

September 22, 2005

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 Kansas regulations Parts 1, 3, 4, 7 and 15 of the Kansas Department of Health and Environment proposed regulations, received by our office on July 18, 2005. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 20, 30, 31, 32, 34, 71 and 150 identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with you on September 19, 2005.

As a result of our review, we have ten 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 State and Tribal Programs (STP) Procedure SA-200.

Per discussion with you, "Respiratory Protection and Controls to Restrict Internal Exposures" RATS 1999-3 has been submitted separately for review as a legal binding condition. Presently, Kansas has no licensee who requires these provisions.

As noted in the enclosure, several comments address Kansas' proposed regulations for Generally Licensed (GL) devices. Please note that we have a Petition For Rulemaking from the Organization of Agreement States (OAS) currently under review by NRC staff, and a request from OAS and the State of Florida to change the Compatibility Category assigned to sections of the GL rule. Staff is examining whether there may be need for additional guidance to Agreement States regarding the status of some Agreement State GL rules during the interim time the NRC will require to complete action on the Petition and request. We will correspond separately with you on this issue in the near future.

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 Regulatory Requirements," please highlight the final changes and provide a copy to STP.

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 STP website: <http://www.hrsd.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 me, or Jenny Tobin at (301)415-2328 or by e-mail at JCT1@NRC.GOV.

Sincerely,

IRA By KNSchneider For

Dennis K. Rathbun, Deputy, Deputy Director
Office of State and Tribal Programs

Enclosures:
As stated

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 STP website: <http://www.hrsd.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 me, or Jenny Tobin at (301)415-2328 or by e-mail at JCT1@NRC.GOV.

Sincerely,

RA By KNSchneider For

Paul H. Lohaus, Director
Office of State and Tribal Programs

Enclosures:
As stated

SISP Review Complete

: Publicly Available 9 Non-Publicly Available
: Non-Sensitive 9 Sensitive

Distribution:

DIR RF[5-134] DCD (SP08) PDR (YES_T) Response to Incoming Document: ML051950324
VCampbell , RSAO JZabko, ASPO BUilton Kansas File Document

DOCUMENT NAME: E:\Filenet\ML052660035.wpd

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	STP		STP		OGC		STP:DD	
NAME	JTobin		KHseuh		STreby		DRathbun	
DATE	9/13/05*		9/13/05*		9/21/05*		9/22/05*	

ML052660035

OFFICIAL RECORD COPY

COMPATIBILITY COMMENTS ON KANSAS PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	CATEGORY	SUBJECT and COMMENTS
1	28-35-135d(b)	20.1003	A	<p>Definitions “declared pregnant woman”: KS omitted the second sentence of the term “declared pregnant woman” from proposed state regulations.</p> <p>Kansas needs to add the sentence “The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.” to the definition for in 28-35-135d to meet Compatibility Category A designation assigned to 10 CFR 20.1003.</p>
2	28-35-135d	20.1003	C	<p>Definitions “decommission”: KS omitted the term “decommission” from proposed state regulations.</p> <p>Kansas needs to add the definition for “decommission” in 28-35-135d to meet Compatibility Category C designation assigned to 10 CFR 20.1003.</p>
3	N/A	20.1405	C	<p>Public Notification and public participation: KS did not include the requirements of 10 CFR 20.1405 in the submission of proposed state regulations.</p> <p>Kansas needs to add these requirements to state regulations to meet Compatibility Category C designation assigned to 10 CFR 20.1405.</p>
4	N/A	20.1406	C	<p>Minimization of contamination: KS did not include the requirements of 10 CFR 20.1406 in the submission of proposed state regulations.</p> <p>Kansas needs to add these requirements to state regulations to meet Compatibility Category C designation assigned to 10 CFR 20.1406.</p>
5	28-35-135s(c)	30.4	B	<p>Definitions “sealed source”: Kansas’ definition of “sealed source” in 28-35-135s(c) uses the terms “container or matrix” instead of “capsule” and concludes the definition with “foreseeable conditions of wear and tear”.</p> <p>Kansas needs to adopt the 10 CFR 30.4 definition for “sealed source” to meet the Compatibility Category B assigned to 10 CFR 30.4.</p>

STATE SECTION		NRC SECTION	CATEGORY	SUBJECT and COMMENTS
6	28-35-135s	30.4	A	<p>Definitions “site area emergency”: KS omitted the definition of “Site area emergency” defined in 10 CFR 30.4 from the proposed state regulations.</p> <p>Kansas should include the definition for “Site area emergency “ in 28-35-135s to meet Compatibility Category A assigned to 10 CFR 30.4.</p>

STATE SECTION		NRC SECTION	CATEGORY	SUBJECT and COMMENTS
7	28-35-178b	31.5	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>The following differences from 10 CFR 31.5 were noted:</p> <p>In 28-35-178b(b), KS omits the wording “receives” and “transfers” stated in 10 CFR 31.5(c).</p> <p>In 28-35-178b(b)(3)(B), KS omits the equivalent language “pursuant to parts 30 and 32 of this chapter or from an Agreement State” stated in 10 CFR 31.5(c)(3)(ii).</p> <p>In 28-35-178b(b)(4)(B), KS adopts “one year” instead of “three years” stated in 10 CFR 31.5(c)(4)(i).</p> <p>In 28-35-178b(b)(5)(A)(i), KS omits the equivalent language “issued under parts 30 and 32 of this chapter or by an Agreement State” stated in 10 CFR 31.5(c)(5).</p> <p>In 28-35-178b(b)(5)(B), KS omits the language “in the case of detection of 0.005 microcurie or more removable radioactive material... on a case-by-case basis” stated in 10 CFR 31.5(c)(5)</p> <p>In 28-35-178b(b)(9)(A), KS omits the wording “serial number” stated in 10 CFR 31.5(c)(9)(B).</p> <p>In 28-35-178b(b)(9)(A), KS omits the wording “phone number” stated in 10 CFR 31.5(c)(9)(D).</p> <p>In 28-35-178b(b)(13)(A), KS omits the language “devices containing at least 370 Mbq (10 mCi) of Cesium-137..., based on activity indicated on the label.” stated in 10 CFR 31.5(c)(13)(i).</p> <p>In 28-35-178b(b)(13)(A), KS omits 10 CFR 31.5(c)(13)(ii) and 31.5(c)(13)(iv) requirements.</p> <p>In 28-35-178(b)(13)(15)(c), KS omits the wording “or import” stated in 10 CFR 31.5(d).</p> <p>Kansas needs to revise 28-35-178b accordingly to meet the Compatibility Category B designation assigned to 10 CFR 31.5.</p>

STATE SECTION		NRC SECTION	CATEGORY	SUBJECT and COMMENTS
8	N/A	32.2	B	<p>Definitions “lot tolerance percent defective”: KS proposed definition for “lot tolerance percent defective” has been omitted compared to NRC’s definition.</p> <p>Kansas needs to add the definition for “lot tolerance percent defective” to 28-35-135I to meet Compatibility Category B designation assigned to 10 CFR 32.2.</p>
9	28-35-181e (b)	32.12	C	<p>Records and material transfer reports Some of the requirements of “Records and material transfer reports” for the materials of 32.11 have been omitted from proposed KS regulations.</p> <p>The requirements, as found in 10 CFR 32.12(b)(c)&(d), need to be added to state regulations in order to meet Compatibility Category C designation assigned to 10 CFR 32.12.</p>
10	28-35-281	34.71	B	<p>Utilization logs Kansas proposed regulation requires records to be kept for a period of two years, the requirements of 10 CFR 34.71 require maintenance of three years.</p> <p>Kansas needs to change this time period in KS 28-35-284 to meet Compatibility Category B designation assigned to Section 10 CFR 34.71.</p>

STATE REGULATION STATUS

State: Kansas
(27 amendments reviewed are identified by a i
at the beginning of each equivalent NRC regulation.)

Tracking Ticket Number: 5-198/199
Date: September 22, 2005

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) / Final (F)¹ Rule / ML #⁵	NRC Review / Y, N² / Date / ML #⁵	Final State Regulation¹ (Effective Date)
i Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1	P ML051950324	N 9/22/05 ML052660035	
ASNT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2	P ML051950324	Y 9/22/05 ML052660035	
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	
i Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	P ML051950324	Y 9/22/05 ML052660035	
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (7/7/95)	1992-1			superseded 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	P ML051320285	N 7/11/05 ML051940432	
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 Required ³
i Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	P ML051950324	N 9/22/05 ML052660035	
i 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	P ML051940450	Y 7/11/05	
i Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	P ML051950324	N 9/22/05 ML052660035	
i Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983; (3/1/98)	1995-3	P ML051950324	N 9/22/05 ML052660035	
i Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	P ML051950324	N 9/22/05 ML052660035	

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) / Final (F) ¹ Rule / ML # ⁵	NRC Review / Y, N ² / Date / ML # ⁵	Final State Regulation ¹ (Effective Date)
i Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	P ML051950324	N 9/22/05 ML052660035	
i Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	P ML051950324	N 9/22/05 ML052660035	
i Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	P ML051950324	N 9/22/05 ML052660035	
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
i Termination or Transfer of Licensed Activities: Recordkeeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3	P ML051950324	N 9/22/05 ML052660035	
i Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act- Part 20	61 FR 65120; (1/9/00)	1997-1	P ML051950324	N 9/22/05 ML052660035	
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	P ML051950324	N 9/22/05 ML052660035	
i Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	P ML051950324	N 9/22/05 ML052660035	
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4			superceded by 2004-1
i 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	P ML051950324	Y 9/22/05 ML052660035	
i Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6	P ML051950324	Y 9/22/05 ML052660035	
i Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea- Part 30	62 FR 63634; (1/02/01)	1997-7	P ML051950324	N 9/22/05 ML052660035	
i 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	P ML051950324	Y 9/22/05 ML052660035	
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
i Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34	63 FR 37059; (7/9/01)	1998-4	P ML051950324	N 9/22/05 ML052660035	
i Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393; (10/26/01)	1998-5	P ML051950324	Y 9/22/05 ML052660035	

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) / Final (F)¹ Rule / ML #⁵	NRC Review / Y, N² / Date / ML #⁵	Final State Regulation¹ (Effective Date)
i Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	P ML051950324	N 9/22/05 ML052660035	
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
i Respiratory Protection and Controls to Restrict Internal Exposure-Part 20	64 FR 54543; 64 FR 55524; (2/2/03)	1999-3	P ML051950324	N 9/22/05 ML052660035	
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1	P ML051320286	Y 7/11/05 ML051940450	
i New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2	P ML051950324	N 9/22/05 ML052660035	
i Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	P ML051950324	Y 9/22/05 ML052660035	
i Revision of the Skin Dose Limit-Part 20	67 FR 1629; (4/5/05)	2002-1	P ML051950324	N 9/22/05 ML052660035	
i Medical Use of Byproduct Material-Parts 20, 32, 35	67 FR 20249; (10/24/05)	2002-2	P ML051320285	N 7/11/05	
i Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1	P ML051950324	N 9/22/05 ML052660035	
i Compatibility with IAEA Transportation Safety Standards and Other Transportation Safety Amendments - Part 71	69 FR 3697; (10/01/07)	2004-1	P ML051950324	N 9/22/05 ML052660035	
Security Requirements for Portable Gauges Containing Byproduct Material - Part 30	70 FR 2001; (7/11/08)	2005-1			
Medical Use of Byproduct Material - Recognition of Specialty Boards - Part 35	70 FR 16336; (4/29/08)	2005-2	P ML051320285	N 7/11/05	

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.