

The Texas Natural Resource Conservation Commission (commission) adopts new §§113.170, 113.240, 113.410, 113.430, 113.460, 113.470, 113.480, 113.490, 113.530, 113.620, 113.640, and 113.660; and amendments to §§113.120, 113.200, 113.220, 113.250, 113.290, 113.340, and 113.380, concerning National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Source Categories. The new sections and amendments are adopted without changes to the proposed text as published in the April 9, 1999 issue of the *Texas Register* (24 TexReg 2851) and will not be republished.

The new sections concern requirements that are contained in 40 Code of Federal Regulations (CFR) Part 63. The United States Environmental Protection Agency (EPA) is developing these national standards to regulate emissions of hazardous air pollutants under the Federal Clean Air Act (FCAA) Amendments, §112. These NESHAP for source categories are technology-based standards commonly referred to as Maximum Achievable Control Technology (MACT) standards.

The amendments incorporate changes that EPA has made to MACT standards by updating the federal promulgation dates cited in the commission rules that were previously adopted by reference. Sections 113.120, 113.220, 113.250, and 113.290 were adopted by the commission on June 25, 1997. Sections 113.200, 113.340, and 113.380 were adopted by the commission on October 15, 1997.

EXPLANATION OF ADOPTED RULES

The commission adopts by reference, without changes, 12 of the federal MACT standards. Under federal law, the affected industries will be required to implement these MACT standards regardless of whether the commission or EPA is the agency responsible for implementation of the standards. In

addition to adopting these standards into Chapter 113, the commission is actively pursuing delegation of MACT standards from the EPA. Upon delegation, the commission will be responsible for administration and enforcement of the MACT requirements. The agency is adopting these rules as a step toward ensuring that the commission will eventually be the single point of contact for most MACT enforcement, notifications, reports, and other actions.

These 12 federal rules, each of which will be under its own division of the same name, are:

Coke Oven Batteries, 40 CFR 63, Subpart L;

Pulp and Paper Production, 40 CFR 63, Subpart S;

Wood Furniture Manufacturing Operations, 40 CFR 63, Subpart JJ;

Primary Aluminum Reduction Plants, 40 CFR 63, Subpart LL;

Tanks - Level 1, 40 CFR 63, Subpart OO;

Containers, 40 CFR 63, Subpart PP;

Surface Impoundments, 40 CFR 63, Subpart QQ;

Individual Drain Systems, 40 CFR 63, Subpart RR;

Oil-Water Separators and Organic-Water Separators, 40 CFR 63, Subpart VV;

Hazardous Waste Combustors, 40 CFR 63, Subpart EEE;

Pharmaceuticals Production, 40 CFR 63, Subpart GGG; and

Flexible Polyurethane Foam Production, 40 CFR 63, Subpart III.

The Hazardous Waste Combustor MACT provisions, promulgated in 40 CFR 63, Subpart EEE, represent only a portion of the MACT standard that was proposed by EPA. On June 19, 1996, EPA proposed the Hazardous Waste Combustor MACT. On June 19, 1998, EPA finalized portions of the MACT which include requirements for sources to provide a notification of intent to comply with the final rule, progress reports once the final rule is promulgated, and allowances for extensions to the compliance period. EPA finalized these MACT provisions early because under the FCAA, affected sources have three years (with a potential one-year extension) to comply with a MACT standard, whereas modifications to a Resource Conservation and Recovery Act permit may take several years to process. Therefore, EPA promulgated a streamlined approach to allow permit modifications designed to comply with MACT requirements. EPA will finalize the remaining portions of the MACT in the near future. This rulemaking includes adoption by reference of the streamlined approach already adopted by EPA. As with all MACTs, the commission will review the future EPA rulemaking on this subject and will incorporate the new standards as appropriate.

As other MACT standards continue to be promulgated, they will be reviewed for compatibility with current state regulations and policies. The commission will then incorporate them into Chapter 113 through formal rulemaking procedures. The commission will seek formal delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

The commission adopts by reference the latest EPA amendments to seven of the federal MACT standards. The seven standards are:

Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater, 40 CFR 63, Subpart G, §113.120;
Ethylene Oxide Sterilization Facilities, 40 CFR 63, Subpart O, §113.200;
Industrial Process Cooling Towers, 40 CFR 63, Subpart Q, §113.220;
Halogenated Solvent Cleaning, 40 CFR 63, Subpart T, §113.250;
Secondary Lead Smelting, 40 CFR 63, Subpart X, §113.290;
Petroleum Refineries, 40 CFR 63, Subpart CC, §113.340; and
Aerospace Manufacturing and Rework Facilities, 40 CFR 63, Subpart GG, §113.380.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the Texas Government Code. This rulemaking does not establish any new requirements beyond those already established by federal law. Affected sources are required to comply with these federal standards whether or not the commission adopts them.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rulemaking under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to facilitate implementation and enforcement of the MACT standards by the state. This rulemaking will not create any additional burden on private real property. Under federal law, the

affected industries will be required to implement these MACT standards regardless of whether the commission or EPA is the agency responsible for implementation of the standards.

COASTAL MANAGEMENT PLAN CONSISTENCY REVIEW

The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this rulemaking action is consistent with the applicable CMP goals and policies. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 CFR to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking will adopt by reference, without changes, 12 federal MACT standards contained in 40 CFR Part 63 and is, therefore, consistent with this policy.

HEARING AND COMMENTERS

A public hearing was held in Austin on May 5, 1999. No oral comments were received at this hearing. Two commenters, the Styrene Information and Research Center and an individual, submitted written comments.

ANALYSIS OF TESTIMONY

The Styrene Information and Research Center expressed support for the commission adoption of the MACT standard for Wood Furniture Manufacturing Operations, 40 CFR 63, Subpart JJ, as amended through December 28, 1998.

The commission appreciates the support.

An individual expressed overall support of the rulemaking.

The commission appreciates the support.

STATUTORY AUTHORITY

The amendment is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which provides for the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this Chapter 382.

**SUBCHAPTER C : NATIONAL EMISSION STANDARDS FOR HAZARDOUS
AIR POLLUTANTS FOR SOURCE CATEGORIES
(FCAA §112, 40 CFR 63)**

**DIVISION 2 : HAZARDOUS ORGANIC NESHAP
§113.120**

**§113.120. Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage
Vessels, Transfer Operations, and Wastewater (40 CFR 63, Subpart G).**

The Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart G, as amended through December 9, 1998, is incorporated by reference.

DIVISION 3 : COKE OVEN BATTERIES

§113.170

STATUTORY AUTHORITY

The new section is adopted under the Texas Health and Safety Code, the TCAA, §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which provides for the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this Chapter 382.

§113.170. Coke Oven Batteries (40 CFR 63, Subpart L).

The Coke Oven Batteries Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart L, October 27, 1993, is incorporated by reference.

DIVISION 6 : ETHYLENE OXIDE STERILIZATION FACILITIES

§113.200

STATUTORY AUTHORITY

The amendment is adopted under the Texas Health and Safety Code, the TCAA, §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which provides for the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this Chapter 382.

§113.200. Ethylene Oxide Sterilization Facilities (40 CFR 63, Subpart O).

The Ethylene Oxide Sterilization Facilities Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart O, as amended through December 4, 1998, is incorporated by reference.

DIVISION 7 : INDUSTRIAL PROCESS COOLING TOWERS

§113.220

STATUTORY AUTHORITY

The amendment is adopted under the Texas Health and Safety Code, the TCAA, §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which provides for the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this Chapter 382.

§113.220. Industrial Process Cooling Towers (40 CFR 63, Subpart Q).

The Industrial Process Cooling Towers Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart Q, as amended through July 23, 1998, is incorporated by reference.

DIVISION 9 : PULP AND PAPER PRODUCTION

§113.240

STATUTORY AUTHORITY

The new section is adopted under the Texas Health and Safety Code, the TCAA, §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which provides for the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this Chapter 382.

§113.240. Pulp and Paper Production (40 CFR 63, Subpart S).

The Pulp and Paper Production Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart S, as amended through December 28, 1998, is incorporated by reference.

DIVISION 10 : HALOGENATED SOLVENT CLEANING

§113.250

STATUTORY AUTHORITY

The amendment is adopted under the Texas Health and Safety Code, the TCAA, §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which provides for the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this Chapter 382.

§113.250. Halogenated Solvent Cleaning (40 CFR 63, Subpart T).

The Halogenated Solvent Cleaning Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart T, as amended through December 11, 1998, is incorporated by reference.

DIVISION 13 : SECONDARY LEAD SMELTING

§113.290

STATUTORY AUTHORITY

The amendment is adopted under the Texas Health and Safety Code, the TCAA, §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which provides for the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this Chapter 382.

§113.290. Secondary Lead Smelting (40 CFR 63, Subpart X).

The Secondary Lead Smelting Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart X, as amended through August 24, 1998, is incorporated by reference.

DIVISION 15 : PETROLEUM REFINERIES

§113.340

STATUTORY AUTHORITY

The amendment is adopted under the Texas Health and Safety Code, the TCAA, §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which provides for the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this Chapter 382.

§113.340. Petroleum Refineries (40 CFR 63, Subpart CC).

The Petroleum Refineries Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart CC, as amended through August 18, 1998, is incorporated by reference.

DIVISION 18 : AEROSPACE MANUFACTURING AND REWORK FACILITIES

§113.380

STATUTORY AUTHORITY

The amendment is adopted under the Texas Health and Safety Code, the TCAA, §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which provides for the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this Chapter 382.

§113.380. Aerospace Manufacturing and Rework Facilities (40 CFR 63, Subpart GG).

The Aerospace Manufacturing and Rework Facilities Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart GG, as amended through September 1, 1998, is incorporated by reference.

DIVISION 20 : WOOD FURNITURE MANUFACTURING OPERATIONS

§113.410

STATUTORY AUTHORITY

The new section is adopted under the Texas Health and Safety Code, the TCAA, §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which provides for the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this Chapter 382.

§113.410. Wood Furniture Manufacturing Operations (40 CFR 63, Subpart JJ).

The Wood Furniture Manufacturing Operations Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart JJ, as amended through December 28, 1998, is incorporated by reference.

DIVISION 22 : PRIMARY ALUMINUM REDUCTION PLANTS

§113.430

STATUTORY AUTHORITY

The new section is adopted under the Texas Health and Safety Code, the TCAA, §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which provides for the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this Chapter 382.

§113.430. Primary Aluminum Reduction Plants (40 CFR 63, Subpart LL).

The Primary Aluminum Reduction Plants Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart LL, October 7, 1997, is incorporated by reference.

DIVISION 23 : TANKS - LEVEL 1

§113.460

STATUTORY AUTHORITY

The new section is adopted under the Texas Health and Safety Code, the TCAA, §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which provides for the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this Chapter 382.

§113.460. Tanks - Level 1 (40 CFR 63, Subpart OO).

The Tanks - Level 1 Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart OO, July 1, 1996, is incorporated by reference.

DIVISION 24 : CONTAINERS

§113.470

STATUTORY AUTHORITY

The new section is adopted under the Texas Health and Safety Code, the TCAA, §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which provides for the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this Chapter 382.

§113.470. Containers (40 CFR 63, Subpart PP).

The Containers Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart PP, July 1, 1996, is incorporated by reference.

DIVISION 25 : SURFACE IMPOUNDMENTS

§113.480

STATUTORY AUTHORITY

The new section is adopted under the Texas Health and Safety Code, the TCAA, §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which provides for the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this Chapter 382.

§113.480. Surface Impoundments (40 CFR 63, Subpart QQ).

The Surface Impoundments Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart QQ, July 1, 1996, is incorporated by reference.

DIVISION 26 : INDIVIDUAL DRAIN SYSTEMS

§113.490

STATUTORY AUTHORITY

The new section is adopted under the Texas Health and Safety Code, the TCAA, §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which provides for the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this Chapter 382.

§113.490. Individual Drain Systems (40 CFR 63, Subpart RR).

The Individual Drain Systems Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart RR, July 1, 1996, is incorporated by reference.

DIVISION 27 : OIL-WATER SEPARATORS AND ORGANIC-WATER SEPARATORS

§113.530

STATUTORY AUTHORITY

The new section is adopted under the Texas Health and Safety Code, the TCAA, §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which provides for the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this Chapter 382.

§113.530. Oil-Water Separators and Organic-Water Separators (40 CFR 63, Subpart VV).

The Oil-Water Separators and Organic-Water Separators Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart VV, July 1, 1996, is incorporated by reference.

DIVISION 28 : HAZARDOUS WASTE COMBUSTORS

§113.620

STATUTORY AUTHORITY

The new section is adopted under the Texas Health and Safety Code, the TCAA, §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which provides for the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this Chapter 382.

§113.620. Hazardous Waste Combustors (40 CFR 63, Subpart EEE).

The Hazardous Waste Combustors Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart EEE, June 19, 1998, is incorporated by reference.

DIVISION 29 : PHARMACEUTICALS PRODUCTION

§113.640

STATUTORY AUTHORITY

The new section is adopted under the Texas Health and Safety Code, the TCAA, §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which provides for the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this Chapter 382.

§113.640. Pharmaceuticals Production (40 CFR 63, Subpart GGG).

The Pharmaceuticals Production Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart GGG, September 21, 1998, is incorporated by reference.

DIVISION 30 : FLEXIBLE POLYURETHANE FOAM PRODUCTION

§113.660

STATUTORY AUTHORITY

The new section is adopted under the Texas Health and Safety Code, the TCAA, §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which provides for the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this Chapter 382.

§113.660. Flexible Polyurethane Foam Production (40 CFR 63, Subpart III).

The Flexible Polyurethane Foam Production Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart III, October 7, 1998, is incorporated by reference.