

July 2, 2012

Ms. Ruth E. McBurney
Executive Director
Conference of Radiation Control Program Directors, Inc.
Office of Executive Director
1030 Burlington Lane, Suite 4B
Frankfort, KY 40601

Dear Ms. McBurney:

We have reviewed the final revision to Part U, *Licensing Requirements for Uranium and Thorium Processing*, of the Suggested State Regulations (SSR), received by our office on March 26, 2012. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Part 40. We discussed our review of the regulations with Bruce Hirschler on June 29, 2012.

As a result of our review, we have 15 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.

Our review included the incorporation of equivalent NRC amendments issued prior to 2011. The following amendments still need to be addressed in the next revision to Part U:

- “Decommissioning Planning, Parts 20, 30, 40, and 70,” (76 FR 35512; July 17, 2011) that becomes effective on 12/17/2012 and are due for State adoption by 12/17/2015. RATS ID 2011-1.
- “Licenses, Certifications, and Approvals for Materials Licensees, Parts 30, 36, 39, 40, 51, 70, and 150,” (76 FR 56951; September 15, 2011) that became effective 11/14/2011 and are due for State adoption by 11/14/2014. RATS ID 2011-2.

The Conference of Radiation Control Program Directors (CRCPD) will need to resubmit Part U to address changes necessary for the implementation of these amendments. The rationale for the 2012 version of Part U should be revised to reflect that this version of Part U does not address the above amendments and that States considering an Agreement with NRC will need to address the comments attached as well as and the above amendments to meet the compatibility and health and safety categories. Comments addressing areas that need revision with the 2011 amendments are included. We are not able to provide federal concurrence until the comments have been addressed and the above amendments have been incorporated and reviewed by NRC.

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 the CRCPD, in response to our comments and provide a copy to FSME.

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) or Dr. Janine F. Katanic, CHP, at (817) 200-1151 (Janine.Katanic@nrc.gov).

Sincerely,

/RA C. Einberg for/

Brian J. McDermott, Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

Enclosures:
As stated

cc: Bruce Hirschler, OED, CRCPD
David Allard, PA, Chair,
SSR Council, CRCPD

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David Allard, PA, Chair,
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COMPATIBILITY COMMENTS ON FINAL CRCPD PART U REGULATIONS

SSR SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	U.2.d.	10 CFR 40.3	N/A	C	<p>License requirements</p> <p>Section U.2.d. refers to "...a specific or general license issued by the Agency under the regulations in this part." However, Part U does not authorize any general licenses. Several of the general license requirements in 10 CFR 40 are reserved to NRC. The other types of general licenses can be found in SSR Part C.</p> <p>Section U.2.d. needs to be revised to identify the correct parts (Part C or other parts, as appropriate) where the general license requirements can be found in order to meet the Compatibility Category C designation assigned to 10 CFR 40.3.</p>
2	U.3	10 CFR 40.4	2011-2	C	<p>Definitions: Commencement of construction</p> <p>The definition commencement of construction in Part U has not been revised to address the revisions in RATS ID 2011-2.</p> <p>Section U.3 needs to revise the definition of commencement of construction in order to meet the Compatibility Category C designation assigned to 10 CFR 40.4 Definition: Commencement of construction.</p>
3	U.3	10 CFR 40.4	2011-2	C	<p>Definitions: Construction</p> <p>Part U has not been revised to add the new definition of construction to address the revisions in RATS ID 2011-2.</p> <p>Section U.3 needs to add the definition of construction in order to meet the Compatibility Category C designation assigned to 10 CFR 40.4 Definition: Construction.</p>

SSR SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
4	U.11.	10 CFR 40.42 (d), (h), (i), (j), (k)(1), (k)(2), (k)(3), (l)	N/A	H&S	<p>Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas</p> <p>Section U.11. omits the requirements of 10 CFR 40.42(d)(1), 40.42(h), 40.42(i), 40.42(j), 40.42(k)(1), 40.42(k)(2), 40.42(k)(3) and 40.42(l).</p> <p>SSR Part U needs to add the above requirements in order to meet the Category H &S designation assigned to Section 10 CFR 40.42.</p>
5	U.10.	10 CFR 40.60 (a), (b), (c)(1), (c)(2)	N/A	C	<p>Reporting requirements.</p> <p>In Sections U.10.c., U.10.d., U.10.e.i., and U.10.e.ii., the references to notification of “NRC”, “NRC’s Operations Center”, “NRC’s document control desk”, “NRC Regional offices “as listed in Appendix D to Part D of these regulations” and “NRC Regional office” are incorrect and need to be revised to reflect the use of the generic term “Agency” pursuant to the style manual for the SSRs (meaning the appropriate State agency).</p> <p>In Section U.10.d.iv.(1), the reference to “Appendix B of §§ 20.1001-20.2401 of 10 CFR Part 20” needs to be revised to read “Appendix B of Part D of these regulations.”</p> <p>Section U.10 needs to be revised as noted above to meet the Compatibility Category C designation assigned to Section 10 CFR 40.60.</p>
6	Appendix A Criterion 2	10 CFR 40, Appendix A, I. Technical Criteria, Criterion 2	N/A	C	<p>Criterion 2</p> <p>In Part U, Appendix A, Criterion 2 omits the word “disposal” in the phrase “...existing large mill tailings sites;”. This phrase should be revised to read “...existing large mill tailings disposal sites;”.</p>

SSR SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					SSR Part U, Appendix A, Criterion 2 needs to be revised as noted above to meet the Compatibility Category C designation assigned to the 10 CFR 40, Appendix A, Criterion 2.
7	Appendix A Criterion 5A(1)	10 CFR 40, Appendix A, I. Technical Criteria, Criterion 5A(1)	N/A	C	<p>Criterion 5A</p> <p>In Part U, Appendix A, Criterion 5A(1), the first sentence substitutes the words “radioactive material” for “byproduct material.” Part U appropriately defines “byproduct material” (same as 10 CFR 40) but does not define “radioactive material.” “Radioactive material” is defined in SSR Part A as “any solid, liquid, or gas which emits radiation spontaneously.” Therefore, substituting “radioactive material” for “byproduct material” is not appropriate in this instance. “Radioactive material” as defined only refers to the radioactive material only, not the total mass of the material as 11e.2 byproduct material is defined.</p> <p>SSR Part U, Appendix A, Criterion 5A(1), needs to replace the word “radioactive” with “byproduct” in order to meet the Compatibility Category C designation assigned to the 10 CFR 40, Appendix A, Criterion 5A.</p>
8	Appendix A Criterion 5E	10 CFR 40, Appendix A, I. Technical Criteria, Criterion 5E	N/A	C	<p>Criterion 5E</p> <p>SSR Part U, Appendix A, Criterion 5E references a ground water monitoring program “as provided in Criterion 7”. However, a portion of Criterion 7 is located in Section U.4.c. and another part is located in Part U, Appendix A, Criterion 7.</p> <p>SSR Part U, Appendix A, Criterion 5E, needs to be revised to refer to the groundwater monitoring program “as provided in U.4.c. and Criterion 7” in order to meet the Compatibility Category</p>

SSR SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					C designation assigned to the 10 CFR 40, Appendix A, Criterion 5E.
9	Appendix A Criterion 9	10 CFR 40 Appendix A II. Financial Criteria Criterion 9	2011-1	C	<p>Criterion 9</p> <p>SSR Part U, Appendix A, Criterion 9 has not been revised to address the revisions in RATS ID 2011-1.</p> <p>SSR Part U, Appendix A, Criterion 9, needs to be revised in order to meet the Compatibility Category C designation assigned to the 10 CFR 40, Appendix A, Criterion 9.</p>
10	Appendix A Criterion 11	10 CFR 40 Appendix A III. Site and Byproduct Material Ownership Criterion 11	N/A	NRC	<p>Criterion 11</p> <p>The Rationale for SSR Part U indicates that Criterion 11 was included in Part U “for completeness” and notes that only Criterion 11.C. through 11.F. are for NRC compatibility. The language in Part U, Appendix A, Criterion 11.C through 11.F. should match NRC’s language exactly if it is to be provided for information purposes.</p> <p>Part U, Appendix A, Criterion 11.E. says “administrative or legal costs” whereas 10 CFR 40, Appendix A, Criterion 11 says “administrative and legal costs.” The “or” needs to be revised to “and.”</p> <p>SSR Part U, Criterion 11.A through F should match the NRC requirements exactly in order to meet the Compatibility Category NRC designation assigned to 10 CFR Part 40, Appendix A, Criterion 11.C through F.</p> <p>Comment stands from October 19, 2009, letter.</p>
11	Appendix A Criterion 13 Hazardous Constituents	10 CFR 40 Appendix A V. Hazardous Constituents Criterion 13	N/A	C	<p>Hazardous Constituents</p> <p>SSR Part U, Appendix A, Criterion 13 contains a significant number of errors in the chemical formulas in the list of <i>Hazardous Constituents</i> and needs</p>

SSR SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>careful proofing. The list needs to be accurate because it defines the hazardous constituents.</p> <p>SSR Part U, Appendix A, Criterion 13, <i>Hazardous Constituents</i> needs to be revised to accurately include the chemical formulas meet the Compatibility Category C designation assigned to the 10 CFR 40, Appendix A, Criterion 13.</p> <p>Comment stands from October 19, 2009, letter.</p>
<p>The following comments are related to the Rationale document or are generic in nature.</p>					
12	Rationale	N/A	N/A	N/A	<p>Specific Provisions Sec. U.1. and U.2 – Purpose and Scope</p> <p>The 1st sentence states that “Part U contains the special licensing requirements for natural uranium and natural thorium processing and disposal.” This is not accurate. Part U pertains to source material and byproduct material (as defined in 10 CFR 40). The terms “natural uranium” and “natural thorium” are specific and are not necessarily inclusive of source material.</p> <p>Comment stands from October 19, 2009, letter.</p>
13	Rationale	N/A	N/A	N/A	<p>Appendix A: Criteria Relating to the Operations of Mills and the Disposition of Radioactive Tailings or Waste</p> <p>In the 3rd paragraph, the 5th sentence states that “The requirements in Criterion 11C through 11F are reserved to the NRC...”</p> <p>This is not accurate and should be revised as follows: “The requirements in Criterion 11A through 11F are reserved to the NRC...”</p>

SSR SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
14	U.7.a.	N/A	N/A	N/A	<p>Transmittal of Applicant's Environmental Report for Review and Comment</p> <p>In paragraph a, recommend that the phrase "or Environmental Assessment" be inserted after (EIS) for completeness in accordance to the requirements of the National Environment Policy Act.</p> <p>Comment stands from October 19, 2009, letter.</p>
15	Appendix A Criterion 13 Hazardous Constituents	10 CFR 40 Appendix A V. Hazardous Constituents Criterion 13	N/A	C	<p>Hazardous Constituents</p> <p>The footnote for N.O.S. is only used once in Part U, Appendix A, Criterion 13, in its first occurrence for "Antimony and compounds, N.O.S.³" There are many other occurrences of N.O.S. in Part U, Appendix A that do not use the footnote to note "The abbreviation N.O.S. (not otherwise specified) specifies those members of the general class not specifically listed by name on the list.</p> <p>This is inconsistent with the style of the SSRs (See tables for Part D).</p>