

February 20, 2014

Michael Snee, Chief
Bureau of Radiation Protection
Ohio Department of Health
246 North High Street
Columbus, OH 43215

Dear Mr. Snee:

The Office of Federal and State Materials and Environmental Management Programs (FSME) has reviewed your letter dated January 10, 2014, in response to our letter dated December 19, 2013, which transmitted our comments on proposed revisions to the Ohio regulations in the Ohio Administrative Code Chapters 3701:1-37-01 through 3701:1-37-31; 3701:1-40-07, 3701:1-38-01 and 3701:1-50-23. Your letter requested clarification and reevaluation of Comment 1 we made regarding the proposed revision. We discussed our reevaluation of the regulations with Mark Light on February 10, 2014.

Based on additional information provided in your letter, we have determined that Ohio regulations meet the Category H&S designation for Comment 1 from our December 19, 2013, letter. This comment is withdrawn. This letter will replace the December 19, 2013, letter.

The attached table shows the four outstanding comments that need to be incorporated into Ohio's proposed regulations. Please note that we have limited our review to regulations required for compatibility and/or health and safety. Under our current procedure, a finding that the Ohio regulations meet the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final Ohio regulations. However, we have determined that if your proposed regulations were adopted, 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, "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements."

We request that when the proposed regulations are adopted and published as final regulations, 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 final changes, and provide a copy to Division of Materials Safety and State Agreements, FSME.

Additionally, please note that NRC has issued certain security Orders to 10 Ohio licensees. We have not listed the names of the licensees in this letter because that information is Official Use Only and cannot be made publicly available. Because the NRC-issued Orders are still legally binding, they must be rescinded by NRC concurrent with Ohio's promulgation of final regulations. Accordingly, close coordination is needed between NRC and your office to ensure there are no conflicts, duplications, or gaps regarding the security-related requirements for

M. Snee

-2-

these licensees. Please contact Adelaide Giantelli, Branch Chief, Source Management and Protection Branch, FSME at (301) 415-3521 (adelaide.giantelli@nrc.gov) for information regarding the affected Ohio licensees and for coordination with rescission of the NRC-issued Orders after Ohio's promulgation and NRC's review of the final regulations on these licensees.

The SRS Data Sheet summarizes our knowledge of the status of other Ohio regulations and legally binding requirements, 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://nrc-stp.ornl.gov/rulemaking.html>.

If you have any questions regarding the review results, 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 (kathleen.schneider@nrc.gov).

Sincerely,

/RA/

John M. Moses, Acting Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

Enclosures:

1. Compatibility Comments
2. Ohio SRS Data Sheet

M. Snee

-2-

these licensees. Please contact Adelaide Giantelli, Branch Chief, Source Management and Protection Branch, FSME at (301) 415-3521 (adelaide.giantelli@nrc.gov) for information regarding the affected Ohio licensees and for coordination with rescission of the NRC-issued Orders after Ohio's promulgation and NRC's review of the final regulations on these licensees.

The SRS Data Sheet summarizes our knowledge of the status of other Ohio regulations and legally binding requirements, 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://nrc-stp.ornl.gov/rulemaking.html>.

If you have any questions regarding the review results, 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 (kathleen.schneider@nrc.gov).

Sincerely,

/RA/

John M. Moses, Acting Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

Enclosures:

1. Compatibility Comments
2. Ohio SRS Data Sheet

DISTRIBUTION: SP07

Ohio File, 14-2
JKatanic, ASPB
JLynch, RSAO/RIII

Incoming Document: ML14010A173

OFFICE	ASPB	OGC	BC:ASPB	MSSA
NAME	KSchneider	BJones	DWhite	JMoses
DATE	01/27/14	02/09/14	02/20/14	02/20/14

ML14027A598

OFFICIAL RECORD COPY

Package ML14010A170

COMPATIBILITY COMMENTS ON OHIO PROPOSED REGULATIONS

	STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT AND COMMENTS
1	3701:1-38-01(A)(26)	§37.5	2013-1	[H&S]	<p>Definition: Byproduct material</p> <p>The Ohio rule is missing paragraphs (3) and (4) of the definition of Byproduct material as follows:</p> <p>(3)(i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or</p> <p>(ii) Any material that—</p> <p>(A) Has been made radioactive by use of a particle accelerator; and</p> <p>(B) Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and</p> <p>(4) Any discrete source of naturally occurring radioactive material, other than source material, that—</p> <p>(i) The Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and</p> <p>(ii) Before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.</p> <p>Ohio needs to make the above changes in order to meet the Category [H&S] designation assigned to 10 CFR 37.5 Definition: Byproduct material.</p> <p>Comment withdrawn based on review of</p>

	STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT AND COMMENTS
					additional information, provided in Ohio's January 9, 2014, letter.
2	3701:1-37-26(C)	§37.77(a)-(d)	2013-1	B	<p>Advance notification of shipment of category 1 quantities of radioactive material.</p> <p>In paragraph (C)(2), the phrase "...of any such incidents." should be changed to "...of any such changes."</p> <p>Ohio needs to make the above change in order to meet the Compatibility Category B designation assigned to 10 CFR 37.77(a)-(d).</p>
3	3701:1-37-27(B)	§37.79(b)	2013-1	B	<p>Requirements for physical protection of category 1 and category 2 quantities of radioactive material during shipment.</p> <p>In paragraph (B)(2)(b), the phrase "Use carriers and maintain constant control ..." should be changed to "Use carriers that maintain constant control..."</p> <p>Ohio needs to make the above change in order to meet the Compatibility Category B designation assigned to 10 CFR 37.79(b).</p>
4	3701:1-37-28(A)-(F)	§37.81(a)-(f)	2013-1	B	<p>Reporting of events.</p> <p>In paragraph (C), "LLEA along with shipment route" should be corrected to "LLEA along the shipment route."</p> <p>Ohio needs to make the above change in order to meet the Compatibility Category B designation assigned to 10 CFR 37.81(a)-(f).</p>

	STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT AND COMMENTS
5	3701:1-37-28(G)-(H)	§37.81(g)-(h)	2013-1	C	<p>Reporting of events.</p> <p>In paragraph (G), "Incidence" should be corrected to "Incident."</p> <p>In paragraph (G)(4), the phrase "or will be taken," is missing from the Ohio rule. Future corrective actions are an important piece of information for the State to expect from the licensee.</p> <p>Ohio needs to make the above changes in order to meet the Compatibility Category C designation assigned to 10 CFR 37.81(g)-(h).</p>

STATE REGULATION STATUS

State: Ohio

Tracking Ticket Number: 14-2

[1 amendment(s) reviewed is identified by a *
at the beginning of the equivalent NRC requirement.]

Date: February 20, 2014

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1991-1	Safety Requirements for Radiographic Equipment Part 34 55 FR 843 (Superceded by 1997-5)	01/10/1994	Final ML023250117	No Comments 01/09/2003 ML030060349	Ohio has adopted Final Regulations equivalent to RATS ID: 1997-5.
1991-2	ASNT Certification of Radiographers Part 34 56 FR 11504 (Superceded by 1997-5)	none	Final ML023250117	No Comments 01/09/2003 ML030060349	Ohio has adopted Final Regulations equivalent to RATS ID: 1997-5.
1991-3	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	01/01/1994	Final ML040920160	No Comments 04/14/2004 ML041060011	
1991-4	Notification of Incidents Parts 20, 30, 31, 34, 39, 40, 70 56 FR 64980	10/15/1994	Final ML083200007	No Comments 12/10/2008 ML083220971	
1992-1	Quality Management Program and Misadministrations Part 35 56 FR 34104 (Superceded by 2002-2)	01/27/1995	Final ML061440106	No Comments 06/08/2006 ML061590424	Ohio has adopted Final Regulations equivalent to RATS ID: 2002-2.
1992-2	Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions Parts 30, 35 57 FR 45566	none	Final ML061440106	No Comments 06/08/2006 ML061590424	These regulation changes are not required to be adopted for purposes of Compatibility.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1993-1	Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites] Parts 30, 40 58 FR 39628	10/25/1996	Final ML083200007	No Comments 12/10/2008 ML083220971	
1993-2	Licensing and Radiation Safety Requirements for Irradiators Part 36 58 FR 7715	07/01/1996	Final ML023250117	No Comments 01/09/2003 ML030060349	
1993-3	Definition of Land Disposal and Waste Site QA Program Part 61 58 FR 33886	07/22/1996	Final	No Comments 10/09/1998	
1994-1	Self-Guarantee as an Additional Financial Mechanism Parts 30, 40, 70 58 FR 68726; 59 FR 1618	none	Final	No Comments 10/09/1998	
1994-2	Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards Part 40 59 FR 28220	07/01/1997	Final	No Comments 10/09/1998	
1994-3	Timeliness in Decommissioning Material Facilities Parts 30, 40, 70 59 FR 36026	08/15/1997	R ¹	No Comments 7/26/00	
1995-1	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	01/01/1998	Final ML061440106	No Comments 06/08/2006 ML061590424	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1995-2	Frequency of Medical Examinations for Use of Respiratory Protection Equipment Part 20 60 FR 7900	03/13/1998	Final ML041240504	No Comments 06/14/2004 ML041670402	
1995-3	Low-Level Waste Shipment Manifest Information and Reporting Parts 20, 61 60 FR 15649; 60 FR 25983	03/01/1998	Final ML040920160	No Comments 04/14/2004 ML041060011	
1995-4	Performance Requirements for Radiography Equipment Part 34 60 FR 28323 (Superseded by 1997-5)	06/30/1998	Final ML023250117	No Comments 01/09/2003 ML030060349	Ohio has adopted Final Regulations equivalent to RATS ID: 1997-5.
1995-5	Radiation Protection Requirements: Amended Definitions and Criteria Parts 19, 20 60 FR 36038	08/14/1998	Final ML040920160	No Comments 04/14/2004 ML041060011	
1995-6	Clarification of Decommissioning Funding Requirements Parts 30, 40, 70 60 FR 38235	11/24/1998	R ¹	No Comments 07/26/2000	
1995-7	Medical Administration of Radiation and Radioactive Materials Parts 20, 35 60 FR 48623 (Superseded by 2002-2 and 2005-2)	10/20/1998	Proposed ML042230062	No Comments 10/14/2004 ML042890002	
1996-1	Compatibility with the International Atomic Energy Agency Part 71 60 FR 50248; 61 FR 28724	04/01/1999	Not Required	Not Required	Ohio has adopted Final Regulations equivalent to RATS ID: 2004-1.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
	(Superceded by 2004-1)				
1996-2	One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses Parts 30, 40, 70 61 FR 1109	02/15/1999	R ¹	No Comments 07/26/2000	
1996-3	Termination or Transfer of Licensed Activities: Record keeping Requirements Parts 20, 30, 40, 61, 70 61 FR 24669	06/17/1999	R ¹	No Comments 07/26/2000	
1997-1	Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act Part 20 61 FR 65120	01/9/2000	Final ML041900134	No Comments 08/09/2004 ML042220269	
1997-2	Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State Part 150 62 FR 1662	02/27/2000	Final ML041240504	No Comments 06/14/2004 ML041670402	
1997-3	Criteria for the Release of Individuals Administered Radioactive Material Parts 20, 35 62 FR 4120	05/29/2000	R ¹	No Comments 07/26/2000	
1997-4	Fissile Material Shipments and Exemptions Part 71 62 FR 5907 (Superceded by 2004-1)	02/10/2000	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility. (See STP-97-078)
1997-5	Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations Parts 30, 34, 71, 150	06/27/2000	Final ML083020271	No Comments 12/05/2008 ML083150069	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
	62 FR 28947				
1997-6	Radiological Criteria for License Termination Parts 20, 30, 40, 70 62 FR 39057	08/20/2000	Final	No Comments 10/09/1998	
1997-7	Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea Part 30 62 FR 63634	01/02/2001	Final ML041240504	No Comments 06/14/2004 ML041670402	
1998-1	Deliberate Misconduct by Unlicensed Persons Parts 30, 40, 61, 70, 71, 150 63 FR 1890; 63 FR 13773	02/12/2001	R ¹ ML010380259 ML010870344	No Comments 12/12/01 ML013530072	
1998-2	Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees Parts 30, 40, 70 63 FR 29535	07/01/2001	Final	No Comments 10/09/1998	These regulation changes are not required to be adopted for purposes of Compatibility.
1998-3	License Term for Medical Use Licenses Part 35 63 FR 31604 (Superseded by 2002-2)	07/10/2001	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility. (See STP-98-074) Ohio has adopted Final Regulations equivalent to RATS ID: 2002-2.
1998-4	Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations Part 34 63 FR 37059	07/09/2001	Final ML041240504	No Comments 06/14/2004 ML041670402	
1998-5	Minor Corrections, Clarifying Changes, and a Minor Policy Change Parts 20, 32, 35, 36, 39 63 FR 39477; 63 FR 45393	10/26/2001	Final	No Comments 10/09/1998	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1998-6	Transfer for Disposal and Manifests: Minor Technical Conforming Amendment Part 20 63 FR 50127	11/20/2001	Final ML041900134	No Comments 08/09/2004 ML042220269	
1999-1	Radiological Criteria for License Termination of Uranium Recovery Facilities Part 40 64 FR 17506	06/11/2002	Final ML060580024	No Comments 04/13/2006 ML061030457	
1999-2	Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information Part 31 64 FR 42269	10/04/2002	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1999-3	Respiratory Protection and Controls to Restrict Internal Exposure Part 20 64 FR 54543; 64 FR 55524	02/02/2003	Final ML040920160	No Comments 04/14/2004 ML041060011	
2000-1	Energy Compensation Sources for Well Logging and Other Regulatory Clarifications Part 39 65 FR 20337	05/17/2003	Final ML023250117	No Comments 01/09/2003 ML030060349	
2000-2	New Dosimetry Technology Parts 34, 36, 39 65 FR 63750	01/08/2004	Final ML023250117	No Comments 01/09/2003 ML030060349	
2001-1	Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material Parts 30, 31, 32 65 FR 79162	02/16/2004	Final ML12361A139	No Comments 02/06/2013 ML13011A272	
2002-1	Revision of the Skin Dose Limit	04/05/2005	Final ML061440106	No Comments 06/08/2006	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
	Part 20 67 FR 16298			ML061590424	
2002-2	Medical Use of Byproduct Material Parts 20, 32, 35 67 FR 20249	10/24/2005	Final ML061440106	No Comments 06/08/2006 ML061590424	
2003-1	Financial Assurance for Materials Licensees Parts 30, 40, 70 68 FR 57327	12/03/2006	Final ML090120129	No Comments 02/06/2009 ML090150553	
2004-1	Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments Part 71 69 FR 3697	10/01/2007	Final ML063170453	No Comments 12/15/2006 ML063490049	
2005-1	Security Requirements for Portable Gauges Containing Byproduct Material Part 30 70 FR 2001	07/11/2008	Final ML071010099	No Comments 04/25/2007 ML071150005	
2005-2	Medical Use of Byproduct Material - Recognition of Specialty Boards Part 35 70 FR 16336; 71 FR 1926	04/29/2008	Final ML090120129	No Comments 02/06/2009 ML090150553	
2005-3	Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) 70 FR 72128	12/01/2005	License Condition ML053120143	No Comments 11/10/2005 ML053180026	
2006-1	Minor Amendments Parts 20, 30, 32, 35, 40 and 70 71 FR 15005	03/27/2009	Final ML103120326	No Comments 01/12/2011 ML103360248	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
2006-2	National Source Tracking System - Serialization Requirements Part 32 with reference to Part 20 Appendix E 71 FR 65685	02/06/2007	Final ML083050030	No Comments 12/18/2008 ML083400038	
2006-3	National Source Tracking System Part 20 71 FR 65685, 72 FR 59162	01/31/2009	Final ML083050030	No Comments 12/18/2008 ML083400038	
2007-1	Medical Use of Byproduct Material - Minor Corrections and Clarifications Parts 32 and 35 72 FR 45147, 54207	10/29/2010	Final ML103120326	No Comments 01/12/2011 ML103360248	
2007-2	Exemptions From Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements Parts 30, 31, 32, 150 72 FR 58473	12/17/2010	Final ML091380031	No Comments 07/02/2009 ML091600466	
2007-3	Requirements for Expanded Definition of Byproduct Material Parts 20, 30, 31, 32, 33, 35, 61, 150 72 FR 55864	11/30/2010	R ¹ ML120100267	No Comments 02/21/2012 ML120370416	
2007-4	Order Imposing Fingerprinting Requirements and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material NRC Order EA-07-305 72 FR 70901	06/05/2008	License Condition ML080460449	No Comments 03/12/2008 ML080720077	
2008-1	Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent Parts 19, 20 72 FR 68043	02/15/2011	Final ML091380048	No Comments 07/07/2009 ML091600652	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
2009-1	Medical Use of Byproduct Material – Authorized User Clarification Part 35 74 FR 33901	09/28/2012	Final ML120100267	No Comments 02/21/2012 ML120370416	
2011-1	Decommissioning Planning Parts 20, 30, 40, 70 76 FR 35512	12/17/2015	Final ML13330A553	No Comments 12/23/2013 ML13330A097	
2011-2	Licenses, Certifications, and Approvals for Materials Licensees Parts 30, 36, 39, 40, 70, and 150 76 FR 56951	11/14/2014	Final ML13228A018	No Comments 09/18/2013 ML13228A016	
2012-1	Change of Compatibility of 10 CFR 31.5 and 31.6 (See RATS ID: 2001-1 for Rule text) 77 FR 3640	01/25/2015	Final ML12361A139	No Comments 02/06/2013 ML13011A272	
2012-2	Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste Part 71 77 FR 34194	08/10/2015	Final ML12361A139	No Comments 02/06/2013 ML13011A272	
2012-3	Technical Corrections Part 30, 34, 40 and 70 77 FR 39899	08/06/2015			
2012-4	Requirements for Distribution of Byproduct Material Parts 30, 31, 32, 40 and 70 77 FR 43666	10/23/2015			
*2013-1	Physical Protection of Byproduct Material, 10 CFR Parts 20, 30, 32, 33, 34, 35, 36, 37, 39, and 71 78 FR 16922	03/19/2016	Proposed ML14010A173	Comments 02/20/2014 ML14010A170	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
2013-2	Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions, 10 CFR Parts 30, 40, and 70 78 FR 32310	08/27/2016			

¹R stands for proposed changes to a final rule.