

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

**ADOPTION REQUESTED:** November 20, 2024

**DATE OF REQUEST:** November 1, 2024

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Gwen Ricco, Rule/Agenda Coordinator, (512) 239-2678

**CAPTION: Docket No. 2024-0162-RUL.** Consideration of the adoption of amended Sections 336.2, 336.102, 336.105, 336.208, 336.329, 336.331, 336.332, 336.336, 336.341, 336.351, 336.357, 336.625, 336.701, and 336.1215 of 30 TAC Chapter 336, *Radioactive Substance Rules*.

The rulemaking adoption will modify the rules to correct errors, remove obsolete text, add clarity, add a definition of “closure” to Subchapter B of 30 TAC Chapter 336, *Radioactive Substance Fees*, and modify the training requirements for the Radiation Safety Officer in 30 TAC §336.208(a) and 30 TAC §336.1215(a)(5) to provide the commission flexibility in determining adequate training for the Radiation Safety Officer at different licensed facilities. The proposed rules were published in the June 28, 2024, issue of the *Texas Register* (49 TexReg 4710). (Hans Weger, Nicholas Pilcher; Rule Project No. 2024-010-336-WS)

  
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**Director**

  
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**Division Deputy Director**

  
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**Agenda Coordinator**


Copy to CCC Secretary? NO  YES

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** November 1, 2024

**Thru:** Laurie Gharis, Chief Clerk  
Kelly Keel, Executive Director

**From:** Beth Seaton, Director   
Office of Waste

**Docket No.:** 2024-0162-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 336, Radioactive Substance Rules  
NRC Compatibility and Error Correction  
Rule Project No. 2024-010-336-WS

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

The Radioactive Materials Division (RMD) rulemaking adoption will amend 30 Texas Administrative Code (TAC) Chapter 336, Radioactive Substance Rules, to ensure compatibility with federal regulations promulgated by the United States Nuclear Regulatory Commission (NRC), which is necessary to preserve the status of Texas as an Agreement State under Title 10 Code of Federal Regulations 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 §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. Adoption of the rulemaking will also amend 30 TAC Chapter 336 to correct errors, add clarity, remove obsolete text, and modify training requirements for Radiation Safety Officers (RSO) to provide the commission flexibility in determining adequate training for the RSO at different licensed facilities.

**Scope of the rulemaking:**

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

To ensure that 30 TAC Chapter 336 is compatible with federal regulations, this rulemaking will correct the reference to Department of Transportation rules in 30 TAC §336.329(4); remove 30 TAC §336.351(a)(8) to remove an obsolete January 31, 2009 deadline for licensees to report their initial inventory of Category 1 or Category 2 nationally tracked sources; and correct an error in an equation for the "sum of fractions" methodology in 30 TAC §336.357(z).

This rulemaking will change the spelling of "byproduct" to "by-product" in 30 TAC §§336.2, 336.331, 336.332, 336.336, 336.341, 336.625, and 336.701 to be consistent with Texas Health and Safety Code (THSC), Chapter 401. To correct errors, this rulemaking will correct the reference to a rule in 30 TAC §336.701(b)(2).

For clarity, this rulemaking will add a definition of "closure" specific for Subchapter B of 30 TAC Chapter 336 in 30 TAC §336.102 and modify 30 TAC §336.105(i) and §336.105(j) to add a reference to THSC §401.271(a)(1) and §401.271(a)(2) regarding fees for commercial radioactive waste disposal. To remove obsolete text, the rulemaking will remove 30 TAC §336.105(g) to remove instructions about the annual fee for when a licensee remitted a biennial licensing fee to the Texas Department of State Health Services during the one-year period prior to June 17, 2007.

This rulemaking will modify the training requirements for the RSO in 30 TAC §336.208(a)(3) and 30 TAC §336.1215(a)(5) to provide the commission flexibility in determining adequate training for the RSO at different licensed facilities.

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

Parts of this rulemaking are required by the NRC to be compatible with federal regulations for Texas to retain its status as an Agreement State.

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

The remaining rule changes being adopted are for clarity, to correct errors, to remove obsolete text, and to provide the Texas Commission on Environmental Quality (TCEQ) flexibility in determining adequate training for the RSO at different licensed facilities.

**Statutory authority:**

The rule change will be adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product 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; THSC §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC §401.301, which authorizes the commission to set fees by rule; and THSC §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances. The amendments will implement THSC, Chapter 401, and are adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

**Effect on the:**

**A.) Regulated community:**

Persons who have a radioactive material license issued by TCEQ will be affected. The effect is negligible since the modifications are mainly to remove obsolete text, correct errors, or add clarity. The modification to RSO training will have a positive effect on licensees since the training required for an RSO will be appropriate for the specific license.

**B.) Public:**

There is no direct impact to the public anticipated with this rulemaking.

**C.) Agency programs:**

There is no direct impact to other agency programs with this rulemaking.

**Stakeholder meetings:**

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing was held in Austin during the public comment period.

**Public comment:**

The commission offered a public hearing on July 29, 2024. The comment period closed on July 30, 2024. No public comments were received.

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**Significant changes from proposal:**  
None.

**Public Involvement Plan**

In addition to the statutory public notice requirements, TCEQ developed a public involvement plan to encourage public participation. A plain language summary was also provided.

**Alternative Language Requirements**

Yes, Spanish.

**Potential controversial concerns and legislative interest:**

No controversial concerns or legislative interest is anticipated.

**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 may result in the loss of its Agreement State status.

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

*Texas Register* proposal publication date: June 28, 2024

Anticipated *Texas Register* adoption publication date: December 6, 2024

Anticipated effective date: December 12, 2024

Six-month *Texas Register* filing deadline: December 27, 2024

**Agency contacts:**

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Nicholas Pilcher, Staff Attorney, Environmental Law Division, (512) 239-5927

Gwen Ricco, Texas Register Rule/Agenda Coordinator, General Law Division, (512) 239-2678

**Attachments:**

None.

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Jim Rizk  
Krista Kyle  
Jessie Powell  
Office of General Counsel  
Hans Weger  
Nicholas Pilcher  
Gwen Ricco

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§336.2, 336.102, 336.105, 336.208, 336.329, 336.331, 336.332, 336.336, 336.341, 336.351, 336.357, 336.625, 336.701, and 336.1215 *without changes* to the proposed text as published in the June 28, 2024, issue of the *Texas Register* (49 TexReg 4710) and, therefore, will not be republished.

### **Background and Summary of the Factual Basis for the Adopted Rule**

The commission adopts changes to Chapter 336, Subchapter D to correct a reference to Department of Transportation rules, remove an obsolete January 31, 2009 deadline for licensees to report their initial inventory of Category 1 or Category 2 nationally tracked sources, and correct an error in an equation for the “sum of fractions” methodology 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.

The commission adopts changes to Subchapters A, D, G, and H to change the spelling

of “byproduct” to “by-product” to be consistent with Texas Health and Safety Code (THSC), Chapter 401. The commission adopts changes to Subchapter H to correct the reference to a rule to correct errors. The commission adopts changes to Subchapter B to add a definition of “closure” specific to Subchapter B and add a reference to THSC, §401.271 regarding fees for commercial radioactive waste disposal for clarity. The commission adopts changes to Subchapter B to remove instructions about the annual fee for when a licensee remitted a biennial licensing fee to the Texas Department of State Health Services during the one-year period prior to June 17, 2007, to remove obsolete text. The commission adopts changes to Subchapter C and M to modify the training requirements for the Radiation Safety Officer (RSO) to provide the commission flexibility in determining adequate training for the RSO at different licensed facilities.

### **Section by Section Discussion**

The commission adopts administrative changes throughout this rulemaking to be consistent with *Texas Register* requirements and agency rules and guidelines.

#### *§336.2, Definitions*

The commission adopts this rulemaking to amend §§336.2(20), 336.2(20)(B), 336.2(89)(B)(iv), 336.2(99), 336.2(126), and 336.2(170) to change the spelling of “byproduct” to “by-product” to be consistent with THSC, Chapter 401.

#### *§336.102, Definitions*

The commission adopts this rulemaking to add a definition of closure specific to Subchapter B for clarity since licensing fees are different when a license is in closure. The adopted definition mirrors the definition of closure found in 30 Texas Administrative Code (TAC) §37.9035. The commission rulemaking adoption will increase the numbering of the subsequent definitions by one.

§336.105, *Schedule of Fees for Other Licenses*

The commission adopts this rulemaking to remove 30 TAC §336.105(g) to remove obsolete text regarding instructions for when a licensee remitted a biennial licensing fee to the Texas Department of State Health Services prior to June 17, 2007, and amend §336.105(i) and §336.105(j) to add a reference to THSC, §401.271 regarding fees for commercial radioactive waste disposal for clarity. The commission rulemaking adoption will adjust the numbering of the remaining rules accordingly.

§336.208, *Radiation Safety Officer*

The commission adopts the rulemaking to amend §336.208(a)(3) to modify the training requirements for the RSO from requiring at least four weeks of specialized additional training from a course provider that has been evaluated and approved by the agency to requiring additional training as determined by the Executive Director. This modification provides the commission flexibility in determining adequate training for the RSO at different licensed facilities.

§336.329, *Exemptions to Labeling Requirements*

The commission adopts the rulemaking to amend the reference to Department of Transportation rules in 30 TAC §336.329(4). This rule amendment is adopted to ensure compatibility with federal regulations promulgated by the NRC.

§336.331, *Transfer of Radioactive Material*

The commission adopts this rulemaking to amend §§336.331(a), 336.331(b), 336.331(c), 336.331(d)(5), 336.331(f), and 336.331(i) to change the spelling of “byproduct” to “by-product” to be consistent with THSC, Chapter 401.

§336.332, *Preparation of Radioactive Material for Transport*

The commission adopts this rulemaking to amend §336.332(a) to change the spelling of “byproduct” to “by-product” to be consistent with THSC, Chapter 401.

§336.336, *Tests*

The commission adopts this rulemaking to amend §336.336(a)(1) and §336.336(a)(4) to change the spelling of “byproduct” to “by-product” to be consistent with THSC, Chapter 401.

§336.341, *General Recordkeeping Requirements for Licensees*

The commission adopts this rulemaking to amend §336.341(e) to change the spelling of “byproduct” to “by-product” to be consistent with THSC, Chapter 401.



§336.351, *Reports of Transactions Involving Nationally Tracked Sources.*

The commission adopts this rulemaking to remove 30 TAC §336.351(a)(8) to remove an obsolete January 31, 2009 deadline for licensees to report their initial inventory of Category 1 or Category 2 nationally tracked sources. This rule amendment is adopted to ensure compatibility with federal regulations promulgated by the NRC.

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

The commission adopts this rulemaking to amend the figure in 30 TAC §336.357(z) by correcting an error in the equation for the “sum of fractions” methodology. This rule amendment is adopted to ensure compatibility with federal regulations promulgated by the NRC.

§336.625, *Expiration and Termination of Licenses*

The commission adopts this rulemaking to amend §§336.625(c), 336.625(c)(1), and 336.625(i)(1) to change the spelling of “byproduct” to “by-product” to be consistent with THSC, Chapter 401.

§336.701, *Scope and General Provisions*

The commission adopts this rulemaking to amend §336.701(b)(2) to change the spelling of “byproduct” to “by-product” to be consistent with THSC, Chapter 401 and

change the reference to §336.2(13)(B) to §336.2(20)(B) to correct an error.

#### §336.1215, *Issuance of Licenses*

The commission adopts this rulemaking to amend §336.1215(a)(5) by referring to 30 TAC §336.208 for the training requirements for a RSO and removing the additional requirements in §336.1215(a)(5)(A) and (B) since these requirements are also stated in 30 TAC §336.208. The commission amends §336.1215(a)(5)(C) to remove the training requirements that the RSO have at least four weeks of specialized additional training from a course provider that has been evaluated and approved by the agency to provide the commission flexibility in determining adequate training for the RSO at different licensed facilities.

#### **Final Regulatory Impact Analysis Determination**

The commission reviewed the rulemaking adoption in light of the regulatory analysis requirements of the Texas Government Code (TGC), §2001.0225. The commission determined that the action is not subject to TGC, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is 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 specific intent of the adopted rule is not to protect the environment or to reduce risks to human health from environmental exposure. The intent of the adopted amendments is to remove obsolete text, correct errors, add clarity, and provide flexibility in determining adequate training for the radiation safety officer at different licensed facilities. Additionally, some of these adopted amendments are required for TCEQ to maintain compatibility with the NRC for these licensing programs. Therefore, the rulemaking adoption is not a major environmental rule.

Furthermore, even if the rulemaking adoption does meet the definition of a “Major environmental rule”, the adopted rules do not meet any of the four applicability requirements listed in TGC, §2001.0225. Section 2001.0225 applies to a “Major environmental rule”, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; 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 adopt a rule solely under the general powers of the agency instead of under a specific state law. The rulemaking adoption does not meet any of the four applicability requirements listed in TGC, §2001.0225.

First, the rulemaking does not exceed a standard set by federal law because the

commission is adopting this rulemaking, in part, to ensure compatibility with federal regulations promulgated by the NRC. The State of Texas is an “Agreement State” authorized by the NRC to administer a radiation control program under the Atomic Energy Act of 1952, as amended (Atomic Energy Act).

Second, the rulemaking does not adopt requirements that are more stringent than existing state laws. THSC, Chapter 401, authorizes the commission to regulate the licensing and disposal of radioactive substances, source material recovery, and commercial radioactive substances storage and processing. The rulemaking adoption seeks to make corrections and provide clarity and flexibility consistent with state law.

Third, the rulemaking adoption does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. The State of Texas has been designated as an “Agreement State” by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of radioactive materials and is adequate to protect health and safety. Under the *Agreement Between the United States Nuclear Regulatory 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*, NRC requirements must be implemented to

maintain a compatible state program for protection against hazards of radiation. The rulemaking adoption does not exceed the NRC requirements nor exceed the requirements for retaining status as an "Agreement State."

Fourth, this rulemaking does not seek to adopt a rule solely under the general powers of the agency. Rather, sections of THSC, Chapter 401, authorize this rulemaking, which are cited in the Statutory Authority section of this preamble.

The commission invited public comments regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

### **Takings Impact Assessment**

The commission evaluated the adopted rules and performed analysis of whether the adopted rules constitute a taking under TGC, Chapter 2007. The specific purpose of the adopted rules is to remove obsolete text, correct errors, add clarity, and provide flexibility in determining adequate training for the radiation safety officer at different licensed facilities. The adopted rules will substantially advance this stated purpose by correcting references to rules, correcting misspellings, adding a definition of "closure," removing obsolete language, correcting errors to ensure compatibility with federal regulations, and modifying training requirements.

Promulgation and enforcement of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, the adopted rules will not burden private real property because they remove obsolete text, correct errors, add clarity, and provide flexibility in training requirements at licensed facilities.

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

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the CMP.

#### **Public Comment**

The commission offered a public hearing on July 29, 2024. The comment period closed

on July 30, 2024. The commission received no comments.

## SUBCHAPTER A: GENERAL PROVISIONS

### §336.2

#### **Statutory Authority**

The rule change is adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approve all general policies of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product 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; THSC §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.



The adopted amendment implements THSC, Chapter 401, and are adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

**§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 (G<sub>y</sub>).

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

(5) 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) 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. Non-agreement State means any other State.

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

(9) 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) 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) 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) As low as is reasonably achievable--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) 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) 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 and self-contained breathing apparatus units.

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

(17) 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, United States Nuclear Regulatory Commission, or an Agreement State.

(18) Becquerel (Bq)--See §336.4 of this title (relating to Units of Radioactivity).

(19) 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) By-product [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 "by-product [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 United States Nuclear Regulatory Commission, in consultation with the Administrator of the United States Environmental Protection Agency, 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) 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. Category 2 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

(25) 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) 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) Committed dose equivalent (HT , 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) Committed effective dose equivalent (HE ,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) 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) 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) 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) Constraint (dose constraint)--A value above which specified licensee actions are required.

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

(34) Curie (Ci)--See §336.4 of this title (relating to Units of Radioactivity).

(35) 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) 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) 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) 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) 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) 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) 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, equivalent to a committed effective dose equivalent of 5 rems (0.05 sievert).

(42) 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) 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) 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 Self-Contained breathing apparatus.

(45) 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) 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) 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) 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) 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) 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) Embryo/fetus--The developing human organism from conception until the time of birth.

(53) 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) 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) Exposure--Being exposed to ionizing radiation or to radioactive material.

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

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

(59) 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) 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) 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 Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste, and Federal Facility Waste Disposal Facility).

(62) 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 Nuclear Regulatory Commission 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) 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) Fit test--The use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

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

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

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

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

(73) Host state--A party state in which a compact facility is located or is being developed. The 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) Individual--Any human being.

(75) 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, derived air concentration-hour; or

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

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

(77) Inhalation class--See "Class."

(78) 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 and rules, orders, and license conditions of the commission.

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

(80) 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 Code of Federal Regulations §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) 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) License--See "Specific license."

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

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

(88) 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) 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 Code of Federal Regulations (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) by-product [byproduct] material as defined by paragraph (20)(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) Lung class--See "Class."

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

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

(93) 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) 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) Nationally tracked source--A sealed source containing a quantity equal to or greater than category 1 or category 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 1 threshold.

Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the category 2 threshold but less than the category 1 threshold.

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

(99) Naturally occurring radioactive material (NORM) waste--Solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and by-product [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) 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) 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) 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) 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) 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) 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) 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) 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) Perpetual care account--The Environmental Radiation and Perpetual Care Account as defined in this section.

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

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

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

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

(120) 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) Rad--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

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

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

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

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

(128) Radiobioassay--See "Bioassay."

(129) 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 (ICRP) report, ICRP Publication 23, "Report of the Task Group on Reference Man."

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

(131) 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 Code of Federal Regulations Part 20.



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

(142) 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) SI--The abbreviation for the International System of Units.

(144) Sievert ( $S_v$ )--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

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

(146) Source material--

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

(B) 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) 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 Code of Federal Regulations §71.75 as amended through September 28, 1995 (60 FR 50264) (Transportation of License Material).

(148) Special nuclear material--

(A) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the National Regulatory Commission, 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) 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) 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) State--The state of Texas.

(152) 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) 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) 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) 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) Tight-fitting facepiece--A respiratory inlet covering that forms a complete seal with the face.

(158) 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) 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) 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) 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 Code of Federal Regulations Part 71 as amended through September 28, 1995 (60 FR 50264) (Packaging and Transportation of Radioactive Material).

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

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

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

(170) Waste--Low-level radioactive wastes containing source, special nuclear, or by-product [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 by-product [byproduct] material as defined in paragraph (20)(B) - (E) of this section.

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

(172) Weighting factor (wT) 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 wT are:

**Figure: 30 TAC §336.2(172)**

**Organ Dose Weighting Factors**

Organ or Tissue	$w_T$
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 ( $w_T$ ),  $w_T = 1.0$ , 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) Whole body--For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(174) 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) 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) 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) 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 B: RADIOACTIVE SUBSTANCE FEES**

### **§336.102 and §336.105**

#### **Statutory Authority**

The rule changes are adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product 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; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement THSC, Chapter 401, and are adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

**§336.102. Definitions.**

Terms used in this subchapter are defined in §336.2 of this title (relating to Definitions). Additional terms used in this subchapter have the following definitions:

(1) Closure--Any one or combination of the following: closure, dismantlement, decontamination, decommissioning, reclamation, disposal, aquifer restoration, stabilization, monitoring, or post closure observation and maintenance.

(2) [(1)] Emergency response--The application of those capabilities necessary for the protection of the public and the environment from the effects of an accidental or uncontrolled release of radioactive materials, including the equipping, training, and periodic retraining of response personnel.

(3) [(2)] Fixed nuclear facility—

(A) Any nuclear reactor(s) at a single site;

(B) Any facility designed or used for the assembly or disassembly of nuclear weapons; or

(C) Any other facility using special nuclear material for which emergency response activities, including training, are conducted to protect the public health and safety or the environment.

**§336.105. Schedule of Fees for Other Licenses.**

(a) Each application for a license under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), Subchapter G of this chapter (relating to Decommissioning Standards), Subchapter K of this chapter (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste from Public Water Systems), Subchapter L of this chapter (relating to Licensing of Source Material Recovery and By-product Material Disposal Facilities), or Subchapter M of this chapter (relating to Licensing of Radioactive Substances Processing and Storage Facilities) must be accompanied by an application fee as follows:

- (1) facilities regulated under Subchapter F of this chapter: \$50,000;
- (2) facilities regulated under Subchapter G of this chapter: \$10,000;
- (3) facilities regulated under Subchapter K of this chapter: \$50,000;

(4) facilities regulated under Subchapter L of this chapter: \$463,096 for conventional mining; \$322,633 for in situ mining; \$325,910 for heap leach; and \$374,729 for disposal only; or

(A) if the application fee is not sufficient to cover costs incurred by the commission, then the applicant shall submit a supplemental fee to recover the actual costs incurred by the commission for review of the application and any hearings associated with an application for commercial by-product material disposal under Subchapter L of this chapter in accordance with Texas Health and Safety Code, §401.301(g);

(B) the executive director shall invoice for the amount of the costs incurred quarterly. Payment shall be made within 30 days following the date of the invoice;

(5) facilities regulated under Subchapter M of this chapter: \$3,830 for Waste Processing - Class I Exempt; \$39,959 for Waste Processing - Class I; \$94,661 for Waste Processing - Class II; and \$273,800 for Waste Processing - Class III.

(b) An annual license fee shall be paid for each license issued under Subchapters F, G, K, L, and M of this chapter. The amount of each annual fee is as follows:

(1) facilities regulated under Subchapter F of this chapter: \$25,000;

(2) facilities regulated under Subchapter G of this chapter: \$8,400;

(3) facilities regulated under Subchapter K of this chapter: \$25,000;

(4) facilities regulated under Subchapter L of this chapter that are operational: \$60,929.50; or

(A) if the annual fee is not sufficient to cover costs incurred by the commission, a holder of a license for commercial by-product material disposal issued under Subchapter L of this chapter shall submit a supplemental license fee sufficient to recover the actual costs incurred by the commission. This fee shall recover for the state the actual expenses arising from the regulatory activities associated with the license in accordance with Texas Health and Safety Code, §401.412(d);

(B) the executive director shall invoice for the amount of the costs incurred quarterly. Payment shall be made within 30 days following the date of the invoice;

(5) facilities regulated under Subchapter L of this chapter that are in closure: \$60,929.50;



(6) facilities regulated under Subchapter L of this chapter that are in post-closure: \$52,011.50 for conventional mining; \$26,006 for in situ mining; and \$52,011.50 for disposal only;

(7) facilities regulated under Subchapter L of this chapter, if additional noncontiguous source material recovery facility sites are authorized under the same license, the annual fee shall be increased by 25% for each additional site and 50% for sites in closure;

(8) facilities regulated under Subchapter L of this chapter, if an authorization for disposal of by-product material is added to a license, the annual fee shall be increased by 25%;

(9) facilities regulated under Subchapter L of this chapter, the following one-time fees apply if added after an environmental assessment has been completed on a facility:

(A) \$28,658 for in situ wellfield on noncontiguous property;

(B) \$71,651 for in situ satellite;

(C) \$11,235 for wellfield on contiguous property;

(D) \$50,756 for non-vacuum dryer; or

(E) \$71,651 for disposal (including processing, if applicable) of by-product material; or

(10) facilities regulated under Subchapter M of this chapter: \$3,830 for Waste Processing - Class I Exempt; \$39,959 for Waste Processing - Class I; \$94,661 for Waste Processing - Class II; and \$273,800 for Waste Processing - Class III.

(c) An application for a major amendment of a license issued under Subchapter F, G, K, L, or M of this chapter must be accompanied by an application fee of \$10,000.

(d) An application for renewal of a license issued under Subchapter F, G, K, L, or M of this chapter must be accompanied by an application fee of \$35,000.

(e) Upon permanent cessation of all disposal activities and approval of the final decommissioning plan, holders of licenses issued under Subchapter F, K, L, or M of this chapter shall use the applicable fee schedule for subsections (b) and (c) of this section.

(f) For any application for a license issued under this chapter, the commission may assess and collect additional fees from the applicant to recover costs. Recoverable

costs include costs incurred by the commission for administrative review, technical review, and hearings associated with the application. The executive director shall send an invoice for the amount of the costs incurred during the period September 1 through August 31 of each year. Payment shall be made within 30 days following the date of the invoice.

[~~(g)~~ If a licensee remitted a biennial licensing fee to the Texas Department of State Health Services during the one year period prior to June 17, 2007, the licensee is not subject to an annual fee under subsection (b) of this section until the expiration of the second year for which the biennial fee was paid.]

~~(g)~~ [(h)] The commission may charge an additional 5% of annual fee assessed under subsection (b) of this section and §336.103 of this title (relating to Schedule of Fees for Subchapter H Licenses). The fee is non-refundable and will be deposited to the perpetual care account.

(1) The fees collected by the agency in accordance with this subsection shall be deposited to the credit of the Environmental Radiation and Perpetual Care Account, until the fees collectively total \$500,000.

(2) If the balance of fees collected in accordance with this subsection is subsequently reduced to \$350,000 or less, the agency shall reinstitute assessment of the fee until the balance reaches \$500,000.

(h) [(i)] The holder of a license authorizing disposal of a radioactive substance from other persons shall remit to the commission 5% of the holder's gross receipts received from disposal operations under a license as required in Texas Health and Safety Code, §401.271(a)(1). Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August. This subsection does not apply to the disposal of compact waste or federal facility waste.

(i) [(j)] The holder of a license authorizing disposal of a radioactive substance from other persons shall remit directly to the host county 5% of the gross receipts disposal operations under a license as required in Texas Health and Safety Code, §401.271(a)(2). Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August. This subsection does not apply to the disposal of compact waste or federal facility waste.

## **SUBCHAPTER C: GENERAL LICENSING REQUIREMENTS**

### **§336.208**

#### **Statutory Authority**

The rule change is adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product 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; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement THSC, Chapter 401, and are adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

**§336.208. Radiation Safety Officer.**

(a) Qualifications of the designated radiation safety officer (RSO) are adequate for the purpose requested and include as a minimum:

(1) have earned at least a bachelor's degree in a physical or biological science, industrial hygiene, health physics, radiation protection, or engineering from an accredited college or university, or an equivalent combination of training and relevant experience, with two years of relevant experience equivalent to a year of academic study, from a uranium or mineral extraction/recovery, radioactive waste processing, or a radioactive waste or by-product material disposal facility;

(2) have at least one year of relevant experience, in addition to that used to meet the educational requirement, working under the direct supervision of the RSO at a uranium or mineral extraction/recovery, radioactive waste processing, or radioactive waste or by-product material disposal facility; and

(3) have additional [at least four weeks of specialized] training in health physics or radiation safety as determined by the Executive Director [applicable to uranium or mineral extraction/recovery, radioactive waste processing, or radioactive

waste or by-product material disposal operations from a course provider that has been evaluated and approved by the agency].

(b) The specific duties of the RSO include, but are not limited to, the following:

(1) to establish and oversee operating, safety, emergency, and as low as reasonably achievable procedures, and to review them at least annually to ensure that the procedures are current and conform with this chapter;

(2) to oversee and approve all phases of the training program for operations and/or personnel so that appropriate and effective radiation protection practices are taught;

(3) to ensure that required radiation surveys and leak tests are performed and documented in accordance with this chapter, including any corrective measures when levels of radiation exceed established limits;

(4) to ensure that individual monitoring devices are used properly by occupationally-exposed personnel, that records are kept of the monitoring results, and that timely notifications are made in accordance with §336.405 of this title (relating to Notifications and Reports to Individuals);

(5) to investigate and cause a report to be submitted to the agency for each known or suspected case of radiation exposure to an individual or radiation level detected in excess of limits established by this chapter and each theft or loss of source(s) of radiation, to determine the cause(s), and to take steps to prevent a recurrence;

(6) to investigate and cause a report to be submitted to the executive director for each known or suspected case of release of radioactive material to the environment in excess of limits established by this chapter;

(7) to have a thorough knowledge of management policies and administrative procedures of the licensee;

(8) to assume control and have the authority to institute corrective actions, including shutdown of operations when necessary in emergency situations or unsafe conditions;

(9) to ensure that records are maintained as required by this chapter;

(10) to ensure the proper storing, labeling, transport, use and disposal of sources of radiation, storage, and/or transport containers;



(11) to ensure that inventories are performed in accordance with the activities for which the license application is submitted;

(12) to perform an inventory of the radioactive sealed sources authorized for use on the license every six months and make and maintain records of the inventory of the radioactive sealed sources authorized for use on the license every six months, to include, but not be limited to, the following:

(A) isotope(s);

(B) quantity(ies);

(C) radioactivity(ies); and

(D) date inventory is performed.

(13) to ensure that personnel are complying with this chapter, the conditions of the license, and the operating, safety, and emergency procedures of the licensee; and

(14) to serve as the primary contact with the agency.

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

**§§336.329, 336.331, 336.332, 336.336, 336.341, 336.351, 336.357**

**Statutory Authority**

The rule changes are adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product 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; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement THSC, Chapter 401, and are adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

**§336.329. Exemptions to Labeling Requirements.**

A licensee is not required to label:

(1) containers holding licensed material in quantities less than those listed in §336.360, Appendix C, of this title (relating to Quantities of Licensed Material Requiring Labeling);

(2) containers holding licensed material in concentrations less than those specified in Table III of §336.359, Appendix B, of this title (relating to Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage);

(3) containers attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the limits established by this subchapter;

(4) containers when they are in transport and packaged and labeled in accordance with the rules of the United States Department of Transportation (labeling of packages containing radioactive material is required by the United States Department of Transportation if the amount and type of radioactive material exceeds

the limits for an excepted quantity or article as defined and limited by rules in 49 CFR 173.403 [(m) and (w) as amended through September 29, 1989,] and 49 CFR 173.421-424 [49 CFR 172.436-172.440 as amended through December 20, 1991)];

(5) containers that are accessible only to individuals authorized to handle or use them, or to work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record. (Examples of containers of this type are containers in locations such as water-filled canals, storage vaults, or hot cells.) The record shall be retained as long as the containers are in use for the purpose indicated on the record; or

(6) installed manufacturing or process equipment, such as piping and tanks.

### **§336.331. Transfer of Radioactive Material.**

(a) The licensee shall not transfer source material, by-product [byproduct] material, or other licensed radioactive material except as authorized under the rules in this subchapter.

(b) Except as otherwise provided in the license and subject to the provisions of subsections (c) and (d) of this section, a licensee shall transfer source material, by-product [byproduct] material, or other licensed radioactive material:

(1) to the agency (A licensee shall transfer material to the agency only after receiving prior approval from the agency. If the material to be transferred is special nuclear material, the quantity must not be sufficient to form a critical mass.);

(2) to the United States Department of Energy;

(3) to any person exempt from licensing requirements by the Texas Department of State Health Services (DSHS) under the Texas Health and Safety Code, §401.106(a), the rules in this chapter, or exempt from the licensing requirements of the United States Nuclear Regulatory Commission (NRC) or an Agreement State, to the extent permitted by those exemptions;

(4) to any person authorized to receive this material under terms of a specific or a general license or its equivalent issued by the commission, DSHS, NRC, or any Agreement State, or to any person authorized to receive this material by the federal government; or

(5) as otherwise authorized by the commission in writing by DSHS, any Agreement State, or the federal government.

(c) Before transferring source material, by-product [byproduct] material, or other radioactive material to a specific licensee of the commission, DSHS, NRC, or an Agreement State or to a general licensee who is required to register with DSHS, NRC, or

an Agreement State prior to receipt of the source material, by-product [byproduct] material, or other radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(d) The following methods for the verification required by subsection (c) of this section are acceptable.

(1) The transferor shall possess and have read a current copy of the transferee's specific license or certificate of registration.

(2) The transferor may possess a written certification by the transferee that the transferee is authorized by the license or certificate of registration to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or certificate of registration number, issuing agency, and expiration date.

(3) For emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or certificate of registration to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or certificate of registration number, issuing agency, and expiration date, provided that the oral certification is confirmed in writing within ten days.

(4) The transferor may obtain other sources of information compiled by a reporting service from official records of the commission, DSHS, NRC, or an Agreement State as to the identity of licensees and registrants and the scope and expiration dates of licenses and registrations.

(5) When none of the methods of verification described in paragraphs (1) - (4) of this subsection are readily available or when a transferor desires to verify that information received by one of these methods is correct or up-to-date, the transferor may obtain and record confirmation from the commission, DSHS, NRC, or an Agreement State that the transferee is licensed to receive the source material, by-product [byproduct] material, or other radioactive material.

(e) Transportation of radioactive material shall also be subject to applicable rules of the United States Department of Transportation, United States Postal Service, NRC, or DSHS.

(f) The licensee shall keep records showing the transfer of any source material, by-product [byproduct] material, or other radioactive material.

(g) Transfer of low-level radioactive waste by a waste generator, waste collector, or waste processor who ships this waste either directly, or indirectly through a collector or processor, to a licensed land disposal facility shall also be subject to

applicable rules of DSHS. A commission licensee who transfers low-level radioactive waste for disposal at a licensed land disposal facility shall also be subject to applicable rules of DSHS with respect to transfers.

(h) A licensed land disposal facility operator shall use and comply with the requirements of §336.363 of this title (relating to Appendix F. Requirements for Receipt of Low-Level Radioactive Waste for Disposal at Licensed Land Disposal Facilities and Uniform Manifests).

(i) Any licensee shipping by-product [byproduct] material, as defined in §336.2(16)(C) - (E) of this title (relating to Definitions) concerning the definition of by-product [byproduct] material, intended for ultimate disposal must document the information required on the shipping manifest and transfer this recorded manifest information to the intended consignee.

**§336.332. Preparation of Radioactive Material for Transport.**

(a) No licensee shall deliver any source material, by-product [byproduct] material, or other licensed radioactive material to a carrier for transport, unless:

(1) the licensee complies with the applicable requirements of the rules, appropriate to the mode of transport, of the United States Department of Transportation insofar as those rules relate to the packing of radioactive material and to the monitoring, marking, and labeling of those packages or containers;



(2) the licensee establishes procedures for opening and closing packages and containers in which radioactive material is transported to provide safety and to assure that, prior to the delivery to a carrier for transport, each package or container is properly closed for transport; and

(3) the licensee assures that any special instructions needed to safely open the package or container are sent to or have been made available to the consignee prior to delivery of a package or container to a carrier for transport.

(b) For the purpose of subsection (a) of this section, licensees who transport their own licensed material as private carriers are considered to have delivered the material to a carrier for transport.

**§336.336. Tests.**

(a) Each licensee shall perform, upon instructions from the executive director, or shall permit the executive director to perform such tests as the executive director deems appropriate or necessary for the administration of the rules in this chapter including, but not limited to, tests of:

(1) source material, by-product [byproduct] material, or other licensed radioactive material;

(2) facilities where these materials are used, stored, or disposed;

(3) radiation detection and monitoring instruments; and

(4) other equipment and devices used in connection with utilization, storage, or disposal of source material, by-product [byproduct] material, or other licensed radioactive material.

(b) The requirements of this section do not apply to licenses issued under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste).

**§336.341. General Recordkeeping Requirements for Licensees.**

(a) Each licensee shall use the units curie, rad, and rem, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this subchapter. Disintegrations per minute may be indicated on records of surveys performed to determine compliance with §336.605 of this title (relating to Surface Contamination Limits for Facilities, Equipment, and Materials) and §336.364, Appendix G, of this title (relating to Acceptable Surface Contamination Levels).

(b) In the records required by this chapter, the licensee may record quantities in International System of Units (SI) units in parentheses following each of the units

specified in subsection (a) of this section. However, all quantities must be recorded as stated in subsection (a) of this section.

(c) Notwithstanding the requirements of subsection (a) of this section, information on shipment manifests for wastes received at a licensed land disposal facility, as required by §336.331(h) of this title (relating to Transfer of Radioactive Material), shall be recorded in SI units (becquerel, gray, and sievert) or in SI and units as specified in subsection (a) of this section.

(d) The licensee shall make a clear distinction among the quantities entered on the records required by this subchapter, such as total effective dose equivalent, shallow-dose equivalent, lens dose equivalent, deep-dose equivalent, and committed effective dose equivalent.

(e) Each licensee shall maintain records showing the receipt, transfer, and disposal of all source material, by-product [byproduct] material, or other licensed radioactive material. Each licensee shall also maintain any records and make any reports as may be required by the conditions of the license, by the rules in this chapter, or by orders of the commission. Copies of any records or reports required by the license, rules, or orders shall be submitted to the executive director or commission on request. All records and reports required by the license, rules, or orders shall be complete and accurate.

(f) The licensee shall retain each record that is required by the rules in this chapter or by license conditions for the period specified by the appropriate rule or license condition. If a retention period is not otherwise specified, each record shall be maintained until the commission terminates each pertinent license requiring the record.

(g) If there is a conflict between the commission's rules, license condition, or other written approval or authorization from the executive director pertaining to the retention period for the same type of record, the longest retention period specified takes precedence.

(h) The executive director may require the licensee to provide the commission with copies of all records prior to termination of the license.

**§336.351. Reports of Transactions Involving Nationally Tracked Sources.**

(a) Each licensee who manufactures, transfers, receives, disassembles, or disposes of a nationally tracked source shall complete and submit to the United States Nuclear Regulatory Commission (NRC) a National Source Tracking Transaction Report as specified in paragraphs (1) - (6) of this subsection for each type of transaction.

(1) Each licensee who manufactures a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report must include the following information:

(A) the name, address, and license number of the reporting licensee;

(B) the name of the individual preparing the report;

(C) the manufacturer, model, and serial number of the source;

(D) the radioactive material in the source;

(E) the initial source strength in becquerels (curies) at the time of manufacture; and

(F) the manufacture date of the source.

(2) Each licensee that transfers a nationally tracked source to another person shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

- (A) the name, address, and license number of the reporting licensee;
- (B) the name of the individual preparing the report;
- (C) the name and license number of the recipient facility and the shipping address;
- (D) the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;
- (E) the radioactive material in the source;
- (F) the initial or current source strength in becquerels (curies);
- (G) the date for which the source strength is reported;
- (H) the shipping date;
- (I) the estimated arrival date; and

(J) for nationally tracked sources transferred as waste under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification of the container with the nationally tracked source.

(3) Each licensee that receives a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

(A) the name, address, and license number of the reporting licensee;

(B) the name of the individual preparing the report;

(C) the name, address, and license number of the person that provided the source;

(D) the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(E) the radioactive material in the source;

(F) the initial or current source strength in becquerels (curies);

(G) the date for which the source strength is reported;

(H) the date of receipt; and

(I) for material received under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification with the nationally tracked source.

(4) Each licensee that disassembles a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

(A) the name, address, and license number of the reporting licensee;

(B) the name of the individual preparing the report;

(C) the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(D) the radioactive material in the source;



(E) the initial or current source strength in becquerels (curies);

(F) the date for which the source strength is reported; and

(G) the disassemble date of the source.

(5) Each licensee who disposes of a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

(A) the name, address, and license number of the reporting licensee;

(B) the name of the individual preparing the report;

(C) the waste manifest number;

(D) the container identification with the nationally tracked source;

(E) the date of disposal; and

(F) the method of disposal.

(6) The reports discussed in paragraphs (1) - (6) of this subsection shall be submitted to NRC by the close of the next business day after the transaction. A single report may be submitted for multiple sources and transactions. The reports shall be submitted to the National Source Tracking System by using the following:

(A) the on-line National Source Tracking System;

(B) electronically using a computer-readable format;

(C) by facsimile;

(D) by mail to the address on the National Source Tracking Transaction Report Form (NRC Form 748); or

(E) by telephone with follow-up by facsimile or mail.

(7) Each licensee shall correct any error in previously filed reports or file a new report for any missed transaction within five business days of the discovery of the error or missed transaction. Such errors may be detected by a variety of methods such as administrative reviews or by physical inventories required by regulation. In

addition, each licensee shall reconcile the inventory of nationally tracked sources possessed by the licensee against that licensee's data in the National Source Tracking System. The reconciliation shall be conducted during the month of January in each year. The reconciliation process shall include resolving any discrepancies between the National Source Tracking System and the actual inventory by filing the reports identified by paragraphs (1) - (6) of this subsection. By January 31 of each year, each licensee shall submit to the National Source Tracking System confirmation that the data in the National Source Tracking System is correct.

[ (8) Each licensee that possesses Category 1 or Category 2 nationally tracked sources listed in subsection (b) of this section shall report its initial inventory of Category 1 or Category 2 nationally tracked sources to the National Source Tracking System by January 31, 2009. The information may be submitted to NRC by using any of the methods identified by paragraph (6)(A) - (E) of this subsection. The initial inventory report shall include the following information: ]

[ (A) the name, address, and license number of the reporting licensee; ]

[ (B) the name of the individual preparing the report; ]

[(C) the manufacturer, model, and serial number of each nationally tracked source or, if not available, other information to uniquely identify the source;]

[(D) the radioactive material in the sealed source;]

[(E) the initial or current source strength in becquerels (curies);

and]

[(F) the date for which the source strength is reported.]

(b) Nationally tracked source thresholds. The Terabecquerel (TBq) values are the regulatory standards. The curie values specified are obtained by converting from the TBq value. The curie values are provided for practical usefulness only and are rounded after conversion. The following table contains nationally tracked source thresholds.

**Figure: 30 TAC §336.351(b)**

<b>Nationally Tracked Sources Threshold</b>				
<b>Radioactive Material</b>	<b>Category 1 (TBq)</b>	<b>Category 1 (Ci)</b>	<b>Category 2 (TBq)</b>	<b>Category 2 (Ci)</b>
Actinium-227	20	540	0.2	5.4
Americium-241	60	1,600	0.6	16.0
Americium-241/Be	60	1,600	0.6	16.0
Californium-252	20	540	0.2	5.4

Cobalt-60	30	810	0.3	8.1
Curium-244	50	1,400	0.5	14.0
Cesium-137	100	2,700	1.0	27.0
Gadolinium-153	1,000	27,000	10.0	270.0
Iridium-192	80	2,200	0.8	22.0
Plutonium-238	60	1,600	0.6	16.0
Plutonium-239/Be	60	1,600	0.6	16.0
Polonium-210	60	1,600	0.6	16.0
Promethium-147	40,000	1,100,000	400.0	11,000.0
Radium-226	40	1,100	0.4	11.0
Selenium-75	200	5,400	2.0	54.0
Strontium-90	1,000	27,000	10.0	270.0
Thorium-228	20	540	0.2	5.4
Thorium-229	20	540	0.2	5.4
Thulium-170	20,000	540,000	200.0	5,400.0
Ytterbium-169	300	8,100	3.0	81.0

TBq - Terabecquerel  
 Ci - Curie

**§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 licensee shall provide a copy of the oath or affirmation certifications of any and all individuals to the executive director once completed. 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)(3) 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)(1) 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) fingerprintings 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 Physical and Cyber Security Policy, 11545 Rockville Pike, ATTN: Criminal History Program/Mail Stop T-07D04M, 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 emailing [MAILSVS.Resource@nrc.gov](mailto:MAILSVS.Resource@nrc.gov). Guidance on submitting electronic fingerprints can be found at <https://www.nrc.gov/security/chp.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 Division of Physical and Cyber Security Policy by e-mailing [Crimhist.Resource@nrc.gov](mailto:Crimhist.Resource@nrc.gov).) 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 Licensee Criminal History Records Checks & Firearms Background Check information page at <https://www.nrc.gov/security/chp.html> and see the link for How do I determine how much to pay for the request?).

(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; and

(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 commission 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 commission 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 subsection (i) of this section, this subsection, and subsections (k) - (q) of this section. The security plan must, at a minimum:

(i) describe the measures and strategies used to implement the requirements of subsection (i) of this section, this subsection, and subsections (k) - (q) of this section; and



(ii) identify the security resources, equipment, and technology used to satisfy the requirements of subsection (i) of this section, this subsection, and subsections (k) - (q) of this section.

(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 commission 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, implementing procedures, and the list of individuals that have been approved for unescorted access.

(C) Before granting an individual access to the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access, licensees shall:

(i) evaluate an individual's need to know the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access; 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, implementing procedures, or the list of individuals that have been approved for unescorted access.

(F) Licensees shall maintain a list of persons currently approved for access to the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access. When a licensee determines that a person no longer needs access to the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access 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, implementing procedures, or the list of individuals that have been approved for unescorted access.

(G) When not in use, the licensee shall store its security plan, implementing procedures, and the list of individuals that have been approved for unescorted access 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, implementing procedures, or the list of individuals that have been approved for unescorted access.

(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. 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. 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.



(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. The report must include sufficient information for commission 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, to the executive director, 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 executive director, to the commission, 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 <https://scp.nrc.gov/special/designee.pdf>. A list of the contact information is also available upon request from the Director, Division of Materials Safety, Security, State, and Tribal Programs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(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 the commission and the executive director 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, to the executive director, and to the commission.

(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 commission and the executive director 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, to the executive director,

and to the commission. 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 canceled.

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

(6) Protection of information. State officials, State employees, and other individuals, whether or not licensees of the commission, NRC, or an Agreement State, who receive schedule information of the kind specified in paragraph (2) of this subsection shall protect that information against unauthorized disclosure as specified in subsection (j)(4) of this section.

(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 and the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 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 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 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.

(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 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 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 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 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. A written report is not required for notifications on suspicious activities required by paragraphs (3) and (4) of this subsection. 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. 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

$$\left[ \sum_i^n \left[ \frac{R_1}{AR_1} + \frac{R_2}{AR_2} + \frac{R_n}{AR_n} \right] \geq 1.0 \right]$$

$$\frac{R_1}{AR_1} + \frac{R_2}{AR_2} + \dots + \frac{R_n}{AR_n} \geq 1.0$$

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## **SUBCHAPTER G: DECOMMISSIONING STANDARDS**

### **§336.625**

#### **Statutory Authority**

The rule change is adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product 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; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement THSC, Chapter 401, and are adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

**§336.625. Expiration and Termination of Licenses.**

(a) Each license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal not less than 30 days before the expiration date stated in the existing license. If an application for renewal in proper form has been filed at least 30 days before the expiration date stated in the existing license, the existing license shall not expire until the application has been finally determined by the commission. For the purposes of this section, "proper form" shall mean that the application includes the information required by §336.617 of this title (relating to Technical Requirements for Inactive Disposal Sites) or §336.513 of this title (relating to Technical Requirements for Active Disposal Sites). The existing license expires at the end of the day on which the commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(b) Each license revoked by the commission expires at the end of the day on the date of the commission's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by commission order.

(c) Each license continues in effect, beyond the expiration date if necessary, with respect to possession of source material, by-product [byproduct] material, or other radioactive material until the commission notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

(1) limit actions involving source material, by-product [byproduct] material, or other radioactive material to those related to decommissioning; and

(2) continue to control entry to restricted areas until they are suitable for release in accordance with commission requirements.

(d) Within 60 days of the occurrence of any of the following, each licensee of an active disposal site shall provide written notification to the executive director:

(1) the license has expired under subsection (a) or (b) of this section; or

(2) the licensee has decided to permanently cease principal activities at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for unrestricted release in accordance with commission requirements; or

(3) no principal activities under the license have been conducted for a period of 24 months; or

(4) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with commission requirements.

(e) The licensee of an active disposal site shall either:

(1) within 60 days of the occurrence for which notification is required by subsection (d) of this section, begin decommissioning its site or any separate building or outdoor area that contains residual radioactivity, according to an approved decommissioning plan, so that the building or outdoor area is suitable for release in accordance with commission requirements; or

(2) if no decommissioning plan has been submitted, submit a decommissioning plan to the executive director, including a signed statement adjusting the amount of financial assurance based upon the detailed cost estimate included in the decommissioning plan, within 12 months of the notification required by subsection (d) of this section and request an amendment of the license to incorporate the plan into the license; and



(3) begin decommissioning within 60 days of the approval of that plan by the commission.

(f) The licensee of an inactive disposal site licensed under §336.615 of this title (relating to Inactive Disposal Sites), shall provide notice of and begin decommissioning within 90 days of license renewal. The owner or operator of an unlicensed inactive disposal site must apply for a license to decommission the site and begin decommissioning within 90 days of license approval.

(g) All licensees shall follow a commission-approved closure plan for decontamination, decommissioning, restoration, and reclamation of buildings and the site.

(1) Coincident with the notification required by subsections (d) or (f) of this section, the licensee shall continue to maintain in effect all decommissioning financial assurance until the license is terminated by the commission.

(2) The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established under §336.613(f)(5) of this title (relating to Additional Requirements).

(3) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so on or before January 1, 1998.

(4) Following approval of the decommissioning plan, with the approval of the executive director, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site.

(h) The executive director may grant in writing a request to extend the time periods established in subsections (d), (e), or (f) of this section, or to delay or postpone the decommissioning process, if the executive director determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted in writing no later than 30 days before notification under subsection (d) or (f) of this section. The schedule for decommissioning set forth in subsection (e) or (f) of this section may not commence until the executive director has made a determination on the request.

(i) Licenses, including expired licenses, will be terminated by the commission by written notice to the licensee when the executive director determines that:

(1) source material, by-product [byproduct] material, and other radioactive material has been properly disposed;

(2) reasonable effort has been made to eliminate residual radioactive contamination, if present;

(3) the site is suitable for release;

(A) a radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with commission requirements; or

(B) other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with commission requirements;

(4) the licensee has paid any outstanding fees required by Subchapter B of this chapter (relating to Radioactive Substance Fees) and has resolved any outstanding notice(s) of violation issued to the licensee; and

(5) the licensee has complied with all other applicable decommissioning criteria required by this subchapter.

(j) A licensee may request that a subsite or a portion of a licensed area be released for unrestricted use before full license termination as long as release of the area of concern will not adversely impact the remaining unaffected areas and will not be recontaminated by ongoing authorized activities. When the licensee is confident that the area of concern will be acceptable to the state for release for unrestricted use, a written request for release for unrestricted use and agency confirmation of close-out work performed must be submitted to the executive director. The request should include a comprehensive report, accompanied by survey and sample results which show contamination is less than the limits specified in §336.603 of this title (relating to Radiological Criteria for Unrestricted Use), and an explanation of how ongoing authorized activities will not adversely affect the area proposed to be released. Upon confirmation by the executive director that the area of concern is indeed releasable for unrestricted use, the licensee may apply for a license amendment, if required.

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

**§336.701**

**Statutory Authority**

The rule change is adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product 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; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement THSC, Chapter 401, and are adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

**§336.701. Scope and General Provisions.**

(a) This subchapter establishes the procedures, criteria, and terms and conditions upon which the commission issues a license for the near-surface land disposal of low-level radioactive wastes and accelerator-produced radioactive material received from other persons. The rules in this subchapter apply to disposal of low-level radioactive waste and accelerator-produced radioactive material as defined in §336.2 of this title (relating to Definitions). For the purpose of this subchapter, the term "low-level radioactive waste" includes accelerator-produced radioactive material. If there is a conflict between the rules of the commission and the rules of this subchapter, the rules of this subchapter shall prevail. No person shall engage in disposal of low-level radioactive waste received from other persons except as authorized in a specific license issued under this subchapter. A licensee under this subchapter shall conduct processing of low-level radioactive waste received for disposal at the licensed site, incidental to the disposal of that waste, in accordance with provisions of the commission license which authorizes the disposal.

(b) A licensee authorized to dispose of low-level radioactive waste under the rules in this subchapter shall not accept for disposal:

(1) high-level radioactive waste as defined in 10 Code of Federal Regulations (CFR) §60.2 as amended through October 27, 1988 (53 FR 43421) (Definitions - high-level radioactive wastes in geologic repositories);

(2) by-product [byproduct] material as defined in §336.2(20)(B) [§336.2(13)(B)] of this title;

(3) spent or irradiated nuclear fuel;

(4) waste that is not generally acceptable for near-surface disposal as specified in §336.362 of this title (relating to Appendix E. Classification and Characteristics of Low-Level Radioactive Waste); or

(5) waste that exceeds Class C limitations as specified in §336.362 of this title.

(c) In addition to the requirements of this subchapter, all licensees, unless otherwise specified, are subject to the requirements of Subchapters A - E and G of this chapter (relating to General Provisions; Radioactive Substance Fees; General Disposal Requirements; Standards for Protection Against Radiation; Notices, Instructions, and Reports to Workers and Inspections; and Decommissioning Standards). For Subchapter

H licensees, the decommissioning and license termination criteria in Subchapter G of this chapter applies only to the ancillary surface facilities.

(d) On-site disposal of low-level radioactive waste at any site authorized under §336.501(b) of this title (relating to Scope and General Provisions), is not subject to licensing under this subchapter.

(e) Shipment and transportation of low-level radioactive waste to a licensed land disposal facility in Texas is subject to applicable rules of the Texas Department of Health, United States Department of Transportation, and United States Nuclear Regulatory Commission. Each shipment of low-level radioactive waste to a licensed land disposal facility in Texas is subject to inspection by the Texas Department of Health before shipment.



**SUBCHAPTER M: LICENSING OF RADIOACTIVE SUBSTANCES PROCESSING AND  
STORAGE FACILITIES**

**§336.1215**

**Statutory Authority**

The rule change is adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product 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; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement THSC, Chapter 401, and are adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

**§336.1215. Issuance of Licenses.**

(a) A license for a radioactive substances processing or storage facility may be issued if the agency finds reasonable assurance that:

(1) an application meets the requirements of the Texas Radiation Control Act and the rules of the agency;

(2) the proposed radioactive substances facility will be sited, designed, operated, decommissioned, and closed in accordance with this chapter;

(3) the issuance of the license will not be inimical to the health and safety of the public or the environment; and

(4) there is no reason to deny the license because of:

(A) any material false statement in the application or any statement of fact required under provisions of the Texas Radiation Control Act;

(B) conditions revealed by the application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a license on an application; or

(C) failure to clearly demonstrate how the requirements in this chapter have been addressed; and

(5) qualifications of the designated radiation safety officer (RSO) as stated in §336.208 of this title (relating to Radiation Safety Officer) are adequate for the purpose requested in the application. [and include as a minimum:]

[(A) have earned at least a bachelor's degree in a physical or biological science, industrial hygiene, health physics, radiation protection, or engineering from an accredited college or university, or an equivalent combination of training and relevant experience, with two years of relevant experience equivalent to a year of academic study, from a uranium or mineral extraction/recovery, radioactive waste processing, or a radioactive waste or by-product material disposal facility;]

[(B) have at least one year of relevant experience, in addition to that used to meet the educational requirement, working under the direct supervision of the radiation safety officer at a uranium or mineral extraction/recovery, radioactive waste processing, or radioactive waste or by-product material disposal facility; and]

[(C) have at least four weeks of specialized training in health physics or radiation safety applicable to uranium or mineral extraction/recovery, radioactive waste processing, or radioactive waste or by-product material disposal operations from a course provider that has been evaluated and approved by the agency.]

(b) The agency may request, and the licensee must provide, additional information after the license has been issued to enable the agency to determine whether the license should be modified, suspended, or revoked.

tutes the LIRAP fee as defined in § 14.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(3) Vehicle owners in counties not participating in the LIRAP shall remit \$2.50 for motor vehicles subject to vehicle emissions inspection to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 13, 2024.

TRD-202402581

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 28, 2024

For further information, please call: (512) 239-6087



## CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§336.2, 336.102, 336.105, 336.208, 336.329, 336.331, 336.332, 336.336, 336.341, 336.351, 336.357, 336.625, 336.701, and 336.1215.

### Background and Summary of the Factual Basis for the Proposed Rule

The commission proposes changes to Chapter 336, Subchapter D to correct a reference to Department of Transportation rules, remove an obsolete January 31, 2009 deadline for licensees to report their initial inventory of Category 1 or Category 2 nationally tracked sources, and correct an error in an equation for the "sum of fractions" methodology 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.

The commission proposes changes to Subchapters A, D, G, and H to change the spelling of "byproduct" to "by-product" to be consistent with Texas Health and Safety Code (THSC), Chapter 401. The commission proposes changes to Subchapter H to correct the reference to a rule to correct errors. The commission proposes changes to Subchapter B to add a definition of "closure" specific to Subchapter B and add a reference to THSC, §401.271 regarding fees for commercial radioactive waste disposal for clarity. The commission proposes changes to Subchap-

ter B to remove instructions about the annual fee for when a licensee remitted a biennial licensing fee to the Texas Department of State Health Services during the one-year period prior to June 17, 2007, to remove obsolete text. The commission proposes changes to Subchapter C and M to modify the training requirements for the Radiation Safety Officer (RSO) to provide the commission flexibility in determining adequate training for the RSO at different licensed facilities.

### Section by Section Discussion

The commission proposes administrative changes throughout this rulemaking to be consistent with *Texas Register* requirements and agency rules and guidelines.

#### §336.2, *Definitions*

The commission proposes to amend §§336.2(20), 336.2(20)(B), 336.2(89)(B)(iv), 336.2(99), 336.2(126), and 336.2(170) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401.

#### §336.102, *Definitions*

The commission proposes to add a definition of closure specific to Subchapter B for clarity since licensing fees are different when a license is in closure. The proposed definition mirrors the definition of closure found in 30 Texas Administrative Code (TAC) §37.9035. The commission proposes to increase the numbering of the subsequent definitions by one.

#### §336.105, *Schedule of Fees for Other Licenses*

The commission proposes to remove 30 TAC §336.105(g) to remove obsolete text regarding instructions for when a licensee remitted a biennial licensing fee to the Texas Department of State Health Services prior to June 17, 2007, and amend §336.105(i) and §336.105(j) to add a reference to THSC, §401.271 regarding fees for commercial radioactive waste disposal for clarity. The commission proposes to adjust the numbering of the remaining rules accordingly.

#### §336.208, *Radiation Safety Officer*

The commission proposes to amend §336.208(a)(3) to modify the training requirements for the RSO from requiring at least four weeks of specialized additional training from a course provider that has been evaluated and approved by the agency to requiring additional training as determined by the Executive Director. This modification provides the commission flexibility in determining adequate training for the RSO at different licensed facilities.

#### §336.329, *Exemptions to Labeling Requirements*

The commission proposes to amend the reference to Department of Transportation rules in 30 TAC §336.329(4). This rule amendment is proposed to ensure compatibility with federal regulations promulgated by the NRC.

#### §336.331, *Transfer of Radioactive Material*

The commission proposes to amend §§336.331(a), 336.331(b), 336.331(c), 336.331(d)(5), 336.331(f), and 336.331(i) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401.

#### §336.332, *Preparation of Radioactive Material for Transport*

The commission proposes to amend §336.332(a) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401.

#### §336.336, *Tests*

The commission proposes to amend §336.336(a)(1) and §336.336(a)(4) to change the spelling of "byproduct" to "by-product" to be consistent with Texas Health and Safety Code, Chapter 401.

#### §336.341, *General Recordkeeping Requirements for Licensees*

The commission proposes to amend §336.341(e) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401.

#### §336.351, *Reports of Transactions Involving Nationally Tracked Sources*

The commission proposes to remove 30 TAC §336.351(a)(8) to remove an obsolete January 31, 2009 deadline for licensees to report their initial inventory of Category 1 or Category 2 nationally tracked sources. This rule amendment is proposed to ensure compatibility with federal regulations promulgated by the NRC.

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

The commission proposes to amend the figure in 30 TAC §336.357(z) by correcting an error in the equation for the "sum of fractions" methodology. This rule amendment is proposed to ensure compatibility with federal regulations promulgated by the NRC.

#### §336.625, *Expiration and Termination of Licenses*

The commission proposes to amend §§336.625(c), 336.625(c)(1), and 336.625(i)(1) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401.

#### §336.701, *Scope and General Provisions*

The commission proposes to amend §336.701(b)(2) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401 and change the reference to §336.2(13)(B) to §336.2(20)(B) to correct an error.

#### §336.1215, *Issuance of Licenses*

The commission proposes to amend §336.1215(a)(5) by referring to 30 TAC §336.208 for the training requirements for a RSO and removing the additional requirements in §336.1215(a)(5)(A) and (B) since these requirements are also stated in 30 TAC §336.208. The commission proposes to remove §336.1215(a)(5)(C) to remove the training requirements that the RSO have at least four weeks of specialized additional training from a course provider that has been evaluated and approved by the agency to provide the commission flexibility in determining adequate training for the RSO at different licensed facilities.

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

Kyle Girtten, Analyst in the Budget and Planning 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 as a result of administration or enforcement of the proposed rule.

#### Public Benefits and Costs

Mr. Girtten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be consistent with other state and federal rules and regulations, improved clarity, and the removal of redundant and outdated requirements.

The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

#### Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

#### Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

#### Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

#### Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation, and it does not create, expand, repeal, or limit this regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of the Texas Government Code (TGC), §2001.0225. The commission determined that the action is not subject to TGC, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is 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 specific intent of the proposed rule is not to protect the environment or to reduce risks to human health from environmental exposure. The intent of the proposed amendments is to remove obsolete text, correct errors, add clarity, and provide flexibility in determining adequate training for the radiation safety officer at different licensed facilities. Additionally, some of these pro-

posed amendments are required for TCEQ to maintain compatibility with the NRC for these licensing programs. Therefore, the proposed rulemaking is not a major environmental rule.

Furthermore, even if the proposed rulemaking did meet the definition of a major environmental rule, the proposed rules do not meet any of the four applicability requirements listed in TGC, §2001.0225. Section 2001.0225 applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; 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 adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking does not meet any of the four applicability requirements listed in TGC, §2001.0225.

First, the rulemaking does not exceed a standard set by federal law because the commission is proposing this rulemaking, in part, to ensure compatibility with federal regulations promulgated by the NRC. The State of Texas is an "Agreement State" authorized by the NRC to administer a radiation control program under the Atomic Energy Act of 1952, as amended (Atomic Energy Act).

Second, the rulemaking does not propose requirements that are more stringent than existing state laws. THSC, Chapter 401, authorizes the commission to regulate the licensing and disposal of radioactive substances, source material recovery, and commercial radioactive substances storage and processing. The proposed rulemaking seeks to make corrections and provide clarity and flexibility consistent with state law.

Third, the proposed rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. The State of Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of radioactive materials and is adequate to protect health and safety. Under the *Agreement Between the United States Nuclear Regulatory 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*, NRC requirements must be implemented to maintain a compatible state program for protection against hazards of radiation. The proposed rulemaking does not exceed the NRC requirements nor exceed the requirements for retaining status as an "Agreement State."

Fourth, this rulemaking does not seek to adopt a rule solely under the general powers of the agency. Rather, sections of THSC, Chapter 401, authorize this rulemaking, which are cited in the Statutory Authority section of this preamble.

The commission invites public comments regarding the Draft Regulatory Impact Analysis Determination during the public comment period. 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 analysis of whether the proposed rules constitute a taking under TGC, Chapter 2007. The specific purpose of the proposed rules is to remove obsolete text, correct errors, add clarity, and provide flexibility in determining adequate training for the radiation safety officer at different licensed facilities. The proposed rules would substantially advance this stated purpose by correcting references to rules, correcting misspellings, adding a definition of "closure," removing obsolete language, correcting errors to ensure compatibility with federal regulations, and modifying training requirements.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, the proposed rules will not burden private real property because they remove obsolete text, correct errors, add clarity, and provide flexibility in training requirements at licensed facilities.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

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 hybrid virtual and in-person public hearing on this proposal in Austin on July 29, 2024 at 10:00 a.m. in Building F, room 2210 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 at 9:30 a.m..

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by July 25, 2024. To register for the hearing, please email [Rules@tceq.texas.gov](mailto:Rules@tceq.texas.gov) and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on July 26, 2024, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

[https://teams.microsoft.com/join/19%3ameeting-g\\_YTU0NzNjMzMtMG15YS00NGFmLWI4ODktZmlyZDR-mODQyMmlw%40thread.v2/0?context=%7B%22Tid%22%3A%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2C%22Oid%22%3A%22e74a40ea-69d4-469d-a8ef-](https://teams.microsoft.com/join/19%3ameeting-g_YTU0NzNjMzMtMG15YS00NGFmLWI4ODktZmlyZDR-mODQyMmlw%40thread.v2/0?context=%7B%22Tid%22%3A%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2C%22Oid%22%3A%22e74a40ea-69d4-469d-a8ef-)

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 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Gwen Ricco, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted at: <https://tceq.commentinput.com/comment/search>. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2024-010-336-WS. The comment period closes at 11:59 p.m. on July 30, 2024. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Hans Weger, Radioactive Materials Section, 512-239-6465.

## SUBCHAPTER A. GENERAL PROVISIONS

### 30 TAC §336.2

#### Statutory Authority

The rule change is proposed under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product 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; THSC §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendment implements THSC, Chapter 401, and are proposed to meet compatibility standards set by the United States Nuclear Regulatory Commission.

#### §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 (G.).

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

(5) 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) 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. Non-agreement State means any other State.

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

(9) 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) 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) 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) As low as is reasonably achievable--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) 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) 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 and self-contained breathing apparatus units.

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

(17) 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, United States Nuclear Regulatory Commission, or an Agreement State.

(18) Becquerel (Bq)--See §336.4 of this title (relating to Units of Radioactivity).

(19) 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) By-product [~~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 "by-product [~~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 United States Nuclear Regulatory Commission, in consultation with the Administrator of the United States Environmental Protection Agency, 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) 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. Category 2 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

(25) 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) 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) Committed dose equivalent (HT , 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) Committed effective dose equivalent (HE ,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) 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) 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) 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) Constraint (dose constraint)--A value above which specified licensee actions are required.

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

(34) Curie (Ci)--See §336.4 of this title (relating to Units of Radioactivity).

(35) 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) 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) Deep-dose equivalent (H<sub>d</sub>) (which applies to external whole-body exposure)--The dose equivalent at a tissue depth of one centimeter (1,000 milligrams/square centimeter).

(38) 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) 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) 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) 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, equivalent to a committed effective dose equivalent of 5 rems (0.05 sievert).

(42) 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) 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) 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 Self-Contained breathing apparatus.

(45) 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) 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) Dose equivalent (H<sub>T</sub>)--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.).

(49) 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) 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) Effective dose equivalent (H<sub>E</sub>)--The sum of the products of the dose equivalent to each organ or tissue (H<sub>T</sub>) and the weighting factor (w<sub>T</sub>) applicable to each of the body organs or tissues that are irradiated.

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

(53) 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) 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) Exposure--Being exposed to ionizing radiation or to radioactive material.

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

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

(59) 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) 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) 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 Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste, and Federal Facility Waste Disposal Facility).

(62) 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 Nuclear Regulatory Commission 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) 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) Fit test--The use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

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

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

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

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

(73) Host state--A party state in which a compact facility is located or is being developed. The 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) Individual--Any human being.

(75) 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, derived air concentration-hour; or

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

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

(77) Inhalation class--See "Class."

(78) 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 and rules, orders, and license conditions of the commission.

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

(80) 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 Code of Federal Regulations §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) 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) License--See "Specific license."

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

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

(88) 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) 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 Code of Federal Regulations (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) by-product [~~byproduct~~] material as defined by paragraph (20)(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) Lung class--See "Class."

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

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

(93) 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) 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) Nationally tracked source--A sealed source containing a quantity equal to or greater than category 1 or category 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 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the category 2 threshold but less than the category 1 threshold.

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

(99) Naturally occurring radioactive material (NORM) waste--Solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and by-product [~~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) 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) 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) 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) 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) 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) 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) 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) 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) Perpetual care account--The Environmental Radiation and Perpetual Care Account as defined in this section.

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

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

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

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

(120) 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) Rad--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

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

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

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

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

(128) Radiobioassay--See "Bioassay."

(129) 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 (ICRP) report, ICRP Publication 23, "Report of the Task Group on Reference Man."

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

(131) 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 Code of Federal Regulations Part 20.

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

(142) Shallow-dose equivalent (H) (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) SI--The abbreviation for the International System of Units.

(144) Sievert (S)--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

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

(146) Source material--

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

(B) 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) 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 Code of Federal Regulations §71.75

as amended through September 28, 1995 (60 FR 50264) (Transportation of License Material).

(148) Special nuclear material--

(A) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the National Regulatory Commission, 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) 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) 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) State--The state of Texas.

(152) 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) 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) 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) 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) Tight-fitting facepiece--A respiratory inlet covering that forms a complete seal with the face.

(158) 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) 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) 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) 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 Code of Federal Regulations Part 71 as amended through September 28, 1995 (60 FR 50264) (Packaging and Transportation of Radioactive Material).

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

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

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

(170) Waste--Low-level radioactive wastes containing source, special nuclear, or ~~by-product~~ [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 ~~by-product~~ [byproduct] material as defined in paragraph (20)(B) - (E) of this section.

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

(172) 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) (No change.)

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

(174) 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) 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) 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) 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.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 14, 2024.

TRD-202402625

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Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 28, 2024

For further information, please call: (512) 239-0634



## SUBCHAPTER B. RADIOACTIVE SUBSTANCE FEES

### 30 TAC §336.102, §336.105

#### Statutory Authority

The rule changes are proposed under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product 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; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendments implement THSC, Chapter 401, and are proposed to meet compatibility standards set by the United States Nuclear Regulatory Commission.

*§336.102. Definitions.*

Terms used in this subchapter are defined in §336.2 of this title (relating to Definitions). Additional terms used in this subchapter have the following definitions:

(1) Closure--Any one or combination of the following: closure, dismantlement, decontamination, decommissioning, reclamation, disposal, aquifer restoration, stabilization, monitoring, or post closure observation and maintenance.

(2) [(4)] Emergency response--The application of those capabilities necessary for the protection of the public and the environment from the effects of an accidental or uncontrolled release of radioactive materials, including the equipping, training, and periodic retraining of response personnel.

(3) [(2)] Fixed nuclear facility--

(A) Any nuclear reactor(s) at a single site;

(B) Any facility designed or used for the assembly or disassembly of nuclear weapons; or

(C) Any other facility using special nuclear material for which emergency response activities, including training, are conducted to protect the public health and safety or the environment.

*§336.105. Schedule of Fees for Other Licenses.*

(a) Each application for a license under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), Subchapter G of this chapter (relating to Decommissioning Standards), Subchapter K of this chapter (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste from Public Water Systems), Subchapter L of this chapter (relating to Licensing of Source Material Recovery and By-product Material Disposal Facilities), or Subchapter M of this chapter (relating to Licensing of Radioactive Substances Processing and Storage Facilities) must be accompanied by an application fee as follows:

(1) facilities regulated under Subchapter F of this chapter: \$50,000;

(2) facilities regulated under Subchapter G of this chapter: \$10,000;

(3) facilities regulated under Subchapter K of this chapter: \$50,000;

(4) facilities regulated under Subchapter L of this chapter: \$463,096 for conventional mining; \$322,633 for in situ mining; \$325,910 for heap leach; and \$374,729 for disposal only; or

(A) if the application fee is not sufficient to cover costs incurred by the commission, then the applicant shall submit a supplemental fee to recover the actual costs incurred by the commission for

review of the application and any hearings associated with an application for commercial by-product material disposal under Subchapter L of this chapter in accordance with Texas Health and Safety Code, §401.301(g);

(B) the executive director shall invoice for the amount of the costs incurred quarterly. Payment shall be made within 30 days following the date of the invoice;

(5) facilities regulated under Subchapter M of this chapter: \$3,830 for Waste Processing - Class I Exempt; \$39,959 for Waste Processing - Class I; \$94,661 for Waste Processing - Class II; and \$273,800 for Waste Processing - Class III.

(b) An annual license fee shall be paid for each license issued under Subchapters F, G, K, L, and M of this chapter. The amount of each annual fee is as follows:

(1) facilities regulated under Subchapter F of this chapter: \$25,000;

(2) facilities regulated under Subchapter G of this chapter: \$8,400;

(3) facilities regulated under Subchapter K of this chapter: \$25,000;

(4) facilities regulated under Subchapter L of this chapter that are operational: \$60,929.50; or

(A) if the annual fee is not sufficient to cover costs incurred by the commission, a holder of a license for commercial by-product material disposal issued under Subchapter L of this chapter shall submit a supplemental license fee sufficient to recover the actual costs incurred by the commission. This fee shall recover for the state the actual expenses arising from the regulatory activities associated with the license in accordance with Texas Health and Safety Code, §401.412(d);

(B) the executive director shall invoice for the amount of the costs incurred quarterly. Payment shall be made within 30 days following the date of the invoice;

(5) facilities regulated under Subchapter L of this chapter that are in closure: \$60,929.50;

(6) facilities regulated under Subchapter L of this chapter that are in post-closure: \$52,011.50 for conventional mining; \$26,006 for in situ mining; and \$52,011.50 for disposal only;

(7) facilities regulated under Subchapter L of this chapter, if additional noncontiguous source material recovery facility sites are authorized under the same license, the annual fee shall be increased by 25% for each additional site and 50% for sites in closure;

(8) facilities regulated under Subchapter L of this chapter, if an authorization for disposal of by-product material is added to a license, the annual fee shall be increased by 25%;

(9) facilities regulated under Subchapter L of this chapter, the following one-time fees apply if added after an environmental assessment has been completed on a facility:

(A) \$28,658 for in situ wellfield on noncontiguous property;

(B) \$71,651 for in situ satellite;

(C) \$11,235 for wellfield on contiguous property;

(D) \$50,756 for non-vacuum dryer; or



(E) \$71, 651 for disposal (including processing, if applicable) of by-product material; or

(10) facilities regulated under Subchapter M of this chapter: \$3,830 for Waste Processing - Class I Exempt; \$39,959 for Waste Processing - Class I; \$94,661 for Waste Processing - Class II; and \$273,800 for Waste Processing - Class III.

(c) An application for a major amendment of a license issued under Subchapter F, G, K, L, or M of this chapter must be accompanied by an application fee of \$10,000.

(d) An application for renewal of a license issued under Subchapter F, G, K, L, or M of this chapter must be accompanied by an application fee of \$35,000.

(e) Upon permanent cessation of all disposal activities and approval of the final decommissioning plan, holders of licenses issued under Subchapter F, K, L, or M of this chapter shall use the applicable fee schedule for subsections (b) and (c) of this section.

(f) For any application for a license issued under this chapter, the commission may assess and collect additional fees from the applicant to recover costs. Recoverable costs include costs incurred by the commission for administrative review, technical review, and hearings associated with the application. The executive director shall send an invoice for the amount of the costs incurred during the period September 1 through August 31 of each year. Payment shall be made within 30 days following the date of the invoice.

~~[(g) If a licensee remitted a biennial licensing fee to the Texas Department of State Health Services during the one year period prior to June 17, 2007, the licensee is not subject to an annual fee under subsection (b) of this section until the expiration of the second year for which the biennial fee was paid.]~~

~~(g) [(h)]~~ The commission may charge an additional 5% of annual fee assessed under subsection (b) of this section and §336.103 of this title (relating to Schedule of Fees for Subchapter H Licenses). The fee is non-refundable and will be deposited to the perpetual care account.

(1) The fees collected by the agency in accordance with this subsection shall be deposited to the credit of the Environmental Radiation and Perpetual Care Account, until the fees collectively total \$500,000.

(2) If the balance of fees collected in accordance with this subsection is subsequently reduced to \$350,000 or less, the agency shall reinstitute assessment of the fee until the balance reaches \$500,000.

~~(h) [(i)]~~ The holder of a license authorizing disposal of a radioactive substance from other persons shall remit to the commission 5% of the holder's gross receipts received from disposal operations under a license as required in Texas Health and Safety Code, §401.271(a)(1). Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August. This subsection does not apply to the disposal of compact waste or federal facility waste.

~~(i) [(j)]~~ The holder of a license authorizing disposal of a radioactive substance from other persons shall remit directly to the host county 5% of the gross receipts disposal operations under a license as required in Texas Health and Safety Code, §401.271(a)(2). Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August. This subsection does not apply to the disposal of compact waste or federal facility waste.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 14, 2024.

TRD-202402626

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Texas Commission on Environmental Quality

Earliest possible date of adoption: July 28, 2024

For further information, please call: (512) 239-0634

## SUBCHAPTER C. GENERAL LICENSING REQUIREMENTS

### 30 TAC §336.208

#### Statutory Authority

The rule change is proposed under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product 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; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendments implement THSC, Chapter 401, and are proposed to meet compatibility standards set by the United States Nuclear Regulatory Commission.

§336.208. *Radiation Safety Officer.*

(a) Qualifications of the designated radiation safety officer (RSO) are adequate for the purpose requested and include as a minimum:

(1) have earned at least a bachelor's degree in a physical or biological science, industrial hygiene, health physics, radiation protection, or engineering from an accredited college or university, or an equivalent combination of training and relevant experience, with two years of relevant experience equivalent to a year of academic study, from a uranium or mineral extraction/recovery, radioactive waste processing, or a radioactive waste or by-product material disposal facility;

(2) have at least one year of relevant experience, in addition to that used to meet the educational requirement, working under the direct supervision of the RSO at a uranium or mineral extraction/re-

covery, radioactive waste processing, or radioactive waste or by-product material disposal facility; and

(3) have additional [at least four weeks of specialized] training in health physics or radiation safety as determined by the Executive Director [applicable to uranium or mineral extraction/recovery, radioactive waste processing, or radioactive waste or by-product material disposal operations from a course provider that has been evaluated and approved by the agency].

(b) The specific duties of the RSO include, but are not limited to, the following:

(1) to establish and oversee operating, safety, emergency, and as low as reasonably achievable procedures, and to review them at least annually to ensure that the procedures are current and conform with this chapter;

(2) to oversee and approve all phases of the training program for operations and/or personnel so that appropriate and effective radiation protection practices are taught;

(3) to ensure that required radiation surveys and leak tests are performed and documented in accordance with this chapter, including any corrective measures when levels of radiation exceed established limits;

(4) to ensure that individual monitoring devices are used properly by occupationally-exposed personnel, that records are kept of the monitoring results, and that timely notifications are made in accordance with §336.405 of this title (relating to Notifications and Reports to Individuals);

(5) to investigate and cause a report to be submitted to the agency for each known or suspected case of radiation exposure to an individual or radiation level detected in excess of limits established by this chapter and each theft or loss of source(s) of radiation, to determine the cause(s), and to take steps to prevent a recurrence;

(6) to investigate and cause a report to be submitted to the executive director for each known or suspected case of release of radioactive material to the environment in excess of limits established by this chapter;

(7) to have a thorough knowledge of management policies and administrative procedures of the licensee;

(8) to assume control and have the authority to institute corrective actions, including shutdown of operations when necessary in emergency situations or unsafe conditions;

(9) to ensure that records are maintained as required by this chapter;

(10) to ensure the proper storing, labeling, transport, use and disposal of sources of radiation, storage, and/or transport containers;

(11) to ensure that inventories are performed in accordance with the activities for which the license application is submitted;

(12) to perform an inventory of the radioactive sealed sources authorized for use on the license every six months and make and maintain records of the inventory of the radioactive sealed sources authorized for use on the license every six months, to include, but not be limited to, the following:

- (A) isotope(s);
- (B) quantity(ies);
- (C) radioactivity(ies); and

(D) date inventory is performed.

(13) to ensure that personnel are complying with this chapter, the conditions of the license, and the operating, safety, and emergency procedures of the licensee; and

(14) to serve as the primary contact with the agency.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 14, 2024.

TRD-202402628

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 28, 2024

For further information, please call: (512) 239-0634

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## SUBCHAPTER D. STANDARDS FOR PROTECTION AGAINST RADIATION

### 30 TAC §§336.329, 336.331, 336.332, 336.336, 336.341, 336.351, 336.357

Statutory Authority

The rule changes are proposed under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product 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; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendments implement THSC, Chapter 401, and are proposed to meet compatibility standards set by the United States Nuclear Regulatory Commission.

§336.329. *Exemptions to Labeling Requirements.*

A licensee is not required to label:

(1) containers holding licensed material in quantities less than those listed in §336.360, Appendix C, of this title (relating to Quantities of Licensed Material Requiring Labeling);

(2) containers holding licensed material in concentrations less than those specified in Table III of §336.359, Appendix B, of this title (relating to Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage);

(3) containers attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the limits established by this subchapter;

(4) containers when they are in transport and packaged and labeled in accordance with the rules of the United States Department of Transportation (labeling of packages containing radioactive material is required by the United States Department of Transportation if the amount and type of radioactive material exceeds the limits for an excepted quantity or article as defined and limited by rules in 49 CFR 173.403 [(m) and (w) as amended through September 29, 1989,] and 49 CFR 173.421-424 [49 CFR 172.436-172.440 as amended through December 20, 1991]);

(5) containers that are accessible only to individuals authorized to handle or use them, or to work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record. (Examples of containers of this type are containers in locations such as water-filled canals, storage vaults, or hot cells.) The record shall be retained as long as the containers are in use for the purpose indicated on the record; or

(6) installed manufacturing or process equipment, such as piping and tanks.

§336.331. *Transfer of Radioactive Material.*

(a) The licensee shall not transfer source material, by-product [~~byproduct~~] material, or other licensed radioactive material except as authorized under the rules in this subchapter.

(b) Except as otherwise provided in the license and subject to the provisions of subsections (c) and (d) of this section, a licensee shall transfer source material, by-product [~~byproduct~~] material, or other licensed radioactive material:

(1) to the agency (A licensee shall transfer material to the agency only after receiving prior approval from the agency. If the material to be transferred is special nuclear material, the quantity must not be sufficient to form a critical mass.);

(2) to the United States Department of Energy;

(3) to any person exempt from licensing requirements by the Texas Department of State Health Services (DSHS) under the Texas Health and Safety Code, §401.106(a), the rules in this chapter, or exempt from the licensing requirements of the United States Nuclear Regulatory Commission (NRC) or an Agreement State, to the extent permitted by those exemptions;

(4) to any person authorized to receive this material under terms of a specific or a general license or its equivalent issued by the commission, DSHS, NRC, or any Agreement State, or to any person authorized to receive this material by the federal government; or

(5) as otherwise authorized by the commission in writing by DSHS, any Agreement State, or the federal government.

(c) Before transferring source material, by-product [~~byproduct~~] material, or other radioactive material to a specific licensee of the commission, DSHS, NRC, or an Agreement State or to a general licensee who is required to register with DSHS, NRC, or an Agreement State prior to receipt of the source material, by-product [~~byproduct~~] material, or other radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes

the receipt of the type, form, and quantity of radioactive material to be transferred.

(d) The following methods for the verification required by subsection (c) of this section are acceptable.

(1) The transferor shall possess and have read a current copy of the transferee's specific license or certificate of registration.

(2) The transferor may possess a written certification by the transferee that the transferee is authorized by the license or certificate of registration to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or certificate of registration number, issuing agency, and expiration date.

(3) For emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or certificate of registration to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or certificate of registration number, issuing agency, and expiration date, provided that the oral certification is confirmed in writing within ten days.

(4) The transferor may obtain other sources of information compiled by a reporting service from official records of the commission, DSHS, NRC, or an Agreement State as to the identity of licensees and registrants and the scope and expiration dates of licenses and registrations.

(5) When none of the methods of verification described in paragraphs (1) - (4) of this subsection are readily available or when a transferor desires to verify that information received by one of these methods is correct or up-to-date, the transferor may obtain and record confirmation from the commission, DSHS, NRC, or an Agreement State that the transferee is licensed to receive the source material, by-product [~~byproduct~~] material, or other radioactive material.

(e) Transportation of radioactive material shall also be subject to applicable rules of the United States Department of Transportation, United States Postal Service, NRC, or DSHS.

(f) The licensee shall keep records showing the transfer of any source material, by-product [~~byproduct~~] material, or other radioactive material.

(g) Transfer of low-level radioactive waste by a waste generator, waste collector, or waste processor who ships this waste either directly, or indirectly through a collector or processor, to a licensed land disposal facility shall also be subject to applicable rules of DSHS. A commission licensee who transfers low-level radioactive waste for disposal at a licensed land disposal facility shall also be subject to applicable rules of DSHS with respect to transfers.

(h) A licensed land disposal facility operator shall use and comply with the requirements of §336.363 of this title (relating to Appendix F. Requirements for Receipt of Low-Level Radioactive Waste for Disposal at Licensed Land Disposal Facilities and Uniform Manifests).

(i) Any licensee shipping by-product [~~byproduct~~] material, as defined in §336.2(16)(C) - (E) of this title (relating to Definitions) concerning the definition of by-product [~~byproduct~~] material, intended for ultimate disposal must document the information required on the shipping manifest and transfer this recorded manifest information to the intended consignee.

§336.332. *Preparation of Radioactive Material for Transport.*

(a) No licensee shall deliver any source material, by-product [~~byproduct~~] material, or other licensed radioactive material to a carrier for transport, unless:

(1) the licensee complies with the applicable requirements of the rules, appropriate to the mode of transport, of the United States Department of Transportation insofar as those rules relate to the packing of radioactive material and to the monitoring, marking, and labeling of those packages or containers;

(2) the licensee establishes procedures for opening and closing packages and containers in which radioactive material is transported to provide safety and to assure that, prior to the delivery to a carrier for transport, each package or container is properly closed for transport; and

(3) the licensee assures that any special instructions needed to safely open the package or container are sent to or have been made available to the consignee prior to delivery of a package or container to a carrier for transport.

(b) For the purpose of subsection (a) of this section, licensees who transport their own licensed material as private carriers are considered to have delivered the material to a carrier for transport.

*§336.336. Tests.*

(a) Each licensee shall perform, upon instructions from the executive director, or shall permit the executive director to perform such tests as the executive director deems appropriate or necessary for the administration of the rules in this chapter including, but not limited to, tests of:

(1) source material, by-product [~~byproduct~~] material, or other licensed radioactive material;

(2) facilities where these materials are used, stored, or disposed;

(3) radiation detection and monitoring instruments; and

(4) other equipment and devices used in connection with utilization, storage, or disposal of source material, by-product [~~byproduct~~] material, or other licensed radioactive material.

(b) The requirements of this section do not apply to licenses issued under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste).

*§336.341. General Recordkeeping Requirements for Licensees.*

(a) Each licensee shall use the units curie, rad, and rem, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this subchapter. Disintegrations per minute may be indicated on records of surveys performed to determine compliance with §336.605 of this title (relating to Surface Contamination Limits for Facilities, Equipment, and Materials) and §336.364, Appendix G, of this title (relating to Acceptable Surface Contamination Levels).

(b) In the records required by this chapter, the licensee may record quantities in International System of Units (SI) units in parentheses following each of the units specified in subsection (a) of this section. However, all quantities must be recorded as stated in subsection (a) of this section.

(c) Notwithstanding the requirements of subsection (a) of this section, information on shipment manifests for wastes received at a licensed land disposal facility, as required by §336.331(h) of this title (relating to Transfer of Radioactive Material), shall be recorded in SI units (becquerel, gray, and sievert) or in SI and units as specified in subsection (a) of this section.

(d) The licensee shall make a clear distinction among the quantities entered on the records required by this subchapter, such as total

effective dose equivalent, shallow-dose equivalent, lens dose equivalent, deep-dose equivalent, and committed effective dose equivalent.

(e) Each licensee shall maintain records showing the receipt, transfer, and disposal of all source material, by-product [~~byproduct~~] material, or other licensed radioactive material. Each licensee shall also maintain any records and make any reports as may be required by the conditions of the license, by the rules in this chapter, or by orders of the commission. Copies of any records or reports required by the license, rules, or orders shall be submitted to the executive director or commission on request. All records and reports required by the license, rules, or orders shall be complete and accurate.

(f) The licensee shall retain each record that is required by the rules in this chapter or by license conditions for the period specified by the appropriate rule or license condition. If a retention period is not otherwise specified, each record shall be maintained until the commission terminates each pertinent license requiring the record.

(g) If there is a conflict between the commission's rules, license condition, or other written approval or authorization from the executive director pertaining to the retention period for the same type of record, the longest retention period specified takes precedence.

(h) The executive director may require the licensee to provide the commission with copies of all records prior to termination of the license.

*§336.351. Reports of Transactions Involving Nationally Tracked Sources.*

(a) Each licensee who manufactures, transfers, receives, disassembles, or disposes of a nationally tracked source shall complete and submit to the United States Nuclear Regulatory Commission (NRC) a National Source Tracking Transaction Report as specified in paragraphs (1) - (6) of this subsection for each type of transaction.

(1) Each licensee who manufactures a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report must include the following information:

- (A) the name, address, and license number of the reporting licensee;
- (B) the name of the individual preparing the report;
- (C) the manufacturer, model, and serial number of the source;
- (D) the radioactive material in the source;
- (E) the initial source strength in becquerels (curies) at the time of manufacture; and
- (F) the manufacture date of the source.

(2) Each licensee that transfers a nationally tracked source to another person shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

- (A) the name, address, and license number of the reporting licensee;
- (B) the name of the individual preparing the report;
- (C) the name and license number of the recipient facility and the shipping address;
- (D) the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

- (E) the radioactive material in the source;
- (F) the initial or current source strength in becquerels (curies);
- (G) the date for which the source strength is reported;
- (H) the shipping date;
- (I) the estimated arrival date; and

(J) for nationally tracked sources transferred as waste under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification of the container with the nationally tracked source.

(3) Each licensee that receives a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

- (A) the name, address, and license number of the reporting licensee;
- (B) the name of the individual preparing the report;
- (C) the name, address, and license number of the person that provided the source;

(D) the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

- (E) the radioactive material in the source;
- (F) the initial or current source strength in becquerels (curies);
- (G) the date for which the source strength is reported;
- (H) the date of receipt; and

(I) for material received under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification with the nationally tracked source.

(4) Each licensee that disassembles a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

- (A) the name, address, and license number of the reporting licensee;
- (B) the name of the individual preparing the report;
- (C) the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

- (D) the radioactive material in the source;
- (E) the initial or current source strength in becquerels (curies);
- (F) the date for which the source strength is reported; and
- (G) the disassemble date of the source.

(5) Each licensee who disposes of a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

- (A) the name, address, and license number of the reporting licensee;

- (B) the name of the individual preparing the report;
- (C) the waste manifest number;
- (D) the container identification with the nationally tracked source;
- (E) the date of disposal; and
- (F) the method of disposal.

(6) The reports discussed in paragraphs (1) - (6) of this subsection shall be submitted to NRC by the close of the next business day after the transaction. A single report may be submitted for multiple sources and transactions. The reports shall be submitted to the National Source Tracking System by using the following:

- (A) the on-line National Source Tracking System;
- (B) electronically using a computer-readable format;
- (C) by facsimile;
- (D) by mail to the address on the National Source Tracking Transaction Report Form (NRC Form 748); or
- (E) by telephone with follow-up by facsimile or mail.

(7) Each licensee shall correct any error in previously filed reports or file a new report for any missed transaction within five business days of the discovery of the error or missed transaction. Such errors may be detected by a variety of methods such as administrative reviews or by physical inventories required by regulation. In addition, each licensee shall reconcile the inventory of nationally tracked sources possessed by the licensee against that licensee's data in the National Source Tracking System. The reconciliation shall be conducted during the month of January in each year. The reconciliation process shall include resolving any discrepancies between the National Source Tracking System and the actual inventory by filing the reports identified by paragraphs (1) - (6) of this subsection. By January 31 of each year, each licensee shall submit to the National Source Tracking System confirmation that the data in the National Source Tracking System is correct.

~~[(8) Each licensee that possesses Category 1 or Category 2 nationally tracked sources listed in subsection (b) of this section shall report its initial inventory of Category 1 or Category 2 nationally tracked sources to the National Source Tracking System by January 31, 2009. The information may be submitted to NRC by using any of the methods identified by paragraph (6)(A) - (E) of this subsection. The initial inventory report shall include the following information:]~~

- ~~[(A) the name, address, and license number of the reporting licensee;]~~
- ~~[(B) the name of the individual preparing the report;]~~
- ~~[(C) the manufacturer, model, and serial number of each nationally tracked source or, if not available, other information to uniquely identify the source;]~~
- ~~[(D) the radioactive material in the sealed source;]~~
- ~~[(E) the initial or current source strength in becquerels (curies); and]~~
- ~~[(F) the date for which the source strength is reported.]~~

(b) Nationally tracked source thresholds. The Terabecquerel (TBq) values are the regulatory standards. The curie values specified are obtained by converting from the TBq value. The curie values are provided for practical usefulness only and are rounded after conversion. The following table contains nationally tracked source thresholds. Figure: 30 TAC §336.351(b) (No change.)

§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 licensee shall provide a copy of the oath or affirmation certifications of any and all individuals to the executive director once completed. 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)(3) 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)(1) 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) fingerprintings 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 Physical and Cyber Security Policy, 11545 Rockville Pike, ATTN: Criminal History Program/Mail Stop T-07D04M, 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 emailing [MAILSVS.Resource@nrc.gov](mailto:MAILSVS.Resource@nrc.gov). Guidance on submitting electronic fingerprints can be found at <https://www.nrc.gov/security/chp.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 Division of Physical and Cyber Security Policy by e-mailing [Crimhist.Resource@nrc.gov](mailto:Crimhist.Resource@nrc.gov).) 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 Licensee Criminal History Records Checks & Firearms Background Check information page at <https://www.nrc.gov/security/chp.html> and see the link for How do I determine how much to pay for the request?).

(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; and

(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 commission 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 commission 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 subsection (i) of this section, this subsection, and subsections (k) - (q) of this section. The security plan must, at a minimum:

(i) describe the measures and strategies used to implement the requirements of subsection (i) of this section, this subsection, and subsections (k) - (q) of this section; and

(ii) identify the security resources, equipment, and technology used to satisfy the requirements of subsection (i) of this section, this subsection, and subsections (k) - (q) of this section.

(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 commission 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, implementing procedures, and the list of individuals that have been approved for unescorted access.

(C) Before granting an individual access to the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access, licensees shall:

(i) evaluate an individual's need to know the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access; 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, implementing procedures, or the list of individuals that have been approved for unescorted access.

(F) Licensees shall maintain a list of persons currently approved for access to the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access. When a licensee determines that a person no longer needs access to the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access 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, implementing procedures, or the list of individuals that have been approved for unescorted access.

(G) When not in use, the licensee shall store its security plan, implementing procedures, and the list of individuals that have been approved for unescorted access 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, implementing procedures, or the list of individuals that have been approved for unescorted access.

(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. 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 con-

ditions 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. 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.

(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. The report must include sufficient information for commission 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 nonfunc-

tional, 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, to the executive director, 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 executive director, to the commission, 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 <https://scp.nrc.gov/special/designee.pdf>. A list of the contact information is also available upon request from the Director, Division of Materials Safety, Security, State, and Tribal Programs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(B) A notification delivered by mail must be post-marked 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 the commission and the executive director 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, to the executive director, and to the commission.

(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 commission and the executive director 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, to the executive director, and to the commission. 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 canceled.

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

(6) Protection of information. State officials, State employees, and other individuals, whether or not licensees of the commission, NRC, or an Agreement State, who receive schedule information of the kind specified in paragraph (2) of this subsection shall protect that information against unauthorized disclosure as specified in subsection (j)(4) of this section.

(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 cate-

gory 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 and the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 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 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 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.

(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 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 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 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 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. A written report is not required for notifications on suspicious activities required by paragraphs (3) and (4) of this subsection. 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)

[Figure: 30 TAC §336.357(z)]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 14, 2024.

TRD-202402630

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 28, 2024

For further information, please call: (512) 239-0634



## SUBCHAPTER G. DECOMMISSIONING STANDARDS

### 30 TAC §336.625

#### Statutory Authority

The rule change is proposed under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product



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; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendments implement THSC, Chapter 401, and are proposed to meet compatibility standards set by the United States Nuclear Regulatory Commission.

§336.625. *Expiration and Termination of Licenses.*

(a) Each license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal not less than 30 days before the expiration date stated in the existing license. If an application for renewal in proper form has been filed at least 30 days before the expiration date stated in the existing license, the existing license shall not expire until the application has been finally determined by the commission. For the purposes of this section, "proper form" shall mean that the application includes the information required by §336.617 of this title (relating to Technical Requirements for Inactive Disposal Sites) or §336.513 of this title (relating to Technical Requirements for Active Disposal Sites). The existing license expires at the end of the day on which the commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(b) Each license revoked by the commission expires at the end of the day on the date of the commission's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by commission order.

(c) Each license continues in effect, beyond the expiration date if necessary, with respect to possession of source material, ~~by-product~~ by-product material, or other radioactive material until the commission notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

(1) limit actions involving source material, ~~by-product~~ by-product material, or other radioactive material to those related to decommissioning; and

(2) continue to control entry to restricted areas until they are suitable for release in accordance with commission requirements.

(d) Within 60 days of the occurrence of any of the following, each licensee of an active disposal site shall provide written notification to the executive director:

(1) the license has expired under subsection (a) or (b) of this section; or

(2) the licensee has decided to permanently cease principal activities at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for unrestricted release in accordance with commission requirements; or

(3) no principal activities under the license have been conducted for a period of 24 months; or

(4) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with commission requirements.

(e) The licensee of an active disposal site shall either:

(1) within 60 days of the occurrence for which notification is required by subsection (d) of this section, begin decommissioning its site or any separate building or outdoor area that contains residual radioactivity, according to an approved decommissioning plan, so that the building or outdoor area is suitable for release in accordance with commission requirements; or

(2) if no decommissioning plan has been submitted, submit a decommissioning plan to the executive director, including a signed statement adjusting the amount of financial assurance based upon the detailed cost estimate included in the decommissioning plan, within 12 months of the notification required by subsection (d) of this section and request an amendment of the license to incorporate the plan into the license; and

(3) begin decommissioning within 60 days of the approval of that plan by the commission.

(f) The licensee of an inactive disposal site licensed under §336.615 of this title (relating to Inactive Disposal Sites), shall provide notice of and begin decommissioning within 90 days of license renewal. The owner or operator of an unlicensed inactive disposal site must apply for a license to decommission the site and begin decommissioning within 90 days of license approval.

(g) All licensees shall follow a commission-approved closure plan for decontamination, decommissioning, restoration, and reclamation of buildings and the site.

(1) Coincident with the notification required by subsections (d) or (f) of this section, the licensee shall continue to maintain in effect all decommissioning financial assurance until the license is terminated by the commission.

(2) The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established under §336.613(f)(5) of this title (relating to Additional Requirements).

(3) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so on or before January 1, 1998.

(4) Following approval of the decommissioning plan, with the approval of the executive director, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site.

(h) The executive director may grant in writing a request to extend the time periods established in subsections (d), (e), or (f) of this section, or to delay or postpone the decommissioning process, if the executive director determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted in writing no later than 30 days before notification under subsection (d) or (f) of this section. The schedule for decommissioning set forth in subsection (e) or (f) of this section may not commence until the executive director has made a determination on the request.

(i) Licenses, including expired licenses, will be terminated by the commission by written notice to the licensee when the executive director determines that:

(1) source material, by-product [~~byproduct~~] material, and other radioactive material has been properly disposed;

(2) reasonable effort has been made to eliminate residual radioactive contamination, if present;

(3) the site is suitable for release;

(A) a radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with commission requirements; or

(B) other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with commission requirements;

(4) the licensee has paid any outstanding fees required by Subchapter B of this chapter (relating to Radioactive Substance Fees) and has resolved any outstanding notice(s) of violation issued to the licensee; and

(5) the licensee has complied with all other applicable de-commissioning criteria required by this subchapter.

(j) A licensee may request that a subsite or a portion of a licensed area be released for unrestricted use before full license termination as long as release of the area of concern will not adversely impact the remaining unaffected areas and will not be recontaminated by ongoing authorized activities. When the licensee is confident that the area of concern will be acceptable to the state for release for unrestricted use, a written request for release for unrestricted use and agency confirmation of close-out work performed must be submitted to the executive director. The request should include a comprehensive report, accompanied by survey and sample results which show contamination is less than the limits specified in §336.603 of this title (relating to Radiological Criteria for Unrestricted Use), and an explanation of how ongoing authorized activities will not adversely affect the area proposed to be released. Upon confirmation by the executive director that the area of concern is indeed releasable for unrestricted use, the licensee may apply for a license amendment, if required.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 14, 2024.

TRD-202402631

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Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 28, 2024

For further information, please call: (512) 239-0634



## SUBCHAPTER H. LICENSING REQUIREMENTS FOR NEAR-SURFACE LAND DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE

### 30 TAC §336.701

#### Statutory Authority

The rule change is proposed under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which

authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product 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; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendments implement THSC, Chapter 401, and are proposed to meet compatibility standards set by the United States Nuclear Regulatory Commission.

#### §336.701. *Scope and General Provisions.*

(a) This subchapter establishes the procedures, criteria, and terms and conditions upon which the commission issues a license for the near-surface land disposal of low-level radioactive wastes and accelerator-produced radioactive material received from other persons. The rules in this subchapter apply to disposal of low-level radioactive waste and accelerator-produced radioactive material as defined in §336.2 of this title (relating to Definitions). For the purpose of this subchapter, the term "low-level radioactive waste" includes accelerator-produced radioactive material. If there is a conflict between the rules of the commission and the rules of this subchapter, the rules of this subchapter shall prevail. No person shall engage in disposal of low-level radioactive waste received from other persons except as authorized in a specific license issued under this subchapter. A licensee under this subchapter shall conduct processing of low-level radioactive waste received for disposal at the licensed site, incidental to the disposal of that waste, in accordance with provisions of the commission license which authorizes the disposal.

(b) A licensee authorized to dispose of low-level radioactive waste under the rules in this subchapter shall not accept for disposal:

(1) high-level radioactive waste as defined in 10 Code of Federal Regulations (CFR) §60.2 as amended through October 27, 1988 (53 FR 43421) (Definitions - high-level radioactive wastes in geologic repositories);

(2) by-product [~~byproduct~~] material as defined in §336.2(20)(B) [~~§336.2(13)(B)~~] of this title;

(3) spent or irradiated nuclear fuel;

(4) waste that is not generally acceptable for near-surface disposal as specified in §336.362 of this title (relating to Appendix E. Classification and Characteristics of Low-Level Radioactive Waste); or

(5) waste that exceeds Class C limitations as specified in §336.362 of this title.

(c) In addition to the requirements of this subchapter, all licensees, unless otherwise specified, are subject to the requirements of Subchapters A - E and G of this chapter (relating to General Provi-

sions; Radioactive Substance Fees; General Disposal Requirements; Standards for Protection Against Radiation; Notices, Instructions, and Reports to Workers and Inspections; and Decommissioning Standards). For Subchapter H licensees, the decommissioning and license termination criteria in Subchapter G of this chapter applies only to the ancillary surface facilities.

(d) On-site disposal of low-level radioactive waste at any site authorized under §336.501(b) of this title (relating to Scope and General Provisions), is not subject to licensing under this subchapter.

(e) Shipment and transportation of low-level radioactive waste to a licensed land disposal facility in Texas is subject to applicable rules of the Texas Department of Health, United States Department of Transportation, and United States Nuclear Regulatory Commission. Each shipment of low-level radioactive waste to a licensed land disposal facility in Texas is subject to inspection by the Texas Department of Health before shipment.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 14, 2024.

TRD-202402633

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 28, 2024

For further information, please call: (512) 239-0634



## SUBCHAPTER M. LICENSING OF RADIOACTIVE SUBSTANCES PROCESSING AND STORAGE FACILITIES

### 30 TAC §336.1215

#### Statutory Authority

The rule change is proposed under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product 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; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendments implement THSC, Chapter 401, and are proposed to meet compatibility standards set by the United States Nuclear Regulatory Commission.

#### §336.1215. Issuance of Licenses.

(a) A license for a radioactive substances processing or storage facility may be issued if the agency finds reasonable assurance that:

(1) an application meets the requirements of the Texas Radiation Control Act and the rules of the agency;

(2) the proposed radioactive substances facility will be sited, designed, operated, decommissioned, and closed in accordance with this chapter;

(3) the issuance of the license will not be inimical to the health and safety of the public or the environment; and

(4) there is no reason to deny the license because of:

(A) any material false statement in the application or any statement of fact required under provisions of the Texas Radiation Control Act;

(B) conditions revealed by the application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a license on an application; or

(C) failure to clearly demonstrate how the requirements in this chapter have been addressed; and

(5) qualifications of the designated radiation safety officer (RSO) as stated in §336.208 of this title (relating to Radiation Safety Officer) are adequate for the purpose requested in the application. ~~[and include as a minimum:]~~

~~[(A) have earned at least a bachelor's degree in a physical or biological science, industrial hygiene, health physics, radiation protection, or engineering from an accredited college or university, or an equivalent combination of training and relevant experience, with two years of relevant experience equivalent to a year of academic study, from a uranium or mineral extraction/recovery, radioactive waste processing, or a radioactive waste or by-product material disposal facility;]~~

~~[(B) have at least one year of relevant experience, in addition to that used to meet the educational requirement, working under the direct supervision of the radiation safety officer at a uranium or mineral extraction/recovery, radioactive waste processing, or radioactive waste or by-product material disposal facility; and]~~

~~[(C) have at least four weeks of specialized training in health physics or radiation safety applicable to uranium or mineral extraction/recovery, radioactive waste processing, or radioactive waste or by-product material disposal operations from a course provider that has been evaluated and approved by the agency.]~~

(b) The agency may request, and the licensee must provide, additional information after the license has been issued to enable the agency to determine whether the license should be modified, suspended, or revoked.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 14, 2024.

TRD-202402634

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**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY**

**CHAPTER 6. LICENSE TO CARRY HANDGUNS**

**SUBCHAPTER B. ELIGIBILITY AND APPLICATION PROCEDURES FOR A LICENSE TO CARRY A HANDGUN**

**37 TAC §§6.12, 6.14, 6.18**

The Texas Department of Public Safety (the department) proposes amendments to §§6.12, 6.14, and 6.18, concerning Eligibility and Application Procedures for a License to Carry a Handgun. The amendments to §6.12, concerning Fingerprints, remove the peace officer exemption for required electronic fingerprints to comply with current Federal Bureau of Investigation requirements. The amendments to §6.14, concerning Proficiency Requirements, and §6.18, concerning First Responder Certification; Renewal of Certification, make conforming language changes for consistency and remove references to form numbers to allow the department flexibility in consolidating and renumbering forms.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of these rules will be consistency with federal fingerprint requirements and simplicity in the identification of forms.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly,

the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does expand, limit, or repeal an existing regulation. The proposed rulemaking does increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.1883, which authorizes the department to adopt by rule standards for the first responder training course as authorized in House Bill 1069, 87th Leg., R.S. (2021) and renumbered in House Bill 4595, 88th Leg., R.S. (2023); and Texas Government Code, §411.197, which authorizes the director to adopt rules to administer Subchapter H, License to Carry a Handgun.

Texas Government Code, §§411.004(3), 411.1883, and 411.197 are affected by this proposal.

*§6.12. Fingerprints.*

(a) Except as provided by §411.175 of the Act, electronic fingerprints are required for all original applicants and must be submitted through the department's approved vendor.

(b) For renewals, if fingerprints on file do not meet current Federal Bureau of Investigation or the department's quality standards, applicants will be required to submit a new set of electronic fingerprints to complete the renewal application process.

~~[(c) Active peace officers are not required to submit electronic fingerprints unless the fingerprints are not on file with the department or those on file are deficient.]~~

*§6.14. Proficiency Requirements.*

(a) The figure in this section provides the proficiency demonstration requirements applicable to applicants for either a license to carry a handgun or certification as a qualified handgun instructor. Figure: 37 TAC §6.14(a) (No change.)

(b) An applicant for a license to carry a handgun [A handgun license applicant] must score at least 70% on both the written examination and the proficiency examination.

(c) An applicant for a license to carry a handgun [A handgun license applicant] will have three opportunities to pass the written examination and the proficiency examination within a 12-month [12 month] period.

# Texas Commission on Environmental Quality



## ORDER ADOPTING AMENDED RULES

**Docket No. 2024-0162-RUL**

**Rule Project No. 2024-010-336-WS**

On November 20, 2024, the Texas Commission on Environmental Quality (Commission) adopted amended rules in 30 Texas Administrative Code Chapter (TAC) 336, concerning Radioactive Substance Rules. The proposed rules were published for comment in the June 28, 2024 issue of the *Texas Register* (49 TexReg 4710).

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code Ann., Chapter 2001 (West 2016).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Jon Niermann, Chairman

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Date Signed