

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Adoption of Rules Review & Readoption of Chapter 321

AGENDA REQUESTED: August 28, 2024

DATE OF REQUEST: August 9, 2024

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

CAPTION: Docket No. 2023-0088-MIS. Consideration for the adoption of the rules review and readoption of 30 TAC Chapter 321, Control of Certain Activities by Rule. 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 31, 2024 issue of the *Texas Register* (Vol. 49 TexReg page 3940). (Shannon Gibson, Bradford Eckhart) (Non-Rule Project No. 2023-089-321-OW)

Cari-Michel La Caille

Director

Robert Sadlier

Division Deputy Director

Gwen Ricco

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** August 9, 2024

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

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

Docket No.: 2023-0088-MIS

Subject: Commission Approval for Adoption of Rules Review and Readoption of Rules
Chapter 321, Control of Certain Activities by Rule
Rules Review of 30 TAC Chapter 321
Non-Rule Project No. 2023-089-321-OW

What the adopted action would do:

This action will approve the rules review of Chapter 321, and readopt the chapter.

This action constitutes a determination by the Texas Commission on Environmental Quality (TCEQ), 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:

Chapter 321 provides state authorization for numerous discharges that are more efficiently authorized by rule than by individual permits. The chapter is organized into the following 7 subchapters:

- Subchapter A, Boat Sewage Disposal, contains: authority; definitions; discharge prohibited; requirements for marine sanitation devices; design specifications and operation requirements for boat pump-out stations; applicability of certifications; obtaining certifications; certification fees; evidence of certifications; delegation to local governmental entities; and criminal penalties.
- Subchapter B, Concentrated Animal Feeding Operations (CAFOs), contains: manure, litter, and wastewater discharge and air emission limitations; definitions; applicability and required authorizations; permit applications; fees; Texas Pollutant Discharge Elimination System general requirements for CAFOs; effluent limitations for CAFO production areas; control facility design requirements applicable to CAFOs; operational requirements applicable to CAFOs; CAFO land application requirements; special requirements for discharges to a playa; requirements applicable to the major sole-source impairment zone; air standard permit for Animal Feeding Operations (AFOs); CAFO notification requirements; CAFO training requirements; CAFO pollution prevention plan, site evaluation,

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recordkeeping, and reporting; and requirements for AFOs not defined or designated as CAFOs.

- Subchapter C, Meat Processing, contains: definitions; application of subchapter; permit alternative; protection of surface water; protection of groundwater; disposal of solid wastes; and prohibition of unauthorized discharge.
- Subchapter D, Sand and Gravel Washing, contains: application of subchapter; exception to application of subchapter; treatment and retention facilities; diversion of runoff; available capacity; and prohibition of unauthorized discharge.
- Subchapter I, Additional Characteristics and Conditions of General Permits and for Controlling Certain Activities by Rule, contains additional characteristics and conditions for general permits and control of certain activities by rule.
- Subchapter N, Handling of Wastes from Commercial Facilities Engaged in Livestock Trailer Cleaning, contains: statement of no discharge policy; definitions; purpose and applicability; certificate of registration and public notice; requirements for containment of wastes and pond(s); general requirements; restrictions; enforcement and revocation; and annual waste treatment fee.
- Subchapter P, Reclaimed Water Production Facilities, contains: purpose and applicability; definitions; general requirements; restrictions; application requirements; application review; authorization; design requirements; buffer zone requirements; public notice requirements; additional reclaimed water production facility requirements; enforcement; and fees.

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 July 1, 2024. No comments were received.

Affected agency program(s):

The program area(s) responsible for implementing these rules are organized under the Water Quality Division within the Office of Water and the Office of Compliance and Enforcement.

Agency contacts:

Shannon Gibson, Project Manager, Water Quality Division, (512) 239-4284

Bradford Eckhart, Staff Attorney, Environmental Law Division, (512) 239-1283

Gwen Ricco, Texas Register/Agenda Coordinator, General Law Division, (512) 239-2678

Attachments:

Texas Register publication of Proposed Rule Review Notice

Commissioners

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August 9, 2024

Re: Docket No. 2023-0088-MIS

cc: Chief Clerk, 7 copies

Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 21, 2024

The Texas Commission on Environmental Quality (TCEQ) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 321, Control of Certain Activities by Rule.

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 321 continue to exist.

Comments regarding suggested changes to the rules in Chapter 321 may be submitted but will not be considered for rule amendments as part of this review. Any such comments will be considered in a future rulemaking action.

Submittal of Comments

TCEQ invites public comment on this preliminary review of the rules in Chapter 321. 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 2023-089-321-OW. Comments must be received by July 1, 2024. For further information, please contact Shannon Gibson, Program Project Manager, Office of Water, at (512) 239-4284.

TRD-202402276
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 21, 2024

Texas Veterans Commission

Title 40, Part 15

Pursuant to Texas Government Code §2001.039, the Texas Veterans Commission (Commission) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 40, Part 15, Texas Administrative Code: Chapter 461, Veterans Education.

This review is conducted in accordance with the requirements of Texas Government Code

§2001.039, which requires state agencies, every four years, to assess whether the initial reason for adopting a rule continue to exist. After reviewing this rule, the agency will readopt, readopt with amendments, or repeal this rule.

The Commission will accept comments for 30 days following the publication of this notice in the *Texas Register*. Comments pertaining to this rule review may be submitted in writing to Kathleen Cordova, General Counsel, Texas Veterans Commission, P.O. Box 12277, Austin, Texas 78711-2277, or faxed to (512) 475-2395, or emailed to rulemaking@tvc.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 461" in the subject line.

The text of the rule being reviewed will not be published, but may be found in Title 40, Part 15, of the Texas Administrative Code on the Secretary of State's website or through the Commission's website at www.tvc.texas.gov.

TRD-202402239
Kathleen Cordova
General Counsel
Texas Veterans Commission
Filed: May 20, 2024

Adopted Rule Reviews

Texas Health and Human Services Commission

Title 1, Part 15

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 1, Part 15, of the Texas Administrative Code (TAC):

Chapter 377, Children's Advocacy Programs

Notice of the review of this chapter was published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1973). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 377 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 377. Any amendments, if applicable, to Chapter 377 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of TAC Chapter 377 as required by the Texas Government Code §2001.039.

TRD-202402209
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: May 17, 2024

Texas Board of Nursing

Title 22, Part 11

In accordance with Government Code §2001.039, the Texas Board of Nursing (Board) filed a notice of intention to review and consider for re-adoption, re-adoption with amendments, or repeal, the following chapter contained in Title 22, Part 11, of the Texas Administrative Code, pursuant to the 2022 rule review plan adopted by the Board at its April 2022 meeting, in the March 29, 2024, issue of the *Texas Register* (49 TexReg 2096).

Chapter 220. Nurse Licensure Compact §§220.1

Chapter 223. Fees §§223.1, §223.2

Chapter 224. Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments §§224.1 - 224.11

Chapter 226. Patient Safety Pilot Programs on Nurse Reporting Systems §§226.1 - 226.7

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 321, Control of Certain Activities by Rule, 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 May 31, 2024, issue of the *Texas Register* (49 TexReg 3940).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules under Chapter 321 provide Texas authorization for numerous discharges that are more efficiently authorized by rule than by individual permits.

Subchapter A, Boat Sewage Disposal, contains: authority; definitions; discharge prohibited; the requirements for marine sanitation devices; design specifications and operation requirements for boat pump-out stations; applicability of certifications; obtaining certifications; certification fees; evidence of certifications; delegation to local governmental entities; and criminal penalties.

Subchapter B, Concentrated Animal Feeding Operations (CAFOs), contains: manure, litter, and wastewater discharge and air emissions limitations; definitions; applicability and required authorizations; permit applications; fees; Texas Pollutant Discharge Elimination System general requirements for CAFOs; effluent limitations for CAFO

production areas; control facility design requirements applicable to CAFOs; operational requirements applicable to CAFOs; CAFO land application requirements; special requirements for discharges to a playa; requirements applicable to the major sole-source impairment zone; air standard permit for Animal Feeding Operations (AFOs); CAFO notification requirements; CAFO training requirements; CAFO pollution prevention plan, site evaluation, recordkeeping, and reporting; and requirements for AFOs not defined or designated as CAFOs.

Subchapter C, Meat Processing, contains: definitions; application of subchapter; permit alternative; protection of surface water; protection of groundwater; disposal of solid wastes; and prohibition of unauthorized discharge.

Subchapter D, Sand and Gravel Washing, contains: application of subchapter; exception to application of subchapter; treatment and retention facilities; diversion of runoff; available capacity; and prohibition of unauthorized discharge.

Subchapter I, Additional Characteristics and Conditions of General Permits and for Controlling Certain Activities by Rule, contains additional characteristics and conditions for general permits and control of certain activities by rule.

Subchapter N, Handling of Wastes from Commercial Facilities Engaged in Livestock Trailer Cleaning, contains: statement of no discharge policy; definitions; purpose and applicability; certificate of registration and public notice; requirements for

containment of wastes and pond(s); general requirements; restrictions; enforcement and revocation; and annual waste treatment fees.

Subchapter P, Reclaimed Water Production Facilities, contains: purpose and applicability; definitions; general requirements; restrictions; application requirements; application review; authorization; design requirements; buffer zone requirements; public notice requirements; additional reclaimed water production facility requirements; enforcement; and fees.

Public Comment

The public comment period closed on July 1, 2024. 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 321 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. 2023-0088-MIS
Non-Rule Project No. 2023-089-321-OW

On August 28, 2024, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 Texas Administrative Code (TAC) Chapter 321, Control of Certain Activities by Rule, 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 May 31, 2024 issue of the *Texas Register* (49 TexReg 3940).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 321 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