

**DOH** STATE OF NEW YORK  
DEPARTMENT OF HEALTH

Flanigan Square 547 River Street Troy, New York 12180-2216

Richard F. Daines, M.D.  
Commissioner

James W. Clyne, Jr.  
Executive Deputy Commissioner

September 8, 2009

Terrence Reis, Deputy Director  
Division Materials Safety and State Agreements  
Office of Federal and State Materials and  
Environmental Management Programs  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Dear Mr. Reis:

Enclosed is a revised submission for RATS ID 2004-1, which addresses the comments in Mr. Lewis's letter, dated March 20, 2008. Currently our regulations incorporate 10 CFR 71 by reference. The items that are reserved to NRC jurisdiction are not specifically listed in our regulations, however such exclusions for areas of exclusive federal jurisdiction are addressed globally in section 16.1(b)(2). In addition, DOH has implemented a policy and procedure to not implement aspects of 10 CFR 71 that are reserved to NRC jurisdiction. This P/P is effective because all staff have been informed of this P/P and all citations are reviewed and approved by either the Field Supervisor or Chief of the Radioactive Materials Section.

Current NYS DOH regulations for transportation appear in sections 16.17 and 16.200 of 10 NYCRR 16 and Inapplicability is in section 16.1. The applicable regulations are provided in Attachment 1, and the policy and procedure is in Attachment 2.

Please note that this policy/procedure was put into place on December 20, 2007.

<u>RATS ID</u>	<u>Title</u>
2004-1	Compatibility with IAEA Transportation Safety Standards and Other Transportation Safety Amendments – Part 71.

We believe that adoption of these revisions satisfies the compatibility and health and safety categories established in the Office of Federal and State Materials and Environmental Programs (FSME) Procedure SA-200.

If you have any questions, please feel free to contact me at 518-402-7550 or Robert Dansereau of my staff at 518-402-7590 or red07@health.state.ny.us.

Sincerely,

  
Stephen M. Gavitt, CHP, Director  
Bureau of Environmental Radiation Protection  
New York State Department of Health

Enclosures: As stated

Attachment 1, 16.1, 17.17, 16.200

NYS DOH current transportation regulations - 16.17 & 16.20, and Inapplicability - 16.1

16.1 Applicability and inapplicability of this Part.

(b) Inapplicability.

(2) This Part does not apply to any common or contract carrier operating within this State to the extent that such carrier is subject to regulation as provided for by law by the United States Department of Transportation or other agencies of the United States or agencies of the State of New York, other than the Department of Health, having jurisdiction.

Effective Date: 01/08/97

Title: Section 16.17 - Transportation

16.17 Transportation. (a) No person shall transport, package for transport, or cause to be transported, outside of the confines of his installation, any radioactive material within this State unless:

(1) such transport conforms to those regulations of the United State Department of Transportation or other agencies of the United States having jurisdiction with respect to packaging of the radioactive material and to the marking and labeling of the package and transporting vehicle which would be applicable if such transport were interstate; and

(2) procedures are established for opening and closing packages in which radioactive material is transported to provide safety and to assure that, prior to delivery to a carrier for transport, each package is properly closed for transport; and

(3) prior to delivery of a package for transport, such person shall assure that any special instructions needed to open the package are sent to, or have been made available to the consignee; or

(4) such transport complies with such requirements as have been approved by the commissioner.

(b) Transport of radioactive material is exempt from the requirements set forth in subdivision (a) of this section provided that all of the following conditions are satisfied:

(1) the package must consist of an outer container and an inner container and must be such that there can be no leakage of radioactive material under conditions normally incident to transportation;

(2) the package must contain not more than 0.01 millicurie of any alpha emitting radioactive material exclusive of fissionable material, or 0.1 millicurie of Argon 41, Barium 133, Bismuth 210, Europium 154, Krypton 87, Lead 210, Lead 212, Strontium 90, or Xenon 135, or one millicurie of any beta-gamma emitting radioactive material;

(3) the package must be such that there is no significant removable surface contamination (7) on the exterior of the package and the radiation dose rate at any point on the external surface of the package must be less than 12 milliroentgens for 24 hours; and

(4) the outside of the inner container of the package must bear the marking "RADIOACTIVE".

(c) Transport of radioactive material by a physician for use in the practice of medicine is exempt from the requirements set forth in subdivisions (a) and (b) of this section, provided that the physician is authorized to use radioactive materials by a license issued by the department under this Part.

---

(7)  
FOOTNOTE: Removable radioactive contamination is not significant if the average amount of radioactive contamination which can be removed by wiping the external surface of the package with an absorbent material, as measured on the wiping material, does not exceed: (1) 10 picocurie per square centimeter beta-gamma (2,200 disintegrations/min. per 100 square centimeters) and 1 picocurie per square centimeter alpha (220 disintegration/min. per 100 square centimeters) for all contaminants except natural or depleted uranium and natural thorium; or (2) 100 picocurie per square centimeter beta-gamma (22,000 disintegrations/min. per 100 square centimeters) and 10 picocurie per square centimeter alpha (2,200 disintegration/min. per 100 centimeters) where the only contaminant is known to be natural or depleted uranium or natural thorium.

Effective Date: 12/30/92

Title: Section 16.200 - Material incorporated by reference

Section 16.200 Material incorporated by reference. (a) Documents. The following documents, referenced in this Part, are available for review and copying through the Records Access Officer, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, New York 12237:

- (1) 49 CFR Parts 170 through 189;
- (2) 10 CFR Parts 20,21,30,32,35,39,40,70,71 and 73;
- (3) 21 CFR Part 1020.

(b) Availability of documents.

All the Code of Federal Regulations (CFR) documents are available from the Superintendent of Documents, US Government Printing Office, Washington, D.C. 20402.

Attachment 2, Policy and Procedure for exclusion of NRC reserved transportation requirements.

Interagency Memorandum

TO: Technical Staff, NYSDOH Bureau of Environmental Radiation Protection

FROM: Stephen G. Gavitt, CHP, Director, Bureau of Environmental Radiation Protection

DATE: December 20, 2007

SUBJECT: Enforcement of Transportation Regulations Incorporated by reference in  
10 NYCRR 16, sections 16.7 and 16.200

Part 16 incorporates federal transportation regulations in 10 CFR 71 by reference in section 16.17.  
References to the regulations incorporated by reference are listed in 16.200.

However, the following sections of 10 CFR 71 are the exclusive use of the US NRC and are therefore not  
to be enforced by BERP: Sections 71.2, 71.6, 71.13(c) and (d), 71.14(b), 71.19, 71.101(c)(2)(d)&(e),  
71.107, 71.109, 71.111, 71.113, 71.115, 71.117, 71.119, 71.121, 71.123, and 71.125.

If you have any questions about this notice please contact Robert Dansereau or Gary Baker.