

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Adoption of Rules Review & Readoption of Chapter 118

AGENDA REQUESTED: October 11, 2023

DATE OF REQUEST: September 22, 2023

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

CAPTION: Docket No. 2023-0039-MIS. Consideration for the adoption of the rules review and readoption of 30 TAC Chapter 118, Control of Air Pollution Episodes. 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 Notice of Intention to Review was published in the May 19, 2023, issue of the *Texas Register* (48 TexReg 2581). (Jamie Zech, Terry Salem) (Non-Rule Project No. 2023-060-118-AI)

Richard Chism

Director

Donna F. Huff

Division Deputy Director

Gwen Ricco

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** September 22, 2023

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

From: Richard C. Chism, Director *RCC*
Office of Air

Docket No.: 2023-0039-MIS

Subject: Commission Approval for Adoption of Rules Review and Readoption of Rules
Chapter 118, Control of Air Pollution Episodes
Rules Review of 30 TAC Chapter 118
Non-Rule Project No. 2023-060-118-AI

What the adopted action would do:

This action will approve the rules review of Chapter 118, 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 re Adoption each of their rules every four years.

Reason rules are needed:

Executive director's staff conducted a review of the rules in Chapter 118 and determined that the reasons for adopting these rules continue to exist. The rules in Chapter 118 were developed to implement state law regarding air pollution episodes. Specifically, the chapter establishes the actions and corresponding procedures necessary for the commission to take in response to generalized or localized air pollution episodes for the protection of human health or safety. Chapter 118 requires owners or operators of major stationary sources in El Paso, Galveston, Harris, Jefferson, and Orange Counties that emit 100 tons or more of any specified pollutant to prepare and maintain an emission reduction plan. In addition, the chapter requires the commission to prepare an air pollution episode contingency plan with detailed procedures for notification to the public and public officials, actions required by the commission and local air pollution control personnel, and transmission of information to contiguous states as may be necessary.

In addition to implementing state law, the rules in Chapter 118 are needed for compliance with federal law, specifically federal Clean Air Act §110(a)(2)(G) and 40 Code of Federal Regulations Part 51, Subpart H, relating to the requirements for a contingency plan regarding air pollution emergency episodes.

Rules found to be obsolete:

None.

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Public comment:

A public hearing was not offered for this review. The comment period for the rules review closed on June 20, 2023. No comments were received.

Affected agency program(s):

The program area responsible for implementing these rules is the Air Quality Division.

Agency contacts:

Jamie Zech, Project Manager, Air Quality Division, (512) 239-3935
Terry Salem, Staff Attorney, Environmental Law Division, (512) 239-0469
Gwen Ricco, Texas Register/Agenda Coordinator, General Law Division (512) 239-2678

Attachments:

Texas Register publication of Notice of Intention to Review

cc: Chief Clerk, 7 copies

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

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 53, Regional Education Service Centers, pursuant to Texas Government Code, §2001.039. The rules being reviewed by TEA in Chapter 53 are organized under Subchapter AA, Commissioner's Rules.

As required by Texas Government Code, §2001.039, TEA will accept comments as to whether the reasons for adopting Chapter 53, Subchapter AA, continue to exist.

The public comment period on the review of Chapter 53, Subchapter AA, begins May 19, 2023, and ends June 19, 2023. A form for submitting public comments on the proposed rule review is available on the TEA website at <https://tea.texas.gov/about-tea/laws-and-rules/commissioner-rules-tac/commissioner-of-education-rule-review>.

TRD-202301657

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: May 8, 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 Texas Administrative Code Chapter 118, Control of Air Pollution Episodes.

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 118 continue to exist.

Comments regarding suggested changes to the rules in Chapter 118 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 118. 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 2023-060-118-AI. Comments must be received by June 20, 2023. For further information, please contact Jamie Zech, Air Quality Division, at (512) 239-3935.

TRD-202301675

Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 9, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 292, Special Requirements for Certain Districts and Authorities.

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 292 continue to exist.

Comments regarding suggested changes to the rules in Chapter 292 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 292. 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 2023-057-292-OW. Comments must be received by June 20, 2023. For further information, please contact Avery Nguyen, Water Supply Division, at (512) 239-0324.

TRD-202301673

Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 9, 2023

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 118, Control of Air Pollution Episodes, 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 Intention to Review these rules in the May 19, 2023 issue of the *Texas Register* (48 TexReg 2581).

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 118 were developed to implement state law regarding air pollution episodes. Specifically, the chapter establishes the actions and corresponding procedures necessary for the commission to take in response to generalized or localized air pollution episodes for the protection of human health or safety. Chapter 118 requires owners or operators of major stationary sources in El Paso, Galveston, Harris, Jefferson, and Orange Counties that emit 100 tons or more of any specified pollutant to prepare and maintain an emission reduction plan. In addition, the chapter requires the commission to prepare an air pollution episode contingency plan with detailed procedures for notification to the public and public officials, actions required by the commission and local air pollution control personnel, and transmission of information to contiguous states as may be necessary.

In addition to implementing state law, the rules in Chapter 118 are needed for compliance with federal law, specifically federal Clean Air Act §110(a)(2)(G) and 40

Code of Federal Regulations Part 51, Subpart H, relating to the requirements for a contingency plan regarding air pollution emergency episodes.

Public Comment

The public comment period closed on June 20, 2023. 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 118 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. 2023-0039-MIS
Non-Rule Project No. 2023-060-118-AI

On October 11, 2023, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 Texas Administrative Code (TAC) Chapter 118, Control of Air Pollution Episodes (30 TAC Chapter 118), in accordance with the requirements of Texas Government Code, § 2001.039, which requires a state agency to review and consider for readoption each of its rules every four years. The proposed Notice of Intention to Review was published in the May 19, 2023, issue of the *Texas Register* (48 TexReg 2581).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 118 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