



State of Utah

DEPARTMENT OF ENVIRONMENTAL QUALITY DIVISION OF RADIATION CONTROL

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November 30, 2001

Linda McLean
State Agreements Officer
U.S. Nuclear Regulatory Agency
611 Ryan Plaza Drive, Suite 400
Arlington, Texas 76011-8064

Dear Ms. McLean:

To our surprise, we have received a letter stating that R313-15-208 is not compatible with NRC requirements. We sent a hard copy and an electronic copy of these regulations to Fred Combs on June 6, 2001 for NRC comment. At that time, we stated that the public comment period would be from July 1, 2001, to July 31, 2001 with the possible effective date of the regulations being August 10, 2001. Because a quorum was not established for the Utah Radiation Control Board at the August meeting, the effective date was pushed out to September 14, 2001. During a telephone conversation held with Mr. Craig Jones on August 1, 2001, it was communicated to him that there were no comments regarding our proposed changes to the Utah Radiation Control Rules, specifically R313-12; R313-15; R313-22; R313-32; and R313-34. This conversation was held prior to the September Board meeting. At the September Board meeting, the rules were approved as proposed with an effective date of September 14, 2001, since there had been no comments received during the rulemaking process.

Item II.B of Appendix A to SA-100 states that "The regulations are requested to be submitted at least 60 days before the State needs comments, or concurrently with the State publication of the proposed regulations for public comment, whichever is earlier." The proposed draft of SA-201 also contains this statement. By submitting the rules to the NRC on June 6, 2001 and having a proposed effective date of August 10, 2001, the State met this criteria. The letter indicating that the rules were found to be incompatible with NRC requirements was dated November 16, 2001 and received in our office on November 26, 2001. The NRC letter was received well after the requested comment period (more than 3 months after our requested date a total of over 5 months for review) and was also received a full month after the implementation date required by the NRC (10/26/2001).

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NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F)¹ Rule / ML #²	NRC Review / Y, N² / Date / ML #²	Final State Regulation¹ (Effective Date)
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	P	N 1/26/98	
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3	P	N 1/26/98	
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4			
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	P	N 1/26/98	
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F	N 2/10/98	7/18/97
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	P	N 1/26/98	
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 4/16/99	3/12/99
One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses-Parts 30, 40, 70	61 FR 1109; (none)	1996-2	F	N 2/10/98	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	F Part 30	N 2/10/98	
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	P	N 1/26/98	
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			
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	P	N 1/26/09	
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	F	N 4/1/98	5/15/97

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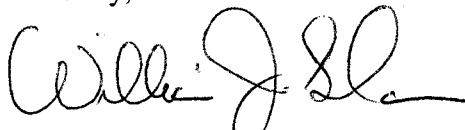
We have the following concerns and questions:

- 1) Since we did not receive comment before our rulemaking action became effective and the date is now past due for compatibility, we will have to begin the rulemaking process from the beginning point. Also, we may have constraints regarding the ability of staff to prepare a rulemaking action for the December Radiation Control Board Meeting. Additionally, due to the legislative session and the Olympics we may have difficulty beginning this process until the Board meeting in March of 2002. What is the new time frame for the approval of this rulemaking action?
- 2) The present wording in the Utah Radiation Control Rules were copied from the Suggested State Regulations (SSR) from the Conference of Radiation Control Program Directors (CRCPD). In the 1995 Rationale for Revisions of Part D of the Suggested State Regulations under D.208c., it states that the Working Group introduced concepts from NRC Regulatory Guide 8.36 which delineate procedures for determining dose to an embryo/fetus of a declared pregnant woman. The Working Group which develop these SSR's typically have an advisor from the NRC who participates in the drafting of the regulations to ensure compatibility with NRC requirements. Therefore, it was assumed that SSR Part D which includes requirements of 10 CFR 20 had received the typical review by the NRC and concurrence that the SSR was compatible.

In addition, the change to the Utah Radiation Control Rules (URCR) which incorporated the present version of R313-15-208(3)(a) & (b) was submitted to the NRC for review on November 24, 1997. The changes were submitted along with the proposed changes made to the URCR's to address RATS ID numbers 1995-2, 1995-3, 1996-3, and 1997-1 (see attached). According to the RATS Tracking Sheet, the NRC had no comments regarding the proposed changes (See attached). A final version of the URCR's were submitted to you on September 3, 1998. At that time, no comments were received on the final changes to the URCR's.

The Division will not take any actions on this issue until a written response is received from the NRC. If you have any questions regarding this matter, please contact me at (801) 536-4250.

Sincerely,



William J. Sinclair, Director
Division of Radiation Control

cc: Paul Lohaus, Director of State and Tribal Programs
Charles Hackney, Regional State Lesion Officer, Region IV