

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (Department) files this notice of intent to review the rules in Texas Administrative Code, Title 4, Part 1, Chapter 2, Subchapter A, General Provisions, comprised of §2.1 (Application for a License), §2.3 (Payment of Required License Fees), and §2.4 (Notification of Change of Address).

This review is being conducted in accordance with the requirements of Texas Government Code, §2001.039 (Agency Review of Existing Rules). The Department will consider whether the initial factual, legal, and policy reasons for adopting each rule continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

Written comments pertaining to this rule review may be submitted by mail to Morris Karam, Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to Morris.Karam@TexasAgriculture.gov. The deadline for comments is 30 days after publication of this notice in the *Texas Register*.

TRD-202303266

Susan Maldonado

General Counsel

Texas Department of Agriculture

Filed: September 7, 2023



Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes to review and consider for re Adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 99, Occupational Diseases

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 99, Occupational Diseases, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov.

dinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 99" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202303386

Jessica Miller

Director, Rules Coordination Office

Department of State Health Services

Filed: September 13, 2023



The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes to review and consider for re Adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 221, Meat Safety Assurance

Subchapter A Transporting Dead Animals and Rendering

Subchapter B Meat and Poultry Inspection

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 221, Meat Safety Assurance, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov.

When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 221" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202303370

Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: September 11, 2023



Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (TCEQ) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 70, Enforcement.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years. During this review, TCEQ will assess whether the reasons for initially adopting the rules in Chapter 70 continue to exist.

Comments regarding suggested changes to the rules in Chapter 70 may be submitted but will not be considered for rule amendments as part of this review. Any such comments will be considered in a future rule-making action.

Submittal of Comments

TCEQ invites public comment on this preliminary review of the rules in Chapter 70. Written comments may be submitted to Ms. Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-101-070-CE. Comments must be received by October 23, 2023. For further information, please contact Rebecca Boyett, Project Manager, Enforcement Division at (512) 239-2503.

TRD-202303396
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 13, 2023



The Texas Commission on Environmental Quality (TCEQ) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 210, Reclaimed Water.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years. During this review, TCEQ will assess whether the initial reasons for adopting the rules in Chapter 210 continue to exist.

Comments regarding suggested changes to the rules in Chapter 210 may be submitted but will not be considered for rule amendments as part of this review. Any such comments will be considered in a future rulemaking action.

Submittal of Comments

TCEQ invites public comment on this preliminary review of the rules in Chapter 210. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087,

or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-104-210-OW. Comments must be received by October 23, 2023. For further information, please contact Shannon Gibson, Water Quality Division, at (512) 239-4284.

TRD-202303398
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 13, 2023



The Texas Commission on Environmental Quality (TCEQ) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 285, On-Site Sewage Facilities.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years. During this review, TCEQ will assess whether the reasons for initially adopting the rules in Chapter 285 continue to exist.

Comments regarding suggested changes to the rules in Chapter 285 may be submitted but will not be considered for rule amendments as part of this review. Any such comments will be considered in a future rulemaking action.

Submittal of Comments

TCEQ invites public comment on this preliminary review of the rules in Chapter 285. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-105-285. Comments must be received by October 23, 2023. For further information, please contact Zachary King, Program Support and Environmental Assistance Division, at (512) 239-1931.

TRD-202303399
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 13, 2023



The Texas Commission on Environmental Quality (TCEQ) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 294, Priority Groundwater Management Areas.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for reoption, reoption with amendments, or repeal every four years. During this review, TCEQ will assess whether the reasons for initially adopting the rules in Chapter 294 continue to exist.

Comments regarding suggested changes to the rules in Chapter 294 may be submitted but will not be considered for rule amendments as part of this review. Any such comments will be considered in a future rulemaking action.

Submittal of Comments

TCEQ invites public comment on this preliminary review of the rules in Chapter 294. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-102-294-OW. Comments must be received by October 23, 2023. For further information, please contact Jade Rutledge, Water Availability Division, at (512) 239-4559.

TRD-202303397

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 13, 2023



Adopted Rule Reviews

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 1, Purpose of Rules, General Provisions as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the April 21, 2023, issue of the *Texas Register* (48 TexReg 2141).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 1 are required to implement the powers and duties of TCEQ under the Texas Water Code, the Texas Health and Safety Code, and other laws, to establish the general policies of TCEQ, and to set forth procedures to be followed in agency proceedings.

Public Comment

The public comment period closed on May 22, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 1 continue to exist and re-adopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202303310

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 8, 2023



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code Chapter 21, Water Quality Fees, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the April 21, 2023, issue of the *Texas Register* (48 TexReg 2141).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 21 are required to establish annual fees that are assessed against wastewater permit holders authorized to discharge into or adjacent to water in the state and against each person holding a right to impound, divert, or use state water. The annual fees are necessary to support the following programs and activities conducted by TCEQ:

1. water quality administration, including, but not limited to, inspection of wastewater treatment facilities and enforcement of Texas Water Code (TWC), Chapter 26, the rules and orders of the commission related to wastewater discharges and wastewater treatment facilities, and the provisions of wastewater discharge permits;
2. the Texas Clean Rivers Program, which monitors and assesses water quality conditions that support water quality management decisions necessary to maintain and improve the quality of the state's water resources; and
3. any other water resource management programs reasonably related to the activities of the persons required to pay a fee under TWC, §26.0291.

Public Comment

The public comment period closed on May 22, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 21 continue to exist and re-adopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202303305

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 8, 2023



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 115, Control of Air Pollution from Volatile Organic Compounds, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the April 7, 2023, issue of the *Texas Register* (48 TexReg 1857).

The review assessed whether the initial reasons for adopting the rules continue to exist, and TCEQ has determined that those reasons exist. The rules for control of volatile organic compounds (VOC) emissions in Chapter 115 were specifically developed to meet the federal Clean Air Act (CAA) requirements for attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for ozone set by the United States Environmental Protection Agency (EPA).

States are primarily responsible for ensuring attainment and maintenance of the NAAQS once the EPA has established those standards. Under 42 United States Code, §7410 and related provisions, states must submit revisions to their state implementation plans (SIP) for EPA approval that provide for the attainment and maintenance of the NAAQS through control programs directed to sources of the pollutants involved. VOC are precursor pollutants in the formation of ozone, and the rules in Chapter 115 form a significant component of the Texas SIP to attain and maintain the NAAQS for ozone.

The review resulted in a determination that the following rules are obsolete: Stage II vapor recovery requirements; provisions allowing for

Wise County to be exempt from rules pending litigation that is now complete; and an incorrect reference to federal test procedures.

The Stage II vapor recovery rules in Subchapter C, Division 4 are no longer required. A 2013 rulemaking to address the maintenance until decommissioning and removal of Stage II vapor recovery equipment was approved effective April 16, 2013 (79 FedReg 14611; March 17, 2014). As part of its approval action, the EPA approved related revisions to the Stage II SIP narrative that pertained to the maintenance and removal of Stage II vapor recovery equipment and demonstrated that the absence of Stage II equipment in the affected areas in Texas would not interfere with attainment of the NAAQS, reasonable further progress or any other requirement of the FCAA. The Stage II decommissioning deadline was August 31, 2018. Now that the decommissioning deadline has passed, the division is no longer necessary and could be removed from the TAC and SIP.

It is no longer necessary to include provisions in §§115.129(g), 115.139(e), 115.219(g), 115.229(f), 115.239(e), 115.359(e), 115.419(f), 115.429(f), 115.449(i), 115.459(d), 115.469(d), 115.479(d), and 115.519(e) that would remove Wise County from applicability to the associated rules upon notice in the *Texas Register* that the Wise County nonattainment designation under the 2008 eight-hour ozone NAAQS is no longer legally effective. The litigation concerning Wise County's attainment status is complete, and Wise County remains designated nonattainment for the 2008 eight-hour ozone NAAQS. Wise County is also designated nonattainment for the 2015 eight-hour ozone NAAQS. Removal of these provisions would allow for greater clarity concerning the nonattainment status of Wise County.

The reference in §115.425(a)(2)(D) to performance test procedures in 40 Code of Federal Regulations (CFR) §60.044 is incorrect and should be amended to 40 CFR §60.444.

Public Comment

The public comment period closed on May 8, 2023. Comments were received from the EPA on this review.

The EPA commented that the TCEQ's accepted flare destruction removal efficiency (DRE) assumptions for highly reactive volatile organic compounds (HRVOC), which are based on compliance with 40 CFR §60.18, are outdated and unobtainable on a continuous basis. The EPA recommended that the HRVOC rules in Chapter 115, Subchapter H that rely upon or cite 40 CFR §60.18 for compliance with monitoring requirements be evaluated and revised to ensure that appropriate DREs are applied. The EPA added that the TCEQ should consider whether the initial factual, legal, and policy reasons for adopting each rule in these subchapters continue to exist and to take into consideration current industry and scientific knowledge and the current attainment status of the Houston-Galveston-Brazoria (HGB) area.

The EPA extended its concerns and recommendations regarding the TCEQ's assumed HRVOC DRE to TCEQ flare guidance, including the TCEQ 2022 Emissions Inventory Guidelines, RG-360/22. If the TCEQ continues to apply its current assumed rates, the EPA commented that the TCEQ should provide rigorous technical justification for continued acceptance of the efficiencies.

The EPA also suggested that the TCEQ evaluate the definition for HRVOC in §115.10 to consider whether it should be revised and updated to apply consistently across the eight counties that comprise the HGB ozone nonattainment area. The EPA further recommended that the TCEQ consider enhancing the rules in Chapter 115 due to a severe classification for the HGB 2008 ozone NAAQS nonattainment area. The EPA commented that strengthening compliance requirements may help improve air quality in the nonattainment area. Finally, the EPA

suggested that the TCEQ use EJSscreen and related evaluation tools to take environmental justice concerns into account when undertaking rulemaking actions.

This quadrennial rule review of Chapter 115 is specifically required to assess whether the initial reasons for adopting the rules in Chapter 115 continue to exist. The EPA's comments, including that the TCEQ consider current industry and scientific knowledge and the current attainment status of the HGB area, are outside the scope of this rule review action. These comments may be considered in a future rulemaking.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 115 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039. Changes to the rules identified as part of this review process may be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

TRD-202303306

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 8, 2023



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 297, Water Rights, Substantive, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re adoption, re adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the April 21, 2023, issue of the *Texas Register* (48 TexReg 2141).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. Chapter 297 provides the substantive rules and definitions concerning water rights including requirements for obtaining different types of permits or authorizations, how TCEQ decides whether to grant a permit, definitions of terms used in water rights, consideration of the environment in water rights permitting, and requirements for cancellation of a water right. The rules are necessary to implement the requirements in Chapter 11 of the Texas Water Code.

Public Comment

The public comment period closed on May 22, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 297 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202303307

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 8, 2023



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 329, Drilled or Mined Shafts, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re adoption, re adoption with

amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the April 21, 2023, issue of the *Texas Register* (48 TexReg 2142).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 329 were adopted in accordance with Texas Water Code, §28.030 to enable TCEQ to issue shaft permits where appropriate and to inform affected persons of permissible pre-application activities, permit application procedures, and operating and monitoring standards and requirements. The review identified some rules in Chapter 329 that could be amended to reflect agency name changes and cross-references to changed rules or statutes.

Public Comment

The public comment period closed on May 22, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 329 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039. Changes to the rules identified as part of this review process will be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

TRD-202303308

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 8, 2023



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 342, Regulation of Certain Aggregate Production Operations, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the April 21, 2023, issue of the *Texas Register* (48 TexReg 2142).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 342 are required to implement Texas Water Code, Chapter 28A, Registration and Inspection of Certain Aggregate Production Operations.

Public Comment

The public comment period closed on May 22, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 342 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202303309

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 8, 2023

