

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 10, 2022

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

From: Tonya Baer, Director
Office of Air

Docket No.: 2021-1456-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 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 would incorporate the amended MACT and GACT standards by reference into Chapter 113, Subchapter C.

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A.) Summary of what the rulemaking would do:

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

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

The proposed 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 would be proposed 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 would also be proposed under the commission's general authority under Texas Water Code:

- §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 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 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 would need to revise their permit to include the applicable Chapter 113 rule citations.

B.) Public: This rulemaking would 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 would need to incorporate some of the amended MACT and GACT standards into new and revised Title V operating permits.

Stakeholder meetings:

No stakeholder meetings are planned for this rulemaking; however, the proposed rule changes will undergo the required 30-day public comment period and public hearing.

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Potential controversial concerns and legislative interest:
None.

Would 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 proposal rulemaking schedule:

Anticipated proposal date: June 29, 2022
Anticipated newspapers publication date: July 8, 2022
Anticipated *Texas Register* publication date: July 15, 2022
Anticipated public hearing date: August 11, 2022
Anticipated public comment period: July 15, 2022-August 15, 2022
Anticipated adoption date: December 14, 2022

Agency contacts:

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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
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Melanie Nelon
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