

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** April 8, 2022

Thru: Laurie Gharis, Chief Clerk
Toby Baker, Executive Director

From:  Brent Wade, Director
Office of Waste

Docket No.: 2021-0905-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 336, Radioactive Substance Rules
Nuclear Regulatory Commission (NRC) Compatibility
Rule Project No. 2021-026-336-WS

Background and reason(s) for the rulemaking:

The changes to Chapter 336, Subchapter D will revise the Texas Commission on Environmental Quality's (TCEQ, agency, or commission) rules concerning physical protection of category 1 and category 2 quantities of radioactive materials 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.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

This adopted rulemaking will modify the rules regarding physical protection of category 1 and category 2 quantities of radioactive materials in §336.357 to add "list of individuals that have been approved for unescorted access" to the list of information for which access must be controlled and to modify contact information (mail addresses, phone numbers, internet address, and department names) of the NRC.

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

This adopted rulemaking is 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:

None.

Statutory authority:

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

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the authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

Effect on the:

A.) Regulated community:

Licensees for the storage, processing, or disposal of radioactive waste will be affected. The effect is negligible since the modifications are minor. Licensees are already required to control specific information concerning category 1 and category 2 quantities of radioactive material and this rulemaking adds one additional item to this list.

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.

Public comment:

The commission offered a public hearing on **January 6, 2022**. The comment period closed on **January 10, 2022**. One public comment letter was received from the NRC stating that three minor changes were needed to §336.357 to maintain compatibility with federal regulations: modify a mail stop number, identify in the rule that the oath or affirmation certifications that a reviewing official is deemed trustworthy and reliable is to be provided to the executive director, and to specify that the executive director is one of the persons to whom advanced notice of shipment of category 1 quantities of radioactive material is to be provided.

Significant changes from proposal:

Based on the comments from the NRC, the following modifications were made to §336.357 to maintain compatibility with federal regulations. Rule §357(c)(2)(B) was modified to add text that identifies that the oath or affirmation certifications that a reviewing official is deemed trustworthy and reliable is to be provided to the executive director. Rule §357(e)(3)(A) was modified to change a mail stop number for the NRC. Rules §336.357(u), §357(u)(1)(A), §336.357(u)(1)(C), §336.357(u)(3)(A), §336.357(u)(3)(B), and §336.357(u)(4) were modified to specify that the executive director is one of the persons to whom advanced notice of shipment of category 1 quantities of radioactive material is to be provided.

Potential controversial concerns and legislative interest:

None.

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 would leave the TCEQ rules inconsistent with federal requirements and may result in the loss of Texas' Agreement State status.

Key points in the proposal rulemaking schedule:

Texas Register proposal publication date: December 3, 2021

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Anticipated *Texas Register* adoption publication date: May 13, 2022

Anticipated effective date: May 19, 2022

Six-month *Texas Register* filing deadline: June 3, 2022

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Attachments:

None.

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