

March 22, 2001

Mr. Warren E. Jacobi, Director  
Laboratory and Radiation Services Division  
Colorado Department of Public Health and Environment  
8100 Lowry Boulevard  
Denver, CO 80230-6928

Dear Mr. Jacobi:

This is a follow-up to our letter of June 14, 2000 concerning our review of the final Colorado *Rules and Regulations Pertaining to Radiation Control*. In that letter, we identified five comments pertaining to the Colorado regulations, Part 17 - Transportation of Radioactive Material, and indicated that those comments must be addressed by Colorado to meet the compatibility and health and safety categories established in the Office State and Tribal Programs (STP) Procedure SA-200, "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements."

At your request, we re-evaluated our comments made in the June 14, 2000 letter on your transportation regulations, which incorporated the following amendments, "Compatibility with the International Atomic Energy Agency-Part 71," RATS ID 1996-1. The results of our re-evaluation are enclosed. We have determined that the five comments made in the June letter regarding the compatibility of the Colorado regulations, Part 17- Transportation of Radioactive Material, should not be addressed by Colorado. The Colorado Part 17 regulations which became effective on July 31, 1998 and were submitted to the NRC on August 25, 1999, meet the compatibility and health and safety categories established in STP Procedure SA-200.

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 Cardelia H. Maupin at (301) 415-2312 or by e-mail at [chm@nrc.gov](mailto:chm@nrc.gov).

Sincerely,

/RA/

Janet R. Schlueter, Acting Deputy Director  
Office of State and Tribal Programs

Enclosure:  
As stated

Warren E. Jacobi

March 22, 2001

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Reference: June 14, 2000 Letter (ML003719248)

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STP-AG-5

## RESULTS OF RE-EVALUATION

In the June 14, 2000 letter, we provided five comments on the Colorado regulations, Part 17, Transportation of Radioactive Material. We have reconsidered these comments and disposed of them as follows.

### 1. §71.4 Definition - maximum normal operating pressure

#### Comment From June 14, 2000 Letter:

The definition of maximum normal operating pressure was not included in the final regulations. This definition is designated a Compatibility Category "B" and should be adopted by an Agreement State in an essentially identical manner to that of the NRC in 10 CFR § 71.4.

#### Disposition of Comment:

The State of Colorado need not adopt this definition for the purposes of compatibility or health and safety. The definition of the term, "maximum normal operating pressure" was changed February 6, 2001, in STP Procedure SA-200 from Compatibility Category "B" to Category "D." This term is not used in any section requiring Agreement State adoption; it relates to the heat conditions in §71.71(c)(1), which is designated as Category "NRC." This definition is not required for compatibility since it defines a term which pertains to an area reserved to the NRC. A State may adopt this definition for purposes of clarity or communication. This definition can be adopted by Agreement States since it in and of itself does not convey any authority whereby a State can regulate in an exclusive NRC jurisdiction. However, if a State chooses to define this term then the definition should be essentially identical. Consequently, there is no need for this definition in the Colorado equivalent regulation.

### 2. §71.10 Exemption for low-level materials.

#### Comment From June 14, 2000 Letter:

Paragraphs (b) and (c) of section, "Exemptions for low level material," were not included in the final regulations. This section is designated Compatibility Category "B" and should be adopted by an Agreement State in an essentially identical manner to that of the NRC in 10 CFR § 71.10. **[This comment was slightly modified to reflect that paragraph (a) was included in Colorado regulations in Section 17.4.2.]**

#### Disposition of Comment:

The State of Colorado should not adopt paragraphs (b) and (c) for the purposes of compatibility or health and safety. Paragraph (a) is retained in STP Procedure SA-200 as a Category "B" because of its significant transboundary implications associated with the definition of radioactive material in the U.S. Department of Transportation regulations. Section 173.403 of 49 CFR defines radioactive material as any material having a specific activity greater than 70 Bq per gram (0.002 microcurie per gram); thus, materials less than this amount would be shipped without being considered radioactive material. Because of the need for consistency in this

area, the exemption in paragraph (a) of section 71.10 reflects the DOT definition of radioactive material and provides the basis for the exemption of materials with a specific activity less than 0.002  $\mu\text{Ci/g}$ .

Paragraphs (b) and (c) were changed in STP Procedure SA-200 from Compatibility Category "B" to Category "NRC." This exemption is reserved to the NRC because it was designed to delineate NRC's authority from that of DOT's in the area of transportation of radioactive materials. These provisions relinquish to DOT control over types of shipments that are of low risk both from radiation and criticality standpoints. Further, to ensure that only low criticality risk shipments are included in the area of DOT authority, these provisions restrict the exemption to Type A and low-specific-activity (LSA) or surface contaminated (SCOs) materials that either contain no fissile material or satisfy the fissile material exemption requirements in 10 CFR §71.53. Finally, this exemption is reserved to the NRC because it does not relieve licensees from DOT requirements by reason of NRC's authority, nor does the exemption relieve licensees from the restrictions on air transportation of plutonium imposed by Congress. Thus, Colorado should not adopt these provisions, in order to retain its ability to implement all of 49 CFR as directed by DOT.

### **3. §71.47 External radiation standards for all packages.**

#### **Comment From June 14, 2000 Letter:**

The section, "External radiation standards for all packages," is included in the final regulations. This section is designated as Compatibility Category "NRC" and should not be adopted by an Agreement State.

#### **Disposition of Comment:**

This comment should not be addressed by Colorado for the purposes of compatibility or health and safety. This requirement was changed in STP Procedure SA-200 from Compatibility Category "NRC" to Category "[B]." This provision is designated Compatibility Category "B" because it applies to activities that have direct and significant effects in multiple jurisdictions since it establishes the external radiation standards for all transportation packages. An Agreement State should adopt this provision in an essentially identical manner. Since the State of Colorado has adopted the provision in an essentially identical manner, no further action should be taken.

### **4. §71.81 Applicability of operating controls.**

#### **Comment From June 14, 2000 Letter:**

The section, "Applicability of operating controls," was not included in the final regulations. This section is designated Compatibility Category "B" and should be adopted by an Agreement State in an essentially identical manner to that of the NRC in 10 CFR § 71.81.

**Disposition of Comment:**

This comment need not be addressed by Colorado for the purposes of compatibility or health and safety. This requirement was changed in STP Procedure SA-200 from Compatibility Category "B" to Category "D." This provision does not meet any of the criteria for designations Category "A," "B," "C," or "health and safety." Thus, it need not be adopted by Agreement States.

**5. §71.83 Assumptions as to unknown properties.****Comment From June 14, 2000 Letter:**

The section, "Assumptions as to unknown properties," is included in the final regulations. This section is designated a Compatibility Category "NRC" and should not be adopted by an Agreement State.

**Disposition of Comment:**

This comment should not be addressed by Colorado for the purposes of compatibility or health and safety. This requirement was changed in STP Procedure SA-200 from a compatibility category "NRC" to "[B]." The designation was changed because Agreement States have the authority to regulate fissile material below 350 grams. This provision is needed to address fissile material regulated by the Agreement States and to assure that a regulatory gap in the regulation of these materials is not created. Moreover, this provision applies to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt this provision in an essentially identical manner. Since Colorado has adopted the regulation in an essentially identical manner, no further action should be taken.