

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of §§113.1-113.3 and 113.7-113.13, regarding Purpose; Definitions; and Specific Toxic Materials; Calculations of Fluoride Concentration from Stack Samples and Measurements; Coordination of Emissions from Several Properties; Measuring and Monitoring; Use of Air Pollution Control Facilities; Exclusion from Application; Exceptions; and Effective Date and Time for Compliance; and new §113.21, concerning Beryllium. These sections are all adopted without changes to the proposed text as published in the September 10, 1996 issue of the *Texas Register* (21 TexReg 8646) and will not be republished. New §113.21 will be placed in a new undesignated head, Beryllium, under new Subchapter A, Hazardous Air Pollutants.

Explanation of Rules

This adoption is part of the regulatory reform effort. The regulatory reform project identifies rules and regulations which need clarification for the benefit of the public; are outdated; impose regulatory requirements in excess of their contribution to the commission's mission; or are duplicated, unnecessary, or inconsistent.

Since most inorganic fluoride emissions are regulated by permit, the commission determines that §§113.1-113.3 and §§113.7-113.13 are outdated and adopts the repeal of these provisions. The commission also adopts revisions regarding beryllium in former §113.3(b), now codified at new §113.21.

Takings Impact Assessment

The commission has prepared a Takings Impact Assessment for these rules as required by Texas Government Code, Section 2007.043. The repeal of the Subchapter A fluoride rules and the new section regarding beryllium will not affect real property.

Hearing and Commenters

A public hearing on the proposal was held in Austin on October 10, 1996. The comment period closed the same day. No oral comments were presented at the hearing. Two commenters presented written testimony. The American Electronic Association supported the repeal of the old fluoride rules. Texas Utilities also supported the regulatory reform effort for fluorides, but also urged the commission to consider deleting the beryllium rule.

The September 10, 1996 notice proposed only to revise and renumber, not repeal, sections relating to the pollutant beryllium. A new proposal is required to entirely repeal beryllium regulations. The original intent of the staff working group was to focus on fluoride compounds, and beryllium compounds were not considered. A working team in the agency will evaluate the proposal to consider the repeal of the beryllium rule.

In addition, the United States Environmental Protection Agency provided a letter which stated that it had no comments on the repeal since the fluoride rule was not part of any specific State Implementation Plan.

Statutory Authority

The repeals are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

SUBCHAPTER A : INORGANIC FLUORIDE COMPOUNDS AND BERYLLIUM

§§113.1-113.3, 113.7-113.13

§113.1. Purpose.

§113.2. Definitions.

§113.3. Specific Toxic Materials.

§113.7. Calculation of Fluoride Concentration from Stack Samples and Measurements.

§113.8. Coordination of Emissions from Several Properties.

§113.9. Measuring and Monitoring.

§113.10. Use of Air Pollution Control Facilities.

§113.11. Exclusions from Application.

§113.12. Exceptions.

§113.13. Effective Date and Time for Compliance.

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 4, 1996.

SUBCHAPTER A : HAZARDOUS AIR POLLUTANTS

BERYLLIUM

§113.21

The new section is proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

§113.21. Beryllium.

(a) Emissions specifications. The maximum allowable, off-property net ground level concentration of beryllium from a source is 0.01 micrograms per cubic meter of ambient air in any 24-hour period.

(b) Compliance determination. Compliance with subsection (a) of this section may be determined by either the use of net ground level sampling procedures or stack sampling, calculated to a downwind concentration, as approved by the executive director.

This agency hereby certifies that the section as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 4, 1996.