United States Environmental Protection Agency

Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act

XX, XX 2018

Overview

- Background
- 2018 Reclassification Memorandum
- What Changed? What Has Not Changed?
- Next Steps
- Contact Information

Deliberative – Do Not Cite or Quote

Background

- In 1995, EPA issued a memorandum on the "Potential to Emit for MACT Standards – Guidance on Timing Issues" (1995 Seitz Memorandum)
  - Per the 1995 memo any facility subject to major source standards would always remain subject to those standards unless the source reduced its potential to emit (PTE) below major source thresholds before the first substantive compliance date of a MACT standard
  - This position was commonly known as the "once in, always in" (OIAI) policy
- In 2003 and 2007, EPA proposed regulatory amendments intended to replace the OIAI policy as stated in 1995 Seitz memorandum
- In 2003, EPA proposed amendments that focused on HAP emissions reductions resulting from pollution prevention (P2) activities
  - Apart from certain provisions associated with EPA's National Environmental Performance Track Program, that proposal was never finalized
- In 2007, EPA again issued a proposed rule to replace OIAI policy
  - Under that proposal, a major source could take limits on its PTE and obtain area source status at any time. EPA did not take final action on this proposal.

Deliberative – Do Not Cite or Quote

2018 Reclassification Memorandum

- On January 25, 2018, EPA issued a new guidance memorandum: Reclassification of Major Sources as Area Sources Under Section 112 of the CAA (2018 Reclassification Memorandum)
- EPA relies on plain language definitions of "major source" in CAA section 112 (a)(1) and of "area source" in CAA section 112 (a)(2) to conclude
  - *A major source becomes an area source at such time that the source takes a federally enforceable limit on it's potential to emit (PTE) HAP below the major source thresholds (10 tpy of a single hazardous air pollutant or 25 tpy of any combination of HAP)*
- Memo is responsive to comments received in response to EO 13777 Enforcing the Regulatory Reform Agenda and EO 13783 Promoting Energy Independence and Economic Growth
  - Supersedes May 1995 Seitz memorandum and withdraws "Once In, Always In" policy

Deliberative – Do Not Cite or Quote

What Changed? What Has Not Changed?

- The 1995 Seitz Memorandum determined that any facility subject to major source standards would always remain subject to those standards unless the source reduced its PTE below major source thresholds before the first substantive compliance date of a MACT standard
- The 2018 Reclassification Memorandum removes the time limit on when a facility may be reclassified as an area source
- Otherwise, the 2018 Reclassification Memorandum did not change the process or requirements for what a major source must do to reduce its PTE and be reclassified as an area source

Deliberative – Do Not Cite or Quote

Next Steps

- On Feb 8, 2018, EPA published a Federal Register notice notifying the public that it has issued the 2018 Reclassification Memorandum and is also withdrawing the Seitz Memorandum
- As noted in the reclassification memo, EPA's press release and the Feb 8, 2018 Federal Register notice, "the EPA anticipates that it will soon publish a *Federal Register* notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute as discussed in this memorandum"
- This action will also address implementation considerations

Deliberative – Do Not Cite or Quote

Since the reclassification memo was issued, we've received questions from state and local officials and other stakeholders about next steps.
We are documenting those questions. As we assess the types of questions we get we will consider developing a set of frequently asked questions.
So far most questions are either applicability or title V permit revisions/ revocation questions.
The current regulations (i.e., MACT or part 70 rules) have not changed and we expect states to continue to follow those regulations to evaluate MACT applicability and the process for permit revisions.

Contact Information

- Questions concerning specific issues should be directed to the appropriate Regional Office
- EPA Regional Office staff, identified below, will coordinate directly with EPA Headquarters staff if assistance is needed to respond to questions related to implementation of the memorandum

Regional Offices	Contacts
1	Donald Dahl, Susan Lancey
2	Umesh Dholakia
3	Emily Linn
4	Lee Page, Yolanda Adams
5	Beth Valenziano
6	Richard Barrett
7	Ward Burns
8	DJ Law
9	Shaheerah Kelly
10	Doug Hardesty

Deliberative – Do Not Cite or Quote