



#### **National Steering Committee**

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November 13, 2023

**SUBJECT:** Comments on proposed changes to the Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act (MM2A)

Dear EPA:

The National Steering Committee (NSC) for the national network of state Small Business Ombudsman (SBO) and Small Business Environmental Assistance Programs (SBEAPs) appreciates the opportunity to comment on the U.S. Environmental Protection Agency (EPA) proposed changes to the Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act (Docket ID: EPA-HQ-OAR-2023-0330-0001).

The National SBEAPs have long supported the flexibility for major sources to be able to reclassify as area sources. The National SBEAPs feel that this flexibility incentivizes facilities to adopt stronger and better pollution prevention policies that will result in a benefit to both the environment and the facility. The previous policy of "Once-in-Always-in" was a disincentive for facilities that once they were subject to a Maximum Achievable Control Technology (MACT) standard, no matter what practices and processes they adopted to reduce their emissions they would still be subject to the MACT requirements. The National SBEAPs are concerned that some of the proposed changes to the MM2A rule are going back to the previous policy and, if promulgated, will reduce the incentives for facilities to reduce their emissions.

The main concern is that approximately one-third of businesses that may be classified as major sources of air emissions have 100 or fewer employees and would otherwise classify as a small business under the definitions found in the Clean Air Act Amended 1990 (CAAA) Section 507. These small businesses may be working with hazardous air pollutants that, while their potential emissions exceed the 10 tons/year threshold for a major source, their actual emissions are relatively small. An example of an industry with this type of emissions profile are reinforced plastic composites manufacturers, as the majority of air emissions from this industry are styrene. 65% of businesses in this industry have less than 10 employees and generate very little actual styrene even when their potential might be greater than 10 tons per year when potential to emit is calculated [Based on Data Axel Reference Solutions search for NAICS codes found in 85 FR 15960 in relation to 40 CFR 63 Boat Manufacturing and Reinforced Plastic Composites Production]. It is expected that most of these

where it would be very easy to cross the threshold into being a major source because of the nature of their primary product, but also easy to reduce emissions via changes to resins (such as lower emitting resins and vapor suppressed resins) for manufacturing reinforced plastic composites.

The proposed rule changes include stricter requirements for federally enforceable permit requirements. Where once a facility reduces emissions to below major source thresholds and is issued a synthetic minor or true minor permit, they cannot ever increase their emissions above that point. The National SBEAPs feel that this proposed change is too restrictive and reduces the flexibility for a facility as well as goes against the process of making changes to a federally enforceable permit. No matter which agency issues the permit to change a major source to area source due to emissions reductions, the permit should be classified as a federally enforceable permit and the facility should be able to follow all the established policies regarding any changes to the permit in the future.

If a facility goes over their permitted limit in a federally enforceable synthetic minor permit, that would be considered a violation of that permit. The additional regulations proposed seem to overlap and supersede established permit requirements and policies as established by the different states and other programs that are federally approved to issue air pollution permits.

If a facility increases their limit to above the major source threshold, this would be done through a new permit action and the facility would once again be reclassified as a major source of air emissions and be subject to the appropriate MACT standard and requirements. In that case, they would be subject to the new source MACT standards, which might be more stringent than the original standards they had to meet when they were first classified as a major source.

The National SBEAPs understand EPA's concerns about facilities that reclassify as an area source and subsequently may increase their emissions, especially hazardous air pollutants. The National SBEAPs propose that facilities that have reclassified as an area source be allowed to operate up to the major source threshold as a facility wide emission, similar to other area sources, rather than based on individual processes. To demonstrate compliance as part of their permit, facilities would need to track facility wide emissions. If they reach a point that the combined emissions from all sources at a facility will exceed the threshold for a major source, the facility will need to go through a new permit action and be reclassified as a major source. The permitting process will prevent any backsliding that might result from allowing major sources that have reduced emissions to become area sources.

Thank you for your consideration of these comments and please do not hesitate to reach out if you have questions or would like additional information.

Sincerely,

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Christopher Lynch, Vice Chair of the National Steering Committee

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