

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** November 22, 2022

Thru: Laurie Gharis, Chief Clerk
Toby Baker, Executive Director

From: Samuel Short, Acting Director
Office of Air

Docket No.: 2021-1456-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 and Generally Available Control
Technology Standards Update
Rule Project No. 2022-005-113-AI

Background and reason(s) for the rulemaking:

The Texas Commission on Environmental Quality (TCEQ or commission) administers federal regulations establishing National Emission Standards for Hazardous Air Pollutants (NESHAP) by incorporating these regulations by reference into Chapter 113, Subchapter C, of the Texas Administrative Code. The United States Environmental Protection Agency (EPA) has amended several Maximum Achievable Control Technology (MACT) and Generally Available Control Technology (GACT) standards since Chapter 113, Subchapter C was last amended in 2016.

Under the Federal Clean Air Act (FCAA), the EPA is required to 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. The EPA conducted the risk assessment and incorporated necessary changes in the *Federal Register* rule titled "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act." These amendments implement the plain language reading of section 112 of the FCAA that allows a "major source" of hazardous air pollutants (HAP) to reclassify as an "area source" at any time after acting to limit emissions. These amendments also codify the EPA's January 25, 2018 Major MACT to Area (MM2A) policy memorandum that reversed the 1995 "Once In, Always In" policy, which made all major source designations permanent regardless of whether emission reductions lowered facility emissions of HAP to less than major source thresholds.

The amendments also clarify and update work practice standards, compliance dates, recordkeeping, monitoring, reporting, and notification, including electronic notification.

TCEQ should incorporate the amended standards 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.

Scope of the rulemaking:

Since Chapter 113 was last updated, the EPA has promulgated amendments to 113 MACT and GACT standards. A table showing the amended standards which are expected to be covered in this rulemaking is attached. This rule package will incorporate the amended MACT and GACT standards by reference into Chapter 113, Subchapter C.

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A.) Summary of what the rulemaking will do:

The rulemaking adoption will incorporate by reference changes made by the EPA to MACT and GACT standards. The amendments to Chapter 113, Subchapter C will avoid any inconsistencies between federal and state requirements.

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

The adopted amendments to Chapter 113, Subchapter C are necessary to make commission rules relating to NESHAP for source categories consistent with EPA guidance and regulations (40 CFR Part 63).

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

Staff recommends additional minor rule revisions throughout Chapter 113, Subchapter C to make various administrative corrections to be consistent with Chapter 113 and federal rule titles.

Statutory authority:

The rulemaking will be adopted under Texas Health and Safety Code, Texas Clean Air Act:

- §382.002, Policy and Purpose;
- §382.011, General Powers and Duties;
- §382.012, State Air Control Plan;
- §382.015, Power to Enter Property;
- §382.016, Monitoring Requirements; Examination of Records;
- §382.017, Rules;
- §382.022, Investigations; and
- §382.051, Permitting Authority of Commission; Rules.

The amended sections will also be adopted under the commission's general authority under Texas Water Code:

- §5.102, General Powers;
- §5.103, Rules;
- §5.105, General Policy; and
- §7.002, Enforcement Authority.

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 the commission or the EPA is the implementing authority. Sources that are subject to the amended sections of Chapter 113 and have a Title V operating permit will need to revise their permit to include the applicable Chapter 113 rule citations.

B.) Public: This rulemaking will allow Texas to enforce the most current 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 amended MACT and GACT standards into new and revised Title V operating permits.

Stakeholder meetings:

No stakeholder meetings were held for this rulemaking; however, the adopted rule changes underwent the required 30-day public comment period and public hearing.

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Public comment:

The commission offered a public hearing on August 11, 2022. The comment period closed on August 15, 2022. One written comment was received from an individual who expressed concern about El Paso ozone. No suggested changes to the proposed rules were received. Accordingly, no rule changes were made based on the comment.

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 to 40 CFR Part 63, Subpart A, General Provisions; Subpart ZZZZ, National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines; and Subpart IIIII, National Emission Standards for Hazardous Air Pollutants for Mercury Cell Chlor-Alkali Plants. The Chapter 113 rule language has been revised to include these recent amendments, so that the rules incorporated into Chapter 113 are as current as possible.

Potential controversial concerns and legislative interest: None.

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 is not completed, TCEQ will not receive formal delegation of the amended standards, and the EPA will be the implementing authority for those regulations. Furthermore, failure to incorporate the amended 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 15, 2022

Anticipated *Texas Register* adoption publication date: December 30, 2022

Anticipated effective date: January 5, 2023

Six-month *Texas Register* filing deadline: January 15, 2023

Agency contacts:

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Terry Salem, Staff Attorney, (512) 239-0469

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Attachments:

Table - Amended MACT and GACT Standards and Corresponding Chapter 113 Sections

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Morgan Johnson
Krista Kyle
Office of General Counsel
Melanie Nelon
Terry Salem
Gwen Ricco

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Amended MACT and GACT Standards and Corresponding Chapter 113 Sections

40 CFR Part 63 Subpart (Chapter 113 Section)	Section Title
A (§113.100)	General Provisions (40 Code of Federal Regulations Part 63, Subpart A)
C (§113.106)	List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List (40 Code of Federal Regulations Part 63, Subpart C)
F (§113.110)	Synthetic Organic Chemical Manufacturing Industry (40 Code of Federal Regulations Part 63, Subpart F)
G (§113.120)	Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (40 Code of Federal Regulations Part 63, Subpart G)
H (§113.130)	Organic Hazardous Air Pollutants for Equipment Leaks (40 Code of Federal Regulations Part 63, Subpart H)
L (§113.170)	Coke Oven Batteries (40 Code of Federal Regulations Part 63, Subpart L)
M (§113.180)	Perchloroethylene Dry Cleaning Facilities (40 Code of Federal Regulations Part 63, Subpart M)
N (§113.190)	Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 Code of Federal Regulations Part 63, Subpart N)
O (§113.200)	Ethylene Oxide Emissions Standards for Sterilization Facilities (40 Code of Federal Regulations Part 63, Subpart O)
Q (§113.220)	Industrial Process Cooling Towers (40 Code of Federal Regulations Part 63, Subpart Q)
R (§113.230)	Gasoline Distribution Facilities (40 Code of Federal Regulations Part 63, Subpart R)
S (§113.240)	Pulp and Paper Industry (40 Code of Federal Regulations Part 63, Subpart S)
T (§113.250)	Halogenated Solvent Cleaning (40 Code of Federal Regulations Part 63, Subpart T)
U (§113.260)	Group I Polymers and Resins (40 Code of Federal Regulations Part 63, Subpart U)
W (§113.280)	Epoxy Resins Production and Non-Nylon Polyamides Production (40 Code of Federal Regulations Part 63, Subpart W)
X (§113.290)	Secondary Lead Smelting (40 Code of Federal Regulations Part 63, Subpart X)
Y (§113.300)	Marine Vessel Loading (40 Code of Federal Regulations Part 63, Subpart Y)
AA (§113.320)	Phosphoric Acid Manufacturing Plants (40 Code of Federal Regulations Part 63, Subpart AA)
BB (§113.330)	Phosphate Fertilizers Production Plants (40 Code of Federal Regulations Part 63, Subpart BB)
CC (§113.340)	Petroleum Refineries (40 Code of Federal Regulations Part 63, Subpart CC)

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40 CFR Part 63 Subpart (Chapter 113 Section)	Section Title
DD (§113.350)	Off-Site Waste and Recovery Operations (40 Code of Federal Regulations Part 63, Subpart DD)
EE (§113.360)	Magnetic Tape Manufacturing Operations (40 Code of Federal Regulations Part 63, Subpart EE)
GG (§113.380)	Aerospace Manufacturing and Rework Facilities (40 Code of Federal Regulations Part 63, Subpart GG)
HH (§113.390)	Oil and Natural Gas Production Facilities (40 Code of Federal Regulations Part 63, Subpart HH)
II (§113.400)	Shipbuilding and Ship Repair (Surface Coating) (40 Code of Federal Regulations Part 63, Subpart II)
JJ (§113.410)	Wood Furniture Manufacturing Operations (40 Code of Federal Regulations Part 63, Subpart JJ)
KK (§113.420)	Printing and Publishing (40 Code of Federal Regulations Part 63, Subpart KK)
LL (§113.430)	Primary Aluminum Reduction Plants (40 Code of Federal Regulations Part 63, Subpart LL)
MM (§113.440)	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (40 Code of Federal Regulations Part 63, Subpart MM)
SS (§113.500)	Closed Vent Systems, Control Devices, Recovery Devices, and Routing to a Fuel Gas System or a Process (40 Code of Federal Regulations Part 63, Subpart SS)
XX (§113.550)	Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations (40 Code of Federal Regulations Part 63, Subpart XX)
YY (§113.560)	Generic Maximum Achievable Control Technology Standards (40 Code of Federal Regulations Part 63, Subpart YY)
CCC (§113.600)	Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants (40 Code of Federal Regulations Part 63, Subpart CCC)
DDD (§113.610)	Mineral Wool Production (40 Code of Federal Regulations Part 63, Subpart DDD)
EEE (§113.620)	Hazardous Waste Combustors (40 Code of Federal Regulations Part 63, Subpart EEE)
GGG (§113.640)	Pharmaceuticals Production (40 Code of Federal Regulations Part 63, Subpart GGG)
HHH (§113.650)	Natural Gas Transmission and Storage Facilities (40 Code of Federal Regulations Part 63, Subpart HHH)
III (§113.660)	Flexible Polyurethane Foam Production (40 Code of Federal Regulations Part 63, Subpart III)
JJJ (§113.670)	Group IV Polymers and Resins (40 Code of Federal Regulations Part 63, Subpart JJJ)
LLL (§113.690)	Portland Cement Manufacturing Industry (40 Code of Federal Regulations Part 63, Subpart LLL)
MMM (§113.700)	Pesticide Active Ingredient Production (40 Code of Federal Regulations Part 63, Subpart MMM)
NNN (§113.710)	Wool Fiberglass Manufacturing (40 Code of Federal Regulations Part 63, Subpart NNN)

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40 CFR Part 63 Subpart (Chapter 113 Section)	Section Title
OOO (§113.720)	Manufacture of Amino/Phenolic Resins (40 Code of Federal Regulations Part 63, Subpart OOO)
PPP (§113.730)	Polyether Polyols Production (40 Code of Federal Regulations Part 63, Subpart PPP)
QQQ (§113.740)	Primary Copper Smelting (40 Code of Federal Regulations Part 63, Subpart QQQ)
RRR (§113.750)	Secondary Aluminum Production (40 Code of Federal Regulations Part 63, Subpart RRR)
TTT (§113.770)	Primary Lead Processing (40 Code of Federal Regulations Part 63, Subpart TTT)
UUU (§113.780)	Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (40 Code of Federal Regulations Part 63, Subpart UUU)
VVV (§113.790)	Publicly Owned Treatment Works (40 Code of Federal Regulations Part 63, Subpart VVV)
XXX (§113.810)	Ferroalloys Production: Ferromanganese and Silicomanganese (40 Code of Federal Regulations Part 63, Subpart XXX)
AAAA (§113.840)	Municipal Solid Waste Landfills (40 Code of Federal Regulations Part 63, Subpart AAAA)
CCCC (§113.860)	Manufacturing of Nutritional Yeast (40 Code of Federal Regulations Part 63, Subpart CCCC)
DDDD (§113.870)	Plywood and Composite Wood Products (40 Code of Federal Regulations Part 63, Subpart DDDD)
EEEE (§113.880)	Organic Liquids Distribution (Non-Gasoline) (40 Code of Federal Regulations Part 63, Subpart EEEE)
FFFF (§113.890)	Miscellaneous Organic Chemical Manufacturing (40 Code of Federal Regulations Part 63, Subpart FFFF)
GGGG (§113.900)	Solvent Extraction for Vegetable Oil Production (40 Code of Federal Regulations Part 63, Subpart GGGG)
HHHH (§113.910)	Wet-Formed Fiberglass Mat Production (40 Code of Federal Regulations Part 63, Subpart HHHH)
IIII (§113.920)	Surface Coating of Automobiles and Light-Duty Trucks (40 Code of Federal Regulations Part 63, Subpart IIII)
JJJJ (§113.930)	Paper and Other Web Coating (40 Code of Federal Regulations Part 63, Subpart JJJJ)
KKKK (§113.940)	Surface Coating of Metal Cans (40 Code of Federal Regulations Part 63, Subpart KKKK)
MMMM (§113.960)	Surface Coating of Miscellaneous Metal Parts and Products (40 Code of Federal Regulations Part 63, Subpart MMMM)
NNNN (§113.970)	Surface Coating of Large Appliances (40 Code of Federal Regulations Part 63, Subpart NNNN)
OOOO (§113.980)	Printing, Coating, and Dyeing of Fabrics and Other Textiles (40 Code of Federal Regulations Part 63, Subpart OOOO)
PPPP (§113.990)	Surface Coating of Plastic Parts and Products (40 Code of Federal Regulations Part 63, Subpart PPPP)
QQQQ (§113.1000)	Surface Coating of Wood Building Products (40 Code of Federal Regulations Part 63, Subpart QQQQ)
RRRR (§113.1010)	Surface Coating of Metal Furniture (40 Code of Federal Regulations Part 63, Subpart RRRR)

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40 CFR Part 63 Subpart (Chapter 113 Section)	Section Title
SSSS (§113.1020)	Surface Coating of Metal Coil (40 CFR 63, Subpart SSSS)
TTTT (§113.1030)	Leather Finishing Operations (40 Code of Federal Regulations Part 63, Subpart TTTT)
UUUU (§113.1040)	Cellulose Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart UUUU)
VVVV (§113.1050)	Boat Manufacturing (40 CFR 63, Subpart VVVV)
WWWW (§113.1060)	Reinforced Plastic Composites Production (40 Code of Federal Regulations Part 63, Subpart WWWW)
XXXX (§113.1070)	Rubber Tire Manufacturing (40 Code of Federal Regulations Part 63, Subpart XXXX)
YYYY (§113.1080)	Stationary Combustion Turbines (40 Code of Federal Regulations Part 63, Subpart YYYY)
ZZZZ (§113.1090)	Reciprocating Internal Combustion Engines (40 Code of Federal Regulations Part 63, Subpart ZZZZ)
AAAAA (§113.1100)	Lime Manufacturing Plants (40 Code of Federal Regulations Part 63, Subpart AAAAA)
BBBBB (§113.1110)	Semiconductor Manufacturing (40 Code of Federal Regulations Part 63, Subpart BBBB)
CCCCC (§113.1120)	Coke Ovens: Pushing, Quenching, and Battery Stacks (40 Code of Federal Regulations Part 63, Subpart CCCCC)
DDDDD (§113.1130)	Industrial, Commercial, and Institutional Boilers and Process Heaters Major Sources (40 Code of Federal Regulations Part 63, Subpart DDDDD)
EEEEEE (§113.1140)	Iron and Steel Foundries (40 Code of Federal Regulations Part 63, Subpart EEEEE)
FFFFFF (§113.1150)	Integrated Iron and Steel Manufacturing Facilities (40 Code of Federal Regulations Part 63, Subpart FFFFF)
GGGGG (§113.1160)	Site Remediation (40 Code of Federal Regulations Part 63, Subpart GGGGG)
HHHHH (§113.1170)	Miscellaneous Coating Manufacturing (40 Code of Federal Regulations Part 63, Subpart HHHHH)
IIII (§113.1180)	Mercury Emissions from Mercury Cell Chlor-Alkali Plants (40 Code of Federal Regulations Part 63, Subpart IIII)
JJJJJ (§113.1190)	Brick and Structural Clay Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart JJJJJ)
KKKKK (§113.1200)	Clay Ceramics Manufacturing (40 Code of Federal Regulations Part 63, Subpart KKKKK)
LLLLL (§113.1210)	Asphalt Processing and Asphalt Roofing Manufacturing (40 Code of Federal Regulations Part 63, Subpart LLLLL)
MMMMM (§113.1220)	Flexible Polyurethane Foam Fabrication Operations (40 Code of Federal Regulations Part 63, Subpart MMMMM)
NNNNN (§113.1230)	Hydrochloric Acid Production (40 Code of Federal Regulations Part 63, Subpart NNNNN)
PPPPP (§113.1250)	Engine Test Cells/Stands (40 Code of Federal Regulations Part 63, Subpart PPPPP)
QQQQQ (§113.1260)	Friction Materials Manufacturing Facilities (40 Code of Federal Regulations Part 63, Subpart QQQQQ)

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40 CFR Part 63 Subpart (Chapter 113 Section)	Section Title
RRRRR (§113.1270)	Taconite Iron Ore Processing (40 Code of Federal Regulations Part 63, Subpart RRRRR)
SSSSS (§113.1280)	Refractory Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart SSSSS)
TTTTT (§113.1290)	Primary Magnesium Refining (40 Code of Federal Regulations Part 63, Subpart TTTTT)
UUUUU (§113.1300)	Coal- and Oil-Fired Electric Utility Steam Generating Units (40 Code of Federal Regulations Part 63, Subpart UUUUU)
WWWWW (§113.1320)	Hospital Ethylene Oxide Sterilizers Area Sources (40 Code of Federal Regulations Part 63, Subpart WWWWW)
ZZZZZ (§113.1350)	Iron and Steel Foundries Area Sources (40 Code of Federal Regulations Part 63, Subpart ZZZZZ)
BBBBBB (§113.1370)	Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities Area Sources (40 Code of Federal Regulations Part 63, Subpart BBBBBB)
CCCCCC (§113.1380)	Gasoline Dispensing Facilities Area Sources (40 Code of Federal Regulations Part 63, Subpart CCCCCC)
HHHHHH (§113.1425)	Paint Stripping and Miscellaneous Surface Coating at Area Sources (40 Code of Federal Regulations Part 63, Subpart HHHHHH)
JJJJJJ (§113.1435)	Industrial, Commercial, and Institutional Boilers Area Sources (40 Code of Federal Regulations Part 63, Subpart JJJJJJ)
MMMMMM (§113.1450)	Carbon Black Production Area Sources (40 Code of Federal Regulations Part 63, Subpart MMMMMM)
OOOOOO (§113.1460)	Flexible Polyurethane Foam Production and Fabrication Area Sources (40 Code of Federal Regulations Part 63, Subpart OOOOOO)
PPPPPP (§113.1465)	Lead Acid Battery Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart PPPPPP)
QQQQQQ (§113.1470)	Wood Preserving Area Sources (40 Code of Federal Regulations Part 63, Subpart QQQQQQ)
RRRRRR (§113.1475)	Clay Ceramics Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart RRRRRR)
TTTTTT (§113.1485)	Secondary Nonferrous Metals Processing Area Sources (40 Code of Federal Regulations Part 63, Subpart TTTTTT)
WWWWWW (§113.1500)	Plating and Polishing Area Sources (40 Code of Federal Regulations Part 63, Subpart WWWWWW)
XXXXXX (§113.1505)	Metal Fabrication and Finishing Area Sources (40 Code of Federal Regulations Part 63, Subpart XXXXXX)
YYYYYY (§113.1510)	Ferroalloys Production Facilities Area Sources (40 Code of Federal Regulations Part 63, Subpart YYYYYY)
AAAAAAA (§113.1520)	Asphalt Processing and Asphalt Roofing Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart AAAAAA)
BBBBBBB (§113.1525)	Chemical Preparations Industry Area Sources (40 Code of Federal Regulations Part 63, Subpart BBBBBB)
CCCCCCC (§113.1530)	Paints and Allied Products Manufacturing Area Sources (40 Code of Federal Regulations Part 63, Subpart CCCCCC)

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40 CFR Part 63 Subpart (Chapter 113 Section)	Section Title
HHHHHHH (§113.1555)	Polyvinyl Chloride and Copolymers Production Major Sources (40 Code of Federal Regulations Part 63, Subpart HHHHHHH)