

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

**AGENDA REQUESTED:** August 16, 2023

**DATE OF REQUEST:** July 28, 2023

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

**CAPTION: Docket No. 2022-1721-MIS.** Consideration for the adoption of the rules review and readoption of 30 Texas Administrative Code 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 Notice of Intention to Review was published in the April 7, 2023, issue of the *Texas Register* (48 TexReg 1857). (Jamie Zech, Terry Salem and John Minter) (Non-Rule Project No. 2023-041-117-AI)

Richard C. Chism  
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**Director**

Donna F. Huff  
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**Division Deputy Director**

Gwen Ricco  
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**Agenda Coordinator**

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** July 28, 2023

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

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

**Docket No.:** 2022-1721-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. 2023-041-117-AI

**What the adopted action would do:**

This action will approve the rules review of 30 Texas Administrative Code 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 which requires 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<sub>x</sub>) 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<sub>x</sub> emissions are precursor pollutants in the formation of ozone, and the NO<sub>x</sub> control 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 (CO) and ammonia emissions that result from the required NO<sub>x</sub> controls. These rules are not

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included in the SIP but address pollutants that may increase as an incidental result of compliance with NO<sub>x</sub> emissions specifications. Certain Chapter 117 rules also give the executive director the authority to approve alternative case-specific specifications for NO<sub>x</sub>, ammonia, and CO when owners or operators can demonstrate that an affected unit cannot attain certain rule requirements in Chapter 117. These rules were adopted to establish the availability of a case-by-case determination of alternate requirements, including NO<sub>x</sub> reasonably available control technology (RACT) requirements, and are not approved in the SIP.

**Rules found to be obsolete:**

The review resulted in a determination that the rules in §117.305, §117.315, §117.323 §117.1205, and §117.1215 are obsolete and can be removed. These sections include provisions that specify the sections no longer apply after the appropriate compliance date in §117.9020(2) or §117.9120(2), which varies, but all dates were prior to 2008. Because the NO<sub>x</sub> RACT rules in §117.305 and §117.1205 no longer apply, the portion of the rules in §117.325 and §117.1225 providing for an alternative case-specific emissions specification for the NO<sub>x</sub> RACT requirements of §117.305 and §117.1205 are also obsolete; the portions of §117.325 and §117.1225 that provide for an alternative emission specification for the CO or ammonia specifications of §117.310(c) or §117.1210(b) remain relevant. The review also identified the definition of Emergency Situation in 30 TAC §117.10 may be outdated and staff recommends evaluating the references in the definition to determine if updates are needed.

**Public comment:**

A public hearing was not offered for this review. The comment period for the rules review closed on May 8, 2023. No comments were received.

**Affected agency program(s):**

The program areas responsible for implementing these rules are 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

John Minter, Staff Attorney, Environmental Law Division, (512) 239-0633

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

# 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 TAC Chapter 115, Control of Air Pollution from Volatile Organic 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 115 continue to exist.

Comments regarding suggested changes to the rules in Chapter 115 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 115. 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 2023-045-115-AI. Comments must be received by May 8, 2023. For further information, please contact Jamie Zech, Air Quality Division, at (512) 239-3935.

TRD-202301223

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 29, 2023

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 re-adoption, re-adoption 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 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 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 2023-041-117-AI. Comments must be received by May 8, 2023. For further information, please contact Jamie Zech, Air Quality Division, at (512) 239-3935.

TRD-202301219

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 29, 2023

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 318, Marine Seawater 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 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 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 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

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 Texas Administrative Code (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 readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the April 7, 2023, issue of the *Texas Register* (48 TexReg 1857).

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 for control of nitrogen oxides (NO<sub>x</sub>) emissions in Chapter 117 were specifically developed to meet the federal Clean Air Act (FCAA) requirements for attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for ozone set 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 their state implementation plans (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<sub>x</sub> are precursor pollutants in the formation of ozone, and the NO<sub>x</sub> control 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 (CO) and ammonia emissions that result from the required NO<sub>x</sub> controls. These rules are not included in the SIP but address pollutants that may increase as an incidental result of compliance with NO<sub>x</sub> emissions specifications. Certain Chapter 117 rules also give the executive director the authority to approve alternative case-specific specifications for NO<sub>x</sub>, ammonia, and CO when owners or operators can demonstrate that an affected unit cannot attain certain rule requirements in Chapter 117. These rules were adopted to establish the availability of a case-by-case determination of alternate requirements, including NO<sub>x</sub> reasonably available control technology (RACT) requirements, and are not approved in the SIP.

The review resulted in a determination that the rules in §117.305, §117.315, §117.323, §117.1205, and §117.1215 are obsolete and can be removed. These sections include provisions that specify the sections no longer apply after the appropriate compliance date in §117.9020(2) or §117.9120(2), which varies, but all dates were prior to 2008. Because the NO<sub>x</sub> RACT rules in §117.305 and §117.1205 no longer apply, the portion of the rules in §117.325 and §117.1225 providing for an alternative case-specific emissions specification for the NO<sub>x</sub> RACT requirements of §117.305 and §117.1205 are also obsolete; the portions of §117.325 and §117.1225 that provide for an alternative emission specification for the CO or ammonia specifications of §117.310(c) or §117.1210(b) remain relevant.

The review also identified the definition of Emergency Situation in 30 TAC §117.10 may be outdated and staff recommends evaluating the references in the definition to determine if updates are needed.

#### Public Comment

The public comment period closed on May 8, 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 117 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §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. 2022-1721-MIS  
Non-Rule Project No. 2023-041-117-AI

On August 16, 2023, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 Texas Administrative Code (TAC) Chapter 117, Control of Air Pollution from Nitrogen Compounds (30 TAC Chapter 117), 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 April 7, 2023, issue of the *Texas Register* (48 TexReg 1857).

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

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Jon Niermann, Chairman

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Date Signed