



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

February 27, 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 January 17, 2018. 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 February 20, 2018.

As a result of our review, we have six 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. We have determined that if these regulations are revised, incorporating our comment and without other significant change, they would meet the compatibility and health and safety categories established in the Office of Nuclear Material Safety and Safeguards (NMSS) Procedure SA-200, “Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements.”

The SRS Data Sheet summarizes our knowledge of the status of all 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) or John Miller at (610) 337-5809 (John.Miller@nrc.gov).

Sincerely,

PMichalak for CEinberg

Christian Einberg, Acting Deputy Director
Division of Materials Safety, Security, State
and Tribal 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	1.2.5	All Parts	NA	Various	<p>General comment</p> <p>Vermont incorporates and unincorporates regulations by reference in multiple sections in their regulations, many of which conflict with the other. Specifically, section 1.2.5 lays out the incorporations/unincorporations- but then they are repeated later in various individual sections, e.g., Section 1.2.5.14 incorporates 10 CFR part 71 by reference in addition to section 18.2.2. However, in 1.2.5.14 there are additional statements regarding 10 CFR 71.17(c)(3) that were omitted in Section 18.2.2.</p> <p>Also, Vermont has incorporated 10 CFR 150.3 Definitions in section 1.2.5, unincorporated 10 CFR 150.3 in sections 1.2.5.15 and 12.10.2, and then incorporates the definitions of 10 CFR Part 150 in section 1.3. This approach causes confusion and creates inconsistencies between regulations.</p> <p>Vermont needs to: delete the redundant sections to 1.2.5; delete section 1.2.5; or be sure that these sections are consistent in order to meet the various Compatibility Category designations assigned to the applicable 10 CFR Parts.</p>
2	1.2.5.1 7.2.1	10 CFR 19.3	NA	D/NRC	<p>Definition: Regulated entities</p> <p>Vermont incorporates the definition of <i>Regulated entities</i> by reference in sections 1.2.5.1, and 7.2.1. Vermont needs to exclude this definition from incorporation by reference. If Vermont wishes to have an equivalent regulation, Vermont should include a</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>new definition citing activities under Vermont authority in section 1.3.</p> <p>Vermont needs to make the changes indicated above in order to meet the Compatibility Category D/NRC designations assigned to 10 CFR 19.3 Definition: Regulated entities.</p>
3	12.10	10 CFR 30.41	Part 30	C	<p>Transfer of byproduct material</p> <p>In section 12.10.4, Vermont includes a reference to “12.12” regarding reciprocity of licenses; however Vermont has deleted Section 12.12.</p> <p>Vermont needs to correct the reference as indicated above in order to meet the Compatibility Category C designation assigned to 10 CFR 30.41.</p>
4	12.8.2 1.2.5.12	10 CFR 40.4	Part 40	[A], [B], B, H&S	<p>Definitions</p> <p>In sections 1.2.5.12 and 12.8.2, Vermont does not incorporate 10 CFR 40.4 by reference. However, several definitions in 10 CFR 40.4 are required for compatibility and should be included in Vermont’s adoption by reference as follows:</p> <ol style="list-style-type: none"> 1) Agreement State- [B] compatibility category 2) Alert- [A], 3) Byproduct Material- H&S, 4) Site Area Emergency- [A], 5) Source Material- [A], 6) Special Nuclear Material- [A], 7) Unrefined and Unprocessed Ore- B. <p>Vermont needs to include the definitions as indicated above in order to meet the noted Compatibility Category designations assigned to 10 CFR 40.4 Definitions.</p>

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5	1.2.5.14	10 CFR 71.17(c)(3)	NA	B	<p>General license: NRC approved package</p> <p>In section 1.2.5.14, Vermont omits the section number, i.e., “.17” as highlighted below: “In 10 C.F.R. 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> <p>Vermont needs to add the section number as indicated above in order to meet the Compatibility Category B designation assigned to 10 CFR 71.17(c)(3).</p>
6	1.2.5 12.10.2	10 CFR 150.20	NA	C	<p>Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274</p> <p>Vermont needs to include the following conditions regarding their adoption by reference of 10 CFR 150.20:</p> <ul style="list-style-type: none"> ○ Where the words “non-agreement states”, “areas of exclusive federal jurisdiction within agreement states”, or “offshore waters” are used in 10 Code of Federal Regulations 150.20(a)(1)(i), (ii), (iii), (b), (b)(3), and (b)(4) substitute the words “state of Vermont”. (*Vermont also needs to follow a similar definition change for Part 31) ○ Where the words “agreement states license” are used in 10

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>Code of Federal Regulations 150.20, also add the words “Nuclear Regulatory Commission license”.</p> <ul style="list-style-type: none"> ○ Where the words “license issued by an agreement state” are used in 10 Code of Federal Regulations 150.20 also add the words “license issued by the Nuclear Regulatory Commission”. ○ Where the words “license from an agreement state” are used in 10 Code of Federal Regulations 150.20 also add the words “license from the Nuclear Regulatory Commission”. <p>Vermont needs to make the changes indicated above in order to meet the Compatibility Category C designation assigned to 10 CFR 150.20.</p>

Editorial Comment

<p>State Section: 1.2.6.1</p>	<p>Vermont regulations in Section 1.2.6.1 state, “With the exception of 10 CFR 30.4 and in the definition of Special Nuclear Material in 10 CFR 20.1003 which is incorporated by reference, a reference to “NRC” or “Commission” means the Vermont Department of Health.</p> <p>Vermont needs to substitute the word “is” with “are”.</p>
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STATE REGULATION STATUS

State: Vermont

Tracking Ticket Number: 18-18
Date: 02/27/2018

Vermont Submittal Description	Incoming Letter	Outgoing Package	Notes
*10 CFR Part 19 Vermont Radiological Health Rule	ML17172A627 6/19/2017 Revised Proposed ML17331A820 11/22/2017 Revised Proposed ML18019A066 01/18/2018	Comments 10/25/2017 ML17172A626 Comments 01/09/2018 ML17331A819 No Comments 02/27/2018 ML18019A050	
*10 CFR Part 20 Vermont Radiological Health Rule	ML17172A627 6/19/2017 Revised Proposed ML17331A820 11/22/2017 Revised Proposed ML18019A066 01/18/2018	Comments 10/25/2017 ML17172A626 Comments 01/09/2018 ML17331A819 No Comments 02/27/2018 ML18019A050	

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 Revised Proposed ML18019A066 01/18/2018	Comments 10/25/2017 ML17172A626 Comments 01/09/2018 ML17331A819 No Comments 02/27/2018 ML18019A050	
*10 CFR Part 31 Vermont Radiological Health Rule	ML17172A627 6/19/2017 Revised Proposed ML17331A820 11/22/2017 Revised Proposed ML18019A066 01/18/2018	Comments 01/09/2018 ML17172A626 Comments 01/09/2018 ML17331A819 No Comments 02/27/2018 ML18019A050	

Vermont Submittal Description	Incoming Letter	Outgoing Package	Notes
*10 CFR Part 32 Vermont Radiological Health Rule	ML17172A627 6/19/2017 Revised Proposed ML17331A820 11/22/2017 Revised Proposed ML18019A066 01/18/2018	Comments 10/25/2017 ML17172A626 Comments 01/09/2018 ML17331A819 No Comments 02/27/2018 ML18019A050	
*10 CFR Part 33 Vermont Radiological Health Rule	ML17172A627 6/19/2017 Revised Proposed ML17331A820 11/22/2017 Revised Proposed ML18019A066 01/18/2018	No Comments 10/25/2017 ML17172A626 Comments 01/09/2018 ML17331A819 No Comments 02/27/2018 ML18019A050	

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 Revised Proposed ML18019A066 01/18/2018	Comments 10/25/2017 ML17172A626 Comments 01/09/2018 ML17331A819 No Comments 02/27/2018 ML18019A050	
*10 CFR Part 35 Vermont Radiological Health Rule	ML17172A627 6/19/2017 Revised Proposed ML17331A820 11/22/2017 Revised Proposed ML18019A066 01/18/2018	Comments 10/25/2017 ML17172A626 Comments 01/09/2018 ML17331A819 No Comments 02/27/2018 ML18019A050	

Vermont Submittal Description	Incoming Letter	Outgoing Package	Notes
*10 CFR Part 36 Vermont Radiological Health Rule	ML17172A627 6/19/2017 Revised Proposed ML17331A820 11/22/2017 Revised Proposed ML18019A066 01/18/2018	Comments 10/25/2017 ML17172A626 Comments 01/09/2018 ML17331A819 No Comments 02/27/2018 ML18019A050	
*10 CFR Part 37 Vermont Radiological Health Rule	ML17172A627 6/19/2017 Revised Proposed ML17331A820 11/22/2017 Revised Proposed ML18019A066 01/18/2018	No Comments 10/25/2017 ML17172A626 Comments 01/09/2018 ML17331A819 No Comments 02/27/2018 ML18019A050	

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 Revised Proposed ML18019A066 01/18/2018	No Comments 10/25/2017 ML17172A626 Comments 01/09/2018 ML17331A819 No Comments 02/27/2018 ML18019A050	
*10 CFR Part 40 Vermont Radiological Health Rule	ML17172A627 6/19/2017 Revised Proposed ML17331A820 11/22/2017 Revised Proposed ML18019A066 01/18/2018	Comments 10/25/2017 ML17172A626 Comments 01/09/2018 ML17331A819 Comment 02/27/2018 ML18019A050	
*10 CFR Part 61 ¹			Vermont did not submit regulations for this Part.

Vermont Submittal Description	Incoming Letter	Outgoing Package	Notes
*10 CFR Part 70 Vermont Radiological Health Rule	ML17172A627 6/19/2017 Revised Proposed ML17331A820 11/22/2017 Revised Proposed ML18019A066 01/18/2018	Comments 10/25/2017 ML17172A626 Comments 01/09/2018 ML17331A819 No Comments 02/27/2018 ML18019A050	
*10 CFR Part 71 Vermont Radiological Health Rule	ML17172A627 6/19/2017 Revised Proposed ML17331A820 11/22/2017 Revised Proposed ML18019A066 01/18/2018	Comments 10/25/2017 ML17172A626 Comments 01/09/2018 ML17331A819 No Comments 02/27/2018 ML18019A050	

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 Revised Proposed ML18019A066 01/18/2018	Comment 10/25/2017 ML17172A626 Comments 01/09/2018 ML17331A819 No Comments 02/27/2018 ML18019A050	

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