

August 28, 2001

Mr. David A. Butcher, Director
Laboratory and Radiation Services Division
Colorado Department of Public Health and Environment
8100 Lowry Blvd.
Denver, CO 80230-6928

Dear Mr. Butcher:

As requested, we have reviewed the proposed revisions to Part 18 - Licensing Requirements for Uranium and Thorium Recovery and Related Radioactive Materials, dated February 21, 2001. The proposed revisions received March 7, 2001 are in response to one amendment identified in the enclosed State Regulation Status (SRS) Data Sheet. The regulations were reviewed by comparison to the equivalent NRC regulations in 10 CFR Part 40. We also discussed our review of the regulations with Kenneth Weaver on April 5, 2001.

As a result of the NRC review, we have identified eight comments and two editorial changes, as enclosed. These comments must be addressed to meet the compatibility and health and safety categories established in the Office of State and Tribal Programs (STP) Procedure SA-200.

We request that when the proposed regulations are adopted and published as final regulations, a copy of the "as published" regulations be provided to us for review. As requested in STP Procedure SA-201, *Review of State Regulations* (November 10, 1998), please highlight the final changes and provide one copy to STP.

The SRS Data Sheet summarizes our knowledge of other Colorado regulations. 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 Web Site: <http://www.hsr.d.gov/nrc/rulemaking.htm>.

If you have any questions regarding the comments, the compatibility and health categories, or any of the NRC regulations used in the review, please contact me or Vivian Campbell of the Region IV staff at 817-860-8143 or VHC@NRC.GOV.

Sincerely,

/RA/

Frederick C. Combs, Deputy Director
Office of State and Tribal Programs

Enclosures:
As stated

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CMaupin, ASPO DCD (SP08) PDR (YES)
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ML012400290

STP-AG-5

**COMMENTS ON PROPOSED COLORADO REGULATIONS
AGAINST COMPATIBILITY AND HEALTH AND SAFETY CATEGORIES**

State Regulation ¹ or SSR	NRC Regulation or SSR ²	RATS ID	Category	Subject and Comments
Part 18 Basis Statement Page 2 of 3	40.2a	1999-1	A	<p>Coverage of inactive tailing 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. The NRC does not have authority to license pre-UMTRA wastes. The disposal of pre-UMTRCA material at an 11e.(2) disposal site should only be done in accordance with NRC Regulatory Issue Summary 2000-23, "Recent Changes to Uranium Recovery Policy." This addresses the use of 11e.(2) disposal sites for disposal of non-11e.(2) material so that this action does not compromise the reclamation of the tailings impoundment or DOE's ability to take title to the impoundment as long-term custodian.</p> <p>To be consistent with that decision, this paragraph needs to be modified to reflect "the requirements of this Part apply only to byproduct material as defined in this section that were under license on or generated after November 8, 1978."</p>
Part 18 (title)	40	1991-1	A	"Byproduct material" needs to be used instead of radioactive material.

¹ For other generic legally binding requirements, change State Regulations to LBR.

² Use NRC regulation when the review is conducted against the equivalent NRC regulation. Use SSR when the review is conducted against the SSR equivalent which NRC has concurred.

18.1	40.1	1999-1	D (purpose) C (in other areas)	<p>In the purpose section and in other places in the regulation, the State has omitted or modified the statement in Part 40.1 and in other locations in Part 40 that, “The regulations in this part establish procedures and criteria for the issuance of licenses to receive title to, receive, possess, use, transfer, or deliver source and byproduct materials.”</p> <p>It is suggested to use this standard Part 40.1 statement in the purpose (18.1) and elsewhere in Part 18 where currently a modified statement was used. This will clarify and meet the compatibility requirements.</p>
18.1.2	40.1	1999-1	A	<p>The State proposes to eliminate the last line of paragraph 18.1.2.</p> <p>The last line of the paragraph establishes the object of the preceding paragraph “to establish ownership and ultimate custody...” It is recommended that it be kept in the paragraph.</p>
18.1.1	40.1	1999-1	A	<p>The State proposes to eliminate the term “source material milling” in leu of “processing.”</p> <p>In Part 1 of Colorado’s radiation controls regulations the term “source material milling” is defined. For clarity and compatibility, we suggest using the same terminology throughout the regulation.</p>

18.1.3	40.2a	1999-1	A	<p>Coverage of inactive tailing 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. The NRC does not have authority to license pre-UMTRA wastes. The disposal of pre-UMTRCA material at an 11e.(2) disposal site should only be done in accordance with NRC Regulatory Issue Summary 2000-23, "Recent Changes to Uranium Recovery Policy." This addresses the use of 11e.(2) disposal sites for disposal of non-11e.(2) material so that this action does not compromise the reclamation of the tailings impoundment or DOE's ability to take title to the impoundment as long-term custodian.</p> <p>To be consistent with that decision, this paragraph needs to be modified to reflect "the requirements of this Part apply only to byproduct material as defined in this section that were under license on or generated after November 8, 1978."</p>
18.4.1	40.31(k)(f)	1999-1	D H&S	<p>The State has left out reference to NRC review of environmental impact studies for license application.</p> <p>The phrase "and opportunity for review by the Nuclear Regulatory Commission" needs to be added in Line 19, page 13 of 71, following the word "hearing."</p>
Appendix A (title)	Appendix A Part 40	1999-1	C	<p>The State has altered the title significantly enough to not meet the essential objectives of the appendix.</p> <p>The title should read "Criteria relating to the operation of mills and the disposition of the tailings or wastes from these operations," to meet compatibility.</p>

EDITORIAL CHANGES

1. The parentheses are in the wrong place for the entry (20pci/M²s). This appears four times:
 - a) Line 24 page 52 of 71
 - b) Lines 1,16,19 page 53 of 71
2. In line 13 and 17, page 58 of 71, “a” needs to be changed to “the” to make the sentence read “the State” not “a State.”

STATE REGULATION STATUS

State: Colorado

[One proposed amendment (02/21/2001) reviewed are identified by a ★ at the beginning of each equivalent NRC regulation.]

Tracking Ticket Number: 1-62

Date: August 28, 2001

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
ASNT 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	Y 5/29/97	7/1/97
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	Y 5/29/97	12/30/97
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

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)
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3	F	Y 6/20/97	1/1/97
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	N 6/14/00	3/30/98
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	P	N 10/16/96	
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	P	N 4/27/98	
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 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: 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	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	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 28948; (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 39058; (8/20/00)	1997-6	F	N 7/13/99	5/19/99
Exempt Distribution of a Radioactive Drug Containing One Microcurie 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			
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

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)
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393 (10/26/01)	1998-5			
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6			
★Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1	P ML010730377	Y 8/28/01 ML012400290	
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			
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. ADAMS ML Number.