

EPA Finalizes Regulations Ending “Once-In-Always-In” Policy

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On October 1, 2020, the United States Environmental Protection Agency (EPA) issued a final rule under Section 112(a) of the Clean Air Act, ending EPA’s “once-in-always-in” policy governing emissions of hazardous air pollutants (HAPs). The rule allows for a major source of HAPs to be reclassified as an area source in some circumstances. A major source is a source that emits or has the potential to emit at least 10 tons per year of a single HAP or at least 25 tons per year of a combination of HAPs, while an area source is any stationary source of HAPs that does not meet either of these thresholds. Major sources are required to use the Maximum Achievable Control Technology (MACT) to reduce HAP emissions. Area sources are meanwhile generally subject to a less stringent “Generally Available Control Technology” standard.

Prior to the issuance of this rule, facilities that qualified as a major source of HAPs were permanently subject to the MACT standard, even if the source reduced its emissions, under EPA’s 1995 “once-in-always-in” policy. The final rule represents the EPA’s withdrawal of the once-in-always-in policy and codifies EPA’s 2018 guidance on this topic. By permitting reclassification, the EPA indicated that it seeks to encourage innovation in pollution-reduction technologies while relieving smaller sources of regulatory requirements intended for much larger emitters.

The new rule, referred to as the “Major MACT to Area” or “MM2A” rule, details the compliance dates, notifications, and record keeping requirements for major sources seeking reclassification. Reclassification is not automatic.

EPA expects that three general types of sources may seek to reclassify as area sources:

1. Sources previously classified as major that are no longer physically or operationally capable of emitting HAPs in amounts that exceed the major source thresholds (MST);
2. Sources previously classified as major that obtain enforceable limits or that already have existing enforceable limits that keep HAP emissions below the MST; and
3. Sources with actual emissions above the MST that (1) reduce emissions to below the MST and (2) obtain enforceable limits that keep HAP emissions below the MST.

The final rule will become effective 60 days after the date of publication in the *Federal Register*. In the meantime, area sources that have remained subject to major source MACT standards under the “once-in-always-in” policy should review the MM2A rule and consider pursuing reclassification.

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Author

[Sam Falcon Trimbach](#)

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