

USEPA Proposes Rule Regarding Reclassification of Major Sources to Area Sources Under Section 112 of the Clean Air Act

The U.S. Environmental Protection Agency (USEPA) proposed a rule clarifying that a “major source” of hazardous air pollutants (HAP) can reclassify as an “area source” after acting to limit emissions to below the levels that define major sources. This proposal would relieve reclassified facilities from regulatory requirements intended for much larger emitters and encourage other sources to pursue innovations in pollution reduction technologies, engineering, and work practices.

The Agency’s action would implement EPA’s reading of the Clean Air Act described in a January 2018 guidance memo withdrawing the “once in, always in” policy. Established in 1995, the “once in, always in” policy determined that any facility subject to major source standards would always remain subject to those standards—even if production processes changed or controls were implemented that eliminated or permanently reduced that facility’s potential to emit hazardous air pollutants. States, state organizations, and industries frequently noted that the “once in, always in” policy discouraged voluntary pollution abatement and prevention efforts and technological innovations that would reduce hazardous air pollution emissions. EPA’s January 2018 memo found EPA had no authority under the Clean Air Act to limit when a facility may be determined to be an area source and that facilities may be reclassified as area sources once their potential to emit hazardous air pollutants falls below the levels that define major sources.

EPA estimates that this proposal would result in cost savings when compared to the agency’s previous “once in, always in” policy. Of the estimated 7,920 sources subject to national emissions standards as a major source, EPA estimates nearly half 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 requests comment on all aspects of this proposal, including:

- EPA’s position that the proposed approach is the proper reading of Clean Air Act section 112(a) and is consistent with the act’s clear language and structure.
- Requirements for establishing effective HAP emissions limits.
- Allowing limitations issued by the state/local/tribal air pollution control agencies to be recognized as effective provided they are legally and practically enforceable.
- Safeguards that may be appropriate to protect against emissions increases.

EPA will accept comment on the proposal for 60 days after publication in the *Federal Register*.

For more information on the rulemaking visit: <https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean>