


Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** May 24, 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 Proposed Rulemaking
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) proposes to 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. RMD also proposes to 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 would do:

To ensure that 30 TAC Chapter 336 is compatible with federal regulations, this rulemaking would 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 would 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 would correct the reference to a rule in 30 TAC §336.701(b)(2).

For clarity, this rulemaking would 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 would 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 would 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.

Re: Docket No. 2024-0162-RUL

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

Parts of this 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:

The remaining rule changes being proposed 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 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 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 proposed amendments implement THSC, Chapter 401, and are proposed 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 will be held in Austin during the public comment period.

Public Involvement Plan

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

Commissioners
Page 3
May 24, 2024

Re: Docket No. 2024-0162-RUL

Alternative Language Requirements
Yes, Spanish.

Potential controversial concerns and legislative interest:
No controversial concerns or legislative interest is anticipated.

Would 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 proposal rulemaking schedule:
Anticipated proposal date: June 12, 2024
Anticipated *Texas Register* publication date: June 28, 2024
Anticipated public hearing date: July 29, 2024
Anticipated public comment period: June 28, 2024 to July 30, 2024
Anticipated adoption date: November 20, 2024

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Attachments:
None.

cc: Chief Clerk, 2 copies
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