

December 19, 2013

Michael Snee, Chief
Bureau of Radiation Protection
Ohio Department of Health
246 North High Street
Columbus, OH 43215

Dear Mr. Snee:

We have reviewed the proposed revisions to the Ohio regulations in the Ohio Administrative Code Chapters 3701:1-37-01 through 3701:1-37-31; 3701:1-40-07, 3701:1-38-01 and 3701:1-50-23, received by our office on October 31, 2013. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 20, 30, 32, 33, 34, 35, 36, 37, 39, 71, and with the requirements of the amendment identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with Mark Light on December 17, 2013.

As a result of our review, we have five 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. Under our current procedure, a finding that the Ohio regulations meet the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final Ohio regulations. However, we have determined that if your proposed regulations were adopted, incorporating our comments and without other significant change, 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](#), "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements."

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 FSME Procedure [SA-201](#), "Review of State Regulatory Requirements," please highlight the final changes, and provide a copy to Division of Materials Safety and State Agreements, FSME.

Additionally, please note that NRC has issued certain security Orders to 10 Ohio licensees. We have not listed the names of the licensees in this letter because that information is Official Use Only and cannot be made publicly available. Because the NRC-issued Orders are still legally binding, they must be rescinded by NRC concurrent with Ohio's promulgation of final regulations. Accordingly, close coordination is needed between NRC and your office to ensure there are no conflicts, duplications, or gaps regarding the security-related requirements for these licensees. Please contact Adelaide Giantelli, Branch Chief, Source Management and Protection Branch, FSME at (301) 415-3521 (adelaide.giantelli@nrc.gov) for information regarding the affected Ohio licensees and for coordination with rescission of the NRC-issued Orders after Ohio's promulgation and NRC's review of the final regulations on these licensees.

M. Snee

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The SRS Data Sheet summarizes our knowledge of the status of other Ohio regulations and legally binding requirements, 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://nrc-stp.ornl.gov/rulemaking.html>.

If you have any questions regarding the review results, 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 (kathleen.schneider@nrc.gov) or Jim Lynch at (630) 829-9661 (james.lynch@nrc.gov).

Sincerely,

/RA D. White for/

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

Enclosures:

1. Compatibility Comments
2. Ohio SRS Data Sheet

COMPATIBILITY COMMENTS ON OHIO PROPOSED REGULATIONS

| | STATE SECTION | NRC SECTION | RATS ID | CATEGORY | SUBJECT AND COMMENTS |
|---|---------------------|-------------|---------|----------|--|
| 1 | 3701:1-38-01(A)(26) | §37.5 | 2013-1 | [H&S] | <p>Definition: Byproduct material</p> <p>The Ohio rule is missing paragraphs (3) and (4) of the definition of Byproduct material as follows:</p> <ul style="list-style-type: none"> (3)(i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or (ii) Any material that— <ul style="list-style-type: none"> (A) Has been made radioactive by use of a particle accelerator; and (B) Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and (4) Any discrete source of naturally occurring radioactive material, other than source material, that— <ul style="list-style-type: none"> (i) The Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and (ii) Before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity. <p>Ohio needs to make the above changes in order to meet the Category [H&S] designation assigned to 10 CFR 37.5 Definition: Byproduct material.</p> |

| | STATE SECTION | NRC SECTION | RATS ID | CATEGORY | SUBJECT AND COMMENTS |
|---|---------------------|---------------|---------|----------|--|
| 2 | 3701:1-37-26(C) | §37.77(a)-(d) | 2013-1 | B | <p>Advance notification of shipment of category 1 quantities of radioactive material.</p> <p>In paragraph (C)(2), the phrase "...of any such incidents." should be changed to "...of any such changes."</p> <p>Ohio needs to make the above change in order to meet the Compatibility Category B designation assigned to 10 CFR 37.77(a)-(d).</p> |
| 3 | 3701:1-37-27(B) | §37.79(b) | 2013-1 | B | <p>Requirements for physical protection of category 1 and category 2 quantities of radioactive material during shipment.</p> <p>In paragraph (B)(2)(b), the phrase "Use carriers and maintain constant control ..." should be changed to "Use carriers that maintain constant control..."</p> <p>Ohio needs to make the above change in order to meet the Compatibility Category B designation assigned to 10 CFR 37.79(b).</p> |
| 4 | 3701:1-37-28(A)-(F) | §37.81(a)-(f) | 2013-1 | B | <p>Reporting of events.</p> <p>In paragraph (C), "LLEA along with shipment route" should be corrected to "LLEA along the shipment route."</p> <p>Ohio needs to make the above change in order to meet the Compatibility Category B designation assigned to 10 CFR 37.81(a)-(f).</p> |

| | STATE SECTION | NRC SECTION | RATS ID | CATEGORY | SUBJECT AND COMMENTS |
|---|---------------------|---------------|---------|----------|--|
| 5 | 3701:1-37-28(G)-(H) | §37.81(g)-(h) | 2013-1 | C | <p>Reporting of events.</p> <p>In paragraph (G), "Incidence" should be corrected to "Incident."</p> <p>In paragraph (G)(4), the phrase "or will be taken," is missing from the Ohio rule. Future corrective actions are an important piece of information for the State to expect from the licensee.</p> <p>Ohio needs to make the above changes in order to meet the Compatibility Category C designation assigned to 10 CFR 37.81(g)-(h).</p> |

STATE REGULATION STATUS

State: Ohio

Tracking Ticket Number: 13-41

[1 amendment(s) reviewed is identified by a *
at the beginning of the equivalent NRC requirement.]

Date: December 19, 2013

| RATS ID | NRC Chronology Identification | Date Due for State Adoption | Incoming Package | Outgoing Package | Notes |
|---------|--|-----------------------------|----------------------|--|--|
| 1991-1 | Safety Requirements for Radiographic Equipment Part 34 55 FR 843 (Superceded by 1997-5) | 01/10/1994 | Final ML023250117 | No Comments 01/09/2003 ML030060349 | Ohio has adopted Final Regulations equivalent to RATS ID: 1997-5. |
| 1991-2 | ASNT Certification of Radiographers Part 34 56 FR 11504 (Superceded by 1997-5) | none | Final ML023250117 | No Comments 01/09/2003 ML030060349 | Ohio has adopted Final Regulations equivalent to RATS ID: 1997-5. |
| 1991-3 | 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 | 01/01/1994 | Final ML040920160 | No Comments 04/14/2004 ML041060011 | |
| 1991-4 | Notification of Incidents Parts 20, 30, 31, 34, 39, 40, 70 56 FR 64980 | 10/15/1994 | Final ML083200007 | No Comments 12/10/2008 ML083220971 | |
| 1992-1 | Quality Management Program and Misadministrations Part 35 56 FR 34104 (Superceded by 2002-2) | 01/27/1995 | Final ML061440106 | No Comments 06/08/2006 ML061590424 | Ohio has adopted Final Regulations equivalent to RATS ID: 2002-2. |
| 1992-2 | Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions Parts 30, 35 57 FR 45566 | none | Final ML061440106 | No Comments 06/08/2006 ML061590424 | These regulation changes are not required to be adopted for purposes of Compatibility. |
| 1993-1 | Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites] Parts 30, 40 58 FR 39628 | 10/25/1996 | Final ML083200007 | No Comments 12/10/2008 ML083220971 | |

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|---------|---|-----------------------------|----------------------|--|-------|
| 1993-2 | Licensing and Radiation Safety Requirements for Irradiators Part 36 58 FR 7715 | 07/01/1996 | Final ML023250117 | No Comments 01/09/2003 ML030060349 | |
| 1993-3 | Definition of Land Disposal and Waste Site QA Program Part 61 58 FR 33886 | 07/22/1996 | Final | No Comments 10/09/1998 | |
| 1994-1 | Self-Guarantee as an Additional Financial Mechanism Parts 30, 40, 70 58 FR 68726; 59 FR 1618 | none | Final | No Comments 10/09/1998 | |
| 1994-2 | Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards Part 40 59 FR 28220 | 07/01/1997 | Final | No Comments 10/09/1998 | |
| 1994-3 | Timeliness in Decommissioning Material Facilities Parts 30, 40, 70 59 FR 36026 | 08/15/1997 | R ¹ | No Comments 7/26/00 | |
| 1995-1 | 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 | 01/01/1998 | Final ML061440106 | No Comments 06/08/2006 ML061590424 | |
| 1995-2 | Frequency of Medical Examinations for Use of Respiratory Protection Equipment Part 20 60 FR 7900 | 03/13/1998 | Final ML041240504 | No Comments 06/14/2004 ML041670402 | |
| 1995-3 | Low-Level Waste Shipment Manifest Information and Reporting Parts 20, 61 60 FR 15649; 60 FR 25983 | 03/01/1998 | Final ML040920160 | No Comments 04/14/2004 ML041060011 | |

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|---------|---|-----------------------------|-------------------------|--|---|
| 1995-4 | Performance Requirements for Radiography Equipment Part 34 60 FR 28323 (Superceded by 1997-5) | 06/30/1998 | Final ML023250117 | No Comments 01/09/2003 ML030060349 | Ohio has adopted Final Regulations equivalent to RATS ID: 1997-5. |
| 1995-5 | Radiation Protection Requirements: Amended Definitions and Criteria Parts 19, 20 60 FR 36038 | 08/14/1998 | Final ML040920160 | No Comments 04/14/2004 ML041060011 | |
| 1995-6 | Clarification of Decommissioning Funding Requirements Parts 30, 40, 70 60 FR 38235 | 11/24/1998 | R ¹ | No Comments 07/26/2000 | |
| 1995-7 | Medical Administration of Radiation and Radioactive Materials Parts 20, 35 60 FR 48623 (Superceded by 2002-2 and 2005-2) | 10/20/1998 | Proposed ML042230062 | No Comments 10/14/2004 ML042890002 | |
| 1996-1 | Compatibility with the International Atomic Energy Agency Part 71 60 FR 50248; 61 FR 28724 (Superceded by 2004-1) | 04/01/1999 | Not Required | Not Required | Ohio has adopted Final Regulations equivalent to RATS ID: 2004-1. |
| 1996-2 | One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses Parts 30, 40, 70 61 FR 1109 | 02/15/1999 | R ¹ | No Comments 07/26/2000 | |
| 1996-3 | Termination or Transfer of Licensed Activities: Record keeping Requirements Parts 20, 30, 40, 61, 70 61 FR 24669 | 06/17/1999 | R ¹ | No Comments 07/26/2000 | |
| 1997-1 | Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act Part 20 61 FR 65120 | 01/9/2000 | Final ML041900134 | No Comments 08/09/2004 ML042220269 | |

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|---------|---|-----------------------------|--|--|---|
| 1997-2 | Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State Part 150 62 FR 1662 | 02/27/2000 | Final ML041240504 | No Comments 06/14/2004 ML041670402 | |
| 1997-3 | Criteria for the Release of Individuals Administered Radioactive Material Parts 20, 35 62 FR 4120 | 05/29/2000 | R ¹ | No Comments 07/26/2000 | |
| 1997-4 | Fissile Material Shipments and Exemptions Part 71 62 FR 5907 (Superseded by 2004-1) | 02/10/2000 | Not Required | Not Required | These regulation changes are not required to be adopted for purposes of Compatibility. (See STP-97-078) |
| 1997-5 | Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations Parts 30, 34, 71, 150 62 FR 28947 | 06/27/2000 | Final ML083020271 | No Comments 12/05/2008 ML083150069 | |
| 1997-6 | Radiological Criteria for License Termination Parts 20, 30, 40, 70 62 FR 39057 | 08/20/2000 | Final | No Comments 10/09/1998 | |
| 1997-7 | Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea Part 30 62 FR 63634 | 01/02/2001 | Final ML041240504 | No Comments 06/14/2004 ML041670402 | |
| 1998-1 | Deliberate Misconduct by Unlicensed Persons Parts 30, 40, 61, 70, 71, 150 63 FR 1890; 63 FR 13773 | 02/12/2001 | R ¹ ML010380259 ML010870344 | No Comments 12/12/01 ML013530072 | |
| 1998-2 | Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees Parts 30, 40, 70 63 FR 29535 | 07/01/2001 | Final | No Comments 10/09/1998 | These regulation changes are not required to be adopted for purposes of Compatibility. |

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|---------|--|-----------------------------|----------------------|--|--|
| 1998-3 | License Term for Medical Use Licenses Part 35 63 FR 31604 (Superceded by 2002-2) | 07/10/2001 | Not Required | Not Required | These regulation changes are not required to be adopted for purposes of Compatibility. (See STP-98-074) Ohio has adopted Final Regulations equivalent to RATS ID: 2002-2. |
| 1998-4 | Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations Part 34 63 FR 37059 | 07/09/2001 | Final ML041240504 | No Comments 06/14/2004 ML041670402 | |
| 1998-5 | Minor Corrections, Clarifying Changes, and a Minor Policy Change Parts 20, 32, 35, 36, 39 63 FR 39477; 63 FR 45393 | 10/26/2001 | Final | No Comments 10/09/1998 | |
| 1998-6 | Transfer for Disposal and Manifests: Minor Technical Conforming Amendment Part 20 63 FR 50127 | 11/20/2001 | Final ML041900134 | No Comments 08/09/2004 ML042220269 | |
| 1999-1 | Radiological Criteria for License Termination of Uranium Recovery Facilities Part 40 64 FR 17506 | 06/11/2002 | Final ML060580024 | No Comments 04/13/2006 ML061030457 | |
| 1999-2 | Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information Part 31 64 FR 42269 | 10/04/2002 | Not Required | Not Required | These regulation changes are not required to be adopted for purposes of Compatibility. |
| 1999-3 | Respiratory Protection and Controls to Restrict Internal Exposure Part 20 64 FR 54543; 64 FR 55524 | 02/02/2003 | Final ML040920160 | No Comments 04/14/2004 ML041060011 | |

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|----------------|---|------------------------------------|-------------------------|--|--------------|
| 2000-1 | Energy Compensation Sources for Well Logging and Other Regulatory Clarifications Part 39 65 FR 20337 | 05/17/2003 | Final ML023250117 | No Comments 01/09/2003 ML030060349 | |
| 2000-2 | New Dosimetry Technology Parts 34, 36, 39 65 FR 63750 | 01/08/2004 | Final ML023250117 | No Comments 01/09/2003 ML030060349 | |
| 2001-1 | Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material Parts 30, 31, 32 65 FR 79162 | 02/16/2004 | Final ML12361A139 | No Comments 02/06/2013 ML13011A272 | |
| 2002-1 | Revision of the Skin Dose Limit Part 20 67 FR 16298 | 04/05/2005 | Final ML061440106 | No Comments 06/08/2006 ML061590424 | |
| 2002-2 | Medical Use of Byproduct Material Parts 20, 32, 35 67 FR 20249 | 10/24/2005 | Final ML061440106 | No Comments 06/08/2006 ML061590424 | |
| 2003-1 | Financial Assurance for Materials Licensees Parts 30, 40, 70 68 FR 57327 | 12/03/2006 | Final ML090120129 | No Comments 02/06/2009 ML090150553 | |
| 2004-1 | Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments Part 71 69 FR 3697 | 10/01/2007 | Final ML063170453 | No Comments 12/15/2006 ML063490049 | |
| 2005-1 | Security Requirements for Portable Gauges Containing Byproduct Material Part 30 70 FR 2001 | 07/11/2008 | Final ML071010099 | No Comments 04/25/2007 ML071150005 | |
| 2005-2 | Medical Use of Byproduct Material - Recognition of Specialty Boards Part 35 70 FR 16336; 71 FR 1926 | 04/29/2008 | Final ML090120129 | No Comments 02/06/2009 ML090150553 | |

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|---------|---|-----------------------------|----------------------------------|--|-------|
| 2005-3 | Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) 70 FR 72128 | 12/01/2005 | License Condition ML053120143 | No Comments 11/10/2005 ML053180026 | |
| 2006-1 | Minor Amendments Parts 20, 30, 32, 35, 40 and 70 71 FR 15005 | 03/27/2009 | Final ML103120326 | No Comments 01/12/2011 ML103360248 | |
| 2006-2 | National Source Tracking System - Serialization Requirements Part 32 with reference to Part 20 Appendix E 71 FR 65685 | 02/06/2007 | Final ML083050030 | No Comments 12/18/2008 ML083400038 | |
| 2006-3 | National Source Tracking System Part 20 71 FR 65685, 72 FR 59162 | 01/31/2009 | Final ML083050030 | No Comments 12/18/2008 ML083400038 | |
| 2007-1 | Medical Use of Byproduct Material - Minor Corrections and Clarifications Parts 32 and 35 72 FR 45147, 54207 | 10/29/2010 | Final ML103120326 | No Comments 01/12/2011 ML103360248 | |
| 2007-2 | Exemptions From Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements Parts 30, 31, 32, 150 72 FR 58473 | 12/17/2010 | Final ML091380031 | No Comments 07/02/2009 ML091600466 | |
| 2007-3 | Requirements for Expanded Definition of Byproduct Material Parts 20, 30, 31, 32, 33, 35, 61, 150 72 FR 55864 | 11/30/2010 | R ¹ ML120100267 | No Comments 02/21/2012 ML120370416 | |

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|---------|--|-----------------------------|----------------------------------|--|-------|
| 2007-4 | Order Imposing Fingerprinting Requirements and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material NRC Order EA-07-305 72 FR 70901 | 06/05/2008 | License Condition ML080460449 | No Comments 03/12/2008 ML080720077 | |
| 2008-1 | Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent Parts 19, 20 72 FR 68043 | 02/15/2011 | Final ML091380048 | No Comments 07/07/2009 ML091600652 | |
| 2009-1 | Medical Use of Byproduct Material – Authorized User Clarification Part 35 74 FR 33901 | 09/28/2012 | Final ML120100267 | No Comments 02/21/2012 ML120370416 | |
| 2011-1 | Decommissioning Planning Parts 20, 30, 40, 70 76 FR 35512 | 12/17/2015 | Proposed ML13066A339 | Comments 04/29/2013 ML13096A025 | |
| 2011-2 | Licenses, Certifications, and Approvals for Materials Licensees Parts 30, 36, 39, 40, 70, and 150 76 FR 56951 | 11/14/2014 | Final ML13228A018 | No Comments 09/18/2013 ML13228A016 | |
| 2012-1 | Change of Compatibility of 10 CFR 31.5 and 31.6 (See RATS ID: 2001-1 for Rule text) 77 FR 3640 | 01/25/2015 | Final ML12361A139 | No Comments 02/06/2013 ML13011A272 | |
| 2012-2 | Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste Part 71 77 FR 34194 | 08/10/2015 | Final ML12361A139 | No Comments 02/06/2013 ML13011A272 | |
| 2012-3 | Technical Corrections Part 30, 34, 40 and 70 77 FR 39899 | 08/06/2015 | | | |

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|---------|---|-----------------------------|-------------------------|---------------------------------------|-------|
| 2012-4 | Requirements for Distribution of Byproduct Material Parts 30, 31, 32, 40 and 70 77 FR 43666 | 10/23/2015 | | | |
| *2013-1 | Physical Protection of Byproduct Material, 10 CFR Parts 20, 30, 32, 33, 34, 35, 36, 37, 39, and 71 78 FR 16922 | 03/19/2016 | Proposed ML13305A231 | Comments 12/19/2013 ML13305A221 | |
| 2013-2 | Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions, 10 CFR Parts 30, 40, and 70 78 FR 32310 | 08/27/2016 | | | |