

November 16, 2007

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

Dear Ms. Schmitt:

We have reviewed the proposed changes to the Nebraska Regulations for Control of Radiation 180 NAC Nebraska Regulations for Radiation Control attached to your letter dated September 12, 2007. 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 seven amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with Trudy Hill on November 15, 2007.

As a result of our review, we have 15 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://www.hsrdr.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 Kathleen Schneider, State Regulation Review Coordinator at (301) 415-2320 (email: kxs@nrc.gov) or Monica Orendi at (301) 415-3938 (email: mlo1@nrc.gov).

Sincerely,

IRA By ADWhite For

Robert Lewis, Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials and
Environmental Management Programs

Enclosures:
As stated

November 16, 2007

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

Dear Ms. Schmitt:

We have reviewed the proposed changes to the Nebraska Regulations for Control of Radiation 180 NAC Nebraska Regulations for Radiation Control attached to your letter dated September 12, 2007. 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 seven amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with Trudy Hill on November 15, 2007.

As a result of our review, we have 15 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://www.hsr.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 Kathleen Schneider, State Regulation Review Coordinator at (301) 415-2320 (email: kxs@nrc.gov) or Monica Orendi at (301) 415-3938 (email: mlo1@nrc.gov).

Sincerely,

IRA By ADWhite For

Robert Lewis, Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials and
Environmental Management Programs

Enclosures: As stated

Distribution:

DIR RF (7-71&72)

DCD (SP08)

RErickson, RSAODsollenberger, HQ POC

Wrautzen, HQ POC MOrandi

SUNSI Review Complete

Publicly Available Non-Publicly Available

Non-Sensitive Sensitive

[NE] File ML of Incoming Document:ML071900139

DOCUMENT NAME: C:\FileNet\ML073200002.wpd 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	SAISB	SAISB	OGC	SAIS:BC	MSSA:DD
NAME	MOrandi	KSchneider	FXCameron	DWhite	RLewis
DATE	10/23/07*	10/23/07*	11/13/07*	11/16/07*	11/16/07*

ML07320002

OFFICIAL RECORD COPY

PKGML07320003

COMPATIBILITY COMMENTS ON NEBRASKA PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	180 NAC 7-002	35.2	2002-2 2006-1	B	<p>Definitions: Authorized Medical Physicist</p> <p>Nebraska regulations omit the words “teletherapy physicist” in section (3) and (4) of its definition.</p> <p>Nebraska needs to add “teletherapy physicist” to the appropriate sections of their definition in order to meet the Compatibility Category B designation assigned to 10 CFR 35.2, Authorized medical physicist.</p>
2	180 NAC 7-002	35.2	2002-2 2006-1	B	<p>Definitions: Authorized User</p> <p>Nebraska omits “dentist or podiatrist” from its definition of Authorized user.</p> <p>Nebraska needs to add the phrase “dentist or podiatrist” to its definition of Authorized user in order to meet the Compatibility Category B designation assigned to 10 CFR 35.2, Authorized user.</p>
3	180 NAC 7- 026	35.57	2002-2 2005-2	B	<p>Training for experienced Radiation Safety Officer, teletherapy or medical physicist, authorized user, and nuclear pharmacist</p> <p>Nebraska omits “authorized medical physicist and authorized nuclear pharmacist” (added to 10 CFR 35.57 in 2005 see RATS 2005-2) in 180 NAC 7-026.01. Also Nebraska omits “dentists” and “podiatrists” from 180 NAC 7-026.02.</p> <p>Nebraska needs to add the above to 180 NAC 7-026 in order to meet the Compatibility Category B designation assigned to 10 CFR 35.57.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
4	180 NAC 7 7-034	35.69	2002-2	H&S	<p>Labeling of vials and syringes</p> <p>Nebraska has not included the following or equivalent language: “Each syringe shield and vial shield must also be labeled unless the label on the syringe is visible when shielded” in 180 NAC 7-034.</p> <p>Nebraska needs to add language equivalent to the above text to 180 NAC 7 7-034 in order to meet the Compatibility Category H&S designation assigned to 10 CFR 35.69.</p>
5	180 NAC 7-051.01	35.390	2002-2 2005-2 2006-1	B	<p>Training for use of unsealed byproduct material for which a written directive is required</p> <p>Nebraska states “Successfully complete a minimum of three years of residency training in...”. 10 CFR 35.390 places no time constraint on the completed residency training (see 35.390(a)(1)).</p> <p>Nebraska needs to remove the 3 year time constraint from 180 NAC 7-051 in order to meet the Compatibility Category B designation assigned to 10 CFR 35.390.</p>
6	180 NAC 7-066	35.590	2002-2 2005-2	B	<p>Training for use of sealed sources for diagnosis</p> <p>Nebraska does not include the terms “dentist or podiatrist” after the word physician in 180 NAC 7-066.</p> <p>Nebraska needs to add the words “dentist or podiatrist” to 180 NAC 7-066 in order to meet the Compatibility Category B designation assigned to 10 CFR 35.590.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
7	180 NAC 3-018	40.36	2003-1	H&S	<p>Financial Assurance and Recordkeeping for Decommissioning</p> <p>Nebraska omits this section from their regulations.</p> <p>Nebraska needs to either adopt the essential elements of this section or add "source material" (as defined by 10 CFR 40.36) to paragraph 1 of Nebraska regulation 180 NAC 3-018.01 to meet the Compatibility Category H&S designation assigned to 10 CFR 40.36(b)(2) & (d).</p>
8	180 NAC 3-018	70.25	2003-1	H&S	<p>Financial Assurance and Recordkeeping for Decommissioning</p> <p>Nebraska omits this section from their regulations.</p> <p>Nebraska needs to either adopt the essential elements of this section or add "special nuclear material" (as defined in 10 CFR 70.25) to paragraph 1 of Nebraska regulation 180 NAC 3-018.01 to meet the Compatibility Category H&S designation assigned to 10 CFR 70.25(e).</p>
9	180 NAC 13-005.01	71.5	2004-1	B	<p>Transportation of licensed material</p> <p>Nebraska regulations state "DOT regulations 170 through 189, appropriate...". The correct wording should be "DOT regulations 107, 171 through 180, and 390 through 397, appropriate...".</p> <p>Nebraska needs to change its referenced DOT regulations from "170 through 189" to "107, 171 through 180, and 390 through 397" in order to meet the Compatibility Category [B] designation assigned to 10 CFR 71.5.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
10	180 NAC 13-009.01	71.20	2004-1	[B]	<p>General license: DOT specification container</p> <p>Nebraska does not incorporate into their regulations a section equivalent to 10 CFR 71.20 (e).</p> <p>Nebraska needs to add a section equivalent to 10 CFR 71.20 (e) in its regulation 180 NAC 13 13-009 in order to meet the Compatibility Category [B] designation assigned to 10 CFR 71.20.</p>
11	180 NAC 13 13-010.01	71.21	2004-1	B	<p>General license: Use of foreign approved package</p> <p>Nebraska does not address exemptions “With respect to the quality assurance provisions of subpart H of this part, the licensee is exempt from design, construction, and fabrication considerations” in its regulation.</p> <p>Nebraska needs to add these exemptions to 180 NAC 13 13-010 in order to meet the Compatibility Category [B] designation assigned to 10 CFR 71.21.</p>
12	180 NAC 13 13-015	71.87	2004-1	B	<p>Routine Determinations</p> <p>Nebraska proposed regulations did not include the phrase: “...ensure that the package with its contents satisfies the applicable requirements of this part and of the license”. Also Nebraska omits an equivalent section to 10 CFR 71.87(g).</p> <p>Nebraska needs to add “ ensure that the package with its contents satisfies the applicable requirements of this part and of the license” and a section equivalent to 10 CFR 71.87(g) in order to meet the Compatibility Category [B] designation assigned to 10 CFR 71.87.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
13	180 NAC 13 13-020.01	71.97	2004-1	B	<p>Advance notification of shipment of irradiated reactor fuel and nuclear waste</p> <p>Nebraska proposed regulations do not require notification to NRC's Office of Nuclear Security and Incident Response as stated in 10 CFR 71.97(c)(1). Also Nebraska requires records retention of 1 year instead of the 3 years stated in 10 CFR 71.97(c)(4).</p> <p>Nebraska needs to make the above changes in order to meet the Compatibility Category B designation assigned to 10 CFR 71.97.</p>
14	N/A	71.127 71.129 71.131 71.133 71.135 71.137	2004-1	C	<p>Quality Assurance Organization</p> <p>Nebraska has omitted these sections from their regulations.</p> <p>Nebraska needs to adopt the essential elements of 10 CFR 71.127, 71.129, 71.131, 71.133, 71.135, and 71.137 in order to meet the Compatibility Category C designation assigned to 10 CFR 71.127, 71.129, 71.131, 71.133, 71.135, and 71.137.</p>
15	180 NAC 3- 014.12	32.74	2006-1	B	<p>Manufacture and distribution of sources or devices containing byproduct material for medical use</p> <p>Nebraska omits "transmission source" from its regulations.</p> <p>Nebraska needs to add "transmission source" in order to meet the Compatibility Category B designation assigned to 10 CFR 32.74.</p>

STATE REGULATION STATUS

State: Nebraska

[7 Amendments were reviewed & identified by a ★
at the beginning of the equivalent NRC requirement.]

Tracking Ticket Number: 7-71 & 7-72

Date: November 16, 2007

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 / License Condition (LC) ML # ⁴	Final State Regulation ¹ (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1			5/30/94
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	10/7/97	5/30/94
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4			5/30/94
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1			Superseded 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 ML022800655	N 10/18/02 ML022960258	9/17/97
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2	F ML022800655	N 10/18/02 ML022960258	10/30/96
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3			QA portion 9/17/97
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618 (none)	1994-1			9/17/97
Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2			Not applicable SECY-95-112 ⁴
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	F ML022800655	N 10/18/02 ML022960258	9/17/97
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 ML022800655	N 10/18/02 ML022960258	9/17/97
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2	F	N 5/19/99	012/15/98

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) Final (F)¹ Rule / License Condition (LC) ML #⁵	NRC Review / Y, N² / Date / License Condition (LC) ML #⁴	Final State Regulation¹ (Effective Date)
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3	F	N 5/19/99	12/15/98
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	F ML003763184	N 2/1/01 ML010330318	5/27/00
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	F	N 5/19/99	12/15/98
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F ML022800566	N 10/18/02 ML022960258	9/17/97
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7	F ML022800655	N 10/18/02 ML022960258	9/17/97
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28724 (4/1/99)	1996-1	F ML003763184	N 2/1/01 ML010330318	12/15/98
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	F ML022800655	N 10/18/02 ML022960258	9/17/97
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	F ML003763184	N 2/1/01 ML010330318	5/27/00
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 ML003763184	N 2/1/01 ML010330318	5/27/00
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	F ML022800655	N 10/18/02 ML022960258	9/17/97
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	F ML003763184	N 2/1/01 ML010330318	5/27/00
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6	F ML011130396	N 7/20/01 ML012010439	5/27/00
Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7	F ML003763184	N 2/1/01 ML010330318	5/27/00

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) Final (F)¹ Rule / License Condition (LC) ML #⁵	NRC Review / Y, N² / Date / License Condition (LC) ML #⁴	Final State Regulation¹ (Effective Date)
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1	F ML031500771	N 6/09/03 ML031610005	4/12/2003
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	F ML003763184	N 2/1/01 ML010330318	5/27/00
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 ML031500771	N 6/09/03 ML031610005	4/12/2003
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	F ML022800655	N 10/18/02 ML022960258	12/15/98
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	F ML031500771	N 6/09/03 ML031610005	4/12/2003
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1	F ML031500771	N 6/09/03 ML031610005	4/12/2003
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2	F ML031500771	N 6/09/03 ML031610005	4/12/2003
Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	F ⁷ ML031500771	Y 8/31/06 ML062400266	4/12/2003
★Revision of the Skin Dose Limit -Part 20	67 FR 16298; (4/5/05)	2002-1	P ML072670112	N 11/16/07 ML073200002	
★Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; (4/24/05)	2002-2	P ML072670112	Y 11/16/07 ML073200002	
★Financial Assurance for Materials Licensees – Parts 30, 40, 70	68 FR 57327; (12/3/06)	2003-1	P ML072670112	Y 11/16/07 ML073200002	

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 / License Condition (LC) ML # ⁴	Final State Regulation ¹ (Effective Date)
★Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments – Part 71	69 FR 3697; (10/01/07)	2004-1	P MI 072670112	Y 11/16/07 MI 073200002	
★Security Requirements for Portable Gauges Containing Byproduct Material - Part 30	70 FR 2001; (7/11/08)	2005-1	P MI 072670112	N 11/16/07 MI 073200002	
★Medical Use of Byproduct Material - Recognition of Specialty Boards - Part 35	70 FR 16336; 71 FR 1926 (4/29/08)	2005-2	P MI 072670112	Y 11/16/07 MI 073200002	
Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) ⁶	70 FR 72128; (12/1/05)	2005-3	LC ML053060118	N 11/3/05 ML053070551	12/2/05
★Minor Amendments - Parts 20, 30, 32, 35, 40, and 70	71 FR 15005 (3/27/09)	2006-1	P MI 072670112	Y 11/16/07 MI 073200002	
National Source Tracking System - Serialization Requirements - Part 32 with reference to Part 20 Appendix E	71 FR 65685 (2/6/07)	2006-2			
National Source Tracking System - Part 20	71 FR 65865 (11/15/07) & (11/30/07)	2006-3 ⁸			

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 that regulation. See: “Final Policy Statement on Adequacy and Compatibility of Agreement State Programs,” III.1. Time Frame for Adoption of Compatible State Regulations, p. 6, SECY-95-112, May 3, 1995.
5. ADAMS ML Number
6. By letter dated September 2, 2005, from Paul H. Lohaus, Director, Office of State and Tribal Programs, Agreement States were given 90 days to issue legally binding requirements satisfying the requirements of NRC Order EA-05-090.
7. A re-review was completed on this item due to change in compatibility of 31.5 and 31.6. More information can be found in the All Agreement States letter STP 05-072.
8. RATS ID 2006-3 will not be considered under the Non-Common Performance Indicator “Compatibility Requirements” for IMPEP reviews until such time as the National Source Tracking System is ready for use. Revisions in the implementation date for Agreement States will be provided to the States under separate correspondence and the SRS sheet will be revised as appropriate.

