

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Adoption of Rules Review & Readoption of Chapter 112

AGENDA REQUESTED: January 24, 2024

DATE OF REQUEST: January 5, 2024

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

CAPTION: Docket No. 2023-0070-MIS. Consideration for the adoption of the rules review and readoption of 30 Texas Administrative Code Chapter 112, Control of Air Pollution from Sulfur 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 Notice of Intention to Review was published in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4135). (Jamie Zech, Terry Salem) (Non-Rule Project No. 2023-082-112-AI)

Donna F. Huff

Deputy Director

Richard C. Chism

Division Director

Gwen Ricco

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** January 5, 2024

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

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

Docket No.: 2023-0070-MIS

Subject: Commission Approval for Adoption of Rules Review and Readoption of Rules
Chapter 112, Control of Air Pollution from Sulfur Compounds
Rules Review of 30 TAC Chapter 112
Non-Rule Project No. 2023-082-112-AI

What the adopted action will do:

This action will approve the rules review of 30 Texas Administrative Code (TAC) Chapter 112, and readopt the chapter.

This action constitutes a determination by the Texas Commission on Environmental Quality (TCEQ), 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 112 and determined that the reasons for adopting these rules continue to exist. The rules in 30 TAC Chapter 112 are needed to control emissions of sulfur dioxide (SO₂), hydrogen sulfide, sulfuric acid, and total reduced sulfur throughout the state. The rules in Subchapter A Control of Sulfur Dioxide are approved by the United States Environmental Protection Agency (EPA) as a part of the State Implementation Plan (SIP) for the SO₂ National Ambient Air Quality Standard (NAAQS) in accordance with federal Clean Air Act (CAA), §109 and §110. The rules in Subchapter B Control of Hydrogen Sulfide are not part of the SIP but were adopted under the State Air Control Plan required by Texas Health and Safety Code, §382.012. The rules in Subchapter C Control of Sulfuric Acid and Subchapter D Control of Total Reduced Sulfur are not included in the SIP but were submitted to the EPA to establish standards of performance to meet CAA, §111(d) state plan requirements.

On October 5, 2022, TCEQ adopted the rules in Subchapter E Requirements in the Howard County Nonattainment Area, Subchapter F Requirements in the Hutchinson County Nonattainment Area, and Subchapter G Requirements in the Navarro County Nonattainment Area to meet SIP requirements for three 2010 SO₂ NAAQS nonattainment areas. The rulemaking (Rule Project No. 2021-035-112-AI) was submitted to EPA on

Re: Docket No. 2023-0070-MIS

October 24, 2022 for approval and inclusion in the SIP. EPA has not yet taken action on the submittal.

Rules found to be obsolete:

- The emissions rate in §112.8(b) is obsolete but must be retained at this time. The provision specifically applies “to any solid fossil fuel-fired steam generator located in Milam County, which began operation prior to January 1, 1955.” The provision was established in a 1979 rulemaking and applied to three units at Alcoa’s Rockdale aluminum smelter in Milam County. The Rockdale smelter was idled in 2008 and permanently closed in 2017. Alcoa sold the property to developers in 2021. This provision is approved in the SIP, and removal from the SIP would require a SIP revision and associated FCAA, §110(l) anti-backsliding demonstration. Until such action is taken, the rule must be retained.
- Chapter 112 includes several outdated references, including references to the former Texas Air Control Board (TACB), the TACB Modeling Section, and Regulation III. The rules in Chapter 112 that include these outdated references are not obsolete, but they should be updated to include current agency and regulatory references.

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.

Affected agency program(s):

The program area(s) responsible for implementing these rules include the Air Quality Division, the Air Permits Division, and the Office of Compliance and Enforcement.

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 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 112, Control of Air Pollution from Sulfur 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 re-adoption, re-adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 112 continue to exist.

Comments regarding suggested changes to the rules in Chapter 112 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; however, the comments must be resubmitted during the open comment period for that future rulemaking.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 112. 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 2023-082-112-AI. Comments must be received by August 28, 2023. For further information, please contact Jamie Zech, Air Quality Division, at (512) 239-3935.

TRD-202302588

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 Chapter 216, Water Quality Performance Standards for Urban Development.

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, the commission will assess whether the reasons for initially adopting the rules in Chapter 216 continue to exist.

Comments regarding suggested changes to the rules in Chapter 216 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 216. 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 2023-083-216-OW. Comments must be received by August 28, 2023. For further information, please contact Jill Csekitz, Water Quality Planning Division, at (512) 239-3136.

TRD-202302589

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 Chapter 293, Water Districts.

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, the commission will assess whether the reasons for initially adopting the rules in Chapter 293 continue to exist.

Comments regarding suggested changes to the rules in Chapter 293 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 293. 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,

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 112, Control of Air Pollution from Sulfur Compounds, as required by Texas Government Code (TGC), §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 Intention to Review these rules in the July 28, 2023, issue of the *Texas Register* (48 TexReg 4135).

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 30 TAC Chapter 112 are needed to control emissions of sulfur dioxide (SO₂), hydrogen sulfide, sulfuric acid, and total reduced sulfur throughout the state. The rules in Subchapter A, Control of Sulfur Dioxide are approved by the United States Environmental Protection Agency (EPA) as a part of the State Implementation Plan (SIP) for the SO₂ National Ambient Air Quality Standard (NAAQS) in accordance with Federal Clean Air Act (FCAA), §109 and §110. The rules in Subchapter B Control of Hydrogen Sulfide are not part of the SIP but were adopted under the State Air Control Plan required by Texas Health and Safety Code, §382.012. The rules in Subchapter C Control of Sulfuric Acid and Subchapter D Control of Total Reduced Sulfur were submitted to the EPA to establish standards of performance to meet FCAA, §111(d) state plan requirements.

On October 5, 2022, the commission adopted the rules in Subchapter E Requirements in the Howard County Nonattainment Area, Subchapter F Requirements in the Hutchinson County Nonattainment Area, and Subchapter G Requirements in the Navarro County Nonattainment Area to meet SIP requirements for three 2010 SO₂ NAAQS nonattainment areas. The rulemaking (Rule Project No. 2021-035-112-AI) was submitted to EPA on October 24, 2022, for approval and inclusion in the SIP. EPA has not yet taken action on the submittal.

The review resulted in a determination that the emissions rate in §112.8(b) is obsolete but must be retained at this time. The provision specifically applies “to any solid fossil fuel-fired steam generator located in Milam County, which began operation prior to January 1, 1955.” The emissions rate specified in §112.8(b) is 4.0 pounds per MMBtu, which is relaxed from the 3.0 pounds per MMBtu rate specified for all other sources in the state. The provision was established in a 1979 rulemaking as a result of a petition from Alcoa to allow relaxed SO₂ emission limitations for three units at its Rockdale aluminum smelter in Milam County based on the actual sulfur content of the lignite fuel the units used. The rulemaking and a SIP revision were submitted to the EPA in 1995 and approved as part of the SIP effective November 22, 1996 (61 FR 49685, September 23, 1996).

The Rockdale smelter was idled in 2008 and permanently closed in 2017. Subsequent environmental restoration efforts were intended to transition the property back to primarily agricultural use, and Alcoa sold the property to developers in 2021. Since the

source specified in §112.8(b) no longer exists, the provision should be repealed; however, because the provision is approved in the SIP, removal from the SIP would require a SIP revision and associated FCAA, §110(l) anti-backsliding demonstration. Until such action is taken, the rule must be retained.

In addition to the obsolete provision in §112.8(b), Chapter 112 includes several outdated references, including references to the former Texas Air Control Board (TACB), the TACB Modeling Section, and Regulation III. The rules in Chapter 112 that include these outdated references are not obsolete, but they should be updated to include current agency and regulatory references.

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 112 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039. Changes to the rules identified as part of this review process may be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

Texas Commission on Environmental Quality



ORDER ADOPTING RULES REVIEW AND READOPTING RULES

Docket No. 2023-0070-MIS
Non-Rule Project No. 2023-082-112-AI

On January 24, 2024, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 Texas Administrative Code (TAC) Chapter 112, Control of Air Pollution from Sulfur 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 July 28, 2023, issue of the Texas Register (48 *TexReg* 4135).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 112 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