

Title 25 Health Services  
Part 1. Department of State Health Services  
Chapter 289. Radiation Control  
Subchapter C. Texas Regulations for Control of Radiation  
New §289.101  
Repeal §289.101

### Proposed Preamble

The Executive Commissioner of Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §289.101 and new §289.101, concerning the memorandum of understanding between the department and the Texas Commission on Environmental Quality (TCEQ) regarding radiation control functions.

### BACKGROUND AND PURPOSE

The repeal and new rule are necessary to comply with Senate Bill (SB) 347, 83rd Legislature, Regular Session, 2013. The purpose of the repeal and new rule is to delineate areas of respective jurisdiction and to coordinate the respective responsibilities and duties of the department and the TCEQ in the regulation of sources of radiation in accordance with Health and Safety Code, §401.011 and §401.069, in order to provide a consistent approach and to avoid duplication of radiation control functions.

In addition, this rule proposal satisfies the four-year review of agency rules in Government Code, §2001.039, which requires that each state agency review every four years its rules and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 289.101 has been reviewed and the department has determined that the reasons for adopting new §289.101 continue to exist.

### SECTION-BY-SECTION SUMMARY

The repeal of the existing rule and the new rule establish 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. New §289.101 updates both agency names, makes minor grammatical and typographical corrections, updates technical terminology, corrects and/or updates rule reference citations; and reorganizes rule text. In addition, the new rule omits the language regarding in situ uranium mining as a result of SB 1604, 80th Legislative Session, 2007, that amended Health and Safety Code, §401.011, and transferred the regulatory authority for licensing and inspection of low-level waste processing and uranium recovery and disposal from the department to the TCEQ.

### FISCAL NOTE

John Huss, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five years that the sections are in effect, there will be no fiscal

implications to state or local governments as a result of enforcing and administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Huss also has determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the sections as proposed. This is determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

#### PUBLIC BENEFIT

In addition, Mr. Huss also has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as the result of enforcing or administering these sections is to ensure continued, enhanced protection of the public, workers, and the environment from unnecessary exposure to radiation by ensuring that the department's and the TCEQ'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.

#### TAKING IMPACT ASSESSMENT

The department has determined that the proposal 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, TX 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 ([www.dshs.state.tx.us/radiation](http://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 rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

## STATUTORY AUTHORITY

The repeal and new rule are authorized by SB 347, 83rd Legislature; Health and Safety Code, §401.069, which allows the department and the TCEQ to adopt a memorandum of understanding defining their respective duties; Health and Safety Code, §401.011 which defines generally the jurisdiction of the department and TCEQ; Health and Safety Code, §401.051, which provides the agencies with the 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 review of the rules implements Government Code, §2001.039.

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

Section for Repeal.

§289.101. Memorandum of Understanding Between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions.