

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Adoption of Rules Review & Readoption of Chapter 290

AGENDA REQUESTED: December 13, 2023

DATE OF REQUEST: November 22, 2023

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

CAPTION: Docket No. 2023-0034-MIS. Consideration for the adoption of the rules review and readoption of 30 TAC Chapter 290, Public Drinking Water. 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 30, 2023, issue of the *Texas Register* (48 TexReg 3523). (Avery Nguyen, Ruth Takeda) (Non-Rule Project No. 2023-073-290-OW)

Cari-Michel La Caille

Director

Michele Risko

Division Deputy Director

Gwen Ricco

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** November 22, 2023

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

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

Docket No.: 2023-0053-MIS

Subject: Commission Approval for Adoption of Rules Review and Readoption of Rules
Chapter 290, Public Drinking Water
Rules Review of 30 TAC Chapter 290
Non-Rule Project No. 2023-073-290-OW

What the adopted action would do:

This action will approve the rules review of Chapter 290 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:

The rules in Subchapters D - F and H are necessary to protect the public health and welfare by assuring the microbiological, chemical, and radiological quality of public water supplies; assuring an adequate quantity of drinking water; assuring that new systems are financially stable and technically sound; establishing fees for these services; and assuring minimally acceptable operating practices for public water systems. Specifically, Subchapters D - F and H set forth the requirements for water treatment plant design, operation, and maintenance; establish fees for services provided by the commission to public water systems; identify standards regarding drinking water quality and monitoring and reporting requirements; and provide the minimum requirements for the content of annual consumer confidence reports. These rules implement the provisions in the Texas Health and Safety Code (THSC), Chapter 341, Subchapter C, including, but not limited to, THSC, §341.031, which allows the commission to adopt and enforce rules to implement the federal Safe Drinking Water Act; THSC, §341.0315, which provides the commission with the authority to ensure that public drinking water supply systems supply safe drinking water; THSC, §341.034, which requires the commission to adopt rules establishing classes of certificates, duration of certificates, and fees; THSC, §341.035, which requires the executive director to approve a business plan and the plans and specifications for a system before a system may begin construction of a public water supply system; and THSC, §341.041, which allows the commission to charge fees to a person who owns, operates, or maintains a public drinking water supply system.

Re: Docket No. 2023-0053-MIS

The rules in Subchapter G are needed to establish procedures for listing plumbing fixtures meeting the water saving performance standards; to establish labeling requirements for clothes washing and dishwashing machines and lawn sprinklers; and to provide for fees and penalties. These rules implement the provisions in THSC, Chapter 372, including, but not limited to, THSC, §372.002, which requires the commission to maintain a current list of plumbing fixtures that are certified to the commission by the manufacturer or importer to meet the saving performance standards established by THSC, §372.002(b), and §372.003, which requires the commission to adopt rules for the marking or labeling of plumbing fixtures.

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 August 1, 2023. No comments were received.

Affected agency program(s):

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

Agency contacts:

Avery Nguyen, Project Manager, Water Supply Division, (512) 239-0324
Ruth Takeda, Staff Attorney, Environmental Law Division, (512) 239-6635
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

Office of the Attorney General

Title 1, Part 3

The Office of the Attorney General of Texas (OAG) files this notice of its intent to review Chapter 52, concerning Administration, in accordance with Texas Government Code §2001.039. An assessment will be made by the OAG as to whether the reasons for adopting or readopting the chapter continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the OAG. Comments on the review may be submitted electronically to the OAG's Human Resources Division by email to HR-Help@oag.texas.gov or by mail to Human Resources Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548. Comments must be received within 30 days after the publication of this rule review notice to be considered.

TRD-202302199
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: June 19, 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 Texas Administrative Code Chapter 114, Control of Air Pollution from Motor Vehicles.

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 114 continue to exist.

Comments regarding suggested changes to the rules in Chapter 114 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 114. 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 2023-072-114-AI. Comments must be received by August 1, 2023. For further information, please contact Sarah Thomas, Air Quality Division, at (512) 239-4939.

TRD-202302210
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 20, 2023

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 290, Public Drinking 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 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 290 continue to exist.

Comments regarding suggested changes to the rules in Chapter 290 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 290. 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 2023-073-290-OW. Comments must be received by August 1, 2023. For further information, please contact Avery Nguyen, Water Supply Division, at (512) 239-0324.

TRD-202302209
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 20, 2023

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 290, Public Drinking Water, 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 June 30, 2023, issue of the *Texas Register* (48 TexReg 3523).

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 290 are required because Subchapters D - F and H protect the public health and welfare by assuring the microbiological, chemical, and radiological quality of public water supplies; assuring an adequate quantity of drinking water; assuring that new systems are financially stable and technically sound; establishing fees for these services; and assuring minimally acceptable operating practices for public water systems.

Specifically, Subchapters D - F and H set forth the requirements for water treatment plant design, operation, and maintenance; establish fees for services provided by the commission to public water systems; identify standards regarding drinking water quality and monitoring and reporting requirements; and provide the minimum requirements for the content of annual consumer confidence reports. These rules implement the provisions in the Texas Health and Safety Code (THSC), Chapter 341, Subchapter C, including, but not limited to, THSC, §341.031, which allows the commission to adopt and enforce rules to implement the federal Safe Drinking Water

Act; THSC, §341.0315, which provides the commission with the authority to ensure that public drinking water supply systems supply safe drinking water; THSC, §341.034, which requires the commission to adopt rules establishing classes of certificates, duration of certificates, and fees; THSC, §341.035, which requires the executive director to approve a business plan and the plans and specifications for a system before a system may begin construction of a public water supply system; and THSC, §341.041, which allows the commission to charge fees to a person who owns, operates, or maintains a public drinking water supply system.

The rules in Subchapter G establish procedures for listing plumbing fixtures meeting the water saving performance standards; to establish labeling requirements for clothes washing and dishwashing machines and lawn sprinklers; and to provide for fees and penalties. These rules implement the provisions in THSC, Chapter 372, including, but not limited to, THSC, §372.002, which requires the commission to maintain a current list of plumbing fixtures that are certified to the commission by the manufacturer or importer to meet the saving performance standards established by THSC, §372.002(b), and §372.003, which requires the commission to adopt rules for the marking or labeling of plumbing fixtures.

Public Comment

The public comment period closed on August 1, 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 290 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. 2023-0053-MIS
Non-Rule Project No. 2023-073-290-OW

On December 13, 2023, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 Texas Administrative Code (TAC) Chapter 290, Public Drinking Water 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 June 30, 2023, issue of the *Texas Register* (48 TexReg 3523).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 290 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