

August 31, 2006

Steve Tarlton, P.E., Unit Leader
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

Dear Mr. Tarlton:

On January 5, 2005, we sent you the results of our review of the final changes to the Colorado regulations which were submitted to the NRC by letter dated November 18, 2004. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 30, 31, and 32, and the requirements of the General License (GL) amendment identified in the enclosed State Regulation Status (SRS) Data Sheet. The review we conducted omitted a specific review of Sections 10 CFR Parts 31.5 and 31.6. The text of these sections was not revised by the GL amendment, but the compatibility designations were changed from Compatibility Categories C and D respectively, to Category B.

As noted in the September 28, 2005 All Agreement States letter [STP-05-072](#), NRC staff will continue to review Agreement State GL Device proposed and final rules but will hold in abeyance any determination on those rules and compatibility of those rules, if the Agreement State has the essential elements of the NRC's rule and is more restrictive than the NRC's rule. For Agreement States without a GL Device rule or a GL Device rule less restrictive than the NRC rules, the staff will factor this determination into results of the NRC's review of the State's proposed and final rules and the compatibility findings during Integrated Materials Performance Evaluation Program (IMPEP) reviews.

We discussed our re-review of the GL Amendment with you on August 21, 2006. Although we had no comments for the 2001-1 amendment stated in the January 5, 2005 letter, as a result of our re-review against the Compatibility Category B designation, we have three comments that have been identified in the enclosure. We determined that Colorado's GL amendment is less restrictive than the NRC's rule. We request that when a final amended version of Colorado regulations are adopted and published in response to our comment, that a copy of the "as published" regulations be provided to us for review as requested in STP Procedure [SA-201](#), Review of State Regulatory Requirements.

Please note that we have limited our review to regulations required for compatibility and/or health and safety. The SRS Data Sheet 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 Data Sheet. This letter, including the SRS Data Sheet, is posted on the STP website: <http://www.hsrdr.gov/nrc/rulemaking.htm>.

Mr. Steve Tarlton

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August 31, 2006

If you have any questions regarding the comment, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact me, or Ms. Jennifer Tobin at (301) 415-2328 or by e-mail at JCT1@nrc.gov.

Sincerely,

Dennis K. Rathbun, Deputy Director
Office of State and Tribal Programs

Enclosures:
As stated

If you have any questions regarding the comment, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact me, or Ms. Jennifer Tobin at (301) 415-2328 or by e-mail at JCT1@nrc.gov.

Sincerely,

\RA By KNSchneider For

Dennis K. Rathbun, Deputy Director
Office of State and Tribal Programs

Enclosures:
As stated

Distribution:

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Linda McLean, RSAO , AMcCraw ASPO SLai BUilton Colorado File

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COMPATIBILITY COMMENTS ON COLORADO FINAL REGULATIONS

NRC SECTION	STATE SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
31.5(b)	6 CCR 1007-1-3.6.4.2	2000-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Colorado’s proposed regulations have the word “or” at the end of 6 CRR 1007-1-3.6.4.2(1), which implies that one of the requirements applied to byproduct material contained in devices in 10CFR 31.5(b)(1) and 10 CFR 31.5(b)(2) can be exclusive.</p> <p>Colorado needs to remove the word “or” at the end of 6 CRR 1007-1-3.6.4.2(1) to meet the Compatibility Category B assigned to 10 CFR 31.5(b).</p>
31.5(c)(3)	6 CCR 1007-1-3.6.4.3(3)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Colorado has omitted the phase “the tests required by paragraph (c)(2) of this section and” at the beginning of this paragraph, after “Shall assure that.”</p> <p>Colorado needs to add the phase and the equivalent reference of (c)(2) to 6 CCR 1007-1-3.6.4.3(3) to meet the Compatibility Category B assigned to 10 CFR 31.5(c)(3).</p>

NRC SECTION	STATE SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
31.5 (c)(4)	6 CCR 1007-1-3.6.4.3(4)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Colorado's proposed regulations require records of tests for leakage of radioactive material and tests for on-off mechanism to be maintained for 1 year; records for other testing, installation, servicing, and removal from installation involving the radioactive material, shielding or containment to be maintained for 2 years before transferring or disposing the device. The NRC's regulations require records to be retained for 3 years for all the above conditions.</p> <p>Colorado needs to revise the record retention period for 6 CCR 1007-1-3.6.4.3(4) to meet the Compatibility Category B assigned to 10 CFR 31.5(c)(4).</p>

STATE REGULATION STATUS

State: Colorado[1 Amendment reviewed are identified
by a ★ at the beginning of each equivalent NRC regulation.]

Tracking Ticket Number: 6-16

Date: August 31, 2006

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) ¹ Rule / License Condition (LC) ML # ⁵	NRC Review / Y, N ² / Date / ML # ⁵	Final State Regulation ¹ (Effective Date) ⁶
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			superseded by 2002-2
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

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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
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 6/14/00	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

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Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F ML043290167	Y 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
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			Not required ³

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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

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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
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	F ML051580379	N 7/11/05 ML051930014	1/30/05
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 ⁸ ML043290167	Y 8/31/06 ML062400296	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	F ML 051580379	N 7/11/05 ML051930014	10/25/05
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

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Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments – Part 71.	69 FR 3697; (10/01/07)	2004-1			
Security Requirements for Portable Gauges Containing Byproduct Material - Part 30	70 FR 2001; (7/11/08)	2005-1	F ML052010436	N 8/05/05 ML052220212	6/30/05
Medical Use of Byproduct Material - Recognition of Specialty Boards - Part 35	70 FR 16336; 71 FR 1926 (4/29/08)	2005-2	F ML 051580379	N 7/11/05 ML051930014	10/25/05
Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090)⁷	70 FR 72128; (12/1/05)	2005-3	LC ML052580384	N 09/19/05 ML052630557	
Minor Amendments - Part 20, 30, 32, 35, 40, and 70	71 FR 15005 (3/27/09)	2006-1			

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. 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.
6. The Final State Regulation (Effective Date) may reflect that by Colorado statute a regulation is effective, unless otherwise adopted by the Colorado Board of Health, 20 days after publication, which occurs on the 10th of the month following adoption, or the first business day thereafter.
7. By letter dated September 2, 2005, from Paul H. Lohaus, Director, Office of State and Tribal Programs, Agreement States were given 90 days to issue legally binding requirements satisfying the requirements of NRC Order EA-05-090.
8. A re-review was completed on this item due to change in compatibility of 31.5 and 31.6. More information can be found in the All Agreement States letter STP 05-072.