

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** November 18, 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.: 2016-0344-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 113, Standards of Performance for Hazardous Air Pollutants and
for Designated Facilities and Pollutants
Maximum Achievable Control Technology (MACT) and Generally Available
Control Technology (GACT) Standards Update
Rule Project No. 2016-032-113-AI

Background and reason(s) for the rulemaking:

The Texas Commission on Environmental Quality (TCEQ, commission, or agency) administers federal regulations establishing National Emission Standards for Hazardous Air Pollutants by incorporating these regulations by reference into Chapter 113, Subchapter C. The United States Environmental Protection Agency (EPA) has amended a number of Maximum Achievable Control Technology (MACT) and Generally Available Control Technology (GACT) standards since Chapter 113 was last amended in 2013. Most of the standards covered in this rulemaking were amended by the EPA as a result of Federal Clean Air Act (FCAA) requirements that the EPA periodically conduct risk assessments on each source category and determine if changes are needed to reduce residual risks or address developments in applicable control technology. Some standards were revised by EPA to remove affirmative defense provisions which were vacated in *Natural Resources Defense Council v. Environmental Protection Agency*, 749 F. 3d 1055 (D.C. Cir. 2014). In addition, EPA finalized new standards for brick and clay manufacturing to replace the 2003 standards vacated in *Sierra Club v. Environmental Protection Agency*, 479 F. 3d 875 (D.C. Cir. 2007).

The amended and new standards need to be incorporated by reference into Chapter 113, Subchapter C, to avoid inconsistency between federal and state requirements; to allow the commission to enforce the most current MACT and GACT standards prior to receiving formal delegation of the amended standards; to facilitate delegation of the amended MACT standards from the EPA; and to maintain existing delegation. Similar updates and amendments to Chapter 113 were adopted in 2013, 2007, 2005, 2003, 2000, 1999, 1998, and 1997.

Scope of the rulemaking:

Since Chapter 113 was last updated, the EPA has promulgated amendments to 31 MACT or GACT standards, and adopted three new MACT standards. Please see attached "Table 1: Amended and New MACT and GACT Standards" for the specific list of amended and new standards to be incorporated in this adopted rulemaking.

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A.) Summary of what the rulemaking will do:

This rulemaking incorporates the amended and new MACT and GACT standards by reference into Chapter 113, Subchapter C.

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

This rulemaking is not explicitly required by federal rules or state statutes; however, it is necessary for TCEQ to receive formal delegation of the amended and new MACT and GACT standards from the EPA and to implement a federal operating permit program that provides authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including National Emission Standards for Hazardous Air Pollutants, which are required under 42 United States Code, §7412.

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

None.

Statutory authority:

Texas Water Code (TWC), §5.103, concerning Rules; TWC, §5.105, concerning General Policy; Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose; THSC, §382.011, concerning General Powers and Duties; THSC, §382.012, concerning the State Air Control Plan; THSC, §382.016, concerning Monitoring Requirements; Examination of Records; THSC, §382.017, concerning Rules; and THSC, §382.051, concerning Permitting Authority of the Commission; Rules.

Effect on the:

A.) Regulated community:

Many industries are subject to MACT or GACT standards. However, the adopted changes to Chapter 113 do not impose an additional burden on those industries, because they are required to comply with the standards regardless of whether TCEQ or the EPA is the implementing authority. Sources subject to the new sections of Chapter 113 that also have a Title V operating permit will need to revise their permit to include the applicable rule citations.

B.) Public:

This rulemaking will allow Texas to enforce the new and amended MACT and GACT standards, resulting in greater compliance and continued protection of human health and the environment.

C.) Agency programs:

The Air Permits Division will need to incorporate the three new MACT and GACT standards into new or revised Title V operating permits. Enforcement of the newly-promulgated MACT and GACT standards may result in additional workload for agency staff in the Office of Compliance and Enforcement. However, these tasks can be accomplished with existing resources.

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Stakeholder meetings:

No stakeholder meetings were held. The adopted rules incorporate by reference federal regulations that already apply, and the adopted rules impose no additional requirements. The standard public notice and public comment process was followed, with a public hearing in Austin offered on August 18, 2016.

Public comment:

No oral or written comments on the proposed rules were received.

Significant changes from proposal:

In the proposed Chapter 113 rulemaking, the commission solicited comment on the possibility of incorporating amendments that EPA was expected to adopt in the near future, specifically, after the Chapter 113 proposal documents were developed. No adverse comments on this proposed approach were received.

In the time since the rulemaking was proposed, EPA issued amendments for the standards for Portland Cement Manufacturing Industry, Secondary Aluminum Production, Coal- and Oil-Fired Electric Utility Steam Generating Units, Aerospace Manufacturing and Rework Facilities, and Petroleum Refineries. The Chapter 113 rule language incorporating these standards has been revised to include these recent amendments, so that the rules incorporated into Chapter 113, Subchapter C, are as current as possible.

Potential controversial concerns and legislative interest:

Staff does not expect controversy related to the adopted revisions to Chapter 113. The commission received no oral or written public comments during the similar incorporation of MACT standards in 2007 and 2013.

Does 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?

If this rulemaking does not go forward, TCEQ will not receive delegation of these new MACT and GACT standards from the EPA, and existing delegation would be at risk. Also, during the time period that TCEQ has not obtained current delegation for outdated MACT and GACT standards in Chapter 113, administrative aspects of the rules (e.g., compliance reports and requests for approval of alternative methods of control or monitoring) would be handled by the EPA rather than the TCEQ. The alternative is to not revise Chapter 113 to incorporate the amended and new MACT and GACT standards. However, if this rulemaking is not completed, the EPA will become the implementing authority for these regulations. Furthermore, failure to incorporate the amended and new standards may create potential issues with approval of Texas' Title V Operating Permit Program.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: July 22, 2016

Anticipated Texas Register adoption publication date: December 23, 2016

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Anticipated effective date: December 29, 2016
Six-month *Texas Register* filing deadline: January 22, 2016

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Attachments:

Table: Amended and New MACT and GACT Standards

cc: Chief Clerk, 2 copies
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