

September 4, 2007

Terry D. Lindsey, Manager
Radiation Protection Services Section
Office of Environmental Public Health
Public Health Division
Department of Human Services
800 NE Oregon Street, Suite 640
Portland, Oregon 97232

Dear Mr. Lindsey:

We have reviewed the final revision to the Oregon Administrative Rules (Div. 333), Radiation Protection Services, as received by our office on July 3, 2007. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 20, 30, 31, 32, 34, 39, 71 and 150; and the requirements of the seven amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with you on August 28, 2007.

As noted in All Agreement States letter STP-05-072, dated September 28, 2005, NRC staff is continuing to review Agreement State GL Device proposed and final rules, but will hold in abeyance any determination on those rules and compatibility of those rules, if the Agreement State has the essential elements of the NRC's rule and is more restrictive than the NRC's rule. Seven comments identified in the enclosure will be held in abeyance until such time as a decision on the petition for rulemaking, as discussed in STP-05-072, is reached. No corrective action will be required for these comments.

As a result of the remainder of our review, we have one comment that has been identified in the enclosure, which was previously addressed in our letter dated December 21, 2006. We have also identified two new comments regarding a provision of your regulations that was previously reviewed and addressed in the December 21, 2006, letter. Please note that we have limited our review to regulations required for compatibility and/or health and safety. We have determined that if the regulations are revised, incorporating our comments and without other significant changes, 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 Oregon, 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 Oregon 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.hsrp.or.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 (kxs@nrc.gov) or Kim Lukes at 301-415-6701 (kxk2@nrc.gov).

Sincerely,

IRA By ADWhite

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

Enclosures:
As stated

The SRS Data Sheet summarizes our knowledge of the status of other Oregon 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.hsrdrnrc.gov/nrc/rulemaking.htm>.

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Sincerely,

IRA By ADWhite

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

Enclosures: As stated

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COMPATIBILITY COMMENTS ON OREGON FINAL REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	333-120-0210(1)(b)	§20.1502	1998-5	H&S	<p>Conditions requiring individual monitoring of external and internal occupational dose</p> <p>Oregon addressed previous comment from December 21, 2006, letter on its regulation in 333-120-0210. However, through further review of this provision, Oregon's regulation in 333-120-0210(1)(b) differs from equivalent NRC regulations by not including the requirements for the deep dose equivalent, lens dose equivalent, and shallow dose equivalent for minors.</p> <p>Oregon needs to adopt the essential objectives of the requirements for the occupational exposure to minors in 333-120-0210(1)(b) to meet the Category H&S designation assigned to section 10 CFR 20.1502.</p>
2	333-120-0210(2)(b)	§20.1502	1998-5	H&S	<p>Conditions requiring individual monitoring of external and internal occupational dose</p> <p>Oregon addressed previous comment from December 21, 2006, letter on its regulation in 333-120-0210. However, through further review of this provision, Oregon's regulation in 333-120-0210(2)(b) differs from equivalent NRC regulations by stipulating the requirements for the deep dose equivalent, lens dose equivalent, and shallow dose equivalent for minors rather than the committed effective dose equivalent.</p> <p>Oregon needs to adopt the essential objectives of the requirements for the committed effective dose equivalent to minors in 333-120-0210(2)(b) to meet the Category H&S designation assigned to section 10 CFR 20.1502.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
3	333-105-0530	§34.43	1997-5	B	<p>Training</p> <p>Oregon's regulation in 333-105-0530 does not address a previous comment from the December 21, 2006, letter from NRC that indicated that Oregon needs to remove the "at least 40 hours" training requirement for a radiographer in 333.105.0530(1)(b). Also, Oregon includes additional training requirements in 333-105-0530(a) and (b) that are more stringent than equivalent NRC requirements, "...and/or one month (160 hours) of active participation in the performance of industrial radiography utilizing radiation machines. Individuals performing industrial radiography utilizing radioactive materials and radiation machines must complete both segments of the on the job training (3 months or 480 hours)."</p> <p>Oregon needs to remove the reference to number of hours of training specified in 333-105-0530 to meet the Compatibility Category "B" designation assigned to 10 CFR 34.43.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
4	333-102-0115(4)(d)	§31.5(c)(4)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Oregon regulations require records to be retained for five years. This is more stringent than NRC rule requirement of three years.</p> <p>Oregon's rule has the essential elements of the NRC, but is more restrictive than the NRC's GL rule. As noted in the September 28, 2005 All Agreement States Letter STP-05-072, the determination on this provision will be held in abeyance until such time that the NRC completes its review and response to the Organization of Agreement State on compatibility changes for the GL rule.</p> <p>COMMENT STANDS (HELD IN ABEYANCE)</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
5	333-102-0115(6)	§31.5(c)(11)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Oregon regulations omitted requirements allowing more than 30 days for response or any other specified time requests. This is more stringent than NRC rule requirement of three years.</p> <p>Oregon's rule has the essential elements of the NRC, but is more restrictive than the NRC's GL rule. As noted in the September 28, 2005 All Agreement States Letter STP-05-072, the determination on this provision will be held in abeyance until such time that the NRC completes its review and response to the Organization of Agreement State on compatibility changes for the GL rule.</p> <p>COMMENT STANDS (HELD IN ABEYANCE)</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
6	333-102-0115(8)	§31.5(c)(13)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Oregon regulations require all GL devices to be registered with the Agency. Oregon's rule has the essential elements of the NRC, but is more restrictive than the NRC's GL rule.</p> <p>As noted in the September 28, 2005 All Agreement States Letter STP-05-072, the determination on this provision will be held in abeyance until such time that the NRC completes its review and response to the Organization of Agreement State on compatibility changes for the GL rule.</p> <p>COMMENT STANDS (HELD IN ABEYANCE)</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
7	333-102-0115(8)	§31.5(c)(13)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Oregon regulations require GL devices containing more than 370 MBq (10 mCi) of cesium-137, 3.7 MBq (0.1 mCi) of strontium-90, 37 MBq (1 mCi) of cobalt-60, any quantity of americium-241 or any other transuranic (i.e., element with atomic number greater than uranium (92)), to have a specific license. Oregon's rule has the essential elements of the NRC, but is more restrictive than the NRC's GL rule.</p> <p>As noted in the September 28, 2005 All Agreement States Letter STP-05-072, the determination on this provision will be held in abeyance until such time that the NRC completes its review and response to the Organization of Agreement State on compatibility changes for the GL rule.</p> <p>COMMENT STANDS (HELD IN ABEYANCE)</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
8	333-102-0115(10)	§31.5(c)(14)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Oregon regulations omitted a provision for portable devices requiring a report of address change only if the device's primary place of storage has changed. Oregon's rule has the essential elements of the NRC, but is more restrictive than the NRC's GL rule.</p> <p>As noted in the September 28, 2005 All Agreement States Letter STP-05-072, the determination on this provision will be held in abeyance until such time that the NRC completes its review and response to the Organization of Agreement State on compatibility changes for the GL rule.</p> <p>COMMENT STANDS (HELD IN ABEYANCE)</p>

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
9	333-102-0115(11)	§31.5(c)(15)	2001-1	<p data-bbox="1015 262 1453 436">Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p data-bbox="1015 472 1502 739">Oregon regulations require generally licensed devices that are not in use for longer than 2 years must be transferred to an authorized recipient or disposed of as radioactive waste. Oregon's rule has the essential elements of the NRC, but is more restrictive than the NRC's GL rule.</p> <p data-bbox="1015 774 1502 1075">As noted in the September 28, 2005 All Agreement States Letter STP-05-072, the determination on this provision will be held in abeyance until such time that the NRC completes its review and response to the Organization of Agreement State on compatibility changes for the GL rule.</p> <p data-bbox="1015 1110 1432 1180">COMMENT STANDS (HELD IN ABEYANCE)</p>
10	333-102-0247(3)	§32.52(c)	2001-1	<p data-bbox="1015 1203 1453 1272">Same: material transfer reports and records</p> <p data-bbox="1015 1308 1502 1541">Oregon regulation requires records to be retained for 5 years. This is more stringent than NRC rule requirement of three years. Oregon's rule has the essential elements of the NRC, but is more restrictive than the NRC's GL rule.</p> <p data-bbox="1015 1577 1502 1877">As noted in the September 28, 2005 All Agreement States Letter STP-05-072, the determination on this provision will be held in abeyance until such time that the NRC completes its review and response to the Organization of Agreement State on compatibility changes for the GL rule.</p> <p data-bbox="1015 1913 1432 1982">COMMENT STANDS (HELD IN ABEYANCE)</p>

STATE REGULATION STATUS

State: Oregon

Tracking Ticket Number: 7-51

[7 Amendments reviewed identified by an ★ at the beginning of each equivalent NRC requirement.]

Date: September 4, 2007

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) / Final (F) ² Rule / License Conditions (LC) ML # ⁵	NRC Review / Y, N ² / Date / ML # ⁵	Final State Regulation ¹ (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1	F ML023450397	N 1/23/03 ML030240463	4/26/95
ASNT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2			Not required 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; (1/1/94)	1991-3	F	N 11/13/97	4/26/95
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	F ML023450397	N 1/23/03 ML030240463	4/26/95
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1	F ML023450397	N 1/23/03 ML030240463	4/26/95
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions-Parts 30,35	57 FR 45566; (none)	1992-2			Not required ³
Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]-Parts 30, 40	58 FR 39628; (10/25/96)	1993-1	F ML023450397	N 1/23/03 ML030240463	03/27/03
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2	F ML023450397	N 1/23/03 ML030240463	04/11/05
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
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			Not applicable SECY-95-112 ⁴
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	F ML023450397	N 1/23/03 ML030240463	03/27/03

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) / Final (F) ² Rule / License Conditions (LC) ML # ⁵	NRC Review / Y, N ² / Date / ML # ⁵	Final State Regulation ¹ (Effective Date)
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 ML023450397	N 1/23/03 ML030240463	03/27/03
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2			Not applicable SECY-95- 112 ⁴
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983; (3/1/98)	1995-3	F ML063110122	N 12/21/06 ML070030381	03/27/03
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	F ML023450397	N 1/23/03 ML030240463	03/27/03
★Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	F ML071870477	N 9/04/07 ML072470108	03/1/07
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F ML063110122	N 12/21/06 ML070030381	03/27/06
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	F ML063110122	N 12/21/06 ML070030381	03/27/03
★10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28724; (4/1/99)	1996-1	F ML071870477	N 9/04/07 ML072470108	03/1/07
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	F ML023450397	N 1/23/03 ML030240463	03/27/03
★Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	F ML071870477	N 9/04/07 ML072470108	03/1/07
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 ML023450397	N 1/23/03 ML030240463	03/27/03
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	F ML023450397	N 1/23/03 ML030240463	03/27/03
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4			Not required ³
★Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations-Parts 30, 34, 71, 150	62 FR 28947; (6/27/00)	1997-5	F ML071870477	Y 9/04/07 ML072470108	03/1/07

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) / Final (F) ² Rule / License Conditions (LC) ML # ⁵	NRC Review / Y, N ² / Date / ML # ⁵	Final State Regulation ¹ (Effective Date)
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6	F ML023450397	N 1/23/03 ML030240463	03/27/03
Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7	F ML063110122	N 12/21/06 ML070030381	03/27/03
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773; (2/12/01)	1998-1	F ML023450397	N 1/23/03 ML030240463	03/27/03
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
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34	63 FR 37059; (7/9/01)	1998-4	F ML023450397	N 1/23/03 ML030240463	03/27/03
★Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20	63 FR 39477; 63 FR 45393; (10/26/01)	1998-5	F ML071870477	Y 09/04/07 ML072470108	03/1/07
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	F ML063110122	N 12/21/06 ML070030381	03/27/03
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1			Not applicable SECY-95- 112 ⁴
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	P ML061020352	Y 7/10/06 ML061910103	
★Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1	F ML071870477	N 9/04/07 ML072470108	3/1/07
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2	F ML063110122	N 12/21/06 ML070030381	
★Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	F ML071870477	Y 9/04/07 ML072470108	03/1/07
Revision of the Skin Dose Limit -Part 20	67 FR 16298; 4/5/05	2002-1	F ML063110122	N 12/21/06 ML070030381	
Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; 4/24/05	2002-2	F ML063110122	N 12/21/06 ML070030381	

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Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1	F ML063110122	N 12/21/06 ML070030381	
Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments – Part 71	69 FR 3697; (10/01/07)	2004-1			
Security Requirements for Portable Gauges Containing Byproduct Material - Part 30	70 FR 2001; (7/11/08)	2005-1	F ML063110122	N 12/21/06 ML070030381	
Medical Use of Byproduct Material - Recognition of Specialty Boards - Part 35	70 FR 16336; 71 FR 1926 (4/29/08)	2005-2	F ML063110122	N 12/21/06 ML070030381	
Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) ⁶	70 FR 72128; (12/1/05)	2005-3	LC ML052870028	N 10/18/05 ML052930002	
Minor Amendments - Part 20,30,32,35,40 and 70	71FR15005 (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			
National Source Tracking System - Part 20	71 FR 65865 (11/15/07) & (11/30/07)	2006-3 ⁷			

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. 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.
5. ADAMS ML Number
6. 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.
7. 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.