

July 5, 2001

Ms. Patricia Gorman, Deputy Director
Conference of Radiation Control
Program Directors, Inc.
205 Capital Avenue
Frankfort, KY 40601

Dear Ms. Gorman:

As requested, we have reviewed the proposed revised Suggested State Regulations (SSR), Part U - Licensing Requirements for Uranium and Thorium Processing and Related Radioactive Material as approved by the Conference of Radiation Control Programs Director's (CRCPD's) Board submitted January 12, 2001. The proposed revised Part U also includes the two amendments identified in the enclosed State Regulation Status. The regulations were reviewed by comparison to the equivalent NRC regulations in 10 CFR Parts 40 and Appendix A to Part 40. It is our understanding per discussions with Mr. Hirschler on May 23, 2001 that the proposed revised Part U has not yet been published as a final SSR.

At this time, NRC does not concur in the Board approved proposed revised Part U as submitted. As a result of our review, we have nine comments that have been identified in the enclosure. Please note that we have limited our review to regulations required for compatibility and/or health and safety. Under our current procedure, NRC would have offered these comments during the peer review process. For this SSR Part, NRC's comments were not requested during the peer review. However, we have determined that if these proposed revised SSR incorporated the NRC comments without any significant or additional changes, then the proposed revised Part U would meet the compatibility and health and safety categories established in Office of State and Tribal Programs (STP) Procedure [SA-200](#).

If CRCPD incorporates these changes, we would request that a copy be provided for reconsideration of NRC's Federal concurrence. As requested in STP Procedure [SA-201](#), Review of State Regulations (November 10, 1998), please highlight the final changes and send one copy in a computer readable format, if possible.

The State Regulation Status summarizes our knowledge of other SSRs. Please let us know if you note any inaccuracies or have any comments on the information contained in the status. This letter, including the status, is posted on the STP web site: <http://www.hsr.gov/nrc/rulemaking.htm>.

Patricia Gorman

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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 Dennis Sollenberger of my staff at 301-415-2819 or Email: DMS4@NRC.GOV.

Sincerely,

/RA Frederick C. Combs Acting for/
Paul H. Lohaus, Director
Office of State and Tribal Programs

Enclosures:
As stated

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DATE	05/23/01*	05/23/01*	06/06/01*	06/08/01*	05/25/01*	07/05/01

ML011860445

STP-C-7

COMMENTS ON PROPOSED PART U OF THE SUGGESTED STATE REGULATIONS

Part U	NRC Regulation	RATS ID	Category	Subject and Comment
U.2.b.	40.2a(b)	1994-2 1999-1	A	<p>Scope and Coverage of inactive tailings sites.</p> <p>On December 13, 2000, the NRC issued a Director's decision that clarified the NRC position on licensing mill tailings generated prior to November 8, 1978. To be consistent with that decision the last sentence of the SSR paragraph needs to be revised to read as follows: "The requirements of this Part apply to byproduct material as defined in this part that were under license on or generated after November 8, 1978." Such wording would meet the compatibility category.</p> <p>This wording would avoid the State's authorizing the disposal of material that would not meet the NRC definition and that may jeopardize the transfer of the site to DOE for long-term care. Other materials could be disposed of in a tailings impoundment if DOE agreed in advance that disposal of the material will not affect title transfer. (See NRC policy on disposal of non-11e(2) material in tailings impoundments.)</p>
U.3	40.4		A	<p>Definitions:</p> <p>The following definitions need to be modified as suggested to meet the compatibility category.</p> <p>"Long-term care" mean those activities to be conducted by the General Licensee under 10 CFR 40.28. (This definition is not in 10 CFR Part 40.)</p> <p>"Post-closure" means the period of time between completion of closure activities and license termination which may include stability monitoring, or other activities to determine effectiveness of the closure design. (This definition is not in 10 CFR Part 40.)</p> <p>The above two definitions were reworded to clarify the periods of time and the activities that would be conducted.</p> <p>"Source material milling (uranium milling)" means ...</p> <p>The parenthetical was added to this definition to ensure that it is clear that source material milling and uranium milling mean the same thing.</p>

Part U	NRC Regulation	RATS ID	Category	Subject and Comment
U.9	40.36		C	<p>Financial Assurance Arrangements:</p> <p>Delete the references to Parts C and S.</p> <p>Since the financial assurance requirements are included in Appendix A to Part U, the references to Parts C and S appear to be confusing and may conflict with the milling financial assurance requirements (there are some significant differences). Part U is complete in the area of financial assurance and does not need the additional references to meet the compatibility category.</p>
App. A, Crit. 10	App. A, Crit. 10		C	<p>Criteria Relating to The Operation of Mills and The Disposition of Radioactive Tailings or Wastes:</p> <p>We recommend the first sentence be reworded to read as follows: "... by each mill operator to the general treasury of the United States or to an appropriate State agency prior to ..." The change is needed for compatibility. With this revision, there would be payment to the US treasury if DOE becomes the long-term custodian of the mill tailings disposal site. The State would get the money if they are the long-term custodian.</p>
App. A, Crit. 11C	App. A, Crit. 11C		NRC	<p>In the third, fourth and fifth sentences, the reference to "or Agency" or "Agency and" must be removed to meet the compatibility category.</p> <p>The NRC is the only licensing agency for long-term care of mill tailings disposal sites.</p>
App. A, Crit. 11D	App. A, Crit. 11D		NRC	<p>The phrase "or Agency if title is held by the State" must be deleted from the criterion to meet the compatibility category.</p> <p>NRC has reserved the licensing of the long-term custodian for mill tailings disposal sites to the NRC whether it is the State or DOE.</p>
App. A, Crit. 13	App. A, Crit. 13		A	<p>The use of the term "radioactive material" in place of "byproduct material" is not appropriate in Part U since Part U deals with 11e.(2) byproduct material which is specifically defined and includes non-radiological hazardous constituents. The term radioactive material generally refers to the radioactive material only, not the total mass of the material as 11e.(2) byproduct material is defined. As worded, the meaning of the sentence is significantly different from that intended in Appendix A to Part 40. The wording must be modified as suggested to meet the compatibility category.</p>

Part U	NRC Regulation	RATS ID	Category	Subject and Comment
App. A, Haz. Const.	App. A, Crit. 13, Hazardous Constituent		A	Our review identified a significant number of the chemical formulas that are different from those NRC published in the Federal Register. The staff will provide a copy of the discrepancies it noted. The full list should be reviewed in detail to ensure the list is accurate since they are part of the definition of hazardous constituent. The corrections need to be made to meet the compatibility category.
App. B	None		D	<p>Standby Trust Agreement:</p> <p>A comparison was made between the Appendix B and the Appendix E to the 1988 Technical Position for Financial Assurance at Uranium Mills. There are a number of differences.</p> <p>The first line does not include the Trustee as a party to the trust agreement.</p> <p>The first WHEREAS paragraph should include reference to Criterion 10 in addition to Criterion 9.</p> <p>The next two WHEREAS paragraphs were not include from the Technical position. These are critical for a standby trust since they specify the primary financial funding mechanism and that it should be paid to the standby trust.</p> <p>The next WHEREAS paragraph should clarify that this is a “standby“ trust. Section 3, first line, same comment, “standby” trust.</p> <p>Section 15. The Trustee would be making disbursements to contractors that are remediating the mill site. This should be worded such that the Trustee could disburse funds as directed by the Grantor or the Agency to accomplish the closure plan.</p> <p>Section 16 and 17. The phrase, “or the Trustee and the Agency, if the Grantor ceases to exist.” Should be added following agency in each section. This will allow the Trustee and the agency to act when the Grantor (licensee) goes out of existence.</p> <p>These corrections are necessary to avoid duplication, gaps, and confusion to meet the compatibility category.</p>

Part U	NRC Regulation	RATS ID	Category	Subject and Comment
Rationale Sec. U.2c	None		None	<p>Rationale:</p> <p>This discussion needs to be revised to acknowledge that inclusion of pre-1978 material in a tailings pile may jeopardize the transfer to DOE for long-term care. (see comment above on Section U.2c.) Prior approval from DOE is needed for the site to be acceptable for transfer to DOE. The Director's Decision issued December 13, 2000 clarifies that material not under license or generated after November 8, 1978 is not considered 11e(2) material by the NRC and is not automatically transferable to DOE for long-term care. (See first comment.)</p> <p>Page 5, first partial paragraph. The discussion should acknowledge that the requirements in Criterion 11C through 11F are reserved to the NRC for implementation and are included in Part U for completeness, but that the States do not play a regulatory role in implementing these Criteria.</p> <p>We recommend these modifications to correct the logic presented in the Rationale.</p>

STATE REGULATION STATUS

**State: Conference of Radiation Control Program Directors, Inc.
Two proposed amendments (1/12/01) reviewed are identified
by a i at the beginning of each equivalent NRC regulation.]**

**Tracking Ticket Number: 1-16
Date: July 5, 2001**

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁵	NRC Review / Y, N ² / Date / ML # ⁵	Final State Regulation ¹ (Effective Date)
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			
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1			
ASNT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2			Not required ³
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4			
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1			
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions-Parts 30,35	57 FR 45566; (none)	1992-2			Not required ³
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2	P	Y 1/9/98	Not applicable SECY-95-112 ⁴
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
Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]-Parts 30, 40	58 FR 39628; (10/25/96)	1993-1	F ML003746440	N 11/13/00 ML003770059	8/2000
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618 (none)	1994-1			Not required ³
i Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2	F ML010220508	Y 7/5/01 ML011860445	
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	F ML003746440	N 11/13/00 ML003770059	8/2000
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			
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2			
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3			

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Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4			
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5			
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F ML003746440	N 11/13/00 ML003770059	8/2000
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7			
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28723 (4/1/99)	1996-1	F	N 12/22/00	2/1999
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: Recordkeeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3			
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	P ML011000039	N 5/15/01 ML011360732	
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4			Not required ³
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			
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	P ML011000039	N 5/15/01 ML011360732	
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations-Parts 30, 34, 71, 150	62 FR 28948; (6/27/00)	1997-5	F	N 12/4/98	2/1999
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39058; (8/20/00)	1997-6			
Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7			
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1			
Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees- Parts 30, 40, 70	63 FR 29535; (none)	1998-2			Not required ³
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			

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁵	NRC Review / Y, N ² / Date / ML # ⁵	Final State Regulation ¹ (Effective Date)
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393 (10/26/01)	1998-5	P ML011000039	N 5/15/01 ML011360732	
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	P ML011000039	Y 5/15/01 ML011360732	
i Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1	F ML010220508	Y 7/5/01 ML011860445	
Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information-Part 31	64 FR 42269; (none)	1999-2			Not required ³
Respiratory Protection and Controls to Restrict Internal Exposure-Part 20	64 FR 54543; 64 FR 55525 (2/2/03)	1999-3	P ML011000039	N 5/15/01 ML011360732	
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1			
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63749; (1/8/04)	2000-2			

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