



May 13, 2016

VIA ELECTRONIC SUBMISSION

Gina McCarthy, Administrator
United States Environmental Protection Agency
OPPT Document Control Office
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

Re: Comments on EPA's Proposed Rule for the Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Docket No. EPA-HQ-OEM-2015-0725.

Dear Administrator McCarthy:

The U.S. Small Business Administration's Office of Advocacy (Advocacy) submits the following comments in response to the Environmental Protection Agency's (EPA) proposed rule, "*Accident Release Prevention Requirements: Risk Management Programs under the Clean Air Act.*"¹ Accident prevention and safety precautions are a priority for small business facilities that use and distribute hazardous chemicals to protect both the public and their employees. Small businesses, however, are concerned that the rule will impose unnecessary burdens on them and that alternatives exist that will reduce the economic impact of the rule on small entities while still accomplishing the agency's objective. Advocacy urges EPA to carefully address the small business concerns and to provide flexibility to reduce the impact of the proposed rule on the small businesses.

The Office of Advocacy

Congress established Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA); as such the views expressed by Advocacy do not necessarily

¹ 81 Fed. Reg. 13638 (March 14, 2016).



reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),² as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives. EPA is required by the Regulatory Flexibility Act to conduct a SBREFA panel to assess the impact of the proposed rule on small entities,⁴ and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁵ The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁶

Background

The 1990 Clean Air Act amendments authorized both EPA's Risk Management Program (RMP) and the Occupational Safety and Health Administration's (OSHA's) Process Safety Management (PSM) standard.⁷ OSHA published its PSM standard in 1992.⁸ EPA, on the other hand, published its regulations under the RMP in two stages. First, the agency published a list of regulated substances and threshold quantities (TQ) in 1994.⁹ Next, EPA published its final regulation with the risk management requirements for covered sources in 1996.¹⁰

Under the existing rules, the owner or operator of a facility holding more than a TQ of a regulated substance in a process is required to implement a risk management program and to submit an RMP (report) to EPA.¹¹ The RMP rule establishes three "program levels" for regulated processes.¹² Program 1 (P1) applies to processes that would not affect the public in the case of a worst-case scenario and have had no accidents with specific off-site consequences within the past five years.¹³ Program 2 (P2) applies to processes that are not eligible for P1 or Program 3 (P3).¹⁴ P3 applies to processes not eligible for P1 and either subject to OSHA's PSM

² 5 U.S.C. §601 et seq.

³ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

⁴ Under the RFA, small entities are defined as (1) a "small business" under section 3 of the Small Business Act and under size standards issued by the SBA in 13 C.F.C. § 121.201, or (2) a "small organization" that is a not-for-profit enterprise which is independently owned and operated and is not dominant in its field, or (3) a "small governmental jurisdiction" that is the government of a city, county, town, township, village, school district or special district with a population of less than 50,000 persons. 5 U.S.C. § 601.

⁵ Small Business Jobs Act of 2010 (PL. 111-240) §1601.

⁶ *Id.*

⁷ See, Clean Air Act Amendments of 1990 (104 Stat. 2468, P.L. 101-549).

⁸ 57 Fed. Reg. 6356 (February 24, 1992).

⁹ 59 Fed. Reg. 4478 (January 31, 1994).

¹⁰ 61 Fed. Reg. 31668 (June 20, 1996).

¹¹ See 40 C.F.R. § 68.10.

¹² *Id.*

¹³ *Id.* at § 68.10(b).

¹⁴ 40 C.F.R. § 68.10(c).

standard or classified in one of the specified industry sectors (i.e., North American Industrial Classification System (NAICS) codes).¹⁵

In August 2013, Executive Order (E.O.) 13650,¹⁶ entitled “Improving Chemical Facility Safety and Security,” was signed by President Obama in response to major chemical accidents, including the explosion at the West Fertilizer facility in West, Texas on April 17, 2013.¹⁷ Among a list of tasks, the E.O. directed federal agencies to consider possible changes to existing chemical safety regulations; for EPA, it is the RMP regulations.¹⁸

On July 31, 2014, EPA published a Request for Information (RFI) notice to solicit comments and information from the public regarding potential changes to EPA’s RMP regulations.¹⁹ In November 2015, EPA convened a SBREFA panel for its planned proposal for the Risk Management Modernization Rule during which thirty-two small entity representatives (SERs) reviewed the planned proposed rulemaking and submitted comments and recommendations to EPA for consideration. The panel report was signed on February 19, 2016 and is available in the docket.²⁰ EPA published the proposed rules on March 14, 2016.²¹

Advocacy Involvement in the Rulemaking Process

Throughout the rule development process Advocacy engaged with EPA and the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs (OIRA) as well as with small businesses and small business representatives. During the SBREFA panel process, Advocacy interacted with EPA, OIRA and the SERs. In addition, following the publication of the proposed rule, Advocacy held a roundtable on April 22, 2016 at which EPA presented its proposal.

Advocacy’s comments

Advocacy strongly supports improving safety at facilities that use and distribute hazardous chemicals as a priority. However, Advocacy believes that EPA’s proposed rule could be modified to reduce the regulatory burden on small businesses without compromising safety. Advocacy has heard from small businesses on a number of issues. First, small businesses identified that the third-party compliance audit requirements are too burdensome for small businesses and should either be eliminated or should be reduced significantly in scope. Second, small businesses believe that the requirement for a root cause analysis should be limited in scope to reduce the regulatory burdens on small businesses. In addition, Advocacy urges the agency to adopt compliance flexibilities for small businesses under its requirement for the inherent safer

¹⁵ 40 C.F.R. § 68.10 (d).

¹⁶ Exec. Order No. 13650, 78 Fed. Reg. 48029 (August 1, 2013).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 79 Fed. Reg. 44604 (July 31, 2014).

²⁰ Final Report of the Small Business Advocacy Review Panel on EPA’s Planned Proposed Rule, Risk Management Modernization Rule (February 19, 2016). U.S. Environmental Protection Agency, Office of Policy, Washington, D.C. [hereinafter Panel Report], available at:

<https://www.regulations.gov/#!documentDetail;D=EPA-HQ-OEM-2015-0725-0032>

²¹ 81 Fed. Reg. at 13638.

technology analysis, coordination, and public meetings. Moreover, Advocacy urges the agency to eliminate the costly requirement for field exercises to reduce significant cost impacts of the rule. Finally, Advocacy suggests that the agency reevaluate the excessive paperwork and recordkeeping requirement under its information disclosure provisions.

I. SER Concerns with the Overlapping of Interagency Review and the Final Panel Report for the Proposed Rule

Many SERs expressed concerns with the overlap in timing of the E.O 12866 review for the proposed rule by OMB's OIRA and the conclusion of the SBREFA panel process. EPA sent the proposed rule to OMB on December 21, 2015. At that time, the SBREFA panel had not formally concluded. The last set of comments from the SERs had been provided to the panel only twelve days prior to this submission, on December 9, 2015. The final report concluding the SBREFA panel was signed on February 19, 2016. The rule cleared OIRA's review just five days later on February 24, 2016. The SERs expressed frustration that their time and effort in participating in this SBREFA panel to provide thoughtful and detailed written comments were not appropriately considered or incorporated. Overall, the SERs were concerned that without a final panel report as part of the interagency review package at OMB, their input did not inform the development of the proposed rule.

II. The Third-Party Compliance Audit Requirements

A. The Third-Party Compliance Audit Requirement Should be Deleted or Limited in Scope

In the proposed rulemaking, the agency is requiring all P2 and P3 process facilities to conduct a third-party compliance audit following an RMP reportable accident²² or findings of significant non-compliance by an implementing agency.²³ EPA views the compliance audits as a systematic evaluation of all covered processes.²⁴ SERs identified that this provision is unnecessary because the existing incident investigation requirements are adequate, more appropriate, and already accomplish the desired remediation objectives of this provision.²⁵ In addition, the SERs pointed out that EPA already has authority to compel third-party audits as a corrective action and therefore can do so on a case-by-case basis.²⁶

Recommendations

Advocacy recommends that the agency eliminate this requirement because the regulatory obligations for a facility to provide a systemic evaluation of all covered processes can already be achieved under the existing requirements for self-audits and incident investigations. Otherwise the agency should consider waiving this requirement if an implementing agency conducts an

²² An RMP reportable accident is an accidental release that resulted in deaths, injuries, or significant property damage on-site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage. See, 40 C.F.R. § 68.42.

²³ 81 Fed. Reg. at 13654.

²⁴ *Id.*

²⁵ Panel Report at 47.

²⁶ *Id.*

inspection as a result of a reportable release or noncompliance at a facility. Alternatively, as suggested by the SERs,²⁷ the agency should limit the requirement of a third party compliance audit to P3 facilities with major accidents with offsite impacts to reduce the number and frequency of third-party compliance audits.

B. EPA Should Streamline Requirements for the Third-Party Compliance Audits by Establishing a Waiver for Small Businesses

Under the proposed rule, EPA requires the third-party auditor to be someone with whom the facility does not have an existing or a recent relationship (for the last three years) and a restricted future relationship (for the next three years).²⁸ In addition to this limitation, small businesses are also concerned with the proposed restriction on allowing the use of a third party firm that employs anyone who has a financial connection with the facility such as retirees. According to small businesses, it is a common practice for third party auditors to hire people from facilities within the industry in which they conduct audits, especially retirees since they have the relevant experience and expertise. Small businesses are concerned that by disqualifying auditors based on the proposed independence criteria, the agency will make it even more difficult for facilities to find qualified third party auditors that meet the proposed independence requirements. During the SBREFA panel, SERs emphasized that the problem of auditor availability will be exacerbated for those facilities in rural areas, who will have to seek out contractors outside of their immediate vicinity, which will add to their costs.²⁹

Recommendations

To streamline this requirement for small businesses, Advocacy recommends that the agency allow small businesses to submit a waiver request of the independence requirement based on consideration of the specific facts such as limited availability of qualified independent auditors. For this purpose, Advocacy recommends that a firm with less than 250 employees should be considered a small business.³⁰

C. The Competency Requirements for an Auditor Should Not be Restricted to a Professional Engineer (PE)

Among the third-party auditor competence requirements, the agency is proposing to require the auditor to be a licensed Professional Engineer (PE) or that one is included on the audit team.³¹ During the SBREFA panel, SERs expressed concerns that the requirement of this license is too restrictive because it requires five years of experience and two exams to obtain such a professional license.³² According to the agency, the requirement of a PE is an attempt to identify a competent auditor that also has an ethical obligation to perform unbiased work.³³ The SERs

²⁷ Panel Report at 47.

²⁸ 81 Fed. Reg. at 13660.

²⁹ *Id.*

³⁰ Comparable to the approach taken by the Department of Interior's Bureau of Safety and Environmental Enforcement (BSEE).

³¹ 81 Fed. Reg. at 13660.

³² Panel Report at 48.

³³ 81 Fed. Reg. at 13660.

suggested other accreditations that should be allowed to qualify (e.g., degreed chemists, degreed chemical engineers, Certified Safety Professionals, Certified Industrial Hygienists, Certified Fire Protection Specialists, Certified Hazardous Materials Managers, Certified Professional Environmental Auditors or Certified Process Safety Auditors).³⁴

Recommendations

Advocacy suggests that the agency examine the recommendations from the SERs to see if any have an associated ethical obligation and if so, allow those certifications to satisfy the competence requirement for third party auditors. Advocacy further recommends that the agency consider other qualifying attributes for a third-party auditor such as years of experience, number of audits conducted in a facility type and active involvement with the development of applicable industry standards to provide additional flexibilities in place of the agency's overly restrictive proposal to require a PE.

III. The Root Cause Analysis Requirement for Incident Investigation Should be Limited to Reportable Accidents

EPA is proposing to add a requirement for all facilities to conduct a root cause analysis to the existing incident investigation requirement following an RMP reportable accident or an incident that could reasonably have resulted in an RMP reportable accident (i.e., "near miss").³⁵ During the SBREFA Panel, SERs expressed concern that this requirement would be especially burdensome for small businesses who will need to hire outside experts to conduct the analyses or incur the expense to train an existing employee.³⁶ According to the agency, the purpose of a root cause analysis is to formally identify underlying reasons for failures that lead to accidental releases.³⁷

Recommendation

Advocacy suggests that the agency limit the requirement for a root cause analysis to reportable releases only as this will accomplish the agency's objective of addressing the causes of actual failures as well as reducing the burden on small businesses by decreasing the number of required root cause analyses.

IV. The Agency Should Retain the Existing Definition of Catastrophic Release

The agency is proposing to revise the definition of "catastrophic release."³⁸ Currently, the RMP rule defines a catastrophic release as a "major uncontrolled emission, fire, or explosion, involving one or more regulated substances that presents an imminent and substantial endangerment to public health and the environment. Imminent and substantial endangerment includes *offsite consequences* such as death, injury, or adverse effects to human health or the

³⁴ Panel Report at 48.

³⁵ 81 Fed. Reg. at 13650.

³⁶ Panel Report at 49.

³⁷ 81 Fed. Reg. at 13650.

³⁸ *Id.* at 13647.

environment or the need for the public to shelter-in-place or be evacuated to avoid such consequences.”³⁹ Under the proposed rule, the agency is modifying the definition of catastrophic release to use the same definition currently being used to identify reportable accidents under the five-year accidental history requirements.⁴⁰ The proposed definition will replace “that presents imminent and substantial endangerment to public health and the environment” with “impacts that result in deaths, injuries or significant property damage *on-site or known offsite* deaths, injuries, evacuations, sheltering in place, property damage or environmental damage.”⁴¹ During the SBREFA panel, SERs expressed concerns that the revised definition will expand the scope of when incident investigations would be required, since those are triggered by catastrophic releases.⁴² Other SERs were concerned that the revision will broaden the definition to include OSHA-jurisdiction events such as smaller releases where endangerment is limited to workers and on-site property.⁴³ The proposed modification adds new elements to the scope of catastrophic release that are exclusive to on-site consequences; this is an addition to the existing definition which is limited to offsite consequences.

Recommendation

As provided in the panel report,⁴⁴ Advocacy recommends that the agency retain the existing definition which maintains consistency with the current OSHA PSM definition of catastrophic release.

V. The Requirements Related to Inherent Safer Technology Analysis Should be Limited and Provide Compliance Flexibilities for Small Businesses

A. An IST Analysis Should be Limited to the Design Stage of New Processes Only

In its proposal, EPA is requiring P3 facilities in three NAICS codes (paper manufacturing, petroleum and coal products manufacturing, and chemical manufacturing) to conduct a Safer Technology and Alternatives Analysis (STAA) for each process as part of the Process Hazard Analysis (PHA).⁴⁵ The first part of the STAA would require a facility to identify alternatives in this order: inherently safer technology (IST), passive measures, active measures and procedural measures.⁴⁶ While the agency is providing new definitions for the other measures, the IST is the only new requirement.⁴⁷ The agency is also requiring that the facility conduct and produce a feasibility analysis for the IST analysis.⁴⁸ Throughout the SBREFA panel process, SERs expressed concerns with the difficulty of performing an IST analysis at the PHA stage.⁴⁹ SERs explained that safer alternatives should be identified in the design stage of a process or facility,

³⁹ 40 C.F.R. § 68.3. [emphasis added].

⁴⁰ 81 Fed. Reg. at 13647.

⁴¹ 40 C.F.R. § 68.42. [emphasis added].

⁴² Panel Report at 49.

⁴³ 81 Fed. Reg. at 13647.

⁴⁴ Panel Report at 50.

⁴⁵ 81 Fed. Reg. at 13667.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Panel Report at 50.

rather than during a PHA, because the costs to incorporate safer alternatives for an existing process could be prohibitive.⁵⁰ SERs also noted that this analysis would require additional staffing such as design engineers, in addition to the chemical and mechanical engineers already staffed for PHA analyses.⁵¹ The SERs added that most small facilities do not have design engineers on staff and would as a result need to incur additional expenses to retain them.⁵²

Recommendations

Advocacy suggests that the STAA provision mandating an IST analysis should be limited to the design stage of new processes only.

Alternatively, to further reduce regulatory burden for small entities, the agency should not subject small firms (under 250 employees) to this provision until three years after the rule's compliance date for larger firms as per the recommendation provided by Advocacy in the panel report.⁵³ This would allow EPA to re-examine the utility of such a provision for large firms for possible application to the firms for which this is most burdensome.⁵⁴

B. Processes that are Subject to External Specifications Should be Exempt from an IST Analysis

Also in the Panel Report, Advocacy recommended to the agency that batch toll processors should be exempt from this provision unless the firm has a contractual relationship with the customer of five or more years, since this requirement is unlikely to yield practical information for contracts of short duration.⁵⁵ Batch toll manufacturer SERs expressed concern that this requirement may result in loss of business if they will be required to evaluate alternatives for custom formula blends.⁵⁶ SERs also expressed concerns that the analysis required by this provision will not be feasible for products regulated by U.S. Food and Drug Administration (FDA) because they are subject to FDA approval.⁵⁷

Recommendation

Advocacy further recommends that the agency should exclude processes that are governed by specifications established by a government agency or a by a customer through a contractual relationship.

⁵⁰ Panel Report at 50.

⁵¹ *Id.*

⁵² *Id.*

⁵³ Panel Report at 51.

⁵⁴ *Id.*

⁵⁵ See Panel Report at 51.

⁵⁶ *Id.*

⁵⁷ *Id.*

VI. Local Emergency Response Coordination Concerns Should be Addressed in a Guidance Document Instead of a New Rulemaking

Under the proposed rule, EPA is requiring P2 and P3 process facilities to coordinate annually with local response agencies to ensure that response capabilities exist.⁵⁸ As a result of this coordination, if the facilities are unsuccessful in getting commitments from their local responders, then they will be considered a responding facility and must comply with the appropriate requirements.⁵⁹ This change in status, from non-responding to a responding facility is accompanied by a host of new requirements and additional costs both under the existing regulations⁶⁰ and those proposed in this agency action (e.g. field exercises).⁶¹

Throughout the SBREFA panel process, SERs repeatedly pointed out the hardship they would endure in being required to coordinate with local emergency response officials because of inactive or non-responsive and non-existing Local Emergency Planning Committees (LEPCs).⁶² SERs were concerned that the consequences of the coordination requirement will lead local governments, who often have limited and insufficient resources, to renounce future response at facilities.⁶³ SERs also expressed concerns about the high costs for the “new responders” (i.e., those required to develop an emergency response program as a result of coordination) and the difficulty for small businesses to absorb such costs.⁶⁴ Specifically, SERs noted that small facilities do not have the capability to provide response without the assistance of local responders and that being forced to become responding facilities may force them out of business.⁶⁵

In the panel report, Advocacy provided a recommendation to address these concerns, advising that it is not appropriate to require small firms to provide emergency response capability in the absence of a public response mechanism.⁶⁶ As an alternative, Advocacy recommended that EPA follow the approach for hazardous waste generators by only requiring that an “attempt” be made to make arrangements with local responders, and to document any failure to complete such arrangements.⁶⁷ The agency itself highlights the plight of a smaller source with few employees by recognizing that “it may not be appropriate for employees to conduct response operations for releases of regulated substances.”⁶⁸ Although the agency ultimately concluded by suggesting to small businesses that they should incur additional costs by hiring response contractors or working closely with local responders,⁶⁹ it is clear that the agency appreciates the unique disadvantage of small business in being forced to become responding facilities. Also under the proposed rule, EPA is enabling the LEPC or a local emergency response official to require a facility to prepare an emergency response program by requesting compliance with

⁵⁸ 81 Fed. Reg. at 13672.

⁵⁹ *Id.*

⁶⁰ See 40 C.F.R. § 68.95

⁶¹ See 81 Fed. Reg. at 13676.

⁶² Panel Report at 52.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at 52-53.

⁶⁶ *Id.*

⁶⁷ *Id.* at 53. See 40 C.F.R. § 268.37.

⁶⁸ 81 Fed. Reg. at 13673, quoting RMP Guidance 2004.

⁶⁹ *Id.* at 13673-74.

EPA's existing regulations for its emergency response program.⁷⁰ The existing requirements already require facilities to develop an emergency response program unless the community emergency response plan addresses toxic substances at the facility or owner/operator has coordinated response actions for flammable substances with the local fire department.⁷¹ During the SBREFA panel process, the SERS suggested that EPA address violations of its existing requirements instead of imposing new duplicative regulations on facilities.⁷²

Recommendations

At this time, Advocacy suggests that the agency consider providing a flexibility for small businesses by limiting their responsibility under this provision to making good faith efforts to coordinate with their local responders. Moreover, Advocacy recommends that the agency instead focus on working with the LEPC and local responding agencies to implement the existing emergency planning requirements for those entities.

Additionally, Advocacy recommends that agency remove the unnecessary delegation of its responsibility to require a facility to prepare an emergency response program to the LEPCs and other local emergency response agencies. Instead, the agency should focus on implementing and enforcing its existing regulations.

As an alternative suggestion, the agency should consider issuing specific guidance on emergency response obligations or updating its 2004 guidance⁷³ on the existing regulations instead of creating new obligations that are both duplicative and unnecessarily burdensome, especially since the agency's intent in this provision is to clarify and not expand the existing regulations.⁷⁴ Advocacy recommends that the agency consider providing guidance on its expectations for coordination between a facility and the local responding agency as well as a facility's obligations under its existing requirements for an emergency response program.

VII. The Agency Should Eliminate the Costly Requirement of Field Exercises for Small Businesses

The proposed rule would require P2 and P3 responding facilities to conduct field exercises every five years and within one year following a reportable accident.⁷⁵ A field exercise involves the mobilization of facility emergency response personnel and equipment deployment.⁷⁶ During the SBREFA panel process, SERs expressed concern that the field exercises can be very expensive for a small business with limited resources because it will require using equipment, production

⁷⁰ 81 Fed. Reg. at 13672-73. See C.F.R. § 68.95.

⁷¹ See, 40 C.F.R. § 68.95.

⁷² Panel Report at 52.

⁷³ See General Guidance on Risk Management Programs for Chemical Accident Prevention (40 CFR part 68), EPA-550-B-04-001, April 2004, available at: <http://www2.epa.gov/rmp/guidance-facilities-risk-management-programs-rmp#general>.

⁷⁴ "EPA proposes to amend the rule requirements to *clarify* the obligations of the owner or operator of the stationary source..."[emphasis added] 81 Fed. Reg. at 13672.

⁷⁵ *Id.* at 13676.

⁷⁶ *Id.*

curtailment, employee evacuation, and hours of planning and coordinating.⁷⁷ SERS also expressed concerns that a field exercise may not be practical for facilities with a very small number of employees.⁷⁸ Consequently, Advocacy recommended in the panel report that EPA should delete the field exercise requirement and require tabletop exercises only.⁷⁹ The scope of the tests in the tabletop exercises is largely the same as field exercise; the main difference is that tabletop exercises do not require the actual deployment response equipment.⁸⁰ The exercise provision is the largest average annual cost of the proposed rule.⁸¹ The provision the agency has chosen to propose is the medium cost alternative whereas under the low cost alternative the agency analyzed would require the responding facilities to conduct tabletop exercises annually.⁸²

Recommendation

Advocacy recommends that the agency adopt the low cost alternative for small business by those requiring facilities to conduct tabletop exercises only and eliminate the required field exercise.

VIII. Public Meeting Requirement

A. The Public Meeting Requirement Should Include a Small Business Flexibility

EPA has proposed to require all facilities to hold a public meeting for the local community within thirty days of an RMP reportable accident.⁸³ In the preamble, EPA discusses a requirement for a public meeting for RMP facilities under the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (CSISSFRRA).⁸⁴ In this discussion, EPA stated that for the CSISSFRRA public meeting requirement, small businesses were provided a flexibility to be able to post the required information instead of holding a meeting.⁸⁵

Recommendation

EPA should provide such a flexibility in this rule by allowing a small business to post the information that is being required to be disclosed at a public meeting.

B. A Longer Time Period Should be Provided for Holding a Public Meeting

Alternatively, if EPA maintains the requirement for small businesses to hold a public meeting, the agency should increase the time period for the required meeting beyond the proposed thirty days. Through the SBREFA process, SERs indicated that many small businesses may still be tied up with the aftermath of accidents, conducting incident investigations, and arranging audits

⁷⁷ Panel Report at 53.

⁷⁸ Panel Report at 53.

⁷⁹ *Id.*

⁸⁰ 81 Fed. Reg. at 13676.

⁸¹ *Id.* at 13693.

⁸² *Id.* at 13692.

⁸³ 81 Fed. Reg. at 13679.

⁸⁴ *Id.* at 13681. See, Chemical Safety Information, Site Security and Fuels Regulatory Relief Act, Public Law 106-40, August 5, 1999. See <https://www.gpo.gov/fdsys/pkg/STATUTE-113/pdf/STATUTE-113-pg207.pdf>.

⁸⁵ *Id.*

in this time period and will have limited attention to devote to educating the public need.⁸⁶ Small businesses have pointed that, in the current environment, in case of an accident pertinent safety information is readily provided to the public in a variety of ways (e.g. news, company's website, social media). The SERs' suggestions consisted of expanding the timeframe from sixty days to nine months to be able to adequately prepare the required materials and have a thorough review of an incident.⁸⁷ The concern is that the information gathered within thirty days may be speculative and incomplete.

Recommendation

Advocacy recommends that EPA should provide a longer timer period for holding a public meeting to allow the facility owner or operator to learn more about the accident causal factors, obtain a complete account of any on-site and any offsite impacts, and to be able to adequately prepare for the public meeting.

IX. The Facilities Should not be Required to Repackage Existing Information for the Public

The agency has proposed a requirement that all facilities must disclose specific chemical hazard information to the public in an easily accessible manner (e.g. posting the information online or in a public library, etc.).⁸⁸ Information that must be provided includes names of regulated substances at the facility, safety data sheets (SDS), accident history information, emergency response program information, and LEPC or local response agency contact information.⁸⁹

Throughout the panel process, the SERs highlighted that information being required is already available through existing public sources and favored a preference for being able to respond to specific information requests rather than repackaging existing information.⁹⁰ EPA also acknowledged that it is not requiring any new information to be provided (other than the exercise information) and that the agency is in fact requiring the existing information to be presented in a new format and/or avenue.⁹¹ In addition, EPA recognized that the existing RMP data and RMP executive summary are available to the public through existing avenues and other public sources.⁹² Among its objectives to improve the public sharing provisions of the RMP rule, the agency wants to "improve public awareness of risks in their communities and provide information on where they can learn more about preparedness and community emergency response plans."⁹³

⁸⁶ Panel Report at 55.

⁸⁷ *Id.*

⁸⁸ 81 Fed. Reg. at 13680.

⁸⁹ 81 Fed. Reg. at 13681.

⁹⁰ Panel Report at 55.

⁹¹ *Id.*

⁹² 81 Fed. Reg. at 13681.

⁹³ *Id.* at 13678.

Recommendations

Advocacy suggests that the agency improve public awareness by identifying these existing sources and the type of information that they can provide on RMP facilities to the public through its own website or other public forums rather than requiring the RMP facilities, especially small businesses, to expend their limited time and resources in repackaging existing information. Alternatively, the agency can require the facilities to indicate where this data can be obtained on their website or in other public forums.

X. Information Disclosure to LEPC

A. Excessive Paperwork and Recordkeeping Requirements for the LEPC Disclosure Should be Reduced

In the proposal, EPA is requiring all facilities to provide summaries of specific chemical hazard information to the LEPC or other local response agencies upon request.⁹⁴ Information that would be disclosed includes names and quantities of regulated substances, five-year RMP reportable accident history, summaries of compliance audit reports, summaries of incident investigation reports, summaries of implementation of IST, and information on emergency response exercises.⁹⁵ EPA has stated that one of its objectives for improving the public information sharing provisions of the RMP rule is to “ensure that local emergency response and planning officials have the information they need to prepare for an emergency response to an accidental release at a stationary source.”⁹⁶

Recommendation

To streamline this requirement, the agency should consider the SERs’ suggestion to require a one-page summary of each chemical, its properties, location and firefighting measures for responders as this information will be sufficient to prepare for an emergency response to an accidental release at a stationary source.⁹⁷

B. Unnecessary and Unjustified Paperwork Recordkeeping Requirements Should be Eliminated

Furthermore, Advocacy has learned of additional small business concerns throughout the public comment period. For example, small businesses are concerned with the recordkeeping requirement associated with this provision. Even though EPA is only requiring that the information be provided upon request, the agency is requiring the facility to update the information annually.⁹⁸ This has only reduced the burden for the LEPCs in not having to review this information; the entities subject to this regulation, however, would still have to prepare and

⁹⁴ 81 Fed. Reg. at 13679.

⁹⁵ *Id.*

⁹⁶ *Id.* at 13678.

⁹⁷ See Panel Report at 55.

⁹⁸ 81 Fed. Reg. at 13680.

update these summaries.⁹⁹ EPA did not analyze alternatives for this provision.¹⁰⁰ The requirement to annually maintain and update the materials that would be provided to the LEPC upon request is an unnecessary and unjustified paperwork burden.

Recommendation

Advocacy suggests that the agency, instead, require that the information be provided, within a reasonable time period, only after a facility receives a request from a LEPC or a local emergency response official.

Conclusion

Advocacy urges EPA to give full consideration to the above issues and recommendations. We look forward to working with you as we explore these new opportunities and challenges facing the Federal government.

If you have any questions or require additional information please contact me or Assistant Chief Counsel Tayyaba Waqar at (202) 205-6970 or by email at twaqar@sba.gov.

Sincerely,



The Honorable Darryl L. DePriest
Chief Counsel
Office of Advocacy
U.S. Small Business Administration



Tayyaba Waqar
Assistant Chief Counsel
Office of Advocacy
U.S. Small Business Administration

Copy to: The Honorable Howard Shelanski
 Administrator
 Office of Information and Regulatory Affairs
 Office of Management and Budget

⁹⁹ 81 Fed. Reg. at 13680.

¹⁰⁰ *Id.* at 13692.