

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Adoption of Rules Review & Readoption of Chapter 90

AGENDA REQUESTED: September 27, 2023

DATE OF REQUEST: September 8, 2023

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

CAPTION: Docket No. 2022-1739-MIS. Consideration for the adoption of the rules review and readoption of 30 TAC Chapter 90, Innovative Programs. 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 May 5, 2023, issue of the *Texas Register* (48 TexReg 2394). (Chris Leahy, Aubrey Pawelka) (Non-Rule Project No. 2023-054-090-AD)

Ryan Vise

Director

Division Deputy Director

Gwen Ricco

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** September 8, 2023

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

From: Ryan Vise, Director
External Relations Division

Docket No.: 2022-1739-MIS

Subject: Commission Approval for Adoption of Rules Review and Readoption of Rules
Chapter 90, Innovative Programs
Rules Review of 30 Texas Administrative Code Chapter 90
Non-Rule Project No. 2023-054-090-AD

What the adopted action would do:

This action will approve the rules review of Chapter 90, 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 90 and determined that the reasons for adopting these rules continue to exist. Chapter 90 implements the requirement for the commission to adopt rules in Texas Water Code (TWC), §5.755, relating to incentives for enhanced environmental performance based on a person's compliance history and any voluntary measures undertaken by the person to improve environmental quality.

The chapter implements TWC, §5.758, which requires the commission to adopt rules to specify procedures for obtaining an exemption from a statute or commission rule if the applicant for a Regulatory Flexibility Order proposes to control or abate pollution by use of an alternative method or standard that is as protective or more than the standard prescribed by the statute or commission rule that would otherwise apply.

Finally, Chapter 90 also implements TWC, §5.127, which requires the commission to adopt rules for a comprehensive program that provides regulatory incentives to encourage the use of environmental management systems.

Rules found to be obsolete:

None.

Commissioners
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Public comment:

A public hearing was not offered for this review. The comment period for the rules review closed on June 6, 2023. No comments were received.

Affected agency program(s):

The program area responsible for implementing these rules is the External Relations Division.

Agency contacts:

Chris Leahy, Project Manager, External Relations Division, (512) 239-2427
Aubrey Pawelka, Staff Attorney, Environmental Law Division, (512) 239-0622
Gwen Ricco, Texas Register/Agenda Coordinator, General Law Division, (512) 239-2678

Attachments:

Texas Register publication of Proposed Rule Review Notice

cc: Chief Clerk, 7 copies

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 25 (Prepaid Funeral Contracts), comprised of Subchapter A (§§25.1 - 25.9); and Subchapter B (§§25.10 - 25.14, 25.17 - 25.19, 25.21 - 25.25, 25.31 and 25.41).

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as a proposed rule in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-202301497
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: April 26, 2023



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 33, Consolidated Permit Processing.

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, 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 33 continue to exist.

Comments regarding suggested changes to the rules in Chapter 33 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 33. 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 2023-051-033-A1. Comments must be received by June 6, 2023. For further information, please contact David Munzenmaier, Air Permits Division, at (512) 239-6092.

TRD-202301503

Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 26, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 90, Innovative Programs.

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, 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 90 continue to exist.

Comments regarding suggested changes to the rules in Chapter 90 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 328. 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 2023-054-090-AD. Comments must be received by June 6, 2023. For further information, please contact Chris Leahy, External Relations Division, at (512) 239-2427.

TRD-202301504
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 26, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification.

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, 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 116 continue to exist.

Comments regarding suggested changes to the rules in Chapter 116 may be submitted during this review 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 116. 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

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 90, Innovative Programs, 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. The commission published its Notice of Intent to Review these rules in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2394).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 90 are required because Chapter 90 implements the requirement for the commission to adopt rules in Texas Water Code §5.755, relating to incentives for enhanced environmental performance based on a person's compliance history and any voluntary measures undertaken by the person to improve environmental quality.

The chapter implements Texas Water Code (TWC), §5.758, which requires the commission to adopt rules to specify procedures for obtaining an exemption from a statute or commission rule if the applicant for a Regulatory Flexibility Order proposes to control or abate pollution by use of an alternative method or standard that is as protective or more than the standard prescribed by the statute or commission rule that would otherwise apply.

Finally, Chapter 90 also implements TWC, §5.127, which requires the commission to adopt rules for a comprehensive program that provides regulatory incentives to encourage the use of environmental management systems.

Public Comment

The public comment period closed on June 6, 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 90 continue to exist and readopts 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. 2022-1739-MIS
Non-Rule Project No. 2023-054-090-AD

On September 27, 2023, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 TAC Chapter 90, Innovative Programs 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 May 5, 2023, issue of the *Texas Register* (48 TexReg 2394).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 90 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