

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Proposed Rulemaking

**AGENDA REQUESTED:** August 19, 2015

**DATE OF REQUEST:** July 31, 2015

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Sherry Davis, (512) 239-2141

**CAPTION: Docket No. 2015-0665-RUL.** Consideration for publication of, and hearing on, proposed amended Section 336.2; simultaneous proposal for repeal and new Section 336.357; and proposal of new Section 336.739 of 30 TAC Chapter 336, Radioactive Substance Rules.

The proposed rulemaking revises the commission's rules concerning physical protection of radioactive material to ensure compatibility with federal regulations promulgated by the United States Nuclear Regulatory Commission and implements Senate Bill 347, 83rd Texas Legislature, 2013, Regular Session, by proposing new Section 336.739, to provide for volume reduction of low-level radioactive waste. (Bobby Janecka, Ron Olson, Amie Robinson) (Rule Project No. 2015-012-336-WS)

Brent Wade  
**Deputy Director**

Charles Maguire  
**Division Director**

Sherry Davis  
**Agenda Coordinator**

**Copy to CCC Secretary? NO X YES**

# **Texas Commission on Environmental Quality**

## **Interoffice Memorandum**

**To:** Commissioners **Date:** July 31, 2015

**Thru:** Bridget C. Bohac, Chief Clerk  
Richard A. Hyde, P.E., Executive Director

**From:** Brent Wade, Deputy Director  
Office of Waste

**Docket No.:** 2015-0665-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 336, Radioactive Substance Rules  
Physical Protection of Category 1 and 2 Quantity Radioactive Material  
Rule Project No. 2015-012-336-WS

**Background and reason(s) for the rulemaking:**

The changes to 30 TAC Chapter 336, Subchapters A and D will revise the commission's rules concerning physical protection of radioactive material to ensure compatibility with federal regulations promulgated by the Nuclear Regulatory Commission (NRC) which is necessary to preserve the status of Texas as an Agreement State under Title 10 Code of Federal Regulations (CFR) Part 150 and under the "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended." Rules which are designated by the NRC as compatibility items must be adopted by an Agreement State within three years of the effective date of the NRC rules, in most cases.

In response to efforts to assess security risks posed by uncontrolled sources, the NRC issued Order EA-05-090 (Increased Controls Order) on November 14, 2005, to impose requirements for the control of high-risk radioactive materials to prevent inadvertent and intentional unauthorized access, primarily due to the potential health and safety hazards posed by the uncontrolled material. The Increased Controls (IC) Order identified certain radionuclides of concern and established control measures for licensees to secure those materials. Part of this order was the requirement to determine that each person who requires access to radioactive material quantities of concern to perform their job duties is sufficiently trustworthy and reliable. Section 652 of the Energy Policy Act of 2005, enacted on August 8, 2005, amended Section 149 (the fingerprinting requirements) of the Atomic Energy Act to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check for "any individual who is permitted unescorted access to radioactive materials or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks." The NRC issued Order EA-07-305 on December 5, 2007, to expeditiously implement, in part, these additional requirements as enhancements to the existing trustworthiness and reliability requirements of the IC Order.

As part of both orders, each Agreement State was required to issue legally binding requirements to put essentially identical measures in place for licensees under state regulatory jurisdiction. The commission has already imposed the requirements of the NRC orders on licensees by adding a condition to their radioactive material license that requires the licensee to follow the two NRC orders. The commission adopted rules to implement the IC Order on January 11, 2012. The NRC adopted both orders to Title 10 CFR on March 19, 2013, with modifications to the requirements in the IC Order based on public comments. The modifications to the requirements from the IC Order will result in the original rules (adopted in January 11, 2012) being removed in their entirety and replaced with the new, modified rule language. This rulemaking will also add new rules concerning the order requiring fingerprinting and an FBI criminal background check. The NRC completed additional rulemaking on January 26, 2015, which slightly modified the federal rules adopted on March 19, 2013. These modifications have been incorporated into the proposed rules.

This proposed rulemaking also implements requirements relating to volume reduction from Senate Bill (SB) 347, 83rd Texas Legislature, 2013, and its amendments to Texas Health and Safety Code (THSC), Chapter 401 (also known as the Texas Radiation Control Act (TRCA)). New provisions in §336.739 prohibit the compact waste disposal facility license holder from accepting nonparty compact waste for disposal at the facility unless the waste has been volume reduced.

### **Scope of the rulemaking:**

#### **A.) Summary of what the rulemaking will do:**

This rulemaking will add 21 definitions to §336.2; and also §336.357 will simultaneously be repealed and proposed as a new rule with minor modifications relaxing some of the requirements, authorizing exemptions to these rules for specific types of radioactive waste, and adding rules requiring fingerprinting and an FBI criminal background check for individuals who have unescorted access to quantities of significant concern. Quantities of significant concern will be defined as "category 2 quantity of radioactive material." "Category 1 quantity of radioactive material" will be defined as 100 times the concentration values of category 2 quantity of radioactive materials.

Modifications to the current physical protection of radioactive material rules in §336.357 will include: 1) applying this rule to a licensee only when they possess a category 1 or category 2 quantity of radioactive material instead of, as under the current rule, when the licensee is authorized on their radioactive material license for such quantities regardless if the licensee actually possess a category 1 or category 2 quantity of radioactive materials; 2) removing the requirement for licensees to submit compliance information; 3) removing the requirement for a licensee to notify the Local Law Enforcement Agency (LLEA) for work at temporary jobsites; 4) removing several of the LLEA coordination elements, including the requirement to request a written agreement and request notification of any degradation in LLEA response capabilities; 5) requiring that the minimum information to be shared with the LLEA is a description of the facilities and radioactive material along with a description

of the security measures being employed by the licensee and a notification that the licensee will request a timely armed response to any theft, sabotage, or diversion of radioactive material; 6) revising the testing and maintenance requirement for security-related equipment to be the manufacturer's recommended frequency or annually if the manufacturer does not provide a suggested frequency; 7) removing the requirement to calibrate the equipment; 8) removing the requirement for the licensee to disable the vehicle if a site has health and safety requirements that prevent disabling of vehicles; 9) modifying the reporting to clarify the requirements and provide greater flexibility to the licensee; and 10) requiring a licensee to report suspicious activities.

Modifications to the current rules concerning security provisions for the transport of category 1 and category 2 quantities of radioactive material will include: 1) revising the requirement for license verification before transferring the radioactive material to include an emergency option that can be used when the license verification system is nonfunctional and the licensee cannot reach the regulator; 2) exempting the licensee from §336.357(r) - (w) if the transfer is within the same organization (an example would be a company that has a license in several states); 3) removing the rule requiring documentation of the license verification if the license verification system is used; 4) removing the provision for the no-later-than arrival time for category 1 shipments; 5) removing some of the specificity on the required coordination with the states through which the radioactive material is being transported; 6) requiring licensees to discuss the State's intention to provide law enforcement escorts and identify safe havens; and 7) removing other elements because they are not necessary and are overly prescriptive.

New §336.739 will also establish new restrictions on the disposal of low-level radioactive waste in Texas generated outside of Texas or Vermont. Those restrictions require that any such waste to be disposed in Texas must have been volume reduced to a certain degree and imposes certain requirements on records retention related to volume reduction.

**B.) Scope required by federal regulations or state statutes:**

Proposed revisions to §336.2 and §336.357 in the proposed rulemaking are required by federal regulations imposed on the State of Texas as an NRC Agreement State. The rulemaking language regarding volume reduction in new §336.739 is required by THSC, §401.207.

**C.) Additional staff recommendations that are not required by federal rule or state statute:**

None.

**Statutory authority:**

- THSC, §401.011
- THSC, §401.051
- THSC, §401.103
- THSC, §401.104
- THSC, §401.106

- Texas Water Code (TWC), §5.103

**Effect on the:**

**A.) Regulated community:**

Licenseses for the storage, processing, or disposal of radioactive waste will be affected. The effect of the updated physical protection of radioactive material is beneficial, since a stricter version is already in effect, and the modifications with this rulemaking will relax certain requirements. The licensee will also have new regulatory requirements for nonparty waste. Generators may have to change their current waste processing procedures to comply with volume reduction requirements.

**B.) Public:**

No direct impact is expected to affect the public.

**C.) Agency programs:**

No direct impact is expected to affect agency programs. Agency staff will have to monitor for compliance with volume reduction requirements in addition to current regulatory compliance monitoring.

**Stakeholder meetings:**

There are no proposed stakeholder meetings associated with this rulemaking; however, there will be a public hearing for this rulemaking on September 29, 2015, in Austin, Texas.

**Potential controversial concerns and legislative interest:**

The rulemaking regarding volume reduction requirements for waste has the potential to be controversial. Since SB 347 has passed, there has been significant interest from parties both within Texas and outside of Texas regarding volume reduction. Further, during the legislative process the industry and the disposal licensees had several discussions with legislative members and industry watch groups on this issue.

**Will this rulemaking affect any current policies or require development of new policies?**

No revisions of current policies or creation of new policies are anticipated to be required by this rulemaking.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

If this rulemaking does not go forward, Texas would be at risk of losing its status as an NRC agreement state due to a failure to maintain state compatibility with NRC rules. Also, the rulemaking is necessary to implement SB 347. There are no alternatives, because implementation of the adopted federal regulations is required in order for Texas to maintain compatibility status as an NRC agreement state.

Commissioners  
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July 17, 2015  
Re: Docket No. 2015-0665-RUL

**Key points in the proposal rulemaking schedule:**

**Anticipated proposal date:** August 19, 2015

**Anticipated *Texas Register* publication date:** September 4, 2015

**Anticipated public hearing date (if any):** September 29, 2015

**Anticipated public comment period:** September 4, 2015 - October 4, 2015

**Anticipated adoption date:** December 9, 2015

**Agency contacts:**

Bobby Janecka, Rule Project Manager, (512) 239-6415, Radioactive Materials Division

Ron Olson, Staff Attorney, (512) 239-0608

Amie Robinson, Staff Attorney, (512) 293-2999

Sherry Davis, Texas Register Coordinator, (512) 239-2141

**Attachments**

Senate Bill 347

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Marshall Coover  
Stephen Tatum  
Office of General Counsel  
Bobby Janecka  
Sherry Davis

AN ACT

relating to funding for the operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission and to the disposal of certain low-level radioactive waste.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (d), Section 401.052, Health and Safety Code, as amended by Chapters 580 (H.B. 1678) and 1067 (H.B. 1567), Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(d) Fees assessed under this section:

(1) may provide additional revenue to support the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission;

(2) may not exceed \$10 per cubic foot of shipped low-level radioactive waste;

(3) [~~2~~] shall be collected by the department and deposited to the credit of the perpetual care account;

(4) [~~3~~] shall be used [~~exclusively~~] by the department for emergency planning for and response to transportation accidents involving low-level radioactive waste, including first responder training in counties through which transportation routes are designated in accordance with Subsection (a); and

(5) [~~4~~] may not be collected on waste disposed of

1 at a federal waste disposal facility [~~shall be suspended when the~~  
2 ~~amount of fees collected reaches \$500,000, except that if the~~  
3 ~~balance of fees collected is reduced to \$350,000 or less, the~~  
4 ~~assessments shall be reinstated to bring the balance of fees~~  
5 ~~collected to \$500,000~~].

6 SECTION 2. Subsection (a), Section 401.109, Health and  
7 Safety Code, is amended to read as follows:

8 (a) The department or commission may require a holder of a  
9 license issued by the agency to provide security acceptable to the  
10 agency to assure performance of the license holder's obligations  
11 under this chapter. The department [~~or commission~~] shall deposit  
12 security provided to the department under this section to the  
13 credit of the perpetual care account. The department [~~or~~  
14 ~~commission~~] by rule shall provide that any evidence of security  
15 must be made payable to the credit of the perpetual care account.  
16 The commission shall deposit security provided to the commission  
17 under this section to the credit of the environmental radiation and  
18 perpetual care account. The commission shall provide that security  
19 must be made payable to the credit of the environmental radiation  
20 and perpetual care account.

21 SECTION 3. Section 401.152, Health and Safety Code, is  
22 amended by amending Subsection (b) and adding Subsection (c) to  
23 read as follows:

24 (b) The department [~~agency~~] shall use the security provided  
25 by the license holder to pay the costs of actions that are taken or  
26 that are to be taken under this section. The department [~~agency~~]  
27 shall send to the comptroller a copy of its order together with

1 necessary written requests authorizing the comptroller to:

- 2 (1) enforce security supplied by the license holder;
- 3 (2) convert an amount of security into cash, as
- 4 necessary; and
- 5 (3) disburse from the security in the radiation and
- 6 perpetual care account the amount necessary to pay the costs.

7 (c) The commission shall use the security provided by the  
8 license holder to pay the costs of actions taken or to be taken  
9 under this section, including costs associated with the Texas  
10 Low-Level Radioactive Waste Disposal Compact Commission. The  
11 commission shall send to the comptroller a copy of its order  
12 together with necessary written requests authorizing the  
13 comptroller to:

- 14 (1) enforce security supplied by the license holder;
- 15 (2) convert an amount of security to cash, as
- 16 necessary; and
- 17 (3) disburse from the security in the environmental
- 18 radiation and perpetual care account the amount necessary to pay
- 19 the costs.

20 SECTION 4. Section 401.207, Health and Safety Code, is  
21 amended by adding Subsections (d-1), (d-2), (d-3), and (e-2) and  
22 amending Subsections (e), (e-1), and (h) to read as follows:

23 (d-1) Beginning September 1, 2015, the compact waste  
24 disposal facility license holder may accept nonparty compact waste  
25 for disposal at the facility only if:

- 26 (1) the waste has been volume-reduced, if eligible, by
- 27 at least a factor of three in a manner consistent with this

1 subchapter as provided by commission rule; and

2 (2) the compact waste disposal facility license holder  
3 collects a surcharge under Subsection (g).

4 (d-2) If volume reduction of a low-level radioactive waste  
5 stream would result in a change of waste classification to a class  
6 higher than Class C, the payment of the fee and compliance with  
7 other requirements of Subsection (d-1) do not apply.

8 (d-3) The commission may assess an additional fee on a  
9 nonparty compact waste generator for failing to comply with the  
10 volume reduction requirements established under this section. The  
11 fee shall be deposited to the credit of the low-level radioactive  
12 waste fund under Section 401.249. Fees deposited under this  
13 subsection may be transferred and used only to support the  
14 operations of the Texas Low-Level Radioactive Waste Disposal  
15 Compact Commission under Section 401.251.

16 (e) The compact waste disposal facility license holder may  
17 not collect a fee under this section or enter into a contract for  
18 the disposal of nonparty low-level radioactive waste that has been  
19 designated as Class A low-level radioactive waste under 10 C.F.R.  
20 Section 61.55 and commission rule unless the waste is  
21 containerized. The compact waste disposal facility license holder  
22 may collect a fee and dispose of:

23 (1) not more than the greater of:

24 (A) 1.167 million curies of nonparty compact  
25 waste; or

26 (B) an amount of nonparty compact waste equal to  
27 30 percent of the initial licensed capacity of the facility; and

1           (2) not more than 275,000 curies of nonparty compact  
2 waste in any fiscal year [~~accept more than 50,000 total cubic feet~~  
3 ~~of nonparty compact waste annually. The compact waste disposal~~  
4 ~~facility license holder may not accept more than 120,000 curies of~~  
5 ~~nonparty compact waste annually, except that in the first year the~~  
6 ~~license holder may accept 220,000 curies]~~.

7           (e-1) The legislature by general law may establish revised  
8 limits under Subsection (e) after considering the results of the  
9 study under Section 401.208.

10           (e-2) [~~(e-1)~~] The commission's executive director, on  
11 completion of the study under Section 401.208, may prohibit the  
12 license holder from accepting any additional nonparty compact waste  
13 if the commission determines from the study that the capacity of the  
14 facility will be limited, regardless of whether the limit under  
15 Subsection (f) has been reached.

16           (h) A surcharge collected under Subsection (g) shall be  
17 deposited to the credit of the environmental radiation and  
18 perpetual care account [~~low-level radioactive waste fund~~].

19           SECTION 5. Subsection (c), Section 401.208, Health and  
20 Safety Code, is amended to read as follows:

21           (c) Not later than December 1, 2016 [~~2012~~], the commission  
22 shall submit a final report of the results of the study to the  
23 standing committees of the senate and the house of representatives  
24 with jurisdiction over the disposal of low-level radioactive waste.

25           SECTION 6. Section 401.218, Health and Safety Code, is  
26 amended by adding Subsection (d) to read as follows:

27           (d) In addition to the fees charged to support the

1 operations of the Texas Low-Level Radioactive Waste Disposal  
2 Compact Commission, the commission's executive director may charge  
3 a license holder a fee to cover the administrative costs of the  
4 executive director's action to adjust, correct, or otherwise modify  
5 a license.

6 SECTION 7. Section 401.249, Health and Safety Code, is  
7 amended by amending Subsection (e) and adding Subsection (f) to  
8 read as follows:

9 (e) The commission may transfer money from the low-level  
10 radioactive waste fund to the environmental radiation and perpetual  
11 care account to make payments required by the commission under  
12 Section 401.303. The commission shall notify the Texas Low-Level  
13 Radioactive Waste Disposal Compact Commission of an action the  
14 commission takes under this subsection.

15 (f) The commission shall deposit in the account the portion  
16 of the fee collected under Section 401.245 that is calculated to  
17 support the activities of the Texas Low-Level Radioactive Waste  
18 Disposal Compact Commission as required by Section 4.04(4), Texas  
19 Low-Level Radioactive Waste Disposal Compact (Section 403.006 of  
20 this code). The fee shall be assessed for party state compact waste  
21 and nonparty compact waste.

22 SECTION 8. Subsections (b) and (c), Section 401.251, Health  
23 and Safety Code, are amended to read as follows:

24 (b) On the first day of each state fiscal year, the  
25 comptroller shall transfer from the low-level radioactive waste  
26 fund to the low-level radioactive waste disposal compact commission  
27 account an amount equal to the amount appropriated for that state

1 fiscal year. On September 30 of each fiscal year, the comptroller  
2 shall transfer the unexpended and unencumbered money from the  
3 previous fiscal year in the low-level radioactive waste disposal  
4 compact commission account to the low-level radioactive waste fund  
5 ~~[The commission shall deposit in the account the portion of the fee~~  
6 ~~collected under Section 401.245 that is calculated to support the~~  
7 ~~activities of the Texas Low-Level Radioactive Waste Disposal~~  
8 ~~Compact Commission as required by Section 4.04(4), Texas Low-Level~~  
9 ~~Radioactive Waste Disposal Compact (Section 403.006 of this code)].~~

10 (c) Money in the low-level radioactive waste disposal  
11 compact commission account may be used ~~[appropriated]~~ only to  
12 support the operations of the Texas Low-Level Radioactive Waste  
13 Disposal Compact Commission.

14 SECTION 9. Subsection (d), Section 401.301, Health and  
15 Safety Code is amended to read as follows:

16 (d) The commission and department shall ~~[may]~~ require that  
17 each person who holds a specific license issued by the agency pay to  
18 the agency an additional five percent of the appropriate fee set  
19 under Subsection (b). Fees collected by the department under this  
20 subsection shall be deposited to the credit of the perpetual care  
21 account. Fees collected by the commission under this subsection  
22 shall be deposited to the environmental radiation and perpetual  
23 care account. The fees are not refundable. The holder of a  
24 specific license authorizing the extraction, processing, or  
25 concentration of uranium or thorium from ore is not required to pay  
26 the additional fee described by this subsection before the  
27 beginning of operations under the license.

1 SECTION 10. Subsection (g), Section 401.303, Health and  
2 Safety Code, is amended to read as follows:

3 (g) If a license holder satisfies the obligations under this  
4 chapter, the issuing agency shall have the comptroller promptly  
5 refund to the license holder from the perpetual care account or the  
6 environmental radiation and perpetual care account, as applicable,  
7 the excess of the amount of all payments made by the license holder  
8 to the issuing agency and the investment earnings of those payments  
9 over the amount determined to be required for the continuing  
10 maintenance and surveillance of land, buildings, and radioactive  
11 material conveyed to the state.

12 SECTION 11. Subsections (b), (c), (d), (e), (f), and (g),  
13 Section 401.305, Health and Safety Code, are amended to read as  
14 follows:

15 (b) The department [~~and commission each~~] shall deposit to  
16 the credit of the perpetual care account money and security it  
17 receives [~~they receive~~] under this chapter, including an  
18 administrative penalty collected by the department under Sections  
19 401.384-401.390 but excluding fees collected under Sections  
20 401.301(a)-(c) and 401.302. Interest earned on money in the  
21 perpetual care account shall be credited to the perpetual care  
22 account.

23 (c) Money and security in the perpetual care account may be  
24 administered by the department [~~or commission~~] only for storage,  
25 maintenance, and distribution of mammography medical records or the  
26 decontamination, decommissioning, stabilization, reclamation,  
27 maintenance, surveillance, control, storage, and disposal of

1 radioactive substances for the protection of the public health and  
2 safety and the environment under this chapter and for refunds under  
3 Section 401.303.

4 (d) Money and security in the perpetual care account may not  
5 be used for normal operating expenses of the department [~~or~~  
6 ~~commission~~].

7 (e) The department [~~or commission~~] may use money in the  
8 perpetual care account to pay for measures:

9 (1) to prevent or mitigate the adverse effects of  
10 abandonment of radioactive substances, default on a lawful  
11 obligation, insolvency, or other inability by the holder of a  
12 license issued by the department [~~or commission~~] to meet the  
13 requirements of this chapter or of department [~~or commission~~]  
14 rules;

15 (2) to assure the protection of the public health and  
16 safety and the environment from the adverse effects of ionizing  
17 radiation; and

18 (3) to protect the health and safety of mammography  
19 patients by assuring mammography medical records are made available  
20 to affected patients.

21 (f) The department [~~or commission~~] may provide, by the terms  
22 of a contract or lease entered into between the department [~~or~~  
23 ~~commission~~] and any person, by the terms of a mammography  
24 certification issued by the department [~~or commission~~] to any  
25 person, or by the terms of a license issued to any person, for the  
26 storage, maintenance, and distribution of mammography medical  
27 records. The department [~~or commission~~] may provide, by the terms

1 of a contract or lease entered into between the department [~~or~~  
2 ~~commission~~] and any person or by the terms of a license issued by  
3 the department [~~or commission~~] to any person, for the  
4 decontamination, closure, decommissioning, reclamation,  
5 surveillance, or other care of a site or facility subject to  
6 department [~~or commission~~] jurisdiction under this chapter as  
7 needed to carry out the purpose of this chapter.

8 (g) The existence of the perpetual care account does not  
9 make the department [~~or commission~~] liable for the costs of  
10 storage, maintenance, and distribution of mammography medical  
11 records arising from a mammography certification holder's failure  
12 to store, maintain, and make available mammography medical records  
13 or for the costs of decontamination, transfer, transportation,  
14 reclamation, surveillance, or disposal of radioactive substances  
15 arising from a license holder's abandonment of radioactive  
16 substances, default on a lawful obligation, insolvency, or  
17 inability to meet the requirements of this chapter or of department  
18 [~~or commission~~] rules.

19 SECTION 12. Subchapter H, Chapter 401, Health and Safety Code,  
20 is amended by adding Sections 401.306 and 401.307 to read as follows:

21 Sec. 401.306. ENVIRONMENTAL RADIATION AND PERPETUAL CARE  
22 ACCOUNT. (a) The environmental radiation and perpetual care  
23 account is an account in the general revenue fund to support the  
24 activities of the Texas Low-Level Radioactive Waste Disposal  
25 Compact Commission.

26 (b) The commission shall deposit to the credit of the  
27 environmental radiation and perpetual care account money and

1 security it receives under this chapter, including fees collected  
2 under Section 401.301(d). Interest earned on money in the  
3 environmental radiation and perpetual care account shall be  
4 credited to the environmental radiation and perpetual care account.

5 (c) Money and security in the environmental radiation and  
6 perpetual care account may be administered by the commission only  
7 for the decontamination, decommissioning, stabilization,  
8 reclamation, maintenance, surveillance, control, storage, and  
9 disposal of radioactive substances for the protection of the public  
10 health and safety and the environment under this chapter and for  
11 refunds under Section 401.303.

12 (d) Money and security in the environmental radiation and  
13 perpetual care account may not be used for normal operating  
14 expenses of the commission.

15 (e) The commission may use money in the environmental  
16 radiation and perpetual care account to pay for measures:

17 (1) to prevent or mitigate the adverse effects of  
18 abandonment of radioactive substances, default on a lawful  
19 obligation, insolvency, or other inability by the holder of a  
20 license issued by the commission to meet the requirements of this  
21 chapter or of commission rules; and

22 (2) to ensure the protection of the public health and  
23 safety and the environment.

24 (f) The commission may provide, by the terms of a contract  
25 or lease entered into between the commission and any person, or by  
26 the terms of a license issued to any person, for the  
27 decontamination, closure, decommissioning, reclamation,

1 surveillance, or other care of a site or facility subject to  
2 commission jurisdiction under this chapter as needed to carry out  
3 the purposes of this chapter.

4 (g) The existence of the environmental radiation and  
5 perpetual care account does not make the commission liable for the  
6 costs of decontamination, transfer, transportation, reclamation,  
7 surveillance, or disposal of radioactive substances arising from a  
8 license holder's abandonment of radioactive substances, default on  
9 a lawful obligation, insolvency, or inability to meet the  
10 requirements of this chapter or of commission rules.

11 Sec. 401.307. PERPETUAL CARE ACCOUNT AND ENVIRONMENTAL  
12 RADIATION AND PERPETUAL CARE ACCOUNT CAPS. (a) The fees imposed  
13 under Sections 401.052(d) and 401.301(d) are suspended when the sum  
14 of the balances of the perpetual care account and the environmental  
15 radiation and perpetual care account reaches \$100 million. The  
16 fees are reinstated when the sum of the balances of the perpetual  
17 care account and the environmental radiation and perpetual care  
18 account falls to \$50 million or less.

19 (b) The surcharge collected under Section 401.207(g) is  
20 collected without regard to the balances of the perpetual care  
21 account and the environmental radiation and perpetual care account.

22 (c) Notwithstanding Subsection (a), a fee imposed by the  
23 commission under Section 401.301(d) on the holder of a license  
24 authorizing the extraction, processing, or concentration of  
25 uranium or thorium from ore is suspended when the amount in the  
26 environmental radiation and perpetual care account attributable to  
27 those fees reaches \$2 million. If the amount in that account

1 attributable to those fees is reduced to \$1.5 million or less, the  
2 fee is reinstated until the amount reaches \$2 million.

3 (d) Notwithstanding Subsection (a), a fee imposed under  
4 Section 401.052(d) is suspended from imposition against a party  
5 state compact waste generator when the amount in the perpetual care  
6 account attributable to those fees reaches \$500,000. If the amount  
7 in that account attributable to those fees is reduced to \$350,000 or  
8 less, the fee is reinstated until the amount reaches \$500,000.

9 (e) This section does not relieve a generator from liability  
10 for a transportation accident involving low-level radioactive  
11 waste.

12 SECTION 13. The following sections of the Health and Safety  
13 Code are repealed:

- 14 (1) Subsection (h), Section 401.245;
- 15 (2) Subsection (b), Section 401.2455;
- 16 (3) Subsection (e), Section 401.301; and
- 17 (4) Section 403.0052.

18 SECTION 14. (a) As soon as practicable after the effective  
19 date of this Act, the Texas Commission on Environmental Quality  
20 shall adopt rules to implement Subsection (d-1), Section 401.207,  
21 and Subsection (d), Section 401.218, Health and Safety Code, as  
22 added by this Act.

23 (b) As soon as practicable after the effective date of this  
24 Act but not later than January 1, 2014, the Texas Commission on  
25 Environmental Quality and the Department of State Health Services  
26 shall update the portion of the memorandum of understanding between  
27 the two agencies under Section 401.069, Health and Safety Code,

1 that governs each agency's role regarding the regulation and  
2 oversight of radioactive materials and sources of radiation.

3 SECTION 15. The changes in law made by this Act apply only  
4 to a contract for the disposal of compact waste or nonparty compact  
5 waste that is signed on or after the effective date of this Act. A  
6 contract signed before the effective date of this Act is governed by  
7 the law in effect on the date the contract was signed, and the  
8 former law is continued in effect for that purpose.

9 SECTION 16. This Act takes effect September 1, 2013.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 347 passed the Senate on March 21, 2013, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 24, 2013, by the following vote: Yeas 26, Nays 5.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 347 passed the House, with amendments, on May 22, 2013, by the following vote: Yeas 130, Nays 15, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §336.2; the repeal of §336.357; and new §336.357 and §336.739.

### **Background and Summary of the Factual Basis for the Proposed Rules**

The commission proposes changes to Chapter 336, Subchapters A and D that will revise the commission's rules concerning physical protection of radioactive material to ensure compatibility with federal regulations promulgated by the Nuclear Regulatory Commission (NRC) which is necessary to preserve the status of Texas as an Agreement State under Title 10 Code of Federal Regulations (CFR) Part 150 and under the "Articles of Agreement Between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended." Rules which are designated by NRC as compatibility items must be adopted by an Agreement State within three years of the effective date of the NRC rules, in most cases.

In response to efforts to assess security risks posed by uncontrolled sources, the NRC issued Order EA-05-090 (Increased Controls (IC) Order) on November 14, 2005, to impose requirements for the control of high-risk radioactive materials to prevent inadvertent and intentional unauthorized access, primarily due to the potential health and safety hazards posed by the uncontrolled material.

The IC Order identified certain radionuclides of concern and established control measures for licensees to secure those materials. Part of this order was the requirement to determine that each person who requires access to radioactive material quantities of concern to perform their job duties is sufficiently trustworthy and reliable. Section 652 of the Energy Policy Act of 2005, enacted on August 8, 2005, amended Section 149 (the fingerprinting requirements) of the Atomic Energy Act (AEA) to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check for "any individual who is permitted unescorted access to radioactive materials or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks." The NRC issued Order EA-07-305 in December 5, 2007 to expeditiously implement, in part, these additional requirements as enhancements to the existing trustworthiness and reliability requirements of the IC Order.

As part of both orders, each Agreement State was required to issue legally binding requirements to put essentially identical measures in place for licensees under state regulatory jurisdiction. The commission has already imposed the requirements of the NRC orders on licensees by adding a condition on their radioactive material license that requires the licensee to follow the two NRC orders. Additionally, the commission has adopted rules to implement the IC Order on January 11, 2012.

The NRC adopted both orders, the IC Order and the order requiring fingerprinting and an

FBI criminal background check, into 10 CFR on March 19, 2013, with modifications to the requirements in the IC Order based on public comments. The modifications to the requirements from the IC Order will result in the original rules (adopted in January 11, 2012) being removed in their entirety and replaced with the new, modified rule language. This rulemaking will also add new rules concerning the order requiring fingerprinting and an FBI criminal background check. The NRC completed additional rulemaking in January 26, 2015, which modified slightly the federal rules adopted in March 19, 2013. These modifications have been incorporated into the proposed rules.

This proposed rulemaking also implements requirements relating to volume reduction from Senate Bill (SB) 347, 83rd Texas Legislature, 2013, and its amendments to Texas Health and Safety Code (THSC), Chapter 401 (also known as the Texas Radiation Control Act (TRCA)). In keeping with amendments to THSC, §401.207, new provisions in Chapter 336 prohibit the compact waste disposal facility license holder from accepting nonparty compact waste for disposal at the facility unless the waste meets the requirements of §336.739.

### **Section by Section Discussion**

In addition to the proposed amendments, various stylistic, non-substantive changes are included to update rule language to current *Texas Register* style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally are

not specifically discussed in this preamble.

*§336.2, Definitions*

The commission proposes to modify §336.2 to add 21 new definitions. Quantities of significant concern will be redefined as category 2 quantity of radioactive materials and category 1 quantity of radioactive materials will be defined as 100 times the category 2 quantity for §336.357.

*§336.357, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material*

The commission proposes the repeal of and new §336.357 to replace the current section regarding physical protection of radioactive materials with a new section with minor modifications (described in detail in this Section by Section Discussion) that relaxes some of the requirements of current §336.357, authorizes exemptions to these rules for specific types of radioactive waste, and adds rules requiring fingerprinting and an FBI criminal background check for individuals who have unescorted access to category 1 and category 2 quantity of radioactive materials. The current rules regarding physical protection of radioactive material in §336.357 are proposed to be replaced completely because of the numerous changes necessary - due to the minor modifications required by the NRC, incorporation of the fingerprinting and FBI criminal background checks into the rules, and the addition and changing of definitions - would make a piecemeal editing of the old rules cumbersome and inefficient.

Proposed new §336.357(a) will exempt licensees who possess radioactive waste - except waste consisting of discrete sources, ion-exchange resins, or activated material that weighs less than 2,000 kg (4,409 pounds) - that contains category 1 or category 2 quantity of radioactive material from the requirements of §336.357(b) - (w). These licensees will still be required to use continuous barriers, use a locked door or gate with monitored alarm, assess and respond to actual or attempted unauthorized access, and notify the local law enforcement agency (LLEA) and request for an armed response when appropriate.

Proposed new §336.357(b) - (h) will contain the provisions for the background investigation and access authorization program for licensees that allow unescorted access to an aggregated category 1 or category 2 quantity of radioactive material. The requirements for the access authorization program would include the use of a reviewing official, informed consent, personal history disclosure, background investigations, use of implementing procedures, the right to correct and complete information before an adverse determination, and an annual program review. A limited reinvestigation would be required every 10 years.

Proposed new §336.357(i) - (q) will contain the new provisions for physical protection during use of category 1 and category 2 quantities of radioactive material. Licensees possessing an aggregated category 1 or category 2 quantity of radioactive material will be required to develop and implement a security program. The objective of the security

program will be to monitor and, without delay, detect, assess, and respond to any actual or attempted unauthorized access to category 1 or category 2 quantity of radioactive materials. A licensee's security program will need to include a written security plan, implementing procedures, training, use of security zones, coordination with the LLEA, testing and maintenance of security-related equipment, security measures, and a program review. These subsections will also establish special requirements for enhanced security measures for mobile sources and when tamper-indicating and alarm systems must be disabled to permit the maintenance of equipment or replacement of radioactive materials.

Modifications to the current physical protection of radioactive material rules in proposed new §336.357 will include: 1) applying the rules to a licensee only when they possess a category 1 or category 2 quantity of radioactive material and not when they are authorized for such quantities on their radioactive material license; 2) removing the requirement for licensees to submit compliance information; 3) removing the requirement for a licensee to notify the LLEA for work at temporary jobsites; 4) removing several of the LLEA coordination elements, including the requirement to request a written agreement and request notification of any degradation in LLEA response capabilities; 5) requiring that the minimum information to be shared with the LLEA is: A) a description of the facilities and material, B) a description of the security measures being employed by the licensee, and C) a notification that the licensee will request a timely armed response to any theft, sabotage, or diversion of material; 6) revising the testing and maintenance requirement for security-related equipment to be the manufacturer's recommended frequency or annually if the

manufacturer does not provide a suggested frequency; 7) removing the requirement to calibrate the equipment; 8) removing the requirement for the licensee to disable the vehicle if a site has health and safety requirements that prevent disabling of vehicles; 9) modifying the reporting requirements to clarify the requirements and provide greater flexibility to the licensee; and 10) requiring a licensee to report suspicious activities.

Proposed new §336.357(r) - (w) will contain security provisions for the transport of category 1 and category 2 quantities of radioactive material. The requirements will be applied in a graded approach with more measures placed on transport of category 1 quantity of radioactive material than on amounts that pose lower risks. The measures will require pre-transfer checks; preplanning and coordination activities; advance notice for category 1 shipments; reporting in the event of a lost or missing shipment or suspicious activities related to the theft or diversion of the shipment; and control, monitoring, and communications during shipments. Road shipments of a category 1 quantity of radioactive material will require licensees to use a carrier that has established movement control centers that maintain periodic position information, use a telemetric position monitoring system, and establish redundant communications that allow the transport to contact the movement control center. Shipments of a category 2 quantity of radioactive material will require the licensees to maintain constant control or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance. If a licensee uses a carrier for transport of the material, the licensee will be required to verify that the carrier meets these requirements and has an established package

tracking system.

Modifications to the current rules concerning security provisions for the transport of category 1 and category 2 quantities of radioactive material in proposed new §336.357 will include: 1) revising the requirement for license verification before transferring the material to include an emergency option that can be used when the license verification system is nonfunctional and the licensee cannot reach the regulator; 2) exempting the licensee from proposed new §336.357(r) - (w) if the transfer is within the same organization; 3) removing the rule requiring documentation of the license verification if the license verification system is used; 4) removing the provision for the no-later-than arrival time for category 1 shipments; 5) removing some of the specificity on the required coordination with the states through which the radioactive material is being transported; 6) requiring licensees to discuss the State's intention to provide law enforcement escorts and identify safe havens; and 7) removing other elements because they are not necessary and are overly prescriptive.

Proposed new §336.357(x) will provide requirements for the form of the records and proposed new §336.357(y) will provide the retention time for these records. The table of concentration values that will be used to determine if the radioactive material is category 1 or category 2 will be in the proposed new §336.357(z).

*§336.739, Volume Reduction*

Proposed new §336.739 will establish new restrictions on the disposal of low-level

radioactive waste in Texas that was generated outside of Texas or Vermont. These restrictions require that any such waste to be disposed in Texas must have been volume reduced to a certain degree and imposes certain requirements on records retention related to volume reduction.

**Fiscal Note: Costs to State and Local Government**

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government. The proposed rules will codify requirements for fingerprinting and an FBI criminal background check for individuals who have unescorted access to certain radioactive material quantities into rule. These requirements are already enforced through a license condition and an NRC order. The proposed rules also provide new restrictions on the disposal of low-level radioactive waste in Texas generated outside of Texas or Vermont. The restrictions would require that any such waste must have been volume reduced. The proposed restrictions are statutorily required and are not expected to result in fiscal implications for the agency or other units of state or local government.

This rulemaking is proposed in order to ensure compatibility with federal regulations promulgated by the NRC. Compatibility with federal regulations is necessary to preserve the status of Texas as an Agreement State under Title 10 CFR Part 150 and under the "Articles of Agreement Between the United States Atomic Energy Commission and the

State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended." Rules which are designated by NRC as compatibility items must be adopted by an Agreement State within three years of the effective date of the NRC rules, in most cases.

The proposed rulemaking will add 21 definitions to §336.2 and replace the rule regarding physical protection of radioactive materials in §336.357 with a new rule with minor modifications relaxing some of the requirements, authorizing exemptions to these rules for specific types of radioactive waste, and adding rules requiring fingerprinting and an FBI criminal background check for individuals who have unescorted access to quantities of significant concern. Quantities of significant concern will be defined as "category 2 quantity of radioactive material." "Category 1 quantity of radioactive material" will be defined as 100 times the concentration values of category 2 quantity of radioactive materials.

Modifications to the current physical protection of radioactive material rules in §336.357 will include: 1) applying this rule to a licensee only when they possess a category 1 or category 2 quantity of radioactive material instead of, as under the current rule, when the licensee is authorized on their radioactive material license for such quantities regardless if the licensee actually possess a category 1 or category 2 quantity of radioactive materials; 2) removing the requirement for licensees to submit compliance information; 3) removing the

requirement for a licensee to notify the LLEA for work at temporary jobsites; 4) removing several of the LLEA coordination elements, including the requirement to request a written agreement and request notification of any degradation in LLEA response capabilities; 5) requiring that the minimum information to be shared with the LLEA is a description of the facilities and radioactive material along with a description of the security measures being employed by the licensee and a notification that the licensee will request a timely armed response to any theft, sabotage, or diversion of radioactive material; 6) revising the testing and maintenance requirement for security-related equipment to be the manufacturer's recommended frequency or annually if the manufacturer does not provide a suggested frequency; 7) removing the requirement to calibrate the equipment; 8) removing the requirement for the licensee to disable the vehicle if a site has health and safety requirements that prevent disabling of vehicles; 9) modifying the reporting to clarify the requirements and provide greater flexibility to the licensee; and 10) requiring a licensee to report suspicious activities.

Modifications to the current rules concerning security provisions for the transport of category 1 and category 2 quantities of radioactive material will include: 1) revising the requirement for license verification before transferring the radioactive material to include an emergency option that can be used when the license verification system is nonfunctional and the licensee cannot reach the regulator; 2) exempting the licensee from §336.357(r) - (w) if the transfer is within the same organization (an example would be a company that has a license in several states); 3) removing the rule requiring documentation of the license

verification if the license verification system is used; 4) removing the provision for the no-later-than arrival time for category 1 shipments; 5) removing some of the specificity on the required coordination with the states through which the radioactive material is being transported; 6) requiring licensees to discuss the State's intention to provide law enforcement escorts and identify safe havens; and 7) removing other elements because they are not necessary and are overly prescriptive.

The proposed rulemaking will modify existing agency rules regarding the physical protection of radioactive materials. Proposed new §336.357 will relax some requirements but will also add rules requiring fingerprinting and an FBI criminal background check for individuals who have unescorted access to radioactive material quantities of significant concern (which will be renamed category 2 quantity of radioactive materials). The fingerprinting and the FBI criminal background check are already enforced through a license condition and an NRC order. The rulemaking will codify these requirements into rule; and therefore, no fiscal implications are anticipated for the agency or any other unit of state or local government.

The proposed rulemaking also addresses the volume reduction of low level radioactive waste generated outside of Texas or Vermont that is to be disposed of in Texas. The proposed requirements are the result of the passage of SB 347. These requirements for nonparty waste (waste from outside the Texas Low Level Radioactive Waste Disposal Compact Commission (TLLRWDC)) would begin September 1, 2015. The license holder

for the Compact low level radioactive waste disposal facility (Waste Control Specialist) would only be allowed to accept nonparty waste for disposal if the waste has been volume-reduced and the license holder collects a fee to support the TLLRWDC. If volume reduction would change the waste classification to greater than class C, volume reduction will not be required. At this time, it is not known how much volume reduced waste would be accepted for disposal or how much associated fee revenue would be collected by Waste Control Specialists. The requirements from SB 347 regarding volume reduction may result in additional disposal costs for out of state licensed entities, but should not result in fiscal implications for any units of state or local government in Texas.

### **Public Benefits and Costs**

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules would be to ensure compatibility with federal regulations promulgated by the NRC and to clarify procedures that ensure that radioactive material is used, stored, and transported safely. The proposed volume reduction requirements would encourage the reservation of waste disposal capacity at the Texas Low-Level Radioactive Waste Disposal Compact disposal site for Texas and Vermont waste. No fiscal implications are anticipated for businesses or individuals as a result of the administration or enforcement of the proposed rules. The proposed rulemaking will modify existing agency rules regarding the physical protection of radioactive materials. Proposed new §336.357 will relax some requirements but will also add rules requiring fingerprinting and an FBI criminal

background check for individuals who have unescorted access to radioactive material quantities of significant concern. The fingerprinting and the FBI criminal background check are already enforced through a state of Texas license condition and an NRC order. Volume reduction requirements will only affect the out of state customers (except Vermont) of one Texas business. Out of state waste that has been volume-reduced will be subject to a fee collected by the Texas license holder that would be used to support the TLLRWDC. It is not known how much fee revenue would be collected or how much volume reduced waste will be received at the disposal site. The volume reduction requirements may result in additional disposal costs for out of state businesses, but any such costs are not possible to estimate at this time.

### **Small Business and Micro-Business Assessment**

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. The proposed rules would have the same effect on a small business as it does on a large business. The proposed requirements are already enforced through a state of Texas license condition and an NRC order and, therefore, not expected to affect small or micro-businesses. The rule is necessary for the safe and secure use of radioactive material and in order to be compatible with federal rules. The volume reduction requirements are not expected to affect small or micro-businesses in the state. It is not known if the volume reduction requirements would affect any small or micro-businesses out of state.

### **Small Business Regulatory Flexibility Analysis**

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are necessary in order to comply with state law and be compatible with federal rules and does not adversely affect small or micro-businesses in a material way for the first five years that the proposed rules are in effect.

### **Local Employment Impact Statement**

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

### **Draft Regulatory Impact Analysis Determination**

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The

proposed new rule is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed new rule codifies existing requirements that are already imposed by federal rule, state statute, and state license condition.

Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor adopt a rule solely under the general powers of the agency.

The TRCA, THSC, Chapter 401, authorizes the commission to regulate the disposal of most radioactive material in Texas. THSC, §401.106(a) authorizes the commission to adopt rules to exempt a source of radiation from the licensing requirements of the TRCA if the commission finds that the exemption of the source of radiation will not constitute a

significant risk to the public health and safety and the environment. In addition, the state of Texas is an "Agreement State," authorized by the NRC to administer a radiation control program under the AEA. The proposed rules do not exceed a standard set by federal law. The proposed rulemaking implements an exemption that is consistent with exemptions approved by the NRC for the disposal of radioactive tracers.

The proposed rules do not exceed an express requirement of state law. The TRCA, THSC, Chapter 401 establishes general requirements for the licensing and disposal of radioactive materials. THSC, §401.106 specially authorizes the commission to exempt a source of radiation from the requirements to obtain a license for disposal.

The commission has also determined that the proposed rules do not exceed a requirement of a delegation agreement or contract between the state and an agency of the federal government. The state of Texas has been designated as an "Agreement State" by the NRC under the authority of the AEA. The AEA requires that the NRC find that the state radiation control program is compatible with the NRC's requirements for the regulation of radioactive materials and is adequate to protect health and safety. The commission determined that the proposed rules do not exceed the NRC's requirements nor exceed the requirements for retaining status as an "Agreement State."

The commission also determined that these rules are proposed under specific authority of the TRCA, THSC, Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.106 authorize

the commission to adopt rules for the control of sources or radiation and the licensing and exemption of the disposal of radioactive materials.

The commission invites public comment of the draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

### **Takings Impact Assessment**

The commission evaluated the proposed rules and performed a preliminary assessment of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment is that implementation of the proposed rules would not constitute a taking of real property. The purpose of the proposed rules is to codify federal requirements for increased controls of certain radioactive material, which are already in effect on state licensees by license condition and to impose certain requirements related to Volume Reduction from SB 347.

### **Consistency with the Coastal Management Program**

The commission reviewed this proposed rulemaking action and determined that the proposed rule is neither identified in, nor will it affect, any action/authorization identified in Coastal Coordination Act Implementation Rules in 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP). Therefore, the

proposed rulemaking action is not subject to the CMP.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

### **Announcement of Hearing**

The commission will hold a public hearing on this proposal in Austin on September 29, 2015, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

### **Submittal of Comments**

Written comments may be submitted to Sherry Davis, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at:

*<http://www1.tceq.texas.gov/rules/ecomments/>*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-012-336-WS. The comment period closes on October 4, 2015. Copies of the proposed rulemaking can be obtained from the commission's website at *[http://www.tceq.texas.gov/rules/propose\\_adopt.html](http://www.tceq.texas.gov/rules/propose_adopt.html)*. For further information, please contact Bobby Janecka, Radioactive Materials Division, (512) 239-6415.

## **SUBCHAPTER A: GENERAL PROVISIONS**

### **§336.2**

#### **Statutory Authority**

The amendment is proposed under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; and THSC, §401.106, which authorizes the commission to adopt rules to exempt a source of radiation from the licensing requirements provided by the Texas Radiation Control Act. The proposed amendment is also authorized by Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

The proposed amendment implements THSC, §§401.011, 401.051, 401.057, 401.103, 401.106, and 401.412.

**§336.2. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings, or as described in Chapter 3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Additional definitions used only in a certain subchapter will be found in that subchapter.

(1) Absorbed dose--The energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (Gy).

(2) Accelerator-produced radioactive material--Any material made radioactive by a particle accelerator.

(3) Access control--A system for allowing only approved individuals to have unescorted access to the security zone and for ensuring that all other individuals are subject to escorted access.

(4) [(3)] Activity--The rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).

(5) [(4)] Adult--An individual 18 or more years of age.

(6) Aggregated--Accessible by the breach of a single physical barrier that allows access to radioactive material in any form, including any devices containing the radioactive material, when the total activity equals or exceeds a category 2 quantity of radioactive material.

(7) [(5)] Agreement state--Any state with which the United States Nuclear Regulatory Commission (NRC) or the Atomic Energy Commission has entered into an effective agreement under the Atomic Energy Act of 1954, §274b, as amended through October 24, 1992 (Public Law 102-486).

(8) [(6)] Airborne radioactive material--Any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(9) [(7)] Airborne radioactivity area--A room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed material, exist in concentrations:

(A) in excess of the derived air concentrations (DACs) specified in Table I of §336.359(d) of this title (relating to Appendix B. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage); or

(B) to a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6% of the ALI or 12 DAC-hours.

(10) [(8)] Air-purifying respirator--A respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

(11) [(9)] Annual limit on intake (ALI)--The derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the "reference man" that would result in a committed effective dose equivalent of 5 rems (0.05 sievert) or a committed dose equivalent of 50 rems (0.5 sievert) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2 of §336.359(d) of this title (relating to Appendix B. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage).

(12) Approved individual--An individual whom the licensee has determined to be trustworthy and reliable for unescorted access in accordance with §336.357(b) - (h) of this title (relating to Physical Protection of Category 1 and Category 2 Quantities of

Radioactive Material) and who has completed the training required by §336.357(j)(3) of this title.

(13) [(10)] As low as is reasonably achievable [(ALARA)]--Making every reasonable effort to maintain exposures to radiation as far below the dose limits in this chapter as is practical, consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of ionizing radiation and licensed radioactive materials in the public interest.

(14) [(11)] Assigned protection factor (APF)--The expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

(15) [(12)] Atmosphere-supplying respirator--A respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators [(SARs)] and self-contained breathing apparatus [(SCBA)] units.

(16) Background investigation--The investigation conducted by a licensee or applicant to support the determination of trustworthiness and reliability.

(17) [(13)] Background radiation--Radiation from cosmic sources; non-technologically enhanced naturally-occurring radioactive material, including radon (except as a decay product of source or special nuclear material) and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include radiation from radioactive materials regulated by the commission, Texas Department of State Health Services, NRC, or an Agreement State.

(18) [(14)] Becquerel (B<sub>q</sub>)--See §336.4 of this title (relating to Units of Radioactivity).

(19) [(15)] Bioassay--The determination of kinds, quantities, or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body. For purposes of the rules in this chapter, "radiobioassay" is an equivalent term.

(20) [(16)] Byproduct material--

(A) A radioactive material, other than special nuclear material, that is produced in or made radioactive by exposure to radiation incident to the process of producing or using special nuclear material;

(B) The tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes, and other tailings having similar radiological characteristics. Underground ore bodies depleted by these solution extraction processes do not constitute "byproduct material" within this definition;

(C) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity;

(D) Any material that has been made radioactive by use of a particle accelerator, and is produced, extracted, or converted for use for a commercial, medical, or research activity; and

(E) Any discrete source of naturally occurring radioactive material, other than source material, that is extracted or converted after extraction for use in a

commercial, medical, or research activity and that the NRC, in consultation with the Administrator of the United States Environmental Protection Agency (EPA), the United States Secretary of Energy, the United States Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security.

(21) [(17)] CFR--Code of Federal Regulations.

(22) Carrier--A person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

(23) Category 1 quantity of radioactive material--A quantity of radioactive material meeting or exceeding the category 1 threshold in accordance with §336.357(z) of this title (relating to Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material). This is determined by calculating the ratio of the total activity of each radionuclide to the category 1 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds 1, the quantity would be considered a category 1 quantity. Category 1 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

(24) Category 2 quantity of radioactive material--A quantity of radioactive material meeting or exceeding the category 2 threshold but less than the category 1 threshold in accordance with §336.357(z) of this title (relating to Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material). This is determined by calculating the ratio of the total activity of each radionuclide to the category 2 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds 1, the quantity would be considered a category 2.

(25) [(18)] Class--A classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D (Days) of less than ten days, for Class W (Weeks) from 10 to 100 days, and for Class Y (Years) of greater than 100 days. For purposes of the rules in this chapter, "lung class" and "inhalation class" are equivalent terms.

(26) [(19)] Collective dose--The sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(27) [(20)] Committed dose equivalent ( $H_{T,50}$ ) (CDE)--The dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

(28) [(21)] Committed effective dose equivalent ( $H_{E,50}$ ) (CEDE)--The sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues.

(29) [(22)] Compact--The Texas Low-Level Radioactive Waste Disposal Compact established under Texas Health and Safety Code, §403.006 and Texas Low-Level Radioactive Waste Disposal Compact Consent Act, Public Law Number 105-236 (1998).

(30) [(23)] Compact waste--Low-level radioactive waste that:

(A) is generated in a host state or a party state; or

(B) is not generated in a host state or a party state, but has been approved for importation to this state by the compact commission under §3.05 of the compact established under Texas Health and Safety Code, §403.006.

(31) [(24)] Compact waste disposal facility--The low-level radioactive waste land disposal facility licensed by the commission under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) for the disposal of compact waste.

(32) [(25)] Constraint (dose constraint)--A value above which specified licensee actions are required.

(33) [(26)] Critical group--The group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

(34) [(27)] Curie (C<sub>i</sub>)--See §336.4 of this title (relating to Units of Radioactivity).

(35) [(28)] Declared pregnant woman--A woman who has voluntarily informed the licensee, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

(36) [(29)] Decommission--To remove (as a facility) safely from service and reduce residual radioactivity to a level that permits:

(A) release of the property for unrestricted use and termination of license; or

(B) release of the property under restricted conditions and termination of the license.

(37) [(30)] Deep-dose equivalent ( $H_d$ ) (which applies to external whole-body exposure)--The dose equivalent at a tissue depth of one centimeter (1,000 milligrams/square centimeter).

(38) [(31)] Demand respirator--An atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

(39) [(32)] Depleted uranium--The source material uranium in which the isotope uranium-235 is less than 0.711%, by weight, of the total uranium present. Depleted uranium does not include special nuclear material.

(40) [(33)] Derived air concentration (DAC)--The concentration of a given radionuclide in air which, if breathed by the "reference man" for a working year of 2,000 hours under conditions of light work (inhalation rate of 1.2 cubic meters of air/hour), results in an intake of one ALI. DAC values are given in Table I, Column 3, of §336.359(d) of this title (relating to Appendix B. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage).

(41) [(34)] Derived air concentration-hour (DAC-hour)--The product of the concentration of radioactive material in air (expressed as a fraction or multiple of the derived air concentration for each radionuclide) and the time of exposure to that radionuclide, in hours. A licensee shall take 2,000 DAC-hours to represent one [ALI], equivalent to a committed effective dose equivalent of 5 rems (0.05 sievert).

(42) [(35)] Discrete source--A radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

(43) [(36)] Disposal--With regard to low-level radioactive waste, the isolation or removal of low-level radioactive waste from mankind and mankind's environment without intent to retrieve that low-level radioactive waste later.

(44) [(37)] Disposable respirator--A respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only SCBA.

(45) [(38)] Distinguishable from background--The detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

(46) Diversion--The unauthorized movement of radioactive material subject to §336.357 of this title (relating to Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material) to a location different from the material's authorized destination inside or outside of the site at which the material is used or stored.

(47) [(39)] Dose--A generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of the rules in this chapter, "radiation dose" is an equivalent term.

(48) [(40)] Dose equivalent ( $H_T$ )--The product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert ( $S_v$ ).

(49) [(41)] Dose limits--The permissible upper bounds of radiation doses established in accordance with the rules in this chapter. For purposes of the rules in this chapter, "limits" is an equivalent term.

(50) [(42)] Dosimetry processor--An individual or organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

(51) [(43)] Effective dose equivalent ( $H_E$ )--The sum of the products of the dose equivalent to each organ or tissue ( $H_T$ ) and the weighting factor ( $w_T$ ) applicable to each of the body organs or tissues that are irradiated.

(52) [(44)] Embryo/fetus--The developing human organism from conception until the time of birth.

(53) [(45)] Entrance or access point--Any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed radioactive materials. This includes portals of sufficient size to permit human access, irrespective of their intended use.

(54) [(46)] Environmental Radiation and Perpetual Care Account--An account in the general revenue fund established for the purposes specified in the Texas Health and Safety Code, §401.306.

(55) Escorted access--Accompaniment while in a security zone by an approved individual who maintains continuous direct visual surveillance at all times over an individual who is not approved for unescorted access.

(56) [(47)] Exposure--Being exposed to ionizing radiation or to radioactive material.

(57) [(48)] Exposure rate--The exposure per unit of time.

(58) [(49)] External dose--That portion of the dose equivalent received from any source of radiation outside the body.

(59) [(50)] Extremity--Hand, elbow, arm below the elbow, foot, knee, and leg below the knee. The arm above the elbow and the leg above the knee are considered part of the whole body.

(60) [(51)] Federal facility waste--Low-level radioactive waste that is the responsibility of the federal government under the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 United States Code, §2021b - 2021j). Excluded from this definition is low-level radioactive waste that is classified as greater than Class C in §336.362 of this title (relating to Appendix E. Classification and Characteristics of Low-Level Radioactive Waste).

(61) [(52)] Federal facility waste disposal facility--A low-level radioactive waste land disposal facility for the disposal of federal facility waste licensed under Subchapters H and J of this chapter (relating to Licensing Requirement of Near-Surface Land Disposal of Low-Level Radioactive Waste, and Federal Facility Waste Disposal Facility).

(62) [(53)] Filtering facepiece (dust mask)--A negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

(63) Fingerprint Orders--Orders issued by the NRC or the legally binding requirements issued by Agreement States that require fingerprints and criminal history records checks for individuals with unescorted access to category 1 and category 2 quantities of radioactive material or safeguards information-modified handling.

(64) [(54)] Fit factor--A quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

(65) [(55)] Fit test--The use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

(66) [(56)] General license--An authorization granted by an agency under its rules which is effective without the filing of an application with that agency or the issuance of a licensing document to the particular person.

(67) [(57)] Generally applicable environmental radiation standards--Standards issued by the EPA under the authority of the Atomic Energy Act of 1954, as amended through October 4, 1996, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(68) [(58)] Gray (G<sub>y</sub>)--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(69) [(59)] Hazardous waste--Hazardous waste as defined in §335.1 of this title (relating to Definitions).

(70) [(60)] Helmet--A rigid respiratory inlet covering that also provides head protection against impact and penetration.

(71) [(61)] High radiation area--An area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 millisievert) in one hour at 30 centimeters from the radiation source or 30 centimeters from any surface that the radiation penetrates.

(72) [(62)] Hood--A respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

(73) [(63)] Host state--A party state in which a compact facility is located or is being developed. The state [State] of Texas is the host state under the Texas Low-Level Radioactive Waste Disposal Compact, §2.01, established under Texas Health and Safety Code, §403.006.

(74) [(64)] Individual--Any human being.

(75) [(65)] Individual monitoring--The assessment of:

(A) dose equivalent by the use of individual monitoring devices;

(B) committed effective dose equivalent by bioassay or by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours; or

(C) dose equivalent by the use of survey data.

(76) [(66)] Individual monitoring devices--Devices designed to be worn by a single individual for the assessment of dose equivalent such as film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(77) [(67)] Inhalation class--See "Class."

(78) [(68)] Inspection--An official examination and/or observation including, but not limited to, records, tests, surveys, and monitoring to determine compliance with the Texas Radiation Control Act (TRCA) and rules, orders, and license conditions of the commission.

(79) [(69)] Internal dose--That portion of the dose equivalent received from radioactive material taken into the body.

(80) [(70)] Land disposal facility--The land, buildings and structures, and equipment which are intended to be used for the disposal of low-level radioactive wastes into the subsurface of the land. For purposes of this chapter, a "geologic repository" as defined in 10 CFR §60.2 as amended through October 27, 1988 (53 FR 43421) (relating to Definitions - high-level radioactive wastes in geologic repositories) is not considered a "land disposal facility."

(81) [(71)] Lens dose equivalent (LDE)--The external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm<sup>2</sup>).

(82) [(72)] License--See "Specific license."

(83) [(73)] Licensed material--Radioactive material received, possessed, used, processed, transferred, or disposed of under a license issued by the commission.

(84) [(74)] Licensee--Any person who holds a license issued by the commission in accordance with the Texas Health and Safety Code, Chapter 401 (Radioactive Materials and Other Sources of Radiation) and the rules in this chapter. For purposes of the rules in this chapter, "radioactive material licensee" is an equivalent term. Unless stated otherwise, "licensee" as used in the rules of this chapter means the holder of a "specific license."

(85) [(75)] Licensing state--Any state with rules equivalent to the Suggested State Regulations for Control of Radiation relating to, and having an effective program for, the regulatory control of naturally occurring or accelerator-produced radioactive material (NARM) and which has been designated as such by the Conference of Radiation Control Program Directors, Inc.

(86) Local law enforcement agency (LLEA)--A public or private organization that has been approved by a federal, state, or local government to carry firearms; make arrests; and is authorized and has the capability to provide an armed response in the jurisdiction where the licensed category 1 or category 2 quantity of radioactive material is used, stored, or transported.

(87) [(76)] Loose-fitting facepiece--A respiratory inlet covering that is designed to form a partial seal with the face.

(88) [(77)] Lost or missing licensed radioactive material--Licensed material whose location is unknown. This definition includes material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(89) [(78)] Low-level radioactive waste--

(A) Except as provided by subparagraph (B) of this paragraph, low-level radioactive waste means radioactive material that:

(i) is discarded or unwanted and is not exempt by a Texas Department of State Health Services rule adopted under the Texas Health and Safety Code, §401.106 ;

(ii) is waste, as that term is defined by 10 CFR §61.2; and

(iii) is subject to:

(I) concentration limits established under this chapter;

and

(II) disposal criteria established under this chapter.

(B) Low-level radioactive waste does not include:

(i) high-level radioactive waste defined by 10 CFR §60.2;

(ii) spent nuclear fuel as defined by 10 CFR §72.3;

(iii) transuranic waste as defined in this section;

(iv) byproduct material as defined by paragraph (20)(B) -  
(E) [(16)(B) - (E)] of this section;

(v) naturally occurring radioactive material (NORM) waste; or

(vi) oil and gas NORM waste.

(C) When used in this section, the references to 10 CFR sections mean those CFR sections as they existed on September 1, 1999, as required by Texas Health and Safety Code, §401.005.

(90) [(79)] Lung class--See "Class."

(91) [(80)] Member of the public--Any individual except when that individual is receiving an occupational dose.

(92) [(81)] Minor--An individual less than 18 years of age.

(93) [(82)] Mixed waste--A combination of hazardous waste, as defined in §335.1 of this title (relating to Definitions) and low-level radioactive waste. The term includes compact waste and federal facility waste containing hazardous waste.

(94) Mobile device--A piece of equipment containing licensed radioactive material that is either mounted on wheels or casters, or otherwise equipped for moving without a need for disassembly or dismounting; or designed to be hand carried. Mobile devices do not include stationary equipment installed in a fixed location.

(95) [(83)] Monitoring--The measurement of radiation levels, radioactive material concentrations, surface area activities, or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of the rules in this chapter, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(96) Movement control center--An operations center that is remote from transport activity and that maintains position information on the movement of radioactive material, receives reports of attempted attacks or thefts, provides a means for reporting these and other problems to appropriate agencies and can request and coordinate appropriate aid.

(97) [(84)] Nationally tracked source--A sealed source containing a quantity equal to or greater than category [Category] 1 or category [Category] 2 levels of any radioactive material listed in §336.351 of this title (relating to Reports of Transactions Involving Nationally Tracked Sources). In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the category [Category] 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the category [Category] 2 threshold but less than the category [Category] 1 threshold.

(98) [(85)] Naturally occurring or accelerator-produced radioactive material (NARM)--Any NARM [naturally occurring or accelerator-produced radioactive material] except source material or special nuclear material.

(99) [(86)] Naturally occurring radioactive material (NORM) waste--Solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and byproduct material, that:

(A) in its natural physical state spontaneously emits radiation;

(B) is discarded or unwanted; and

(C) is not exempt under rules of the Texas Department of State Health Services adopted under Texas Health and Safety Code, §401.106.

(100) [(87)] Near-surface disposal facility--A land disposal facility in which low-level radioactive waste is disposed of in or within the upper 30 meters of the earth's surface.

(101) [(88)] Negative pressure respirator (tight fitting)--A respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

(102) No-later-than arrival time--The date and time that the shipping licensee and receiving licensee have established as the time an investigation will be initiated if the shipment has not arrived at the receiving facility. The no-later-than arrival time may not be more than six hours after the estimated arrival time for shipments of category 2 quantities of radioactive material.

(103) [(89)] Nonstochastic effect--A health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract

formation is an example of a nonstochastic effect. For purposes of the rules in this chapter, "deterministic effect" is an equivalent term.

(104) [(90)] Occupational dose--The dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation and/or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or other person. Occupational dose does not include dose received from background radiation, as a patient from medical practices, from voluntary participation in medical research programs, or as a member of the public.

(105) [(91)] Oil and gas naturally occurring radioactive material (NORM) waste--NORM waste that constitutes, is contained in, or has contaminated oil and gas waste as that term is defined in the Texas Natural Resources Code, §91.1011.

(106) [(92)] On-site--The same or geographically contiguous property that may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way that the property owner controls and to which the public does not have access, is also considered on-site property.

(107) [(93)] Particle accelerator--Any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and discharging the resultant particulate or other associated radiation at energies usually in excess of 1 million electron volts (MeV).

(108) [(94)] Party state--Any state that has become a party to the compact in accordance with Article VII of the Texas Low-Level Radioactive Waste Disposal Compact, established under Texas Health and Safety Code, §403.006.

(109) [(95)] Perpetual care account--The Environmental Radiation and Perpetual Care Account as defined in this section.

(110) [(96)] Personnel monitoring equipment--See "Individual monitoring devices."

(111) [(97)] Planned special exposure--An infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

(112) [(98)] Positive pressure respirator--A respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

(113) [(99)] Powered air-purifying respirator (PAPR)--An air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

(114) [(100)] Pressure demand respirator--A positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

(115) [(101)] Principal activities--Activities authorized by the license which are essential to achieving the purpose(s) for which the license is issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(116) [(102)] Public dose--The dose received by a member of the public from exposure to radiation and/or radioactive material released by a licensee, or to any other source of radiation under the control of the licensee. It does not include occupational dose or doses received from background radiation, as a patient from medical practices, or from voluntary participation in medical research programs.

(117) [(103)] Qualitative fit test (QLFT)--A pass/fail test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

(118) [(104)] Quality factor (Q)--The modifying factor listed in Table I or II of §336.3(c) or (d) of this title (relating to Units of Radiation Exposure and Dose) that is used to derive dose equivalent from absorbed dose.

(119) [(105)] Quantitative fit test (QNFT)--An assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

(120) [(106)] Quarter (Calendar quarter)--A period of time equal to one-fourth of the year observed by the licensee (approximately 13 consecutive weeks), providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(121) [(107)] Rad--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(122) [(108)] Radiation--Alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of the rules in this chapter, "ionizing radiation" is an equivalent term. Radiation, as used in this chapter, does not include non-ionizing radiation, such as radio- or microwaves or visible, infrared, or ultraviolet light.

(123) [(109)] Radiation area--Any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 millisievert) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates.

(124) [(110)] Radiation machine--Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(125) [(111)] Radioactive material--A naturally-occurring or artificially-produced solid, liquid, or gas that emits radiation spontaneously.

(126) [(112)] Radioactive substance--Includes byproduct material, radioactive material, low-level radioactive waste, source material, special nuclear material, source of radiation, and NORM waste, excluding oil and gas NORM waste.

(127) [(113)] Radioactivity--The disintegration of unstable atomic nuclei with the emission of radiation.

(128) [(114)] Radiobioassay--See "Bioassay."

(129) [(115)] Reference man--A hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These

characteristics shall be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base. A description of "reference man" is contained in the International Commission on Radiological Protection report, ICRP Publication 23, "Report of the Task Group on Reference Man."

(130) [(116)] Rem--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(131) [(117)] Residual radioactivity--Radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 10 CFR Part 20.

(132) [(118)] Respiratory protection equipment--An apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials. For purposes of the rules in this chapter, "respiratory protective device" is an equivalent term.

(133) [(119)] Restricted area--An area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to

radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building shall be set apart as a restricted area.

(134) Reviewing official--The individual who shall make the trustworthiness and reliability determination of an individual to determine whether the individual may have, or continue to have, unescorted access to the category 1 or category 2 quantities of radioactive materials that are possessed by the licensee.

(135) [(120)] Roentgen (R)--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(136) Sabotage--Deliberate damage, with malevolent intent, to a category 1 or category 2 quantity of radioactive material, a device that contains a category 1 or category 2 quantity of radioactive material, or the components of the security system.

(137) Safe haven--A readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for the local law enforcement authorities.

(138) [(121)] Sanitary sewerage--A system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.

(139) [(122)] Sealed source--Radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions that are likely to be encountered in normal use and handling.

(140) Security zone--Any temporary or permanent area established by the licensee for the physical protection of category 1 or category 2 quantities of radioactive material.

(141) [(123)] Self-contained breathing apparatus (SCBA)--An atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

(142) [(124)] Shallow-dose equivalent ( $H_s$ ) (which applies to the external exposure of the skin of the whole body or the skin of an extremity)--The dose equivalent at a tissue depth of 0.007 centimeter (seven milligrams/square centimeter).

(143) [(125)] SI--The abbreviation for the International System of Units.

(144) [(126)] Sievert (S<sub>v</sub>)--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(145) [(127)] Site boundary--That line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(146) [(128)] Source material--

(A) Uranium or thorium, or any combination thereof, in any physical or chemical form; or

(B) Ores [ores] that contain, by weight, 0.05% or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

(147) [(129)] Special form radioactive material--Radioactive material which is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule and which has at least one dimension not less than five millimeters and which satisfies the test requirements of 10 CFR §71.75 as amended through September 28, 1995 (60 FR 50264) (Transportation of License Material).

(148) [(130)] Special nuclear material--

(A) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the NRC, under the provisions of the Atomic Energy Act of 1954, §51, as amended through November 2, 1994 (Public Law 103-437), determines to be special nuclear material, but does not include source material; or

(B) any material artificially enriched by any of the foregoing, but does not include source material.

(149) [(131)] Special nuclear material in quantities not sufficient to form a critical mass--Uranium enriched in the isotope 235 in quantities not exceeding 350 grams of contained uranium-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of these in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified in this paragraph for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed 1. For example, the following quantities in combination would not exceed the limitation: (175 grams contained U-235/350 grams) + (50 grams U-233/200 grams) + (50 grams Pu/200 grams) = 1.

(150) [(132)] Specific license--A licensing document issued by an agency upon an application filed under its rules. For purposes of the rules in this chapter, "radioactive material license" is an equivalent term. Unless stated otherwise, "license" as used in this chapter means a "specific license."

(151) [(133)] State--The state [State] of Texas.

(152) [(134)] Stochastic effect--A health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of the rules in this chapter, "probabilistic effect" is an equivalent term.

(153) [(135)] Supplied-air respirator (SAR) or airline respirator--An atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

(154) [(136)] Survey--An evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, and/or presence of radioactive materials or other sources of radiation. When appropriate, this evaluation includes, but is not limited to, physical examination of the location of

radioactive material and measurements or calculations of levels of radiation or concentrations or quantities of radioactive material present.

(155) Telemetric position monitoring system--A data transfer system that captures information from instrumentation and/or measuring devices about the location and status of a transport vehicle or package between the departure and destination locations.

(156) [(137)] Termination--As applied to a license, a release by the commission of the obligations and authorizations of the licensee under the terms of the license. It does not relieve a person of duties and responsibilities imposed by law.

(157) [(138)] Tight-fitting facepiece--A respiratory inlet covering that forms a complete seal with the face.

(158) [(139)] Total effective dose equivalent (TEDE)--The sum of the effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

(159) [(140)] Total organ dose equivalent (TODE)--The sum of the deep-dose equivalent and the committed dose equivalent to the organ receiving the highest dose as

described in §336.346(a)(6) of this title (relating to Records of Individual Monitoring Results).

(160) [(141)] Transuranic waste--For the purposes of this chapter, wastes containing alpha emitting transuranic radionuclides with a half-life greater than five years at concentrations greater than 100 nanocuries/gram.

(161) Trustworthiness and reliability--Characteristics of an individual considered dependable in judgment, character, and performance, such that unescorted access to category 1 or category 2 quantities of radioactive material by that individual does not constitute an unreasonable risk to the public health and safety or security. A determination of trustworthiness and reliability for this purpose is based upon the results from a background investigation.

(162) [(142)] Type A quantity (for packaging)--A quantity of radioactive material, the aggregate radioactivity of which does not exceed A 1 for special form radioactive material or A2 for normal form radioactive material, where A1 and A2 are given in or shall be determined by procedures in Appendix A to 10 CFR Part 71 as amended through September 28, 1995 (60 FR 50264) (Packaging and Transportation of Radioactive Material).

(163) [(143)] Type B quantity (for packaging)--A quantity of radioactive material greater than a Type A quantity.

(164) Unescorted access--Solitary access to an aggregated category 1 or category 2 quantity of radioactive material or the devices that contain the material.

(165) [(144)] Unrefined and unprocessed ore--Ore in its natural form before any processing, such as grinding, roasting, beneficiating, or refining.

(166) [(145)] Unrestricted area--Any area that is not a restricted area.

(167) [(146)] User seal check (fit check)--An action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

(168) [(147)] Very high radiation area--An area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of 500 rads (five grays) in one hour at one meter from a source of radiation or one meter from any surface that the radiation penetrates.

(169) [(148)] Violation--An infringement of any provision of the Texas Radiation Control Act (TRCA) [TRCA] or of any rule, order, or license condition of the commission issued under the TRCA or this chapter.

(170) [(149)] Waste--Low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in paragraph (16)(B) - (E) of this section.

(171) [(150)] Week--Seven consecutive days starting on Sunday.

(172) [(151)] Weighting factor ( $w_T$ ) for an organ or tissue (T)--The proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of  $w_T$  are:

Figure: 30 TAC §336.2(172)

[Figure: 30 TAC §336.2(151)]

### **Organ Dose Weighting Factors**

<u>Organ or Tissue</u>	<u>w<sub>T</sub></u>
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30 <sup>1</sup>
Whole body	1.00 <sup>2</sup>

1. The value 0.30 results from 0.06 for each of five remainder organs, excluding the skin and the lens of the eye, that receive the highest doses.

2. For the purpose of weighting the external whole body dose (for adding it to the internal dose) a single weighting factor (w<sub>T</sub>),  $w_T = 1.0$ , has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

(173) [(152)] Whole body--For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(174) [(153)] Worker--An individual engaged in activities under a license issued by the commission and controlled by a licensee, but does not include the licensee.

(175) [(154)] Working level (WL)--Any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of  $1.3 \times 10^5$  MeV of potential alpha particle energy. The short-lived radon daughters are: for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

(176) [(155)] Working level month (WLM)--An exposure to one working level for 170 hours (2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month).

(177) [(156)] Year--The period of time beginning in January used to determine compliance with the provisions of the rules in this chapter. The licensee shall change the starting date of the year used to determine compliance by the licensee provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

## **SUBCHAPTER D: STANDARDS FOR PROTECTION AGAINST RADIATION**

### **§336.357**

#### **Statutory Authority**

The repeal is proposed under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; and THSC, §401.106, which authorizes the commission to adopt rules to exempt a source of radiation from the licensing requirements provided by the Texas Radiation Control Act. The proposed repeal is also authorized by Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

The proposed repeal implements THSC, §§401.011, 401.051, 401.057, 401.103, 401.104, 401.106, and 401.412.

**[§336.357. Increased Controls for Licensees that Possess Sources Containing Radioactive Material Quantities of Concern.]**

[Licensees possessing sources containing radioactive material, at any given time, in quantities greater than or equal to the quantities of concern listed in paragraph (11) of this section shall:]

[(1) control access at all times to radioactive material in quantities of concern and devices containing such radioactive material (devices) in accordance with paragraph (11) of this section; and]

[(2) limit access to such radioactive material and devices to only approved individuals who require access to perform their duties.]

[(A) The licensee shall allow only trustworthy and reliable individuals, approved in writing by the licensee, to have unescorted access to radioactive material quantities of concern and devices.]

[(B) The licensee shall approve for unescorted access only those individuals with job duties that require access to such radioactive material and devices. Personnel who require access to such radioactive material and devices to perform a job

duty, but who are not approved by the licensee for unescorted access, must be escorted by an approved individual.]

[(C) For individuals employed by the licensee for three years or less, and for non-licensee personnel, such as physicians, physicists, house-keeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined, at a minimum, by verifying employment history, education, and personal references. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e., seeking references not supplied by the individual). For individuals employed by the licensee for longer than three years, trustworthiness and reliability shall be determined, at a minimum, by a review of the employees' employment history with the licensee.]

[(D) Service providers shall be escorted unless determined to be trustworthy and reliable by an NRC required background investigation as an employee of a manufacturing and distribution licensee. Written verification attesting to or certifying the person's trustworthiness and reliability shall be obtained from the manufacturing and distribution licensee providing the service.]

[(E) The licensee shall document the basis for concluding that there is reasonable assurance that an individual granted unescorted access is trustworthy and reliable, and does not constitute an unreasonable risk for unauthorized use of radioactive

material quantities of concern. The licensee shall maintain a list of persons approved for unescorted access to such radioactive material and devices by the licensee.]

[(3) Each licensee shall have a documented program to monitor and immediately detect, assess, and respond to unauthorized access to radioactive material quantities of concern and devices in use or in storage. Enhanced monitoring shall be provided during periods of source delivery or shipment, where the delivery or shipment exceeds 100 times the values listed in paragraph (11) of this section.]

[(A) The licensee shall respond immediately to any actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices. The response shall include requesting assistance from a Local Law Enforcement Agency (LLEA).]

[(B) The licensee shall have a pre-arranged plan with LLEA for assistance in response to an actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices which is consistent in scope and timing with a realistic potential vulnerability of the sources containing such radioactive material. The pre-arranged plan shall be updated when changes to the facility design or operation affect the potential vulnerability of the sources.]

[(C) The licensee shall have a dependable means to transmit information between, and among, the various components used to detect and identify an unauthorized intrusion, to inform the assessor, and to summon the appropriate responder.]

[(D) After initiating appropriate response to any actual or attempted theft, sabotage, or diversion of radioactive material or of the devices, the licensee shall, as promptly as possible, notify the Office of Compliance and Enforcement 24-hour Emergency Response at 800-832-8224.]

[(E) The licensee shall maintain documentation describing each instance of unauthorized access and any necessary corrective actions to prevent future instances of unauthorized access.]

[(4) In order to ensure the safe handling, use, and control of licensed material in transportation for domestic highway and rail shipments by a carrier other than the licensee, for quantities that equal or exceed but are less than 100 times those listed in paragraph (11) of this section, per consignment, the licensee shall:]

[(A) use carriers which:]

[(i) use package tracking systems;]

[(ii) implement methods to assure trustworthiness and reliability of drivers;]

[(iii) maintain constant control and/or surveillance during transit; and]

[(iv) have the capability for immediate communication to summon appropriate response or assistance;]

[(B) verify and document that the carrier employs the measures in subparagraph (A) of this paragraph;]

[(C) contact the recipient to coordinate the expected arrival time of the shipment;]

[(D) confirm receipt of the shipment; and]

[(E) initiate an investigation to determine the location of the licensed material if the shipment does not arrive on or about the expected arrival time. When, through the course of the investigation, it is determined the shipment has become lost, stolen, or is missing, the licensee shall immediately notify the Office of Compliance and

Enforcement 24-hour Emergency Response at 800-832-8224. If, after 24 hours of investigating, the location of the material still cannot be determined, the radioactive material shall be deemed missing and the licensee shall immediately notify the Office of Compliance and Enforcement 24-hour Emergency Response at 800-832-8224.]

[ (5) For domestic highway and rail shipments, prior to shipping licensed radioactive material that exceeds 100 times the quantities in paragraph (11) of this section per consignment, the licensee shall:]

[ (A) Notify the United States Nuclear Regulatory Commission (NRC) Director, Office of Federal and State Materials and Environmental Management Programs, United States Nuclear Regulatory Commission, Washington, DC 20555, in writing, at least 90 days prior to the anticipated date of shipment. The NRC will issue the Order to implement the Additional Security Measures (ASMs) for the transportation of Radioactive Material Quantities of Concern (RAM QC). The licensee shall not ship this material until the ASMs for the transportation of RAM QC are implemented or the licensee is notified otherwise, in writing, by the NRC.]

[ (B) Once the licensee has implemented the ASMs for the transportation of RAM QC, the notification requirements in subparagraph (A) of this paragraph shall not apply to future shipments of licensed radioactive material that exceeds

100 times the quantities listed in paragraph (11) of this section. The licensee shall implement the ASMs for the transportation of RAM QC.]

[(6) If a licensee employs an Manufacturer/Distributor (M&D) licensee to take possession at the licensee's location of the licensed radioactive material and ship it under its M&D license, the requirements of paragraphs (4) and (5)(A) and (B) of this section shall not apply.]

[(7) If the licensee is to receive radioactive material greater than or equal to the quantities in paragraph (11) of this section, per consignment, the licensee shall coordinate with the originator to:]

[(A) establish an expected time of delivery; and]

[(B) confirm receipt of transferred radioactive material. If the material is not received at the expected time of delivery, notify the originator and assist in any investigation.]

[(8) Each licensee who possesses mobile or portable devices containing radioactive material in quantities greater than or equal to the values listed in paragraph (11) of this section, shall:]

[(A) For portable devices, have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.]

[(B) For mobile devices:]

[(i) that are only moved outside of the facility (e.g., on a trailer), have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.]

[(ii) that are only moved inside a facility, have a physical control that forms a tangible barrier to secure the material from unauthorized movement or removal when the device is not under direct control and constant surveillance by the licensee.]

[(C) For devices in or on a vehicle or trailer, licensees shall also utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee.]

[(9) The licensee shall retain documentation required by these increased controls for inspection by the executive director for three years after they are no longer effective.]

[(A) The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends.]

[(B) Each time the licensee revises the list of approved persons required by paragraph (2)(E) of this section, or the documented program required by paragraph (3) of this section, the licensee shall retain the previous documentation for three years after the revision.]

[(C) The licensee shall retain documentation on each radioactive material carrier for three years after the licensee discontinues use of that particular carrier.]

[(D) The licensee shall retain documentation on shipment coordination, notifications, and investigations for three years after the shipment or investigation is completed.]

[(E) After the license is terminated or amended to reduce possession limits below the quantities of concern, the licensee shall retain all documentation required by these increased controls for three years.]

[(10) Detailed information generated by the licensee that describes the physical protection of radioactive material quantities of concern, is sensitive information and shall be protected from unauthorized disclosure.]

[(A) The licensee shall control access to its physical protection information to those persons who have an established need to know the information, and are considered to be trustworthy and reliable.]

[(B) The licensee shall develop, maintain, and implement policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, its physical protection information for radioactive material covered by these requirements. The policies and procedures shall include the following:]

[(i) general performance requirement that each person who produces, receives, or acquires the licensee's sensitive information, protect the information from unauthorized disclosure;]

[(ii) protection of sensitive information during use, storage, and transit;]

[(iii) preparation, identification or marking, and transmission;]

[(iv) access controls;]

[(v) destruction of documents;]

[(vi) use of automatic data processing systems; and]

[(vii) removal from the licensee's sensitive information category.]

[(11) Radionuclide quantities of concern. The following methods shall be used to determine which sources of radioactive material require increased controls:]

[(A) include any single source equal to or greater than the quantity of concern;]

[(B) include multiple collocated sources of the same radionuclide when the combined quantity equals or exceeds the quantity of concern;]

[(C) for combinations of radionuclides, include multiple collocated sources of different radionuclides when the aggregate quantities satisfy the following unity rule: ((amount of radionuclide A) / (quantity of concern of radionuclide A)) + ((amount of radionuclide B) / (quantity of concern of radionuclide B)) + etc... > 1; and]

[(D) The following table contains quantities of radioactive materials to be used in determining a quantity of concern.]

[Figure: 30 TAC §336.357(11)(D)]

<b>Radionuclides of Concern</b>		
<b>Radionuclide</b>	<b>Quantity of Concern<sup>1</sup> (TBq)</b>	<b>Quantity of Concern<sup>2</sup> (Ci)</b>
Am-241	0.6	16
Am-241/Be	0.6	16
Cf-252	0.2	5.4
Cm-244	0.5	14
Co-60	0.3	8.1
Cs-137	1	27
Gd-153	10	270
Ir-192	0.8	22
Pm-147	400	11,000
Pu-238	0.6	16
Pu-239/Be	0.6	16
Ra-226	0.4	11
Se-75	2	54

Sr-90 (Y-90)	10	270
Tm-170	200	5,400
Yb-169	3	81
Combinations of radioactive materials listed above <sup>3</sup>	See footnote below <sup>4</sup>	

<sup>1</sup>The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern.

<sup>2</sup> The primary values used for compliance with this Order are terabecquerel (TBq). The curie (Ci) values are rounded to two significant figures for informational purposes only.

<sup>3</sup> Radioactive materials are to be considered aggregated or collocated if breaching a common physical security barrier (e.g., a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material. When transporting or storing sources on vehicles and/or trailers, the sources are automatically considered collocated.

<sup>4</sup> If several radionuclides are aggregated, the sum of the ratios of the activity of each source,  $i$  of radionuclide,  $n$ ,  $A(i,n)$ , to the quantity of concern for radionuclide  $n$ ,  $Q(n)$ , listed for that radionuclide equals or exceeds one.  $((\text{aggregated source activity for radionuclide A}) / (\text{quantity of concern for radionuclide A})) + ((\text{aggregated source activity for radionuclide B}) / (\text{quantity of concern for radionuclide B})) + \text{etc...} > 1$

**SUBCHAPTER D: STANDARDS FOR PROTECTION AGAINST RADIATION**

**§336.357**

**Statutory Authority**

The new rule is proposed under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; and THSC, §401.106, which authorizes the commission to adopt rules to exempt a source of radiation from the licensing requirements provided by the Texas Radiation Control Act. The proposed new rule is also authorized by Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

The proposed new rule implements THSC, §§401.011, 401.057, 401.103, 401.106, and 401.412.

**§336.357. Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.**

(a) Specific exemption. A licensee that possesses radioactive waste that contains category 1 or category 2 quantities of radioactive material is exempt from the requirements of subsections (b) - (w) of this section. However, any radioactive waste that contains discrete sources, ion-exchange resins, or activated material that weighs less than 2,000 kilograms (4,409 pounds) is not exempt from the requirements of subsections (b) - (w) of this section. The licensee shall implement the following requirements to secure the radioactive waste:

(1) Use continuous physical barriers that allow access to the radioactive waste only through established access control points:

(2) Use a locked door or gate with monitored alarm at the access control point:

(3) Assess and respond to each actual or attempted unauthorized access to determine whether an actual or attempted theft, sabotage, or diversion occurred; and

(4) Immediately notify the local law enforcement agency (LLEA) and request an armed response from the LLEA upon determination that there was an actual or

attempted theft, sabotage, or diversion of the radioactive waste that contains category 1 or category 2 quantities of radioactive material.

(b) Personnel access authorization requirements for category 1 or category 2 quantities of radioactive material.

(1) General.

(A) Each licensee that possesses an aggregated quantity of radioactive material at or above the category 2 threshold shall establish, implement, and maintain its access authorization program in accordance with the requirements of this subsection and subsections (c) - (h) of this section.

(B) An applicant for a new license and each licensee, upon application for modification of its license, that would become newly subject to the requirements of this subsection and subsections (c) - (h) of this section, shall implement the requirements of this subsection and subsections (c) - (h) of this section, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

(C) Any licensee that has not previously implemented the Security Orders or been subject to the provisions of this subsection and subsections (c) - (h) of this section shall implement the provisions of this subsection and subsections (c) - (h) of this

section before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

(2) General performance objective. The licensee's access authorization program must ensure that the individuals specified in paragraph (3)(A) of this subsection are trustworthy and reliable.

(3) Applicability.

(A) Licensees shall subject the following individuals to an access authorization program:

(i) Any individual whose assigned duties require unescorted access to category 1 or category 2 quantities of radioactive material or to any device that contains the radioactive material; and

(ii) Reviewing officials.

(B) Licensees need not subject the categories of individuals listed in subsection (f)(1) of this section to the investigation elements of the access authorization program.

(C) Licensees shall approve for unescorted access to category 1 or category 2 quantities of radioactive material only those individuals with job duties that require unescorted access to category 1 or category 2 quantities of radioactive material.

(D) Licensees may include individuals needing access to safeguards information-modified handling under 10 Code of Federal Regulations (CFR) Part 73, in the access authorization program under this subsection and subsections (c) - (h) of this section.

(c) Access authorization program requirements.

(1) Granting unescorted access authorization.

(A) Licensees shall implement the requirements of subsection (b) of this section, this subsection, and subsections (d) - (h) of this section for granting initial or reinstated unescorted access authorization.

(B) Individuals determined to be trustworthy and reliable shall also complete the security training required by subsection (j)(3) of this section before being allowed unescorted access to category 1 or category 2 quantities of radioactive material.

(2) Reviewing officials.

(A) Reviewing officials are the only individuals who may make trustworthiness and reliability determinations that allow individuals to have unescorted access to category 1 or category 2 quantities of radioactive materials possessed by the licensee.

(B) Each licensee shall name one or more individuals to be reviewing officials. After completing the background investigation on the reviewing official, the licensee shall provide under oath or affirmation, a certification that the reviewing official is deemed trustworthy and reliable by the licensee. The fingerprints of the named reviewing official must be taken by a law enforcement agency, Federal or State agencies that provide fingerprinting services to the public, or commercial fingerprinting services authorized by a State to take fingerprints. The licensee shall recertify that the reviewing official is deemed trustworthy and reliable every 10 years in accordance with subsection (d)(2) of this section.

(C) Reviewing officials must be permitted to have unescorted access to category 1 or category 2 quantities of radioactive materials or access to safeguards information or safeguards information-modified handling, if the licensee possesses safeguards information or safeguards information-modified handling.

(D) Reviewing officials cannot approve other individuals to act as reviewing officials.

(E) A reviewing official does not need to undergo a new background investigation before being named by the licensee as the reviewing official if:

(i) The individual has undergone a background investigation that included fingerprinting and a Federal Bureau of Investigations (FBI) criminal history records check and has been determined to be trustworthy and reliable by the licensee; or

(ii) The individual is subject to a category listed in subsection (f) of this section.

(3) Informed consent.

(A) Licensees may not initiate a background investigation without the informed and signed consent of the subject individual. This consent must include authorization to share personal information with other individuals or organizations as necessary to complete the background investigation. Before a final adverse determination, the licensee shall provide the individual with an opportunity to correct any inaccurate or incomplete information that is found during the background investigation. Licensees do not need to obtain signed consent from those individuals that meet the requirements of subsection (d)(2) of this section. A signed consent must be obtained prior to any reinvestigation.

(B) The subject individual may withdraw his or her consent at any time. Licensees shall inform the individual that:

(i) If an individual withdraws his or her consent, the licensee may not initiate any elements of the background investigation that were not in progress at the time the individual withdrew his or her consent; and

(ii) The withdrawal of consent for the background investigation is sufficient cause for denial or termination of unescorted access authorization.

(4) Personal history disclosure. Any individual who is applying for unescorted access authorization shall disclose the personal history information that is required by the licensee's access authorization program for the reviewing official to make a determination of the individual's trustworthiness and reliability. Refusal to provide, or the falsification of, any personal history information required by subsection (b) of this section, this subsection, and subsections (d) - (h) of this section is sufficient cause for denial or termination of unescorted access.

(5) Determination basis.

(A) The reviewing official shall determine whether to permit, deny, unfavorably terminate, maintain, or administratively withdraw an individual's unescorted access authorization based on an evaluation of all of the information collected to meet the requirements of subsection (b) of this section, this subsection, and subsections (d) - (h) of this section.

(B) The reviewing official may not permit any individual to have unescorted access until the reviewing official has evaluated all of the information collected to meet the requirements of subsection (b) of this section, this subsection, and subsections (d) - (h) of this section and determined that the individual is trustworthy and reliable. The reviewing official may deny unescorted access to any individual based on information obtained at any time during the background investigation.

(C) The licensee shall document the basis for concluding whether or not there is reasonable assurance that an individual is trustworthy and reliable.

(D) The reviewing official may terminate or administratively withdraw an individual's unescorted access authorization based on information obtained after the background investigation has been completed and the individual granted unescorted access authorization.

(E) Licensees shall maintain a list of persons currently approved for unescorted access authorization. When a licensee determines that a person no longer requires unescorted access or meets the access authorization requirements, the licensee shall remove the person from the approved list as soon as possible, but no-later-than seven working days, and take prompt measures to ensure that the individual is unable to have unescorted access to the material.

(6) Procedures. Licensees shall develop, implement, and maintain written procedures for implementing the access authorization program. The procedures must include provisions for the notification of individuals who are denied unescorted access. The procedures must include provisions for the review, at the request of the affected individual, of a denial or termination of unescorted access authorization. The procedures must contain a provision to ensure that the individual is informed of the grounds for the denial or termination of unescorted access authorization and allow the individual an opportunity to provide additional relevant information.

(7) Right to correct and complete information.

(A) Prior to any final adverse determination, licensees shall provide each individual subject to subsection (b) of this section, this subsection, and subsections (d) - (h) of this section with the right to complete, correct, and explain information obtained as a result of the licensee's background investigation. Confirmation of receipt by

the individual of this notification must be maintained by the licensee for a period of one year from the date of the notification.

(B) If, after reviewing his or her criminal history record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, update, or explain anything in the record, the individual may initiate challenge procedures. These procedures include direct application by the individual challenging the record to the law enforcement agency that contributed the questioned information or a direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306, as set forth in 28 CFR §§16.30 - 16.34. In the latter case, the FBI will forward the challenge to the agency that submitted the data, and will request that the agency verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division will make any changes necessary in accordance with the information supplied by that agency. Licensees must provide at least 10 days for an individual to initiate action to challenge the results of an FBI criminal history records check after the record is made available for his or her review. The licensee may make a final adverse determination based upon the criminal history records only after receipt of the FBI's confirmation or correction of the record.

(8) Records.

(A) The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

(B) The licensee shall retain a copy of the current access authorization program procedures as a record for three years after the procedure is no longer needed. If any portion of the procedure is superseded, the licensee shall retain the superseded material for three years after the record is superseded.

(C) The licensee shall retain the list of persons approved for unescorted access authorization for three years after the list is superseded or replaced.

(d) Background investigations.

(1) Initial investigation. Before allowing an individual unescorted access to category 1 or category 2 quantities of radioactive material or to the devices that contain the material, licensees shall complete a background investigation of the individual seeking unescorted access authorization. The scope of the investigation must encompass at least the seven years preceding the date of the background investigation or since the individual's

eighteenth birthday, whichever is shorter. The background investigation must include at a minimum:

(A) Fingerprinting and an FBI identification and criminal history records check in accordance with subsection (e) of this section;

(B) Verification of true identity. Licensees shall verify the true identity of the individual applying for unescorted access authorization to ensure that the applicant is who he or she claims to be. A licensee shall review official identification documents (e.g., driver's license; passport; government identification; certificate of birth issued by the state, province, or country of birth) and compare the documents to personal information data provided by the individual to identify any discrepancy in the information. Licensees shall document the type, expiration, and identification number of the identification document, or maintain a photocopy of identifying documents on file in accordance with subsection (g) of this section. Licensees shall certify in writing that the identification was properly reviewed and shall maintain the certification and all related documents for review upon inspection;

(C) Employment history verification. Licensees shall complete an employment history verification, including military history. Licensees shall verify the individual's employment with each previous employer for the most recent seven years before the date of application;

(D) Verification of education. Licensees shall verify the individual's education during the claimed period;

(E) Character and reputation determination. Licensees shall complete reference checks to determine the character and reputation of the individual who has applied for unescorted access authorization. Unless other references are not available, reference checks may not be conducted with any person who is known to be a close member of the individual's family, including but not limited to the individual's spouse, parents, siblings, or children, or any individual who resides in the individual's permanent household. Reference checks under subsections (b) and (c) of this section, this subsection, and subsections (e) - (h) of this section must be limited to whether the individual has been and continues to be trustworthy and reliable;

(F) The licensee shall also, to the extent possible, obtain independent information to corroborate the information provided by the individual (e.g., seek references not supplied by the individual); and

(G) If a previous employer, educational institution, or any other entity with which the individual claims to have been engaged fails to provide information or indicates an inability or unwillingness to provide information within a time frame deemed appropriate by the licensee, but at least after 10 business days of the request or if the

licensee is unable to reach the entity, the licensee shall document the refusal, unwillingness, or inability in the record of investigation and attempt to obtain the information from an alternate source.

(2) Grandfathering.

(A) Individuals who have been determined to be trustworthy and reliable for unescorted access to category 1 or category 2 quantities of radioactive material under the Fingerprint Orders may continue to have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. These individuals shall be subject to the reinvestigation requirement.

(B) Individuals who have been determined to be trustworthy and reliable under the provisions of 10 CFR Part 73 or the Security Orders for access to safeguards information, safeguards information-modified handling, or risk-significant material may have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. The licensee shall document that the individual was determined to be trustworthy and reliable under the provisions of 10 CFR Part 73 or a Security Order. Security Order, in this context, refers to any order that was issued by the United States Nuclear Regulatory Commission (NRC) that required fingerprints and an FBI criminal history records check for access to safeguards information, safeguards information-modified handling, or risk significant material such as special nuclear

material or large quantities of uranium hexafluoride. These individuals shall be subject to the reinvestigation requirement.

(3) Reinvestigations. Licensees shall conduct a reinvestigation every 10 years for any individual with unescorted access to category 1 or category 2 quantities of radioactive material. The reinvestigation shall consist of fingerprinting and an FBI identification and criminal history records check in accordance with subsection (e) of this section. The reinvestigations must be completed within 10 years of the date on which these elements were last completed.

(e) Requirements for criminal history records checks of individuals granted unescorted access to category 1 or category 2 quantities of radioactive material.

(1) General performance objective and requirements.

(A) Except for those individuals listed in subsection (f) of this section and those individuals grandfathered under subsection (d)(2) of this section, each licensee subject to the provisions of subsections (b) - (d) of this section, this subsection, and subsections (f) - (h) of this section shall fingerprint each individual who is to be permitted unescorted access to category 1 or category 2 quantities of radioactive material. Licensees shall transmit all collected fingerprints to the NRC for transmission to the FBI. The licensee shall use the information received from the FBI as part of the required background

investigation to determine whether to grant or deny further unescorted access to category 1 or category 2 quantities of radioactive materials for that individual.

(B) The licensee shall notify each affected individual that his or her fingerprints will be used to secure a review of his or her criminal history record and shall inform him or her of the procedures for revising the record or adding explanations to the record.

(C) Fingerprinting is not required if a licensee is reinstating an individual's unescorted access authorization to category 1 or category 2 quantities of radioactive materials if:

(i) The individual returns to the same facility that granted unescorted access authorization within 365 days of the termination of his or her unescorted access authorization; and

(ii) The previous access was terminated under favorable conditions.

(D) Fingerprints do not need to be taken if an individual who is an employee of a licensee, contractor, manufacturer, or supplier has been granted unescorted access to category 1 or category 2 quantities of radioactive material, access to safeguards

information, or safeguards information-modified handling by another licensee, based upon a background investigation conducted under this section, the Fingerprint Orders, or 10 CFR Part 73. An existing criminal history records check file may be transferred to the licensee asked to grant unescorted access in accordance with the provisions of subsection (g)(3) of this section.

(E) Licensees shall use the information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access authorization to category 1 or category 2 quantities of radioactive materials, access to safeguards information, or safeguards information-modified handling.

(2) Prohibitions.

(A) Licensees may not base a final determination to deny an individual unescorted access authorization to category 1 or category 2 quantities of radioactive material solely on the basis of information received from the FBI involving:

(i) An arrest more than one year old for which there is no information of the disposition of the case; or

(ii) An arrest that resulted in dismissal of the charge or an acquittal.

(B) Licensees may not use information received from a criminal history records check obtained under subsections (b) - (d) of this section, this subsection, and subsections (f) - (h) of this section in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States nor shall licensees use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, gender, or age.

(3) Procedures for processing of fingerprint checks.

(A) For the purpose of complying with subsections (b) - (d) of this section, this subsection, and subsections (f) - (h) of this section, licensees shall use an appropriate method listed in 10 CFR §37.7 to submit to the United States Nuclear Regulatory Commission, Director, Division of Facilities and Security, 11545 Rockville Pike, ATTN: Criminal History Program/Mail Stop TWB-05 B32M, Rockville, Maryland 20852, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ), electronic fingerprint scan or, where practicable, other fingerprint record for each individual requiring unescorted access to category 1 or category 2 quantities of radioactive material. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; by calling (630) 829-9565; or by e-mail to FORMS.Resource@nrc.gov. Guidance on submitting electronic fingerprints can be found at <http://www.nrc.gov/site-help/e-submittals.html>.

(B) Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." (For guidance on making electronic payments, contact the Security Branch, Division of Facilities and Security at (301) 492-3531.) Combined payment for multiple applications is acceptable. The NRC publishes the amount of the fingerprint check application fee on the NRC's public website. (To find the current fee amount, go to the Electronic Submittals page at <http://www.nrc.gov/site-help/e-submittals.html> and see the link for the Criminal History under Electronic Submission Systems.)

(C) The NRC will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history records checks.

(f) 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.

(1) Fingerprinting, and the identification and criminal history records checks required by §149 of the Atomic Energy Act of 1954, as amended, and other elements of the

background investigation, are not required for the following individuals prior to granting unescorted access to category 1 or category 2 quantities of radioactive materials:

(A) An employee of the NRC or of the Executive Branch of the United States (U.S.) Government who has undergone fingerprinting for a prior U.S. Government criminal history records check;

(B) A Member of Congress;

(C) An employee of a member of Congress or Congressional committee who has undergone fingerprinting for a prior U.S. Government criminal history records check;

(D) The Governor of a State or his or her designated State employee representative;

(E) Federal, State, or local law enforcement personnel;

(F) State Radiation Control Program Directors and State Homeland Security Advisors or their designated State employee representatives;

(G) Agreement State employees conducting security inspections on behalf of the NRC under an agreement executed under §274.i. of the Atomic Energy Act;

(H) Representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who have been certified by the NRC;

(I) Emergency response personnel who are responding to an emergency;

(J) Commercial vehicle drivers for road shipments of category 1 and category 2 quantities of radioactive material;

(K) Package handlers at transportation facilities such as freight terminals and railroad yards;

(L) Any individual who has an active federal security clearance, provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that granted the federal security clearance or reviewed the criminal history records check must be provided to the licensee. The licensee shall retain this documentation for a period of three years from the date the individual no

longer requires unescorted access to category 1 or category 2 quantities of radioactive material; and

(M) Any individual employed by a service provider licensee for which the service provider licensee has conducted the background investigation for the individual and approved the individual for unescorted access to category 1 or category 2 quantities of radioactive material. Written verification from the service provider must be provided to the licensee. The licensee shall retain the documentation for a period of three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

(2) Fingerprinting, and the identification and criminal history records checks required by §149 of the Atomic Energy Act of 1954, as amended, are not required for an individual who has had a favorably adjudicated U.S. Government criminal history records check within the last five years, under a comparable U.S. Government program involving fingerprinting and an FBI identification and criminal history records check provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that reviewed the criminal history records check must be provided to the licensee. The licensee shall retain this documentation for a period of three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material. These programs include, but are not limited to:

(A) National Agency Check;

(B) Transportation Worker Identification Credentials under 49 CFR

Part 1572;

(C) Bureau of Alcohol, Tobacco, Firearms, and Explosives background  
check and clearances under 27 CFR Part 555;

(D) Health and Human Services security risk assessments for  
possession and use of select agents and toxins under 42 CFR Part 73;

(E) Hazardous Material security threat assessment for hazardous  
material endorsement to commercial drivers license under 49 CFR Part 1572; and

(F) Customs and Border Protection's Free and Secure Trade Program.

(g) Protection of information.

(1) Each licensee who obtains background information on an individual  
under subsections (b) - (f) of this section, this subsection, and subsection (h) of this section  
shall establish and maintain a system of files and written procedures for protection of the  
records and the personal information from unauthorized disclosure.

(2) The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his or her representative, or to those who have a need to have access to the information in performing assigned duties in the process of granting or denying unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling. No individual authorized to have access to the information may disseminate the information to any other individual who does not have a need to know.

(3) The personal information obtained on an individual from a background investigation may be provided to another licensee:

(A) Upon the individual's written request to the licensee holding the data to disseminate the information contained in his or her file; and

(B) The recipient licensee verifies information such as name, date of birth, social security number, gender, and other applicable physical characteristics.

(4) The licensee shall make background investigation records obtained under subsections (b) - (f) of this section, this subsection, and subsection (h) of this section

available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

(5) The licensee shall retain all fingerprint and criminal history records (including data indicating no record) received from the FBI or a copy of these records if the individual's file has been transferred on an individual for three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

(h) Access authorization program review.

(1) Each licensee shall be responsible for the continuing effectiveness of the access authorization program. Each licensee shall ensure that access authorization programs are reviewed to confirm compliance with the requirements of subsections (b) - (g) of this section and this subsection and that comprehensive actions are taken to correct any noncompliance identified. The review program shall evaluate all program performance objectives and requirements. Each licensee shall periodically (at least annually) review the access authorization program content and implementation.

(2) The results of the reviews, along with any recommendations, must be documented. Each review report must identify conditions that are adverse to the proper performance of the access authorization program, the cause of the condition(s), and, when

appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

(3) Review records must be maintained for three years.

(i) Security program.

(1) Applicability.

(A) Each licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material shall establish, implement, and maintain a security program in accordance with the requirements of this subsection and subsections (j) - (q) of this section.

(B) An applicant for a new license, and each licensee that would become newly subject to the requirements of this subsection and subsections (j) - (q) of this section upon application for modification of its license, shall implement the requirements of this subsection and subsections (j) - (q) of this section, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

(C) Any licensee that has not previously implemented the Security Orders or been subject to the provisions of this subsection and subsections (j) - (q) of this section shall provide written notification to the NRC regional office specified in 10 CFR §30.6 at least 90 days before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

(2) General performance objective. Each licensee shall establish, implement, and maintain a security program that is designed to monitor and, without delay, detect, assess, and respond to an actual or attempted unauthorized access to category 1 or category 2 quantities of radioactive material.

(3) Program features. Each licensee's security program must include the program features, as appropriate, described in subsections (j) - (p) of this section.

(j) General security program requirements.

(1) Security plan.

(A) Each licensee identified in subsection (i)(1) of this section shall develop a written security plan specific to its facilities and operations. The purpose of the

security plan is to establish the licensee's overall security strategy to ensure the integrated and effective functioning of the security program required by this subsection. The security plan must, at a minimum:

(i) Describe the measures and strategies used to implement the requirements of this subsection; and

(ii) Identify the security resources, equipment, and technology used to satisfy the requirements of this subsection.

(B) The security plan must be reviewed and approved by the individual with overall responsibility for the security program.

(C) A licensee shall revise its security plan as necessary to ensure the effective implementation of the executive director's requirements. The licensee shall ensure that:

(i) The revision has been reviewed and approved by the individual with overall responsibility for the security program; and

(ii) The affected individuals are instructed on the revised plan before the changes are implemented.

(D) The licensee shall retain a copy of the current security plan as a record for three years after the security plan is no longer required. If any portion of the plan is superseded, the licensee shall retain the superseded material for three years after the record is superseded.

(2) Implementing procedures.

(A) The licensee shall develop and maintain written procedures that document how the requirements of subsection (i) of this section, this subsection, and subsections (k) - (q) of this section and the security plan will be met.

(B) The implementing procedures and revisions to these procedures must be approved in writing by the individual with overall responsibility for the security program.

(C) The licensee shall retain a copy of the current procedure as a record for three years after the procedure is no longer needed. Superseded portions of the procedure must be retained for three years after the record is superseded.

(3) Training.

(A) Each licensee shall conduct training to ensure that those individuals implementing the security program possess and maintain the knowledge, skills, and abilities to carry out their assigned duties and responsibilities effectively. The training must include instruction in:

(i) The licensee's security program and procedures to secure category 1 or category 2 quantities of radioactive material and the purposes and functions of the security measures employed;

(ii) The responsibility to report promptly to the licensee any condition that causes or may cause a violation of the requirements of the commission, the NRC, or any Agreement State;

(iii) The responsibility of the licensee to report promptly to the LLEA and licensee any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material; and

(iv) The appropriate response to security alarms.

(B) In determining those individuals who shall be trained on the security program, the licensee shall consider each individual's assigned activities during authorized use and response to potential situations involving actual or attempted theft, diversion, or sabotage of category 1 or category 2 quantities of radioactive material. The extent of the training must be commensurate with the individual's potential involvement in the security of category 1 or category 2 quantities of radioactive material.

(C) Refresher training must be provided at a frequency not to exceed 12 months and when significant changes have been made to the security program. This training must include:

(i) Review of the training requirements of this paragraph and any changes made to the security program since the last training;

(ii) Reports on any relevant security issues, problems, and lessons learned;

(iii) Relevant results of NRC inspections; and

(iv) Relevant results of the licensee's program review and testing and maintenance.

(D) The licensee shall maintain records of the initial and refresher training for three years from the date of the training. The training records must include dates of the training, topics covered, a list of licensee personnel in attendance, and related information.

(4) Protection of information.

(A) Licensees authorized to possess category 1 or category 2 quantities of radioactive material shall limit access to and unauthorized disclosure of their security plan, implementing procedures, and the list of individuals that have been approved for unescorted access.

(B) Efforts to limit access shall include the development, implementation, and maintenance of written policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, the security plan and implementing procedures.

(C) Before granting an individual access to the security plan or implementing procedures, licensees shall:

(i) Evaluate an individual's need to know the security plan or implementing procedures; and

(ii) If the individual has not been authorized for unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling, the licensee must complete a background investigation to determine the individual's trustworthiness and reliability. A trustworthiness and reliability determination shall be conducted by the reviewing official and shall include the background investigation elements contained in subsection (d)(1)(B) - (G) of this section.

(D) Licensees need not subject the following individuals to the background investigation elements for protection of information:

(i) The categories of individuals listed in subsection (f)(1) of this section; or

(ii) Security service provider employees, provided written verification that the employee has been determined to be trustworthy and reliable, by the required background investigation in subsection (d)(1)(B) - (G) of this section, has been provided by the security service provider.

(E) The licensee shall document the basis for concluding that an individual is trustworthy and reliable and should be granted access to the security plan or implementing procedures.

(F) Licensees shall maintain a list of persons currently approved for access to the security plan or implementing procedures. When a licensee determines that a person no longer needs access to the security plan or implementing procedures or no longer meets the access authorization requirements for access to the information, the licensee shall remove the person from the approved list as soon as possible, but no-later-than seven working days, and take prompt measures to ensure that the individual is unable to obtain the security plan or implementing procedures.

(G) When not in use, the licensee shall store its security plan and implementing procedures in a manner to prevent unauthorized access. Information stored in non-removable electronic form must be password protected.

(H) The licensee shall retain as a record for three years after the document is no longer needed:

(i) A copy of the information protection procedures; and

(ii) The list of individuals approved for access to the security plan or implementing procedures.

(k) LLEA coordination.

(1) A licensee subject to subsections (i) and (j) of this section, this subsection, and subsections (l) - (q) of this section shall coordinate, to the extent practicable, with an LLEA for responding to threats to the licensee's facility, including any necessary armed response. The information provided to the LLEA must include:

(A) A description of the facilities and the category 1 and category 2 quantities of radioactive materials along with a description of the licensee's security

measures that have been implemented to comply with subsections (i) and (j) of this section, this subsection, and subsections (l) - (q) of this section; and

(B) A notification that the licensee will request a timely armed response by the LLEA to any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of material.

(2) The licensee shall notify the executive director within three business days if:

(A) The LLEA has not responded to the request for coordination within 60 days of the coordination request; or

(B) The LLEA notifies the licensee that the LLEA does not plan to participate in coordination activities.

(3) The licensee shall document its efforts to coordinate with the LLEA. The documentation must be kept for three years.

(4) The licensee shall coordinate with the LLEA at least every 12 months, or when changes to the facility design or operation adversely affect the potential vulnerability of the licensee's material to theft, sabotage, or diversion.

(l) Security zones.

(1) Licensees shall ensure that all aggregated category 1 and category 2 quantities of radioactive material are used or stored within licensee established security zones. Security zones may be permanent or temporary.

(2) Temporary security zones must be established as necessary to meet the licensee's transitory or intermittent business activities, such as periods of maintenance, source delivery, and source replacement.

(3) Security zones must, at a minimum, allow unescorted access only to approved individuals through:

(A) Isolation of category 1 and category 2 quantities of radioactive materials by the use of continuous physical barriers that allow access to the security zone only through established access control points. A physical barrier is a natural or man-made structure or formation sufficient for the isolation of the category 1 or category 2 quantities of radioactive material within a security zone; or

(B) Direct control of the security zone by approved individuals at all times; or

(C) A combination of continuous physical barriers and direct control.

(4) For category 1 quantities of radioactive material during periods of maintenance, source receipt, preparation for shipment, installation, or source removal or exchange, the licensee shall, at a minimum, provide sufficient individuals approved for unescorted access to maintain continuous surveillance of sources in temporary security zones and in any security zone in which physical barriers or intrusion detection systems have been disabled to allow such activities.

(5) Individuals not approved for unescorted access to category 1 or category 2 quantities of radioactive material must be escorted by an approved individual when in a security zone.

(m) Monitoring, detection, and assessment.

(1) Monitoring and detection.

(A) Licensees shall establish and maintain the capability to continuously monitor and detect without delay all unauthorized entries into its security zones. Licensees shall provide the means to maintain continuous monitoring and detection capability in the event of a loss of the primary power source or provide for an alarm and

response in the event of a loss of the capability to continuously monitor and detect unauthorized entries.

(B) Monitoring and detection must be performed by:

(i) A monitored intrusion detection system that is linked to an onsite or offsite central monitoring facility;

(ii) Electronic devices for intrusion detection alarms that will alert nearby facility personnel;

(iii) A monitored video surveillance system;

(iv) Direct visual surveillance by approved individuals located within the security zone; or

(v) Direct visual surveillance by a licensee designated individual located outside the security zone.

(C) A licensee subject to subsections (i) - (l) of this section, this subsection, and subsections (n) - (q) of this section shall also have a means to detect

unauthorized removal of the radioactive material from the security zone. This detection capability must provide:

(i) For category 1 quantities of radioactive material, immediate detection of any attempted unauthorized removal of the radioactive material from the security zone. Such immediate detection capability must be provided by:

(I) Electronic sensors linked to an alarm;

(II) Continuous monitored video surveillance; or

(III) Direct visual surveillance.

(ii) For category 2 quantities of radioactive material, weekly verification through physical checks, tamper indicating devices, use, or other means to ensure that the radioactive material is present.

(2) Assessment. Licensees shall immediately assess each actual or attempted unauthorized entry into the security zone to determine whether the unauthorized access was an actual or attempted theft, sabotage, or diversion.

(3) Personnel communications and data transmission. For personnel and automated or electronic systems supporting the licensee's monitoring, detection, and assessment systems, licensees shall:

(A) Maintain continuous capability for personnel communication and electronic data transmission and processing among site security systems; and

(B) Provide an alternative communication capability for personnel, and an alternative data transmission and processing capability, in the event of a loss of the primary means of communication or data transmission and processing. Alternative communications and data transmission systems may not be subject to the same failure modes as the primary systems.

(4) Response. Licensees shall immediately respond to any actual or attempted unauthorized access to the security zones, or actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material at licensee facilities or temporary job sites. For any unauthorized access involving an actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material, the licensee's response shall include requesting, without delay, an armed response from the LLEA.

(n) Maintenance and testing.

(1) Each licensee subject to subsections (i) - (m) of this section, this subsection, and subsections (o) - (q) of this section shall implement a maintenance and testing program to ensure that intrusion alarms, associated communication systems, and other physical components of the systems used to secure or detect unauthorized access to radioactive material are maintained in operable condition and capable of performing their intended function when needed. The equipment relied on to meet the security requirements of this section must be inspected and tested for operability and performance at the manufacturer's suggested frequency. If there is no manufacturer's suggested frequency, the testing must be performed at least annually, not to exceed 12 months.

(2) The licensee shall maintain records on the maintenance and testing activities for three years.

(o) Requirements for mobile devices. Each licensee that possesses mobile devices containing category 1 or category 2 quantities of radioactive material must:

(1) Have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee; and

(2) For devices in or on a vehicle or trailer, unless the health and safety requirements for a site prohibit the disabling of the vehicle, the licensee shall utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee.

(3) Licensees shall not rely on the removal of an ignition key to meet this requirement.

(p) Security program review.

(1) Each licensee shall be responsible for the continuing effectiveness of the security program. Each licensee shall ensure that the security program is reviewed to confirm compliance with the requirements of subsections (i) - (o) of this section, this subsection, and subsection (q) of this section and that comprehensive actions are taken to correct any noncompliance that is identified. The review must include the radioactive material security program content and implementation. Each licensee shall periodically (at least annually) review the security program content and implementation.

(2) The results of the review, along with any recommendations, must be documented. Each review report must identify conditions that are adverse to the proper performance of the security program, the cause of the condition(s), and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the

findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

(3) The licensee shall maintain the review documentation for three years.

(q) Reporting of events.

(1) The licensee shall immediately notify the LLEA after determining that an unauthorized entry resulted in an actual or attempted theft, sabotage, or diversion of a category 1 or category 2 quantity of radioactive material. As soon as possible after initiating a response, but not at the expense of causing delay or interfering with the LLEA response to the event, the licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 and the NRC's Operations Center at (301) 816-5100. In no case shall the notification to the commission or the NRC be later than four hours after the discovery of any attempted or actual theft, sabotage, or diversion.

(2) The licensee shall assess any suspicious activity related to possible theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material and notify the LLEA as appropriate. As soon as possible but not later than four hours after notifying the LLEA, the licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 and the NRC's Operations Center at (301) 816-5100.

(3) The initial telephonic notification required by paragraph (1) of this subsection must be followed, within a period of 30 days, by a written report submitted to the executive director and the NRC by an appropriate method listed in 10 CFR §37.7. The report must include sufficient information for NRC analysis and evaluation, including identification of any necessary corrective actions to prevent future instances.

(r) Additional requirements for transfer of category 1 and category 2 quantities of radioactive material. A licensee transferring a category 1 or category 2 quantity of radioactive material to a licensee of the commission, the NRC, or an Agreement State shall meet the license verification provisions listed in this subsection instead of those listed in §336.331(d) of this title (relating to Transfer of Radioactive Material):

(1) Any licensee transferring category 1 quantities of radioactive material to a licensee of the commission, the NRC, or an Agreement State, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred and that the licensee is authorized to receive radioactive material at the location requested for delivery. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

(2) Any licensee transferring category 2 quantities of radioactive material to a licensee of the commission, the NRC, or an Agreement State, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

(3) In an emergency where the licensee cannot reach the license issuing authority and the license verification system is nonfunctional, the licensee may accept a written certification by the transferee that it is authorized by license to receive the type, form, and quantity of radioactive material to be transferred. The certification must include the license number, current revision number, issuing agency, expiration date, and for a category 1 shipment the authorized address. The licensee shall keep a copy of the certification. The certification must be confirmed by use of the NRC's license verification system or by contacting the license issuing authority by the end of the next business day.

(4) The transferor shall keep a copy of the verification documentation as a record for three years.

(s) Applicability of physical protection of category 1 and category 2 quantities of

radioactive material during transit. The shipping licensee shall be responsible for meeting the requirements of subsection (r) of this section, this subsection, and subsections (t) - (w) of this section unless the receiving licensee has agreed in writing to arrange for the in-transit physical protection required under subsection (r) of this section, this subsection, and subsections (t) - (w) of this section.

(t) Preplanning and coordination of shipment of category 1 or category 2 quantities of radioactive material.

(1) Each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 1 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall:

(A) Preplan and coordinate shipment arrival and departure times with the receiving licensee;

(B) Preplan and coordinate shipment information with the governor or the governor's designee of any state through which the shipment will pass to:

(i) Discuss the state's intention to provide law enforcement escorts; and

(ii) Identify safe havens; and

(C) Document the preplanning and coordination activities.

(2) Each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 2 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall coordinate the shipment no-later-than arrival time and the expected shipment arrival with the receiving licensee. The licensee shall document the coordination activities.

(3) Each licensee who receives a shipment of a category 2 quantity of radioactive material shall confirm receipt of the shipment with the originator. If the shipment has not arrived by the no-later-than arrival time, the receiving licensee shall notify the originator.

(4) Each licensee, who transports or plans to transport a shipment of a category 2 quantity of radioactive material, and determines that the shipment will arrive after the no-later-than arrival time provided pursuant to paragraph (2) of this subsection, shall promptly notify the receiving licensee of the new no-later-than arrival time.

(5) The licensee shall retain a copy of the documentation for preplanning and coordination and any revision thereof as a record for three years.

(u) Advance notification of shipment of category 1 quantities of radioactive material.

As specified in paragraphs (1) and (2) of this subsection, each licensee shall provide advance notification to the NRC and the governor of a state, or the governor's designee, of the shipment of licensed material in a category 1 quantity, through or across the boundary of the state, before the transport or delivery to a carrier for transport of the licensed material outside the confines of the licensee's facility or other place of use or storage.

(1) Procedures for submitting advance notification.

(A) The notification must be made to the NRC and to the office of each appropriate governor or governor's designee. The contact information, including telephone and mailing addresses, of governors and governors' designees, is available on the NRC's website at <http://nrc-stp.ornl.gov/special/designee.pdf>. A list of the contact information is also available upon request from the Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Notifications to the NRC must be to the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The notification to the NRC may be made by e-mail to [RAMQC\\_SHIPMENTS@nrc.gov](mailto:RAMQC_SHIPMENTS@nrc.gov) or by fax to (301) 816-5151.

(B) A notification delivered by mail must be postmarked at least seven days before transport of the shipment commences at the shipping facility.

(C) A notification delivered by any means other than mail must reach NRC at least four days before the transport of the shipment commences and must reach the office of the governor or the governor's designee at least four days before transport of a shipment within or through the state.

(2) Information to be furnished in advance notification of shipment. Each advance notification of shipment of category 1 quantities of radioactive material must contain the following information, if available at the time of notification:

(A) The name, address, and telephone number of the shipper, carrier, and receiver of the category 1 radioactive material;

(B) The license numbers of the shipper and receiver;

(C) A description of the radioactive material contained in the shipment, including the radionuclides and quantity;

(D) The point of origin of the shipment and the estimated time and date that shipment will commence;

(E) The estimated time and date that the shipment is expected to enter each state along the route;

(F) The estimated time and date of arrival of the shipment at the destination; and

(G) A point of contact, with a telephone number, for current shipment information.

(3) Revision notice.

(A) The licensee shall provide any information not previously available at the time of the initial notification, as soon as the information becomes available but not later than commencement of the shipment, to the governor of the state or the governor's designee and to the NRC's Director of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(B) A licensee shall promptly notify the governor of the state or the governor's designee of any changes to the information provided in accordance with paragraph (2) of this subsection and subparagraph (A) of this paragraph. The licensee shall also immediately notify the NRC's Director, Division of Security Policy, Office of Nuclear

Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, of any such changes.

(4) Cancellation notice. Each licensee who cancels a shipment for which advance notification has been sent shall send a cancellation notice to the governor of each state or to the governor's designee previously notified and to the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, United States Nuclear Regulatory Commission, Washington, DC 20555-0001. The licensee shall send the cancellation notice before the shipment would have commenced or as soon thereafter as possible. The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being cancelled.

(5) Records. The licensee shall retain a copy of the advance notification and any revision and cancellation notices as a record for three years.

(v) Requirements for physical protection of category 1 and category 2 quantities of radioactive material during shipment.

(1) Shipments by road.

(A) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

(i) Ensure that movement control centers are established that maintain position information from a remote location. These control centers must monitor shipments 24 hours a day, seven days a week, and have the ability to communicate immediately, in an emergency, with the appropriate law enforcement agencies.

(ii) Ensure that redundant communications are established that allow the transport to contact the escort vehicle (when used) and movement control center at all times. Redundant communications may not be subject to the same interference factors as the primary communication.

(iii) Ensure that shipments are continuously and actively monitored by a telemetric position monitoring system or an alternative tracking system reporting to a movement control center. A movement control center must provide positive confirmation of the location, status, and control over the shipment. The movement control center must be prepared to promptly implement preplanned procedures in response to deviations from the authorized route or a notification of actual, attempted, or suspicious activities related to the theft, loss, or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.

(iv) Provide an individual to accompany the driver for those highway shipments with a driving time period greater than the maximum number of allowable hours of service in a 24-hour duty day as established by the Department of Transportation Federal Motor Carrier Safety Administration. The accompanying individual may be another driver.

(v) Develop written normal and contingency procedures to address:

(I) Notifications to the communication center and law enforcement agencies;

(II) Communication protocols. Communication protocols must include a strategy for the use of authentication codes and duress codes and provisions for refueling or other stops, detours, and locations where communication is expected to be temporarily lost;

(III) Loss of communications; and

(IV) Responses to an actual or attempted theft or diversion of a shipment.

(vi) Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall ensure that drivers, accompanying personnel, and movement control center personnel have access to the normal and contingency procedures.

(B) Each licensee that transports category 2 quantities of radioactive material shall maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance.

(C) Each licensee who delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall:

(i) Use carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control;

(ii) Use carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

(iii) Use carriers that have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

(2) Shipments by rail.

(A) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

(i) Ensure that rail shipments are monitored by a telemetric position monitoring system or an alternative tracking system reporting to the licensee, third-party, or railroad communications center. The communications center shall provide positive confirmation of the location of the shipment and its status. The communications center shall implement preplanned procedures in response to deviations from the authorized route or to a notification of actual, attempted, or suspicious activities related to the theft or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.

(ii) Ensure that periodic reports to the communications center are made at preset intervals.

(B) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall:

(i) Use carriers that have established package tracking systems.

An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control.

(ii) Use carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

(iii) Use carriers that have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

(3) Investigations. Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall immediately conduct an investigation upon the discovery that a category 1 shipment is lost or missing. Each licensee who makes arrangements for the shipment of category 2 quantities of radioactive material shall

immediately conduct an investigation, in coordination with the receiving licensee, of any shipment that has not arrived by the designated no-later-than arrival time.

(w) Reporting of events.

(1) The shipping licensee shall notify the appropriate LLEA, the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224, and the NRC's Operations Center at (301) 816-5100 within one hour of its determination that a shipment of category 1 quantities of radioactive material is lost or missing. The appropriate LLEA would be the law enforcement agency in the area of the shipment's last confirmed location. During the investigation required by subsection (v)(3) of this section, the shipping licensee will provide agreed upon updates to the executive director and the NRC's Operations Center on the status of the investigation.

(2) The shipping licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 and the NRC's Operations Center at (301) 816-5100 within four hours of its determination that a shipment of category 2 quantities of radioactive material is lost or missing. If, after 24 hours of its determination that the shipment is lost or missing, the radioactive material has not been located and secured, the licensee shall immediately notify the executive director and the NRC's Operations Center.

(3) The shipping licensee shall notify the designated LLEA along the shipment route as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment or suspicious activities related to the theft or diversion of a shipment of a category 1 quantity of radioactive material. As soon as possible after notifying the LLEA, the licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 and the NRC's Operations Center at (301) 816-5100 upon discovery of any actual or attempted theft or diversion of a shipment or any suspicious activity related to the shipment of category 1 radioactive material.

(4) The shipping licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 and the NRC's Operations Center at (301) 816-5100 as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment or any suspicious activity related to the shipment, of a category 2 quantity of radioactive material.

(5) The shipping licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224, the NRC's Operations Center at (301) 816-5100, and the LLEA as soon as possible upon recovery of any lost or missing category 1 quantities of radioactive material.

(6) The shipping licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 and the NRC's Operations

Center at (301) 816-5100 as soon as possible upon recovery of any lost or missing category 2 quantities of radioactive material.

(7) The initial telephonic notification required by paragraphs (1) - (4) of this subsection must be followed within a period of 30 days by a written report submitted to the executive director and NRC by an appropriate method listed in 10 CFR §37.7. A written report is not required for notifications on suspicious activities required by paragraphs (3) and (4) of this subsection. In addition, the licensee shall provide one copy of the written report addressed to the Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The report must set forth the following information:

(A) A description of the licensed material involved, including kind, quantity, and chemical and physical form;

(B) A description of the circumstances under which the loss or theft occurred;

(C) A statement of disposition, or probable disposition, of the licensed material involved;

(D) Actions that have been taken, or will be taken, to recover the material; and

(E) Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed material.

(8) Subsequent to filing the written report, the licensee shall also report any additional substantive information on the loss or theft within 30 days after the licensee learns of such information.

(x) Form of records. Each record required by this section must be legible throughout the retention period specified in regulation by the licensing authority. The record may be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

(y) Record retention. Licensees shall maintain the records that are required in this section for the period specified by the appropriate regulation. If a retention period is not

otherwise specified, these records must be retained until the executive director terminates the facility's license. All records related to this section may be destroyed upon executive director termination of the facility license.

(z) Category 1 and category 2 radioactive materials. The terabecquerel (TBq) values are the regulatory standard. The curie (Ci) values specified are obtained by converting from the TBq value. The Ci values are provided for practical usefulness only.

Figure: 30 TAC §336.357(z)

Category 1 and Category 2 Threshold				
Radioactive Material	Category 1 (TBq)	Category 1 (Ci)	Category 2 (TBq)	Category 2 (Ci)
Americium-241	60	1,620	0.6	16.2
Americium-241/Be	60	1,620	0.6	16.2
Californium-252	20	540	0.2	5.40
Cobalt-60	30	810	0.3	8.10
Curium-244	50	1,350	0.5	13.5
Cesium-137	100	2,700	1	27.0
Gadolinium-153	1,000	27,000	10	270
Iridium-192	80	2,160	0.8	21.6
Plutonium-238	60	1,620	0.6	16.2
Plutonium-239/Be	60	1,620	0.6	16.2
Promethium-147	40,000	1,080,000	400	10,800
Radium-226	40	1,080	0.4	10.8

Selenium-75	200	5,400	2	54.0
Strontium-90	1,000	27,000	10	270
Thulium-170	20,000	540,000	200	5,400
Ytterbium-169	300	8,100	3	81.0

**Note: Calculations Concerning Multiple Sources or Multiple Radionuclides**

The "sum of fractions" methodology for evaluating combinations of multiple sources or multiple radionuclides is to be used in determining whether a location meets or exceeds the threshold and is thus subject to the requirements of this section.

I. If multiple sources of the same radionuclide and/or multiple radionuclides are aggregated at a location, the sum of the ratios of the total activity of each of the radionuclides must be determined to verify whether the activity at the location is less than the category 1 or category 2 thresholds of Table 1, as appropriate. If the calculated sum of the ratios, using the equation below, is greater than or equal to 1.0, then the applicable requirements of this section apply.

II. First determine the total activity for each radionuclide from Table 1. This is done by adding the activity of each individual source, material in any device, and any loose or bulk material that contains the radionuclide. Then use the equation below to calculate the sum of the ratios by inserting the total activity of the applicable radionuclides from Table 1 in the numerator of the equation and the corresponding threshold activity from Table 1 in the denominator of the equation. Calculations must be performed in metric values (i.e., TBq) and the numerator and denominator values must be in the same units.

$R_1$  = total activity for radionuclide 1

$R_2$  = total activity for radionuclide 2

$R_N$  = total activity for radionuclide n

$AR_1$  = activity threshold for radionuclide 1

$AR_2$  = activity threshold for radionuclide 2

$AR_N$  = activity threshold for radionuclide n

$$\sum_i^n \left[ \frac{R_1}{AR_1} + \frac{R_2}{AR_2} + \frac{R_n}{AR_n} \right]$$

**SUBCHAPTER H: LICENSING REQUIREMENTS FOR NEAR-SURFACE LAND  
DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE**

**§336.739**

**Statutory Authority**

The new section is proposed under the specific authority of Texas Health and Safety Code (THSC), Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. The new section is also proposed under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under TWC and other laws of the state.

The new section is proposed to implement Senate Bill 347, 83rd Texas Legislature, 2013, and its amendments to THSC, Chapter 401.

**§336.739. Volume Reduction.**

(a) The compact waste disposal facility license holder may accept nonparty compact waste for disposal at the facility only if the waste has been volume-reduced, if eligible, by at least a factor of three in a manner consistent with Texas Health and Safety Code, Chapter 401, Subchapter F.

(b) Waste has been reduced by a factor of three if the final volume of waste disposed is one-third (1/3) or less of the initial volume.

(1) Initial volume of the waste is the volume of radioactive material generated prior to receiving any processing or operational waste volume reducing methods.

(2) Final volume of the waste is the volume after the waste has been processed, whether by the generator (including any waste minimization as part of the generator's process) or by a commercial waste processor, and is in the final form immediately prior to disposal. Waste packaging is not included in determining the final volume.

(c) Examples and Eligibility.

(1) Examples of volume reduction methods include:

(A) reduction of the volume of ion exchange media loaded into individual demineralizer vessels;

(B) on-line lithiation strategies for reactor coolant purification demineralizers;

(C) intermittent use of some demineralizers instead of continuous use (spent fuel pool);

(D) reduction by compaction of dry active waste or compactible waste;

(E) removal of radioactive particulates from a liquid waste stream by the use of methods such as filters, ion-exchange medium (such as resin), precipitation, flocculation, or settlement (resultant liquid, if still radioactive, would not be considered volume reduced);

(F) incineration (any radioactive effluent captured in a device such as a baghouse or charcoal filter would not be considered volume reduced);

(G) concentration technologies such as evaporation, crystallization, drying, or dewatering; or

(H) repackaging or consolidation of waste in order to more efficiently minimize volume required for disposal in compliance with the license.

(2) Examples of what is not considered volume reduction include:

(A) downblending;

(B) separation of radioactive waste from non-radioactive waste, such as debris or contaminated scrap metal; or

(C) volume reduction based entirely on hypothetical calculations, rather than actual records of historical waste generation.

(3) Waste streams that are not eligible for volume reduction include:

(A) irradiated hardware;

(B) solid forms, such as non-compactible metals or monoliths;

(C) large components;

(D) soils and demolition debris; or

(E) sealed sources.

(d) Recordkeeping.

(1) Maintenance of records. Records detailing compliance with this section must be maintained and available for examination and copying by the executive director or the executive director's designee at all reasonable times. Such records must include information to identify the manifest number(s) and the exact shipping date(s) of the volume-reduced waste being transported to the compact waste disposal facility. Upon request, all records required by this chapter must be assembled at a single location within the state of Texas.

(2) Records retention. Records under this section must be kept for a minimum of five years from the date on which the record is made.

(3) Penalties for records violations. A person that violates this section shall be subject to any action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law, and the suspension or revocation of a license.