



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

October 4, 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 – Radioactive Materials Rule, received by our office on September 24, 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 October 4, 2018.

As a result of our review, we have five 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](mailto:Michelle.Beardsley@nrc.gov)).

Sincerely,

**/RA Paul Michalak for S Attack/**

Sabrina Atack, Acting Deputy Director  
Division of Materials Safety, Security, State  
and Tribal Programs  
Office of Nuclear Material Safety  
and Safeguards

Enclosures:

1. Compatibility and Editorial 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 12.10.1	150.3	NA	Various	<p><b>Definitions</b></p> <p>Vermont incorporates 10 CFR 150.3 in Section 1.2.5., but does not list 150.3 in Section 12.10.1. This presents conflicting regulations.</p> <p>Vermont needs to include 10 CFR 150.3 in Section 12.10.1. of their regulations to meet the various Compatibility Category designations assigned to 10 CFR 150.3, Definitions.</p>
2	1.3	30.4 40.4	NA	H&S	<p><b>Definitions: Byproduct material</b></p> <p>a) In Section 1.3, Vermont regulations contain the sentence, "In addition, the following words and terms, when used in this rule, have the following meanings, unless the context clearly indicates otherwise." This statement is confusing and may cause conflicts with other definitions. Vermont should either clarify this sentence or delete it from Section 1.3. to avoid possible conflicts and confusion.</p> <p>b) Section 1.3 reads as if the Part 40 definition of byproduct material is the only definition included in the Vermont regulations. Although, Vermont incorporates the definitions in Part 30 in the first sentence of Section 1.3, the second sentence states that if a term is specifically defined in a subpart to 1.3, the incorporated definition from the NRC regulations does not apply. Vermont needs to delete the</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>definition of byproduct material in Section 1.3.2. to avoid conflicting definitions.</p> <p>Vermont needs to make the changes indicated above to meet the Compatibility Category H&amp;S designation assigned to 10 CFR 30.4 and 40.4.</p>
3	12.8.2	40.4	NA	Various	<p><b>Definitions</b></p> <p>In Section 12.8.2, Vermont excludes 10 CFR 40.4 from incorporation by reference; however, several definitions in 10 CFR 40.4 are required for compatibility. Vermont needs to delete the reference to 10 CFR 40.4 from this Section, because they are adopting the required references directly.</p> <p>Vermont needs to make the changes indicated above to meet the various compatibility category designations assigned to 10 CFR 40.4, Definitions.</p>
4	1.1 1.2.1 1.2.3	NA	NA	Various	<p><b>General comments</b></p> <p>a) In Section 1.1 and 1.2.1 Vermont regulations contain the term “radioactive materials”, however this term is not defined in their regulations.</p> <p>Vermont should either define this term or replace it with the applicable term(s), i.e., byproduct/source materials”.</p> <p>b) In Section 1.2.3, Vermont regulations contain the statement, “Similarly, this rule only regulates <b>nonionizing</b> radiation under State authority.” The Agreement between the NRC and Vermont will relinquish the</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					authority to regulate “ionizing” radiation. Vermont needs to either clarify what is meant by this statement or delete it.
5	3.7	NA	NA	NA	<p><b>Penalties</b></p> <p>In Section 3.7 Vermont references the Atomic Energy Act (AEA) and Energy Reorganization Act (ERA). The State cannot reference these Acts.</p> <p>Vermont needs to delete the references to the AEA and ERA and reference their State’s Radiation Control Act instead.</p>

Editorial comments

State Section	NRC Section	Comment
1.2.6.5	NA	In Section 1.2.6.5, the term “NARM” should be defined in the first sentence.
1.3	NA	In Section 1.3, the term, “10 CFR Chapter 1” should be “10 CFR Chapter I.”

**STATE REGULATION STATUS**

State: Vermont

Tracking Ticket Number: 18-57  
Date: 10/04/2018

Vermont Submittal Description	Incoming Letter	Outgoing Package	Notes
<p>*10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 61.55<sup>1</sup>, 61.66<sup>1</sup>, 61.67<sup>1</sup>, 70, 71, and 150</p> <p>Vermont Radioactive Materials Rule</p>	<p>ML17172A627 6/19/2017</p> <p>Revised Proposed ML17331A820 11/22/2017</p> <p>Revised Proposed ML18019A066 01/18/2018</p> <p>Revised Proposed ML18268A249 09/24/2018</p>	<p>Comments 10/25/2017 ML17172A626</p> <p>Comments 01/09/2018 ML17331A819</p> <p>No Comments 02/27/2018 ML18019A050</p> <p>Comments DATE10/4/2018 ML18268A243</p>	<p>Vermont submitted regulations that incorporate NRC regulations by reference.</p>

<sup>1</sup> IMPEP review team: Vermont submitted Parts 61.55, 61.56 and 61.57 relating to classification, characterization, and labeling of radioactive waste only; please ensure that Vermont does not have licensees/plans for Part 61 facilities.