



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2023-0330; FRL-4908.2-01-OAR]

RIN 2060-AW28

Congressional Review Act Revocation of 2024 Review of Final Rule Reclassification of Major Sources as Area Sources under Section 112 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) is amending the Code of Federal Regulations (CFR) to remove the provisions finalized by the EPA in a 2024 rule titled “Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act” (2024 Rule) and restoring the language of the final rule titled “Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act,” published November 19, 2020, and with minor corrections published December 28, 2020. Under the Congressional Review Act (CRA), Congress passed, and the President signed, a joint resolution of disapproval of the 2024 Rule. The 2024 Rule amended the General Provisions that apply to National Emission Standards for Hazardous Air Pollutants (NESHAP) by requiring certain sources of persistent and bioaccumulative hazardous air pollutants (HAP) listed in Clean Air Act (CAA) section 112(c)(6) to continue to comply with major source emission standards under CAA section 112(d)(2) or standards under CAA section 112(d)(4) even if the sources reclassify as area sources. Under the joint resolution and by operation of the CRA, the 2024 Rule has no legal force or effect.

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

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2023-0330. All documents in the docket are listed at <https://www.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. The EPA does not place certain other material, such as copyrighted material, on the Internet; this material is publicly available only as PDF versions accessible only on EPA computers in the docket office reading room. The public cannot download certain data bases and physical items from the docket but may request these items by contacting the docket office at 202-566-1744. The docket office has 10 business days to respond to such requests. With the exception of such material, publicly available docket materials are available electronically at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For information about this final rule, contact U.S. EPA, Attn: Ms. Angela M. Ortega, Mail Drop: D243-02 109 T.W. Alexander Drive, P.O. Box 12055, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-4197; and email address: ortega.angela@epa.gov.

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. Throughout this document the use of “we,” “us,” or “our” refers to the EPA. 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:

APA	Administrative Procedure Act
CAA	Clean Air Act
CBI	Confidential Business Information
CFR	Code of Federal Regulations
CRA	Congressional Review Act
EPA	Environmental Protection Agency
FR	<i>Federal Register</i>
HAP	hazardous air pollutant(s)
MACT	maximum achievable control technology
NESHAP	national emission standards for hazardous air pollutants
NTTAA	National Technology Transfer and Advancement Act
OMB	Office of Management and Budget

PDF	portable document format
PRA	Paperwork Reduction Act
RFA	Regulatory Flexibility Act
RIA	Regulatory Impact Analysis
UMRA	Unfunded Mandates Reform Act of 1995
U.S.C.	United States Code

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I. Does this action apply to me?

Regulated entities. Categories and entities potentially impacted by this rule include major sources of HAP that were subject to certain major source NESHAP requirements and that reclassified from a major to an area source of HAP pursuant to the requirements in 40 CFR part 63 subpart A, implementing CAA section 112. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

II. Background and Rationale for This Final Action

On January 25, 2018, the EPA issued a guidance memorandum titled, “Reclassification of Major Sources as Areas Sources Under Section 112 of the Clean Air

Act.”¹ The memorandum discussed the statutory provisions that govern when a major source subject to a major source NESHAP under CAA section 112 may be reclassified as an area source, and thereby avoid being subject to major source NESHAP requirements. The guidance also rescinded the May 1995 “Once In, Always In Policy.”²

On October 1, 2020, the EPA finalized a rule titled “Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act” (also known as Major MACT (Maximum Achievable Control Technology) to Area Rule or 2020 Final Rule).³ The 2020 Final Rule allowed major sources of HAP to reclassify as an area source at any time after taking steps to limit emissions.

On September 10, 2024, the EPA finalized a rule titled “Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act.”⁴ This 2024 Rule amended the 2020 Final Rule. Specifically, the 2024 Rule amended the NESHAP General Provisions in 40 CFR 63.1(c)(6) to require that sources subject to major source NESHAP used to meet the Agency's obligations under CAA section 112(c)(6) for seven specific persistent and bioaccumulative HAP remain subject to those major source NESHAP, even if the sources reclassify to area source status. In addition, the 2024 Rule made minor amendments to the notification requirements in 40 CFR 63.9.

The United States Senate passed a joint resolution, S.J. Res. 31, on May 1, 2025, disapproving the 2024 Rule under the CRA, 5 U.S.C. 801 et seq. The United States House of Representatives passed S.J. Res. 31 on May 22, 2025, and President Donald J.

¹ See notice of issuance of this guidance memorandum at 83 FR 5543 (February 8, 2018).

² “Potential to Emit for MACT Standards—Guidance on Timing Issues,” from John Seitz to the EPA Regional Air Division Directors (May 16, 1995) (“May 1995 Seitz Memorandum”).

³ 85 FR 73854, November 19, 2020.

⁴ 89 FR 73293, September 10, 2024.

Trump signed it into law as Public Law (Pub. L.) 119-20 on June 20, 2025. Under the joint resolution and by operation of the CRA, the 2024 Rule has no legal force or effect.

III. Final Action

This final action revises the CFR by removing the now nullified amendments that had been codified under the 2024 Rule, thus returning the rule to the version finalized in the 2020 Final Rule.

The EPA is taking this ministerial action as a final rule without providing an opportunity for public comment or a public hearing because the EPA finds that the Administrative Procedure Act (APA) “good cause” exemption to notice-and-comment rulemaking applies here.⁵ The EPA has determined that good cause exists to take this final action because the correction of the CFR is a ministerial act to effectuate S.J. Res. 31 and the operation of the CRA. The CRA joint resolution became law on June 20, 2025, at which point the 2024 Rule ceased to have any legal force or effect. As such, public notice and comment is unnecessary and would serve no useful purpose.

For these reasons, the EPA finds good cause to issue a final rulemaking without undergoing public notice and comment, in conformance with 5 U.S.C. 553(b)(B).

IV. Statutory and Executive Order Review

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is considered an Executive Order 14192 deregulatory action.

⁵ 5 U.S.C. 553(b)(B).

The present value (PV) of the regulatory costs savings beginning in 2025 using a 7 percent discount rate over an infinite time horizon is \$935.8 million in 2024 dollars discounted to 2024. The equivalent annual value (EAV) is \$65.5 million dollars (in 2024 dollars). Details on the estimated cost savings of this final rule can be found in EPA’s analysis of the potential costs and benefits associated with this action, which can be found in the docketed memo *Derivation of Regulatory Cost Savings under Executive Order 14912*. To reflect the CRA nullification, this final rule removes from the CFR provisions that keep sources subject to certain major source NESHAP after reclassification to area source status, thus provides regulatory certainty to sources, permitting authorities, and other stakeholders.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This final action is ministerial in nature and does not contain any information collection activities.

D. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the Agency has invoked the APA “good cause” exemption under 5 U.S.C. 553(b)(B).

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or Tribal governments.

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 does not have Tribal implications as specified in Executive Order 13175. This action is ministerial in nature. Thus, Executive Order 13175 does not apply to this action.

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.

Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, the EPA’s Policy on Children’s Health also does not apply.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under EO 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Congressional Review Act (CRA)

As discussed earlier in this document, this action reflects the effect of the joint resolution to disapprove the 2024 Rule under the CRA.

L. Judicial Review

Under CAA section 307(b)(1), any petition for review of this final rule must be filed in the U.S. Court of Appeals for the District of Columbia Circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Congressional Review Act, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Lee Zeldin,

Administrator.

Under the authority of the Congressional Review Act and Public Law 119-20, 139 Stat. 71, the Environmental Protection Agency amends part 63 of title 40, chapter I, 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

§ 63.1 [Amended]

2. Amend § 63.1 by removing paragraph (c)(6)(iii).

3. Amend § 63.9 by revising paragraphs (j) and (k) introductory text, and removing paragraph (k)(3) to read as follows:

§ 63.9 Notification requirements.

* * * * *

(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 (j). 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 (j). A source which reclassified after January 25, 2018, and before January 19, 2021, and has not yet provided the notification of a change in information is required to provide such notification no later than February 2, 2021, according to the requirements of paragraph (k) of this section. Beginning January 19, 2021, 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. A notification of reclassification must contain the following information:

- (1) The name and address of the owner or operator;
 - (2) The address (i.e., physical location) of the affected source;
 - (3) An identification of the standard being reclassified from and to (if applicable);
- and
- (4) Date of effectiveness of the reclassification.

(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. The EPA will make all the information submitted through CEDRI available to the public without further notice to you. Do not use CEDRI to submit information you claim as confidential business information (CBI). Anything submitted using CEDRI cannot later be claimed to be CBI. Although we do not expect persons to assert a claim of CBI, if persons wish to assert a 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). All CBI claims must be asserted at the time of submission. Furthermore, under section 114(c) of the Act emissions data is not entitled to confidential treatment and requires the EPA to make emissions data available to the

public. Thus, emissions data will not be protected as CBI and will be made publicly available.

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[FR Doc. 2025-24202 Filed: 12/31/2025 8:45 am; Publication Date: 1/2/2026]