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

ACTION

- On October 1, 2020, the U.S. Environmental Protection Agency (EPA) completed a final action that will allow a major source of hazardous air pollutants (HAP) to reclassify as an area source at any time after taking steps to limit emissions. A "major source" emits or has 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.

- This final action amends the National Emission Standards for Hazardous Air Pollutants (NESHAP) General Provisions to provide sources that reduce emissions and PTE to below these major source thresholds (MST) of 10 and 25 tpy the flexibility to reclassify as an area source. This rule also finalizes amendments to clarify the compliance dates, notification, and recordkeeping requirements that apply to sources choosing to reclassify to area source status and to sources that revert to major source status, including a requirement for electronic notification.

- This action may also encourage sources with emissions above the MST to evaluate their operations and consider changes that can further reduce their HAP emissions to below the MST. Reclassified sources may be exempt from the requirement to obtain an operating permit under title V of the Clean Air Act (CAA) and may be subject to CAA section 112 area source requirements rather than major source requirements.

- This final action implements EPA's current reading of the 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 outlines EPA's reading of the CAA, allowing sources of HAP previously classified as major sources to reclassify as area sources when the facility limits its PTE below the MST using an enforceable permit or other mechanism. There is no time limitation to reduce emissions and reclassify.
    - In addition, the guidance withdrew the agency's 1995 "Once In, Always In" (OIAI) policy, which stated that any facility subject to NESHAP as a major source would always remain subject to those standards unless the source reduced its PTE below the MST before the first substantive compliance date.

- 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 MST;
    2. sources previously classified as major that obtain enforceable PTE limits or that already have existing enforceable PTE limits that keep HAP emissions below the MST; and
    3. sources with actual emissions above the MST that (1) reduce emissions to below the MST and (2) obtain enforceable PTE limits that keep HAP emissions below the MST.

- EPA is not taking final action on the proposed amendments to the definition of PTE, to define "legally and practicably enforceable" PTE limits, or to establish effectiveness criteria for those limits in this action. The agency is still considering comments on this issue and plans to address them in a separate action.

- In the interim, EPA is removing the word "federally" from the phrase "federally enforceable" in the PTE definition. This interim ministerial revision is consistent with the 1995 District of Columbia Circuit Court remand that directed EPA to explain how federal enforceability enhanced effectiveness. PTE limitations must continue to be both legally enforceable by a state or local permitting authority and practicably enforceable.

COSTS and EMISSIONS IMPACTS

- EPA's illustrative analysis estimates that this rule will 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.
    - The analyses for this final rule can only illustrate the potential impacts. Because the rule is not a mandate, and many other uncertainties exist when determining whether a facility will voluntarily seek reclassification, EPA cannot be certain which sources will voluntarily seek reclassification. Ultimately, the decision to reclassify depends on conditions specific to each individual facility.

- Under its primary scenario, EPA identified facilities with actual HAP emissions already below 75 percent of the MST—below 7.5 tpy for one HAP and 18.75 tpy for all HAP. Of the estimated 7,183 sources subject to national emissions standards as a major source, EPA estimates that about one-third of them emit HAP below this 75-percent threshold. If all of these facilities reclassified as area sources, initial permitting costs could result in overall net costs of $16.1 million in the first year; in following years, these reclassifications could result in savings of $90.6 million (both in 2017 dollars).

- EPA also evaluated two alternate scenarios. One scenario looked at facilities with actual HAP emissions already below 50 percent of the MST. The other scenario included facilities with HAP emissions up to 125 percent of the MST, considering costs associated with reducing emissions. Each alternative resulted in overall cost savings.

- EPA reviewed operating permits of 69 reclassification actions completed since January 2018. Sources that had reclassified to area source status, in nearly all cases, achieved and maintain area source status by continuing to operate the emission controls or implement the practices they used to comply with the major source NESHAP requirements.

- While EPA is unable to quantify emissions changes for all source categories associated with

this rule, the agency's emissions analysis found that, for most facilities, reclassifying 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 regulatory requirements that also control HAP emissions. While some sources may increase their emissions after they reclassify, in most cases the potential change in emissions is modest and limited by many factors such as other regulatory limits, technology requirements, and economic reasons.

- In EPA's illustrative analysis of potential emissions impacts, the agency determined that 65 source categories will not change HAP emissions as a result of this final rule. In the primary scenario of this analysis, approximately 130 facilities in seven source categories could increase emissions if they were to reclassify and were allowed to reduce operation of adjustable add-on controls. The potential emissions changes would likely be modest, potentially occurring at a small number of facilities within an impacted industry. Under an alternative scenario analyzed, some facilities might opt to decrease emissions and reclassify to area source status.

- The potential emissions increase suggested by EPA's illustrative analysis range from about 900 tpy to about 1,260 tpy. Note that this is not a projection, just one set of possible outcomes using a particular set of assumptions. Under an alternative scenario analyzed, this final rule could reduce emissions by about 180 tpy.

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 CAA 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.

- In May 1995, EPA produced the "Potential to Emit for MACT Standards – Guidance on Timing Issues" memorandum, which is commonly referred to as the OIAI" policy or the "1995 Seitz Memorandum." 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 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 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 being withdrawn.

FOR MORE INFORMATION

- The fact sheet and a copy of the final rule are on EPA's website at https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean.