

April 25, 2011

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

Dear Ms. Taylor:

We have reviewed the proposed changes to the Texas regulations for Control of Radiation, 25 Texas Administrative Code, received by our office on March 8, 2011. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Part 19, 20, 30, 31, 32, 33, 35, 40, 61, 70, 71, 150 and the requirements of the nine amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with Monica Perez on April 22, 2011.

As a result of our review, we have one new comment and five standing comments from previous reviews 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 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://nrc-stp.ornl.gov/rulemaking.html>.

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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](mailto:Kathleen.Schneider@nrc.gov)) or Maria Arribas-Colon at (301) 415-6026 ([Maria.Arribas-Colon@nrc.gov](mailto:Maria.Arribas-Colon@nrc.gov)).

Sincerely,

***/RA A.D. White for/***

Mark Delligatti, Acting Deputy Director  
Division of Materials Safety and State Agreements  
Office of Federal and State Materials and  
Environmental Management Programs

Enclosures:  
As stated

[CONCURRENCE]

Enclosures: As stated

Distribution:  
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|--------|-----------------|--|-------------|--|----------|--|----------|--|------------------|--|
| OFFICE | ASPB            |  | ASPB        |  | OGC      |  | ASPB:BC  |  | MSSA:DD          |  |
| NAME   | M.Arribas-Colon |  | K.Schneider |  | B.Jones  |  | D.White  |  | M.Delligatti/ADW |  |
| DATE   | 03/29/11        |  | 04/07/11    |  | 04/20/11 |  | 04/25/11 |  | 04/25/11         |  |

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Package ML110880034

**COMPATIBILITY COMMENTS ON TEXAS PROPOSED REGULATIONS**

| STATE SECTION |                        | NRC SECTION | RATS ID          | CATEGORY | SUBJECT and COMMENTS  |
|---------------|------------------------|-------------|------------------|----------|---|
| 1             | 289.256<br>(aaa)(2)(C) | 35.491      | 2009-1           | B        | <p><b>Training for ophthalmic use of strontium-90.</b></p> <p>In 289.256(aaa)(2)(C) references, Texas has an incorrect reference. The phrase "...of paragraphs (1) and (2) of this subsection ..." should be revised to "...of <b>paragraph (2)</b> of this subsection ..."</p> <p>Texas needs to correct the above references in order to meet the Compatibility Category B designation assigned to 10 CFR 35.491.</p>   |
| 2             | 289.251(f)             | 31.12       | 2007-3           | C        | <p><b>General license for certain items and self-luminous products containing radium-226</b></p> <p>Texas has omitted the requirements of paragraphs 10 CFR 31.12(a)(1) through 10 CFR 31.12(a)(5). These requirements list the products for issuance of the general license under this part.</p> <p>Texas needs to add these paragraphs to 289.251(f) to meet the Compatibility Category C designation assigned to Section 10 CFR 31.12.</p> <p><b>COMMENT STANDS from NRC letter dated November 19, 2010.</b></p> |
| 3             | 289.256<br>(c)(3)      | 35.2        | 2002-2<br>2006-1 | B        | <p><b>Definition: Authorized Medical Physicist</b></p> <p>Texas adds an additional section (289.256(c)(3)(C)) to their definition of Authorized Medical Physicist. This section makes this definition more restrictive than NRC's definition.</p> <p>Texas needs to remove section (C)</p>  |

| STATE SECTION |                | NRC SECTION | RATS ID          | CATEGORY | SUBJECT and COMMENTS   |
|---------------|----------------|-------------|------------------|----------|--|
|               |                |             |                  |          | <p>from 289.256(c)(3) Authorized Medical Physicist to meet the Compatibility Category B designation assigned to 10 CFR 35.2 Definition: Authorized Medical Physicist.</p> <p><b>COMMENT STANDS from NRC letter dated November 19, 2010.</b></p>  |
| 4             | 289.256 (c)(4) | 35.2        | 2002-2<br>2006-1 | B        | <p><b>Definition: Authorized nuclear pharmacist</b></p> <p>Texas adds an additional section (289.256(c)(4)(E)) to their definition of Authorized Nuclear Pharmacist. This section makes this definition more restrictive than NRC's definition.</p> <p>Texas omitted an "or" at the end of 289.256(c)(4)(B)(iv).</p> <p>Texas needs to make the above changes to their definition of Authorized Nuclear Pharmacist to meet the Compatibility Category B designation assigned to 10 CFR 35.2 Definition: Authorized Nuclear Pharmacist.</p> <p><b>COMMENT STANDS from NRC letter dated November 19, 2010.</b></p> |
| 5             | 289.256 (c)(5) | 35.2        | 2002-2<br>2006-1 | B        | <p><b>Definition: Authorized user</b></p> <p>Texas adds additional text to this definition making it more restrictive than NRC's definition. Texas requires the physician, dentist, and podiatrist be licensed by the Texas Medical Board, the Texas State Board of Dental Examiners, and the Texas State Board of Podiatric Medicine respectfully. Texas needs to remove this language from the definition.</p> <p>Texas needs to make the above change to 289.256(c)(5) in order to meet the Compatibility Category B</p>  |

| STATE SECTION |             | NRC SECTION | RATS ID          | CATEGORY | SUBJECT and COMMENTS  |
|---------------|-------------|-------------|------------------|----------|---|
|               |             |             |                  |          | <p>designation assigned to 10 CFR 35.2 Definition Authorized User.</p> <p><b>COMMENT STANDS from NRC letter dated November 19, 2010.</b></p>  |
| 6             | 289.256(jj) | 35.290      | 2002-2<br>2005-2 | B        | <p><b>Training for imaging and localization studies</b></p> <p>Texas regulation 289.256(jj)(2) contains additional requirements for the use of PET radionuclides. This paragraph is more restrictive than Section 35.290 and should be removed.</p> <p>Texas needs to make the above change in order to meet the Compatibility Category B designation assigned to 10 CFR 35.290..</p> <p><b>COMMENT STANDS from NRC letter dated November 19, 2010.</b></p> |

**STATE REGULATION STATUS**

State: Texas Department of State Health Services

Tracking Ticket Number: 11-5  
Date: April 25, 2011

[9 amendment(s) reviewed is identified by a ★  
at the beginning of the equivalent NRC requirement.]

| RATS ID | NRC Chronology Identification  | Date Due for State Adoption | Incoming Package     | Outgoing Package                         | Notes  |
|---------|--|-----------------------------|----------------------|--|--|
| 1991-1  | Safety Requirements for Radiographic Equipment<br>Part 34<br>55 FR 843<br><b>(Superceded by 1997-5)</b>  | 01/10/1994                  | Final<br>ML051520266 | No Comments<br>10/31/2005<br>ML053050013 | Texas has adopted Final Regulations equivalent to RATS ID: 1997-5.                     |
| 1991-2  | ASNT Certification of Radiographers<br>Part 34<br>56 FR 11504<br><b>(Superceded by 1997-5)</b>   | none                        | Not Required         | Not Required                             | Texas has adopted Final Regulations equivalent to RATS ID: 1997-5.                     |
| 1991-3  | Standards for Protection Against Radiation<br>Part 20<br>56 FR 23360; 56 FR 61352; 57 FR 38588; 57 FR 57877;<br>58 FR 67657; 59 FR 41641; 60 FR 20183; | 01/01/1994                  | Final                | No Comments<br>11/06/1997                |  |
| 1991-4  | Notification of Incidents<br>Parts 20, 30, 31, 34, 39, 40, 70<br>56 FR 64980;  | 10/15/1994                  | Final<br>ML052060129 | No Comments<br>09/29/2005<br>ML052720491 |  |
| 1992-1  | Quality Management Program and Misadministrations<br>Part 35<br>56 FR 34104<br><b>(Superceded by 2002-2)</b>   | 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<br>Parts 30, 35<br>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]<br>Parts 30, 40<br>58 FR 39628       | 10/25/1996                  | Final<br>ML052060129 | Comments<br>09/29/2005<br>ML052720491    |  |
| 1993-2  | Licensing and Radiation Safety Requirements for Irradiators<br>Part 36<br>58 FR 7715   | 07/01/1996                  | Final<br>ML051520266 | No Comments<br>08/12/2005<br>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<br>Part 61<br>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<br>Parts 30, 40, 70<br>58 FR 68726; 59 FR 1618  | none                        | Final<br>ML062860025          | No Comments<br>11/21/2006<br>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<br>Part 40<br>59 FR 28220   | 07/01/1997                  | Not Applicable                | Not Applicable                           | Texas CEQ Responsibility  |
| 1994-3  | Timeliness in Decommissioning Material Facilities<br>Parts 30, 40, 70<br>59 FR 36026  | 08/15/1997                  | Final<br>ML052060129          | No Comments<br>09/29/2005<br>ML052720491 |   |
| 1995-1  | Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use<br>Parts 30, 32, 35<br>59 FR 61767; 59 FR 65243; 60 FR 322 | 01/01/1998                  | Final                         | No Comments<br>03/17/1999                |   |
| 1995-2  | Frequency of Medical Examinations for Use of Respiratory Protection Equipment<br>Part 20<br>60 FR 7900  | 03/13/1998                  | Final<br>ML051520266          | No Comments<br>10/31/2005<br>ML053050013 |   |
| *1995-3 | Low-Level Waste Shipment Manifest Information and Reporting<br>Parts 20, 61<br>60 FR 15649; 60 FR 25983   | 03/01/1998                  | R <sup>1</sup><br>ML110610650 | No Comments<br>04/xx/2011<br>ML110880034 |   |
| 1995-4  | Performance Requirements for Radiography Equipment<br>Part 34<br>60 FR 28323<br><b>(Superceded by 1997-5)</b>   | 06/30/1998                  | Final<br>ML051520266          | No Comments<br>10/31/2005<br>ML053050013 | Texas has adopted Final Regulations equivalent to RATS ID: 1997-5.                          |
| 1995-5  | Radiation Protection Requirements: Amended Definitions and Criteria<br>Parts 19, 20<br>60 FR 36038  | 08/14/1998                  | Final                         | No Comments<br>03/17/1999                |   |
| 1995-6  | Clarification of Decommissioning Funding Requirements<br>Parts 30, 40, 70<br>60 FR 38235  | 11/24/1998                  | Final<br>ML052060129          | No Comments<br>09/29/2005<br>ML052720491 |   |



| RATS ID | NRC Chronology Identification   | Date Due for State Adoption | Incoming Package     | Outgoing Package                         | Notes   |
|---------|---|-----------------------------|----------------------|--|---|
| 1995-7  | Medical Administration of Radiation and Radioactive Materials<br>Parts 20, 35<br>60 FR 48623<br><b>(Superceded by 2002-2 and 2005-2)</b>            | 10/20/1998                  | Final<br>ML051520266 | No Comments<br>10/31/2005<br>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<br>60 FR 50248; 61 FR 28724<br><b>(Superceded by 2004-1)</b>                      | 04/01/1999                  | Final<br>ML052060129 | Comments<br>09/29/2005<br>ML052720491    | 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<br>Parts 30, 40, 70<br>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<br>Parts 20, 30, 40, 61, 70<br>61 FR 24669                              | 06/17/1999                  | Final<br>ML062860025 | No Comments<br>11/21/2006<br>ML063200232 | Part 30 only. Part 61 applies to TXCEQ.   |
| 1997-1  | Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act<br>Part 20<br>61 FR 65120                               | 01/9/2000                   | Final                | No Comments<br>07/07/2000                |   |
| 1997-2  | Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State<br>Part 150<br>62 FR 1662           | 02/27/2000                  | Final<br>ML063030232 | No Comments<br>11/27/2006<br>ML063200389 |   |
| 1997-3  | Criteria for the Release of Individuals Administered Radioactive Material<br>Parts 20, 35<br>62 FR 4120   | 05/29/2000                  | Final                | No Comments<br>07/07/2000                |   |
| 1997-4  | Fissile Material Shipments and Exemptions<br>Part 71<br>62 FR 5907<br><b>(Superceded by 2004-1)</b>   | 02/10/2000                  | Not Required         | Not Required                             | These regulation changes are not required to be adopted for purposes of Compatibility. (See STP-97-078) |
| 1997-5  | Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations<br>Parts 30, 34, 71, 150<br>62 FR 28947 | 06/27/2000                  | Final                | No Comments<br>07/07/2000                |   |

| RATS ID | NRC Chronology Identification  | Date Due for State Adoption | Incoming Package     | Outgoing Package                         | Notes   |
|---------|--|-----------------------------|----------------------|--|---|
| 1997-6  | Radiological Criteria for License Termination<br>Parts 20, 30, 40, 70<br>62 FR 39057   | 08/20/2000                  | Final                | No Comments<br>07/07/2000                |   |
| 1997-7  | Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea<br>Part 30<br>62 FR 63634                       | 01/02/2001                  | Final<br>ML052060129 | No Comments<br>09/29/2005<br>ML052720491 |   |
| 1998-1  | Deliberate Misconduct by Unlicensed Persons<br>Parts 30, 40, 61, 70, 71, 150<br>63 FR 1890; 63 FR 13773                                | 02/12/2001                  | Final<br>ML063030232 | No Comments<br>11/27/2006<br>ML063200389 |   |
| 1998-2  | Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees<br>Parts 30, 40, 70<br>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<br>Part 35<br>63 FR 31604<br><b>(Superceded by 2002-2)</b>                                       | 07/10/2001                  | Not Required         | Not Required                             | These regulation changes are not required to be adopted for purposes of Compatibility. (See STP-98-074)<br><br>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<br>Part 34<br>63 FR 37059 | 07/09/2001                  | Final<br>ML093110052 | No Comments<br>01/21/2010<br>ML093520035 |   |
| 1998-5  | Minor Corrections, Clarifying Changes, and a Minor Policy Change<br>Parts 20, 35, 36<br>63 FR 39477; 63 FR 45393                       | 10/26/2001                  | Final                | No Comments<br>07/07/2000                |   |
| 1998-6  | Transfer for Disposal and Manifests: Minor Technical Conforming Amendment<br>Part 20<br>63 FR 50127                                    | 11/20/2001                  | Final                | No Comments<br>07/07/2000                |   |
| 1999-1  | Radiological Criteria for License Termination of Uranium Recovery Facilities<br>Part 40<br>64 FR 17506                                 | 06/11/2002                  | Final<br>ML051520266 | Comments<br>08/12/2005<br>ML052280032    |   |

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|---------|--|-----------------------------|-------------------------------|--|--|
| 1999-2  | Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information<br>Part 31<br>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<br>Part 20<br>64 FR 54543; 64 FR 55524   | 02/02/2003                  | Final<br>ML062750348          | No Comments<br>11/21/2006<br>ML063200232 |  |
| 2000-1  | Energy Compensation Sources for Well Logging and Other Regulatory Clarifications<br>Part 39<br>65 FR 20337   | 05/17/2003                  | Final<br>ML051520266          | No Comments<br>11/30/2006<br>ML063340007 |  |
| 2000-2  | New Dosimetry Technology<br>Parts 34, 36, 39<br>65 FR 63750  | 01/08/2004                  | Final<br>ML093110052          | No Comments<br>01/21/2010<br>ML093520035 |  |
| 2001-1  | Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material<br>Parts 30, 31, 32<br>65 FR 79162                        | 02/16/2004                  | Final<br>ML102240370          | Comments<br>11/19/2010<br>ML102740009    |  |
| 2002-1  | Revision of the Skin Dose Limit<br>Part 20<br>67 FR 16298  | 04/05/2005                  | Final<br>ML102240370          | No Comments<br>11/19/2010<br>ML102740009 |  |
| *2002-2 | Medical Use of Byproduct Material<br>Parts 20, 32, 35<br>67 FR 20249   | 10/24/2005                  | R <sup>1</sup><br>ML110610650 | Comments<br>04/25/2011<br>ML110880034    |  |
| *2003-1 | Financial Assurance for Materials Licensees<br>Parts 30, 40, 70<br>68 FR 57327   | 12/03/2006                  | R <sup>1</sup><br>ML110610650 | No Comments<br>04/25/2011<br>ML110880034 |  |
| *2004-1 | Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments<br>Part 71<br>69 FR 3697                            | 10/01/2007                  | R <sup>1</sup><br>ML110610650 | No Comments<br>04/25/2011<br>ML110880034 |  |
| 2005-1  | Security Requirements for Portable Gauges Containing Byproduct Material<br>Part 30<br>70 FR 2001   | 07/11/2008                  | Final<br>ML093110052          | No Comments<br>01/21/2010<br>ML093520035 |  |

| RATS ID | NRC Chronology Identification  | Date Due for State Adoption | Incoming Package                 | Outgoing Package                         | Notes |
|---------|--|-----------------------------|----------------------------------|--|-------|
| *2005-2 | Medical Use of Byproduct Material - Recognition of Specialty Boards<br>Part 35<br>70 FR 16336; 71 FR 1926  | 04/29/2008                  | R <sup>1</sup><br>ML110610650    | Comments<br>04/25/2011<br>ML110880034    |       |
| 2005-3  | Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090)<br>70 FR 72128   | 12/01/2005                  | License Condition<br>ML052240226 | No Comments<br>12/12/2005<br>ML053420404 |       |
| *2006-1 | Minor Amendments<br>Parts 20, 30, 32, 35, 40 and 70<br>71 FR 15005   | 03/27/2009                  | R <sup>1</sup><br>ML110610650    | Comments<br>04/25/2011<br>ML110880034    |       |
| 2006-2  | National Source Tracking System - Serialization Requirements<br>Part 32 with reference to Part 20 Appendix E<br>71 FR 65685  | 02/06/2007                  | Final<br>ML093110052             | No Comments<br>01/21/2010<br>ML093520035 |       |
| 2006-3  | National Source Tracking System<br>Part 20<br>71 FR 65685, 72 FR 59162   | 01/31/2009                  | Final<br>ML093110052             | No Comments<br>01/21/2010<br>ML093520035 |       |
| 2007-1  | Medical Use of Byproduct Material - Minor Corrections and Clarifications<br>Parts 32 and 35<br>72 FR 45147, 54207  | 10/29/2010                  | Final<br>ML102240370             | No Comments<br>11/19/2010<br>ML102740009 |       |
| 2007-2  | Exemptions From Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements<br>Parts 30, 31, 32, 150<br>72 FR 58473                      | 12/17/2010                  | Final<br>ML102240370             | Comments<br>11/19/2010<br>ML102740009    |       |
| *2007-3 | Requirements for Expanded Definition of Byproduct Material<br>Parts 20, 30, 31, 32, 33, 35, 61, 150<br>72 FR 55864   | 11/30/2010                  | R <sup>1</sup><br>ML110610650    | Comments<br>04/25/2011<br>ML110880034    |       |
| 2007-4  | Order Imposing Fingerprinting Requirements and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material<br>NRC Order EA-07-305<br>72 FR 70901 | 06/05/2008                  | License Condition<br>ML080350004 | No Comments<br>02/13/2008<br>ML080440203 |       |

| RATS ID | NRC Chronology Identification   | Date Due for State Adoption | Incoming Package              | Outgoing Package                         | Notes |
|---------|---|-----------------------------|-------------------------------|--|-------|
| *2008-1 | Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent Parts 19, 20<br>72 FR 68043 | 02/15/2011                  | R <sup>1</sup><br>ML110610650 | No Comments<br>04/25/2011<br>ML110880034 |       |
| *2009-1 | Medical Use of Byproduct Material – Authorized User Clarification<br>Part 35<br>74 FR 33901                     | 09/28/2012                  | Proposed<br>ML110610650       | Comments<br>04/25/2011<br>ML110880034    |       |
| *N/A    | 10 CFR 34.47, 35.11, 35.63, 35.92 and 35.204  | N/A                         | Proposed<br>ML110610650       | No Comments<br>04/25/2011<br>ML110880034 |       |

<sup>1</sup> R Means proposed revisions to final rule