

TEXAS ETHICS COMMISSION



MEMORANDUM

TO: Commissioners, Texas Ethics Commission

FROM: Jim Tinley, General Counsel

DATE: November 21, 2024

Re: Texas Ethics Commission Rule Review Plan

I. The TEC is conducting a comprehensive review of its rules.

The Texas Administrative Procedure Act (Gov't Code, Ch. 2001) requires every state agency to conduct a periodic review of its rules. The law requires a state agency to review and readopt, readopt with amendments, or repeal on the fourth anniversary of the date on which the rule takes effect and every four years after that date. Tex. Gov't Code § 2001.039. A state agency's review of a rule must include an assessment of whether the reasons for initially adopting the rule continue to exist. *Id.*

This memo is meant to provide guidance to commission staff and to inform the public of the TEC's plan to conduct a comprehensive review of its rules.

A. The Plan, Generally.

The TEC is conducting a chapter-by-chapter comprehensive review of its rules rather than conducting a piecemeal review organized by last adoption date of each rule.

The TEC rules are organized into chapters by subject matter. A comprehensive review conducted by chapter allows the TEC to re-adopt, amend, or repeal rules in a way that takes into consideration how that rule operates in the context of the chapter. This holistic approach should minimize the risk of unintended consequences from changing a single rule in isolation.

In order to make the review manageable for the commissioners, staff, and public, about two of the 16 chapters will be up for consideration at each quarterly commission meeting. The review cycle will take about two years to complete under this schedule. Once complete, the TEC

will update its plan for the next comprehensive review and begin it again so that each chapter will be subject to review again within four years.

B. The Plan, Specifically.

1. Completed Reviews.

The review began in September 2023 with a repeal and readoption with amendments of Chapter 18 (General Rules Concerning Reports). During its review of Chapter 18, the TEC repealed and replaced its rules related to requests for a waiver or reduction of a civil penalty. The revisions simplified a complex and cumbersome process and also fit with the TEC's technology plan by crafting rules that allow for the initial waiver or reduction decision to be automated in the electronic filing system. The filing system improvements are in progress.

The review proceeded to Chapter 6 (General Provisions) and Chapter 12 (Sworn Complaint Rules). Both chapters were repealed and replaced with amendments. The amendments simplified the rules related to sworn complaints, removed redundant and unnecessary rules, and ensured that the rules were in sync with the statutory commands. The TEC adopted the rules repealing and replacing of Chapters 6 and 12 at the September 2024 TEC meeting.

2. In Progress Reviews.

Rules related to Chapter 40 (Financial Disclosure for Public Officers) were proposed at the September 2024 TEC meeting and are eligible for adoption at the December 2024 meeting. Proposed rules amending Chapter 8 (Advisory Opinions) will be available for potential publication in the Register at the December 2024 meeting.

3. Future Reviews.

Below is a tentative schedule for the review of the remaining chapters:

Chapter 10 (Ethics Training Programs). *Spring 2025.*

Chapter 13 (Referrals to Prosecutors) *Currently under consideration for amendments.*

Chapter 16 (Facial Compliance Reviews and Audits). *Spring 2025.*

Chapter 20 (Reporting Political Contributions and Expenditures). *Winter 2025.*

Chapter 22 (Restrictions on Contributions and Expenditures). *Fall 2025.*

Chapter 24 (Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations). *Fall 2025.*

Chapter 26 (Political and Legislative Advertising). *Winter 2025.*

Chapter 28 (Reports by a Candidate for Speaker of the House of Representatives). *Spring 2025*

Chapter 34 (Regulation of Lobbyists). *Summer 2025.*

Chapter 45 (Conflicts of Interest). *Spring 2026.*

Chapter 46 (Disclosure of Interested Parties). *Winter 2025.*

Chapter 50 (Legislative Salaries and Per Diem). *Reviewed biennially with per diem adjustment.*

II. General Considerations for the Review.

The rule publication and adoption will follow the Administrative Procedure Act, the TEC rules, and other applicable law. Once staff completes its review of each chapter, it will present recommendations to the chair and vice chair. Upon approval from the chair and vice-chair, the recommendations will be considered at a public meeting for possible publication in the Texas Register. After publication and public comment, the commissioners may vote to readopt, readopt with amendments, or repeal each chapter.

Staff's review of rules should be guided by the questions below:

- Is the rule authorized by law?
- Does the rule conflict with law?
- Is there a law that requires rulemaking for this subject?
- Have there been legislative, judicial, or other legal developments that necessitate a change to existing rules?
- Is the rule necessary?
- Do the reasons the TEC stated for the rule's initial adoption still apply? If no, is there another reason for the rule?
- Is the rule written in a clear and concise manner?
- Can the rule be simplified?
- Before recommending non-substantive changes to a rule, does the benefit of changing the rule outweigh any reliance interest in the particular words and phrases used in the rule?
- Does the rule fit with the overall objective of the law?

Sec. 2001.039. AGENCY REVIEW OF EXISTING RULES.

(a) A state agency shall review and consider for readoption each of its rules in accordance with this section.

(b) A state agency shall review a rule not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date. The adoption of an amendment to an existing rule does not affect the dates on which the rule must be reviewed except that the effective date of an amendment is considered to be the effective date of the rule if the agency formally conducts a review of the rule in accordance with this section as part of the process of adopting the amendment.

(c) The state agency shall readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

(d) The procedures of this subchapter relating to the original adoption of a rule apply to the review of a rule and to the resulting repeal, readoption, or readoption with amendments of the rule, except as provided by this subsection. Publishing the Texas Administrative Code citation to a rule under review satisfies the requirements of this subchapter relating to publishing the text of the rule unless the agency readopts the rule with amendments as a result of the review.

(e) A state agency's review of a rule must include an assessment of whether the reasons for initially adopting the rule continue to exist.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 1.11(a), eff. Sept. 1, 1999.