

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** November 1, 2024

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

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

**Docket No.:** 2024-0645-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 115, Control of Air Pollution from Volatile Organic Compounds  
Industrial Adhesives Contingency Measure Corrections  
Rule Project No. 2024-024-115-AI

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

Effective November 7, 2022, the U.S. Environmental Protection Agency (EPA) reclassified 10 counties in the Dallas-Fort Worth (DFW) area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) and eight counties in the Houston-Galveston-Brazoria (HGB) area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) from serious to severe for the 2008 eight-hour ozone national ambient air quality standards (NAAQS) (87 *Federal Register* (FR) 60926). Reclassification to severe nonattainment triggered emission control evaluation, emission reduction quantification, rule writing, and state implementation plan (SIP) submission requirements for the DFW and HGB 2008 ozone NAAQS nonattainment areas that were submitted to EPA on May 7, 2024, to meet the deadline established in EPA's reclassification action for the 2008 ozone NAAQS.

Federal Clean Air Act (FCAA), §172(c)(9) and §182(c)(9) impose SIP requirements on nonattainment areas classified as moderate and above, including contingency measures to be implemented if the areas fail to meet reasonable further progress (RFP) requirements or fail to attain the NAAQS by the applicable attainment date. The commission adopted a 30 Texas Administrative Code (TAC) Chapter 115 rulemaking on April 24, 2024, that included SIP contingency rules (Project No. 2023-116-115-AI). However, between proposal and adoption of that rulemaking, staff discovered that some of the industrial adhesive emissions limits added to 30 TAC Chapter 115, Subchapter E, Division 7 were proposed incorrectly from what was intended and other emissions limits that should have been included were inadvertently omitted from the proposed rulemaking.

Emissions reductions associated with the contingency measures intended to be included in the previous rulemaking were calculated and included in three SIP revisions adopted April 24, 2024: the DFW 2008 Ozone NAAQS Severe Attainment Demonstration (AD) SIP Revision, (Project No. 2023-107-SIP-NR), the HGB 2008 Ozone NAAQS Severe AD SIP Revision (Project No. 2023-110-SIP-NR), and the DFW-HGB 2008 Ozone NAAQS Severe RFP SIP Revision (Project No. 2023-108-SIP-NR). This rulemaking adoption will revise Chapter 115, Subchapter E, Division 7 to correct and add the emissions limits that were intended to be included in the previously adopted rulemaking and that were accounted for in the SIP contingency calculations for the three previously adopted SIP revisions.

### Scope of the rulemaking:

The rulemaking will amend §115.470, §115.471, and §115.473 to correct errors in previous rulemaking pertaining to inadequate contingency control measures that were adopted affecting the DFW and HGB nonattainment areas and specify additional applicability requirements for contingency scenarios. These corrections will implement adequate contingency measure controls as intended and stated in the associated SIP revisions for the DFW and HGB areas.

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

The rulemaking includes control requirements with corrected volatile organic compounds (VOC) content limits for existing industrial adhesive categories, new and revised definitions, and a revision to the applicability section necessary to fulfill SIP contingency measure requirements. The rulemaking will revise existing §115.470 (relating to Applicability and Definitions), §115.471 (relating to Exemptions), and §115.473 (relating to Control Requirements) within Subchapter E, Solvent-Using Processes, Division 7, Miscellaneous Industrial Adhesives. Adoption of this rulemaking will allow for implementation of the additional emissions reductions necessary to satisfy FCAA, §172(c)(9) and §182(c)(9) contingency requirements for the DFW and HGB areas, as adopted in the DFW 2008 Ozone NAAQS Severe AD SIP Revision, the HGB 2008 Ozone NAAQS Severe AD SIP Revision, and the DFW-HGB 2008 Ozone NAAQS Severe RFP SIP Revision.

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

The rule revisions will address FCAA, §172(c)(9) and §182(c)(9) contingency measure requirements for the DFW and HGB 2008 ozone NAAQS nonattainment areas. Corrections are adopted for industrial adhesive contingency measures that will be implemented in the DFW and/or HGB areas, if triggered, to meet SIP contingency requirements for any 2008 ozone standard classification.

This rulemaking will also address FCAA, §110(l) anti-backsliding requirements associated with the adopted amendments to existing rules in Subchapter E, Division 7.

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

Staff recommends additional updates to Chapter 115, Subchapter E, Division 7 to assure necessary applicability, promote clarification, and address missing definitions in those rules that would explain terminology to be used in reference to the revised VOC content limit materials and their applications or uses. The rulemaking adoption will also revise an erroneous reference in the exemption section and specify additional applicability requirements for contingency scenarios in the DFW and HGB nonattainment areas. The rulemaking will also include non-substantive revisions to Chapter 115 to remove obsolete language, use consistent terminology, and update the rule language to current *Texas Register* and Texas Commission on Environmental Quality (TCEQ) style and format requirements.

**Statutory authority:**

The rule amendments will be adopted 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; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; 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 will also be adopted 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; §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the 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 will also be adopted under 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

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maintained within each air quality control region of the state. EPA published the final rule establishing the NAAQS for ozone in the *Federal Register* on March 27, 2008 (73 FR 16436).

**Effect on the:**

**A.) Regulated community:**

The adopted rules, if triggered for contingency, will require owners or operators of affected sources in the DFW and HGB areas to comply with the revised VOC content limits; implement work practices; or comply with monitoring, testing, and recordkeeping requirements. Costs associated with new requirements would be incurred by the owner or operator.

**B.) Public:**

The public in the DFW and HGB areas may benefit from ultimately meeting the applicable ozone NAAQS and the areas being redesignated to attainment.

**C.) Agency programs:**

The rulemaking may affect certain parts of the agency. Additional Air Permits Division staff hours may be required to update Title V Operating Permits as new rules become applicable to more major sources. Additional staff hours may also be required in the Office of Compliance and Enforcement to conduct additional or expanded investigations because of new regulations in Chapter 115.

**Stakeholder meetings:**

No.

**Public Involvement Plan**

Yes.

**Alternative Language Requirements**

Yes. Spanish.

**Public comment:**

The public comment period opened on June 14, 2024, and closed on July 29, 2024. The commission offered a virtual public hearing on July 25, 2024. Notice of the hearing was published in English in the *Dallas Morning News* newspaper and the *Houston Chronicle* on June 14, 2024. Notice of the public hearing was published in Spanish in *La Voz* newspaper on July 17, 2024, and in *Al Día* newspaper on June 19, 2024. Notice was also published in English in the *Texas Register* on July 19, 2024, (49 TexReg 5320). A public hearing notice was published in both English and Spanish on the TCEQ's Public Comment System on June 14, 2024. The rule proposal, which included public comment and hearing information, was available on TCEQ's Pending Rule Proposals webpage on May 31, 2024, and was available on TCEQ's Rule Proposals webpage on June 12, 2024. GovDelivery notifications were distributed on May 31, 2024, and on June 12, 2024, and the public hearing notice was sent to local, regional, and state agencies in the affected areas and to state agencies in surrounding states. TCEQ staff were present for the hearing for public comment on the proposed rulemaking on July 25, 2024, and Spanish language interpreters were available at the hearing; however, none of the attendees signed up to make comments on the record. The public hearing was not formally opened for comment, and a transcript was not prepared.

During the comment period, the commission received comments from Texans for Environmental Awareness. The comments concerned enhancing compliance and improving transparency, protecting public health, reducing ozone levels, and improving public engagement.

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**Significant changes from proposal:**

None.

**Potential controversial concerns and legislative interest:**

EPA released new draft guidance on contingency measures, published in the *Federal Register* for public comment on March 23, 2023 (88 FR 17571). The draft guidance proposed an entirely new scheme for determining the amount of emissions reductions necessary to address the contingency measures requirement. Since EPA had not issued final guidance to the states regarding the quantity of required reductions from contingency measures at the time this rulemaking was developed, the provisions in this adopted rulemaking that will address contingency measure requirements relied on the historically approved approach (3% of the 2011 RFP base year emissions) to determine the amount of emissions reductions necessary to address this requirement.

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

The adopted rules will 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?**

Not submitting the rule revisions could result in partial disapprovals or incompleteness findings for the recently submitted DFW and HGB 2008 Ozone NAAQS Severe AD SIP Revisions (Project Nos. 2023-107-SIP-NR and 2023-110-SIP-NR) and the DFW-HGB 2008 Ozone NAAQS Severe RFP SIP Revision (Project No. 2023-108-SIP) due to incorrect or incomplete contingency plans.

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

*Texas Register* proposal publication date: July 19, 2024

Anticipated *Texas Register* adoption publication date: December 6, 2024

Anticipated effective date: December 12, 2024

Six-month *Texas Register* filing deadline: December 27, 2024

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