



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Hazardous Air Pollutants/Clean Air Act: U.S. Environmental Protection Agency Proposed Rule Addressing Issues Associated with Additions to HAP List

09/14/2023

The United States Environmental Protection Agency ("EPA") published in the September 13th Federal Register a proposed rule that would amend the general provisions for Clean Air Act National Emission Standards for Hazardous Air Pollutants ("NESHAP") to address the applicability and compliance issues resulting from additions of a compound to the statutory list of Hazardous Air Pollutants ("HAP"). See 88 Fed. Reg. 62711.

The proposed rule would also address:

- Issues related to newly applicable standards for sources that become major sources solely from the addition of a compound to the HAP list (Major Source Due to Listing ["MSDL"])
- Discuss the impacts of a newly listed HAP on the Clean Air Act Title V Operating Permit program

Congress in the 1990 amendments to the Clean Air Act revised Section 112 to change EPA's methodology for regulating HAPs. EPA was required to establish technology-based emission standards (i.e., MACT standards) for sources of 189 pollutants that were specifically listed in the legislation.

Of particular relevance to the proposed rule is the statutory provision that provides that EPA can, on its own initiative or in response to a petition, add or delete substances from the statutory list. The impetus for the proposed is that EPA in response to a petition added 1-bromopropane to the HAP list in 2022. Therefore, EPA determined that additions to the HAP list raise certain regulatory issues.

The stated purpose of the proposed rule is to:

Address the immediate regulatory effects of adding a pollutant to the HAP list.

Three issues are identified by EPA which include:

- Whether already promulgated NESHAPs would apply to a newly listed HAP
- Consideration of the permitting implications for facilities that become major sources under Section 112 solely due to the addition of a new pollutant to the HAP list
- If a major source due to listing triggers the applicability of a major source NESHAP – what is the determination of the applicable emission standards (i.e., is the source subject to standards for new sources or existing sources) and compliance deadlines for the new NESHAP requirements?

The proposed rule does not revise the Title V Permit regulations in regard to the addition of a new pollutant to the Section 112 HAP list. Nevertheless, EPA states that it:

. . . intends to clarify the applicability of previously promulgated NESHAP when the EPA adds a new pollutant to the HAP list by revising 40 C.F.R. 63.64, Subpart C.

Several alternatives are proposed to:

. . . address applicable emission standards and compliance deadlines for MSDL facilities by revising 40 C.F.R., Subpart A.

Key sections of the proposed preamble include:

- Are there any concurrent changes to Title V Programs in this action?
- What is the rationale for the proposed changes?
- When must a newly listed HAP be included in emission estimates and what are the potential regulatory implications?
- Permitting impacts for sources and programs.
- What standards apply to MSDL facilities?
- When does a MSDL facility have to be in compliance with new requirements?
- Alternatives
- Maintain compliance schedules and individual NESHAP
- Provide a timeline equivalent to the time provided for initial compliance
- Provide a single timeline for all NESHAP newly triggered for MSDL facilities
- Provide compliance deadlines based on the types of emission limitations or requirements
- Are there any new notification requirements?

A copy of the proposed rule can be downloaded [here](#).