



## 40 CFR Part 63

[EPA-HQ-OAR-2023-0330; FRL-4908.3-02-OAR]

### **Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act; Correction**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction.

**SUMMARY:** The Environmental Protection Agency (EPA) is making corrections to the Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act (CAA) final rule that appeared in the *Federal Register* on September 10, 2024.

Following publication of this final rule, the EPA discovered an inadvertent typographical error in the regulatory text and is correcting the error in this action.

**DATES:** The final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2023-0330. All documents in the docket are listed on the <https://www.regulations.gov/> website. 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 form. Publicly available docket materials are available electronically through <https://www.regulations.gov/>.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Kennedy, Mail Drop: D243-02, 109 T.W. Alexander Drive, P.O. Box 12055, RTP, North Carolina 27711; telephone number: (919) 541-1548; and email address: [kennedy.john@epa.gov](mailto:kennedy.john@epa.gov).

## **I. Summary of Final Action**

The EPA is making a correction to the Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act (CAA) final rule that appeared in the *Federal Register* on September 10, 2024 (89 FR 73293). In the September 10, 2024, final rule, the EPA amended 40 CFR 63.1(c)(6) to include a requirement that sources subject to certain major source NESHAP used to meet the Agency's obligations under the CAA for seven specific persistent and bioaccumulative pollutants must remain subject to those NESHAP even if the sources reclassify to area source status.

Following publication of this final rule, the EPA discovered an inadvertent typographical error in the regulatory text in 40 CFR 63.1(c)(6) and is correcting the error in this action. Specifically, as finalized on September 10, 2024, the regulatory text in 40 CFR 63.1(c)(6)(iii) included a reference to 40 CFR part 63 subpart HHH (National Emission Standards for Hazardous Air Pollutants from Natural Gas Transmission and Storage Facilities) instead of the correct reference, 40 CFR part 63 subpart MMM (National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production). This error was included in the table of CAA 112(c)(6) categories placed in the docket for the Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act (docket ID: EPA-HQ-OAR-2023-0330-0033). The table included the correct source category rule name, National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production, but instead of referencing the correct regulation reference to 40 CFR part 63 subpart MMM, it referenced 40 CFR part 63 subpart HHH. This error found in the table included in the docket was cross referenced in the regulatory text of the final rulemaking. This action corrects this inadvertent typographical error by removing the reference to 40 CFR part 63 subpart HHH from 40 CFR 63.1(c)(6)(iii) and adding the correct reference to 40 CFR part 63 subpart MMM.

## **II. Rulemaking Procedures**

The EPA's authority for the rulemaking procedures followed in this action is provided

by the Administrative Procedure Act (APA), 5 U.S.C. 553. In general, an agency issuing a rule must provide prior notice and an opportunity for public comment, but APA section 553(b)(B) includes an exemption from notice-and-comment requirements “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” This action is being issued without prior notice or opportunity for public comment because the EPA finds that the APA “good cause” exemption from notice-and-comment requirements applies here.

Following notice-and-comment procedures is unnecessary for this action. This action corrects a typographical error to correct a reference in 40 CFR 63.1(c)(6)(iii) to 40 CFR part 63 subpart MMM instead of 40 CFR part 63 subpart HHH. It is critical to timely correct the identified error to avoid confusion.

This action is effective immediately upon publication. The APA typically requires publication of a final rule to precede its effective date by at least 30 days unless, as relevant here, the agency finds good cause to make the rule effective sooner. APA section 553(b)(B). Under APA section 553(d), these technical corrections are both necessary and beneficial to regulated entities in understanding and complying with the final rule’s requirements. Further, because this rule does not impose any new regulatory requirements, the regulated community does not need time to prepare for it to come into effect. *See Omnipoint Corp. v. Fed. Comm’n Comm’n*, 78 F.3d 620, 630 (D.C. Cir. 1996) (in determining whether good cause exists to make a rule immediately effective, an agency should “balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling”).

Good cause exists for this rule to be made immediately effective. The EPA has balanced the necessity for immediate implementation against the benefits of delaying implementation. Because this rule makes a typographical correction to a rule that has already

been promulgated, the public is aware of the content of the rule. Making the corrections effective immediately will make the regulatory text consistent with what the proposed rule and the preamble to the final rule have described.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

**Michael S. Regan,**

*Administrator*

For the reasons set forth in the preamble, the Environmental Protection Agency is amending title 40, chapter I, part 63 of the Code of Federal Regulations as follows:

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

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

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

**Subpart A — General Provisions**

2. Amend § 63.1 by revising paragraph (c)(6)(iii) as follows:

**§ 63.1 Applicability.**

\* \* \* \* \*

(c) \* \* \*

(6) \* \* \*

(iii) After September 10, 2024, affected sources subject to the following 40 CFR part 63 subparts on September 10, 2024, must remain subject to those subparts, and any modifications thereafter, even if the source becomes an area source by reducing both its actual emissions and potential to emit hazardous air pollutants to below major source thresholds: F, G, H, I, L, R, X, CC, GG, II, JJ, KK, LL, MM, EEE, JJJ, LLL, MMM, RRR, UUU, FFFF, JJJJ, MMMM, PPPP, ZZZZ, CCCCC, DDDDD, FFFFF, IIIII, LLLLL, YYYYY, JJJJJ, EEEEEEE.

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