

November 8, 2001

Mr. Stanley R. Marshall, Supervisor
Radiological Health Section
Bureau of Health Protection Services
Nevada State Health Division
1179 Fairview Drive, Suite 102
Carson City, NV 87901-5405

Dear Mr. Marshall:

As requested, we have reviewed the proposed regulations of the Nevada Administrative Code Chapter 459 (Radiological Health Rules), (Section 13, and NAC 459.118; Sections 17, 18, 19, NAC 459.0885, 8239, 824, 8245, 200.1, NAC 459.054, 065, 256, 320, 335, 3565, 3881, NAC.459.192.4, 394, 321.4, 371; Section 20, NAC 459.060, 1145, 1156, 321, 325, 327, 333, 337, 339, 3565, 3626, 3665, 3695, 3942, 3927; Section 4, NAC 459.260, 680, 681, 685-696, 7005, 732, 734; Section 1, NAC 459.124, 1955; Sections 2, 3, 5, 6, 7, 8, 9, 11, 14, NAC 459.027, 200, 314), submitted to the Nuclear Regulatory Commission (NRC) by letter dated July 12, 2001. The proposed regulations are in response to the nine amendments 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 20.1003, 1101, 1208, 1301, 1402, 1403, 1405, 1406, Subpart F, 1501, 1502, Subpart I, Subpart J, 1903, Subpart L, 2101, 2203, Appendix G, Part 30.10, 21, 35, 36, Part 34.43, Part 35.75, 641, and Part 150.20. We also discussed our review of the regulations with Larry Boschult on September 24, 2001.

As a result of our review, we have three comments and three editorial comments that have been identified in the Enclosures. (Please note that we have limited our review to regulations required for compatibility and/or health and safety.) Under our current procedure, a finding that a State regulation meets the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final State regulation. However, we have determined that if your proposed regulations were adopted (incorporating the comments) and without (other) significant change, they would meet the compatibility and health and safety categories established in Office of State and Tribal Programs (STP) Procedure SA-200. The Nevada deliberate misconduct rule is compatible provided that the unlicensed person who is the direct or indirect subject of the enforcement action taken in accordance with Nevada's Radiological Health Rules, NAC 459, is afforded the opportunity to appeal the enforcement action to the State.

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 send one hard copy to STP.

The SRS Data Sheet summarizes our knowledge of other Nevada 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.hsrn.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 Linda McLean at NRC, Region IV, at 817- 860-8116 or mlm1@nrc.gov.

Sincerely,

/RA/

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

Enclosures:
As stated

Distribution:

DIR RF (1-141)

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Nevada File

DCD (SP08) PDR (YES_✓)

Response to Incoming Document: ML011970393

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|--------|------------------------|--|----------|--|---------------------------|--|---------------------|--|--|
| OFFICE | RSAO | | STP | | OGC | | STP:DD | | |
| NAME | MLMcLean via E-Mail | | JZabko | | Streby (By JLieberman) | | FCombs | | |
| DATE | 9/25/01 | | 10/13/01 | | 11/05/01 | | 10/23/01 11/8/01 | | |

STP-AG-17

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

| State Regulation¹ or SSR | NRC Regulation or SSR² | RATS ID | Category | Subject and Comments |
|--|--|--------------------|------------------|---|
| NAC 459 Section 6-1 | 20.1401(a) | 1996-3 | C | <p>General Provisions and Scope</p> <p>Statement (a) contains the phrase “as well as other facilities subject to the Division’s jurisdiction under the AEA and ERA as amended.</p> <p>The State should not include this statement because the AEA and ERA give the State no jurisdiction for this condition. The sentence should end at “....NAC 459.”</p> |
| NAC 459 124-2 | 30.51 | 1996-3 | D H&S | <p>Records</p> <p>The term “may” is substituted for the word “shall” throughout the section on records. The word shall implies “must” and with the substitution does not meet the compatibility criteria.</p> <p>The word “shall” needs to be throughout the section.</p> |

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

²Use 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.

| State Regulation ¹ or SSR | NRC Regulation or SSR ² | RATS ID | Category | Subject and Comments |
|--|--|------------|----------|---|
| NAC 459 Section 10 | 10 CFR Part 20.1405 | 1997-6 | C | <p>Public Notification & Public Participation</p> <p>Missing the UNDERLINED WORDS.</p> <p>Section 10, 1.(a) local and State governments in the vicinity of the site and <u>any Indian Nation or other Indigenous people that have treaty or statutory rights</u>.</p> <p>The State committed to inserting those words into the rule.</p> |

Editorial Items

1. Pages 5-8 use the term “license termination plan” and “LTP.” These terms pertain only to reactors and should be removed. Only the term “decommissioning plan” should remain.
2. Page 7 section 5(a)(1) uses the reference to (e)(1). That reference is from the 10 CFRs. The correct reference is 5(a) of NAC section 8 which refers to the State’s regulations.
3. Page 9 section 14, the definition of background radiation, does not meet the definition in 10 CFR 30.4. The reference to Chernobyl is omitted. Although this is a compatibility A category item, this is only an editorial comment. The omission does not invalidate the definition but an exact duplicate of the definition in 10 CFR 30.4 would more adequately meet the compatibility A requirement.

STATE REGULATION STATUS

State: Nevada

[Nine proposed amendments (07/12/01) reviewed are identified by a ★ at the beginning of each equivalent NRC regulation.]

Tracking Ticket Number: 1-141

Date: November 8, 2001

| NRC Chronology Identification | FR Notice (Date Due For State Implementation) | RATS ID | Proposed (P) / Final (F) ¹ Rule / ML # ⁵ | NRC Review / Y, N ² / Date / ML # ⁵ | Final State Regulation ¹ (Effective Date) |
|---|--|---------|--|---|--|
| Safety Requirements for Radiographic Equipment-Part 34 | 55 FR 843; (1/10/94) | 1991-1 | F | N 9/21/94 | 12/8/93 |
| 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 12/15/97 | 12/8/93 |
| Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70 | 56 FR 64980; (10/15/94) | 1991-4 | F | N 9/21/94 | 12/8/93 |
| 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 | | | |
| Licensing and Radiation Safety Requirements for Irradiators-Part 36 | 58 FR 7715; (7/1/96) | 1993-2 | | | 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 |
| Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70 | 58 FR 68726; 59 FR 1618 (none) | 1994-1 | | | Not required ³ |
| Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40 | 59 FR 28220; (7/1/97) | 1994-2 | | | Not applicable SECY-95-112 ⁴ |
| Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70 | 59 FR 36026; (8/15/97) | 1994-3 | | | |
| 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 | P | Y 3/10/99 | 1/99 |
| Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20 | 60 FR 7900; (3/13/98) | 1995-2 | P | N 3/10/99 | 1/99 |

| NRC Chronology Identification | FR Notice (Date Due For State Implementation) | RATS ID | Proposed (P) / Final (F)¹ Rule / ML #⁵ | NRC Review / Y, N² / Date / ML #⁵ | Final State Regulation¹ (Effective Date) |
|---|--|----------------|---|--|--|
| Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61 | 60 FR 15649; 60 FR 25983 (3/1/98) | 1995-3 | P | Y 3/10/99 | 1/99 |
| Performance Requirements for Radiography Equipment-Part 34 | 60 FR 28323; (6/30/98) | 1995-4 | P | N 3/10/99 | 1/99 |
| Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20 | 60 FR 36038; (8/14/98) | 1995-5 | P | N 3/10/99 | 1/99 |
| Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70 | 60 FR 38235; (11/24/98) | 1995-6 | P | N 3/10/99 | 1/99 |
| Medical Administration of Radiation and Radioactive Materials-Parts 20, 35 | 60 FR 48623; (10/20/98) | 1995-7 | P | Y 3/10/99 | 1/99 |
| 10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71 | 60 FR 50248; 61 FR 28723 (4/1/99) | 1996-1 | P | Y 3/10/99 | 1/99 |
| 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 | P ML011970393 | Y 11/8/01 ML013120552 | |
| Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act- Part 20 | 61 FR 65120; (1/9/00) | 1997-1 | | | |
| *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 | P ML011970393 | N 11/8/01 ML013120552 | |
| *Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35 | 62 FR 4120; (5/29/00) | 1997-3 | P ML011970393 | N 11/8/01 ML013120552 | |
| Fissile Material Shipments and Exemptions-Part 71 | 62 FR 5907; (none) | 1997-4 | | | 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 | P ML011970393 | N 11/8/01 ML013120552 | |
| *Radiological Criteria for License Termination-Parts 20, 30, 40, 70 | 62 FR 39058; (8/20/00) | 1997-6 | P ML011970393 | Y 11/8/01 ML013120552 | |
| *Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea- Part 30 | 62 FR 63634; (1/02/01) | 1997-7 | P ML011970393 | N 11/8/01 ML013120552 | |
| *Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150 | 63 FR 1890; 63 FR 13773 (2/12/01) | 1998-1 | P ML011970393 | N 11/8/01 ML013120552 | |

| NRC Chronology Identification | FR Notice (Date Due For State Implementation) | RATS ID | Proposed (P) / Final (F)¹ Rule / ML #⁵ | NRC Review / Y, N² / Date / ML #⁵ | Final State Regulation¹ (Effective Date) |
|--|--|----------------|---|--|--|
| 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 | P ML011970393 | N 11/8/01 ML013120552 | |
| *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 ML011970393 | N 11/8/01 ML013120552 | |
| 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 | | | |
| 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. 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