

TITLE 25. Health Services
Part 1. Department of State Health Services
Chapter 289. Radiation Control
Subchapter C. Texas Regulations for Control of Radiation
New §289.102

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §289.102 concerning a memorandum of understanding between the department and the Railroad Commission of Texas (RRC) regarding radiation control functions.

BACKGROUND AND PURPOSE

The purpose of the new rule is to delineate areas of respective jurisdiction and to coordinate the respective responsibilities and duties of the department and the RRC in the regulation of sources of radiation in accordance with Health and Safety Code, §401.414, in order to provide a consistent approach and to avoid duplication of radiation control functions.

SECTION-BY-SECTION SUMMARY

The new rule establishes respective agency responsibilities regarding general agency jurisdiction, jurisdiction over specific activities and wastes, coordination of regulatory activities, coordination of enforcement and incident response activities, mutual assistance, and miscellaneous items.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five years that the new section is in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the new section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to comply with the section.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons because they are not required to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as the result of enforcing or administering this section is to ensure continued protection of the public, workers, and the environment from unnecessary exposure to radiation by ensuring that the department's and the RRC's jurisdictional responsibilities are clear and specific.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Barbara J. Taylor, Radiation Group, Policy/Standards/Quality Assurance Unit, Division of Regulatory Services, Environmental and Consumer Safety Section, Department of State Health Services, Mail Code 1987, P. O. Box 149347, Austin, Texas 78714-9347, (512) 834-6770, extension 2010, or by email to BarbaraJ.Taylor@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Radiation Control website at www.dshs.state.tx.us/radiation. Please contact Barbara J. Taylor at (512) 834-6770, extension 2010, or BarbaraJ.Taylor@dshs.state.tx.us if you have questions.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The new rule is authorized by Health and Safety Code, §401.414, which allows the department and the RRC to adopt a memorandum of understanding defining their respective duties; Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new rule affects Health and Safety Code, Chapters 401 and 1001; and Government Code, Chapter 531.