

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Adoption of Rules Review & Readoption of Chapter 288

AGENDA REQUESTED: February 7, 2024

DATE OF REQUEST: January 19, 2024

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

CAPTION: Docket No. 2023-0089-MIS. Consideration for the adoption of the rules review and readoption of 30 TAC Chapter 288, Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements. 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 August 11, 2023, issue of the *Texas Register* (48 TexReg 4402). (Jade Rutledge, Aubrey Pawelka; Non-Rule Project No. 2023-088-288-OW)

Cari-Michel La Caille

Director

Kim Nijm

Division Deputy Director

Gwen Ricco

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** January 19, 2024

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

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

Docket No.: 2023-0089-MIS

Subject: Commission Approval for Adoption of Rules Review and Readoption of Rules
Chapter 288, Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements
Rule Review of 30 TAC Chapter 288
Non-Rule Project No. 2023-088-288-OW

What the adopted action would do:

This action will approve the rules review of Chapter 288 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:

This proposed rule review is in accordance with Texas Government Code, §2001.039, and with 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:

30 TAC Chapter 288 provides requirements for water conservation plans and drought contingency plans, as well as submittal requirements. The rules are needed to implement several different sections in the Texas Water Code (TWC):

- TWC, §11.1271. Requires an applicant for a new or amended water right and certain existing water right holders to develop and submit a water conservation plan. This section identifies specific requirements to be included in water conservation plans and requires the commission to adopt rules establishing criteria and deadlines for submission of water conservation plans.
- TWC, §11.1272. Requires certain regulated entities to develop drought contingency plans consistent with the appropriate approved regional water plan to be implemented during periods of water shortages and drought. This section identifies specific requirements to be included in drought contingency plans and requires the commission to adopt rules requiring wholesale and retail public water suppliers and irrigation districts to develop drought contingency plans.
- TWC, §13.146. Requires the TCEQ to require a retail public utility that provides potable water service to 3,300 or more connections to submit to the Texas Water Development Board (TWDB) a water conservation plan based on specific targets

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and goals developed by the retail public utility, designate a person as the water conservation coordinator responsible for implementing the water conservation plan, and identify the water conservation coordinator to the TWDB.

- TWC, §§16.402 - 16.404. Requires entities required to submit water conservation plans to the TCEQ to submit copies of those plans and an annual report on an entity's progress in implementing the plan to the TWDB and includes authorization for the TCEQ to enforce water conservation plan requirements. These sections also require the TCEQ and TWDB to develop a uniform, consistent methodology and guidance for calculating water use and conservation to be used by a municipality or water utility in developing water conservation plans and for reporting municipal water use data and requires the TCEQ and TWDB to adopt rules and standards as necessary to implement.

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 September 12, 2023. No comments were received.

Affected agency programs:

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

Agency contacts:

Jade Rutledge, Project Manager, Water Availability Division, (512) 239-4559
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

information, please contact Jarita Sepulvado, Waste Permits Division, at (512) 239-4413.

TRD-202302724

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: August 2, 2023

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code (TAC) Chapter 288, Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements.

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 re adoption, 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 30 TAC Chapter 288 continue to exist.

Comments regarding suggested changes to the rules in 30 TAC Chapter 288 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 30 TAC Chapter 288. 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 2023-088-288-OW. Comments must be received by September 12, 2023. For further information, please contact Jade Rutledge, Water Availability Division, at (512) 239-4559.

TRD-202302725

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: August 2, 2023

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 331, Underground Injection Control.

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 re adoption, 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 331 continue to exist.

Comments regarding suggested changes to the rules in Chapter 331 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 331. 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 2023-086-331-WS. Comments must be received by September 12, 2023. For further information, please contact Jan Bates, Radioactive Materials Division, at (512) 239-6627.

TRD-202302723

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: August 2, 2023

Texas Water Development Board

Title 31, Part 10

The Texas Water Development Board (TWDB) files this notice of intent to review the rules in 31 Texas Administrative Code, Title 31, Part 10, Chapter 354.

This review is being conducted in accordance with the requirements of the Texas Government Code §2001.039, which requires state agencies to review and consider for re adoption each of their rules every four years.

The TWDB will consider whether the initial factual, legal, and policy reasons for adopting each rule in these chapters and subchapters continue to exist and whether these rules should be repealed, re adopted, or re adopted with amendments.

Written comments on this notice may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the Texas Register. Include "Chapter 354" in the subject line of any comments submitted.

TRD-202302697

Ashley Harden

General Counsel

Texas Water Development Board

Filed: July 28, 2023

Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 61, School Districts, Subchapter AA, Commissioner's Rules on School Finance; Subchapter BB, Commissioner's Rules on Reporting Requirements; Subchapter CC, Commissioner's Rules Concerning School Facilities; Subchapter DD, Commissioner's Rules Concerning Missing Child Prevention and Identification Programs; Subchapter EE, Commissioner's Rules on Prevention, Awareness, and Reporting of Child Abuse or Neglect, Including Trafficking of a Child; Subchapter FF, Commissioner's Rules Concerning Veterans and Military Dependents; Subchapter GG, Commissioner's Rules Concerning Counseling Public School Students; Subchapter HH, Commissioner's Rules Concerning Classroom Supply Reimbursement Program; Subchapter JJ, Commis-

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 288, Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements, 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 August 11, 2023, issue of the *Texas Register* (48 TexReg 4402).

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 288 are required because Chapter 288 provides requirements for water conservation plans and drought contingency plans, as well as submittal requirements. The rules are needed to implement several different sections in the Texas Water Code (TWC):

- TWC, §11.1271. Requires an applicant for a new or amended water right and certain existing water right holders to develop and submit a water conservation plan. This section identifies specific requirements to be included in water conservation plans and requires the commission to adopt rules establishing criteria and deadlines for submission of water conservation plans.
- TWC, §11.1272. Requires certain regulated entities to develop drought contingency plans consistent with the appropriate approved regional water plan to be implemented during periods of water shortages and drought. This section identifies specific requirements to be included in drought contingency plans and requires the

commission to adopt rules requiring wholesale and retail public water suppliers and irrigation districts to develop drought contingency plans.

- TWC, §13.146. Requires the TCEQ to require a retail public utility that provides potable water service to 3,300 or more connections to submit to the Texas Water Development Board (TWDB) a water conservation plan based on specific targets and goals developed by the retail public utility, designate a person as the water conservation coordinator responsible for implementing the water conservation plan, and identify the water conservation coordinator to the TWDB.

- TWC, §§16.402 - 16.404. Requires entities required to submit water conservation plans to the TCEQ to submit copies of those plans and an annual report on an entity's progress in implementing the plan to the TWDB and includes authorization for the TCEQ to enforce water conservation plan requirements. These sections also require the TCEQ and TWDB to develop a uniform, consistent methodology and guidance for calculating water use and conservation to be used by a municipality or water utility in developing water conservation plans and for reporting municipal water use data and requires the TCEQ and TWDB to adopt rules and standards as necessary to implement.

Public Comment

The public comment period closed on September 12, 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 288 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. 2023-0089-MIS
Non-Rule Project No. 2023-088-288-OW

On February 7, 2024, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 Texas Administrative Code (TAC) Chapter 288, Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements, 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 August 11, 2023, issue of the *Texas Register* (48 TexReg 4402).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 288 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