UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

JUN 11 2019

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

MEMORANDUM

SUBJECT: Once In, Always In (OIAI) Provisions in Existing NESHAP Subparts

FROM: Penny Lassiter, Division Director
Sector Policies and Programs Division

TO: Regional Air Division Directors

On January 25, 2018, the U.S. Environmental Protection Agency (EPA) issued a guidance memorandum titled "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act" (the Major Maximum Achievable Control Technology [MACT] to Area, or MM2A, memorandum).[1] The MM2A memorandum discusses the statutory provisions that govern when a major source subject to a major source standard under Clean Air Act (CAA) section 112 may be reclassified as an area source and thereby not be subject to major source requirements. The MM2A memorandum also withdrew the agency's previous position regarding this topic, commonly known as the "Once In, Always In" (OIAI) policy.[2]

The purpose of this memorandum is to notify the Regional offices that we have identified a category of regulatory provisions in certain NESHAP subparts that reflect the previous OIAI policy. This category addresses the date by which a major source can become an area source. The provisions we have identified are:

- 40 CFR part 63, subpart QQQ at 63.1441;
- 40 CFR part 63, subpart QQQQQ at 63.9485;
- 40 CFR part 63, subpart RRRRR at 63.9581; and
- Table 2 of 40 CFR part 63, subpart WWWW.

These regulatory provisions continue to apply, notwithstanding the plain language reading of CAA section 112(a)(1) and (2) discussed in the 2018 MM2A Memorandum and the MM2A Memorandum's withdrawal of the 1995 OIAI policy, until EPA takes final action amending these

[1] Memorandum from William L. Wehrum, Assistant Administrator for the EPA Office of Air and Radiation, "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act," to EPA Regional Air Division Directors (January 25, 2018).
[2] The OIAI policy was set forth in the EPA Memorandum, "Potential to Emit for MACT Standards," issued by John Seitz, EPA Director of Office of Air Quality Planning and Standards (OAQPS) (May 16, 1995).

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subparts by removing such date limitations. We will be proposing to amend these subparts accordingly in the upcoming action implementing EPA's plain language reading of the statute as discussed in the MM2A memorandum. We expect this proposal to be signed in June 2019.

The Regions should coordinate with Elineth Torres and Rod Truesdell of OAQPS (torres.elineth@epa.gov and truesdell.raymond@epa.gov, respectively) concerning any reclassification activity related to sources that are subject to the subparts listed above.