

Incorporation by reference: 10CFR Parts 30, 40 & 70

Section 16.103 is repealed and replaced to read:

16.xxx Licensing requirements for radioactive material.

(a) The department will approve an application for, and issue in response thereto, a specific license to transfer, receive, possess and use any radioactive material, if the department determines that the following requirements have been met:

- (1) the applicant's proposed use, equipment, facilities and procedures will protect public health and safety, and will minimize danger to life and property, from radiation hazards;
- (2) the applicant's radiation detection and measuring instrumentation is appropriate for the uses of radioactive materials requested in the application;
- (3) the applicant, (or the applicant's personnel if the applicant is not an individual), is qualified by training and experience to use such radioactive material for each purpose covered by the application so as to protect public health and safety and to minimize danger to life and property from radiation hazards; and
- (4) the applicant submits sufficient information to support a determination that the requirements of this section are satisfied.

(b) Any person who manufactures or transfers items containing radioactive material shall comply with the provisions of the following federal regulations, which are hereby incorporated by reference, with the same force and effect as if fully set forth at length herein: Title 10 of the Code of Federal Regulations, Part 30, Rule of General Applicability to Domestic Licensing of Byproduct Material; Part 40, Domestic Licensing of Source Material; and Part 70, Domestic licensing of Special Nuclear Material, except as follows:

(1) 30.2, 30.3, 30.4 definitions of "Utilization facility", "Commencement of construction" and "construction", 30.5, 30.7, 30.8, 30.9, 30.21(c), 30.31, 30.32(a)-(f), 30.32(h), 30.33, 30.34(d), 30.34(e)(1)-(4), 30.37, 30.38, 30.39, 30.41, 30.55, 30.61, 30.62, 30.63, 40.2a, 40.4 definitions of Commencement of Construction, Construction, Foreign obligations, Reconciliation, Residual radioactive material, and Uranium milling, 40.5 – 40.9, 40.12(b), 40.13(c)(5)(iv), 40.14, 40.20 **{DEC JURISDICTION}** 40.23, 40.26, 40.27, 40.28, 40.31(a)-h) and (j)-(m), 40.32 (d) with respect to "common defense and security", 40.32, (e) and (g), 40.33, 40.35 (d)-(f), 40.38, 40.41(d), (e), (g) and (h), 40.43, 40.44, 40.45, 40.51(b)(6), 40.52, 40.53, 40.56, 40.64 – 40.82, criterion 11A. thru F of Appendix A to Part 40, 70.1, 70.2, 70.10(b), 70.13, 70.14, 70.17, 70.20a, 70.20b, 70.21, 70.22, 70.24, 70.25(a)(1), (c), (d), f), and (h), 70.31

(2) Any reference to the "commission", "NRC", "US NRC", "NRC regional office", "United States nuclear regulatory commission", "administrator of the appropriate regional office", Director of the Office of Nuclear Material Safety and Safeguards", NRC Operations Center or any other office or person thereof, shall be deemed to be a reference to the New York State Department of Health, except for when

used in: 30.12, 30.21(c), 30.34(h)(1), 30.50(c)(1), 40.11. 70.11, 70.19(a)(1) and (2), 70.39(b), 70.40(b)-(d),

(3) Any reference to “Department” in 40.11 means the United States Department of Energy.

(4) Any reference to “parts 19, 20, and 21 of this chapter” shall be deemed to be a reference to 10 NYCRR 16.

(5) Any reference to “an appropriate method listed in 30.6(a), 40.5(a) and 70.5(a)” shall be deemed to be a reference to “a means specified in 16.1(c)”.

(6) Any reference to an “NRC Form” shall be deemed to reference “ a form prescribed by the department”.