



TEXAS DEPARTMENT OF STATE HEALTH SERVICES

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October 22, 2015

Ms. Pamela Henderson, Deputy Director
Division of Material Safety, State, Tribal
and Rulemaking Programs (MSTR)
Office of Nuclear Material Safety and
Safeguards (NMSS)
U.S. Nuclear Regulatory Commission
T8-E24
Washington, D.C. 20555-0001

Dear Ms. Henderson:

The Texas Radiation Control Program is pleased to present the attached proposed rules for NRC's review. Recognizing NRC's Agreement State compatibility date of March 19, 2016, Texas is submitting these proposed rules for NRC's review to complete the review process as soon as possible. Revisions to the Texas Regulations for Control of Radiation, Title 25, Texas Administrative Code (TAC), include the following sections:

§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

§289.252 relating to Licensing of Radioactive Material

§289.257 relating to Packaging and Transportation of Radioactive Material

The proposed revisions for §§289.201, 289.202, 289.251, 289.252, and 289.257 were presented to the Texas State Health Services Council (SHSC) on September 9, 2015. On September 10, 2015, the SHSC provided their consent to allow the Health and Human Services Commission (HHSC) review of these proposed rules to proceed. That review is still in progress.

Following final approval by the Executive Commission of HHSC, the proposed rules will be published in the *Texas Register* and made available via our website email system for a 30-day public comment period. Since these proposed rule requirements are essentially identical to the NRC's 10 CFR, Part 37, rule requirements, no significant changes are expected. If any significant changes are identified, we will notify the NRC immediately.

The proposed regulations are identified by underlined text for new text and **[bold face and brackets]** for deleted text. Please see the following chart that identifies the outstanding required changes in order for Texas to meet NRC compatibility

<u>Rats ID</u>	<u>NRC Title</u>	<u>State Section</u>
N/A	Public Notification and Public Participation	§289.202
2007-2	Exemptions from Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements	§289.251
2007-3	Requirements for Expanded Definition of Byproduct Material	§289.251
2011-2	Licenses, Certifications, and Approvals for Materials Licensees	§289.252 §289.253
2012-4	Requirements for Distribution of Byproduct Material	§289.251 §289.252
2013-1	Physical Protection of Byproduct Material	§289.201 §289.252 §289.257
2013-2	Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions	§289.201 §289.251 §289.252
2015-1	Domestic Licensing of Special Nuclear Material – Written Reports and Clarifying Amendments	§289.252
2015-2	Safeguards Information - Modified Handling Categorization, Change for Materials Facilities	§289.252

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

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If you have any questions, please feel free to contact Chuck Flynn at 512-834-6770, ext. 2821, or Chuck.Flynn@dshs.state.tx.us; or Richard Ratliff at 512-834-6688, ext. 6679, or Richard.Ratliff@dshs.state.tx.us.

Sincerely,



Chuck Flynn, Manager
Radiation Group
Policy, Standards, and Quality Assurance Unit
Division for Regulatory Services
Department of State Health Services



Richard A. Ratliff, P.E., L.M.P.
Agreement State Director and
Radiation Safety Licensing Branch Manager
Division for Regulatory Services
Texas Department of State Health Services

Attachments

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
\$289.257(f)(2)	30.13	2013-1	B	Carriers	Meets compatibility
\$289.201(b)(3)	37.5	2013-1	C	Access Control	Meets compatibility
\$289.201(b)(8)	37.5	2013-1	C	Aggregated	Meets compatibility
\$289.201(b)(9)	37.5	2013-1	B	Agreement State	Meets compatibility
\$289.201(b)(12)	37.5	2013-1	B	Approved Individual	Meets compatibility
\$289.201(b)(14)	37.5	2013-1	C	Background Investigation	Meets compatibility
\$289.201(b)(16)	37.5	2013-1	A	Becquerel	Meets compatibility
\$289.201(b)(19)	37.5	2013-1	H&S	Byproduct Material	Meets compatibility
\$289.257(d)(3)	37.5	2013-1	B	Carrier	Existing Meets compatibility
\$289.201(b)(20)	37.5	2013-1	B	Category 1 Quantity of Radioactive Material	Meets compatibility
\$289.201(b)(21)	37.5	2013-1	B	Category 2 Quantity of Radioactive Material	Meets compatibility
\$289.201(b)(31)	37.5	2013-1	A	Curie	Meets compatibility
\$289.201(b)(38)	37.5	2013-1	C	Diversion	Meets compatibility
\$289.201(b)(45)	37.5	2013-1	B	Escorted Access	Meets compatibility
\$289.201(b)(50)	37.5	2013-1	C	Fingerprint Orders	Meets compatibility
\$289.201(b)(67)	37.5	2013-1	C	Local Law Enforcement Agency	Meets compatibility
\$289.201(b)(68)	37.5	2013-1	B	Lost or Missing Licensed Material	Meets compatibility

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
§289.201(b)(73)	37.5	2013-1	B	Mobile Device	Meets compatibility
§289.201(b)(75)	37.5	2013-1	B	Movement Control Center	Meets compatibility
§289.201(b)(78)	37.5	2013-1	B	No-later-than Arrival Time	Meets compatibility
§289.201(b)(82)	37.5	2013-1	C	Person	Meets compatibility
§289.201(b)(109)	37.5	2013-1	C	Reviewing Official	Meets compatibility
§289.201(b)(112)	37.5	2013-1	C	Sabotage	Meets compatibility
§289.201(b)(113)	37.5	2013-1	B	Safe Haven	Meets compatibility
§289.201(b)(115)	37.5	2013-1	C	Security Zone	Meets compatibility
§289.201(b)(128)	37.5	2013-1	B	Telemetric Position Monitoring System	Meets compatibility
§289.201(b)(135)	37.5	2013-1	B	Trustworthiness and Reliability	Meets compatibility
§289.201(b)(138)	37.5	2013-1	B	Unescorted Access	Meets compatibility
§289.252(ii)(1)	37.11(c)	2013-1	B	Specific Exemptions	Meets compatibility
§289.252(ii)(2)(A)	37.21(a)	2013-1	C	Personnel Access	Meets compatibility
§289.252(ii)(2)(B)	37.21(b)	2013-1	B	Personnel Access	Meets compatibility
§289.252(ii)(2)(C)	37.21(c)	2013-1	B	Personnel Access	Meets compatibility
§289.252(ii)(3)(A)	37.23(a)	2013-1	B	Access Authorization Program Requirements	Meets compatibility
§289.252(ii)(3)(B), (i) & (ii)	37.23(b)(1) & (2)	2013-1	B	Access Authorization Program Requirements	Meets compatibility

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
§289.252(ii)(3)(B)(iii)	37.23(b)(3)	2013-1	C	Access Authorization Program Requirements	Meets compatibility
§289.252(ii)(3)(B)(iv) & (v)	37.23(b)(4) & (5)	2013-1	B	Access Authorization Program Requirements	Meets compatibility
§289.252(ii)(3)(C)	37.23(c)	2013-1	B	Access Authorization Program Requirements	Meets compatibility
§289.252(ii)(3)(D)	37.23(d)	2013-1	B	Access Authorization Program Requirements	Meets compatibility
§289.252(ii)(3)(E)	37.23(e)	2013-1	B	Access Authorization Program Requirements	Meets compatibility
§289.252(ii)(3)(F)	37.23(f)	2013-1	C	Access Authorization Program Requirements	Meets compatibility
§289.252(ii)(3)(G)	37.23(g)	2013-1	B	Access Authorization Program Requirements	Meets compatibility
§289.252(ii)(3)(H)	37.23(h)	2013-1	C	Access Authorization Program Requirements	Meets compatibility
§289.252(ii)(4)(A)	37.25(a)	2013-1	B	Background Investigations	Meets compatibility
§289.252(ii)(4)(B)	37.25(b)	2013-1	C	Background Investigations	Meets compatibility
§289.252(ii)(4)(C)	37.25(c)	2013-1	B	Background Investigations	Meets compatibility
§289.252(ii)(5)(A)	37.27(a)	2013-1	B	Requirements for Criminal History Records Check...	Meets compatibility
§289.252(ii)(5)(B)	37.27(b)	2013-1	B	Requirements for Criminal History Records Check...	Meets compatibility
§289.252(ii)(5)(C)	37.27(c)	2013-1	B	Requirements for Criminal History Records Check...	Meets compatibility
§289.252(ii)(6)(A)	37.29(a)	2013-1	B	Relief from Fingerprinting...	Meets compatibility
§289.252(ii)(6)(A)(x)	37.29(a)(10)	2015-2	B	Relief from Fingerprinting...	Meets compatibility

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
\$289.252(ii)(6)(B)	37.29(b)	2013-1	B	Relief from Fingerprinting...	Meets compatibility
\$289.252(ii)(7)(A) - (D)	37.31(a) - (d)	2013-1	B	Protection of Information	Meets compatibility
\$289.252(ii)(7)(E)	37.31(e)	2013-1	C	Protection of Information	Meets compatibility
\$289.252(ii)(8)	37.33	2013-1	C	Access Authorization Program Review	Meets compatibility
\$289.252(ii)(9)(A)	37.41(a)	2013-1	B	Security Program	Meets compatibility
\$289.252(ii)(9)(B)	37.41(b)	2013-1	B	Security Program	Meets compatibility
\$289.252(ii)(9)(C)	37.41(c)	2013-1	C	Security Program	Meets compatibility
\$289.252(ii)(10)(A)	37.43(a)	2013-1	B	General Security Program Requirements	Meets compatibility
\$289.252(ii)(10)(B)	37.43(b)	2013-1	C	General Security Program Requirements	Meets compatibility
\$289.252(ii)(10)(C)(i)-(iii)	37.43(c)(1) - (3)	2013-1	B	General Security Program Requirements	Meets compatibility
\$289.252(ii)(10)(C)(iv)	37.43(c)(4)	2013-1	C	General Security Program Requirements	Meets compatibility
\$289.252(ii)(10)(D)(i)-(viii)	37.43(d)(1) - (8)	2013-1	C	General Security Program Requirements	Meets compatibility
\$289.252(ii)(10)(D)(i)	37.43(d)(1)	2015-2	C	General Security Program Requirements	Meets compatibility
\$289.252(ii)(11)(A) & (B)	37.45(a) & (b)	2013-1	B	LLEA Coordination	Meets compatibility
\$289.252(ii)(11)(C)	37.45(c)	2013-1	C	LLEA Coordination	Meets compatibility
\$289.252(ii)(11)(D)	37.45(d)	2013-1	B	LLEA Coordination	Meets compatibility

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
§289.252(ii)(12)	37.47	2013-1	B	Security Zones	Meets compatibility
§289.252(ii)(13)(A)	37.49(a)	2013-1	B	Monitoring, Detection, and Assessment	Meets compatibility
§289.252(ii)(13)(B)	37.49(b)	2013-1	B	Monitoring, Detection, and Assessment	Meets compatibility
§289.252(ii)(13)(C)	37.49(c)	2013-1	B	Monitoring, Detection, and Assessment	Meets compatibility
§289.252(ii)(13)(D)	37.49(d)	2013-1	B	Monitoring, Detection, and Assessment	Meets compatibility
§289.252(ii)(14)	37.51	2013-1	C	Maintenance and Testing	Meets compatibility
§289.252(ii)(15)	37.53	2013-1	B	Requirements for Mobile Devices	Meets compatibility
§289.252(ii)(16)	37.55	2013-1	C	Security Program Review	Meets compatibility
§289.252(ii)(17)	37.57	2013-1	C	Reporting of Events	Meets compatibility
§289.252(ii)(17)(C)	70.50(c)(2)	2015-1	C	Reporting Requirements	Meets compatibility
§289.252(ii)(18)(A) - (C)	37.71(a) - (c)	2013-1	B	Additional Requirements for Transfer...	Meets compatibility
§289.252(ii)(18)(D)	37.71(d)	2013-1	C	Additional Requirements for Transfer...	Meets compatibility
§289.252(ii)(19)	37.73(c)	2013-1	B	Applicability of Physical Protection...	Meets compatibility
§289.252(ii)(20)(A) - (D)	37.75(a) - (d)	2013-1	B	Preplanning and Coordination...	Meets compatibility
§289.252(ii)(20)(E)	37.75(e)	2013-1	C	Preplanning and Coordination...	Meets compatibility
§289.252(ii)(21)(A) - (D)	37.77(a) - (d)	2013-1	B	Advance Notification...	Meets compatibility

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
§289.252(ii)(21)(E)	37.77(e)	2013-1	C	Advance Notification...	Meets compatibility
§289.252(ii)(21)(F)	37.77(f)	2015-2	C	Advance Notification...	Meets compatibility
§289.252(ii)(22)(A)	37.79(a)	2013-1	B	Requirements for Physical Protection...	Meets compatibility
§289.252(ii)(22)(B)	37.79(b)	2013-1	B	Requirements for Physical Protection...	Meets compatibility
§289.252(ii)(22)(C)	37.79(c)	2013-1	B	Requirements for Physical Protection...	Meets compatibility
§289.252(ii)(23)(A) - (F)	37.81(a) - (f)	2013-1	B	Reporting of Events	Meets compatibility
§289.252(ii)(23)(G) - (H)	37.81(g) - (h)	2013-1	C	Reporting of Events	Meets compatibility
§289.252(ii)(24)	37.101	2013-1	C	Form of Records	Meets compatibility
§289.252(ii)(25)	37.103	2013-1	C	Record Retention	Meets compatibility
§289.252(ji)(9)	Appendix A to Part 37	2013-1	B	Table 1 - Category 1 and Category 2 Threshold	Meets compatibility
§289.257(q)(3)	71.97	2013-1	B	Advance Notification of Shipment of Irradiated Reactor Fuel and Nuclear Waste	Meets compatibility
§289.201(b)(139)	40.4	2013-2	B	Unrefined and Unprocessed Ore	Meets compatibility
§289.251(d)(3)	40.13(c)	2013-2	B	Unimportant Quantities of Source Material	Meets compatibility
§289.251(d)(3)(B)(i)	40.13(c)(2)(i)	2013-2	B	Unimportant Quantities of Source Material	Meets compatibility
§289.251(d)(3)(B)(ii)	40.13(c)(2)(iii)	2013-2	B	Unimportant Quantities of Source Material	Meets compatibility

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
§289.251(d)(3)(E) former (i) deleted	40.13(c)(5)(i)	2013-2	B	Unimportant Quantities of Source Material	Meets compatibility
§289.251(d)(3)(E)(i)-(iii)	40.13(c)(5)(ii)-(iv)	2013-2	B	Unimportant Quantities of Source Material	Meets compatibility
§289.251(d)(3)(G)	40.13(c)(7)	2013-2	B	Unimportant Quantities of Source Material	Meets compatibility
§289.251(d)(5)	40.13(c)(10)	2013-2	B	Unimportant Quantities of Source Material	Meets compatibility
§289.251(d)(3)(E)(i) and (ii)	40.13 Footnote 2	2013-2	B	Unimportant Quantities of Source Material	Meets compatibility
§289.251(f)(3)(A)	40.22(a)	2013-2	B	Small Quantities of Source Material	Meets compatibility
§289.251(f)(3)(A)(i)(I) - (IV)	40.22(a)(1) - (4)	2013-2	B	Small Quantities of Source Material	Meets compatibility
§289.251(f)(3)(A)(ii)	40.22(b)	2013-2	B	Small Quantities of Source Material	Meets compatibility
§289.251(f)(3)(A)(ii)(I) - (III)	40.22(b)(1) - (3)	2013-2	B	Small Quantities of Source Material	Meets compatibility
§289.251(f)(3)(A)(ii)(IV)	40.22(b)(5)	2013-2	B	Small Quantities of Source Material	Meets compatibility
§289.251(f)(3)(A)(iii)	40.22(c)	2013-2	C	Small Quantities of Source Material	Meets compatibility
§289.251(f)(3)(A)(iv)	40.22(d)	2013-2	B	Small Quantities of Source Material	Meets compatibility
§289.251(f)(3)(A)(v)	40.22(e)	2013-2	B	Small Quantities of Source Material	Meets compatibility
§289.252(cc)(6)(A)	40.54	2013-2	B	Requirements for License to Initially Transfer...	Meets compatibility
§289.252(cc)(6)(B)(i)	40.55(a)	2013-2	B	Conditions of Licenses to Initially Transfer...	Meets compatibility

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
§289.252(cc)(6)(B)(ii)	40.55(b)	2013-2	B	Conditions of Licenses to Initially Transfer...	Meets compatibility
§289.252(cc)(6)(B)(iii)	40.55(c)	2013-2	B	Conditions of Licenses to Initially Transfer...	Meets compatibility
§289.252(cc)(6)(B)(iv)	40.55(d)	2013-2	B	Conditions of Licenses to Initially Transfer...	Meets compatibility
§289.252(cc)(6)(B)(v)	40.55(e)	2013-2	C	Conditions of Licenses to Initially Transfer...	Meets compatibility
§289.252(v)(6), (8), (9), and (10)	32.210(e), (g), & (h) and 32.211	2012-4	B B C B	NRC comment per letters dated December 16, 2014, and May 26, 2015 Registration of product information Texas' regulations omit the term "certificate of" throughout this section. Texas needs to add the term "certificate of" in sections (v)(6,8,9 and 10), where applicable, in order to meet the Compatibility Category B designation of 10 CFR 32.210(e) and (g) and 32.211; and the Compatibility Category C designation of 10 CFR 32.201 (h).	Meets compatibility
§289.251(e)(3)(A)(i)(II) - (IV) and (V)	30.15(a)(2)	2012-4	B	NRC comment per letter dated May 26, 2015 Certain items containing byproduct material	Meets compatibility

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
<p>§289.252(e) and §289.253(b)</p>	<p>39.13</p>	<p>2011-2</p>	<p>H&S</p>	<p>In the Texas 289.251(e)(3)(A)(i)(IV) which is equivalent to 30.15(a)(2)(iii), Texas adds the words "...any agreement state, or any licensing state" after the words "specific license issued by the NRC." Also Texas §289.251(e)(3)(A)(i)(V) refers to lock illuminators which are not included in 10 CFR 30.15(a)(2) Texas needs to remove §289.251(e)(3)(A)(i)(V) and the words "any agreement state, or any licensing state" from §289.251(e)(3)(A)(i)(IV) in order to meet the Compatibility Category B designation assigned to 10 CFR 30.15(a)(2).</p>	<p>Texas DSHS will address this item in a future rule revision</p>
				<p>NRC comment per letter dated May 26, 2015</p> <p>Specific licenses for well logging Texas omitted the revised §39.13 language from their regulations. Texas needs to add the revised language in 10 CFR 39.13 to 289.252(e) and 289.253(b) in order to meet the Compatibility Category H&S designation assigned to 10 CFR 39.13.</p>	

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
§289.251(f)(4)(K)(ii)(V) and (VI)	31.12(c)(4)	2007-3	C	<p>NRC comment per letters dated November 19, 2010, December 16, 2014, and May 26, 2015</p> <p>General license for certain items and self-luminous products containing radium-226</p> <p>Texas' regulations state in Part (V) "by a specific license issued in accordance with this section"; it omitted that the specific license can also be issued by the NRC or other Agreement States. Texas needs to add that the specific license can also be issued by the NRC or other Agreement States in order to meet the Compatibility Category C designation assigned to 10 CFR 31.12(c)(4).</p>	Meets compatibility
§289.251(e)(1)(C)	30.14	2007-2	B	<p>NRC comment per letters dated November 19, 2010, and May 26, 2015</p> <p>Exempt concentrations</p> <p>Texas adds "any agreement state, or any licensing state" to §289.251(e)(1)(C). Exempt distribution is reserved for NRC only. Texas needs to remove "any agreement state, or licensing state" from §289.251(e)(1)(C) in</p>	Meets compatibility

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
§289.251(f)(4)(K)	31.12	N/A	C	<p>order to meet the Compatibility Category B designation assigned to 10CFR30.14(c).</p> <p>Texas adds the phrase "or the general license provided in 289.252(ee). Texas needs to omit the above phrase in 289.251(e)(1)(C) in order to meet the Compatibility Category B designation assigned to 10 CFR 30.14.</p>	
				<p>NRC comment per letter dated May 26, 2015</p> <p>General license for certain items and self-luminous products containing radium-226</p> <p>Texas omits: 1) 31.12(b) which exempts general licensees from parts 19, 20, 21, etc. and 2) the second sentence of 31.12(a)(5) "For the purposes of this paragraph, "small radium sources" means discrete survey instrument check sources,..." Texas needs to add requirements that meet the essential objectives of 10 CFR 31.12(b) and 31.12(a)(5) to §289.251(f)(4)(K) in order to meet the Compatibility Category C designation assigned to 10 CFR 31.12.</p>	<p>Texas DSHS will address this item in a future rule revision</p>

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS	TX RESPONSE
§289.202(ddd)(4) see new (ddd)(3)	20.1403 20.1405	N/A	C	<p>NRC comment per letters dated December 16, 2014, and May 26, 2015</p> <p>Public Notification and Public Participation</p> <p>Texas regulations in 289.202 (ddd)(4) state "for release of a site in accordance with paragraph (3) of this subsection..." Paragraph (3) is the "Alternate criteria for license termination". Texas omits the additional reference to the "Criteria for license termination under restricted conditions". Texas does not have a separate section for the "Criteria for license termination under restricted conditions". Texas needs to create a separate section for the "Criteria for license termination under restricted conditions"; and correct the reference to point to this criteria and the "Alternate criteria for license termination" in order to meet the Compatibility Category C designation assigned to 10 CFR 20.1403 and 20.1405.</p>	Meets compatibility

