

## FACT SHEET

### Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act (MM2A) – Proposed Action

#### ACTION

- On September 21, 2023, the U.S. Environmental Protection Agency (EPA) proposed to amend Clean Air Act rules to safeguard public health and promote transparency and accountability when major sources of hazardous air pollutants (HAPs) reclassify themselves as area sources under the National Emissions Standards for Hazardous Air Pollutants (NESHAP) program.
- These amendments would strengthen public health protections by requiring sources, that choose to reclassify from major sources to area sources, to establish federally enforceable permit conditions that contain safeguards to prevent emission increases above the levels allowed by the major source NESHAP a source was subject to prior to reclassification. “Major sources” emit or have the potential to emit (PTE) 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of a combination of HAP. “Area sources” emit HAP at levels below those thresholds.
- The proposed requirements would apply to all sources that choose to reclassify, including any sources which have reclassified since January 25, 2018.
- Reclassification would be effective only after a permit containing the federally enforceable conditions has been issued and EPA has been notified. In addition, this action would clarify reporting requirements and update information regarding submission of confidential business information.
- In October 2020, EPA issued a final rule entitled Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act, also known as “MM2A”, to allow a major source of hazardous air pollutants (HAP) to reclassify as an area source at any time after taking steps to limit emissions. EPA expected that this action could encourage some major sources to evaluate their operations and consider changes to further reduce their HAP emissions. In general, area source emissions control and reporting requirements are less burdensome than the requirements for major sources.
- On January 20, 2021, President Biden issued Executive Order 13990 Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. This Executive Order directed the EPA to review actions promulgated during the prior four years and determine whether they should be revised or rescinded as appropriate and consistent with applicable law. The final MM2A rule was identified as an action to review under the Executive Order.
- EPA will accept comment on the proposed amendments for 45 days after publication in the *Federal Register*.

## **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, birth defects, or adverse environmental effects. EPA is working with state, local, and tribal governments to reduce emissions of the 187 toxic air pollutants identified by Congress in the Clean Air Act Amendments of 1990.
- 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 an assessment of maximum achievable control technology (MACT). Area sources may be subject to NESHAP based on generally available control technology (GACT) standards rather than MACT.
- The May 1995, memorandum “Potential to Emit for MACT Standards – Guidance on Timing Issues”, which is commonly referred to as the “Once in Always In Policy” or the “1995 Seitz Memorandum” determined 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 Once In Always In Policy, many of which asserted 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 discussed 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 also withdrew the Once In Always In Policy.
- On October 1, 2020, EPA completed a final rule that allows a major source of HAP to reclassify as an area source at any time after taking steps to limit emissions. This proposal would modify this final rule.

## **HOW TO COMMENT**

- EPA will accept comments for 45 days after the proposal is published in the Federal Register.
- Comments, identified by Docket ID No. EPA-HQ-OAR-2023-0330, may be submitted by one of the following methods:
  - Go to <https://www.regulations.gov/> and follow the online instructions for submitting 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-2023-0330.

- Fax your comments to: (202) 566-9744, Attention Docket ID No. EPA-HQ-OAR-2023-0330.
- Mail your comments to: EPA Docket Center, Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Ave, NW, Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2023-0330.
- Deliver comments in person to: EPA Docket Center, 1301 Constitution Ave., NW, Room 3334, Washington, DC. Note: In-person deliveries (including courier deliveries) are only accepted during the Docket Center's normal hours of operation. Special arrangements should be made for deliveries of boxed information.

#### **FOR MORE INFORMATION**

- Interested parties can download a copy of the proposed rule notice from EPA's website at the following address:
  - <https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112>
- Today's action and other background information are also available electronically at <https://www.regulations.gov/>, EPA's electronic public docket and comment system.
  - The Public Reading Room is located at the EPA Headquarters library, room number 3334 in the EPA WJC West Building, 1301 Constitution Avenue, NW, Washington, DC. Hours of operation are 8:30 a.m. to 4:30 p.m., Eastern Standard Time, Monday through Friday, excluding federal holidays.
  - Visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor materials will be processed through an X-ray machine as well. Visitors will be provided a badge that must be visible at all times.
  - Materials for this proposed action can be accessed using Docket ID No. EPA-HQ-OAR-2023-0330
- For further technical information about the rule, contact Nathan Topham, EPA's Office of Air Quality Planning and Standards, at 919-541-0483 or [Topham.Nathan@epa.gov](mailto:Topham.Nathan@epa.gov).