



January 13, 2020

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Chemical Safety and Hazard Investigation Board
1750 Pennsylvania Avenue, NW, Suite 910
Washington, DC 20006

Attn: Docket ID no. CSB-2019-0004.

The Coalition for Responsible Waste Incineration (CRWI) appreciates the opportunity to submit comments on *Accidental Release Reporting*; Proposed rule. 84 FR 67,899 (December 12, 2019). CRWI is a trade association comprised of 27 members representing companies that own and operate hazardous waste combustors and companies that provide equipment and services to the hazardous waste combustion industry.

Attached are specific comments on the proposed requirements.

Thank you for the opportunity to comment. If you have any questions, please contact me at (703-431-7343 or mel@crwi.org).

Sincerely yours,

Melvin E. Keener, Ph.D.
Executive Director

cc: CRWI members
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Specific comments

1. Comments on this proposed rule were due on January 13, 2020. The court ordered deadline for signing a final rule is February 4, 2020. CRWI is concerned that the Chemical Safety Board (CSB) does not have adequate time to properly review and respond to comments. We suggest asking the court for additional time to properly complete the rulemaking process.
2. CRWI is concerned that the definitions currently proposed are overly broad and will result in many more reports to the Board than anticipated. We suggest the Board review all incidents they have chosen to investigate over the years and develop definitions and release thresholds based on these events.
3. Definition of extremely hazardous substances

The proposed definition of extremely hazardous substance includes any regulated substance “at or below any threshold” set by EPA. The Board explains this language is deliberate so they will be notified of releases that would not be reported to National Response Center (NRC) but had caused serious injury or death. CRWI believes this definition is too broad and exceeds the Board’s statutory authority. Setting different thresholds would create confusion on what is to be reported to whom. In addition, it is not needed. If a release below EPA’s reporting threshold causes a “serious injury,” it would be reported based on causing that injury. CRWI believes that the “or below any” phrase should be changed to “or above any” in the final rule. Suggested regulatory language is below.

Extremely hazardous substance means any substance which may cause death, serious injury, or substantial property damages, including but not limited to, any “regulated substance” at or ~~below~~ above any threshold quantity set by the Environmental Protection Agency (EPA) Administrator under 42 U.S.C. 7412(r)(5).

4. Definition of serious injury

CRWI believes that by borrowing the proposed definition from an OSHA provision that was intended to be very broad, the definition of “serious injury” is too broad and may not be limited to serious injuries under CSB’s statutory authority. While CSB’s stated intention is to make the definition as close to possible to the OSHA definition to avoid confusion, we believe the actual effect is the opposite. As proposed, this definition would require reporting all OSHA recordable injuries including those that may not be “serious.” This definition goes well beyond what was contemplated to fall under CSB jurisdiction. Examples would include accidental releases resulting in dermal adhesive/suture of minor cuts, prescription ibuprofen, preventive antibiotics, removal of foreign objects from eyes with combination instruments called eye loops and magnets, and the use of an IV saline solution. It would also include a water release where a person tripped and sprained their ankle.

CSB states that OSHA’s “significant” injuries for recordkeeping purposes is synonymous with “serious” injuries that CSB would investigate. These terms, however, are not the same because of the different purposes involved. The purpose of the OSHA recordkeeping regulations is to provide employers with information on types of injuries and furthering an evaluation of their protective measures as well as alerting employees to workplace hazards. OSHA also uses the records to focus inspections on what hazards are present. See 81 FR 91792 at 91793-91794. The vast majority of these recordable injuries have no bearing on the type of incident CSB is charged with investigating.

OSHA recordable injuries are significant for “making employers and workers more aware of the kinds of injuries and illnesses occurring in the workplace, giving OSHA a source to consult to determine problem areas in particular industries or at particular workplaces, and providing safety and health policy makers with statistics “to make decisions concerning safety and health legislation, programs and standards.” 66 Fed. Reg. 5916, 5916-17 (Jan. 19, 2001) (preamble to revised OSHA recordkeeping rule describing benefits of accurate recordkeeping).” Elaine CHAO, Secretary, Department of Labor, Petitioner, v. OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION; Saw Pipes USA, Inc., Respondents. Elaine CHAO, Secretary, Department of Labor, Petitioner, v. JINDAL UNITED STEEL CORP; Occupational Safety and Health Review Commission, Respondents., 2006 WL 5390720 (C.A.5), 33-34

Finally, the 200 reports per year used in the economic impact/burden assessment for the rule and other discussions is based on the OSHA reportable definition (fatality and hospitalization). The proposed definition falls more in line with recordable injuries. If this definition is used, there will be thousands of reports per year, not 200. See the following link:
https://www.bls.gov/news.release/archives/osh_11072019.htm (Table 2 indicates that in 2018, in the manufacturing industry sector, there were approximately 118,600 cases with days away from work (with or without job transfer or restrictions).) As such, CSB’s estimation of 200 reports per year is off by a factor of 10-50, using a “lost time” type of definition as proposed. OSHA already cannot respond to all of the injury reports per their definition, and OSHA has substantially more resources than does CSB.

CRWI believes that it would be more appropriate to use the OSHA reporting criteria under 29 CFR 1904.39. This requires reporting fatalities, hospitalizations, amputations, and losses of an eye as a result of work-related incidents to OSHA. These are the type of injuries that would likely result in investigative efforts and would eliminate reporting for non-serious injuries. We suggest modifying the regulatory language in 1604.3(a) to read as follows.

(a) The owner or operator of a stationary source must report in accordance with paragraph (b) or (c) of this section, any accidental release resulting in a ~~fatality~~,

~~serious injury or~~ notification to OSHA as required by 29 CFR 1904.39 and/or substantial property damages.

The proposed definition of “serious injury” would no longer be needed and should not be included in the final rule.

5. Potential duplicate reporting requirements

CRWI is concerned that as proposed, the rule requires duplicate reporting requirements. As proposed, 40 CFR 1604.3(b) states that the CSB reporting requirement can be satisfied by reporting to the National Response Center and then reporting the NRC identification number to CSB. We believe that this is not allowed by the statute. In 42 U.S.C. 7412(r)(6)(C)(iii), Congress required the CSB to

“establish 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.”

Congress did not say that a facility should report to NRC and then report to CSB. In fact, the statutory language requires NRC to “promptly notify the Board of any releases which are within the Board's jurisdiction.” Any notification by the facility to the CSB after notification to the NRC would be duplicative and potentially confusing. CRWI believes that reporting the NRC identification number to the CSB is outside of the statutory requirements. In addition, we believe it is more logical to have CSB get information from the NRC on incidents that meet their criteria. As such, this part of paragraph (b) should be deleted from the final rule. We believe the final rule language should be

(b) If the owner or operator has submitted a report to the National Response Center (NRC) pursuant to 40 CFR 302.6, the CSB reporting requirement ~~may be~~ is satisfied by submitting the NRC identification number to the CSB immediately following submission of the report to the NRC.

6. Four hour reporting requirement

NRC reporting requirements are based on exceeding a threshold for the release within a 24 hour period. Once the threshold has been exceeded, the facility is required to immediately notify the NRC. NRC reports are required immediately as NRC reporting can trigger response agencies (i.e., the Coast Guard). Also, NRC reporting is generally done very early in the event. The applicability of CSB reporting may not yet be known.

CSB assumes that four hours is adequate time for emergency response activities to quell such that reporting can be performed. Activities may still be going on at the

site that would impede appropriate reporting to CSB within that time frame. These could include:

- A facility with limited employees may not have the experience or manpower to conduct all of the non-responding agency reporting.
- Incident response and initial investigation to determine information that would be needed to develop reporting information.
- A search or rescue response (i.e., DuPont LaPorte incident in November 2014. Per CSBs timeline, search and rescue activities were ongoing for 8-10 hours. Lack of a reporting did not prevent CSB from arriving on scene to that event in a timely manner.)
- A release that has been ongoing for several hours but is not detected until notification or arrival at the scene (ex. pipeline releases).

For those incidents that would not be reported to NRC but would be reportable to CSB, CRWI believes that four hours is too short of a timeframe to realistically submit a report and that it may distract from urgent on-site response after releases. We believe that 24 hours would be more appropriate given the necessary emergency response activities and immediate reporting obligations with these type events.