



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

January 9, 2018

William Irwin, Sc.D., CHP, Chief  
Office of Radiological Health  
Vermont Department of Health  
108 Cherry Street  
P.O. Box 70  
Burlington, VT 05402

Dear Dr. Irwin:

We have reviewed the proposed revisions to the Vermont regulations Chapter 6, Subchapter 5 – Radiological Health Rule, received by our office on November 27, 2017. These regulations were reviewed by comparison to the equivalent U.S. Nuclear Regulatory Commission (NRC) rules as identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with you on January 4, 2018.

As a result of our review, we have 21 comments that have been identified in the enclosure. Please note that we have limited our review to regulations required for compatibility or health and safety. The NRC requests that Vermont provide updated proposed regulations for review. Under our current procedure, a finding that the Vermont regulations meet the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final Vermont regulations.

The SRS Data Sheet summarizes our knowledge of the status of other Vermont 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 comments, 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 (267) 884-2305 ([Michelle.Beardsley@nrc.gov](mailto:Michelle.Beardsley@nrc.gov)) or Monica Ford at (610) 337-5214 ([Monica.Ford@nrc.gov](mailto:Monica.Ford@nrc.gov)).

Sincerely,

**/RA/  
PMichalak for KWilliams**

Kevin Williams, Deputy Director  
Division of Material Safety, State, Tribal  
and Rulemaking Programs  
Office of Nuclear Material Safety  
and Safeguards

Enclosures:

1. Compatibility Comments
2. Vermont SRS Data Sheet

**COMPATIBILITY COMMENTS ON VERMONT PROPOSED REGULATIONS**

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	Various	Various	Various	N/A	<p><b>General Comments</b></p> <p>1) Vermont regulations sections 6.4.1.2 and 6.4.1.3, state: “Each sealed source...approved by the Department, a state or the NRC.” Vermont needs to replace “a state” with “an Agreement State”.</p> <p>2) Vermont incorporates NRC regulations by reference, but also includes some of these same regulations as text. This results in a duplication of requirements. Vermont needs remove the following sections from its regulations:</p> <ol style="list-style-type: none"> <li>1) In Section 1.3 delete the definitions for: License, Licensee, Pharmacist, Physician, and Special Nuclear Material.</li> <li>2) 4.2.1(equivalent 30.12)</li> <li>3) 6.4 (Multiple Parts 35.67, 39.35...)</li> <li>4) 6.5.1 (remove reference to radiation sources)</li> <li>5) 6.7.7 (20.2202(c); need to clarify if this is just for radiation producing machines)</li> <li>6) 7.2 – 7.5 (19.11)</li> <li>7) 12.5 – 12.5.3.2 (Part 30)</li> <li>8) 12.7.2 (70.39)</li> <li>9) 12.7.3 (32.71)</li> <li>10) 12.12.1 – 12.12.1.5.2 (150.20)</li> <li>11) 12.12.3 (31.6)</li> <li>12) 18.4 – 18.4.6.6 (71.97)</li> <li>13) 18.5 (37.77)</li> </ol> <p><b>Comments stand from NRC letter dated October 25, 2017/ML17172A626.</b></p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
2	1.2.5 1.3 7.6.1	19.3, <i>Regulated entities</i>	19	D/NRC	<p><b>Regulated entities</b></p> <p>Vermont incorporates the definition of Regulated Entities in 10 CFR 19.3 by reference in sections 1.2.5, 1.3, and 7.6.1. Vermont needs to exclude this definition from incorporation by reference. If Vermont wishes to have an equivalent regulation, Vermont should include a new definition citing activities under Vermont authority in section 1.3.</p> <p>Vermont needs to make the above change in order to meet the Compatibility Category D/NRC designations assigned to 10 CFR 19.3 Definition: Regulated Entities.</p> <p><b>Comment stands from NRC letter dated October 25, 2017/ML17172A626</b></p>
3	1.2.5 7.2 7.6.1	19.11	19	C, except portions of paragraph (a), and all of paragraphs (b) and (e) are designated as NRC.	<p><b>Posting of notices to workers</b></p> <p>Vermont incorporates all of 10 CFR 19.11 by reference in sections 1.2.5 and 7.6.1. Vermont needs to specifically exclude the portions of paragraph (a), and all of paragraphs (b) and (e) which are reserved to the NRC from incorporation by reference.</p> <p>In addition, Vermont incorporates 10 CFR 19.11 by reference and includes duplicative requirements for posting notices to workers in section 7.2. Vermont needs to revise their equivalent regulations to exclude either 10 CFR 19.11 or Vermont regulations section 7.2, to eliminate the duplication of requirements.</p> <p><b>Comment stands from NRC letter dated October 25, 2017/ML17172A626</b></p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
4	1.2.5 7.6.1	19.13	19	C	<p><b>Notification and reports to individuals</b></p> <p>In their equivalent regulations to 10 CFR 19.13(a), Vermont needs to replace the phrase “Nuclear Regulatory Commission regulation 10 CFR part 19” with their equivalent regulation.</p> <p><b>Comment stands from NRC letter dated October 25, 2017/ML17172A626</b></p>
5	1.2.5 7.6.1	19.14(a)	19	NRC	<p><b>Presence of representatives of licensees and workers during inspections</b></p> <p>Vermont adopts 10 CFR 19.14(a) by reference in section 7.6.1. Vermont needs to add 10 CFR 19.14(a) to section 7.6.2 in order to not adopt it by reference.</p> <p>Vermont needs to make the above change in order to meet the Compatibility Category NRC designation assigned to 10 CFR 19.14(a).</p>
6	1.2.6.1	20.1003	20	A	<p><b>Definition: Special Nuclear Material</b></p> <p>In the definition of special nuclear material in 10 CFR 20.1003, the word “Commission” should remain and should not mean the Vermont Department of Public Health as stated in section 1.2.6.1.</p> <p>Vermont needs to make the above change in order to meet the Compatibility Category A designation assigned to 10 CFR 20.1003 Definition: Special Nuclear Material.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
7	12.5.1 Tables 1a/1b	30.70	30	B	<p><b>Schedule A - exempt concentrations table</b></p> <p>Vermont adds radionuclides to 10 CFR 30.70 Schedule A, Exempt concentrations, in Tables 1a and 1b of Vermont's regulations. This makes Vermont's regulations less restrictive than the NRC's regulation.</p> <p>Vermont needs to delete Tables 1a and 1b in order to meet the Compatibility Category B designation assigned to 10 CFR 30.70.</p>
8	12.5.3.1 Tables 2a/2b	30.71	30	B	<p><b>Schedule B - exempt quantity table</b></p> <p>Vermont adds radionuclides to 10 CFR 30.71, Schedule B, in Tables 2a and 2b of Vermont's regulations. This makes Vermont's regulations less restrictive than the NRC's regulation.</p> <p>Vermont needs to delete Tables 2a and 2b in order to meet the Compatibility Category B designation assigned to 10 CFR 30.71.</p>
9	12.7.1.2	32.24	32	B	<p><b>Same: Table of organ doses</b></p> <p>Vermont excludes 10 CFR 32.24 from incorporation by reference in section 12.7.1.2. VT needs to remove this reference from section 12.7.1.2 in order to adopt 10 CFR 32.34 by reference.</p> <p>VT needs to make the above change in order to meet the Compatibility Category B designation assigned to 10 CFR 32.24.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
10	1.2.6.9	32.59	32	B	<p><b>Same: Leak testing of each source</b></p> <p>Vermont needs to add 10 CFR 32.59 to section 1.2.6.9 in order to incorporate it by reference.</p> <p>Vermont needs to make the above change in order to meet the Compatibility Category B designation assigned to 10 CFR 32.59.</p>
11	12.9.1 1.2.5.12	40.4	40	Various	<p><b>Definitions</b></p> <p>In sections 1.2.5.12 and 12.9.1, Vermont does not incorporate 10 CFR 40.4 by reference. Several definitions in 10 CFR 40.4 are required for compatibility and should be included in Vermont's adoption by reference.</p> <p>It should be noted that by not adopting 10 CFR 40.4 by reference, some previously made comments were resolved since they were category NRC. VT will need to use this letter in conjunction with the October 25, 2017 letter to ensure that the comments are appropriately addressed.</p>
12	1.2.5	40.13(c)(5)(iv)	40	NRC	<p><b>Unimportant quantities of source material</b></p> <p>Vermont incorporates 10 CFR 40.13(c)(5)(iv) by reference in section 1.2.5.</p> <p>Vermont needs to specifically exclude this regulation from incorporation by reference in section 1.2.5 in order to meet the Compatibility Category NRC designation assigned to 10 CFR 40.13(c)(5)(iv).</p> <p><b>Comment stands from NRC letter dated October 25, 2017/ML17172A626.</b></p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
13	1.2.5.12 12.9.1	40.31(j), (k), (l), & (m)	40	NRC	<p><b>Application for specific licenses</b></p> <p>VT incorporates 10 CFR 40.31(m) by reference in sections 1.2.5.12 and 12.9.1.</p> <p>VT needs to not adopt this regulation by reference in order to meet the Compatibility Category NRC designation assigned to 10 CFR 40.31(m).</p> <p><b>Comment stands from NRC letter dated October 25, 2017/ML17172A626.</b></p>
14	12.9.1	40.41(d), (e)(1), (e)(3), (g) & (h)	40	NRC	<p><b>Terms and conditions of licenses</b></p> <p>Vermont incorporates 10 CFR 40.41(h) by reference in section 12.9.1.</p> <p>Vermont needs to specifically exclude this regulation from incorporation by reference in section 12.9.2 in order to meet the Compatibility Category NRC designation assigned to 10 CFR 40.41(h).</p> <p><b>Comment stands from NRC letter dated October 25, 2017/ML17172A626.</b></p>
15	12.9.1	40.52	40	NRC	<p><b>Certain items containing source material; requirements for license to apply or initially transfer</b></p> <p>Vermont incorporates 10 CFR 40.52 by reference in section 12.9.1.</p> <p>Vermont needs to add 10 CFR 40.52 to section 12.9.2 so that it is not adopted by reference in order to meet the Compatibility Category NRC designation assigned to 10 CFR 40.52.</p> <p><b>Comment stands from NRC letter</b></p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<b>dated October 25, 2017/ML17172A626.</b>
16	12.9.1	40.53	40	NRC	<p><b>Conditions for licenses issued for initial transfer of certain items containing source material: Quality control, labeling, and records and reports</b></p> <p>Vermont incorporates 10 CFR 40.53 by reference in section 12.9.1.</p> <p>Vermont needs to add 10 CFR 40.53 to section 12.9.2 so that it is not adopted by reference in order to meet the Compatibility Category NRC designation assigned to 10 CFR 40.53.</p> <p><b>Comment stands from NRC letter dated October 25, 2017/ML17172A626.</b></p>
17	12.9.1	40.56	40	NRC	<p><b>Restrictions on the use of Australian-obligated source materials</b></p> <p>Vermont incorporates 10 CFR 40.56 by reference in section 12.9.1.</p> <p>Vermont needs to add 10 CFR 40.56 to section 12.9.2 so that it is not adopted by reference in order to meet the Compatibility Category NRC designation assigned to 10 CFR 40.56.</p> <p><b>Comment stands from NRC letter dated October 25, 2017/ML17172A626.</b></p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
18	1.2.5 12.9.1	Part 40, <i>Criterion 11A-F</i>	40	NRC	<p><b>APPENDIX A, III. Site and Byproduct Material Ownership</b></p> <p>Vermont incorporates 10 CFR Part 40, Appendix A, Criterion 11 by reference in sections 1.2.5 and 12.9.1. Vermont needs to specifically exclude this regulation from incorporation by reference.</p> <p><b>Comment stands from NRC letter dated October 25, 2017/ML17172A626.</b></p>
19	1.2.5 12.9.1	Part 40, <i>Criterion 12</i>	40	NRC	<p><b>APPENDIX A, IV. Long-Term Site Surveillance</b></p> <p>Vermont incorporates 10 CFR Part 40, Appendix A, Criterion 12 by reference in sections 1.2.5 and 12.9.1. Vermont needs to specifically exclude this regulation from incorporation by reference.</p> <p><b>Comment stands from NRC letter dated October 25, 2017/ML17172A626.</b></p>
20	1.2.6.1	71.17	71	B	<p><b>General license: NRC approved package</b></p> <p>Vermont states in Section 1.2.6.1 that a reference made to the “NRC” or “Commission” means the Vermont Department of Health. However Vermont should note that in 10 CFR 71.17(c)(3), the submission required before the first use of a NRC approved package should be sent to the NRC, ATTN: Document Control Desk, Director, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, using an appropriate method listed in § 71.1(a), the licensee's name and license number and the package identification number specified in the package approval.”</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<b>Comment stands from NRC letter dated October 25, 2017/ML17172A626. The reference has now been moved from 1.2.7.1 to 1.2.6.1.</b>
21	18.2.2	71.91(b)	71	NRC	<p><b>Records</b></p> <p>Vermont does not incorporate all of 10 CFR 71.91 by reference in section 18.2.2.</p> <p>Vermont needs to incorporate 10 CFR 71.91 by reference, but specifically exclude <b>only 10 CFR 71.91(b)</b> from incorporation by reference in section 18.2.2 in order to meet the Compatibility Category NRC designation assigned to 10 CFR 71.91(b).</p> <p><b>Comment stands from NRC letter dated October 25, 2017/ML17172A626.</b></p>

**STATE REGULATION STATUS**

State: Vermont

Tracking Ticket Number: 18-11  
Date: 01/09/2018

Vermont Submittal Description	Incoming Letter	Outgoing Package	Notes
Proposed Enabling Legislation Vermont Statute for Ionizing and Nonionizing Radiation Control	ML15222A313 8/5/2015	Comments 8/31/2015 ML15222A300	
Revised Proposed Enabling Legislation Vermont Statute for Ionizing and Nonionizing Radiation Control	ML16028A214 1/25/2016	No Comments 03/04/2016 ML16028A209	
*10 CFR Part 19 Vermont Radiological Health Rule	ML17172A627 6/19/2017  Revised Proposed ML17331A820 11/22/2017	Comments 10/25/2017 ML17172A626  Comments 01/09/2018 ML17331A819	
*10 CFR Part 20 Vermont Radiological Health Rule	ML17172A627 6/19/2017  Revised Proposed ML17331A820 11/22/2017	Comments 10/25/2017 ML17172A626  Comments 01/09/2018 ML17331A819	

Vermont Submittal Description	Incoming Letter	Outgoing Package	Notes
*10 CFR Part 30 Vermont Radiological Health Rule	ML17172A627 6/19/2017  Revised Proposed ML17331A820 11/22/2017	Comments 10/25/2017 ML17172A626  Comments 01/09/2018 ML17331A819	
*10 CFR Part 31 Vermont Radiological Health Rule	ML17172A627 6/19/2017  Revised Proposed ML17331A820 11/22/2017	Comments 01/09/2018 ML17172A626  Comments 01/09/2018 ML17331A819	
*10 CFR Part 32 Vermont Radiological Health Rule	ML17172A627 6/19/2017  Revised Proposed ML17331A820 11/22/2017	Comments 10/25/2017 ML17172A626  Comments 01/09/2018 ML17331A819	
*10 CFR Part 33 Vermont Radiological Health Rule	ML17172A627 6/19/2017  Revised Proposed ML17331A820 11/22/2017	No Comments 10/25/2017 ML17172A626  Comments 01/09/2018 ML17331A819	

Vermont Submittal Description	Incoming Letter	Outgoing Package	Notes
*10 CFR Part 34 Vermont Radiological Health Rule	ML17172A627 6/19/2017  Revised Proposed ML17331A820 11/22/2017	Comments 10/25/2017 ML17172A626  Comments 01/09/2018 ML17331A819	
*10 CFR Part 35 Vermont Radiological Health Rule	ML17172A627 6/19/2017  Revised Proposed ML17331A820 11/22/2017	Comments 10/25/2017 ML17172A626  Comments 01/09/2018 ML17331A819	
*10 CFR Part 36 Vermont Radiological Health Rule	ML17172A627 6/19/2017  Revised Proposed ML17331A820 11/22/2017	Comments 10/25/2017 ML17172A626  Comments 01/09/2018 ML17331A819	
*10 CFR Part 37 Vermont Radiological Health Rule	ML17172A627 6/19/2017  Revised Proposed ML17331A820 11/22/2017	No Comments 10/25/2017 ML17172A626  Comments 01/09/2018 ML17331A819	

Vermont Submittal Description	Incoming Letter	Outgoing Package	Notes
*10 CFR Part 39 Vermont Radiological Health Rule	ML17172A627 6/19/2017  Revised Proposed ML17331A820 11/22/2017	No Comments 10/25/2017 ML17172A626  Comments 01/09/2018 ML17331A819	
*10 CFR Part 40 Vermont Radiological Health Rule	ML17172A627 6/19/2017  Revised Proposed ML17331A820 11/22/2017	Comments 10/25/2017 ML17172A626  Comments 01/09/2018 ML17331A819	
10 CFR Part 61 <sup>1</sup>			Vermont did not submit regulations for this Part.
*10 CFR Part 70 Vermont Radiological Health Rule	ML17172A627 6/19/2017  Revised Proposed ML17331A820 11/22/2017	Comments 10/25/2017 ML17172A626  Comments 01/09/2018 ML17331A819	
*10 CFR Part 71 Vermont Radiological Health Rule	ML17172A627 6/19/2017  Revised Proposed ML17331A820 11/22/2017	Comments 10/25/2017 ML17172A626  Comments 01/09/2018 ML17331A819	

Vermont Submittal Description	Incoming Letter	Outgoing Package	Notes
*10 CFR Part 150 Vermont Radiological Health Rule	ML17172A627 6/19/2017  Revised Proposed ML17331A820 11/22/2017	Comment 10/25/2017 ML17172A626  Comments 01/09/2018 ML17331A819	

<sup>1</sup> IMPEP review team: please ensure that Vermont does not have licensees/plans for these facilities.