

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** May 30, 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 Proposed Rulemaking
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 proposed rulemaking would 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 proposed rulemaking would 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 would 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 would do:

The proposed 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 proposed rulemaking would 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 proposed rulemaking would 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 proposed rule revisions would address FCAA, §172(c)(9) and §182(c)(9) contingency measure requirements for the DFW and HGB 2008 ozone NAAQS nonattainment areas. Corrections are proposed 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 proposed rulemaking would also address FCAA, §110(l) anti-backsliding requirements associated with the proposed 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 proposed rulemaking would also revise an erroneous reference in the exemption section and also specify additional applicability requirements for contingency scenarios in the DFW and HGB nonattainment areas. The proposed rulemaking would 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 TCEQ style and format requirements.

Statutory authority:

The rule amendments would be 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; 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 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; §382.016, 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 would also be proposed under 42 United States Code, §§7420 et seq.,

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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. 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 rulemaking would 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 proposed 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:

The commission did not hold any stakeholder meetings related to this proposed rulemaking. 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 proposed rulemaking would 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 proposal rulemaking schedule:

Anticipated proposal date: June 12, 2024

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Anticipated *Texas Register* publication date: June 28, 2024

Anticipated public hearing date: July 25, 2024

Anticipated public comment period: June 14, 2024 - July 29, 2024

Anticipated adoption date: November 20, 2024

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