ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2019–0282; FRL–9996–00–OAR]

RIN 2060–AM75

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing amendments to the General Provisions to the National Emission Standards for Hazardous Air Pollutants (NESHAP). The proposed amendments implement the plain language reading of the ''major source'' and ''area source'' definitions of section 112 of the Clean Air Act (CAA) and provide that a major source can reclassify to area source status at any time by limiting its potential to emit (PTE) hazardous air pollutants (HAP) to below the major source thresholds of 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAP. The EPA is proposing that PTE HAP limits must meet the proposed effectiveness criteria of being legally and practicably enforceable. The proposal also clarifies the requirements that apply to sources choosing to reclassify to area source status after the first substantive compliance date of an applicable NESHAP standard. The EPA is proposing electronic notification when a source reclassifies. We are also proposing to revise provisions in specific NESHAP standards that specify the applicability of General Provisions requirements to account for the regulatory provisions we are proposing to add through this rule.

DATES:

Comments. Comments must be received on or before September 24, 2019.

Public hearing. The EPA is planning to hold at least one public hearing in response to this proposed action. Information about the hearing, including location, date, and time, along with instructions on how to register to speak at the hearing, will be published in a second **Federal Register** document and posted at *https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean*. See **SUPPLEMENTARY INFORMATION** for information on registering and attending a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2019–0282, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov*. Include Docket ID No. EPA–HQ–OAR–2019–0282 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2019–0282.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2019–0282, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Ms. Elineth Torres, Sector Policies and Programs Division (D205–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4347; fax number: (919) 541–4991; and email address: *torres.elineth@epa.gov*.

SUPPLEMENTARY INFORMATION:

Public hearing. The EPA is planning to hold at least one public hearing in response to this proposed action. Information about the hearing, including location, date, and time, along with instructions on how to register to speak at the hearing will be published in a second **Federal Register** document.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2019–0282. All documents in the docket are listed in *Regulations.gov*. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2019–0282. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov/* or email. This type of information should be submitted by mail as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in

the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA's Docket Center homepage at *https://www.epa.gov/dockets*.

The EPA is expressly soliciting comment on numerous aspects of the proposed rule. The EPA has indexed each comment solicitation with an alpha-numeric identifier (*e.g.,* ''C–1,'' ''C–2,'' ''C–3'') to provide a consistent framework for effective and efficient provision of comments. Accordingly, the EPA asks that commenters include the corresponding identifier when providing comments relevant to that comment solicitation. The EPA asks that commenters include the identifier in either a heading, or within the text of each comment (*e.g.,* ''In response to solicitation of comment C–1, . . .'') to make clear which comment solicitation is being addressed. The EPA emphasizes that the Agency is not limiting comment to these identified areas and encourages submission of any other comments relevant to this proposal.

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2019–0282.

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA Clean Air Act
CAM compliance assurance monitoring
CBI Confidential Business Information
CEDRI Compliance and Emissions Data Reporting Interface
CEMS continuous emission monitoring system
CFR Code of Federal Regulations
EAV equivalent annualized value
EIA economic impact analysis
EPA Environmental Protection Agency
FESOP federally enforceable state operating permit
FIP Federal Implementation Plan
HAP hazardous air pollutant(s)
MACT maximum achievable control technology
MM2A Major MACT to Area
MRR monitoring, recordkeeping, and reporting
NESHAP national emission standards for hazardous air pollutants
NMA National Mining Association
NSPS new source performance standards
NSR New Source Review
NTTAA National Technology Transfer and Advancement Act
OIAI Once In, Always In
OMB Office of Management and Budget
P2 pollution prevention
PRA Paperwork Reduction Act
PSD prevention of significant deterioration
PTE potential to emit
PV present value
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
RTR risk and technology review
SBA Small Business Administration
SIP State Implementation Plan
TIP Tribal Implementation Plan
tpy tons per year
UMRA Unfunded Mandates Reform Act
VOC volatile organic compound(s)

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I. Executive Summary

A. Purpose of the Regulatory Action

On January 25, 2018, the EPA issued a guidance memorandum titled ''Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act'' (Major Maximum Achievable Control Technology (MACT) to Area, or MM2A) memorandum. The memorandum discusses the statutory provisions that govern when a major source subject to a major source standard under section 112 of the CAA may be reclassified as an area source, and thereby avoid being subject to major source requirements. The proposed amendments to the General Provisions of the NESHAP regulations in 40 CFR part 63, subpart A implement the plain language reading of the ''major source'' and ''area source'' definitions of section 112 of the CAA and provide that a major

source can reclassify to area source status at any time by limiting its potential to emit HAP to below the major source thresholds of 10 tpy of any single HAP or 25 tpy of any combination of HAP. The proposal also clarifies the requirements that apply to sources choosing to reclassify to area source status after the first substantive compliance date of an applicable NESHAP standard (also ''CAA section 112 requirements'' or ''requirements'').

Further, we propose to amend the definition of ''potential to emit'' in the General Provisions of the NESHAP regulations to address a Court decision remanding the definition to the EPA. Under the current definition in 40 CFR 63.2, any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. In 1995, the United States Court of Appeals for the District of Columbia Circuit issued a decision in *National Mining Association (NMA)* v. *EPA,* 59 F.3d 1351 (D.C. Cir. 1995), in which it remanded the definition of ''potential to emit'' found in 40 CFR 63.2. In the NMA decision, the Court stated that the Agency had not adequately explained how ''federal enforceability'' furthered effectiveness. 59 F.3d at 1363–1365. In this action, the EPA is proposing specific criteria that HAP PTE limits must meet for these limits to be effective in ensuring that a source would not emit above the PTE limits. The EPA is proposing to amend the definition of ''potential to emit'' in 40 CFR 63.2, accordingly, by removing the requirement for federally enforceable PTE limits and requiring instead that HAP PTE limits meet the effectiveness criteria of being both legally enforceable and practicably enforceable.

To ensure the EPA and the public is aware of the universe of sources that reclassify from major source to area source status, we propose to amend the current notification requirements in 40 CFR 63.9(b) and (j)(9) to require the notifications to be submitted electronically. This proposal also responds to questions received after the issuance of the MM2A memorandum and requests comment on issues relevant to implementation of the plain language reading of the statute. In addition, this proposal revises the General Provisions applicability tables in specific NESHAP standards to reflect the proposed changes to the General Provisions requirements. This proposal is intended to provide clarity and certainty to stakeholders and the public regarding the reclassification process.

B. Summary of the Major Provisions of the Regulatory Action

The EPA is proposing to amend the applicability section found in 40 CFR 63.1 by adding a new paragraph (c)(6). This paragraph will specify that a major source can become an area source at any time by limiting its HAP PTE to below the major source thresholds established in 40 CFR 63.2. The EPA is also proposing to amend the definition of ''potential to emit'' in 40 CFR 63.2 to remove the requirement that limits on emissions be federally enforceable and instead require that any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is legally and practicably enforceable (*i.e.,* ''effective''). The EPA is also proposing to include in 40 CFR 63.2 the definitions of legally and practicably enforceable. By proposing this amendment, the EPA is allowing for the use of non-federally enforceable limits *(e.g.,* state only enforceable limits) to be recognized as effective in limiting a source's potential to emit for purposes of CAA section 112 applicability provided those limits are legally and practicably enforceable.

To address the issue of compliance time frames for sources that reclassify from major source status to area source status after the first substantive compliance date of an applicable major source NESHAP standard, we are proposing regulatory text in the new provision at 40 CFR 63.1(c)(6)(i) under which major sources that reclassify to area source status become subject to applicable area source requirements in 40 CFR part 63 immediately upon becoming an area source in those situations where the first substantive compliance date of the area source requirements has passed. For sources that reclassify from major to area source status and then revert back to their previous major source status, the EPA is proposing to add a new provision in 40 CFR 63.1(c)(6)(ii)(A) to specify that upon reverting back to major source status, a source must meet the major source NESHAP requirements at the time that those requirements again become applicable to the source. The EPA is proposing to add a new provision at 40 CFR 63.1(c)(6)(iii) to address the interaction of the reclassification of sources with enforcement actions arising from violations that occurred while the source was a major source subject to major source requirements. Specifically, we are proposing that status reclassification from major source to area source does not affect a source's liability or any enforcement investigations or enforcement actions for a source's past violations of major source requirements that occurred prior to the source's reclassification.

The EPA is proposing to amend the notification requirements in 40 CFR 63.9(b) so that an owner or operator of a facility that reclassifies must notify the Administrator of any standards to which it becomes subject. With this amendment, the notification requirements of 40 CFR 63.9 will cover both situations where a source switches from major to area source status, and where a source switches from major, to area, and back to major source status. The EPA is also proposing to clarify that a source that reclassifies must notify the EPA of any changes in the applicability of the standards that the source was subject to per the notification requirements of 40 CFR 63.9(j). The EPA is also proposing to amend the notification requirements in 40 CFR 63.9(b) and (j) to require the notification be submitted electronically through the Compliance and Emissions Data Reporting Interface (CEDRI). The EPA is also proposing to amend the General Provisions to add 40 CFR 63.9(k) to include the CEDRI submission procedures. The EPA is also proposing to remove the time limit for record retention in 40 CFR 63.10(b)(3) so sources that obtain new legally and practicably enforceable PTE limits are required to keep the required records until the source becomes subject to major source NESHAP requirements. The EPA is also proposing to amend 40 CFR 63.12(c) to clarify that a source may not be exempted from electronic reporting requirements.

The EPA is proposing to amend the General Provisions applicability tables contained within most subparts of 40 CFR part 63 to add a reference to a new proposed paragraph 63.1(c)(6) discussed above. The EPA has identified one general category of regulatory provisions in several NESHAP subparts that include a date by which a major source can become an area source. Accordingly, in this action we are proposing to revise these provisions by removing such date limitations. The provisions we are proposing to revise

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. We are also proposing to revise several area source NESHAP subparts that include a specific date for an existing source to submit the initial notification because the date specified in the regulations has passed. The provisions we are proposing to revise are: 40 CFR part 63, subpart HHHHHH at 63.11175; 40 CFR part 63, subpart XXXXXX at 63.11519; 40 CFR part 63, subpart AAAAAAA at 63.11564; 40 CFR part 63, subpart BBBBBBB at 63.11585; and 40 CFR part 63, subpart CCCCCCC at 63.11603. We request comments on whether there are other NESHAP subparts that contain the same type of general provisions of those discussed above that will need to be revised (Comment C–1).[1]

C. Costs and Benefits

The EPA projects that this proposed action may result in substantial cost savings based on illustrative estimates of its reduced administrative burden. Other changes in costs, such as from changes in control device operation and maintenance in response to this proposed action, are not estimated due to lack of information. To assess potential changes in emissions, we analyzed the reclassification of 34 sources and also performed an illustrative analysis of six source categories in detail; however, due to limited information on how emissions changes could take place across the broad array of HAP emissions sources, we are unable to provide precise estimates of changes in emissions for all source categories that could be impacted by this action. Due to the uncertainties in determining precise emission impacts, we are providing a qualitative assessment of benefits that may result from this proposed action. The illustrative cost saving impacts of this proposed regulation are estimated for all sources that could potentially reclassify from major source status to area source status under section 112 of the CAA for the 2 years after promulgation of this action. The impacts presented in the preamble reflect those estimated from the illustrative cost saving analysis of the primary scenario, which for analytical purposes is defined as only those facilities whose actual emissions are below 75 percent of the major source thresholds (7.5 tpy for a single HAP and 18.75 tpy for all HAP) that could potentially reclassify from major to area source status, a scenario that is further described in section VI of this preamble and the Regulatory Impact Analysis (RIA) that is available in the docket for this action. The RIA also presents two other alternative scenarios to provide a range of estimated cost savings.[2] All impacts are estimated compared to a baseline in which all promulgated regulations to limit HAP emissions under section 112 of the CAA are in place and includes implementation of the 1995 Once In, Always In (OIAI) policy. Results are presented as the present value (PV) and equivalent annualized value (EAV) of the cost savings of the proposed action in 2016 dollars. The PV is the one-time value of a stream of impacts over time, discounted to the current (or nearly current) day. The EAV is a measure of the annual cost that is calculated consistent with the PV. The cost savings of the proposed action in 2014 dollars are also presented later in this preamble and in the RIA.

A summary of key results from the proposed action presented as shown in the RIA can be found in Table 1. This table presents the PV and EAV, estimated in 2016 dollars using discount rates of 7 and 3 percent, and discounted to 2016, of the cost savings of the proposed action. Yearly estimates are presented for the second year after promulgation and subsequent years.

TABLE 1—ANNUAL COST SAVINGS COMPARED TO THE BASELINE, FOR YEAR 2

[Including following years]
[Billions 2016$]*

	Present value	7% Equivalent annualized value	Present value	3% Equivalent annualized value
Benefits (Cost Savings)	$2.39	$0.17	$6.24	$0.19

*The analytic timeline begins in 2020 and continues thereafter for an indefinite period. Year 1 impacts are those for 1 year after 2020, and Year 2 impacts are those for the second year after 2022 and annually afterwards. Impacts for year 2 are representative of impacts in subsequent years. Impacts are for the primary scenario analyzed for the proposal.

To assess the potential for emission changes from the reclassification of major sources as area sources, the EPA evaluated the sources that the EPA knows have reclassified to area source status consistent with the EPA's plain language reading of the CAA section 112 definitions of ''major'' and ''area'' source, since January 2018. The EPA reviewed permits associated to the reclassification of 34 sources. The EPA also performed an illustrative analysis of changes in emissions for six source categories covered by the proposed rule. In addition, the EPA also performed an illustrative analysis of control cost estimates under one alternative scenario for five source categories covered by the proposed rule. The assessment of the reclassifications and illustrative analyses are summarized in section VI of this preamble and presented in details in the Emission Impacts Analysis Technical Support Memorandum (TSM), the illustrative 125% Scenario Cost Considerations Memorandum and the RIA for the proposal that are available in the docket for this action.

II. General Information

A. Does this proposed action apply to me?

Categories and entities potentially impacted by this proposal include sources subject to NESHAP requirements under section 112 of the CAA.

The proposed amendments, if promulgated, will be applicable to

[1] The EPA notes that the regulatory provisions cited and discussed in this paragraph continue to be in effect. These provisions will remain in effect until such time as they are revised or removed by final agency action.

[2] Alternative scenario 1 assumes that only those facilities whose actual emissions are below 50 percent of the major source thresholds (5 tpy for a single HAP and 12.5 tpy for all HAP) would reclassify from major to area source status. Alternative scenario 2 assumes that sources below 125 percent of the major source thresholds (12.5 tpy for a single HAP and 31.25 tpy for all HAP) would reclassify from major to area source status. Discussion of these scenarios and results can be found in the RIA for this proposal.

sources that reclassify from major source to area source status under section 112 of the CAA and sources that revert from their reclassified status as an area source resulting from this action to their previous major source status.

Federal, state, local, and tribal governments may be affected by this action if they own or operate sources that choose to request reclassification from major source status to area source status or if they choose to subsequently revert to their major source status at some time in the future after such reclassification. The EPA is the permitting authority for issuing, rescinding, and amending permits for sources that request reclassification in Indian country, with four exceptions.[3] State, local, or tribal regulatory authorities[4] may receive requests to issue new permits or make changes to existing permits for sources in their jurisdiction to address reclassification related activities (*e.g.,* title V, synthetic minor permits, establishing limits on a source's PTE).

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this proposal is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean*. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key documents at this same website.

A redline version of the regulatory language that incorporates the proposed changes in this action is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2019–0282).

C. What should I consider as I prepare my comments for the EPA?

In 2007, the EPA issued a proposed rule to amend the General Provisions to the NESHAP. *See* 72 FR 69 (January 3, 2007). This new proposal supersedes and replaces the 2007 proposed rule. The EPA will not be responding to comments received on the 2007 proposal. While some aspects of this new proposal are similar to some aspects of the 2007 proposal, some aspects also differ from the 2007 proposal. To the extent that your comments on this new proposal are similar to or the same as comments submitted in 2007, you can restate those comments in the document that you prepare and submit on this proposal. Please do not resubmit 2007 comment documents or attach 2007 comment documents in what you submit on this proposal.

The EPA is expressly soliciting comment on numerous aspects of the proposed rule. The EPA has indexed each comment solicitation with an alpha-numeric identifier (*e.g.,* ''C–1,'' ''C–2,'' ''C–3'') to provide a consistent framework for effective and efficient provision of comments. Accordingly, the EPA asks that commenters include the corresponding identifier when providing comments relevant to that comment solicitation. The EPA asks that commenters include the identifier in either a heading, or within the text of each comment (*e.g.,* ''In response to solicitation of comment C–1, . . .'') to make clear which comment solicitation is being addressed. The EPA emphasizes that the Agency is not limiting comment to these identified areas and encourages the submission of any other comments relevant to this proposal.

III. Basis for the Proposed Action

A. Prior Agency Actions

Shortly after the EPA began implementing individual NESHAP standards resulting from the 1990 CAA Amendments, the Agency received multiple requests to clarify when a major source of HAP could avoid CAA section 112 requirements applicable to major sources by taking enforceable limits on its PTE below the major source thresholds. In response, the EPA issued, on May 16, 1995, a memorandum from John Seitz, Director of the Office of Air Quality Planning and Standards, to the EPA Regional Air Division Directors (the 1995 Seitz Memorandum).[5] The 1995 Seitz Memorandum provided guidance on three timing issues related to avoidance of CAA section 112 requirements for major sources:

- ''By what date must a facility limit its PTE if it wishes to avoid major source requirements of a MACT standard?''
- ''Is a facility that is required to comply with a MACT standard permanently subject to that standard?''
- ''In the case of facilities with two or more sources in different source categories: If such a facility is a major source for purposes of one MACT standard, is the facility necessarily a major source for purposes of subsequently promulgated MACT standards?''

In the 1995 Seitz Memorandum, the EPA stated its interpretation of the relevant statutory language that facilities that are major sources of HAP may switch to area source status at any time until the ''first compliance date'' of the standard.[6] Under this interpretation, facilities that are major sources on the first substantive compliance date of an applicable major source NESHAP were required to comply permanently with that major source standard even if the source was subsequently to become an area source by limiting its PTE. This position was commonly referred to as the ''Once In, Always In'' (OIAI) policy. The expressed basis for this OIAI policy was that this would help ensure that required reductions in HAP emissions were maintained over time. *See* 1995 Seitz Memorandum at 9 (''A once in, always in policy ensures that MACT emissions reductions are permanent, and that the health and environmental protection provided by MACT standards is not undermined.''). Finally, the 1995 Seitz Memorandum provided that a source that is major for one MACT standard would not be considered major for a subsequent MACT standard if the source's potential to emit HAP emissions was reduced to below major source levels by complying with the first major source MACT standard. In the 1995 Seitz Memorandum, the EPA set forth transitional policy guidance that was intended to remain in effect only until the Agency proposed and promulgated amendments to the 40 CFR part 63 General Provisions.

[3] Two tribes have approved title V programs or delegation of 40 CFR part 71. The tribes may have sources that request to no longer be covered by title V. Neither of these two tribes have approved minor source permitting programs but may in the future. In the meantime, the tribes will need to coordinate with the EPA, who is the permitting authority in Indian country for these requests. In addition, two other tribes have approved Tribal Implementation Plans (TIPs) authorizing the issuance of minor source permits. Only one of these tribes has a major source that would be eligible to request reclassification. If that source requests a new permit, the tribe may issue the minor source permit, but the EPA would need to be made aware of the request as the EPA is the permitting authority for title V.

[4] The term regulatory authority is intended to be inclusive of the permitting authority or other governmental agency with authority to process reclassification requests and issuance of legally and practicably enforceable HAP PTE limits.

[5] *See* ''Potential to Emit for MACT Standards-Guidance on Timing Issues.'' From John Seitz, Director, Office of Air Quality Planning and Standards, to the EPA Regional Air Division Directors. May 16, 1995, *https://www.epa.gov/sites/production/files/2018-02/documents/pteguid.pdf*.

[6] The ''first substantive compliance date'' is defined as the first date a source must comply with an emission limitation or other substantive regulatory requirement (*i.e.,* leak detection and repair programs, work practice measures, etc. . . , but not a notice requirement) in the applicable standard.

After issuing the 1995 Seitz Memorandum, the EPA twice proposed regulatory amendments that would have altered the OIAI policy. In 2003, the EPA proposed amendments that focused on HAP emissions reductions resulting from pollution prevention (P2) activities. Apart from certain provisions associated with the EPA's National Environmental Performance Track Program, a national voluntary program designed to recognize and encourage top environmental performers whose program participants go beyond compliance with regulatory requirements to attain levels of environmental performance that benefit people, communities, and the environment, that proposal was never finalized. *See* 68 FR 26249 (May 15, 2003); 69 FR 21737 (April 22, 2004). In 2007, the EPA issued a proposed rule to replace the OIAI policy set forth in the May 1995 Seitz Memorandum. 72 FR 69 (January 3, 2007). In that proposal, the EPA reviewed the provisions in CAA section 112 relevant to the OIAI policy interpretation, applicable regulatory language, stakeholder concerns, and potential implications. *Id.* at 71–74. Based on that review, the EPA proposed an interpretation of the relevant statutory language that a major source that is subject to a major source NESHAP would no longer be subject to that major source standard if the source were to become an area source through enforceable limitations on its PTE for each HAP. *Id.* at 72–73. Under the 2007 proposal, major sources could take such limits on their PTE and obtain ''area source'' status at any time and would not be limited to doing so only before the ''first substantive compliance date,'' as the OIAI policy provided.[7] *Id.* at 70. The EPA did not take final action on this 2007 proposal. This proposal supersedes and replaces the 2007 proposed rule.

Many commenters supporting the 2007 proposal expressed the view that, by imposing an artificial time limit on major sources obtaining area source status, the OIAI policy created a disincentive for sources to implement voluntary pollution abatement and prevention efforts, or to pursue technological innovations that would reduce HAP emissions further. Stakeholders commented to the EPA that the definitions in CAA section 112(a)(2) contain a single factor for distinguishing between major source and area source—the amount of HAP the source ''emits'' or ''has the potential to emit.'' Commenters further stated that the temporal limitation imposed by the OIAI policy was inconsistent with the CAA and created an arbitrary date by which sources must determine whether their HAP PTE will exceed either of the major source thresholds. These issues were re-emphasized in recent comments received per Executive Order 13777, Enforcing the Regulatory Reform Agenda (February 24, 2017), and the Presidential Memorandum on Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing (January 24, 2017).

On January 25, 2018, the EPA issued a guidance memorandum from William L. Wehrum, Assistant Administrator of the Office of Air and Radiation, to the EPA Regional Air Division Directors titled ''Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act'' (MM2A Memorandum).[8] The MM2A Memorandum discussed the statutory provisions that govern when a major source subject to major source NESHAP requirements under section 112 of the CAA may be reclassified as an area source, and thereby avoid being subject thereafter to major source NESHAP requirements and other requirements applicable to major sources under CAA section 112. In the MM2A Memorandum, the EPA discussed the plain language of CAA section 112(a) regarding Congress's definitions of ''major source'' and ''area source,'' and determined that the OIAI policy articulated in the 1995 Seitz Memorandum is contrary to the plain language of the CAA and, therefore, must be withdrawn. In the MM2A Memorandum, the EPA announced the future publication of a proposed rule to receive input from the public on adding regulatory text consistent with the plain reading of the statute as described in the MM2A Memorandum.

In this action, the EPA is proposing regulatory text to implement the plain language reading of the statute as discussed in the MM2A Memorandum, and this proposal supersedes and replaces the 2007 proposal. *See* 72 FR 69 (January 3, 2007). This proposal also addresses questions received after the issuance of the MM2A Memorandum. In the comments on the 2007 proposal, many stakeholders asserted that the implementation of this plain reading and withdrawal of the OIAI policy will incentivize stationary sources that have reduced HAP emissions to below major source thresholds to reclassify to area source status by taking enforceable PTE limits and reduce their compliance burden. These stakeholders also stated that sources with emissions above major source thresholds after complying with CAA section 112 major source requirements could be encouraged to evaluate their operations and consider additional changes that can further reduce their HAP emissions to below the major source thresholds. Overall, many stakeholders believed the implementation of the plain language reading of the statute will encourage sources to pursue pollution abatement efforts, including innovation in pollution reduction technologies, engineering, and work practices. Other stakeholders raised the concern that allowing sources to reclassify could potentially result in emission increases from sources that have reduced their actual emissions to below the major source thresholds because they have had to comply with major source NESHAP requirements.

We solicit comment on all aspects of this proposal, including the EPA's position that the withdrawal of the OIAI policy and the proposed approach gives proper effect to the statutory definitions of ''major source'' and ''area source'' in CAA section 112(a) and is consistent with the plain language and structure of the CAA as well as the impacts of the proposal on costs, benefits, and emissions impacts (Comment C–2).

B. Statutory Authority

CAA section 112 distinguishes between major and area sources of HAP emissions. Major sources are larger sources of air emissions than area sources and, generally, different requirements apply to major sources and area sources. For some HAP source categories, the EPA has promulgated requirements for only major sources, and HAP emissions from area sources in that source category are not regulated under the NESHAP program.

Whether a source is a ''major source'' or an ''area source'' depends on the amount of HAP emitted by the source based on its actual or potential emissions. Congress defined ''major source'' to mean a source that emits or has the potential to emit at or above either of the statutory thresholds of 10 tpy of any one HAP or 25 tpy of total HAP. CAA section 112(a)(1). An ''area source'' is defined as any source of HAP that is not a major source. CAA section 112(a)(2). If a source does not emit or does not have the potential to emit at or above either of the major source thresholds, then it is an ''area source.'' The statutory definitions of ''major

[7] As provided in the 2007 proposal, ''[p]rior to the effective date of the permit [that limits the emissions of HAP], the source must comply with the relevant major source MACT standard(s) and other conditions in its title V permit.'' *See* 72 *FR* 76.

[8] See notice of issuance of this guidance memorandum at 83 *FR* 5543 (February 8, 2018).

source'' and ''area source'' do not contain any language that fixes a source's status as a major source or area source at any particular point in time, nor do they otherwise contain any language suggesting that there is a cut-off date after which a source's status cannot change.

Congress did, however, create a distinction based on timing in CAA section 112 in defining and creating provisions related to ''new sources'' and ''existing sources.'' Specifically, Congress defined ''new source'' to mean a source that is constructed or reconstructed after the EPA first proposes regulations covering the source. CAA section 112(a)(4). An ''existing source'' is defined as any source other than a new source. CAA section 112(a)(10). A source will be subject to different requirements depending on whether it is a new source or an existing source. *See, e.g.,* CAA section 112(d)(3) (identifying different minimum levels of stringency (known as ''MACT floors'') for new and existing sources).

The emissions-based distinction (arising from the definitions of major source and area source) and the timing-based distinction (arising from the definitions of new source and existing source) are independent, and neither is tied to the other. For example, the statutory definition of ''major source'' does not provide that major source status is determined based on a source's emissions or PTE as of the date that the EPA first proposes regulations applicable to that source or any other point in time. As noted above, the plain language of the ''major source'' and ''area source'' definitions create a distinction that is based solely on amount of emissions and PTE, and not timing. Similarly, with respect to the timing-based distinction, a source is a ''new source'' or an ''existing source'' based entirely on the timing of its construction or reconstruction and without consideration of its actual emissions or PTE. The contrast between the temporal distinction in the contrasting definitions of existing and new sources on the one hand, and the absence of any temporal dimension to the contrasting definitions of major and area sources on the other, is further evidence that Congress did not intend to place a temporal limitation on a source's ability to be classified as an area source (including a source's ability to be classified as an area source through the permitting authority's ''considering controls'' that may have been imposed after the source was initially classified as major).

Notwithstanding the independence of the two distinctions that the statute created based on amount of emissions and timing (and without addressing that independence or otherwise addressing the plain language of the statutory definitions of ''major source'' and ''area source''), the EPA issued the May 1995 Seitz Memorandum, which set forth the OIAI policy. Under the OIAI policy, a source's status as a major source for the purpose of applying a specific major source MACT standard issued under the requirements of CAA section 112 is unalterably fixed on the first substantive compliance date of the specific applicable major source requirements. Thus, a source that was a major source on that first compliance date would continue to be subject to the major source requirements for that specific NESHAP even if the source reduced its PTE to below the statutory thresholds in the definition of ''major source,'' and, thus, fell within the definition of ''area source.''

On January 25, 2018, the EPA issued a guidance memorandum titled ''Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act,'' signed by William L. Wehrum, Assistant Administrator of EPA's Office of Air and Radiation (MM2A Memorandum). The MM2A Memorandum discussed the statutory definitions of ''major source'' and ''area source'' and explained that the OIAI policy articulated in the May 1995 Seitz Memorandum was contrary to the plain language of the CAA, and, therefore, must be withdrawn.

As discussed above, Congress expressly defined the terms ''major source'' and ''area source'' in CAA section 112(a) in unambiguous language. Nonetheless, under the OIAI policy, a source that reduced its PTE to below the statutory thresholds for major source status after the relevant compliance date would nevertheless continue to be subject to the requirements applicable to major sources. This policy was applied notwithstanding that the statutory definitions of ''major source'' and ''area source'' lack any reference to the compliance date of major source requirements or any other text that indicates a time limit for changing between major source status and area source status. In short, Congress placed no temporal limitations on the determination of whether a source emits or has the potential to emit HAP in sufficient quantity to be a major source under CAA section 112. Because, the OIAI policy imposed such a temporal limitation (before the ''first compliance date''), the EPA had no authority for the OIAI policy under the plain language of the CAA. Under the plain language of the statute, a major source that takes enforceable limits on its PTE to bring its HAP emissions below the CAA section 112 major source thresholds, no matter when it may choose to do so, becomes an area source under the plain language of the statute. We are proposing to make clear in this rulemaking that such a source, now having area source status, will not be subject to the CAA section 112 requirements applicable to the source as a major source under CAA section 112—so long as the source's actual and PTE HAP remains below the CAA section 112 thresholds—and will instead be subject to any applicable area source requirements.

A discussion of the statutory definitions of ''new source'' and ''existing source'' in CAA section 112(a)(4) and (a)(10) further demonstrates that the OIAI policy was inconsistent with the language of the statute. As discussed above, the major source/area source distinction and the new source/existing source distinction are two separate and independent features of the statute. Significantly, the statutory definitions of ''new source'' and ''existing source'' dictate that the new source/existing source distinction is determined by when a source commences construction or reconstruction and say nothing about the source's volume of emissions. No one can reasonably suggest that this silence concerning volume of emissions indicates that Congress intended to give the EPA the discretion to conclude that sources should be classified as new or existing based, in part, on how much they emit. For example, if the EPA were to say that a source is only a new source if it both (1) commences construction after regulations are first proposed (as stated in CAA section 112(a)(4)), and (2) emits more than 20 tpy of any single HAP (which is not stated anywhere in the statute), that second element would be contrary to the plain language of the statute. Similarly, the OIAI policy of considering timing matters as part of the major source/area source distinction is contrary to the plain language of the statute, because it interjects timing matters into the major/area distinction when Congress provided that such distinction would be based only on the source's actual and potential emissions.

Some interested parties assert that the EPA's plain language reading of the definitions of ''major source'' and ''area source'' is contradicted by CAA section 112(i)(3)(A). Specifically, they contend that the first phrase in CAA section 112(i)(3)(A) precludes a major source from reclassifying to area source status

after the source has become subject to a major source standard, and that this statutory text compels the OIAI policy. The EPA disagrees with this contention and is taking comment on the following analysis. The first phrase in CAA section 112(i)(3)(A) states: ''After the effective date of any emissions standard, limitation or regulation promulgated under this section and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation. . . .'' The EPA reads this phrase to have the same meaning as similar ''effective date'' provisions in the CAA, such as CAA section 111(e), notwithstanding that CAA section 112(i)(3)(A) has somewhat different phrasing. In short, this text simply provides that, after the effective date of a CAA section 112 rule, sources to which a standard is applicable must comply with that standard. This text is not reasonably read to say that, once a standard is applicable to a source, that standard continues to be applicable to the source for all time, even if the source's potential to emit changes such that it no longer meets the applicability criteria for the standard. Such a reading would produce some odd results. For example, if the first phrase in CAA section 112(i)(3)(A) were read to say that a source's applicable requirements are determined at the point in time that a source first becomes subject to CAA section 112 requirements, then a source that was initially an area source would continue to be subject to area source requirements even if that source increased its potential to emit above either of the major source thresholds. The EPA's reading is that an area source that actually emits or increases its PTE above either of the major source thresholds is subject to major source requirements. In sum, we are proposing to determine that the CAA section 112 definitions of ''major source'' and ''area source'' and the ''effective date'' provision in CAA section 112(i)(3)(A) are properly read together to say that sources must comply with the applicable requirements corresponding to their major source or area source status, and that if this status changes, then the source becomes subject to the requirements corresponding to its current status.

Nothing in the structure of the CAA counsels against the plain language reading of the statute to allow major sources to become area sources after an applicable compliance date in a regulation, in the same way that they have long been able to become area sources before the applicable compliance date. Congress defined major sources and area sources differently and established different provisions applicable for each. The OIAI policy, by contrast, created an artificial time limit that does not exist on the face of the statute by including a temporal limitation on when a major source could become an area source by limiting its PTE HAP.

Some interested parties have pointed to various provisions in CAA section 112 in addition to CAA section 112(i)(3)(A) as demonstrating that the EPA's plain language reading is contrary to the purposes and structure of CAA section 112. The EPA disagrees that these provisions are contrary to or inconsistent with EPA's plain language reading, for the following reasons.

First, some interested parties have pointed to CAA sections 112(c)(3) and (c)(6) as reflecting a Congressional intent for sources to be subject to continuous, permanent compliance with major-source standards and, thus, these provisions are inconsistent with the EPA's plain language reading. But there is no real inconsistency here. Those provisions required the EPA to ensure that sources accounting for 90 percent of the emissions of specific pollutants were listed and regulated by November 2000. The premise of the argument based on CAA sections 112(c)(3) and (c)(6) is that these provisions do not simply require the EPA to list and regulate sufficient source categories to meet the 90 percent requirement at a given point in time; rather, they require that the EPA's regulations ensure that 90 percent of emissions are subject to regulation on an ongoing basis. This is not a reasonable reading of what is required by CAA sections 112(c)(3) and (c)(6), as demonstrated by the inherent implications of the regulation called for in these provision and simple math. Once the sources in the categories that represent 90 percent of the emissions addressed in these provisions become subject to standards, those sources' emissions will decrease and those categories will no longer represent 90 percent of all emissions of the pollutants in question. As a hypothetical example, if the total emissions of one of the pollutants addressed in CAA sections 112(c)(3) and (c)(6) were 100 tpy, and if the source categories emitting 90 tpy were subjected to a standard that called for a 50 percent reduction in emissions, then those source categories would now only be emitting 45 tpy, which would be about 82 percent of the new total emissions of 55 tpy. Under the interested parties' reading of CAA sections 112(c)(3) and (c)(6), the EPA would then be required to add source categories to get back to 90 percent and set standards to reduce the emissions of those sources. This would, once again, reduce the regulated sources to below 90 percent. In short, this reading of CAA sections 112(c)(3) and (c)(6) would create a never-ending cycle of listing and regulation in order to achieve an unattainable goal of ensuring the 90 percent of emissions are regulated. This is not a reasonable reading of what CAA sections 112(c)(3) and (c)(6) require. Further, one would expect the number of sources in a source category to change over time due to shifts in the economy. For example, one source category regulated under CAA section 112 is magnetic tape manufacturing operations. *See* subpart EE, 40 CFR 63.701–63.708. Since this source category was first regulated in 1994 (*see* 59 FR 64596, December 15, 1994), the use of digital recording and data storage has largely replaced the use of magnetic tape, and, thus, the number of sources in this source category has declined. As the number of sources in a source category declined, the total emissions from the source category would decline, which creates another reason why the total group of source categories that at one point represented 90 percent of emissions would fall to less than 90 percent. Thus, again, a reading that the 90 percent requirement is an ongoing requirement that must be continuously met is not a reasonable reading, because it is not reasonable to think, and there is nothing in the statute to suggest, that Congress intended the 90 percent requirement to impose on the EPA the need to endlessly revisit its 90 percent determination as the implementation of MACT standards under CAA section 112 achieved reductions in emissions. For these reasons, there is no conflict between the EPA's plain language reading of CAA sections 112(a)(1)–(2) and the requirements of CAA sections 112(c)(3) and (c)(6).

Second, opponents of the EPA's plain language reading also point to CAA section 112(f)(2) (commonly referred to as the residual risk provision) and CAA section 112(d)(6) (commonly referred to as the technology review provision). These parties suggest that these provisions demonstrate Congress's ''legislative plan'' that sources will continually reduce their emissions, and that the EPA's plain language reading will allow sources to become area sources and, in so doing, undermine this ''legislative plan.'' This argument, however, fails to recognize that Congress in CAA section 112 also plainly distinguished between major sources emitting above the 10/25

threshold and area sources emitting below the 10/25 threshold and subjected them to different requirements. Perhaps the clearest example of the differential treatment of major sources and area sources is the provision in CAA section 112(d)(5) allowing the EPA to set GACT standards rather than MACT standards for area sources. In short, any consideration of Congress' ''legislative plan'' has to look at the entire plan, including the plain language that Congress used to define major sources and area sources.

Third, some parties have pointed to the requirements of CAA section 112(d) as requiring that sources that are at any point subjected to major source standards must continue to be subject to major source standards permanently and argued that EPA's plain language reading undermines the protections provided by these CAA 112 standards. Section 112(d)—and in particular, section 112(d)(2) and (d)(3) of the CAA—addresses how the EPA sets MACT standards for major sources (based on the maximum degree of emissions reduction the EPA determines is achievable, which may be a complete prohibition on emissions). As an initial point, sections 112(d)(2) and (d)(3) are not the only provisions that govern major source standards, and in some cases, they are not the controlling provisions. For example, CAA section 112(h) provides that the EPA, in certain circumstances, can set standards that are different from the MACT floor-based standards created under CAA sections 112(d)(2) and (d)(3). More fundamentally, the question of what standard is applicable to major sources in a source category—whether MACT floor standards or otherwise—logically cannot control the proper reading of the statutory text identifying the pool of sources to which major source requirements apply. In short, once again, these contextual arguments are misplaced. Congress has spoken by defining ''major source'' without any temporal limitation. The EPA's plain language reading honors that unambiguous choice.

Parties opposed to the EPA's plain language reading also suggest that the EPA's reading is inconsistent with the purpose and provisions of CAA section 112 because it will lead major sources that reclassify to area source status to increase their emissions above what they could emit if they continued to be major sources. The EPA disagrees that a sources' reclassification from major source to area source will necessarily lead to an increase in emissions for the source, for the following reasons.

First, as the EPA noted in the MM2A memorandum (at 4) and as discussed above in section III.A of this preamble, some stakeholders have stated that some sources with emissions above the major source thresholds will reduce their emissions below what is required by the applicable major sources standards and to below the major source thresholds in order to be able to reclassify as area sources. As discussed in more detail in section VI of this preamble and in the EPA's Emissions Impacts Analysis TSM, the EPA has identified three sources that have reclassified, and as a result will decrease their emissions. *See* Emission Impacts Analysis TSM Table 2: (1) City of Columbia—Municipal Power Plant (Facility #27 on Table 2); (2) Holland Board of Public Works—James DeYoung Generating Station and Wastewater Treatment Plant (Facility #28 on Table 2); and (3) MidAmerican Energy Company—Riverside Generating Station (Facility #29 on Table 2).

Second, the EPA's analysis of the 34 sources that have reclassified or are in the process of reclassifying since January 2018 based on the EPA's plain language reading shows that none of them will increase their emissions as a result of reclassification. *See* section VI of this preamble and the EPA's Emissions Impact Analysis TSM at Table 2, available in the docket.

Nonetheless, the EPA recognizes (as discussed below in section IV at Table 3) that there are possible scenarios in which major sources might increase emissions after they reclassify to area source status. However, the EPA does not view such potential emission increase scenarios as a basis for disregarding the plain language of Congress's ''major source'' and ''area source'' definitions and the lack of any temporal restriction on sources' opportunity to reclassify. Instead, the EPA views such scenarios as a matter that needs to be evaluated and addressed in determining how the agency should implement the plain language of the statute. Thus, the EPA is seeking comment on (1) to what extent will theoretical emission increase scenarios actually occur, including (a) what emissions restrictions will be put in place as part of the PTE HAP limits that a major source takes to be reclassified as an area source and (b) whether other regulatory controls are in place and applicable to sources after reclassification that will either continue to restrict the source from emitting above the major source standard or prevent an emissions increase after reclassification; and (2) whether the EPA should adopt regulatory text to establish safeguards to prevent emissions increases following reclassification (Comment C–3).

With respect to the second issue (whether the EPA should adopt regulatory text to establish safeguards to prevent emissions increases), the EPA is seeking comment on what legal basis the agency would have for requiring such safeguards (Comment C–4). In addition to seeking comment on this question generally, we are seeking comment on several specific points.

First, the EPA is seeking comment on the following rationale for separating the timing of reclassification from the sufficiency of the PTE limits that support reclassification (Comment C–5). There are two related but distinct matters at issue here. The first matter is the timing of reclassification: Whether sources can reclassify at any time or are permanently classified as major sources after the first substantive compliance date. The second matter is what PTE limit is sufficient to form the basis for a source to reclassify. One aspect of this ''sufficiency'' matter is enforceability, which is discussed below in section IV.B of this preamble. Another aspect of ''sufficiency'' is whether the PTE limit must, in addition to being enforceable, ensure that the source does not increase emissions as a result of reclassification. As discussed above, the ''timing'' matter is governed by the plain language of the statutory definitions of ''major source'' and ''area source.'' The ''sufficiency'' matter is governed by the phrasing in the major source definition that directs the EPA to compare a source's ''potential to emit considering controls'' to the 10/25 major source thresholds. The D.C. Circuit has previously looked at a ''sufficiency'' question and the phrase ''potential to emit considering controls.'' Specifically, in *NMA* v. *EPA,* 59 F.3d 1351 (D.C. Cir. 1995), the Court considered whether a PTE limit had to be federally enforceable to be a sufficient basis for reclassification and, as part of its analysis, concluded that the phrase ''considering controls'' was ambiguous and the EPA's application of those words had to be reviewed under a Chevron Step 2 analysis. 59 F.3d at 1362–1363 (concluding that the EPA had not explained why a PTE limit had to be federally enforceable to be sufficient to support reclassification). Similarly, whether a PTE limit that allows a source to increase its emissions as a result of reclassification is sufficient to support reclassification cannot be determined by the plain language reading of the statute that governs the timing of reclassification, but must be considered based on the ambiguous phrase ''potential to emit considering

controls'' and in light of the other provisions in CAA section 112.

Second, assuming that the above rationale properly frames the ''sufficiency'' matter as a separate question based on how to reasonably read the phrase ''potential to emit considering controls,'' the EPA is seeking comment on whether a requirement that PTE limits used to reclassify a major source to area source status must include safeguards to prevent emissions increases is a reasonable reading of the ambiguous phrase ''potential to emit considering controls'' in light of the other provisions in CAA section 112 (Comment C–6). For example, some interested parties have presented arguments opposing the EPA's plain language reading on timing based on CAA section 112(d)—specifically, that major sources must be subject to MACT floor standards that are at least as stringent as what is achieved by the best performing sources, as provided under CAA section 112(d)(2) and (d)(3). The EPA is seeking comment on whether the arguments presented in opposition to EPA's plain language reading on timing are appropriately considered on the question of the sufficiency of the PTE limit and support the conclusion that PTE limits used to support reclassification must not allow sources to increase emissions as a result of reclassification (Comment C–7).

Third, assuming that requiring safeguards against emission increases in PTE limits is a reasonable reading of the statute, the EPA is seeking comment on what safeguards should be required (Comment C–8). Possible safeguards include requiring that: (1) PTE limits include a limit of the same type as the major source standard and at least as stringent, (2) PTE limits include the requirement that the source continue to implement the measures that it is taking to meet the major source requirement (*i.e.,* the source must continue to operate the same control device and at the same level of effectiveness), or (3) the permitting authority determine that the source will implement the same measures that are being used to meet major source requirements in order to meet the PTE limit—even if such use is not mandated—and thus that emissions will not increase.

Fourth, and finally, the EPA is seeking comment generally on whether it is reasonable and appropriate to require safeguards against emission increases following reclassification (Comment C–9).

As discussed above, the EPA reads the plain language of the statute to allow reclassification of a source's status from major source to area at any time. However, even if the statutory definitions of ''major source'' and ''area source'' were to be read as containing an ambiguity that would allow an interpretation under which the EPA could set a cut-off point (as it did in the OIAI policy), the EPA's reading that there is no such cut-off point is a reasonable reading of the statute, and indeed is the best reading. First, the statutory definitions do not specify any particular cut-off point after which Congress said that a source's status was fixed. Second, the statutory definitions contain no text in which Congress directed or suggested that the EPA create a cut-off point. Third, even if Congress's silence is read to create an ambiguity that the EPA can address by creating a cut-off date for fixing a source's status, that is, at most, only a permissible way to address such an ambiguity and does not undermine the conclusion that the statute can be reasonably read—and indeed is best read—as not requiring a cut-off date. In short, even if the statutory text were found to contain an ambiguity on the question of a cut-off date for setting a source's status, the absence of any cut-off date or cut-off language in the statutory definitions enacted by Congress is best read as allowing a source to change from a major source to area source or vice versa at any time.

Further, such a reading is consistent with the statutory structure and goals of the CAA. In addition to the points discussed above in support of the EPA's plain language reading, and as discussed in more detail below in sections IV and VI, there are various reasons why a major source's reclassification to area source status, in some cases, may result in a decrease in HAP emissions rather than an increase in that source's HAP emissions. First, when the corresponding regulatory authority reviews the application for a new or revised permit that will incorporate enforceable limits on a source's PTE of HAP below the major source thresholds, the regulatory authority will consider the specifics of each source. Among other things, the regulatory authority will consider the current and proposed HAP emissions levels, the type of limits proposed and whether such limits are legally and practicably enforceable, any newly applicable area source NESHAP subparts, and if other requirements are needed to ensure that the source complies with the CAA. Second, some major sources have undergone facility and operational modifications since they became subject to the major source NESHAP requirements, and these modifications may prevent the HAP emissions from increasing even without the sources remaining subject to major source NESHAP requirements (*e.g.,* a source that has eliminated the use of HAP binders or coatings from their operations or has switched to low-HAP or no-HAP products). Third, as discussed below in sections IV and VI, some sources with actual emissions just above one or both of the major source thresholds under their current major source NESHAP requirements might choose to accept HAP PTE limits that are lower than their current emissions and further reduce their emissions consistent with the PTE limits in order to achieve area source status and reduce their regulatory burden. In those cases, allowing sources to reclassify as area sources even after they are subject to major source NESHAP requirements can provide an incentive for them to reduce their emissions below what is required under the CAA section 112 major source requirements.

The EPA invites interested persons to comment on the EPA's plain language reading discussed above. The EPA is interested in specific examples of sources that would reclassify consistent with the EPA's reading and whether those sources' emissions would increase, decrease, or stay the same after reclassification, and in any additional information on whether allowing major sources to reclassify as areas sources would or would not increase emissions from such sources or lead to a reduction in their emissions (Comment C–10). Further, the EPA invites comments on whether the Agency's reading is a permissible interpretation of the statute even if it is not the only possible reading (Comment C–11).

C. Role of the PTE Definition in the Regulation of Major Sources

Section 112 of the CAA defines a major source not only in terms of a source's actual emissions of an air pollutant, but also in terms of its potential emissions of an air pollutant or any combination of air pollutants. The definition of PTE in the General Provisions of the NESHAP regulations interprets the statutory term ''potential to emit'' found in the definition of major source of section 112 of the CAA and provides a legal mechanism for sources that wish to restrain their emissions to avoid triggering major source requirements. 40 CFR part 63.2 defines ''potential to emit'' to mean the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Under the current definition in 40 CFR 63.2, any physical or operational limitation

on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.[9]

Accordingly, a source that has the physical and operational design allowing it to potentially emit HAP above the statutorily specified thresholds (*i.e.,* 10 tpy or more of an individual HAP, or 25 tpy or more of total HAP) is a major source of air pollution unless the source limits its maximum capacity to emit HAP under its physical and operational design by obtaining restrictions that have the effect of limiting the amount of emissions (referred to as ''HAP PTE limits'' or ''PTE limits'') the source can legally emit. Further, as explained in more detail below in section IV.B, to ensure that sources do not disregard their PTE limits, the EPA's definition of ''potential to emit'' in 40 CFR 63.2 required that limitations on a source's operations can only be taken into account in determining PTE if the limitation was federally enforceable. In 1995, the United States Court of Appeals for the District of Columbia Circuit issued a decision in *National Mining Association (NMA)* v. *EPA,* 59 F.3d 1351 (D.C. Cir. 1995), in which it remanded the definition of ''potential to emit'' found in 40 CFR 63.2 to the EPA to justify the requirement that physical or operational limits be ''federally enforceable.'' The NMA Court decision confirmed that the EPA has an obligation to ensure that limits considered in determining a source's PTE are effective, but it stated that the Agency had not adequately explained how ''federal enforceability'' furthered effectiveness. 59 F.3d at 1363–1365. In this action, the EPA is proposing specific criteria that HAP PTE limits must meet for these limits to be effective in ensuring that a source would not emit above the PTE limits. The EPA is proposing to amend the definition of ''potential to emit'' in 40 CFR 63.2, accordingly, by removing the requirement for federally enforceable PTE limits and requiring instead that HAP PTE limits meet the effectiveness criteria of being both legally enforceable and practicably enforceable. The EPA is also proposing to amend 40 CFR 63.2 to include the definitions of ''legally enforceable'' and ''practicably enforceable'' as described in this proposal. These proposed amendments will facilitate such effective HAP PTE limits to be issued by the EPA and by state, local, and tribal regulatory agencies. The EPA is taking comment in this proposal on the criteria required for effective HAP PTE limits for purposes of determining whether a source is a major source under 40 CFR 63.2 and whether the EPA's proposed criteria are necessary and sufficient to ensure HAP PTE limits are effective to support reclassification of a major source to an area source (Comment C–12). In this action, the EPA is not proposing to change our approach to any PTE limits other than those for HAP for purposes of NESHAP applicability. *See* section IV.B for a discussion on the criteria for effective HAP PTE limits, enforceability considerations, and requests for comments on specific issues.

D. Issues Not Resolved by the Statute or Existing Regulations

As discussed in section III.B above, the EPA's read of the statutory definitions of ''major source'' and ''area source'' in section 112(a) of the CAA is that these are not dependent on timing and do not contain any language concerning when a source may change its status from major source to area source. The General Provisions section of 40 CFR part 63, subpart A, addresses compliance with standards when an area source subsequently increases its emissions of HAP such that the source becomes a major source subject to requirements established under section 112 of the CAA. But these existing regulations do not address the issue of compliance time frames for sources that reclassify from major source status to area source status. This action proposes to amend 40 CFR part 63, subpart A to address the issues not resolved by the current General Provisions requirements with regard to the reclassification of major sources as area sources under section 112 of the CAA and to clarify existing requirements that apply to sources that reclassify. This action proposes to amend the General Provisions applicability tables contained within most subparts of 40 CFR part 63 to reflect the proposed amendments to subpart A. *See* section V.A and V.B for proposed amendments to 40 CFR part 63, subpart A, and for proposed changes to individual NESHAP General Provisions applicability tables.

In addition to the provisions that the EPA is proposing to amend in the 40 CFR part 63 General Provisions, the EPA has identified a number of provisions in the 40 CFR part 63 subparts that reflect the 1995 OIAI policy by stating the date after which a major source can no longer become an area source. In this action, we are proposing to remove these provisions because they are contrary to the plain language of the statute as discussed above. *See* section V.C for proposed amendments to specific NESHAP subparts.[10]

IV. Considerations for Sources Seeking Reclassification From Major to Area Source Status

As explained above in section III.A, the EPA reads the definitions of major source and area source in section 112 of the CAA to impose no time constraint for when a major source can be reclassified as an area source. Given the statutory definitions, a major source that takes enforceable limits [11] on its PTE HAP can be reclassified as an area source at any time.[12] The decision by a source to be reclassified as an area source would be voluntary. We expect that the process for reclassification to area source status for HAP will rely on existing programs (*e.g.,* minor source programs, title V permitting procedures, and/or approved programs for issuing PTE limits under CAA section 112(l)). It is also possible for state, local, and tribal regulatory authorities to develop new programs for issuing HAP PTE limits.

After the issuance of the MM2A Memorandum, the EPA received questions from stakeholders about the reclassification of sources that already emit at levels lower than the major source thresholds but have major source NESHAP requirements in their permits because of the OIAI policy. Stakeholders also inquired about public notice requirements associated with the issuance of enforceable HAP PTE limits. We address specific stakeholders' questions regarding permitting and procedural steps associated with reclassification in more detail in section IV.B and IV.C of this preamble. The following discussion presents some general considerations for sources that

[9] *See* 40 CFR 63.2 definition of ''federally enforceable'' available at *https://ecfr.io/Title-40/se40.11.63_12.*

[10] In the meantime, and unless and until the EPA takes final action to remove or revise such provisions, the provisions in part 63 subparts that reflect the 1995 OIAI policy continue to control when major sources subject to those subparts may reclassify to area sources status.

[11] The concept ''enforceable limits'' incorporates legal enforceability and practical enforceability. Throughout this proposed rulemaking, we use the term ''enforceable limits'' to mean limitations that satisfy both of these criteria.

[12] Note, however, that reclassification does not affect a source's responsibility to comply with the major source requirements prior to the time the source reclassifies. Further, even after a source reclassifies from major source to area source, it may be subject to requirements under a consent decree or permit that obligates it to continue to comply with the major source requirements.

will be seeking reclassification from major source to area source status.

Sources seeking status reclassification from major source to area source can generally be grouped in three categories: (1) Existing major sources that would need to obtain enforceable limits on their HAP PTE that are below major source thresholds; (2) existing sources previously classified as major sources for a specific major source NESHAP that already have obtained enforceable limits on all their HAP emissions such that the source's PTE, as well as actual emissions, are currently below major source thresholds for each individual HAP and any combination of HAP; and (3) existing sources previously classified as major sources for a specific major source NESHAP that are no longer physically or operationally able to emit HAP in amounts that exceed the major source thresholds (commonly known as true or natural area sources).[13]

The third category includes former major sources that no longer have the ability to emit at major source levels because they have either permanently removed equipment, changed their processes, or for other reasons. Pursuant to the plain language of the statute, the sources in this third category are area sources because their maximum capacity to emit HAP under the physical or operational design is less than the thresholds for a major source under CAA section 112(a)(1). These true area sources do not rely on such things as State Implementation Plan (SIP)-imposed limits or pollution control equipment to constrain their emissions. Any source that needs a physical or operational limit on its maximum capacity to emit, including requirements for the use of air pollution control equipment or restrictions on the hours of operations or on the type or amount of material combusted, stored, or processed, is not in this third category.

Sources in any of these three categories who are seeking to reclassify to area source status will apply to their corresponding regulatory authority [14] and follow the corresponding regulatory authority's procedures for reclassifying and, if needed, for obtaining enforceable limits on their HAP PTE. A source proposing to reclassify to area source status must identify any applicable area source NESHAP requirements in its request. Upon submission, the regulatory authority will review the source's proposed enforceable limitations and, if approved, the regulatory authority will incorporate the enforceable HAP PTE limitations and other applicable CAA requirements, such as any applicable area source NESHAP requirements, in a revised title V permit or a minor source permit. In lieu of an individual permit, a source may be eligible for coverage under a general permit or registration program under a specific regulatory authority program. Depending on the regulatory authority rules for minor source programs, sources that no longer have the capacity to emit HAP above the major source thresholds, unaided by added controls or operational limitations, may have additional options.

After a source completes the process to reclassify to area source status, the source must comply with any applicable area source NESHAP requirements and would no longer be subject to major source NESHAP requirements or other major source requirements that were applicable to it as a major source under CAA section 112.[15] A source that reclassifies will need to update the information already provided to the Administrator per the notification requirements of 40 CFR 63.9(j). The permitting programs have procedures in place for processing changes to a source's applicable requirements and the ability to coordinate any notification required under 40 CFR part 63. *See* section V.A of this preamble for proposed changes to notification requirements of 40 CFR 63.9(b) and (j).

Below are some general considerations for sources contemplating seeking reclassification from major to area source status. An improved understanding of these considerations should serve to alleviate the concerns that have been expressed regarding the reclassification of major sources as area sources under section 112 of the CAA.

A. PTE Determination Considerations

The definition of ''major source'' in section 112(a) of the CAA includes ''any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit considering controls [HAP emissions that exceed the thresholds].'' Regulatory authorities (*i.e.,* permitting authorities) and sources have a long history of evaluating HAP PTE calculations, developing HAP PTE limits, and making applicability determinations. That said, the HAP PTE calculations and determination are critical steps for (1) any source seeking to understand whether it is subject to major source requirements and (2) for any source that is seeking to cease being subject to major source requirements by reclassifying from major source to area source status. Following the issuance of the MM2A Memorandum, we received many questions concerning the requirements for sources to obtain PTE limits, including requests for clarity regarding the minimum requirements that a request for reclassification must meet. While this proposed action does not propose any new requirements regarding the process for completing a HAP PTE calculation and determination for sources seeking reclassification from major to area source status, the EPA is requesting comments on whether it would be appropriate to include in the General Provisions of 40 CFR part 63 the minimum requirements that a major source of HAP must submit to its regulatory authority when seeking to obtain HAP PTE limitations to reclassify as area sources under section 112 of the CAA (Comment C–13).

A source seeking to obtain enforceable limits on its HAP PTE to below the major source thresholds will follow the established process and submit to the regulatory authority any required documentation and demonstration. For example, the discussion below presents the requirements a source seeking to obtain HAP PTE limits under the established regulations for the Federal Minor New Source Review Program in Indian Country must follow. 40 CFR 49.158(a)(1) provides that the application for a synthetic minor source permit must include the following information:

(1) Identifying information, including name and address (and plant name and address if different) and the name and telephone number of the plant manager/contact;

(2) For each regulated New Source Review (NSR) pollutant and/or HAP and for all emissions units to be covered by an emissions limitation, the following information: (a) The proposed emission limitation and a description of its effect on actual emissions or the PTE. Proposed emission limitations must

[13] See definition of true area in memorandum titled ''Potential to Emit (PTE) Guidance for Specific Source Categories.'' From John S. Seitz, Director, Office of Air Quality Planning and Standards, page 2, April 14, 1998.

[14] The term regulatory authority is intended to be inclusive of the permitting authority or other governmental agency with authority to process reclassification requests and issuance of legally and practicably enforceable HAP PTE limits.

[15] A source that reclassifies from major source to area source may be subject to major source requirements under a consent decree, permit, or other enforceable vehicle that obligates it to continue to comply with the major source requirements for a specified amount of time. This rule is not intended to affect any of those existing obligations. Any changes to those obligations would need to be made through the appropriate processes (*e.g.,* modification of the consent decree with the Court, or revisions of the permit with the permit authority).

have a reasonably short averaging period, taking into consideration the operation of the source and the methods to be used for demonstrating compliance; (b) proposed testing, monitoring, recordkeeping, and reporting requirements to be used to demonstrate and assure compliance with the proposed limitation; (c) a description of the production processes; (d) identification of the emissions units; (e) type and quantity of fuels and/or raw materials used; (f) description and estimated efficiency of air pollution control equipment under present or anticipated operating conditions; (g) estimates of the current actual emissions and current PTE, including all calculations for the estimates; (h) estimates of the allowable emissions and/or PTE that would result from compliance with the proposed limitation, including all calculations for the estimates; and

(3) Any other information specifically requested by the reviewing authority.

As described above, for the Federal Minor New Source Review Program in Indian Country, a source seeking to obtain HAP PTE limits, as part of its PTE evaluation, will show that it has accounted for emissions of all HAP, from all emission points, including fugitive HAP emissions, and HAP emissions from insignificant activities [16] [17] from the stationary source or group of sources located within a contiguous area and under common control. The source also provides the current and proposed HAP emissions levels, the type of limitations or controls proposed, and a demonstration that the emission reductions are achievable in practice.

While the PTE calculations and supporting evaluation for large and complex sources might require data collection and validation and accounting for a larger number of emission points, the process is not different than what is already required within some source category rules [18] or under the recordkeeping requirements for applicability determinations of 40 CFR 63.10(b)(3). In the Federal Minor New Source Review Program in Indian Country regulations at 40 CFR 49.158(a)(2),[19] the EPA provided a hierarchy of acceptable data and methods to determine a source's PTE for a source seeking to obtain a synthetic minor source permit, including a synthetic minor permit for purposes of 40 CFR part 63. The hierarchy in 40 CFR 49.158(a)(2) presents the procedures that are generally acceptable for estimating emissions from air pollution sources: (1) Source-specific emission tests; (2) mass balance calculations; (3) published, verifiable emission factors that are applicable to the source; (4) other engineering calculations or (5) other procedures to estimate emissions specifically approved by the reviewing authority. We request comment on whether the EPA should include in the General Provisions to 40 CFR part 63 the hierarchy of acceptable data and methods a source seeking reclassification would use to determine the source PTE (Comment C–14).

As described above, the best approach uses source specific test data (on-site measurements) or continuous emission monitoring system (CEMS) data where available. Where these data are not available, the next best approach uses a material-balance approach (comparing inputs and outputs). Where these data are not available, the next best approach uses source-specific models (based on information about the source's operations). Finally, where these data are not available, the approach uses emission factors (based on industry-average emission rates).[20] The responsibility for using the best data available in preparing the source's PTE calculations and analyses is with the owner and operator of a source. The data should be accurate and representative of the source's emissions. A source's efforts to be reclassified from major source to area source may be unsuccessful if it does not use the best data.

The EPA requests comments on whether adding the same or similar requirements that are now in 40 CFR 49.158(a)(1) to 40 CFR 63.10 would be appropriate to create the minimum requirements that a major source of HAP must submit to its regulatory authority when seeking to obtain PTE HAP limitations to reclassify as area sources under section 112 of the CAA (Comment C–15). We also request comments on whether the EPA should also include the hierarchy of acceptable data and methods a source seeking reclassification would use to determine the source PTE. This hierarchy could be the same or similar to the one provided in 40 CFR 49.158(a)(2) (Comment C–16).

In response to the 2007 proposal, the EPA received multiple comments regarding sources that have reduced their HAP emissions to below major source thresholds because of the implementation of major source NESHAP requirements. Some stakeholders were concerned that if these sources were to reclassify to area source status and were no longer subject to major source NESHAP requirements, they could stop using the emission controls or emission reduction practices implemented for major source NESHAP compliance or no longer maintain the same level of control as before.[21] This concern was also raised by stakeholders after the issuance of the MM2A Memorandum. A source seeking reclassification because it has reduced its HAP emissions to below the major source thresholds through use of control devices or emission reduction practices implemented for compliance with major source NESHAP requirements will need to demonstrate to the regulatory authority issuing the HAP PTE limits, the degree to which the control devices and emission reduction practices are needed to restrict the source's PTE. If the source relies on its existing control devices and/or emission reduction practices to limit its HAP PTE below the major source thresholds, under the proposed effectiveness criteria, the use of the control devices and/or emission

[16] As part of its PTE evaluation, sources must account for emissions of all HAP, from all emission points, including fugitive HAP emissions. ''. . . An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement . . .'' *See* 40 CFR 70.5(c). ''Insignificant Activities—Section 70.5(c) allows the Administrator to approve as part of a State program a list of insignificant activities which need not be included in permit applications. For activities on the list, applicants may exclude from part 70 permit applications information that is not needed to determine (1) which applicable requirements apply, (2) whether the source is in compliance with applicable requirements, or (3) whether the source is major.'' See ''White Paper for Streamlined Development of Part 70 Permit Applications.'' From Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards, to the EPA Regional Air Division Directors. July 10, 1995; *https://www.epa.gov/sites/production/files/2015-08/documents/fnlwtppr.pdf.*

[17] *See* order granting in part and denying in part petition for objection to permit for Hu Honua Bioenergy, at *https://www.epa.gov/sites/production/files/2015-08/documents/hu_honua_decision2011.pdf.*

[18] *See,* as example, 40 CFR part 63, subpart F at 63.100, Applicability and designation of source.

[19] *See* 40 CFR part 49 subpart C, Synthetic minor source permits under the Federal Indian Country Minor New Source Review Rule at 40 CFR 49.158, and Potential to Emit A Guide for Small Business. October 1998. US EPA, OAQPS. *https://www3.epa.gov/airtoxics/1998sbapptebroc.pdf.*

[20] ''Use of emission factors as source-specific permit limits and/or as emission regulation compliance determinations are not recommended by the EPA. Because emission factors essentially represent an average of a range of emission rates, approximately half of the subject sources will have emission rates greater than the emission factor and the other half will have emission rates less than the emission factor. As such, a permit limit using an AP–42 emission factor would result in half of the sources being in noncompliance. *See* ''Compilation of Air Pollutant Emission Factors, Introduction,'' January 1995.

[21] These stakeholders are concerned that these sources could increase their emissions to just below the major source thresholds of 10/25 tpy of HAP. *See* section IV for a discussion of the assessment of potential emission changes from the reclassification of major sources as area sources.

reduction practices must be made legally and practicably enforceable in the absence of the applicability of the major source NESHAP requirements. Alternatively, if a source intends not to retain the control device equipment or emission reduction practices used to comply with a previously applicable major source NESHAP requirement, the source must demonstrate that other limits exist or can be imposed that will restrict the source's maximum capacity to emit HAP, and that these limits are or can be made legally and practicably enforceable to ensure that the source will not emit HAP at or above the major source thresholds. A blanket emissions limit on HAP generally (*e.g.,* no more than 10 tpy of an individual HAP or no more than 25 tpy of total HAP) is not sufficient as it fails to meet the practicably enforceable criteria of being a technically accurate limitation of short duration with adequate monitoring (*i.e.,* there is no monitoring method for ''HAP'' in the aggregate).[22] *See* section IV.B of this preamble, Criteria for Effective HAP PTE Limits, for a full discussion of proposed criteria for effective HAP PTE limits.

B. Criteria for Effective HAP PTE Limits

In this action, the EPA is proposing that a major source that reduces its PTE HAP emissions to below the major source thresholds by taking HAP PTE limits that meet the proposed criteria for effective PTE limits may request and, upon approval, be reclassified to area source status. In the past, the EPA concluded that federal enforceability was required for the effectiveness of PTE limits; [23] hence, the requirement is in the current regulations for the HAP programs (*see* PTE definition in 40 CFR 63.2). Since the issuance of the MM2A Memorandum, stakeholders have raised the question of whether HAP PTE limitations still need to be federally enforceable. By proposing to establish criteria for effective HAP PTE limits in this action, we will respond to this question from stakeholders.

In the context of HAP PTE limits, the term federally enforceable under 40 CFR 63.2, refers to the legal authority granted under the CAA (*i.e.,* under section 113 and section 304(a) of the statute) to the EPA Administrator and citizens to enforce in Federal court all limitations and conditions that implement requirements under the CAA (*e.g.,* issued under an approved program under section 112(l) of the CAA or a SIP or another statute administered by the EPA.). Given that sources that rely on state or local PTE limitations cease to be subject to major source CAA requirements, in the past the EPA concluded that these PTE limitations must be federally enforceable [24] to be consistent with the enforcement structure of the CAA. The EPA also linked effectiveness of PTE limits to programs that followed the EPA's specific procedures for issuance of PTE limits (*e.g.,* program requirements and implementation).[25] To recognize the state or local PTE limitations as federally enforceable, the EPA then imposed various administrative requirements on SIP programs issuing limitations.[26] These program requirements specified procedures, meant to ensure that a source's PTE limitations included in a permit have the intended effect of reducing the amount of emissions, and that sources could not disregard their PTE limits without enforcement consequences. For implementing the air toxics program under CAA section 112, the EPA adopted the SIP federal enforceability framework for PTE limits. The original 40 CFR part 63 General Provisions preamble explains that federal enforceability was required: (1) To confirm that PTE HAP limits were included as part of the source's physical and operational design, and that any claimed limitations will be observed; (2) to ensure that a permitting authority had strong enforcement capability and the legal and practical means to make sure that such commitments are carried out; and (3) to support the goal of the CAA to enforce all relevant features of the air toxics program.[27] Following litigation on the 40 CFR part 63 General Provisions, on July 21, 1995, the Court issued a decision in *National Mining Association* v. *EPA* (59 F. 3d 1351 (D.C. Cir. 1995)), in which, after examining the question of whether HAP PTE limits must be federally enforceable, it remanded, but did not vacate, the definition of ''potential to emit'' found in 40 CFR 63.2. The Court found that the EPA had not adequately explained why only federally enforceable measures should be considered as effective limits on a source's HAP PTE.

After the *NMA* decision, the EPA extended a pre-existing policy allowing the use of non-federally enforceable limits (*e.g.,* state-only enforceable limits) for limiting PTE provided those limits are legally enforceable and practicably enforceable.[28] Also, on March 23, 2001, the EPA added recordkeeping requirements for applicability determinations for sources with a maximum capacity to emit HAP in amounts greater than major source thresholds but with PTE limits to avoid applicability of a standard. *See* 40 CFR 63.10(b)(3).[29] At that time, the EPA also confirmed that until the rules are clarified to address various PTE issues, consistent with the *NMA* Court decision, any determination of HAP PTE under 40 CFR 63.2 should consider the regulations and also take into consideration the EPA transition policy guidance memoranda. 66 FR 16342 (March 23, 2001).

Our experience shows that while many states have programs for issuing HAP PTE limits that have been reviewed by the EPA and have become federally enforceable through the EPA's approval (*e.g.,* CAA section 112(l)/40 CFR 63.91 programs to limit HAP PTE, federally enforceable state operating permit (FESOP), or title V permitting programs), many state and local agencies also implement programs that have the proper legal authority but are not subject to the EPA's review either because these programs reflect state-only initiatives or are not otherwise required under other CAA provisions (*e.g.,* state permitting programs for air toxics). These state-only or local-only programs are implemented in

[22] There is substantial body of EPA guidance and administrative decisions relating to PTE and PTE limits. *E.g., see generally,* Terrell E. Hunt and John S. Seitz, ''Limiting Potential to Emit in New Source Permitting'' (June 13, 1989); John S. Seitz, ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act'' (January 25, 1995); Kathie Stein, ''Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and § 112 Rules and General Permits'' (January 25, 1995); John Seitz and Robert Van Heuvelen, ''Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit'' (January 22, 1996); ''In the Matter of Orange Recycling and Ethanol Production Facility, Pencor-Masada Oxynol, LLC,'' Order on Petition No. II–2001–05 (April 8, 2002) at 4–7.

[23] The EPA concluded that Federal enforceability was required for issuing effective PTE limits in a June 28, 1989, rule that amended the Federal enforceability requirement and created federally enforceable operating permits. *See* 54 FR 27274.

[24] *See* 54 FR 27274 (June 28, 1989).

[25] In the past, the EPA held the view that it could be certain that only programs reviewed and approved by the EPA had adequate procedures for issuance of effective PTE limits.

[26] *Id.*

[27] *See,* National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions. March 16, 1994. 59 FR 12430.

[28] *See* memorandum, ''Third Extension of January 25, 1995 Potential to Emit Transition Policy'' from John S. Seitz and Eric V. Schaeffer, to Regional Offices, December 20, 1999. Also, *see* memorandum, ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act,'' from John S. Seitz and Robert I. Van Heuvelen, to Regional offices, January 25, 1995; and ''Extension of January 25, 1995, Potential to Emit Transition Policy,'' from John S. Seitz and Robert I. Van Heuvelen, to Regional offices, August 27, 1997.

[29] These requirements became final April 5, 2002. *See* 67 FR 16582, also, 66 FR 16342 (March 23, 2001).

coordination with federally approved programs and share infrastructure and resources, as well as program management and personnel, and create HAP PTE limits that are structurally similar to their federally enforceable counterparts. In sum, for purposes of determining HAP PTE under 40 CFR 63.2, the EPA's PTE definition and current policies make clear that an enforceability requirement remains in place until we finalize a rule addressing the remand, but that HAP PTE limits that are both (1) legally enforceable (that is, either federally enforceable or legally enforceable by a state, local, or tribal authority) and (2) practicably enforceable are allowed in the interim as effective limits restraining emissions.

Consistent with the Court's decision in *NMA,* the EPA views ''effectiveness'' as both a foundation and a constraint on the EPA's discretion in defining PTE under 40 CFR 63.2. As a foundation, effectiveness is a minimum element of limitations on a source's HAP PTE, and the EPA has an obligation to ensure that limits considered in determining a source's HAP PTE are effective. 59 F.3d at 1362. As a constraint, promoting effectiveness must be the purpose for any conditions the EPA would require before considering a limit valid for HAP PTE purposes, and the Court indicated it would not uphold requirements that were extraneous to that goal. *Id.* at 1364–65. In *NMA* the Court concluded that the EPA had not explained why the federal enforceability requirement was necessary to ensure the ''effectiveness'' the Court viewed as essential. For example, the Court expressed concern that the EPA has ''proposed conditions for achieving 'federal enforceability' that go beyond the mere effectiveness of a particular constraint as a practical matter.'' *Id.* at 1363. Although it is clear from this that effectiveness as a practical matter must be preserved in some way, the Court was not convinced that federal enforceability was necessarily a prerequisite to ''effectiveness.'' The discussion below presents the criteria the EPA is proposing as necessary for HAP PTE limits to be ''effective'' in ensuring that a source does not emit HAP above the legally enforceable PTE level. The EPA views these proposed criteria as sufficient to effectively constrain a source's emissions for purposes of calculating HAP PTE under section 112 of the CAA and, if met, support reclassification of major sources as area sources under CAA section 112. The EPA requests comments on the proposed effectiveness criteria and whether these criteria are sufficient to support reclassification (Comment C–17). At the same time, the EPA invites comments on whether there are additional criteria that must be included to ensure that HAP PTE limits are effective (Comment C–18). The Agency's overarching goal in proposing these criteria is to achieve a clear and simple implementation process to motivate area sources to maintain reduced HAP emissions and ensure that sources of HAP comply with CAA requirements. Avoiding unreasonable burden on industry or states is also an important objective under this goal.

The EPA is proposing that to be effective, HAP PTE limits must meet the criteria of legal enforceability and practical enforceability as explained below. We request comments on these proposed effectiveness criteria and the elements discussed below (Comment C–19). The EPA is also requesting comments on whether there are other criteria that should be required for ensuring effectiveness of HAP PTE limits, including whether public notice and comment procedures should be part of the required effectiveness criteria (Comment C–20). At the end of this section, we discuss some considerations regarding the issuance of HAP PTE limits and public notice and comment procedures. In this action, the EPA is not proposing to change our approach to establishing PTE limits other than those used for CAA section 112 NESHAP applicability.

1. Legal Enforceability

The EPA proposes that to be effective, HAP PTE limits must be legally enforceable. The legal enforceability of a HAP PTE limit is composed of two parts: (a) The authority to establish the HAP PTE limits and (b) the authority to enforce the HAP PTE limits. Each of these parts is discussed below.

a. Authority To Establish the Limits

To be effective, HAP PTE limits must be required by law and legally binding on the source. To that end, the first aspect of the legally enforceable criterion for effective HAP PTE limits must address the adequacy of the legal authority to issue the PTE limits. This first aspect of legal enforceability ensures that the HAP PTE limits are issued under governmental regulatory authority and are not merely voluntary. Accordingly, we propose that to be effective, HAP PTE limits must identify the legal authority under which the HAP PTE limits are being issued. The proper identification of legal authority ensures that the issued HAP PTE limits are required by law and legally binding on the source and not merely voluntary. The EPA is requesting comments both on the appropriateness of this requirement and on whether there are other considerations that warrant being part of the criterion of legal authority to issue HAP PTE limits (Comment C–21).

b. Legal Authority To Enforce the PTE Limits

The second aspect of legal enforceability for effective HAP PTE limits refers to the legal authority to enforce the limits. A PTE limit may appear to be effective in every technical sense yet fail to be effective if no governmental authority has sufficient legal authority to enforce against violations of the limit once issued. There is a benefit to compliance oversight by a governmental entity that has the expertise in air pollution control and requisite authority to enforce a PTE limit. The EPA proposes that for HAP PTE limits to be effective, the regulatory authority issuing the limits must also have the authority to enforce the limits. The EPA recognizes that to be effective, PTE limits must carry with them a credible risk for enforcement if they are violated, that sources be on notice of their legal obligation to comply, and that sources are cognizant of the consequences of non-compliance. As part of that, the EPA is taking comment on whether state-only or local-only enforcement authority alone is sufficient to impose a credible risk of enforcement and, therefore, ensure compliance with the HAP PTE limits or whether to be effective, the EPA and/or citizens through the enforcement authorities in the CAA must also have the authority to enforce the HAP PTE limits that are being used to avoid a Federal requirement (Comment C–22). In addition, we request comments on whether enforceability of a PTE limit by the EPA and/or citizens reduces the implementation burden for all parties and provides a level of compliance incentive unmatched by enforcement by only a state or local authority that warrants it to be part of the effectiveness criteria (Comment C–23).

2. Practical Enforceability

The second criterion for effective HAP PTE limits is that the limits must be enforceable as a practical matter, *i.e.,* practicably enforceable. The EPA proposes that to be practicably enforceable, HAP PTE limits must be written so that it is possible to readily verify compliance and to document violations when enforcement action is necessary. We are proposing that to meet this criterion, PTE limits must specify: (1) A technically accurate limitation and identify the portions of the source subject to the limitation; (2)

the time period for the limitation (hourly, daily, monthly, and annual limits such as 12-month rolling limits); and (3) the method to determine compliance, including appropriate monitoring, recordkeeping, and reporting (MRR).[30] Below, the EPA presents specific guidance regarding MRR requirements, as well as a discussion of technically accurate limitations so that HAP PTE limits will be compliant with the proposed criteria of being practicably enforceable.

a. Technically Accurate Limits That Identify the Portions of the Source Subject to the Limitations

A technically accurate limit is one that accounts for each emissions unit contributing to the maximum capacity of the source to emit HAP and must be based on the physical and operational design of the emission units. A technically accurate limit is also one that is capable of being monitored, regardless of whether the monitoring is accomplished by means of monitoring individual units or monitoring a common point for multiple sources. For example, a blanket emission limit on a single HAP or on total HAP (*e.g.,* no more than 10 tpy of an individual HAP or no more than 25 tpy of total HAP) is not technically accurate because it does not contain any analysis on the physical or operational design of the emission unit or units under consideration. Such a blanket emission limit is also not generally capable of being monitored as there is no emission testing techniques for ''HAP'' in general. In the case of monitoring usage of materials, a limit on the HAP emissions must be based in the formulations of the materials used and the specific HAP content, even if a limit eventually taken to avoid a major source classification is a limit on the collection of specific HAP used at the facility. If a single pollutant or class of pollutants is used as a surrogate for HAP emissions from a source, this correlation needs to be provided to the regulatory authority reviewing the limits, and not just assumed by the source through use of a monitoring technique, such as a total hydrocarbons CEMS for volatile organic compounds (VOC).

b. Time Periods for Limitations

The time periods for the limitations will depend on the type of limits proposed. Limits ''should be as short term as possible and should generally not exceed one month.'' [31] However, a limit longer than 1 month may be appropriate if it is a rolling limit for sources with ''substantial or unpredictable annual variations in production,'' not exceeding an annual limit rolled on a monthly basis. In other words, although the emissions may be totaled for a 12-month period, they should be measured and ''checked'' more frequently to ensure the source is maintaining compliance. Typically, with longer term periods, the emissions for the shorter-term period are ''rolled'' with those in the previous periods to get the total for the longer compliance period. For example, a 365-day rolling limit requires a source to calculate its emissions and/or operational parameters relevant to any operational restriction, daily, and then add that total to the totals for the previous 364 days to determine whether the source is in compliance. When a control device or other ongoing operating parameter limits, which indirectly indicate emissions, are required for meeting the PTE limit, much shorter time periods are necessary. These may include limits such as the minimum operating temperature of a thermal oxidizer measured hourly, where this shorter period is necessary in order to ensure the proper operation of the control device. These shorter limits may be either block or rolling averages as appropriate.

Also, time periods should be frequent enough to allow a source to rapidly identify periods of deviation and bring operations back into normal operating conditions expeditiously. Periods longer than once per day may be appropriate if the limits do not consider the use of a control device. For restrictions on content or usage of raw materials, coatings, or fuels, the EPA recommends a frequency of record (*i.e.,* certified product data sheets traceable to EPA or American Society for Testing and Materials (ASTM) methods or formulation data, or fossil fuel analytical data reports traceable to EPA or ASTM methods) collection of once per batch of material used or for each separate delivery of material or fuel, as appropriate. This frequency is consistent with procedures specified in several EPA regulations (*e.g.,* 40 CFR part 63, subpart NNNN, NESHAP: Surface Coating of Large Appliances, 40 CFR part 63, subpart OOOO, NESHAP: Printing, Coating, and Dyeing of Fabrics and Other Textiles, and 40 CFR part 63, subpart RRRR, NESHAP: Surface Coating of Metal Furniture), the General Provisions to both 40 CFR parts 60 and 63, and 40 CFR part 75. For other types of limitations, such as restrictions on operating hours, conduct of certain work practices, fugitive emissions control measures, and equipment integrity inspections, unless circumstances justify otherwise, a limit frequency of once per week or once per operating period (if operated less frequently than weekly) is appropriate and may be justified, but should not be assumed.

c. MRR Requirements

MRR requirements are necessary components of the proposed practicably enforceable criterion for effective PTE HAP limits. MRR requirements prescribe the collection of data necessary to verify that the requirements and conditions that are part of the PTE limits are checked at the frequency needed to avoid deviations, and, thus, they are crucial to compliance and providing transparency and accountability to the public as well as enabling the EPA and other state, local, and tribal regulatory agencies to determine whether emissions remain below the PTE limits and the major source thresholds. The MRR requirements associated with the HAP PTE limits enable the EPA to carry out the provisions of CAA section 112 to ensure that sources are complying with the appropriate requirements with respect to HAP emissions. Appropriate MRR requirements are dependent on site-specific variables such as the nature of the facility and the type of control device(s) installed at that facility. To meet the proposed criterion of being practicably enforceable a HAP PTE limit must provide for the collecting, maintaining, and reporting of the information necessary to determine the emissions of each HAP, which is necessary to determine whether the source's emissions are compliant with the source's PTE limits, as well as compliance with any other requirements that are part of the PTE limit (such as operating parameters). Appropriate MRR requirements serve to assure that the source is continuously complying with HAP PTE limits and any associated requirements as required by the CAA, as well as to identify when a source is not in compliance in a timely fashion so as

[30] *See* discussion of principles of enforceability in Attachment 4 of the January 25, 1995, EPA Memorandum, ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act.'' *See,* also, *e.g., https://www.epa.gov/sites/production/files/2015-08/documents/masada_decision2000.pdf* at page 9.

[31] ''Guidance on Limiting Potential to Emit in New Source Permitting,'' available at *https://www.epa.gov/sites/production/files/2015-08/documents/lmitpotl.pdf. See* also ''Time Frames for Determining Applicability for New Source Review,'' March 13, 1986; ''Clarification of New Source Review Policy on Averaging Times for Production Limitations,'' April 8, 1987; ''Use of Long Term Rolling Averages to Limit Potential to Emit,'' February 24, 1992.

to avoid long periods of non-compliance.

If monitoring is proposed from a common point for various units, it should accurately evaluate emissions from all of the individual sources covered by the monitoring (*e.g.,* monitoring the mercury content of a fuel at a common header instead of at each of the individual emissions sources or monitoring at a common stack for multiple operating units). In practice, monitoring for a surrogate (*e.g.,* particulate matter (PM)) can adequately estimate or provide the actual emissions for a group of HAP at the unit, provided there exists a validated relationship between the surrogate and the HAP emissions (*e.g.,* emissions of HAP metals may be controlled as PM by a baghouse and continuously monitored through bag leak detectors and pressure drop measurement; this requires a validated relationship between PM emissions and the HAP metals emissions as well as the relationship between the baghouse operating parameters and the PM emissions). The monitoring requirements for a HAP PTE limit must be developed to ensure that compliance with the limit can be monitored on a pollutant-by-pollutant basis (including surrogacy, if applicable); they must cover every emissions source included in the limit, describe the emissions unit covered, and the level of accuracy needed for verifying the restriction(s) considered such that the monitored parameter can be certain of demonstrating ongoing compliance with the PTE limits. Depending on the situation, appropriate monitoring may consist of one or more of the following: collecting data on operational parameters that are used to monitor emissions; CEMS or CEMS-based methods; data collection and calculations for mass balance determinations; and continuous monitoring of operating parameters on a control device or process performance parameters correlated with actual emissions and used with calculations of emissions, including appropriate adjustments for control devices or process out-of-control periods. To determine whether a given set of monitoring requirements is appropriate, one should consider the following aspects of the monitoring: The parameter and its measurement approach; the operating range; and the performance criteria, including the representativeness of the data collected, an operational status check, quality assurance and control practices, frequency of data collection, data collection procedures, and averaging period.[32] It is important to identify and select these aspects of the monitoring to assure the emissions control measures employed are properly operated and maintained, and do not deteriorate to the point that the source's emissions fail to be in compliance with the applicable PTE limit. We request comments on the inclusion of the specific considerations for monitoring, discussed above in the General Provisions of 40 CFR part 63 proposed regulatory text defining practicably enforceable (Comment C–24).

Selection of the parameter and the measurement approach, as well as the operating range, are all dependent directly upon site-specific criteria including the nature of the source, any control devices present, and other site-specific criteria. The EPA has provided guidance and requirements for performance criteria, including the representativeness of the data collected, an operational status check, and quality assurance and control practices within the CAM Technical Guidance Document and the Performance Specifications and ongoing quality assurance procedures for continuous emissions monitoring systems and continuous opacity monitoring systems (COMS) in 40 CFR part 60, appendixes B and F. Though the CAM rule is not applicable to the emissions units covered in this proposed rulemaking, the general principles of representativeness and quality assurance and control presented in the guidance are still relevant.

Good recordkeeping requirements document the facility's compliance with the PTE limits on an ongoing basis. These records may consist of many types (*e.g.,* CEMS data, coating HAP content and usage rates, documentation that required work practices are being followed, or continuous parameter monitoring system data) and must include all the variables in each of the PTE calculations needed to determine if the source is emitting at less than the PTE limits. Good recordkeeping requirements at a minimum correspond to the time period of the limitation required by the enforceable conditions (*e.g.,* 3-hour average temperature) and require periodic determinations of compliance with the area source designation. Records should also be readily accessible for review by the relevant regulatory authority.

Good periodic reporting requirements must provide sufficient information to demonstrate to the regulatory authority that the PTE limits are being met on an ongoing basis (*e.g.,* periodic summary reports, exception reports, and deviation reports provide contemporaneous information about the source's compliance status) and that emissions remain below the major source threshold, similar to those of the periodic excess emissions and continuous monitoring system performance report and summary report of 40 CFR 63.10(e)(3).

Many stakeholders have raised concerns that, without proper MRR requirements, an owner or operator using add-on emission controls to reduce and maintain HAP emissions at area source levels may dial down the use or cease the proper maintenance regime of those emission controls, and, thus, increase emissions above the HAP PTE limit. Other stakeholders have asked for clarification on the type of monitoring that is adequate for demonstrating compliance with a HAP PTE limit designed to keep HAP emissions below the applicable major source thresholds.

While it is possible for any control device to be operated in a manner reducing its effectiveness, such as neglecting to perform required maintenance or reducing the operating temperature of a thermal oxidizer, the EPA has no reason to believe, and does not anticipate, that, as a result of this rulemaking, facility owners or operators will cease to properly operate their control devices where the operation of the control is needed to restrict the PTE and appropriate MRR are established as enforceable conditions.[33] [34] In any event, the incorporation of appropriate MRR requirements as enforceable conditions should assure that sources continue to operate the required control devices correctly. For example, where the control device is required to maintain the emissions of HAP below the PTE limits and the major source thresholds, for the PTE limits to be enforceable, the MRR requirements need to be sufficient to assess the effectiveness of the control device on emissions on an ongoing basis (such as hourly or shift measurements of operating parameters for the control device that demonstrate it is operating as designed for the specified daily control efficiency limit). For a facility which no longer requires the use of a control device to remain below the

[32] *See* Table 1 of the Compliance Assurance Monitoring (CAM) Technical Guidance Document, available at *https://www.epa.gov/sites/production/files/2016-05/documents/cam-tgd.pdf.*

[33] *See* discussion of specific technically accurate limits in Attachment 4 of the January 25, 1995, EPA memorandum, ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act.'')

[34] *See* analysis of reclassifications in the EPA's Emission Impact Analysis Technical Support Memorandum available in the docket.

major source thresholds, the regulatory authority will determine what alternative MRR are needed (along with revised PTE limits, if necessary) to continue ensuring the source will not exceed the major source thresholds (*e.g.,* a coatings operation that has reformulated to remove HAP from its coatings and no longer requires a thermal oxidizer to control HAP emissions to meet a PTE limit of 98-percent destruction does not need to have MRR on the thermal oxidizer temperature if reducing HAP emissions was the only purpose of the thermal oxidizer but may now need a PTE limit and require MRR on the content of the coatings). As another example, if the coating operation had instead reformulated their materials such that a specific HAP is eliminated, then appropriate monitoring may simply consist of the ongoing documentation of the remaining HAP content of the materials that corresponds to a new PTE limit based on the remaining HAP in the materials used. We solicit comment on whether, as a result of this rulemaking, facility owners or operators of sources that reclassify will cease to properly operate their control devices where the operation of the control device is needed to restrict the PTE and appropriate MRR are established as enforceable conditions (Comment C–25).

As discussed above, MRR requirements are components of the proposed practicably enforceable criterion for effective HAP PTE limits. The MRR requirements ensure that a source complies with its PTE limits and does not emit HAP in major source amounts. As described above in this section, the MRR requirements associated with HAP PTE limits are source specific and will be determined on a case-by-case basis by the regulatory authority issuing the HAP PTE limits. Appropriate MRR requirements serve to assure that the established enforceable PTE limits are being met, to meet the ongoing compliance requirement in the CAA, and to identify for the facility when violations exist in order to return to compliance as quickly as possible.

In sum, the EPA proposes that HAP PTE limits that meet the legally and practicably enforceable criteria explained above are effective HAP PTE limits and are necessary and sufficient to support the reclassification of major sources as area sources under section 112 of the CAA. We request comments on the proposed criteria and the elements of effective HAP PTE limits as discussed above (Comment C–26). The EPA is also proposing that legally and practicably enforceable HAP PTE limits issued under state and local regulatory agencies' rules would be considered effective HAP PTE limitations even if those HAP PTE limits are not federally enforceable. As a result of this proposed determination, the EPA is proposing to amend the PTE definition in 40 CFR 63.2 to require HAP PTE limits to meet the criteria of being legally and practicably enforceable as discussed above. The EPA is also proposing to include in 40 CFR 63.2 the definitions of legally enforceable and practicably enforceable as described above. At the same time, the EPA invites comments on whether there are additional criteria that must be included to ensure that HAP PTE limits are effective and have practical utility (Comment C–27).

In particular, the EPA request comment on whether to be effective, HAP PTE limits need to undergo public notice and comment procedures (Comment C–28) and whether HAP PTE limits can be properly and legally established if the limits do not go through public notice and comment procedures (Comment C–29). After the issuance of the MM2A Memorandum, sources and permitting authorities asked about public notice and comment requirements for issuing enforceable PTE HAP limits for sources seeking reclassification. The underlying concerns can relate to the processing time involved and overall burden for certain situations, and confusion about what is required for issuing HAP PTE limitations.[35] State and local regulatory agencies implement public notice and comment procedures for state, local, and tribal programs as required under state and/or local regulations and statutes. The legal authority under which the PTE limits are issued contain issuance procedures including any procedures for public notice and comment. Importantly, regulatory authorities use different issuing mechanisms depending on the complexity of the PTE limits required for the situation and the pollutants addressed. Typically, states issue enforceable PTE limits for individual sources in a SIP construction permit or a synthetic minor type of operating permit (*e.g.,* operating permits other than title V permit). States can also utilize less burdensome mechanisms for limiting PTE such as general permits for source categories, permits by rule or registration programs, as appropriate. Regardless of the mechanism used to issue an enforceable PTE limit, the state must follow the applicable procedures for that mechanism, including providing for public notice and comment when required.

As part of the effectiveness criteria, the EPA is requesting comments on whether, in order to further the effectiveness of HAP PTE limits and support reclassification of major sources as area sources under section 112 of the CAA, the EPA should require public comment and notice procedures (Comment C–30). The EPA request comments on how requiring public comment and notice procedures for issuance of HAP PTE limits enhance or is needed for ensuring effectiveness of such limits (Comment C–31).

In the past, when the EPA included specific requirements for public comment and notice procedures for programs reviewed and approved by the EPA (*i.e.,* FESOP), state and local agencies raised the cost of the public notice as a concern. For these programs, the EPA then revised the rules to allow for electronic notice as an alternative to newspaper notices. Another concern raised regarding public notice and comment was the additional time associated with this procedural step. We request comments on whether these concerns are still an issue if EPA were to require that HAP PTE limits that will be used as the basis for reclassifying major sources to area source status need to be subject to public notice and comment procedures (Comment C–32). The EPA also requests comments on whether there are specific criteria for deciding under what circumstances a source's proposed HAP PTE limits would need to undergo public review and comment under the state or local program (*e.g.,* controversial or complex sources, sources with actual emissions close to the major source thresholds, etc.) (Comment C–33). The EPA recognizes that some state-programs may process HAP PTE limits concurrently with a minor NSR or other permitting action such that the EPA and the interested public would have the opportunity to provide comments on PTE limits in that case. The EPA seeks comment on whether the public notice and comment procedures provided in those circumstances would be sufficient (Comment C–34). The EPA requests comments on whether, to be effective and support reclassification from major to area source under section 112 of the CAA, PTE limitations need to undergo public comment and notice procedures (Comment C–35). The EPA notes that

[35] Public notice has been closely associated with federal enforceability of PTE limits because, in the past, the EPA regulations have required that for PTE limits issued pursuant to FESOP programs to be considered federally enforceable, a state, local, or tribal program must provide the public and the EPA with an upfront opportunity for notice and comment on any issued limit. *See* 54 FR 27274, 27282, 27283 (1989).

nothing in this proposal is meant to alter or affect in any way those public notice procedures in the SIP-approved regulations for federally enforceable programs such as FESOP or minor NSR permit programs. *See, i.e.,* 54 FR 27281–27281, *see* also 40 CFR 51.161.

To provide information to the EPA and the public, 40 CFR 63.9(b) currently requires sources to notify the EPA when a source becomes subject to a relevant standard and 40 CFR 63.9(j) requires sources to notify the Administrator when there is a change in the information previously submitted to the EPA. This notification requirement applies to sources that reclassify from major source to area source status under CAA section 112 (*e.g.,* by taking a HAP PTE limits). To improve the availability of this information, the EPA is proposing electronic submission of such notifications. Sources that reclassify to area source status by taking a HAP PTE limit are also currently required under 40 CFR 63.10 to keep records of applicability determinations on-site. In this action, the EPA is proposing that any source that takes a HAP PTE limit and uses that limit to reclassify from major source to area source status must keep these records as long as the source is an area source. The EPA expects these notification and recordkeeping requirements under 40 CFR part 63 would assist the EPA in its oversight role under the CAA and be of minimal burden to the regulated community.

C. Permitting Considerations

As mentioned above, sources seeking status reclassification from major source to area source can generally be grouped in three categories: (1) Existing major sources that need to obtain enforceable limits on their HAP PTE to ensure that their emissions do not exceed major source thresholds; (2) existing sources previously classified as major sources for a specific major source NESHAP that already have obtained enforceable limits on all their HAP emissions such that the source's PTE, as well as actual emissions, is currently below major source thresholds for both each individual HAP and total HAP; and (3) existing sources previously classified as major sources for a specific major source NESHAP that are no longer physically or operationally able to emit HAP in amounts that exceed the major source thresholds (commonly known as true or natural area sources). The third category includes former major sources that no longer have the ability to emit at major source levels either by permanently removing equipment or changing their processes, among other reasons.

After the issuance of the MM2A Memorandum, the EPA received questions from sources and permitting authorities regarding permit process, mechanisms, and the requirements for reclassifying to an area source. Stakeholders asked that we clarify the process for implementing area source status for sources with title V permits that already have enforceable HAP PTE limits or now no longer have the ability to emit HAP in amounts that exceed major source thresholds. This section addresses these questions.

From the questions received in relation to the 2018 MM2A Memorandum, we learned that sources with title V permits that already have enforceable HAP PTE limits or no longer have the ability to emit HAP in amounts that exceed major source thresholds fit in two scenarios. The first scenario involves a source subject to major source requirements that has made changes and no longer has the ability to emit HAP above major source thresholds (*i.e.,* enforceable limits are not needed on the source's physical or operational design to restrict the source's PTE) but was still subject to major source requirements because of the OIAI policy. For a source which no longer has the ability to emit HAP at major source levels, enforceable limits for HAP emissions are not needed for changing its status to area source.[36] The second scenario involves a source that has already taken enforceable PTE limits on its capacity to emit HAP that make it an area source, often to avoid major source requirements in the future. However, in accordance with the OIAI policy, such a source remained subject to the requirements of any previous major source NESHAP prior to the limits becoming effective because the source was not an area source at the time of the first substantive compliance deadline in that NESHAP. In each of these situations, the EPA assumes that the major source NESHAP requirements have been listed as applicable requirements in the source's title V (or equivalent)[37] operating permit.

A question that applies to all the above scenarios is whether a reclassified source continues to have an obligation to comply with the major source requirements in their title V permit. While our reading of the statute is that a source in these scenarios qualifies as an area source of HAP, a permitted source must continue to comply with the terms of its title V permit until the source follows the permitting authority's procedures for facility changes and permit revisions to its title V permit. Sources should work with their permitting authorities who have knowledge of the specific procedures in their individual programs. The permitting authority will generally be in the best position to help a source decide on the appropriate procedures under the specific program rules. The EPA expects that the procedures will generally depend on the approved regulations and the facts of the situation. Some programs may specifically provide a streamlined mechanism for the removal of non-applicable requirements while others may require a significant modification process. The process may depend on the specific facts of the situation. For instance, some situations may simply call for the removal of the non-applicable major source permit terms and no other changes to the permit. In contrast, when the major source permit terms are relied upon to demonstrate compliance with some other applicable requirement (*e.g.,* in the case of streamlining the permit conditions), concurrently with their removal, the permitting authority may need to reevaluate the MRR for applicable requirements remaining in the permit. Sources should consult with their permitting authority and the program regulations on the proper process to add any newly applicable MRR requirements, but the EPA notes that the regulations in 40 CFR part 71 would require a significant modification to add these requirements to a title V permit.

For sources located within Indian country,[38] where the EPA is the

[36] The definition of HAP PTE does not mandate a restriction to achieve area source status if, after considering limitations inherent to the process (*i.e.,* the physical or operational design), a source no longer has the capacity to emit HAP above major source thresholds without the aid of operational restrictions. An example of limitations inherent to the process would be changing a boiler so that it can burn only gaseous fuel, such that HAP associated with burning coal need not be considered in determining the source maximum capacity to emit.

[37] These include permits the EPA deems to meet the title V requirements but are not called title V operating permits.

[38] The Federal Indian Country Minor NSR Rule defines ''Indian country'' to include three categories of lands consistent with 18 U.S.C. 1151: *i.e.,* Indian reservations, dependent Indian communities, and Indian allotments. The Court vacated the rule with respect to non-reservation areas of Indian country (*i.e.,* dependent Indian communities and Indian allotments), in the absence of a demonstration by the EPA or a tribe that a tribe has jurisdiction over the non-reservation area of Indian country (*Oklahoma Dept. of Environmental Quality* v. *EPA,* 740 F.3d 185 (D.C. Cir. 2014)). The Court held that states have initial responsibility for implementation plans under CAA section 110 in non-reservation areas of Indian country in the absence of a demonstration of tribal jurisdiction by the EPA or a tribe. Therefore, the Federal Indian Country Minor NSR Rule does not apply in non-reservation areas of Indian country unless and until a tribe or the

reviewing authority unless the EPA has approved a non-federal minor source permitting program or a delegation of the Federal Indian Country Minor NSR Rule, the Federal Indian Country Minor NSR Rule at 40 CFR 49.151–49.165 provides a mechanism for an otherwise major source to voluntarily accept restrictions on its PTE to become a synthetic minor source. The Federal Indian Country Minor NSR Rule applies to sources located within the exterior boundaries of an Indian reservation or other lands as specified in 40 CFR part 49, collectively referred to as ''Indian country.'' *See* 40 CFR 49.151(c), 49.152(d). This mechanism may also be used by an otherwise major source of HAP to voluntarily accept restrictions on its PTE to become a synthetic minor HAP source. The EPA's Federal Implementation Plan (FIP) program, which includes the Federal Indian Country Minor NSR Rule, provides additional options for particular situations such as general permits for specific source categories to facilitate minor source emissions management in Indian country. Existing sources in Indian country may have PTE limits that preceded the EPA's FIP for minor sources, and for that reason, were issued a 40 CFR part 71 permit.

D. SIP Considerations

This rulemaking does not affect states' continuing obligations under CAA section 110 or requirements for SIP development, including the obligation to maintain major source NESHAP requirements that may have been approved in a SIP under CAA section 110. In addition, states have an ongoing obligation under CAA section 110 to ensure that changes to any measure incorporated into a SIP do not interfere with attainment or maintenance of any National Ambient Air Quality Standards or with any other requirement of the CAA.[39] The EPA cannot approve changes to SIP provisions unless the Agency can conclude that the changes would not result in backsliding, pursuant to CAA section 110(l).

V. Proposed Regulatory Changes

To reflect the plain language reading of the statute as discussed in section III above, the EPA is proposing to amend the General Provisions of 40 CFR part 63, subpart A. We are also proposing amendments to the General Provision tables contained within most subparts of 40 CFR part 63 to incorporate the changes proposed to the General Provisions of 40 CFR part 63, subpart A. The EPA is also proposing changes to several individual NESHAP intended to remove rule specific OIAI provisions.

A. Proposed Changes to 40 CFR Part 63, Subpart A: General Provisions

1. Applicability

We are proposing to amend the applicability section found in 40 CFR 63.1 by adding a new paragraph (c)(6). This paragraph will specify that a major source can become an area source at any time by limiting its PTE HAP to below the major source thresholds established in 40 CFR 63.2.[40] [41] [42] Sources can also become area sources by making permanent physical changes (*e.g.,* by the removal of emission units), if these changes limit the potential to emit HAP below the major source thresholds. As explained in section IV of this preamble, sources who are seeking to reclassify to area source status will apply to their corresponding regulatory authority and follow the corresponding regulatory authority's procedures for reclassifying and, if needed, for obtaining enforceable limits on their HAP PTE.

A major source that reclassifies to area source will no longer be subject to NESHAP requirements applicable to a major source. The major source requirements to which the source would no longer be subject may include, but are not limited to, CAM[43] and title V requirements[44] (assuming the source is not otherwise subject to title V permitting). As an area source complying with its PTE HAP limits, the source would nonetheless be subject to any applicable area source requirements issued pursuant to CAA section 112 and title V if the EPA has not exempted the area source category from such requirements.

The statute and existing regulations contain compliance date provisions that address some, but not all, situations. For sources that are subject to certain CAA section 112 requirements on the effective date of those requirements, CAA section 112(i)(3)(A) provides that the source must meet the applicable requirements beginning on the effective date of those requirements, but that the EPA may set a later compliance date for existing sources that provides for compliance ''as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard'' and with additional time allowed under certain circumstances as provided in CAA sections 112(i)(3)(B) and 112(i)(4) through (8). For an area source that increases its emissions and becomes a major source after the effective date of an emission standard, the existing regulations address the issue of compliance time frames. *See* 40 CFR 63.6(a)(2) and (c)(5). On the other hand, the existing regulations do not address the issue of compliance time frames for sources that reclassify from major source status to area source status after the effective date of an emission standard.

To address the issue of compliance time frames for sources that reclassify from major source status to area source status, we are proposing regulatory text in the new provision at 40 CFR 63.1(c)(6)(i) under which major sources that reclassify to area source status become subject to applicable area source requirements in 40 CFR part 63 immediately upon becoming an area

EPA has demonstrated that the tribe has jurisdiction in a particular non-reservation area of Indian country.

[39] *See* CAA section 112 (l) ''The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.''

[40] Former major sources that no longer have the ability to emit at major source levels due to the permanent removal of equipment or changes in processes are area sources under the plain language of the statute; therefore, and these sources do not need to obtain additional PTE limits to reclassify to area source status. These sources will need to apply with their corresponding regulatory authority and follow the corresponding authority's procedures for reclassifying from major source status to area source status.

[41] Some individual NESHAP standards in 40 CFR part 63 provide sources the opportunity to become area sources not by limiting total mass emissions directly, but by limiting material use or by taking other measures, which in turn, correlate to emissions below major source levels (*e.g.,* 40 CFR part 63, subpart KK, Printing and Publishing and 40 CFR part 63, subpart JJ, Wood Furniture Manufacturing Operations (limiting HAP usage to below major source thresholds)). We recommend that sources refer to the applicable NESHAP for guidance in determining whether the source meets the major source thresholds.

[42] We recognize that there may be sources that were major sources as of the first substantive compliance date of a MACT standard that, by complying with non-section 112 CAA requirements, became area sources for HAP emissions. In this instance, the EPA proposes that the source obtain enforceable limitations on its HAP PTE to ensure that those emissions remain below major source thresholds.

[43] The CAM regulations at 40 CFR 64.2(b)(1)(i) include an exception for emission limitations or standards proposed by the Administrator after November 15, 1990, pursuant to section 111 or 112 of the CAA. In summary, if a particular unit was subject to just a MACT standard, CAM did not apply. But if the unit was also subject to another emission limit/standard (*e.g.,* SIP limit), then the MACT monitoring provisions would have been determined to be presumptively acceptable to meet CAM for the SIP limit. If the MACT standard is then removed, and the source is still required to have a title V permit, then CAM compliance might require re-evaluation.

[44] As noted above in section IV.D, the source would need to continue to comply with any major source NESHAP requirements currently in the source's title V permit until removed by the permitting authority.

source in those situations where the first substantive compliance date has passed. However, where an area source standard would apply to an existing source upon reclassification from major to area source status and different emission points will need control or different emission controls are necessary to comply with the area source standard or other physical changes are needed to comply with the standard, we are proposing that additional time, (not to exceed 3 years), may be granted by the EPA (or a delegated authority) in a compliance schedule if the source demonstrates that the additional time is necessary and reasonable.

The proposed regulatory provision, 40 CFR 63.1(c)(6)(i), is consistent with the principle underlying CAA section 112(i)(3) compliance schedule for existing sources because it requires sources to comply immediately with the area source standard upon becoming an area source, and authorizes the EPA (or a delegated authority) to grant additional time in a compliance schedule only if it determines that such time is appropriate based on the facts and circumstances. In any event, any extension of time provided pursuant to the proposed text in 40 CFR 63.1(c)(6)(i) cannot exceed 3 years. In the situation where a major source is engaged in the process of reclassifying to area source status after the initial compliance date of the applicable area source NESHAP has passed, and the source concludes that it needs a compliance extension to meet the applicable area source NESHAP requirements, the source must apply for and obtain that compliance extension before completing the process to reclassify as an area source; otherwise, the source will be in violation of the area source NESHAP. A source that is successful in receiving approval of a compliance extension must continue to comply with the major source NESHAP requirements until such time as compliance with the area source NESHAP is achieved.

We solicit comment on the appropriateness of the proposed case-by-case compliance extension date approach discussed above, including, for example, the type of information that should be requested from the source seeking the proposed compliance extension, and whether the limitations proposed above (*i.e.,* the compliance extension is only available if the affected source must undergo a physical change or install additional control equipment to meet the area source NESHAP) are appropriate (Comment C–36). *See* proposed regulations at 40 CFR 63.1(c)(6)(i). We also solicit comment generally on the appropriate process for requesting the compliance extension and on the mechanics of obtaining the compliance extension (Comment C–37). If the area source category is not exempted from the requirements of title V, the request for a compliance extension could be made in the context of the title V permit process. If, however, the area source category at issue is exempt from title V, the source could submit its compliance date extension request to the regulatory authority issuing its PTE HAP limits, provided that the regulatory authority has delegation to implement the area source NESHAP. We further solicit comment on whether the proposed compliance date extension provision in 40 CFR 63.1(c)(6)(i) should be available to major sources that reclassify to area source status prior to the compliance date of an applicable area source standard, to the extent that the remaining time before the compliance date is not sufficient time for the source to comply (Comment C–38).

In 2007, the EPA considered the issue of time frames for compliance with corresponding CAA section 112 standards when sources reclassify between major and area source status more than once. In particular, the EPA looked at whether it is reasonable to require immediate compliance with previously applicable major source NESHAP requirements for sources that reclassify from major to area source status and then revert back to its previous major source status.

As discussed above, the current statutory and regulatory provisions specify the timing for compliance when an area source becomes a major source for the first time. *See* 40 CFR 63.6(c)(5) and (b)(7). Per 40 CFR 63.6(b)(7), when an area source becomes a major source by the addition of equipment or operations that meet the definition of a ''new affected source'' in the relevant standard, the portion of the existing facility that is a new affected source must comply with all requirements of that standard applicable to new sources upon startup. On the other hand, 40 CFR 63.6(c)(5) specifies that, except as provided in paragraph (b)(7), the owner or operator of an area source that increases its emissions of (or its PTE) HAP such that the source becomes a major source shall be subject to relevant standards for existing sources and must comply by the date specified in the major source standards for existing sources that are applicable to that source. If no such compliance date is specified in the standards, the source shall have a period of time to comply with the relevant emission standard that is equivalent to the compliance period specified in the relevant standard for existing sources in existence at the time the standard becomes effective.

Sources that reclassify to area source status in most cases, if not all, would achieve and maintain area source status by operating the emission controls or continuing to implement the practices (*i.e.,* use of no-HAP or low-HAP compliant material) they used to meet the major source NESHAP requirements. Sources may, in addition to, or in lieu of, operating emission controls, reduce their production level or hours of operation. The EPA has no information to suggest that a source that reclassifies from major to area source status, regardless of the means employed to attain area source status, would remove the controls used to meet the previous applicable major source NESHAP requirements. We recognize that some major source NESHAP allow alternative compliance options, such as the use of low-HAP materials, but these options should continue to be available to the affected source. Moreover, the addition of equipment or process units to an existing affected source should not change the source's ability to meet the major source NESHAP requirements upon startup of the new equipment or emission unit because the equipment or process units should be accompanied by either a tie-in to existing emission controls or part of the installation of new emission controls. *See* also 40 CFR 63.6(b)(7) (applying to new affected sources). We solicit comment on whether our information and expectations, as stated in this paragraph, are correct (Comment C–39).

For the reasons explained above, in this action the EPA is proposing to add a new provision in 40 CFR 63.1(c)(6)(ii)(A) to specify that a source that reclassifies from major source status to area source status and then later reclassifies back to major source status must meet the major source NESHAP requirements at the time that standard again becomes applicable to the source. This is reasonable because existing affected sources located at the facility that were previously subject to a major source NESHAP should be able to comply with that major source NESHAP immediately upon the requirements again becoming applicable to them. To date, we have identified one set of circumstances where additional time would be necessary for the source to comply with the major source NESHAP in the scenario where a source is reclassifying from area source status to major source status after previously going from major source to area source.

Specifically, there are situations where major source NESHAP rules may

be amended and either become more stringent or apply to additional emission points or regulate additional HAP. For example, under CAA section 112(d)(6), MACT standards must be reviewed every 8 years and revised if necessary. If revisions issued pursuant to CAA section 112(d)(6) increase the stringency of the standards or revise the standards such that they apply to additional emission points or HAP, it may be necessary to allow existing sources that are returning to major source status some additional time to come into compliance with the new major source requirements.

The revision of a NESHAP pursuant to CAA section 112(d)(6) is only one example of a situation where a major source NESHAP rule may be revised. Many types of rule amendments that substantively modify the NESHAP could provide a basis for additional time for compliance. Thus, we are proposing to add a provision in 40 CFR 63.1(c)(6)(ii)(B) that sources that reclassify from major source to area source and then revert to major source status, be allowed additional time for compliance if the major source NESHAP has changed such that the source must undergo a physical change, install additional emission controls, and/or implement new emission control measures. We propose that such sources have the same time period to comply with the revised major source NESHAP as is allowed for existing sources subject to the revised major source NESHAP. The source will need to continue complying with the area source requirements until such time as compliance with the major source requirements is achieved. We solicit comment on this proposed compliance time frame and whether the proposed regulatory text in 40 CFR 63.1(c)(6)(ii)(B) adequately captures the intended exception (Comment C–40).

We solicit comment on the appropriateness of the proposed immediate compliance rule for sources that reclassify between major and area source status more than once and whether such a rule should be finalized (Comment C–41). Further, we solicit comment on whether, if it is finalized, there are other situations, in addition to the one noted above, that would necessitate an extension of the time period specified for compliance with the major source NESHAP requirements (Comment C–42). We further solicit comment on whether we should instead allow all sources that revert back to major source status a specific period of time in which to comply with the major source NESHAP requirements, which would be consistent with the approach provided for in 40 CFR 63.6(c)(5) (Comment C–43). If we promulgate this approach in the final rule, we request comment on whether we should provide the same time period as is already provided for in 40 CFR 63.6(c)(5), or whether a different time period is appropriate and why. To the extent a commenter proposes a compliance time frame, we request that the commenter explain the basis for providing that time frame with enough specificity for the EPA to evaluate the request (Comment C–44). Thus, depending on the comments received and the factual circumstances identified, the options we are considering include: (1) Not finalizing the immediate compliance rule with exceptions, and instead providing all sources that revert back to major source status a defined period of time to comply consistent with the provisions of 40 CFR 63.6(c)(5); and (2) finalizing the proposed immediate compliance rule and adopting additional exceptions to that rule if we receive persuasive and concrete scenarios that would warrant allowing additional time to comply with previously applicable major source NESHAP requirements.[45] If we pursue the former approach, we would likely amend 40 CFR 63.6(c)(5). If we pursue the latter approach and retain the immediate compliance rule but create exceptions in addition to the one noted above, there are two ways to implement the exceptions: (1) Through a case-by-case compliance extension request process or (2) by identifying in the final rule specific exceptions to the immediate compliance rule and providing a time period for compliance for each identified exception.

Under the case-by-case approach, the EPA or delegated regulatory authority could grant limited additional time for compliance upon a specific showing of need. A case-by-case compliance extension request process would call for the owners or operators of sources to submit to the relevant regulatory authority a request that (1) identifies the specific additional time needed for compliance, and (2) explains, in detail, why the source needs additional time to come into compliance with the major source NESHAP. The regulatory authority would review the request and could either approve it in whole, or in part (*i.e.,* by specifying a different compliance time frame or allowing different time frames for different parts of the affected sources) or deny the request. We envision that a request for a compliance extension, if such an option is provided in the final rule, would ordinarily be made in the context of the title V permit application or an application to modify an existing title V permit. Any compliance extension, if granted, would be memorialized in the title V permit. If we finalize the proposed immediate compliance rule with exceptions, we will also consider the option of including in the final rule defined compliance extension time frames for defined factual scenarios, as we have done for the exception described above. Under this approach, if a source satisfies the criteria identified in the final rule, it would automatically be afforded a specified extension of time to comply with the major source NESHAP requirements upon the source, again becoming subject to the NESHAP. This specified extension approach would be useful if there are specific factual scenarios that affect a broad number of sources because defining the compliance extension time frame in the final rule eliminates the burden on regulatory authorities associated with the case-by-case approach.

In submitting your comments on the above-noted issues and proposed 40 CFR 63.6(c)(6) provision, identify, with specificity, the factual circumstances that would warrant a compliance extension, explain why the source would need the extension under the circumstances identified, and explain why the source could not comply with the standard immediately upon reverting to major source status given the identified circumstances (Comment C–45). We specifically solicit comment on our discussion above as to the mechanics of obtaining a compliance extension if a case-by-case approach is finalized, including, for example, the type of information to request from the source seeking the proposed compliance extension, the process to be used to obtain the extension, and any limitations on providing extensions (Comment C–46).[46] We further solicit

[45] The new proposed regulatory provision at 40 CFR 63.1(c)(6)(ii) would be subject to the provisions of 40 CFR 63.6(b)(7). Thus, if a source adds a piece of equipment which results in emissions at levels in excess of the major source thresholds, and that equipment meets the definition of a new affected source under the relevant NESHAP, the source would be subject to the provisions of 40 CFR 63.6(b)(7) and would have to meet the requirements for new sources in the relevant major source NESHAP, including compliance at startup.

[46] Some major sources that switch to area source status may, as an area source, no longer be subject to title V permit requirements and, therefore, apply to their permitting authority to terminate their title V permits. In this situation, the source would need to obtain HAP PTE limits through a regulatory vehicle other than title V. Presumably, such sources would have their title V permit terminated at the same time their enforceable PTE limits become effective. If, however, the area source reverts to major source status, the source will once again have

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comment on the approach of providing a specified compliance extension in the final rule for certain defined factual scenarios (Comment C–47). Regarding this approach, we solicit comment on the nature of the scenario that would warrant such an extension and the specific amount of additional time that would be needed to comply with the major source NESHAP requirements and why such a period of time is needed to comply (Comment C–48). We also request comments on whether a source that cannot immediately comply with previously or newly applicable major source NESHAP requirements at the time it requests reclassification, should be required to continue to comply with the HAP PTE limits until the source can comply with the corresponding major source NESHAP requirements (Comment C–49).

The EPA is also proposing to add a new provision at 40 CFR 63.1(c)(6)(iii) to address the interaction of the reclassification of sources with enforcement actions. Specifically, we are proposing that sources that reclassify from major to area source status and are subject to enforcement investigations or enforcement actions are not absolved from the results of such investigations or the consequences of such actions by becoming area sources. Although sources that are the subject of an investigation or enforcement action may still seek area source status for purposes of future applicability, they are not absolved of any previous or pending violations of the CAA that occurred while they were a major source, and the source must bear the consequences of any enforcement action or remedy imposed upon it, which could include fines, imposition of additional emission reduction requirements, or other remedies for noncompliance. Accordingly, a source cannot use its new area source status as a defense to major source NESHAP violations that occurred while the source was a major source. Similarly, becoming a major source does not absolve a source subject to an enforcement action or investigation for area source violations or infractions from the consequences of any actions occurring when the source was an area source.

to obtain a title V permit. The source would also have to have its enforceable PTE limits terminated to allow it to emit at major source levels. Once the HAP PTE limits no longer apply to the source, the source must comply with all applicable major source NESHAP requirements or have taken appropriate steps to apply for compliance extensions for each applicable major source NESHAP.

2. Definitions

In this action, the EPA is proposing specific criteria that a HAP PTE limit must meet to be effective in ensuring that a source would not emit above the PTE levels for each emission unit in the permit. The EPA is proposing to amend the PTE definition in 40 CFR 63.2, accordingly, by removing the requirement for federally enforceable PTE limits and requiring instead that PTE limits meet the effectiveness criteria of being both legally enforceable and practicably enforceable as described in detail in section IV. B of this proposal. The EPA is proposing to include in 40 CFR 63.2 the definitions of legally enforceable and practicably enforceable. The EPA proposes legally enforceable to mean that an emission limitation or other standards meet the following criteria: (1) Must identify the legal authority under which the limitations or standards are being issued; and (2) must provide the right for the issuing authority to enforce it. The EPA proposes practicably enforceable to mean that an emission limitation or other standards meet the following criteria: (1) Must be written so that it is possible to verify compliance and to document violations when enforcement action is necessary; (2) must specify a technically accurate numerical limitation and identify the portions of the source subject to the limitation. The time frame for the limitation (*e.g.,* hourly, daily, monthly, and annual limits such as annual limits rolled on a monthly basis) taking into account the type of parameter limited (an indirect indicator of emissions such as a continuous monitoring system limit should have a shorter time frame than a direct measurement of HAP emissions to account for the relationship between HAP emissions and the monitored parameter); and (3) must specify the method of determining compliance, including appropriate MRR. We request comments on whether other criteria are needed to ensure the emission limitations are practicably enforceable (Comment C–50).

3. Recordkeeping and Reporting Requirements

The EPA is proposing to amend the recordkeeping requirements for applicability determinations in 40 CFR 63.10(b)(3) by adding text to clarify that this requirement applies to an owner or operator with an existing or new stationary source that is in a source category regulated by a standard established pursuant to CAA section 112, but that is not subject to the relevant standard because of legally and practicably enforceable limitations on the source's HAP PTE. The proposed text also clarifies that the record of the applicability determination must include an emissions analysis (or other information) that demonstrates the owner or operator's conclusion that the source is not subject to major source requirements. The analysis (or other information) must be sufficiently detailed to allow the Administrator to make an applicability finding for the source with regard to the relevant standard or other requirements. The EPA is proposing to remove the time limit for record retention in 40 CFR 63.10(b)(3) so sources that obtain new enforceable PTE limits are required to keep the required record of the applicability determination until the source becomes subject to major source requirements. We request comments on the propose amendment to 40 CFR 63.10(b)(3) removing the time limit for keeping these records and requiring that the records be maintained until the source becomes an affected source as described above (Comment C–51).

The EPA is further proposing to amend the recordkeeping requirements for records submitted through CEDRI by adding 40 CFR 63.10(g) to clarify the records submitted through CEDRI may be maintained in electronic format. This provision does not remove the requirement for facilities to make records, data, and reports available upon request by a delegated air agency or the EPA upon request.

4. Notification Requirements

The EPA is proposing to amend the notification requirements in 40 CFR 63.9(b) so that an owner or operator of a facility must notify the Administrator of any standards to which it becomes subject. With this amendment, the notification requirements of 40 CFR 63.9 will cover both situations where a source reclassifies from major to area source status and where a source reclassifies from major to area and subsequently reverts back to major source status. The EPA is also proposing to clarify that a source that reclassifies must notify the EPA of any changes in the applicability of the standards that the source was subject to per the notification requirements of 40 CFR 63.9(j). The EPA is also proposing to amend the notification requirements in 40 CFR 63.9(b) and (j) to require the notification be submitted electronically through the CEDRI. The EPA is also proposing to amend the General Provisions to add 40 CFR 63.9(k) to include the CEDRI submission procedures. Additionally, the EPA has identified two broad circumstances in

which extensions of the time frame for electronic submittal may be provided. In both circumstances, the decision to accept the claim of needing additional time to submit is within the discretion of the Administrator, and submittal should occur as soon as possible. The EPA is providing these potential extensions to protect owners and operators from noncompliance in cases where they cannot successfully submit a notification by the submittal deadline for reasons outside of their control. The situation where an extension may be warranted due to outages of the EPA's Central Data Exchange or CEDRI that preclude an owner or operator from accessing the system and submitting a required notification is addressed in 40 CFR 63.9(k)(1). The situation where an extension may be warranted due to a force majeure event, which is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents an owner or operator from complying with the requirement to submit electronically as required by this rule, is addressed in 40 CFR 63.9(k)(2). Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazards beyond the control of the facility.

The electronic submittal of the notifications addressed in this proposed rulemaking will increase the usefulness of the notification, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance and the applicability of major and area source standards to a facility, and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic submittal also eliminates paper-based, manual processes, thereby saving time and resources and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public. Moreover, electronic reporting is consistent with the EPA's plan [47] to implement Executive Order 13563 and is in keeping with the EPA's Agency-wide policy [48] developed in response to the White House's Digital Government Strategy.[49] The EPA is also proposing to amend 40 CFR 63.12(c) to specify that a delegated authority may not exempt sources from reporting electronically to the EPA when stipulated by this part. For more information on the benefits of electronic reporting, see the memorandum, ''Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,'' available in Docket ID No. EPA–HQ–OAR–2019–0282.

B. Proposed Changes to Individual NESHAP General Provisions Applicability Tables

We are proposing to amend the General Provisions applicability tables contained within most subparts of 40 CFR part 63 to add a reference to a new paragraph 40 CFR 63.1(c)(6) discussed in the section above and add a reference to reflect the proposed CEDRI submission procedures of 40 CFR 63.9(k) discussed above. We solicit comments on whether any other subparts warrant amendment to reference the new General Provision 40 CFR 63.1(c)(6) or the CEDRI submission procedures in 40 CFR 63.9(k) (Comment C–52).

C. Proposed Changes to Individual NESHAP

The EPA has identified one general category of regulatory provisions in several NESHAP subparts that reflect the 1995 OIAI policy that require revision pursuant to this action. This category of provisions addresses the date by which a major source can become an area source. Accordingly, in this action we are proposing to revise the following provisions: 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.

We also identified several area source NESHAP containing notification provisions (*i.e.,* initial notification) applicable to existing sources which have passed. The following area source NESHAP contain notification requirements for existing sources with specific deadlines that are in the past: 40 CFR part 63, subpart HHHHHH at 63.11175; 40 CFR part 63, subpart XXXXXX at 63.11519; 40 CFR part 63, subpart YYYYYY at 63.11529; 40 CFR part 63, subpart AAAAAAA at 63.11564; 40 CFR part 63, subpart BBBBBBB at 63.11585; 40 CFR part 63, subpart CCCCCCC at 63.11603. We are proposing to amend these provisions to add language applicable to existing sources that reclassify from major source to area source status. Consistent with other area source NESHAP notification requirements, we propose that, for an existing source that reclassify from major to area source status, the notification shall be submitted no later than 120 calendar days after the source becomes subject to the relevant area source NESHAP requirements.

We further solicit comment on whether there are any other regulatory provisions in any of the individual subparts that would warrant modification or clarification consistent with this proposal (Comment C–53).

VI. Impacts of Proposed Amendments

In this section, we present the findings of the cost, environmental, and economic impacts associated with this action. While the opportunity to reclassify from major to area source status under section 112 of the CAA is available to all major sources of HAP, the EPA has very limited information on how many sources may choose to limit their PTE HAP to below major source thresholds and reclassify to area source status as a result of this action. We outline in section IV of this preamble the series of analyses and considerations a source will undergo to reclassify from major to area source, including: Evaluating actual and potential HAP emissions, technical feasibility of effectively limiting the source's PTE HAP, process to obtain effective PTE limitations, as well as other considerations. Because each source will assess its own situation to determine whether the costs and benefits associated with becoming an area source are advantageous to the source, there are inherent uncertainties in determining the number of sources to include in the illustrative analysis presented here.

The EPA specifically solicited comments in 2007 on the number of potential and likely sources that may avail themselves of the opportunity to reclassify. Many of the commenters on the 2007 proposal stated that the opportunity to reclassify to area source status will mainly benefit manufacturing operations that have been working on technological advances and/or process changes to reduce their

[47] The EPA's ''Final Plan for Periodic Retrospective Reviews,'' August 2011. Available at: *https://www.regulations.gov/document?D=EPA-HQ-OA-2011-0156-0154.*

[48] ''E-Reporting Policy Statement for EPA Regulations,'' September 2013. Available at: *https://www.epa.gov/sites/production/files/2016-03/documents/epa-ereporting-policy-statement-2013-09-30.pdf.*

[49] ''Digital Government: Building a 21st Century Platform to Better Serve the American People,'' May 2012. Available at: *https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digital-government.html.*

emissions. Commenters in 2007 did not provide specific information and data in response to this request that would allow the EPA to analyze the impacts.

Since the inception of the air toxics program under section 112 of the CAA, the EPA has observed significant improvements in technologies and processes that have significantly reduced, or in some cases eliminated, the use of HAP from many operations. These advances include process or procedural changes, equipment or technology modifications, reformulation or redesign of products, and substitution of raw materials. Although the incorporation of such advances will benefit all sources regardless of the size and status, such incorporation at small- to medium-sized major sources can aid those sources to reduce their HAP emissions to below major source thresholds.

Sources that might seek reclassification to area source status can generally be grouped into three categories: (1) Major sources that need to obtain enforceable limits on their PTE HAP to ensure that the emissions do not exceed major source thresholds; (2) sources previously classified as major sources that already have enforceable limits on their HAP emissions such that their PTE is below the major source thresholds; and (3) sources previously classified as major sources that are no longer physically or operationally able to emit HAP in amounts that exceed the major source thresholds (commonly known as true or natural area sources).

As discussed below, commenters on the 2007 proposal asserted that the implementation of the plain reading of the definitions of major and area source in section 112 of the CAA and withdrawal of the OIAI policy will encourage innovation in pollution reduction technologies, engineering, and work practices. For many sources, the opportunity to reclassify to area source status may create an incentive to evaluate their operations and consider changes that can further reduce their HAP emissions to below the major source thresholds if the source views those changes as an opportunity to reduce costs of production, increase productivity, or reduce the opportunity costs of complying with major source NESHAP requirements. For example, sources using surface coatings [50] may see the opportunity to become an area source as an extra incentive to invest in the development of new low- or no-HAP content coatings, inks, and binders. Similarly, sources with boilers and engines may benefit from replacing old boilers and engines with new, more efficient, and clean technologies, which not only could help a source reduce HAP to below the major source thresholds but could also reduce fuel use and associated costs.

The EPA specifically requests information and specific examples of sources that would consider investing in additional emissions reduction measures like changing processes or installing additional emission controls (intrinsic to the source or additional add-on controls), installing new lower emitting equipment, or implementing P2 initiatives to avail themselves of the potential to seek reclassification to area source status (Comment C–54). The Agency is interested both in comments in which the commenters themselves would consider investing in additional emissions reduction measures, and comments identifying specific types of facilities that would be able to invest in additional emissions reduction measures (Comment C–55).

Commenters on the 2007 proposal noted that many sources have undergone facility and/or operational modifications that will ensure maintenance of emission reductions even without the sources remaining subject to major source NESHAP requirements. For these sources, the opportunity to reclassify will result in a reduction in regulatory burden with no potential for HAP emission increases. An example provided in the 2007 comments is that of a gasoline distribution terminal [51] classified as a major source of HAP and subject to 40 CFR part 63, subpart R, NESHAP for Gasoline Distribution Facilities. The site converted from methyl tertiary butyl ether to ethanol to comply with reformulated gasoline requirements and obtained enforceable HAP limitations below the major source thresholds so that two other major source NESHAP rules (Organic Liquids Distribution: 40 CFR part 63, subpart EEEE, and Site Remediation: 40 CFR part 63, subpart GGG) would not be applicable. Because this facility is also a major source of VOC, the site has, and will continue to have, a title V permit. Vapors from loading facilities are currently captured by a vapor recovery system and the tanks are equipped with floating roofs. In light of their existing enforceable PTE limitations, the source could submit a request to their permitting authority to be reclassified as an area source and to remove the 40 CFR part 63, subpart R major source requirements from its title V permit. The facility will still be subject to NSPS 40 CFR part 60, subpart XX, for bulk gasoline terminals and NSPS 40 CFR part 60, subpart Kb, for storage vessels. In addition, the facility will be subject to the Gasoline Distribution area source NESHAP 40 CFR part 63, subpart BBBBBB requirements. The commenter then asserted that emissions will continue to be controlled while allowing a reduction in regulatory burden at the source.

In the section below the EPA presents the potential impacts of the proposed amendments. This action does not mandate any source to reclassify to area source status. An evaluation of the potential to reclassify to area source status involves many source-specific considerations (discussed above and in section IV). Each source must assess its own situation to determine whether the costs and benefits associated with becoming an area source are advantageous to the source. Because of inherent uncertainties in determining how many and which sources may choose to reclassify from major source to area source, we can only present illustrative analyses concerning the impacts of the proposed amendments.

We estimated the potential costs and cost savings associated with this proposed action by determining which sources are likely to have the option to reclassify from major to area source status and then we assessed the potential costs and cost savings. The potential costs and cost savings presented in the proposal cost memorandum and RIA are the results of an illustrative assessment. It is unknown how many sources would choose to take legally and practicably enforceable HAP PTE limits to below major source thresholds and reclassify to area source status. The illustrative assessment is based on the following key assumptions: (1) We estimated that only those facilities whose actual emissions are below 75 percent of the major source thresholds (7.5 tpy for a single HAP and 18.75 tpy for all HAP) would reclassify from major to area source status (this assumption forms the basis for the primary alternative scenario analyzed for this proposal); (2) the costs that we estimated to be incurred by the facilities are the costs associated with permitting actions necessary to obtain area source status; (3) the costs that we estimated to be incurred by permitting authorities are the costs associated with permitting actions necessary to permit facilities as

[50] Coating manufacturing operations covered by NESHAP include: Shipbuilding and repair; wood furniture; aerospace; fiberglass boat; metal coil; paper and other web; metal furniture; large appliances; wooden building parts; plastic parts; fabric; miscellaneous metal parts and products; auto and light duty trucks; and metal can.

[51] EPA–HQ–OAR–2004–0094–0125.

area sources; and (4) the cost savings estimates are based solely on estimated changes in labor burden related to MRR requirements that would either no longer apply or would change based on the specific requirements in the major source and area source rules that apply to a particular source category. In addition, we conducted this illustrative assessment for two alternative scenarios. Alternative scenario 1 assumed that only those facilities whose actual emissions are below 50 percent of the major source thresholds (5 tpy for a single HAP and 12.5 tpy for all HAP) would reclassify from major to area source status. Alternative scenario 2 assumed that sources below 125 percent of the major source thresholds (12.5 tpy for a single HAP and 31.25 tpy for all HAP) would reclassify from major to area source status. As part of the overall analysis of the 125 percent alternative scenario, we examined the potential control costs for major sources in a few source categories that may reduce HAP emissions as part of reclassifying to area HAP sources. Details of this potential control cost analysis are presented in the memorandum, ''Analysis of Illustrative 125% Scenario for MM2A Proposal—Potential Cost Impacts from HAP Major Sources Reducing Emissions as part of Reclassifying to HAP Area Sources,'' which is available in the docket for this action. Discussion of these scenarios and results can be found in the RIA for this proposal. The details of the cost analysis are presented in the memorandum, ''Analysis of Potential Costs and Cost Savings Associated with Facilities Reclassifying as Area Sources,'' which is available in the docket for this action. A summary of the results of our illustrative cost and cost savings illustrative analysis is presented in Table 2.

TABLE 2—RESULTS OF POTENTIAL COSTS AND COST SAVINGS ILLUSTRATIVE ANALYSIS

Coverage	Total number of facilities in source category subject to major source NESHAP	Facilities projected to obtain area source status [1]	Potential net annual cost savings (2014$)
71 source categories for which the EPA had RTR data	3,065	1,621 (52.9%)	$73.4 Million (yr 1).[3] $86.4 Million (yr 2).[4]
Extrapolated source categories (35 categories) [2]	3,034	1,383 (45.6%)	$69.8 Million (yr 1). $80.9 Million (yr 2).
Industrial, commercial, and institutional boilers and process heaters (3 categories) [2].	1,821	908 (49.9%)	$25.8 Million (yr 1). $33.1 Million (yr 2).
Total [5]	7,920	3,912 (49.4%)	$169.0 Million (yr 1).[6] $200.3 Million (yr 2).

[1] Results are for the 75-percent cut-off scenario—whole facility emissions below 75 percent of the major source thresholds (7.5 tpy for one HAP and 18.75 tpy for combined HAP).
[2] Extrapolated using the EPA's Enforcement and Compliance History Online (ECHO) data.
[3] Costs incurred by sources and permitting authority assumed in year 1.
[4] Year 2 impacts are also representative of annual impacts beyond year 2.
[5] This analysis was done source category by source category. The one possibility for double counting is in the permitting costs incurred in year 1, which the EPA applied to each facility in each source category regardless of whether a permit change would cover more than one source category (for facilities subject to more than one major source NESHAP).
[6] The analytic timeline begins in 2020 and continues thereafter for an indefinite period. Year 1 impacts are those for 1 year after 2020, and year 2 impacts are those for the second year after 2020 and annually afterwards.

The EPA also estimated the PV of the illustrative cost savings for the main illustrative scenario and each alternative scenario. The PV is the value of a stream of impacts over time, discounted to the current (or nearly current) year. The PV of the cost savings for the primary illustrative scenario is $2.34 billion (in 2014 dollars) at a discount rate of 7 percent, which is discounted to 2016. At a discount rate of 3 percent, the PV is $6.08 billion (in 2014 dollars), again discounted to 2016. In 2016 dollars, these PVs are $2.39 billion at a 7-percent discount rate and $6.2 billion at a 3-percent discount rate, discounted to 2016. Another measure of the annual cost savings to complement the estimates in Table 2 is the EAV. This annual impact estimate is calculated consistent with the PV. The EAV is $164 million (2014 dollars) and $167 million (2016 dollars) at a 7-percent discount rate for the primary scenario. At a 3-percent discount rate, the EAV is $183 million (2014 dollars) and $187 million (2016 dollars). The PVs for each alternative scenario and discount rate in 2014 and 2016 dollars can be found in the RIA for the proposal.

To assess the potential emission impact associated with the reclassification of sources, the EPA evaluated the sources that the EPA knows have reclassified to area source status consistent with the EPA's plain language reading of the CAA section 112 definitions of ''major'' and ''area'' source since January 2018. The review of these reclassifications provides a representation of the potential real-world impact on emissions by looking at the facts and circumstances of actual reclassification actions. In addition to the evaluation of the reclassification actions, the EPA performed an illustrative assessment for six source categories: Wood Furniture Manufacturing Operations, Surface Coating of Metal Cans, Surface Coating of Miscellaneous Metal Parts and Products, Wet-Formed Fiberglass Mat Production, Hydrochloric Acid (HCl) Production, and Non-Gasoline Organic Liquids Distribution (OLD). The analysis of these six source categories is informative in some respects but is only illustrative and speculative in nature and can only present a range of possible outcomes that is dependent on the assumptions that we made in the assessment. The details and results of the emission analysis are summarized below presented in detail in the emission impact analysis technical support memorandum, which is available in the docket for this action.[52]

The EPA reviewed permits associated with 34 reclassifications to area source status. Of the 34 sources reviewed for this analysis, 21 sources can be classified as coating type sources; five as oil and gas sources; four as fuel

[52] See Technical Support Memorandum (TSM): Emission Impacts Analysis for the Proposed Rulemaking ''Reclassification of Major Sources as Area Sources under Section 112 of the Clean Air Act.''

combustion/boiler sources, three as chemical sources and one as heavy industry. (*See* Table 2 of Emission Impacts Analysis TSM available in the docket for this action).[53] To assess the potential for emission impacts due to reclassification, the EPA focused the review on the enforceable conditions associated with the HAP PTE limitations for the emission units previously subject to major source NESHAP requirements and whether the sources that reclassified will continue to use the major source NESHAP compliance obligations for these emission units as an enforceable condition on the source's PTE. A summary of the permit review and emission evaluation is presented in Table 2 and Appendix 1 of the Emission Impacts Analysis TSM available in the docket for this action. The EPA's findings from the permit review and emission evaluation is that sources that reclassify to area source status would, in most cases, achieve and maintain area source status by operating the emission controls or continuing to implement the practices they used to comply with the major source NESHAP requirements. Below is an overview of the EPA's findings from the permit review and evaluation:

- Of the 21 coating sources (Facilities #1–21 on Table 2 of Emission Impact Analysis TSM), 20 used compliant materials (low-HAP/no-HAP) to meet applicable major source requirements, and their continued use of compliant materials is an enforceable condition after reclassification. Only one source (Facility #13) used a regenerative thermal oxidizer (RTO) to meet the applicable major source requirements and their continued use of the RTO is an enforceable condition after reclassification. Thus, the EPA does not expect emissions increases from those sources using compliant materials (low-HAP/no-HAP) both before and after reclassification. Similarly, for the coating source using the RTO, the permit for this source continues to require the use of an RTO ensuring a HAP destruction efficiency of 95 percent as an enforceable permit requirement. Therefore, we don't expect emissions increases resulting from the reclassification of this facility.
- All five oil and gas sources (Facilities #22–26 on Table 2 of Emission Impact Analysis TSM), that reclassified or are in the process of reclassifying relied on the use of control technologies to meet applicable major source requirements before reclassification, and their continued use of these control technologies is an enforceable condition after reclassification. Four of these facilities (#22, #24, #25, and #26) were subject to the major source requirements of the Oil and Natural Gas Production NESHAP while one facility (#23) was subject to the major source requirements of the Stationary Reciprocating Internal Combustion Engines (RICE) NESHAP.
  - The facility (#23) previously subject to the major source RICE NESHAP requirements, replaced old engines with new engines equipped with a catalytic oxidizer designed to reduce HAP emissions (formaldehyde by 90 percent) prior to the reclassification. Since reclassification, this facility continues to be subject to enforceable conditions on the operation of the engines and the catalytic oxidizer to reduce formaldehyde by 90 percent. Thus, we don't expect emissions increases resulting from the reclassification of this facility.
  - Of the four facilities that were subject to the major source requirements of the Oil and Natural Gas Production NESHAP, two (#22 and #26) relied on the use of flares and enclosed combustion devices to meet applicable major source requirements before reclassification, and their continued use of these control technologies is required as an enforceable condition after reclassification. The permit for another facility (#24), as proposed, will impose enforceable emission restrictions for an existing installed and operating emissions unit and associated voluntarily installed and operated control device. The proposed enforceable conditions include the operation of an enclosed combustor to control the VOC and HAP emissions from a triethylene glycol dehydrator still vent. If these enforceable conditions are finalized, we don't expect emissions increases resulting from the reclassification of this facility. The last facility in this category (#25) took additional enforceable limits on the amount of low-pressure relief gas vented to the atmosphere to ensure emissions of the individual HAP 2,2,4-trimethylpentane (largest individual HAP for the gas compression/venting operation) emissions are below 10 tpy. This enforceable limitation ensures HAP emissions will not increase as a result of the modification to vent the low-pressure gas directly to the atmosphere instead of being recovered in a vapor recovery unit. Without the enforceable limitations in the amount of low-pressure relief gas vented to the atmosphere, emissions from the gas compression/venting would have increased (uncontrolled PTE) to 10.3 tpy for the largest individual HAP. The actions taken by this facility to reclassify to area source status resulted in emission reductions.
- Of the four fuel combustion/boiler sources (Facilities # 27–30 on Table 2 of Emission Analysis TSM), three of these sources (#27, #28, #29) had emissions above the major source thresholds as reported in the 2014 National Emission Inventory (NEI). To reclassify, these sources either ceased combustion of coal, ceased operation of boilers, or obtained enforceable restrictions on the combustion of natural gas. For each of these three sources, their actions to reclassify resulted in a reduction of HAP emissions. Another source (#30) relied on material limits and operational restrictions on natural gas usage to meet the applicable major source requirements, and the continued use of these compliance methods is required by an enforceable condition after the reclassification. Thus, the EPA does not expect emission increases from the reclassification of this source.
- Two of the chemical sources are gasoline distribution facilities (Facilities #31 and #33 on Table 2 of Emission Analysis TSM). These facilities were subject to 40 CFR part 63, subpart R and relied on vapor flare/vapor combustion to meet the major source requirements before reclassification, and their continued use of this control technology is required as an enforceable condition after reclassification. Since reclassification, their permit continues to require the operation of the vapor flare/vapor combustor at all times when the facility's loading racks are loading gasoline into transports. These sources are now subject to the area source NESHAP requirements in 40 CFR part 63, subpart BBBBBB that regulate emissions from tanks, transfer racks, roof landings, and maintenance. For these facilities, the EPA reviewed the operating parameters associated with the vapor flare/vapor combustion. The permit for one facility (#31) includes a requirement for annual periodic testing in addition to the continuous monitoring of the presence of the pilot flame to ensure that the enclosed combustor is operational when loading operations occur. The annual performance test together with the monitoring of the presence of the flame ensure operation and performance. We,

[53] As part of this review, the EPA identified one source subject to 40 CFR part 63, subpart WWWW (Reinforced Plastic Composite Production). As discussed above in the preamble, 40 CFR part 63, subpart WWWW contains a regulatory provision that reflects the 1995 OIAI policy. In this action, the EPA is proposing to revise Table 2 of subpart WWWW by removing the date after which a major source cannot become an area source. The existing provision will remain in effect until such time as it is revised or removed by final agency action.

therefore, do not expect emission increases due to the reclassification of this source. The other gasoline distribution facility (#33) continues to be subject to flare operating and monitoring requirements in 40 CFR part 60, subpart XX (New Source Performance Standards for Bulk Gasoline Terminals). The flare operating and monitoring requirements in 40 CFR part 60, subpart XX are identical to those that the source was previously subject to under 40 CFR part 63, subpart R. This permit also requires testing for specific HAP associated with the vapor combustor to ensure operation and performance. We do not expect emission increases due to the reclassification of this source.

- As for the incinerator (Facility #32 on Table 2 of Emission Analysis TSM), the source continues to be subject to the same NESHAP requirements in 40 CFR part 63, subpart EEEE as before reclassification, and it has been reclassified for purposes of applicability with 40 CFR part 63, subpart DD (Off-Site Waste Recovery Operations), which covers emissions from tanks and equipment leaks. This source relied on control technologies (fixed roofs with closed vents systems routed to carbon absorption units) as their method of compliance before reclassification and is required by an enforceable condition to continue to operate the same control technologies after reclassification. The source is also subject to Resource Conservation and Recovery Act (RCRA) regulation/permit requirements. The RCRA permit for this facility requires the source to control emissions by venting the tanks through closed vent systems to carbon adsorption units designed and operated to recover the organic vapors vented to them with an efficiency of 95 percent or greater by weight. The tanks shall be covered by a fixed roof and vented directly through the closed vent system to a control device. Therefore, we don't expect emissions increases due to the reclassification of this source.
- As for the lime manufacturing plant (Facility #34 on Table 2 of Emission Analysis TSM), after reclassification this source remains subject to other regulatory obligations, including PM emission limitations, use of a baghouse, and monitored opacity as an operating limit with operation of a COMS. Because of the inherent scrubbing properties of lime and the requirements for the use of a baghouse, we don't expect emissions increases resulting from the reclassification of this facility.

The results of the analysis of these reclassifications show that three sources with NEI 2014 emissions above the major source thresholds took actions that reduced their emissions below what is required by their previously applicable major sources NESHAP and to below the major source thresholds in order to reclassify to area source status. The results also support the conclusion that the remaining 31 sources that reclassified from major to area source status since January 2018 will have no change in emissions. We request comments on the analysis of the reclassification actions presented above and in more details in the Emission Impact Analysis TSM available in the docket (Comment C–56). Specifically, we request comments on whether there are other factual factors to consider for the emission evaluation of these reclassifications (Comment C–57).

In addition to the evaluation of the reclassification actions presented above, the EPA performed an illustrative assessment for six source categories: Wood Furniture Manufacturing Operations, Surface Coating of Metal Cans, Surface Coating of Miscellaneous Metal Parts and Products, Wet-Formed Fiberglass Mat Production, HCl Production, and Non-Gasoline OLD. The analysis of these six source categories is informative in some respects but is only illustrative and speculative in nature and can only present a range of possible outcomes that is dependent on the assumption that we made in the assessment. The following discussion summarizes the illustrative emission impact analysis and results of it. The full discussion of the illustrative analysis, including the rationale for our key assumptions and assessments, is presented in the technical support memo for the emission analysis, which is available in the docket for this action.[54]

Consistent with the review and evaluation of the reclassification actions, the illustrative analysis focuses on whether sources in the evaluated source categories could adjust the types of add-on control equipment used to comply with the major source NESHAP requirements upon reclassification. The EPA considered two set of assumptions for the illustrative analysis. The first set of assumptions aligns with the findings of our permit review presented above in which sources continue to use the same compliance obligations before and after reclassification and add-on controls are not adjusted to decrease control efficiency after the source is reclassified. The second set of assumptions addresses sources that limits and use adjustable add-on controls, estimating possible emission impacts if these sources were allowed by their regulatory authority (*i.e.,* permitting authority) to change the operating parameters of the adjustable add-on controls after reclassifying.

To assess the potential for emission changes if sources taking HAP PTE limitations were to be allowed by their permitting authority to change the operating parameters of adjustable add-on control, we assumed the following:

- For a source category employing adjustable controls, emissions could potentially increase for all facilities with actual emissions below the 75-percent thresholds.
- For sources with only a single HAP reported in the NEI and an adjustable control, a potential increase in emissions was calculated as the difference between 7.5 tpy and the estimate of the single largest HAP. Otherwise, the potential emissions increase was estimated as the larger difference between 18.75 tpy and the estimate of total HAP emissions and between 7.5 tpy and the single HAP emissions.

For our illustrative assessment, we also considered whether other non-HAP regulatory requirements apply to the facilities that could potentially reclassify and increase emissions that would provide some level of control of HAP from the source/pollutants (*i.e.,* NSPS, control techniques guidelines, etc.) and the extent to which those other regulatory requirements would serve as a backstop that would prevent emission increases and whether area source NESHAP requirements would apply to a source that reclassifies. The details of our illustrative emission analysis, including the rationale for our key assumptions and assessments, are presented in the TSM for the emission analysis, which is available in the docket for this action. A summary of the findings of our illustrative emission impact assessment for the six source categories analyzed is presented in Table 3.

The results of our illustrative analysis show that for many facilities, the reclassification from major source to area source status is not expected to result in an increase in that source's HAP emissions. The analysis also shows that for many sources there are backstops in place that would prevent emission increases (*e.g.,* other non-HAP regulatory requirements that also provide for HAP control). The analysis also shows that for some source categories, no emissions increases, and some emission decreases can be

[54] *See* Technical Support Memorandum: Emission Impacts Analysis for the Proposed Rulemaking ''Reclassification of Major Sources as Area Sources under Section 112 of the Clean Air Act.'' Available in the docket for this rulemaking.

anticipated. Finally, the results of our illustrative analysis show that, for some facilities, there could be a potential for emission increases. However, when the regulatory authority reviews the application for a new or revised permit to reclassify a major source as an area source under section 112 of the CAA, the regulatory authority will consider the current and proposed HAP emissions levels and evaluate the potential for emission increases due to reclassification and whether safeguards are needed to prevent any emission increases due to reclassification.

We solicit comments on our emission analysis (analysis of reclassification actions and illustrative analysis) and illustrative control cost analysis for five source categories discussed above and in the docket for this proposed rule, and in general on the potential impacts on emissions resulting from the reclassification of major sources to area source status (Comment C–58). In particular, the EPA is interested in data and analysis on the number and type of major sources that may reclassify from major source to area source status and whether the HAP emissions from those sources will decrease or increase or stay the same (Comment C–59).

TABLE 3—RESULTS OF POTENTIAL EMISSION IMPACTS ILLUSTRATIVE ANALYSIS

Source category, 40 CFR part 63 subpart	Number of facilities in source category subject to major source NESHAP	Facilities projected to obtain area source status at 75% cut-off scenario/ percent	Range of potential HAP increases (tpy) at 75% cut-off	Additional facilities projected to obtain area source status at 125% cut-off scenario/ percent	Range of potential HAP decreases (tpy) at 125% cut-off
Wood Furniture, subpart JJ	333	250/75%	0	26/8%	0–125
Metal Cans, subpart KKKK	5	1/20%	0	2/40%	0–4
Miscellaneous Metal Parts and Products, subpart MMMM.	371	268/72%	0	46/12%	0–160
Wet Formed Fiberglass, subpart HHHH.	7	5/71%	0–6 single HAP; 0–33 combined HAP.	0	0
HCl Production, subpart NNNNN	19	3/16%	0–11 single HAP; 0–27 combined HAP.	2/11%	0–4
Non-Gasoline OLD, subpart EEEE	177	82/46%	0–1,140 combined HAP	19/11%	0–77

The emission analysis of the 34 reclassification shows for most sources that have reclassified or are in the process of reclassifying the reclassification to area source status will have no change in the sources' emissions. Specifically, the information that we have shows that 31 of 34 sources will have no change on their emissions as a result of reclassification. The analysis also shows that for three sources the actions the reclassification resulted in additional emission reductions.

The illustrative control cost analysis conducted under the 125% scenario considered the potential control costs associated with major sources reducing emissions as part of reclassifying to area sources in five source categories. For two source categories (miscellaneous metal parts and products, and wood furniture manufacturing operations), we find some potential for the cost savings to be greater than the illustrative control costs. More information on the analysis can be found in the Illustrative 125% Scenario Cost Considerations Memorandum that is in the docket for this proposed rulemaking.

Based on the results of the EPA's analysis of the reclassifications of 34 sources and the illustrative control cost analysis of five source categories, this proposed rule may potentially result in both emission reductions and increases from a broad array of affected sources. We are uncertain as to the magnitude, direction, and distribution of changes in emissions across the broad array of affected sources resulting from this rulemaking. As we discuss above and in the docket of this proposed rule, the emissions from different sources will be impacted in different ways. Thus, we are unable to quantify the changes in emissions across these sources. In place of quantitative estimates of the number and economic value of the pollutant changes, we instead characterize these impacts in qualitative terms. For more information on this qualitative characterization, please refer to the benefits analysis included in section 5 of the RIA for this proposed action.

The economic impact analysis (EIA), an analysis that is included in the RIA, focuses on impacts at an industry level and impacts are calculated for the scenario in which only facilities whose actual emissions are below 75 percent of the major source thresholds would reclassify from major to area source status. As part of the EIA, the EPA considered the impact of this rulemaking to small entities (small businesses, governments, and non-profit organizations). Impacts are calculated as compliance costs (savings, in this instance) as a percent of sales for businesses, and of budgets for other organizations. For informational purposes, the RIA includes the Small Business Administration's (SBA) definition of small entities by affected industry categories (defined as North American Industry Classification System) and potential burden reductions from title V and other permitting programs. Since this rule significantly lessens the regulatory burden resulting from ending the OIAI policy, no compliance costs are imposed upon industry categories as a result of this proposal. These avoided costs accrue because some reclassified sources will not be required to obtain or maintain a title V permit or continue meeting major source administrative requirements under section 112 of the CAA. Some of the facilities benefitting from this action are owned by small entities, and these entities along with large entities will experience a reduction in costs from the burden reductions that would take place as a result of this rule.

We find that the results of the EIA for the primary scenario show that the annual cost savings per sales for all affected industries is around 0.1 percent, using the median of these estimates, which is approximately $9.1 billion per affected industry, to determine average impact. The details of the EIA and impacts on employment are presented in the RIA of the MM2A proposal, as well as results of the EIA

for the other two alternative scenarios, which is available in the docket for this action.

VII. Request for Comments

Interested persons may submit comments on any matter that is relevant to this proposed rule. Further, the EPA is expressly soliciting comment on numerous aspects of the proposed rule in various places in this preamble. The EPA has indexed each comment solicitation with an alphanumeric identifier (*e.g.,* ''C–1,'' ''C–2,'' ''C–3'') to provide a consistent framework for effective and efficient provision of comments. Accordingly, the EPA asks that commenters include the corresponding identifier when providing comments relevant to that comment solicitation. The EPA asks that commenters include the identifier in a heading or within the text of each comment (*e.g.,* ''In response to solicitation of comment C–1, . . .'') to make clear which comment solicitation is being addressed. The EPA emphasizes that the Agency is not limiting comments to these identified areas and encourages submission of any other comments relevant to this proposal.

Below we provide a list of the areas the EPA is expressly soliciting comments on. The EPA invites comments:

- On whether there are any other regulatory provisions in any of the individual NESHAP subparts that would warrant modification or clarification consistent with this proposal (Comment C–1 and Comment C–53).
- On all aspects of this proposal, including the EPA's position that the withdrawal of the OIAI policy and the proposed approach gives proper effect to the statutory definitions of ''major source'' and ''area source'' in CAA section 112(a) and is consistent with the plain language and structure of the CAA as well as the impacts of the proposal on costs, benefits, and emissions impacts (Comment C–2).
- On (1) to what extent will theoretical emission increase scenarios actually occur, including (a) what emissions restrictions will be put in place as part of the PTE HAP limits that a major source takes to be reclassified as an area source and (b) whether other regulatory controls are in place and applicable to sources after reclassification that will either continue to restrict the source from emitting above the major source standard or prevent an emissions increase after reclassification; and (2) whether the EPA should adopt regulatory text to establish safeguards to prevent emissions increases following reclassification (Comment C–3).
- With respect on whether the EPA should adopt regulatory text to establish safeguards to prevent emissions increases, the EPA is seeking comment on what legal basis the agency would have for requiring such safeguards (Comment C–4).
- On the EPA's rationale for separating the timing of reclassification from the sufficiency of the PTE limits that support reclassification (Comment C–5).
- On whether a requirement that PTE limits must include safeguards to prevent emissions increases is a reasonable reading of the ambiguous phrase ''potential to emit considering controls'' in light of the other provisions in CAA section 112 (Comment C–6).
- On whether the arguments presented in opposition to EPA's plain language reading on timing are appropriately considered on the question of the sufficiency of the PTE limit and support the conclusion that PTE limits used to support reclassification must not allow sources to increase emissions as a result of reclassification (Comment C–7).
- Assuming that requiring safeguards against emission increases in PTE limits is a reasonable reading of the statute, the EPA is seeking comment on what safeguards should be required (Comment C–8).
- On whether it is reasonable and appropriate to require safeguards against emission increases following reclassification (Comment C–9).
- On the EPA's plain language reading discussed above and to provide specific examples of, and/or provide additional information on these and any other reasons why allowing major sources to reclassify as areas sources would or would not increase emissions from such sources and may even lead to a reduction in their emissions (Comment C–10).
- On whether the Agency's reading is a permissible interpretation of the statute even if it is not the only possible reading (Comment C–11).
- On whether it would be appropriate to include in the General Provisions of 40 CFR part 63 the minimum requirements that a major source of HAP must submit to its regulatory authority when seeking to obtain HAP PTE limitations to reclassify as area sources under section 112 of the CAA (Comment C–13), and on whether adding the same or similar requirements that are now in 40 CFR 49.158(a)(1) to 40 CFR 63.10 would be appropriate to create the minimum requirements that a major source of HAP must submit to its regulatory authority when seeking to obtain PTE HAP limitations to reclassify as area sources under section 112 of the CAA (Comment C–15).
- On whether the EPA should include in the General Provisions to 40 CFR part 63 the hierarchy of acceptable data and methods a source seeking reclassification would use to determine the source PTE. This hierarchy could be the same or similar to the one provided in 40 CFR 49.158(a)(2) (Comment C–14 and Comment C–16).
- On the proposed criteria required for effective HAP PTE limits for purposes of determining whether a source is a major source under 40 CFR 63.2 and whether the EPA's proposed criteria and their corresponding elements are necessary and sufficient to ensure HAP PTE limits are effective to support reclassification of a major source to an area source (Comment C–12, Comment C–17, Comment C–18, Comment C–19, Comment C–26, Comment C–27).
- On the proposed legally enforceable criterion that HAP PTE limits must identify the legal authority under which the limits are being issued, the appropriateness of this requirement, and on whether there are other considerations that warrant being part of the criterion of legal authority to issue HAP PTE limits (Comment C–21).
- On whether state-only or local-only enforcement authority alone is sufficient to impose a credible risk of enforcement and, therefore, ensure compliance with the HAP PTE limits, or whether to be effective, the EPA and/or citizens, through the enforcement authorities in the CAA must also have the authority to enforce the HAP PTE limits that are being used to avoid a federal requirement (Comment C–22).
- On whether enforceability of a PTE limit by the EPA and/or citizens reduces the implementation burden for all parties and provides a level of compliance incentive unmatched by enforcement by only a state or local authority that warrants it to be part of the effectiveness criteria (Comment C–23).
- On the inclusion of the specific considerations for monitoring, discussed above in the General Provisions of 40 CFR part 63 proposed regulatory text defining practicably enforceable (Comment C–24) and on whether other criteria are needed to ensure the emission limitations are practicably enforceable (Comment C–50).
- On whether, as a result of this rulemaking, facility owners or operators of sources that reclassify will cease to properly operate their control devices

where the operation of the control device is needed to restrict the PTE and appropriate MRR are established as enforceable conditions (Comment C–25).

- On whether there are other criteria that should be required for ensuring effectiveness of HAP PTE limits including whether public notice and comment procedures should be part of the required effectiveness criteria (Comment C–20, Comment C–13, Comment C–19).
- On whether to be effective, HAP PTE limits need to undergo public notice and comment procedures (Comment C–28, Comment C–30, Comment C–35).
- On whether HAP PTE limits can be properly and legally established if the limits do not go through public notice and comment procedures (Comment C–29).
- On how requiring public comment and notice procedures for issuance of HAP PTE limits enhance or is needed for ensuring effectiveness of such limits (Comment C–31).
- On whether the concerns raised in the past are still an issue if EPA were to require that HAP PTE limits that will be used as the basis for reclassifying major sources to area source status need to be subject to a public notice and comment procedures (Comment C–32).
- On whether there are specific criteria for deciding under what circumstances a source's proposed HAP PTE limits would need to undergo public review and comment under the state or local program (*e.g.,* controversial or complex sources, sources with actual emissions close to the major source thresholds, etc.) (Comment C–33).
- Given that the EPA recognizes that some state-programs may process HAP PTE limits concurrently with a minor NSR or other permitting action such that the EPA and the interested public would have the opportunity to provide comments on PTE limits in that case, on whether the public notice and comment procedures provided in those circumstances would be sufficient (Comment C–34).
- On the appropriateness of the proposed case-by-case compliance extension date approach, including, for example, the type of information that should be requested from the source seeking the proposed compliance extension and whether the limitations proposed above (*i.e.,* the compliance extension is only available if the affected source must undergo a physical change or install additional control equipment to meet the area source NESHAP) are appropriate (Comment C–36).
- On the appropriate process for requesting the compliance extension and on the mechanics of obtaining the compliance extension (Comment C–37).
- On whether the proposed compliance date extension provision in 40 CFR 63.1(c)(6)(i) should be available to major sources that reclassify to area source status prior to the compliance date of an applicable area source standard, to the extent that the remaining time before the compliance date is not sufficient time for the source to comply (Comment C–38).
- On whether our information and expectations that sources that reclassify to area source status would in most cases, if not all, achieve and maintain area source status by operating the emission controls or continuing to implement the practices (*i.e.,* use of no-HAP or low-HAP compliant coating) they used to meet the major source NESHAP requirements are correct (Comment 39) on the proposed compliance time frame for sources that reclassify from major source to area source and then revert back to major source status, and whether the proposed regulatory text in 40 CFR 63.1(c)(6)(ii)(B) adequately captures the intended exception if the major source standard has changed such that the source must undergo a physical change, install additional emission controls, and/or implement new emission control measures (Comment C–40).
- On the appropriateness of the proposed immediate compliance rule for sources that reclassify between major and area source status more than once and whether such a rule should be finalized, and on whether, if it is finalized, there are other situations in addition to the one noted above that would necessitate an extension of the time period specified for compliance with the major source NESHAP requirements. (Comment C–41, Comment C–42).
- Or whether the EPA should instead allow all sources that revert back to major source status a specific period of time in which to comply with the major source NESHAP requirements which would be consistent with the approach provided for in 40 CFR 63.6(c)(5) and to the extent a commenter proposes a compliance time frame, we request that the commenter explain the basis for providing that time frame with enough specificity for the EPA to evaluate the request (Comment C–43, Comment C–44, Comment C–45).
- On the mechanics of obtaining a compliance extension if a case-by-case approach is finalized, including, for example, the type of information to request from the source seeking the proposed compliance extension, the process to be used to obtain the extension, and any limitations on providing extensions (Comment C–46).
- On the approach of providing a specified compliance extension in the final rule for certain defined factual scenarios (Comment C–47) and on the nature of the scenario that would warrant such an extension, the specific amount of additional time that would be needed to comply with the major source NESHAP requirements and why such a period of time is needed to comply (Comment C–48).
- On whether a source that cannot immediately comply with previously or newly applicable major source NESHAP requirements at the time it requests reclassification should be required to continue to comply with the HAP PTE limits until the source can comply with the corresponding major source NESHAP requirements (Comment C–49).
- On the proposed amendment to remove the time limit for record retention in 40 CFR 63.10(b)(3) so sources that obtain new enforceable PTE limits are required to keep the required record of the applicability determinations until the source becomes subject to major source requirements (Comment C–51).
- On whether any other NESHAP subparts warrant amendment to reference the new General Provision 40 CFR 63.1(c)(6) or the CEDRI submission procedures in 40 CFR 63.9(k) (Comment C–52).
- The EPA specifically requests information and specific examples of sources that would consider investing in additional emissions reduction measures, including changing processes or installing additional emission controls (intrinsic to the source or additional add-on controls), installing new lower emitting equipment, or implementing P2 initiatives to avail themselves of the potential to seek reclassification to area source status (Comment C–54). The Agency is interested both in comments in which the commenters themselves would consider investing in additional emissions reduction measures, and comments identifying specific types of facilities that would be able to invest in additional emissions reduction measures (Comment C–55).
- On the analysis of the reclassification actions presented above and in more details in the Emission Impacts Analysis TSM available in the docket. (Comment C–56) and on whether there are other factual factors to consider for the emission evaluation of these reclassifications (Comment C–57).

• On our emissions analysis (analysis of reclassification actions and illustrative analysis) and illustrative control cost analysis discussed above and in the docket for this proposed rule, and in general on the potential impacts on emissions resulting from the reclassification of major sources to area source status (Comment C–58). In particular, the EPA is interested in data and analysis on the number and type of major sources that may reclassify from major source to area source status and whether the HAP emissions from those sources will decrease or increase or stay the same (Comment C–59).

Finally, as noted above, even though the EPA is expressly soliciting comment on numerous aspects of the proposed rule, the EPA emphasizes that the Agency is not limiting comment to these identified areas and encourages submission of any other comments relevant to this proposal. For any other comments relevant to this proposal, the submission can be identified by identifier (C–other).

VIII. The Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, the RIA for the proposed MM2A rule, is available in the docket and is summarized in section I.C of this preamble.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 deregulatory action. Details on the estimated potential cost savings of this proposed rule can be found in the RIA that is the EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. Specifically, this rule requires the electronic reporting of the one-time notification of the already required in 40 CFR 63.9(j) in the case where the facility is notifying of a change in major source status. OMB has previously approved the information collection activities contained in the existing regulations. These amendments would neither require additional reports nor require that additional content be added to already required reports. Therefore, this action would not impose any new information collection burden. Sources reclassifying to area source status may experience some burden reduction as they would no longer be subject to major source NESHAP requirements. Any changes in MRR would be done through the regulatory mechanism of the responsible regulatory authority. It is not possible to identify how many sources would choose to reclassify, nor is it possible to determine what, if any, changes to reporting and recordkeeping would be made. Regulatory authorities may, in fact, choose to establish NESHAP provisions themselves as the enforceable PTE limits and change little or nothing.

Furthermore, approval of an information collection request (ICR) is not required in connection with these proposed amendments. This is because the General Provisions do not themselves require any reporting and recordkeeping activities, and no ICR was submitted in connection with their original promulgation or their subsequent amendment. Any recordkeeping and reporting requirements are imposed only through the incorporation of specific elements of the General Provisions in the individual MACT standards which are promulgated for particular source categories which have their own ICRs.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule.

Small entities that are subject to major source NESHAP requirements would not be required to take any action under this proposal; any action a source takes to reclassify as an area source would be voluntary. In addition, we expect that sources that reclassify will experience cost savings that will outweigh any additional cost of achieving area source status. The only cost that would be incurred by regulatory authorities would be the cost of reviewing a sources' application for area source status and issuing enforceable HAP PTE limits. No small government jurisdictions operate their own air pollution control permitting agencies, so none would be required to incur costs under the proposal. In addition, any costs associated with the reclassification of major sources as area sources (*i.e.,* application reviews and PTE issuance) are expected to be offset by reduced Agency oversight obligations for sources that no longer must meet major source NESHAP requirements.

Based on the considerations above, we have, therefore, concluded that this action will relieve regulatory burden for all regulated small entities that reclassify to area source status. Nevertheless, we continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts. We also note that a small entity analysis, prepared at the discretion of the EPA, reflecting the relief in regulatory burden was prepared for this proposal and is included in the RIA, which is available in the public docket for this rulemaking. The results of this small entity analysis show relatively small reductions in burden estimate annual costs (about 0.10 percent) as a percentage of sales using the median estimate as the average of impacts.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local, or tribal governments, or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments,

nor preempt tribal law. There are two tribes that currently implement title V permit programs and one that implements an approved TIP for minor source permitting, which also has a major source. As a result, these tribes may have additional actions needed for sources in their jurisdiction. In addition, any tribal government that owns or operates a source subject to major source NESHAP requirements would not be required to take action under this proposal; the provisions in the proposed amendments would be strictly voluntary. In addition, achieving area source status would result in reduced burden on any source that no longer must meet major source NESHAP requirements. Under the proposed amendments, a tribal government with an air pollution control agency to which we have delegated CAA section 112 authority would be required to review permit applications and to modify permits as necessary. However, any burden associated with the review and modification of permits will be offset by reduced Agency oversight obligations for sources no longer required to meet major source requirements. The EPA specifically solicits comment on the proposed amendments from tribal officials and, consistent with EPA policy, intends to specifically offer to consult with the potentially impacted tribes and other tribes on their request.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action does not establish an environmental standard intended to mitigate health or safety risks. This action implements the plain reading of the statutory definitions of major source and area source of section 112 of the CAA and, therefore, is not subject to Executive Order 13045.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that this proposal is not likely to have any adverse energy effects.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. The proposed amendments to the General Provisions are procedural changes and does not impact the technology performance nor level of control of the NESHAP governed by the General Provisions.

L. Determination Under Section CAA 307(d)

Pursuant to CAA section 307(d)(1)(V), the Administrator determines that this action is subject to the provisions of CAA section 307(d). Section 307(d)(1)(V) of the CAA provides that the provisions of CAA section 307(d) apply to ''such other actions as the Administrator may determine.''

List of Subjects in 40 CFR Part 63

Environmental protection, Area sources, General provisions, Major sources, Potential to emit, Hazardous air pollutants.

Dated: June 25, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, the EPA proposes to amend 40 CFR part 63 as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

■ 2. Add § 63.1(c)(6) to read as follows:

§ 63.1 Applicability.

* * * * *

(c) * * *

(6) A major source may become an area source at any time by limiting its potential to emit (PTE) hazardous air pollutants, as defined in this subpart, to below the major source thresholds established in § 63.2, subject to the provisions in paragraphs (c)(6)(i) through (iii) of this section. Until the PTE limitations become effective, the source remains subject to major source requirements. After the PTE limitations become effective, the source is subject to any applicable requirements for area sources.

(i) A major source that becomes an area source must meet all applicable area source requirements promulgated under this part immediately upon becoming an area source, provided the first substantive compliance date for the area source standard has passed, except that the regulatory authority may grant additional time, up to 3 years, if the source must undergo physical changes or install additional control equipment in order for the source (or portion thereof) to comply with the applicable area source standard and the EPA (or a delegated authority), determines that such additional time is warranted based on the record. A source seeking additional compliance time must submit a request to the EPA (or a delegated authority), that identifies the area source standard; the steps that must be taken to come into compliance with the standard; the amount of additional time requested to come into compliance with the standard, and a detailed justification supporting the requested additional time. Owners and operators of major sources that become area sources subject to standards under this part must comply with the initial notification requirements of § 63.9(b), unless the source was previously subject to that area source standard and such notification was previously submitted. Owners and operators of major sources that become area sources must also provide to the Administrator any change in the information already provided under § 63.9(b) per § 63.9(j).

(ii)(A) A major source subject to standards under this part that subsequently becomes an area source, and then later becomes a major source again by increasing its emissions to at or above the major source thresholds, must comply with the major source requirements of this part immediately upon becoming a major source again, notwithstanding § 63.6(c)(5), except as noted in paragraph (c)(6)(ii)(B) of this section. Such major sources must comply with the notification requirements of § 63.9(b).

(B) If a source becomes subject to the standard for major sources again, but that standard has been revised since the source was last subject to the standard and, in order to comply, the source must undergo a physical change, install additional emission controls and/or implement new control measures, the owner or operator will have up to the same amount of time to comply as the amount of time allowed for existing sources subject to the revised standard.

(iii) Becoming an area source does not absolve a source subject to an enforcement action or investigation for major source violations or infractions from the consequences of any actions occurring when the source was major. Becoming a major source does not absolve a source subject to an enforcement action or investigation for area source violations or infractions from the consequences of any actions occurring when the source was an area source.

* * * * *

■ 3. Amend § 63.2 by:

■ a. Adding the definition ''Legally enforceable'' in alphabetical order;

■ b. Revising the definition ''Potential to emit''; and

■ c. Adding the definition ''Practicably enforceable'' in alphabetical order.

The additions and revision read as follows:

§ 63.2 Definitions.

* * * * *

Legally enforceable means that an emission limitation or other standard meet the following criteria:

(1) Must identify the legal authority under which the limitation or standards are being issued.

(2) Must provide the right for the issuing authority to enforce it.

* * * * *

Potential to emit means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is legally and practicably enforceable as defined in this subpart (*i.e.,* effective).

Practicably enforceable means that an emission limitation or other standards meet the following criteria:

(1) Must be written so that it is possible to verify compliance and to document violations when enforcement action is necessary.

(2) Must specify a technically accurate numerical limitation and identify the portions of the source subject to the limitation. The time frame for the limitation (*e.g.,* hourly, daily, monthly and annual limits such as annual limits rolled on a monthly basis) must take into account the type of restriction employed (an indirect indicator of emissions such as a CMS limit should have a shorter time frame than a direct measurement to account for the layers of complexity between direct measurement of HAP and the limitation).

(3) Must specify the method of determining compliance, including appropriate monitoring, recordkeeping, and reporting. The monitoring, recordkeeping, and reporting requirements must be sufficient to demonstrate compliance with the emissions limitations of each pollutant.

* * * * *

■ 4. Revise § 63.6(c)(1) to read as follows:

§ 63.6 Compliance with standards and maintenance requirements.

* * * * *

(c) *Compliance dates for existing sources.* (1) After the effective date of a relevant standard established under this part pursuant to section 112(d) or 112(h) of the Act, the owner or operator of an existing source shall comply with such standard by the compliance date established by the Administrator in the applicable subpart(s) of this part. Except as otherwise provided for in section 112 of the Act, in no case will the compliance date established for an existing source in an applicable subpart of this part exceed 3 years after the effective date of such standard. Except as provided in § 63.1(c)(6)(ii) such sources must comply by the date specified in the standards for existing area sources that become major sources.

* * * * *

■ 5. In § 63.9, revise paragraphs (b)(1)(ii) and (j) and add paragraph (k) to read as follows:

§ 63.9 Notification requirements.

* * * * *

(b) * * *

(1) * * *

(ii) If an area source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source that is subject to the emission standard or other requirement, such source shall be subject to the notification requirements of this section. Area sources previously subject to major source requirements that again become major sources are also subject to the notification requirements of this paragraph and must submit the notification according to the requirements of paragraph (k) of this section.

* * * * *

(j) *Change in information already provided.* Any change in the information already provided under this section shall be provided to the Administrator within 15 calendar days after the change. The owner or operator of a major source that reclassifies to area source status is also subject to the notification requirements of this paragraph. The owner or operator may use the application for reclassification with the regulatory authority (*e.g.,* permit application) to fulfill the requirements of this paragraph. The owner or operator of a major source that reclassifies to area source status must submit the notification according to the requirements of paragraph (k) of this section.

(k) *Electronic Submission of Notifications or Reports.* If you are required to submit notifications or reports following the procedure specified in this paragraph (k), you must submit notifications or reports to the EPA via CEDRI, which can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). The notification or report must be submitted by the deadline specified. If you claim some of the information required to be submitted via CEDRI is confidential business information (CBI), submit a complete notification or report, including information claimed to be CBI, to the EPA. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph (k).

(1) If you are required to electronically submit a notification or report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (k)(1)(i) through (vii) of this section.

(i) You must have been or will be precluded from accessing CEDRI and submitting a required notification or report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(ii) The outage must have occurred within the period of time beginning five business days prior to the date that the notification or report is due.

(iii) The outage may be planned or unplanned.

(iv) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should

have known, that the event may cause or has caused a delay in reporting.

(v) You must provide to the Administrator a written description identifying:

(A) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(B) A rationale for attributing the delay in submitting beyond the regulatory deadline to EPA system outage;

(C) Measures taken or to be taken to minimize the delay in submitting; and

(D) The date by which you propose to submit, or if you have already met the reporting requirement at the time of the notification, the date you submitted the notification or report.

(vi) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(vii) In any circumstance, the notification or report must be submitted electronically as soon as possible after the outage is resolved.

(2) If you are required to electronically submit a notification or report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with the submittal requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (k)(2)(i) through (v) of this section.

(i) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a notification or report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage).

(ii) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in submitting through CEDRI.

(iii) You must provide to the Administrator:

(A) A written description of the force majeure event;

(B) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(C) Measures taken or to be taken to minimize the delay in reporting; and

(D) The date by which you propose to submit the notification or report, or if you have already met the submittal requirement at the time of the notification, the date you submitted the notification or report.

(iv) The decision to accept the claim of force majeure and allow an extension to the submittal deadline is solely within the discretion of the Administrator.

(v) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

■ 6. In § 63.10, revise paragraph (b)(3) and add paragraph (g) to read as follows:

§ 63.10 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(3) If an owner or operator determines that his or her existing or new stationary source is in the source category regulated by a standard established pursuant to CAA section 112, but that source is not subject to the relevant standard (or other requirement established under this part) because of legally and practicably enforceable limitations on the source's potential to emit, or the source otherwise qualifies for an exclusion, the owner or operator must keep a record of the applicability determination on site at the source until the source changes its operations to become an affected source. The record of the applicability determination must be signed by the person making the determination and include an emissions analysis (or other information) that demonstrates the owner or operator's conclusion that the source is unaffected (*e.g.,* because the source is an area source). The analysis (or other information) must be sufficiently detailed to allow the Administrator to make an applicability finding for the source with regard to the relevant standard or other requirement. If applicable, the analysis must be performed in accordance with requirements established in relevant subparts of this part for this purpose for particular categories of stationary sources. If relevant, the analysis should be performed in accordance with EPA guidance materials published to assist sources in making applicability determinations under CAA section 112 if any guidance is available, or industry standards or engineering calculations. The requirements to determine applicability of a standard under § 63.1(b)(3) and to record the results of that determination under this paragraph (b)(3) of this section shall not by themselves create an obligation for the owner or operator to obtain a title V permit.

* * * * *

(g) *Electronic Recordkeeping.* Any records required to be maintained by this part that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

■ 7. Revise § 63.12(c) to read as follows:

§ 63.12 State authority and delegations.

* * * * *

(c) All information required to be submitted to the EPA under this part also shall be submitted to the appropriate state agency of any state to which authority has been delegated under section 112(l) of the CAA, provided that each specific delegation may exempt sources from a certain federal or state reporting requirement with the exception of federal electronic reporting requirements under this part. The Administrator may permit all or some of the information to be submitted to the appropriate state agency only, instead of to the EPA and the state agency.

Subpart F—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

■ 8. Table 3 to subpart F of part 63 is amended by adding an entry for § 63.1(c)(6) in numerical order, revising the entry for § 63.9(j), and adding an entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 3 TO SUBPART F OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPARTS F, G, AND H[a] TO SUBPART F

Reference	Applies to subparts F, G, and H	Comment

TABLE 3 TO SUBPART F OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPARTS F, G, AND H[a] TO SUBPART F—Continued

Reference	Applies to subparts F, G, and H	Comment
* * * * * * *		
63.1(c)(6)	Yes.	
* * * * * * *		
63.9(j)	Yes.	Only as related to change to major source status.
63.9(k)	Yes.	
* * * * * * *		
63.10(g)	Yes.	
* * * * * * *		

[a] Wherever subpart A specifies ''postmark'' dates, submittals may be sent by methods other than the U.S. Mail (*e.g.,* by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not necessarily required.

* * * * *

Subpart J—National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production

■ 9. Amend § 63.215 by revising paragraph (b) introductory text and adding paragraph (b)(4) to read as follows:

§ 63.215 What General Provisions apply to me?

* * * * *

(b) The provisions in subpart A of this part also apply to this subpart as specified in paragraphs (b)(1) through (4) of this section.

* * * * *

(4) The specific notification procedure of § 63.9(j) and (k) relating to a change in major source status and § 63.10(g).

Subpart L—National Emission Standards for Coke Oven Batteries

■ 10. Revise § 63.311(a) to read as follows:

§ 63.311 Reporting and recordkeeping requirements.

(a) *General requirements.* After the effective date of an approved permit in a state under part 70 of this chapter, the owner or operator shall submit all notifications and reports required by this subpart to the state permitting authority except a source which reclassifies to an area source must follow the notification procedures of § 63.9(j) and (k). Use of information provided by the certified observer shall be a sufficient basis for notifications required under § 70.5(c)(9) of this chapter and the reasonable inquiry requirement of § 70.5(d) of this chapter.

* * * * *

Subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

■ 11. Add § 63.324(g) to read as follows:

§ 63.324 Reporting and recordkeeping requirements.

* * * * *

(g) Each owner or operator of a dry cleaning facility that reclassifies from a major source to an area source must follow the procedures of § 63.9(j) and (k) to provide notification of the change in status.

Subpart N–National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

■ 12. Table 1 to subpart N of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART N OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART N

General provisions reference	Applies to subpart N	Comment
* * * * * * *		
63.1(c)(6)	Yes.	
* * * * * * *		
63.9(k)	Yes.	
* * * * * * *		
63.10(g)	Yes.	
* * * * * * *		

Subpart O—Ethylene Oxide Emissions Standards for Sterilization Facilities

■ 13. In § 63.360, amend Table 1 of Section 63.360 by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

§ 63.360 Applicability.

* * * * *

TABLE 1 OF SECTION 63.360—GENERAL PROVISIONS APPLICABILITY TO SUBPART O

Reference	Applies to sources using 10 tons in subpart O [a]	Applies to sources using 1 to 10 tons in subpart O [a]	Comment
* *	*	* * * *	*
63.1(c)(6)		Yes.	
* *	*	* * * *	*
63.9(k)		Yes.	
* *	*	* * * *	*
63.10(g)		Yes.	
* *	*	* * * *	*

[a] See definition.

* * * * *

Subpart Q–National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers

■ 14. Table 1 to subpart Q of part 63 is amended by revising the entries for §§ 63.9 and 63.10 in numerical order to read as follows:

TABLE 1 TO SUBPART Q OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART Q

Reference	Applies to subpart Q	Comment
* *	*	* * * *
63.9(a), (b)(1), (b)(3), (c), (h)(1), (h)(3), (h)(6), (j), and (k).	Yes.	
* *	*	* * * *
63.10(a), (b)(1), (b)(2)(xii), (b)(2)(xiv), (b)(3), (d), (f), and (g).	Yes.	Section 63.406 requires an onsite record retention of 5 years.
* *	*	* * * *

Subpart R–National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)

■ 15. Table 1 to subpart R of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART R OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART R

Reference	Applies to subpart R	Comment
* *	*	* * * *
63.1(c)(6)	Yes.	
* *	*	* * * *
63.9(k)	Yes.	
* *	*	* * * *
63.10(g)	Yes.	
* *	*	* * * *

Subpart S–National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry

■ 16. Table 1 to subpart S of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART S OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART S [a]

Reference	Applies to subpart S	Comment
* *	* * * * *	*
63.1(c)(6)	Yes.	
* *	* * * * *	*
63.9(k)	Yes.	
* *	* * * * *	*
63.10(g)	Yes.	
* *	* * * * *	*

[a] Wherever subpart A specifies ''postmark'' dates, submittals may be sent by methods other than the U.S. Mail (*e.g.,* by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not required.

Subpart T—National Emission Standards for Halogenated Solvent Cleaning

■ 17. Appendix B to subpart T of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

APPENDIX B TO SUBPART T OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART T

Reference	Applies to subpart T		Comments
	BCC	BVI	
* *	* * * * *		*
63.1(c)(6)	Yes	Yes.	
* *	* * * * *		*
63.9(k)	Yes	Yes.	
* *	* * * * *		*
63.10(g)	Yes	Yes.	
* *	* * * * *		*

* * * * *

Subpart U—National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins

■ 18. Table 1 to subpart U of part 63 is amended by adding an entry for § 63.1(c)(6) in numerical order, revising the entry for § 63.9(j), and adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART U OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART U AFFECTED SOURCES

Reference	Applies to subpart U	Explanation
* *	* * * * *	*
§ 63.1(c)(6)	Yes.	
* *	* * * * *	*
§ 63.9(j)	Yes	For change in major source status only.
§ 63.9(k)	Yes.	
* *	* * * * *	*
§ 63.10(g)	Yes.	

TABLE 1 TO SUBPART U OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART U AFFECTED SOURCES—Continued

Reference	Applies to subpart U	Explanation
* * * * * * *		

* * * * *

Subpart W–National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production

■ 19. Table 1 to subpart W of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART W OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART W

Reference	Applies to subpart W			Comment
	BLR	WSR	WSR alternative standard, and BLR equipment leak standard (40 CFR part 63, subpart H)	
*	* *	*	* *	*
§ 63.1(c)(6)	Yes	Yes	Yes.	
*	* *	*	* *	*
§ 63.9(k)	Yes	Yes	Yes.	
*	* *	*	* *	*
§ 63.10(g)	Yes	Yes	Yes.	
*	* *	*	* *	*

Subpart X—National Emission Standards For Hazardous Air Pollutants From Secondary Lead Smelting

■ 20. Table 1 to subpart X of part 63 is amended by adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART X OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART X

Reference	Applies to subpart X	Comment
* *	* * *	* * *
63.9(k)	Yes.	
* *	* * *	* * *
63.10(g)	Yes.	
* *	* * *	* * *

* * * * *

Subpart Y—National Emission Standards for Marine Tank Vessel Loading Operations

■ 21. Table 1 of § 63.560 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

§ 63.560 Applicability and designation of affected sources.

* * * * *

TABLE 1 TO § 63.560—GENERAL PROVISIONS APPLICABILITY TO SUBPART Y

Reference	Applies to affected sources in subpart Y	Comment
* *	* * * * * *	
63.1(c)(6)	Yes.	
* *	* * * * * *	
63.9(k)	Yes.	
* *	* * * * * *	
63.10(g)	Yes.	
* *	* * * * * *	

Subpart AA—National Emission Standards for Hazardous Air Pollutants from Phosphoric Acid Manufacturing Plants

■ 22. Appendix A to subpart AA of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

APPENDIX A TO SUBPART AA OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART AA

40 CFR citation	Requirement	Applies to subpart AA	Comment
* *	* * * * * *		
§ 63.1(c)(6)		Yes	None.
* *	* * * * * *		
§ 63.9(k)		Yes	None.
* *	* * * * * *		
§ 63.10(g)		Yes	None.
* *	* * * * * *		

Subpart BB—National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants

■ 23. Appendix A to subpart BB of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

APPENDIX A TO SUBPART BB OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART BB

40 CFR citation	Requirement	Applies to subpart BB	Comment
* *	* * * * * *		
§ 63.1(c)(6)		Yes	None.
* *	* * * * * *		
§ 63.9(k)		Yes	None.
* *	* * * * * *		
§ 63.10(g)		Yes	None.
* *	* * * * * *		

Subpart CC—National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries

■ 24. In appendix to subpart CC of part 63, Table 6 is amended by adding an entry for § 63.1(c)(6) in numerical order, revising the entry for § 63.9(j), and adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

Appendix to Subpart CC of Part 63—Tables

* * * * *

TABLE 6–GENERAL PROVISIONS APPLICABILITY TO SUBPART CC [a]

Reference	Applies to subpart CC	Comment
* *	* * * * * *	
63.1(c)(6)	Yes.	
* *	* * * * * *	
63.9(j)	Yes.	
63.9(k)	Yes.	
* *	* * * * * *	
63.10(g)	Yes.	
* *	* * * * * *	

[a] Wherever subpart A specifies ''postmark'' dates, submittals may be sent by methods other than the U.S. Mail (*e.g.,* by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not required.

* * * * *

Subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations

■ 25. Table 2 to subpart DD of part 63 is amended by adding an entry for § 63.1(c)(6) in numerical order, revising the entry for § 63.9(j), and adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 2 TO SUBPART DD OF PART 63—APPLICABILITY OF PARAGRAPHS IN SUBPART A OF THIS PART 63—GENERAL PROVISIONS TO SUBPART DD

Subpart A reference	Applies to subpart DD	Explanation
* *	* * * * * *	
63.1(c)(6)	Yes.	
* *	* * * * * *	
63.9(j)	Yes	For change in major source status only.
63.9(k)	Yes.	
* *	* * * * * *	
63.10(g)	Yes.	
* *	* * * * * *	

* * * * *

Subpart EE—National Emission Standards for Magnetic Tape Manufacturing Operations

■ 26. Table 1 to subpart EE of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART EE OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EE

Reference	Applies to subpart EE	Comment
* *	* * * * * *	
63.1(c)(6)	Yes.	
* *	* * * * * *	
63.9(k)	Yes.	

TABLE 1 TO SUBPART EE OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EE—Continued

Reference	Applies to subpart EE	Comment
* *	* * * * *	*
63.10(g)	Yes.	
* *	* * * * *	*

Subpart GG—National Emission Standards for Aerospace Manufacturing and Rework Facilities

■ 27. Table 1 to subpart GG of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART GG OF PART 63–GENERAL PROVISIONS APPLICABILITY TO SUBPART GG

Reference	Applies to affected sources in subpart GG	Comment
* *	* * * * *	*
63.1(c)(6)	Yes.	
* *	* * * * *	*
63.9(k)	Yes.	
* *	* * * * *	*
63.10(g)	Yes.	
* *	* * * * *	*

Subpart HH—National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities

■ 28. In appendix to subpart HH of part 63, Table 2 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

Appendix to Subpart HH of Part 63—Tables

* * * * *

TABLE 2 TO SUBPART HH OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH

General provisions reference	Applicable to subpart HH	Explanation
* *	* * * * *	*
§ 63.1(c)(6)	Yes.	
* *	* * * * *	*
§ 63.9(k)	Yes.	
* *	* * * * *	*
§ 63.10(g)	Yes.	
* *	* * * * *	*

Subpart JJ—National Emission Standards for Wood Furniture Manufacturing Operations

■ 29. Table 1 to subpart JJ of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART JJ OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART JJ

Reference	Applies to subpart JJ	Comment
* *	* * * * *	
63.1(c)(6)	Yes.	
* *	* * * * *	
63.9(k)	Yes.	
* *	* * * * *	
63.10(g)	Yes.	
* *	* * * * *	

Subpart KK—National Emission Standards for the Printing and Publishing Industry

■ 30. Table 1 to subpart KK of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART KK OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KK

General provisions reference	Applicable to subpart KK	Comment
* *	* * * * *	
§ 63.1(c)(6)	Yes.	
* *	* * * * *	
§ 63.9(k)	Yes.	
* *	* * * * *	
§ 63.10(g)	Yes.	
* *	* * * * *	

Subpart LL—National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants

■ 31. Appendix A to subpart LL of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

Appendix A to Subpart LL of Part 63—Applicability of General Provisions

Reference sections(s)	Requirement	Applies to subpart LL	Comment
* *	* * * * *	*	
63.1(c)(6)	Becoming an area source	Yes.	
* *	* * * * *	*	
63.9(k)	Electronic reporting procedures	Yes	Only as specified in 63.9(j).
* *	* * * * *	*	
63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* *	* * * * *	*	

Subpart MM—National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

■ 32. Table 1 to subpart MM of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART MM OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART MM

General provisions reference	Summary of requirements	Applies to subpart MM	Explanation
* *	* *	* *	* *
63.1(c)(6)	Becoming an area source	Yes.	
* *	* *	* *	* *
63.9(k)	Electronic reporting procedures	Yes	Only as specified in 63.9(j).
* *	* *	* *	* *
63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* *	* *	* *	* *

Subpart CCC—National Emission Standards for Hazardous Air Pollutants for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants

■ 33. Table 1 to subpart CCC of part 63 is amended by adding entries for §§ 63.9(j), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART CCC OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART CCC

Reference	Applies to subpart CCC	Explanation
* *	* *	* *
63.9(j)	Yes.	
63.9(k)	Yes.	
* *	* *	* *
63.10(g)	Yes.	
* *	* *	* *

Subpart DDD—National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production

■ 34. Table 1 to subpart DDD of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART DDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART DDD OF PART 63

General provisions citation	Requirement	Applies to subpart DDD?	Explanation
* *	* *	* *	* *
§ 63.1(c)(6)	Becoming an area source	Yes.	
* *	* *	* *	* *
§ 63.9(k)		Yes.	

TABLE 1 TO SUBPART DDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART DDD OF PART 63—Continued

General provisions citation	Requirement	Applies to subpart DDD?	Explanation
* *	* *	* *	* *
§ 63.10(g)	Additional CMS Reports Excess Emission/CMS Performance Reports COMS Data Reports Recordkeeping/Reporting Waiver Recordkeeping for electronic reporting.	Yes.	
* *	* *	* *	* *

Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors

■ 35. Table 1 to subpart EEE of part 63 is amended by adding an entry for § 63.9(k) to read as follows:

TABLE 1 TO SUBPART EEE OF PART 63—GENERAL PROVISIONS APPLICABLE TO SUBPART EEE

Reference	Applies to subpart EEE	Explanation
* *	* *	* *
63.9(k)	Yes.	
* *	* *	* *

Subpart GGG—National Emission Standards for Pharmaceuticals Production

■ 36. Table 1 to subpart GGG of part 63 is amended by adding an entry for § 63.1(c)(6) in numerical order, revising the entry for § 63.9(j), and adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART GGG OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART GGG

General provisions reference	Summary of requirements	Applies to subpart GGG	Comments
* *	* *	* *	* *
63.1(c)(6)	Becoming an area source	Yes.	
* *	* *	* *	* *
63.9(j)	Change in information provided	Yes.	For change in major source status only
63.9(k)	Electronic reporting procedures	Yes.	Only as specified in 63.9(j)
* *	* *	* *	* *
63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* *	* *	* *	* *

Subpart HHH—National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities

■ 37. Table 2 to subpart HHH of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

APPENDIX: TABLE 2 TO SUBPART HHH OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HHH

General provisions Reference	Applicable to subpart HHH	Explanation
* *	* * * * * * *	
§ 63.1(c)(6)	Yes.	
* *	* * * * * * *	
§ 63.9(k)	Yes.	
* *	* * * * * * *	
§ 63.10(g)	Yes.	
* *	* * * * * * *	

Subpart III—National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production

■ 38. Table 1 to subpart III of part 63 is amended by adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART III OF PART 63—APPLICABILITY GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART III

Subpart A reference	Applies to subpart III	Comment
* *	* * * * * * *	
§ 63.9(k)	Yes.	
* *	* * * * * * *	
§ 63.10(g)	Yes.	
* *	* * * * * * *	

Subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

■ 39. Table 1 to subpart JJJ of part 63 is amended by adding an entry for §§ 63.1(c)(6) in numerical order, revising the entry for § 63.9(j), and adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART JJJ OF PART 63–APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES

Reference	Applies to subpart JJJ	Explanation
* *	* * * * * * *	
§ 63.1(c)(6)	Yes.	
* *	* * * * * * *	
§ 63.9(j)	Yes	For change in major source status only
§ 63.9(k)	Yes.	
* *	* * * * * * *	
§ 63.10(g)	Yes.	
* *	* * * * * * *	

Subpart LLL—National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

■ 40. Table 1 to subpart LLL of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART LLL OF PART 63—APPLICABILITY OF GENERAL PROVISIONS

Citation	Requirement	Applies to subpart LLL	Explanation
* * * * * * *			
63.1(c)(6)	Becoming an area source	Yes.	
* * * * * * *			
63.9(k)	Electronic reporting procedures	Yes.	
* * * * * * *			
63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* * * * * * *			

Subpart MMM—National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

■ 41. Table 1 to subpart MMM of part 63 is amended by adding an entry for §§ 63.1(c)(6) in numerical order, revising the entry for § 63.9(j), and adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART MMM OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART MMM

Reference to subpart A	Applies to subpart MMM	Explanation
* * * * * * *		
§ 63.1(c)(6)	Yes.	
* * * * * * *		
§ 63.9(j)	Yes	For change in major source status only, 63.1368(h) specifies procedures for other notification of changes.
§ 63.9(k)	Yes.	
* * * * * * *		
63.10(g)	Yes.	
* * * * * * *		

Subpart NNN—National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing

■ 42. Table 1 to subpart NNN of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9–(k), and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART NNN OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART NNN

General provisions citation	Requirement	Applies to subpart NNN?	Explanation
* * * * * * *			
§ 63.1(c)(6)		Yes.	
* * * * * * *			
§ 63.9(k)		Yes.	

TABLE 1 TO SUBPART NNN OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART NNN—Continued

General provisions citation	Requirement	Applies to subpart NNN?	Explanation
* *	* *	* *	* *
§ 63.10(g)	Additional CMS Reports Excess Emission/CMS Performance Reports COMS Data Reports Recordkeeping/Reporting Waiver Recordkeeping for electronic reporting.	Yes.	
* *	* *	* *	* *

Subpart OOO—National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins

■ 43. Table 1 to subpart OOO of part 63 is amended by adding an entry for § 63.1(c)(6) in numerical order, revising the entry for § 63.9(j), and adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART OOO OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOO AFFECTED SOURCES

Reference	Applies to subpart OOO	Explanation
* *	* *	* *
63.1(c)(6)	Yes.	
* *	* *	* *
63.9(j)	Yes.	For change in major source status only.
63.9(k)	Yes.	
* *	* *	* *
63.10(g)	Yes.	
* *	* *	* *

Subpart PPP—National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production

■ 44. Table 1 to subpart PPP of part 63 is amended by adding an entry for §§ 63.1(c)(6) in numerical order, revising the entry for § 63.9(j), and adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART PPP OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES

Reference	Applies to subpart PPP	Explanation
* *	* *	* *
63.1(c)(6)	Yes.	
* *	* *	* *
63.9(j)	Yes.	For change in major source status only.
63.9(k)	Yes.	
* *	* *	* *
63.10(g)	Yes.	
* *	* *	* *

Subpart QQQ—National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting

■ 45. Revise § 63.1441 to read as follows:

§ 63.1441 Am I subject to this subpart?

You are subject to this subpart if you own or operate a primary copper smelter that is (or is part of) a major source of hazardous air pollutant (HAP) emissions, and your primary copper smelter uses batch copper converters as defined in § 63.1459. Your primary copper smelter is a major source of HAP if it emits or has the potential to emit any single HAP at the rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year.

■ 46. Table 1 to subpart QQQ of part 63 is amended by adding an entry for § 63.10(g) in numerical order to read as follows:

* * * * *

TABLE 1 TO SUBPART QQQ OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQ

Citation	Subject	Applies to subpart QQQ	Explanation
* *	*	* *	* *
§ 63.10 (g)	Recordkeeping for electronic reporting.	Yes.	
* *	*	* *	* *

Subpart RRR—National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

■ 47. Appendix A to subpart RRR of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

Appendix A to Subpart RRR of Part 63—General Provisions Applicability to Subpart RRR

Citation	Requirement	Applies to subpart RRR	Comment
* *	*	* *	* *
§ 63.1(c)(6)	Becoming an area source	Yes.	
* *	*	* *	* *
§ 63.9(k)	Electronic reporting procedures	Yes.	
* *	*	* *	* *
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* *	*	* *	* *

Subpart TTT—National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting

■ 48. Table 1 to subpart TTT of part 63 is amended by adding entries for §§ 63.9(j), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART TTT OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART TTT

Reference	Applies to subpart TTT	Comment
* *	*	* * * *
63.9(j)	Yes.	
63.9(k)	Yes.	
* *	*	* * * *
63.10(g)	Yes.	
* *	*	* * * *

Subpart UUU—National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units

■ 49. Table 44 to subpart UUU of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

* * * * *

TABLE 44 TO SUBPART UUU OF PART 63—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART UUU

Citation	Subject	Applies to subpart UUU	Explanation
* *	*	* * *	* *
§ 63.1(c)(6)	Becoming an area source	Yes.	
* *	*	* * *	* *
§ 63.9(k)	Electronic reporting procedures	Yes.	
* *	*	* * *	* *
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* *	*	* * *	* *

Subpart VVV—National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works

■ 50. Table 1 to subpart VVV of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART VVV OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART VVV

General provisions reference	Applicable to subpart VVV	Explanation
* *	*	* * * *
§ 63.1(c)(6)	Yes.	
* *	*	* * * *
§ 63.9(k)	Yes.	
* *	*	* * * *
§ 63.10(g)	Yes.	
* *	*	* * * *

Subpart XXX—National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese

■ 51. Table 1 to subpart XXX of part 63 is amended by adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART XXX OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART XXX

Reference	Applies to subpart XXX	Comment
* *	*	* * * *
§ 63.9(k)	Yes.	
* *	*	* * * *
§ 63.10(g)	Yes.	
* *	*	* * * *

Subpart DDDD—National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products

■ 52. Table 10 to subpart DDDD of part 63 is amended by adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 10 TO SUBPART DDDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDD

Citation	Subject	Brief description	Applies to subpart DDDD
* *	*	* *	* *
§ 63.9(k)	Electronic reporting procedures	Electronic reporting procedures	Yes.
* *	*	* *	* *
§ 63.10(g)	Recordkeeping for electronic reporting.	Recordkeeping for electronic reporting.	Yes.
* *	*	* *	* *

Subpart EEEE—National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)

■ 53. Table 12 to subpart EEEE of part 63 is amended by revising the entry for § 63.9(j) and adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 12 TO SUBPART EEEE OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE

Citation	Subject	Brief description	Applies to subpart EEEE
* *	*	* *	* *
§ 63.9(j)	Change in Previous Information	Must submit within 15 days after the change.	Yes for change to major source status, other changes are reported in the first and subsequent compliance reports.
§ 63.9(k)	Electronic reporting procedures	Procedure to report electronically for notification in 63.9(j).	Yes.
* *	*	* *	* *
§ 63.10(g)	Recordkeeping for electronic reporting.		Yes.

.

Subpart FFFF—National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing

■ 54. Table 12 to subpart FFFF of part 63 is amended by revising the entry for § 63.9(j) and adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 12 TO SUBPART FFFF OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFF

Citation	Subject	Explanation
* *	*	* * *
§ 63.9(j)	Change in previous information	Yes for change in major source status, otherwise § 63.2520(e) specifies reporting requirements for process changes.
§ 63.9(k)	Electronic reporting procedures	Yes, as specified in 63.9(j).

TABLE 12 TO SUBPART FFFF OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFF—Continued

Citation	Subject	Explanation
* * * * * * *		
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.
* * * * * * *		

Subpart GGGG—National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production

■ 55. Table 1 to § 63.2870 is amended by adding entries for §§ 63.9(j), 63.9(k), and 63.10(g) in numerical order to read as follows:

§ 63.2870 What Parts of the General Provisions apply to me?

* * * * *

TABLE 1 TO § 63.2870—APPLICABILITY OF 40 CFR PART 63, SUBPART A, TO 40 CFR PART 63, SUBPART GGGG

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
* * * * * * *				
§ 63.9(j)	Notification requirements	Change in previous information.	Yes.	
§ 63.9(k)	Notification requirements	Electronic reporting procedures.	Yes.	
* * * * * * *				
§ 63.10(g)	Recordkeeping	Recordkeeping for electronic reporting.	Yes.	
* * * * * * *				

Subpart HHHH—National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production

■ 56. Table 2 to subpart HHHH of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 2 TO SUBPART HHHH OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART HHHH

Citation	Requirement	Applies to subpart HHHH	Explanation
* * * * * * *			
§ 63.1(c)(6)		Yes.	
* * * * * * *			
§ 63.9(k)	Electronic reporting procedures	Yes.	
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* * * * * * *			

Subpart IIII—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks

■ 57. Table 2 to subpart IIII of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 2 TO SUBPART IIII OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIII OF PART 63

* * * * * * *

Citation	Subject	Applicable to subpart IIII	Explanation
* * * * * * *			
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * * * * * *			
§ 63.9(k)	Electronic reporting procedures	Yes.	
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* * * * * * *			

Subpart JJJJ—National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating

■ 58. Table 2 to subpart JJJJ of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 2 TO SUBPART JJJJ OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART JJJJ

* * * * * * *

General provisions reference	Applicable to subpart JJJJ	Explanation
* * * * * * *		
§ 63.1(c)(6)	Yes.	
* * * * * * *		
§ 63.9(k)	Yes.	
* * * * * * *		
§ 63.10(g)	Yes.	
* * * * * * *		

Subpart KKKK—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans

■ 59. Table 5 to subpart KKKK of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 5 TO SUBPART KKKK OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK

* * * * * * *

Citation	Subject	Applicable to subpart KKKK	Explanation
* * * * * * *			
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * * * * * *			
§ 63.9(k)	Electronic reporting procedures	Yes.	

TABLE 5 TO SUBPART KKKK OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKK—Continued

Citation	Subject	Applicable to subpart KKKK	Explanation
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* * * * * * *			

Subpart MMMM—National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products

■ 60. Table 2 to subpart MMMM of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 2 TO SUBPART MMMM OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM OF PART 63

Citation	Subject	Applicable to subpart MMMM	Explanation
* * * * * * *			
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * * * * * *			
§ 63.9(k)	Electronic reporting procedures	Yes.	
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* * * * * * *			

Subpart NNNN—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances

■ 61. Table 2 to subpart NNNN of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 2 TO SUBPART NNNN OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNN

Citation	Subject	Applicable to subpart NNNN	Explanation
* * * * * * *			
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * * * * * *			
§ 63.9(k)	Electronic reporting procedures	Yes.	
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* * * * * * *			

Subpart OOOO—National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles

■ 62. Table 3 to subpart OOOO of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 3 TO SUBPART OOOO OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART OOOO

* * * * * * *

Citation	Subject	Applicable to subpart OOOO	Explanation
* * * * * * *			
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * * * * * *			
§ 63.9(k)	Electronic reporting procedures	Yes.	
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* * * * * * *			

Subpart PPPP—National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products

■ 63. Table 2 to subpart PPPP of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

* * * * *

TABLE 2 TO SUBPART PPPP OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPP OF PART 63

* * * * * * *

Citation	Subject	Applicable to subpart PPPP	Explanation
* * * * * * *			
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * * * * * *			
§ 63.9(k)	Electronic reporting procedures	Yes.	
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* * * * * * *			

Subpart QQQQ—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products

■ 64. Table 4 to subpart QQQQ of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 4 TO SUBPART QQQQ OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQ OF PART 63

* * * * * * *

Citation	Subject	Applicable to subpart QQQQ	Explanation
* * * * * * *			
§ 63.1(c)(6)	Becoming an area source	Yes.	

TABLE 4 TO SUBPART QQQQ OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQ OF PART 63—Continued

Citation	Subject	Applicable to subpart QQQQ	Explanation
* * * * * * *			
§ 63.9(k)	Electronic reporting procedures	Yes.	
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* * * * * * *			

Subpart RRRR—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture

■ 65. Table 2 to subpart RRRR of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 2 TO SUBPART RRRR OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART RRRR

Citation	Subject	Applicable to subpart	Explanation
* * * * * * *			
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * * * * * *			
§ 63.9(k)	Electronic reporting procedures	Yes.	
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* * * * * * *			

Subpart SSSS—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil

■ 66. Table 2 to subpart SSSS of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 2 TO SUBPART SSSS OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSS

General provisions reference	Applicable to subpart SSSS	Explanation
* * * * * * *		
§ 63.1(c)(6)	Yes.	
* * * * * * *		
§ 63.9(k)	Yes.	
* * * * * * *		
§ 63.10(g)	Yes.	
* * * * * * *		

Subpart TTTT—National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations

■ 67. Table 2 to subpart TTTT of part 63 is amended by adding entries for §§ 63.9(j), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 2 TO SUBPART TTTT OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTT

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
*	*	*	*	*
§ 63.9(j)	Notification requirements	Change in previous information.	Yes.	
§ 63.9(k)	Notification requirements	Electronic reporting procedures.	Yes.	
*	*	*	*	*
§ 63.10(g)	Recordkeeping	Recordkeeping for electronic reporting.	Yes.	
*	*	*	*	*

Subpart UUUU—National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing

■ 68. Table 8 to subpart UUUU of part 63 is amended by revising entry 7 to read as follows:

TABLE 8 TO SUBPART UUUU OF PART 63—REPORTING REQUIREMENTS

You must submit a compliance report, which must contain the following information . . .	and you must submit the report . . .
*	*
7. the report must contain any changes in information already provided, as specified in § 63.9(j), except changes in major source status must be reported per § 63.9(j);	
*	*

■ 69. Table 10 to subpart UUUU of part 63 is amended by revising the entry for § 63.9(j) and adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 10 TO SUBPART UUUU OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART UUUU

Citation	Subject	Brief description	Applies to subpart UUUU
*	*	*	*
§ 63.9(j)	Change in previous information	Must submit within 15 days of the change.	Yes, except the notification for all but change in major source status must be submitted as part of the next semiannual compliance report, as specified in Table 8 to this subpart.
§ 63.9(k)	Electronic reporting procedures	Procedure for electronically reporting the notification required by 63.9(j).	Yes, as specified in 63.9(j).

TABLE 10 TO SUBPART UUUU OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART UUUU—Continued

Citation	Subject	Brief description	Applies to subpart UUUU
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Electronically reported data may be stored electronically.	Yes.
* * * * * * *			

Subpart VVVV—National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing

■ 70. Table 8 to subpart VVVV of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 8 TO SUBPART VVVV OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART VVVV

Citation	Requirement	Applies to subpart VVVV	Explanation
* * * * * * *			
§ 63.1(c)(6)		Yes.	
* * * * * * *			
§ 63.9(k)	Electronic reporting procedures	Yes.	
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* * * * * * *			

Subpart WWWW—National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production

■ 71. Table 2 to subpart WWWW of part 63 is amended by revising entry 1 to read as follows:

TABLE 2 TO SUBPART WWWW OF PART 63—COMPLIANCE DATES FOR NEW AND EXISTING REINFORCED PLASTIC COMPOSITES FACILITIES

If your facility is . . .	And . . .	Then you must comply by this date . . .
* * * * * * *		
1. An existing source	a. Is a major source on or before the publication date of this subpart.	April 21, 2006.
* * * * * * *		

■ 72. Table 15 to subpart WWWW of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 15 TO SUBPART WWWW OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART WWWW OF PART 63

The general provisions reference . . .	That addresses . . .	And applies to subpart WWWW of part 63 . . .	Subject to the following additional information . . .
* * * * * * *			
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * * * * * *			
§ 63.9(k)	Electronic reporting procedures	Yes.	
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* * * * * * *			

Subpart XXXX—National Emissions Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing

■ 73. Table 17 to subpart XXXX of part 63 is amended by adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 17 TO SUBPART XXXX OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART XXXX

Citation	Subject	Brief description of applicable sections	Applicable to subpart XXXX?	
			Using a control device	Not using a control device
* * * * * * *				
§ 63.9(k)	Notification	Electronic reporting procedures.	Yes	Yes.
* * * * * * *				
§ 63.10(g)	Recordkeeping	Recordkeeping for report submitted electronically.	Yes	Yes.
* * * * * * *				

Subpart YYYY—National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines

■ 74. Table 7 to subpart YYYY of part 63 is amended by adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 7 TO SUBPART YYYY OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART YYYY

Citation	Requirement	Applies to subpart YYYY	Explanation
* * * * * * *			
§ 63.9(k)	Electronic reporting procedures	Yes.	
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* * * * * * *			

Subpart ZZZZ—National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines

§§ 63.9(k) and § 63.10(g) in numerical order to read as follows:

■ 75. Table 8 to subpart ZZZZ of part 63 is amended by adding entries for

TABLE 8 TO SUBPART ZZZZ OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART

General provisions citation	Subject of citation	Applies to subpart	Explanation
* * * * * * *			
§ 63.9(k)	Electronic reporting procedures	Yes.	
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* * * * * * *			

Subpart AAAAA—National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants

§§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

* * * * *

■ 76. Table 8 to subpart AAAAA of part 63 is amended by adding entries for

TABLE 8 TO SUBPART AAAAA OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART AAAAA

Citation	Summary of requirement	Am I subject to this requirement?	Explanations
* * * * * * *			
§ 63.1(c)(6)	Becoming an area source	Yes.	
* * * * * * *			
§ 63.9(k)	Electronic reporting procedures	Yes.	
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* * * * * * *			

Subpart CCCCC—National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks

§ 63.10(g) in numerical order to read as follows:

■ 77. Table 1 to subpart CCCCC of part 63 is amended by adding entry for

TABLE 1 TO SUBPART CCCCC OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART CCCCC

Citation	Subject	Applies to Subpart CCCCC?	Explanations
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* * * * * * *			

Subpart DDDDD—National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters

■ 78. Table 10 to subpart DDDDD of part 63 is amended by adding an entry for § 63.10(g) in numerical order to read as follows:

TABLE 10 TO SUBPART DDDDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART DDDDD

Citation	Subject	Applies to subpart DDDDD
* * * * * * *		
63.10(g)	Recordkeeping for reports submitted electronically.	Yes.
* * * * * * *		

Subpart EEEEE—National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries

■ 79. Table 1 to subpart EEEEE of part 63 is amended by adding an entry for § 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART EEEEE OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEEE

Citation	Subject	Applies to Subpart EEEEE?	Explanations
* * * * * * *			
63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* * * * * * *			

Subpart FFFFF—National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities

■ 80. Table 4 to subpart FFFFF of part 63 is amended by adding an entry for § 63.10(g) in numerical order to read as follows:

TABLE 4 TO SUBPART FFFFF OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFFF

Citation	Subject	Applies to Subpart FFFFF	Explanations
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* * * * * * *			

Subpart GGGGG—National Emission Standards for Hazardous Air Pollutants: Site Remediation

■ 81. Table 3 to subpart GGGGG of part 63 is amended by adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 3 TO SUBPART GGGGG OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG

Citation	Subject	Brief description	Applies to subpart GGGGG
* * * * * * *			
§ 63.9(k)	Electronic reporting procedures	Electronic reporting procedures for notifications per 63.9(j).	Yes.
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Electronically reported data may be stored electronically.	Yes.
* * * * * * *			

Subpart HHHHH—National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

■ 82. Table 10 to subpart HHHHH of part 63 is amended by revising the entry for § 63.9(j) and adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 10 TO SUBPART HHHHH OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART HHHHH

Citation	Subject	Explanation
* * * * * * *		
§ 63.9(j)	Change in previous information	Yes for change in major source status, otherwise § 63.8075(e)(8) specifies reporting requirements for process changes.
§ 63.9(k)	Electronic reporting procedures	Yes, as specified in 63.9(j).
* * * * * * *		
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.
* * * * * * *		

Subpart IIIII—National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants

■ 83. Table 10 to subpart IIIII of part 63 is amended by adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 10 TO SUBPART IIIII OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIIII

Citation	Subject	Applies to subpart IIIII	Explanation
* * * * * * *			
§ 63.9(k)	Electronic reporting procedures	Yes.	
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* * * * * * *			

Subpart JJJJJ—National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing

■ 84. Table 10 to subpart JJJJJ of part 63 is amended by adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 10 TO SUBPART JJJJJ OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJJJ

Citation	Subject	Brief description	Applies to subpart JJJJJ?
* * * * * * *			
§ 63.9(k)	Electronic reporting procedures	Electronic reporting procedures for notifications per 63.9(j).	Yes.
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Electronically reported data may be stored electronically.	Yes.
* * * * * * *			

Subpart KKKKK—National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing

■ 85. Table 11 to subpart KKKKK of part 63 is amended by adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 11 TO SUBPART KKKKK OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKKK

Citation	Subject	Brief description	Applies to subpart KKKKK?
* * * * * * *			
§ 63.9(k)	Electronic reporting procedures	Electronic reporting procedures for notifications per 63.9(j).	Yes.
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Electronically reported data may be stored electronically.	Yes.
* * * * * * *			

Subpart LLLLL—National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing

■ 86. Table 7 to subpart LLLLL of part 63 is amended by adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 7 TO SUBPART LLLLL OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART LLLLL

Citation	Subject	Brief description	Applies to subpart LLLLL
* * * * * * *			
§ 63.9(k)	Electronic reporting procedures	Electronic reporting procedures for notifications per 63.9(j).	Yes.
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Electronically reported data may be stored electronically.	Yes.
* * * * * * *			

Subpart MMMMM—National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations

■ 87. Table 7 to subpart MMMMM of part 63 is amended by adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 7 TO SUBPART MMMMM OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMMM

Citation	Requirement	Applies to subpart MMMMM	Explanation
* * * * * * *			
§ 63.9(k)	Electronic reporting procedures	Yes.	
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* * * * * * *			

Subpart NNNNN—National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production

■ 88. Table 7 to subpart NNNNN of part 63 is amended by adding entries for §§ 63.9(k) and § 63.10(g) in numerical order to read as follows:

TABLE 7 TO SUBPART NNNNN OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN

Citation	Requirement	Applies to subpart NNNNN	Explanation
* * * * * * *			
§ 63.9(k)	Electronic reporting procedures	Yes.	
* * * * * * *			
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* * * * * * *			

Subpart PPPPP—National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands

■ 89. Table 7 to subpart PPPPP of part 63 is amended by adding entries for §§ 63.1(c)(6), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 7 TO SUBPART PPPPP OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPP

Citation	Subject	Brief description	Applies to subpart PPPPP
* * * * * * *			
§ 63.1(c)(6)	Applicability	Becoming an area source	Yes.
* * * * * * *			
§ 63.9(k)	Notifications	Electronic reporting procedures	Yes.
* * * * * * *			
§ 63.10(g)	Recordkeeping	Recordkeeping for electronic reporting.	Yes.
* * * * * * *			

Subpart QQQQQ—National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities

■ 90. Revise § 63.9485(a) to read as follows:

§ 63.9485 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a friction materials manufacturing facility (as defined in § 63.9565) that is (or is part of) a major source of hazardous air pollutants (HAP) emissions. Your friction materials manufacturing facility is a major source of HAP if it emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

* * * * *

■ 91. Table 1 to subpart QQQQQ of part 63 is amended by adding entries for §§ 63.9(j), 63.9(k), and 63.10(g) in numerical order to read as follows:

TABLE 1 TO SUBPART QQQQQ OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQQ

Citation	Subject	Applies to subpart QQQQQ?	Explanation
* *	* *	*	* *
§ 63.9(j)	Changes to information already provided.	Yes.	
§ 63.9(k)	Electronic reporting procedures	Yes.	
* *	* *	*	* *
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* *	* *	*	* *

Subpart RRRRR—National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing

■ 92. Revise § 63.9581 to read as follows:

§ 63.9581 Am I subject to this subpart?

You are subject to this subpart if you own or operate a taconite iron ore processing plant that is (or is part of) a major source of hazardous air pollutant (HAP) emissions. Your taconite iron ore processing plant is a major source of HAP if it emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year.

■ 93. Table 2 to subpart RRRRR of part 63 is amended by adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 2 TO SUBPART RRRRR OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART RRRRR OF PART 63

* * * * * * *

Citation	Subject	Applies to subpart RRRRR	Explanation
* *	* *	*	* *
§ 63.9(k)	Electronic reporting procedures	Yes.	
* *	* *	*	* *
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* *	* *	*	* *

Subpart SSSSS—National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing

■ 94. Table 11 to subpart SSSSS of part 63 is amended by adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 11 TO SUBPART SSSSS OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSSS

* * * * * * *

Citation	Subject	Brief description	Applies to subpart SSSSS
* *	* *	*	* *
§ 63.9(k)	Notifications	Electronic reporting procedures	Yes.
* *	* *	*	* *
§ 63.10(g)	Recordkeeping	Recordkeeping for electronic reporting.	Yes.

TABLE 11 TO SUBPART SSSSS OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSSS—Continued

Citation	Subject	Brief description	Applies to subpart SSSSS
*	*	*	*

Subpart TTTTT—National Emissions Standards for Hazardous Air Pollutants for Primary Magnesium Refining

■ 95. Table 5 to subpart TTTTT of part 63 is amended by adding an entry for § 63.10(g) in numerical order to read as follows:

TABLE 5 TO SUBPART TTTTT OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTTT OF PART 63

Citation	Subject	Applies to subpart TTTTT	Explanation
*	*	*	*
63.10(g)	Recordkeeping for electronic reporting.	Yes.	
*	*	*	*

Subpart UUUUU—National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units

■ 96. Table 9 to subpart UUUUU of part 63 is amended by adding an entry for § 63.10(g) in numerical order to read as follows:

TABLE 9 TO SUBPART UUUUU OF PART 63—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART UUUUU

Citation	Subject	Applies to subpart UUUUU
*	*	*
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes
*	*	*

Subpart WWWWW—National Emission Standards for Hospital Ethylene Oxide Sterilizers

■ 97. Table 1 to subpart WWWWW of part 63 is amended by removing the entry for § 63.9(d)-(j), and adding entries in alphanumerical order for §§ 63.9(d)–(i), 63.9(j)–(k), and 63.10(g) to read as follows:

TABLE 1 TO SUBPART WWWWW OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART WWWWW

Citation	Subject	Applies to subpart WWWWW	Explanation
*	*	*	*
§ 63.9(d)–(i)	Other notifications	No.	
§ 63.9(j)–(k)	Change in information already submitted Electronic reporting.	Yes.	
*	*	*	*
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	

TABLE 1 TO SUBPART WWWWW OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART WWWWW—Continued

Citation	Subject	Applies to subpart WWWWW	Explanation
* * * * * * *			

Subpart BBBBBB—National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities

■ 98. Table 3 to subpart BBBBBB of part 63 is amended by adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 3 TO SUBPART BBBBBB OF PART 63—APPLICABILITY OF GENERAL PROVISIONS

Citation	Subject	Brief description	Applies to subpart BBBBBB
* * * * * * *			
§ 63.9(k)	Notifications	Electronic reporting procedures	Yes.
* * * * * * *			
§ 63.10(g)	Recordkeeping	Recordkeeping for electronic reporting.	Yes.

Subpart CCCCCC—National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities

■ 99. Table 3 to subpart CCCCCC of part 63 is amended by adding entries for §§ 63.9(k) and § 63.10(g) in numerical order to read as follows:

TABLE 3 TO SUBPART CCCCCC OF PART 63—APPLICABILITY OF GENERAL PROVISIONS

Citation	Subject	Brief description	Applies to subpart CCCCCC
* * * * * * *			
§ 63.9(k)	Notifications	Electronic reporting procedures	Yes.
* * * * * * *			
§ 63.10(g)	Recordkeeping	Recordkeeping for electronic reporting.	Yes.
* * * * * * *			

Subpart HHHHHH—National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources

■ 100. Revise § 63.11175(a) introductory text to read as follows:

§ 63.11175 What notifications must I submit?

(a) Initial Notification. If you are the owner or operator of a paint stripping operation using paint strippers containing MeCl and/or a surface coating operation subject to this subpart, you must submit the initial notification required by § 63.9(b). For a new affected source, you must submit the Initial Notification no later than 180 days after initial startup or July 7, 2008, whichever is later. For an existing affected source, you must submit the initial notification no later than January 11, 2010 or no later than 120 days after the source becomes subject to this subpart. The initial notification must provide the information specified in paragraphs (a)(1) through (8) of this section.

* * * * *

Subpart XXXXXX—National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories

■ 101. Revise § 63.11519(a)(1) introductory text to read as follows:

§ 63.11519 What are my notifications, recordkeeping, and reporting requirements?

(a) What notifications must I submit?—(1) *Initial notification.* If you are the owner or operator of an area source in one of the nine metal

fabrication and finishing source categories, as defined in § 63.11514, you must submit the initial notification required by § 63.9(b), for a new affected source no later than 120 days after initial startup or November 20, 2008, whichever is later. For an existing affected source, you must submit the initial notification no later than July 25, 2011 or no later than 120 days after the source becomes subject to this subpart. Your initial notification must provide the information specified in paragraphs (a)(1)(i) through (iv) of this section.

* * * * *

Subpart YYYYYY—National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities

■ 102. Revise § 63.11529(a) to read as follows:

§ 63.11529 What are the notification, reporting, and recordkeeping requirements?

(a) *Initial notification.* You must submit the initial notification required by § 63.9(b)(2) no later than 120 days after December 23, 2008 or no later than 120 days after the source becomes subject to this subpart. The initial notification must include the information specified in § 63.9(b)(2)(i) through (b)(2)(iv).

* * * * *

Subpart AAAAAAA—National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing

■ 103. Revise § 63.11564(a)(2) to read as follows:

§ 63.11564 What are my notification, recordkeeping, and reporting requirements?

(a) * * *

(2) As specified in § 63.9(b)(2), if you have an existing affected source, you must submit an initial notification not later than 120 calendar days after December 2, 2009 or no later than 120 days after the source becomes subject to this subpart.

* * * * *

Subpart BBBBBBB—[Amended]

■ 104. Revise § 63.11585(b)(1) to read as follows:

§ 63.11585 What are my notification, recordkeeping, and reporting requirements?

* * * * *

(b) * * *

(1) Initial notification of applicability. If you own or operate an existing affected source, you must submit an initial notification of applicability as required by § 63.9(b)(2) no later than April 29, 2010 or no later than 120 days after the source becomes subject to this subpart. If you own or operate a new affected source, you must submit an initial notification of applicability required by § 63.9(b)(2) no later than 120 days after initial start-up of operation or April 29, 2010, whichever is later. The initial notification of applicability must include the information specified in § 63.9(b)(2)(i) through (iii).

* * * * *

Subpart CCCCCCC—National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing

■ 105. Revise § 63.11603(a)(1) introductory text to read as follows:

§ 63.11603 What are the notification, recordkeeping, and reporting requirements?

(a) * * *

(1) Initial notification of applicability. If you own or operate an existing affected source, you must submit an initial notification of applicability required by § 63.9(b)(2) no later than June 1, 2010, or no later than 120 days after the source becomes subject to this subpart. If you own or operate a new affected source, you must submit an initial notification of applicability required by § 63.9(b)(2) no later than 180 days after initial start-up of the operations or June 1, 2010, whichever is later. The notification of applicability must include the information specified in paragraphs (a)(1)(i) through (iii) of this section.

* * * * *

Subpart HHHHHHH—National Emission Standards for Hazardous Air Pollutant Emissions for Polyvinyl Chloride and Copolymers Production

■ 106. Table 4 to subpart HHHHHHH of part 63 is amended by adding entries for §§ 63.9(k) and 63.10(g) in numerical order to read as follows:

TABLE 4 TO SUBPART HHHHHHH OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO PART 63

Citation	Subject	Applies to subpart HHHHHHH	Comment
* *	*	* * *	*
§ 63.9(k)	Electronic reporting procedures	Yes.	
* *	*	* * *	*
§ 63.10(g)	Recordkeeping for electronic reporting.	Yes.	
* *	*	* * *	*

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