

July 1, 2008

Robert J. Walker, Director
Radiation Control Program
Department of Public Health
Schrafft Center, Suite 1M2A
529 Main Street
Charlestown, MA 02129

Dear Mr. Walker:

We have reviewed the proposed and final changes to the Massachusetts regulations, Regulations for the Control of Radiation, received by our office on May 14, 2008. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 30, 40, 70, 71 and the requirements of the three amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with Salifu Dakubu on July 1, 2008.

As a result of our review, we have 14 comments that have been identified in the enclosure. Please note that we have limited our review to regulations required for compatibility and/or health and safety. Under our current procedure, a finding that the Massachusetts regulations meet the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final Massachusetts regulations. However, we have determined that if your proposed regulations were adopted, incorporating our comments and without other significant change, they would meet the compatibility and health and safety categories established in the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure [SA-200](#).

We request that when the proposed regulations are adopted and published as final regulations and the final regulations are updated to reflect our changes, a copy of the "as published" regulations be provided to us for review. As requested in FSME Procedure [SA-201](#), "Review of State Regulatory Requirements," please highlight the final changes, and provide a copy to Division of Materials Safety and State Agreements, FSME.

The SRS Data Sheet summarizes our knowledge of the status of other Massachusetts regulations, as indicated. Please let us know if you note any inaccuracies, or have any comments on the information contained in the SRS Data Sheet. This letter, including the SRS Data Sheet, is posted on the FSME website: <http://nrc-stp.ornl.gov/rulemaking.html>.

If you have any questions regarding the comments, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact Kathleen Schneider, State Regulation Review Coordinator at (301) 415-2320 (email: kathleen.schneider@nrc.gov) or Monica Orendi at (301) 415-3938 (email: monica.orendi@nrc.gov).

Sincerely,

/ RA by ADWhite for /

James G. Luehman, Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials and
Environmental Management Programs

Enclosures:
As stated

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 Office of Federal and State Materials and
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Enclosures: As stated

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DATE	06/17/08*	06/18/08*	06/30/08*	07/01/08*	07/01/08*

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COMPATIBILITY COMMENTS ON *MASSACHUSETTS* PROPOSED AND FINAL REGULATIONS

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	120.125 (C)	30.35 70.25	2003-1	<p>H&S</p> <p>Financial assurance and recordkeeping for decommissioning</p> <p>Massachusetts has a wrong reference in 120.125 (C)(2). Reference 105 CMR 120.125(C)(1)(e) should actually be 105 CMR 120.125 (C)(6).</p> <p>In 120.125(C)(6) Massachusetts needs to add a time requirement for resubmitting the decommissioning funding plan to the Agency (see 10 CFR 30.35(e) AND 10 CFR 70.25(e)).</p> <p>Massachusetts needs to make the above changes in order to meet the Compatibility category H&S designation assigned to 10 CFR 30.35 and 70.25.</p>
2	120.125(C)	40.36	2003-1	<p>H&S</p> <p>Financial assurance and recordkeeping for decommissioning</p> <p>Massachusetts does not incorporate the essential objectives to 10 CFR 40.36(b) in 120.125.</p> <p>Massachusetts needs to add the essential objectives of 40.36(b) in order to meet the Compatibility Category H&S designation assigned to 10 CFR 40.36.</p>
3	120.772	71.4	2004-1	<p>[B]</p> <p>Definition: Exclusive use</p> <p>Massachusetts deletes the “or” from the word consignor in the first sentence making the word consign.</p> <p>Massachusetts needs to keep the “or” on the end of the word “consignor” in order to meet the Compatibility Category [B] designation assigned to 10 CFR 71.4 Definition Exclusive use.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
4	120.772	71.4	2004-1	[B]	<p>Definition: Fissile material</p> <p>Massachusetts has the incorrect reference for 10 CFR 71.15. The reference should be 105 CMR 120.775.</p> <p>Massachusetts needs to make the above change in order to meet the Compatibility category [B] designation assigned to 10 CFR 71.4 Definition Fissile material.</p>
5	120.772	71.4	2004-1	B	<p>Definition: Graphite</p> <p>Massachusetts has incorrect references for 10 CFR 71.15 and 71.22. The references should be 105 CMR 120.775 and 120.781 respectively.</p> <p>Massachusetts needs to make the above change in order to meet the Compatibility category B designation assigned to 10 CFR 71.4 Definition Graphite.</p>
6	120.772	71.4	2004-1	[B]	<p>Definition: Low specific activity (LSA) material</p> <p>Massachusetts has incorrect references for 10 CFR 71.15 and 71.77 in its definition. The references should be 105 CMR 120.775 and 10 CFR 71.77 respectively.</p> <p>Massachusetts needs to make the above change in order to meet the Compatibility category [B] designation assigned to 10 CFR 71.4 Definition Low Specific Activity (LSA) material.</p>
7	120.774	71.5	2004-1	[B]	<p>Transportation of licensed material.</p> <p>In Massachusetts regulation 120.774(B) the reference should state "... the requirements of 49 CFR 107, 171 through 180, and 390 through 397, appropriate ...".</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>Massachusetts omits the second half of paragraph (b) which allows for “modification, waiver, or exemption from those requirements”.</p> <p>Massachusetts needs to make the above changes in order to meet the Compatibility category [B] designation assigned to 10 CFR 71.5.</p>
8	120.777	71.17	2004-1	[B]	<p>General license: NRC-approved package.</p> <p>Massachusetts needs to change 120.777(B) to say “... approved by Agency as satisfying the provisions of (equivalent MA regulations to 10 CFR 71 subpart H).”.</p> <p>Massachusetts needs to make the above change in order to meet the Compatibility Category [B] designation assigned to 10 CFR 71.17.</p>
9	120.780	71.21	2004-1	[B]	<p>General license: Use of foreign approved package.</p> <p>Massachusetts needs to change (C)(1) to say “Has a quality assurance program as approved by the agency;”.</p> <p>Massachusetts needs to change paragraph (C)(3) to state “... with respect to the quality assurance provisions of 120.790, the licensee...”.</p> <p>Massachusetts needs to make the above changes in order to meet the Compatibility Category [B] designation assigned to 10 CFR 71.21.</p>
10	120.781	71.22	2004-1	[B]	<p>General license: Fissile material</p> <p>Massachusetts needs to change the 120.781 (B) to read “... who has a quality assurance program approved by the Agency as satisfying the provisions of 120.790.”.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					Massachusetts needs to make the above change in order to meet the Compatibility Category [B] designation assigned to 10 CFR 71.22.
11	120.782	71.23	2004-1	[B]	<p>General license: Plutonium beryllium special form material.</p> <p>Massachusetts needs to change the 120.782(B) to read "... who has a quality assurance program approved by the Agency as satisfying the provisions of 120.790."</p> <p>Massachusetts needs to change 120.782(C) by removing (C)(2) and adding an equivalent to 10 CFR 71.23 (c)(2).</p> <p>Massachusetts needs to make the above changes in order to meet the Compatibility Category [B] designation assigned to 10 CFR 71.23.</p>
12	120.789	71.97	2004-1	B	<p>Advance notification of shipment of irradiated reactor fuel and nuclear waste.</p> <p>Massachusetts needs to change the reference in 120.789(B) to say 10 CFR 73.37(f).</p> <p>120.789(B)(1) is missing the word "required" after the word material.</p> <p>120.789(C)(1) and (F)(1) need to have the "Agency" added to the list of person's to be notified in writing.</p> <p>Massachusetts needs to make the above changes in order to meet the Compatibility Category B designation assigned to 10 CFR 71.97.</p>
13	120.790	71.101	2004-1	C	<p>Quality assurance requirements.</p> <p>Massachusetts needs to revise 120.790(C) to state "... each licensee shall obtain Agency approval of its quality assurance program."</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					Massachusetts needs to make the above change in order to meet the Compatibility Category B designation assigned to 10 CFR 71.101.
14	120.795	10 CFR 71 Appendix A	2004-1	[B]	<p>Determination of A₁ and A₂</p> <p>Massachusetts needs to replace the word “Commission” with the word “Agency” throughout 120.795.</p> <p>The footnotes for Tables A-1 and A-2 are incorrect and need to be corrected to match the footnotes in 10 CFR 71 Appendix A Table A-1 and Table A-2.</p> <p>Massachusetts needs to make the above change in order to meet the Compatibility Category [B] designation assigned to 10 CFR 71 Appendix A</p>

STATE REGULATION STATUS

State: Massachusetts

Tracking Ticket Number: 8-62

[3 amendment(s) reviewed is identified by a ★

Date: July 1, 2008

at the beginning of the equivalent NRC requirement.]

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1991-1	Safety Requirements for Radiographic Equipment Part 34 55 FR 843 (Superceded by 1997-5)	01/10/1994	Final	No Comments 03/03/1997	Massachusetts has adopted Final Regulations equivalent to RATS ID: 1997-5.
1991-2	ASNT Certification of Radiographers Part 34 56 FR 11504 (Superceded by 1997-5)	none	Not Required	Not Required	Massachusetts has adopted Final Regulations equivalent to RATS ID: 1997-5.
1991-3	Standards for Protection Against Radiation Part 20 56 FR 23360; 56 FR 61352; 57 FR 38588; 57 FR 57877; 58 FR 67657; 59 FR 41641; 60 FR 20183;	01/01/1994	Final	No Comments 03/03/1997	
1991-4	Notification of Incidents Parts 20, 30, 31, 34, 39, 40, 70 56 FR 64980;	10/15/1994	Final	No Comments 03/03/1997	
1992-1	Quality Management Program and Misadministrations Part 35 56 FR 34104 (Superceded by 2002-2)	01/27/1995	Final	No Comments 03/03/1997	Massachusetts has adopted Final Regulations equivalent to RATS ID: 2002-2.
1992-2	Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions Parts 30, 35 57 FR 45566	none	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1993-1	Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites] Parts 30, 40 58 FR 39628	10/25/1996	Final	No Comments 03/03/1997	
1993-2	Licensing and Radiation Safety Requirements for Irradiators Part 36 58 FR 7715	07/01/1996	Final	No Comments 03/03/1997	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1993-3	Definition of Land Disposal and Waste Site QA Program Part 61 58 FR 33886	07/22/1996	Final	No Comments 03/03/1997	
1994-1	Self-Guarantee as an Additional Financial Mechanism Parts 30, 40, 70 58 FR 68726; 59 FR 1618	none	Final	No Comments 03/03/1997	These regulation changes are not required to be adopted for purposes of Compatibility.
1994-2	Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards Part 40 59 FR 28220	07/01/1997	Not Applicable	Not Applicable	Massachusetts does not have authority to regulate this material under its Agreement.
1994-3	Timeliness in Decommissioning Material Facilities Parts 30, 40, 70 59 FR 36026	08/15/1997	Final ML062980638	No Comments 11/30/2006 ML063380019	
1995-1	Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use Parts 30, 32, 35 59 FR 61767; 59 FR 65243; 60 FR 322	01/01/1998	Final	No Comments 09/21/1999	
1995-2	Frequency of Medical Examinations for Use of Respiratory Protection Equipment	03/13/1998	Final ML062980638	No Comments 11/30/2006 ML063380019	
1995-3	Low-Level Waste Shipment Manifest Information and Reporting Parts 20, 61 60 FR 15649; 60 FR 25983	03/01/1998	Final ML062980638	No Comments 11/30/2006 ML063380019	
1995-4	Performance Requirements for Radiography Equipment Part 34 60 FR 28323 (Superceded by 1997-5)	06/30/1998	Not Required	Not Required	Massachusetts has adopted Final Regulations equivalent to RATS ID: 1997-5.
1995-5	Radiation Protection Requirements: Amended Definitions and Criteria Parts 19, 20 60 FR 36038	08/14/1998	Final ML062980638	No Comments 11/30/2006 ML063380019	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1995-6	Clarification of Decommissioning Funding Requirements Parts 30, 40, 70 60 FR 38235	11/24/1998	Final ML062980638	No Comments 11/30/2006 ML063380019	
1995-7	Medical Administration of Radiation and Radioactive Materials Parts 20, 35 60 FR 48623 (Superceded by 2002-2 and 2005-2)	10/20/1998	Final	No Comments 09/21/1999	Massachusetts has not yet adopted Final Regulations equivalent to RATS ID: 2005-2.
1996-1	Compatibility with the International Atomic Energy Agency Part 71 60 FR 50248; 61 FR 28724 (Superceded by 2004-1)	04/01/1999	Final	No Comments 09/21/1999	Massachusetts has not yet adopted Final Regulations equivalent to RATS ID: 2004-1.
1996-2	One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses Parts 30, 40, 70 61 FR 1109	02/15/1999	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1996-3	Termination or Transfer of Licensed Activities: Record keeping Requirements Parts 20, 30, 40, 61, 70 61 FR 24669	06/17/1999	Final	No Comments 09/21/1999	
1997-1	Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act Part 20 61 FR 65120	01/9/2000	Final	No Comments 09/21/1999	
1997-2	Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State Part 150 62 FR 1662	02/27/2000	Final ML062980638	No Comments 11/30/2006 ML063380019	
1997-3	Criteria for the Release of Individuals Administered Radioactive Material Parts 20, 35 62 FR 4120	05/29/2000	Final ML062980638	No Comments 11/30/2006 ML063380019	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1997-4	Fissile Material Shipments and Exemptions Part 71 62 FR 5907 (Superceded by 2004-1)	02/10/2000	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility. (See STP-97-078)
1997-5	Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations Parts 30, 34, 71, 150 62 FR 28947	06/27/2000	Final	No Comments 09/21/1999	
1997-6	Radiological Criteria for License Termination Parts 20, 30, 40, 70 62 FR 39057	08/20/2000	Final ML062980638	No Comments 11/30/2006 ML063380019	
1997-7	Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea Part 30 62 FR 63634	01/02/2001	Final	No Comments 09/21/1999	
1998-1	Deliberate Misconduct by Unlicensed Persons Parts 30, 40, 61, 70, 71,	02/12/2001	Final ML062980638	No Comments 11/30/2006 ML063380019	
1998-2	Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees Parts 30, 40, 70 63 FR 29535	07/01/2001	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1998-3	License Term for Medical Use Licenses Part 35 63 FR 31604 (Superceded by 2002-2)	07/10/2001	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility. (See STP-98-074) Massachusetts has adopted Final Regulations equivalent to RATS ID: 2002-2.
1998-4	Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations Part 34 63 FR 37059	07/09/2001	Final ML062980638	No Comments 11/30/2006 ML063380019	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1998-5	Minor Corrections, Clarifying Changes, and a Minor Policy Change Parts 20, 35, 36 63 FR 39477; 63 FR 45393	10/26/2001	Final ML062980638	No Comments 11/30/2006 ML063380019	
1998-6	Transfer for Disposal and Manifests: Minor Technical Conforming Amendment Part 20 63 FR 50127	11/20/2001	Final ML062980638	No Comments 11/30/2006 ML063380019	
1999-1	Radiological Criteria for License Termination of Uranium Recovery Facilities Part 40 64 FR 17506	06/11/2002	Not Applicable	Not Applicable	Massachusetts does not have authority to regulate this material under its Agreement.
1999-2	Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information Part 31 64 FR 42269	10/04/2002	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1999-3	Respiratory Protection and Controls to Restrict Internal Exposure Part 20 64 FR 54543; 64 FR 55524	02/02/2003	Final ML062980638	No Comments 11/30/2006 ML063380019	
2000-1	Energy Compensation Sources for Well Logging and Other Regulatory Clarifications Part 39 65 FR 20337	05/17/2003	Final ML062980638	No Comments 11/30/2006 ML063380019	
2000-2	New Dosimetry Technology Parts 34, 36, 39 65 FR 63750	01/08/2004	Final ML062980638	No Comments 11/30/2006 ML063380019	
2001-1	Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct	02/16/2004	Final ML062980638	No Comments 11/30/2006 ML063380019	
2002-1	Revision of the Skin Dose Limit Part 20 67 FR 16298	04/05/2005	Final ML062980638	No Comments 11/30/2006 ML063380019	
2002-2	Medical Use of Byproduct Material Parts 20, 32, 35 67 FR 20249	10/24/2005	Final ML062980638	No Comments 11/30/2006 ML063380019	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
★2003-1	Financial Assurance for Materials Licensees Parts 30, 40, 70 68 FR 57327	12/03/2006	Final ML081350748	Comments 07/01/2008 ML081830510	
★2004-1	Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments Part 71 69 FR 3697	10/01/2007	Proposed ML081350748	Comments 07/01/2008 ML081830510	
★2005-1	Security Requirements for Portable Gauges Containing Byproduct Material Part 30 70 FR 2001	07/11/2008	Proposed ML081350748	No Comments 07/01/2008 ML081830510	
2005-2	Medical Use of Byproduct Material - Recognition of Specialty Boards	04/29/2008			
2005-3	Increased Controls for Risk-Significant Radioactive Sources	12/01/2005	License Condition ML080110677	No Comments 10/04/2005 ML052780024	
2006-1	Minor Amendments Parts 20, 30, 32, 35, 40 and 70	03/27/2009			
2006-2	National Source Tracking System - Serialization Requirements Part 32 with reference to Part 20 Appendix E 71 FR 65685	02/06/2007	License Condition ML070360300	No Comments 02/16/2007 ML070470054	
2006-3	National Source Tracking System Part 20 71 FR 65865, 72 FR 59162	01/31/2009			
2007-1	Medical Use of Byproduct Material - Minor Corrections and Clarifications Parts 32 and 35 72 FR 45147, 54207	10/29/2010			
2007-2	Exemptions From Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements Parts 30, 31, 32, 150 72 FR 58473	12/17/2010			

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
2007-3	Requirements for Expanded Definition of Byproduct Material Parts 20, 30, 31, 32, 33, 35, 61, 150 72 FR 55864	11/30/2010			
2007-4	Order Imposing Fingerprinting Requirements and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material NRC Order EA-07-305 72 FR 70901	06/05/2008	License Condition ML080800501	No Comments 04/14/2008 ML081050505	
2008-1	Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent Parts 19, 20 72 FR 68043	02/15/2011			