



## National Tribal Air Association's Fact Sheet on EPA's "Once In Always In" Policy Change

### **What are MACT and "Once In Always In"?**

MACT refers to the Maximum Achievable Control Technology standard and is a level of control specific to each industry. "Once in always in" is a policy that means that a major source of hazardous air pollutants (HAPs), or a facility that emits or has the potential to emit more than 10 tons per year of a single HAP or 25 tons per year of all HAPs, would always remain subject to MACT standards, and could not seek reclassification as an area source (area sources are subject to more lenient standards) once the compliance date of the MACT standard had past. MACT standards frequently require major sources to reduce their emissions of HAPs well below the tons per year threshold that initially made them major sources. On January 25, 2018, EPA issued a guidance memorandum that withdrew this policy, meaning that if a source that was previously classified as a "major source" limited its potential to emit below major source thresholds, it may be reclassified as an "area" source rather than continuing to need to use MACT.<sup>1</sup> This could allow many major sources to increase their emissions of HAPs from the MACT level to the major source thresholds or the less stringent area source levels. This may also allow the source to drop out of Title V permitting (with its monitoring, reporting, and recordkeeping requirements that help enforcement) if there were no other major source applicable requirements. EPA states that this change is intended to reward sources that take steps to reduce HAP emissions below the major source thresholds, such as through installing pollution controls, or limiting production. On July 26, 2019, EPA published a proposal to withdraw the "once in always in" policy through changes to the relevant regulations.

### **How does this affect my Tribe?**

Tribes should review the current emissions profiles of major sources on Tribal land and/or near their boundaries, whether privately or Tribally owned. Tribes should consider the impacts on their regulation of these sources and air quality generally if they were to reclassify as area sources. For example, under §505 "Notification to Administrator and Contiguous States," Tribes with Treatment as a State status may no longer receive notification for reclassified sources within 50 miles if they were only subject to Title V because of the MACT requirement. This means that the Tribe's ability to track sources around them may be diminished. The [Union of Concerned Scientists published maps](#) that indicate potential emissions increases by Congressional district as well as facilities that are affected by this rule change.

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<sup>1</sup> <https://www.epa.gov/newsreleases/reducing-regulatory-burdens-epa-withdraws-once-always-policy-major-sources-under-clean>

There is also the potential that sources that reclassify as area sources might increase emissions of HAPs since they would no longer need to comply with MACT. In 1995, OAQPS issued a Memorandum titled “Potential to Emit for MACT Standards – Guidance on Timing Issues” which predicted this concern, stating:

*EPA believes that this once in, always in policy follows most naturally from the language and structure of the statute. In many cases, application of MACT will reduce a major emitter's emissions to levels substantially below the major thresholds. Without a once in, always in policy, these facilities could "backslide" from MACT control levels by obtaining potential-to-emit limits, escaping applicability of the MACT standard, and increasing emissions to the major-source threshold (10/25 tons per year). Thus, the maximum achievable emissions reductions that Congress mandated for major sources would not be achieved. A once in, always in policy ensures that MACT emissions reductions are permanent, and that the health and environmental protection provided by MACT standards is not undermined.<sup>2</sup>*

One question that remains unanswered is in regards to public comments. Since states are the entity responsible for the review process and approving reclassification applications, will they be taking public comments, or will they see this as a process that does not need public input? If they do not take public comments, Tribes will be unable to weigh in with air quality concerns.

### **Comments and Further Information**

Comments were originally due by September 24, 2019; EPA closed the comment period on that date, then reopened it for 30 days, through November 1, 2019. All information for submitting comments can be found on [www.regulations.gov](http://www.regulations.gov), using [Docket Number EPA-HQ-OAR-2019-0282](#). The NTAA held a webinar on this topic which was posted on the [NTAA Policy Response Kit webpage](#), and will be producing a template letter that your Tribe can use to help with commenting. EPA has posted information [on their website here](#). Any questions can be directed to the NTAA’s Project Director, Andy Bessler, at [Andy.Bessler@nau.edu](mailto:Andy.Bessler@nau.edu) or 928-523-0526.

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<sup>2</sup> <https://www.epa.gov/sites/production/files/2015-08/documents/pteguid.pdf>