



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

December 1, 2015

Mr. Richard Ratliff, Director
Radiation Program
Texas Department of State Health Services
P.O. Box 149347, MC 1987
Austin, TX 78714-9347

Dear Mr. Ratliff:

We have reviewed the proposed revisions to the Texas regulations for Control of Radiation, Title 25, Texas Administrative Code (TAC), received by our office on October 22, 2015. These regulations were reviewed by comparison to the equivalent U.S. Nuclear Regulatory Commission (NRC) rules 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 you on December 1, 2015.

As a result of our review, we have three comments related to compatibility and one comment that is not related to compatibility but should be addressed. These 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 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 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 NMSS Procedure SA-201, "Review of State Regulatory Requirements," please highlight the final changes, 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 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 NMSS State Communication Portal: <https://scp.nrc.gov/rulemaking.html>.

Additionally, please note that NRC has previously issued certain Security Orders to fourteen Texas DSHS licensees. We have not listed the names of the licensees in this letter because that information is Official Use Only and cannot be made publicly available. Because the NRC-issued Orders are still legally binding, they must be rescinded by NRC concurrent with Texas' promulgation of final regulations. Accordingly, close coordination is needed between NRC and your office to ensure there are no conflicts, duplications, or gaps regarding the security-related requirements for these licensees. Please contact Adelaide Giantelli, Chief, Source Management and Protection Branch, NMSS (Adelaide.Giantelli@nrc.gov) for information regarding the affected Texas licensees and for coordination with rescission of the NRC-issued Orders for these licensees after Texas' promulgation and NRC's review of the final Texas regulations.

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) 337-6942 (Michelle.Beardsley@nrc.gov) or Lizette Roldán-Otero at (817) 200-1596 (Lizette.Roldan@nrc.gov).

Sincerely,

/RA/

CEinberg 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 & Non-Compatibility Comments
2. Texas DSHS SRS Data Sheet

COMPATIBILITY COMMENTS ON TEXAS PROPOSED REGULATIONS

STATE SECTION	NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	289.252(ii)(6)(A)(xii) 289.252(ii)(6)(B)	37.29(a) 37.29(b)	2013-1	<p>Relief from fingerprinting, identification, and criminal history records checks and other elements of background investigations for designated categories of individuals permitted unescorted access to certain radioactive materials</p> <p>TX needs to update their regulations in section 289.252(ii)(6)(A)(xii) and (ii)(6)(B) to remove the word “federal” before the words “agency/employer” .</p> <p>TX needs to delete the word “federal” as indicated above in order to meet the Compatibility Category B designation assigned to 10 CFR 37.29(a)(12) and 37. 29(b).</p>
2	289.252(ii)(9)(A)(ii)	37.41(b)	2013-1	<p>Security program</p> <p>TX omits the word “newly” after the phrase “and each licensee that would become” in the first sentence of 289.252(ii)(9)(A)(ii). TX needs to revise the first sentence to read “An applicant for a new license and each licensee that would become newly subject to...” in 289.252(ii)(9)(A)(ii).</p> <p>TX needs to revise the first sentence in 289.252(ii)(9)(A)(ii) as indicated above in order to meet the Compatibility Category B designation assigned to 10 CFR 37.41(a).</p>
3	289.252(ii)(21)(A) – (D)	37.77(a)-(d)	2013-1	<p>Advance notification of shipment of category 1 quantities of radioactive material</p> <p>TX needs to replace the NRC</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					<p>addresses for advance notification and add their State Agency information. For those shipments initially made by an Agreement State licensee, the NRC would not be notified as the notification would go to the Agreement State.</p> <p>TX needs to update all NRC references and addresses to indicate their State Agency's corresponding address as indicated above in order to meet the Compatibility Category B designation assigned to 10 CFR 37.77(a) – (d).</p>

COMMENT NOT RELATED TO COMPATIBILITY

1	289.252 (ii)(5)(C)(i)	37.27(c)	2013-1	B	<p>Requirements for criminal history records checks of individuals granted unescorted access to category 1 or category 2 quantities of radioactive material</p> <p>TX needs to update their regulations in section 289.252(ii)(5)(C)(i) to revise the Mail Stop to TWB-05 B32M.</p> <p><i>See FSME-13-081 dated August 16, 2013, for notification to Agreement States of the change of address from that published in the regulations.</i></p>
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STATE REGULATION STATUS

State: Texas Department of State Health Services

Tracking Ticket Number: 16-08

Date: 12/01/2015

[4 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	Final ML051520266	No Comments 10/31/2005 ML053050013	Texas has adopted Final Regulations equivalent to RATS ID: 1997-5.
1991-2	ASNT Certification of Radiographers Part 34 56 FR 11504 (Superceded by 1997-5)	none	Not Required	Not Required	Texas has adopted Final Regulations equivalent to RATS ID: 1997-5.
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 ML052060129	No Comments 09/29/2005 ML052720491	
1992-1	Quality Management Program and Misadministrations Part 35 56 FR 34104 (Superceded by 2002-2)	01/27/1995	Not Required	Not Required	Texas has adopted Final Regulations equivalent to RATS ID: 2002-2.
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 Letter	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 ML052060129	Comments 09/29/2005 ML052720491	
1993-2	Licensing and Radiation Safety Requirements for Irradiators Part 36 58 FR 7715	07/01/1996	Final ML051520266	No Comments 08/12/2005 ML052280032	
1993-3	Definition of Land Disposal and Waste Site QA Program Part 61 58 FR 33886	07/22/1996	Not Applicable	Not Applicable	Texas DSHS does not have responsibility for these regulations. See SRS sheet for Texas CEQ.
1994-1	Self-Guarantee as an Additional Financial Mechanism Parts 30, 40, 70 58 FR 68726; 59 FR 1618	none	Final ML062860025	No Comments 11/21/2006 ML063200232	These regulation changes are not required to be adopted for purposes of Compatibility.
1994-2	Uranium Mill Tailings Regulations: Conforming NRC Requirements to EPA Standards Part 40 59 FR 28220	07/01/1997	Not Applicable	Not Applicable	Texas CEQ Responsibility
1994-3	Timeliness in Decommissioning Material Facilities Parts 30, 40, 70 59 FR 36026	08/15/1997	Final ML052060129	No Comments 09/29/2005 ML052720491	
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	Final	No Comments 03/17/1999	

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1995-2	Frequency of Medical Examinations for Use of Respiratory Protection Equipment Part 20 60 FR 7900	03/13/1998	Final ML051520266	No Comments 10/31/2005 ML053050013	
1995-3	Low-Level Waste Shipment Manifest Information and Reporting Parts 20, 61 60 FR 15649; 60 FR 25983	03/01/1998	Final ML112510357	No Comments 11/22/2011 ML113000228	
1995-4	Performance Requirements for Radiography Equipment Part 34 60 FR 28323 (Superceded by 1997-5)	06/30/1998	Final ML051520266	No Comments 10/31/2005 ML053050013	Texas has adopted Final Regulations equivalent to RATS ID: 1997-5.
1995-5	Radiation Protection Requirements: Amended Definitions and Criteria Parts 19, 20 60 FR 36038	08/14/1998	Final	No Comments 03/17/1999	
1995-6	Clarification of Decommissioning Funding Requirements Parts 30, 40, 70 60 FR 38235	11/24/1998	Final ML052060129	No Comments 09/29/2005 ML052720491	
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	Final ML051520266	No Comments 10/31/2005 ML053050013	Texas has not yet adopted Final Regulations equivalent to RATS ID: 2005-2.
1996-1	Compatibility with the International Atomic Energy Agency Part 71 60 FR 50248; 61 FR 28724 (Superceded by 2004-1)	04/01/1999	Final ML052060129	Comments 09/29/2005 ML052720491	Texas has adopted Final Regulations equivalent to RATS ID: 2004-1.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
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 ML062860025	No Comments 11/21/2006 ML063200232	Part 30 only. Part 61 applies to TXCEQ.
1997-1	Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act Part 20 61 FR 65120	01/9/2000	Final	No Comments 07/07/2000	
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	Final ML063030232	No Comments 11/27/2006 ML063200389	
1997-3	Criteria for the Release of Individuals Administered Radioactive Material Parts 20, 35 62 FR 4120	05/29/2000	Final	No Comments 07/07/2000	
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, 150 62 FR 28947	06/27/2000	Final	No Comments 07/07/2000	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
1997-6	Radiological Criteria for License Termination Parts 20, 30, 40, 70 62 FR 39057	08/20/2000	Final	No Comments 07/07/2000	
1997-7	Exempt Distribution of a Radioactive Drug Containing One Micro curie of Carbon-14 Urea Part 30 62 FR 63634	01/02/2001	Final ML052060129	No Comments 09/29/2005 ML052720491	
1998-1	Deliberate Misconduct by Unlicensed Persons Parts 30, 40, 61, 70, 71, 150 63 FR 1890; 63 FR 13773	02/12/2001	Final ML063030232	No Comments 11/27/2006 ML063200389	
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) Texas has adopted Final Regulations equivalent to RATS ID: 2002-2.
1998-4	Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial Radiographic Operations Part 34 63 FR 37059	07/09/2001	Final ML093110052	No Comments 01/21/2010 ML093520035	
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	No Comments 07/07/2000	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
1998-6	Transfer for Disposal and Manifests: Minor Technical Conforming Amendment Part 20 63 FR 50127	11/20/2001	Final	No Comments 07/07/2000	
1999-1	Radiological Criteria for License Termination of Uranium Recovery Facilities Part 40 64 FR 17506	06/11/2002	Not Applicable	Not Applicable	Texas CEQ Responsibility
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 ML062750348	No Comments 11/21/2006 ML063200232	
2000-1	Energy Compensation Sources for Well Logging and Other Regulatory Clarifications Part 39 65 FR 20337	05/17/2003	Final ML051520266	No Comments 11/30/2006 ML063340007	
2000-2	New Dosimetry Technology Parts 34, 36, 39 65 FR 63750	01/08/2004	Final ML093110052	No Comments 01/21/2010 ML093520035	
2001-1	Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material Parts 30, 31, 32 65 FR 79162	02/16/2004	Final ML120650638	No Comments 04/02/2012 ML120660270	Note: See RATS ID 2012-1 for the changes of compatibility review.

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
2002-1	Revision of the Skin Dose Limit Part 20 67 FR 16298	04/05/2005	Final ML102240370	No Comments 11/19/2010 ML102740009	
2002-2	Medical Use of Byproduct Material Parts 20, 32, 35 67 FR 20249	10/24/2005	R ¹ ML14258B117 Final ML15078A299	Comments 12/16/2014 ML14258A158 No Comments 05/26/2015 ML15078A285	
2003-1	Financial Assurance for Materials Licensees Parts 30, 40, 70 68 FR 57327	12/03/2006	Final ML112510357	No Comments 11/22/2011 ML113000228	
2004-1	Compatibility With IAEA Transportation Safety Standards and Other Transportation Safety Amendments Part 71 69 FR 3697	10/01/2007	R ¹ ML14258B117 Final ML15078A299	No Comments 12/16/2014 ML14258A158 No Comments 05/26/2015 ML15078A285	
2005-1	Security Requirements for Portable Gauges Containing Byproduct Material Part 30 70 FR 2001	07/11/2008	Final ML093110052	No Comments 01/21/2010 ML093520035	
2005-2	Medical Use of Byproduct Material - Recognition of Specialty Boards Part 35 70 FR 16336; 71 FR 1926	04/29/2008	R ¹ ML14258B117 Final ML15078A299	No Comments 12/16/2014 ML14258A158 No Comments 05/26/2015 ML15078A285	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
2005-3	Increased Controls for Risk-Significant Radioactive Sources (NRC Order EA-05-090) 70 FR 72128	12/01/2005	License Condition ML052240226	No Comments 12/12/2005 ML053420404	
2006-1	Minor Amendments Parts 20, 30, 32, 35, 40 and 70 71 FR 15005	03/27/2009	R ¹ ML14258B117 Final ML15078A299	Comments 12/16/2014 ML14258A158 No Comments 05/26/2015 ML15078A285	
2006-2	National Source Tracking System - Serialization Requirements Part 32 with reference to Part 20 Appendix E 71 FR 65685	02/06/2007	Final ML093110052	No Comments 01/21/2010 ML093520035	
2006-3	National Source Tracking System Part 20 71 FR 65685, 72 FR 59162	01/31/2009	Final ML093110052	No Comments 01/21/2010 ML093520035	
2007-1	Medical Use of Byproduct Material - Minor Corrections and Clarifications Parts 32 and 35 72 FR 45147, 54207	10/29/2010	Final ML102240370	No Comments 11/19/2010 ML102740009	
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	Final ML15078A299	Comments 05/26/2015 ML15078A285	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
2007-3	Requirements for Expanded Definition of Byproduct Material Parts 20, 30, 31, 32, 33, 35, 61, 150 72 FR 55864	11/30/2010	R ¹ ML14258B117 Final ML15078A299	No Comments 12/16/2014 ML14258A158 Comments 05/26/2015 ML15078A285	
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 ML080350004	No Comments 02/13/2008 ML080440203	
2008-1	Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent Parts 19, 20 72 FR 68043	02/15/2011	Final ML112510357	No Comments 11/22/2011 ML113000228	
2009-1	Medical Use of Byproduct Material – Authorized User Clarification Part 35 74 FR 33901	09/28/2012	Final ML112510357	No Comments 11/22/2011 ML113000228	
2011-1	Decommissioning Planning Parts 20, 30, 40, 70 76 FR 35512	12/17/2015	Proposed ML14258B117 Final ML15078A299	No Comments 12/16/2014 ML14258A158 No Comments 05/26/2015 ML15078A285	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
2011-2	Licenses, Certifications, and Approvals for Materials Licensees Parts 30, 36, 39, 40, 70, and 150 76 FR 56951	11/14/2014	Proposed ML 14258B117 Final ML15078A299	No Comments 12/16/2014 ML14258A158 Comments 05/26/2015 ML15078A285	
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	Final ML120650638	No Comments 04/02/2012 ML12066270	
2012-2	Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste Part 71 77 FR 34194	08/10/2015	Proposed ML14258B117 Final ML15078A299	No Comments 12/16/2014 ML14258A158 No Comments 05/26/2015 ML15078A285	
2012-3	Technical Corrections Part 30, 34, 40 and 71 77 FR 39899	08/06/2015	Proposed ML14258B117 Final ML15078A299	No Comments 12/16/2014 ML14258A158 No Comments 05/26/2015 ML15078A285	
2012-4	Requirements for Distribution of Byproduct Material Parts 30, 31, 32, 40 and 70 77 FR 43666	10/23/2015	Proposed ML14258B117 Final ML15078A299	Comments 12/16/2014 ML14258A158 Comments 05/26/2015 ML15078A285	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
*2013-1	Physical Protection of Byproduct Material, 10 CFR Parts 20, 30, 32, 33, 34, 35, 36, 37, 39, and 71 78 FR 16922	03/19/2016	Proposed ML15300A238	Comments 12/01/2015 ML15300A222	
*2013-2	Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions, 10 CFR Parts 30, 40, and 70 78 FR 32310	08/27/2016	Proposed ML15300A238	No Comments 12/01/2015 ML15300A222	
*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 ML15300A238	No Comments 12/01/2015 ML15300A222	
*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 ML15300A238	No Comments 12/01/2015 ML15300A222	
2015-3	Revisions to Transportation Safety Requirements and Harmonization with International Atomic Energy Agency Transportation Requirements Part 71 80 FR 33987	07/13/2018			
2015-4	Miscellaneous Corrections, Parts 37 and 40 80 FR 45841	09/02/2018			
N/A	10 CFR 35.11, 35.63, 35.92 and 35.204	N/A	Final ML112510357	No Comments 11/22/2011 ML113000228	
N/A	10 CFR 34 and 39 Not Associated with a Specific RATS	N/A	Final ML113340070	Comments 01/11/2012 ML113550343	

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
N/A	10 CFR 20, 30, 31, 32, 35, 70 and 71 Not Associated with a Specific RATS	N/A	Proposed ML14258B117 Final ML15078A299	Comments 12/16/2014 ML14258A158 Comments 05/26/2015 ML15078A285	Comments are regarding 10 CFR Parts 20.1403, 20.1405 and 31.12(c)(4).