GUIDELINES

FOR

INCORPORATING NRC REGULATIONS BY REFERENCE (IBR)

* If current State regulations exist, the State will need to rescind their regulations before IBR to avoid a duplication of requirements.
* The State will need to identify regulations where references to the NRC should be to their State Agency, e.g. reporting requirements, notifications, contact information, etc.
* Certain references, e.g., the “Act”, and “Section 181 of the Act” refer to the Atomic Energy Act that does not apply to the State. They need to identify that this refers instead to the State’s Radiation Control Act.
* The State needs to list the regulations that are not incorporated by reference; i.e., those that have an “NRC” Compatibility Category designation.
* The State needs to ensure overall that the regulations are reviewed from their jurisdictional perspective and specify where and how their regulations differ from the NRC regulations that are being incorporated by reference.

**EXAMPLE 1:**

**Incorporation by Reference of 10 CFR Part 37, PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL**

\*NOTE: THE WORDING DOES NOT HAVE TO BE VERBATIM

10 Code of Federal Regulations 37.1, 37.3, 37.5, 37.11, 37.21, 37.23, 37.25, 37.27, 37.29, 37.31, 37.33, 37.41, 37.43, 37.45, 37.47, 37.49, 37.51, 37.53, 37.55, 37.57, 37.71, 37.73, 37.75, 37.77, 37.79, 37.81, 37.101, 37.103, 37.105, and appendix A to part 37 are incorporated by reference[[1]](#footnote-1), with the following exceptions:

Not incorporated by reference is 10 CFR 37.11(b) and 37.43(d)(9).

All of the requirements in chapter 33-10-22 apply to both licensees and registrants. A reference in 10 CFR part 37 to "license" includes "registration," a reference to "licensee" includes "registrant," a reference to "licensed" includes "registered," a reference to "licensed material(s)" includes "registered source of radiation," and a reference to "licensed radioactive material" includes "registered source of radiation." "Registrant" means any person who is registered with the department and is legally obligated to register with the department pursuant to article XX and STATE Code chapter XXX. "Registration" means the notification of the XX state department of health of possession of a source of radiation and the furnishing of information with respect thereto, in accordance with STATE Code chapter XX.

Where the word "NRC" appears in 10 CFR 37.31(d), 37.43(c)(3)(iii), 37.57(a), 37.57(c), 37.77 [with the exception of "the NRC's Web site" in 37.77(a)(1)], and 37.81(g)], substitute the words "XX state department of health".

Where the word "Commission" appears in 10 CFR 37.5 (definitions of "byproduct material" and "person"), 37.11(a), 37.43(a)(3), 37.43(c)(1)(ii), 37.101, 37.103, and 37.105, substitute the words "XX state department of health".

Where the words "NRC regional office" appear in 10 CFR 37.41(a)(3) and 37.81, substitute the words "XX state department of health".

Where the words "appropriate NRC regional office listed in § 30.6(a)(2) of this chapter" appear in 10 CFR 37.45(b), substitute the words "XX state department of health".

Where the words "NRC's Operational Center (301-816-5100)" appear in 10 CFR 37.57(a), 37.57(b), and 37.81, substitute the words "XX state department of health".

Where the words "NRC's Operational Center" appear in 10 CFR 37.81, substitute the words "XX state department of health".

Where the words "NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001. The notification to the NRC may be made by email to RAMQC\_SHIPMENTS@nrc.gov or by fax to 301-816-5151" appear in 10 CFR 37.77(a)(1), substitute the words "XX state department of health".

Where the words "NRC's Director of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001" appear in 10 CFR 37.77(c)(1), substitute the words "XX state department of health".

Where the words "NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001" appear in 10 CFR 37.77(c)(2) and 37.77(d), substitute the words "XX state department of health".

Where the words "Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001" appear in 10 CFR 37.81(g), substitute the words "XX state department of health".

Requirements in 10 CFR part 37 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.

"Act" includes STATE Code chapters XX.

**EXAMPLE 2:**

**Incorporation by Reference of 10 CFR Part 71, TRANSPORTATION REQUIREMENTS**

\*NOTE: THE WORDING DOES NOT HAVE TO BE VERBATIM

10 CFR 71.0, 71.3, 71.4, 71.5, 71.7, 71.8, 71.9, 71.10, 71.12, 71.13, 71.14, 71.15, 71.17, 71.21, 71.22, 71.23, 71.47, 71.81, 71.83, 71.85, 71.87, 71.88, 71.89, 71.91, 71.93, 71.95, 71.97, 71.101, 71.103, 71.105, 71.106, 71.127\*, 71.129\*, 71.131\*, 71.133, 71.135, and 71.137 and Appendix A to Part 71 are adopted by reference as they exist on (Date), with the following exceptions:

\* For those States which have licensees that use Type B packages, and have adopted the essential objectives of § 71.105, it is not necessary for them to adopt these provisions again.

OR-

The State can make a general statement that they are incorporating the provisions of 10 CFR Part 71 subject to the following conditions:

1. Not adopted by reference are 10 CFR 71.11, 71.14 (b), 71.19, 71.31, 71.33, 71.35, 71.37, 71.38, 71.39, 71.41, 71.43, 71.45, 71.51, 71.55, 71.59, 71.61, 71.63, 71.64, 71.65, 71.70, 71.71, 71.73, 71.74, 71.75, 71.77, 71.85 (a)-(c), 71.91 (b), 71.101 (c)(2), (d), and (e), 71.107, 71.109, 71.111, 71.113, 71.115, 71.117, 71.119, 71.121, 71.123, 71.125. (Note: the State may also include other sections that have a compatibility category “D” designation).

2. Where the words “NRC”, “Commission”, “Nuclear Regulatory Commission”, “United States Nuclear Regulatory Commission” or “Administrator of the appropriate Regional Office” appear in 10 CFR Part 71, substitute the words “[State] Department/Agency” except when used in 10 CFR 71.5 (b), 71.10, 71.17(c)(3), and (e), 71.85(c), 71.88(a)(4), 71.93(c), 71.95, 71.97(c), (c)(3)(iii), and (f).

3. The terms “certificate of compliance, compliance holder or applicant” apply to the NRC as they are the sole authority for issuing a package Certificate of Compliance.

OTHER CONDITIONS (These are not required as they are a “D” compatibility):

 10 CFR 71.9 employee protection also applies to violations of [State] Administrative Code in XXXXX.

 [State] form number XXXX, “Notice to Employees”, must be posted instead of NRC Form 3 that is specified in 10 CFR Part 71.

1. Some States are required to specify the date of the NRC regulations that they are incorporating by reference. Such states are only incorporating that specific *version* of the NRC regulations. Other States are able to automatically incorporate by reference revisions to the NRC regulations as they occur, and do not include a specific date in their provisions. [↑](#footnote-ref-1)