



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

May 1, 2019

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

Dear Ms. McBurney:

We have reviewed the proposed revisions to the Suggested State Regulations (SSRs) in Part C, "Licensing of Radioactive Material" received by our office on February 8, 2019, for federal concurrence. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 30, 31, 32, 40, and 70 included in Regulatory Amendment Tracking System Identification Numbers (RATS IDs) 2011-1, 2011-2, 2012-3, 2012-4, 2013-1, 2013-2. We discussed our review of the regulations with Bruce Hirschler on April 18, 2019.

As a result of our review, we have twelve comments related to compatibility, and one editorial comment that have been identified in the enclosure. Under our current procedure, a finding that the Conference of Radiation Control Program Directors' (CRCPD) SSRs meet the compatibility and health and safety categories of the equivalent NRC regulations may only be made based on a review of the final CRCPD regulations. However, we have determined that if your proposed regulations were adopted, 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, "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements."

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 and federal concurrence. As requested in NMSS Procedure SA-201, "Review of State Regulatory Requirements," please highlight the final changes, and provide a copy to Division of Materials Safety, Security, State and Tribal Programs, NMSS.

The SRS Data Sheet summarizes our knowledge of the status of other CRCPD Suggested State 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 NMSS State Communication Portal:

<https://scp.nrc.gov/rulemaking.html>.

If you have any questions regarding the review results, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact Michelle Beardsley, State Regulation Review Coordinator at 301-415-0275 ([michelle.beardsley@nrc.gov](mailto:michelle.beardsley@nrc.gov)) or Cindy Flannery at 301-415-0223 ([cindy.flannery@nrc.gov](mailto:cindy.flannery@nrc.gov)).

Sincerely,

***/RA Paul Michalak for/***

Kevin Williams, Deputy Director  
Division of Materials Safety, Security, State  
and Tribal Programs  
Office of Nuclear Materials Safety and Safeguards

Enclosure:

1. Compatibility and Editorial Comments

cc: Bruce Hirschler, SSRCR Publication Manager, CRCPD

**COMPATIBILITY COMMENTS ON CRCPD PROPOSED SUGGESTED STATE  
REGULATIONS (SSRs) PART C**

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	C.4.c.ii.	30.19(b)	2012-4	B	<p><b>Self-luminous products containing tritium, krypton-85, or promethium-147</b></p> <p>In section C.4.c.ii.(3), CRCPD adds the phrase, “or to transfer such products for use pursuant to C.4c.ii.(1),”. This phrase is not included in 10 CFR 30.19(b).</p> <p>CRCPD needs to omit the phrase, as indicated above, to meet the Compatibility Category B designation assigned to 10 CFR 30.19(b).</p>
2	C.4.c.i.(1)	30.20	2012-4	B	<p><b>Gas and aerosol detectors containing byproduct material</b></p> <p>10 CFR 30.20 states in part, “(a) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution gas and aerosol detectors containing byproduct material, any person is exempt from the requirements for a license set forth in section 81 of the Act and from the regulations in parts 19, 20, 21, and 30 through 36 and 39 of this chapter...”.</p> <p>CRCPD regulations do not contain specific references to “parts 19, 20, 30 through 36, and 39 of this chapter; rather they state, “these regulations”.</p> <p>CRCPD needs to specify equivalent regulations to 10 CFR Parts 19, 20, 30 through 36, and 39 in section C.4.c.i.(1) to meet the Compatibility Category B designation assigned to 10 CFR 30.20.</p>
3	C.28.e.iii.	32.55	2012-4	B	<p><b>Same: Quality assurance, prohibition of transfer</b></p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>CRCPD omitted the highlighted language from their equivalent regulation to 32.55(d)(1): “(1) Any luminous safety device tested and found defective under any condition of a license issued under § 32.53.”</p> <p>CRCPD needs to add the phrase as indicated above to meet the Compatibility Category B designation assigned to 10 CFR 32.55.</p>
4	C.28.f.ii	32.57(e)	2012-4	B	<p><b>Calibration or reference sources containing americium 241 or radium 226: Requirements for license to manufacture or initially transfer</b></p> <p>CRCPD section C.28.f:</p> <ol style="list-style-type: none"> <li>1) includes the radionuclide “plutonium”; 10 CFR 32.57 does not include plutonium. CRCPD needs to delete plutonium from this section; and</li> <li>2) omits the word “initial” in f.ii.1. CRCPD needs to add the word “initial” to read as follows: “The initial quantity of radioactive material deposited on each source is measured by direct counting of the source.”</li> </ol> <p>CRCPD needs to make the changes indicated above to meet the Compatibility Category B designation assigned to 10 CFR 32.57(e).</p>
5	C.28.i.i.(5)(d)	32.61(e)(4)	2012-4	B	<p><b>Ice detection devices containing strontium-90; requirements for license to manufacture or initially transfer</b></p> <p>CRCPD regulations in section C.28.i.i.(5)(d) are not essentially</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>identical to 10 CFR 32.61(e)(4).</p> <p>CRCPD needs to revise their regulation to state, "Prototypes of the device have been subjected to and have satisfactorily passed the tests required by paragraph C.28.i.iii. of this section."</p> <p>CRCPD needs to revise section C.28.i.i.(5)(d) as indicated above to meet the Compatibility Category B designation assigned to 10 CFR 32.61(e)(4).</p>
6	C.28.i.iii.	32.61(f)	2012-4	B	<p><b>Ice detection devices containing strontium-90; requirements for license to manufacture or initially transfer</b></p> <p>CRCPD regulations state, "An applicant for a license pursuant to C.28.i. shall conduct prototype tests on each of at least five prototype ice detection devices to tests as follows:". This sentence, as written, is not essentially identical to 10 CFR 32.61(f).</p> <p>The sentence should read, "An applicant...shall subject at least five prototypes of the devices to tests as follows:"</p> <p>CRCPD needs to revise their regulation as indicated above to meet the Compatibility Category B designation assigned to 10 CFR 32.61(f).</p>
7	C.28.i.ii.(5)	32.62(e)(1)	2012-4	B	<p><b>Same: Quality assurance; prohibition of transfer</b></p> <p>CRCPD subsection (5)(a) omits the highlighted language below:  "(1) Any ice detection device containing strontium-90 tested and</p>

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					<p>found defective under the criteria specified in a license issued under...".</p> <p>CRCPD needs to include the highlighted language as indicated above to meet the Compatibility Category B designation assigned to 10 CFR 32.62(e)(1).</p>
8	C.3.c	40.13(c)	2013-2	B	<p><b>Unimportant quantities of source material</b></p> <p>In section C.3.c, CRCPD omits a reference to the [State] Radiation Control Act.</p> <p>CRCPD needs to include the above to meet the Compatibility Category B designation assigned to 10 CFR 40.13(c).</p>
9	C.3.c.ix	40.13(c)(10)	2013-2	B	<p><b>Unimportant quantities of source material</b></p> <p>CRCPD regulations in section C.3.c.ix state that persons who import must be authorized by a license issued by the NRC, but it does not explicitly state that this license is "issued under § 40.52."</p> <p>CRCPD needs to add the wording indicated above to meet the Compatibility Category B designation assigned to 10 CFR 40.13(c)(10).</p>
10	C.21.c(i),(ii)(3)	40.22(b)(3)	2013-2	B	<p><b>Small quantities of source material</b></p> <p>CRCPD regulations do not include all equivalent references to those stated in 10 CFR 40.22(b)(3). Specifically, CRCPD needs to add equivalent references to 10 CFR 40.60(a),(b),(c)(1)&amp;(2) and 40.61(a)(b)(d)(e)&amp;(f).</p> <p>CRCPD needs to add equivalent regulations to those stated in 10 CFR 40.22(b)(3) as indicated above to</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					meet the Compatibility Category B designation assigned to 10 CFR 40.22(b)(3).
11	C.21.b	40.22(d)	2013-2	B	<p><b>Small quantities of source material</b></p> <p>a) 10 CFR 40.22(d) states, "... to the extent that such receipt, possession, use, and transfer are within the terms of this general license regulations...". CRCPD regulations say "or" instead of "and". CRCPD needs to change their regulations to say, "and" where designated.</p> <p>b) CRCPD regulations state, "...[h]owever, this exemption shall not be deemed to apply to any such person who is <i>also in possession of</i> source material under a specific license issued pursuant to C.21.a." This can be interpreted to mean that the exemption is applicable if the entity has a specific license and also is in possession of source material, whereas 10 CFR 40.22(d) only requires the entity to possess a specific license</p> <p>CRCPD needs to revise their regulations as indicated above to meet the Compatibility Category B designation assigned to 10 CFR 40.22(d).</p>
12	C.28.o.iv	40.55(d)	2013-2	B	<p><b>Conditions of licenses to initially transfer source material for use under the 'small quantities of source material' general license: Quality control, labeling, safety instructions, and records and reports</b></p> <p>CRCPD regulations omit 10 CFR 40.55(d)(iii) in C.28.o.iv(c), and instead repeat the text from 10 CFR</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>40.55(d)(ii) (i.e., C.28.o.iv(b)).</p> <p>CRCPD needs to insert their equivalent regulation to 10 CFR 40.55(d)(iii) as indicated above to meet the Compatibility Category B designation assigned to 10 CFR 40.55(d).</p>

EDITORIAL COMMENT

STATE SECTION	COMMENT
C.28.e.iii.(4)(b)	<p>This section states,  “Any luminous safety device contained within any lot that has been sampled and rejected as a result of the procedures in paragraph (b)(2) of this section...”.</p> <p>It appears that this should read, “e.iii”.</p>