



R313. Environmental Quality, Waste Management and Radiation Control, Radiation. R313-17. Administrative Procedures.

R313-17-1. Authority.

The rules set forth herein are adopted pursuant to the provision of Subsection 19-3-104(4) and Sections 19-1-301 and 19-1-301.5.

R313-17-2. Public Notice and Public Comment Period.

- (1) The Director shall give public notice of and provide an opportunity to comment on the following:
- (a) A proposed major licensing action for license categories ~~[2b](2)(b)~~ and ~~[e](c)~~, ~~[4a, b, c, d](4)(a) through (c)~~, and ~~6~~ identified in Section R313-70-7.
 - (i) Major licensing actions include:
 - (A) Pending issuance of a new license,
 - (B) Pending issuance of a license renewal,
 - (C) Pending approval of a license termination,
 - (D) An increase in process, storage, or disposal capacity,
 - (E) A geographic expansion beyond facility closure plan boundaries under the licensee's approved financial assurance, including any activity likely to cause a surface disturbance within the scope of Sections 9-8a-301 through 307, or 9-8a-401 through 405,
 - (F) A significant change in engineering design, construction, ~~[or]~~process controls, or other significant change to the applicant's operations, plans, safety modeling, and similar factors as compared to impacts previously evaluated that will more than likely (i) impact public health, safety, or security; or (ii) cause an individual to receive a higher total effective dose equivalent; or (iii) increase the annual quantity of radioactive effluents released to the environment,
 - (G) A decrease in environmental monitoring or sampling frequency,
 - (H) Pending approval of reclamation, decontamination, or decommissioning plans,
 - (I) Pending approval of or changes to corrective actions to control or remediate existing radioactive material contamination~~[, not already] to the extent not already~~ authorized by a license,
 - (J) A licensing action that would allow for possession or use of matter other than natural or native ores from which source material is extracted in a licensed uranium or thorium mill, or
 - (K) A licensing issue the Director deems is of significant public interest.
 - (b) The initial proposed registration of an ionizing radiation producing machine which operates at a kilovoltage potential (kVp) greater than 200 in an open beam configuration. R313-17-2(1)(b) does not apply to ionizing radiation producing machines used in the healing arts.
 - (c) Board activities that may have significant public interest and the Board requests the Director to take public comment on those proposed activities.
- (2) The Director may elect to give public notice of and provide an opportunity to comment for any~~one~~ licensing action[s] described in Section R313-70-7 that is not subject to [that do not include the actions in] Subsection R313-17-2(1)(a)(i) [for all license categories identified in Section R313-70-7].
- (3) Public notice shall allow at least 30 days for public comment. The Director may extend the public comment period for good cause. Notice of extensions shall be provided as set forth in Subsection (5)(b).
 - (4) Public notice may ~~[describe]~~include more than one action listed in Subsection R313-17-2(1) and may combine notice of a public hearing with notice of the proposed action. After considering public comments, however, the Director may issue separate final permit orders as to any action that was combined for purposes of public notice, hearing, and comment.
 - (5) Public notice shall be reasonably calculated to notify members of the public who are known to or are likely to have an interest in the proposed licensing action and may be provided~~[given]~~ by one or more of the following methods:
 - (a) Publication in a newspaper of general circulation in the area affected by the proposed action, [or]
 - (b) Publication on the Division of Waste Management and Radiation Control website~~[, or]~~
 - (e) ~~Distribution by an electronic mail server].~~

R313-17-3. ~~[Administrative Procedures]~~Review of Licensing and Permitting Actions.

Except for actions involving permit or license terminations, the review of permit orders is governed by Section 19-1-301.5 and~~[Administrative proceedings under the Radiation Control Act are governed by]~~ Rule R305-7.

R313-17-4. Special Procedures for Decisions Associated with Licenses for Uranium Mills and Disposal of Byproduct Material.

- (1) Definitions. For purposes of this rule:



- (a) "Byproduct material" has the same meaning as defined in 42 U.S.C. Section 2014(e)(2);
- (b) "License" means a radioactive materials license for a uranium mill or disposal of byproduct material, including any ground water discharge permit incorporated in a license; and
- (c) "Question and answer hearing" means the informal hearing described in paragraphs (3) through (5) held for the purpose of responding to questions from the public.
 - (2) Scope. This rule R313-17-4 applies only to licensing activities that meet both of the following criteria:
 - (a) they are licensing activities described in R313-17-2(a)(i)(A) through (I); and
 - (b) they are for licenses or license amendments for uranium mills and disposal of byproduct materials.
 - (3) Opportunity for Question and Answer Hearing Prior to Director's Decision.
 - (a) For licensing actions that are subject to the scope of this rule, the Director may, at the Director's discretion, schedule a question and answer hearing at the time it proposes the action.
 - (b) If the Director does not choose to schedule a question and answer hearing at the time it proposes a licensing action, the Director shall provide notice to the public of an opportunity to request a question and answer hearing, and it shall schedule and hold a hearing if there is a request from a member of the public.
 - (c) Notice of a hearing or an opportunity to request a hearing under this rule shall be made as provided in R313-17-3(5). Members of the public shall be given at least ten days to request a hearing.
 - (d) The Director may combine the question and answer hearing with a licensing hearing held for the purpose of taking public comment on a proposed licensing action.
 - (4) Procedures Prior to Question and Answer Hearing.
 - (a) The Director shall provide a notice of the question and answer hearing at least 30 days before the hearing. The notice shall also summarize the applicable procedures, including the obligation to provide questions in advance of the hearing.
 - (b) Any person who proposes to ask questions during the question and answer hearing shall submit the questions to the Director. Questions must be received by the Director by the deadline specified in the public notice, which shall be no fewer than 15 days after the notice of the question and answer hearing is posted. If a question relies on information that is not included in the licensing record, that information shall be submitted with the questions. The relevance of and the relevant portions of any supporting materials shall be described with reasonable specificity. Information submitted in accordance with this paragraph will become part of the record.
 - (c) If the Director determines that any of the questions submitted will not be answered during the question and answer hearing, as provided in paragraph (5)(f), the Director shall notify the person who submitted the questions prior to the hearing. Notification shall include a statement about the Director's reasons for the determination.
 - (5) Procedures for Question and Answer Hearing.
 - (a) The question and answer hearing shall ordinarily be held in the Department of Environmental Quality offices. Unless the question and answer hearing is held in a place near the proposed facility, the Director shall provide an opportunity for the public to participate by telephone or other electronic means.
 - (b) The question and answer hearing will not ordinarily be scheduled for longer than three hours. The Director may allocate time to those who have submitted questions after considering the number and nature of the questions submitted.
 - (c) A hearing officer who is not the director or a member of the director's staff shall manage the question and answer hearing. Representatives of the licensee and Director's staff shall attend the hearing.
 - (d) The question and answer hearing shall be recorded and transcribed. Alternatively, the Director may elect to have a court reporter record and transcribe the hearing.
 - (e) The Director shall determine whether the initial and follow-up question will be answered by the applicant, by the Director's staff, or by both. Notwithstanding the Director's decision, the applicant may choose to respond to any question. After the response to a question, the person who submitted the question shall be allowed to follow up with additional questions based on the response provided.
 - (f) Appropriate questions are those that seek specific factual information about the license application, or about other documents created during the licensing process. The following kinds of questions do not require a response during a question and answer hearing:
 - (i) Questions that are not relevant to the licensing action;
 - (ii) Questions that are based on information that is not in the record;
 - (iii) Questions that are vague;
 - (iv) Questions that require speculation;
 - (v) Questions that seek legal conclusions;
 - (vi) Questions that have been previously answered;
 - (vii) Questions that are more appropriately characterized as comments; and



- (viii) Questions that would not have to be answered during a trial-type hearing.
- (g) Either the Director or the applicant may elect to answer a question even if it is a question that does not require a response under paragraph (f). No waiver will result from answering a question that does not require a response.
- (h) Questions requesting information that is clear in the record may be answered by referring the questioner to the record.
- (i) In the event that a questioner or the applicant disagrees with the Director's determinations under paragraphs (4)(c), (5)(b), or (5)(e), it may request a determination by the hearing officer. If the hearing officer disagrees with the Director's determination, the Director or, as appropriate, the applicant may then:
 - (i) comply with the hearing officer's determination during the question and answer hearing;
 - (ii) comply with the hearing officer's determination by responding to the question in writing no fewer than 10 days before the end of the comment period; or
 - (iii) notify the questioner or applicant that it contests the determination, and provide information to the questioner about the procedures available to it under paragraph (5)(j).
- (j) If a decision of the hearing officer is contested as described in paragraph (5)(i)(iii), the person who asked the question may challenge that failure to comply with the hearing officer's decision on appeal. If the hearing officer's determination is upheld on appeal, the record on appeal shall be supplemented as described in paragraph (6) and R305-7-607.

(6) Formal Questioning During Appeal.

If no opportunity for a question and answer hearing is provided, or if an opportunity that was provided is found by the Administrative Law Judge to have been deficient, an opportunity for questions and answers shall be provided on appeal as described in R305-7-607. This opportunity for questions and answers on appeal shall be available only to a petitioner who has exhausted procedures and remedies available under paragraphs R313-17-4(1) through R313-17-4(5). The scope of questions and answers on appeal shall be limited by the scope of the deficiency.

KEY: administrative procedures, comment, hearings, adjudicative proceedings

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Authorizing, and Implemented or Interpreted Law: 19-3-104(4); 19-1-301 and 19-1-301.5