

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Adoption of Rules Review & Readoption of Chapter 297

AGENDA REQUESTED: September 6, 2023

DATE OF REQUEST: August 18, 2023

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Gwen Ricco, Agenda Coordinator, (512) 239-2678

CAPTION: Docket No. 2022-1728-MIS. Consideration for the adoption of the rules review and readoption of 30 TAC Chapter 297, Water Rights, Substantive. This review is in accordance with Texas Government Code, Section 2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The proposal was published in the April 21, 2023, issue of the *Texas Register* (48 TexReg 2141). (Jade Rutledge, Harrison Malley) (Non-Rule Project No. 2023-046-297-OW)

Cari-Michel La Caille

Director

Kim Nigg

Division Deputy Director

Gwen Ricco

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** August 18, 2023

Thru: Laurie Gharis, Chief Clerk
Kelly Keel, Interim Executive Director

From: *CML* Cari-Michel La Caille, Director
Office of Water

Docket No.: 2022-1728-MIS

Subject: Commission Approval for Adoption of Rules Review and Readoption of Rules
Chapter 297, Water Rights, Substantive
Rule Review of 30 TAC Chapter 297
Non-Rule Project No. 2023-046-297-OW

What the adopted action would do:

This action will approve the rules review of Chapter 297, and readopt the chapter.

This action constitutes a determination by the Texas Commission on Environmental Quality, after opportunity for public review and comment, that the initial reasons for adopting the rules of this chapter continue to exist.

Applicable law:

The review of the rules is authorized under the requirements of Texas Government Code, §2001.039; and the General Appropriations Act, Article IX, §9-10.13, 76th Texas Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years.

Reason rules are needed:

Executive director's staff conducted a review of the rules in Chapter 297 and determined that the reasons for adopting these rules continue to exist. Chapter 297 provides the substantive rules and definitions concerning water rights including requirements for obtaining different types of permits or authorizations, how the commission 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.

Rules found to be obsolete:

None.

Public comment:

A public hearing was not offered for this review. The comment period for the rules review closed on May 22, 2023. No comments were received.

Affected agency program(s):

The program area responsible for implementing these rules is the Water Availability Division.

Commissioners
Page 2
August 18, 2023

Re: Docket No. 2022-1728-MIS

Agency contacts:

Jade Rutledge, Project Manager, Water Availability Division, (512) 239-4559
Harrison Malley, Staff Attorney, Environmental Law Division, (512) 239-1439
Gwen Ricco, Texas Register/Agenda Coordinator, (512) 239-2678

Attachments:

Texas Register publication of Proposed Rule Review Notice

cc: Chief Clerk, 7 copies

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 Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 1, Purpose of Rules, General Provisions.

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 re-adoption, re-adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 1 continue to exist.

Comments regarding suggested changes to the rules in Chapter 1 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rule-making action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 1. 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 2023-050-001-LS. Comments must be received by May 22, 2023. For further information, please contact Kathy Humphreys, Environmental Law Division, at (512) 239-3417.

TRD-202301358

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 12, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 21, Water Quality Fees.

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 re-adoption, re-adoption with amendments, or repeal every four years. During this review, the com-

mission will assess whether the reasons for initially adopting the rules in Chapter 21 continue to exist.

Comments regarding suggested changes to the rules in Chapter 21 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rule-making action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 21. 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 2023-020-021-OW. Comments must be received by May 22, 2023. For further information, please contact Shannon Gibson, Water Quality Division, at (512) 239-4284.

TRD-202301359

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 12, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code (30 TAC) Chapter 297, Water Rights, Substantive.

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 re-adoption, re-adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in 30 TAC Chapter 297 continue to exist.

Comments regarding suggested changes to the rules in 30 TAC Chapter 297 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in 30 TAC Chapter 297. 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 2023-046-297-OW. Comments must be received by May 22, 2023. For further information, please contact Jade Rutledge, Water Availability Division, at (512) 239-4559.

TRD-202301355

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 12, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 329, Drilled or Mined Shafts.

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 readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 329 continue to exist.

Comments regarding suggested changes to the rules in Chapter 329 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 329. 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 fax4808@tceq.texas.gov. 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 2023-047-329-WS. Comments must be received by May 22, 2023. For further information, please contact Pavan Bairu, Radioactive Materials Division, at (512) 239-6648.

TRD-202301356

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 12, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 342, Regulation of Certain Aggregate Production Operations.

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 readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 342 continue to exist.

Comments regarding suggested changes to the rules in Chapter 342 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 342. 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 2023-048-342-WS. Comments must be received by May 22, 2023. For further information, please contact Rebecca Moore, Project Manager, Occupational Licensing and Registration Division, at (512) 239-2463.

TRD-202301357

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 12, 2023



Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 74, Curriculum Requirements, Subchapter AA, Commissioner's Rules on College Readiness, and Subchapter BB, Commissioner's Rules Concerning High School Graduation, pursuant to Texas Government Code, §2001.039. TEA proposed the review of Chapter 74, Subchapters AA and BB, in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6953).

Relating to the review of Chapter 74, Subchapters AA and BB, TEA finds that the reasons for adopting Subchapters AA and BB, continue to exist and readopts the rules. TEA received no comments related to the review of Subchapters AA and BB. No changes to Subchapter AA are necessary as a result of the review. At a later date, TEA may propose changes to Subchapter BB to address financial aid application graduation requirements and individual graduation committees.

This concludes the review of Chapter 74.

TRD-202301346

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: April 12, 2023



The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 129, Student Attendance, Subchapter AA, Commissioner's Rules; and Subchapter BB, Commissioner's Rules Concerning Truancy, pursuant to Texas Government Code, §2001.039. TEA proposed the review of 19 TAC Chapter 129, Subchapters AA and BB, in the January 27, 2023, issue of the *Texas Register* (48 TexReg 418).

Relating to the review of 19 TAC Chapter 129, Subchapter AA, TEA finds that the reasons for adopting the rules continue to exist and readopts the rules. TEA received comments related to the review of Subchapter AA. Following is a summary of the comments received and the agency responses.

Comment: A school district administrator commented on the success of Independent School District Optional Flexible School Day Program (OFSDP) in the administrator's district and recommended that the ODSFP continue. t.

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 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. The commission 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 the commission 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 the commission 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. The commission did not receive comments on the rules review of this chapter.

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

Texas Commission on Environmental Quality



ORDER ADOPTING RULES REVIEW AND READOPTING RULES

Docket No. 2022-1728-MIS
Non-Rule Project No. 2023-046-297-OW

On September 6, 2023, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 TAC Chapter 297, Water Rights, Substantive, in accordance with the requirements of Texas Government Code, § 2001.039, which requires a state agency to review and consider for re-adoption each of its rules every four years. The proposed Notice of Intention to Review was published in the April 21, 2023, issue of the Texas Register (48 TexReg 2141).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 297 is hereby adopted. The rules and the preamble to the rules approved by the Commission are incorporated by reference in this Order as if set forth at length verbatim in this Order.

IF ANY PORTION OF THIS ORDER is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Jon Niermann, Chairman

Date Signed