



## TEXAS DEPARTMENT OF STATE HEALTH SERVICES

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COMMISSIONER

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August 11, 2009

Mr. Terrence Reis  
Deputy Director  
Division of Materials Safety and State Agreements  
Office of Federal and State Materials and  
Environmental Management Programs  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Dear Mr. Reis:

Enclosed is a copy of the proposed revisions to the Texas Regulations for Control of Radiation, 25 Texas Administrative Code (TAC), §289.201 relating to Standards for Protection Against Radiation from Radioactive Material, §289.203 relating to Notices, instructions, and Reports to Workers; Inspections; §289.251 relating to Exemptions, General Licenses, and General License Acknowledgements, and §289.252 relating to Licensing of Radioactive Material. The proposed revisions for §289.201, §289.203, §289.251, and §289.252 were made available for public comment on August 1, 2009 with a request for comments by September 1, 2009. We request NRC's comments by October 1, 2009. The proposed regulations are identified by underlined text for new text and **[bold face and brackets]** for deleted text. Please see the following table that identifies the equivalent amendment to NRC's regulations.

We believe that adoption of these revisions satisfies the compatibility and health and safety categories established in the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-200, with the exception of the following noted items. However, concerning 25 TAC §289.203, please note that no changes were made to this revision due to compatibility items.

If you have any questions, please feel free to contact me at 512-834-6770, ext. 2239, or [Cindy.Cardwell@dshs.state.tx.us](mailto:Cindy.Cardwell@dshs.state.tx.us).

Sincerely,

A handwritten signature in cursive script that reads "Cynthia C. Cardwell".

Cynthia C. Cardwell, Manager  
Radiation Group  
Policy, Standards, and Quality Assurance Unit  
Department of State Health Services

| STATE SECTION     | NRC SECTION | RATS ID | CATEGORY | SUBJECT and COMMENTS  | TX RESPONSE         |
|-------------------|-------------|---------|----------|---|---------------------|
| §289.201(b)(22)   | 30.4        | 2007-3  | C        |   | Meets compatibility |
| §289.201(b)(97)   | 20.1003     | 2002-1  | A        | <p><b>NRC comment per letter dated Jan 13, 2009 -</b></p> <p><b>Definitions: Shallow Dose Equivalent</b></p> <p>Texas' definition of "shallow dose equivalent" in 289.201(b)(95) contains the phrase "averaged over an area of 1 square centimeter" which contradicts the determination of shallow dose equivalent found in their 289.202(f). Texas' 289.202(f) is compatible with NRC's equivalent requirement in 10 CFR 20.1201(c).</p> <p>Texas must revise their definition of "shallow-dose equivalent" in 289.201(b)(95) to remove the contradiction and meet Compatibility Category A designation assigned to this definition in Section 10 CFR 20.1003.</p> | Meets compatibility |
| §289.251(e)(1)(C) | 30.14       | 2007-2  | B        |   | Meets compatibility |
| §289.251(e)(2)(A) | 30.18(a)    | 2007-2  | B        |   | Meets compatibility |

| <b>STATE SECTION</b>         | <b>NRC SECTION</b> | <b>RATS ID</b> | <b>CATEGORY</b> | <b>SUBJECT and COMMENTS</b>  | <b>TX RESPONSE</b>  |
|------------------------------|--------------------|----------------|-----------------|--|---|
| §289.251(e)(2)(B)            | 30.18(b)           | 2007-3         | B               |  | Meets compatibility   |
| §289.251(e)(2)(F)            | 30.18(e)           | 2007-2         | B               |  | Meets compatibility   |
| §289.251(e)(3)(A)(i)(I)(-h-) | 30.15(a)(1)(viii)  | 2007-3         | B               | TX states "January 1, 1986" instead of NRC's "November 30, 2007" since TX has been exempting these items since 1986.   |   |
| §289.251(e)(3)(A)(i)(X)      | 30.15(a)(7)        | 2007-2         | B               |  | Meets compatibility   |
| §289.251(e)(3)(C)(i)         | 30.20(a)           | 2007-3         | B               |  | Meets compatibility   |
| §289.251(e)(3)(C)(i)(I)      | 30.20(a)           | 2007-3         | B               | After "manufactured," TX will replace "imported" with "processed, produced, or initially" during the adoption process of this rule revision to meet compatibility. | TX will make this change during the adoption process of this rule revision to meet compatibility. |
| §289.251(e)(3)(C)(i)(II)     | 30.20(a)           | 2007-3         | B               | After "transfer," TX will replace "detectors" with "product for use" during the adoption process of this rule revision to meet compatibility.                      | TX will make this change during the adoption process of this rule revision to meet compatibility. |
| §289.251(e)(3)(C)(i)(III)    | 30.20(a)           | 2007-3         | B               |  | Meets compatibility   |
| §289.251(e)(3)(D)            | 30.16              | 2007-2         | B               |  | Meets compatibility   |

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|---------------------------|------------------------|---------|----------|--|---------------------|
|                           |                        |         |          |  |                     |
|                           |                        |         |          |  |                     |
| §289.251(f)(4)(H)(iv)(IX) | 31.5(c)(7)             | NA      |          | TX adds "by export in accordance with Title 10, CFR, Part 110" to be compatible with 10 CFR 31.5(c)(7).    |                     |
|                           |                        |         |          |  |                     |
| §289.251(f)(4)(H)(iv)(XI) | 31.5(c)(8)(iii)(A)-(D) | 2007-2  | B        |  | Meets compatibility |
|                           |                        |         |          |  |                     |
| §289.251(f)(4)(K)         | 31.12                  | 2007-3  | C        | TX omits "manufactured prior to November 30, 2007," since TX has been licensing these items prior to 2007. | Meets compatibility |
|                           |                        |         |          |  |                     |
| §289.252(i)(5)            | 32.13                  | 2007-2  | C        |  | Meets compatibility |
|                           |                        |         |          |  |                     |
| §289.252(n)(2)            | 32.59                  | 2007-3  | B        |  | Meets compatibility |
|                           |                        |         |          |  |                     |
| §289.252(p)(1)(F)         | 32.71(b)(8)            | 2007-3  | B        |  | Meets compatibility |
|                           |                        |         |          |  |                     |
| §289.252(p)(2)(A)         | 32.71(c)(1)            | 2007-3  | B        |  | Meets compatibility |
|                           |                        |         |          |  |                     |
| §289.252(r)(1)(A)(i)      | 32.72(a)(2)(i)         | 2007-3  | B        |  | Meets compatibility |
|                           |                        |         |          |  |                     |
| §289.252(r)(1)(A)(iii)    | 32.72(a)(2)(iii)       | 2007-3  | B        | Current TX rule already meets compatibility  |                     |
|                           |                        |         |          |  |                     |

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|------------------------|--------------------|----------------|-----------------|-----------------------------|---------------------|
| §289.252(r)(1)(A)(iv)  | 32.72(a)(2)(iv)    | 2007-3         | B               |                             | Meets compatibility |
|                        |                    |                |                 |                             |                     |
| §289.252(r)(1)(A)(v)   | 32.72(a)(2)(v)     | 2007-3         | B               |                             | Meets compatibility |
|                        |                    |                |                 |                             |                     |
| §289.252(r)(3)         | 32.72(b)           | 2002-2         | B               |                             | Meets compatibility |
|                        |                    |                |                 |                             |                     |
| §289.252(r)(3)(A)      | 32.72(b)(1)        | 2002-2         | B               |                             | Meets compatibility |
|                        |                    |                |                 |                             |                     |
| §289.252(r)(3)(B)      | 32.72(b)(2)        | 2002-2         | B               |                             | Meets compatibility |
|                        |                    |                |                 |                             |                     |
| §289.252(r)(3)(B)(i)   | 32.72(b)(2)(i)     | 2002-2         | B               |                             | Meets compatibility |
|                        |                    |                |                 |                             |                     |
| §289.252(r)(3)(B)(ii)  | 32.72(b)(2)(ii)    | 2007-3         | B               |                             | Meets compatibility |
|                        |                    |                |                 |                             |                     |
| §289.252(r)(3)(B)(iii) | 32.72(b)(2)(iii)   | ?              | B               |                             | Meets compatibility |
|                        |                    |                |                 |                             |                     |
| §289.252(r)(3)(C)      | 32.72(b)(4)        | 2007-3         | B               |                             | Meets compatibility |
|                        |                    |                |                 |                             |                     |
| §289.252(r)(3)(C)(i)   | 32.72(b)(4)(i)     | 2007-3         | B               |                             | Meets compatibility |
|                        |                    |                |                 |                             |                     |
| §289.252(r)(3)(C)(ii)  | 32.72(b)(4)(ii)    | 2007-3         | B               |                             | Meets compatibility |
|                        |                    |                |                 |                             |                     |
| §289.252(r)(3)(D)      | 32.72(b)(5)        | 2007-3         | B               |                             | Meets compatibility |
|                        |                    |                |                 |                             |                     |
| §289.252(r)(3)(D)(i)   | 32.72(b)(5)(i)     | 2007-3         | B               |                             | Meets compatibility |
|                        |                    |                |                 |                             |                     |
| §289.252(r)(3)(D)(ii)  | 32.72(b)(5)(ii)    | 2007-3         | B               |                             | Meets compatibility |

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|------------------------|------------------|---------|----------|--|---|
| NA                     | 32.72(b)(5)(iii) | 2007-3  | B        | TX does not have Master Material Licenses  |   |
| §289.252(r)(3)(D)(iii) | 32.72(b)(5)(iv)  | 2007-3  | B        |  | Meets compatibility   |
| §289.252(r)(3)(D)(iv)  | 32.72(b)(5)(v)   | 2007-3  | B        |  | Meets compatibility   |
| §289.252(r)(3)(D)(v)   | 32.72(b)(5)(vi)  | 2007-3  | B        |  | Meets compatibility   |
| §289.252(x)(9)         | 30.34(g)         | 2007-3  | H&S      |  | Meets compatibility   |
| §289.252(kk)(1)        | 30.32(j)         | 2007-3  | B        |  | Meets compatibility   |
| §289.252(kk)(2)        | 30.34(j)         | 2007-3  | B        |  | Meets compatibility   |
| §289.252(jj)(2)        | 40.36            | 2003-1  | H&S      | <p><b>NRC comment per letter dated January 2, 2008</b></p> <p><b>Financial assurance and recordkeeping for decommissioning</b> Texas uses the words radioactive material to encompass byproduct and source material. However by doing this and referencing Figure 289.252(jj)(2) Texas shows its 10<sup>5</sup> limits for natural thorium and uranium at 10Ci, well above the</p> | TX will make this change during the adoption process of this rule revision to meet compatibility. |

| STATE SECTION | NRC SECTION | RATS ID | CATEGORY | SUBJECT and COMMENTS   | TX RESPONSE |
|---------------|-------------|---------|----------|--|-------------|
|               |             |         |          | 100mCi limit set in 10 CFR 40.36 for source material. Texas should move natural thorium and uranium in its table to the row with the limit of 1.0uCi and a 10 <sup>5</sup> limit of 100mCi. Texas needs to move natural uranium and thorium in its Figure 289.252(jj)(2) in order to meet the Compatibility category H&S designation assigned to 10 CFR 40.36. |             |
|               |             |         |          |  |             |