



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

B-332743

December 1, 2020

The Honorable John Barrasso
Chairman
The Honorable Thomas R. Carper
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Frank Pallone, Jr.
Chairman
The Honorable Greg Walden
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Environmental Protection Agency: Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Environmental Protection Agency (EPA) entitled "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act" (RIN: 2060-AM75). We received the rule on October 2, 2020. It was published in the *Federal Register* as a final rule on November 19, 2020. 85 Fed. Reg. 73854. The effective date of this rule is January 19, 2021.

According to EPA, this rule finalizes amendments to the General Provisions that apply to National Emission Standards for Hazardous Air Pollutants (NESHAP). EPA stated these amendments implement the plain language reading of the "major source" and "area source" definitions of section 112 of the Clean Air Act and provide that a major source can be reclassified to area source status at any time upon reducing its potential to emit hazardous air pollutants (HAP) to below the major source thresholds of 10 tons per year (tpy) of any single HAP and 25 tpy of any combination of HAP. See 42 U.S.C. § 7412. EPA stated further that 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 back to major source status, including a requirement for electronic notification.

Enclosed is our assessment of EPA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any

questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is fluid and cursive, with "Shirley" on the top line and "A. Jones" on the bottom line.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Mary Manibusan
Director, Regulatory Management Division
Environmental Protection Agency

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
ENVIRONMENTAL PROTECTION AGENCY
ENTITLED
“RECLASSIFICATION OF MAJOR SOURCES AS AREA SOURCES
UNDER SECTION 112 OF THE CLEAN AIR ACT”
(RIN: 2060-AM75)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) conducted a cost, environmental, and economic impact analysis for this final rule. There are supporting and related material in the docket for this final rule, including technical support memorandums and a regulatory impact analysis. EPA noted the potential costs and cost savings presented are the result of an illustrative assessment because it is unknown how many major sources would choose to take enforceable potential to emit (PTE) limits to levels below the major source thresholds (MST) and reclassify to area source status. EPA estimates that this final rule may result in substantial annual cost savings of \$90.6 million (in 2017 dollars) based on illustrative estimates of its potential reduction in administrative burden if sources reclassify to area source status. EPA stated the voluntary actions taken by sources to reclassify will be carried out over a period of time, but once a source reclassifies, the cost savings will accrue for as long as the source continues to operate as an area source. EPA stated further that its emissions analysis suggests that there may be both emissions increases and decreases, and it is uncertain of the magnitude and geographic distribution of the changes in emissions resulting from this rulemaking across the broad array of sources that could reclassify. As part of the environmental impact analysis EPA stated, that it analyzed the potential impact of this rulemaking on tribal and environmental justice communities. EPA asserted that the final rule would not have an additional impact on most areas of “Indian country” and environmental justice communities.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

EPA certified that this action will not have a significant economic impact on a substantial number of small entities under RFA.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

EPA determined that this rule does not contain an unfunded mandate of \$100 million or more, as described in the Act, and does not significantly or uniquely affect small governments. EPA asserted that this action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On July 26, 2019, EPA published a proposed rule titled “Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act.” 84 Fed Reg. 36304. EPA stated that it summarized some of the more significant public comments it received regarding the proposed rule and provided its responses to those comments in the preamble of this final rule. EPA noted that a summary of all other public comments on the proposal and EPA's responses to those comments is available in the Response to Comments document available in the docket number EPA-HQ-OAR-2019-0282.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

EPA determined that this rule does not impose any new information-collection burden under PRA.

Statutory authorization for the rule

EPA promulgated this final rule pursuant to the Clean Air Act, ch. 360, 69 Stat. 322 (July 14, 1955), as amended.

Executive Order No. 12866 (Regulatory Planning and Review)

EPA determined that this rule is economically significant and submitted it to the Office of Management and Budget for review.

Executive Order No. 13132 (Federalism)

EPA determined that this final rule does not have federalism implications. EPA asserted that the final rule will not have substantial direct effects on the states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government.