

December 12, 2001

Mr. Roger L. Suppes, Chief  
Bureau of Radiation Protection  
Ohio Department of Health  
P. O. Box 118  
Columbus, OH 43266-0118

Dear Mr. Suppes:

As requested, we have reviewed the Ohio rules 3701:1-40-05, paragraph (I)(2) and (I)(3) 3701:1-50 and Ohio Revised Code Chapter 3748, division (B)(2) section 3748.05 concerning Deliberate Misconduct Rule. This review was follow up to your letters dated January 30, 2001 and March 19, 2001 associated with the proposed regulations in Ohio rule 3701:1-50 "Transportation of Radioactive Material" submitted to the NRC for review.

As a result of our review, it appears that the State has the authority to issue orders to carry out its regulatory responsibilities. This includes the ability to suspend a license or request suspension of an individual as a result of deliberate violations. Presumably, the suspension order can be conditioned on the removal of an untrustworthy person who may adversely impact public health and safety. Thus, you appear to have the legal mechanism in place to take enforcement action indirectly against an individual. Provided the unlicensed person impacted by the order is afforded an opportunity to challenge the action, the Ohio regulatory approach appears to be compatible. Please notify us, if our understanding of the Ohio program is not correct.

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 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.

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 any changes and send one hard 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.hsrdo.org/nrc/rulemaking.htm>

Roger L. Suppes

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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 James Lynch at (630) 829-9661 or JLL2@NRC.GOV.

Sincerely,

**/RA/**

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

Enclosure:  
As stated

Distribution:

DIR RF (1-134)

DCD (SP07) PDR (YES\_✓)

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Response to Incoming Documents: ML010380259, ML010870344

Ohio File

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|--------|-----------|--|------------|--|----------|--|--|
| OFFICE | STP       |  | OGC        |  | STP:DD   |  |  |
| NAME   | JZabko:kk |  | JLieberman |  | FCombs   |  |  |
| DATE   | 11/25/01  |  | 12/04/01   |  | 12/12/01 |  |  |

ML013530072

STP-AG-31

# 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: 1-134**

**Date: December 12, 2001**

| NRC Chronology Identification  | FR Notice<br>(Date Due for State<br>Implementation))   | RATS ID | Proposed (P) /<br>Final (F) <sup>1</sup> Rule /<br>ML # <sup>4</sup> | NRC Review /<br>Y, N <sup>2</sup> / Date /<br>ML # <sup>4</sup> | Final State<br>Regulation <sup>1</sup><br>(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 <sup>6</sup>                                       |
| Standards for Protection Against Radiation-Part 20   | 56 FR 23360; 56 FR 61352;<br>57 FR 38588; 57 FR 57877;<br>58 FR 67657; 59 FR 41641;<br>60 FR 20183; (1/1/94) | 1991-3  | P<br>ML003772297<br>ML010330197                                      | Y 5/14/01<br>ML011360572  | 10/9/98 <sup>5</sup>                                       |
| 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 45566; (none)  | 1992-2  |  |   | 10/9/98 <sup>6</sup>                                       |
| 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 <sup>6</sup>                                       |
| Definition of Land Disposal and Waste Site QA Program-Part 61  | 58 FR 33886; (7/22/96)   | 1993-3  |  |   | 10/9/98 <sup>6</sup>                                       |
| Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70   | 58 FR 68726; 59 FR 1618<br>(none)  | 1994-1  |  |   | 10/9/98 <sup>6</sup>                                       |
| Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40  | 59 FR 28220; (7/1/97)  | 1994-2  |  |   | 10/9/98 <sup>5</sup>                                       |
| 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 <sup>5</sup>                                       |
| Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use-Parts 30, 32, 35              | 59 FR 61767; 59 FR 65243<br>60 FR 322; (1/1/98)  | 1995-1  | P<br>ML012340364   | Y 12/11/01<br>ML013510454                                       | 10/9/98 <sup>5</sup>                                       |
| Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20  | 60 FR 7900; (3/13/98)  | 1995-2  | P<br>ML003772297<br>ML010330197                                      | N 5/14/01<br>ML011360572  | 10/9/98 <sup>5</sup>                                       |
| Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61   | 60 FR 15649; 60 FR 25983<br>(3/1/98)   | 1995-3  | P<br>ML003772297<br>ML010330197                                      | Y 5/14/01<br>ML011360572  | 10/9/98 <sup>5</sup>                                       |
| Performance Requirements for Radiography Equipment-Part 34   | 60 FR 28323; (6/30/98)   | 1995-4  |  |   | 10/9/98 <sup>5</sup>                                       |

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|--|---|----------------|---|--|--|
| Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20   | 60 FR 36038; (8/14/98)  | 1995-5         | P<br>ML003772297<br>ML010330197   | Y 5/14/01<br>ML011360572   | 10/9/98 <sup>5</sup>   |
| 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 <sup>5</sup>   |
| Medical Administration of Radiation and Radioactive Materials-Parts 20, 35   | 60 FR 48623; (10/20/98)                                       | 1995-7         |   |  | 10/9/98 <sup>5</sup>   |
| 10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71  | 60 FR 50248; 61 FR 28723<br>(4/1/99)                          | 1996-1         | P<br>ML010380259<br>ML010870344   | Y 9/25/01<br>ML012710319   | 10/9/98 <sup>5</sup>   |
| One Time Extension of Certain Byproduct, Source and Special Nuclear Materials<br>Licenses-Parts 30, 40, 70                           | 61 FR 1109; (none)  | 1996-2         |   |  | 10/9/98 <sup>6</sup>   |
| Termination or Transfer of Licensed Activities: Recordkeeping Requirements-Parts<br>20, 30, 40, 61, 70                               | 61 FR 24669; (6/17/99)  | 1996-3         | P   | N 7/26/00  | 10/9/98 <sup>5</sup>   |
| Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean<br>Air Act-Part 20                               | 61 FR 65120; (1/9/00)   | 1997-1         | P<br>ML003772297<br>ML010330197   | N 5/14/01<br>ML011360572   | 10/9/98 <sup>5</sup>   |
| Recognition of Agreement State Licenses in Areas Under Exclusive Federal<br>Jurisdiction Within an Agreement State-Part 150          | 62 FR 1662; (2/27/00)   | 1997-2         | P   | N 7/26/00  | 10/9/98 <sup>5</sup>   |
| Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35   | 62 FR 4120; (5/29/00)   | 1997-3         |   |  | 10/9/98 <sup>5</sup>   |
| Fissile Material Shipments and Exemptions-Part 71  | 62 FR 5907; (none)  | 1997-4         |   |  | 10/9/98 <sup>6</sup>   |
| Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial<br>Radiography Operations-Parts 30, 34, 71, 150 | 62 FR 28948; (6/27/00)  | 1997-5         | P   | N 7/26/00  | 10/9/98 <sup>5</sup>   |
| Radiological Criteria for License Termination-Parts 20, 30, 40, 70   | 62 FR 39058; (8/20/00)  | 1997-6         |   |  | 10/9/98 <sup>5</sup>   |
| Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14<br>Urea-Part 30                                     | 62 FR 63634; (1/02/01)  | 1997-7         | P   | N 7/26/00  | 10/9/98 <sup>5</sup>   |
| ★Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150   | 63 FR 1890; 63 FR 13773<br>(2/12/01)                          | 1998-1         | P<br>ML010380259<br>ML010870344   | N 12/12/01<br>ML013530072  | 10/9/98 <sup>5</sup>   |
| Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing<br>Licensees- Parts 30, 40, 70                           | 63 FR 29535; (none)   | 1998-2         |   |  | 10/9/98 <sup>6</sup>   |
| License Term for Medical Use Licenses-Part 35  | 63 FR 31604; (none)   | 1998-3         |   |  | 10/9/98 <sup>6</sup>   |

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|--|---|----------------|---|--|--|
| 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 <sup>5</sup>   |
| Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36  | 63 FR 39477; 63 FR 45393<br>(10/26/01)                        | 1998-5         |   |  | 10/9/98 <sup>5</sup>   |
| Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20  | 63 FR 50127; (11/20/01)                                       | 1998-6         | P<br>ML003772297<br>ML010330197   | N 5/14/01<br>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 <sup>3</sup>  |
| Respiratory Protection and Controls to Restrict Internal Exposure-Part 20  | 64 FR 54543; 64 FR 55525<br>(2/2/03)                          | 1999-3         | P<br>ML003772297<br>ML010330197   | Y 5/14/01<br>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 63749; (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.