

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: February 8, 2013

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

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

Docket No.: 2012-2076-RUL

Subject: Commission Approval for Proposed Rulemaking
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. 2013-004-113-AI

Background and reason(s) for the rulemaking:

The Texas Commission on Environmental Quality (TCEQ) 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 adopted a number of new MACT and GACT standards and amended a number of existing MACT standards since Chapter 113 was last amended in 2007. The new and amended federal regulations need to be incorporated by reference into Chapter 113 in order to avoid inconsistency between federal and state requirements; to allow the commission to enforce MACT standards prior to receiving formal delegation of the new standards; to facilitate delegation of the new MACT standards from the EPA; and to maintain existing delegation. Similar updates and amendments to Chapter 113 were adopted in 2007, 2005, 2003, 2000, 1999, 1998, and 1997.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The rulemaking would incorporate by reference 25 new area source MACT and GACT standards into Chapter 113, Subchapter C. Three new major source MACT standards would also be incorporated by reference. Approximately 30 existing MACT standards already in Chapter 113, Subchapter C would be updated to maintain consistency with the corresponding federal regulations. Three existing MACT standards in Chapter 113 would be repealed as a result of court decisions that vacated those standards. Certain standards recently promulgated by the EPA are undergoing ongoing reconsideration (such as the area source and major source Boiler standards, the Mercury and Air Toxics Standards, and the Portland Cement Manufacturing standard). The proposal includes these standards under reconsideration, and solicits comment on whether these standards should be incorporated as of the currently-effective rules, or whether incorporation should be postponed until after EPA's reconsideration actions are resolved. A table is attached to show the new standards proposed to be added to Chapter 113.

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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 in order for the TCEQ to receive formal delegation of the amended and new MACT and GACT standards from the EPA.

C.) Additional staff recommendations that are not required by federal rule or state statute: None.

Statutory authority:

The amended and new sections would be proposed under Texas Health and Safety Code, §382.002, Policy and Purpose; §382.011, General Powers and Duties; §382.012, State Air Control Plan; §382.016, Monitoring Requirements; Examination of Records; §382.017, Rules; and §382.051, Permitting Authority of Commission; Rules. The amended and new sections would also be proposed under the commission's general authority under Texas Water Code, §5.103, Rules; and §5.105, General Policy.

Effect on the:

A.) Regulated community:

Many industries are subject to MACT or GACT standards. However, the proposed 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 the TCEQ or the EPA is the implementing authority. Sources that are subject to the new sections of Chapter 113 and 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 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 some of the new MACT and GACT standards into new and 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.

Stakeholder meetings:

No stakeholder meetings have been held. The proposed rules would incorporate by reference federal regulations that already apply, and the proposed rules impose no additional requirements. The standard public notice and public comment process will be followed, with a public hearing scheduled for April 11, 2013.

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Potential controversial concerns and legislative interest:

Staff does not expect controversy related to the revisions to Chapter 113. The commission received no oral or written public comments during the incorporation of MACT standards in 2005 and 2007. However, this rule package does include a number of area source standards, which apply to facilities that are smaller than those previously regulated under Chapter 113. This may generate more interest from smaller businesses that may be affected by these regulations, such as metal fabrication shops, metal plating facilities, and small coating operations.

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?

If this rulemaking does not go forward, TCEQ will not receive delegation of the new MACT and GACT standards from the EPA, and existing delegation would be at risk. Additionally, the existence of outdated MACT and GACT standards in Chapter 113 could create confusion as to which regulations apply. The alternative is to not revise Chapter 113 to incorporate the amended and new MACT 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 proposal rulemaking schedule:

Anticipated proposal date: February 27, 2013

Anticipated *Texas Register* publication date: March 15, 2013

Public hearing date: April 11, 2013

Public comment period: March 15, 2013 - April 15, 2013

Anticipated adoption date: July 24, 2013

Agency contacts:

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Terry Salem, Staff Attorney, 239-0469
Charlotte Horn, Texas Register Coordinator, 239-0779

Attachments

Table 1: Recent MACT/GACT Standards to be Incorporated into Chapter 113

Table 2: Amended MACT/GACT Standards Proposed to be Incorporated

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal

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Re: Docket No. 2012-2076-RUL

Curtis Seaton
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Michael Wilhoit
Charlotte Horn

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Table 1: List of Recent MACT/GACT Standards Proposed to be Incorporated

40 CFR Part 63 Subpart (Chapter 113 Section)	Section Title
DDDDD (§113.1130)	Industrial, Commercial, and Institutional Boilers and Process Heaters Major Sources
UUUUU (§113.1300)	Coal- and Oil-fired Electric Utility Steam Generating Units
WWWWW (§113.1320)	Hospital Ethylene Oxide Sterilizers Area Sources
YYYYY (§113.1340)	Electric Arc Furnace Steelmaking Facilities Area Sources
ZZZZZ (§113.1350)	Iron and Steel Foundries Area Sources
BBBBBB (§113.1370)	Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities Area Sources
CCCCCC (§113.1380)	Gasoline Dispensing Facilities Area Sources
HHHHHH (§113.1425)	Paint Stripping and Miscellaneous Surface Coating at Area Sources
JJJJJJ (§113.1435)	Industrial, Commercial, and Institutional Boilers Area Sources
LLLLLL (§113.1445)	Acrylic and Modacrylic Fibers Area Sources
MMMMMM (§113.1450)	Carbon Black Production Area Sources
NNNNNN (§113.1455)	Chemical Manufacturing Area Sources: Chromium Compounds
OOOOOO (§113.1460)	Flexible Polyurethane Foam Production and Fabrication Area Sources
PPPPPP (§113.1465)	Lead Acid Battery Manufacturing Area Sources
QQQQQQ (§113.1470)	Wood Preserving Area Sources
RRRRRR (§113.1475)	Clay Ceramics Manufacturing Area Sources
SSSSSS (§113.1480)	Glass Manufacturing Area Sources
TTTTTT (§113.1485)	Secondary Nonferrous Metals Processing Area Sources
VVVVVV (§113.1495)	Chemical Manufacturing Area Sources
WWWWWW (§113.1500)	Plating and Polishing Area Sources
XXXXXX (§113.1505)	Metal Fabrication and Finishing Area Sources
YYYYYY (§113.1510)	Ferrous Alloys Production Area Sources
ZZZZZZ (§113.1515)	Aluminum, Copper, and other Nonferrous Foundries Area Sources
AAAAAA (§113.1520)	Asphalt Processing and Asphalt Roofing Manufacturing Area Sources
BBBBBBB (§113.1525)	Chemical Preparations Industry Area Sources
CCCCCCC (§113.1530)	Paints and Allied Products Manufacturing Area Sources
DDDDDDD (§113.1535)	Prepared Feeds Manufacturing Area Sources
HHHHHHH (§113.1570)	Polyvinyl Chloride and Copolymers Production Major Sources

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Table 2: Amended MACT/GACT Standards Proposed to be Incorporated

40 CFR Part 63 Subpart (Chapter 113 Section)	Section Title
A (§113.100)	General Provisions
G (§113.120)	Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater
H (§113.130)	Organic Hazardous Air Pollutants for Equipment Leaks
M (§113.180)	Perchloroethylene Dry Cleaning Facilities
N (§113.190)	Chromium Emissions from Hard and Decorative Chromium Electroplating
R (§113.230)	Gasoline Distribution Facilities
S (§113.240)	Pulp and Paper Industry
U (§113.260)	Group I Polymers and Resins
X (§113.290)	Secondary Lead Smelting
Y (§113.300)	Marine Tank Vessel Loading Operations
CC (§113.340)	Petroleum Refineries
HH (§113.390)	Oil and Natural Gas Production Facilities
II (§113.400)	Shipbuilding and Ship Repair (Surface Coating)
JJ (§113.410)	Wood Furniture Manufacturing Operations
KK (§113.420)	Printing and Publishing
YY (§113.560)	Generic Maximum Achievable Control Technology Standards
CCC (§113.600)	Steel Pickling - HCl Process Facilities and HCl Acid Regeneration Plants
DDD (§113.610)	Mineral Wool Production
EEE (§113.620)	Hazardous Waste Combustors
GGG (§113.640)	Pharmaceuticals Production
HHH (§113.650)	Natural Gas Transmission and Storage Facilities
JJJ (§113.670)	Group IV Polymers and Resins
LLL (§113.690)	Portland Cement Manufacturing Industry
TTT (§113.770)	Primary Lead Processing
VVV (§113.790)	Publicly Owned Treatment Works
EEEE (§113.880)	Organic Liquids Distribution (Non-Gasoline)
FFFF (§113.890)	Miscellaneous Organic Chemical Manufacturing
UUUU (§113.1040)	Cellulose Products Manufacturing
ZZZZ (§113.1090)	Reciprocating Internal Combustion Engines
BBBBB (§113.1110)	Semiconductor Manufacturing
EEEEE (§113.1140)	Iron and Steel Foundries
GGGGG (§113.1160)	Site Remediation
HHHHH (§113.1170)	Miscellaneous Coating Manufacturing
DDDDDD (§113.1390)	Polyvinyl Chloride and Copolymers Production Area Sources
EEEEEE (§113.1400)	Primary Copper Smelting Area Sources
FFFFFF (§113.1410)	Secondary Copper Smelting Area Sources