

April 23, 2007

Mr. Thomas A. Conley, CHP, RRPT, Chief
Radiation and Asbestos Control Radiation Section
Department of Health and Environment
Bureau of Air and Radiation
1000 SW Jackson, Suite 310
Topeka, KS 66612-1366

Dear Mr. Conley:

We have reviewed the proposed changes to the Kansas Radiation Protection Regulations, received by our office on March 23, 2007. We have also reviewed proposed changes to final Kansas Radiation Protection Regulations you made to address the letter we sent to you dated May 18, 2006. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 20, 31, 32, 35, 39, 40 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 Isabelle Busenitz on April 20, 2007.

As noted in All Agreement States letter STP-05-072, dated September 28, 2005, NRC staff will continue to hold in abeyance any determination on those rules and compatibility of 10 CFR 31.5 and 31.6, if the Agreement State has the essential elements of the NRC's rule and is more restrictive than the NRC's rule.

In our May 18, 2006 letter to you we had eight comments. Two of these comments pertained to the GL Device rule. Comment 6 indicated that the State's regulation is more restrictive than the NRC's regulation. Kansas took no action regarding this comment and there is currently no corrective action required for this comment at this time. 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 this comment. Comment 5 indicated that the State's regulation is less restrictive than the NRC's regulation. Kansas addressed Comment 5 as well as Comments 1-4, 7, and 8 in the letter received by our office on May 23, 2007. All of these comments have been resolved.

As a result of the rest of our review, we have two 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 Kansas 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 Kansas 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.

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 (see letter FSME 06-94 dated October 6, 2006 for further information).

The SRS Data Sheet summarizes our knowledge of the status of other Kansas 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.hsrcd.ornl.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 310-415-2320 (email: kxs@nrc.gov), or William Rautzen at 301-415-7206 (e-mail: wrr@nrc.gov).

Sincerely,

IRA By S.W. Moore

Scott W. Moore, Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials and
Environmental Management Programs

Enclosures:
As stated

highlight the final changes, and provide a copy to Division of Materials Safety and State Agreements, FSME (see letter FSME 06-94 dated October 6, 2006 for further information).

The SRS Data Sheet summarizes our knowledge of the status of other Kansas 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.ornl.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 310-415-2320 (email: kxs@nrc.gov), or William Rautzen at 301-415-7206 (e-mail: wrr@nrc.gov).

Sincerely,

IRA By S.W. Moore

Scott W. Moore, Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials and
Environmental Management Programs

Enclosures: As stated

Distribution:

DIR RF (7-33)

DCD (SP08)

RErickson, RSAO

MOrendi, ASPO

WRautzen

SUNSI Review Complete

☒ Publicly Available

☐ Non-Publicly Available

☒ Non-Sensitive

☐ Sensitive

[KS] File

DOCUMENT NAME: C:\FileNet\ML071140120.wpd ML of Incoming Document:ML070851184

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE	SAISB		SAISB		SAISB		OGC		SAISB:BC		MSSA:DD	
NAME	WRautzen		MOrendi		KSchneider		FCameron		DWhite		SMoore	
DATE	4/10/07*		4/10/07*		4/10/07*		4/20/07*		4/23/07*		4/23/07*	

ML071140120

OFFICIAL RECORD COPY

COMPATIBILITY COMMENTS ON KANSAS PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	28-35-178b	31.5	2001-1	B	Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere The Kansas regulations require registration of all general licenses, rather than only those required by 10 CFR 31.5(c)(13)(iv). The Kansas rule is more restrictive than the NRC rule. Kansas' 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 STP05-072, 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. Comment Stands from letter dated May 18, 2006.
2	28-35-135n(b)	32.2	2006-2	B	Definitions-Nationally tracked sources Kansas omits the part of the definition explaining the difference between Category 1 and Category 2 nationally tracked sources from 28-35-135n(b). Kansas needs to add the explanation of the difference between Category 1 and Category 2 nationally tracked sources to 28-35-135n(b) to meet the Compatibility Category B designation assigned to 10 CFR 32.2.

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
3	28-35-230g(g) and (h)	20.2207(g)	2006-3	B	Reports of transactions involving nationally tracked sources Kansas omits the part of the regulation explaining methods of error detection from 28-35-230g(g). Kansas needs to add the methods of error detection to 28-35-230g(g) to meet the Compatibility Category B designation assigned to 10 CFR 20.2207(g).

STATE REGULATION STATUS

State: Kansas

(7 Amendments reviewed are identified by a ★
at the beginning of each equivalent NRC regulation.)

Tracking Ticket Number: 7-33

Date: APRIL 23, 2007

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) / Final (F) ¹ Rule / License Condition (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 ML060940369	N 5/18 /06 ML061370535	
ASNT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2	F ML060940369	N 5/18/06 ML061370535	
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 12/30/97	
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	F ML060940369	N 5/18/06 ML061370535	
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/7/95)	1992-1			superceded by 2002-2
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	N 1/3/97	
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2	F ML060940369	N 5/18/06 ML061370535	
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3			Not Applicable

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) / Final (F)¹ Rule / License Condition (LC) ML #⁵	NRC Review / Y, N² / Date / ML #⁵	Final State Regulation¹ (Effective Date)
					SECY-95- 112⁴
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618; (none)	1994-1			Not Required³
Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards- Part 40	59 FR 28220; (7/1/97)	1994-2			Not Required³
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	F ML060940369	N 5/18/06 ML061370535	
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 ML060940369	N 5/18/06 ML061370535	
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	F ML060940369	N 5/18/06 ML061370535	
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983; (3/1/98)	1995-3	F ML060940369	N 5/18/06 ML061370535	
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	F ML060940369	N 5/18/06 ML061370535	
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	F ML060940369	N 5/18/06 ML061370535	
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F ML060940369	N 5/18/06 ML061370535	

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) / Final (F) ¹ Rule / License Condition (LC) ML # ⁵	NRC Review / Y, N ² / Date / ML # ⁵	Final State Regulation ¹ (Effective Date)
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	F ML060940369	N 5/18/06 ML061370535	
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28724; (4/1/99)	1996-1			superceded by 2004-1
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 ML060940369	N 5/18/06 ML061370535	
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	F ML060940369	N 5/18/06 ML061370535	
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 ML060940369	N 5/18/06 ML061370535	
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	F ML060940369	N 5/18/06 ML061370535	
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4			superceded by 2004-1
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 ML060940369	N 5/18/06 ML061370535	
★Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6	F ML070851184	N 4/23/07 ML071140120	
Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7	F ML060940369	N 5/18/06 ML061370535	

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) / Final (F) ¹ Rule / License Condition (LC) ML # ⁵	NRC Review / Y, N ² / Date / ML # ⁵	Final State Regulation ¹ (Effective Date)
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 50, 52, 60, 61, 70, 71, 72	63 FR 1890; 63 FR 13773; (2/12/01)	1998-1	F ML060940369	N 5/18/06 ML061370535	
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 ML060940369	N 5/18/06 ML061370535	
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393; (10/26/01)	1998-5	F ML060940369	N 5/18/06 ML061370535	
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	F ML060940369	N 5/18/06 ML061370535	
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1			Not Required ³
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	LC ML052510063	N 9/22/05 ML052660291	
★Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1	F ML070851184	N 4/23/07 ML071140120	

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) / Final (F)¹ Rule / License Condition (LC) ML #⁵	NRC Review / Y, N² / Date / ML #⁵	Final State Regulation¹ (Effective Date)
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2	F ML060940369	N 5/18/06 ML061370535	
★Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	F ML070851184	Y 4/23/07 ML071140120	
Revision of the Skin Dose Limit-Part 20	67 FR 1629; (4/5/05)	2002-1	F ML060940369	N 5/18/06 ML061370535	
★Medical Use of Byproduct Material-Parts 20, 32, 35	67 FR 20249; (10/24/05)	2002-2	F ML070851184	N 4/23/07 ML071140120	
Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1	F ML060940369	N 5/18/06 ML061370535	
Compatibility with IAEA Transportation Safety Standards and Other Transportation Safety Amendments - Part 71	69 FR 3697; (10/01/07)	2004-1	F ML060940369	N 5/18/06 ML061370535	
★Security Requirements for Portable Gauges Containing Byproduct Material - Part 30	70 FR 2001; (7/11/08)	2005-1	P ML070851184	N 4/23/07 ML071140120	
Medical Use of Byproduct Material - Recognition of Specialty Boards - Part 35	70 FR 16336; 71 FR 1926 (4/29/08)	2005-2	F ML060940369	N 5/18/06 ML061370535	
Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090)⁶	70 FR 72128; (12/1/05)	2005-3	LC ML052650212	N 09/27/2005 ML0526503270	
Minor Amendments - Parts 20, 30, 32, 35, 40, and 70	71 FR 15005 (3/27/09)	2006-1			

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) / Final (F)¹ Rule / License Condition (LC) ML #⁵	NRC Review / Y, N² / Date / ML #⁵	Final State Regulation¹ (Effective Date)
★National Source Tracking System - Serialization Requirements - Part 32 with reference to Part 20 Appendix E	71 FR 65685 (2/6/07)	2006-2	P ML070851184	Y 4/23/07 ML071140120	
★National Source Tracking System - Part 20	71 FR 65865 (11/15/07) & (11/30/07)	2006-3	P ML070851184	Y 4/23/07 ML071140120	

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 the regulation. See: "Final Policy Statement on Adequacy and Compatibility of Agreement State Programs," III.1.Time From For Adoption of Compatible State Regulations, p. 6, SECY-95-112, May 3, 1995.
5. ADAMS ML Number.
6. The Final State Regulation (Effective Date) of some regulations may be the date of adoption with the effective date occurring 31 days after adoption according to Kansas statute.