

STATE OF KANSAS

DEPARTMENT OF HEALTH AND ENVIRONMENT
DIVISION OF PUBLIC HEALTH
CURTIS STATE OFFICE BUILDING
1000 SW JACKSON ST., SUITE 330
TOPEKA, KS 66612-1365



PHONE: (785) 296-1560
FAX: (785) 559-4251
WWW.KDHEKS.GOV/RADIATION

GOVERNOR JEFF COLYER, M.D.
JEFF ANDERSEN, SECRETARY

April 26, 2018

Kevin Williams, Deputy Director
Division of Material Safety, State, Tribal & Rulemaking Programs
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
TWFN Mail Stop: 8 D36
Washington, D.C. 20555-0001

Dear Mr. Williams:

We have reviewed the Nuclear Regulatory Commission's Regulation Review Letter ML17298A214 dated November 13, 2017 pertaining to the revisions to the Kansas Administrative Regulations in Sections 28-35-180b, 28-35-180a, 28-35-504, 28-35-221b, 28-35-177a, 28-35-181h, 28-35-700, 28-35-135u, 28-35-192a and 28-35-192g. The regulations were reviewed by comparison to the equivalent U.S. Nuclear Regulatory Commission (NRC) rules and the requirements of Regulation Amendment Tracking System Identification Numbers (RATS IDs) 2011-1, 2011-2, 2012-2, 2012-3, 2012-4, 2013-1 and 2013-2.

We appreciate the review and the 21 comments that were identified. One item of feedback we would like to provide is that the comments provided in this letter were not specific, and the lack of specificity and details in your comments made it extremely challenging to identify exactly what part of the regulation was being targeted for the comment by NRC. It would be extremely helpful if NRC would be more specific and provide the exact language in question in future comments on Kansas regulations.

We thank you for your response and comments. We have responded to your individual comments in the attachments to this letter.

Sincerely,

Kimberly Steves, Director
Kansas Radiation Control Program
Kansas Department of Health and Environment
1000 SW Jackson Suite 330
Topeka, KS 66612
kim.steves@ks.gov

	STATE SECTION	NRC SECTION	RATS ID	CATE-GORY	SUBJECT and COMMENTS
1	28-35-135i (g)	71.4	2012-2	B	<p>Definition Kansas' definition of "Indian Tribe" omits and adds language which renders the definition not essentially identical to NRC's definition.</p> <p>Kansas needs to revise their definition of Indian Tribe to meet the Compatibility Category B designation assigned to 10 CFR 71.4.</p> <p><u>Kansas Response:</u> <i>The definition of Indian Tribe - KAR 28-35-135 uses "eligible for services" the CFR uses "the Secretary of the Interior acknowledges to exist". They are different, but the end result may be the same.</i></p> <p><u>Kansas Response:</u> <i>This regulation will be revised to be essentially identical to federal regulations as part of the current package of regulations under revision by the Kansas Radiation Control program.</i></p>
2	28-35-504	71.97(a)	2012-2	B	<p>Advance notification of shipment of irradiated reactor fuel and nuclear waste</p> <p>Kansas' equivalent regulation to 10 CFR 71.97(a) omits and adds language which renders the regulation not essentially identical to NRC's regulation.</p> <p>Kansas needs to revise their equivalent regulation to be essentially identical to meet the Compatibility Category B designation assigned to 10 CFR 71.97(a).</p> <p><u>Kansas Response:</u> <i>This regulation will be revised to be essentially identical to federal regulations as part of the current package of regulations under revision by the Kansas Radiation Control program.</i></p>
3	28-35-504 (c)(1)	71.97(c)(1)	2012-2	B	<p>Advance notification of shipment of irradiated reactor fuel and nuclear waste</p> <p>Kansas' equivalent regulation to 10 CFR 71.97(c)(1) omits and adds language which renders the regulation not essentially identical to NRC's regulation.</p> <p>Kansas needs to revise their equivalent regulation to be essentially identical to meet the Compatibility Category B designation assigned to 10 CFR 71.97(c)(1).</p> <p><u>Kansas Response:</u> <i>This regulation will be revised to be essentially identical to federal regulations as part of the current package of regulations under revision by the Kansas Radiation Control program.</i></p>

4	28-35-504 (C)(3)	71.97(c)(3)	2012-2	B	<p>Advance notification of shipment of irradiated reactor fuel and nuclear waste</p> <p>Kansas' equivalent regulation to 10 CFR 71.97(c)(3) omits and adds language which renders the regulation not essentially identical to NRC's regulation.</p> <p>Kansas needs to revise their equivalent regulation to be essentially identical to meet the Compatibility Category B designation assigned to 10 CFR 71.97(c)(3).</p> <p><u>Kansas Response:</u> <i>Kansas regulatory style does not allow for us to use the word "must", but instead we are required to use "shall". The sections pertaining to the reference to Federal Register and lists of government and tribal designees will not be inserted into Kansas regulations as that is contrary to Kansas requirements for regulatory style and format and has been disallowed by our legal staff. No amendments are being made at this time to this regulation.</i></p>
5	28-35-504 (C)(2)	71.97(d)(4)	2012-2	B	<p>Advance notification of shipment of irradiated reactor fuel and nuclear waste</p> <p>Kansas' equivalent regulation to 10 CFR 71.97(d)(4) omits and adds language which renders the regulation not essentially identical to NRC's regulation.</p> <p>Kansas needs to revise their equivalent regulation to be essentially identical to meet the Compatibility Category B designation assigned to 10 CFR 71.97(d)(4).</p> <p><u>Kansas Response:</u> <i>This regulation will be revised to be essentially identical to federal regulations as part of the current package of regulations under revision by the Kansas Radiation Control program.</i></p>
6	28-35-504 (4)(e)	71.97(e)	2012-2	B	<p>Advance notification of shipment of irradiated reactor fuel and nuclear waste</p> <p>Kansas' equivalent regulation to 10 CFR 71.97(e) omits and adds language which renders the regulation not essentially identical to NRC's regulation.</p> <p>Kansas needs to revise their equivalent regulation to be essentially identical to meet the Compatibility Category B designation assigned to 10 CFR 71.97(e).</p> <p><u>Kansas Response:</u> <i>This regulation will be revised to be essentially identical to federal regulations as part of the current package of regulations under revision by the Kansas Radiation Control program.</i></p>

7	28-35-504(f)	71.97(f)(1)	2012-2	B	<p>Advance notification of shipment of irradiated reactor fuel and nuclear waste</p> <p>Kansas' equivalent regulation to 10 CFR 71.97(f)(1) omits and adds language which renders the regulation not essentially identical to NRC's regulation.</p> <p>Kansas needs to revise their equivalent regulation to be essentially identical to meet the Compatibility Category B designation assigned to 10 CFR 71.97(f)(1).</p> <p><u>Kansas Response:</u> <i>This regulation will be revised to be essentially identical to federal regulations as part of the current package of regulations under revision by the Kansas Radiation Control program.</i></p>
8	28-35-291	34.20(a)(1)	2012-3	B	<p>Performance requirements for industrial radiography equipment</p> <p>Kansas has omitted the address for acquiring American National Standards Institute (ANSI) publications from their equivalent regulation.</p> <p>Kansas needs to adopt the address for acquiring ANSI publications to meet the Compatibility Category B designation assigned to 10 CFR 34.20(a)(1).</p> <p><u>Kansas Response:</u> <i>This regulation was not a part of the package of regulations which was just completed by Kansas and which was submitted to the NRC for review. Kansas regulatory style requirements discourage the use of mailing addresses in regulations as these have the potential to change and can be easily accessed via internet without inserting them into regulation. This change will not be made to Kansas regulations.</i></p>
9	28-35-178a(1)	30.15(a)(2)	2012-4	B	<p>Certain items containing byproduct material</p> <p>Kansas has omitted equivalent regulations for 10 CFR 30.15(a)(2)(iii) from their equivalent regulation for 10 CFR 30.15(a)(2).</p> <p>Kansas needs to adopt the regulations in 10 CFR 30.15(a)(2)(iii) to meet the Compatibility Category B designation assigned to 10 CFR 10 CFR 30.15(a)(2).</p> <p><u>Kansas Response:</u> <i>This regulation was not a part of the package of regulations which was just completed by Kansas and which was submitted to the NRC for review. This regulation will be revised to be essentially identical to federal regulations as part of the current package of regulations under revision by the Kansas Radiation Control program.</i></p>

10	28-35-192f(b)	30.19(b)	2012-4	B	<p>Self-luminous products containing tritium, krypton-85, or promethium-147</p> <p>Kansas' equivalent regulation to 10 CFR 30.19(b) omits and adds language which renders the regulation not essentially identical to NRC's regulation.</p> <p>Kansas needs to revise their equivalent regulation to be essentially identical to meet the Compatibility Category B designation assigned to 10 CFR 30.19(b).</p> <p><u>Kansas Response:</u> <i>This regulation was not a part of the package of regulations which was just completed by Kansas and which was submitted to the NRC for review. This regulation will be revised to be essentially identical to federal regulations as part of the current package of regulations under revision by the Kansas Radiation Control program.</i></p>
11	28-35-192e	30.20	2012-4	B	<p>Gas and aerosol detectors containing byproduct material</p> <p>Kansas' equivalent regulation to 10 CFR 30.20 omits and adds language which renders the regulation not essentially identical to NRC's regulation.</p> <p>Kansas needs to revise their equivalent regulation to be essentially identical to meet the Compatibility Category B designation assigned to 10 CFR 30.20.</p> <p><u>Kansas Response:</u> <i>This regulation was not a part of the package of regulations which was just completed by Kansas and which was submitted to the NRC for review. This regulation will be revised to be essentially identical to federal regulations as part of the current package of regulations under revision by the Kansas Radiation Control program.</i></p>
12	28-35-192h	30.22	2012-4	B	<p>Certain industrial devices</p> <p>Kansas' equivalent regulation to 10 CFR 30.22 omits and adds language which renders the regulation not essentially identical to NRC's regulation.</p> <p>Kansas needs to revise their equivalent regulation to be essentially identical to meet the Compatibility Category B designation assigned to 10 CFR 30.22.</p> <p><u>Kansas Response:</u> <i>This regulation will be revised to be essentially identical to federal regulations as part of the current package of regulations under revision by the Kansas Radiation Control program.</i></p>

13	28-35-151h(e)	32.51(a)(6)	2012-4	B	<p>Byproduct material contained in devices for use under § 31.5; requirements for license to manufacture, or initially transfer</p> <p>Kansas' equivalent regulation in 28-35-151h(e) has been omitted which renders the regulation not essentially identical to NRC's regulation.</p> <p>Kansas needs to adopt an equivalent regulation to 10 CFR 32.51(a)(6) to meet the Compatibility Category B designation assigned to 10 CFR 32.51(a)(6).</p> <p><u>Kansas Response:</u> <i>This regulation was not a part of the package of regulations which was just completed by Kansas and which was submitted to the NRC for review. The language will be added to K.A.R. 28-35-181r.</i></p>
14	28-35-181j(a)(2)(D)	32.57(d)(2)	2012-4	B	<p>Calibration or reference sources containing americium-241 or radium-226: Requirements for license to manufacture or initially transfer</p> <p>Kansas' equivalent regulation in 28-35-181j(a)(2)(D) has been omitted which renders the regulation not essentially identical to NRC's regulation.</p> <p>Kansas needs to adopt an equivalent regulation to 10 CFR 32.57(d)(2) to meet the Compatibility Category B designation assigned to 10 CFR 32.57(d)(2).</p> <p><u>Kansas Response:</u> <i>This regulation was not a part of the package of regulations which was just completed by Kansas and which was submitted to the NRC for review. This regulation will be revised to be essentially identical to federal regulations as part of the current package of regulations under revision by the Kansas Radiation Control program.</i></p>
15	28-35-181j(a)(5)	32.57(e)	2012-4	B	<p>Calibration or reference sources containing americium-241 or radium-226: Requirements for license to manufacture or initially transfer</p> <p>Kansas' equivalent regulation in 28-35-181j(a)(5) has been omitted which renders the regulation not essentially identical to NRC's regulation.</p> <p>Kansas needs to adopt an equivalent regulation to 10 CFR 32.57(e) to meet the Compatibility Category B designation assigned to 10 CFR 32.57(e).</p> <p><u>Kansas Response:</u> <i>This regulation was not a part of the package of regulations which was just completed by Kansas and which was submitted to the NRC for review. This regulation will be revised to be essentially identical to federal regulations as part of the current package of regulations under revision by the Kansas Radiation Control program.</i></p>

16	28-35-181j(b)	32.59	2012-4	B	<p>Same: Leak testing of each source</p> <p>Kansas equivalent regulation in 28-35-181j(b) has been omitted which renders the regulation not essentially identical to NRC's regulation.</p> <p>Kansas needs to adopt an equivalent regulation to 10 CFR 32.59 to meet the Compatibility Category B designation assigned to 10 CFR 32.59.</p> <p><u>Kansas Response:</u> <i>This regulation was not a part of the package of regulations which was just completed by Kansas and which was submitted to the NRC for review. This regulation will be revised to be essentially identical to federal regulations as part of the current package of regulations under revision by the Kansas Radiation Control program.</i></p>
17	N/A	32.210(a) 32.210(b) 32.210(d) 32.210(e) 32.210(g) 32.210(h) 32.211	2012-4	B	<p>Registration of product information Inactivation of certificates of registration of sealed sources and devices</p> <p>Kansas' 274b. agreement with the NRC includes Sealed Source and Device (SS&D) Evaluation authority, therefore Kansas is required to have compatible regulations to 10 CFR 32.210(a), 32.210(b), 32.210(d), 32.210(e), 32.210(g) and 32.210(h).</p> <p>Kansas needs to adopt equivalent regulations as stated above to meet the Compatibility Category B designation assigned to 10 CFR 32.210(a), 32.210(b), 32.210(d), 32.210(e), 32.210(g), 32.210(h), and 32.211.</p> <p><u>Kansas Response:</u> <i>This regulation was not a part of the package of regulations which was just completed by Kansas and which was submitted to the NRC for review. Kansas is interested in discussing options to modify the agreement with the NRC to not include SS&D.</i></p>
18	28-35-140b	30.13	2013-1	B	<p>Carriers</p> <p>Kansas' equivalent regulation to 10 CFR 30.13 omits and adds language which renders the regulation not essentially identical to NRC's regulation.</p> <p>Kansas needs to revise their equivalent regulation to be essentially identical to meet the Compatibility Category B designation assigned to 10 CFR 30.13.</p> <p><u>Kansas Response:</u> <i>This regulation will be revised to be essentially identical to federal regulations as part of the current package of regulations under revision by the Kansas Radiation Control program.</i></p>

19	28-35-135u	40.4	2013-2	B	<p>Definitions</p> <p>Kansas' equivalent regulation to 10 CFR 40.4 omits and adds language which renders the regulation not essentially identical to NRC's regulation.</p> <p>Kansas needs to revise their equivalent regulation to be essentially identical to meet the Compatibility Category B designation assigned to 10 CFR 40.4.</p> <p><u>Kansas Response:</u> <i>This regulation will be revised to be essentially identical to federal regulations as part of the current package of regulations under revision by the Kansas Radiation Control program.</i></p>
20	28-35-192a(c)(2)(A) 28-35-192a(c)(2)(B) 28-35-192a(c)(6)(6A) and (6B) 28-35-192a(e1) and (e2) 28-35-192a(d)(1)	40.13(c)(2)(i)) 40.13(c)(2)(i) ii) 40.13(c)(7) 40.13(c)(10) 40.13 Footnote 2	2013-2	B	<p>Unimportant quantities of source material</p> <p>Kansas' equivalent regulations to 10 CFR 40.13(c)(2)(i), 40.13(c)(2)(iii), 40.13(c)(7), 40.13(c)(10) and 40.13 Footnote 2 omit and add language which renders the regulations not essentially identical to NRC's regulations.</p> <p>Kansas needs to revise their equivalent regulations to be essentially identical to meet the Compatibility Category B designation assigned to 10 CFR 40.13(c)(2)(i), 40.13(c)(2)(iii), 40.13(c)(7), 40.13(c)(10), and 40.13 Footnote 2.</p> <p><u>Kansas Response:</u> <i>This regulation will be revised to be essentially identical to federal regulations as part of the current package of regulations under revision by the Kansas Radiation Control program.</i></p>
21	28-35-177a 28-35-177a(b)(1) 28-35-177a(b)(1)(A-B)	40.22(a)(1) – (4) 40.22(b) 40.22(b)(1) – (3)	2013-2	B	<p>Small quantities of source material</p> <p>Kansas' equivalent regulations to 10 CFR 40.22(a)(1)–(4), 40.22(b), and 40.22(b)(1)–(3), omit and add language which renders the regulations not essentially identical to NRC's regulations.</p> <p>Kansas needs to revise their equivalent regulations to be essentially identical to meet the Compatibility Category B designation assigned to 10 CFR 40.22(a)(1)–(4), 40.22(b), and 40.22(b)(1)–(3).</p> <p><u>Kansas Response:</u> <i>This regulation will be revised to be essentially identical to federal regulations as part of the current package of regulations under revision by the Kansas Radiation Control program.</i></p>