

September 13, 2013

Pamela J. Henderson, 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 Ms. Henderson,

Ohio has amended rules in the Ohio Administrative Code. We are submitting the draft rules to the NRC for your review to ensure that they are compatible with NRC regulations. The rules were amended in accordance with RATS ID number 2012-2 OAC rules 3701:1-50-1, 3701:1-50-23. A chart to aid you in cross referencing the Ohio rules to the applicable NRC regulations is attached. The draft Ohio rules can be found at <http://www.odh.ohio.gov/rules/drafts/drafts.aspx>.

We believe that these Ohio rules satisfy the compatibility and health and safety categories established in the Federal and State Materials and Environmental Management Programs procedure SA-200.

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

Sincerely,

Michael J. Snee, Chief
Bureau of Radiation Protection

Enclosure: As stated

Advance Notification to Native American tribes of Transportation of Certain Types of Nuclear Waste
 (77 FR 34194, Published June 11, 2012) RATS ID: 2012-2 Effective: August 10, 2012
 Date Due for State Adoption August 10, 2015

Change to NRC Section	Title	State Section	Compatibility Category	Summary of Change to CFR	Difference Yes/No	Significant Yes/No	If Difference, Why or Why Not Was a Comment Generated
71.4	Definition: Indian tribe	3701:1-50-01	B	<p>In § 71.4, the new definition for the term “Indian tribe” was added as follows:</p> <p><i>Indian tribe</i> means an Indian or Alaska native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.</p>			
71.4	Definition: Tribal official	3701:1-50-01	B	<p>In § 71.4, the new definition for the term “Tribal official” was added as follows:</p> <p><i>Tribal official</i> means the highest ranking individual that represents Tribal leadership, such as the Chief, President, or Tribal Council leadership.</p>			

Change to NRC Section	Title	State Section	Compatibility Category	Summary of Change to CFR	Difference Yes/No	Significant Yes/No	If Difference, Why or Why Not Was a Comment Generated
§71.97(a)	Advance notification of shipment of irradiated reactor fuel and nuclear waste	3701:1-50-23	B	<p>In § 71.97, paragraph (a) is revised to read as follows:</p> <p>(a)(1) As specified in paragraphs (b), (c), and (d) of this section, each licensee shall provide advance notification to the governor of a State, or the governor's designee, of the shipment of licensed material, within or across the boundary of the State, before the transport, or delivery to a carrier, for transport, of licensed material outside the confines of the licensee's plant or other place of use or storage.</p> <p>(2) As specified in paragraphs (b), (c), and (d) of this section, after June 11, 2013, each licensee shall provide advance notification to the Tribal official of participating Tribes referenced in paragraph (c)(3)(iii) of this section, or the official's designee, of the shipment of licensed material, within or across the boundary of the Tribe's reservation, before the transport, or delivery to a carrier, for transport, of licensed material outside the confines of the licensee's plant or other place of use or storage.</p>			

Change to NRC Section	Title	State Section	Compatibility Category	Summary of Change to CFR	Difference Yes/No	Significant Yes/No	If Difference, Why or Why Not Was a Comment Generated
§71.97(c)(1)	Advance notification of shipment of irradiated reactor fuel and nuclear waste	3701:1-50-23	B	<p>In § 71.97, paragraph (c)(1) is revised to read as follows:</p> <p><i>(c) Procedures for submitting advance notification.</i></p> <p>(1) The notification must be made in writing to:</p> <p>(i) The office of each appropriate governor or governor's designee;</p> <p>(ii) The office of each appropriate Tribal official or Tribal official's designee; and</p> <p>(iii) The Director, Division of Security Policy, Office of Nuclear Security and Incident Response.</p>			
§71.97(c)(3)	Advance notification of shipment of irradiated reactor fuel and nuclear waste	3701:1-50-23	B	<p>In § 71.97, paragraph (c)(3) is revised to read as follows:</p> <p>(c) * * *</p> <p>(3) A notification delivered by any other means than mail must reach the office of the governor or of the governor's designee or the Tribal official or Tribal official's designee at least 4 days before the beginning of the</p>			

Change to NRC Section	Title	State Section	Compatibility Category	Summary of Change to CFR	Difference Yes/No	Significant Yes/No	If Difference, Why or Why Not Was a Comment Generated
				<p>7-day period during which departure of the shipment is estimated to occur.</p> <p>(i) A list of the names and mailing addresses of the governors' designees receiving advance notification of transportation of nuclear waste was published in the <i>Federal Register</i> on June 30, 1995 (60 FR 34306).</p> <p>(ii) The list of governor's designees and Tribal official's designees of participating Tribes will be published annually in the <i>Federal Register</i> on or about June 30th to reflect any changes in information.</p> <p>(iii) A list of the names and mailing addresses of the governors' designees and Tribal officials' designees of participating Tribes is available on request from the Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.</p>			

Change to NRC Section	Title	State Section	Compatibility Category	Summary of Change to CFR	Difference Yes/No	Significant Yes/No	If Difference, Why or Why Not Was a Comment Generated
§71.97(d)(4)	Advance notification of shipment of irradiated reactor fuel and nuclear waste	3701:1-50-23	B	<p>In § 71.97, paragraph (d)(4) is revised to read as follows:</p> <p>(d) * * *</p> <p>(4) The 7-day period during which arrival of the shipment at State boundaries or Tribal reservation boundaries is estimated to occur;</p>			
§71.97(e)	Advance notification of shipment of irradiated reactor fuel and nuclear waste	3701:1-50-23	B	<p>In § 71.97, paragraph (e) is revised to read as follows:</p> <p>(e) <i>Revision notice.</i> A licensee who finds that schedule information previously furnished to a governor or governor's designee or a Tribal official or Tribal official's designee, in accordance with this section, will not be met, shall telephone a responsible individual in the office of the governor of the State or of the governor's designee or the Tribal official or the Tribal official's designee and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain a record of the name of the individual contacted for 3 years.</p>			

Change to NRC Section	Title	State Section	Compatibility Category	Summary of Change to CFR	Difference Yes/No	Significant Yes/No	If Difference, Why or Why Not Was a Comment Generated
§71.97(f)(1)	Advance notification of shipment of irradiated reactor fuel and nuclear waste	3701:1-50-23	B	<p>In § 71.97, paragraph (f)(1) is revised to read as follows:</p> <p><i>(f) Cancellation notice.</i> (1) Each licensee who can cancel an irradiated reactor fuel or nuclear waste shipment for which advance notification has been sent shall send a cancellation notice to the governor of each State or to the governor's designee previously notified, each Tribal official or to the Tribal official's designee previously notified, and the Director, Division of Security Policy, Office of Nuclear Security and Incident Response.</p>			
§ 73.2	Definition: Indian tribe		NR C	In § 73.2, the new definition for the term "Indian tribe" was added:			
§ 73.2	Definition: Tribal official		NR C	In § 73.2, the new definition for the term "Tribal official" was added:			

Change to NRC Section	Title	State Section	Compatibility Category	Summary of Change to CFR	Difference Yes/No	Significant Yes/No	If Difference, Why or Why Not Was a Comment Generated
§ 73.21	Protection of Safeguards Information: Performance Requirements.		NRC	In § 73.21, paragraph (a)(2) is revised:			
§ 73.37	Requirements for physical protection of irradiated reactor fuel in transit		NRC	In § 73.37, paragraphs (f) and (g) are revised:			
§ 73.59	Relief from fingerprinting, identification and criminal history records checks and other elements of background checks for designated categories of individuals		NRC	In § 73.59, new paragraph (l) is added:			

3701:1-50-01 **Definitions.**

Terms defined in rule 3701:1-38-01 of the Administrative Code shall have the same meaning when used in this chapter except terms redefined within a given rule for use within that rule only, and additionally, as used in this chapter of the Administrative Code:

(A) "Carrier" means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

(B) "Certificate holder" means a person who has been issued a certificate of compliance or other package approval by the United States nuclear regulatory commission.

(C) "Certificate of compliance (CoC)" means the certificate issued by the United States nuclear regulatory commission under subpart D of 10 C.F.R. 71 (as published in the January 1, 2010 Code of Federal Regulations) which approves the design of a package for the transportation of radioactive material.

(D) "Closed transport vehicle" means a transport vehicle equipped with a securely attached exterior enclosure that during normal transportation restricts the access of unauthorized persons to the cargo space containing the radioactive material. The enclosure may be temporary or permanent but shall limit access from top, sides, and ends. In the case of packaged materials, it may be of the "see-through" type.

(E) "Close reflection by water" means immediate contact by water of sufficient thickness for maximum reflection of neutrons.

~~(1) "Consignment" means each shipment of a package or groups of packages or load of radioactive material offered by a shipper for transport.~~

~~(2) "Containment system" means the assembly of components of the packaging intended to retain the radioactive material during transport.~~

(F) "Consignment" means each shipment of a package or groups of packages or load of radioactive material offered by a shipper for transport.

(G) "Containment system" means the assembly of components of the packaging intended to retain the radioactive material during transport.

~~(F)~~(H) "Conveyance" means:

(1) For transport by public highway or rail, any transport vehicle or large freight container;

(2) For transport by water, any vessel, or any hold, compartment, or defined deck

area of a vessel including any transport vehicle on board the vessel; and

(3) For transport by ~~aircraft~~air, any aircraft.

~~(G)~~(I) "Criticality safety index (CSI)" means the dimensionless number (rounded up to the next tenth) assigned to and placed on the label of a fissile material package, to designate the degree of control of accumulation of packages containing fissile material during transportation. Determination of the criticality safety index is described in rules 3701:1-50-11 and 3701:1-50-12 of the Administrative Code.

~~(H)~~(J) "Deuterium" means, for the purpose of rules 3701:1-50-11 and 3701:1-50-13 of the Administrative Code, deuterium and any deuterium compounds, including heavy water, in which the ratio of deuterium atoms to hydrogen atoms exceeds one to five thousand.

~~(I)~~(K) "DOT" means United States department of transportation.

~~(J)~~(L) "Enriched uranium" means uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

~~(K)~~(M) "Exclusive use" means the sole use by a single consignor of a conveyance for which all initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee. The consignor and the carrier must ensure that any loading or unloading is performed by personnel having radiological training and resources appropriate for safe handling of the consignment. The consignor must issue specific instructions, in writing, for maintenance of exclusive use shipment controls, and include them with the shipping paper information provided to the carrier by the consignor.

~~(L)~~(N) "Graphite" means, for the purposes of rules 3701:1-50-11 and 3701:1-50-13 of the Administrative Code, graphite with a boron equivalent content less than five parts per million and density greater than 1.5 grams per cubic centimeter.

(O) "Indian tribe" means an Indian or Alaska native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U. S. C. 479a.

~~(M)~~(P) "Low toxicity alpha emitters" means natural uranium, depleted uranium, natural thorium; uranium-235, uranium-238, thorium-232, thorium-228 or thorium-230 when contained in ores or physical or chemical concentrates or tailings; or alpha emitters with a half-life of less than ten days.

~~(N)~~(Q) "Maximum normal operating pressure" means the maximum gauge pressure that would develop in the containment system in a period of one year under the heat condition specified in 10 C.F.R. 71.71(C)(1) (as published in the January 1, 2010 Code of Federal Regulations), in the absence of venting, external cooling by an ancillary system, or operational controls during transport.

~~(O)~~(R) "Natural thorium" means thorium with the naturally occurring distribution of thorium isotopes or one hundred weight per cent thorium-232.

~~(P)~~(S) "Natural uranium" means uranium with the naturally occurring distribution of uranium isotopes (approximately 0.711 weight per cent uranium-235, and the remainder by weight essentially uranium-238).

~~(Q)~~(T) "Optimum interspersed hydrogenous moderation" means the presence of hydrogenous material between packages to such an extent that the maximum nuclear reactivity results.

~~(R)~~(U) "Regulations of the United States department of transportation" means the regulations in 49 C.F.R. parts 100-189 (as published in the October 1, 2009 Code of Federal Regulations).

~~(S)~~(V) "Specific activity of a radionuclide" means the radioactivity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

~~(T)~~(W) "Spent nuclear fuel or spent fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, has undergone at least one year's decay since being used as a source of energy in a power reactor, and has not been chemically separated into its constituent elements by reprocessing. Spent fuel includes the special nuclear material, byproduct material, source material, and other radioactive materials associated with fuel assemblies.

~~(U)~~(X) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Y) "Tribal official" means the highest ranking individual that represents tribal leadership, such as the chief, president, or tribal council leadership.

~~(V)~~(Z) "Unirradiated uranium" means uranium containing not more than two thousand becquerels (fifty-four nanocuries) of plutonium per gram of uranium-235, not more

than nine megabecquerels (two hundred forty-three microcuries) of fission products per gram of uranium-235, and not more than 0.005 grams of uranium-236 per gram of uranium-235.

3701:1-50-23

Advance notification of shipment of irradiated reactor fuel and nuclear waste.

(A) ~~As specified in paragraphs (B), (C) and (D) of this rule, each licensee shall provide advance notification to the governor of a state, or the governor's designee, of the shipment of licensed material, through, or across the boundary of the state, before the transport, or delivery to a carrier, for transport, of licensed material outside the confines of the licensee's plant or other place of use or storage in compliance with section 4163.07 of the Revised Code.~~

(1) As specified in paragraphs (B), (C) and (D) of this rule, each licensee shall provide advance notification to the governor of a state, or the governor's designee, of the shipment of licensed material, through, or across the boundary of the state, before the transport, or delivery to a carrier, for transport, of licensed material outside the confines of the licensee's plant or other place of use or storage in compliance with section 4163.07 of the Revised Code.

(2) As specified in paragraphs (B), (C), and (D) of this rule, each licensee shall provide advance notification to the Tribal official of participating Tribes referenced in paragraph (C)(3)(c) of this rule, or the official's designee, of the shipment of licensed material, within or across the boundary of the Tribe's reservation, before the transport, or delivery to a carrier, for transport, of licensed material outside the confines of the licensee's plant or other place of use or storage in compliance with section 4163.07 of the Revised Code..

(B) Advance notification is also required under this rule for shipments of licensed material, other than irradiated reactor fuel, meeting the following three conditions:

(1) The licensed material is required by this part to be in type B packaging for transportation;

(2) The licensed material is being transported to or across a state boundary in route to a disposal facility or to a collection point for transport to a disposal facility; and

(3) The quantity of licensed material in a single package exceeds the least of the following:

(a) Three thousand times the A_1 value of the radionuclides as specified in rule 3701:1-50-25 of the Administrative Code for special form radioactive material;

(b) Three thousand times the A_2 value of the radionuclides as specified in rule

3701:1-50-25 of the Administrative Code for normal form radioactive material; or

(c) One thousand terabecquerels (twenty-seven thousand curies).

(C) Each licensee shall submit an advance notification as follows:

(1) The notification must be made in writing to the office of each appropriate governor or governor's designee, the office of each appropriate tribal official or tribal official's designee, and to the director, division of security policy, office of nuclear security and incident response, United States nuclear regulatory commission.

(2) A notification delivered by mail must be postmarked at least seven days before the beginning of the seven-day period during which departure of the shipment is estimated to occur.

(3) A notification delivered by any other means than mail must reach the ~~offices listed in paragraph (A)~~ office of the governor or of the governor's designee or the tribal official or tribal official's designee at least ~~of this rule at least~~ four days before the beginning of the seven-day period during which departure of the shipment is estimated to occur.

(a) A list of the names and mailing addresses of the governors' designees receiving advance notification of transportation of nuclear waste was published in the federal register on June 30, 1995 (60 FR 34306).

(b) The list of governor's designees and tribal official's designees of participating tribes will be published annually in the federal register on or about June 30 of each year to reflect any changes in information.

(c) A list of the names and mailing addresses of the governors' designees and tribal officials' designees of participating tribes is available on request from the "Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs, United States Nuclear Regulatory Commission, Washington, DC 20555-0001".

(4) The licensee shall retain a copy of the notification as a record for three years.

(D) Each advance notification of shipment of nuclear waste must contain the following information:

- (1) The name, address, and telephone number of the shipper, carrier, and receiver of the nuclear waste shipment;
 - (2) A description of the nuclear waste contained in the shipment, as specified in the regulation of DOT in 49 C.F.R. 172.202 and 49 C.F.R. 172.203(D) (as published in the October 1, 2009 Code of Federal Regulations);
 - (3) The point of origin of the shipment and the seven-day period during which departure of the shipment is estimated to occur;
 - (4) The seven-day period during which arrival of the shipment at state boundaries, or tribal reservation boundaries is estimated to occur;
 - (5) The destination of the shipment, and the seven-day period during which arrival at the destination of the shipment is estimated to occur; and
 - (6) A point of contact, with a telephone number, for current shipment information.
- (E) ~~A licensee who finds that schedule information previously furnished to an office listed in paragraph (A) of this rule, will not be met, shall telephone a responsible individual and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain a record of the name of the individual contacted for three years.~~ Revision notice.
- (1) A licensee who finds that schedule information previously furnished to a governor or governor's designee or a tribal official or tribal official's designee, in accordance with this section, will not be met, shall telephone a responsible individual in the office of the governor of the state or of the governor's designee or the tribal official or the tribal official's designee and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain a record of the name of the individual contacted for three years.
- (F) Cancellation notice.
- (1) Each licensee who cancels a nuclear waste shipment for which advance notification has been sent shall send a cancellation notice to the offices listed in paragraph (A) of this rule previously notified, and to the director, division of nuclear security, office of security policy and incident response, United States nuclear regulatory commission.

- (2) The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being canceled. The licensee shall retain a copy of the notice as a record for three years.