

January 14, 2010

Julia Schmitt, Program Manager
Nebraska Department of Health
and Human Services
301 Centennial Mall South
P.O. Box 95007
Lincoln, NE 68509-5007

Dear Ms. Schmitt:

We have reviewed the final revision to the Nebraska regulations for Control of Radiation 180 NAC Nebraska Regulations for Radiation Control requirements received by our office on November 12, 2009. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 20, 30, 32, 35, 40, 70, 71 and the requirements of the nine amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with Trudy Hill on January 13, 2010.

As a result of our review, we have three 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 Federal and State Materials and Environmental Management Programs (FSME) 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 FSME Procedure [SA-201](#), "Review of State Regulatory Requirements," please highlight the location of any changes made by Nebraska, in response to our comments, and provide a copy to Division of Materials Safety and State Agreements, FSME.

The SRS Data Sheet summarizes our knowledge of the status of other Nebraska 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://nrc-stp.ornl.gov/rulemaking.html>.

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 (301) 415-2320 (kathleen.schneider@nrc.gov) or Shirley Xu at (301) 415-7640 (shirley.xu@nrc.gov).

Sincerely,

/RA/

Terrence Reis, Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

Enclosures:
As stated

[Concurrence Page]

Enclosures: As stated

Distribution:

DIR RF (9-55)

DCD (SP08)

RErickson, RIV

LMcLean, RIV

JKatanic, ASPB

NE File

SUNSI Review Complete

- Publicly Available Non-Publicly Available
 Non-Sensitive Sensitive

DOCUMENT NAME: G:\DMSSA\SAISB\REGULATION TOOLBOX\States\Nebraska\9-55

Incoming Document: ML093110093

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	ASPB		ASPB		OGC		ASPB:BC		MSSA:DD	
NAME	S Xu		K Schneider		BJones:gms		AWhite		TReis	
DATE	12/09/2009		12/11/2009		01/11/2010		01/14/2010		01/14/2010	

ML093431059

OFFICIAL RECORD COPY

Package ML093431027

COMPATIBILITY COMMENTS ON Nebraska FINAL REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	180 NAC 3-018	§40.36	2003-1	H&S	<p>Financial assurance and recordkeeping for decommissioning</p> <p>Nebraska uses both “byproduct” material and “radioactive” material within this section. This creates confusion. For consistency purposes, Nebraska should change all references to “Byproduct Material” to “Radioactive Material.”</p> <p>Also, Nebraska omits an equivalent section to 10 CFR 40.36 which requires financial assurance and recordkeeping for decommissioning requirements for “...a specific license authorizing the possession and use of more than 100mCi of source material in a readily dispersible form ...” and for “...a specific license authorizing the possession and use of quantities of source material greater than 10mCi but less than or equal to 100mCi in a readily dispersible form...”.</p> <p>Nebraska needs to make the above changes to 180 NAC 3-018 to meet the Compatibility Category H&S designation assigned to 10 CFR 40.36.</p>
2	180 NAC 13-005.01	71.5	2004-1	B	<p>Transportation of licensed material</p> <p>Nebraska regulations state “DOT regulations 170, 171 through 189, and 390 through 397, appropriate...”. The correct wording should be “DOT regulations 107, 171 through 180, and 390 through 397, appropriate...”.</p> <p>In 180 NAC 13-005.01 (1)(b) Nebraska states “Marking and labeling 49 CFR Part 172: Subpart D, §§ 172.400 through 172.407, §§ 172.436 through 172.440, and Subpart E.” This should state “Marking and labeling 49 CFR Part</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>172: Subpart D; and §§ 172.400 through 172.407 and §§ 172.436 through 172.441 of Subpart E.”</p> <p>Nebraska omits an equivalent to 10 CFR 71.5(a)(1)(vii) “Security plans-49 CFR part 172: subpart I” from 180 NAC 13-005.01(b).</p> <p>Nebraska needs to make the above changes to 180 NAC 13-005.01 in order to meet the Compatibility Category [B] designation assigned to 10 CFR 71.5.</p>
3	180 NAC 13-010	71.21	2004-1	B	<p>General License: Use of Foreign Approved Package</p> <p>Nebraska omits an essentially identical regulation to 10 CFR 71.21 from its regulations.</p> <p>Nebraska needs to make the above addition in order to meet the Compatibility Category B designation assigned to 10 CFR 71.21.</p>

STATE REGULATION STATUS

State: Nebraska

Tracking Ticket Number: 9-55

[9 amendment(s) reviewed is identified by a ★

Date: January 14, 2010

at the beginning of the equivalent NRC requirement.]

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1991-1	Safety Requirements for Radiographic Equipment Part 34 55 FR 843 (Supceded by 1997-5)	01/10/1994	Final	10/7/97	Nebraska has adopted Final Regulations equivalent to RATS ID: 1997-5.
1991-2	ASNT Certification of Radiographers Part 34 56 FR 11504 (Supceded by 1997-5)	none	Not Required	Not Required	Nebraska has adopted Final Regulations equivalent to RATS ID: 1997-5.
1991-3	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;	01/01/1994	Final	No Comments 10/07/1997	
1991-4	Notification of Incidents Parts 20, 30, 31, 34, 39, 40, 70 56 FR 64980;	10/15/1994	Final	10/7/97	
1992-1	Quality Management Program and Misadministrations Part 35 56 FR 34104 (Supceded by 2002-2)	01/27/1995			Nebraska has not yet adopted final regulation equivalent to RATS ID: 2002-2.
1992-2	Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions Parts 30, 35 57 FR 45566	none	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1993-1	Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites] Parts 30, 40 58 FR 39628	10/25/1996	Final ML022800655	No Comments 10/18/2002 ML022960258	
1993-2	Licensing and Radiation Safety Requirements for Irradiators Part 36 58 FR 7715	07/01/1996	Final ML022800655	No Comments 10/18/2002 ML022960258	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1993-3	Definition of Land Disposal and Waste Site QA Program Part 61 58 FR 33886	07/22/1996	Not Applicable ⁱ	Not Applicable	Nebraska does not any licensees subject to these regulations. (See SECY-95-112)
1994-1	Self-Guarantee as an Additional Financial Mechanism Parts 30, 40, 70 58 FR 68726; 59 FR 1618	none	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1994-2	Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards Part 40 59 FR 28220	07/01/1997	Not Applicable	Not Applicable	Nebraska does not have the authority to regulate this material under its Agreement
1994-3	Timeliness in Decommissioning Material Facilities Parts 30, 40, 70 59 FR 36026	08/15/1997	Final ML022800655	No Comments 10/18/2002 ML022960258	
1995-1	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	01/01/1998	Final ML022800655	No Comments 10/18/2002 ML022960258	
1995-2	Frequency of Medical Examinations for Use of Respiratory Protection Equipment	03/13/1998	Final	No Comments 05/19/1999	
1995-3	Low-Level Waste Shipment Manifest Information and Reporting Parts 20, 61 60 FR 15649; 60 FR 25983	03/01/1998	Final	No Comments 05/19/1999	
1995-4	Performance Requirements for Radiography Equipment Part 34 60 FR 28323 (Superseded by 1997-5)	06/30/1998	Final ML003763184	No Comments 02/01/2001 ML010330318	Nebraska has adopted Final Regulations equivalent to RATS ID: 1997-5.
1995-5	Radiation Protection Requirements: Amended Definitions and Criteria Parts 19, 20 60 FR 36038	08/14/1998	Final	No Comments 05/19/1999	
1995-6	Clarification of Decommissioning Funding Requirements Parts 30, 40, 70 60 FR 38235	11/24/1998	Final ML022800566	No Comments 10/18/2002 ML022960258	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1995-7	Medical Administration of Radiation and Radioactive Materials Parts 20, 35 60 FR 48623 (Superceded by 2002-2 and 2005-2)	10/20/1998	Final ML022800566	No Comments 10/18/2002 ML022960258	Nebraska has not yet adopted Final Regulations equivalent to RATS IDs: 2002-2 and 2005-2.
1996-1	Compatibility with the International Atomic Energy Agency Part 71 60 FR 50248; 61 FR 28724 (Superceded by 2004-1)	04/01/1999	Final ML003763184	No Comments 02/01/2001 ML010330318	
1996-2	One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses Parts 30, 40, 70 61 FR 1109	02/15/1999	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1996-3	Termination or Transfer of Licensed Activities: Record keeping Requirements Parts 20, 30, 40, 61, 70 61 FR 24669	06/17/1999	Final ML022800566	No Comments 10/18/2002 ML022960258	
1997-1	Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act Part 20 61 FR 65120	01/9/2000	Final ML003763184	No Comments 02/01/2001 ML010330318	
1997-2	Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State Part 150 62 FR 1662	02/27/2000	Final ML003763184	No Comments 02/01/2001 ML010330318	
1997-3	Criteria for the Release of Individuals Administered Radioactive Material Parts 20, 35 62 FR 4120	05/29/2000	Final ML022800655	No Comments 10/18/2002 ML022960258	
1997-4	Fissile Material Shipments and Exemptions Part 71 62 FR 5907 (Superceded by 2004-1)	02/10/2000	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility. (See STP-97-078)

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1997-5	Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations Parts 30, 34, 71, 150 62 FR 28947	06/27/2000	Final ML003763184	No Comments 02/01/2001 ML010330318	
1997-6	Radiological Criteria for License Termination Parts 20, 30, 40, 70 62 FR 39057	08/20/2000	Final ML011130396	No Comments 07/20/2001 ML012010439	
1997-7	Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea Part 30 62 FR 63634	01/02/2001	Final ML003763184	No Comments 02/01/2001 ML010330318	
1998-1	Deliberate Misconduct by Unlicensed Persons Parts 30, 40, 61, 70, 71, 150	02/12/2001	Final ML031500771	No Comments 06/09/2003 ML031610005	
1998-2	Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees Parts 30, 40, 70 63 FR 29535	07/01/2001	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1998-3	License Term for Medical Use Licenses Part 35 63 FR 31604 (Superseded by 2002-2)	07/10/2001	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility. (See STP-98-074)
1998-4	Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations Part 34 63 FR 37059	07/09/2001	Final ML003763184	No Comments 02/01/2001 ML010330318	
1998-5	Minor Corrections, Clarifying Changes, and a Minor Policy Change Parts 20, 35, 36 63 FR 39477; 63 FR 45393	10/26/2001	Final ML031500771	No Comments 06/09/2003 ML031610005	
1998-6	Transfer for Disposal and Manifests: Minor Technical Conforming Amendment Part 20 63 FR 50127	11/20/2001	Final ML022800655	No Comments 10/18/2002 ML022960258	
1999-1	Radiological Criteria for License Termination of Uranium Recovery Facilities Part 40 64 FR 17506	06/11/2002	Not Applicable	Not Applicable	Nebraska does not have the authority to regulate this material under its Agreement.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1999-2	Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information Part 31 64 FR 42269	10/04/2002	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1999-3	Respiratory Protection and Controls to Restrict Internal Exposure Part 20 64 FR 54543; 64 FR 55524	02/02/2003	Final ML031500771	No Comments 06/09/2003 ML031610005	
2000-1	Energy Compensation Sources for Well Logging and Other Regulatory Clarifications Part 39 65 FR 20337	05/17/2003	Final ML031500771	No Comments 06/09/2003 ML031610005	
2000-2	New Dosimetry Technology Parts 34, 36, 39 65 FR 63750	01/08/2004	Final ML031500771	No Comments 06/09/2003 ML031610005	
2001-1	Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material	02/16/2004	Final ML031500771	Comments 08/31/2006 ML062400266	
★2002-1	Revision of the Skin Dose Limit Part 20 67 FR 16298	04/05/2005	Final ML093110093	No Comments 01/14/2010 ML093431027	
★2002-2	Medical Use of Byproduct Material Parts 20, 32, 35 67 FR 20249	10/24/2005	Final ML093110093	No Comments 01/14/2010 ML093431027	
★2003-1	Financial Assurance for Materials Licensees Parts 30, 40, 70 68 FR 57327	12/03/2006	Final ML093110093	Comments 01/14/2010 ML093431027	
★2004-1	Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments Part 71 69 FR 3697	10/01/2007	Final ML093110093	Comments 01/14/2010 ML093431027	
★2005-1	Security Requirements for Portable Gauges Containing Byproduct Material Part 30 70 FR 2001	07/11/2008	Final ML093110093	No Comments 01/14/2010 ML093431027	
★2005-2	Medical Use of Byproduct Material - Recognition of Specialty Boards Part 35	04/29/2008	Final ML093110093	No Comments 01/14/2010 ML093431027	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
2005-3	Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-	12/01/2005	License Condition ML053060118	No Comments 11/03/2005 ML053070551	
★2006-1	Minor Amendments Parts 20, 30, 32, 35, 40 and 70	03/27/2009	Final ML093110093	No Comments 01/14/2010 ML093431027	
★2006-2	National Source Tracking System - Serialization Requirements Part 32 with reference to Part 20 Appendix E 71 FR 65685	02/06/2007	Final ML093110093	No Comments 01/14/2010 ML093431027	
★2006-3	National Source Tracking System Part 20 71 FR 65685, 72 FR 59162	01/31/2009	Final ML093110093 License Condition ML083520149	No Comments 01/14/2010 ML093431027 No Comments 12/30/2008 ML083530535	
2007-1	Medical Use of Byproduct Material - Minor Corrections and Clarifications Parts 32 and 35 72 FR 45147, 54207	10/29/2010			
2007-2	Exemptions From Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements Parts 30, 31, 32, 150 72 FR 58473	12/17/2010			
2007-3	Requirements for Expanded Definition of Byproduct Material Parts 20, 30, 31, 32, 33, 35, 61, 150 72 FR 55864	11/30/2010			
2007-4	Order Imposing Fingerprinting Requirements and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material NRC Order EA-07-305 72 FR 70901	06/05/2008	License Condition ML081130768 ML081140539	No Comments 05/02/2008 ML081230143	
2008-1	Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent Parts 19, 20 72 FR 68043	02/15/2011			

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
2009-1	Medical Use of Byproduct Material – Authorized User Clarification Part 35 74 FR 33901	09/28/2012			

ⁱ IMPEP Team: verify that Nebraska does not have any licensees subject to these regulations during each review.