

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Adoption of Rules Review & Readoption of Chapter 117

AGENDA REQUESTED: June 26, 2019

DATE OF REQUEST: June 7, 2019

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Kris Hogan, Agenda Coordinator, (512) 239-6812

CAPTION: Docket No. 2018-1249-MIS. Consideration for the adoption of the rules review and readoption of 30 TAC Chapter 117, Control of Air Pollution from Nitrogen Compounds. 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 January 18, 2019, issue of the *Texas Register* (44 TexReg 335). (Graham Bates, Janis Hudson) (Project No. 2018-049-117-AI)

Tonya Baer

Deputy Director

Donna F. Huff

Division Director

Kristina M. Hogan

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 7, 2019

Thru: Bridget C. Bohac, Chief Clerk
Toby Baker, Executive Director

From: Tonya Baer, Deputy Director
Office of Air

Docket No.: 2018-1249-MIS

Subject: Commission Approval for Adoption of Rules Review and Readoption of Rules
Chapter 117, Control of Air Pollution from Nitrogen Compounds
Rules Review of 30 TAC Chapter 117
Non-Rule Project No. 2018-049-117-AI

What the adopted action would do:

This action will approve the rules review of Chapter 117, 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 117 and determined that the reasons for adopting these rules continue to exist. The rules in Chapter 117 for controlling nitrogen oxides (NO_x) emissions were specifically developed to meet the Federal Clean Air Act requirements for attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for ozone established by the United States Environmental Protection Agency (EPA).

States are primarily responsible for ensuring attainment and maintenance of the NAAQS once the EPA has established those standards. Under 42 United States Code, §7410 and related provisions, states must submit revisions to the state implementation plan (SIP) for EPA approval that provide for the attainment and maintenance of the NAAQS through control programs directed to sources of the pollutants involved. NO_x emissions are precursor pollutants in the formation of ozone, and the rules in Chapter 117 form a significant component of the Texas SIP to attain and maintain the NAAQS for ozone.

Additional rules in Chapter 117 are needed to regulate carbon monoxide and ammonia emissions that result from the required NO_x controls, as well as rules that give the executive director the authority to approve alternative case-specific specifications when owners or operators can demonstrate that an affected unit cannot attain certain rule requirements in Chapter 117.

Commissioners

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Re: Docket No. 2018-1249-MIS

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 February 19, 2019. No comments were received.

Affected agency program(s):

The program areas responsible for implementing these rules are: Air Quality Division; Air Permits Division; and Office of Compliance and Enforcement.

Agency contacts:

Graham Bates, Project Manager, Air Quality Division, (512) 239-2606

Janis Hudson, Staff Attorney, (512) 239-0466

Kris Hogan, Texas Register/Agenda Coordinator, (512) 239-6812

Attachments:

Texas Register publication of Proposed Rule Review Notice

cc: Chief Clerk, 7 copies

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

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 117, Control of Air Pollution from Nitrogen Compounds.

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 117 continue to exist.

Comments regarding suggested changes to the rules in Chapter 117 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 117. Written comments may be submitted to Ms. Kris Hogan, 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://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Non-Rule Project Number 2018-049-117-AI. Comments must be received by February 19, 2019. For further information, please contact Graham Bates, Air Quality Division, at (512) 239-2606.

TRD-201900035

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: January 8, 2019



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 222, Subsurface Area Drip Dispersal Systems.

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 com-

mission will assess whether the reasons for initially adopting the rules in Chapter 222 continue to exist.

Comments regarding suggested changes to the rules in Chapter 222 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 222. Written comments may be submitted to Derek Baxter, 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://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Non-Rule Project Number 2019-007-222-OW. Comments must be received by February 19, 2019. For further information, please contact Laurie Fleet, Water Quality Division, at (512) 239-5445.

TRD-201900032

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: January 8, 2019



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 318, Marine Sea-water Desalination Discharges.

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 318 continue to exist.

Comments regarding suggested changes to the rules in Chapter 318 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 318. Written comments may be submitted to Paige Bond, 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

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 117, Control of Air Pollution from Nitrogen Compounds, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the January 18, 2019, issue of the *Texas Register* (44 TexReg 335).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 117 for controlling nitrogen oxides (NO_x) emissions were specifically developed to meet the Federal Clean Air Act requirements for attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for ozone established by the United States Environmental Protection Agency (EPA).

States are primarily responsible for ensuring attainment and maintenance of the NAAQS once the EPA has established those standards. Under 42 United States Code, §7410 and related provisions, states must submit revisions to the state implementation plan (SIP) for EPA approval that provide for the attainment and maintenance of the NAAQS through control programs directed to sources of the pollutants involved. NO_x emissions are precursor pollutants in the formation of ozone, and the rules in Chapter 117 form a significant component of the Texas SIP to attain and maintain the NAAQS for ozone.

Additional rules in Chapter 117 are needed to regulate carbon monoxide and ammonia emissions that result from the required NO_x controls, as well as rules that give the executive director the authority to approve alternative case-specific specifications when owners or operators can demonstrate that an affected unit cannot attain certain rule requirements in Chapter 117.

Public Comment

The public comment period closed on February 19, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 117 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. 2018-1249-MIS
Non-Rule Project No. 2018-049-117-AI

On June 26, 2019, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 TAC Chapter 117, Control of Air Pollution from Nitrogen Compounds, 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 January 18, 2019, issue of the *Texas Register* (44 TexReg 335).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 117 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