

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** November 21, 2014

**Thru:** Bridget C. Bohac, Chief Clerk  
Richard A. Hyde, P.E., Executive Director

**From:** Steve Hagle, P.E., Deputy Director  
Office of Air

**Docket No.:** 2014-0501-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 115, Control of Air Pollution from Volatile Organic Compounds  
VOC RACT Rules for the DFW 2008 Eight-Hour Ozone Nonattainment  
Area  
Rule Project No. 2013-048-115-AI

**Background and reason(s) for the rulemaking:**

On May 21, 2012, the United States Environmental Protection Agency (EPA) established initial air quality designations for the 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS). Effective July 20, 2012, the Dallas–Fort Worth (DFW) 2008 eight-hour ozone nonattainment area, consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties, was classified as a moderate nonattainment area with a December 31, 2018 attainment deadline (77 FR 30088, May 21, 2012).

Nonattainment areas classified as moderate and above are required to meet the mandates of the Federal Clean Air Act (FCAA) under §172(c)(1) and §182(b)(2). FCAA, §172(c)(1) requires that the state implementation plan (SIP) incorporate all reasonably available control measures, including reasonably available control technology (RACT), for sources of relevant pollutants. FCAA, §182(b)(2) requires the state to submit a SIP revision that implements RACT for all emission sources addressed in a control techniques guidelines (CTG) and all non-CTG major sources of volatile organic compounds (VOC).

The EPA defines RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761, September 17, 1979). The FCAA requires the state to implement RACT, while EPA guidance provides states with the flexibility to determine the most technologically and economically feasible RACT requirements for a nonattainment area. EPA guidance on RACT indicates that states can choose to implement the CTG recommendations, implement an alternative approach, or demonstrate that additional control for the CTG emission source category is not technologically or economically feasible in the area.

The proposed rulemaking would revise Chapter 115 to implement RACT for all CTG emission source categories and all non-CTG major sources of VOC in the DFW area as required by FCAA, §172(c)(1) and §182(b)(2). If adopted, these rules would be submitted to

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the EPA as a SIP revision. The state previously adopted Chapter 115 RACT rules for sources in most of the DFW area as part of the SIP for the 1997 eight-hour ozone standard. However, Wise County was classified as attainment under the 1997 eight-hour ozone standard so the Chapter 115 RACT rules do not currently apply in Wise County.

**Scope of the rulemaking:**

**A.) Summary of what the rulemaking will do:**

The proposed rulemaking would revise divisions in Chapter 115, Subchapters B, C, D, E, and F to implement RACT as required by the FCAA for the emission source categories that have been identified as potentially being affected in the DFW area. Compliance would be required for these sources by January 1, 2017. The revisions are primarily proposed to these divisions to expand the applicability of each rule and to extend the same RACT requirements currently applicable in the nine-county 1997 DFW eight-hour ozone nonattainment area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) to Wise County. Sources in Wise County that meet applicability criteria and do not qualify for exemption from the rules would be required to comply with emission limits and control requirements; implement work practice standards or operating requirements; and institute associated monitoring, recordkeeping, and reporting requirements.

Although Subchapter A, §115.10, *Definitions* is not being revised to implement RACT, it is necessary to make revisions to reflect the change in attainment status of Wise County. Proposed changes would exclude Wise County from the definition of covered attainment counties and include it in the definition of the DFW area. The proposed revisions to the DFW area definition would explicitly list the counties that are covered under the applicability of each rule in Chapter 115. Proposed changes to §115.10 would also amend the definition of *Covered attainment counties*, *El Paso area*, and *Internal floating cover*.

Changes identified during a previous rulemaking regarding the VOC storage tank rules in Subchapter B, Division 1 (Rule Project No. 2010-025-115-EN) are being proposed in the DFW area. Specifically, proposed requirements would add control, inspection, and recordkeeping requirements for storage tank openings, including thief hatches and pressure relief valves; revoke exemptions for pre-1982 floating roof storage tanks; and alter the applicability of control requirements for storage tanks at pipeline breakout stations.

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

The proposed rule would implement RACT for sources of VOC emissions addressed in a CTG document and non-CTG major sources, as mandated by FCAA requirements.

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

In addition to implementing RACT requirements for the DFW area, the proposed rulemaking would include potentially substantive technical corrections that would extend

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to the Houston-Galveston-Brazoria nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) and in some instances extend to other areas that are currently in attainment with the ozone NAAQS (e.g., the Beaumont-Port Arthur and El Paso areas; in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis and Victoria Counties; and in other counties defined as covered attainment counties, §115.10). Proposed technical corrections are intended to add compliance flexibility, streamline and consolidate requirements, remove obsolete language and requirements that have been superseded by more stringent rules, and clarify the rules for consistency with the agency's intent and CTG recommendations. Non-substantive revisions are also being proposed as part of this rulemaking that would remove obsolete language, establish consistent terminology, and update the rule language to current *Texas Register* and Texas Commission on Environmental Quality (TCEQ) style and format requirements. The technical corrections and non-substantive revisions are only proposed for the rules that are simultaneously being revised to implement RACT.

The TCEQ and other concerned parties are currently challenging whether the EPA's inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area was lawful. These challenges are currently pending in the United States Court of Appeals for the District of Columbia Circuit. If the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area is overturned, the TCEQ will take action to revise this rulemaking appropriately. Changes are proposed to the compliance schedule section in each division being revised as part of this rulemaking to appropriately address this issue if it occurs.

#### Subchapter B, Division 1, Storage of Volatile Organic Compounds

Proposed changes include correcting exemptions to reflect the threshold triggering applicability of this rule. Proposed requirements would also add control, inspection, and recordkeeping requirements for storage tank openings, including thief hatches and pressure relief valves; revoke exemptions for pre-1982 floating roof storage tanks; and alter the applicability of control requirements for storage tanks at pipeline breakout stations.

#### Subchapter B, Division 2, Vent Gas Controls

Proposed revisions would incorporate past TCEQ formal interpretations to clarify the applicability and exemptions consistent with prior agency formal rule interpretations regarding glycol dehydrator reboilers, vents from a compressor rod packing housing, and exemption criteria for multiple vent streams prior to a single control device. Similar to other divisions, the rulemaking would require the flare flame to be lit to clarify that the intent is for both the flare flame and the pilot to be lit at all times when VOC vapors are routed to the flare. The proposed rule would also include testing updates and provide an alternative to continuous VOC monitoring in carbon adsorption systems or carbon adsorber monitoring.

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Subchapter C, Division 1, Loading and Unloading of Volatile Organic Compounds

The proposed revisions would add a newly EPA-approved test method for determining the vapor pressure of crude oil to the list of approved test methods. In addition, the proposed rulemaking would specify that true vapor pressure must be corrected to storage temperature using the measured actual storage temperature or the maximum local monthly average ambient temperature as reported by the National Weather Service.

Subchapter E, Division 1, Degreasing Processes

Proposed changes would add a new applicability and definitions section to the division to improve the readability of the rule and to direct users to the rules containing the relevant degreasing processes definitions. The proposed revisions would clarify that this rule impacts VOC-containing degreasing materials and provides the option to rely on and maintain manufacturer's data or standard reference text as an alternative to testing for determining the vapor pressure of cold solvent cleaning. Recordkeeping requirements are also proposed to demonstrate compliance with applicable exemption criteria.

Subchapter E, Division 2, Surface Coating Processes

The proposed revisions would add a new subsection to establish the applicability for each of the surface coating processes regulated in the division. Proposed revisions would also consolidate and restructure rule requirements as a result of the proposed applicability subsection, as well as to improve the readability and usability of these rules throughout the division.

Subchapter E, Division 5, Control Requirements for Surface Coating Processes

Corrections proposed for this division would clarify the applicability for the miscellaneous metal and plastic parts category. Amendments are proposed to add an exemption for ultraviolet curable coating because negligible amounts of VOC are emitted from these processes. Proposed revisions would clarify the intent of the coating application system transfer efficiency control requirement.

A new exemption is also being proposed to clarify the applicability of adhesives used in miscellaneous metal parts and products coating processes. Since the Subchapter E, Division 7 rules also apply to adhesives, this proposed revision would make clear which division a source is expected to comply with.

Subchapter E, Division 6, Industrial Cleaning Solvents

Proposed amendments would define *solvent* and make changes to *solvent cleaning operations* to clarify the materials intended to be regulated in the division. An exemption regarding aerosols would be updated to reflect the intended meaning.

Subchapter E, Division 7, Miscellaneous Industrial Adhesives

Proposed changes would clarify the applicability of this division by more thoroughly explaining the adhesives that are exempt from complying with the VOC limits in this division and are required to instead comply with the requirements in Subchapter E,

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Division 5. The proposed change would make clear which division a source is expected to comply with.

**Statutory authority:**

The new, amended, and repealed sections are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the Texas Water Code; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; 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 new, amended, and repealed sections are also 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; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The new, amended, and repealed sections are also proposed under THSC §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The new, amended, and repealed sections are also proposed under FCAA, 42 USC, §§7401, *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.

The new, amended, and repealed sections implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and FCAA, 42 USC, §§7401 *et seq.*

**Effect on the:**

**A.) Regulated community:** The rulemaking may require affected sources to install control equipment or use reformulated products to meet the emission specifications; implement work practices; or comply with monitoring, testing, and recordkeeping requirements. The RACT rules proposed to address emissions from CTG emission source categories will likely affect many small businesses.

The cost to regulated entities depends on whether an owner or operator is affected by the new rule requirements and which compliance option the affected owner or operator chooses. However, staff do not anticipate any significant fiscal impacts as a result of the proposed VOC rules, and for certain rule categories, the proposed requirements are anticipated to incur cost savings.

**B.) Public:** The public may benefit from improved air quality.

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**C.) Agency programs:** The proposed changes are not expected to significantly increase the workload or the number of facilities requiring inspection by the Office of Compliance and Enforcement. Depending on the number of small businesses affected in Wise County, the Environmental Assistance Division may experience a minor increase in workload.

**Stakeholder meetings:**

An Ozone Planning Public Information Meeting was held at the North Central Texas Council of Governments in Arlington, Texas on September 5, 2013.

**Potential controversial concerns and legislative interest:**

The EPA's proposed implementation rule for the 2008 eight-hour ozone standard (78 FR 34178, June 6, 2013) included two alternative deadlines for submitting the various SIP elements: (1) submit the emissions inventory and RACT SIP revisions by July 20, 2014 and the other major SIP elements by July 20, 2015 or (2) submit all required SIP elements together by January 20, 2015. The current timeline is to submit all elements together by July 20, 2015. This is consistent with the approach taken in 2007 during the transition to the 1997 eight-hour NAAQS in both the DFW and Houston-Galveston-Brazoria areas.

Because this proposed RACT SIP revision will not be submitted by the deadline specified in the implementation rule or the FCAA, the EPA could issue a finding of failure to submit. Such a finding could result in the imposition of sanctions on the state and promulgation of a federal implementation plan (FIP) under FCAA, §179, unless a plan is submitted to the EPA within 18 months after the EPA makes such a finding (not earlier than January 20, 2016). Sanctions could include transportation funding restrictions, grant withholding, and increased emissions offset requirements for new construction and major modification of stationary sources in the DFW ozone nonattainment area. The EPA would be required to impose such sanctions and implement a FIP until a SIP revision is approved for the area.

Owners and operators of units that may be subject to new RACT requirements in the DFW 2008 eight-hour ozone nonattainment area from this rulemaking may oppose more stringent VOC control and documentation requirements. Additionally, in the proposed implementation rule for the 2008 eight-hour ozone NAAQS, the EPA requires that RACT be implemented by January 1, 2017. Under the current proposed schedule, this rulemaking would be adopted in June 2015. Therefore, affected entities would only have from June 2015 through December 2016 to implement RACT control strategies and may object to the short time frame for compliance.

The EPA has requested comment on the proposed implementation rule regarding the necessity of imposing VOC RACT on sources in areas where VOC controls would have negligible ozone reduction benefit. If the EPA changes the current policy regarding VOC RACT, revisions to some or all of the rules included for this rulemaking may not be necessary. However, the EPA is not expected to finalize the implementation rule for the

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2008 eight-hour ozone NAAQS until after this Chapter 115 rulemaking for VOC RACT is proposed.

The TCEQ and other concerned parties are currently challenging whether the EPA's inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area was lawful. These challenges are currently pending in the United States Court of Appeals for the District of Columbia Circuit. If the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area is overturned, the TCEQ will take action to revise this rulemaking appropriately. Changes are proposed to the compliance schedule section in each division being revised as part of this rulemaking to appropriately address this issue if it occurs.

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

No

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

FCAA, §172(c)(1) and §182(b)(2) requires the state to submit a SIP revision implementing RACT for all CTG emission sources categories and all non-CTG major sources of VOC in the DFW area. Failure to submit a SIP revision could result in sanctions or promulgation of a FIP. One alternative would be to address RACT for the DFW area only and not make technical corrections that impact other areas of the state.

**Key points in the proposal rulemaking schedule:**

**Anticipated proposal date:** December 10, 2014

**Anticipated *Texas Register* publication date:** December 26, 2015

**Anticipated public hearing date:** January 15, 2015 and January 22, 2015

**Anticipated public comment period:** December 26, 2014 through January 30, 2015

**Anticipated adoption date:** June 3, 2015

**Agency contacts:**

Frances Dowiak, Rule Project Manager, (512) 239-3931, Air Quality Division

Amy Browning, Staff Attorney, (512) 239-0891

Derek Baxter, Texas Register Coordinator, (512) 239-2613

**Attachments**

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Marshall Coover  
Tucker Royall

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**Pattie Burnett**  
**Office of General Counsel**  
**Frances Dowiak**  
**Derek Baxter**