



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 27, 2016

Mr. Charles Maguire, Director
Radioactive Materials Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Dear Mr. Maguire:

We have reviewed the final revisions to the rules of Texas Commission on Environmental Quality (TCEQ) in Title 30 Texas Administrative Code (TAC) § 336 Radioactive Substance Rules, received by our office on May 18, 2016. These regulations were reviewed by comparison to the equivalent U.S. Nuclear Regulatory Commission (NRC) rules and the requirements of the two amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with you on June 23, 2016.

As a result of our review, we have two 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 Nuclear Material Safety and Safeguards (NMSS) Procedure SA-200, "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements."

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 NMSS Procedure SA-201, "Review of State Regulatory Requirements," please highlight the location of any changes made by TCEQ, in response to our comments, and provide a copy to Division of Material Safety, State, Tribal, and Rulemaking Programs, NMSS. The SRS Data Sheet summarizes our knowledge of the status of other TCEQ 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 NMSS State Communication Portal: <https://scp.nrc.gov/rulemaking.html>.

C. Maguire

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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 Michelle Beardsley, State Regulation Review Coordinator, at (610) 337-6492 (Michelle.Beardsley@nrc.gov) or Binesh Tharakan at (817) 200-1116 (Binesh.Tharakan@nrc.gov).

Sincerely,

/RA/

PMichalak for PHenderson

Pamela J. Henderson, Deputy Director
Division of Material Safety, State, Tribal
and Rulemaking Programs
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. Compatibility Comments
2. TCEQ SRS Data Sheet

C. Maguire

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Pamela J. Henderson, Deputy Director
Division of Material Safety, State, Tribal
and Rulemaking Programs
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DISTRIBUTION: SP08
DIR RF (16-69)
BTharakan, RSAO
TCEQ File

| | | | | | |
|--------|-----------|------------|------------------------------|-----------|-----------------------------|
| OFFICE | RIV | ASPB | OGC | ASPB:BC | MSTR:DD |
| NAME | BTharakan | MBeardsley | AGenddelman NLO via email | PMichalak | PMichalak for PHenderson |
| DATE | 6/6/16 | 6/8/16 | 6/22/16 | 6/27/16 | 6/27/16 |

ML16160A082

OFFICIAL RECORD COPY

Package ML16140A044

COMPATIBILITY COMMENTS ON TCEQ FINAL REGULATIONS

| STATE SECTION | | NRC SECTION | RATS ID | CATEGORY | SUBJECT and COMMENTS |
|---------------|---------------|--------------------------|---------|----------|---|
| 1 | §336.1105(10) | 10 CFR 40.4 | 2011-2 | C | <p>Definition Construction, Paragraph 1-8, 9(i)</p> <p>TCEQ does not have separate and distinct definitions of <i>Construction</i> and <i>Commencement of Construction</i> as required by 10 CFR 40.4. They are combined and as written, do not meet the essential objectives of 10 CFR 40.4 .</p> <p>TCEQ needs to have separate and distinct definitions of <i>Construction</i> and <i>Commencement of Construction</i> in §336.1105 that meet the essential objectives of 10 CFR 40.4 in order to meet the Compatibility Category C designation assigned to 10 CFR 40.4.</p> |
| 2 | §336.1105(10) | 10 CFR 150.31 (b)(3)(iv) | 2011-2 | C | <p>Requirements for Agreement State regulation of byproduct material.</p> <p>TCEQ does not have separate and distinct definitions of <i>Construction</i> and <i>Commencement of Construction</i> as required by 10 CFR 150.31. They are combined and as written, do not meet the essential objectives of 10 CFR 150.31(b)(3)(iv).</p> <p>TCEQ needs to have separate and distinct definitions of <i>Construction</i> and <i>Commencement of Construction</i> in §336.1105 that meet the essential objectives of 10 CFR 150(b)(3)(iv) in order to meet the Compatibility Category C designation assigned to 10 CFR 150(b)(3)(iv).</p> |

STATE REGULATION STATUS

State: Texas Commission on Environmental Quality

Tracking Ticket Number: 16-69

Date: 6/27/2016

[# 2 amendment(s) reviewed identified by a * at the beginning of the equivalent NRC requirement.]

| RATS ID | NRC Chronology Identification | Date Due for State Adoption | Incoming Letter | 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 and 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 and 35 57 FR 45566 | none | Not Required | Not Required | These regulation changes are not required to be adopted for purposes of Compatibility. |

Enclosure

| RATS ID | NRC Chronology Identification | Date Due for State Adoption | Incoming Letter | Outgoing Package | Notes |
|---------|---|-----------------------------|-----------------|---------------------------|------------------------|
| 1993-1 | Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites] Parts 30 and 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 and 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 and 70 59 FR 36026 | 08/15/1997 | Final | No Comments 01/07/1998 | |

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|---------|--|-----------------------------|-----------------|---------------------------|------------------------|
| 1995-1 | Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use Parts 30, 32 and 35 59 FR 61767; 59 FR 65243; 60 FR 322 | 01/01/1998 | Not Applicable | Not Applicable | TX DSHS Responsibility |
| 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 and 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 (Superseded by 1997-5) | 06/30/1998 | Not Applicable | Not Applicable | TX DSHS Responsibility |
| 1995-5 | Radiation Protection Requirements: Amended Definitions and Criteria Parts 19 and 20 60 FR 36038 | 08/14/1998 | Final | No Comments 01/07/1998 | |
| 1995-6 | Clarification of Decommissioning Funding Requirements Parts 30, 40 and 70 60 FR 38235 | 11/24/1998 | Final | No Comments 01/07/1998 | |

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|---------|---|-----------------------------|----------------------|--|--|
| 1995-7 | Medical Administration of Radiation and Radioactive Materials Parts 20 and 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 Part 71 60 FR 50248; 61 FR 28724 (Superceded by 2004-1) | 04/01/1999 | Not Applicable | Not Applicable | TX DSHS Responsibility |
| 1996-2 | One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses Parts 30, 40 and 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 and 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 |

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|---------|--|-----------------------------|----------------------|--|---|
| 1997-3 | Criteria for the Release of Individuals Administered Radioactive Material Parts 20 and 35 62 FR 4120 | 05/29/2000 | Not Applicable | | TX DSHS Responsibility |
| 1997-4 | Fissile Material Shipments and Exemptions Part 71 62 FR 5907 (Superseded 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 and 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 and 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 and 150 63 FR 1890; 63 FR 13773 | 02/12/2001 | Final ML063450071 | No Comments 1/09/07 ML070090204 | |

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|---------|--|-----------------------------|----------------------|--|---|
| 1998-2 | Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees Parts 30, 40 and 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) |
| 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 |
| 1998-5 | Minor Corrections, Clarifying Changes, and a Minor Policy Change Parts 20, 32, 35, 36 and 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 | R ML13240A300 | Comments 10/03/2013 ML13240A299 | |

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|----------------|--|------------------------------------|------------------------|--|--|
| 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 and 39 65 FR 63750 | 01/08/2004 | Not Applicable | Not Applicable | TX DSHS Responsibility |
| 2001-1 | Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material Parts 30, 31 and 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 and 35 67 FR 20249 | 10/24/2005 | Not Applicable | Not Applicable | TX DSHS Responsibility |

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|---------|---|-----------------------------|--|--|------------------------|
| 2003-1 | Financial Assurance for Materials Licensees Parts 30, 40 and 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 |
| 2005-3 | Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) 70 FR 72128 | 12/01/2005 | Final ML14055A034 License Condition ML052240226 | No Comments 05/03/2014 ML14055A027 No Comments 12/12/2005 ML053420404 | |
| 2006-1 | Minor Amendments Parts 20, 30, 32, 35, 40 and 70 71 FR 15005 | 03/27/2009 | Final ML16071A117 | No Comments 03/30/2016 ML16071A113 | |

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|---------|--|-----------------------------|----------------------------------|--|---|
| 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 | Final ML14055A034 | No Comments 05/13/2014 ML14055A027 | Note: TCEQ adopted 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 and 150 72 FR 58473 | 12/17/2010 | Not Applicable | Not Applicable | TX DSHS Responsibility |
| 2007-3 | Requirements for Expanded Definition of Byproduct Material Parts 20, 30, 31, 32, 33, 35, 61 and 150 72 FR 55864 | 11/30/2010 | Final ML14055A034 | No Comments 05/13/2014 ML14055A027 | |
| 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 | |

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|---------|--|-----------------------------|-------------------------|---------------------------------------|------------------------|
| 2008-1 | Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent Parts 19 and 20 72 FR 68043 | 02/15/2011 | Final ML14055A034 | Comments 05/13/2014 ML14055A027 | |
| 2009-1 | Medical Use of Byproduct Material – Authorized User Clarification Part 35 74 FR 33901 | 09/28/2012 | | | TX DSHS Responsibility |
| 2011-1 | Decommissioning Planning Parts 20, 30, 40 and 70 76 FR 35512 | 12/17/2015 | | | |
| *2011-2 | Licenses, Certifications, and Approvals for Materials Licensees Parts 30, 36, 39, 40, 70 and 150 76 FR 56951 | 11/14/2014 | Proposed ML16140A109 | Comments 6/27/2016 ML16140A044 | |
| 2012-1 | Change of Compatibility of 10 CFR 31.5 and 31.6 (See RATS ID: 2001-1 for Rule text) 77 FR 3640 | 01/25/2015 | Not Applicable | Not Applicable | TX DSHS Responsibility |
| *2012-2 | Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste Part 71 77 FR 34194 | 08/10/2015 | Not Applicable | Not Applicable | TX DSHS Responsibility |
| 2012-3 | Technical Corrections Parts 30, 34, 40 and 71 77 FR 39899 | 08/06/2015 | | | |

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|---------|---|-----------------------------|---|---|------------------------|
| *2012-4 | Requirements for Distribution of Byproduct Material Parts 30, 31, 32, 40 and 70 77 FR 43666 | 10/23/2015 | Not Applicable | Not Applicable | TX DSHS Responsibility |
| 2013-1 | Physical Protection of Byproduct Material Parts 20, 30, 32, 33, 34, 35, 36, 37, 39 and 71 78 FR 16922 | 03/19/2016 | Proposed ML15323A211 Proposed License Condition ML16049A214 | Comments 01/13/2016 ML15323A207 No Comments 03/01/2016 ML16049A154 | |
| 2013-2 | Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions Parts 30, 40 and 70 78 FR 32310 | 08/27/2016 | | | |
| *2015-1 | Domestic Licensing of Special Nuclear Material – Written Reports and Clarifying Amendments Part 70 79 FR 57721, 80 FR 143 | 01/26/2018 | Proposed ML16140A109 | No Comments 6/27/2016 ML16140A044 | |
| 2015-2 | Safeguards Information - Modified Handling Categorization, Change for Materials Facilities Parts 30, 37, 73 and 150 79 FR 58664, 80 FR 3865 | 01/28/2018 | Proposed ML15323A211 | Comments 01/13/2016 ML15323A207 | |

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| *2015-3 | Revisions to Transportation Safety Requirements and Harmonization with International Atomic Energy Agency Transportation Requirements Part 71 80 FR 33987 | 07/13/2018 | Not Applicable | Not Applicable | TX DSHS Responsibility |
| 2015-4 | Miscellaneous Corrections Parts 37 and 40 80 FR 45841 | 09/02/2018 | | | |
| 2015-5 | Miscellaneous Corrections Parts 19, 20, 30, 32, 37, 40, 61, 70, 71 and 150 80 FR 74974 | 12/31/2018 | | | |
| N/A | Compact Waste Disposal Facility and Commingling of Waste Part 61 | N/A | Final ML121230326 | No Comments 06/29/2012 ML12152A150 | |
| N/A | 10 CFR Part 40 | N/A | R ML13240A300 | Comments 10/03/2013 ML13240A299 | |
| N/A | Exemption for Radioactive Substances from Disposal Requirements | N/A | Final ML13176A107 | No Comments 08/15/2013 ML13176A104 | |
| N/A | Legislation on Production Area Authorizations and Compact Waste | N/A | Final ML13178A064 | No Comments 08/23/2013 ML13178A059 | |