



## TEXAS DEPARTMENT OF STATE HEALTH SERVICES

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COMMISSIONER

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November 2, 2009

Mr. Terrence Reis  
Deputy Director  
Division of Materials Safety and State Agreements  
Office of Federal and State Materials and  
Environmental Management Programs  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Dear Mr. Reis:

In order to update the Texas Department of State Health Services State Regulation Status document, these final rules are being sent for review.

The following final revisions to the Texas Regulations for Control of Radiation, 25 Texas Administrative Code are available at: [www.dshs.state.tx.us/radiation/rules.shtm](http://www.dshs.state.tx.us/radiation/rules.shtm). The final changes to the regulations are shown as **shaded text** and correspond to the following equivalent amendments to NRC's regulations.

§289.201 relating to General Provisions for Radioactive Material

§289.202 relating to Standards for Protection Against Radiation from Radioactive Materials

§289.251 relating to Exemptions, General Licenses, and General License Acknowledgements, and §289.252 relating to Licensing of Radioactive Material

§289.252 relating to Licensing of Radioactive Material

§289.253 relating to Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies

§289.255 relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography

§289.257 relating to Packaging and Transportation of Radioactive Material

§289.258 relating to Licensing and Radiation Safety Requirements for Irradiators

<b><u>Rats ID</u></b>	<b><u>Title</u></b>	<b><u>State Section</u></b>
1995-3	Low-Level Waste Shipment Manifest Information and Reporting  Comment letter dated June 27, 2007	§289.201 §289.202 §289.257
1996-1 (Superceded by RATS 2004-1) & 2004-1	Compatibility with IAEA Transportation Safety Standards and Other Transportation Safety Amendments  Comment letter dated September 29, 2005 Comment letter dated November 5, 2007	§289.257
1998-4	Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations  Comment letter dated June 27, 2007	§289.255
1999-1	Radiological Criteria for License Termination of Uranium Recovery Facilities  Comment letter dated August 12, 2005	§289.260
2000-2	New Dosimetry Technology - Only as relates to 10 CFR Part 36  Comment letter dated January 2, 2008	§289.253 §289.255 §289.258
2001-1	Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct  Comment letter dated January 2, 2008	§289.251
2002-1	Revision of the Skin Dose Limit  Comment letter dated June 27, 2007 Comment letter dated January 2, 2008 Comment letter dated January 13, 2009	§289.201
2003-1	Financial Assurance for Materials Licensees  Comment letter dated January 2, 2008	§289.252
2004-1	Compatibility with IAEA Transportation Safety Standards and Other Transportation Safety Amendments  Comment letter dated November 5, 2007	§289.257

<b><u>Rats ID</u></b>	<b><u>Title</u></b>	<b><u>State Section</u></b>
2005-1	Security Requirements for Portable Gauges Containing Byproduct Material	§289.202
2006-2	National Source Tracking System - Serialization Requirements	§289.202
2006-3	National Source Tracking System  Comment letter dated January 2, 2008	§289.202
2008-1	Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent	§289.201 §289.202

We believe that adoption of these revisions satisfies the compatibility and health and safety categories established in the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-200.

The following table also specifies a few items that are not compatible and provides Texas' rationale for promulgating a regulation that is not compatible with NRC's regulations.

If you have any questions, please feel free to contact me at 512-834-6770, ext. 2239, or [Cindy.Cardwell@dshs.state.tx.us](mailto:Cindy.Cardwell@dshs.state.tx.us).

Sincerely,



Cynthia C. Cardwell, Manager  
Radiation Group  
Policy, Standards, and Quality Assurance Unit  
Department of State Health Services

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
§289.257(dd)	20.2006	1995-3	B		Meets compatibility
§289.202(II)(2)	20.2101	1995-3	C		Meets compatibility
§289.257(gg)(6)(E)	20 Appendix G.I.B5	1995-3	B	<p><b>NRC comment per letter dated June 27, 2007</b></p> <p><b>Transfer for disposal and manifests</b>            Appendix G only includes the radionuclide activity of H-3, C-14, Tc-99, and I-129 contained in the shipment. However, in Texas' §289.257(s)(5)(F)(v), they include not only the above elements, but also chlorine-36, nickel-63, strontium-90, cesium-137 and any other isotopes with a half-life greater than 35 years. Texas should eliminate chlorine-36, nickel-63, strontium-90, cesium-137, and other isotopes with a half-life greater than 35 years for the activity contained in the shipment to meet the Compatibility Category B designation assigned to 10 CFR 20 Appendix G.I.B5.</p>	<p>Change was made as per comment.</p> <p>Meets compatibility.</p>
§289.201(d)	61.80	1995-3	C		Meets compatibility

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
§289.257(f)(2) & (3)	71.10 (b) & (c)	1996-1	NRC	<p><b>NRC comment per letter dated September 29, 2005</b></p> <p><b>Exemptions for low level material</b>            Texas has adopted the requirements of 71.10 (b) &amp; (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. Texas needs to remove these requirements from their regulations as they are NRC-specific requirements.</p>	<p>Superseded by RATS 2004-1.</p> <p>Meets compatibility.</p>
NA	71.11	1996-1	C	<p><b>NRC comment per letter dated September 29, 2005</b></p> <p><b>Deliberate misconduct</b>            Texas has omitted the deliberate misconduct requirement. Texas needs to add these provisions to their rules to meet the Compatibility Category C designation assigned to Section 10 CFR 71.11.</p>	<p>Superseded by RATS 2004-1.</p> <p>Regarding RATS 2004-1, 10 CFR 71.8 relating to "Deliberate Misconduct," per NRC comments in letter dated Nov 5, 2007, NRC had no comments relevant to this compatibility item; therefore, TX</p>

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
					§289.257 rule meets compatibility.
§289.257(i)(1)	71.12 (c) (3), (d) and (e)	1996-1	B	<p><b>NRC comment per letter dated September 29, 2005</b></p> <p><b>General license: NRC-approved package</b>            Texas' regulation does not include the package usage requirements specified in 10 CFR 71.12 (c) (3), (d) and (e). 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>	<p>Superceded by RATS 2004-1.</p> <p>Meets compatibility.</p>
§289.257(t)	71.101	1996-1	C	<p><b>NRC comment per letter dated September 29, 2005</b></p> <p><b>Quality assurance requirements</b>            Texas omitted the provisions of 10 CFR 71.101. Texas needs to adopt these provisions to meet the Compatibility Category C designation of 10 CFR 71.101.</p>	<p>Superceded by RATS 2004-1.</p> <p>Meets compatibility.</p>
§289.257(u)	71.103	1996-1	C	<p><b>NRC comment per letter dated September 29, 2005</b></p> <p><b>Quality assurance organization</b>            Texas omitted the provisions of 10</p>	<p>Superceded by RATS 2004-1.</p> <p>Meets compatibility</p>

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
				CFR 71.103. Texas needs to adopt these provisions to meet the Compatibility Category C designation of 10 CFR 71.103.	
§289.257(v)	71.105	1996-1	C	<b>NRC comment per letter dated September 29, 2005</b> <b>Quality assurance program</b> Texas omitted the provisions of 10 CFR 71.105. Texas needs to adopt these provisions to meet the Compatibility Category C designation of 10 CFR 71.105.	Superseded by RATS 2004-1.  Meets compatibility.
§289.255(u)(6)(C)	34.27(e)	1998-4	C	No comments per NRC letter dated June 27, 2007	Meets compatibility but TX did not include "Licensees will have until June 27, 1998, to comply with the DU leak-testing requirements of this paragraph." since TX rule became effective 12/27/07 and this requirement is obsolete.
§289.255(x)(1)	34.43(h) & (i)	1998-4	B	No comments per NRC letter dated June 27, 2007	Meets compatibility but TX did not include "(h) Licensees will have

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					<p>until June 27, 1998, to comply with the additional training requirements specified in paragraphs (b)(1) and (c)(1) of this section.</p> <p>(i) Licensees will have until June 27, 1999 to comply with the certification requirements specified in paragraph (a)(1) of this section.</p> <p>Records of radiographer certification maintained in accordance with Sec. 34.79(a) provide appropriate affirmation of certification requirements specified in paragraph (a)(1) of this section." since TX rule became effective 12/27/07. and these requirements are obsolete.</p>



STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
§289.260(o)(16)	Part 40, Appendix A, Criterion 6(6)	1999-1	C	<p><b>NRC comment per letter dated August 12, 2005</b></p> <p><b>Appendix A, Criterion 6(6)</b>            Texas does not provide a course of action if the dose measured is greater than the limit. Texas has not included the method to calculate the averaged benchmark dose when there is a presence of many isotopes. This requirement mandates a proposed course of action should benchmark dose be exceeded and outlines a method for dose calculation should more than one isotope be present. Texas needs to add the dose requirements to 289.260 (o)(16) to meet the Compatibility Category C designation assigned to Section 10 CFR 40 Appendix A Criterion 6(6).</p>	TX does not have authority over uranium recovery facilities. The Texas Commission on Environmental Quality has authority over uranium recovery facilities.
§289.255(p)	34.47	2000-2	C		Meets compatibility
§289.255(v)(1)	34.83	2000-2	C		Meets compatibility
§289.258(u)	36.55	2000-2	H&S	No comments per NRC letter dated January 2, 2008	Meets compatibility.
§289.253(q)	39.65	2000-2	C		Meets compatibility

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
§289.251(f)(4)(H)(iv)(II)(-b-)	31.5(c)(2)	2001-1	B	<p><b>NRC comment per letter dated January 2, 2008</b></p> <p><b>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</b></p> <p>Texas has an additional requirement that each source has to be tested for leakage within six months prior to being used or transferred. Texas's rule has the essential elements of the NRC, but is more restrictive than the NRC's GL rule. As noted in the September 20, 2007 All Agreement States Letter FSME07-087, the determination on this provision will be held in abeyance until such time that the NRC completes the GL Device rulemaking.</p>	TX is waiting on final NRC GL rulemaking.

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
§289.251(f)(4)(H)(iv)(IV)	31.5(c)(4)	2001-1	B	<p><b>NRC comment per letter dated January 2, 2008</b></p> <p><b>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</b></p> <p>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. Texas's rule has the essential elements of the NRC, but is more restrictive than the NRC's GL rule. As noted in the September 20, 2007 All Agreement States Letter FSME07-087, the determination on this provision will be held in abeyance until such time that the NRC completes the GL Device rulemaking.</p>	TX is waiting on final NRC GL rulemaking.

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
§289.201(b)(95)	20.1003	2002-1	A	<p><b>NRC comment per letters dated June 27, 2007, January 2, 2008, and January 13, 2009</b></p> <p><b>Definitions: Shallow Dose Equivalent</b></p> <p>Texas' definition of "shallow dose equivalent" in 289.201(b)(95) contains the phrase "averaged over an area of 1 square centimeter" which contradicts the determination of shallow dose equivalent found in their 289.202(f). Texas' 289.202(f) is compatible with NRC's equivalent requirement in 10 CFR 20.1201(c).</p> <p>Texas must revise their definition of "shallow-dose equivalent" in 289.201(b)(95) to remove the contradiction and meet Compatibility Category A designation assigned to this definition in Section 10 CFR 20.1003.</p>	<p>The definition of "shallow dose equivalent" is currently proposed for revision to meet compatibility with 10 CFR, 20.1003, as reflected in TX letter emailed on 8/11/09. Rule to become effective January 2010.</p>

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
§289.252(gg) & (jj)(2)	40.36	2003-1	H&S	<p><b>NRC comment per letter dated January 2, 2008</b></p> <p><b>Financial assurance and recordkeeping for decommissioning</b></p> <p>Texas uses the words radioactive material to encompass byproduct and source material. However by doing this and referencing Figure 289.252(jj)(2) Texas shows its 10<sup>s</sup> limits for natural thorium and uranium at 10Ci, well above the 100mCi limit set in 10 CFR 40.36 for source material. Texas should move natural thorium and uranium in its table to the row with the limit of 1.0uCi and a 10<sup>s</sup> limit of 100mCi. Texas needs to move natural uranium and thorium in its Figure 289.252(jj)(2) in order to meet the Compatibility category H&amp;S designation assigned to 10 CFR 40.36.</p>	<p>TX will make this change during the adoption process of this current proposed rule revision to meet compatibility with 10 CFR 40.36, as reflected in TX letter emailed on 8/11/09. Rule to become effective January 2010.</p>
§289.257	Part 71	2004-1	B	<p><b>Please see NRC comments below per letter dated November 5, 2007</b></p>	<p>Meets compatibility.</p>

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
§289.257(i)(5)(E)(v)	71.22	2004-1	B	<p><b>NRC comment per letter dated November 5, 2007</b></p> <p><b>General license: Fissile material</b>            Texas references Table 257-2 of their regulations instead of Table 257-1 in 289.257(i)(5)(E)(v) for CSI determination. 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>	<p>Change was made as per comment.</p> <p>Meets compatibility.</p>
§289.257(i)(6)(E)(i)	71.23	2004-1	B	<p><b>NRC comment per letter dated November 5, 2007</b></p> <p><b>General license: Plutonium/beryllium special form material</b>            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. Texas needs to change grams of Pu232 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>	<p>Change was made as per comment.</p> <p>Meets compatibility.</p>

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
§289.257 (x)	71.127	2004-1	C	<p><b>NRC comment per letter dated November 5, 2007</b></p> <p><b>Handling, storage, and shipping control</b> Texas omitted the requirements for Handling, storage, and shipping control found in 10 CFR 71.127. 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>	<p>Change was made as per comment.</p> <p>Meets compatibility.</p>
§289.257 (y)	71.129	2004-1	C	<p><b>NRC comment per letter dated November 5, 2007</b></p> <p><b>Inspection, test, and operating status</b> Texas omitted the requirements for Inspection, test, and operating status found in 10 CFR 71.129. 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>	<p>Change was made as per comment.</p> <p>Meets compatibility.</p>

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
§289.257 (z)	71.131	2004-1	C	<p><b>NRC comment per letter dated November 5, 2007</b></p> <p><b>Nonconforming materials, parts, or components</b> Texas omitted the requirements for Nonconforming materials, parts, or components found in 10 CFR 71.131. 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>	<p>Change was made as per comment.</p> <p>Meets compatibility.</p>
§289.257 (aa)	71.133	2004-1	C	<p><b>NRC comment per letter dated November 5, 2007</b></p> <p><b>Corrective action</b> Texas omitted the requirements for Corrective action found in 10 CFR 71.133. 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>	<p>Change was made as per comment.</p> <p>Meets compatibility.</p>



STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
§289.257 (bb)	71.135	2004-1	C	<p><b>NRC comment per letter dated November 5, 2007</b></p> <p><b>Quality assurance records</b>  Texas omitted the requirements for Quality assurance records found in 10 CFR 71.135. 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>	<p>Change was made as per comment.</p> <p>Meets compatibility.</p>
§289.202(y)(3)	30.34	2005-1	C	No comments per NRC letter dated January 13, 2009	Meets compatibility.
§289.202(hhh)(2)	20 Appendix E	2006-2	B	No comments per NRC letter dated January 13, 2009	Meets compatibility.
§289.202(c)(21)	32.2	2006-2	B	No comments per NRC letter dated January 13, 2009	Meets compatibility.
§289.202(hhh)(3)	32.201	2006-2	B	No comments per NRC letter dated January 13, 2009	Meets compatibility.
§289.202(c)(21)	20.1003	2006-3	B	No comments per NRC letter dated January 13, 2009	Meets compatibility.
§289.202(hhh)(1)	20.2207	2006-3	B	No comments per NRC letter dated January 13, 2009	Meets compatibility

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
§289.202(hhh)(2)	20 Appendix E	2006-3	B	<p><b>NRC comment per letter dated January 2, 2008</b></p> <p><b>Nationally tracked sources threshold</b>            Texas lists the Promethium-147 Category 2 limit as 11,100.0 Ci instead of 11000 Ci, and the Ytterbium-169 Category 1 limit as 8,1000 Ci instead of 8100 Ci. Texas needs to change these Category 1 and Category 2 limits to the proper amounts to meet the Compatibility Category B designation assigned to 10 CFR 20 Appendix E.</p>	<p>Change was made as per comment.</p> <p>Meets compatibility.</p>
§289.201(b)(109)	20.1003	2008-1	A	No comments per NRC letter dated January 13, 2009	Meets compatibility.
§289.202(f)(3) & (4)	20.1201	2008-1	A	No comments per NRC letter dated January 13, 2009	Meets compatibility.
§289.202(aaa)	20.2205	2008-1	C	No comments per NRC letter dated January 13, 2009	Meets compatibility.