

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Adoption of Rules Review & Readoption of Chapter 303

AGENDA REQUESTED: January 10, 2024

DATE OF REQUEST: December 20, 2023

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

CAPTION: Docket No. 2023-0073-MIS. Consideration for the adoption of the rules review and readoption of 30 TAC Chapter 303, Operation of the Rio Grande. 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 July 28, 2023, issue of the *Texas Register* (48 TexReg 4136). (Jade Rutledge, Ruth Takeda) (Non-Rule Project No. 2023-085-303-OW)

Cari-Michel La Caille

Director

Kim Nye

Division Deputy Director

Gwen Ricco

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** December 20, 2023

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

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

Docket No.: 2023-0073-MIS

Subject: Commission Approval for Adoption of Rules Review and Readoption of Rules
Chapter 303, Operation of the Rio Grande
Rules Review of 30 TAC Chapter 303
Non-Rule Project No. 2023-085-303-OW

What the adopted action would do:

This action will approve the rules review of Chapter 303 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, 76th Texas Legislature, Regular Session, Chapter 1589, Article IX, Sec. 9-10.13 (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 303 and determined that the reasons for adopting these rules continue to exist. Chapter 303 provides the rules concerning the operation of the Rio Grande Watermaster program. The rules are needed because this program administers water rights in the Rio Grande Basin, which is subject to an interstate compact and an international treaty. Chapter 303 includes rules for the allocation and distribution of waters, enforcement regarding watermaster operations, amendments to and sales of water rights, contractual sales, excess flow permits, financing watermaster operations, and bed and banks permit provisions specific to the basin. The rules are necessary to implement the procedures and powers provided to the commission relating to watermaster operations contained in Texas Water Code, Chapter 11, including §§11.325 - 11.458.

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 August 28, 2023. No comments were received.

Commissioners
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Affected agency program(s):

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
Ruth Takeda, Staff Attorney, Environmental Law Division, (512) 239-6635
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

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 2023-084-293-OW. Comments must be received by August 28, 2023. For further information, please contact Avery Nguyen, Water Supply Division, at (512) 239-0324.

TRD-202302590

Charmaine Backens

Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality

Filed: July 19, 2023

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code (30 TAC) Chapter 303, Operation of the Rio Grande.

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, the commission will assess whether the reasons for initially adopting the rules in 30 TAC Chapter 303 continue to exist.

Comments regarding suggested changes to the rules in 30 TAC Chapter 303 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 303. 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 2023-085-303-OW. Comments must be received by August 28, 2023. For further information, please contact Jade Rutledge, Water Availability Division, at (512) 239-4559.

TRD-202302591

Charmaine Backens

Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality

Filed: July 19, 2023

The Texas Commission on Environmental Quality (commission) files this Notice of Intent to Review 30 Texas Administrative Code Chapter 344, Landscape Irrigation.

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, the commission will assess whether the reasons for initially adopting the rules in Chapter 344 continue to exist.

Comments regarding suggested changes to the rules in Chapter 344 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 344. 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 2023-081-344-CE. Comments must be received by August 28, 2023. For further information, please contact Zachary King, Program Support and Environmental Assistance Division, at (512) 239-1931.

TRD-202302587

Charmaine Backens

Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality

Filed: July 19, 2023

Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 70, Technology-Based Instruction, Subchapter AA, Commissioner's Rules Concerning the Texas Virtual School Network, pursuant to Texas Government Code, §2001.039. TEA proposed the review of Chapter 70, Subchapter AA, in the March 12, 2021 issue of the *Texas Register* (46 TexReg 1663).

Relating to the review of Chapter 70, Subchapter AA, TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rules. TEA received comments related to the review of Subchapter AA. Following is a summary of the comments received and the agency responses.

Comment: One administrator stated that it is important that the rules in 19 TAC Chapter 70, Subchapter AA, regarding technology-based or remote instruction be adjusted to meet the current needs of Texas students.

Response: The agency disagrees that revisions are necessary and has determined that the rules align with existing statute related to virtual instruction.

Comment: One administrator stated that it would serve students and families well if districts with a robust virtual learning program would be able to continue to offer this option to students who are successful in the remote environment. The commenter stated that the rules should allow for new full-time providers to be added to the Texas Virtual Schools Network (TXVSN) in addition to the current full-time providers.

Response: The agency offers the following clarification. At the direction of the governor, the commissioner of education will consider and approve waiver applications to allow certain districts to continue remote learning programs pending passage of legislation authorizing long-term remote learning options. The agency disagrees that amendments to this rule are necessary at this time.

Comment: One administrator stated that districts that have developed successful programs that engage learners should be allowed to offer remote learning to students in programs serving prekindergarten-Grade 12 instead of just Grades 3-12.

Response: The agency provides the following clarification. TEC, §30A.104(a)(2), establishes that a course offered for the TXVSN must

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 303, Operation of the Rio Grande, 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 July 28, 2023, issue of the *Texas Register* (48 TexReg 4136).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. Chapter 303 provides the rules concerning the operation of the Rio Grande Watermaster program. The rules are needed because this program administers water rights in the Rio Grande Basin, which is subject to an interstate compact and an international treaty. Chapter 303 includes rules for the allocation and distribution of waters, enforcement regarding watermaster operations, amendments to and sales of water rights, contractual sales, excess flow permits, financing watermaster operations, and bed and banks permit provisions specific to the basin. The rules are necessary to implement the procedures and powers provided to the commission relating to watermaster operations contained in Texas Water Code, Chapter 11, including §§11.325 - 11.458.

Public Comment

The public comment period closed on August 28, 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 303 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. 2023-0073-MIS
Non-Rule Project No. 2023-085-303-OW

On January 10, 2024, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 Texas Administrative Code (TAC) Chapter 303, Operation of the Rio Grande, in accordance with the requirements of Texas Government Code, § 2001.039, which requires a state agency to review and consider for reoption each of its rules every four years. The proposed Notice of Intention to Review was published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4136).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 303 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