



January 10, 2020

VIA WWW.REGULATIONS.GOV

Mr. Thomas Goonan
General Council
Chemical Safety and Hazard Investigation Board
1750 Pennsylvania Ave. NW, Suite 910
Washington, DC 20006
<http://www.regulations.gov>

RE: Comments on the Chemical Safety and Hazard Investigation Board's "Accidental Release Reporting" Proposed Rule, CSB-2019-0004

Dear Mr. Goonan:

The Fertilizer Institute (TFI), on behalf of its member companies, submits these comments addressing the Chemical Safety and Hazard Investigation Board's (CSB) proposed rule entitled "*Accidental Release Reporting*." The *Accidental Release Reporting Proposed Rule*, published in the *Federal Register* on December 12, 2019, appears at 84 Fed. Reg. 67,899.

Statement of Interest

TFI represents the nation's fertilizer industry, including producers, importers, retailers, wholesalers and companies that are engaged in all aspects of the fertilizer supply chain. Fertilizer is a key ingredient in feeding a growing global population, which is expected to surpass 9.5 billion people by 2050. Half of all food grown around the world today is made possible through the use of fertilizer.

From 2015 to 2017 alone, the U.S. fertilizer industry invested an average of \$3.8 billion annually in capital infrastructure projects. These investments create jobs, increase worker and community safety, and help conserve energy, land, water, and air resources. The U.S. fertilizer industry is one of the world's largest. The United States is the world's fourth largest producer of nitrogen-based fertilizers and the second largest producer of phosphate fertilizer. The U.S. fertilizer industry generates more than \$155 billion in economic benefit and provides more than 89,000 direct jobs and 406,000 indirect jobs for a total of more than 495,000 U.S. jobs.

All TFI members are subject to the accidental release and spill reporting requirements mandated by federal requirements including any release "resulting in a fatality, serious injury or substantial property damages," which the CSB must investigate.

TFI Comments

TFI is in favor of reporting all significant incidents that involve an accidental chemical release including spills, fires, and explosions that exceed the requisite reporting thresholds. However, incident and/or release reporting is already required under and occurring through the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Emergency Planning and Community Right-to-Know Act (EPCRA), Risk Management Plan (RMP) program (all administered by EPA), and other federal mandates ([See attachment: Summary of Chemical Information Sharing Requirements Across the Federal Government.](#))

The National Response Center (NRC) has and continues to work well. Industry and first responders are familiar with using the NRC notification system. Imposing additional reporting obligations or establishing a parallel reporting system beyond those already required, and that are solely for the purpose of informing the CSB of an event, add an unnecessary burden, increase resource requirements and may distract the facility supervision team who would be working to mitigate the impacts of an emergency.

The CSB's primary mission is to "drive chemical safety change through independent investigation to protect people and the environment."¹ We strongly recommend that the CSB continue to use the NRC as the primary source of information on chemical releases to the environment or significant process safety incidents that may warrant investigation by the CSB. Such an approach is clearly contemplated by the CSB's enabling legislation, stating that the CSB shall "establish by regulation requirements binding on persons for reporting accidental releases into the ambient air subject to the Board's investigatory jurisdiction," but noting that "[r]eporting releases to the [NRC], in lieu of the Board directly, *shall satisfy such regulations.*"² Building on this, in accompanying report language, Congress stated that if "the [NRC] is to be the initial point of contact under such rules, then the Board shall assure that officials at the [NRC] promptly notify the Board or its officers whenever an accidental release requiring an investigation has occurred."³

Thus, Congress made clear that the CSB could satisfy its statutory mandate by receiving and relying upon NRC reports, with such coordination as necessary between the CSB and NRC to ensure that the CSB receives the information. In the *Accidental Release Reporting Proposed Rule*, the CSB confirms that NRC reports can be accessed by the CSB and, using a modified search algorithm, relevant information to the CSB's mission can be obtained from such reports and evaluated to determine if a CSB investigation is warranted.⁴ Notwithstanding this conclusion, the CSB is proposing that facility owners/operators still provide notice to the CSB that such a report was filed with the NRC. This is extremely inefficient and places additional burdens on facilities when responding to an accidental release should be the primary focus.

If more information beyond that contained in NRC reports is necessary for the CSB to meet their

¹ CSB Website, available at <https://www.csb.gov/about-the-csb/mission/>.

² 42 U.S.C. § 7412(r)(6)(c)(iii) (emphasis added).

³ S. Rep. No. 101-228 at 236 (1989).

⁴ 84 Fed. Reg. at 67,907.

stated mission, TFI recommends that before adopting additional reporting regulations, there should be efforts to improve and enhance federal inter-agency and federal/state information sharing and notification procedures. The *Accidental Release Reporting Proposed Rule* does not discuss whether such attempts have been made by the CSB. Therefore, TFI strongly urges CSB, if they have not already done so, to formally adopt MOUs with EPA and other federal entities to obtain the NRC data in a timely fashion so that the Board can conduct its analyses.

Similarly, if existing reporting requirements do not capture the universe of accidental releases that the CSB is statutorily required to evaluate for investigations, TFI urges the CSB to work with EPA to make targeted revisions to the existing federal release reporting rules to incorporate the information needed by the CSB to fulfill its statutory mission. Such an approach, using existing reporting regulations, will facilitate the submission of necessary information to the NRC and allow the CSB to access this information without introducing new and duplicative CSB reporting regulations.

In summary, recognizing the CSB's statutory obligation, ordered by the U.S. District Court for the District of Columbia to be finalized by February 4, 2020, to issue a CSB reporting rule, TFI recommends that the Board utilize the NRC reporting platform to satisfy the court mandate. The NRC framework should be updated to simultaneously transmit the data to both the NRC and CSB. Additional reporting mechanisms are unnecessary and would create an undue burden on industry. Most importantly, we believe that increasing CSB staff responsibilities to manage a separate database is counterproductive to the Board's primary mission. Such expanded duties will only divert limited resources away from what the CSB does best – investigate serious chemical releases and make recommendations to prevent future incidents of a similar nature.

Conclusion

TFI appreciates CSB's consideration of our comments outlined in this correspondence. Please contact me by telephone at (202) 515-2714 or via e-mail at ethomas@tfi.org if you would like to discuss our comments or if we can provide any additional information.

Sincerely,



Ed Thomas
Director, Regulatory Affairs



Attachment 1

Chemical Information Sharing Requirements Across the Federal Government

Agency	Program	Summary of Requirements	Targeted Chemicals	Affected Facilities	First Responder Relationship
EPA	Emergency Planning and Community Right-to-Know Act (EPCRA) Section 304: Emergency Notification	Reporting releases of hazardous and extremely hazardous substances to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC), and, as necessary, National Response Center (NRC)	Hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and extremely hazardous substances, as defined in EPCRA	Chemical manufacturers, importers, users, and distributors	Release information shared with SERC, LEPC, and NRC (NRC reporting only required for CERCLA hazardous substances)
EPA	EPCRA Section 311: Safety Data Sheets (SDSs)	Initial and recurring obligation to provide SDSs for hazardous chemicals, as defined under OSHA Hazard Communication	Chemicals with SDSs under the OSHA Haz Com Standard	Chemical manufacturers, importers, users, and distributors	SDSs shared with SERC, LEPC, and first responders and facility employees

Agency	Program	Summary of Requirements	Targeted Chemicals	Affected Facilities	First Responder Relationship
		(Haz Com) Standard, to SERC, LEPC, and local fire department			
EPA	EPCRA Section 312: Tier I, II	Annual obligation to share the inventory of chemicals above certain thresholds with the SERC, LEPC, and local fire department	Chemicals with SDSs under the OSHA Haz Com Standard	Chemical manufacturers, importers, users and distributors	Tier I and II forms shared with SERC, LEPC, and first responders
EPA	EPCRA Section 313: Toxic Release Inventory (TRI)	Annual report to EPA on the amount of TRI chemicals manufactured, processed, or otherwise used at facility above certain thresholds	TRI chemicals	Chemical manufacturers, importers, users and distributors	Annual reporting to EPA, with an inventory of TRI-reported chemicals published annually, by facility by EPA
EPA	CERCLA Section 103: Release Reporting	Chemical emergency release reporting above minimum thresholds (including one-time and continuous releases)	CERCLA hazardous substances	Chemical manufacturers, users and distributors	Releases reported to the NRC, shared with LEPCs
EPA	Clean Air Act: Risk Management Program	Planning program to avoid off-site releases of	Risk Management Program chemicals	Chemical manufacturers, users and	Annual coordination requirement with

Agency	Program	Summary of Requirements	Targeted Chemicals	Affected Facilities	First Responder Relationship
		chemicals		distributors	first responders; Risk Management Plan shared with LEPCs and first responders
EPA	Toxic Substances Control Act (TSCA): Chemical Data Reporting	Reporting program regarding the use and distribution in commerce of chemicals	TSCA Inventory chemicals manufactured or imported above certain threshold quantities	Chemical manufacturers and importers	Reporting to EPA every four years, with an inventory of reported chemicals published, by facility
DHS	Chemical Facility Anti-terrorism Standards (CFATS)	Security planning for certain chemicals above certain limits	CFATS chemicals of Interest	Chemical manufacturers, users and distributors	Site Security Plans shared with first responders
DOT	Hazardous Materials Regulations: Emergency Response and Release Reporting	Regulates the transportation of hazardous materials	Department of Transportation (DOT) hazardous materials	Shippers and transporters	Requirement for shipping paper to include contact information to provide emergency response information to first responders; Reporting to NRC and DOT regarding certain hazardous materials incidents during transportation
OSHA	Haz Com Standard	Information sharing	Haz Com Standard	Chemical	Sharing of hazard

Agency	Program	Summary of Requirements	Targeted Chemicals	Affected Facilities	First Responder Relationship
		regarding hazardous chemicals, as defined in the Haz Com Standard	hazardous chemicals	manufacturers and importers, users and distributors	information on SDSs; Sharing of chemical-related trade secret information with health care professionals
OSHA	Hazardous Waste Operations and Emergency Response (HAZWOPER) Standard	Facility emergency response planning and implementation for chemical releases	Planning requirements tailored to chemicals at the facility	Chemical manufacturers, users and distributors	Establish and implement an emergency action plan for the facility
OSHA	Process Safety Management (PSM) Standard	Manufacturers required to consider process design to minimize potential on-site chemical releases	PSM Standard highly hazardous chemicals	Chemical manufacturers, users, and distributors	Establish and implement an emergency action plan for the facility