

August 31, 2006

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

Dear Ms. Cardwell:

By letter dated August 12, 2005, we sent you the results of our review of the final changes to the Texas regulations which were submitted to the NRC by letter dated May 27, 2005. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 30, 31, and 32, and the requirements of the General License (GL) amendment identified in the enclosed State Regulation Status (SRS) Data Sheet. The review we conducted omitted a specific review of Sections 10 CFR Parts 31.5 and 31.6. The text of these sections was not revised by the GL amendment, but the compatibility designations were changed from Compatibility Categories C and D respectively, to Category B.

As noted in All Agreement States letter STP-05-072, dated September 28, 2005, NRC staff will continue to review Agreement State GL Device proposed and final rules but will hold in abeyance any determination on those rules and compatibility of those rules, if the Agreement State has the essential elements of the NRC's rule and is more restrictive than the NRC's rule. For Agreement States without a GL Device rule or a GL Device rule less restrictive than the NRC rules, the staff will factor this determination into results of the NRC's review of the State's proposed and final rules and the compatibility findings during Integrated Materials Performance Evaluation Program (IMPEP) reviews.

We discussed our review of the GL Amendment with you on August 21, 2006. Although we had no comments for the 2001-1 amendment stated in the August 12, 2005 letter, as a result of our re-review against the Compatibility Category B designation, we have eight comments that have been identified in the enclosure. Comments 1 and 2 indicate that the State's regulations are more restrictive than the NRC's regulations, and there is no corrective action required for this comment at this point. However, Comments 3 to 8 indicate that the State's regulations are less restrictive than the NRC's regulations, and they need to be addressed in the State's future rulemaking process. We request that when a final amended version of Texas regulations is adopted and published in response to our comments, that a copy of the "as published" regulations be provided to us for review as requested in STP Procedure SA-201, Review of State Regulatory Requirements.

Please note that we have limited our review to regulations required for compatibility and/or health and safety. 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.hsr.gov/nrc/rulemaking.htm>.

Cynthia C. Cardwell

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August 31, 2006

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 Ms. Monica Orendi at (301) 415-3938 or by e-mail at MLO1@nrc.gov.

Sincerely,

Dennis K. Rathbun, Deputy Director
Office of State and Tribal Programs

Enclosures: As stated
CC: Richard Ratliff A., PE, LMP
Radiation Program Officer

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 Ms. Monica Orendi (301) 415-3938 or by e-mail at MLO1@nrc.gov.

Sincerely,

IRA By KNSchneider For

Dennis K. Rathbun, Deputy Director
Office of State and Tribal Programs

Enclosures: As stated
cc: Richard Ratliff A., PE, LMP
Radiation Program Officer

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**COMMENTS ON PROPOSED TEXAS REGULATIONS
AGAINST COMPATIBILITY AND HEALTH AND SAFETY CATEGORIES**

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	289.251(f)(4)(H)(iv)(I)(b)	§31.5(c)(2)	2001-1	<p data-bbox="1003 365 1438 537">Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p data-bbox="1003 575 1487 705">Texas has an additional requirement that each source has to be tested for leakage within six months prior to being used or transferred.</p> <p data-bbox="1003 743 1451 840">Texas's rule has the essential elements of the NRC, but is more restrictive than the NRC's GL rule.</p> <p data-bbox="1003 877 1497 1205">As noted in the September 28, 2005 All Agreement States Letter STP-05-072, the determination on this provision will be held in abeyance until such time that the NRC completes its review and response to the Organization of Agreement State petition and State of Florida's request on compatibility changes for the GL rule.</p>

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
2	289.251(f)(4)(H)(iv) (IV)	§31.5(c)(4)	2001-1	<p data-bbox="1000 260 1438 432">Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p data-bbox="1000 470 1500 634">Texas has extra requirements that the test records shall identify the device tested by manufacturer, model and serial number of the device, serial number of the sealed source.</p> <p data-bbox="1000 672 1451 768">Texas's rule has the essential elements of the NRC, but is more restrictive than the NRC's GL rule.</p> <p data-bbox="1000 806 1500 1138">As noted in the September 28, 2005 All Agreement States Letter STP-05-072, the determination on this provision will be held in abeyance until such time that the NRC completes its review and response to the Organization of Agreement State petition and State of Florida's request on compatibility changes for the GL rule.</p>
3	289.251(f)(4)(H)(iv) (VII)	§31.5(c)(5)	2001-1	<p data-bbox="1000 1167 1438 1339">Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p data-bbox="1000 1377 1471 1444">Texas has 1.85 becquerels which is not equal to 0.005 microCi.</p> <p data-bbox="1000 1482 1487 1675">Texas needs to correct this unit conversion error (i.e. change the number "1.85" to "185") in 289.251(f)(4)(H)(iv)(VII) to meet the Compatibility Category B designation assigned to 10 CFR 31.5(c)(5).</p>

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
4	N/A	§31.5(c)(7)	2001-1	<p data-bbox="1000 260 1442 432">Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p data-bbox="1000 470 1500 705">Texas has omitted the provision of 10 CFR 31.5(c)(7) regarding the export of the device containing byproduct material. Omitting this provision also caused a missing reference to 10 CFR 31.5(c)(7) in 289.251(f)(4)(H)(v)(IX).</p> <p data-bbox="1000 743 1474 907">Texas needs to adopt the provision and add the equivalent reference to meet the Compatibility Category B designation assigned to 10 CFR 31.5(c)(7) and 10 CFR 31.5(c)(8).</p>
5	289.251(f)(4)(H)(iv)(X)	31.5(c)(8)(ii)	2001-1	<p data-bbox="1000 932 1442 1104">Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p data-bbox="1000 1142 1435 1209">Texas has omitted the phrase “or export” in 289.251(f)(4)(H)(iv)(X).</p> <p data-bbox="1000 1247 1455 1373">Texas needs to add the phrase to meet the Compatibility Category B designation assigned to 10 CFR 31.5(c)(8)(ii).</p>
6	N/A	§31.5(c)(10)	2001-1	<p data-bbox="1000 1394 1442 1566">Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p data-bbox="1000 1604 1500 1734">Texas has omitted the provision of 10 CFR 31.5(c)(10) regarding the reporting of radiation incidents, theft or loss of licensed material.</p> <p data-bbox="1000 1772 1474 1902">Texas needs to add the provision to meet the Compatibility Category B designation assigned to 10 CFR 31.5(c)(10).</p>

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
7	N/A	§31.5(c)(11)	2001-1	<p data-bbox="1000 260 1442 432">Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p data-bbox="1000 470 1498 604">Texas has omitted the provision of 10 CFR 31.5(c)(11) regarding general license response to information requests within 30 calendar days.</p> <p data-bbox="1000 638 1474 772">Texas needs to add the provision to meet the Compatibility Category B designation assigned to 10 CFR 31.5(c)(10).</p>
8	289.251(g)(1)	§31.5(c)(13)(ii)	2001-1	<p data-bbox="1000 795 1442 968">Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p data-bbox="1000 1005 1430 1140">Texas omitted the annually registration requirement of these devices stated in 10 CFR 31.5(c)(13)(ii).</p> <p data-bbox="1000 1173 1490 1308">Texas needs to add the requirement to 289.251(g)(1) to meet the Compatibility Category B designation assigned to 10 CFR 31.5(c)(13)(ii).</p>

STATE REGULATION STATUS

State: Texas(# amendments reviewed identified by a ★ at the beginning of the equivalent NRC requirement.)

Tracking Ticket Number: 6-16

Date: August 31, 2006

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 / ML # ⁵	Final State Regulation ¹ (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1	F ML051520266	N 10/31/05 ML053050013	Superceded by 1997-5
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
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; (1/27/95)	1992-1			Superceded 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 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			Not applicable SECY-95-112 ⁴
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	F ML052060129	N 9/29/05	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	F ML051520266	N 10/31/05 ML053050013	04/2002
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3	F ML051520266	Y 10/31/05 ML053050013	04/2002

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Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	F ML051520266	N 10/31/05 ML053050013	04/11/1999
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	F ML051520266	N 10/31/05 ML053050013	10/1/2000
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			

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 / ML # ⁵	Final State Regulation ¹ (Effective Date)
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 ML051520266	Y 10/31/05 ML053050013	04/11/1999
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
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 ⁷ ML051520266	Y 8/31/2006 ML062410004	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	69 FR 3697; (10/01/07)	2004-1			

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 / ML # ⁵	Final State Regulation ¹ (Effective Date)
Transportation Safety Amendments - Part 71					
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; 71 FR 1926 (4/29/08)	2005-2			
Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) ⁶	70 FR 72128; (12/1/05)	2005-3	LC ML052240226	N 12/12/05 ML053420404	12/2/05
Minor Amendments - Parts 20, 30, 32, 35, 40, and 70	71 FR 15005 (3/27/09)	2006-1			

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 the change in compatibility category of 31.5 and 31.6. More information can be found in the All Agreement States letter STP 05-072.