

December 6, 2007

Robert E. Owen, Chief
Bureau of Radiation Protection
Ohio Department of Health
P. O. Box 118
Columbus, OH 43216-0118

Dear Mr. Owen:

We have reviewed the final revision to the Ohio regulations 3701:1-40-17, 3701:1-44-18 and 3701:1-56-19, received by our office on November 2, 2007. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 30, 40, and 70 and the requirements of the one amendment identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with Mike Snee on November 8, 2007.

As a result of our review, we have one comment that has been identified in the enclosure. Please note that we have limited our review to regulations required for compatibility and/or health and safety. We have determined that if these regulations are revised, incorporating our comments and without other significant change, they would meet the compatibility and health and safety categories established in the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-200.

We request that when you revise your regulations to address our comments, a copy of the "as published" regulations be provided to us for review. As requested in FSME Procedure SA-201, "Review of State Regulatory Requirements," please highlight the location of any changes made by Ohio, in response to our comments, and provide a copy to Division of Materials Safety and State Agreements, FSME.

The SRS Data Sheet summarizes our knowledge of the status of other Ohio regulations, as indicated. 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 FSME website: <http://www.hsrdr.ornl.gov/nrc/rulemaking.htm>.

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 Kathleen Schneider, State Regulation Review Coordinator at (301) 415-2320 (email: kxs@nrc.gov) or Jim Lynch at (630) 829-9661 (email: jll2@nrc.gov).

Sincerely,

Robert J. Lewis, Deputy Director */RA/*
Division of Materials Safety and State Agreements
Office of Federal and State Materials and Environmental
Management Programs

Enclosures:
As stated

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Division of Materials Safety and State Agreements
Office of Federal and State Materials and
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Enclosures: As stated

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COMPATIBILITY COMMENTS ON OHIO FINAL REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	3701:1-40-17(A)	30.35(a)	2003-1	H&S	<p>Financial assurance and recordkeeping for decommissioning</p> <p>Ohio's rule is missing the equivalent to 10 CFR 30.35(a)(2) in paragraph (A) of 3701:1-40-17, which requires decommissioning funding plans for the possession of certain quantities of sealed sources.</p> <p>Ohio needs to adopt the essential objectives of the requirement for sealed source decommissioning funding plans, to meet the Category H&S designation assigned to 10 CFR 30.35(a).</p>

STATE REGULATION STATUS

State: OHIO

**Tracking Ticket Number: 7-85
Date: December 6, 2007**

[1 Amendment reviewed is identified by a ★ at the beginning of the equivalent NRC regulation]

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) Rule / License Condition (LC) ML #⁴	NRC Review / Y, N¹ / Date / ML #⁴	Final State Regulation¹ (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1	F ML023250117	N 1/9/03 ML030060349	10/20/02
ASNT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2	F ML023250117	N 1/9/03 ML030060349	10/20/02
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 ML040920160	N 4/14/04 ML041060011	7/22/01
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	P	Y 7/26/00	
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1	F ML061440106	N 6/8/06 ML061590424	
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions-Parts 30,35	57 FR 45566; (none)	1992-2	F ML061440106	N 6/8/06 ML061590424	10/9/98 ⁶
Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]-Parts 30, 40	58 FR 39628; (10/25/96)	1993-1	P	Y 7/26/00	10/9/98 ⁵
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2	F ML023250117	N 1/9/03 ML030060349	10/20/02
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3			10/9/98 ⁵
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618 (none)	1994-1			10/9/98 ⁶
Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2			10/9/98 ⁵
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	P	N 7/26/00	10/9/98 ⁵
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	F ML061440106	N 6/8/06 ML061590424	10/20/02

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Frequency of Medical Examinations for Use of Respiratory Protection Equipment- Part 20	60 FR 7900; (3/13/98)	1995-2	F ML041240504	N 6/14/04 ML041670402	10/9/98 ⁵
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3	F ML040920160	N 4/14/04 ML041060011	7/22/01
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	F ML023250117	N 1/9/03 ML030060349	10/20/02
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	F ML040920160	N 4/14/04 ML041060011	7/22/01
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	P	N 7/26/00	10/9/98 ⁵
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	P ML042230062	N 10/14/2004 ML042890002	10/9/98 ⁵
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28723 (4/1/99)	1996-1			superseded by 2004-1
One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses-Parts 30, 40, 61, 70	61 FR 1109; (none)	1996-2	P	N 07/26/00	10/9/98 ⁶
Termination or Transfer of Licensed Activities: Record Keeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3	P	N 07/26/00	10/9/98 ⁵
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	F ML041900134	N 8/9/04 ML042220269	07/26/01
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	F ML041240504	N 6/14/04 ML041670402	11/27/02
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	P ML042230062	N 10/14/2004 ML042890002	10/9/98 ⁵
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4			superseded by 2004-1

NRC Chronology Identification	FR Notice (Date Due for State Implementation)	RATS ID	Proposed (P) / Final (F) Rule / License Condition (LC) ML # ^a	NRC Review / Y, N ¹ / Date / ML # ^a	Final State Regulation ¹ (Effective Date)
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 ML023250117	Y 1/9/03 ML030060349	10/20/02
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39058; (8/20/00)	1997-6			10/9/98 ⁵
Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7	F ML041240504	6/14/04 ML041670402	10/18/02
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1	P ML010380259 ML010870344	N 12/12/01 ML013530072	10/9/98 ⁵
Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees- Parts 30, 40, 70	63 FR 29535; (none)	1998-2			10/9/98 ⁶
License Term for Medical Use Licenses-Part 35	63 FR 31604; (none)	1998-3			10/9/98 ⁶
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34	63 FR 37059; (7/9/01)	1998-4	F ML041240504	N 6/14/04 ML041670402	10/18/02
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393 (10/26/01)	1998-5			10/9/98 ⁵
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	F ML041900134	N 8/9/04 ML042220269	7/26/01
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1	F ML060580024	N 4/13/06 ML061030457	
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 55524 (2/2/03)	1999-3	F ML040920160	N 4/14/04 ML041060011	7/22/01
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1	F ML023250117	N 1/9/03 ML030060349	10/20/02

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New Dosimetry Technology-Parts 34, 36, 39	65 FR 63749; (1/8/04)	2000-2	F ML023250117	N 1/9/03 ML030060349	10/20/02
Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	R ^{8,9} ML070950457	Y 4/27/07 ML071150004	10/18/02
Revision of the Skin Dose Limit-Part 20	67 FR 1629; (4/5/05)	2002-1	F ML061440106	N 6/8/06 ML061590424	8/15/05
Medical Use of Byproduct Material-Parts 20, 32, 35	67 FR 20249; (4/24/05)	2002-2	F ML061440106	N 6/8/06 ML061590424	8/15/05
★Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327 12/3/06	2003-1	F ML073030070	Y 12/06/07 ML073390193	
Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments – Part 71.	69 FR 3697; (10/01/07)	2004-1	F ML063170453	N 12/15/06 ML063490049	10/22/06
Security Requirements for Portable Gauges Containing Byproduct Material - Part 30	70 FR 2001; (7/11/08)	2005-1	F ML071010099	N 4/25/07 ML071150005	3/22/07
Medical Use of Byproduct Material - Recognition of Specialty Boards - Part 35	70 FR 16336; 71 FR 1926 (4/29/08)	2005-2			
Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) ⁷	70 FR 72128; (12/1/05)	2005-3	LC ML053120143	N 11/10/05 ML053180026	12/2/05
Minor Amendments - Parts 20, 30, 32, 35, 40, and 70	71 FR 15005 (3/27/09)	2006-1			
National Source Tracking System - Serialization Requirements - Part 32 with reference to Part 20 Appendix E	71 FR 65685 (2/6/07)	2006-2	P ML070380488	N 03/06/07 ML070650102	Not Applicable 02/01/07 ML070310347
National Source Tracking System - Part 20	71 FR 65865 (11/15/07) & (11/30/07)	2006-3 ¹⁰	P ML070380488	N 03/06/07 ML070650102	

1. For 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. ADAMS ML Number
5. Ohio became an Agreement State effective 08/31/99. The State incorporated NRC regulations by reference 10/9/98 and therefore, these regulations were found compatible.
6. Although these items are not required for purposes of compatibility, the State incorporated NRC regulations by reference on 10/9/98 which included these items.
7. By letter dated September 2, 2005, from Paul H. Lohaus, Director, Office of State and Tribal Programs, Agreement States were given 90 days to issue legally binding requirements satisfying the requirements of NRC Order EA-05-090.
8. A re-review was completed on this item due to change in compatibility of 31.5 and 31.6. More information can be found in the All Agreement States letter STP 05-072.
9. R stands for proposed changes made to final regulations.
10. RATS ID 2006-3 will not be considered under the Non-Common Performance Indicator "Compatibility Requirements" for IMPEP reviews until such time as the National Source Tracking System is ready for use. Revisions in the implementation date for Agreement States will be provided to the States under separate correspondence and the SRS sheet will be revised as appropriate.