

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** July 1, 2011

Thru: Melissa Chao, Acting Chief Clerk
Mark R. Vickery, P.G., Executive Director

From: Richard A. Hyde, P.E., Deputy Director
Office of Permitting and registration

Docket No.: 2011-0755-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 336, Radioactive Substance Rules
Radioactive Substance Rules Update
Rule Project No. 2011-011-336-PR

Background and reason(s) for the rulemaking:

Texas Health and Safety Code, §401.001 establishes that it is the policy of the state to institute and maintain a regulatory program for sources of radiation that provides for compatibility with federal standards and regulatory programs. This rulemaking will revise the commission's radiation control rules to ensure compatibility with regulations promulgated by the United States Nuclear Regulatory Commission (NRC). The state must adopt compatible rules to maintain the status of Texas as an Agreement State authorized to administer a portion of the radiation control program under the Atomic Energy Act.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The rulemaking will implement the following NRC rules:

NRC Order Imposing Increased Controls (70 FR 72128). Subsequent to the terrorist attacks of September 11, 2001, the NRC conducted an assessment of security risks posed by uncontrolled sources of radiation. On November 14, 2005, the NRC issued an order imposing requirements for the control of high-risk radioactive materials to prevent inadvertent and intentional unauthorized access. Each agreement state is required to issue legally binding requirements for licensees under state regulatory jurisdiction.

National Source Tracking System (71 FR 65685). Subsequent to the terrorist attacks of September 11, 2001, the NRC conducted a comprehensive review of nuclear material security requirements and established the National Source Tracking System to provide greater accountability and increased controls by licensees for certain tracked sources. These rules impose requirements for the reporting of information on the manufacture, transfer, receipt, disassembly, and disposal of nationally tracked sealed sources.

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Requirements for Expanded Definition of Byproduct Material (72 FR 55864, 72 FR 42672). The NRC adopted rules implementing changes established by Congress in the Energy Policy Act of 2005 regarding the regulation of byproduct material under the NRC's regulatory program. New categories of byproduct material under NRC authority include discrete sources of radium-226, accelerator produced radioactive material, and any discrete sources of naturally occurring radioactive materials that the NRC determines should be included under the NRC regulatory because it poses a similar threat as radium-226.

Occupational Dose Records, Labeling Containers, and the Total Effective Dose Equivalent (72 FR 68043, 72 FR 72233). The NRC conducted a review of regulatory requirements imposed on licensees and revised rules to remove unnecessarily burdensome record-keeping and reporting requirements for licensees. Although these rules reduce record-keeping and reporting requirements, the NRC explains that the rules do not change the level of protection for either the health and safety of workers or the public or for the environment.

The rulemaking will also amend the fees charged for facilities regulated under Subchapter L of Chapter 336 (Licensing of Source Material Recovery and By-Product Material Disposal Facilities). The proposed fee shall recover for the state the actual expenses arising from the regulatory activities associated with the license.

The rulemaking will also clarify the requirements for license fees to fund the Radiation and Perpetual Care Account.

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

This rulemaking will bring the TCEQ radiation control rules current with federal rules promulgated by the NRC and will implement state statutes regarding cost recovery for radioactive material licenses and fees to fund the Radiation and Perpetual Care Account.

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

None

Statutory authority:

Texas Health and Safety Code, §401.011, Radiation Control Agency

Texas Health and Safety Code, §401.051, Adoption of Rules and Guidelines

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Texas Health and Safety Code, §401.103, Rules and Guidelines for Licensing and Registration

Texas Health and Safety Code, §401.104, Licensing and Registration Rules

Texas Health and Safety Code, §401.262, Management of Certain By-Product Material

Texas Health and Safety Code, §401.2625, Licensing Authority

Texas Health and Safety Code, §401.301, License and Registration Fees

Texas Health and Safety Code, §401.305, Radiation and Perpetual Care Account

Texas Health and Safety Code, §401.412, Commission Licensing Authority

Effect on the:

A.) Regulated community:

There will be an effect on members of the regulated community who are authorized to possess, store, process or dispose of radioactive material under a license issued by the commission. The effect and fiscal impact of adopting the new NRC rules is not expected to be significant. The rule does not create a group of affected persons who were not affected previously.

There may be a fiscal impact for licensees authorized for commercial dispose of by-product material. The annual license fee will change from \$60,929.50 to the actual expenses arising from the regulatory activities associated with the license. This could be an increase or decrease depending on the nature and extent of regulatory activities associated with the license in any given year. There is only one licensee currently authorized for commercial disposal of by-product material.

B.) Public:

There will be no effect on the public because the proposed rules only pertain to members of the regulated community.

C.) Agency programs:

Office of Permitting and Registration: Additional technical review of license applications may be necessary. Additional cost recovery efforts will be necessary for by-product material disposal licenses. No additional full-time employees (FTEs) are required.

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Environmental Law Division: Additional support for the technical review of license applications may be necessary. No additional FTEs are required.

Office of Compliance and Enforcement: There will be additional rule requirements to inspect during investigations. No additional FTEs are required.

Stakeholder meetings:

There will be a public hearing on the rule proposal on August 30, 2011. Stakeholder meetings were not held as the commission did not anticipate a significant degree of public interest in the rule proposal.

Potential controversial concerns and legislative interest:

There should be no controversial concerns or legislative interest since the primary purpose of this rulemaking is to bring the TCEQ rules current with federal rules and state statute.

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

No

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

Failure to amend Chapter 336 will leave the TCEQ rules inconsistent with federal requirements and state statutes.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: July 20, 2011

Anticipated *Texas Register* publication date: August 5, 2011

Public hearing date (if any): August 30, 2011

Public comment period: August 5 - September 6, 2011

Anticipated adoption date: December 7, 2011

Agency contacts:

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Attachments

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None

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