

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

Finance Commission of Texas

Title 7, Part 1

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 6 (Banking Development Districts), comprised of §§6.1 - 6.6.

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-202302394
Catherine Reyer
General Counsel
Finance Commission of Texas
Filed: June 30, 2023



Texas Department of Banking

Title 7, Part 2

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 15 (Corporate Activities), comprised of Subchapter A (§§15.1 - 15.7 and §§15.9 - 15.12); Subchapter B (§15.23 and §15.24); Subchapter C (§§15.41 - 15.44); Subchapter E (§15.81); Subchapter F (§§15.101 - 15.111 and §§15.113 - 15.117); and Subchapter G (§15.121 and §15.122)

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist,

will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-202302395
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: June 30, 2023



On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 17 (Trust Company Regulation), comprised of Subchapter A (§§17.2 - 17.5) and Subchapter B (§§17.21 - 17.23)

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-202302396
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: June 30, 2023



On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for re adoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 19 (Trust Company Loans and Investments), comprised of Subchapter B (§19.22); and Subchapter C (§19.51)

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-202302397
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: June 30, 2023



On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking files this notice of intention to review and consider for re adoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, in its entirety:

Chapter 21 (Trust Company Corporate Activities), comprised of Subchapter A (§§21.1 - 21.7 and §§21.9 - 21.12); Subchapter B (§21.23 and §21.24); Subchapter C (§21.31 and §21.32); Subchapter D (§§21.41 - §21.44); Subchapter E (§21.51); Subchapter F (§§21.61 - 21.64; §§21.67 - 21.70 and §§21.72 - 21.76); and Subchapter G (§21.91 and §21.92)

The review is conducted pursuant to Government Code, §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Catherine Reyer, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705, or e-mailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-202302398
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: June 30, 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 TAC Chapter 220, Regional Assessments of Water Quality.

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 220 continue to exist.

Comments regarding suggested changes to the rules in Chapter 220 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 220. 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 2023-078-220-OW. Comments must be received by August 14, 2023. For further information, please contact Sarah Whitley, Water Quality Planning Division, at (512) 239-5831.

TRD-202302425
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: July 5, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 323, Waste Disposal Approvals.

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 323 continue to exist.

Comments regarding suggested changes to the rules in Chapter 323 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 323. 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 2023-079-323-OW. Comments must be received by August 14, 2023. For further information, please contact Shannon Gibson, Water Quality Division, at (512) 239-4284.

TRD-202302426

Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: July 5, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 333, Brownfields Initiatives.

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, 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 333 continue to exist.

Comments regarding suggested changes to the rules in Chapter 333 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 333. 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 2023-080-333-WS. Comments must be received by August 14, 2023. For further information, please contact Anna R. Brulloths, Remediation Division, at (512) 239-5052.

TRD-202302427
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: July 5, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 351, Regionalization.

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 351 continue to exist.

Comments regarding suggested changes to the rules in Chapter 351 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 351. 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 2023-076-351-OW. Comments must be received by August 14, 2023. For further information, please contact Shannon Gibson, Water Quality Division, at (512) 239-4284.

TRD-202302424
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: July 5, 2023



Adopted Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (Department) has completed its review of Texas Administrative Code, Title 4, Part 1, Chapter 4, Prescribed Burning Board Enforcement Program, pursuant to Texas Government Code, Section 2001.039 (Agency Review of Existing Rules). The Department considered whether the initial factual, legal, and policy reasons for adoption of the rules in this chapter continue to exist. Notice of the rule review was published in the August 19, 2022, issue of the *Texas Register* (47 TexReg 5005) under the Review of Agency Rules section. No public comments were received as a result of the proposed rule review notice.

The Department finds that the reasons for initially adopting the rules in this chapter no longer exist and proposes the repeal of these rules. The proposed repeals can be found in the Proposed Rules section of this issue.

TRD-202302382
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Filed: June 29, 2023



Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation (DWC) completed its review of 28 Texas Administrative Code Chapters 41 - 43, 45, 47, 49, 51, 53, 55, 56, 59, 61, 63 - 65, 67 and 69. DWC conducted the review under Texas Government Code §2001.039.

Notice of the review was published in the March 31, 2023, issue of the *Texas Register* (48 TexReg 1737). There were no requests for a public hearing.

DWC received one comment by the May 1, 2023, deadline. No comments suggested repealing a rule in its entirety. Commenters for re-adoption and for re-adoption with changes were: the Office of Injured Employee Counsel. Commenters against re-adoption were: none.

Comment on Chapters 41 - 43, 45, 47, 49, 51, 53, 55, 56, 59, 61, 63 - 65, 67 and 69. The commenter stated that the reasons for initially adopting the rules continue to exist, and that it would be to the detriment of the injured employees of Texas if DWC repeals the old law rules. Agency response to comment on Chapters 41 - 43, 45, 47, 49, 51, 53, 55, 56, 59, 61, 63 - 65, 67 and 69. DWC appreciates the comment.

As a result of the review, and in accordance with Texas Government Code §2001.039, DWC finds that the reasons for initially adopting the

rules continue to exist and readopts all sections in 28 Texas Administrative Code:

- Chapter 41 (Practice and Procedure);
- Chapter 42 (Medical Benefits);
- Chapter 43 (Insurance Coverage);
- Chapter 45 (Employer's Report of Injury or Disease);
- Chapter 47 (Employee Notice of Injury or Death and Claim for Benefits);
- Chapter 49 (Procedures for Formal Hearings by the Board);
- Chapter 51 (Award of the Board);
- Chapter 53 (Carrier's Report of Initiation and Suspension of Compensation Payments);
- Chapter 55 (Lump Sum Payments);
- Chapter 56 (Structured Compromise Settlement Agreements);
- Chapter 59 (Notices of Intention to Appeal);
- Chapter 61 (Prehearing Conferences);
- Chapter 63 (Promptness of First Payment);
- Chapter 64 (Representing Claimants Before the Board);
- Chapter 65 (Unethical or Fraudulent Claims Practices);
- Chapter 67 (Allegations of Fraud); and
- Chapter 69 (Medical Examination Orders).

DWC may consider any suggested repeals or amendments identified during this rule review in future rulemaking under Texas Government Code Chapter 2001 (Administrative Procedure).

This concludes the review of 28 Texas Administrative Code Chapters 41 - 43, 45, 47, 49, 51, 53, 55, 56, 59, 61, 63 - 65, 67 and 69.

TRD-202302401

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: June 30, 2023



Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 106, Permits by Rule, 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 February 10, 2023, issue of the *Texas Register* (48 TexReg 719).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons still exist. The rules in Chapter 106 contain numerous permits by rule (PBRs) which provide a simplified and streamlined method for authorizing air emissions in specific circumstances, as an alternative to resource-intensive case-by-case air permits. Under Texas Health and Safety Code (THSC), §382.051(b)(4) and §382.05196, the Texas Legislature provided the Texas Commission on Environmental Quality (TCEQ) with the authority to create PBRs as a means of authoriz-

ing emissions from facilities that will not significantly contribute air contaminants to the atmosphere. PBRs, as codified in Chapter 106, make up a core component of TCEQ's air permitting strategy. The use of PBRs to authorize insignificant emission sources that pose minimal risk to human health or the environment allow TCEQ to allocate finite permitting resources toward the review of more complex or significant sources of air pollution.

Chapter 106 PBRs are used extensively by a wide range of facility types and industries, including, but not limited to, domestic and retail facilities and activities, coatings operations, metalworking and general industrial facilities, stationary engines and turbines, oil and gas production, chemical manufacturing, and petroleum refining. TCEQ typically processes several thousand PBR registrations or notifications each year. Many additional facilities are authorized by PBRs that do not require registration or notification. If these PBR claims had to be processed as full case-by-case air permits, as would typically be the case if Chapter 106 was eliminated, it would result in a dramatically increased burden on the regulated community and on the TCEQ.

Public Comment

The public comment period closed on March 14, 2023. Comments were received on this review from the City of Houston Health Department (CHHD); the Environmental Integrity Project (EIP) on behalf of Citizens for Clean Air and Clean Water of Freeport and Brazoria County, Citizens Alliance for Fairness and Progress, Hillcrest Residents Association, Air Alliance Houston, Texas Rio Grande Legal Aid, Sierra Club, the Environmental Integrity Project, Earthjustice, and Public Citizen; and the United States Environmental Protection Agency Region 6 (EPA).

Comment

CHHD expressed concern that the use of TCEQ's PBRs contributes to environmental injustice in Houston. CHHD stated that PBRs do not require facilities to monitor, report or notify the public. CHHD also stated that large facilities in high pollution areas where environmental justice challenged communities live may be using PBRs to add emission sources instead of opening up major source permits. CHHD stated that oversight and the appropriate use of PBRs needs to be re-defined. CHHD stated the following additional concerns:

A. National Air Toxics Assessment (NATA) census tract results indicated that for the census tract locations with the greatest change in number of PBRs over time, the cancer risk significantly increases with increasing PBRs.

B. NATA cancer risk is statistically higher in census tracts with greater than median number of PBRs compared to tracts with lower number of PBRs (p-value <0.10) for the 2018 NATA year.

C. All census tracts within three miles of a PBR have at least one environmental justice indicator ranking in the top 10 percentile of the nation.

Comment

EIP submitted numerous comments on the review of Chapter 106, expressing a variety of concerns and alleged deficiencies with the Chapter 106 rules and the TCEQ's PBR program. EIP commented that the Chapter 106 rules allow significant emission increases, provide insufficient opportunity for public participation, and cause disproportionate harm to communities of color and economically underprivileged populations. EIP's comments identified the following primary concerns, and included additional details and supporting comments under each primary concern:

A. Texas's Chapter 106 regulations do not comply with federal standards for public participation;

B. PBRs claimed by sources in TCEQ Region 12 (Houston) authorize significant increases of air pollution and interfere with permitting programs designed to improve air quality in the region;

C. The TCEQ's Chapter 106 regulations interfere with major source preconstruction permitting requirements and regulations established to maintain National Ambient Air Quality Standards (NAAQS) attainment in Texas attainment areas; and

D. Flaws in the TCEQ's Chapter 106 PBR program rules disproportionately harm communities of color and low-income communities.

EIP also stated that Chapter 106 should not be readopted unless the following revisions were made:

A. Restrict use of the program to true minor sources and prohibit use of the program to authorize changes with multiple, distinct processes;

B. Require PBRs to authorize only well-defined and relatively simple projects, such as gas stations or dry cleaners, that don't have the potential to contribute significantly to local air pollution concentrations, and that will emit pollutants with similar characteristics and warrant similar permit terms;

C. Require each PBR to contain specific and technically accurate limits that restrict the potential to emit and specific compliance requirements;

D. Establish cumulative emission limits for projects authorized by PBR below the applicable netting threshold for major sources and impose additional requirements to protect the public from cumulative risks in areas of concentrated operations;

E. Establish specific criteria the TCEQ must consider when conducting investigations required by THSC, §§382.05196(a) and 382.057(a) and require such investigations to be conducted whenever a new PBR is announced, when an existing PBR is amended, and as part of the TCEQ's quadrennial review of the PBR program regulations;

F. Establish regulations specifically defining the terms and conditions for a PBR in nonattainment areas necessary to facilitate prompt compliance with the NAAQS and to prevent circumvention of other, more stringent, preconstruction permitting and pollution control requirements (THSC, §382.057(b));

G. Prohibit the use of multiple PBRs to authorize project types not covered by a single PBR;

H. Ensure consistency with public participation requirements at 40 CFR §51.161; and

I. Revoke PBRs that are inconsistent with the above recommendations, including but not limited to §§106.261, 106.262, 106.263, and 106.264.

Comment

EPA provided a variety of comments and concerns about the use, protectiveness, and enforceability of PBRs. A summary list of EPA's comments is provided below:

A. EPA questioned whether sufficient safeguards are in place to prevent a PBR project in nonattainment areas from circumventing non-attainment new source review (NNSR).

B. TCEQ should reevaluate the §106.4 limits based on new or revised NAAQS promulgated in 2010, 2013, and 2020 and limit total emissions from a source to a reasonable de minimis level.

C. TCEQ should consider the cumulative impacts from PBRs, especially for the oil and gas handling and production PBR, which tends to be used in high concentrations in some counties.

D. EPA stated that cumulative impacts from the use of PBRs at a site have raised concerns that efforts to improve air quality might be af-

fectured. TCEQ should review the number of PBRs claimed by individual sites and co-located sites.

E. EPA asked if TCEQ conducts any review of each account to determine what impacts may accrue if multiple PBRs are being claimed or registered.

F. EPA asked if there was a review to determine if projects are interrelated and if those projects' impacts should be aggregated and possibly permitted through a case-by-case NSR permit or a major NSR permit.

G. EPA asked if TCEQ reviews the number and frequency of "off permit" changes that are made to Title V permits and evaluates if these are being made appropriately.

H. EPA stated that a review of Title V permits for major sources indicates there is little or no recordkeeping prescribed in some PBRs, and this indicates that the provisions of §106.4(a)(2)-(3) relating to major source permits may not always be practically enforceable.

H. EPA stated that TCEQ should review any netting performed when a source is registering a PBR at a site with sitewide emissions exceeding the major source and/or netting threshold. This is especially relevant in non-attainment areas where the netting trigger for federal NSR is 5 tons per year (TPY).

I. EPA asked if sources were reviewing the increases and decreases in emissions in the contemporaneous period when registering or claiming a PBR.

J. EPA stated a concern that that existing major sources in ozone non-attainment areas may be able to claim or register a PBR for emissions exceeding 5 TPY of volatile organic compounds or nitrogen oxides (NOx) without performing contemporaneous netting to determine if the project causes a significant net emissions increase.

K. EPA stated that they have found instances where sites without a Chapter 116 permit may exceed the site-wide emission limitation of §106.4(a)(4) and have concerns that it may happen more frequently than known. EPA asked how TCEQ verifies that site-wide emissions for all PBRs do not exceed the limits of §106.4(a)(4). EPA asked how TCEQ can verify compliance with this requirement for any site when not all PBRs have to be registered with the TCEQ.

L. EPA asked if a site with a "claimed" PBR with only the generic emission limit of 30 TAC §106.4(a)(1) is precluded from obtaining any other PBR authorization. EPA also asked how TCEQ could prevent such a source from claiming an additional PBR since it is unclear if they are required to notify TCEQ of any PBRs that are merely "claimed" through the use of the §106.4 checklist.

M. EPA asked what mechanisms, beyond the non-mandatory §106.4 checklists, are in place to ensure that site-wide emissions from claimed and registered PBRs never exceed the emission limits of §106.4(a)(4) when the source does not have a Chapter 116 permit. EPA asked if any additional safeguards are in place to ensure that sitewide emissions do not exceed major source thresholds when in an Ozone or particulate matter (PM) non-attainment county.

N. EPA stated that when TCEQ proposes new or revised PBRs, TCEQ should provide an estimate of the number of the proposed PBRs that are currently authorized (or could be authorized), with the anticipated locations or areas where these authorizations occur to inform the public of the possible pollutants and health effects. EPA stated that without knowledge of the number of facilities using the PBR in specific areas, TCEQ will not be able to determine the cumulative impact of the PBRs especially when §106.4(a)(1) has such large emission thresholds.

O. EPA stated that PBRs should be a clearly defined permit for a specific category of sources with definitive emission limits and conditions

and should also be for only small sources that have less than significant emission increases.

P. EPA provided a table of certain PBRs which EPA stated were defined, specific categories of sources. EPA stated that due to new standards for PM_{2.5}, NOx, sulfur dioxide, and lead (Pb), these PBRs must be reevaluated for their protectiveness of the current NAAQS. As an example, EPA noted concern for §106.227, Soldering, Brazing, and Welding, and stated that TCEQ should determine if this limit of Pb is acceptable and where there could be violations of the NAAQS should there be other sources of Pb emissions. EPA also stated that PBRs with particulate emissions should be evaluated for potential NAAQS implications.

Q. EPA stated concerns that a large majority of TCEQ's PBRs do not require registration, and a large subset of those do not have any recordkeeping requirements. EPA stated that a PBR cannot be practically enforceable without the inclusion of any recordkeeping requirements.

R. EPA stated that many PBRs do not specify the type of monitoring, recordkeeping, and compliance testing to be performed to ensure compliance with the PBR. EPA stated that TCEQ should have specific and definitive monitoring requirements and should specify methods for emission estimates that are replicable.

S. EPA stated that they appreciate that TCEQ is requiring Title V permit renewal and significant revision applications to include a PBR Supplemental Table to identify the monitoring, recordkeeping, and reporting for each emission unit covered by a claimed or registered PBR. EPA stated that the quality of information in these tables varies widely, and stated that it's EPA's understanding that TCEQ is not verifying the adequacy of the information provided. EPA stated that if PBRs were up-

dated with adequate monitoring, recordkeeping, and reporting it would alleviate some of the problems identified in EPA Title V petition orders and objection letters issued for multiple permits.

Response to all comments

The commission recognizes that CHHD, EIP, and EPA have expressed concern about a number of aspects of the Chapter 106 rules implementing PBRs. As stated in the February 10, 2023, *Texas Register* notice of this rules review, the commission is not making any changes to the Chapter 106 rules as part of this review action. The PBR authorization mechanism implemented by Chapter 106 is an essential component of the agency's air permitting program, and the commission finds that the reasons that the Chapter 106 rules were initially adopted continue to exist. The commission is readopting Chapter 106 without change. The commission will consider these comments as ongoing stakeholder input for possible future policy or rulemaking action.

As a result of the review, the commission finds that the reasons for adopting the rules in 30 TAC Chapter 106 continue to exist and reopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202302391

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: June 29, 2023

