

May 18, 2006

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 final revision to the Kansas Radiation Protection Regulations, received by our office on March 29, 2006. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 19, 20, 30, 31, 32, 34, 35, 36, 39, 71, and 150 and the requirements of the amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with you on May 17, 2006.

As noted in All Agreement States letter STP-05-072, dated September 28, 2005, NRC staff will continue to review Agreement State GL Device proposed and final rules but will hold in abeyance any determination on those rules and compatibility of those rules, if the Agreement State has the essential elements of the NRC's rule and is more restrictive than the NRC's rule. For Agreement States without a GL Device rule or a GL Device rule less restrictive than the NRC rules, the staff will factor this determination into results of the NRC's review of the State's proposed and final rules and the compatibility findings during Integrated Materials Performance Evaluation Program (IMPEP) reviews.

Although we had only one comment for the 2001-1 amendment stated in the September 22, 2005 letter, as a result of our re-review of the GL device rule against the Compatibility Category B designation, we have two comments that have been identified in the enclosure. Comment 6 indicates that the State's regulation is more restrictive than the NRC's regulation, and there is no corrective action required for this comment at this time. However, Comment 5 indicates that the State's regulation is less restrictive than the NRC's regulations, which needs to be addressed in the State's future rulemaking process.

As a result of our review of the other rules, we have six 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. We have determined that if these regulations are revised, 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.

We request that when you revise your regulations to address our comments, 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 location of any changes made by Kansas, in response to our comments 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.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 me, or Richard Blanton at 301-415-2322 or by e-mail at rlb@nrc.gov.

Sincerely,

IRA BY KNSCHNEIDER FOR

Dennis K. Rathbun, 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.hsrdo.ornl.gov/nrc/rulemaking.htm>.

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

Enclosures: As stated

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**COMMENTS ON PROPOSED KANSAS REGULATIONS
AGAINST COMPATIBILITY AND HEALTH AND SAFETY CATEGORIES**

STATE SECTION		NRC SECTION	RATS ID	CAT EGO RY	SUBJECT and COMMENTS
1	28-35-264	35.2	2002-2	B	<p>Definitions - Authorized User, Radiation Safety Officer</p> <p>Kansas has adopted these definitions by reference. However, Kansas has kept inconsistent definitions for these concepts in Section 28-35-135.</p> <p>Kansas needs to delete these definitions from its regulations for the adoption by reference to be effective and meet the Compatibility B designation assigned to these definitions in 10 CFR 35.2.</p>
2	28-35-264	35.2	2002-2	C	<p>Definition - Prescribed Dose</p> <p>Kansas has adopted this definition by reference. However, Kansas has kept an inconsistent definition in Section 28-35-135.</p> <p>Kansas needs to delete this definition from its regulations for the adoption by reference to be effective and meet the Compatibility C designation assigned to this definition in 10 CFR 35.2.</p>
3	28-35-135d	20.1003	1997-6	C	<p>Definitions - Decommission</p> <p>The comment on the draft rule was not addressed in the final rule. The comment was:</p> <p>The Kansas definition does not apply the requirement “to remove a facility or site safely from service and reduce residual radioactivity” to both unrestricted and restricted release.</p> <p>Kansas needs to add the requirement to the restricted release case to meet the Compatibility C designation assigned to Section 10 CFR 20.1003.</p>

STATE SECTION		NRC SECTION	RATS ID	CAT EGO RY	SUBJECT and COMMENTS
4	28-35-177a	40.22	2002-2	B	<p>Small quantities of source material</p> <p>The Kansas rule authorizes possession by pharmacists, physicians, and patients. This authorization no longer is in the NRC rule.</p> <p>This is a new comment on the final rules.</p> <p>Kansas needs to remove the authorizations to meet the Compatibility B designation assigned to Section 10 CFR 40.22.</p>
5	28-35-178b	31.5	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>The comment on the draft rule was not addressed in the final rule. The comment was:</p> <p>The Kansas rule limits the issuance of a general license to persons. The NRC rule, instead, includes commercial and industrial firms and research, educational and medical institutions, as well as individuals in the conduct of their business, and Federal, State or local government agencies. Kansas rule appears to be less restrictive than that of the NRC.</p> <p>Kansas should include commercial and industrial firms and research, educational and medical institutions, as well as individuals in the conduct of their business, and Federal, State or local government agencies in this rule to meet the Compatibility B designation assigned to Section 10 CFR 31.5.</p>

STATE SECTION		NRC SECTION	RATS ID	CAT EGO RY	SUBJECT and COMMENTS
6	28-35-178b	31.5	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>The comment on the draft rule was not addressed in the final rule. The comment was:</p> <p>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.</p> <p>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 STP-05-072, 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.</p>
7	28-35-181d	Part 35	2002-2	C	<p>Specific Licenses for Medical Use</p> <p>Kansas regulations in 28-35-181d retains the group licenses for medical use. This licensing format is inconsistent with Part 35.</p> <p>This is a new comment on the final rules.</p> <p>Kansas should remove the group licensing regulations to assure consistency with the compatibility categories in 10 CFR Part 35.</p>
8	28-35-349(c)	39.41	2000-1	B	<p>DESIGNS AND PERFORMANCE CRITERIA FOR SOURCES</p> <p>The state incorrectly references requirements in ANSI/HPS N43.6-1977 as those to meet by sealed sources for use in well logging applications. The correct ANSI/ standard should be ANSI/HPS N43.6-1997.</p> <p>This is a new comment on the final rules.</p> <p>Kansas needs to address this to meet the Compatibility Category B designation assigned to Section 10 CFR 39.41.</p>

STATE REGULATION STATUS

State: Kansas
(31 amendment reviewed identified by a i
at the beginning of each equivalent NRC regulation.)

Tracking Ticket Number: 6-102
Date: May 18, 2006

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)
i Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1	F ML060940369	N 5/18/06 ML061370535	
i 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	
i 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	
i 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 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	F ML060940369	N 5/18/06 ML061370535	
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	F ML060940369	N 5/18/06 ML061370535	

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I 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	
I 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	
I Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	F ML060940369	N 5/18/06 ML061370535	
I 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	
I Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F ML060940369	N 5/18/06 ML061370535	
I 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
I 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	
I 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	
I 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	
I 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
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	F ML060940369	N 5/18/06 ML061370535	
I Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6	F ML060940369	Y 5/18/06 ML061370535	
I 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	

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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	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
i 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	
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	F ML060940369	N 5/18/06 ML061370535	
i 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 ML052510065	N 9/22/05 ML052660291	
i Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1	F ML060940369	Y 5/18/06 ML061370535	
i New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2	F ML060940369	N 5/18/06 ML061370535	
i Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	F ML060940369	Y 5/18/06 ML061370535	
i Revision of the Skin Dose Limit-Part 20	67 FR 1629; (4/5/05)	2002-1	F ML060940369	N 5/18/06 ML061370535	
i Medical Use of Byproduct Material-Parts 20, 32, 35	67 FR 20249; (10/24/05)	2002-2	F ML060940369	Y 5/18/06 ML061370535	
i Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1	F ML060940369	N 5/18/06 ML061370535	
i 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			
i 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	

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)
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	

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.