

January 21, 2010

Cindy Cardwell, Manager
Radiation Policy, Standards and Q/A Group
Texas Department of State Health Services
1100 West 49th Street, MC 2828
Austin, TX 78756-3189

Dear Ms. Cardwell:

We have reviewed the final revision to the Texas Regulations for Control of Radiation, Texas Administrative Code 289.201, 289.202, 289.251, 289.252, 289.253, 289.255, 289.257, and 289.258 received by our office on November 10, 2009. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 19, 20, 30, 31, 32, 34, 36, 39, 40, 61, 70, 71 and the requirements of the 12 amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with Monica Perez on January 21, 2010.

As a result of our review, we have five comments which stand from NRC letters dated June 27, 2007, January 2, 2008, and January 13, 2009 and we have seven new 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 Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-200.

We request that when you revise your regulations to address our comments, 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 location of any changes made by Texas, in response to our comments, 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 Department of Health Services 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://nrc-stp.ornl.gov/rulemaking.html>.

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 (kathleen.schneider@nrc.gov) or Michelle Beardsley at (610) 337-6942 (michelle.beardsley@nrc.gov).

Sincerely,

/RA A. D. White for/

Terrence Reis, Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

Enclosures:
As stated

[Concurrence Page]

Enclosures: As stated

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COMPATIBILITY COMMENTS ON TEXAS FINAL REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	289.257 (gg) (6) (e)	10 CFR 20 Appendix G.I.B5	1995-3	B	<p>Transfer for disposal and manifests</p> <p>Texas' regulation 289.257(gg)(6)(E) includes radium-226. 10 CFR 20 Appendix G (I)(B)(5) does not list this isotope therefore it needs to be removed.</p> <p>Texas needs to make the above change to 289.257(gg)(6)(E) in order to meet the Compatibility Category B designation assigned to 10 CFR 20 Appendix G.</p> <p>Comment partially resolved from NRC letters June 27, 2007 and January 2, 2008. See new comment above.</p>
2	289.251 (i) 289.252 (x)(5)	30.34	2001-1	H&S	<p>Terms and conditions of licenses.</p> <p>Texas omits the following from its regulation for general and specific licenses:</p> <ol style="list-style-type: none"> 1) the phrase "under any chapter of title 11 (Bankruptcy of the United States Code"; 2) the sentences "An entity (as that term is defined in 11 U.S.C. 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or An affiliate (as that term is defined in 11 U.S.C. 101(2)) of the licensee."; and 3) the phrase "or against" in 289.251 (i) (3) after "...or involuntary petition for bankruptcy by.....". <p>Texas need to add the above phrase and sentences to its regulation in order to meet the Compatibility Category H&S designation assigned to 10 CFR 30.34"</p>
3	289.251 (f) (4)(H)(iv)(II) (b)	31.5 (c) (2)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Texas has an additional requirement</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>that each source has to be tested for leakage within six months prior to being used or transferred.</p> <p>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> <p>COMMENT STANDS from NRC letter dated January 2, 2008</p>
4	289.251 (f) (4) (H) (iv) (IV)	31.5 (c) (4)	2001-1	B	<p>Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere</p> <p>Texas has extra requirements that the test records shall identify the device tested by manufacturer, model and serial number of the device, and serial number of the sealed source.</p> <p>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 FSME 07-087, the determination on this provision will be held in abeyance until such time that the NRC completes the GL Device rulemaking.</p> <p>COMMENT STANDS from NRC letter dated January 2, 2008</p>
5	289.201 (b) (95)	20.1003	2002-1	A	<p>Definition: Shallow Dose Equivalent</p> <p>Texas' definition of Shallow Dose equivalent states "... external exposure of the skin or the skin of an extremity...". Texas omits the phrase "of the whole body". The definition should read "...external exposure of the skin of the whole body or the skin of an extremity...".</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>Also Texas' definition contains "averaged over an area of 1 square centimeter". This phrase needs to be removed as the NRC definition does not contain this.</p> <p>Texas needs to make the above changes to its definition for Shallow-dose equivalent in 289.201 (b)(95) to meet the Compatibility Category A designation assigned 10 CFR 20.1003 definition of Shallow dose equivalent.</p> <p>Comment stands and comment revised from NRC letters dated June 27, 2007, January 2, 2008 and January 13, 2009.</p>
6	289.252 (gg)	30.35 40.36	2003-1	H&S	<p>Financial assurance and recordkeeping for decommissioning</p> <p>Texas omits equivalent sections to 10 CFR 40.36(a) & the intro paragraph of 40.36(b) in 289.252(gg). Texas needs to apply financial assurance and decommissioning requirements to "possession and use of more than 100mCi of source material in a readily dispersible form" and "possession and use of quantities of source material greater than 10mCi but less than or equal to 100mCi in a readily dispersible form."</p> <p>Texas needs to make the above change to 289.252(gg) in order to meet the Compatibility Category H&S designation assigned to 10 CFR 40.36.</p> <p>Comment stands and comment revised from NRC letter dated January 2, 2008.</p>
7	289.257 (d) (38)(A)	71.4	2004-1	B	<p>Definition: Surface contaminated object</p> <p>Texas has numerical errors in it's definition of Surface contaminated object in 289.257(d)(38).</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>289.257(d)(38)(A)(ii) and (iii) should both read "...(10^{-2} uCi/cm²) for all other alpha emitters;" instead of "... (10^{-1} uCi/cm²) for all other alpha emitters;".</p> <p>Texas needs to make the above change to their definition of Surface contaminated object in order to meet the Compatibility Category B designation assigned to 10 CFR 71.4 Definition: Surface Contaminated Object.</p>
8	289.257 (e)	71.5	2004-1	B	<p>Transportation of licensed material.</p> <p>Texas references DOT regulations 49 CFR "Part 107, Parts 171 through 189 and 390-397" in 289.257(e)(1). The references should be "49 CFR Part 107, Parts 171-180 and 390-397".</p> <p>Texas needs to make the above change to 289.257(e) in order to meet the Compatibility Category B designation assigned to 10 CFR 71.5.</p>
9	289.257 (k)	71.85	2004-1	B	<p>Preliminary determinations.</p> <p>Texas omits the unit "f" in the maximum normal operating pressure 35kPa (5 lb" f"/in²) requirement for structural integrity testing.</p> <p>Texas needs to make the above change in order to meet the Compatibility Category B designation assigned to 10 CFR 71.85.</p>
10	289.257 (t)(1)(C)	71.103	2004-1	C	<p>Quality assurance requirements.</p> <p>Texas omits the footnote from its requirement.</p> <p>Texas needs to add the footnote to its regulation in order to meet the Compatibility Category C designation assigned to 10 CFR 71.101 (g).</p>
11	289.257 (v)	71.105 (a)	2004-1	C	<p>Quality assurance program.</p> <p>In paragraph (v) (1) (A) of its regulation, Texas references 10 CFR "71.01" through 71.137.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					Texas needs to correct the regulation reference to "71.101" in order to meet the Compatibility Category C designation assigned to 10 CFR 71.105 (a).
12	289.203(d)	19.13	2008-1	C	<p>Notification and reports to individuals.</p> <p>Texas omits equivalent regulations to 19.13(b) from 289.203(d).</p> <p>Texas needs to add an equivalent section to 19.13(b) to 289.203(d) in order to meet the Compatibility Category C designation assigned to 10 CFR 19.13.</p>

STATE REGULATION STATUS

State: Texas Department of State Health Services
 [12 amendment(s) reviewed is identified by a ★
 at the beginning of the equivalent NRC requirement.]

Tracking Ticket Number: 9-54
 Date: January 21, 2010

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1991-1	Safety Requirements for Radiographic Equipment Part 34 55 FR 843 (Superceded by 1997-5)	01/10/1994	Final ML051520266	No Comments 10/31/2005 ML053050013	Texas has adopted Final Regulations equivalent to RATS ID: 1997-5.
1991-2	ASNT Certification of Radiographers Part 34 56 FR 11504 (Superceded by 1997-5)	none	Not Required	Not Required	Texas has adopted Final Regulations equivalent to RATS ID: 1997-5.
1991-3	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;	01/01/1994	Final	No Comments 11/06/1997	
1991-4	Notification of Incidents Parts 20, 30, 31, 34, 39, 40, 70 56 FR 64980;	10/15/1994	Final ML052060129	No Comments 09/29/2005 ML052720491	
1992-1	Quality Management Program and Misadministrations Part 35 56 FR 34104 (Superceded by 2002-2)	01/27/1995	Not Required	Not Required	Texas has adopted Final Regulations equivalent to RATS ID: 2002-2.
1992-2	Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions Parts 30, 35 57 FR 45566	none	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1993-1	Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites] Parts 30, 40 58 FR 39628	10/25/1996	Final ML052060129	Comments 09/29/2005 ML052720491	
1993-2	Licensing and Radiation Safety Requirements for Irradiators Part 36 58 FR 7715	07/01/1996	Final ML051520266	No Comments 08/12/2005 ML052280032	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1993-3	Definition of Land Disposal and Waste Site QA Program Part 61 58 FR 33886	07/22/1996	Not Applicable	Not Applicable	Texas DSHS does not have responsibility for these regulations. See SRS sheet for Texas CEQ.
1994-1	Self-Guarantee as an Additional Financial Mechanism Parts 30, 40, 70 58 FR 68726; 59 FR 1618	none	Final ML062860025	No Comments 11/21/2006 ML063200232	These regulation changes are not required to be adopted for purposes of Compatibility.
1994-2	Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards Part 40 59 FR 28220	07/01/1997	Not Applicable	Not Applicable	Texas CEQ Responsibility
1994-3	Timeliness in Decommissioning Material Facilities Parts 30, 40, 70 59 FR 36026	08/15/1997	Final ML052060129	No Comments 09/29/2005 ML052720491	
1995-1	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	01/01/1998	Final	No Comments 03/17/1999	
1995-2	Frequency of Medical Examinations for Use of Respiratory Protection Equipment Part 20 60 FR 7900	03/13/1998	Final ML051520266	No Comments 10/31/2005 ML053050013	
★1995-3	Low-Level Waste Shipment Manifest Information and Reporting Parts 20, 61 60 FR 15649; 60 FR 25983	03/01/1998	Final ML093110052	Comments 01/21/10 ML093520035	
1995-4	Performance Requirements for Radiography Equipment Part 34 60 FR 28323 (Superseded by 1997-5)	06/30/1998	Final ML051520266	No Comments 10/31/2005 ML053050013	Texas has adopted Final Regulations equivalent to RATS ID: 1997-5.
1995-5	Radiation Protection Requirements: Amended Definitions and Criteria Parts 19, 20 60 FR 36038	08/14/1998	Final	No Comments 03/17/1999	
1995-6	Clarification of Decommissioning Funding Requirements Parts 30, 40, 70 60 FR 38235	11/24/1998	Final ML052060129	No Comments 09/29/2005 ML052720491	

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1995-7	Medical Administration of Radiation and Radioactive Materials Parts 20, 35 60 FR 48623 (Superceded by 2002-2 and 2005-2)	10/20/1998	Final ML051520266	No Comments 10/31/2005 ML053050013	Texas has not yet adopted Final Regulations equivalent to RATS ID: 2005-2.
1996-1	Compatibility with the International Atomic Energy Agency Part 71 60 FR 50248; 61 FR 28724 (Superceded by 2004-1)	04/01/1999			Texas has adopted Final Regulations equivalent to RATS ID: 2004-1.
1996-2	One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses Parts 30, 40, 70 61 FR 1109	02/15/1999	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1996-3	Termination or Transfer of Licensed Activities: Record keeping Requirements Parts 20, 30, 40, 61, 70 61 FR 24669	06/17/1999	Final ML062860025	No Comments 11/21/2006 ML063200232	Part 30 only. Part 61 applies to TXCEQ.
1997-1	Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act Part 20 61 FR 65120	01/9/2000	Final	No Comments 07/07/2000	
1997-2	Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State Part 150 62 FR 1662	02/27/2000	Final ML063030232	No Comments 11/27/2006 ML063200389	
1997-3	Criteria for the Release of Individuals Administered Radioactive Material Parts 20, 35 62 FR 4120	05/29/2000	Final	No Comments 07/07/2000	
1997-4	Fissile Material Shipments and Exemptions Part 71 62 FR 5907 (Superceded by 2004-1)	02/10/2000	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility. (See STP-97-078)

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1997-5	Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations Parts 30, 34, 71, 150 62 FR 28947	06/27/2000	Final	No Comments 07/07/2000	
1997-6	Radiological Criteria for License Termination Parts 20, 30, 40, 70 62 FR 39057	08/20/2000	Final	No Comments 07/07/2000	
1997-7	Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea Part 30 62 FR 63634	01/02/2001	Final ML052060129	No Comments 09/29/2005 ML052720491	
1998-1	Deliberate Misconduct by Unlicensed Persons Parts 30, 40, 61, 70, 71, 150 63 FR 1890; 63 FR 13773	02/12/2001	Final ML063030232	No Comments 11/27/2006 ML063200389	
1998-2	Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees Parts 30, 40, 70 63 FR 29535	07/01/2001	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1998-3	License Term for Medical Use Licenses Part 35 63 FR 31604 (Superseded by 2002-2)	07/10/2001	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility. (See STP-98-074) Texas has adopted Final Regulations equivalent to RATS ID: 2002-2.
★ 1998-4	Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations Part 34 63 FR 37059	07/09/2001	Final ML093110052	No Comments 01/21/10 ML093520035	
1998-5	Minor Corrections, Clarifying Changes, and a Minor Policy Change Parts 20, 35, 36 63 FR 39477; 63 FR 45393	10/26/2001	Final	No Comments 07/07/2000	
1998-6	Transfer for Disposal and Manifests: Minor Technical Conforming Amendment Part 20 63 FR 50127	11/20/2001	Final	No Comments 07/07/2000	

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1999-1	Radiological Criteria for License Termination of Uranium Recovery Facilities Part 40 64 FR 17506	06/11/2002	Not Applicable	Not Applicable	Texas DSHS does not have regulatory authority over uranium recovery (See TX letter ML093110052)
1999-2	Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information Part 31 64 FR 42269	10/04/2002	Not Required	Not Required	These regulation changes are not required to be adopted for purposes of Compatibility.
1999-3	Respiratory Protection and Controls to Restrict Internal Exposure Part 20 64 FR 54543; 64 FR 55524	02/02/2003	Final ML062750348	No Comments 11/21/2006 ML063200232	
2000-1	Energy Compensation Sources for Well Logging and Other Regulatory Clarifications Part 39 65 FR 20337	05/17/2003	Final ML051520266	No Comments 11/30/2006 ML063340007	
★2000-2	New Dosimetry Technology Parts 34, 36, 39 65 FR 63750	01/08/2004	Final ML093110052	No Comments 01/21/10 ML093520035	
★2001-1	Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material Parts 30, 31, 32 65 FR 79162	02/16/2004	Final ML093110052	Comments 01/21/10 ML093520035	
★2002-1	Revision of the Skin Dose Limit Part 20 67 FR 16298	04/05/2005	Final ML093110052	Comments 01/21/10 ML093520035	
2002-2	Medical Use of Byproduct Material Parts 20, 32, 35 67 FR 20249	10/24/2005	Final ML092390185 ML092400365	Comments 10/29/2009 ML092870302	
★2003-1	Financial Assurance for Materials Licensees Parts 30, 40, 70 68 FR 57327	12/03/2006	Final ML093110052	Comments 01/21/10 ML093520035	

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★2004-1	Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments Part 71 69 FR 3697	10/01/2007	Final ML093110052	Comments 01/21/10 ML093520035	
★2005-1	Security Requirements for Portable Gauges Containing Byproduct Material Part 30 70 FR 2001	07/11/2008	Final ML093110052	No Comments 01/21/10 ML093520035	
2005-2	Medical Use of Byproduct Material - Recognition of Specialty Boards Part 35 70 FR 16336; 71 FR 1926	04/29/2008	Final ML092390185 ML092400365	Comments 10/29/2009 ML092870302	
2005-3	Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) 70 FR 72128	12/01/2005	License Condition ML052240226	No Comments 12/12/2005 ML053420404	
2006-1	Minor Amendments Parts 20, 30, 32, 35, 40 and 70 71 FR 15005	03/27/2009	R ¹ ML092650466	Comments 10/05/2009 ML092660410	
★2006-2	National Source Tracking System - Serialization Requirements Part 32 with reference to Part 20 Appendix E 71 FR 65685	02/06/2007	Final ML093110052	No Comments 01/21/10 ML093520035	
★2006-3	National Source Tracking System Part 20 71 FR 65685, 72 FR 59162	01/31/2009	Final ML093110052	No Comments 01/21/10 ML093520035	
2007-1	Medical Use of Byproduct Material - Minor Corrections and Clarifications Parts 32 and 35 72 FR 45147, 54207	10/29/2010			
2007-2	Exemptions From Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements Parts 30, 31, 32, 150 72 FR 58473	12/17/2010	Proposed ML092260388	Comments 09/29/2009 ML092450682	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
2007-3	Requirements for Expanded Definition of Byproduct Material Parts 20, 30, 31, 32, 33, 35, 61, 150 72 FR 55864	11/30/2010	Proposed ML092260388	Comments 09/29/2009 ML092450682	
2007-4	Order Imposing Fingerprinting Requirements and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material NRC Order EA-07-305 72 FR 70901	06/05/2008	License Condition ML080350004	No Comments 02/13/2008 ML080440203	
★2008-1	Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent Parts 19, 20 72 FR 68043	02/15/2011	Final ML093110052	Comments 01/21/10 ML093520035	
2009-1	Medical Use of Byproduct Material – Authorized User Clarification Part 35 74 FR 33901	09/28/2012			