

August 8, 2002

Mr. Terry O'Clair, Director
Division of Air Quality
North Dakota Department of Health
1200 Missouri Avenue, Room 304
P. O. Box 5520
Bismarck, ND 58506-5520

Dear Mr. O'Clair:

As requested, we have reviewed the proposed regulations to the North Dakota Radiological Health Rules, received by our office on June 28, 2002. The proposed regulations are in response to the 17 amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. The regulations were reviewed by comparison to the equivalent NRC regulations in 10 CFR Parts 19, 20, 30, 31, 32, 34, 35, 36, 39, 40, 61, 71 and 150. We discussed our review of the regulations with Ken Wangler on August 7, 2002.

As a result of our review, we have three comments and one editorial suggestion that have been identified in the enclosures. 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 a State regulation meets the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final State regulation. However, we have determined that if your proposed regulations were adopted incorporating the comments and without other significant change, they would meet the compatibility and health and safety categories established in Office of State and Tribal Programs (STP) 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 STP Procedure SA-201, *Review of State Regulations* (November 10, 1998), please highlight the final changes and send one copy to STP in a computer readable format, if possible.

The SRS Data Sheet summarizes our knowledge of other North Dakota regulations. 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 STP Web Site: <http://www.hsrdo.nrl.gov/nrc/rulemaking.htm>.

If you have any questions regarding the comments, the compatibility and health categories, or any of the NRC regulations used in the review, please contact me or John Zabko at 301-415-2308 or JGZ@NRC.GOV.

Sincerely,

/RA/

Josephine M. Piccone, Deputy Director
Office of State and Tribal Programs

Enclosures:
As stated

Terry O'Clair

Distribution:

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North Dakota File

DCD (SP 08) PDR (YES_✓)
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Response to Incoming Document: ML021840389

DOCUMENT NAME: C:\ORPCheckout\FileNET\ML022210543.wpd

*See previous
concurrence.

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OFFICE	STP		OGC		STP	
NAME	JZabko:kk		JLieberman		JMPiccone	
DATE	07/11/02*		08/07/02*		07/17/02*	
					08/8/02	

OFFICIAL AGENCY RECORD

EDITORIAL SUGGESTIONS

1. In section 33-10-14-08 (3), Personnel Monitoring, the word “badge” has been substituted for the phrase “personnel dosimeter.” The word badge is not defined in the North Dakota rules and even though the “badge” is commonly used in the industry, it is suggested that the term personnel dosimeter be substituted for the word badge for consistency.

**COMMENTS ON NORTH DAKOTA'S PROPOSED RULES
AGAINST COMPATIBILITY AND HEALTH AND SAFETY CATEGORIES**

State Regulation or SSR	NRC Regulation or SSR	Category	Rats ID #	Subject and Comments
33-10-04.1-11 (3) (a) (3) (e)	20.1703 (c) (5) (iii)	D H&S	1999-3	<p>Use of individual respiratory protection equipment</p> <p>The State omits the requirement that a physician must certify a person is medically fit to use respiratory protection "before the first field use of a non-face sealing respirator" as required by 20.1703 (c) (5) (iii).</p> <p>The State needs to include this requirement.</p>
33-10-14-05 (2)(g)	36.23(g)	D H&S	1998-5	<p>Access Control</p> <p>The State does not include the new posting requirement for the entrance to irradiators. The "GRAVE DANGER, VERY HIGH RADIATION AREA" posting requirement has been omitted.</p> <p>The State needs to add this posting requirement.</p>
33-10-12-04	39.15	C	2000-1	<p>Agreement With Well Owner or Operator</p> <p>The State has omitted the following sentence that appears in 39.15(a) "The written agreement must identify who will meet the following requirements...." Without this statement, the responsibility for performing the actions listed in 39.15 1-5, in an abnormal logging condition, is not established.</p> <p>The State needs to include this statement.</p>

STATE REGULATION STATUS

State: North Dakota

**[17 amendments reviewed are identified by a ★
at the beginning of the equivalent NRC regulation.]**

Tracking Ticket Number: 2-140

Date: August 8, 2002

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁵	NRC Review / Y, N ² / Date / ML # ⁵	Final State Regulation ¹ (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1			
ASNT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2			Not required 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; (1/1/94)	1991-3	F	N 10/17/97	
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4			
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1			
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions-Parts 30, 35	57 FR 45566; (none)	1992-2			Not required ³
Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]-Parts 30, 40	58 FR 39628; (10/25/96)	1993-1	P	N 8/6/97	
Licensing and Radiation Safety Requirements for Irradiations-Part 36	58 FR 7715; (7/1/96)	1993-2	F	N 2/20/96	Not Applicable SECY-95-112 ⁴
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3			Not Applicable SECY-95-112 ⁴
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618; (none)	1994-1	F	N 2/6/96	Not required ³
Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2			
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	F	N 2/20/96	

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F)¹ Rule / ML #⁵	NRC Review / Y, N² / Date / ML #⁵	Final State Regulation¹ (Effective Date)
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; (1/1/98)	1995-1	P	N 8/6/97	
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	P	N 8/6/97	
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983; (3/1/98)	1995-3	P	N 8/6/97	
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	P	N 8/6/97	
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	P	N 8/6/97	
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	P	N 8/6/97	
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	P	N 8/6/97	
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28724; (4/1/99)	1996-1	P	N 2/26/98	
One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses-Parts 30, 40, 70	61 FR 1109; (none)	1996-2			Not required ³
Termination or Transfer of Licensed Activities: Record keeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3	P	N 8/6/97	
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	P	N 8/6/97	
★ Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State-Part 150	62 FR 1662; (2/27/00)	1997-2	P ML021840389	N 8/8/02 ML022210543	
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	P	N 8/6/97	
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4			Not required ³
★ Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations-Parts 30, 34, 71, 150	62 FR 28947; (6/27/00)	1997-5	P ML021840389	N 8/8/02 ML022210543	

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F)¹ Rule / ML #⁵	NRC Review / Y, N² / Date / ML #⁵	Final State Regulation¹ (Effective Date)
★ Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6	P ML021840389	N 8/8/02 ML022210543	
★ Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea-Part 30	62 FR 63634; (1/2/01)	1997-7	P ML021840389	N 8/8/02 ML022210543	
★ Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773; (2/12/01)	1998-1	P ML021840389	N 8/8/02 ML022210543	
★ Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees- Parts 30, 40, 70	63 FR 29535; (none)	1998-2	P ML021840389	N 8/8/02 ML022210543	Not required ³
License Term for Medical Use Licenses-Part 35	63 FR 31604; (none)	1998-3			Not required ³
★ Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34	63 FR 37059; (7/9/01)	1998-4	P ML021840389	N 8/8/02 ML022210543	
★ Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393; (10/26/01)	1998-5	P ML021840389	Y 8/8/02 ML022210543	
★ Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	P ML021840389	N 8/8/02 ML022210543	
★ Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1	P ML021840389	N 8/8/02 ML022210543	
★ Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information-Part 31	64 FR 42269; (none)	1999-2	P ML021840389	N 8/9/02 ML022210543	Not required ³
★ Respiratory Protection and Controls to Restrict Internal Exposure-Part 20	64 FR 54543; 64 FR 55524; (2/2/03)	1999-3	P ML021840389	Y 8/8/02 ML022210543	
★ Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1	P ML021840389	Y 8/8/02 ML022210543	
★ New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2	P ML021840389	N 8/8/02 ML022210543	
★ Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material-Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	P ML021840389	N 8/8/02 ML022210543	

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁵	NRC Review / Y, N ² / Date / ML # ⁵	Final State Regulation ¹ (Effective Date)
★ Revision of the Skin Dose Limit-Part 20	67 FR 16298; (4/5/05)	2002-1	P ML021840389	N 8/8/02 ML022210543	
★ Medical Use of Byproduct Material-Parts 20, 32, 35	67 FR 20249; (4/24/05)	2002-2	P ML021840389	N 8/8/02 ML022210543	

1. Or other generic Legally Binding Requirements.
2. (Y/N) Y means "Yes," there are comments in the review letter that the State needs to address.
N means "No," there are no comments in the review letter.
3. Not required means these regulations are not required for purposes of compatibility.
4. A State need not adopt a specific regulation if the State has no licensees that would be subject to that regulation. See:
"Final Policy Statement on Adequacy and Compatibility of Agreement State Programs," III.1. Time Frame for Adoption of
Compatible State Regulations, p. 6, SECY-95-112, May 3, 1995.
5. ADAMS ML Number