

July 11, 2005

Thomas A. Conley, CHP,RRPT, Chief
Radiation and Asbestos Control 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 regulations in Parts 6, 12, and supporting information in Part 1, received by our office on June 8, 2005. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 35 and 36 and the requirements of the four amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with you on June 14, 2005.

As a result of our review, 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. 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 changes, 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 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 Mr. Andrew N. Mauer at (301) 415-3962 or by e-mail at anm@nrc.gov.

Sincerely,

IRA By KNSchneider for

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

Enclosures:
As stated

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IRA By KNSchneider for

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Office of State and Tribal Programs

Enclosures: As stated

Distribution:

SISP Review Complete

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Response to Incoming Document:

VCampbell, RSAO JZabko, ASPO WRautzen BUilton Kansas File Response to Incoming Document: **ML051580285**

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OFFICE	STP		STP		OGC		STP:DD	
NAME	AMauer		WRautzen		STreby		KNSchneider for DKRathbun	
DATE	06/21/05*		06/21/05*		06/30/05*		07/11/05*	

ML051940432

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COMPATIBILITY COMMENTS ON KANSAS PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	Part 1 28-35-135a	35.2	2002-2	B	<p>Definitions - Authorized Medical Physicist</p> <p>Kansas has omitted requirements for the definition of authorized medical physicist in their regulations.</p> <p>Kansas needs to add the definition to Part 1, Section 28-35-135a to meet the Compatibility B designation assigned to Section 10 CFR 35.2.</p>
2	Part 1 28-35-135a	35.2	2002-2	B	<p>Definitions - Authorized Nuclear Pharmacist</p> <p>Kansas has omitted requirements for the definition of authorized nuclear pharmacist in their regulations.</p> <p>Kansas needs to add the definition to Part 1, Section 28-35-135a to meet the Compatibility B designation assigned to Section 10 CFR 35.2.</p>
3	Part 1 28-35-135a	35.2	2002-2	B	<p>Definitions - Authorized User</p> <p>Kansas did not identify the requirements needed to qualify as an authorized user in the proposed definition.</p> <p>Kansas needs to add the requirements needed to qualify as an authorized user to Part 1, Section 28-35-135a to meet the Compatibility B designation assigned to Section 10 CFR 35.2.</p>
4	Part 1 28-35-135p	35.2	2002-2	C	<p>Definitions - Prescribed Dose</p> <p>Kansas omitted the requirement concerning remote brachytherapy afterloaders.</p> <p>Kansas needs to add the portion of the definition concerning remote brachytherapy afterloaders to Part 1, Section 28-35-135p to meet the Compatibility C designation assigned to Section 10 CFR 35.2.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
5	Part 1 28-35-135r	35.2	2002-2	B	<p>Definitions - Radiation Safety Officer</p> <p>Kansas used the definition provided in 10 CFR Part 36 which is assigned a Compatibility 'D.' In order to satisfy the essentially identical requirement of 10 CFR Part 35.2, the State must include the requirements to qualify as a radiation safety officer and include where the radiation safety officer is identified (e.g. State license).</p> <p>Kansas needs to add the definition to Part 1, Section 28-35-135r to meet the Compatibility B designation assigned to Section 10 CFR 35.2.</p>
6	Part 12 28-35-375	36.1	1993-2	C- paragraphs (b) & (c)	<p>Purpose & Scope</p> <p>Kansas has omitted requirements for the purpose and scope in their regulations.</p> <p>Kansas needs to add the purpose and scope to Part 12, Section 28-35-175 to meet the Compatibility C designation assigned to Section 10 CFR 36.1.</p>

STATE REGULATION STATUS

State: Kansas

Tracking Ticket Number: 5-157

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

Date: July 11, 2005

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)
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			Not Required ³
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			
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (7/7/95)	1992-1			
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 ML051580285	Y 7/11/05 ML051940432	Not Applicable SECY-95-112 ⁴
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			
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3			
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			

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)
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2			
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983; (3/1/98)	1995-3			
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4			
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5			
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6			
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7			
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28724; (4/1/99)	1996-1			
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			
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1			
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			
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3			
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4			Not Required ³
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			

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)
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6			
Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7			
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773; (2/12/01)	1998-1			
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			
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393; (10/26/01)	1998-5			
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6			
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 ³
Respiratory Protection and Controls to Restrict Internal Exposure-Part 20	64 FR 54543; 64 FR 55524; (2/2/03)	1999-3			
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 63750; (1/8/04)	2000-2	P ML051580285	N 7/11/05 ML051940432	
Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1			

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)
Revision of the Skin Dose Limit-Part 20	67 FR 1629; (4/5/05)	2002-1			
★ Medical Use of Byproduct Material-Parts 20, 32, 35	67 FR 20249; (10/24/05)	2002-2	P ML051580285	Y 7/11/05 ML051940432	
Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1			
Compatibility with IAEA Transportation Safety Standards and Other Transportation Safety Amendments - Part 71	69 FR 3697; (10/01/07)	2004-1			
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 ML051580285	N 7/11/05 ML051940432	

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.