

August 18, 2011

Susan M. Jablonski, P.E.
Division Director
Radioactive Materials Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Dear Ms. Jablonski:

We have reviewed the proposed changes to the Texas Commission on Environmental Quality's found in Title 30 Texas Administrative Code Chapter 336 (relating to Radioactive Substances Rules), received by our office on July 6, 2011. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Parts 19, 20, the Increased Control requirements and the requirements of the four amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with Devane Clark on August 15, 2011.

As a result of our review, we have 11 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://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) or Merri Horn at 301-415-8126 (merri.horn@nrc.gov).

Sincerely,

/RA/

Mark S. 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 Page]

Enclosures: As stated

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DATE	07/25/2011	07/26/2011		08/09/2011		08/18/2011		08/18/2011	

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COMPATIBILITY COMMENTS ON TEXAS PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	§336.351(a)	§20.2207(a)	2006-3	B	<p>Reports of Transactions Involving Nationally Tracked Sources</p> <p>The regulation in paragraph §336.351(a) refers to the wrong paragraphs for the transaction reports. The language should be revised to “as specified in paragraphs (1) – (5) of this subsection” and not paragraphs (1) – (6).</p> <p>Texas needs to make the above change in order to meet Compatibility Category B designation assigned to §20.2207(a).</p>
2	§336.351(a)(6)	§20.2207(f)	2006-3	B	<p>Reports of Transactions Involving Nationally Tracked Sources</p> <p>The regulation in subparagraph §336.351(a)(6) refers to the wrong paragraphs for the transaction reports. The language should be revised to “reports discussed in paragraphs (1) – (5) of this subsection” and not paragraphs (1) – (6).</p> <p>Texas needs to make the above change in order to meet Compatibility Category B designation assigned to §20.2207(f).</p>
3	§336.351(a)(7)	§20.2207(g)	2006-3	B	<p>Reports of Transactions Involving Nationally Tracked Sources</p> <p>The regulation in subparagraph §336.351(a)(7) refers to the wrong paragraphs for the transaction reports. The language should be revised to “reports identified by paragraphs (1) – (5) of this subsection” and not paragraphs (1) – (6).</p> <p>Texas needs to make the above change in order to meet Compatibility</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					Category B designation assigned to §20.2207(g).
4	§336.357(2)(D)	IC Orders 1.c.	2005-3	B	<p>Increased Controls For Licensees That Possess Sources Containing Radioactive Material Quantities of Concern</p> <p>The Texas regulations do not contain condition 1.c from the IC Orders. The Texas' regulations repeat the text from §336.357(3)(E).</p> <p>Texas needs to add IC 1.c. in order to meet Compatibility Category B designation assigned to the provision.</p>
5	§336.357(2)(E)	IC Order 1.d.	2005-3	B	<p>Increased Controls For Licensees That Possess Sources Containing Radioactive Material Quantities of Concern</p> <p>The Texas regulations do not contain paragraph (2)(E) which should contain condition 1.d from the IC Orders.</p> <p>Texas needs to add IC 1.d. in order to meet Compatibility Category B designation assigned to the provision.</p>
6	§336.357(3)(D)	IC2.d.	2005-3	B	<p>Increased Controls For Licensees That Possess Sources Containing Radioactive Material Quantities of Concern</p> <p>The Texas regulations have the licensee notifying the NRC Operations Center after initiating response to actual or attempted theft, sabotage, or diversion of the material. The licensee should call the Texas equivalent to the NRC Operations Center.</p> <p>Texas needs revise the regulations so the calls go to Texas instead of the</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					NRC in order to meet Compatibility Category B designation assigned to the provision.
7	§336.357(4)(E)	IC3.a.4.	2005-3	B	<p>Increased Controls For Licensees That Possess Sources Containing Radioactive Material Quantities of Concern</p> <p>The Texas regulations have the licensee notifying the NRC Operations Center if a shipment is determined to be lost, stolen or missing. The licensee should call the Texas equivalent to the NRC Operations Center.</p> <p>Texas needs revise the regulations so the calls go to Texas instead of the NRC in order to meet Compatibility Category B designation assigned to the provision.</p>
8	§336.357(5)(B)	IC3.b.2.	2005-3	B	<p>Increased Controls For Licensees That Possess Sources Containing Radioactive Material Quantities of Concern</p> <p>The Texas regulations have the licensee notify the NRC Office of Nuclear Material Safety and Safeguards if it plans to ship a category 1 shipment for the first time. While this is consistent with the IC Order, the responsibility for this activity no longer resides with NMSS. The notification should now go to the NRC Director, Office of Federal and State Materials and Environmental Management Programs</p> <p>Texas should revise the regulations to reflect the correct NRC Office, however, this would not be required to meet Compatibility Category B designation assigned to the provision.</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
9	§336.357(6).	IC3.c.	2005-3	B	<p>Increased Controls For Licensees That Possess Sources Containing Radioactive Material Quantities of Concern</p> <p>The Texas regulations do not include the reference to IC 3.a. which is the Texas equivalent to paragraph (4.) The wording should be "...requirements of paragraphs (4) and (5) of this..." or "... requirements of paragraphs (4) and (5)(A) and (B) of this..."</p> <p>Texas needs revise the regulations to include reference to paragraph (4) in order to meet Compatibility Category B designation assigned to the provision.</p>
10	§336.357(9)(B)	IC5.b.	2005-3	B	<p>Increased Controls For Licensees That Possess Sources Containing Radioactive Material Quantities of Concern</p> <p>The Texas regulations refer to paragraph (2)(E) which does not exist. However, once Texas adds IC condition 1.c. and 1.d., the reference would be correct, assuming that 1.d. becomes (2)(E). See comments 4 and 5.</p> <p>Texas needs revise the regulations to refer to a provision that exists in order to meet Compatibility Category B designation assigned to the provision.</p>
11	§336.359	Part 20 Appendix B	2007-3	A	<p>Annual Limits on Intake (ALIs) and Derived Air Concentrations (DACs) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sewerage</p> <p>TX did not include the footnote citation "1" on the term Submersion</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>under Nitrogen and Oxygen entries.</p> <p>Footnote 1 on Submersion is incomplete and the word "material" needs to be inserted after "airborne" at the end of the footnote.</p> <p>Texas needs to make the above changes in order to meet Compatibility Category A designations assigned to Part 20, Appendix B.</p>

STATE REGULATION STATUS

State: Texas Commission on Environmental Quality

Tracking Ticket Number: 11-20

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

Date: August 18, 2011

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	Not Applicable	Not Applicable	TX DSHS Responsibility
1991-2	ASNT Certification of Radiographers Part 34 56 FR 11504 (★ Superceded by 1997-5)	none	Not Applicable	Not Applicable	TX DSHS Responsibility
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	No Comments 01/07/1998	
1992-1	Quality Management Program and Misadministrations Part 35 56 FR 34104 (★ Superceded by 2002-2)	01/27/1995	Not Applicable	Not Applicable	TX DSHS Responsibility
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.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1993-1	Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites] Parts 30, 40 58 FR 39628	10/25/1996	Final	No Comments 01/07/1998	
1993-2	Licensing and Radiation Safety Requirements for Irradiators Part 36 58 FR 7715	07/01/1996	Not Applicable	Not Applicable	TX DSHS Responsibility
1993-3	Definition of Land Disposal and Waste Site QA Program Part 61 58 FR 33886	07/22/1996	Final	No Comments 01/07/1998	
1994-1	Self-Guarantee as an Additional Financial Mechanism Parts 30, 40, 70 58 FR 68726; 59 FR 1618	none	Final	No Comments 01/07/1998	
1994-2	Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards Part 40 59 FR 28220	07/01/1997	Final	No Comments 01/07/1998	
1994-3	Timeliness in Decommissioning Material Facilities Parts 30, 40, 70 59 FR 36026	08/15/1997	Final	No Comments 01/07/1998	
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	Not Applicable	Not Applicable	TX DSHS Responsibility

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1995-2	Frequency of Medical Examinations for Use of Respiratory Protection Equipment Part 20 60 FR 7900	03/13/1998	Final	No Comments 01/07/1998	
1995-3	Low-Level Waste Shipment Manifest Information and Reporting Parts 20, 61 60 FR 15649; 60 FR 25983	03/01/1998	Final	No Comments 01/07/1998	
1995-4	Performance Requirements for Radiography Equipment Part 34 60 FR 28323 (Superceded by 1997-5)	06/30/1998	Not Applicable	Not Applicable	TX DSHS Responsibility
1995-5	Radiation Protection Requirements: Amended Definitions and Criteria Parts 19, 20 60 FR 36038	08/14/1998	Final	No Comments 01/07/1998	
1995-6	Clarification of Decommissioning Funding Requirements Parts 30, 40, 70 60 FR 38235	11/24/1998	Final	No Comments 01/07/1998	
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	Not Applicable	Not Applicable	TX DSHS Responsibility
1996-1	Compatibility with the International Atomic Energy Agency	04/01/1999	Not Applicable	Not Applicable	TX DSHS Responsibility

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
	Part 71 60 FR 50248; 61 FR 28724 (Superceded by 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	No Comments 01/07/1998	
1997-1	Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act Part 20 61 FR 65120	01/9/2000	Final ML012610092	No Comments 11/26/01 ML013330250	
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	Not Applicable	Not Applicable	TX DSHS Responsibility
1997-3	Criteria for the Release of Individuals Administered Radioactive Material Parts 20, 35 62 FR 4120	05/29/2000	Not Applicable	Not Applicable	TX DSHS Responsibility
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	Not Applicable	Not Applicable	TX DSHS Responsibility
1997-6	Radiological Criteria for License Termination Parts 20, 30, 40, 70 62 FR 39057	08/20/2000	Final ML063450071	No Comments 01/09/2007 ML070090204	
1997-7	Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea Part 30 62 FR 63634	01/02/2001	Not Applicable	Not Applicable	TX DSHS Responsibility
1998-1	Deliberate Misconduct by Unlicensed Persons Parts 30, 40, 61, 70, 71, 150 63 FR 1890; 63 FR 13773	02/12/2001	F ML063450071	N 1/09/07 ML070090204	
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)
1998-4	Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations Part 34 63 FR 37059	07/09/2001	Not Applicable	Not Applicable	TX DSHS Responsibility

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1998-5	Minor Corrections, Clarifying Changes, and a Minor Policy Change Parts 20, 32, 35, 36, 39 63 FR 39477; 63 FR 45393	10/26/2001	Final ML012610092	No Comments 11/26/2001 ML013330250	
1998-6	Transfer for Disposal and Manifests: Minor Technical Conforming Amendment Part 20 63 FR 50127	11/20/2001	Final ML063450071	No Comments 01/09/2007 ML070090204	
1999-1	Radiological Criteria for License Termination of Uranium Recovery Facilities Part 40 64 FR 17506	06/11/2002	Final ML091000165	Comments 05/13/2009 ML091180024	
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 ML012610092	No Comments 11/26/2001 ML013330250	
2000-1	Energy Compensation Sources for Well Logging and Other Regulatory Clarifications Part 39 65 FR 20337	05/17/2003	Not Applicable	Not Applicable	TX DSHS Responsibility
2000-2	New Dosimetry Technology Parts 34, 36, 39 65 FR 63750	01/08/2004	Not Applicable	Not Applicable	TX DSHS Responsibility

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
2001-1	Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material Parts 30, 31, 32 65 FR 79162	02/16/2004	Not Applicable	Not Applicable	TX DSHS Responsibility
2002-1	Revision of the Skin Dose Limit Part 20 67 FR 16298	04/05/2005	Final ML063450071	No Comments 01/09/2007 ML070090204	
2002-2	Medical Use of Byproduct Material Parts 20, 32, 35 67 FR 20249	10/24/2005	Not Applicable	Not Applicable	TX DSHS Responsibility
2003-1	Financial Assurance for Materials Licensees Parts 30, 40, 70 68 FR 57327	12/03/2006	Final ML063450071	No Comments 01/09/2007 ML070090204	
2004-1	Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments Part 71 69 FR 3697	10/01/2007	Not Applicable	Not Applicable	TX DSHS Responsibility
2005-1	Security Requirements for Portable Gauges Containing Byproduct Material Part 30 70 FR 2001	07/11/2008	Not Applicable	Not Applicable	TX DSHS Responsibility
2005-2	Medical Use of Byproduct Material - Recognition of Specialty Boards Part 35 70 FR 16336; 71 FR 1926	04/29/2008	Not Applicable	Not Applicable	TX DSHS Responsibility

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
*2005-3	Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) 70 FR 72128	12/01/2005	Proposed ML111880217 License Condition ML052240226	Comments 08/18/2011 ML112060277 No Comments 12/12/2005 ML053420404	
2006-1	Minor Amendments Parts 20, 30, 32, 35, 40 and 70 71 FR 15005	03/27/2009			
2006-2	National Source Tracking System - Serialization Requirements Part 32 with reference to Part 20 Appendix E 71 FR 65685	02/06/2007	Not Applicable	Not Applicable	TX DSHS Responsibility
*2006-3	National Source Tracking System Part 20 71 FR 65685, 72 FR 59162	01/31/2009	Proposed ML111880217	Comments 08/18/2011 ML112060277	Note: Because of the upcoming licensee for a LLW site, TCEQ is adopting this provision prior to the LLW site becoming operational and receiving waste.
2007-1	Medical Use of Byproduct Material - Minor Corrections and Clarifications Parts 32 and 35 72 FR 45147, 54207	10/29/2010	Not Applicable	Not Applicable	TX DSHS Responsibility
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	Not Applicable	Not Applicable	TX DSHS Responsibility

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*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 ML111880217	Comments 08/18/2011 ML112060277	
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 ML082100350	No Comments 09/11/2008 ML082410019	
*2008-1	Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent Parts 19, 20 72 FR 68043	02/15/2011	Proposed ML111880217	No Comments 08/18/2011 ML112060277	
2009-1	Medical Use of Byproduct Material – Authorized User Clarification Part 35 74 FR 33901	09/28/2012			
2011-1	Decommissioning Planning Parts 20, 30, 40, 70 76 FR 35512	12/17/2015			