



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

1

July 7, 2008

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 proposed changes to the New York City Department of Health regulations, Article 175 Radiation Control, received by our office on June 19, 2008. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 30, 40, 70, 71, 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 July 7, 2008.

As a result of our review, we have 18 comments that have been identified in the enclosure. Please note that we have limited our review to regulations required for compatibility and/or health and safety. Under our current procedure, a finding that the New York City Department of Health regulations meet the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final New York City Department of Health 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, 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 New York City Department of Health 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,



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

COMPATIBILITY COMMENTS ON NEW YORK CITY PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	175.105 (n)(1)	40.36	2003-1	H&S	<p>Financial assurance and recordkeeping for decommissioning</p> <p>NYCDOH omits "Each applicant for a specific license authorizing the possession and use of more than 100mCi of source material in readily dispersible form shall submit...". This should be added as 175.105 (n)(1)(c).</p> <p>NYCDOH needs to add the above in order to meet the Compatibility Category H&S designation assigned to 10 CFR 40.36.</p>
2	175.105 (n)(1)	70.25	2003-1	H&S	<p>Financial assurance and recordkeeping for decommissioning</p> <p>NYCDOH omits "Each applicant for a specific license authorizing the possession and use of unsealed special nuclear material in quantities exceeding 10^5 times the applicable quantities set forth in Appendix B to this section. A decommissioning funding plan must also be submitted when a combination of isotopes is involved if R divided by 10^5 is greater than 1 (unity rule), where R is the sum of the ratios of the quantity of each isotope to the applicable value in appendix B of this section."</p> <p>NYCDOH needs to add the above as section 175.105(n)(1)(d) in order to meet the Compatibility Category H&S designation assigned to 10 CFR 70.25.</p>
3	N/A	71.4	2004-1	B	<p>Definition: Deuterium</p> <p>NYCDOH omits this definition from their regulations.</p> <p>NYCDOH needs to add this definition in order to meet the Compatibility Category B designation assigned to 10 CFR 71.4 Definition Deuterium.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
4	175.02 (a)(89)	71.4	2004-1	[B]	<p>Definition: Fissile Material</p> <p>NYCDOH's definition of Fissile material includes plutonium-238, cites the wrong NRC reference, and excludes the sentence "Fissile material means the fissile nuclides themselves, not material containing fissile nuclides."</p> <p>NYCDOH needs to change their definition of Fissile material to address the above in order to meet the Compatibility Category [B] designation assigned to 10 CFR 71.4 Definition Fissile material.</p>
5	N/A	71.4	2004-1	B	<p>Definition: Graphite</p> <p>NYCDOH omits this definition from its regulations.</p> <p>NYCDOH needs to add this definition in order to meet the Compatibility Category B designation assigned to 10 CFR 71.4 Definition Graphite.</p>
6	175.02 (a)(228)	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 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>
7	175.105 (a)(6)	71.5	2004-1	[B]	<p>Transportation of licensed material.</p> <p>NYCDOH lists the incorrect sections of 49 CFR in 175.105(a)(6)(i). It should read "49 CFR parts 107, 171 through 180, and 390 through 397, appropriate to the mode of transport."</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>NYCDOH omits the second half of 10 CFR 71.5(b) regarding request for a waiver, modification or exemption. NYCDOH needs to add this to 175.105(a)(6)(ii).</p> <p>NYCDOH needs to make the above changes in order to meet the Compatibility Category [B] designation assigned to 10 CFR 71.5.</p>
8	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>
9	175.105 (b)(1)	71.13	2004-1	[B]	<p>Exemption of physicians.</p> <p>NYCDOH should include 10 CFR part 35 or equivalent Agreement State regulations after "... any physician operating under this exemption must be licensed under applicable sections of this Code."</p> <p>Also 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 changes in order to meet the Compatibility Category [B] designation assigned to 10 CFR 71.13.</p>
10	175.105 (b)(2)(ii)	71.14(b)	2004-1	NRC	<p>Exemption for low-level materials.</p> <p>NYCDOH includes this in their regulations. Since this part of 10 CFR 71.14 is designated Compatibility Category NRC, NYCDOH needs to remove this from their regulations.</p> <p>NYCDOH needs to remove</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					175.105(b)(2)(ii) from their regulations in order to meet the Compatibility category NRC designation assigned to 10 CFR 71.14(b).
11	175.105 (b)(3)	71.15	2004-1	[B]	<p>Exemption from classification as fissile material.</p> <p>NYCDOH omits an essentially identical paragraph to 10 CFR 71.15(f) from its regulations.</p> <p>NYCDOH needs to add essentially identical language to 10 CFR 71.15(f) in order to meet the Compatibility category [B] designation assigned to 10 CFR 71.15.</p>
12	175.105 (c)(3)	71.20	2004-1	[B]	<p>General license: DOT specification container.</p> <p>NYCDOH omits stating that this provision expires on October 1, 2008.</p> <p>NYCDOH needs to add a sentence that says that 175.105(c)(3) expires on October 1, 2008 in order to meet the Compatibility Category [B] designation assigned to 10 CFR 71.20.</p>
13	175.105 (c)(5)	71.22	2004-1	[B]	<p>General license: Fissile material.</p> <p>NYCDOH omits the equation:</p> $CSI = 10 \left[\frac{\text{grams of } ^{235}\text{U}}{X} + \frac{\text{grams of } ^{235}\text{U}}{Y} + \frac{\text{grams of Pu}}{Z} \right]$ <p>from their regulations.</p> <p>NYCDOH needs to insert this equation into their regulations in order to meet the Compatibility Category [B] designation assigned to 10 CFR 71.22.</p>
14	175.105 (c)(6)	71.23	2004-1	[B]	<p>General license: Plutonium beryllium special form material.</p> <p>NYCDOH omits references to correct sections equivalent to NRC regulations throughout this section.</p> <p>NYCDOH needs to go through this section and correct all its references</p>

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					to sections equivalent to NRC sections in order to meet the Compatibility Category [B] designation assigned to 10 CFR 71.23.
15	175.105 (d)(4)	71.88	2004-1	[B]	<p>Air transport of plutonium.</p> <p>NYCDOH regulation 175.105(d)(4)(i)(B) states "...contained in a material in which the specific activity is not greater than 70 Bq/g (0.002mCi/g) of material ...". This is incorrect and should say "...contained in a material in which the specific activity is less than or equal to the activity concentration values listed in Appendix A table A-2...".</p> <p>NYCDOH needs to make the above change in order to meet the Compatibility Category [B] designation assigned to 10 CFR 71.88.</p>
16	175.105 (e)(1)(iv) and (v)	71.101(c)(2), (d), & (e)	2004-1	NRC	<p>Quality assurance requirements.</p> <p>NYCDOH sections 175.105(e)(1)(iv) and (v) are essentially identical to 10 CFR 71.101 (d) and (e) and should be removed since these paragraphs are delegated to the NRC.</p> <p>NYCDOH needs to remove 175.105(e)(1)(iv) and (v) in order to meet the Compatibility Category NRC designation assigned to 10 CFR 71.101 (c)(2), (d), & (e).</p>
17	N/A	71.101(g)	2004-1	C	<p>Quality assurance requirements.</p> <p>NYCDOH omits this section from their regulations.</p> <p>NYCDOH needs to add the essential elements of 10 CFR 71.101(g) in order to meet the Compatibility Category C designation assigned to 10 CFR 71.101(g).</p>
18	175.105 Appendix A	10 CFR 71 Appendix A	2004-1	B	<p>Determination of A₁ and A₂</p> <p>NYCDOH's equations for Appendix A</p>

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
				<p>are unreadable. NYCDOH needs to go back and correct all the equations listed in 175.105 Appendix A.</p> <p>NYCDOH's values in Table A-1 column's A1 (TBq) A1 (Ci), A2 (TBq) and A2 (Ci) are incorrect for many of the listed radionuclides. NYCDOH needs to copy the values listed in 10 CFR 71 Appendix A Table A-1. Also in this Table NYCDOH omits the different descriptions of uranium and their associated values and omits the footnotes following the table.</p> <p>NYCDOH's listed table A-2 is not essentially identical to 10 CFR 71 Appendix A table A-2. It is actually aligned with 10 CFR 71 Table A-3 however the values listed are incorrect. NYCDOH needs to remove the table listed as A-2 and replace it with an essentially identical table to 10 CFR 71 Appendix A Table A-2. NYCDOH does not need to list 10 CFR 71 Appendix A Table A-3 because it is cited by reference in 175.105 Appendix A paragraph II.</p> <p>NYCDOH omits an equivalent table to 10 CFR 71 Appendix A Table A-4. NYCDOH needs to add an essentially identical table to their regulations.</p> <p>NYCDOH needs to make the above changes in order to meet the Compatibility Category B designation assigned to 10 CFR 71 Appendix A.</p>

STATE REGULATION STATUS

State: New York City Department of Health
 [3 amendment(s) reviewed is identified by a ★
 at the beginning of the equivalent NRC requirement.]

Tracking Ticket Number: 8-66
 Date: July 7, 2008

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 (Superseded 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 (Superseded 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 (Superseded 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.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1993-3	Definition of Land Disposal and Waste Site OA 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 Part 20 60 FR 7900	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 (Superseded 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	
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	

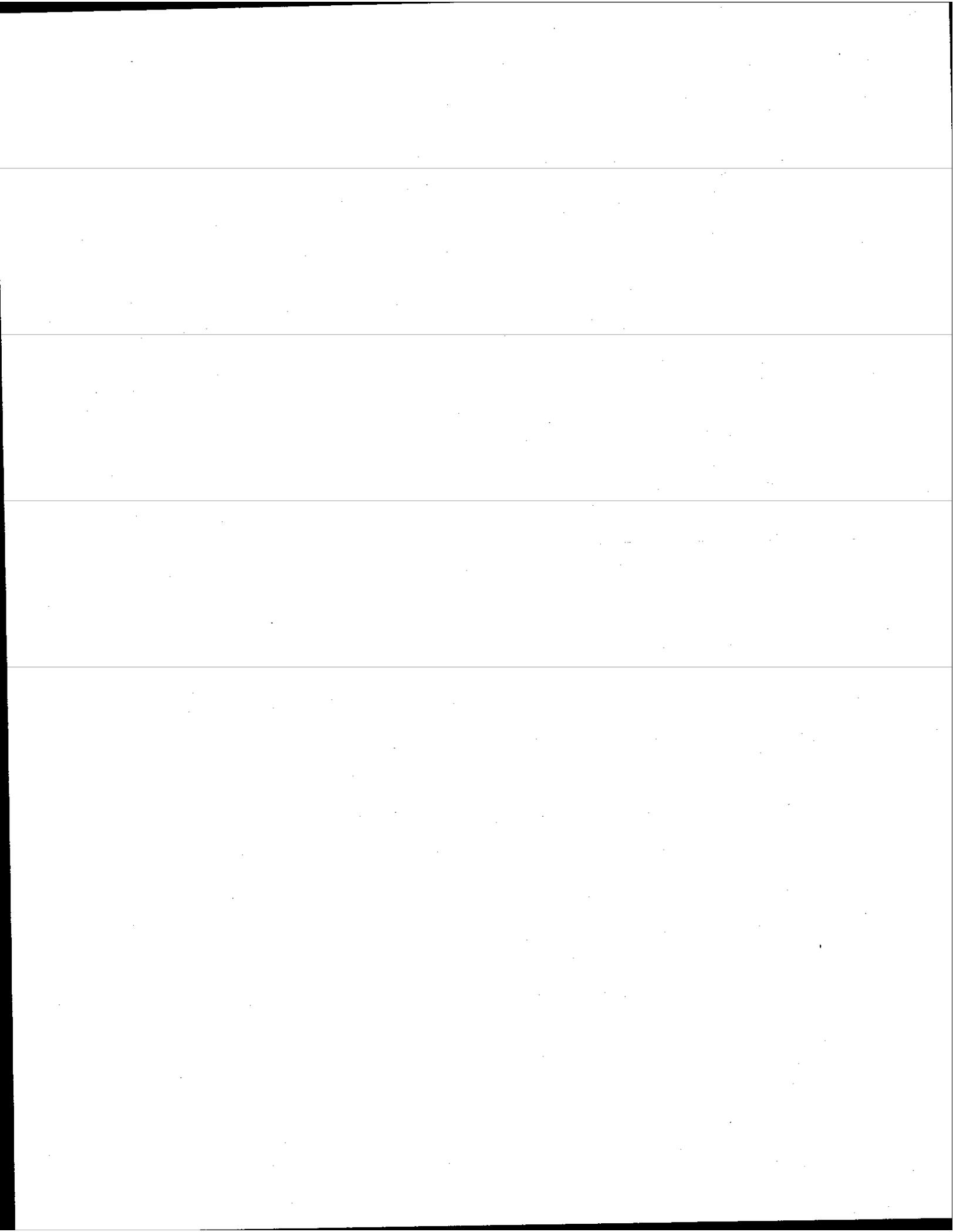
RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1995-7	Medical Administration of Radiation and Radioactive Materials Parts 20, 35 60 FR 48623 (Superseded by 2002-2 and 2005-2)	10/20/1998			NYCDH has not yet adopted final regulations equivalent 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 (Superseded 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 (Superseded by 2004-1)	02/10/2000	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility. (See SIP-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	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
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			
1998-1	Deliberate Misconduct by Unlicensed Parsons Parts 30, 40, 61, 70, 71, 150 63 FR 1890; 63 FR 13773	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			
1999-1	Radiological Criteria for License Termination of Uranium Recovery Facilities Part 40 64 FR 17506	05/11/2002	Not Applicable	Not Applicable	NYCDH does not have authority to regulate this material under its portion of the Agreement.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1999-2	Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information Part 31 64 FR 42269	10/04/2002	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1999-3	Respiratory Protection and Controls to Restrict Internal Exposure Part 20 64 FR 54543; 64 FR 55524	02/02/2003	Final 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 Material Parts 30, 31, 32 65 FR 79162	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	Proposed ML081750227	Comments 07/07/2008 ML081890145	
★2004-1	Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments Part 71 69 FR 3697	10/01/2007	Proposed ML081750227	Comments 07/07/2008 ML081890145	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
2005-1	Security Requirements for Portable Gauges Containing Byproduct Material Part 30 70 FR 2001	07/11/2008			
2005-2	Medical Use of Byproduct Material - Recognition of Specialty Boards Part 35 70 FR 16336; 71 FR 1926	04/29/2008			
2005-3	Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) 70 FR 72128	12/01/2005	License Condition ML052910113	No Comments 10/20/2005 ML052940009	
2006-1	Minor Amendments Parts 20, 30, 32, 35, 40 and 70 71 FR 15005	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 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			
2007-3	Requirements for Expanded Definition of Byproduct Material Parts 20, 30, 31, 32, 33, 35, 61, 150 72 FR 55864	11/30/2010			

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
★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	Proposed ML081750227	No Comments 07/07/2008 ML081890145	
2008-1	Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent Parts 19, 20 72 FR 68043	02/15/2011			



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Tobias A. Lickerman

From: Stephen M. Gavitt [smg03@health.state.ny.us]
Sent: Monday, July 14, 2008 10:09 AM
To: Gene Miskin; Tobias A. Lickerman
Cc: Harminderpal Singh Rana; Jeanine Prud'homme; Robert E. Dansereau; Adela Salame-Alfie
Subject: DOH comments on NYC fingerprinting regulations

Dear Gene and Tobias,

The following are our comments on the proposed fingerprinting regulations:

The first line states "All licensees subject to the criteria to implement Increased Controls pursuant to the U.S. Nuclear ...". It sounds like your licensees are subject to NRC criteria - which they are not. I would change "subject to the criteria" to "that must". Also you may want to reference NYC IC requirements rather than NRC's EA05-090. The phrase "any successor order, law or regulation could be problematic. I'm am advised by our attorney that under state law, such language could not be used in a state regulation. Additionally because a person who reads the order could not determine what constitutes "any successor order, law or regulation." this portion of the order may be vulnerable to a claim that it is unconstitutionally vague.

I know that you have reached out to affected licensees and everyone should be preparing to implement the fingerprinting requirements. However there may be some licensees who cannot implement the fingerprinting requirement until required by regulation because of the restrictions in section 201 of NYS Labor Law. NRC Order EA-07-305 requires affected licensees to implement the fingerprinting requirement on or before June 2, 2008. If your regulations become effective upon adoption then any licensee who has not implement the fingerprinting requirements on the day of adoption would be in violation of the regulation?

Feel free to call with any questions. Steve.

Stephen Gavitt, CHP, Director
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