

August 17, 2009

Gene Miskin, Director
Office of Radiological Health
New York City Department of Health
2 Lafayette Street, 11th floor
New York, NY 10007

Dear Mr. Miskin:

We have reviewed the final revision to the New York City regulations, Article 175 of the New York City Health Code, received by our office on July 21, 2009. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 30, 40, 70, 71, and NRC Order EA-07-305 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 Tobias Lickerman on August 12, 2009.

As a result of our review, we have four comments that have been identified in the enclosure. Please note that we have limited our review to regulations required for compatibility and/or health and safety. We have determined that if these regulations are revised, incorporating our comments and without other significant change, they would meet the compatibility and health and safety categories established in the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure [SA-200](#).

We request that when you revise your regulations to address our comments, a copy of the "as published" regulations be provided to us for review. As requested in FSME Procedure [SA-201](#), "Review of State Regulatory Requirements," please highlight the location of any changes made by New York City, in response to our comments, and provide a copy to Division of Materials Safety and State Agreements, FSME.

The SRS Data Sheet summarizes our knowledge of the status of other New York City 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 (kathleen.schneider@nrc.gov) or Monica Orendi at (301) 415-3938 (monica.orendi@nrc.gov).

Sincerely,

/RA/

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

Enclosures:
As stated

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 Division of Materials Safety and State Agreements
 Office of Federal and State Materials
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Enclosures: As stated

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COMPATIBILITY COMMENTS ON *NEW YORK CITY* FINAL REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	175.02(a)(232)	71.4	2004-1	[B]	<p>Definition: Transport Index</p> <p>NYCDOH makes a distinction between fissile material and non-fissile material when determining the transport index. NRC's definition does not make this distinction when determining the transport index.</p> <p>NYCDOH's definition of transport index should change in their section on determining the transport index so it is essentially identical to NRC's in order to meet the Compatibility category [B] designation assigned to 10 CFR 71.4 Definition Transport index.</p>
2	N/A	71.8	2004-1	C	<p>Deliberate Misconduct</p> <p>NYCDOH omits a section containing the essential elements of 10 CFR 71.8.</p> <p>NYCDOH needs a section containing the essential elements of 10 CFR 71.8 in order to meet the Compatibility Category C designation assigned to 10 CFR 71.8</p>
3	175.105(b)(1)	71.13	2004-1	[B]	<p>Exemption of physicians</p> <p>The last sentence of NYCDOH's regulation is more restrictive because it limits the means of transport the physician can use. This sentence should be removed.</p> <p>NYCDOH needs to make the above change in order to meet the Compatibility Category [B] designation assigned to 10 CFR 71.13.</p>
4	175.105(c)(5)	71.22	2004-1	[B]	<p>General License: Fissile Material</p> <p>NYC states in 175.105(c)(5)(i) "...which meets the standards of</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>subparts E and F of 10 CFR 71.22 ...". This is incorrect. It should read "... which meets the standards of subparts E and F of 10 CFR 71 ...".</p> <p>Also in 175.105(c)(5)(v)(C), (D), and (E), NYC needs to state "10 CFR 71 Table 71.1 and 10 CFR 71 Table 71.2" instead of just stating "Table 71.1 and 71.2"</p> <p>NYC needs to make the above changes to 175.105(c)(5) in order to meet the Compatibility Category [B] designation assigned to 10 CFR 71.22.</p>

STATE REGULATION STATUS

State: New York City Department of Health

Tracking Ticket Number: 9-33

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

Date: August 17, 2009

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	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
1991-2	ASNT Certification of Radiographers Part 34 56 FR 11504 (Superceded by 1997-5)	none	Not Required	Not Required	These regulations are not required to be adopted for purposes of Compatibility.
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 10/14/1997	
1991-4	Notification of Incidents Parts 20, 30, 31, 34, 39, 40, 70 56 FR 64980;	10/15/1994			
1992-1	Quality Management Program and Misadministrations Part 35 56 FR 34104 (Superceded by 2002-2)	01/27/1995			
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			
1993-2	Licensing and Radiation Safety Requirements for Irradiators Part 36 58 FR 7715	07/01/1996	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.

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1993-3	Definition of Land Disposal and Waste Site QA Program Part 61 58 FR 33886	07/22/1996	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
1994-1	Self-Guarantee as an Additional Financial Mechanism Parts 30, 40, 70 58 FR 68726; 59 FR 1618	none	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1994-2	Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards Part 40 59 FR 28220	07/01/1997	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
1994-3	Timeliness in Decommissioning Material Facilities Parts 30, 40, 70 59 FR 36026	08/15/1997	Final ML061290502	No Comments 06/12/2006 ML061630264	
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			
1995-2	Frequency of Medical Examinations for Use of Respiratory Protection Equipment	03/13/1998	Final ML061290502	No Comments 06/12/2006 ML061630264	
1995-3	Low-Level Waste Shipment Manifest Information and Reporting Parts 20, 61 60 FR 15649; 60 FR 25983	03/01/1998	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
1995-4	Performance Requirements for Radiography Equipment Part 34 60 FR 28323 (Superceded by 1997-5)	06/30/1998	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
1995-5	Radiation Protection Requirements: Amended Definitions and Criteria Parts 19, 20 60 FR 36038	08/14/1998	Final ML070290581	No Comments 02/23/2007 ML070520527	

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1995-6	Clarification of Decommissioning Funding Requirements Parts 30, 40, 70 60 FR 38235	11/24/1998	Final ML061290502	No Comments 06/12/2006 ML061630264	
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			NYCDH has not yet adopted final regulations equivalent to RATS IDs: 2002-2 and 2005-2.
1996-1	Compatibility with the International Atomic Energy Agency Part 71 60 FR 50248; 61 FR 28724 (Superceded by 2004-1)	04/01/1999	Proposed	No Comments 02/09/1999	NYCDH 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 ML061290502	No Comments 06/12/2006 ML061630264	
1997-1	Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act Part 20 61 FR 65120	01/9/2000	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
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 ML070290581	No Comments 02/23/2007 ML 070520527	
1997-3	Criteria for the Release of Individuals Administered Radioactive Material Parts 20, 35 62 FR 4120	05/29/2000			
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)

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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	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
1997-6	Radiological Criteria for License Termination Parts 20, 30, 40, 70 62 FR 39057	08/20/2000	Final ML070290581	No Comments 02/23/2007 ML070520527	
1997-7	Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea Part 30 62 FR 63634	01/02/2001	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
1998-1	Deliberate Misconduct by Unlicensed Persons Parts 30, 40, 61, 70, 71,	02/12/2001	Final ML061290502	No Comments 06/12/2006 ML061630264	
1998-2	Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees Parts 30, 40, 70 63 FR 29535	07/01/2001	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1998-3	License Term for Medical Use Licenses Part 35 63 FR 31604 (Superseded by 2002-2)	07/10/2001	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility. (See STP-98-074)
1998-4	Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations Part 34 63 FR 37059	07/09/2001	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
1998-5	Minor Corrections, Clarifying Changes, and a Minor Policy Change Parts 20, 35, 36 63 FR 39477; 63 FR 45393	10/26/2001			
1998-6	Transfer for Disposal and Manifests: Minor Technical Conforming Amendment Part 20 63 FR 50127	11/20/2001			

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1999-1	Radiological Criteria for License Termination of Uranium Recovery Facilities Part 40 64 FR 17506	06/11/2002	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the 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 ML061290502	No Comments 06/01/2006 ML061530099	
2000-1	Energy Compensation Sources for Well Logging and Other Regulatory Clarifications Part 39 65 FR 20337	05/17/2003	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
2000-2	New Dosimetry Technology Parts 34, 36, 39 65 FR 63750	01/08/2004	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
2001-1	Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct	02/16/2004	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
2002-1	Revision of the Skin Dose Limit Part 20 67 FR 16298	04/05/2005	Final ML061290502	No Comments 06/01/2006 ML061530099	
2002-2	Medical Use of Byproduct Material Parts 20, 32, 35 67 FR 20249	10/24/2005			
★2003-1	Financial Assurance for Materials Licensees Parts 30, 40, 70 68 FR 57327	12/03/2006	Final ML092010319	No Comments 08/17/2009 ML092100446	
★2004-1	Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments Part 71 69 FR 3697	10/01/2007	Final ML092010319	Comments 08/17/2009 ML092100446	

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2005-1	Security Requirements for Portable Gauges Containing Byproduct Material Part 30 70 FR 2001	07/11/2008	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
2005-2	Medical Use of Byproduct Material - Recognition of Specialty Boards Part 35	04/29/2008			
2005-3	Increased Controls for Risk-Significant Radioactive Sources	12/01/2005	License Condition ML052910113	No Comments 10/20/2005 ML052940009	
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	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.
2006-3	National Source Tracking System Part 20 71 FR 65685, 72 FR 59162	01/31/2009	License Condition ML090080848	No Comments 01/22/2009 ML090120617	
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			
2007-3	Requirements for Expanded Definition of Byproduct Material Parts 20, 30, 31, 32, 33, 35, 61, 150 72 FR 55864	11/30/2010			

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★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	Final ML092010319	No Comments 08/17/2009 ML092100446	
2008-1	Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent Parts 19, 20 72 FR 68043	02/15/2011			