

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 20, 2025

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

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

Docket No.: 2025-0339-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 117 NO_x Rule Revisions for the Bexar County 2015 Eight Hour Ozone
Serious Nonattainment Area
Rule Project No. 2025-007-117-AI

Background and reason(s) for the rulemaking:

On June 20, 2024, the U.S. Environmental Protection Agency (EPA) published the reclassification of Bexar County from moderate to serious nonattainment for the 2015 eight-hour ozone National Ambient Air Quality Standards (NAAQS), effective July 22, 2024 (89 *Federal Register* (FR) 51829). Bexar County is now subject to the serious nonattainment area requirements in federal Clean Air Act (FCAA), §172(c) and §182(c), and the Texas Commission on Environmental Quality (TCEQ or commission) is required to submit serious area attainment demonstration (AD) and reasonable further progress (RFP) state implementation plan (SIP) revisions to EPA by January 1, 2026. The attainment deadline for the Bexar County serious nonattainment area is September 24, 2027, with a 2026 attainment year. This rulemaking is necessary to fulfill SIP obligations resulting from the Bexar County area's reclassification to serious.

Nonattainment areas classified as serious and above are required to meet the mandates of FCAA, §172(c)(1) and §182(c) and (f). FCAA, §172(c)(1) requires that the SIP incorporate all reasonably available control measures (RACM), including reasonably available control technology (RACT), as expeditiously as practicable and to provide for attainment of the NAAQS. FCAA, §182(b)(2) requires the state to implement RACT requirement rules for all categories of stationary sources identified by EPA in an alternative control technique (ACT) document or a control techniques guideline (CTG) document, as well as any non-ACT/CTG category sources that are classified as major stationary sources of nitrogen oxides (NO_x) or volatile organic compounds. FCAA, §182(c) addresses the SIP requirements for demonstrating attainment and RFP for areas classified as serious. FCAA, §182(f) requires the state to submit a SIP revision that implements RACT for all major sources of NO_x. This rulemaking would fulfill serious classification NO_x RACT requirements for the Bexar County area. Based on photochemical modeling results for future years, the Bexar County area is projected to meet the 2015 ozone standard without implementing additional control measures, and the RACM analysis provided in the concurrently proposed Bexar County 2015 Ozone NAAQS Serious AD SIP Revision (Non-Rule Project No. 2024-041-SIP-NR) determined that no potential control measures met the criteria to be considered RACM. As a result, no rule revisions are proposed as RACM.

The proposed Chapter 117 NO_x rulemaking would implement RACT requirements for owners or operators of stationary internal combustion engines, process heaters, ovens, and incinerators located at industrial, commercial, or institutional major sources of NO_x in the Bexar County ozone nonattainment area. The proposed rulemaking would extend existing rule provisions in Subchapter B, Division 2 to additional sources due to the reclassification from moderate to serious ozone nonattainment and the decrease in the major source NO_x threshold from 100 to 50 or more tons per year (tpy) of NO_x.

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Scope of the rulemaking:

TCEQ is required to submit AD and RFP SIP revisions to EPA consistent with FCAA requirements for areas classified as serious nonattainment for the 2015 eight-hour ozone NAAQS. The proposed Chapter 117 NO_x rulemaking would revise existing rule sections and add new rule provisions in existing sections, as applicable, in Subchapter B, Division 2. The proposed changes would address required AD SIP elements for the Bexar County serious ozone nonattainment area by implementing RACT for major NO_x sources at the new major source threshold of 50 or more tpy.

A.) Summary of what the rulemaking would do:

This proposed rulemaking would extend rule applicability of Subchapter B, Division 2 to stationary gas-fired engines fired on landfill gas, stationary diesel engines, process heaters, natural gas-fired ovens, and incinerators. Proposed revisions would include new emission standards and exemptions for the unit categories that would be new to the provisions of Subchapter B, Division 2. The proposed rulemaking would also extend applicability of existing monitoring, testing, recordkeeping, and reporting requirements associated with Division 2 to the newly affected major sources of NO_x located in the Bexar County serious ozone nonattainment area. These monitoring, testing, recordkeeping, and reporting requirements would be necessary to ensure compliance with the new emission specifications, confirm eligibility for certain exemptions, and ensure that NO_x emission reductions are achieved from the units that become subject to the requirements of Subchapter B, Division 2.

Finally, the proposed rulemaking would revise the compliance schedule for Bexar County Ozone Nonattainment Area Major Sources, in §117.9010 of Subchapter H, Division 1, by updating the compliance deadline to March 1, 2026, to reflect the reclassification of the area to serious ozone nonattainment and the proposed new rule provision requirements.

B.) Scope required by federal regulations or state statutes:

The new and amended rules implemented through this rulemaking, if adopted, are necessary to address FCAA-required AD SIP elements for the Bexar County serious ozone nonattainment area, which include rules to implement serious classification NO_x RACT.

C.) Additional staff recommendations that are not required by federal rule or state statute:

Non-substantive updates to Chapter 117 are recommended to remove obsolete language, use consistent terminology, and update the rule language to conform to current *Texas Register* and TCEQ style and format requirements.

Statutory authority:

The rule amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The rules would also be proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.014, Emissions Inventory, which authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the

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commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The rule amendments would also be proposed consistent with 42 United States Code, §§7420 et seq., which requires states to submit SIP revisions that specify the manner in which the NAAQS will be achieved and maintained within each air quality control region of the state.

Effect on the:

A.) Regulated community:

The regulated community in Bexar County would be obligated to comply with, and may incur costs associated with, any new rules adopted by the commission for Bexar County. To meet the emission specifications in the proposed rules, owners or operators of affected sources may need to install control equipment or modify sources. They would need to comply with monitoring, testing, and recordkeeping requirements. Any costs associated with the new requirements would be incurred by the owner or operator of the affected NO_x source.

B.) Public:

The general public in Bexar County may benefit from NO_x emissions reductions associated with any new or revised rules adopted by the commission. Reduced NO_x emissions may result in less ozone formation in the area, which may help improve air quality.

C.) Agency programs:

This rulemaking would affect certain parts of the agency. Air Permits Division staff would be required to update Title V Operating Permits if new rules became applicable to more major sources. Additionally, staff in the Office of Compliance and Enforcement to conduct additional or expanded investigations as a result of any new or amended regulations in Chapter 117.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, if this proposed rulemaking is approved by the commission for public comment and public hearing, then a formal public comment period will be opened, and a public hearing will be offered.

Public Involvement Plan

Yes.

Alternative Language Requirements

Yes. Spanish.

Potential controversial concerns and legislative interest:

None.

Would this rulemaking affect any current policies or require development of new policies?

The rulemaking does not affect any current policies or require the development of new policies.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

The commission could choose to not comply with the requirements to develop and submit the Chapter 117 rulemaking to EPA to address serious classification RACT requirements for Bexar County. However, a 2-to-1 emissions offset sanction will apply in the Bexar County nonattainment area 18 months after the effective date of a finding by EPA that TCEQ has failed to submit the

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required SIP elements, unless TCEQ submits, and EPA deems complete, a plan revision that resolves the deficiency. Highway funding sanctions will apply six months after the offset sanction begins if a complete plan revision has not been submitted to resolve the deficiency. In addition, EPA is required to promulgate a federal implementation plan within 24 months of the effective date of a finding of failure to submit if TCEQ does not submit, or if TCEQ submits but EPA does not approve, the required rules within the 24-month period.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: July 9, 2025

Anticipated *Texas Register* publication date: July 25, 2025

Anticipated public hearing date: August 19, 2025

Anticipated public comment period: July 11, 2025 - August 25, 2025

Anticipated adoption date: December 17, 2025

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