

**PROPOSED RULE: RECLASSIFICATION OF MAJOR SOURCES AS AREA SOURCES  
UNDER SECTION 112 OF THE CLEAN AIR ACT  
FACT SHEET**

**ACTION**

- On June 25, 2019, the U.S. Environmental Protection Agency (EPA) proposed regulatory text stating that a major source of hazardous air pollutants (HAP) may reclassify as an area source at any time after taking steps to limit emissions. A “major source” emits 10 tons per year or more of a single HAP or 25 tons per year or more of a combination of HAP.
- This proposal would implement EPA’s reading of the Clean Air Act (CAA) discussed in the agency’s January 2018 guidance memorandum, “Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act.”
- The January 2018 guidance withdrew the agency’s 1995 “once in, always in” (OIAI) policy, which stated that any facility subject to national emission standards for hazardous air pollutants (NESHAP) as a major source would always remain subject to those standards unless the source reduced its maximum emissions, known as potential to emit (PTE), below major source thresholds before the first substantive compliance date. Under EPA’s reading of the Clean Air Act, sources of HAP previously classified as major sources may be reclassified as area sources when the facility limits its PTE below major source thresholds using an enforceable permit or other mechanism. There is no time limitation.
- This proposed action would provide sources that have reduced HAP emissions to below major source thresholds the flexibility to reclassify to area source status. In many cases, sources have taken steps to reduce their emissions through effective pollution prevention activities. By reclassifying, these sources would benefit from a reduced and more appropriate compliance burden. Reclassified sources may be exempt from the requirement to obtain an operating permit under title V of the CAA and may be subject to CAA section 112 area source requirements rather than major source requirements.
- This proposal may also encourage sources with emissions above major source thresholds to evaluate their operations and consider changes that can further reduce their HAP emissions to below the major source thresholds.
- EPA expects that three general types of sources may seek to reclassify as area sources:
  1. Sources previously classified as major that are no longer physically or operationally capable of emitting HAP in amounts that exceed the major source thresholds;
  2. Sources previously classified as major that have existing enforceable PTE limits that keep HAP emissions below the major source thresholds; and

3. Sources with actual emissions above the major source thresholds that (1) reduce emissions to below the major source thresholds and (2) put in place enforceable emissions limits.

- EPA is proposing criteria for establishing effective HAP PTE limits. These limits must be legally and practicably enforceable.
- EPA solicits comment on all aspects of this proposal, including the agency's position that the proposed approach is the proper reading of the statutory definitions in CAA section 112(a) and is consistent with the clear language and structure of the CAA, and whether safeguards may be appropriate to protect against emissions increases.
- This proposal replaces the 2007 proposal. This action also addresses questions received after the issuance of the January 2018 guidance memorandum and proposes amendments to the General Provisions.

#### **COSTS and EMISSIONS IMPACTS**

- Even though the actions of sources and businesses in response to this proposal would be voluntary, EPA estimates that this proposal would result in cost savings when compared to the agency's previous OIAI policy. EPA assessed the impacts of this proposed rule by identifying the source categories likely to be affected and evaluating associated costs, cost savings and, where possible, emissions impacts resulting from the reclassification of major sources as area sources under section 112 of the CAA.
- Under its primary scenario, EPA identified facilities with actual HAP emissions already below 75 percent of the threshold for being a major source—below 7.5 tons per year (tpy) for one HAP and 18.75 tpy for any HAP. Of the estimated 7,920 sources subject to NESHAP as a major source, EPA estimates nearly half of them could become area sources, saving \$168.9 million in the first year and \$163 million to \$183 million annually (in 2014 dollars) in the following years.
- EPA also evaluated more stringent and less stringent scenarios. The more stringent scenario looked at facilities with actual HAP emissions already below 50 percent of the major source thresholds. The less stringent scenario included facilities with HAP emissions up to 125 percent of the major source thresholds. Each alternative resulted in overall cost savings.
- To develop an understanding of the potential emission impacts of this proposed rule, EPA evaluated 34 sources that have already reclassified as area sources as allowed by CAA section 112 and explained in EPA's guidance memorandum issued January 25, 2018. These sources fall into five general categories: coatings, oil and gas, fuel combustion/boilers, chemical sources and heavy industry.
- While EPA did not attempt to quantify emissions changes for all source categories

associated with this proposal, the agency's emissions analysis found that, for many facilities, reclassifying from major source to area source status is not expected to result in an increase in those sources' HAP emissions. In addition, there are protections in place that would prevent emissions increases, such as other non-HAP regulatory requirements that also control HAP emissions.

- For some source categories, EPA expects there will be either no emissions increases or some emissions decreases. For some facilities, if permitting authorities were to allow for changes in the operating parameters of adjustable add-on control technologies, these changes could potentially result in emissions increases.

## **BACKGROUND**

- HAP, also known as toxic air pollutants or air toxics, are those pollutants that are known or suspected to cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental effects. EPA is working with state, local, and tribal governments to reduce emissions of 187 toxic air pollutants.
- Section 112 of the CAA establishes the regulatory structure for the control of sources that emit HAP. Within the regulatory framework of CAA section 112, major sources are, with certain exceptions, subject to NESHAP based on maximum achievable control technology (MACT). Area sources may be subject to NESHAP based on generally available control technology standards rather than MACT.
- In May 1995, EPA produced the "Potential to Emit for MACT Standards – Guidance on Timing Issues" memorandum, which is commonly referred to as the "once in, always in" (OIAI) policy or the "1995 Seitz Memo." At the time, EPA took the position that facilities that are major sources of HAP on the first significant compliance date of an applicable major source NESHAP must comply "permanently" with that standard and, thus, be subject to title V permitting, even if the sources were to later become area sources by limiting their emissions. This position was transitional policy guidance, intended to remain in effect only until the agency proposed and promulgated amendments to the 40 CFR part 63 General Provisions.
- In response to 2017 Executive Orders 13777 and 13783, EPA received comments on the OIAI policy, many of which asserting that section 112 of the CAA does not support the time limitation imposed by EPA's policy and that the policy created disincentives for major sources to reduce emissions.
- On January 25, 2018, EPA issued a guidance memorandum titled "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act." The memorandum discusses the statutory provisions that govern when a major source subject to a major source NESHAP under section 112 of the CAA may be reclassified as an area source, and thereby avoid being subject to major source NESHAP requirements. It discussed the clear language of CAA section 112(a) regarding Congress's unambiguous definitions of major

source and area source and explained that the OIAI policy articulated in the May 1995 memorandum is contrary to the clear language of the CAA and, therefore, was withdrawn. In the 2018 memorandum, EPA indicated that a *Federal Register* notice would be issued to take comment on adding regulatory text consistent with EPA's reading of the statute.

### **HOW TO COMMENT**

- EPA will accept comments for 60 days after the proposal is published in the *Federal Register*.
- Comments, identified by Docket ID No. EPA-HQ-OAR-2019-0282, may be submitted by one of the following methods:
  - Go to <https://www.regulations.gov/> and follow the online instructions for submitting comments. **This is our preferred method of receiving comments.**
  - Send comments by email to [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov), Attention Docket ID No. EPA-HQ-OAR-2019-0282.
  - Fax your comments to: 202-566-9744, Attention Docket ID No. EPA-HQ-OAR-2019-0282.
  - Mail your comments to: EPA Docket Center, Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2019-0282.
  - Deliver comments in person or via express mail, commercial delivery, hand delivery, or courier to: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. Delivery verification signatures will be available only during regular business hours.