

January 9, 2003

Mr. Richard A. Ratliff, PE, LMP, Chief
Bureau of Radiation Control
Texas Department of Health
1100 West 49th Street
Austin, TX 78756-3189

Dear Mr. Ratliff:

We have reviewed the proposed Texas regulations for Control of Radiation (25 Texas Administrative Code 289) Sections 289.201 and 289.253, received by letter dated October 29, 2002. The proposed regulations are in response to the two amendments identified in the enclosed State Regulation Status (SRS) Data Sheet. The regulations were reviewed by comparison to the equivalent NRC regulations in 10 CFR Part 39. We discussed our review of the regulations with Ms. Cindy Cardwell, of your staff, on January 7, 2002.

As a result of the NRC review, we have five 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 a State regulation meets the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final State regulation. However, we have determined that if your proposed regulations were adopted, incorporating the comments and without other significant change, they would meet the compatibility and health and safety categories established in Office of State and Tribal Programs (STP) Procedure SA-200.

The SRS Data Sheet summarizes our knowledge of the status of other Texas Department of Health regulations as indicated. This letter, including the SRS Data Sheet, is posted on the STP Web Site: <http://www.hsr.doh.state.tx.us/nrc/rulemaking.htm>. If you have any questions regarding the compatibility and health categories, or any of the NRC regulations used in the review, please contact me at 301-415-2325 or Vivian Campbell of the Region IV staff at 817-860-8143 or E-mail: VHC@NRC.GOV.

Sincerely,

/RA by Josephine M. Piccone/

Josephine M. Piccone, Deputy Director
Office of State and Tribal Programs

Enclosures:
As stated

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Josephine M. Piccone, Deputy Director
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Enclosures:
As stated

STP:DDDistribution:

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RESPONSE TO INCOMING DOCUMENTS: ML023040140

DOCUMENT NAME: I:\Regs\2-252.wpd

*See previous concurrence

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OFFICE	STP	STP	OGC	STP:DD
NAME	VHCampbell/via email	JZabko:gd	STreby	JMPiccone
DATE	12/10/02*	12/19/02*	01/07/03*	01/09/03*

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COMMENTS ON PROPOSED TEXAS REGULATIONS
AGAINST AND HEALTH AND SAFETY CATEGORIES

State Regulation	NRC Regulation	RATS ID	Category	Subject and Comments
289.201(g) (5) & (6)	39.35(d)(1)	2000-1	C	<p>Leak testing of sealed sources</p> <p>The State regulations do not include the requirement for the licensee to check the equipment associated with the leaking source for radioactive contamination and, if contaminated, have it decontaminated or disposed of by an NRC or Agreement State licensee that is authorized to perform these functions.</p> <p>The State needs to include this requirement in order to meet all the essential objectives of 39.35(d)(1).</p>
289.253(l)(3)	39.41(f)	2000-1	B	<p>Design and performance criteria for sources</p> <p>The State regulations do not include the requirement that energy compensation sources (ECS) must be registered with the Commission under 10 CFR 32.210 or with an Agreement State.</p> <p>The State should include this requirement because of the direct transboundary implications associated with the use of ECS sources.</p>
289.253(y)	39.53(b)	2000-1	C	<p>Energy compensation source</p> <p>289.253(dd)(4)(A) requires licensees to have procedures for the handling and use of sources in wells without surface casing for protecting fresh water aquifers. However, the State regulations do not specify that licensees who use ECS in uncased wells are subject to State requirements equivalent to §§ 39.15, 39.35, 39.37, 39.39, 39.51 and 39.77.</p> <p>The State should include this requirement in order to meet all the essential objectives of 10 CFR 39.53(b).</p>

289.253(z)	39.55(b)	2000-1	C	<p>Tritium neutron generator target source</p> <p>289.253(dd)(4)(A) requires licensees to have procedures for the handling and use of sources in wells without surface casing for protecting fresh water aquifers. However, the State regulations do not specify that licensees who use tritium neutron generator sources in uncased wells are subject to State requirements equivalent to 10 CFR Part 39, except for 10 CFR 39.41.</p> <p>The State should include this requirement in order to meet all the essential objectives of 10 CFR 39.55(b), to meet compatibility.</p>
289.235	39.77 (c)(1)(i)	None	C	<p>Notification of incidents and lost sources; abandonment procedures for irretrievable sources.</p> <p>The State omits the requirement for obtaining approval prior to commencing abandonment procedures for a lost or stuck source as per 39.77 (c)(1)(i).</p> <p>The State needs to include this requirement to meet the compatibility requirements.</p>

STATE REGULATION STATUS

State: Texas

[2 amendments reviewed are identified by a i at the beginning of each equivalent NRC regulation.]

Tracking Ticket Number: 2-252

Date: JANUARY 9, 2003

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) Final (F) ¹ Rule / ML # ⁵	NRC Review / Y, N ² / Date / ML # ⁵	Final State Regulation ¹ (Effective Date)
Safety Requirements for Radiographic Equipment-Part 34	55 FR 843; (1/10/94)	1991-1	P	Y 1/12/99	
ASNT Certification of Radiographers-Part 34	56 FR 11504; (none)	1991-2			Not required 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; (1/1/94)	1991-3	F	N 11/6/97	9/1/93
Notification of Incidents-Parts 20, 30, 31, 34, 39, 40, 70	56 FR 64980; (10/15/94)	1991-4	P	N 11/21/97	
Quality Management Program and Misadministrations-Part 35	56 FR 34104; (1/27/95)	1992-1			
Eliminating the Recordkeeping Requirements for Departures from Manufacturer's Instructions-Parts 30, 35	57 FR 45566; (none)	1992-2			Not required ³
Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites]- Parts 30, 40	58 FR 39628; (10/25/96)	1993-1	P	N 11/21/97	
Licensing and Radiation Safety Requirements for Irradiators-Part 36	58 FR 7715; (7/1/96)	1993-2	P	Y 3/13/96	
Definition of Land Disposal and Waste Site QA Program-Part 61	58 FR 33886; (7/22/96)	1993-3			Part 61 not applicable to TX-DOH
Self-Guarantee as an Additional Financial Mechanism-Parts 30, 40, 70	58 FR 68726; 59 FR 1618 (none)	1994-1	P	N 11/21/97	
Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards-Part 40	59 FR 28220; (7/1/97)	1994-2	P	N 11/21/97	Not applicable SECY-95-112 ⁴
Timeliness in Decommissioning Material Facilities-Parts 30, 40, 70	59 FR 36026; (8/15/97)	1994-3	P	N 11/21/97	
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; (1/1/98)	1995-1	F	N 3/17/99	
Frequency of Medical Examinations for Use of Respiratory Protection Equipment-Part 20	60 FR 7900; (3/13/98)	1995-2			
Low-Level Waste Shipment Manifest Information and Reporting-Parts 20, 61	60 FR 15649; 60 FR 25983 (3/1/98)	1995-3	P	N 11/8/96	Part 61 not applicable to TX-DOH

NRC Chronology Identification	FR Notice (State Due Date)	RATS ID	Proposed (P) Final (F)¹ Rule / ML #⁵	NRC Review / Y, N² / Date / ML #⁵	Final State Regulation¹ (Effective Date)
Performance Requirements for Radiography Equipment-Part 34	60 FR 28323; (6/30/98)	1995-4	P	Y 1/22/99	
Radiation Protection Requirements: Amended Definitions and Criteria-Parts 19, 20	60 FR 36038; (8/14/98)	1995-5	F	N 3/17/99	
Clarification of Decommissioning Funding Requirements-Parts 30, 40, 70	60 FR 38235; (11/24/98)	1995-6	P	N 11/21/97	
Medical Administration of Radiation and Radioactive Materials-Parts 20, 35	60 FR 48623; (10/20/98)	1995-7			
10 CFR Part 71: Compatibility with the International Atomic Energy Agency-Part 71	60 FR 50248; 61 FR 28724 (4/1/99)	1996-1	P	Y 11/21/97	
One Time Extension of Certain Byproduct, Source and Special Nuclear Materials Licenses-Parts 30, 40, 70	61 FR 1109; (none)	1996-2			Not required ³
Termination or Transfer of Licensed Activities: Recordkeeping Requirements-Parts 20, 30, 40, 61, 70	61 FR 24669; (6/17/99)	1996-3	P (Part 30)	N 11/8/96	Part 61 not applicable to TX-DOH
Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act-Part 20	61 FR 65120; (1/9/00)	1997-1	F	N 7/7/00	10/1/00
Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State-Part 150	62 FR 1662; (2/27/00)	1997-2			
Criteria for the Release of Individuals Administered Radioactive Material-Parts 20, 35	62 FR 4120; (5/29/00)	1997-3	F	N 7/7/00	10/1/00
Fissile Material Shipments and Exemptions-Part 71	62 FR 5907; (none)	1997-4			Not required ³
Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiography Operations-Parts 30, 34, 71, 150	62 FR 28947; (6/27/00)	1997-5	F	N 7/7/00	3/30/00
Radiological Criteria for License Termination-Parts 20, 30, 40, 70	62 FR 39057; (8/20/00)	1997-6	F	N 7/7/00	10/1/00
Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea-Part 30	62 FR 63634; (1/02/01)	1997-7			
Deliberate Misconduct by Unlicensed Persons-Parts 30, 40, 61, 70, 71, 150	63 FR 1890; 63 FR 13773 (2/12/01)	1998-1			
Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees- Parts 30, 40, 70	63 FR 29535; (none)	1998-2			Not required ³
License Term for Medical Use Licenses-Part 35	63 FR 31604; (none)	1998-3			Not required ³

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Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations-Part 34	63 FR 37059; (7/9/01)	1998-4	P	Y 1/12/99	
Minor Corrections, Clarifying Changes, and a Minor Policy Change-Parts 20, 35, 36	63 FR 39477; 63 FR 45393 (10/26/01)	1998-5	F	N 7/7/00	10/1/00
Transfer for Disposal and Manifests: Minor Technical Conforming Amendment-Part 20	63 FR 50127; (11/20/01)	1998-6	F	N 7/7/00	10/1/00
Radiological Criteria for License Termination of Uranium Recovery Facilities-Part 40	64 FR 17506; (6/11/02)	1999-1			
Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information-Part 31	64 FR 42269; (none)	1999-2			Not required ³
Respiratory Protection and Controls to Restrict Internal Exposure-Part 20	64 FR 54543; 64 FR 55524 (2/2/03)	1999-3			
i Energy Compensation Sources for Well Logging and Other Regulatory Clarifications-Part 39	65 FR 20337; (5/17/03)	2000-1	P ML023040140	Y 1/9/03 ML030210400	
i New Dosimetry Technology-Parts 34, 36, 39	65 FR 63750; (1/8/04)	2000-2	P ML023040140	N 1/9/03 ML030210400	
Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material - Parts 30, 31, 32	65 FR 79162; (2/16/04)	2001-1			
Revision of the Skin Dose Limit -Part 20	67 FR 16298; (4/5/05)	2002-1			
Medical Use of Byproduct Material-Parts 20, 32, and 35	67 FR 20249; (4/24/05)	2002-2			

1. Or other generic Legally Binding Requirements.
2. (Y/N) Y means "Yes," there are comments in the review letter that the State needs to address. N means "No," there are no comments in the review letter.
3. Not required means these regulations are not required for purposes of compatibility.
4. A State need not adopt a specific regulation if the State has no licensees that would be subject to that regulation. See: "Final Policy Statement on Adequacy and Compatibility of Agreement State Programs," III.1. Time Frame for Adoption of Compatible State Regulations, p. 6, SECY-95-112, May 3, 1995.
5. ADAMS ML Number