



# TEXAS DEPARTMENT OF STATE HEALTH SERVICES

EDUARDO J. SANCHEZ, M.D., M.P.H.  
COMMISSIONER

1100 W. 49<sup>th</sup> Street • Austin, Texas 78756  
1-888-963-7111 • <http://www.dshs.state.tx.us>

DATE

[LICENSEE NAME]  
ATTN [RSO]  
[LICENSEE ADDRESS]  
[CITY] TX [ZIP]

Dear [RSO]:

The U.S. Nuclear Regulatory Commission (NRC) and its Agreement States are in the process of implementing **increased controls** for licensees that possess certain radioactive materials in quantities of concern. NRC has determined that **additional requirements need** to be implemented to supplement existing regulatory requirements in 10 CFR §§ 20.1801-1802 (rules similar to Title 25 Texas Administrative Code (TAC) §289.202(y)). The **increased controls** are a matter of compatibility with NRC and must be implemented in a time frame desired by the NRC **and with essentially identical content to those** being used by NRC for its licensees.

- Deleted: additional protective measures
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Your radioactive material license has been identified as authorizing possession of certain radioactive material in one of the affected categories. Therefore, in accordance with Texas Health and Safety Code Chapter 401 and TAC §289.252(w)(2)(A)&(C), **your license has been amended to require you to comply with the increased controls detailed in attachment 1. The table of radionuclides of concern (Table 1), is provided at attachment 2.** Your newly amended license is provided at attachment 3. Within **thirty (30)** days of the date of this letter:

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1. You shall notify this office (1) if you are unable to comply with any of the requirements in attachment 1, (2) if compliance with any of the requirements is unnecessary because of your specific circumstances, or (3) if implementation of any of the requirements would cause you to be in violation of the provisions of any regulation or your license. The notification shall provide your justification for seeking relief from or variation of any specific requirement.
2. If you consider that implementation of any of the requirements detailed in attachment 1 would adversely impact safe operation of your facility, you must notify this office, in writing, of the adverse safety impact, the basis for its determination that the requirement **would have** an adverse safety impact, and

either a proposal for achieving the same objectives specified in the attachment 1-requirement in question, or a schedule for modifying the facility to address the

[RSO]

[Date]

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adverse safety condition. If neither approach is appropriate, you must supplement your response to paragraph 1 above to identify the condition as a requirement with which you cannot comply, with attendant justifications as required in paragraph 1 above.

3. You shall submit to this office a schedule for completion of each requirement detailed in attachment 1.

Responses to paragraphs 1-3, above, shall be submitted to the Manager, Radioactive Material Licensing Group, Radiation Safety Licensing Branch, 1100 W. 49th Street, Austin, Texas 78756-3189. In addition, your response shall be marked as "Withhold from Public Disclosure Under **TX Government Code Section 552.101**."

Deleted: Section 418.178 of the Texas Government Code

The Department may, in writing, relax or rescind any of the above conditions upon your demonstration of good cause.

As provided by 25 TAC §289.205(c), you have an opportunity to request a hearing to contest this action. In accordance with 25 TAC §289.205(h), if you wish such a hearing to be convened, we must have your request to that effect, in writing, within 30 days of the date of this letter.

Should you require assistance in addressing this letter, please call Mr. Pete Myers, Manager, Radioactive Material Licensing Group, at (512) 834-6688 extension 2209 (or e-mail Pete.Myers@tdh.state.tx.us).

Sincerely,

Ruth E. McBurney, CHP, Manager  
Radiation Safety Licensing Branch  
Division for Regulatory Services

Deleted: Regulatory Licensing Unit  
Environmental and Consumer Safety  
Section

3 Attachments

1. Increased Controls
2. Table 1
3. License Amendment

bcc: file

~~INCREASED~~ CONTROLS FOR LICENSEES THAT POSSESS SOURCES  
CONTAINING RADIOACTIVE MATERIAL QUANTITIES OF CONCERN

The purpose of the additional controls for radioactive sources is to enhance control of radioactive material in quantities greater than or equal to values described in Table 1, to reduce the risk of malevolent use of radioactive materials, through access controls to aid prevention, and prompt detection, assessment, and response to mitigate potentially high consequences that would be detrimental to public health and safety. These additional controls for radioactive sources are established to delineate licensee responsibility to maintain control of licensed material and secure it from unauthorized removal or access. The following additional controls apply to licensees who, at any given time, possess radioactive sources greater than or equal to the quantities of concern of radioactive material defined in Table 1.

1. In order to ensure the safe handling, use, and control of licensed material in use and in storage each licensee shall control access at all times to radioactive material quantities of concern and devices containing such radioactive material (devices), and limit access to such radioactive material and devices to only approved individuals who require access to perform their duties.
  - a. The licensee shall allow only trustworthy and reliable individuals, approved in writing by the licensee, to have unescorted access to radioactive material quantities of concern and devices. The licensee shall approve for unescorted access only those individuals with job duties that require access to such radioactive material and devices. Personnel who require access to such radioactive material and devices to perform a job duty, but who are not approved by the licensee for unescorted access, must be escorted by an approved individual.
  - b. For individuals employed by the licensee for three years or less, and for non-licensee personnel, such as physicians, physicists, house-keeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined, at a minimum, by verifying employment history, education, and personal references. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e., seeking references not supplied by the individual). For individuals employed by the licensee for longer than three years, trustworthiness and reliability shall be determined, at a minimum, by a review of the employees' employment history with the licensee.
  - c. Service providers shall be escorted unless determined to be trustworthy and reliable by an NRC-required background investigation as an employee of a manufacturing or distribution (M&D) licensee. Written verification attesting to or certifying the person's trustworthiness and reliability shall be obtained from the manufacturing/distribution licensee providing the service.

- d. The licensee shall document the basis for concluding that there is reasonable assurance an individual granted unescorted access is trustworthy and reliable, and does not constitute an unreasonable risk for malevolent use of radioactive material quantities of concern. The licensee shall maintain a list of persons approved for access to such radioactive material and device(s) by the licensee.
2. In order to ensure the safe handling, use, and control of licensed material in use and in storage, each licensee shall have a documented program to monitor and immediately detect, assess, and respond to unauthorized access to radioactive material quantities of concern and devices. Enhanced monitoring shall be provided during periods of source delivery or shipment, where the delivery or shipment exceeds 100 times the Table 1 values.
  - a. The licensee shall respond immediately to any actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices. The response shall include requesting assistance from Local Law Enforcement Agency (LLEA).
  - b. The licensee shall have a pre-arranged plan with LLEA for assistance in response to an actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices which is consistent in scope and timing with realistic potential vulnerability of the sources containing such radioactive material. The pre-arranged plan shall be updated when changes to the facility design or operation affect the potential vulnerability of the sources. Pre-arranged LLEA coordination is not required for temporary job sites.
  - c. The licensee shall have a dependable means to transmit information between, and among, the various components used to detect and identify an unauthorized intrusion, to inform the assessor, and to summon the appropriate responder.
  - d. After initiating appropriate response to any actual or attempted theft, sabotage, or diversion of radioactive material or of the device(s), the licensee shall, as promptly as possible, notify DSHS at (512) 834-6688 ext 2022 during normal work hours; or (512) 458-7460 after normal work hours.
  - e. The licensee shall maintain documentation describing each instance of unauthorized access and any necessary corrective actions to prevent future instances of unauthorized access.
3. a. In order to ensure the safe handling, use, and control of licensed material in transportation for domestic highway and rail shipments by a carrier other than the licensee, for quantities that equal or exceed those in Table 1 but are less than 100 times Table 1 quantities, per consignment, the licensee shall:
  1. Use carriers which:

- A. Use package tracking systems,
- B. Implement methods to assure trustworthiness and reliability of drivers,
- C. Maintain constant control and/or surveillance during transit, and
- D. Have the capability for immediate communication to summon appropriate response or assistance.

The licensee shall verify and document that the carrier employs the measures listed above.

2. Contact the recipient to coordinate the expected arrival time of the shipment;
  3. Confirm receipt of the shipment; and
  4. Initiate an investigation to determine the location of the licensed material if the shipment does not arrive on or about the expected arrival time. When, through the course of the investigation, it is determined the shipment has become lost, stolen, or missing, the licensee shall immediately notify DSHS at (512) 834-6688 ext 2022 during normal work hours; or (512) 458-7460 after normal work hours. If after 24 hours of investigating, the location of the material still cannot be determined, the radioactive material is deemed missing and the licensee shall immediately notify DSHS at the telephone numbers provided above.
- b. For domestic highway and rail shipments, prior to shipping licensed radioactive material that exceeds 100 times the quantities in Table 1 per consignment, the licensee shall:
1. Notify NRC\*, in writing, at least 90 days prior to the anticipated date of shipment. The NRC will issue the order requiring implementation of Additional Security Measures (ASMs) for the transportation of Radioactive Material Quantities of Concern (RAM QC). The licensee shall not ship this material until the ASMs for the transportation of RAM QC are implemented or notified otherwise, in writing, by NRC.
  2. Once the licensee has implemented the ASMs for the transportation of RAM QC, the notification requirements of 3.b.1 shall not apply to future shipments of licensed radioactive material that exceed 100 times the Table 1 quantities. The licensee shall implement the ASMs for the transportation of RAM QC.

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\* Director, Office of Nuclear Material Safety and Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

- c. If a licensee employs a M&D licensee to take possession of the licensed radioactive material and ship it under its M&D license, the requirements of 3.a. and 3.b above shall not apply **(because the M&D licensee will have to comply with equivalent requirements).**
- d. If the licensee is to receive radioactive material greater than or equal to the Table 1 quantities, per consignment, the licensee shall coordinate with the originating licensee to:
  - 1. Establish an expected time of delivery; and
  - 2. Confirm receipt of transferred radioactive material. If the material is not received at the expected time of delivery, notify the originating licensee and assist in any investigation.
- 4. In order to ensure the safe handling, use, and control of licensed material in use and in storage each licensee which possesses mobile or portable devices containing radioactive material in quantities greater than or equal to Table 1 values, shall:
  - a. For portable devices, have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.
  - b. For mobile devices:
    - 1. that are only moved outside of the facility (e.g., on a trailer), have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.
    - 2. that are only moved inside a facility, have a physical control that forms a tangible barrier to secure the material from unauthorized movement or removal when the device is not under direct control and constant surveillance by the licensee.
  - c. For devices in or on a vehicle or trailer, licensees shall also utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee.
- 5. The licensee shall retain documentation required by these increased controls for three years after they are no longer effective:
  - a. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends.

- b. Each time the licensee revises the list of approved persons required by 1.d., or the documented security program required by 2, the licensee shall retain the previous documentation for three years after the revision.
  - c. The licensee shall retain documentation on each radioactive material carrier for three years after the licensee discontinues use of that particular carrier.
  - d. The licensee shall retain documentation on shipment coordination, notifications, and investigations for three years after the shipment or investigation is completed.
  - e. After the license is terminated or amended to reduce possession limits below the quantities of concern, the licensee shall retain all documentation required by these increased controls for three years.
6. The licensee shall protect its sensitive information from unauthorized disclosure and control access to its sensitive information to those persons **for whom the licensee has** established the need-to-know the information, and are considered to be trustworthy and reliable. The licensees shall develop, maintain and implement policies and procedures for controlling access to, and proper handling and protection against unauthorized disclosure of, its sensitive information for radioactive material covered by these requirements.