



CHEMICAL SAFETY BOARD PROPOSES NEW ACCIDENTAL RELEASE REPORTING RULE

The U.S. Chemical Safety and Hazard Investigation Board (CSB) has proposed a new accidental release reporting rule that would require owners and owners of stationary sources to notify CSB of certain accidental releases resulting in a fatality, serious injury, or substantial property damages. The comment period closes on January 13, 2020.¹

The publication of the Proposed Rule follows on the heels of a federal court ruling ordering CSB to promulgate an accidental release reporting rule pursuant to its authority under the Clean Air Act Amendments (“CAAA”).² CSB’s authority to investigate serious accidents involving chemical releases is well-known to those who work in and around industries involved in the manufacture or use of potentially hazardous chemicals. Somewhat less well-known though is CSB’s mandate under the CAAA to “[e]stablish by regulation requirements ... for reporting accidental releases into the ambient air....”³ While CSB has periodically taken steps over the years to fulfill this mandate, CSB has never actually promulgated a rule in the 20-plus years of its existence. Several environmental groups sued CSB to force the promulgation of a rule, and ultimately succeeded.

The content of the Proposed Rule appears to reflect an effort on the part of CSB to minimize the reporting burden by strictly construing the scope of its rulemaking authority, and by harmonizing its reporting requirements with similar reporting requirements established by EPA and other federal agencies. With respect to the strict construction of the scope of its rulemaking authority, the Proposed Rule would only require a facility to submit basic information about the nature and character of a covered accidental release. CSB noted that such basic information is all that is necessary to enable the agency to fulfill its mandate to investigate serious chemical accidents. CSB also opined that requiring too much information may impact the timeliness of reporting, and thus interfere with its ability to deploy investigative resources promptly and effectively.⁴


With respect to CSB harmonizing its reporting requirements with reporting requirements established by other agencies, two examples stand out. First, the Proposed Rule would not require unnecessary duplication of the reporting of accidental releases to the National Response Center (NRC) pursuant to CERCLA Section 103(a). Any facility that submits such a report to NRC

¹ 84 Fed. Reg. 67899 (Dec. 12, 2019). This proposed rule is simply referred to herein as the “Proposed Rule.”

² *Air Alliance Houston v. U.S. Chem. & Safety Hazard Investigation Bd.*, 365 F. Supp. 3d 118 (D.D.C 2019).

³ 42 U.S.C. § 7412(r)(6)(C).

⁴ 84 Fed. Reg. at 67900-67901, 67908.



could fulfill the requirement to report an accidental release to CSB by simply submitting the NRC identification number to CSB.⁵ Second, the definition of “serious injury” under the Proposed Rule – one of the three triggers for the requirement to submit an accidental release report to CSB – is nearly identical to OSHA’s criteria for what constitutes a recordable work-related injury or illness.⁶

Given the fact that the Proposed Rule was issued in response to a federal court order, it may not be too long before a final rule is issued. Thus, facilities potentially subject to such a final rule may want to begin preparations to update existing release reporting matrices and reporting protocols, and to train key personnel on these updates once they go into effect. One key to ensuring compliance with the panoply of release reporting rules in existence is to have up-to-date release reporting protocols and matrices in place, and to ensure that key facility personnel are trained on these protocols and matrices. Reporting deadlines are unlikely to be met if a facility finds itself in the position of trying to figure out which reports and notifications need to be made after a release has already occurred.

This article is a complimentary publication from Daniel J. Brown, L.L.C. on a topic of general interest. It does not constitute legal advice. © 2020 Daniel J. Brown, L.L.C. All rights reserved.

⁵ 84 Fed. Reg. at 67910. See also 40 C.F.R. §302.6.

⁶ 84 Fed. Reg. at 67906. Under OSHA’s standard for recordable and reportable work-related injuries and illnesses, a recordable work-related injury or illness is any injury or illness that results in: death; one or more days away from work; restricted work or transfer to another job; medical treatment beyond first aid; loss of occurrence; or a diagnosis of significant injury or illness by a physician or other licensed health care professional even where it does not result in any of the aforementioned consequences. 29 C.F.R. § 1904.7(b)(1).