement. This rulemaking updates the citations of federal regulations incorporated by reference to reflect the most current versions applicable to Part 381. This rulemaking also includes minor revisions to incorporation by reference verbiage to be consistent with Department of State requirements and to update division names referenced in the regulation. The parties affected by the amendments are transporters of LLRW as well as facilities which generate LLRW.

This rule is not expected to cause the loss of jobs at any affected party. The update to the federal regulations incorporated by reference is largely administrative changes and corrections of typographical errors. The requirement to provide advance notification to Indian Nations regarding transportation of certain types of nuclear waste has existed in federal rules since 2012 and is not expected to add significant costs to licensees with the potential to generate the types of wastes

subject to that section of the rule. The quantities of radioactive materials subject to this rule are a small subset of all radioactive materials transported under Part 381. Those few licensees that exceed the notification threshold are already required to notify government entities. This action simply adds the requirement to notify Indian Nation officials prior to transport through Indian Nation land. This additional notification requirement will result in an insignificant increase in costs to the licensee. Since these changes are not expected to result in any increased costs to the affected businesses, it is not anticipated that this action will result in any job impacts.

RURAL AREA FLEXIBILITY ANALYSIS

6 NYCRR Part 381

Transporters of Low-Level Radioactive Waste

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS

For purposes of this Rural Area Flexibility Analysis (RAFA), “rural area” means those portions of New York State (State) so defined by Executive Law section 481(7) pursuant to SAPA section 102(10). Under Executive Law section 481(7), rural areas are defined as “counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, programs and such other entities or resources as are found therein. In counties of two hundred thousand or greater population, ‘rural areas’ means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein.” There are 44 counties in State that have populations of less than 200,000 people and 71 towns in non-rural counties where the population densities are less than 150 people per square mile. This rule would apply statewide, including all rural areas of the State.

2. REPORTING, RECORDKEEPING, OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES

The Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Part 381 – Transporters of Low-Level Radioactive Waste – to establish regulations consistent with the Nuclear Regulatory Commission (NRC) regulations adopted in 2012, 2015, 2019, 2020, and 2021 that pertain to the transportation of radioactive materials. Revisions were made to portions of the

NRC regulations which are incorporated by reference into Part 381. This proposed rulemaking would amend Part 381 to update the references to the portions of the Code of Federal Regulations that contain the NRC regulations, to the most recent versions. It also includes minor revisions to the incorporation by reference verbiage to be consistent with Department of State and updates division names referenced in Part 381.

The changes to the federal regulations incorporated by reference are largely ministerial in nature. The changes consist largely of miscellaneous organizational and technical corrections. There is one change to the federal regulations which adds a notification requirement for shipments of irradiated reactor fuel and certain nuclear wastes for shipments passing within or through federally recognized Indian Nations. These notification requirements are already required for state and local government entities, so this amendment simply adds federally recognized Indian Nations to the notification list. Therefore, this amendment does not create any significant new reporting, record keeping or compliance requirement nor does it require the regulated entity to obtain any additional professional services.

3. COSTS

No incremental costs to the regulated community or local governments are anticipated because of this rulemaking. The update to the federal regulations incorporated by reference is largely administrative changes and corrections of typographical errors. The requirement to provide advance notification to federally recognized Indian Nations regarding transportation of certain types of nuclear waste has existed in federal rules since 2012 and is not expected to add significant costs to licensees with the potential to generate the types of wastes subject to that section of the rule. The quantities of radioactive materials subject to this rule are a small subset of all radioactive materials transported

under Part 381. Those few permittees that exceed the notification threshold are already required to notify government entities. This action simply adds the requirement to notify federally recognized Indian Nation officials prior to transport through Indian Nation lands. This additional notification requirement will result in an insignificant increase in cost to the licensee.

4. MINIMIZING ADVERSE IMPACT

These regulations are not expected to generate any adverse impact to any of the regulated parties they may apply to. As stated previously, there will be little or no increase in costs for those parties responsible for remediation and required paperwork preparation will be minimal.

5. RURAL AREA PARTICIPATION

As an effort of preliminary public outreach, on October 19, 2022, the Department conducted a virtual public stakeholder information session regarding the amendments being considered. Public comment was solicited to obtain input prior to the development of the express terms.

Once Part 381 has been proposed for public comment, the Department plans to hold public meetings to provide information about the proposed rulemaking and address questions and concerns. Subsequently, required public hearings will be held prior to the end of the public comment period. Information about the rule making will also be posted on the Department's website and in the Environmental Notice Bulletin, which is published weekly on Wednesdays.

6. INITIAL REVIEW OF THE RULE

The Department would conduct an initial review of the rule within three years as required by SAPA § 207 as amended by Chapter 462 of the Laws of 2012.

REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

6 NYCRR Part 381

Transporters of Low-Level Radioactive Waste

1. EFFECT OF RULE

The proposed rule would apply statewide in all 62 counties of New York State (State). There are forty-four (44) businesses which possess transporter permits issued under Part 381. The Department estimates that less than twenty (20) of those businesses may meet the definition of small business. For the purposes of this regulatory flexibility analysis, “small business” means any business resident in this State, independently owned, and operated, that employs one hundred or fewer employees. No local governments currently possess transporter permits issued under Part 381.

2. COMPLIANCE REQUIREMENTS

There are no application forms associated with this proposed rule. This action amends the existing rule by updating the federal rules incorporated by reference. Regulated parties will be required to follow referenced federal requirements under 10 CFR Part 71. Changes which result from this amendment will require insignificant changes to existing requirements for notifications to local and state governments by adding a notification requirement for transport through federally recognized Indian Nations.

3. PROFESSIONAL SERVICES

Regulated parties subject to this rule are not expected to be required to obtain professional services to comply with the amended regulation.

4. COMPLIANCE COSTS

No incremental costs to the regulated community or local governments are anticipated because of this rulemaking. The update to the federal regulations incorporated by reference is largely administrative changes and corrections of typographical errors. The requirement to provide advance notification to federally recognized Indian Nations regarding transportation of certain types of nuclear waste has existed in federal rules since 2012 and is not expected to add significant costs to licensees with the potential to generate the types of wastes subject to that section of the rule. The quantities of radioactive materials subject to this rule are a small subset of all radioactive materials transported under Part 381. Those few licensees that exceed the notification threshold are already required to notify local and state government entities. This action simply adds the requirement to notify nation or tribe officials prior to transport through federally recognized Indian Nation lands. This additional notification requirement will result in an insignificant increase in cost to the licensee.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

Implementation of these regulations will be economically and technologically feasible for small businesses and local governments. Most of the changes to federal regulations incorporated by reference are administrative in nature. The addition of the notification requirement for transport of certain low-level radioactive wastes across federally recognized Indian Nation lands does not present any adverse economic or technological feasibility concerns.

6. MINIMIZING ADVERSE IMPACT

These regulations are not expected to generate any adverse impact to any of the regulated parties they apply to. There will be little or no increase in costs for those parties responsible for remediation and required paperwork preparation will be minimal.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

As an effort of preliminary public outreach, on October 19, 2022, the Department conducted a virtual public stakeholder information session regarding the amendments being considered. Public comment was solicited to obtain input prior to the development of the express terms.

Once Part 381 has been proposed for public comment, the Department plans to hold public meetings to provide information about the proposed rulemaking and address questions and concerns. Subsequently, required public hearings will be held prior to the end of the public comment period. Information about the rule making will also be posted on the Department's website and in the Environmental Notice Bulletin, which is published weekly on Wednesdays.

8. CURE PERIOD OR OTHER OPPORTUNITY FOR AMELIORATIVE ACTION

No cure period or other opportunity for ameliorative action is needed since the rule making does not impose any penalties on the regulated community.

9. INITIAL REVIEW OF THE RULE

The Department would conduct an initial review of the rule within three years as required by SAPA §207 as amended by Chapter 462 of the Laws of 2012.