

July 26, 2000

Ms. Marcia Howard, Administrator
Nuclear Materials Safety Program
Bureau of Radiation Protection
Ohio Department of Health
P.O. Box 118
Columbus, OH 43266-0118

Dear Ms. Howard:

As requested, we have reviewed the proposed regulations in Chapter 3701: 1 - 40, dated May 17, 2000. The proposed regulations are replacements for the current regulations which adopted the Nuclear Regulatory Commission (NRC) regulations by reference. They are also in response to the 8 amendments identified in the enclosed Regulations Assessment Tracking System (RATS) Data Sheet. The Ohio regulations were reviewed by comparison to the equivalent NRC regulations in 10 CFR Parts 30 and 150. We also discussed our review of the regulations with you on June 28 and 30, 2000.

As a result of our review we have 10 comments as listed in the enclosure. 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 a State regulation meets the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final State regulation. However, we have determined that if your proposed regulations were adopted incorporating the comments and without other significant change, they would meet the compatibility and health and safety categories established in the Office of State and Tribal Programs (STP) Procedure SA-200.

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 STP Procedure SA-201, Review of State Regulations (November 10, 1998), please highlight the final changes and send one copy in a computer readable format, if possible.

We have also summarized on the RATS Data Sheet our knowledge of the status of other Ohio regulations. Please let us know if you note any inaccuracies or have any comments on the information contained in the RATS Data Sheet.

If you have any questions regarding the comments, the compatibility and health categories, or any of the NRC regulations used in the review, please contact me or Mr. Richard Blanton of my staff at (301) 415-2322 or RLB@NRC.GOV.

Sincerely,

/RA/
Frederick C. Combs, Deputy Director
Office of State and Tribal Programs

Enclosures:
As stated

Distribution:
 DIR RF (0-146)
 PHLohaus
 SCDroggitis
 JLynch, RIII
 RLickus, RIII
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DCD (SP07)
 PDR (YES✓)

Response to incoming document: ML003721873

DOCUMENT NAME: C:\Ohio proposed chapter 3701 ~.wpd

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OFFICE	STP	STP	OGC	STP:DD
NAME	RLBlanton:gd	SNSalomon	STreby (By S.H. Lewis)	FCCombs
DATE	07/18/2000	07/20/2000	07/26/2000	07/18/2000

STP- AG-31

**COMMENTS ON PROPOSED OHIO REGULATIONS
AGAINST COMPATIBILITY AND HEALTH AND SAFETY CATEGORIES**

State Regulation	NRC Regulation	RATS ID	Category	Subject and Comments
3701:1-40-01(A)	30.4	1991-4	B	Definition: Alert In the first line, delete the word "that" from between the words "events" and "may."
3701:1-40-01	30.4	1993-1	(as indicated)	Definitions of - Decommission (C) Sealed Source (B) Site Area Emergency (A) These definitions are not in the proposed regulations. To assure compatibility, they must be adopted. We understand that they are in Chapter 38, and will be submitted for review later.
DELETED	30.10	1998-1	C	Deliberate Misconduct The proposed regulations delete this section. A reference is given to R.C. 4113.52, however, this section of Ohio law appears to apply to whistle-blower protection rather than deliberate misconduct by a licensee employee. To assure compatibility, either the appropriate section of law should be identified, or the rule should be retained.
3701:1-40-09(D)	30.14	none	B	Exempt Concentrations To assure compatibility, delete paragraph D, and substitute the following: "No person may introduce byproduct material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under this rule, except in accordance with a license issued pursuant to 10 CFR 32.11 or the general license provided in 10 CFR150.20." Only NRC may issue a license to distribute byproduct material to unlicensed persons (exempt distribution). States may issue licenses authorizing the exempt distribution NARM
Chapter 38	30.31	none	C	We understand that the equivalent rule is in Chapter 38, and will be submitted for review later.
3701:1-40-17	30.34	none	C	We understand that the equivalent to 30.34(a) is in Ohio Statute RC 3748.07(A)
Chapter 38	Part 30, Appendix B	none	B	We understand that the equivalent rule is in Chapter 38, and will be submitted for review later.
Chapter 38	150.3	none	various	We understand that the equivalent rule is in Chapter 38, and will be submitted for review later.
Chapter 56	150.11	none	A	We understand that the equivalent rule is in Chapter 56, and will be submitted for review later.
DELETED	150.31	none	C	The rule is not required since there are no affected licensees in Ohio.

**REGULATION ASSESSMENT TRACKING SYSTEM
RATS DATA SHEET**

State: Ohio

Tracking Ticket Number: 0-146

[Eight proposed amendments (May 17, 2000), reviewed are identified by a ★ at the beginning of each equivalent NRC regulation.]

Date: July 26, 2000

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed/ Final-Comment (Y/N) ¹	NRC Review Date	Final State Regulation ² (Effective Date)
Standards for Protection Against Radiation-Part 20	56 FR 23360 plus others (1/1/94)	1991-3			
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843 (1/10/94)	1991-1			
ASNT Certification of Radiographers-Part 34	56 FR 11504 (none)	1991-2			Not required ³
★ 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			
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions-Parts 30,35	57 FR 45566 (none)	1992-2			Not required ³
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715 (7/1/96)	1993-2			Not applicable SECY-95-112 ⁴
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886 (7/22/96)	1993-3			Not applicable SECY-95-112 ⁴
★ 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	
Self-Guarantee as an Additional Financial Mechanism- Parts 30, 40, 70	58 FR 68726 59 FR 1618 (none)	1994-1			Not required ³
Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220 (7/1/97)	1994-2			
★ Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026 (8/15/97)	1994-3	P-N	7/26/00	
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			
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900 (3/13/98)	1995-2			
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649 60 FR 25983 (3/1/98)	1995-3			
Performance Requirements for Radiography Equipment- Part 34	60 FR 28323 (6/30/98)	1995-4			

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed/ Final-Comment (Y/N)¹	NRC Review Date	Final State Regulation² (Effective Date)
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038 (8/14/98)	1995-5			
★ Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235 (11/24/98)	1995-6	P-N	7/26/00	
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623 (10/20/98)	1995-7			
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248 61 FR 28723 (4/1/99)	1996-1			
One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses-Parts 30, 40, 70	61 FR 1109 (none)	1996-2			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	P-N	7/26/00	
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120 (1/9/00)	1997-1			
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907 (none)	1997-4			Not required ³
★ 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	P-N	7/26/00	
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120 (5/29/00)	1997-3			
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			
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39058 (8/20/00)	1997-6			
★ Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30	62 FR 63634 (1/02/01)	1997-7	P-N	7/26/00	
★ Deliberate Misconduct by Unlicensed Persons- Parts 30, 40, 61, 70, 150	63 FR 1890 63 FR 13773 (2/12/01)	1998-1	P-Y	7/26/00	
Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees-Parts 30, 40, 70	63 FR 29535 (none)	1998-2			Not required ³
License Term for Medical Use Licenses-Part 35	63 FR 31604 (none)	1998-3			Not required ³

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed/ Final-Comment (Y/N)¹	NRC Review Date	Final State Regulation² (Effective Date)
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34	63 FR 37059 (7/9/01)	1998-4			
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39347 63 FR 45393 (10/26/01)	1998-5			
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127 (11/20/01)	1998-6			
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506 (6/11/02)	1999-1			
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 55525 (2/2/03)	1999-3			
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications - Part 39	65 FR20337 (5/17/03)	2000-1			

1. (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.
2. Or other generic Legally Binding Requirement.
3. Not required means these regulations are not required for purposes of compatibility.
4. A State need not adopt a specific regulation if the State has no licensees that would be subject to that regulation. See: "Final Policy Statement on Adequacy and Compatibility of Agreement State Programs," III.1. Time Frame for Adoption of Compatible State Regulations, p. 6, SECY-95-112, May 3, 1995.