ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2008–0676–200820(b); FRL–8903–7]

Approval and Promulgation of Air Quality Implementation Plans; Tennessee; Approval of Revisions to the Knox County Portion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Knox County portion of the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee on April 21, 2008. The revision pertains to the Knox County Department of Air Quality Management (KCDAQM) Regulation, Section 25.0 ''Permits,'' specifically subsection 25.6—Exemptions. This revision removes ''mobile sources'' from the list of exempted air contaminant sources, with respect to operating permits and reserves subsection 25.6.A. This revision is part of KCDAQM strategy to attain and maintain the National Ambient Air Quality Standards for 8-hour ozone, particulate matter $(PM)_{2.5}$ and PM_{10}. This revision was certified by the Tennessee Department of Environment and Conservation to be at least as stringent as the State of Tennessee's existing requirements in Chapter 1200–3–9–.04 ''Exemptions,'' and is being approved pursuant to section 110 of the Clean Air Act (CAA).

In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before July 27, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2008–0676, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2008–0676,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9352. Ms. Bradley can also be reached via electronic mail at *bradley.twunjala@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: June 15, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. E9–14871 Filed 6–24–09; 8:45 am]

BILLING CODE 6560–50–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Chapter VI

[Docket No. CSB–09–01]

Chemical Release Reporting

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Clean Air Act requires that the Chemical Safety and Hazard Investigation Board (CSB) establish a regulation which would require that accidental chemical releases be reported to the CSB or to the National Response Center. With this advance notice of proposed rulemaking, the CSB seeks to obtain comments on how best to proceed with implementing this requirement. The CSB will use this information in the development of a proposed and then a final rule.

DATES: Written comments must be received by the CSB on or before August 4, 2009.

ADDRESSES: You may submit written comments, identified by docket number CSB–09–01, by either of the following methods:

- *E-mail: anpr@csb.gov*. Include CSB–09–01 in the subject line of the message.
- *Mail/Express delivery service:* Chemical Safety and Hazard Investigation Board, Office of General Counsel, Attn: C. Kirkpatrick, 2175 K Street, NW., Suite 650, Washington, DC 20037.

Instructions: All comment submissions must include the agency name and docket number. All comments received, including any personal information provided, will be made available to the public without modifications or deletions. For detailed instructions on submitting comments electronically, including acceptable file formats, see the ''Electronic Submission of Comments'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For information on access to the docket to read comments received by the CSB, see the ''Inspection of Comments'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Christopher Kirkpatrick, at (202) 261–7600.

SUPPLEMENTARY INFORMATION:

Background

Statutory Requirement

The CSB was established by the Clean Air Act Amendments of 1990. The statute directs the CSB, among other things, to:

> [I]nvestigate (or cause to be investigated), determine and report to the public in writing the facts, conditions, and circumstances and the cause or probable cause of any accidental release resulting in a fatality, serious injury or substantial property damages; and
>
> [R]ecommen[d] measures to reduce the likelihood or the consequences of accidental releases and propos[e] corrective steps to

make chemical production, processing, handling and storage as safe and free from risk of injury as is possible. * * *

42 U.S.C. 7412(r)(6)(C)(i) and (ii).

The CSB's enabling legislation also includes a requirement that the CSB:

> [E]stablish by regulation requirements binding on persons for reporting accidental releases into the ambient air subject to the Board's investigatory jurisdiction. Reporting releases to the National Response Center, in lieu of the Board directly, shall satisfy such regulations. The National Response Center shall promptly notify the Board of any releases which are within the Board's jurisdiction.

42 U.S.C. 7412(r)(6)(C)(iii).

The statute also directs the Administrator of the Environmental Protection Agency (EPA) to enforce the reporting requirements promulgated by the CSB. *See* 42 U.S.C. 7412(r)(6)(O).

Although the CSB's enabling legislation was enacted in 1990, the CSB did not begin operations until 1998. Since 1998, the CSB has not promulgated an accidental release reporting requirement as envisioned in the CSB enabling legislation. With the development of the Internet and other new information sources, the CSB has maintained that it could learn of most serious chemical accidents from these sources along with reports of chemical releases required to be filed with the National Response Center for purposes of timely identification of incidents appropriate for CSB on-site investigations. The CSB has not attempted to systematically conduct national surveillance activities of chemical incidents or releases.

Recommendations To Implement Reporting Rule

In 2004, the Inspector General recommended that the CSB implement the statutory reporting requirement: ''The CSB needs to refine its mechanism for learning of chemical incidents, and it should publish a regulation describing how the CSB will receive the notifications it needs.'' (Department of Homeland Security, Office of Inspector General, A Report on the Continuing Development of the U.S. Chemical Safety and Hazard Investigation Board, OIG–04–04, Jan. 2004, at 14.) Recently, the Government Accountability Office (GAO) also recommended that the CSB fulfill its statutory obligation by issuing a reporting regulation. (U.S. Government Accountability Office, Chemical Safety Board: Improvements in Management and Oversight Are Needed, GAO–08–864R, Aug. 22, 2008, at 11.)

The CSB recognizes that a reporting regulation is clearly required by the statute. Based on these audit recommendations and its own more recent experience, the CSB has concluded that a reporting rule would also be helpful to the CSB in improving the timeliness, completeness, and accuracy of the information it now collects on chemical incidents. For example, the CSB recognizes that there is sometimes a delay between some chemical incidents and media coverage and that a rule could potentially improve the CSB's ability to learn of certain incidents in a timelier manner before an accident site is disturbed or evidence is lost. The CSB also recognizes that a requirement to report certain information on chemical incidents, in addition to fulfilling its statutory mandate, could help the agency develop better information on chemical incidents occurring in the United States, and help both the agency and other organizations to identify issues and trends, and thereby further the cause of preventing chemical incidents. For these reasons, the CSB now intends to promulgate and implement a reporting rule as required by its enabling legislation after collecting input from all interested parties.

Important Issues

Some of the more important issues for the CSB's consideration and for public comment are as follows:

Purpose of Rule—Incident Notification and Collection of Incident Data

In the past, the CSB has argued that the sole purpose of a reporting regulation is to inform the CSB of major incidents warranting the deployment of investigators. (GAO–08–864R, at 70.) GAO has suggested that the value of a reporting rule is broader than ensuring that the CSB receives mere notification of incidents, stating that a rule would ''better inform the agency of important details about accidents that it may not receive from current sources.'' (GAO–08–864R, at 11.) GAO also suggested that the information obtained through a reporting rule could improve the CSB's ability to ''target its resources, identify trends and patterns in chemical incidents, and prevent future similar accidents.'' (GAO–08–864R, at 7.) These goals are typically those of a comprehensive surveillance program. Due to this focus on surveillance goals and more accurate incident data (as opposed to mere notification), it is important to describe how the CSB has previously collected such information and what it hopes to achieve in promulgating a rule.

The CSB described the process it uses for receiving notice of and determining whether to investigate chemical incidents in a 2006 report to Congress:

> The CSB has a designated chemical incident screener on duty 24 hours a day, seven days a week. A combination of notification services including the National Response Center, the National Transportation Safety Board [NTSB] Communications Center, and various news outlets, serve as sources of information to identify chemical incidents as they occur. The incidents in the database do not comprise an exhaustive list of all chemical incidents that occurred in the country on any given day. Incidents logged in the CSB incident-screening database are scored using a formula that measures several factors relevant to its potential selection for investigation. These factors include: Injuries/fatalities; public evacuation; ecosystem damage; potential for consequences; learning potential; property losses; public concern; history of the company.
>
> The factors assessing public and worker injuries and fatalities are given greater weight in the scoring system. Once scored, the factors are averaged, and based on the numerical score the incident is then assigned a priority level * * *. Deployment decisions are made in accordance with the CSB incident selection protocol. The decision to deploy a team of investigators to the site of a chemical incident often needs to be made before an incident can be scored with complete certainty. Consequently, incidents may be re-scored if new information is obtained on site.

(Chemical Safety and Hazard Investigation Board, Report on Chemical Incident Screening Database, Feb. 2006, at 3.)

With some refinements, this is essentially the process that the CSB uses today for learning of incidents and making investigation deployment decisions. The agency has discontinued its contract with the NTSB Communications Center, but continues to rely on reports from the National Response Center and from media sources. As the agency has added news services and as internet search engines have become more and more powerful, the number of incidents that are logged into the CSB's system has increased substantially, from about 600 per year when CSB began keeping a somewhat rudimentary database of ''screened'' incidents, to over 1,000 incidents per year currently. The sole source of information for the majority (approximately two-thirds) of screened incidents is media reports. (OIG–04–04, at 14 n. 37; M.R. Gomez, et al., The CSB Incident Screening Database: Description, Summary Statistics and Uses, J. Hazard. Mater. 159 (2008) 119–129.) Reports of most serious incidents (which are the ones most likely to involve deploying investigators) are

very often received from media sources first, even if the incident is also reported to the National Response Center and the report forwarded to the CSB later. This is significant, because the CSB seeks to make deployment decisions as quickly as possible so that investigators can arrive at the accident site within the first 24 to 48 hours after the time of the initiating event, in order to begin the investigation while the evidence is less likely to be disturbed and the witnesses' testimony is fresh. Thus, the CSB believes that a reporting rule would complement, rather than replace, the existing mechanisms by which the CSB typically learns of chemical incidents.

The CSB's collection of incident information thus was an outgrowth of the CSB's effort to make its incident selection process more transparent and predictable, and was not done with the intention of establishing a formal national surveillance system or creating a valid and reliable chemical incident database. However, GAO noted that the CSB has sometimes used the database, in testimony to Congress and in other contexts, to give a sense of the scope of serious chemical incidents. GAO further noted the problems of accuracy and completeness with the information on incidents in the database:

> We found that CSB lacks a long-term strategy to improve quality controls, and the data [in the database] remain somewhat inaccurate and incomplete. For example, when we analyzed a subset of accidents in the database involving fatalities and injuries, we found at least five accidents (about 6 percent of the cases reviewed) where fatalities were not correctly recorded in the database. We also found seven accidents (about 4 percent of the cases reviewed) where data on injuries were missing as a result of incomplete data entry. Moreover, CSB does not have procedures to ensure that data has been entered accurately. The lack of data-reporting regulations and these data quality problems limit CSB's ability to target its resources, identify trends and patterns in chemical accidents, and prevent future similar accidents.

(GAO–08–864R, at 7.)

The CSB has already taken steps to improve the accuracy of information on chemical incidents that it collects, including software changes and supervisory controls on data entry. The CSB foresees that a reporting rule will further its current efforts to improve data collection and would permit more accurate surveillance of chemical incidents.

Coordination With Other Chemical Incident Reporting Requirements

The CSB has previously noted that EPA, the Occupational Safety and Health Administration (OSHA), and the Agency for Toxic Substances and Disease Registry (ATSDR) all collect chemical incident information for various purposes. (GAO–08–864R, at 70.) In drafting a new requirement, the CSB will seek to avoid unnecessary duplication with various other reporting requirements.

Specifically, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires that companies immediately report to the National Response Center releases over the reportable quantities of any of several hundred listed hazardous substances and other substances with hazardous characteristics. *See* 42 U.S.C. 9603; *see also* 40 CFR 302.4 (table of hazardous substances reportable under this section of CERCLA). The Emergency Planning and Community Right to Know Act (EPCRA) requires that companies report hazardous chemical releases potentially affecting the public to the Local Emergency Response and State Emergency Response office. For certain companies, the EPCRA also requires annual reports of releases of listed toxic chemicals during the previous 12 months. *See* 42 U.S.C. 11004, 11023. Facilities that are subject to the Risk Management Program (RMP) rule must report annually on any accidental releases that are reportable under that rule. *See* 42 U.S.C. 7412(r)(7)(B)(i)–(ii) (mandating the Risk Management Program and regulatory scheme); *see also* 40 CFR part 68 (the Chemical Accident Prevention Provisions (CAPPs) that include the RMP rules); 40 CFR 68.130 (listing the reportable substances under the RMP). Workplace fatalities, including those caused by accidental chemical releases, must be reported within eight hours to OSHA. *See* 29 CFR 1904.39.

ATSDR has collected information about chemical incidents from more than a dozen states for several years—although the data have some limitations, such as the exclusion of incidents related to petroleum products. The program is called the Hazardous Substances Emergency Events Surveillance (HSEES), and information about its history can be found at *http://www.atsdr.cdc.gov/HS/HSEES/index.html.* The ATSDR has expressed interest in building upon its current efforts. Its Web page also contains information about this effort.

Threshold for Report

The CSB's current resources limit the number of detailed investigations it can conduct each year, and the CSB believes that an initial notification reporting rule should likely focus on selected, high-consequences events (for example, incidents that result in death, serious injuries requiring in-patient hospitalization, large public evacuations, very substantial property damage, or acute environmental impact). Such an approach to notification for high consequence events and reporting for others would reduce the reporting burden on industry and the volume of information to be collected and managed. Based on available information, the CSB believes there are likely to be at most a few hundred incidents throughout the country each year that would require reporting to the CSB if the threshold is set at a level to capture serious consequences or substantial near miss situations. Of course, limiting the threshold for reporting an incident would not limit the CSB's investigatory jurisdiction.

Statutory Definitions

The CSB notes that existing chemical release reporting requirements are generally triggered by a list of chemicals and a threshold amount for each chemical. On the other hand, the CSB may investigate any incident resulting in serious consequences (fatality, serious injury, or substantial property damage) that involves an emission into the ambient air of any RMP-listed hazardous substance or other extremely hazardous substance, no matter what quantity is present or released. *See* 42 U.S.C. 7412(r)(2)(A), 7412(r)(6)(C)(i). The CSB has not defined such terms as ''ambient air,'' ''extremely hazardous substance,'' ''serious'' injury, or ''substantial'' property damage, but would likely need to do so in promulgating a rule.

Collection of Initial Report

A rule could require that a report be made directly to the CSB through an electronic form on the CSB Web site, or to the National Response Center, as provided by the CSB's enabling statute. With respect to the latter option, the legislative history of the CSB statute further explains:

> The regulations of the Board for accident reporting may provide that any person directed to make a report contact the National Response Center rather than the Board directly. This will assure coordination of such reports with responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act and the Hazardous Materials Transportation Act. If the National Response Center is to be the initial point of contact under such rules, then the Board shall assure that officials at the National Response Center promptly notify the Board or its officers

whenever an accidental release requiring an investigation has occurred.

S. Rep. No. 101–228, at 236 (1989), *reprinted in* 1990 U.S.C.C.A.N. 3385, 3620.

Among other considerations, cost is a concern with using the National Response Center as a receiving point for reports to the CSB. The CSB received a preliminary estimate from the National Response Center that establishing and operating a dedicated CSB reporting line (toll-free telephone number) would cost $450,000 per year.

Compliance Education

Because the chemical accidents that the CSB can investigate may occur at a wide range of companies and operations but are relatively infrequent events, a rule could apply to many parties which could potentially, but likely will not, experience a serious chemical incident at some point. Most of those parties would have no direct contact with the CSB unless a serious incident occurred. Thus, the CSB must also consider how best to educate potentially affected parties about compliance with any final rule.

Approaches

The CSB has identified four general approaches for implementing the statutory requirement, as described below, but is open to additional suggestions:

(1) A comprehensive approach would require the reporting of information on *all* accidental releases subject to the CSB's investigatory jurisdiction. The CSB is concerned that this approach might be unnecessarily broad in scope, duplicative of other federal efforts concerning chemical incident surveillance, and may not be necessary for the CSB to learn of most significant incidents that would justify an on-site investigation.

(2) A targeted approach would require reporting of basic information (e.g., location, date, and time of incident; chemical involved; number of injuries) for incidents that met significant consequence thresholds (incidents that result in death, serious injuries requiring in-patient hospitalization, large public evacuations, very substantial property damage, or acute environmental impact). Such an approach would be consistent with that taken by several other federal agencies, whose accident reporting rules incorporate the same or similar consequence-based criteria. Examples of this type of rule include the NTSB railroad accident notification rule (49 CFR 840.3); Department of Transportation rules on notification of hazardous materials accidents (49 CFR 171.15), gas pipeline accidents (49 CFR 191.5), and hazardous liquid pipeline accidents (49 CFR 195.50); and the OSHA work-related accident reporting rule (29 CFR 1904.39).

A related approach would require reports from certain high risk facilities no matter what the specific consequences of the incident. For example, the EPA Office of Inspector General recently issued a report which identified three different approaches to identifying high risk facilities covered by the RMP rule. (U.S. Environmental Protection Agency, Office of Inspector General, EPA Can Improve Implementation of the Risk Management Program for Airborne Chemical Releases, 09–P–0092, Feb. 10, 2009, at 17). Similar criteria could be employed in a rule to require that certain facilities promptly report incidents to the CSB.

Based on such targeted reports, the CSB could determine whether the owner/operator would be required to submit additional, detailed information to the CSB for evaluation and further investigation.

(3) A third approach would require owners or operators to report to the CSB more extensive information on chemical incidents in their workplace when notified by the CSB. The agency would continue to rely primarily on existing sources for initially learning of chemical incidents, but would follow up on a subset of the incidents (e.g., those with the most serious consequences, based on initial reports, and a sample of all others) to gather additional information through a questionnaire or on-line form that the reporting party would be required by the rule to complete and submit to the CSB. This approach would be primarily aimed at addressing the data quality problems of accuracy and completeness of information on incidents in the CSB's incident database. It would also allow the CSB to collect more complete and in-depth information on incidents than is generally available in the minutes and hours immediately after an incident. For example, the information required could go beyond the location, date, and time of incident, and also include information on the materials involved, the nature of the incident (e.g., chemical reaction, untested presence of flammables, etc.), and type of operation, as well as more complete information on consequences. This approach would formalize what the CSB screening personnel currently do, i.e., follow up (primarily by telephone) with companies and responders on approximately 60 incidents each year to gather detailed information on the consequences, as well as the processes and chemicals involved, beyond what is contained in media or NRC reports.

(4) A fourth approach to a reporting requirement could be based upon the presence or release of specified chemicals and specified threshold amounts. However, CSB investigations have shown that serious consequences may and do result from the release of relatively small amounts of chemicals, and from chemicals that are not likely to be listed.

Information Sought

The CSB seeks comments and information in advance of drafting a proposed regulation to implement the accidental release reporting requirement. In addition to comments addressing the issues and approaches described above, the CSB is also interested in comments that address the following specific questions:

- Are there Federal, State, or local rules or programs for reporting chemical or other types of incidents that would be an appropriate model for the CSB to consider in developing a reporting requirement?
- Should an initial report be made to the CSB or the National Response Center?
- What information should be reported to the CSB?
- How soon after an accident should reporting occur?
- Should the rule be designed with distinct requirements for rapid notification of high-consequence incidents and more systematic (and slower) notification of other incidents?
- What specific factors (such as lists of chemicals or specific consequences) should the CSB consider in drafting a proposed rule?
- How should the CSB gather information on incidents (such as combustible dust explosions and reactive chemical incidents) that may not involve specifically listed hazardous substances?
- How might this reporting requirement best be tailored to avoid duplication with existing sources of information on chemical incidents, including federal, state, or local reporting requirements?
- How might the CSB best target compliance education efforts?

Electronic Submission of Comments

You may submit comments by e-mail to: *anpr@csb.gov.* Please include CSB–09–01 in the subject line of the message. Comments may be submitted in the body of the e-mail message or as an attached PDF, MS Word, or plain text

ASCII file. Files must be virus-free and unencrypted. Please ensure that the comments themselves, whether in the body of the e-mail or attached as a file, include docket number CSB–09–01 and your full name and address.

Inspection of Comments

All comments received by the CSB will be available to the public upon request. To obtain copies of the comments or arrange an appointment to inspect the comments at CSB headquarters (2175 K Street, NW., Suite 650, Washington, DC 20037) during normal business hours, please call the CSB at (202) 261–7600.

Dated: June 18, 2009.

John S. Bresland,

Chairman, Chemical Safety and Hazard Investigation Board.

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