


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 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 the Texas Commission on Environmental Quality (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:

Hans Weger, Rule Project Manager, Radioactive Materials Division, (512) 239-6465

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