

OCT 25 1994

Mr. Stanley R. Marshall, Supervisor
Deputy Food and Drug Commissioner
Radiological Health Section
Bureau of Health Protection Services
505 E. King Street, Room 101
Carson City, Nevada 89710

Dear Mr. Marshall,

This in response to your letter of September 13, 1994. In your letter you questioned the necessity of initiating rulemaking in situations where there is no need for the regulation. Specifically, you questioned the need for the State to develop an equivalent to NRC's 10 CFR Part 36, "Licensees and Radiation Safety Requirements for Irradiators," absent an interest in large irradiators in Nevada.

The State of Iowa recently made a similar inquiry. Given the absence of interest in the use of irradiators in Iowa, NRC determined that the State would not have to adopt a 10 CFR Part 36 equivalent. Our rationale for this determination is found in our August 31, 1994 letter to Donald Flater (copy enclosed).

Given the similar circumstances found in Nevada, we believe your position to postpone development and adoption of 10 CFR Part 36 is acceptable and would not affect future compatibility determinations for your program. However, as committed in your letter of September 13, 1994, we would expect Nevada to take action to adopt the provisions of Part 36, if an application for a large irradiator were to be received, and until such a rule becomes effective, to incorporate the provisions of Part 36 through license conditions.

Finally, NRC is currently developing a new compatibility policy for use in the administration of the NRC Agreement State Program. It is possible that the final NRC compatibility policy may require reconsideration of this position. Until such time, however, you may postpone the implementation of 10 CFR Part 36.

If you have any questions, do not hesitate to contact Jim Myers at 301-504-2328.

Sincerely,

Original Signed By
RICHARD L. BANGART

Richard L. Bangart, Director
Office of State Programs

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PDR STPRG ESGNV
PDR

Enclosure:
As stated
cc: All Agreement States

Distribution:
RBangart
JMyers
Nevada File
DCD (SP01) PDR YES NO

DIR RF S-259
PLohaus
FXCameron, OGC
All Agreement States File
JHornor

*See previous concurrence.

OFC	OSP	OSP:DD	OSP:D		
NME	JHMyers:gd	PHLohaus	Bangart		
DTE	09/30/94*	10/4/94*	10/15/94		

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

October 5, 1994

Mr. Stanley R. Marshall, Supervisor
Deputy Food and Drug Commissioner
Radiological Health Section
Bureau of Health Protection Services
505 E. King Street, Room 101
Carson City, Nevada 89710

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Sincerely,

Richard L. Bangart
Richard L. Bangart, Director
Office of State Programs

Enclosure:
As stated

cc: All Agreement States

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 Deputy Food and Drug Commissioner
 Radiological Health Section
 Bureau of Health Protection Services
 505 E. King Street, Room 101
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Given the similar circumstances found in Nevada, we believe your position to postpone development and adoption of 10 CFR Part 36 is acceptable and would not affect future compatibility determinations for your program. However, as committed in your letter of September 13, 1994 we would expect Nevada to take action to adopt the provisions of Part 36, if an application for a large irradiator were to be received, and until such a rule becomes effective, to incorporate the provisions of Part 36 through license conditions.

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If you have question do not hesitate to contact Jim Myers at 301-504-2328.

Sincerely,

Richard L. Bangart, Director
 Office of State Programs

Enclosure:
 As stated

cc: All Agreement States

Distribution: DIR RF S-259
 RBangart PLOhaus
 JMyers FXCameron, OGC
 Nevada File All Agreement States File
 DCD (SPO1) PDR YES NO

OFC	OSP	OSP:DD	OSP:D		
NME	JHMyers:gd	PHLOhaus	Bangart		
DTE	09/30/94*	10/ /94	10/ /94		

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*See previous concurrence

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 Radiological Health Section
 Bureau of Health Protection Services
 505 E. King Street, Room 101
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The State of Iowa recently made a similar inquiry. Given the absence of interest in the use of irradiators in Iowa, NRC determined that the State would not have to adopt a 10 CFR Part 36 equivalent. Our rationale for this determination is found in Enclosure 1.

Given the similar circumstances found in Nevada, we believe your position to postpone development and adoption of 10 CFR Part 36 is acceptable and would not affect future compatibility determinations for your program. However, as committed in your letter of September 13, 1994 we would expect Nevada to take action to adopt the provisions of Part 36, if an application for a large irradiator were to be received, and until such a rule becomes effective, to incorporate the provisions of Part 36 through license conditions.

Finally, NRC is currently developing a new compatibility policy for use in the administration of the NRC Agreement State Program. It is possible that the final NRC compatibility policy may require reconsideration of this position. Until such time, however, you may postpone the implementation of 10 CFR Part 36.

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Sincerely,

Richard L. Bangart, Director
 Office of State Programs

Enclosure:
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Distribution:
 DIR RF S-259
 PLohaus
 FXCameron, OGC
 Regulations File

RBangart
 JMyers
 Nevada File
 DCD (SP01) PDR YES NO

OFC	OSP <i>JHM</i>	OSP:DD	OSP:D			
NME	JHMyers:gd	PHLohaus	Bangart			
DTE	09/30/94	09/ /94	09/ /94			

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

August 31, 1994

Mr. Donald A. Flater, Chief
Bureau of Radiological Health
Department of Public Health
Lucas State Office Building
Des Moines, IA 50319-0075

Dear Mr. Flater:

Thank you for your March 24, 1994 letter informing the Office of State Programs (OSP) on the progress of rulemaking in Iowa. We are pleased to hear that the "Notification of Incidents" and "Quality Management Program and Misadministration" rules will be in effect by October 1, 1994.

In your letter you also inquired about the necessity of initiating rulemaking on 10 CFR Part 36: "Licenses and Radiation Safety Requirements for Irradiators," indicating that "Iowa currently has no large irradiators which meet the definition found in 10 CFR, Part 36.2 nor have we ever had such an irradiator. In fact, a review of our files indicate that we have not ever had an inquiry of the feasibility of a large irradiator being licensed in Iowa."

Historically, NRC has taken the position that new rules necessary for compatibility be adopted by Agreement States as soon as possible, but no later than three years from the effective date of the rule. NRC continues to believe that the States should have regulations in place at the earliest time to assure compatibility and adequacy of programs.

A notable exception to this practice occurred when NRC did not require all States to adopt rules regarding the siting and licensing of low-level waste disposal facilities. This exception recognized that only States with existing or future new waste disposal facilities needed to have such regulations in place. "Non-host" States were, however, required to adopt some features of the rule, e.g., definitions and waste transfer requirements. NRC's expectation was that "non-host" States would initiate rulemaking at the earliest possible time to assure that appropriate low-level waste siting and licensing regulations would be in place should there be a change in the State's status.

Given the above, and given the absence of any interest in the use of irradiators in Iowa, we believe your position to postpone development and adoption of the 10 CFR Part 36 equivalent rulemaking is acceptable and would not affect the compatibility determination for your program. However, as committed in your March 24, 1994 letter, we would expect Iowa to take action to adopt the provisions of Part 36, if an application for a large irradiator were to be received, and until such a rule becomes effective, to incorporate the provisions of Part 36 through license conditions.

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Donald A. Flater

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Finally, NRC is currently developing a new compatibility policy for use in the administration of the NRC Agreement State Program. It is possible that the final NRC compatibility policy may require reconsideration of this position. Until such time, however, you may postpone the implementation of 10 CFR Part 36.

If you have questions, please do not hesitate to contact me or Jim Myers at 301-504-2328.

Sincerely,

Richard L. Bangart

Richard L. Bangart, Director
Office of State Programs