



## TEXAS DEPARTMENT OF STATE HEALTH SERVICES

DAVID L. LAKEY, M.D.  
COMMISSIONER

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April 26, 2007

Dr. Dale Klein, Chairman  
U.S. Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Rockville, Maryland 20852-2738

Dear Dr. Klein:

The Texas Department of State Health Services (DSHS) is in the process of submitting amended rules for the use of radioisotopes in medicine to Texas Health and Human Services Executive Commissioner, Albert Hawkins, for proposal. The Texas Radiation Advisory Board (TRAB) has unanimously voted against adoption of these rules due to the training and education compatibility requirements established by the U.S. Nuclear Regulatory Commission (NRC).

Currently, the Texas Regulations for Control of Radiation, Medical and Veterinary Use of Radioactive Material rules are stricter than those in NRC's 10 CFR Part 35 with regard to training and education requirements for physicians using radioisotopes in diagnosis and therapy. To be compatible with NRC, the DSHS rules would have to be made less stringent.

Mr. Michael Ford, Chair of TRAB, requested your assistance in his E-mail message on January 16, 2007, concerning the compatibility issue (copy attached). At the April 14, 2007 TRAB meeting, the issue was discussed again and Ms. Kathryn C. Perkins, Assistant Commissioner, Division for Regulatory Services, advised the TRAB members that I would write you to request that you respond to Mr. Ford. This information and clarification is essential for us to make the correct decision as this rule is proceeding through the rulemaking process.

Mr. Ford may be reached at: Michael Ford, CHP, Chair, Texas Radiation Advisory Board, 7005 Alpine Lane, Amarillo, Texas 79109, or by e-mail at [MFORD@pantex.com](mailto:MFORD@pantex.com).

If you have any questions, please contact Ms. Perkins at 512-834-6660 or [Kathy.Perkins@dshs.state.tx.us](mailto:Kathy.Perkins@dshs.state.tx.us).

Sincerely,

David L. Lakey, M.D.  
Commissioner

05/01...To EDO for Direct Reply...Due Date: 05/23...Copy to: RF, RAS...07-0307

**Boukhris, Tommy**

**From:** Ratliff, Richard  
**Sent:** Friday, April 20, 2007 11:51 AM  
**To:** Perkins, Kathy  
**Subject:** FW: Comments in Support of Petition for Rulemaking, Docket No. PRM-35-20

FYI, for letter to Dr. Klein. Richard

**From:** Michael Ford [mailto:MFORD@pantex.com]  
**Sent:** Thursday, January 18, 2007 1:30 PM  
**To:** Omack@allstate.com; RGR5KLR@aol.com; TMPEINTL@aol.com; jacobiconsulting@austin.rr.com; ianh@bcm.edu; kimhoward@cablelynx.com; bbunn@caprockoperating.com; earl.erdmann@cox.net; bruceamatsondds@hotmail.com; ana@lis.admin.unt.edu; Bob.Haley@lonestarhealth.com; njanjan@mdanderson.org; mikew@sanantonio.gov; rmoreira@tamu.edu; mlucas3@txu.com; metter@uthscsa.edu  
**Cc:** Perkins, Kathy; Flowers, Kim; Ratliff, Richard; Godard, Tom; jean.amundson@txu.com  
**Subject:** Fwd: Comments in Support of Petition for Rulemaking, Docket No. PRM-35-20

Dear Colleagues,

This is the response we have thus far from the NRC Chairman, Dr. Klein, regarding our question on compatibility and the latitude the state has within the written policy ... not necessarily the manner in which the policy is being executed.

A brief hint of action on our request.

I'll pass along any correspondence as I receive it.

v/r  
Michael

>>> "Dale Klein" <DEK1@nrc.gov> 17 Jan 07 7:24:38 AM >>>

David -- I worked with Michael when I was the Chair of the Texas Radiation Advisory Board. Please have someone on our staff look at this information and then get back with Michael with our assessment. Dale

>>> "Michael Ford" <MFORD@pantex.com> 1/16/2007 10:39 AM >>>

Dale, I hope all is well in your neck of the woods. I read about the CR that you're working under and the attendant squeeze on many of your critical activities. We're staring at the same fate in NNSA.

On the TRAB front, I've attached a letter from Kim Howard's Medical Committee supporting the AAPM petition for rulemaking. You were cc'd on the distribution.

We have some major heartburn with the changes in the training and qual requirements in 10 CFR 35. The TRAB is advising the state to maintain its more stringent requirements, because we feel that patient safety is at stake.

DSHS raised the concern of compatibility, given that this change to 10 CFR 35 has been assigned to Category B.

The TRAB is concerned with the Category B assignment. And given the historical treatment of compatibility from the state agencies' perspective, there is a tendency for treating all rule changes as "required" when Texas has "adequate" or more stringent requirements with sufficient basis in public safety and health.

4/26/2007

I have read the NRC policy on Adequacy and Compatibility of Agreement State Programs (62 FR 46517) and find several points of relief in the policy that allow Texas to maintain more stringent requirements than what the NRC is calling for.

Further, there is precedence in Texas' higher rate of inspections of well-loggers and industrial radiographers than what NRC calls for.

At present, it appears that the Policy has become a defacto requirement, despite clauses within the policy that indicate otherwise. That reality notwithstanding, the TRAB would like to exercise the policy in its entirety where it will more appropriately reflect the spirit of the agreement state relationship.

Dale, I would sincerely appreciate the opportunity to *briefly* discuss this matter with you. Also, I invite your staff to discuss this matter with the TRAB at our April meeting.

Take Care, My Friend

v/r  
Michael

>>> "Michael Ford" <michael.ford@cox.net> 15 Jan 07 10:12:51 PM >>>

Dear NRC Secretary,

Please find attached the Texas Radiation Advisory Board's comments in support of the subject petition for rulemaking as presented on page 64168 of the Federal Register, Vol. 71, No. 211, dated Wednesday, November 1, 2006 (also attached).

v/r  
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Michael Ford, CHP  
Chair  
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