ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 63

[AD-FRL]

National Emission Standards for Hazardous Air Pollutants: Source Category List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: The Clean Air Act (Act) requires the EPA to list (for regulation under section 112 of the Act) all categories of major sources of hazardous air pollutants (HAP's), and categories of area sources if they present a threat of adverse effects to human health or the environment. The EPA has listed many sources categories, but has yet to list or regulate research and development (R&D) facilities. Today's notice provides advance notice that the EPA intends to list R&D, and solicits comments and information on the best way to list and regulate such sources.

DATES: Comments. Comments must be received on or before [Insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Comments. Comments should be submitted (in duplicate) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A-97-11, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Docket. Docket No. A-97-11 is available for public inspection and copying from 8:00 a.m. to 5:30 p.m. Monday through Friday, at the EPA's Air and Radiation Docket and

Information Center, Waterside Mall, Room M-1500, Ground Floor, 401 M Street SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning this ANPR, contact Mr. Mark Morris at (919) 541-5416, Organic Chemicals Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The Clean Air Act (Act) requires that EPA evaluate and control emissions of hazardous air pollutants (HAP's). The control of HAP's is achieved through promulgation of emission standards under section 112 of the Act for sources that emit HAP's. The Act requires the EPA to publish a list of all categories and subcategories of sources of HAP's. This list is required to be revised (no less often than every 8 years), if appropriate, in response to public comment or new information. The EPA published an initial list of source categories on July 16, 1992. The list was last revised on June 14, 1996 (correction notice on July 18, 1996).

Section 112(c)(7) of the Act requires the EPA to "establish a separate category covering research or laboratory facilities, as necessary to assure the equitable treatment of such facilities." Such language was included in the Act because Congress was concerned that research and laboratory facilities should not arbitrarily be included in regulations that cover manufacturing operations. The Act

defines research or laboratory facility as “any stationary source whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner.”

The EPA has interpreted the Act as requiring the listing of R&D major sources. It is clear from section 112(c)(7) of the Act that Congress intended for R&D to receive special treatment. The EPA has interpreted this section of the Act as requiring the creation of a separate category for R&D (as necessary to ensure equitable treatment of such facilities); the EPA does not believe this section of the Act provides the Agency with discretion regarding whether to list R&D major sources. The EPA welcomes other interpretations (with legal basis) regarding the discretion of the EPA in listing R&D major sources.

Research and development (R&D) is performed at many sources which are already included in listed source categories. For example, R&D is performed in the synthetic organic chemical manufacturing industry (SOCMI), an industry which is addressed by the Hazardous Organic NESHAP (HON). The HON does not apply to R&D operations, regardless of whether they are located on the same site as a commercial chemical manufacturing process. In the preamble to the proposed HON rule, the EPA stated it had limited information

on the operations of R&D facilities and the appropriate controls for them. The EPA stated it was uncertain how to structure a standard for R&D facilities, and concluded it would be appropriate to establish a separate source category covering R&D facilities to ensure equitable treatment of them. For reasons similar to those given in the HON, R&D has been exempted from other NESHAP's.

The EPA is now considering adding major R&D sources to the source category list. The term "major source" is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit (considering controls), in the aggregate, 10 tons per year or more of any HAP or 25 tons per year of any combination of HAP's. Sources that emit HAP's in amounts smaller than those of a major source are called area sources.

Language in the Act specifying special treatment of R&D facilities (section 112(c)(7)), along with language in the legislative history of the Act, suggests that Congress considered inequitable subjecting the R&D facilities of an industry to a standard designed for the commercial production processes of that industry. The application of such a standard may be inappropriate because the wide range of R&D operations and sizes, and the frequent changes in R&D operations, may be significantly different from the typically large and continuous production processes.

The Act requires the EPA to list all categories of major sources of HAP's, and categories of area sources if they present a threat of adverse effects to human health or the environment. The EPA has no information indicating there are major or area R&D sources that are required to be listed and regulated, other than those associated with sources already included in listed source categories. Although the EPA is not aware of other R&D sources that need to be added to the source category list, such sources may exist, and the EPA is seeking information about them. For example, what Federal, State, or private research facilities, hospitals, universities, military facilities, etc. require listing?

Since R&D is performed in many different industries, the EPA is considering various ways of listing and addressing R&D. R&D major sources could be listed as one category covering all R&D operations in all industries. However, it may be difficult in this case to develop standards general enough for the variety of sources, and to ensure the standards are consistent with the minimum control requirements ("floors") required by the Act. R&D could also be listed as several (or many) different source categories to account for the significant differences between sources. The source categories already listed could provide a guide for listing the R&D sources of the associated industries, that is, for each listed source category, a corresponding source category for R&D operations could be listed.

The EPA is seeking comments on the advantages and disadvantages of the different ways to list R&D facilities described above, as well as any other options for listing. The EPA is also seeking information on R&D sources so it can assess the most reasonable and practical way to list and regulate R&D. Such information includes descriptions of R&D processes, magnitude of HAP emissions and methods of HAP emission estimation, emission controls and their costs, and any existing State or local regulations that may apply to R&D facilities. The EPA also invites any trade groups associated with R&D operations to provide information and participate in the process of listing and regulating R&D.

Electronic Submission of Comments

Comments may be submitted electronically by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments will also be accepted on diskette in WordPerfect 5.1 or ASCII file format. All comments in electronic form must be identified by the docket number A-97-11. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Administrative Requirements

Because today's notice is not a rule or a proposed rule, the EPA has not prepared an economic impact analysis pursuant to section 317 of the Act, a regulatory flexibility

analysis pursuant to the Regulatory Flexibility Act, or a written statement under section 202 of the Unfunded Mandates Act of 1995. Also, this notice does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act.

Under Executive Order 12866 [58 FR 5173 (October 4, 1993)], the EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in standards that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, the OMB has notified the EPA that it considers this a "significant

regulatory action" within the meaning of the Executive Order. The EPA submitted this action to the OMB for review. Changes made in response to suggestions or recommendations from the OMB were documented and included in the public record.

List of Subjects

Air pollution control, Hazardous air pollutants, Research and development, Environmental protection.

_____ Date

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Mary D. Nichols
Assistant Administrator for
Air and Radiation

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