

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Adoption of Rules Review & Readoption of Chapter 40

AGENDA REQUESTED: November 6, 2024

DATE OF REQUEST: October 18, 2024

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

CAPTION: Docket No. 2022-1738-MIS. Consideration for the adoption of the rules review and readoption of 30 TAC Chapter 40, Alternative Dispute Resolution Procedure. 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* (49 TexReg 3938). (Kyle Lucas, Brad Eckhart) (Non-Rule Project No. 2023-049-040-AD)

Mary Smith

General Counsel

Gwen Ricco

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** October 18, 2024

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

From: Mary Smith, General Counsel
Office of General Counsel

Docket No.: 2022-1738-MIS

Subject: Commission Approval for Adoption of Rules Review and Readoption of Rules
Chapter 40, Alternative Dispute Resolution Procedure
Rule Review of 30 TAC Chapter 40
Non-Rule Project No. 2023-049-040-AD

What the adopted action would do:

This action will approve the rules review of Chapter 40, 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 40 and determined that the reasons for adopting these rules continue to exist. The rules in Chapter 40 implement Texas Government Code, Chapter 2009, Alternative Dispute Resolution (ADR) for Use by Governmental Bodies ("Governmental Dispute Resolution Act," enacted 1997). Texas Government Code, §2009.051 authorizes each governmental body to develop and use ADR (primarily mediation) procedures, and further provides that if an agency that is subject to Texas Government Code, Chapter 2001, adopts an ADR procedure, it may do so by rule. TCEQ is subject to Texas Government Code, Chapter 2001, also known as the Administrative Procedure Act. Texas Government Code, §2009.002 provides that disputes before governmental bodies are to be resolved as fairly and *expeditiously* as possible and that each governmental body support this policy by developing and using ADR procedures in appropriate aspects of the governmental body's operations and programs. Texas Government Code, Chapter 2009 not only authorizes each agency to adopt its own ADR procedures but encourages agencies to do so. The commission's policy is to provide ADR/mediation opportunities to those persons and entities who interact with the TCEQ in the agency's daily operations. Most of the ADR/mediation matters involve permit applications subject to an opportunity for a contested case hearing under Texas Government Code, Chapter 2001 and the rules of the commission. The readoption of the rules in Chapter 40 support this policy by administering and providing procedural framework for the ADR program at the agency, which continues to offer the public and

Commissioners
Page 2
October 18, 2024

Re: Docket No. 2022-1738-MIS

regulated community an efficient, less costly and time-consuming alternative to the contested case process.

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 areas responsible for implementing these rules are the Office of General Counsel, the Office of Public Interest Counsel, and the Environmental Law Division.

Agency contacts:

Kyle Lucas, Project Manager, Office of General Counsel, (512) 239-0687
Brad 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

cc: Chief Clerk, 7 copies

The State Board for Educator Certification (SBEC) proposes the review of 19 Texas Administrative Code (TAC) Chapter 234, Military Service Members, Military Spouses, and Military Veterans, pursuant to Texas Government Code (TGC), §2001.039.

As required by TGC, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 234 continue to exist.

The comment period on the review of 19 TAC Chapter 234 begins May 31, 2024, and ends July 1, 2024. A form for submitting public comments on the proposed rule review is available on the Texas Education Agency (TEA) website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_\(TAC\)/State_Board_for_Educator_Certification_Rule_Review/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/State_Board_for_Educator_Certification_Rule_Review/). The SBEC will take registered oral and written comments on the review of 19 TAC Chapter 234 during the July 19, 2024 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

TRD-202402241
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: May 20, 2024



The State Board for Educator Certification (SBEC) proposes the review of 19 Texas Administrative Code (TAC) Chapter 245, Certification of Educators from Other Countries, pursuant to Texas Government Code (TGC), §2001.039.

As required by TGC, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 245 continue to exist.

The comment period on the review of 19 TAC Chapter 245 begins May 31, 2024, and ends July 1, 2024. A form for submitting public comments on the proposed rule review is available on the Texas Education Agency (TEA) website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_\(TAC\)/State_Board_for_Educator_Certification_Rule_Review/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/State_Board_for_Educator_Certification_Rule_Review/). The SBEC will take registered oral and written comments on the review of 19 TAC Chapter 245 during the July 19, 2024 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

TRD-202402242
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: May 20, 2024



Texas Appraiser Licensing and Certification Board

Title 22, Part 8

The Texas Appraiser Licensing and Certification Board (TALCB) files this notice of intention to review 22 TAC Chapter 155, Rules Relating to Standards of Practice, and Chapter 157, Rules Relating to Practice and Procedure. This review is undertaken pursuant to Government Code, §2001.039.

During the review process, TALCB may determine whether a specific rule requires amendments to refine TALCB's legal and policy considerations; whether the rules reflect current TALCB procedures; that no changes to a rule as currently in effect are necessary; or that a rule is no longer valid or applicable. Rules may also be combined or reduced for simplification and clarity when feasible. Any proposed amendments or

repeal of a rule or chapter 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 before final adoption or repeal. Final consideration of this rules review is expected at the TALCB meeting in November 2024.

Any questions or comments pertaining to this notice of intention to review should be directed to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov within 30 days of publication.

TRD-202402161
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Filed: May 14, 2024



Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (TCEQ) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 35, Emergency and Temporary Orders and Permits; Temporary Suspensions or Amendment of Permit Conditions.

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, TCEQ will assess whether the reasons for initially adopting the rules in Chapter 35 continue to exist.

Comments regarding suggested changes to the rules in Chapter 35 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 rule-making action.

Submission of Comments

TCEQ invites public comment on this preliminary review of the rules in Chapter 35. 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 2023-064-035-LS. Comments must be received by July 1, 2024. For further information, please contact Harrison Cole Malley, Staff Attorney/Project Manager, Environmental Law Division, at (512) 239-1439.

TRD-202402272
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 (TAC) Chapter 40, Alternative Dispute Resolution Procedure.

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, TCEQ will assess whether the reasons for initially adopting the rules in Chapter 40 continue to exist.

Comments regarding suggested changes to the rules in Chapter 40 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 TCEQ.

Submittal of Comments

TCEQ invites public comment on this preliminary review of the rules in Chapter 40. 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 2023-049-040-AD. Comments must be received by July 1, 2024. For further information, please contact Kyle Lucas, Office of General Counsel, at (512) 239-0687.

TRD-202402273

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 (TAC) Chapter 279, Water Quality Certification.

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, TCEQ will assess whether the reasons for initially adopting the rules in Chapter 279 continue to exist.

Comments regarding suggested changes to the rules in Chapter 279 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 preliminary review of the rules in Chapter 279. 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 2023-056-279-OW. Comments must be received by July 1, 2024. For further information, please contact Shannon Gibson, Project Manager, Office of Water, at (512) 239-4284.

TRD-202402274

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 311, Watershed Protection Rules.

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, TCEQ will assess whether the reasons for initially adopting the rules in Chapter 311 continue to exist.

Comments regarding suggested changes to the rules in Chapter 311 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 preliminary review of the rules in Chapter 311. 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 2023-053-311-OW. Comments must be received by July 1, 2024. For further information, please contact Shannon Gibson, Project Manager, Office of Water, at (512) 239-4284.

TRD-202402278

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 312, Sludge Use, Disposal, and Transportation.

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, 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 312 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 312. 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 2023-090-312-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-202402275

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 40, Alternative Dispute Resolution Procedure, 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 3938).

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 40 implement TGC, Chapter 2009, Alternative Dispute Resolution (ADR) for Use by Governmental Bodies ("Governmental Dispute Resolution Act," enacted 1997). TGC, §2009.051 authorizes each governmental body to develop and use ADR (primarily mediation) procedures, and further provides that if an agency that is subject to TGC, Chapter 2001, adopts an ADR procedure, it may do so by rule. TCEQ is subject to TGC, Chapter 2001, also known as the Administrative Procedure Act. TGC, §2009.002 provides that disputes before governmental bodies are to be resolved as fairly and *expeditiously* as possible and that each governmental body support this policy by developing and using ADR procedures in appropriate aspects of the governmental body's operations and programs. TGC, Chapter 2009 not only authorizes each agency to adopt its own ADR procedures but encourages agencies to do so. TCEQ's policy is to provide ADR/mediation opportunities to those persons and entities who interact with TCEQ in the commission's daily operations. Most of the ADR/mediation matters involve permit

applications subject to an opportunity for a contested case hearing under TGC, Chapter 2001 and the rules of the commission. The readoption of the rules in Chapter 40 support this policy by administering and providing procedural framework for the ADR program at TCEQ, which continues to offer the public and regulated community an efficient, less costly and time-consuming alternative to the contested case process.

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 40 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. 2022-1738-MIS
Non-Rule Project No. 2023-049-040-AD

On November 6, 2024, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 Texas Administrative Code (TAC) Chapter 40, Alternative Dispute Resolution Procedure in accordance with the requirements of Texas Government Code, § 2001.039, which requires a state agency to review and consider for re adoption 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 3938).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 40 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