



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

November 30, 2021

Ms. Ashley Forbes, Division Director
Radioactive Materials Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Dear Ms. Forbes:

We have reviewed the proposed revisions to the Texas Commission on Environmental Quality (TCEQ) Rules, Title 30 Texas Administrative Code (TAC), § 336.357, received by our office on November 17, 2021. These regulations were reviewed by comparison to the equivalent U.S. Nuclear Regulatory Commission (NRC) rules and Regulation Amendment Tracking System Identification Numbers (RATS IDs) 2018-3, and 2019-1, as identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with Brad Broussard on November 23, 2021.

As a result of our review, we have three 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 the TCEQ 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 TCEQ 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 Materials Safety, Security, State, and Tribal 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>.

A. Forbes

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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 301-415-0275 (michelle.beardsley@nrc.gov).

Sincerely,



Signed by Anderson, Brian
on 11/30/21

Brian C. Anderson, Chief
State Agreement and Liaison Programs Branch
Division of Materials Safety, Security, State
and Tribal Programs
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. Compatibility Comments
2. TCEQ SRS Data Sheet

SUBJECT: TCEQ PROPOSED REGULATIONS TO RATS IDS 2018-3, AND 2019-1
DATE November 30, 2021

DISTRIBUTION: SP[08]

DIR RF (22-07)

JCook, RSAO

TCEQ File

ADAMS Accession No. ML21327A063 pkg and ML21334A189 letter

OFFICE	NMSS/MSST	OGC	NMSS/MSST
NAME	MBeardsley	NA	BAnderson
DATE	11/30/2021		11/30/2021

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COMPATIBILITY COMMENTS ON TCEQ PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	336.357(c) (2)(B)	37.23(b)(2)	2018-3 2019-1	B	<p>Access authorization program requirements</p> <p>TCEQ omits an equivalent provision to 10 CFR 37.23(b)(2). TCEQ needs to add this provision to section 336.357(c)(2)(B) as follows: “Provide oath or affirmation certifications to [insert State agency].”</p> <p>TCEQ needs to add the provision noted above to meet the Compatibility Category B designation assigned to 10 CFR 37.23(b)(2).</p>
2	336.357(u) (1)(A)	37.77(a)(1)	2018-3	B	<p>Advance notification of shipment of category I quantities of radioactive material</p> <p>The advance notifications required in section 336.357(u)(1)(A) should go to TCEQ in addition to NRC and the office of each appropriate governor or governor’s designee.</p> <p>TCEQ needs to add their state agency in section 336.357(u)(1)(A) to meet the Compatibility Category B designation assigned to 10 CFR 37.77(a)(1).</p>
3	336.357(e) (3)(A)	37.27(c)(1)	2019-1	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>TCEQ needs to update the mailbox location listed in section 336.357(e)(3)(A) to “T-07D04M;” (SEE STC-20-067).</p> <p>TCEQ needs to make the change indicated above to meet the Compatibility Category B designation assigned to 10 CFR 37.27(c)(1).</p>

STATE REGULATION STATUS

State: Texas Commission on Environmental Quality

Tracking Ticket Number: 22-07

Date: November 30, 2021

[1 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	
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

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
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	
1995-7	Medical Administration of Radiation and Radioactive Materials Parts 20 and 35 60 FR 48623 (Superseded by 2002-2 and 2005-2)	10/20/1998	Not Applicable	Not Applicable	TX DSHS Responsibility

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
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
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 (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)

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
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 Microcurie 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	
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 (Superseded 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

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
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	Revised Final ML13240A300 Revised Final ML16321A333	Comments 10/03/2013 ML13240A299 No Comments 01/18/2017 ML16321A324	
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

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

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

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, 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	
2008-1	Occupational Dose Records, Labeling Containers, and Total Effective Dose Equivalent Parts 19 and 20 72 FR 68043	02/15/2011	Final ML14055A034 Revised Final ML16321A333	Comments 05/13/2014 ML14055A027 No Comments 01/18/2017 ML16321A324	
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	Proposed ML16218A245 Final ML16321A333 Proposed ML18162A279	Comment 09/10/2016 ML16218A244 Comment 01/18/2017 ML16321A324 No Comments 6/19/2018 ML18162A244	The ADAMS package and associated documents incorrectly characterize this submission as “revised final” regulations instead of “proposed” regulations.

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 ML16140A109 Proposed ML16218A245 Final ML16321A333	Comments 6/27/2016 ML16140A044 No Comments 09/10/2016 ML16218A244 No Comments 01/18/2017 ML16321A324	
2012-1	Change of Compatibility of Parts 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	Proposed ML16218A245 Final ML16321A333	No Comments 09/10/2016 ML16218A244 No Comments 01/18/2017 ML16321A324	
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

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
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 Final ML16321A333	Comments 01/13/2016 ML15323A207 No Comments 03/01/2016 ML16049A154 No Comments 01/18/2017 ML16321A324	
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	Final ML16321A333	No Comments 01/18/2017 ML16321A324	
2015-1	Domestic Licensing of Special Nuclear Material – Written Reports and Clarifying Amendments Part 70 79 FR 57721, 80 FR 143	01/26/2018	Final 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	Final ML15323A211 Revised Final ML16321A333	Comments 01/13/2016 ML15323A207 No Comments 01/18/2017 ML16321A324	
2015-3	Revisions to Transportation Safety Requirements and Harmonization with International Atomic Energy Agency Transportation Requirements Part 71 80 FR 33987	07/13/2018 *extended to 08/15/2020 See STC 17-060	Not Applicable	Not Applicable	TX DSHS Responsibility

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
2015-4	Miscellaneous Corrections Parts 37 and 40 80 FR 45841	09/02/2018	Proposed ML16218A245 Final ML16321A333	No Comments 09/10/2016 ML16218A244 No Comments 01/18/2017 ML16321A324	
2015-5	Miscellaneous Corrections Parts 19, 20, 30, 32, 37, 40, 61, 70, 71, and 150 80 FR 74974	12/31/2018	Proposed ML16218A245 Final ML16321A333	No Comments 09/10/2016 ML16218A244 No Comments 01/18/2017 ML16321A324	
2018-1	Medical Use of Byproduct Material – Medical Event Definitions, Training and Experience, and Clarifying Amendments, 10 CFR Parts 30, 32 and 35	01/14/2022			
2018-2	Miscellaneous Corrections - Organizational Changes 10 CFR Parts 37, 40, 70 and 71	12/21/2021			
*2018-3	Miscellaneous Corrections 10 CFR Parts 1, 2, 34, 37, 50, 71, 73, and 140	07/30/2022	Proposed ML21327A082	Comments 11/30/2021 ML21327A063	
*2019-1	Miscellaneous Corrections 10 CFR Parts 2, 21, 37, 50, 52, 73, and 110	12/18/2022	Proposed ML21327A082	Comments 11/30/2021 ML21327A063	
2019-2	Organizational Changes and Conforming Amendments 10 CFR Parts 1, 2, 37, 40, 50, 51, 52, 55, 71, 72, 73, 74, 100, 140, and 150	12/30/2022			

RATS ID	NRC Chronology Identification	Date Due for State Adoption	Incoming Letter	Outgoing Package	Notes
2020-1	Individual Monitoring Devices 10 CFR Parts 34, 36, and 39	06/16/2023			
2020-2	Social Security Number Fraud Prevention 10 CFR Parts 9 and 35	08/17/2023			
2021-1	Miscellaneous Corrections 10 CFR Parts 2, 11, 20, 25, 32, 35, 37, 50, 52,55, 70, 72, 73, 95, and 110	09/08/2024			
N/A	Compact Waste Disposal Facility and Commingling of Waste Part 61	N/A	Final ML121230326	No Comments 06/29/2012 ML12152A150	
N/A	Part 40	N/A	R ML13240A300 Revised Final ML16321A333	Comments 10/03/2013 ML13240A299 No Comments DATE ML16321A324	
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	