

OHIO DEPARTMENT OF HEALTH

246 North High Street
Post Office Box 118
Columbus, Ohio 43216-0118

Telephone (614) 486-3543
www.odh.state.oh.us



BOB TAFT
Governor

J. NICK BAIRD, M.D.
Director of Health

02 APR -3 AM 9:04

STP

March 15, 2002

Victoria Morris, MS CHP
Radiation Safety Officer
University of Cincinnati
PO Box 670591
231 Albert Sabin Way
Radiation Safety Lab
Cincinnati, Ohio 45627-0591

Dear Ms. Morris:

I am writing in response to your letter regarding the application of certain rules in chapter 3701:1-50 of the Administrative Code.

When Chapter 3701:1-50 was developed by the Bureau of Radiation Protection and placed on the web seeking public comment, the rules were prepared with the compatibility levels that NRC had published in their guidance (SA-200). In June 2000, the NRC posted a copy of SA-200 for comment. The proposed compatibility for 10 CFR 71.10(b) and (c) was listed as "B" as it had been in previous editions. In response to an internal comment from the NRC Office of Nuclear Materials Safety and Safeguards, the compatibility was changed to "NRC". In February 2001, the NRC published an updated edition of SA-200 and the compatibility level for 10 CFR 71.10 (b) and (c) was changed to "NRC". There was no specific notification to Agreement States noting this change from the previous edition. Compatibility "NRC" is for NRC only and states are not to adopt these provisions. Compatibility level "B" means that the particular rule has significant transboundary implications and the wording of the rule needs to be essentially identical to that of NRC.

When Chapter 3701:1-50 was being prepared for adoption, the Bureau of Radiation Protection, in response to comments from the NRC, made modifications to the rules. The changes were made because NRC indicated that the provision that Ohio was proposing to adopt regarding exemption for low-level materials found in 10 CFR 71.10 (b) and (c) was listed as compatibility "NRC" rather than compatibility "B". A copy of the letter from NRC noting these recommendations is enclosed.

Given the comment from NRC, staff proceeded to remove the language from the rule as it went forward to Public Health Council for adoption. The changes in the rule were brought to the attention of the Radioactive Materials Committee and the Radiation Advisory Council. There was no intention to create additional requirements for Ohio radioactive materials licensees. However, by removing the language regarding exemptions from rule 3701:1-50-06, an unintended consequence was to have all licensees be subject to the Quality Assurance Requirements of 3701:1-50-24. It was not the intention of the Bureau of Radiation Protection to recommend the adoption of rules that would have this impact on licensees. It is

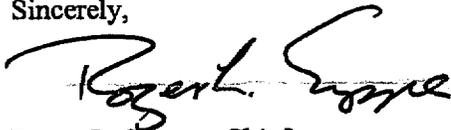
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the intention on the Bureau to go to the Radioactive Materials Committee, the Radiation Advisory Council, and the Public Health Council to correct this matter.

Pursuant to Section 3748.05 (A) (5) the Director shall ensure that programs for the control of radiation sources are developed with due regard for compatibility with federal programs for the regulation of byproduct, source, and special nuclear material. Pursuant to Section 3748.05 (B) (5) the Director may issue orders to carry out the purposes of Chapter 3748 of the Revised Code. The Bureau of Radiation Protection is requesting that the Director issue an order providing for an exemption to all licensees regarding establishing quality assurance requirements as required by rule 3701:1-50-24 of the Administrative Code until the rules can be modified to delete this requirement. A copy of the order will be sent to all licensees when the order is issued. In the interim, the Bureau will not initiate enforcement action against licensees for an above outlined violation of rule 3701:1-50-24.

Sincerely,



Roger L. Suppes, Chief
Bureau of Radiation Protection

CF: Socrates Tuch, Office of Legal Services
Paul Lohaus, Director Office of State and Tribal Programs, NRC
Susan Hiatt, Chair, Radioactive Materials Committee
William Potvin, Chair, Radiation Advisory Council

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BOB TAFT
Governor

J. NICK BAIRD, M.D.
Director of Health

02 APR -3 AM 9:05

STP

March 15, 2002

Michael J. Burba
ORMUG
1601 W. Fifth Avenue, Suite 233
Columbus, Ohio 43212-2367

Dear Mr. Burba:

I am writing in response to your letter dated February 11, 2002, regarding the application of certain rules in chapter 3701:1-50 of the Administrative Code.

When Chapter 3701:1-50 was developed by the Bureau of Radiation Protection and placed on the web seeking public comment, the rules were prepared with the compatibility levels that NRC had published in their guidance (SA-200). In June 2000, the NRC posted a copy of SA-200 for comment. The proposed compatibility for 10 CFR 71.10(b) and (c) was listed as "B" as it had been in previous editions. In response to an internal comment from the NRC Office of Nuclear Materials Safety and Safeguards, the compatibility was changed to "NRC". In February 2001, the NRC published an updated edition of SA-200 and the compatibility level for 10 CFR 71.10 (b) and (c) was changed to "NRC". There was no specific notification to Agreement States noting this change from the previous edition. Compatibility "NRC" is for NRC only and states are not to adopt these provisions. Compatibility level "B" means that the particular rule has significant transboundary implications and the wording of the rule needs to be essentially identical to that of NRC.

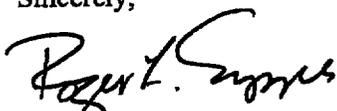
When Chapter 3701:1-50 was being prepared for adoption, the Bureau of Radiation Protection, in response to comments from the NRC, made modifications to the rules. The changes were made because NRC indicated that the provision that Ohio was proposing to adopt regarding exemption for low-level materials found in 10 CFR 71.10 (b) and (c) was listed as compatibility "NRC" rather than compatibility "B". A copy of the letter from NRC noting these recommendations is enclosed.

Given the comment from NRC, staff proceeded to remove the language from the rule as it went forward to Public Health Council for adoption. The changes in the rule were brought to the attention of the Radioactive Materials Committee and the Radiation Advisory Council. There was no intention to create additional requirements for Ohio radioactive materials licensees. However, by removing the language regarding exemptions from rule 3701:1-50-06, an unintended consequence was to have all licensees be subject to the Quality Assurance Requirements of 3701:1-50-24. It was not the intention of the Bureau of Radiation Protection to recommend the adoption of rules that would have this impact on licensees. It is the intention on the Bureau to go to the Radioactive Materials Committee, the Radiation Advisory Council, and the Public Health Council to correct this matter.

Pursuant to Section 3748.05 (A) (5) the Director shall ensure that programs for the control of radiation sources are developed with due regard for compatibility with federal programs for the regulation of

byproduct, source, and special nuclear material. Pursuant to Section 3748.05 (B) (5) the Director may issue orders to carry out the purposes of Chapter 3748 of the Revised Code. The Bureau of Radiation Protection is requesting that the Director issue an order providing for an exemption to all licensees regarding establishing quality assurance requirements as required by rule 3701:1-50-24 of the Administrative Code until the rules can be modified to delete this requirement. A copy of the order will be sent to all licensees when the order is issued. In the interim, the Bureau will not initiate enforcement action against licensees for an above outlined violation of rule 3701:1-50-24.

Sincerely,



Roger L. Suppes, Chief
Bureau of Radiation Protection

CF: ~~Socrates Tuch, Office of Legal Services~~
Paul Lohaus, Director Office of State and Tribal Programs, NRC
Susan Hiatt, Chair, Radioactive Materials Committee
William Potvin, Chair, Radiation Advisory Council



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

WASHINGTON, D.C. 20555-0001

September 25, 2001

02 APR -3 AM 9:06

STP

Mr. Roger L. Suppes, Chief
Bureau of Radiation Protection
Ohio Department of Health
246 North High Street, P.O. Box 118
Columbus, Ohio 43216-0118

Dear Mr. Suppes:

As requested, we have reviewed the proposed regulations in Ohio rule 3701:50, "Transportation of Radioactive Material," sent January 30, 2001. These regulations are to replace 10 CFR Part 71 that Ohio adopted by reference prior to the effective date of the 274b Agreement. The proposed regulations are in response to the one amendment identified in the enclosed State Regulation Status (SRS) Data Sheet. The regulations were reviewed by comparison to the equivalent NRC regulations in 10 CFR Part 71. We also discussed our review of the regulations with Marcia Howard on March 7 and 14, 2001. We will respond separately to your March 19, 2001 letter regarding deliberate misconduct that resulted from these discussions.

As a result of our review, we have 5 comments that have been identified in the enclosure. Please note that we have limited our review to regulations required for compatibility and/or health and safety. We are also enclosing an editorial mark-up identified during our review. 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 Office of State and Tribal Programs (STP) Procedure SA-200, revised February 6, 2001.

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 provide one copy to STP.

The SRS Data Sheet summarizes 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 SRS Data Sheet. This letter, including the SRS Data Sheet, is posted on the STP Web Site: <http://www.hsrcd.ornl.gov/nrc/rulemaking.htm>.

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 John Zabko of my staff at 301-415-1277 or JGZ@NRC.GOV.

Sincerely,


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

RECEIVED OCT 0 4 2001

Enclosures:
As stated

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

State Regulation	NRC Regulation	RATS ID	Category	Subject and Comments
3701: 1-50-01	71.4	1996-1	B	<p>Definitions</p> <p>The definitions of Type A and Type B quantities are missing.</p> <p>These definitions need to be added to meet the compatibility category.</p>
3701: 1-50-06(B)	§71.10(b)	1996-1	NRC	<p>Exemptions for Low-Level Materials</p> <p>This exemption is reserved to the NRC because it was designed to delineate NRC's authority from that of DOT's in the areas of transportation of radioactive materials.</p> <p>Paragraph (B) should be deleted to meet the compatibility category.</p>
3701: 1-50-06(C)	§71.53	1996-1	NRC	<p>Exemptions for Low-Level Materials</p> <p>This section is reserved to NRC.</p> <p>Paragraph (C) should be deleted to meet the compatibility category.</p>
3701: 1-50-06(D)	§71.10(c)	1996-1	NRC	<p>Exemptions for Low-Level Materials</p> <p>This exemption is reserved to the NRC because it was designed to delineate NRC's authority from that of DOT's in the areas of transportation of radioactive materials.</p> <p>Paragraph (D) should be deleted to meet the compatibility category.</p>
3701: 1-50-23 (A) and (C)	71.97 (a)	1996-1	B	<p>Advanced Notification</p> <p>The paragraph is written to require the advanced notification of the Ohio authorities. 10 CFR 71.97 refers to the notification of the authorities of any state in which a shipment passes through.</p> <p>This paragraph needs to be reworded to reflect this and not give the impression that this requirement only refers to Ohio.</p>

EDITORIAL CHANGES

1. In 3701:1-38-01 (105), the reference to Part 173 was omitted in the reference to 49 CFR 173.
2. In 3701:1-38-01, the reference to rule 3701-39-021 is incorrectly written as 3701-39-02.1.
3. In 3701-1-50-17, there are references to both "table 1" and "paragraph 1 (1)"; both of which are the same. There should be consistent use of either one.
4. In 3701-1-50-25 D (2), the lower case "f" used in the equation, is referred to in the paragraph with an uppercase "F." The two F's need to be the same.

STATE REGULATION STATUS

State: Ohio

One proposed amendment (1/30/01) reviewed is identified by a ★ at the beginning of each equivalent NRC regulation.

Tracking Ticket Number: 1-33

Date: September 25, 2001

NRC Chronology Identification	FR Notice (Date, Date for State Implementation)	RATS ID	Proposed (P) / Final (F) Rule / ML*	NRC Review / Y, N / Date / ML*	Final State Regulation (Effective Date)
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			10/9/98 ^e
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	P ML003772297 ML010330197	Y 5/14/01 ML011360572	10/9/98 ^e
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 45586; (none)	1992-2			10/9/98 ^e
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
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2			10/9/98 ^e
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3			10/9/98 ^e
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618 (none)	1994-1			10/9/98 ^e
Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2			10/9/98 ^e
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 ^e
Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use-Parts 30, 32, 35	59 FR 61767; 59 FR 66243 60 FR 322; (1/1/98)	1995-1			10/9/98 ^e
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	P ML003772297 ML010330197	N 5/14/01 ML011360572	10/9/98 ^e

NRC Chronology Identification	FR Notice (Date Issued for State Implementation)	RATS ID	Proposed (P) / Final (F) Rule / ML #	NRC Review / Y, N / Date / ML #	Final State Regulation (Effective Date)
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3	P ML003772297 ML010330197	Y 5/14/01 ML011360572	10/9/98 ^b
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4			10/9/98 ^b
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	P ML003772297 ML010330197	Y 5/14/01 ML011360572	10/9/98 ^b
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 ^b
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7			10/9/98 ^b
*10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28723 (4/1/99)	1996-1	P ML010380259 ML010870344	Y 9/25/01 ML012710319	10/9/98 ^b
One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses-Parts 30, 40, 70	61 FR 1108; (none)	1996-2			10/9/98 ^b
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	10/9/98 ^b
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	P ML003772297 ML010330197	N 5/14/01 ML011360572	10/9/98 ^b
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	10/9/98 ^b
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3			10/9/98 ^b
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4			10/9/98 ^b
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	P	N 7/26/00	10/9/98 ^b
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39058; (8/20/00)	1997-6			10/9/98 ^b
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	10/9/98 ^b
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1	P	Y 7/26/00	10/9/98 ^b

NRC Chronology Identification	FR Notice (Date/Title for State Instrumentation)	PARTS ID	Proposed (P) Final (F) Rule/ ML #	NRC Review / Y (Y) Date / ML #	Final State Regulation (Effective Date)
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			10/9/98 ⁶
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45383 (10/26/01)	1998-5			10/9/98 ⁶
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	P ML003772297 ML010330197	N 5/14/01 ML011360572	
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	P ML003772297 ML010330197	Y 5/14/01 ML011360572	
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1			
New Dosimetry Technology-Parts 34, 36, 39	65 FR 69749; (1/8/04)	2000-2			

1. Or 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.