

April 28, 2003

Mr. Terry L. 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:

We have reviewed the final revisions to the North Dakota Administrative Code Article 33-10, "*North Dakota Radiological Health Rules*", received by our office on April 4, 2003. In addition, we reviewed your responses to our letters, dated August 8, 2002 and December 23, 2002, which contained our comments on your proposed version of these rules. These regulations were reviewed by comparison to the equivalent NRC regulations in 10 CFR Part 19, 20, 34, 71 and the requirements of the 35 amendments identified in the enclosed State Regulation Status Data Sheet (SRS). We discussed our review of the regulations with Kenneth Wangler, on April 24, 2003.

As a result of our review, we have no comments and one editorial suggestion. Please note that we have limited our review to regulations required for compatibility and/or health and safety. As a result of the NRC review, we have determined that the regulations, as adopted, meet the compatibility and health and safety categories established in the Office of State and Tribal Programs (STP) Procedure [SA-200](#).

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 STP website: <http://www.hsrdrd.org/nrc/rulemaking.htm>.

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 me, or John Zabko of my staff at (301)415-2308 or JGZ@NRC.GOV.

Sincerely,

IRA by Scott Flanders for/

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

Enclosures:
As stated

April 28, 2003

Mr. Terry L. 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:

We have reviewed the final revisions to the North Dakota Administrative Code Article 33-10, "North Dakota Radiological Health Rules", received by our office on April 4, 2003. In addition, we reviewed your responses to our letters, dated August 8, 2002 and December 23, 2002, which contained our comments on your proposed version of these rules. These regulations were reviewed by comparison to the equivalent NRC regulations in 10 CFR Part 19, 20, 34, 71 and the requirements of the 35 amendments identified in the enclosed State Regulation Status Data Sheet (SRS). We discussed our review of the regulations with Kenneth Wangler, on April 24, 2003.

As a result of our review, we have no comments and one editorial suggestion. Please note that we have limited our review to regulations required for compatibility and/or health and safety. As a result of the NRC review, we have determined that the regulations, as adopted, meet the compatibility and health and safety categories established in the Office of State and Tribal Programs (STP) Procedure SA-200.

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 STP website: <http://www.hsrn.gov/nrc/rulemaking.htm>.

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 me, or John Zabko of my staff at (301)415-2308 or JGZ@NRC.GOV.

Sincerely,
IRA by Scott Flanders for/

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

Enclosures:

As stated

Distribution:

DIR RF [3-99]
BUilton

DCD (SP08)
TBrock

PDR (YES_✓)
JMyers, ASPO

Response to Incoming Document: ML031010635

DOCUMENT NAME: G:\JGZ\NorthDakota\ND3-99.wpd

***See Previous Concurrence**

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE	STP	STP	OGC	STP:DD
NAME	PmcGrady-Finneran	JGZabko	SATreby	JMPiccone (Sflanders for)
DATE	04/15/03*	04/15/03*	04/23/03*	04/28/03*

ML031220151

OFFICIAL RECORD COPY

Editorial Suggestions the State Did Not Address

1. In 33-10-05-06.4, the State has omitted the Part § (location) of the “Applicable Rules” of North Dakota.

STATE REGULATION STATUS

State: North Dakota
35 amendments reviewed are identified by a ★
at the beginning of the equivalent NRC regulation.]

Tracking Ticket Number: 3-99
Date: April 28, 2003
ML031220151

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	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★ASNT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2	F ML031220151	N 04/28/03 ML031010635	3/1/2003
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	5/1/98
★Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1	F ML031220151	N 04/28/03 ML031010635	3/1/2003
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	F ML031220151	N 04/28/03 ML031010635	3/1/2003
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 7/1/1995
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

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)
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 7/1/1995
★Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★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	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983; (3/1/98)	1995-3	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28724; (4/1/99)	1996-1	F ML031220151	N 04/28/03 ML031010635	3/1/2003

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)
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	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★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	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	F ML031220151	N 04/28/03 ML031010635	3/1/2003
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	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea-Part 30	62 FR 63634; (01)	1997-7	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773; (2/12/01)	1998-1	F ML031220151	N 04/28/03 ML031010635	3/1/2003

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)
★Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees-Parts 30, 40, 70	63 FR 29535; (none)	1998-2	F ML031220151	N 04/28/03 ML031010635	Not required ³ 3/1/2003
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	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393; (10/26/01)	1998-5	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information-Part 31	64 FR 42269; (none)	1999-2	F ML031220151	N 04/28/03 ML031010635	Not required ³ 3/1/2003
★Respiratory Protection and Controls to Restrict Internal Exposure-Part 20	64 FR 54543; 64 FR 55524; (2/2/03)	1999-3	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material-Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	F ML031220151	N 04/28/03 ML031010635	3/1/2003
★Revision of the Skin Dose Limit-Part 20	67 FR 16298; (4/5/05)	2002-1	F ML031220151	N 04/28/03 ML031010635	3/1/2003

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)
★Medical Use of Byproduct Material-Parts 20, 32, 35	67 FR 20249; (4/24/05)	2002-2	F ML031220151	N 04/28/03 ML031010635	3/1/2003

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