

January 5, 2005

Steve Tarlton, P.E., Unit Leader
Radioactive Materials Management Unit
Colorado Department of Public Health and Environment
8100 Lowry Boulevard
Denver, CO 80230-6928

Dear Mr. Tarlton:

We have reviewed the final revisions to the Colorado regulations contained in Parts 1, 3, 4, 5, 16, and 19 submitted to this office in response to our draft comments on the proposed version of these rules. These rules were received electronically by this office on November 23, 2004. In addition, we reviewed your responses to our letter, dated November 10, 2004, which contained our comments on your proposed version of these rules. These regulations were reviewed by comparison to the equivalent NRC rules in 10 CFR Parts 19, 20, 30, 32, 34, 35, 39, 61, 71, 150, and the requirements of the 14 amendments identified in the enclosed States Regulation Status Data Sheet (SRS).

As a result of our review, we have two comments that carry over from our letter dated November 10, 2004, and that have been enclosed in the attached chart for your convenience. It is understood from a discussion with Mr. Ken Weaver on October 27, 2004, that these two items will be addressed in a future rulemaking. Following this future rulemaking, please provide a final amended "as published" version of parts 1, 3, 4, 5, 16, and 19 showing the location of any changes made in response to these two comments. If there are any comments which the State believes are in error, Colorado should identify the section of their regulations that meet the designated compatibility category. Please note that we have limited our review to regulations required for compatibility and/or health and safety, but have determined that if these regulations are adopted, incorporating our comments and without significant change, they would meet the compatibility and health and safety categories established in the Office of State and Tribal Programs (STP) Procedure [SA-200](#).

The SRS summarizes our knowledge of the status of other Colorado regulations, as indicated. Please let us know if you note any inaccuracies, or have any comments on the information contained in the SRS. This letter, including the SRS, is posted on the STP website: <http://www.hrsd.ornl.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 William Rautzen of my staff at (301)415-7206 or WRR@NRC.GOV.

Sincerely,

IRA By K.N. Schneider For

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

Enclosures:
As stated

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Distribution:

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OFFICE	STP		OGC		STP:DD	
NAME	WRautzen		STreby		KNSchneider for JMPiccone	
DATE	12 /14 /04*		1/04/05*		1/05/05*	

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COMPATIBILITY COMMENTS ON COLORADO FINAL REGULATIONS

Unresolved Comments from NRC Letter Dated November 10, 2004

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1 RH 10.3.1.3	19.12(a)(3)	1995-5	C	<p>Instruction to Workers</p> <p>10 CFR 19.12(a) (3) states “Instruction in, and required to...”. The State substitutes the word “instructed” for “required.” Due to this substitution, the State’s text does not mean the same thing as 19.12 (a) (3).</p> <p>The State needs to adopt the word, “required,” in lieu of “instructed” to meet the essential objective of Category C.</p>
2 RH 10.3.1.2, 4, and 6	19.12(a)	1995-5	C	<p>Instruction to Workers</p> <p>The State uses “or” instead of “and/or” in the NRC regulation. By having “and/or” the application is broader than only “or.”</p> <p>The State needs to replace “and/or” in the three paragraphs to meet the essential objectives of Category C.</p>

STATE REGULATION STATUS

State: Colorado

**[14 amendments reviewed is identified by a ★
at the beginning of the equivalent NRC regulation.]**

Tracking Ticket Number: 4-339

Date: January 5, 2005

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁴	NRC Review / Y, N ² / Date / ML # ⁴	Final State Regulation ¹ (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1	F	Y 5/29/97	6/30/94
ANT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2			Not required ³
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	F	N 8/18/97	1/1/94
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	F	Y 5/29/97	11/1/94
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
Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]-Parts 30, 40	58 FR 39628; (10/25/96)	1993-1	F	N 6/14/00	7/1/97
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2	F	N 5/29/97	7/1/97
★ Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3	F ML043290167	N 1/05/05 ML050050164	1/30/05
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618 (none)	1994-1	F	N 6/14/00	7/1/97
★ Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2	F ML043290167	N 1/05/05 ML050050164	1/30/05
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	F	N 6/14/00	7/1/97

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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	F	N 6/14/00	9/30/98
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	F	N 6/14/01	1/1/98
* Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3	F ML043290167	N 1/05/05 ML050050164	1/30/05
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	F	N 6/14/00	3/30/98
* Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	F ML043290167	Y 1/05/05 ML050050164	1/30/05
* Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F ML043290167	N 1/05/05 ML050050164	1/30/05
* Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	F ML043290167	N 1/05/05 ML050050164	1/30/05
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28724 (4/1/99)	1996-1	F	N 3/22/01	7/31/98
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: Record keeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3	F ML043290167	N 1/05/05 ML050050164	1/30/05
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	F	N 8/8/00	12/30/99
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	F	N 6/14/00	11/30/98

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F)¹ Rule / ML #⁴	NRC Review / Y, N² / Date / ML #⁴	Final State Regulation¹ (Effective Date)
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	F	N 6/14/00	3/30/98
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4	P	N 4/27/98	Not required ³
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations-Parts 30, 34, 71, 150	62 FR 28947; (6/27/00)	1997-5	F	N 8/8/00	5/30/00
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6	F	N 7/13/99	5/19/99
Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7	F	N 6/14/00	9/30/98
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1	F ML010380248	N 9/17/01 ML012630207	2/01/00
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	F	N 8/8/00	5/30/00
* Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393 (10/26/01)	1998-5	F ML043290167	N 1/05/05 ML050050164	1/30/05
* Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	F ML042440167	N 1/05/05 ML050050164	1/30/05
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1	F ML020320440	N 3/28/02 ML020880468	11/20/01

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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 55524 (2/2/03)	1999-3	F ML043290167	N 1/05/05 ML050050164	1/30/05
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 63750; (1/8/04)	2000-2	F ML043290167	N 1/05/05 ML050050164	1/30/05
* Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	F ML043290167	N 1/05/05 ML050050164	1/30/05
* Revision of the Skin Dose Limit -Part 20	67 FR 16298; 4/5/05	2002-1	F ML043290167	N 1/05/05 ML050050164	1/30/05
Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; 10/24/05	2002-2			
* Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1	F ML043290167	N 1/05/05 ML050050164	1/30/05
Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments – Part 71.	69 FR 3697; (10/01/07)	2004-1			

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. ADAMS ML Number.