

Chemical Safety Information, Site Security and Fuels Regulatory Relief Act: Public Meetings and Other Notifications

On Aug. 5, 1999, President Clinton signed the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (PL 106-40). The new law primarily concerns the public availability of the Off-site Consequence Analysis (OCA) sections of Risk Management Plans (RMPs) submitted by facilities under regulations implementing Section 112(r) of the Clean Air Act (CAA). The new law prohibits government officials from disclosing to the public the OCA sections of RMPs and other related materials until at least Aug. 5, 2000. However, the law does *not* prohibit facilities from sharing with the public the OCA sections of their RMPs, and it requires most facilities to provide the public with at least a summary of their OCA information by Feb. 1, 2000.

Background

Section 112(r) of the Clean Air Act (CAA) requires facilities with more than a threshold quantity of a listed extremely hazardous substance to have a risk management program in place and to submit a summary of that program - the RMP - to the Environmental Protection Agency (EPA) by June 21, 1999.

Under Section 112(r) as originally enacted, RMPs, including the OCA sections of RMPs, were publicly available, since one purpose of RMPs is to inform the public about facilities' safety programs and to stimulate a dialogue between the community and industry about chemical safety.

However, concerns were raised that widespread electronic distribution of a database derived from the OCA sections of RMPs could pose a security risk. In response to this concern, the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act was passed.

The new law, among other things, limits public access to the OCA sections (i.e., sections 2 through 5) of RMPs and other related materials until at least Aug. 5, 2000. By that date, the federal government is to complete an assessment and rulemaking to address the future public availability of those OCA materials. In the meantime, the new law requires

facilities submitting RMPs to provide the public with certain related information.

Public Meetings

If your facility was required to submit an RMP for a Program 2 or Program 3 process, you must announce and hold a public meeting by Feb. 1, 2000, to discuss your RMP, including the OCA sections. If you meet the applicable definition of "small business stationary source," you may opt to publicly post a summary of your OCA information.

In either case, you must certify to the Federal Bureau of Investigation (FBI) by June 5, 2000, that you have held the meeting or posted the summary. Facilities having only Program 1 processes are exempt from the public meeting/summary requirement.

It's An Opportunity!

Holding a public meeting can help your facility:

- Open a risk communication dialogue with the LEPC, local community leaders and the public;
- Explain what you are doing to reduce risk;
- Discuss your plans for Y2K compliance; and
- Identify key issues of concern in your community.

The new law requires that the public meeting must:

- Be convened after "reasonable public notice" of the meeting, and
- "Describe and discuss the local implications" of your RMP, including a summary of the information in the OCA sections of your plan.

You have broad discretion under PL 106-40 to decide how best to announce and conduct a public meeting that meets these requirements. The new law allows you to conduct joint public meetings with other facilities.

Suggestions

- Use a form of public notice that makes sense for your community. For example, consider announcing your meeting in utility bills, a community newsletter or on the radio.
- Coordinate your meeting with the LEPC or Fire Department.
- Make your presentation at a public meeting co-hosted by the mayor or other public official.

Credit for Past Public Meetings

If your facility held or participated in a public meeting between Aug. 5, 1998 and Aug. 5, 1999 that met the requirements for public meetings, you do not have to conduct another public meeting.

You have fulfilled your public meeting requirement if your meeting was open to the public; preceded by reasonable public notice; and you described and discussed the local implications of your RMP and summarized the OCA information. Simply certify to the FBI that you held such a meeting.

Note: To meet the requirements of the new law, the past meeting must have considered the same information that you submitted to EPA in your RMP. If the information that you described and discussed at the public meeting was significantly different from that reported in your RMP, you must convene another public meeting.

RMP Program Levels

The RMP rule classifies processes (not facilities) into three Program levels:

- Program 1 - processes considered low risk because their worst-case release would not affect public receptors and they have not had an accident that affected the public in the last 5 years.
- Program 2 - processes not eligible for Program 1 or subject to Program 3.
- Program 3 - processes not eligible for Program 1 that are subject to the OSHA process safety management standard or in one of ten industrial sectors (i.e., chemical manufacturers, refineries, and pulp mills).

Small Businesses

Facilities meeting the CAA Section 507(c)(1) definition of "small business stationary source" have the option of publicly posting a summary of their OCA information instead of holding a public meeting.

The new law requires that summaries prepared in lieu of a public meeting must:

- Be publicly posted; and
- Summarize the information in sections 2 through 5 of your RMP.

Your facility qualifies as a "small business stationary source" if it:

- Is owned or operated by a person that employs 100 or fewer individuals;
- Meets the definition of "small business concern" in the Small Business Act (15 USC 631 et seq.);
- Is not a "major stationary source" under the CAA (see 42 USC 7661(2));
- Emits less than 50 tons or more per year of any regulated pollutant; and
- Emits less than 75 tons per year of all regulated pollutants.

"Regulated pollutants" include all of the pollutants regulated under the CAA, not just the

substances regulated under section 112(r) of the CAA.

You have broad discretion under the new law to decide how best to publicly post your OCA information. Your town may have a public bulletin board where the community regularly goes for information about local activities. Or, you can contact your Local Emergency Planning Committee (LEPC) or County Emergency Management Association to see if they have any posting tips.

Certification to the FBI

By June 5, 2000, the owner or operator of your facility must send a certification stating that the public meeting has been held, or the OCA summary posted, to:

Director, FBI
Attention: RMP Program - Room 1B327
935 Pennsylvania Ave. N.W.
Washington, D.C. 20535-0001

The FBI will document receipt of the certifications and provide documentation to the EPA. No other communication should be included with certifications to the FBI.

Release of OCA Without Restriction

The owner or operator of a facility may chose to share with the public the OCA sections of the facility's RMP. PL 106-40 provides that the OCA sections of any RMP made available to the public without restriction by the facility owner or operator is not subject to the restrictions of the law.

Once a facility has released that portion of its RMP to the public, government officials may do so, as well.

Sample Certification to Director, FBI

RE: EPA Facility ID# (12 digits)

In accordance with P.L. 106-40, on (insert date), (name of facility and facility ID number), after reasonable public notice, convened a public meeting. At that time, the local implications of our Risk Management Plan, including a summary of the OCA portion of the plan, were described and discussed.

or

In accordance with P.L. 106-40, on (insert date), (name of facility) publicly posted a summary of the OCA portion of our Risk Management Plan. The information was posted (describe where). This facility meets the definition of a small business stationary source in Section 507(c) of the Clean Air Act.

Signature

Print Name

Title

Date

Notification to EPA

If your facility makes the OCA portion of your RMP available to the public without restriction, PL 106-40 requires you to notify EPA that you have done so. EPA must keep a public list of facilities that have released the OCA portion of their RMPs without restriction.

Sample Notification to the Administrator, EPA

EPA Facility ID# (12 boxes to indicate size)

I am submitting this notification in accordance with the requirements of P.L. 106-40 to indicate that the OCA portion of the Risk Management Plan relating to (name of facility) was publicly released without restriction on (insert date).

Signature

Print Name

Title

Date

Enforcement

EPA has the authority to enforce the meeting, certification, and notification provisions of the law. Failing or refusing to comply with the above provisions may result in EPA initiating a judicial action in Federal district court to enforce the obligations under the new law.

For More Information

Full text of the law and some Frequently Asked Questions and Answers are available on EPA's Chemical Emergency Preparedness and Prevention Office homepage at <http://www.epa.gov/ceppo>

RMPs, except for sections 2 through 5 (the OCA portion), are available on the Internet in a database called RMP*Info. The public can access the data at <http://www.epa.gov/enviro>.

Contact the Emergency Planning and Community Right-To-Know Hotline at (800) 424-9346 or (703) 412-9810.

Mail the notice to:

RMP Reporting Center
P.O. Box 3346
Merrifield, VA 22116-3346