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Accidental Release Prevention Requirements for Risk Management Programs/Clean Air Act: U.S. Environmental Protection Agency Amends 112(r)(7) Regulations

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The United States Environmental Protection Agency issued a final rule on December 21st amending the Clean Air Act Accidental Release Prevention Requirements for Risk Management Program ("RMP") regulations.

Section 112(r)(7) of the Clean Air Act addresses the RMP.

Section 112(r) of the Clean Air Act RMP regulations require covered facilities to develop and implement a risk management program. The RMP information developed pursuant to the rules is provided to state and local officials to assist in planning for and preventing chemical accidents and releases.

EPA describes the purpose of the final rule as to:

- Prevent catastrophic accidents by improving accident prevention program requirements
- Enhance emergency preparedness to ensure coordination between facilities and local communities
- Improve information access to help the public understand the risks at RMP facilities
- Improve third-party audits at RMP facilities

As to local coordination requirements, EPA states that the final rule increases coordination with local emergency planning committees ("LEPCs") to enhance local emergency preparedness and responsive planning by requiring facilities to conduct annual coordination with LEPCs or local emergency response officials to clarify response needs, emergency plans, roles, and responsibilities.

EPA cites as an example of poor coordination an August 2008 explosion and fire at the Bayer CropScience Facility and Institute, West Virginia. The agency cites findings indicating a lack of effective coordination between the facility and local responders preventing responding agencies from receiving timely information updates about the continually changing conditions at the scene, preventing a public shelter-in place order for reaching the local community. This is stated to have possibly resulted in toxic exposure to on-scene public emergency responders.

The final rule requires qualifying facility owners or operators to request an opportunity to meet with the local emergency planning committee (or equivalent) and/or local fire department. However, it does not require a meeting to be held if local authorities determine that a meeting is not required. Further, the

final rule requires that owners or operators consult with local emergency response officials to establish appropriate frequencies and plans for tabletop and field exercises.

Qualified facilities must also:

- Develop an emergency response plan
- Develop procedures for the use, inspection, and testing of emergency response equipment
- Conduct training for employees in relevant procedures
- Update the emergency response plan to reflect changes in the facilities

The emergency response plan provision is modified by requiring the plan to include procedures for informing the public and local emergency response agencies about accidental releases and to require these procedures to inform appropriate federal and state emergency agencies about accidental releases. EPA deems this provision complementary to preexisting notification requirements under EPCRA and CERCLA (Superfund).

Applicable facilities are required to provide certain existing chemical information to the public upon request. Such information includes:

- Chemical hazard information
- Accident history
- Dates of past emergency response exercises
- Emergency response information
- LEPC contact information

This information is not required to be posted on the internet.

The final rule also requires that the RMP be available to the public. This information is currently restricted to Federal Reading Rooms or through Freedom of Information Act request. Relevant information is now required to be available to the public upon request.

Issues associated with “root cause analysis” are addressed.

The final rule requires additional reporting elements to investigations that are required after any incident that resulted in or could have resulted in a catastrophic release. The facility must identify the fundamental reason (i.e., root cause analysis) for the incident and prepare a report within 12 months of the incident. This report is required to include consequences of the accident and any emergency response actions taken.

EPA has modified the proposed definition of “root cause” to eliminate the phrase “that identifies a correctable failure(s) and management of systems.” The agency’s intent is that there be no implication that all incidents include a correctable management system failure. In addition, “near-miss incidents” (i.e., incidents that could have reasonably resulted in a catastrophic release) must be investigated.

The final rule requires an independent third-party audit be conducted at a facility if there has been a reportable accident, or if an implementing agency determines that a third-party audit is necessary, based on information about the facility or a prior third-party audit at the facility. Also addressed are the criteria for auditor competence and independence.

[A link to the final rule can be found here.](#)