

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Adoption of Rules Review & Readoption of Chapter 60

AGENDA REQUESTED: March 6, 2024

DATE OF REQUEST: February 16, 2024

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

CAPTION: Docket No. 2023-0081-MIS. Consideration for the adoption of the rules review and readoption of 30 Texas Administrative Code (TAC) Chapter 60, Compliance History. 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 September 8, 2023, issue of the *Texas Register* 48 TexReg 5074. (Rebecca Boyett, Misty James) (Non-Rule Project No. 2023-096-060-CE)



Director



Division Deputy Director

Gwen Ricco

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** February 16, 2024

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

From: Craig Pritzlaff, Director
Office of Compliance and Enforcement

Docket No.: 2023-0081-MIS

Subject: Commission Approval for Adoption of Rules Review and Readoption of Rules
Chapter 60, Compliance History
Rules Review of 30 Texas Administrative Code Chapter 60
Non-Rule Project No. 2023-096-060-CE

What the adopted action would do:

This action will approve the rules review of Chapter 60, 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 60 and determined that the reasons for adopting these rules continue to exist. Chapter 60 requires the Texas Commission on Environmental Quality (agency) to rate the compliance history of every owner or operator of a facility that is regulated under any of these state environmental laws: water-quality laws (TWC, Chapter 26); laws for the installation and operation of injection wells (TWC, Chapter 27); Subsurface Area Drip Dispersal Systems (TWC, Chapter 32); the Texas Solid Waste Disposal Act (Texas Health and Safety Code (THSC), Chapter 361); the Texas Clean Air Act (THSC, Chapter 382); Removal of Convenience Switches (THSC, Chapter 375); and the Texas Radiation Control Act (THSC, Chapter 401).

TWC §5.753, concerning the Standard for Evaluating Compliance History, authorizes the agency to “develop standards for evaluating and using compliance history that ensure consistency” among regulated entities. Additionally, TWC §5.754, concerning Classification and Use of Compliance History, authorizes the agency to establish a set of standards for the classification of a person’s compliance history, establish methods of assessing the compliance history of regulated entities, and requires the use of compliance history when making decisions regarding the issuance, renewal, amendment, modification, denial, suspension or revocation of a permit, enforcement matters, the use of announced investigations, and participation in innovative programs. Chapter 60 establishes the rules the agency uses to meet these statutory mandates, including the components, formulas, and classifications that are used to measure regulated entities’ performance.

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 October 9, 2023. No comments were received.

Affected agency program(s):

Chapter 60 is utilized by all program areas within the agency when making decisions on permitting and enforcement matters, announced investigations, and participation in innovative programs. The program areas responsible for implementing these rules are the Air, Waste, and Water Permitting Programs, as well as the Office of Compliance and Enforcement.

Agency contacts:

Rebecca Boyett, Project Manager, Enforcement Division, (512) 239-2503

Misty James, Staff Attorney, Litigation Division, (512) 239-0631

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

by October 9, 2023. For further information, please contact Kathy Humphreys, Environmental Law Division, at (512) 239-3417.

TRD-202303189

Charmaine K. Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: August 29, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 60, Compliance History.

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 60 continue to exist.

Comments regarding suggested changes to the rules in Chapter 60 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 60. 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 2023-096-060-CE. Comments must be received by October 9, 2023. For further information, please contact Brandy Wright, Enforcement Division, at (512) 239-2530.

TRD-202303180

Gitanjali Yadav

Deputy Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 29, 2023



The Texas Commission on Environmental Quality files this Notice of Intention to Review 30 Texas Administrative Code Chapter 213, Edwards Aquifer.

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, TCEQ will assess whether the reasons for initially adopting the rules in Chapter 213 continue to exist.

Comments regarding suggested changes to the rules in Chapter 213 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 TCEQ.

Submittal of Comments

TCEQ invites public comment on this review of the rules in Chapter 213. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Qual-

ity, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: 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 2023-098-213-CE. Comments must be received by October 9, 2023. For further information, please contact Zachary King, Program Support and Environmental Assistance Division, at (512) 239-1931.

TRD-202303182

Charmaine K. Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: August 29, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 230, Groundwater Availability Certifications for Platting.

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, TCEQ will assess whether the reasons for initially adopting the rules in Chapter 230 continue to exist.

Comments regarding suggested changes to the rules in Chapter 230 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 TCEQ.

Submittal of Comments

TCEQ invites public comment on this review of the rules in Chapter 230. 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: 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 2023-099-230-OW. Comments must be received by October 9, 2023. For further information, please contact Jade Rutledge, Water Availability Division, at (512) 239-4559.

TRD-202303186

Charmaine K. Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: August 29, 2023



The Texas Commission on Environmental Quality files this Notice of Intention to Review 30 Texas Administrative Code Chapter 307, Texas Surface Water Quality Standards.

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, TCEQ will assess whether the reasons for initially adopting the rules in Chapter 307 continue to exist.

Comments regarding suggested changes to the rules in Chapter 307 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 TCEQ.

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 60, Compliance History, as required by Texas Government Code (TGC), §2001.039. TGC, §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 September 8, 2023, issue of the *Texas Register* (48 TexReg 5074).

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 60 are required because Chapter 60 requires TCEQ to rate the compliance history of every owner or operator of a facility that is regulated under any of these state environmental laws: water-quality laws (Texas Water Code (TWC), Chapter 26); laws for the installation and operation of injection wells (TWC, Chapter 27); Subsurface Area Drip Dispersal Systems (TWC, Chapter 32); the Texas Solid Waste Disposal Act (Texas Health and Safety Code (THSC), Chapter 361); the Texas Clean Air Act (THSC, Chapter 382); Removal of Convenience Switches (THSC, Chapter 375); and the Texas Radiation Control Act (THSC, Chapter 401).

TWC §5.753, concerning the Standard for Evaluating Compliance History, authorizes the agency to “develop standards for evaluating and using compliance history that ensure consistency” among regulated entities. Additionally, TWC §5.754, concerning Classification and Use of Compliance History, authorizes the agency to establish a set of standards for the classification of a person’s compliance history, establish methods of assessing the compliance history of regulated entities, and requires the use of

compliance history when making decisions regarding the issuance, renewal, amendment, modification, denial, suspension or revocation of a permit, enforcement matters, the use of announced investigations, and participation in innovative programs. Chapter 60 establishes the rules the agency uses to meet these statutory mandates, including the components, formulas, and classifications that are used to measure regulated entities' performance.

Public Comment

The public comment period closed on October 9, 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 60 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

Texas Commission on Environmental Quality



ORDER ADOPTING RULES REVIEW AND READOPTING RULES

Docket No. 2023-0081-MIS
Non-Rule Project No. 2023-096-060-CE

On March 6, 2024, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 Texas Administrative Code (TAC) Chapter 60, Compliance History 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 September 8, 2023, issue of the *Texas Register* (48 TexReg 5074).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 60 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