April 28, 2003

Mr. Terry L. O’Clair, Director
Division or Air Quality
North Dakota Department of Health
1200 Missouri Avenue, Room 304
P. O. Box 5520
Bismarck, ND 58506-5520

Dear Mr. O’Clair:

We have reviewed the final revisions to the North Dakota Administrative Code Article 33-10, “North Dakota Radiological Health Rules”, received by our office on April 4, 2003. In addition, we reviewed your responses to our letters, dated August 8, 2002 and December 23, 2002, which contained our comments on your proposed version of these rules. These regulations were reviewed by comparison to the equivalent NRC regulations in 10 CFR Part 19, 20, 34, 71 and the requirements of the 35 amendments identified in the enclosed State Regulation Status Data Sheet (SRS). We discussed our review of the regulations with Kenneth Wangler, on April 24, 2003.

As a result of our review, we have no comments and one editorial suggestion. Please note that we have limited our review to regulations required for compatibility and/or health and safety. As a result of the NRC review, we have determined that the regulations, as adopted, meet the compatibility and health and safety categories established in the Office of State and Tribal Programs (STP) Procedure SA-200.

The SRS Data Sheet summarizes our knowledge of the status of other North Dakota 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 STP website: http://www.hsr.iterl.gov/nrc/rulemaking.htm.

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 John Zabko of my staff at (301)415-2308 or JGZ@NRC.GOV.

Sincerely,

/IRA by Scott Flanders for/

Josephine M. Piccone, Deputy Director
Office of State and Tribal Programs

Enclosures:
As stated
April 28, 2003

Mr. Terry L. O’Clair, Director
Division or Air Quality
North Dakota Department of Health
1200 Missouri Avenue, Room 304
P. O. Box 5520
Bismarck, ND 58506-5520

Dear Mr. O’Clair:

We have reviewed the final revisions to the North Dakota Administrative Code Article 33-10, “North Dakota Radiological Health Rules”, received by our office on April 4, 2003. In addition, we reviewed your responses to our letters, dated August 8, 2002 and December 23, 2002, which contained our comments on your proposed version of these rules. These regulations were reviewed by comparison to the equivalent NRC regulations in 10 CFR Part 19, 20, 34, 71 and the requirements of the 35 amendments identified in the enclosed State Regulation Status Data Sheet (SRS). We discussed our review of the regulations with Kenneth Wangler, on April 24, 2003.

As a result of our review, we have no comments and one editorial suggestion. Please note that we have limited our review to regulations required for compatibility and/or health and safety. As a result of the NRC review, we have determined that the regulations, as adopted, meet the compatibility and health and safety categories established in the Office of State and Tribal Programs (STP) Procedure SA-200.

The SRS Data Sheet summarizes our knowledge of the status of other North Dakota 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 STP website: http://www.hsr.org/nrc/rulemaking.htm.

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 John Zabko of my staff at (301)415-2308 or JGZ@NRC.GOV.

Sincerely,

/RA by Scott Flanders for/

Josephine M. Piccone, Deputy Director
Office of State and Tribal Programs

Enclosures:
As stated
Distribution:
DIR RF [3-99] DCD (SP08) PDR (YES ✓)
BUsilton TBrock JMyers, ASPO

Response to Incoming Document: ML031010635
*See Previous Concurrence
Editorial Suggestions the State Did Not Address

1. In 33-10-05-06.4, the State has omitted the Part § (location) of the “Applicable Rules” of North Dakota.
# STATE REGULATION STATUS

**State:** North Dakota  
35 amendments reviewed are identified by a ★ at the beginning of the equivalent NRC regulation.

**Tracking Ticket Number:** 3-99  
**Date:** April 28, 2003  
**ML031220151**

<table>
<thead>
<tr>
<th>NRC Chronology Identification</th>
<th>FR Notice (Date Due for State Implementation)</th>
<th>RATS ID</th>
<th>Proposed (P) / Final (F)¹ Rule / ML #²</th>
<th>NRC Review / Y, N³ / Date / ML #⁴</th>
<th>Final State Regulation¹ (Effective Date)</th>
</tr>
</thead>
<tbody>
<tr>
<td>★Safety Requirements for Radiographic Equipment-Part 34</td>
<td>55 FR 843; (1/10/94)</td>
<td>1991-1</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>★ASNT Certification of Radiographers-Part 34</td>
<td>56 FR 11504; (none)</td>
<td>1991-2</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>Standards for Protection Against Radiation-Part 20</td>
<td>56 FR 23360; 56 FR 61352; 57 FR 38588; 57 FR 57877; 58 FR 67657; 59 FR 41641; 60 FR 20183; (1/1/94)</td>
<td>1991-3</td>
<td>F</td>
<td>N 10/17/97</td>
<td>5/1/98</td>
</tr>
<tr>
<td>★Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70</td>
<td>56 FR 64980; (10/15/94)</td>
<td>1991-4</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions-Parts 30, 35</td>
<td>57 FR 45566; (none)</td>
<td>1992-2</td>
<td></td>
<td>Not required³</td>
<td></td>
</tr>
<tr>
<td>★Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]-Parts 30, 40</td>
<td>58 FR 39628; (10/25/96)</td>
<td>1993-1</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>Licensing and Radiation Safety Requirements for Irradiations-Part 36</td>
<td>58 FR 7715; (7/1/96)</td>
<td>1993-2</td>
<td>F</td>
<td>N 2/20/96</td>
<td>Not Applicable SECY-95-112⁴ 7/1/1995</td>
</tr>
<tr>
<td>Definition of Land Disposal and Waste Site QA Program-Part 61</td>
<td>58 FR 33886; (7/22/96)</td>
<td>1993-3</td>
<td></td>
<td>Not Applicable SECY-95-112⁵</td>
<td></td>
</tr>
<tr>
<td>NRC Chronology Identification</td>
<td>FR Notice (Date Due for State Implementation)</td>
<td>RATS ID</td>
<td>Proposed (P) / Final (F)(^1) Rule / ML (^5)</td>
<td>NRC Review / Y, N(^2) / Date / ML (^5)</td>
<td>Final State Regulation(^1) (Effective Date)</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70</td>
<td>58 FR 68726; 59 FR 1618; (none)</td>
<td>1994-1</td>
<td>F</td>
<td>N 2/6/96</td>
<td>Not required(^3) 7/1/1995</td>
</tr>
<tr>
<td>Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70</td>
<td>59 FR 36026; (8/15/97)</td>
<td>1994-3</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use-Parts 30, 32, 35</td>
<td>59 FR 61767; 59 FR 65243; 60 FR 322; (1/1/98)</td>
<td>1995-1</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20</td>
<td>60 FR 7900; (3/13/98)</td>
<td>1995-2</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61</td>
<td>60 FR 15649; 60 FR 25983; (3/1/98)</td>
<td>1995-3</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>Performance Requirements for Radiography Equipment-Part 34</td>
<td>60 FR 28323; (6/30/98)</td>
<td>1995-4</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20</td>
<td>60 FR 36038; (8/14/98)</td>
<td>1995-5</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70</td>
<td>60 FR 38235; (11/24/98)</td>
<td>1995-6</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>Medical Administration of Radiation and Radioactive Materials-Parts 20, 35</td>
<td>60 FR 48623; (10/20/98)</td>
<td>1995-7</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71</td>
<td>60 FR 50248; 61 FR 28724; (4/1/99)</td>
<td>1996-1</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>NRC Chronology Identification</td>
<td>FR Notice (Date Due for State Implementation)</td>
<td>RATS ID</td>
<td>Proposed (P) / Final (F) Rule / ML #</td>
<td>NRC Review / Y, N / Date / ML #</td>
<td>Final State Regulation¹ (Effective Date)</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>---------</td>
<td>-------------------------------------</td>
<td>---------------------------------</td>
<td>---------------------------------------</td>
</tr>
<tr>
<td>One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses-Parts 30, 40, 70</td>
<td>61 FR 1109; (none)</td>
<td>1996-2</td>
<td></td>
<td></td>
<td>Not required³</td>
</tr>
<tr>
<td>★Termination or Transfer of Licensed Activities: Record keeping Requirements-Parts 20, 30, 40, 61, 70</td>
<td>61 FR 24669; (6/17/99)</td>
<td>1996-3</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>★Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20</td>
<td>61 FR 65120; (1/9/00)</td>
<td>1997-1</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>Fissile Material Shipments and Exemptions-Part 71</td>
<td>62 FR 5907; (none)</td>
<td>1997-4</td>
<td></td>
<td></td>
<td>Not required³</td>
</tr>
<tr>
<td>★Radiological Criteria for License Termination-Parts 20, 30, 40, 70</td>
<td>62 FR 39057; (8/20/00)</td>
<td>1997-6</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>★Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea-Part 30</td>
<td>62 FR 63634; (01)</td>
<td>1997-7</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>★Deliberate Misconduct by Unlicenced Persons-Parts 30, 40, 61, 70, 71, 150</td>
<td>63 FR 1890; 63 FR 13773; (2/12/01)</td>
<td>1998-1</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
</tbody>
</table>

¹ Effective Date
² Final Date
³ Not Required
<table>
<thead>
<tr>
<th>NRC Chronology Identification</th>
<th>FR Notice (Date Due for State Implementation)</th>
<th>RATS ID</th>
<th>Proposed (P) / Final (F)¹ Rule / ML #² / Date / ML #⁵</th>
<th>NRC Review / Y, N² / Date / ML #⁵</th>
<th>Final State Regulation¹ (Effective Date)</th>
</tr>
</thead>
<tbody>
<tr>
<td>★Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees-Parts 30, 40, 70</td>
<td>63 FR 29535; (none)</td>
<td>1998-2</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>Not required³ 3/1/2003</td>
</tr>
<tr>
<td>License Term for Medical Use Licenses-Part 35</td>
<td>63 FR 31604; (none)</td>
<td>1998-3</td>
<td></td>
<td></td>
<td>Not required²</td>
</tr>
<tr>
<td>★Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34</td>
<td>63 FR 37059; (7/9/01)</td>
<td>1998-4</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>★Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36</td>
<td>63 FR 39477; 63 FR 45393; (10/26/01)</td>
<td>1998-5</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>★Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20</td>
<td>63 FR 50127; (11/20/01)</td>
<td>1998-6</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>★Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information-Part 31</td>
<td>64 FR 42269; (none)</td>
<td>1999-2</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>Not required³ 3/1/2003</td>
</tr>
<tr>
<td>★Respiratory Protection and Controls to Restrict Internal Exposure-Part 20</td>
<td>64 FR 54543; 64 FR 55524; (2/2/03)</td>
<td>1999-3</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>★Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39</td>
<td>65 FR 20337; (5/17/03)</td>
<td>2000-1</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>★New Dosimetry Technology-Parts 34, 36, 39</td>
<td>65 FR 63750; (1/8/04)</td>
<td>2000-2</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>★Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material-Parts 30, 31, 32</td>
<td>65 FR 79162; (2/16/04)</td>
<td>2001-1</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
<tr>
<td>★Revision of the Skin Dose Limit-Part 20</td>
<td>67 FR 16298; (4/5/05)</td>
<td>2002-1</td>
<td>F ML031220151</td>
<td>N 04/28/03 ML031010635</td>
<td>3/1/2003</td>
</tr>
</tbody>
</table>
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.


5. ADAMS ML Number