



OHIO DEPARTMENT OF HEALTH

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Bob Taft / Governor

J. Nick Baird, M.D. / Director of Health

March 22, 2007

Scott Moore, Deputy Director
Division of Materials Safety and State Agreements
Federal and State Materials and Environmental Management Programs
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Mr. Moore:

The Ohio Department of Health has finalized the amendment to rule 3701:1-40-16 of the Ohio Administrative Code. The effective date of the rule was March 22, 2007. The rule was submitted in draft form to the NRC on August 21, 2006. In a letter signed by Kathleen Schneider and dated September 11, 2006, the NRC indicated that there were no comments on the draft rule. The rule corresponds to the following equivalent amendment to NRC's regulations.

Rule 3701:1-40-16 of the Ohio Administrative Code – RATS ID 2005-1

This rule is the equivalent of 10 CFR 30.34 and contains the revision for security requirements for portable gauges.

The Ohio rule can be found at <http://www.odh.ohio.gov/rules/final/finalRules.aspx>. A copy of the rule is also enclosed. We believe that this Ohio rule satisfies the compatibility and health and safety categories established in the FSME Procedure SA-200.

If you have any questions, please feel free to contact Michael Snee of my staff at 614-644-2727 or Michael.Snee@odh.ohio.gov.

Sincerely,

Robert E. Owen, Chief
Bureau of Radiation Protection

Enclosure

Terms and conditions of licenses.

- (A) A license, or any right under a license, shall not be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the director finds that the transfer is in accordance with this rule and Chapters 3701:1-46, 3701:1-48, 3701:1-49, 3701:1-52, and 3701:1-58 of the Administrative Code. A license or any right contained therein may not be transferred or conveyed without the written authorization of the director. If the director approves the transfer and receives payment of the appropriate licensing fee, a new license will be issued to the transferee.
- (B) Each licensee shall confine possession and use of byproduct or accelerator produced material to the locations and purposes authorized in the license. Preparation for shipment and transport of byproduct or accelerator produced material shall be in accordance with Chapter 3701:1-50 of the Administrative Code.
- (C) The director may incorporate at the time of issuance, or thereafter by appropriate rule, regulation, or order, such additional requirements or conditions with respect to the licensee's receipt, possession, use and transfer of byproduct or accelerator produced material as the director deems appropriate or necessary in order to protect the environment, protect health, or minimize danger to life or property. The director may require such reports and the keeping of such records, and provide for such inspections of activities under the license as may be necessary to effectuate the purposes of Chapter 3748. of the Revised Code or rules adopted thereunder.
- (D) A licensee that is required to submit an emergency plan pursuant to rule 3701:1-40-14 of the Administrative Code shall follow the emergency plan approved by the director. The licensee may amend the approved plan without approval of the director provided that the amendment does not decrease the effectiveness of the plan. Within six months after amending the emergency plan, the licensee shall furnish the amended plan to both the director and to affected offsite response organizations. Any proposed amendment to the emergency plan that decreases, or potentially decreases, the effectiveness of the approved emergency plan may not be implemented without prior approval by the director.
- (E) Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators shall test the generator eluates for molybdenum-99 breakthrough in accordance with rule 3701:1-58-35 of the Administrative Code. The licensee shall record the results of each test and retain each record for three years after the record is made.
- (F) Each licensee must notify the department by certified mail within ten business days of the commencement of a voluntary or involuntary bankruptcy petition that has been filed by or against:
- (1) The licensee;

- (2) An entity, defined in this rule as person, estate, trust, governmental unit, and United States trustee, controlling the licensee or listing the license or licensee as property of the estate; or
- (3) An affiliate of the licensee defined in this rule as an entity that directly or indirectly owns, controls, or holds with power to vote, twenty per cent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities:
 - (a) In a fiduciary or agency capacity without sole discretionary power to vote such securities; or
 - (b) Solely to secure a debt, if such entity has not in fact exercised such power to vote.

The notification shall specify the bankruptcy court in which the petition for bankruptcy was filed and the date of the filing petition.

- (G) The director may, upon application including adequate documentation by a person or by his own initiative, grant such exemptions from the requirements of this chapter or other chapters of the Administrative Code involving radioactive materials promulgated under Chapter 3748. of the Revised Code that are authorized by law and will not result in undue hazard to life or property and are otherwise in the public interest.
- (H) Each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Effective: 03/22/2007
 R.C. 119.032 review dates: 12/11/2006 and 03/01/2012

CERTIFIED ELECTRONICALLY

 Certification

03/22/2007

 Date

Promulgated Under: 119.03
 Statutory Authority: 3748.04
 Rule Amplifies: 3748.04
 Prior Effective Dates: 8/15/05