

Proposed Rulemaking to Address Reclassification of Major Sources as Area Sources

The U.S. Environmental Protection Agency (U.S. EPA) proposed a rulemaking in the [July 26, 2019 Federal Register](#) to revise the 40 CFR Part 63, Subpart A General Provisions to include requirements for facilities that want to reclassify from a major source of hazardous air pollutants (HAP) to an area source. This rulemaking follows a [January 25, 2018 U.S. EPA memorandum](#) titled “Reclassification of Major Sources and Area Sources Under Section 112 of the Clean Air Act.” With the memo and rulemaking, U.S. EPA is reversing its longstanding “Once In, Always In” (OIAI) policy and has coined a new acronym: Major Maximum Achievable Control Technology (MACT) to Area (MM2A).

The U.S. EPA OIAI policy was set out in a [1995 John Seitz memo](#) and stated that a major source of HAP had only until the first substantive compliance date of an applicable MACT standard to reclassify as an area source. After that time, once a MACT standard applied to a facility, it always applied. If a facility was subsequently determined to be an area source, it could only avoid MACT compliance obligations under future major source rules. U.S. EPA now believes that the OIAI policy is not consistent with a plain reading of the Clean Air Act. The January 2018 memo repealed the policy and U.S. EPA is now proposing to codify procedures for reclassifying from major source to area source (and vice versa). Note that this proposal supersedes and replaces the January 2007 proposed rule, which was a much simpler version of the current proposal (it essentially said that a source could reclassify at any time and would be subject to the new applicable requirements upon the effective date of the permit reclassifying the source).

U.S. EPA is proposing the following changes to the 40 CFR Part 63 General Provisions:

- Adding a new paragraph §63.1(c)(6) that states a major source can become an area source at any time by limiting its potential to emit (PTE) HAP. Until the PTE limitations become effective, the source remains subject to the major source requirements. After the PTE limitations become effective, the source is subject to any applicable 40 CFR Part 63 area source requirements.
- A major source that becomes an area source must meet applicable 40 CFR Part 63 area source requirements immediately (provided the first substantive compliance date for area sources has passed), except that the regulatory authority can grant up to 3 years additional time if the source must make physical changes or install additional controls.
- A major source that becomes an area source and then later becomes a major source again must comply with applicable major source MACT requirements immediately. If the standard has been revised since the source was last subject and the source must make physical changes or install additional controls to comply, the permitting authority can allow the same amount of time to comply as the amount of time allowed for existing sources subject to the revised standard.
- Reclassification does not absolve a source subject to enforcement action or investigation of any compliance obligations.
- Limitations on PTE must be legally and practicably enforceable. Definitions of those terms are being added at §63.2.
- Sources that reclassify must notify U.S. EPA electronically via the Compliance and Emissions Data Reporting Interface (CEDRI). No sources will be exempted from electronic reporting.

U.S. EPA is also proposing to revise individual subparts under 40 CFR Part 63 that currently specify dates that would conflict with the MM2A revisions and to include new citations in each rule's general provisions applicability table.

A public hearing will be held on August 15, 2019 in Washington, DC and comments on the proposed rule are due September 24, 2019. U.S. EPA has included 59 specific requests for comment on the proposed rule. They include, but are not limited to, the following:

- Whether this new interpretation is permissible.
- Examples of whether emissions will increase, or air pollution controls will be decommissioned if major sources reclassify to area sources.
- Whether U.S. EPA should prohibit emissions increases when major sources reclassify to area sources, and the legal basis for doing so.
- Whether the compliance timing provisions are appropriate.
- Whether the proposed criteria for HAP PTE limits are effective, whether they should include additional criteria, and whether state or local enforceability is sufficient.
- Whether they should codify minimum requirements for a reclassification request, including a hierarchy of acceptable data and methods.
- Whether public notice and comment should automatically be required when a source reclassifies.
- Whether additional changes are needed to individual subparts.