

# Regulatory Requirements for New HAP Additions to Section 112

**Post Proposal Outreach**  
**September 2023**

# Outline

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- Regulatory History of Hazardous Air Pollutants (HAP) Listing
- Overview of Proposed Requirements

# Clean Air Act section 112 HAP

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- Congress provided an initial list of HAP, and further provided guidelines for the listing of new HAP and delisting of existing HAP. These actions can be taken by:
  - Petitions from public
  - Administrator's own action
- The Administrator must grant the petition per section 112(b)(3) if he/she determines that the substance is an air contaminant and is known to cause or could reasonably be expected to cause adverse effects on human health or the environment
- To date, EPA has finalized four delisting actions. In 2022, the first HAP was added to the Section 112 HAP list.

# Questions when a new HAP is listed

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1. When is a new HAP officially a HAP?
2. Can a facility's status change from the addition of a new HAP? If so, when?
3. When/how is it included in previously promulgated rules?
4. What happens if a facility becomes a major source from a listing?
  - A. Is it an existing or new affected source?
  - B. When does it have to be in compliance?

# Question and Answer Document- Interim Guidance

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- January 5, 2022: published online, concurrent with listing action for 1-bromopropane
- Document provides guidance to EPA regional and state/local/tribal permitting authorities as well as to potentially impacted industries and the general public
- Addressed some, but not all, of the implementation questions
- Interpretation of full regulatory requirements left to states/regulatory authorities

# Regulatory Requirements for New HAP- “Infrastructure”

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- Proposes to codify positions included in Q and A document; provide rationale
- Proposes regulatory requirements for questions not answered in Q and A document
- Provides structure for future additions to the HAP list

# When is a new HAP officially a HAP?

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- On and after the effective date of a listing (30 days after FR notice)
  - Must be included in HAP actual/PTE calculations
  - Must be considered in Title V

# A facility may immediately become a major source

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- Before listing, a facility that was an area (“true” or “synthetic”), can become major solely from addition of new HAP in the calculation of actual or potential emissions
- Some individual NESHAP and the General Provisions provided compliance for sources that transition from area to major when source **“increases its emissions or PTE”**
- The HAP infrastructure rule creates term- “major source due to listing,” or ***MSDL***, to differentiate these facilities from others
- ***EPA concluded that no previous provisions directly address MSDL facilities***



# What about previously promulgated NESHAP?

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- No NESHAP promulgated before a HAP listing can retroactively include the new HAP
  - CAA section 112(d) requires EPA to consider each HAP prior to regulating
  - A newly listed HAP would not have been evaluated for MACT limits
  - Terms “Total HAP,” “volatile HAP,” do not include newly listed HAP
- Each NESHAP will be evaluated for the new HAP in the 8-year review cycle

# MSDL Facilities

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- These are the only facilities with potential for NESHAP applicability upon listing, but not directly for the new HAP
- Any major source NESHAP potentially applicable to emission sources
- Definition of “new” and “existing” in all NESHAP
  - Based on date source was constructed
  - Before new HAP, MSDL complied with area source requirements, with no knowledge that EPA action would change their status
- Compliance time periods vary

# MSDL Facilities- Applicable requirements

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- Considered whether MSDL should be subject to existing or new source MACT
- All MSDL facilities would be subject to existing source MACT
  - Facilities constructed with no reasonable belief that their status would change without action on their part
  - Clean Air Act links “new” with ability to consider “preconstruction”

# MSDL Facilities- Compliance Period

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- Four compliance options were discussed in the proposal
  1. No change
  2. Compliance based on time period for existing sources in “original NESHAP”
  3. One compliance date for all MSDL-created requirements
  4. Compliance date based on whether control device is required or not, with additional time being provided if installation of control is necessary
- Preferred option is Option 4

# Next Steps

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- No public hearing requested
- 60-day public comment period- ends November 13, 2023
- Final rule in 2024
  
- After listing of a new HAP, individual NESHAP will be evaluated for impact of newly listed HAP during regularly scheduled technology reviews or risk and technology reviews.

# Questions?

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