

# Overview

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- ▶ Reclassification of Major Sources as Area Sources (MM2A)
- ▶ Court split on reviewing preconstruction permitting decisions in Title V permitting process
- ▶ Update to guidance databases

# 2020 MM2A Final Rule

## Statutory Authority

- ▶ Finalizes EPA’s plain language reading of CAA section 112 definitions of “major source” and “area source”
  - ▶ Definitions do not
    - fix a source’s status at any particular point in time
    - suggest a cut-off date after source’s status cannot change
- ▶ Statute plain language: A major source taking enforceable limits on PTE to bring HAP emissions below the MST becomes an area source regardless of timing
  - Source no longer subject to major source requirements as long as *actual and potential* HAP emissions remain below the MST
  - Source instead subject to applicable area source requirements
- ▶ Concludes that provisions that would prevent a source that reclassifies from increasing emissions above what the source was allowed to emit when it was a major source would be contrary to the plain language of the statute

# 2020 MM2A Final Rule

## Regulatory Amendments

- ▶ Finalizes amendments to existing GP (40 CFR 63 subpart A)
  - ▶ Applicability
    - New provision allowing sources to reclassify at anytime
  - ▶ Timing for Compliance with Applicable Standards
    - Immediate compliance with applicable standards when a source reclassifies
  - ▶ Notification Requirements
    - Electronic notification of initial notification and notification of change in status
  - ▶ Recordkeeping Requirements
    - Removal of 5-yr record retention limit for applicability determination for sources that obtain new PTE limits
  - ▶ Interaction with Enforcement Actions
    - Reclassification does not absolve a source subject to an enforcement action or investigation for violations or infractions that occurred before the source reclassified
- ▶ Finalizes amendments to individual NESHAP Subparts: Account for final amendments to GP
  - ▶ Removes OIAI date limitations for reclassification
  - ▶ Updates dates for initial notification requirements that are in the past
  - ▶ Amends GP Tables
- ▶ Defers issue of enforceability of PTE HAP limits and effectiveness criteria but includes a ministerial revision of the PTE definition in the interim

# Next Steps

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- ▶ Final rule was signed on October 1, 2020
- ▶ Published in 85 FR 73854 November 19, 2020
- ▶ Effective Date: January 19, 2021
- ▶ More information available at:
  - ▶ <https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean>

# Reviewing NSR Decisions in Title V

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- ▶ Petition on PacificCorp Energy, Hunter Power Plant in Utah
  - ▶ EPA order Oct. 16, 2017
- ▶ Petition on ExxonMobil Corp., Baytown Olefins Plant in Texas
  - ▶ EPA order March 1, 2018
- ▶ May 29, 2020 decision in 5<sup>th</sup> Circuit (Louisiana, Mississippi, and Texas) agreed with EPA
- ▶ July 2, 2020 decision in 10<sup>th</sup> Circuit (Oklahoma, **Kansas**, New Mexico, Colorado, Wyoming and Utah) agreed with Sierra Club

# Guidance Database Updates

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- ▶ NSR Policy and Guidance

- ▶ <https://www.epa.gov/nsr/new-source-review-policy-and-guidance-document-index>

- ▶ Title V

- ▶ Policy and Guidance

- <https://www.epa.gov/title-v-operating-permits/title-v-operating-permit-policy-and-guidance-document-index>

- ▶ Petitions

- <https://www.epa.gov/title-v-operating-permits/title-v-petition-database>

- ▶ EPA active “Guidance Documents” for EO 13891

- ▶ <https://www.epa.gov/guidance>

# Guidance Database Updates

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- ▶ Have created topic groupings for NSR and Title V Policy and Guidance Documents
- ▶ Working on adding issues addressed summary to topic document lists.
- ▶ Will continue to keep current and historic documents in our Policy and Guidance databases
- ▶ Documents in database link to other documents in database but some browsers do not display PDF files correctly so you cannot see the links.
- ▶ Can still use search page to search for any word or phrase that appears in any of the databases documents.

# Quesitons

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