



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

July 31, 2018

Kimberly Steves, Director
Kansas Radiation Control Program
Kansas Department of Health and Environment
1000 SW Jackson Suite 330
Topeka, KS 66612

Dear Ms. Steves:

We have reviewed the final revisions to the Kansas Administrative Regulations in Sections 28-35-135, 28-35-140, 28-35-151, 28-35-177, 28-35-178, 28-35-181, 28-35-192, 28-35-291, and 28-35-504, received by our office on June 7, 2018. These regulations pertaining to comments provided by the U.S. Nuclear Regulatory Commission (NRC) in a letter dated November 13, 2017, were reviewed by comparison to the equivalent NRC rules and the requirements of Regulation Amendment Tracking System Identification Numbers (RATS IDs) 2012-2, 2012-3, 2012-4, 2013-1, and 2013-2 as identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with Judee Walden on July 30, 2018.

As a result of our review, we have 14 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 Nuclear Material Safety and Safeguards (NMSS) Procedure SA-200, "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements."

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 NMSS 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 Division of Materials Safety, Security, State, and Tribal Programs, NMSS. 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 NMSS State Communication Portal: <https://scp.nrc.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 Michelle Beardsley, State Regulation Review Coordinator, at (267) 884-2305 (Michelle.Beardsley@nrc.gov) or Dr. Lizette Roldán-Otero at (817) 200-1596 (Lizette.Roldan@nrc.gov).

Sincerely,

/RA Paul Michalak for/

Sabrina Atack, Acting Deputy Director
Division of Materials Safety, Security, State,
and Tribal Programs
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. Compatibility Comments
2. Kansas SRS Data Sheet

COMPATIBILITY COMMENTS ON KANSAS REVISED FINAL REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	KS COMMENTS and RESOLUTION
1	28-35-504 (c)(1) and (f)(1)	71.97(c)(1) 71.97(f)(1)	2012-2	B	<p>Advance notification of shipment of irradiated reactor fuel and nuclear waste</p> <p>Kansas' regulations: 1) omit the phrase "or Tribal official's designee," and 2) Kansas needs to replace "division of nuclear security" with "division of Security Policy"</p> <p>Kansas needs to make</p>	Changed, with one exception. Kansas regulatory rules prohibit the capitalization of any non-proper-noun not at the beginning of a sentence. The regulations are capitalization-agnostic in Kansas.
2	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' regulations omits the phrase, "or Tribal official's designee."</p> <p>Kansas needs to add the phrase indicated above</p>	Changed, with the same comment as above.
3	28-35-504 (d)(3)(B)	71.97(d)(4)	2012-2	B	<p>Advance notification of shipment of irradiated reactor fuel and nuclear waste</p> <p>Kansas' regulations omit the phrase "or Tribal reservation boundaries".</p> <p>Kansas needs to add the</p>	Changed, with the same comment as above.
4	28-35-504(e)	71.97(e)	2012-2	B	<p>Advance notification of shipment of irradiated reactor fuel</p>	Changed, with the same comment as above.

STATE		NRC	RATS	CATE	SUBJECT and	KS COMMENTS and RESOLUTION
					<p>Kansas' regulations omit the phrase "or Tribal official's designee".</p> <p>Kansas needs to</p>	
5	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 regulatory standards prohibit the addition of an address as informational language outside of definitions. The definition of ANSI in K.A.R. 28-35-135a(x) has been modified to include this information.</p>
6	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</p>	<p>K.A.R. 28-35-178a(a)(3) has been added to include equivalent regulations for 10 CFR 30.15(a)(2)(iii).</p>

STATE		NRC	RATS	CATE	SUBJECT and	KS COMMENTS and RESOLUTION
7	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</p>	K.A.R. 28-35-192f has been modified substantially to accommodate equivalent regulation.
8	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</p>	192e has been modified to add that the exemption does not apply to K.A.R. 28-35-700, which is our Part 37 adoption. This should cover all relevant references.
9	28-35-192h	30.22	2012-4	B	<p>Certain industrial devices</p>	192h has been modified to include the language "pursuant to 10 C.F.R. 32.30 by the nuclear regulatory commission." It has also added that the exemption does not apply to K.A.R. 28-35-700, which is our Part 37 adoption. This should cover all relevant references.

STATE		NRC	RATS	CATE	SUBJECT and	KS COMMENTS and RESOLUTION
					<p>Kansas' regulation did not include an equivalent phrase to, "for a license set forth in section 81 of the Act and from the regulations in parts 19, 20, 21, 30, through 36, and 39 of this chapter."</p> <p>Kansas needs to add this phrase (inserting their equivalent regulations and Radiation Control Act) to meet the Compatibility Category B designation assigned to 10 CFR 30.22.</p>	
10	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>Regulation is actually K.A.R. 28-35-181r.</p> <p>Language added as 181r(b).</p>

11	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</p>	<p>Changes applied to 28-35-181j(a)(4) to incorporate the necessary requirements. Additional changes in 28-35-181j(a)(3) are made to accommodate. The requirement that it pass all tests is covered under 181j(4)(F).</p>
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STATE		NRC	RATS	CATE	SUBJECT and	KS COMMENTS and RESOLUTION
					designation assigned to 10 CFR 32.57(d)(2). Comment	
12	28-35-181j(a)(5)	32.57(e)	2012-4	B	Calibration or reference sources containing americium-241 or radium-226: Requirements for license to manufacture or initially transfer Kansas' equivalent regulation in 28-35-181j(a)(5) has been omitted which renders the regulation not essentially identical to NRC's regulation.	Changes applied to 28-35-181j(a)(4) to incorporate the necessary requirements. Additional changes in 28-35-181j(a)(3) are made to accommodate. The requirement that it pass all tests is covered under 181j(4)(F).
13	28-35-181j(b)	32.59	2012-4	B	Same: Leak testing of each source Kansas equivalent regulation in 28-35-181j(b) has been omitted which renders the regulation not essentially identical to NRC's regulation. Kansas needs to adopt an equivalent regulation to 10 CFR 32.59 to meet	Further clarification is required as to where 181j(b) is dissimilar to 32.59.

STATE		NRC	RATS ID	CAT	SUBJECT and	KS COMMENTS and RESOLUTION
14	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	Registration of product information Inactivation of certificates of registration of sealed sources and devices 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). 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),	Addition of K.A.R. 28-35-181u and 181v.

