

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Adoption of Rules Review & Readoption of Chapter 281

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. 2023-0090-MIS. Consideration for the adoption of the rules review and readoption of 30 TAC Chapter 281, Applications Processing. 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 4401). (Jarita Sepulvado, Kathy Humphreys) (Non-Rule Project No. 2023-087-281-OW)



Director



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, Executive Director

From: Beth Seaton, Director 
Office of Waste

Docket No.: 2023-0090-MIS

Subject: Commission Approval for Adoption of Rules Review and Readoption of Rules
Chapter 281, Applications Processing
Rules Review of 30 TAC Chapter 281
Non-Rule Project No. 2023-087-281-OW

What the adopted action would do:

This action will approve the rules review of Chapter 281, 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:

Executive director's staff conducted a review of the rules in Chapter 281 and determined that the reasons for adopting these rules continue to exist. The rules in Chapter 281, Subchapter A, contain the general policy for the processing of applications for permits, licenses, and other types of approvals. The rules are needed to implement provisions of state law, including:

- Texas Health and Safety Code (THSC), Chapter 361 regarding new, amended, and renewed industrial solid waste and municipal solid waste permits; the prioritization process for commercial hazardous waste management facility permit applications; applications for new, amended, or renewed radioactive material licenses, including but not limited to those described at THSC, §§401.107, 401.108, 401.110, 401.112 - 401.114, and 401.116; and some provisions of THSC, Chapter 401 at Subchapter F, Special Provisions Concerning Low-Level Radioactive Waste Disposal, and Subchapter G, Special Provisions Concerning By-Product Material;
- Texas Local Government Code, §375.022 and §375.025, regarding the creation of municipal management districts, and Texas Local Government Code, §395.080, regarding impact fees;
- Texas Natural Resources Code, §§33.205, 33.2051, 33.2053, and 33.208(a), regarding consistency with the Texas Coastal Management Program as it applies to TCEQ; and

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- Texas Water Code (TWC), §§11.124 - 11.129, 11.132, and 12.011, regarding water rights; TWC, §16.092, regarding local sponsor designation; TWC, §16.234, regarding levees for reclamation projects; TWC, §§26.027, 26.0271, 26.0272, 26.028, and 26.0281, regarding water quality; TWC, §§27.012 - 27.014 and §27.051(e), regarding underground injection control; TWC, §§32.052, 32.053, 32.055, and 32.101, regarding subsurface area drip dispersal systems; TWC, §§36.304 - 36.306, 49.071, 49.105, 49.153(c), 49.181, 49.231, 49.321 - 49.324, 49.351, and 49.456, regarding other water district applications and petitions such as dissolution of Groundwater Conservation Districts, name changes, appointment of directors, bonds, standby fees, dissolution of districts other than Groundwater Conservation Districts, fire plans, and bankruptcy; TWC, §§36.013, 36.015, 51.027, 51.333, 54.014, 54.030 - 54.033, 55.040, 58.027, 58.030, 59.003, 65.014, and 66.014, regarding creations, conversions, and addition of powers of Groundwater Conservation Districts (TWC, Chapter 36), Water Control and Improvement Districts (TWC, Chapter 51), Municipal Utility Districts (TWC, Chapter 54), Water Improvement Districts (TWC, Chapter 55), Irrigation Districts (TWC, Chapter 58), Regional Districts (TWC, Chapter 59), Special Utility Districts (TWC, Chapter 65), and Stormwater Control Districts (Chapter 66).

The rules in Chapter 281, Subchapter B, identify agency actions which are subject to review for consistency with the goals and policies of the Coastal Management Program under the Coastal Coordination Act, Texas Natural Resources Code, Chapter 33, Subchapter F, and the rules of the General Land Office in 31 TAC §29.20 - 29.26.

Changes necessary to conform with the transfer of the Texas Coastal Management Program from the abolished Coastal Coordination Council to the General Land Office were identified and will be addressed in a separate rulemaking action.

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 program(s):

The program areas responsible for implementing these rules are the Water Availability Division, Water Quality Division, Water Supply Division, Waste Permits Division, Critical Infrastructure Division, and Radioactive Materials Division.

Agency contacts:

Jarita Sepulvado, Project Manager, Waste Permits Division, (512) 239-4413
Kathy Humphreys, Staff Attorney, Environmental Law Division, (512) 239-3417
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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January 19, 2024

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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

Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) will review and consider whether to readopt, readopt with amendments, or repeal the rules in Title 1, Part 12, Texas Administrative Code, Chapter 254, *Regional Poison Control Centers*. This review is conducted in accordance with Government Code §2001.039.

CSEC has conducted a preliminary review of Chapter 254 and determined that the reasons for initially adopting the chapter continue to exist. CSEC does not at this time anticipate proposing amendments to its Chapter 254 rules other than to amend rule 254.2, *Poison Control Coordinating Committee*, to extend the date on which the committee is abolished to September 1, 2029. (See Proposed Rules section of this issue of the *Texas Register*.)

All comments or questions regarding this review may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Patrick Tyler, General Counsel, at The Commission on State Emergency Communications, 1801 Congress Avenue, Suite 11.100, Austin, Texas 78701; by facsimile to (512) 305-6937; or by email to csecinfo@csec.texas.gov. Please include "Chapter 254 Comments" in the subject line of the comments or questions. Any proposed changes to Chapter 254 will be published for comment in the "Proposed Rules" section of a subsequent issue of the *Texas Register*.

TRD-202302675
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: July 27, 2023

Texas Historical Commission

Title 13, Part 2

The Texas Historical Commission files this notice of intent to review and consider for re-adoption, revision or repeal, Chapter 12, related to the Texas Historic Courthouse Preservation Program.

Pursuant to Texas Government Code §2001.039, the Texas Historical Commission will assess whether the reason(s) for initially adopting these rules continue to exist. The rules will be reviewed to determine whether they are obsolete, reflect current legal and policy considerations, reflect current general provisions in the governance of the Commission, and/or whether they are in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedures Act).

The Commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*. Comments as to whether the reasons for initially adopting these rules continue to exist may be submitted to Elizabeth Brummett, Director, Architecture Division, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276, or by email to elizabeth.brummett@thc.texas.gov. In a separate action, amendments to the rules are concurrently proposed. Any additional changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-202302698
Mark Wolfe
Executive Director
Texas Historical Commission
Filed: July 28, 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 281, Applications Processing.

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 281 continue to exist.

Comments regarding suggested changes to the rules in Chapter 281 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 281. 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 2023-087-281-OW. Comments must be received by September 12, 2023. For further

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 Rules Review of 30 TAC Chapter 281, Applications Processing, 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 4401).

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 281, Subchapter A, contain the general policy for the processing of applications for permits, licenses, and other types of approvals. The rules are needed to implement provisions of state law, including:

Texas Health and Safety Code (THSC), Chapter 361 regarding new, amended, and renewed industrial solid waste and municipal solid waste permits; the prioritization process for commercial hazardous waste management facility permit applications; applications for new, amended, or renewed radioactive material licenses, including but not limited to those described at THSC, §§401.107, 401.108, 401.110, 401.112 - 401.114, and 401.116; and some provisions of THSC, Chapter 401 at Subchapter F, Special Provisions Concerning Low-Level Radioactive Waste Disposal, and Subchapter G, Special Provisions Concerning By-Product Material; Texas Local Government Code, §375.022 and §375.025, regarding the creation of municipal management districts, and Texas Local Government Code, §395.080, regarding impact fees; Texas Natural

Resources Code, §§33.205, 33.2051, 33.2053, and 33.208(a), regarding consistency with the Texas Coastal Management Program as it applies to TCEQ; and Texas Water Code (TWC), §§11.124 - 11.129, 11.132, and 12.011, regarding water rights; TWC, §16.092, regarding local sponsor designation; TWC, §16.234, regarding levees for reclamation projects; TWC, §§26.027, 26.0271, 26.0272, 26.028, and 26.0281, regarding water quality; TWC, §§27.012 - 27.014 and §27.051(e), regarding underground injection control; TWC, §§32.052, 32.053, 32.055, and 32.101, regarding subsurface area drip dispersal systems; TWC, §§36.304 - 36.306, 49.071, 49.105, 49.153(c), 49.181, 49.231, 49.321 - 49.324, 49.351, and 49.456, regarding other water district applications and petitions such as dissolution of Groundwater Conservation Districts, name changes, appointment of directors, bonds, standby fees, dissolution of districts other than Groundwater Conservation Districts, fire plans, and bankruptcy; TWC, §§36.013, 36.015, 51.027, 51.333, 54.014, 54.030 - 54.033, 55.040, 58.027, 58.030, 59.003, 65.014, and 66.014, regarding creations, conversions, and addition of powers of Groundwater Conservation Districts (TWC, Chapter 36), Water Control and Improvement Districts (TWC, Chapter 51), Municipal Utility Districts (TWC, Chapter 54), Water Improvement Districts (TWC, Chapter 55), Irrigation Districts (TWC, Chapter 58), Regional Districts (TWC, Chapter 59), Special Utility Districts (TWC, Chapter 65), and Stormwater Control Districts (Chapter 66).

The rules in Chapter 281, Subchapter B, identify agency actions which are subject to review for consistency with the goals and policies of the Coastal Management Program

under the Coastal Coordination Act, Texas Natural Resources Code, Chapter 33, Subchapter F, and the rules of the General Land Office in 31 TAC §29.20 - 29.26.

The review resulted in a determination that changes to Chapter 281 are necessary to conform with the transfer of the Texas Coastal Management Program from the abolished Coastal Coordination Council to the General Land Office. Rules concerning the Coastal Management Program in 31 TAC Chapters 501, 503, 504, 505, and 506 were transferred to 31 TAC Chapters 26, 27, 28, 29, and 30 (47 TexReg 7301).

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 281 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039. Changes to the rules identified as part of this review process may be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

Texas Commission on Environmental Quality



ORDER ADOPTING RULES REVIEW AND READOPTING RULES

Docket No. 2023-0090-MIS
Non-Rule Project No. 2023-087-281-OW

On February 7, 2024, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 Texas Administrative Code (TAC) Chapter 281, Applications Processing 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 4401).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 281 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