

May 13, 2009

Susan Jablonski, Director
Radioactive Materials Division
Texas Commission on Environmental Quality
P.O. Box 13087 MS 122
Austin, TX 78711-3087

Dear Ms. Jablonski:

We have reviewed the final revisions to the Texas Commission on Environmental Quality regulations in Title 30, Texas Administrative Code, Chapters 37 and 336, received by our office on April 8, 2009. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Part 40 and the requirements of the one amendment identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with you on May 12, 2009.

As a result of our review, we have two comments that have been identified in the enclosure. Both comments stand from our letter dated September 18, 2008. 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 Federal and State Materials and Environmental Management Programs (FSME) Procedure [SA-200](#).

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 FSME Procedure [SA-201](#), "Review of State Regulatory Requirements," please highlight the location of any changes made by Texas, in response to our comments, 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/nrc/rulemaking.htm>.

S. Jablonski

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If you have any questions regarding the comment, 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 William R. Rautzen at (301) 415-7206 (william.rautzen@nrc.gov).

Sincerely,

/RA/

Terrence Reis, Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

Enclosures:
As stated

If you have any questions regarding the comment, 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 William R. Rautzen at (301) 415-7206 (William.Rautzen@nrc.gov).

Sincerely,

/RA/

Terrence Reis, Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

Enclosures:
As stated

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DATE	04/28/09		04/28/08		05/07/09		05/13/09		05/13/09	

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COMPATIBILITY COMMENT ON TEXAS FINAL REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	30 TAC 336.1129	Part 40 Appendix A	1999-1	C	<p>Appendix A: Criterion 6(6)</p> <p>Texas CEQ does not provide a course of action if the dose measured is greater than the limit. Texas CEQ has not included the method to calculate the averaged benchmark dose when there is a presence of many isotopes. This requirement mandates a proposed course of action should benchmark doses be exceeded and outlines a method of dose calculation should more than one isotope be present.</p> <p>Texas CEQ needs to add the dose requirements to 30 TAC 336.1129 to meet the Compatibility Category C designation assigned to 10 CFR 40 Appendix A Technical Requirements Criterion 6(6). Comment Stands: From letter dated September 18, 2008.</p>
2	30 TAC 336.1127	Part 40 Appendix A	N/A	C	<p>Appendix A: Criterion 10</p> <p>Texas CEQ revised its regulation in §336.1127 to change the assumed annual real interest rate to 2.0% for long-term care funds for uranium mill sites. NRC's regulations use a 1.0% assumed annual real interest rate. The lower assumed annual real interest rate is a more conservative approach to ensure there are sufficient funds to cover the annual costs of site care, surveillance, and maintenance during long-term care. These sites are generally turned over to the U.S. Department of Energy (DOE) for long-term care, conducted under an NRC license. Sufficient funding is essential for adequate care, surveillance, and maintenance of the site after DOE takes ownership. The 2.0% interest rate could underfund DOE's long-term care activities at the site.</p> <p>Texas CEQ needs to adopt the 1.0% assumed annual real interest rate established in Criterion 10 of 10 CFR 40 Appendix A to meet the essential objective of this requirements and to meet the Compatibility Category C assigned to 10 CFR 40 Appendix A, Criterion 10. Comment Stands: From letter dated September 18, 2008.</p>

STATE REGULATION STATUS

State: Texas Commission on Environmental Quality

Tracking Ticket Number: 9-17

[1 amendment(s) reviewed is identified by a ★

Date: May 13, 2009

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	Not Applicable	Not Applicable	TX DOH Responsibility
1991-2	ASNT Certification of Radiographers Part 34 56 FR 11504 (Superceded by 1997-5)	none	Not Applicable	Not Applicable	TX DOH 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 DOH 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.
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	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
1993-2	Licensing and Radiation Safety Requirements for Irradiators Part 36 58 FR 7715	07/01/1996	Not Applicable	Not Applicable	TX DOH 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 DOH Responsibility
1995-2	Frequency of Medical Examinations for Use of Respiratory Protection Equipment Part 20	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 DOH Responsibility

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
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 DOH 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 DOH Responsibility
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 DOH Responsibility

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
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 DOH 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)
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 DOH 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 DOH Responsibility
1998-1	Deliberate Misconduct by Unlicensed Persons Parts 30, 40, 61, 70, 71,	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 (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 DOH 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, 35, 36 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 DOH Responsibility
2000-2	New Dosimetry Technology Parts 34, 36, 39 65 FR 63750	01/08/2004	Not Applicable	Not Applicable	TX DOH Responsibility
2001-1	Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct	02/16/2004	Not Applicable	Not Applicable	TX DOH 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	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
2002-2	Medical Use of Byproduct Material Parts 20, 32, 35 67 FR 20249	10/24/2005	Not Applicable	Not Applicable	TX DOH 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 DOH Responsibility
2005-1	Security Requirements for Portable Gauges Containing Byproduct Material Part 30 70 FR 2001	07/11/2008	Not Applicable	Not Applicable	TX DOH Responsibility
2005-2	Medical Use of Byproduct Material - Recognition of Specialty Boards Part 35	04/29/2008	Not Applicable	Not Applicable	TX DOH Responsibility
2005-3	Increased Controls for Risk-Significant Radioactive Sources	12/01/2005	License Condition ML052240226	No Comments 12/12/2005 ML053420404	
2006-1	Minor Amendments Parts 20, 30, 32, 35, 40 and 70	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 DOH Responsibility
2006-3	National Source Tracking System Part 20 71 FR 65685, 72 FR 59162	01/31/2009	Not Applicable	Not Applicable	TX DOH Responsibility
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 DOH Responsibility

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Package	Outgoing Package	Notes
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 DOH Responsibility
2007-3	Requirements for Expanded Definition of Byproduct Material Parts 20, 30, 31, 32, 33, 35, 61, 150 72 FR 55864	11/30/2010			
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			