



Billing Code 6350-01-P

## **CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD**

### **40 CFR Part 1604**

**[Docket Number: CSB-2019-0004]**

**RIN 3301-AA00**

### **Accidental Release Reporting**

**AGENCY:** Chemical Safety and Hazard Investigation Board.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule describes when an owner or operator is required to file a report of an accidental release and the required content of such a report. The purpose of the proposed rule is to ensure that the CSB receives rapid, accurate reports of any accidental release that meets established statutory criteria.

**DATES:** Comments must be submitted by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

**ADDRESSES:** You may send comments, identified by docket number and/or RIN number, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: [reportingrule@csb.gov](mailto:reportingrule@csb.gov). Include docket number and/or RIN number, 3301-AA00, in the subject line of the message.
- Mail: Chemical Safety and Hazard Investigation Board, 1750 Pennsylvania Ave., NW, Suite 910, Washington, DC, 20006, ATTN: Reporting Rule Comment.

*Instructions:* All submissions must include the agency name and docket number, CSB-2019-0004, or Regulatory Information Number, 3301-AA00, for this rulemaking. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation and Request for Comments” heading of the SUPPLEMENTARY INFORMATION section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rule, call or e-mail Mr. Thomas Goonan, General Counsel of the Chemical Safety and Hazard Investigation Board, by telephone at 202-261-7600, or by e-mail at [rulemaking@csb.gov](mailto:rulemaking@csb.gov).

**SUPPLEMENTARY INFORMATION:** The enabling statute of the Chemical Safety and Hazard Investigation Board (CSB) provides that the CSB “shall establish by regulation requirements binding on persons for reporting accidental releases into the ambient air subject to the Board’s investigative jurisdiction.” 42 U.S.C. 7412(r)(6)(C)(iii). The proposed rule is intended to satisfy this statutory requirement.

## **Background**

The CSB was established by the Clean Air Act Amendments of 1990. The statute directs the CSB, among other things, to investigate and report on any accidental release “resulting in a fatality, serious injury or substantial property damages.” 42 U.S.C. 7412(r)(6)(C)(i) and (ii). The statute also requires the CSB to issue a rule governing the reporting of accidental releases to the CSB. 42 U.S.C. 7412(r)(6)(C)(iii).

Although the CSB's enabling legislation was enacted in 1990, the CSB did not begin operations until 1998. Since 1998, the CSB has not promulgated an accidental release-reporting requirement as envisioned in the CSB enabling legislation.

In 2004, the DHS Inspector General recommended that the CSB implement the statutory reporting requirement: “The CSB needs to refine its mechanism for learning of chemical incidents, and it should publish a regulation describing how the CSB will receive the notifications it needs.” (Department of Homeland Security, Office of Inspector General, “A Report on the Continuing Development of the U.S. Chemical Safety and Hazard Investigation Board,” OIG-04-04, Jan. 2004, at 14.) In 2008, the Government Accountability Office (GAO) also recommended that the CSB fulfill its statutory obligation by issuing a reporting rule. (U.S. Government Accountability Office, “Chemical Safety Board: Improvements in Management and Oversight Are Needed,” GAO-08-864R, Aug. 22, 2008, at 11.)

On June 25, 2009, the CSB submitted an Advanced Notice of Proposed Rulemaking (ANPRM) entitled “Chemical Release Reporting,” at 74 FR 30259-30263, June 25, 2009. The ANPRM outlined four potential approaches to accidental release reporting and requested additional information for developing a proposed rule. Specifically, the CSB sought comments in response to several specific questions, including but not limited to the following:

- Are there Federal, State, or local rules or programs for reporting chemical or other types of incidents that would be an appropriate model for the CSB to consider in developing a reporting requirement?
- Should an initial report be made to the CSB or the National Response Center?
- What information should be reported to the CSB?
- How soon after an accident should reporting occur?
- Should the rule be designed with distinct requirements for rapid notification of high-consequence incidents and more systematic (and slower) notification of other incidents?

74 FR 30262.

In response to the ANPRM, the CSB received 27 comments from a variety of interested parties. These comments are included as part of the docket for this rulemaking and labeled for reference as CSB-ANPR0901-000001 to CSB-ANPR0901-000133.

On February 4, 2019, a U.S. District Court judge ordered the CSB to issue a rule requiring the reporting of accidental chemical releases to the CSB. See *Air Alliance of Houston, et al. v. U.S. Chemical Safety and Hazard Investigation Board*, 365 F. Supp. 3d 118 (D.D.C. Feb. 4, 2019). The court directed the CSB to promulgate a final rule within 12 months of the date of the court's final order.

## **Public Participation and Request for Comments**

### *Submitting Comments*

If you submit a comment, please: include the docket number for this rulemaking (USCSB-2019-0004) and/or the RIN number, 3301-AA00; indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. We recommend that you include your name and either a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

### *Online*

To submit your comments online, go to <http://www.regulations.gov> and find the CSB's proposed rule. You can find a rule on [regulations.gov](http://www.regulations.gov) by entering a keyword, title, RIN number, or document ID in the search area on the homepage and click the "Search" button. On the "Search Results" page, you can narrow your results with the filters on the screen. Once you find the proposed rule, click its title to view the "Document Details" page.

Once you locate a document that is open for comment, click the "Comment Now!" button on either the Search Results or the Document Details page. This will display the Comment Form. You can enter your comment on the form, and attach files (up to 10MB each). Be sure to complete all required fields. Please note that some information entered on the web form may be viewable publicly. These fields are identified by the globe icon. Once you reach the "Your Preview" screen, the information that will be viewable publicly is displayed directly on the form under the section titled: "This information will appear on Regulations.gov." To complete your comment, you must first agree to the disclaimer and check the box. This will enable the "Submit Comment" button.

Upon completion, you will receive a Comment Tracking Number for your comment. To learn more about comment submission, visit the "Submit a Comment" section of the "How to Use Regulations.gov" pages.

#### *Mail or Hand Delivery*

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know if your mail reached the CSB, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based upon your comments.

#### *Viewing Comments and Documents*

To view comments, as well as documents described in this preamble as being available in the docket, go to <http://www.regulations.gov>. If you do not have access to the Internet, you may view the docket online by visiting the Chemical Safety and Hazard Investigation Board, 1750

Pennsylvania Ave. NW, Suite 910, Washington, DC 20006, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Please call 202-261-7600 in advance to schedule an appointment.

## **Regulatory Requirements**

### **Unfunded Mandates Reform Act (2 U.S.C. Ch. 25)**

The Act does not apply to independent regulatory agencies, 2 U.S.C. 658(1). In any event, the proposed rule does not contain a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year. Nor will it have a significant or unique effect on small governments.

### **Regulatory Flexibility Act (5 U.S.C. Ch. 6)**

The Regulatory Flexibility Act (RFA) requires Federal agencies to assess the impact of a proposed rule on small entities and to consider less burdensome alternatives for rules that are expected to have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603. However, an agency is not required to prepare such an analysis for a proposed rule if the Agency head certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). For the reasons discussed below, the CSB has certified to the SBA's Chief Counsel for Advocacy of the Small Business Administration ("SBA") that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small businesses, small governmental jurisdictions, or small organizations.

### *Summary of Proposal*

As authorized by 42 U.S.C. 7412(r)(6)(C)(iii), the CSB has proposed a rule to require an owner or operator of a stationary source to submit an accidental release report to the CSB. The

proposed rule describes when an owner or operator is required to file a report of an accidental release, and the required content of such a report. The purpose of the proposed rule is to ensure that the CSB receives rapid, accurate reports of any accidental release that meets established statutory criteria.

The proposed accidental release reports will require only information that is already known or should be available to an owner/operator soon after an accidental release. The required information is also limited in scope to critical information required for the CSB to make informed decisions about its jurisdiction, interagency coordination, and deployment decision-making. For example, paragraphs (a)-(e) require only minimal contact information and a basic description of the accidental release. Paragraph (g) requests the relevant CAS Registry Number associated with the chemical(s) involved in the accidental release. Paragraphs (h), (i), (j), and (l)(1)-(3) include an important qualifier, “if known.” This qualifier recognizes that some or all of this information may not be known within four hours of an accidental release.

## **Economic Impact**

### *Small Entity Impact*

Although the CSB concluded that the proposed rule will not have a significant economic impact on businesses, regardless of size, the CSB nevertheless estimated how many small businesses would be impacted by the proposed rule by using the following methodology. In order to estimate the percentage of reports that would likely be filed by small businesses each year, the CSB reviewed the 1,923 accidental releases to determine how many releases could be matched to a NAICS code and how many distinct NAICS codes were represented. Of the 1,923

incidents, approximately 85 percent (1,625) had a NAICS code identifier. The 1,625 events were distributed among 441 distinct, six-digit NAICS codes.<sup>1</sup>

Because of the distribution of accidental releases among so many different NAICS codes, the CSB focused its analysis on the business types most likely to be impacted by the proposed rule: firms with NAICS codes that appeared most often in the dataset. The CSB sorted the 1,625 releases with a NAICS code into three segments: 1) NAICS codes which appeared at least 10 times in the dataset; 2) NAICS codes which appeared between 5-9 times, and 3) NAICS codes that appeared less than 5 times. The CSB concluded that a total of 19 NAICS codes appeared 10 or more times and represented 423 separate incidents, or 26% of the 1,923 events recorded in the database.

The 19 NAICS codes with at least 10 events over the pertinent time period are listed in Table 2 below. The CSB used these 19 codes as a sample to assess impact on small businesses. The CSB assumed that releases fell evenly across all businesses within each NAICS code. Based on the total number of reports for each code (column 2), the CSB calculated the percentage of accidental releases occurring within each of the 19 most frequent NAICS codes in relation to the total number of 1,923 incidents in the database. This information is summarized in Table 2, column 3.

The CSB used the U.S. Small Business Administration Table of Small Business Size Standards to determine the pertinent small business standard for each of the 19 NAICS categories.<sup>2</sup> Depending on the NAICS code, a firm's status as a small business is determined by

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<sup>1</sup> The CSB determined that a total of 253 NAICS codes appeared only one time over 10 years. Thus, 57% (253 out of 441) of the codes involved only one incident.

<sup>2</sup> U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes (effective August 19, 2019), available at <https://www.sba.gov/document/support--table-size-standards>.

the number of employees or by annual revenue.<sup>3</sup> The pertinent measure for each NAICS code, employment or revenue, is set out in Table 2 in the fourth and fifth columns.

The CSB determined the total number of firms in each category, and the total number of small firms in each category, by consulting the most recent census tables summarizing data for U.S. businesses. See Table 1, columns 6 and 7. The most recent data for businesses measured by employment is from 2016.<sup>4</sup> The most recent data for businesses measured in terms of revenue is from 2012.<sup>5</sup> The percentage of small businesses within each NAICS code is listed in the last column of Table 2.

**Table 1 Releases by NAICS Categories in Terms of Frequency of Releases 2009-2019**

NAICS Code	NAICS Industry Name	Number (percent) of incidents in sample (N=1,923)	Size standards in millions of dollars of revenue (2012)	Size standards in number of employees (2016)	Total Firms	Small	% Small
324110	Petroleum Refineries	54 (2.8%)	N/A	1,500	96	51*	53%
213112	Support Activities for Oil and Gas Operations	48 (2.5%)	\$42	N/A	8,877	8,595	98%
211111	Crude Petroleum and Natural Gas Extraction	44 (2.3%)	N/A	1250	5,658	5,558*	98%
424690	Other Chemical and Allied Products	28 (1.5%)	N/A	150	5,912	5,410	92%

<sup>3</sup> Id. The SBA does set out some alternative measures for certain codes, but the CSB review used only standard measures.

<sup>4</sup> Number of Firms, Number of Establishments, Employment, and Annual Payroll by Enterprise Employment Size for the United States, All Industries: 2016 (released 12/18/2018), available at <https://www.census.gov/data/tables/2016/econ/susb/2016-susb-annual.html>.

<sup>5</sup> Number of Firms, Number of Establishments, Employment, Annual Payroll, and Estimated Receipts by Enterprise Receipt Sizes for the United States, All Industries: 2012 (released June, 22, 2015), available at <https://www.census.gov/data/tables/2012/econ/susb/2012-susb-annual.html>.

	Merchant Wholesalers						
213111	Drilling oil and gas	27 (1.4%)	N/A	1000	1,795	1,754*	98%
325199	All Other Basic Organic Chemical Manufacturing	24 (1.25%)	N/A	1,250	584	485*	83%
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing	24 (1.25%)	N/A	500	1,005	924	92%
325211	Plastics Material and Resin Manufacturing	20 (1.04%)	N/A	1,250	855	736*	86%
423930	Recyclable Material Merchant Wholesalers	20 (1.04%)	N/A	100	6,776	6569	97%
331110	Iron and Steel Mills	22 (1.14%)	N/A	1,500	442	372*	84%
221310	Water Supply and Irrigation Systems	18 (.94%)	\$30	N/A	3,293	3,243	98%
424720	Petroleum and Petroleum Products Merchant Wholesalers	17 (.88%)	N/A	200	1,690	1490	88%
238910	Site Preparation Contractors	15 (.78%)	\$17	N/A	33,806	33,324	98%
311615	Poultry Processing	13 (.68%)	N/A	1,250	317	258*	81%
325180	All Other Basic Inorganic	16 (.8)	N/A	1000	365	279	76%
221320	Sewage Treatment Facilities	12 (.62%)	\$22	N/A	398	370	93%

237120	Oil and Gas Pipeline and Related Structures Construction	12 (.62%)	\$40	N/A	1,779	1592	89%
811111	General Automotive Repair	11 (.57%)	\$8	N/A	76,336	75,639	99%
713940	Fitness and Recreational Sports Centers	10 (.52%)	\$8	N/A	24,775	24,348	98%
	Total	435 (23%)					

Note 1: An asterisk appears next to numbers in the table that are estimates based on a lack of sufficiently specific census data. For example, the pertinent employment size standard for iron and steel mills set by the SBA is 1,500 employees. However, census data does not provide specific information on the number of firms with more than 1,500 employees. Instead, the highest category is 500 and more employees. Thus, for purposes of analysis, the counted firms with less than 500 employee's as small firms.

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The CSB then multiplied the percentage of small business within each category by the total number of reported releases in that category over the 10-year period. Table 2, column 7. This number was then divided by 10 to obtain the number of reports anticipated each year on average from small businesses within each NAICS code.<sup>6</sup> Table 2, column 8. Because the number of small business reports expected annually is low, (covering a range from .91 to 4.7) for the sectors with the most identifiable releases, the CSB reasons that the impact in sectors with only a few releases over 10 years would be inconsequential.

**Table 2- Expected Annual Reports Burden by Sector**

NAICS Code	NAICS Industry Name	Total Businesses <sup>7</sup>	Small	% Small	Expected Reports 2020-2030	Expected-Reports from Small Businesses-	Expected Annual Reports-Small
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<sup>6</sup> The database covered approximately 10.5 years, but the CSB used 10 in its calculation for simplicity.

<sup>7</sup> In order to calculate the number of small businesses, the CSB had to use two different census tables. If the size standard was based on revenue, the CSB relied on a 2012 table. If the size standard was based on employment, the CSB used the 2016 table.

						2020-2030	Business
213112	Support Activities for Oil and Gas Operations	8,727	8,596	.98	48	47	4.7
211111	Crude Petroleum and Natural Gas Extraction	5,658	5,558	.98	44	43	4.32
324110	Petroleum Refineries	96	51	.53	54	28.29	2.87
213111	Drilling Oil and Gas Operations	1,795	1,754	.98	27	27	2.64
325998	Miscellaneous Chemical Product & Preparation Manufacturing	1,005	924	.92	24	22	2.2
423930	Recyclable Material Merchant Wholesalers	6,776	6,569	.97	20	19.4	1.94
325199	All Other Basic Organic Chemical Manufacturing	584	485	.83	24	20	1.99
331110	Iron and Steel Mills	442	372	.84	22	18.48	1.85
325211	Plastics Material and Resin Manufacturing	855	736	.86	20	17.2	1.7
221310	Water Supply and Irrigation Systems	3,293	3,243	.98	18	17.6	1.76
424690	Other Chemical and Allied Products Merchant Wholesalers	5,912	5,410	.92	17	15.64	1.56
424720	Petro. and Petro. Products Merchant Wholesalers (except Bulk Stations and Terminals)	1,690	1,487	.88	17	15	1.5
238910	Site Preparation	34,153	32,997	.98	15	14.7	1.47

	Contractors						
325180	All Other Basic Inorganic Chemical Manufacturing	365	279	.76	16	12.16	1.22
221320	Sewage Treatment Facilities	398	370	.93	12	11.2	1.12
811111	General Automotive Repair	76,336	75,639	.99	11	10.89	1.08
237120	Oil and Gas Pipeline and Related Structures Construction	1,779	1,592	.89	12	11	1.1
311615	Poultry Processing	317	258	.81	13	10.5	1.0
713940	Fitness and Recreational Sports Centers	24,775	24,348	.98	10	10	.98

*Estimated Reports per Year*

The CSB identified 1,923 chemical accidents in its database that occurred between January 1, 2009, and July 15, 2019. Each of these incidents involved either a fatality or hospitalization. A copy of the CSB's database information regarding the 1,923 accidental releases is included in the docket for reference.<sup>8</sup> The total number of annual incidents ranged from a low of 113 in 2017 to a high of 291 in 2012. Over 10.5 years, the average annual number of accidents was approximately 183. The median number of accidents per year was 169.

Because the database tracked hospitalizations (as opposed to serious injuries as defined in the proposed rule), it is possible that certain incidents within the CSB's investigatory jurisdiction

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<sup>8</sup> Because of the CSB's limited resources and lack of available information, there are certain limitations to the information contained in the CSB database. The database was not designed to comprehensively collect statistically valid data concerning all accidental releases. Much of the information in the database comes from the first day of incident media reports. The CSB could only follow up on a limited number of events per year to verify information contained in the media reports.

are not included in the database. In addition, it is possible that the CSB's data does not include a small number of accidental releases that resulted in a fatality. A release resulting in a fatality might have been missed if it was not reported to NRC pursuant to other law or not reported in the media.<sup>9</sup> For these reasons, the CSB recognizes that the annual average of 183 incidents may undercount a certain number of accidental releases which meet the CSB's statutory criteria. On the other hand, the past annual average does not take into account that a certain number of full reports will not be required under the proposed rule if a party has already reported the release to the NRC under CERCLA. In light of all factors, the CSB increased its annual estimate of reports from the historic average of 183 to 200.

#### *Burden Estimate-Time*

The CSB considered two areas of burden: familiarization costs and reporting costs. The CSB estimated that it would take approximately 45 minutes for each firm to learn about the rule and when to report. The CSB considers this a one-time cost, which will be borne by all entities which might experience an accidental release, whether or not such a release occurs. The CSB also estimated that it would take each firm approximately 15 minutes to submit a report to the CSB following an accidental release.

The CSB reviewed forms the NRC uses to guide its operators in taking release information with questions similar to those included in the CSB's proposed form. The main difference is that the proposed CSB form had fewer data queries. The CSB asked NRC how long it typically took its operators to collect information from a caller reporting an accidental release. NRC does not break that information down based on the type of incident involved but had other relevant, informal information to share. NRC informed the CSB that it receives approximately

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<sup>9</sup> During the relevant time period, the CSB relied on NRC reports and media surveillance search engines to identify releases of interest.

30,000 telephone reports each year, and the average time required for each operator to complete the call was approximately 8 minutes. The CSB conducted two simulated accidental release phone calls in which the caller was asked for the same information as is required under the proposed rule. These simulated calls also took approximately 8 minutes. Thus, the available information indicated that a phone submission would take approximately 8 minutes. In its judgment, the CSB estimated that it would take 2-3 additional minutes to complete a screen-fillable .pdf form and email it to the CSB. To allow for some margin of error in its analysis, the CSB estimates that it will take approximately 15 minutes to submit a report, either by telephone or by emailing a form.

#### *Burden Estimate-Cost*

The CSB then estimated an hourly labor cost to translate the time requirement into a cost figure. In order to determine an appropriate hourly rate, the CSB identified six relevant occupation codes, the annual mean wage, and the mean hourly wage for each, based on the Bureau of Labor Statistics' May 2018 National Occupational Employment and Wage Estimates United States.<sup>10</sup> The CSB next combined the average hourly rate for each of the six classifications and divided that total by six. This calculation produced an average hourly rate of \$37.20. This information is summarized in Table 3 below.

The CSB then multiplied the average hourly wage (\$37.20) by the total time requirement for the first year of one (1) hour (45 minutes to learn about the rule and 15 minutes to submit a report). This calculation resulted in an estimated per-business compliance cost during the first year of \$37.20. However, not all businesses will need to file a report during the first year or each year thereafter. Further, some businesses who need to file a report each year will not have to

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<sup>10</sup> [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm)

submit a full report to the CSB if the firm has already reported the event to the NRC under CERCLA.

Based on the minimal per business cost, the CSB has concluded that the proposed rule will not have a significant economic impact on any business, regardless of size.

**Table 3- Occupational Classifications and Wages**

Occupational Code	Occupation Title	Mean Annual Wage	Mean Hourly
13-1041	Compliance Officer	\$72,520	\$34.86
17-2081	Environmental Engineers	\$92,640	\$44.54
17-2110	Industrial Engineers <sup>11</sup>	\$91,800	\$44.14
17-1111	Health and Safety Engineers <sup>12</sup>	93,630	\$45.01
17-3025	Environmental Engineering Technicians	\$54,800	\$26.34
17-3026	Industrial Engineering Technicians	\$58, 860	\$28.30
	Composite Average Hourly		\$37.20

Given the minimal burden of reporting imposed under the proposed rule, and the low number of reports expected from small businesses on an annual basis, the CSB concluded that the proposed rule will not have a significant economic impact on a substantial number of small entities. The CSB seeks comments on this certification, under the RFA. The CSB also requests comments on the threshold economic analysis, presented above, and its underlying assumptions.

<sup>11</sup> Includes health and safety engineers.

<sup>12</sup> Except Mining Safety Engineers and Inspectors.

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### **Paperwork Reduction Act (44 U.S.C. Ch. 35)**

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to, nor be subject to a penalty for, failure to comply with a collection of information unless that collection has obtained Office of Management and Budget (OMB) approval and displays a currently valid OMB Control Number.

As of the date of the publication of this proposed rule, the CSB has made a PRA submission to OMB in accordance with 5 CFR 1320.5(a)(3) and immediately below has published the following notice required under 5 CFR 1320.5(a)(1)(iv):

Type of Information Collection: New Collection.

Title of the Collection: Accidental release report.

Summary of the Collection: The proposed collection requires an owner/operator of a stationary source to report information concerning an accidental release. Specific detail is provided in the proposed information collection request.

Need for the information and proposed use of the information: The CSB is required by law to issue an accidental release reporting rule. The CSB intends to use the information to learn of any accidental release within its jurisdiction and to plan how to respond to that particular accidental release.

A description of the likely respondents: The vast majority of respondents will be private sector businesses involved in the production, storage or handling of regulated substances or extremely hazardous substances.

Estimated number of likely respondents per year: 200.

Proposed frequency of response to the collection of information: Most respondents will only submit a response if an accidental release within the scope of the rule occurs during a given year. For the vast majority of potential respondents, the frequency of responses will likely be “none” in a given year.

An estimate of the total annual reporting and recordkeeping burden:

*Reporting:* The CSB estimates that approximately 200 reports will be submitted each year, and that each report will take approximately 15 minutes for each respondent to complete and submit to the CSB. Thus, the CSB estimates the total annual labor burden each year for reporting parties will be approximately 50 hours.<sup>13</sup>

The CSB then estimated an hourly labor cost to translate the time requirement into an annual cost figure. In order to determine an appropriate hourly rate, the CSB identified six relevant occupational classifications, and the annual salary for each position, based on the Bureau of Labor Statistics’ May 2018 National Occupational Employment and Wage Estimates. A full discussion of this calculation is included in the discussion above concerning the Regulatory Flexibility Act. Based on its analysis, the CSB estimated an hourly rate of \$37.20 was appropriate for purposes of estimated labor cost. The CSB then multiplied the average hourly wage rate of \$37.20 by the total annual time estimate of 50 hours to determine its total annual cost estimate of \$1,860.00.

#### *Recordkeeping*

There is no recordkeeping requirement.

Notice that comments may be submitted to OMB: The collection of information proposed in this rule has been submitted to OMB for review under section 3507(d) of the Act. See 5 CFR

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<sup>13</sup> This estimate does not include first year familiarization costs for potentially impacted firms to learn about the rule and its requirements. However, the first year familiarization cost calculation is addressed in the regulatory flexibility section of the preamble.

1320.8(d)(3). You may submit comments to OMB's Office of Information and Regulatory Affairs via email to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov), Attention: Desk Officer for the CSB.

Because OMB is required to make a decision concerning the proposed information collection request between 30 and 60 days following receipt, OMB must receive comments no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

Any interested person may also submit comments to the CSB regarding the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden directly. Whether submitted to OMB or the CSB, such comments should:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Address the potential to enhance the quality, utility, and clarity of the information to be collected; and
- Discuss options to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### **Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. Ch. 6)**

The proposed rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (as amended), 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

#### **National Environmental Policy Act of 1969 (5 U.S.C. 804)**

The proposed rule will not have significant effect on the human environment. Accordingly, this rule is categorically excluded from environmental analysis under 43 CFR 46.210(i).

**E-Government Act of 2002 (44 U.S.C. 3504)**

Section 206 of the E-Government Act requires agencies, to the extent practicable, to ensure that all information about that agency required to be published in the Federal Register is also published on a publicly accessible website. All information about the CSB required to be published in the Federal Register may be accessed at <http://www.csb.gov>. This Act also requires agencies to accept public comments “by electronic means.”

Finally, the E-Government Act requires, to the extent practicable, that agencies ensure that a publicly accessible Federal Government website contains electronic dockets for rulemakings under the Administrative Procedure Act of 1946 (5 U.S.C. 551, et seq.). Under this Act, an electronic docket consists of all submissions under section 553(c) of title 5, United States Code; and all other materials that by agency rule or practice are included in the rulemaking docket under section 553(c) of title 5, United States Code, whether or not submitted electronically. Regulations.gov will contain an electronic docket for this rulemaking.

**Plain Writing Act of 2010 (5 U.S.C. 301)**

Under this Act, the term “plain writing” means writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience. To ensure that this rulemaking has been written in plain and clear language so that it can be used and understood by the public, the CSB has modeled the language of this proposed rule on the Federal Plain Language Guidelines.

**National Technology Transfer and Advancement Act of 1995 Section 12(d) (15 U.S.C. 272 note)**

The NTTAA requires agencies to “use technical standards that are developed or adopted by voluntary consensus standards bodies” to carry out policy objectives determined by the agencies, unless they are “inconsistent with applicable law or otherwise impractical.” The CSB has determined that there are no voluntary consensus standards that are appropriate for use in the development of this rule.

### **Congressional Review Act**

A final rule will be subject to the Congressional Review Act (CRA). 5 U.S.C. 801(a)(1)(A). However, a final rule resulting from this rulemaking will not be a major rule as contemplated under the CRA. See 5 U.S.C. 804 (1).

### **Discussion of the Proposed Rule**

The CSB proposes to add a new part to title 40 of the Code of Federal Regulations, which will appear as a new part 1604. The proposed part will consist of six sections. Proposed § 1604.1 states the purpose of the rule. Proposed § 1604.2 sets forth key definitions. Section 1604.3 sets forth who must file a report and when. Section 1604.4 describes the information required in each report. Section 1604.5 implements the enforcement provisions authorized by 42 U.S.C. 7412(r)(6)(O). Section 1604.6 confirms that the procedure for seeking records obtained pursuant to the rule is governed by the Freedom of Information Act (FOIA), 5 U.S.C. 552, the CSB’s procedural regulations for disclosure of records under the FOIA, 40 CFR part 1601, and other pertinent Federal disclosure laws.

#### **§ 1604.1 Purpose.**

The purpose of the rule is to require an owner/operator to notify the CSB promptly of any accidental release within the CSB’s investigatory jurisdiction. When the enabling legislation was adopted, there was no other reliable method for the government to learn quickly of an

accidental release other than requiring that an owner/operator inform the government. A reporting rule should lead to the provision of information useful to CSB in assessing its jurisdiction and making deployment decisions.

Over the years, interested parties have suggested other potential benefits of a reporting rule. For example, GAO opined that the value of a reporting rule is broader than ensuring that the CSB receives mere notification of incidents, stating that a rule would “better inform the agency of important details about accidents that it may not receive from current sources.” (GAO–08–864R, at 11.) GAO also suggested that the information obtained through a reporting rule could improve the CSB’s ability to “target its resources, identify trends and patterns in chemical incidents, and prevent future similar accidents.”(GAO–08–864R, at 7).

The CSB appreciates the points made in the GAO report. However, the CSB is mindful that its enabling legislation makes clear that in mandating this reporting rule, Congress did not intend that such a rule would supplant or conflict with existing public information and safety laws, such as The Emergency Planning and Community Right to Know Act (EPCRA), which is focused on emergency response, the protection of public health and safety, and the public release of information to mitigate risks to the public.<sup>14</sup>

The CSB, thus, has focused the rule on requiring an owner/operator to promptly report an accidental release to the CSB. The CSB’s ability to propose a rule designed to achieve more than a meaningful notification is limited by the language and purpose of its enabling statute.

#### **§ 1604.2 Definitions.**

Section 1604.2 establishes definitions for the proposed rule. A few comments in response to the ANPRM suggested that CSB use definitions established in other rules. As explained below, the CSB could not use certain existing definitions in other rules. For example, the CSB is

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<sup>14</sup> See section 303 of EPCRA.

required to use certain definitions that are established at 42 U.S.C. 7412(r)(2)(A)-(C), which provides definitions for the terms “accidental release,” “stationary source,” and “regulated substance.” Although not a mandatory definition, the CSB determined that one definition in section 112(r) (“owner or operator”) was appropriate and relied on that existing definition. The CSB also set forth its own proposed definitions for certain terms important to implementation of the rule. The discussion below addresses most of the proposed definitions:

Accidental release means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

This proposed definition is adopted verbatim from 42 U.S.C. 7412(r)(2)(A). The CSB uses the statutory term “accidental release” throughout the rule to refer to an event meeting the specific statutory criteria under 42 U.S.C. 7412(r)(2)(A). To the extent there are references, in this or other related documents, to a “chemical accident” or “incident,” the context and specific facts will determine whether the event meets the statutory definition of an “accidental release,” or is instead employed generically to describe an event that may or may not satisfy the statutory definition of an accidental release.

Ambient air means any portion of the atmosphere inside, adjacent to, or outside a stationary source.

Although mentioned many times throughout the Clean Air Act, there is no statutory definition of the term “ambient air.” Accordingly, the CSB proposes a plain meaning definition. The plain meaning of the phrase “ambient air” is defined by two words – ambient, meaning “existing or present on all sides” and “air,” meaning “the mixture of invisible odorless tasteless gases (as nitrogen and oxygen) that surrounds the earth” (see, *e.g.*, <https://www.merriam-webster.com/dictionary/ambient>; <https://www.merriam-webster.com/dictionary/air>).

The CSB is aware that EPA defined the term “ambient air” as part of its rule implementing the National Primary and Secondary Ambient Air Quality Standards. That definition reads as follows: “Ambient air means that portion of the atmosphere, external to buildings, to which the general public has access.” 40 CFR 50.1(e) While this definition may work well in terms of implementation of the National Primary and Secondary Ambient Air Quality Standards, its use in the CSB’s proposed rule would undercut a primary purpose of section 112 of the Clean Air Act Amendments of 1990 – to protect workers inside structures at a stationary source.

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

The term “extremely hazardous substance” is not defined in the CSB’s enabling legislation. However, the relevant legislative history provides: “The release of any substance which causes death or serious injury because of its acute toxic effect or as the result of explosion or fire or which causes substantial property damage by blast, fire, corrosion or other reaction would create a presumption that such substance is extremely hazardous.” Sen. R. 101-228 at \_\_\_ (1989), reprinted in 1990 U.S.C.C.A.N. 3385, 3596. Although it is an important element, the specific property of a substance, such as flammability, toxicity, corrosiveness, etc., does not always determine whether a substance is extremely hazardous. For example, a substance on its own may not be considered hazardous. When combined with other substances, however, the consequences may be lethal.

The CSB has therefore proposed a definition of “extremely hazardous substances,” which focuses on the consequences of a substance when it is accidentally released. Thus, an

“extremely hazardous substance” includes any substance that alone, or in combination with other substances or factors, causes death, serious injury, or substantial property damages.

Other laws or rules that define or list “hazardous substance(s)” may provide useful guidance as to what is an “extremely hazardous substance” for purposes of the CSB’s definition, but such lists or associated threshold quantities do not control the CSB’s definition. Again, the pertinent legislative history supports an expansive definition:

Extremely hazardous substances would also include other agents which may or may not be listed or otherwise identified by any Government agency currently which may as the result short-term exposures associated with releases to the air cause death, injury or property damage due to their toxicity, reactivity, flammability, volatility or corrosivity.

S. Rep. 101-228 at 212 (1989), reprinted in 1990 U.S.C.C.A.N. 3385, 3596.

For example, the CSB definition is not limited to substances listed as a “regulated substance” defined as such under 42 U.S.C 7412(r)(3).

The accidents which the Board is to investigate are those which result from the production, processing, handling or storage of a chemical substance (not limited to the extremely hazardous substances listed under subsection (c)) which result in a death, serious injury, or substantial property damage.

S. Rep. 101-228 at 231 (1989), reprinted in 1990 U.S.C.C.A.N. 3385, 3615.

Thus, “[e]xtremely hazardous substances would include, but are not limited to, those substances which are specifically listed by the Administrator under subsection (c).” S. Rep.101-228 at 212 (1989), reprinted in 1990 U.S.C.C.A.N. 3385, 3596.

Nor should the CSB definition be limited by threshold quantity limits set by other laws. A “regulated substance” includes a “threshold quantity” set by the Administrator under 42 U.S.C. 7412(r)(5). The CSB definition of extremely hazardous substance does not incorporate the concept of a threshold quantity. Limiting the CSB definition by reference to threshold limits set by other laws would potentially lead to results inconsistent with the CSB’s statutory purpose.

For example, the accidental release of a “regulated substance” that does not meet a threshold quantity can still cause serious injuries and death. There is nothing in the statutory scheme to suggest that a death or serious injury caused by less than a threshold quantity of a “regulated substance” or other hazardous substance falls outside the CSB’s investigatory jurisdiction.

To emphasize its broad definition and the inapplicability of a generic threshold limit, the CSB definition of “extremely hazardous substance” includes the phrase “including but not limited to any ‘regulated substance’ at or below any threshold quantity set by the EPA Administrator under 42 USC 7412(r)(5).”

General public means any person except for workers, employees or contractors working for (or on behalf of) the owner or operator of a stationary source from which an accidental release has occurred and any person acting in the capacity of an emergency responder to an accidental release from a stationary source.

Under its enabling legislation, the CSB is directed to treat certain investigations as mandatory. See generally 42 U.S.C. 7412(r)(E) (“In no event shall the Board forego an investigation where an accidental release causes a fatality or serious injury among the general public, or had the potential to cause substantial property damage or a number of deaths or injuries among the general public.”). The proposed definition reflects the specific statutory emphasis that the CSB investigate any accidental release that impacts or threatens people not involved directly in the operations of a stationary source. The CSB is aware that EPA has longstanding policy interpretations of “general public” for purposes of implementing other sections of the Clean Air Act. However, these policy interpretations are neither binding nor pertinent to the CSB’s implementation of an accidental release-reporting rule under its statutory authority.

Owner or operator means any person who owns, leases, operates, controls, or supervises a stationary source.

This proposed regulatory definition is adopted verbatim from 42 U.S.C. 7412(a)(9). As the enabling legislation recognizes, a stationary source may be under the “common control” of different entities. See 42 U.S.C. 7412(r)(2)(C). Multiple owners, leaseholders, or operators can exist alongside each other in complex business relationships such that a stationary source may be considered under the common control of two or more entities. Therefore, this definition applies to any person or entity who owns, leases, operates, controls, or supervises a stationary source, and can include parties with a joint interest, partnership interest, partial ownership interest, co-ownership interest, or any otherwise co-responsible parties who, in some manner, share in the ownership, leasing, operation, control or supervision of a stationary source.

These parties are in the best position to coordinate among themselves to determine which entity should file an accidental release report under this rule for an accidental release. For the purpose of efficiency, multiple owner/operators may agree in advance or at the time of release to a single, consolidated report on behalf of one or more parties who are responsible for reporting an accidental release from a stationary source. This proposed definition allows for the owner(s)/operator(s) to decide for themselves how best to meet the requirements of the rule, as long as an accidental release report is submitted by one of the parties following an accidental release.

Property damage means damage to, or the destruction of, tangible public or private property, including loss of use of that property.

This definition is well established for purposes of commercial liability insurance policies, and therefore most owner/operators should be familiar with its meaning and have no difficulty in

determining whether there has been any property damage. In addition, the proposed definition confirms that pertinent property damage is not limited to the stationary source, but also includes damage to private property (e.g., homes) and public property outside the stationary source.

Regulated substance means any substance listed by the EPA Administrator pursuant to the authority of 42 U.S.C. 7412(r)(3).

This definition is based on the definition at 42 USC 7412(r)(2)(B). The statute simply refers to “substances listed under paragraph (3).” For clarity, the definition here refers to the full citation at 42 USC 7412(r)(3) in order to encompass the “List of Substances.”

Serious injury means any injury if it results in any of the following: death; one or more days away from work; restricted work, or transfer to another job; medical treatment beyond first aid; loss of consciousness; any injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer.

As suggested by comments in response to its ANPRM, this definition is based on OSHA’s regulations pertaining to Recording and Reporting Occupational Injuries and Illness, found at 29 CFR 1904.7. Although OSHA’s regulatory requirement focuses on “significant” injuries, the CSB finds the word “significant” to be generally synonymous with the word “serious” in this context (compare [https://www.merriam-webster.com/dictionary/significant?utm\\_campaign=sd&utm\\_medium=serp&utm\\_source=jsonld#synonyms](https://www.merriam-webster.com/dictionary/significant?utm_campaign=sd&utm_medium=serp&utm_source=jsonld#synonyms) and <https://www.merriam-webster.com/dictionary/serious>). The CSB further concluded that use of an existing OSHA definition would contribute to greater understanding among the regulated community and help to ensure faster and more effective compliance with the new regulation.

Stationary source means any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.

This definition is taken verbatim from 42 U.S.C. 7412(r)(2)(C). While this definition reiterates longstanding statutory language, the CSB notes that the phrase “same industrial group” requires some additional clarification. The CSB interprets this phrase as referring to “industry group” under the Standard Industrial Classification system (SIC), which was in common use when the Clean Air Act Amendments of 1990 were signed into law. SIC employed a four-digit classification system; the first three digits in the four-digit sequence indicated the “industry group.”

In 1997, the SIC system was replaced by North American Industry Classification System (NAICS). NAICS employs a six-digit classification system. Under NAICS, the fourth digit in the six-digit sequence indicates industrial group.

[www.census.gov/eos/www/naics/faqs/faqs.html#q5](http://www.census.gov/eos/www/naics/faqs/faqs.html#q5)

Substantial property *damages* means property damage, at or outside the stationary source, estimated to be equal to or greater than \$1,000,000.

In developing its definition, the CSB began with the plain meaning of the statute.<sup>15</sup> The CSB determined that the word “substantial” must be accorded some significance. Merriam Webster defines substantial as “considerable in quantity: significantly great....” Clearly, property damage in a minimal amount (i.e., \$100) should not be considered “substantial.” This interpretation is consistent with the available legislative history:

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<sup>15</sup> The CSB separately defined the words “property damage.” See discussion above.

The Board is authorized to investigate accidental releases which cause substantial property damage. Substantial damage would include fires, explosions, and other events which cause damages that are very costly to repair or correct, and would not include incidental damage to equipment or controls.

H.R. Conf. Rep. No. 952, 101<sup>st</sup> Cong., 2d Sess. 340(1990), reprinted in 1990 U.S.C.C.A.N. 3867, 3872.

At the same time, the CSB determined that a very high dollar threshold, i.e., \$10,000,000, would not be consistent with the statutory intent because there are numbers far below that amount that any reasonable person would consider substantial. The difficulty, of course, is where to draw the line between substantial and non-substantial damages. The CSB looked at different sources for guidance.<sup>16</sup>

In reviewing its own work, the CSB concluded that nearly all of its published investigation reports involved a fatality or serious injury. This is noteworthy only because the CSB has not relied heavily on this factor in selecting accidental releases to investigate in-depth. With a low-dollar, property-damage-only accidental release, the CSB might receive a number of reports that would be unlikely candidates for further CSB investigation.

In response to its ANPRM, the CSB received few comments regarding this definition. The American Chemistry Council's comment suggested that the CSB adopt the DOT regulatory limit of \$50,000. CSB-ANPR0901-000115. The CSB also considered API 754 (2016). API 754 suggests recording "fire or explosion damage greater than or equal to \$100,000 of direct cost" under its Tier 1 category. Under API 754 Table D.1-Tier 1 Process Safety Event Severity Weighting, \$100,000 in property damage would score one

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<sup>16</sup> CSB understands that FEMA has defined the phrase "substantial damage" as "damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred." 44 CFR 209.2. However, the CSB determined that this definition was too narrow (property damage limited to structure) and would be less easy to apply than an estimate of monetary damage.

point. \$1,000,000 would score three points, \$10,000,000 would score 9 points, and \$100,000,000 would score 27 points.

The CSB also considered EPA’s “Summary of Quantified Damages” in its proposed amendments to its RMP rule. 81 FR 13637 at 13642–43, March 14, 2016. In looking at EPA RMP-covered facilities over a 10-year period, the EPA estimated an average of \$1,354,578 in onsite property damage for each accident. *Id.* However, this figure is only an average, not a median, and is limited to only a subset of facilities within the scope of the proposed rule.

After reviewing the relevant factors, the CSB has proposed \$1,000,000 as a threshold for purposes of defining “substantial property damages.” The CSB believes this amount should likely capture accidental releases of significance when there is no other basis for jurisdiction (no deaths or serious injuries.) At the same time, this threshold should reduce the number of reports required when there is very little likelihood of serious scrutiny or follow-up investigation by the CSB because the accidental release did not cause any deaths or serious injuries.

The CSB notes, however, that any proposed threshold, even a much lower one, may exclude a small number of very significant accidental releases. This might occur if an accidental release fortuitously did not result in death, serious injury, or substantial property damages, but nevertheless involved the release of a significant amount of an extremely hazardous substance such as hydrofluoric acid. Despite the potential significance of such an accidental release, the CSB is concerned that its statutory language—“death, serious injury, or substantial property damages” — does not authorize it to require reports when all three consequences are absent.

The CSB welcomes comments with respect to the proposed definition of “substantial property damages.” Based on additional comment and information, the CSB may revise the dollar threshold in its definition to a level below \$1,000,000.

### **§ 1604.3 Reporting an accidental release.**

Section 1604.3 establishes what constitutes a reportable accidental release, and a deadline of four hours for reporting such an accidental release directly to the CSB. This section also provides for two alternatives for reporting an accidental release in attempt to avoid duplicative reporting.

#### *Avoiding Duplication*

In its ANPRM, the CSB asked for comments on the following questions: “Should an initial report be made to the CSB or the National Response Center?” The CSB received a number of comments that suggested that reports be submitted to the National Response Center (NRC) in order to avoid duplicative reporting. The CSB has long sought to avoid duplicative reporting requirements by arguing that it had alternative methods for collecting the same information even in the absence of a rule. For this reason, the CSB understands the concerns expressed about additional reporting requirements.

In developing this proposed rule, the CSB also considered whether accidents reported to the NRC under other laws could satisfy the CSB’s reporting rule. CSB considered information provided in reports it already receives from the NRC, and reviewed its own incident database to determine how many reports in the database, on average, are based on reports the CSB receives from the NRC.

The CSB has determined that there is no simple method to ensure that reports filed with NRC under other laws would satisfy the requirements of a CSB reporting rule. The NRC collects information based on the type of event (i.e., storage tank accidents), not specific laws. Accordingly, there is no certain way to determine whether information reported to the NRC under a certain law will also satisfy CSB requirements. Some laws may seem to overlap with

CSB's requirements but include certain exceptions, i.e., threshold quantities. Under such laws, if the accidental release does not meet the threshold quantity, no report will be made to the NRC.

However, in conferring with NRC, CSB was able to determine that reports under 40 CFR 302.6 (although not labeled as such) could be reliably identified via a modified search algorithm. Accordingly, if an owner/operator knows that it has submitted a report to NRC under 40 CFR 302.6, the owner/operator is not required to file a separate report with the CSB. Rather, the owner/operator is simply required to notify the CSB of the pertinent NRC identification number. The CSB would then use this number to ensure that its search algorithm is capturing all pertinent accidental releases reported to the NRC.

This approach is consistent with the CSB's legislative history, which provides in pertinent part, that the CSB's "reporting requirements may be coordinated with other reporting requirements established by the Agency [EPA] (for instance, under section 103 of CERCLA)." S. Rep. No. 101-228 at 236 (1989), reprinted in 1990 U.S.C.C.A.N. 3385, 3620.

Moreover, the CSB's legislative history provides:

The regulations of the Board for accident reporting may provide that any person directed to make a report contact the National Response Center rather than the Board directly. This will assure coordination of such reports with responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act and the Hazardous Materials Transportation Act. If the National Response Center is to be the initial point of contact under such rules, then the Board shall assure that officials at the National Response Center promptly notify the Board or its officers whenever an accidental release requiring an investigation has occurred.

Id.

#### *Reports to CSB*

Other than reports submitted to the NRC under 40 CFR 302.6, the proposed rule requires that a report be made to the CSB directly. According to CSB estimates, the proposed rule will require approximately 200 reports per year. However, the total number made to CSB should be

fewer because some reports made to NRC under 40 CFR 302.6 will satisfy the CSB's requirements. In any event, compliance by telephone, or by filing a report directly with the CSB (through completion of a form), should not be a complicated or time-consuming matter.

### *Reporting Deadline*

In its ANPRM, the CSB asked for comments on the following question: "How soon after an accident should reporting occur?" The CSB received a range of comments. These comments suggested a reporting deadline of between two and twenty-four hours. The proposed rule includes a four-hour deadline.

In response to the 2009 ANPRM, the American Society of Safety Professionals commented, "a minimum of three hours is needed for a site's emergency response priorities and any extenuating circumstances to be handled." The CSB understands that the first several hours following an accidental release require a focus on emergency response actions. Accordingly, the CSB decided against an "immediate report" or one within an hour or two of an accidental release.

At the same time, the CSB needs to make deployment decisions as quickly as possible so that investigators can arrive at the accident site within the first 24 hours after the accidental release. CSB has learned from experience that it is often crucial to begin an investigation within this timeframe to examine physical evidence before it is disturbed, and to interview witnesses while the facts and circumstances are still fresh.

In order to achieve this goal, the CSB determined that the proposed rule should require notification that would allow the CSB sufficient time to receive a report, analyze preliminary information, make a deployment determination, and deploy investigators to the site of the accidental release within 24 hours. The proposed four-hour deadline should be sufficient for the

CSB to achieve its deployment goal while not interfering with immediate emergency response activities.

#### *Revisions to Report*

In response to the 2009 ANPRM, the American Chemistry Council's comment suggested that the CSB's reporting rule include a provision for a reporting party to correct unintentionally incorrect information within a reasonable period of time following an accidental release. The CSB agrees with this comment, and the proposed rule includes a provision that allows an owner/operator to file any revision or update to an initial report submitted either to the CSB or to the NRC. The proposed rule is not intended to create a trap for any owner/operator submitting a report on short notice based on the best available information.

#### **§ 1604.4 Information required in an accidental release report**

Section 1604.4 details the information that must be submitted by an owner/operator in a report. The information required is consistent with information that the CSB has collected for years from various public sources, and has attempted to verify through public information channels, or through phone calls or email exchanges with the representatives of an owner/operator in the immediate aftermath of an accidental release. This approach has not always been ideal for either the CSB or an owner/operator because CSB must make multiple phone calls or send multiple emails to an owner/operator over a period of hours and days. In this section, the CSB has attempted to balance its need for prompt information with the desirable goal of obtaining as much pertinent information as possible.

As reflected in the purpose of the rule (1604.1), the CSB has determined that the prompt reporting of basic information is its highest priority. While additional, detailed information is desirable, the CSB concluded that it would need to extend the reporting deadline if it added

additional information requirements beyond those set out in the proposed rule. Some additional requirements would arguably require additional hours, or even days, for compliance. At some point, the primary purpose of the rule—prompt notification of an accidental release—would be undermined by the quest for more information.

The CSB has also considered the need of an owner/operator to focus on numerous matters in the immediate aftermath of accidental release. Accordingly, the proposed accidental release reports will require only information that is already known or should be available to an owner/operator soon after an accidental release. The required information is also limited in scope to critical information required for the CSB to make informed decisions about its jurisdiction, interagency coordination, and deployment decision-making. For example, paragraphs (a)-(e) require only minimal contact information and a basic description of the accidental release. Paragraph (g) requests the relevant CAS Registry Number associated with the chemical(s) involved in the accidental release.<sup>17</sup> The CAS information will help the CSB in making informed decisions about deploying investigators and initiating an investigation. paragraphs (h), (i), (j), and (l)(1)-(3) include an important qualifier, “if known.” This qualifier recognizes that some or all of this information may not be known within four hours of an accidental release.

Paragraph (k) asks the owner/operator to provide an estimate of “property damage at or outside the stationary source.” The owner is required to make an estimate only, not report an exact figure, or to state whether or not the amount of property damage meets or exceeds the definition for “substantial property damages.” There will be certain instances when an owner or

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<sup>17</sup> A CAS Registry Number is assigned by an organization called CAS (a division of the American Chemical Society). See <https://www.cas.org/support/documentation/chemical-substances/faqs#2>. It is a unique numeric identifier that is well known to the companies who produce, handle, or ship chemicals and will require minimal effort to include in a report.

operator may need to assess whether a report is required at all by reference to the definition of “substantial property damages.” However, for purposes of including a number in the report, the owner/operator may simply include the best available estimate, regardless of whether the amount falls above or below the threshold for reporting. The CSB also anticipates that the number of reports required to be submitted solely because of the “substantial property damages” criterion should be rather limited.

#### **§ 1604.5 Failure to report an accidental release**

Paragraphs (a) and (b) of § 1604.5 implement the enforcement provisions authorized by 42 U.S.C. 7412(r)(6)(O). For one year following the effective date of the rule, the CSB will refrain from referring violations for enforcement, unless there is a knowing failure to report. This policy is required to allow adequate time for compliance education.

The CSB is confident that most significant matters will come to its attention through its ongoing surveillance of accident activity. For one year following the effective date of the rule, the CSB will contact any owner/operator who it believes should have filed a report. If a report is filed immediately following notification, the CSB will not refer the failure to report under § 1604.5.

A significant number of accidental releases are concentrated within certain industries. The CSB anticipates that firms within these sectors will be the focus of initial compliance education outreach. The remainder of accidental releases occur in a range of other sectors. The CSB anticipates that additional time may be required to adequately educate all sectors. If appropriate, the CSB will extend the grace period for such sectors. Similarly, accidents involving small facilities with few employees require special consideration.

In some cases, the owner/operator may not be able to report an accidental release within four hours, especially if ongoing response activities require attention. The CSB has encountered such cases in the past and has worked with owners and operators to factor in such exceptional circumstances. The grace period described above will resolve such issues in a reasonable fashion for at least one year following the date of adoption. The CSB will consider a longer-term approach to these unique situations and propose appropriate compliance guidance and/or amendments to any final rule before the grace period has expired.

The CSB intends to issue compliance guidance periodically, and welcomes comments that address unusual circumstances. For example, the CSB is interested in comments on what exceptions should be made for owner/operators with small operations and few employees.

#### **§ 1604.6 Public availability of accidental release records.**

This section is included to clarify that the procedure for seeking records obtained pursuant to the rule is governed by the Freedom of Information Act, 5 U.S.C. 552, (FOIA), the CSB's procedural regulations for disclosure of records under the FOIA, 40 CFR part 1601, and any other pertinent Federal disclosure laws.

Neither 42 U.S.C. 7612(r)(6)(C)(iii) nor 42 U.S.C. 7612(r)(6)(Q),<sup>18</sup> alone or in combination, authorize the immediate disclosure of accidental release record information apart from the requirements of FOIA. Importantly, neither of those two provisions, alone or in combination, authorize the immediate disclosure of accidental release report information in order to support emergency response and public safety operations. Such a reading would potentially conflict with the implementation of other existing public

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<sup>18</sup> CSB does not interpret subsection Q as in any manner amending the FOIA.

information and safety laws, such as EPCRA (see section 303), which are directly focused on emergency response, the protection of public health and safety, and the public release of information to mitigate risks to the public.

#### **List of Subjects in 40 CFR Part 1604**

Hazardous substances, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board proposes to add 40 CFR part 1604 to read as follows:

#### **PART 1604 – REPORTING OF ACCIDENTAL RELEASES**

Sec.

1604.1 Purpose.

1604.2 Definitions.

1604.3 Reporting an accidental release.

1604.4 Information required in an accidental release report submitted to the CSB.

1604.5 Failure to report an accidental release.

1604.6 Public availability of accidental release records.

Authority: 42 U.S.C. 7412(r)(6)(C)(iii); 42 U.S.C. 7412(r)(6)(N)

##### **§ 1604.1 Purpose.**

The enabling legislation of the Chemical Safety and Hazard Investigation Board (CSB) provides that the CSB shall establish requirements binding on persons for reporting accidental releases into the ambient air subject to the Board's investigative jurisdiction. 42 U.S.C. 7412(r)(6)(C)(iii).

This part establishes the rule required by the enabling legislation. The purpose of this part is to require prompt notification of any accidental release within the CSB's investigatory jurisdiction.

##### **§ 1604.2 Definitions.**

*Accidental release* means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

*Ambient air* means any portion of the atmosphere inside or outside a stationary source.

*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 any threshold quantity set by the Environmental Protection Agency (EPA) Administrator under 42 U.S.C. 7412(r)(5).

*General public* means any person except for:

- (1) Workers, employees or contractors working for (or on behalf of) the owner or operator of a stationary source from which an accidental release has occurred; and
- (2) Any person acting in the capacity of an emergency responder to an accidental release from a stationary source.

*Owner or operator* means any person or entity who owns, leases, operates, controls, or supervises a stationary source.

*Property damage* means damage to or the destruction of tangible public or private property, including loss of use of that property.

*Regulated substance* means any substance listed pursuant to the authority of 42 USC 7412(r)(3).

*Serious injury* means any injury if it results in any of the following:

- (1) Death; one or more days away from work; restricted work or transfer to another job; medical treatment beyond first aid; loss of consciousness; or
- (2) Any injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.

*Stationary source* means any buildings, structures, equipment, installations, or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

*Substantial property damages* means estimated property damage at or outside the stationary source equal to or greater than \$1,000,000.

### **§1604.3 Reporting an accidental release.**

(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 substantial property damages.

(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 satisfied by submitting the NRC identification number to the CSB immediately following submission of the report to the NRC.

(c) If the owner or operator has not submitted a report to the NRC and notified the CSB under paragraph (b) of this section, the owner/operator must submit a report directly to the CSB within four hours of the accidental release and must include the required information listed in §1604.4.

A report may be made by email to: [report@csb.gov](mailto:report@csb.gov), or by telephone at 202-261- 7600.

(d) Notwithstanding paragraphs (a) through (c) of this section, an owner or operator of a stationary source, without penalty, may revise and/or update information reported to the NRC or CSB by sending a notification with revisions by email to: [report@csb.gov](mailto:report@csb.gov), or by correspondence to: Chemical Safety Board (CSB) 1750 Pennsylvania Ave., NW, Suite 910, Washington, DC 20006, within 30 days following the submission of a report to the NRC or CSB. If applicable,

the notification must reference the original NRC identification number. No update or revisions should be sent to the NRC.

**§ 1604.4 Information required in an accidental release report submitted to the CSB**

The report required under §1604.3(c) must include the following information regarding an accidental release as applicable:

- (a) The name of, and contact information for, the owner/operator;
- (b) The name of, and contact information for, the person making the report;
- (c) The location information and facility identifier;
- (d) The approximate time of the accidental release;
- (e) A brief description of the accidental release;
- (f) An indication whether one or more of the following has occurred:
  - (1) Fire;
  - (2) Explosion;
  - (3) Death;
  - (4) Serious injury; or
  - (5) Property damage;
- (g) The name of the material(s) involved in the accidental release, the Chemical Abstract Service (CAS) number(s), or other appropriate identifiers;
- (h) If known, the amount of the release;
- (i) If known, the number of fatalities;
- (j) If known, the number of serious injuries;
- (k) Estimated property damage at or outside the stationary source;

(1) Whether the accidental release has resulted in an evacuation order impacting members of the general public and others, and, if known:

(1) The number of people evacuated;

(2) Approximate radius of the evacuation zone; and

(3) The type of individuals subject to the evacuation order (i.e., employees, members of the general public, or both).

**§ 1604.5 Failure to report an accidental release.**

(a) It is unlawful for any person to fail to make reports required under this part, and suspected violations of this part will be forwarded to the Administrator of the EPA for appropriate enforcement action.

(b) Violation of this part is subject to enforcement pursuant to the authorities of 42 U.S.C 7413 and 42 U.S.C. 7414, which may include—

(1) Administrative penalties;

(2) Civil action; or

(3) Criminal action.

**§ 1604.6 Public availability of accidental release records.**

Accidental release records collected by the CSB under this rule may be obtained by making a request in accordance with 40 CFR part 1601, the CSB's procedures for the disclosure of records under the Freedom of Information Act. The CSB will process, and if appropriate, disclose such records, only in accordance with 40 CFR part 1601 and relevant Federal information disclosure laws.

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General Counsel

Chemical Safety and Hazard Investigation Board

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