

September 29, 2005

Ms. Cynthia C. Cardwell
Radiation Policy, Standards, and Quality Assurance Group
Policy, Standards, and Quality Assurance Unit
Department of State Health Services
1100 West 49th Street
Austin, TX 78756-3189

Dear Ms. Cardwell:

We have reviewed the final changes to the Texas Regulations for Control of Radiation, 25 Texas Administrative Code, 289.202, 289.252, 289.257, and 289.260, received by our office on July 22, 2005. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 20, 30, 40, 70, and 71, and the requirements of the six amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with you on Sept 29, 2005.

As a result of our review, we have seven 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 State and Tribal Programs (STP) Procedure SA-200.

We request that when you revise your regulations to address our comments, a copy of the "as published" regulations be provided for us to review. As requested in STP Procedure SA-201, "Review of State Regulatory Requirements", please highlight the location of any changes made by Texas in response to our comments, and provide a copy to STP.

The SRS Data Sheet summarizes our knowledge of the status of other Texas 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 Vivian Campbell at (817)860-8143 or by e-mail at vhc@nrc.gov.

Sincerely,

IRA By KNSchneider For

Dennis Rathbun, Deputy Director
Office of State and Tribal Programs

Enclosures:
As stated

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Enclosures: As stated

SISP Review Complete

: Publicly Available Non-Publicly Available
: Non-Sensitive Sensitive

Distribution:

DIR RF[5-212] DCD (SP05) PDR(YES_T) Response to Incoming **ML052060129**
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DATE	09/08/05*		09/08/05*		09/28/05*		09/29/05*	

ML052720491

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COMPATIBILITY COMMENTS ON TEXAS FINAL REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	289.260(h)	40.36 (f) (3)	1993-1	D/H&S	<p>Financial assurance and recordkeeping for decommissioning</p> <p>Texas does not have language from 10 CFR 40.36(f)(3) for licensees to ensure that they maintain a list in a single document of areas that could potentially be contaminated as a result of licensed activities either in or outside the restricted area.</p> <p>Texas needs to adopt the essential objectives of the requirements for maintaining a list of areas that could potentially be contaminated to meet the Category H&S designation assigned to 10 CFR 40.36(f)(3).</p>
2	289.257(f)(2) & (3)	71.10 (b) & (c)	1996-1	NRC	<p>Exemptions for low level material</p> <p>Texas has adopted the requirements of 71.10 (b) & (c), which are reserved for NRC. These provisions delineate NRC's authority from that of DOT's in the area of transportation of radioactive material. Agreement States should not adopt these provisions in order to retain their ability to implement all of 49 CFR as directed by DOT.</p> <p>Texas needs to remove these requirements from their regulations as they are NRC-specific requirements.</p>
3	Omitted	71.11	1996-1	C	<p>Deliberate misconduct</p> <p>Texas has omitted the deliberate misconduct requirement.</p> <p>Texas needs to add these provisions to their rules to meet the Compatibility Category C designation assigned to Section 10 CFR 71.11.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
4	289.257(g)(1)	71.12 (c) (3), (d) and (e)	1996-1	B	<p>General license: NRC-approved package</p> <p>Texas' regulation does not include the package usage requirements specified in 10 CFR 71.12 (c) (3), (d) and (e).</p> <p>Texas needs to add these provisions to their rules to meet the Compatibility Category B designation assigned to Sections 10 CFR 71.12 (c) (3), (d) and (e).</p>
5	Omitted	71.101	1996-1	C	<p>Quality assurance requirements</p> <p>Texas omitted the provisions of 10 CFR 71.101.</p> <p>Texas needs to adopt these provisions to meet the Compatibility Category C designation of 10 CFR 71.101.</p>
6	Omitted	71.103	1996-1	C	<p>Quality assurance organization</p> <p>Texas omitted the provisions of 10 CFR 71.103.</p> <p>Texas needs to adopt these provisions to meet the Compatibility Category C designation of 10 CFR 71.103.</p>
7	Omitted	71.105	1996-1	C	<p>Quality assurance program</p> <p>Texas omitted the provisions of 10 CFR 71.105.</p> <p>Texas needs to adopt these provisions to meet the Compatibility Category C designation of 10 CFR 71.105.</p>

STATE REGULATION STATUS

State: Texas

(Six amendments reviewed identified by a i

at the beginning of equivalent NRC regulation.)

Tracking Ticket Number:

5-212

Date: September 29, 2005

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)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1	P	Y 1/12/99	
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 11/6/97	9/1/93
i Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	F ML052060129	N 9/29/05 ML052720491	10/00
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (½7/95)	1992-1			
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions-Parts 30, 35	57 FR 45566; (none)	1992-2			Not required ³
i Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]-Parts 30, 40	58 FR 39628; (10/25/96)	1993-1	F ML052060129	Y 9/29/05 ML052720491	09/04
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2	F ML051520266	N 8/12/05 ML052280032	10/01/2000
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3			Part 61 not applicable to TX-DOH
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618 (none)	1994-1	P	N 11/21/97	
Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2	P	N 11/21/97	Not applicable SECY-95-112 ⁴
i Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	F ML052060129	N 9/29/05 ML052720491	09/04
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	N 3/17/99	
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	P	N 11/8/96	Part 61 not applicable to TX-DOH
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	P	Y 1/22/99	

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Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	F	N 3/17/99	
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	F ML052060129	N 9/29/05 ML052720491	09/04
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	F ML052060129	Y 9/29/05 ML052720491	3/1/98
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	P (Part 30)	N 11/8/96	Part 61 not applicable to TX-DOH
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	F	N 7/7/00	10/1/00
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			
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	F	N 7/7/00	10/1/00
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	N 7/7/00	3/30/00
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6	F	N 7/7/00	10/1/00
Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7	F ML052060129	N 9/29/05 ML052720491	9/1/04
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	P	Y 1/12/99	
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	N 7/7/00	10/1/00
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	F	N 7/7/00	10/1/00

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Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1	F ML051520266	Y 8/12/05 ML052280032	09/01/04
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	F ML051520266	Y 8/12/05 ML052280032	04/29/03
New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2	F ML051520266	N 8/12/05 ML052280032	04/29/03
Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1	F ML051520266	N 8/12/05 ML052280032	09/01/04
Revision of the Skin Dose Limit -Part 20	67 FR 16298; (4/5/05)	2002-1			
Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; (10/24/05)	2002-2			
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			

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," Ill.1. Time Frame for Adoption of Compatible State Regulations, p. 6, SECY-95-112, May 3, 1995.
5. ADAMS ML Number