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Client Alert: U.S. EPA Issues Final Rule Overturning ‘Once In, Always In’ Policy for Major Sources of Hazardous Air Pollutants

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This provides an important update to our January 2018 [Client Alert](#) regarding U.S. EPA's 'Once In, Always In' policy for major sources of hazardous air pollutants (HAPs). On October 1, 2020, U.S. EPA issued a final rule amending the general provisions of the National Emission Standards for Hazardous Air Pollutants (NESHAP), at 40 CFR Part 63, Subpart A.

The final rule implements the plain language reading for the definitions of "major source" and "area source" under Section 112 of the Clean Air Act (CAA). Notably, the final rule also amends the NESHAP applicability provision in 40 CFR 63.1 by adding a new paragraph – (c) (6) – that specifies that a major source can be reclassified as an area source at any time upon limiting its potential to emit HAP to below the major source threshold of 10 tons/year for any single HAP and 25 tons/year of any combination of HAP. Once the reclassification becomes effective, the source is subject to any applicable area source NESHAP requirements in 40 CFR Part 63. U.S. EPA's final rule effectively codifies a January 25, 2018 guidance document reversing the Agency's long-standing controversial policy that any facility subject to major source NESHAP requirements would always remain subject to those requirements, even if the facility's processes changed or controls were implemented that eliminated or permanently reduced that facility's potential to emit HAP.

Facilities in a position to take advantage of reclassification under U.S. EPA's final rule should be mindful of the new notification procedures and record keeping and reporting requirements under the final rule. Please contact us with any questions or for assistance regarding your facility's permitting and emission requirements.

A pre-publication version of the final rule is available [here](#). The final rule will become effective 60 days after it is published in the Federal Register.