

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Adoption of Rules Review & Readoption of Chapter 328

AGENDA REQUESTED: November 29, 2023

DATE OF REQUEST: November 10, 2023

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

CAPTION: Docket No. 2023-0052-MIS. Consideration for the adoption of the rules review and readoption of 30 Texas Administrative Code Chapter 328, Waste Minimization and Recycling. 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 June 16, 2023, issue of the *Texas Register* (48 TexReg 3303). (Calen Roome, Don Redmond) (Non-Rule Project No. 2023-070-328-AD)

Ryan Vise

Director

David Greer

Division Deputy Director

Gwen Ricco

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** November 10, 2023

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

From: Ryan Vise, Director
External Relations Division

Docket No.: 2023-0052-MIS

Subject: Commission Approval for Adoption of Rules Review and Readoption of Rules
Chapter 328, Waste Minimization and Recycling
Rule Review of 30 TAC Chapter 328
Non-Rule Project No. 2023-070-328-AD

What the adopted action would do:

This action will approve the rules review of Chapter 328 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 328 and determined that the reasons for adopting these rules continue to exist. The rules in Chapter 328, Subchapters A - K implement requirements for management of various materials that can be diverted from solid waste streams; to promote economic recovery and reuse of materials; and to support the development of markets for recycled, remanufactured or environmentally sensitive products or services in a sustainable manner that protects the environment, public health and safety as authorized by the Texas Health and Safety Code (THSC). Each subchapter fulfills individual THSC requirements.

Subchapter A implements THSC, §361.119 and §361.1191, which establish rules to ensure that a solid waste processing facility is regulated as a solid waste facility and is not allowed to operate unregulated as a recycling facility. This subchapter also contains rules for the limitations on the storage of recyclable materials and reporting and recordkeeping requirements for facilities regulated under this subchapter.

Subchapter B implements the requirements of THSC, §361.422, which states that the commission shall establish rules and reporting requirements through which progress toward achieving the established source reduction and recycling goals can be measured.

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Subchapter C implements the requirements of THSC, §361.452 and §361.453, relating to lead-acid battery retailers and wholesalers and the collection of lead-acid batteries for recycling. The commission is required to produce, print, and distribute notices of battery recycling. In performing this duty, the commission may also inspect any place, building, or premises governed by THSC, §361.452 for compliance.

Subchapter D implements the requirements of THSC, §371.104 relating to the registration and management of Used Oil Filters. The commission is required to register facilities that transport, store, and process used oil filters.

Subchapter E implements the requirements of THSC, §371.023 that the commission shall develop a grant program for local governments and private entities that encourages the collection, reuse, and recycling of household do-it-yourselfer used oil.

Subchapter F implements the requirements of THSC, §361.112 which establishes procedures and requirements for the safe storage, transportation, utilization, and disposal of used or scrap tires or tire pieces.

Subchapter G implements the requirements of THSC, §361.430, requiring the commission to promulgate rules and regulations that establish a newsprint recycling program for the state and develop forms for and regulations governing the submission of the reports required by THSC, §361.430(g)(1).

Subchapter H implements the requirements of THSC, §369.002, which states that the commission shall maintain, for distribution, a list of the symbols required for certain plastic containers manufactured or distributed within the state and has the ability to approve the use of another nationally or internationally recognized label coding system for special-purpose plastics.

Subchapter I implements the requirements of THSC, §§361.951 - 361.966, which establishes a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of computer equipment that has reached the end of its useful life.

Subchapter J implements the requirements of THSC, §§361.971 - 361.992, which establishes a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of television equipment.

Subchapter K implements the requirements of THSC, §§361.425 - 361.426, which establishes a program for the separation and collection of all recyclable materials generated by a governmental entity's operations, including, at a minimum, aluminum, steel containers, aseptic packaging and polycoated paperboard cartons, high-grade office paper, and corrugated cardboard.

Rules found to be obsolete:
None.

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Public comment:

A public hearing was not offered for this review. The comment period for the rules review closed on July 18, 2023. No comments were received.

Affected agency program(s):

The program area(s) responsible for implementing these rules are the External Relations Division and the Office of Waste.

Agency contacts:

Calen Roome, Project Manager, External Relations Division, (512) 239-4621
Don Redmond, Staff Attorney, Environmental Law Division, (512) 239-0612
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

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 301, Levee Improvement Districts, District Plans of Reclamation, and Levees and Other Improvements.

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 301 continue to exist.

Comments regarding suggested changes to the rules in Chapter 301 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 301. 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 2023-066-301-OW. Comments must be received by July 18, 2023. For further information, please contact Avery Nguyen, Water Supply Division, at (512) 239-0324.

TRD-202302098

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: June 7, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 319, General Regulations Incorporated into Permits.

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 com-

mission will assess whether the reasons for initially adopting the rules in Chapter 319 continue to exist.

Comments regarding suggested changes to the rules in Chapter 319 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 319. 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 2023-069-319-OW. Comments must be received by July 18, 2023. For further information, please contact Shannon Gibson, Water Quality Division, at (512) 239-4284.

TRD-202302099

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: June 7, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code (TAC) Chapter 328, Waste Minimization and Recycling.

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 30 TAC Chapter 328 continue to exist.

Comments regarding suggested changes to the rules in 30 TAC Chapter 328 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 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 2023-070-328-AD. Comments must be received by July 18, 2023. For further information, please contact Calen Roome, External Relations Division, at (512) 239-4621.

TRD-202302100

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: June 7, 2023

Adopted Rule Reviews

Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission (commission) has completed its review of Title 13 Texas Administrative Code, Part 1, Chapter 3, State Publications Depository Program. The commission published its Notice of Intent to Review these rules in the February 24, 2023, issue of the *Texas Register* (48 TexReg 1157). The commission received no comments on the proposed rule review.

As a result of the review, the commission finds that the reasons for adopting the rules in Chapter 3 continue to exist and readopts the rules in accordance with the requirements of Government Code, §2001.039. However, during the review, the commission identified the need to amend multiple sections. Amendments will be proposed in a future issue of the *Texas Register*. This concludes the commission's review of Chapter 3 as required by Government Code, §2001.039.

TRD-202302065

Sarah Swanson

General Counsel

Texas State Library and Archives Commission

Filed: June 5, 2023

State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 232, General Certification Provisions, pursuant to the Texas Government Code (TGC), §2001.039. The SBEC proposed the review of 19 TAC Chapter 232 in the March 17, 2023 issue of the *Texas Register* (48 TexReg 1569).

Relating to the review of 19 TAC Chapter 232, the SBEC finds that the reasons for the adoption continue to exist and readopts the rules. No public comments were received on the proposed review.

This concludes the review of 19 TAC Chapter 232.

TRD-202302094

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Filed: June 6, 2023

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, pursuant to the Texas

Government Code (TGC), §2001.039. The SBEC proposed the review of 19 TAC Chapter 249 in the March 17, 2023 issue of the *Texas Register* (48 TexReg 1569).

Relating to the review of 19 TAC Chapter 249, the SBEC finds that the reasons for the adoption continue to exist and readopts the rules. No public comments were received on the proposed review.

This concludes the review of 19 TAC Chapter 249.

TRD-202302092

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Filed: June 6, 2023

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission or TCEQ) has completed its Rule Review of 30 TAC Chapter 9, Training, 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 January 20, 2023, issue of the *Texas Register* (48 TexReg 229).

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 9 are required because the rules provide the procedures regarding training TCEQ Commissioners, as well as, the general procedures and policies concerning training and education of state administrators and employees.

The rules are necessary to ensure the agency complies with the Texas Water Code, Chapter 5, Required Training Program for Commission Members; and the Texas Government Code, Chapter 656, State Employees Training Act. In addition, Texas Government Code, §656.048, requires adopting rules related to the eligibility of the commission's administrators and employees for training and education, the obligations assumed by the administrators and employees receiving the training or education, and the approval process for tuition reimbursement.

Public Comment

The public comment period closed on February 21, 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 9 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202302038

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: June 2, 2023

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 15, Fleet Vehicle Management, 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

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 328, Waste Minimization and Recycling, 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 June 30, 2023, issue of the *Texas Register* (48 TexReg 3303).

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 328 are required because they implement requirements for management of various materials that can be diverted from solid waste streams; to promote economic recovery and reuse of materials; and to support the development of markets for recycled, remanufactured or environmentally sensitive products or services in a sustainable manner that protects the environment, public health and safety as authorized by the Texas Health and Safety Code (THSC). Each subchapter fulfills individual THSC requirements.

Subchapter A implements THSC, §361.119 and §361.1191, which establish rules to ensure that a solid waste processing facility is regulated as a solid waste facility and is not allowed to operate unregulated as a recycling facility. This subchapter also

contains rules for the limitations on the storage of recyclable materials and reporting and recordkeeping requirements for facilities regulated under this subchapter.

Subchapter B implements the requirements of THSC, §361.422, which states that TCEQ shall establish rules and reporting requirements through which progress toward achieving the established source reduction and recycling goals can be measured.

Subchapter C implements the requirements of THSC, §§361.452 - 361.453, relating to lead-acid battery retailers and wholesalers and the collection of lead-acid batteries for recycling. TCEQ is required to produce, print, and distribute notices of battery recycling. In performing this duty, TCEQ may also inspect any place, building, or premises governed by THSC, §361.452 for compliance.

Subchapter D implements the requirements of THSC, §371.104 relating to the registration and management of Used Oil Filters. TCEQ is required to register facilities that transport, store, and process used oil filters.

Subchapter E implements the requirements of THSC, §371.023 that TCEQ shall develop a grant program for local governments and private entities that encourages the collection, reuse, and recycling of household do-it-yourselfer used oil.

Subchapter F implements the requirements of THSC, §361.112 which establishes procedures and requirements for the safe storage, transportation, utilization, and disposal of used or scrap tires or tire pieces.

Subchapter G implements the requirements of THSC, §361.430, requiring TCEQ to promulgate rules and regulations that establish a newsprint recycling program for the state and develop forms for and regulations governing the submission of the reports required by §361.430(g).

Subchapter H implements the requirements of THSC, §369.002, which states that TCEQ shall maintain, for distribution, a list of the symbols required for certain plastic containers manufactured or distributed within the state and has the ability to approve the use of another nationally or internationally recognized label coding system for special-purpose plastics.

Subchapter I implements the requirements of THSC, §§361.951 - 361.966, which establishes a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of computer equipment that has reached the end of its useful life.

Subchapter J implements the requirements of THSC, §§361.971 - 361.992, which establishes a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of television equipment.

Subchapter K implements the requirements of THSC, §§361.425 - 361.426, which establishes a program for the separation and collection of all recyclable materials generated by a governmental entity's operations, including, at a minimum, aluminum, steel containers, aseptic packaging and polycoated paperboard cartons, high-grade office paper, and corrugated cardboard.

Public Comment

The public comment period closed on July 18, 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 328 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. 2023-0052-MIS
Non-Rule Project No. 2023-070-328-AD

On November 29, 2023, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 TAC Chapter 328, Waste Minimization and Recycling in accordance with the requirements of Texas Government Code, § 2001.039, which requires a state agency to review and consider for readoption each of its rules every four years. The proposed Notice of Intention to Review was published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3303).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 328 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