

November 5, 2007

Cynthia C. Cardwell, Manager
Radiation 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 proposed changes to the Texas regulations TAC 289, received by our office on September 13, 2007. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 71 and the requirements of the one amendment identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with Darice Bailey on November 1, 2007.

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. Under our current procedure, a finding that the Texas regulations meet the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final Texas regulations. However, we have determined that if your proposed regulations were adopted, 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 the proposed regulations are adopted and published as final regulations, 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 final changes, 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 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 FSME website: <http://www.hsrdrn.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 Bill Rautzen at 301-775-4456 (email: wrr@nrc.gov).

Sincerely,

\RA By ADWHITE For

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

Enclosures:
As stated

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 Bill Rautzen at 301-775-4456 (email: wrr@nrc.gov).

Sincerely,

IRA By ADWHITE For

Robert J. 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 (7-69)
DCD (SP08)
L McLean, RSAO
WRautzen
MOrendi

SISP Review Complete

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

Texas File

DOCUMENT NAME:C:\FileNet\ML073060016.wpd

ML of Incoming Document:ML072560678

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	SAISB	OGC	SAIS:BC	SAIS:DD
NAME	WRautzen	MOrendi	KSchneider	FCameron	DWhite	RLewis
DATE	10/18/07*	10/18/07*	10/19/07*	10/29/07*	11/05/07*	11/05/07*

ML073060016

OFFICIAL RECORD COPY

PKGML073060024

COMPATIBILITY COMMENTS ON TEXAS PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	289.257(i)(5)(E)(v)	10 CFR 71.22	2004-1	[B]	<p>General license: Fissile material</p> <p>Texas references Table 257-2 of their regulations instead of Table 257-1 in 289.257(i)(5)(E)(v) for CSI determination.</p> <p>Texas needs to change their reference from Table 257-2 to Table 257-1 in 289.257(i)(5)(E)(v) to meet the Compatibility Category [B] designation assigned to Section 10 CFR 71.22.</p>
2	289.257(i)(6)(E)(i)	10 CFR 71.23	2004-1	[B]	<p>General license: Plutonium/beryllium special form material</p> <p>In the equation for determining CSI in 289.257(i)(6)(E)(i), Texas indicates in the equation that grams of Pu-232 are used for calculation instead of grams of Pu-239.</p> <p>Texas needs to change grams of Pu-232 to grams of Pu-239 in the CSI calculation equation in 289.257(i)(6)(E)(i) to meet the Compatibility Category [B] designation assigned to Section 10 CFR 71.23.</p>
3	N/A	10 CFR 71.127	2004-1	C	<p>Handling, storage, and shipping control</p> <p>Texas omitted the requirements for Handling, storage, and shipping control found in 10 CFR 71.127.</p> <p>Texas needs to adopt the essential objectives of the Handling, storage, and shipping control requirements of 10 CFR 71.127 to meet the Compatibility Category C designation assigned to Section 10 CFR 71.127.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
4	N/A	10 CFR 71.129	2004-1	C	<p>Inspection, test, and operating status</p> <p>Texas omitted the requirements for Inspection, test, and operating status found in 10 CFR 71.129.</p> <p>Texas needs to adopt the essential objectives of the Inspection, test, and operating status requirements of 10 CFR 71.129 to meet the Compatibility Category C designation assigned to Section 10 CFR 71.129.</p>
5	N/A	10 CFR 71.131	2004-1	C	<p>Nonconforming materials, parts, or components</p> <p>Texas omitted the requirements for Nonconforming materials, parts, or components found in 10 CFR 71.131.</p> <p>Texas needs to adopt the essential objectives of the Nonconforming materials, parts, or components requirements of 10 CFR 71.131 to meet the Compatibility Category C designation assigned to Section 10 CFR 71.131.</p>
6	N/A	10 CFR 71.133	2004-1	C	<p>Corrective action</p> <p>Texas omitted the requirements for Corrective action found in 10 CFR 71.133.</p> <p>Texas needs to adopt the essential objectives of the Corrective action requirements of 10 CFR 71.133 to meet the Compatibility Category C designation assigned to Section 10 CFR 71.133.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
7	N/A	10 CFR 71.135	2004-1	C	<p>Quality assurance records</p> <p>Texas omitted the requirements for Quality assurance records found in 10 CFR 71.135.</p> <p>Texas needs to adopt the essential objectives of the Quality assurance records requirements of 10 CFR 71.135 to meet the Compatibility Category C designation assigned to Section 10 CFR 71.135.</p>

STATE REGULATION STATUS

State: Texas

(1 Amendment reviewed is identified by a ★ at the beginning of the equivalent NRC requirement.)

Tracking Ticket Number: 7-69

Date: November 5, 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, N² / Date / ML #⁵	Final State Regulation¹ (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1	F ML051520266	N 10/31/05 ML053050013	Superseded 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			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 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	F ML062860025	N 11/21/06 ML063200232	
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 ML052720491	09/04

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)
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	R ⁹ ML071370165	Y 06/27/07 ML071790090	04/2002
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	F (Part 30) ML062860025	N 11/21/06 ML063200232	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	F ML063030232	N 11/27/06 ML063200389	
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

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)
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	F ML063030232	N 11/27/06 ML063200389	
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	R ⁹ ML071370165	N 6/27/07 ML071790090	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	F ML062750348	N 11/21/06 ML063200232	03/29/06

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)
Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1	F ML051520266	N 11/30/06 ML063340007	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	F ML062750348	Y 11/21/06 ML063200232	03/29/06
Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; (10/24/05)	2002-2	R ⁹ ML071370165	Y 6/27/07 ML071790090	
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	P ML072560678	Y 11/05/07 ML073060016	
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	P ML071370165	Y 6/27/07 ML071790090	
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	P ML071370165	Y 6/27/07 ML071790090	
National Source Tracking System - Serialization Requirements - Part 32 with reference to Part 20 Appendix E	71 FR 65685 (2/6/07)	2006-2	LC ML070100405	N 01/22/07 ML070240176	

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)
National Source Tracking System - Part 20	71 FR 65865 (11/15/07) & (11/30/07)	2006-3 ⁸	P ML071370165	Y 6/27/07 ML071790090	

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.
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.
9. R stands for proposed changes made to final regulations.