

March 15, 2011

Terry L. O'Clair, P.E. Director  
Division of Air Quality  
North Dakota Department of Health  
918 E. Divide Ave, Gold Seal Center  
Bismarck, ND 58501-1947

Dear Mr. O'Clair:

We have reviewed the final revision to the North Dakota regulations Radiological Health Rules 33-10-03 through 33-10-22, except for Chapters 5, 6, 7, 8, 9, 11, 12, 14, and 15, received by our office on February 14, 2011. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 19, 20, 30, 31, 32, 33, 35, 40, 61, 70, 71, 150 and the requirements of the 12 amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with you on March 14, 2011.

As a result of our review, we have three 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. We have determined that if these regulations are revised, 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 you revise your regulations to address our comments, 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 location of any changes made by North Dakota, in response to our comments, 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 North Dakota 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 ([Kathleen.Schneider@nrc.gov](mailto:Kathleen.Schneider@nrc.gov)) or Stephen Poy at 301-415-7135 ([Stephen.Poy@nrc.gov](mailto:Stephen.Poy@nrc.gov)).

Sincerely,

*/RA/*

Terrence Reis, Deputy Director  
Division of Materials Safety and State Agreements  
Office of Federal and State Materials and  
Environmental Management Programs

Enclosures:  
As state

**[Concurrence Page]**

Enclosures: As stated

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**ML110590670**

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**Package ML110590610**

**COMPATIBILITY COMMENTS ON NORTH DAKOTA FINAL REGULATIONS**

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	33-10-20-01	§32.201	2006-2	B	<p><b>Serialization of nationally tracked sources</b></p> <p>North Dakota omits the reference to 10 CFR 32.201 in this section from its regulations.</p> <p>North Dakota needs to adopt the essentially identical regulations in order to meet the Compatibility Category B designation assigned to 10 CFR 32.201.</p>
2	33-10-03.1-01	§30.3(b) (1), (2), & (3)	2007-3	NRC	<p><b>Activities requiring license</b></p> <p>North Dakota adopts by reference 10 CFR 30.3(b) (1), (2), and (3) in section 33-10-03.1-01. Due to a recent change in Compatibility, 10 CFR 30.3(b) (1), (2), &amp; (3) is designated a Compatibility Category NRC. North Dakota needs to delete the reference to these sections in their regulations.</p> <p>North Dakota needs to omit the references to 10 CFR 30.3(b) (1), (2), and (3) from its regulations in order to meet the Compatibility Category NRC designation assigned to 10 CFR 30.3(b) (1), (2), and (3).</p>
3	33-10-07.2-01	§35.13 (a)(1)	2007-3	NRC	<p><b>License amendments</b></p> <p>North Dakota adopts by reference 10 CFR 35.13 (a)(1) in section 33-10-07.2-01. Due to a recent change in Compatibility, 10 CFR 35.13 (a)(1) is designated a Compatibility Category NRC. North Dakota needs to delete the reference to this section in their regulations.</p> <p>North Dakota needs to omit the reference to 10 CFR 35.13 (a)(1) from its regulations in order to meet the Compatibility Category NRC</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					designation assigned to 10 CFR 35.13 (a)(1).

**STATE REGULATION STATUS**

State: North Dakota

Tracking Ticket Number: 11-3

[12 amendment(s) reviewed is identified by a ★  
at the beginning of the equivalent NRC requirement.]

Date: March 15, 2011

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 <b>(Superceded by 1997-5)</b>	01/10/1994	Final ML031010635	No Comments 04/28/2003 ML031220151	North Dakota adopted Final Regulations equivalent to RATS ID: 1997-5.
1991-2	ASNT Certification of Radiographers Part 34 56 FR 11504 <b>(Superceded by 1997-5)</b>	none	Final ML031010635	No Comments 04/28/2003 ML031220151	North Dakota adopted Final Regulations equivalent to RATS ID: 1997-5.
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 10/17/97	
1991-4	Notification of Incidents Parts 20, 30, 31, 34, 39, 40, 70 56 FR 64980;	10/15/1994	Final ML031010635	No Comments 04/28/2003 ML031220151	
1992-1	Quality Management Program and Misadministrations Part 35 56 FR 34104 <b>(Superceded by 2002-2)</b>	01/27/1995	Final ML031010635	No Comments 04/28/2003 ML031220151	North Dakota adopted Final Regulations equivalent to RATS ID: 2002-2.
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	Final ML031010635	No Comments 04/28/2003 ML031220151	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1993-2	Licensing and Radiation Safety Requirements for Irradiators Part 36 58 FR 7715	07/01/1996	Not Applicable <sup>1</sup>	Not Applicable	North Dakota does not have any licensees subject to these regulations. (See SECY-95-112)
1993-3	Definition of Land Disposal and Waste Site QA Program Part 61 58 FR 33886	07/22/1996	Not Applicable <sup>1</sup>	Not Applicable	North Dakota does not have any licensees subject to these regulations. (See SECY-95-112)
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	North Dakota does not have authority to regulate this material under its Agreement.
1994-3	Timeliness in Decommissioning Material Facilities Parts 30, 40, 70 59 FR 36026	08/15/1997	Final ML031010635	No Comments 04/28/2003 ML031220151	
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	Final ML031010635	No Comments 04/28/2003 ML031220151	
1995-2	Frequency of Medical Examinations for Use of Respiratory Protection Equipment Part 20 60 FR 7900	03/13/1998	Final ML031010635	No Comments 04/28/2003 ML031220151	
1995-3	Low-Level Waste Shipment Manifest Information and Reporting Parts 20, 61 60 FR 15649; 60 FR 25983	03/01/1998	Final ML031010635	No Comments 04/28/2003 ML031220151	
1995-4	Performance Requirements for Radiography Equipment Part 34 60 FR 28323 <b>(Superceded by 1997-5)</b>	06/30/1998	Final ML031010635	No Comments 04/28/2003 ML031220151	North Dakota has adopted Final Regulations equivalent to RATS ID: 1997-5.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1995-5	Radiation Protection Requirements: Amended Definitions and Criteria Parts 19, 20 60 FR 36038	08/14/1998	Final ML031010635	No Comments 04/28/2003 ML031220151	
1995-6	Clarification of Decommissioning Funding Requirements Parts 30, 40, 70 60 FR 38235	11/24/1998	Final ML031010635	No Comments 04/28/2003 ML031220151	
1995-7	Medical Administration of Radiation and Radioactive Materials Parts 20, 35 60 FR 48623 <b>(Superseded by 2002-2 and 2005-2)</b>	10/20/1998	Final ML031010635	No Comments 04/28/2003 ML031220151	North Dakota has not yet adopted Final Regulations equivalent to RATS ID: 2005-2.
1996-1	Compatibility with the International Atomic Energy Agency Part 71 60 FR 50248; 61 FR 28724 <b>(Superseded by 2004-1)</b>	04/01/1999	Final ML031010635	No Comments 04/28/2003 ML031220151	North Dakota 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 ML031010635	No Comments 04/28/2003 ML031220151	
1997-1	Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act Part 20 61 FR 65120	01/9/2000	Final ML031010635	No Comments 04/28/2003 ML031220151	
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 ML031010635	No Comments 04/28/2003 ML031220151	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1997-3	Criteria for the Release of Individuals Administered Radioactive Material Parts 20, 35 62 FR 4120	05/29/2000	Final ML031010635	No Comments 04/28/2003 ML031220151	
1997-4	Fissile Material Shipments and Exemptions Part 71 62 FR 5907 <b>(Superseded by 2004-1)</b>	02/10/2000	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility. (See STP-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	Final ML031010635	No Comments 04/28/2003 ML031220151	
1997-6	Radiological Criteria for License Termination Parts 20, 30, 40, 70 62 FR 39057	08/20/2000	Final ML031010635	No Comments 04/28/2003 ML031220151	
1997-7	Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea Part 30 62 FR 63634	01/02/2001	Final ML031010635	No Comments 04/28/2003 ML031220151	
1998-1	Deliberate Misconduct by Unlicensed Persons Parts 30, 40, 61, 70, 71, 150 63 FR 1890; 63 FR 13773	02/12/2001	Final ML031010635	No Comments 04/28/2003 ML031220151	
1998-2	Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees Parts 30, 40, 70 63 FR 29535	07/01/2001	Final ML031010635	No Comments 04/28/2003 ML031220151	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 <b>(Superseded by 2002-2)</b>	07/10/2001	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility. (See STP-98-074)  North Dakota has adopted Final Regulations equivalent to RATS ID: 2002-2.



RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1998-4	Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations Part 34 63 FR 37059	07/09/2001	Final ML031010635	No Comments 04/28/2003 ML031220151	
1998-5	Minor Corrections, Clarifying Changes, and a Minor Policy Change Parts 20, 35, 36 63 FR 39477; 63 FR 45393	10/26/2001	Final ML031010635	No Comments 04/28/2003 ML031220151	
1998-6	Transfer for Disposal and Manifests: Minor Technical Conforming Amendment Part 20 63 FR 50127	11/20/2001	Final ML031010635	No Comments 04/28/2003 ML031220151	
1999-1	Radiological Criteria for License Termination of Uranium Recovery Facilities Part 40 64 FR 17506	06/11/2002	Not Applicable	Not Applicable	North Dakota does not have authority to regulate this material under its Agreement.
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	Final ML031010635	No Comments 04/28/2003 ML031220151	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 ML031010635	No Comments 04/28/2003 ML031220151	
2000-1	Energy Compensation Sources for Well Logging and Other Regulatory Clarifications Part 39 65 FR 20337	05/17/2003	Final ML031010635	No Comments 04/28/2003 ML031220151	
2000-2	New Dosimetry Technology Parts 34, 36, 39 65 FR 63750	01/08/2004	Final ML031010635	No Comments 04/28/2003 ML031220151	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
2001-1	Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material Parts 30, 31, 32 65 FR 79162	02/16/2004	Final ML031010635	No Comments 08/31/2006 ML062410064	
2002-1	Revision of the Skin Dose Limit Part 20 67 FR 16298	04/05/2005	Final ML031010635	No Comments 04/28/2003 ML031220151	
2002-2	Medical Use of Byproduct Material Parts 20, 32, 35 67 FR 20249	10/24/2005	Final ML031010635	No Comments 04/28/2003 ML031220151	
*2003-1	Financial Assurance for Materials Licensees Parts 30, 40, 70 68 FR 57327	12/03/2006	Final ML110420074	No Comments 03/15/2011 ML110590610	
*2004-1	Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments Part 71 69 FR 3697	10/01/2007	Final ML110420074	No Comments 03/15/2011 ML110590610	
*2005-1	Security Requirements for Portable Gauges Containing Byproduct Material Part 30 70 FR 2001	07/11/2008	Final ML110420074	No Comments 03/15/2011 ML110590610	
*2005-2	Medical Use of Byproduct Material - Recognition of Specialty Boards Part 35 70 FR 16336; 71 FR 1926	04/29/2008	Final ML110420074	No Comments 03/15/2011 ML110590610	
2005-3	Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) 70 FR 72128	12/01/2005	License Condition ML052620195	No Comments 09/26/2005 ML052690322	
*2006-1	Minor Amendments Parts 20, 30, 32, 35, 40 and 70 71 FR 15005	03/27/2009	Final ML110420074	No Comments 03/15/2011 ML110590610	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
*2006-2	National Source Tracking System - Serialization Requirements Part 32 with reference to Part 20 Appendix E 71 FR 65685	02/06/2007	Final ML110420074	Comments 03/15/2011 ML110590610	
*2006-3	National Source Tracking System Part 20 71 FR 65685, 72 FR 59162	01/31/2009	Final ML110420074  License Condition ML083430028	No Comments 03/15/2011 ML110590610  No Comments 12/18/2008 ML083440096	
*2007-1	Medical Use of Byproduct Material - Minor Corrections and Clarifications Parts 32 and 35 72 FR 45147, 54207	10/29/2010	Final ML110420074	No Comments 03/15/2011 ML110590610	
*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	Final ML110420074	No Comments 03/15/2011 ML110590610	
*2007-3	Requirements for Expanded Definition of Byproduct Material Parts 20, 30, 31, 32, 33, 35, 61, 150 72 FR 55864	11/30/2010	Final ML110420074	Comments 03/15/2011 ML110590610	
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	License Condition ML081130312	No Comments 05/02/2008 ML081230204	
*2008-1	Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent Parts 19, 20 72 FR 68043	02/15/2011	Final ML110420074	No Comments 03/15/2011 ML110590610	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
*2009-1	Medical Use of Byproduct Material – Authorized User Clarification Part 35 74 FR 33901	09/28/2012	Final ML110420074	No Comments 03/15/2011 ML110590610	

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<sup>1</sup> IMPEP Team: verify that North Dakota does not have any licensees subject to these regulations during each review.