

The Texas Natural Resource Conservation Commission (commission) adopts new §7.118, concerning Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions. Section 7.118 is adopted without change to the proposed text as published in the August 21, 1998, issue of the *Texas Register* (23 TexReg 8651).

EXPLANATION OF ADOPTED RULE

The purpose of new rule §7.118 is to reflect the transfer of the licensing authority for the recovery and processing of source material and disposal of by-product material from the commission to the Texas Department of Health (TDH) by Senate Bill (SB) 1857, 75th Legislature, 1997, in an amended Memorandum of Understanding (MOU) and to adopt that MOU by reference.

ECONOMIC ANALYSIS FOR SMALL BUSINESS

The commission has reviewed the adopted rulemaking in light of Texas Government Code, §2006.002, requirements and has determined that there is no economic effect on small businesses because the adopted rulemaking adds no regulatory burden or substantive change, but only reflects the transfer of the licensing authority for the recovery and processing of source material and disposal of by-product material from the commission to the TDH by SB 1857, 75th Legislature, 1997 in an amended understanding between state agencies.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the act, and it does not meet any of the four applicability standards listed in §2001.0225(a).

Although this rule is to protect the environment and reduce the risk to human health from environmental exposure, this is not a major environmental rule because it does not 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 the state or a sector of the state because the rules update the memorandum of understanding (MOU) in the state’s regulations, which in turn provides an overall benefit to the affected economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of the state and affected sectors of the state, as explained below. This overall benefit from updating state’s regulations is derived, for example, from the increased public awareness about the roles and activities of each agency relative to the regulation of radioactive substances, from the clarification provided through cross references, and from the deletion of two obsolete MOU documents.

In addition, this rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency. Nor do these rules involve substantive changes. Rather, the rules implement law that was previously enacted by the Texas Legislature. By creating and providing a revised MOU, by use of the cross references within the technical chapters, and through the deletion of the obsolete

MOUs, consistency and cooperation between the TDH and the commission is enhanced with regard to jurisdiction over radioactive substances. Because the applicable rules and jurisdiction becomes more clear to the regulated community, to the public, and to agency staff, the environment and public health and safety is beneficially affected.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The primary purpose of the rulemaking is to reflect the transfer of the licensing authority for the recovery and processing of source material and disposal of by-product material from the commission to the TDH by SB 1857, 75th Legislature, 1997, in an amended understanding between the state agencies. The rules will substantially advance this specific purpose by adopting the amended MOU by reference in 30 TAC §7.118.

Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they merely pertain to an understanding between state agencies on their jurisdiction and areas of cooperation; the amended understanding places no requirements on the regulated community; and the understanding merely implements requirements previously incorporated into state law by SB 1857.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the adopted rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any

action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11.

Therefore, the adoption is not subject to the Coastal Management Program.

HEARING AND COMMENTERS

A public hearing was not held for this rulemaking. The comment period closed September 21, 1998.

No comments were received.

STATUTORY AUTHORITY

This new section is adopted under Texas Water Code, §5.104, and Texas Health and Safety Code, §361.016 and §401.069, which require the commission to adopt by rule any MOU or a revision to an MOU. The rulemaking is also adopted under the Texas Radiation Control Act, Texas Health and Safety Code §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103 and §27.019, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances and to regulate injection wells.

CHAPTER 7

MEMORANDA OF UNDERSTANDING

§7.118

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

The Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission regarding radiation control functions and mutual cooperation is adopted by reference as in complete text in Texas Department of Health rule 25 TAC §289.101 (relating to Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions). If a copy of this document cannot be obtained from the Internet, a copy can be requested from the Texas Natural Resource Conservation Commission, Chief Clerk's Office, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §305.521, concerning Adoption of Memoranda of Understanding by Reference. Section 305.521 is adopted with changes to the proposed text as published in the August 21, 1998, issue of the *Texas Register* (23 TexReg8653).

EXPLANATION OF ADOPTED RULE

The primary purpose of the amendments is to delete two obsolete memoranda of understanding (MOUs). One concerns municipal sewage sludge; the other concerns non-hazardous wastewater that contains radioactive constituents. These MOUs were adopted by reference in 30 Texas Administrative Code (TAC) §305.521(1) and (2), respectively. The MOU concerning municipal sewage sludge is obsolete. The MOU concerning non-hazardous wastewater that contains radioactive constituents has been superseded by the Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions. (An update of this MOU is concurrently adopted in this issue of the *Texas Register*.) The remaining MOU in §305.521 between the Texas Department of Transportation and the Texas Water Commission (a predecessor to the Texas Natural Resource Conservation Commission) concerns the assessment of water quality impacts resulting from certain transportation projects and is still applicable. Another purpose of these amendments is to change the name of the commission office that will provide a copy of an MOU from the Legal Division to the Office of the Chief Clerk.

One punctuation correction has been made to the proposed version. A closing parenthesis has been added to the parenthetical phrase “(a predecessor to the Texas Natural Resource Conservation Commission).”

ECONOMIC ANALYSIS FOR SMALL BUSINESS

The commission has reviewed the adopted rulemaking in light of Texas Government Code, §2006.002, requirements and has determined that there is no economic effect on small businesses because the adopted rulemaking only deletes two obsolete jurisdictional and cooperative agreements between state agencies. The amended section adds no new requirements.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

Although this rule is to protect the environment and reduce the risk to human health from environmental exposure, this is not a major environmental rule because it does not 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 the state or a sector of the state.

In Chapter 305, two obsolete MOUs are removed from §305.521. Section 336.11(k) of the previous version of the radiation control functions MOU stated that it superseded the radioactive waste water MOU in §305.521(2). However, that superseded MOU was not repealed at the time the previous radiation control functions MOU was adopted. Regulatory reform review of the other MOUs in §305.521 ascertained that the municipal sewage sludge MOU was also obsolete and should be removed. However, the remaining MOU concerning the assessment of water quality impacts resulting from certain transportation projects is still being used and should be retained in the section. This rulemaking benefits the state by removing two obsolete MOUs from commission rules.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rulemaking pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to delete two obsolete MOUs and to state where to obtain a copy of the remaining MOU. The rules will substantially advance this specific purpose by removing two obsolete MOUs (concerning municipal sewage sludge and non-hazardous wastewater that contains radioactive constituents) that were adopted by reference in 30 TAC §305.521(1) and (2), respectively.

Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they merely remove two obsolete MOUs and do not add any new requirements.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the adopted rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any

action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11.

Therefore, the adoption is not subject to the Coastal Management Program.

HEARING AND COMMENTERS

A public hearing was not held for this rulemaking. The comment period closed September 21, 1998.

No comments were received.

STATUTORY AUTHORITY

The amendment is adopted under the Texas Water Code, §5.104, which requires the commission to adopt by rule any MOU related to the regulation of water.

SUBCHAPTER N : MEMORANDUM OF UNDERSTANDING

§305.521

§305.521. Adoption of Memorandum of Understanding by Reference.

The February, 1992 Memorandum of Understanding between the Texas Department of Transportation and the Texas Water Commission (a predecessor to the Texas Natural Resource Conservation Commission), which concerns primarily the assessment of water quality impacts resulting from certain transportation projects, is adopted by reference. A copy of the document is available upon request from the Texas Natural Resource Conservation Commission, Office of the Chief Clerk, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.

The Texas Natural Resource Conservation Commission (commission) adopts new §331.16, concerning Memorandum of Understanding Between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions. Section 331.16 is adopted without change to the proposed text as published in the August 21, 1998, issue of the *Texas Register* (23 TexReg 8654).

EXPLANATION OF ADOPTED RULE

The transfer of the licensing authority for the recovery and processing of source material and disposal of by-product material from the commission to the Texas Department of Health (TDH) by Senate Bill (SB) 1857, 75th Legislature, 1997, required amendment of the uranium control functions MOU to incorporate provisions regarding “in situ” uranium mining that had been previously removed from Chapter 331 (relating to Underground Injection Control). The “in situ” uranium mining provisions have been added to the concurrently adopted Memorandum of Understanding Between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions.

New §331.16 is being adopted to add a cross reference to the radiation control functions MOU in Chapter §7.118. The “in situ” uranium mining content of the radiation control functions MOU is not obvious from its title. Therefore, a reference is needed in the rule chapter containing technical provisions related to injection wells in order to alert the regulated community, the public, and commission staff to these provisions.

ECONOMIC ANALYSIS FOR SMALL BUSINESS

The commission has reviewed the adopted rulemaking in light of Texas Government Code, §2006.002, requirements and has determined that there is no economic effect on small businesses because the new rule section merely references an amended MOU and states where to obtain a copy of it. The new section adds no new requirements.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

Although this rule is to protect the environment and reduce the risk to human health from environmental exposure, this is not a major environmental rule because it does not 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 the state or a sector of the state.

Chapter 331 concerns underground injection wells and “in situ” uranium mining. A new §331.16 is being added to this chapter to cross reference the MOU on radiation control functions. The radiation control functions MOU contains provisions related to “in situ” uranium mining; and this is not obvious from the title. Therefore, a cross reference benefits the regulated community and commission staff by alerting them to the existence of these provisions in the radiation control functions MOU.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rulemaking pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to reference the radiation control functions MOU and say where to obtain a copy of it in the rule chapter where the regulated community and commission staff would look for provisions related to “in situ” uranium mining. The rules will substantially advance this specific purpose by adding a new §331.16 to Chapter 331 that will reference the radiation control functions MOU and say where to obtain a copy of it. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they merely provide a reference to an MOU and say where to obtain a copy of it. The new section applies no additional requirements.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the adopted rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adoption is not subject to the Coastal Management Program.

HEARING AND COMMENTERS

A public hearing was not held for this rulemaking. The comment period closed September 21, 1998. No comments were received.

STATUTORY AUTHORITY

This new section is adopted under Texas Water Code, §5.104, and Texas Health and Safety Code, §361.016 and §401.069, which require the commission to adopt by rule any MOU or a revision to an MOU. The rulemaking is also adopted under the Texas Radiation Control Act, Texas Health and Safety Code §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103 and §27.019, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances and to regulate injection wells.

SUBCHAPTER A : GENERAL PROVISIONS

§331.16

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

The Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions is adopted by reference in §7.118 of this title (related to Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions). However, the full text of the memorandum of understanding can be found only in Texas Department of Health rule 25 TAC §289.101 (relating to Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions). If a copy of this document is required and cannot be obtained from the Internet, a copy can be requested from the Texas Natural Resource Conservation Commission, Chief Clerk's Office, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §336.11, concerning Appendix A. Memorandum of Understanding Between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions. Section 336.11 is adopted without change to the proposed text as published in the August 21, 1998, issue of the *Texas Register* (23 TexReg 8655).

EXPLANATION OF ADOPTED RULE

The old memorandum of understanding (MOU) is deleted from §336.11 and a reference to the amended MOU in §7.118 is added, along with instructions on where to obtain a copy.

ECONOMIC ANALYSIS FOR SMALL BUSINESS

The commission has reviewed the adopted rulemaking in light of Texas Government Code, §2006.002, requirements and has determined that there is no economic effect on small businesses because the adopted section adds no new requirements.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

Although this rule is to protect the environment and reduce the risk to human health from environmental exposure, this is not a major environmental rule because it does not 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 the state or a sector of the state.

In addition, this rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency.

In Chapter 336, amended §336.11 references the updated MOU and directs the reader to Chapter 7.

This amended section does not add any new requirements. It benefits the regulated community and commission staff by alerting them in the specific program rule to the existence of the MOU as adopted by reference in Chapter 7.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rulemaking pursuant to Texas Government Code, §2007.043. The following is a summary of that Assessment. The specific purpose of the rulemaking is to delete a previous MOU from §336.11 and to provide a reference to the amended MOU, along with instructions on where to obtain a copy. The rules will substantially advance this specific purpose by amending §336.11. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because §336.11 merely references an amended MOU and says where to obtain a copy of it. Amended §336.11 adds no new requirements.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the adopted rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adoption is not subject to the Coastal Management Program.

HEARING AND COMMENTERS

A public hearing was not held for this rulemaking. The comment period closed September 21, 1998. No comments were received.

STATUTORY AUTHORITY

This amended section is adopted under the Texas Radiation Control Act, Texas Health and Safety Code, §§401.011, 401.051, and 401.412, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances.

SUBCHAPTER A : GENERAL PROVISIONS

§336.11

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

The Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions is adopted by reference in §7.118 of this title (related to Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions). However, the full text of the memorandum of understanding can be found only in Texas Department of Health rule 25 TAC §289.101 (relating to Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions). If a copy of this document is required and cannot be obtained from the Internet, a copy can be requested from the Texas Natural Resource Conservation Commission, Chief Clerk's Office, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.