

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** September 13, 2016

**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.:** 2016-0956-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 115, Control of Air Pollution from Volatile Organic Compounds  
VOC RACT Rules for the 2008 HGB Eight-Hour Ozone Nonattainment Area  
Rule Project No. 2016-039-115-AI

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

The 1990 Federal Clean Air Act (FCAA) Amendments (42 United States Code (USC), §§7401 *et seq.*) require the United States Environmental Protection Agency (EPA) to establish primary National Ambient Air Quality Standards (NAAQS) that protect public health and to designate areas exceeding the NAAQS as nonattainment areas. For each designated nonattainment area, the state is required to submit a State Implementation Plan (SIP) revision to the EPA that provides for attainment and maintenance of the NAAQS.

FCAA, §172(c)(1) requires that the SIP incorporate all reasonably available control measures, including reasonably available control technology (RACT), for sources of relevant pollutants. 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). For ozone nonattainment areas classified as moderate and above, FCAA, §182(b)(2) requires the state to submit a SIP revision that implements RACT for sources of volatile organic compounds (VOC) addressed in a control techniques guidelines (CTG) document and for all non-CTG major sources.

The Houston-Galveston-Brazoria (HGB) area's 2015 design value of 80 parts per billion exceeded the 2008 eight-hour ozone NAAQS and therefore did not attain the NAAQS by the July 20, 2016 attainment deadline. The EPA notified the Texas Commission on Environmental Quality (TCEQ) of the pending determination of nonattainment and reclassification of the HGB area from marginal to moderate. The major source threshold for moderate nonattainment areas is a potential to emit (PTE) 100 tons per year (tpy) or more of VOC. However, a PTE of 25 tpy is retained as the major source threshold for the HGB area, which was classified as a severe eight-hour ozone nonattainment area under the 1997 eight-hour ozone NAAQS because this is the most stringent classification currently in effect for the HGB area.

As indicated in the EPA's 2008 ozone standard SIP requirements rule, the attainment deadline for moderate classification is July 20, 2018 with an attainment year of 2017 (80 FR 12264, March 6, 2015). These proposed rules will address updated RACT for the

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future required reclassification of the HGB ozone nonattainment area.

The proposed Chapter 115, Subchapter B, Division 1 rule revisions are intended to update the RACT rules for storage tanks in the HGB area to mirror the changes incorporated during the December 2011 rulemaking for the Dallas-Fort Worth (DFW) 1997 eight-hour ozone nonattainment area and the June 2015 rulemaking for the DFW 2008 eight-hour ozone nonattainment area for the crude oil and condensate storage tanks. The proposed Chapter 115, Subchapter B, Division 1 rule revisions would address RACT for both CTG and non-CTG major source VOC storage tanks in the HGB area.

**Scope of the rulemaking:**

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

The proposed rulemaking would revise Chapter 115, Subchapter B, Division 1, to update the approved RACT requirements for VOC storage tanks in the HGB area. The proposed updates mirror revisions incorporated during the December 2011 rulemaking for the DFW 1997 eight-hour ozone nonattainment area and the June 2015 rulemaking for the DFW 2008 eight-hour ozone nonattainment area for VOC storage tanks. The proposed rule changes include: updating the control efficiency requirement for control devices other than vapor recovery units or flares; expanding the applicability to include the aggregate of storage tanks at a pipeline breakout station into the control requirements prescribing flashed gas controls; and adding inspection, repair, and recordkeeping requirements for consistency with existing requirements in the DFW area.

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

The proposed rules would implement RACT for VOC storage tanks, as mandated by FCAA requirements.

The control, inspection, and recordkeeping requirements adopted for storage tanks in the DFW area and recommended for implementation in the HGB area are:

- increasing the control efficiency for all control devices, other than vapor recovery units and flares, from 90% to 95%;
- expanding the applicability to include the aggregate of storage tanks at a pipeline breakout station into the control requirements prescribing flashed gas controls;
- implementing control, inspection, and repair requirements after tank opening/loading and quarterly seal integrity inspections for condensate and crude oil storage tanks;
- maintaining records of the new inspection requirements; and
- increasing the record retention period from two to five years.

The 95% control efficiency adopted for storage vessels in the DFW area was approved by the EPA as RACT in 2014. The control, inspection, and recordkeeping requirements for openings, and the 95% control efficiency, are also consistent with the New Source Performance Standards for new condensate and crude oil tanks (40 Code of Federal Regulations Subpart OOOO).

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

The proposed rulemaking would revise Chapter 115, Subchapter B, Division 1, Storage of Volatile Organic Compounds, to update approved RACT requirements for VOC storage tanks in the HGB area. These proposed requirements would establish more stringent requirements consistent with the level of RACT established for this emission source category in the DFW 2008 eight hour ozone nonattainment area.

The rulemaking would include other non-substantive revisions to update rule citations and to conform to *Texas Register* style and formatting requirements.

**Statutory authority:**

The rule changes would be 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 TWC; §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission. The rule changes would also be proposed 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; 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; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §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; and 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 amended 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 EPA published the final rule establishing the 2008 eight-hour NAAQS for ozone in the *Federal Register* on March 27, 2008 (73 FR 16436).

**Effect on the:**

**A.) Regulated community:** The regulated community would be obligated to comply with the new inspection and recordkeeping requirements and may incur costs associated with those requirements. Agency staff estimates that there would be 47 entities with 118 facilities that operate crude oil or condensate storage tanks in the HGB area that have uncontrolled emissions over 25 tpy of VOC. Agency staff anticipates all of these entities and facilities are already maintaining the new 95% control requirement with their current practices. Because they are anticipated to already meet the proposed control requirement, no additional costs are expected for these facilities from increasing the control requirement from 90% to 95%.

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However, the proposed rules would also expand the applicability requirements to include the aggregate of crude oil and condensate tanks at a pipeline breakout station in the HGB area. There are six potential sites that fall under this expanded applicability. These six sites may need to install controls if they do not meet the exemption criterion.

Agency staff did identify one entity that may be a small business, but for the most part all affected entities were large businesses.

**B.) Public:** The EPA asserts that the general public in the HGB ozone nonattainment area may benefit from improved air quality as a result of lower ozone levels.

**C.) Agency programs:** The rulemaking may increase the workload for the Office of Compliance and Enforcement staff when inspecting affected facilities to verify compliance with any new or revised requirements.

**Stakeholder meetings:**

No stakeholder meetings were held for the proposed rulemaking; however, a public hearing will be offered in Houston.

**Potential controversial concerns and legislative interest:**

In order to ensure that there will be enough time to finish the rulemaking, the planning to meet the RACT obligations for the anticipated reclassification of the 2008 eight-hour ozone HGB nonattainment area from marginal to moderate must begin prior to the EPA's anticipated finalized classification. Owners and operators in the HGB area who would be required to achieve the 95% control efficiency on VOC storage tanks and comply with the new inspection requirements for crude oil and condensate fixed roof tanks may object to the rule changes. Industry may object to the short time frame to implement controls. However, any source meeting the existing 90% control requirements is likely to already be meeting the proposed 95% requirement as well.

Because the HGB area is currently classified as severe nonattainment for the 1997 eight-hour ozone NAAQS, the major source threshold is 25 tpy of VOC. If the EPA approves the redesignation substitute request submitted August 2015, the major source threshold for the 2008 eight-hour ozone HGB nonattainment area would be 100 tpy of VOC emissions, commensurate with a moderate nonattainment area classification. This change in area classification could affect the applicability for newly affected pipeline breakout stations.

**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 source categories and all non-CTG major sources in the HGB area. Failure to submit a SIP revision could result in sanctions or promulgation of a

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federal implementation plan. One alternative would be to submit a certification that existing provisions fulfill RACT requirements for storage vessels in the HGB area. However, this would necessitate a demonstration showing that the existing RACT requirements for storage vessels in the DFW area are not RACT for the same types of storage vessels in the HGB area, which may be difficult to support.

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

**Anticipated proposal date:** September 21, 2016

**Anticipated *Texas Register* publication date:** October 7, 2016

**Anticipated public hearing date:** October 24, 2016

**Anticipated public comment period:** September 23, 2016 to October 24, 2016

**Anticipated adoption date:** December 2016

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