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TEXAS DEPARTMENT OF STATE HEALTH SERVICES

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OFFICE OF SECRETARY  
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SECRETARY  
US NUCLEAR REGULATORY COMMISSION  
ATTN RULEMAKINGS AND  
ADJUDICATIONS STAFF  
WASHINGTON DC 20555-0001

RE: RIN 3150 - AH41

Dear Staff:

Staff members of the Texas Department of State Health Services (DSHS), Radiation Control Program have completed their review of the federal register notice (FRN) and proposed rule package related to changes to Title 10 Code of Federal Regulations Parts 30, 31, 32 and 150. and have compiled the following comments.

**Section II, Item A** - Texas DSHS supports the NRC's decision to decrease the frequency of reporting exempt distributions. Considering the new culture of increased source security it follows that the NRC should have a better handle on the movement, quantities and destinations of all radioactive material.

**Section II, Item B** - Texas DSHS disagrees with the reclassification of Sections 32.11 and 32.12 as Compatibility Category NRC. Texas DSHS would be willing to provide NRC with all distribution reports from licensees possessing a license that authorizes the manufacture or distribution of products and materials for use under the exempt concentration provisions. In effect, this strategy would put into place the system of NRC obtaining copies of exempt concentration product and material distributions originally discussed in the 1960's.

There now exists two separate organizations (Organization of Agreement States or Conference of Radiation Control Program Directors) more than willing to work with the NRC in obtaining these reports. These organizations did not exist in the 1960's when the reporting program was first discussed. Without pursuing these options, the NRC would be arbitrary and capricious in exerting it's will over Agreement State licensees. Although there may be few licensees and Agreement States impacted by this rule change, the NRC is not pursuing this change due to national defense and security; further illustrating how punitive such a measure would be.

Rulemakings and Adjudications Staff

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**Section II, Item C** - Texas DSHS supports the NRC's decision to specifically prohibit the bundling of exempt sources.

**Section II, Item D** - Texas DSHS supports the NRC's decision to remove exemptions for products containing radioactive material that are no longer being used and/or manufactured, while allowing those already distributed to continue to be possessed and used under the exemption applicable at the time of distribution.

The removal of these exemptions does not appear to effect any Texas DSHS licensees and the reduction in volume of regulation will be a prudent move considering the continuously upward climb in the volume of regulations and negative perception generated by volumes upon volumes of codified requirements.

**Section II, Item E** - Texas DSHS supports the NRC's decision to propose a rule that would establish a specific exemption from licensing requirements for ionization chamber smoke detectors containing no more than 1  $\mu\text{Ci}$  of  $^{241}\text{Am}$  in the form of a foil and designed to protect life and property from fires.

Taking into account all the possible changes in the way NRC and Agreement States conduct product reviews for sealed sources and devices containing radioactive material, Texas DSHS encourages NRC to revise NUREG 1556, volume 3, revision 1 as soon as possible, if not concurrently, to match the approval process for these rule changes.

**Section II, Item F** - Texas DSHS disagrees with the proposed revision to Paragraph 31.5(c)(8)(iii). This action is punitive to specific licensees who possess generally licensed (GL) products as NRC is requiring additional regulation not required of general licensees who do not possess a specific license. Texas DSHS has developed a successful working infrastructure that addresses these differences in class yet maintains the specific identification and segregation of GL products, regulatory tracking of these products, and the authorization/ability to separately list GL products in a distinct license condition on specific licenses.

The regulatory cost analysis for this revision should reflect that no heightened security, public health and safety or national defense interests are accomplished by approving and implementing the proposed rule revision.

Further, this revision to rule would, in essence, ignore the inherent safety properties of GL products and abandon their inherent safety features and relegate them to the same requirements imposed on specifically licensed products.

*Section II, Item F* (continued) -

The example cited in this section regarding appropriateness for the general licensee to conduct its own leak tests is appropriate rather the product be possessed and used as a GL product or as a specifically licensed product. The reference to leak tests in this case refers to the actual radioanalysis of leak test samples. Texas DSHS has logged many calls from licensees, general and specific, confused on this subject. Apparently the confusion includes the NRC as well. The instructions contained on labels of GL products prohibiting leak testing refers to the radioanalysis portion of leak testing, not the actual, physical leak test sampling.

Further, Texas DSHS sees nothing wrong with a product containing additional safety information. The appropriateness of a GL product having additional safety warnings or instructions is a valuable asset to these products and their users.

The argument that GL products may not come with leak testing instructions is moot. The likelihood of particular products not having or having leak testing instructions is identical for specifically licensed products and GL products. Rather, it is GL products that are required to mention leak testing and interval. Though not required, GL products may also contain information on a label that may provide instructions on leak testing. Why would the NRC want to have licensees remove safety related information from GL products? That action does not appear to be consistent with ALARA principles.

Regarding the NRC's instance that the General License Tracking System be updated each time a GL device is transferred to a specific licensee, Texas DSHS believes that a GL device does not stop-being a GL device because it is possessed by a specific licensee. In this case, the transfer of the GL device to an end-user, in this case a specific licensee, would need to be reported, but not because it is being transferred as a specifically licensed device; it is not, it is still a GL device.

Thank you for the opportunity to comment on the rule revisions to 10 CFR 30, 31, 32 and 150. If you have any questions, please contact David Fogle, Chief, Advanced Technology Licensing Program, of my staff at (512) 834-6688, extension 2203 or at David.Fogle@dshs.state.tx.us.

Sincerely,

Ruth E. McBurney, CHP, Manager  
Radiation Safety Licensing Branch

REM:dbf  
bcc: PMyers, RMcBurney, RRatliff, Ccardwell, DFogle

**From:** Catherine Mattsen  
**To:** SECY@nrc.gov  
**Date:** Wed, Mar 15, 2006 2:09 PM  
**Subject:** Fwd: Texas Comments on RIN 3150-AH41

Attached is a comment letter from the State of Texas, which was emailed to me. I am forwarding it in case it was not also submitted to SECY.

**From:** David Fogle <David.Fogle@dshs.state.tx.us>  
**To:** "crm@nrc.gov" <crm@nrc.gov>  
**Date:** Wed, Mar 8, 2006 11:00 AM  
**Subject:** Texas Comments on RIN 3150-AH41

Ms. Mattsen -

Please see the attachment regarding Texas' concerns on the proposed rule changes to 10 CFR 30, 31, 32 and 150.

Thank you.

David Fogle, Chief  
Advanced Technology Licensing Program  
Radioactive Material Licensing Group  
Radiation Safety Licensing Branch  
Texas Department of State Health Services

**CC:** Pete Myers <Pete.Myers@dshs.state.tx.us>, Ruth McBurney  
<Ruth.McBurney@dshs.state.tx.us>

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**From:** Catherine Mattsen

**Created By:** CRM@nrc.gov

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