

April 25, 2011

Barbara Taylor, 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. 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>.

-2-

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 Maria Arribas-Colon at (301) 415-6026 (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

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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 (aaa)(2)(C)	35.491	2009-1	B	<p>Training for ophthalmic use of strontium-90.</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 paragraph (2) 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>General license for certain items and self-luminous products containing radium-226</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>COMMENT STANDS from NRC letter dated November 19, 2010.</p>
3	289.256 (c)(3)	35.2	2002-2 2006-1	B	<p>Definition: Authorized Medical Physicist</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>COMMENT STANDS from NRC letter dated November 19, 2010.</p>
4	289.256 (c)(4)	35.2	2002-2 2006-1	B	<p>Definition: Authorized nuclear pharmacist</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>COMMENT STANDS from NRC letter dated November 19, 2010.</p>
5	289.256 (c)(5)	35.2	2002-2 2006-1	B	<p>Definition: Authorized user</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>COMMENT STANDS from NRC letter dated November 19, 2010.</p>
6	289.256(jj)	35.290	2002-2 2005-2	B	<p>Training for imaging and localization studies</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>COMMENT STANDS from NRC letter dated November 19, 2010.</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 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	R ¹ ML110610650	No Comments 04/xx/2011 ML110880034	
1995-4	Performance Requirements for Radiography Equipment Part 34 60 FR 28323 (Superceded 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	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
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	Final ML052060129	Comments 09/29/2005 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 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)
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	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
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 (Superceded 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 01/21/2010 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	
1999-1	Radiological Criteria for License Termination of Uranium Recovery Facilities Part 40 64 FR 17506	06/11/2002	Final ML051520266	Comments 08/12/2005 ML052280032	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
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 01/21/2010 ML093520035	
2001-1	Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material Parts 30, 31, 32 65 FR 79162	02/16/2004	Final ML102240370	Comments 11/19/2010 ML102740009	
2002-1	Revision of the Skin Dose Limit Part 20 67 FR 16298	04/05/2005	Final ML102240370	No Comments 11/19/2010 ML102740009	
*2002-2	Medical Use of Byproduct Material Parts 20, 32, 35 67 FR 20249	10/24/2005	R ¹ ML110610650	Comments 04/25/2011 ML110880034	
*2003-1	Financial Assurance for Materials Licensees Parts 30, 40, 70 68 FR 57327	12/03/2006	R ¹ ML110610650	No Comments 04/25/2011 ML110880034	
*2004-1	Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments Part 71 69 FR 3697	10/01/2007	R ¹ ML110610650	No Comments 04/25/2011 ML110880034	
2005-1	Security Requirements for Portable Gauges Containing Byproduct Material Part 30 70 FR 2001	07/11/2008	Final ML093110052	No Comments 01/21/2010 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 Part 35 70 FR 16336; 71 FR 1926	04/29/2008	R ¹ ML110610650	Comments 04/25/2011 ML110880034	
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 ML110610650	Comments 04/25/2011 ML110880034	
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 01/21/2010 ML093520035	
2006-3	National Source Tracking System Part 20 71 FR 65685, 72 FR 59162	01/31/2009	Final ML093110052	No Comments 01/21/2010 ML093520035	
2007-1	Medical Use of Byproduct Material - Minor Corrections and Clarifications Parts 32 and 35 72 FR 45147, 54207	10/29/2010	Final ML102240370	No Comments 11/19/2010 ML102740009	
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	Final ML102240370	Comments 11/19/2010 ML102740009	
*2007-3	Requirements for Expanded Definition of Byproduct Material Parts 20, 30, 31, 32, 33, 35, 61, 150 72 FR 55864	11/30/2010	R ¹ ML110610650	Comments 04/25/2011 ML110880034	
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	

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 72 FR 68043	02/15/2011	R ¹ ML110610650	No Comments 04/25/2011 ML110880034	
*2009-1	Medical Use of Byproduct Material – Authorized User Clarification Part 35 74 FR 33901	09/28/2012	Proposed ML110610650	Comments 04/25/2011 ML110880034	
*N/A	10 CFR 34.47, 35.11, 35.63, 35.92 and 35.204	N/A	Proposed ML110610650	No Comments 04/25/2011 ML110880034	

¹ R Means proposed revisions to final rule