ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[OAR–2003–0044; FRL–7536–9]

RIN 2050–AF09

Accidental Release Prevention Requirements: Risk Management Program Requirements Under Clean Air Act Section 112(r)(7); Amendments to the Submission Schedule and Data Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 20, 1996, EPA published risk management planning regulations mandated under the accidental release prevention provisions of the Clean Air Act (CAA). These regulations require owners and operators of stationary sources to submit risk management plans (RMPs) to be made available to federal, state and local emergency planning and response agencies and to the public though a central location. The first submissions were received in early 1999. EPA is now proposing to modify the re-submission schedule under the risk management program for sources who have significant accidents and for those who change the information for the emergency contacts. EPA is also proposing to add three data elements to the RMP, make several revisions to the submission format for the RMP, and remove the regulatory requirement to discuss the off-site consequence analysis in the executive summary of the RMP. EPA intends to issue a final rule addressing all of these proposed changes in time for the majority of facilities to complete their 5-year anniversary re-submissions by June 21, 2004. The modifications proposed today seek to improve the accident prevention and reporting programs of regulated sources, and to assist federal, state, and local RMP implementation in light of new homeland security concerns.

DATES: Comments must be submitted on or before September 15, 2003. If requested within 7 days from publication date, EPA will hold a public hearing on August 15, 2003 to discuss the modifications in this proposed rule. Consult the sources of information in **FOR FURTHER INFORMATION CONTACT** for the time and location of the hearing, if such hearing is requested.

ADDRESSES: Comments may be submitted by electronic mail (e-mail) to *a-and-r-Docket@epa.gov*, Attention Docket ID No. OAR–2003–0044. Submit comments by postal mail to: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room B108, Mail Code 6102T, Washington, DC 20460, Attention Docket ID No. OAR–2003–0044. Follow the detailed instructions, and find more options, provided in section I.C of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346; in the Washington, DC metropolitan area, contact (703) 412–9810. The Telecommunications Device for the Deaf (TDD) Hotline number is (800) 535–7672. You may also access general information online at the Hotline Internet site, *http://www.epa.gov/epaoswer/hotline/*. For questions on the contents of this notice contact Vanessa Rodriguez, Chemical Emergency Preparedness and Prevention Office, Mail Code 5104A, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20004, (202) 564–7913, Fax (202) 564–8233, *rodriguez.vanessa@epa.gov*. You may also wish to visit the Chemical Emergency Preparedness and Prevention Office (CEPPO) Internet site at *http://www.epa.gov/ceppo*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What Are the Affected or Regulated Entities?

Entities potentially affected by this action are those stationary sources that are subject to the chemical accident prevention requirements at 40 CFR part 68. Affected categories and entities include:

CATEGORY EXAMPLES OF AFFECTED ENTITIES

Chemical Manufacturers	Basic chemical manufacturing, petrochemicals, resins, agricultural chemicals, pharmaceuticals, paints, cleaning compounds.
Petroleum	Refineries.
Other Manufacturing	Paper, electronics, semiconductors, fabricated metals, industrial machinery, food processors.
Agriculture	Agricultural retailers.
Public Sources	Drinking water and waste water treatment systems.
Utilities	Electric utilities.
Other	Cold storage, warehousing, and wholesalers.
Federal Sources	Military and energy installations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether a stationary source is affected by this action, carefully examine the provisions associated with the list of substances and thresholds under 40 CFR 68.130 and the applicability criteria under § 68.10. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OAR–2003–0044. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section I.D. Do not use EPA Dockets (EPA's electronic public docket and comment system) or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OAR–2003–0044. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *a-and-r-Docket@epa.gov,* Attention Docket ID No. OAR–2003–0044. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* When mailing comments through the U.S. Postal Service, send 2 copies of your comments to: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room: B108, Mail Code 6102T, Washington, DC 20460, Attention Docket ID No. OAR–2003–0044.

3. *By Hand Delivery or Courier.* When mailing comments through Federal Express, UPS, or other courier services, deliver 2 copies of your comments to: EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room: B108, Mail Code 6102T, Washington, DC 20004, Attention Docket ID No. OAR–2003–0044. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.B.

4. *By Facsimile.* Fax your comments to: 202–566–1741, Attention Docket ID. No. OAR–2003–0044.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the

following address: Dorothy Mcmanus, Mail Code 5104A, U.S. EPA, 1200 Pennsylvania Avenue. NW., Washington, DC 20460, Attention Docket ID No. OAR–2003–0044. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

The information in this proposed rule is organized as follows:

I. Introduction

A. Statutory Authority

This notice of proposed rulemaking (NPRM) is being issued under section 112(r) of the Clean Air Act (CAA or Act) as amended (42 U.S.C. 7412, 7601).

B. Background

The 1990 CAA Amendments added, among other things, section 112(r) to provide for the prevention and mitigation of accidental releases of extremely hazardous substances. Section 112(r) calls for EPA to list the most dangerous substances and a threshold quantity for each substance. It also directs EPA to issue regulations requiring any stationary source with more than a threshold quantity of a listed substance to develop and implement a risk management program. EPA published a final rule creating the list of regulated substances and establishing thresholds on January 31, 1994 (59 FR 4478) (the ''List Rule''), and a final rule establishing the accidental release prevention regulations on June 20, 1996 (61 FR 31668) (the risk management program regulations or ''RMP Rule''). Together, these two rules are codified as part 68 of title 40 of the Code of Federal Regulations (40 CFR part 68).

Sources subject to the RMP rule are required to develop and implement a risk management program that includes, for covered processes, a five-year accident history, an offsite consequence analysis, a prevention program, and an emergency response program. Sources must also submit to EPA a risk management plan (RMP) describing the source's risk management program. The deadline for submitting RMPs was June 21, 1999, for sources subject to the program by that date. Approximately 15,000 sources have submitted RMPs.

The RMP rule requires sources to update and re-submit their RMPs at least every five years or sooner if any of the changes specified in section 68.190(b)(2) of the rule occur. The specified changes currently include the following conditions: (1) No later than three years after the date on which a regulated substance is first listed under § 68.130, (2) no later than the date on which a new regulated substance is first present in an already covered process above a threshold quantity, (3) no later than the date on which a regulated substance is first present above a threshold quantity in a new process, (4) within 6 months of a change that requires a revised PHA or hazard review, (5) within 6 months of a change that requires a revised off-site consequence analysis as provided in § 68.36, and (6) within six months of a change that alters the Program level that applied to any covered process. Updates and re-submissions entail the review and revision of all sections of the RMP as needed to bring the RMP up to date. They must be accompanied by a new certification letter for the entire RMP. If a source re-submits its RMP for any of the aforementioned reasons, the five-year anniversary date for resubmitting the RMP is reset.

Sources may wish to revise their RMPs for other reasons, as well. The Agency distinguishes among the re-submissions discussed above and other various types of revisions, namely corrections, de-registrations (revised registrations) and withdrawals. A correction is a change only to individual data elements that a source wishes to change or correct, and requires a new certification letter covering that change. Corrections may be required if the implementing agency or the reporting center discovers the submission was incomplete based on a validation/error report. The source may initiate a correction if it discovers an error, needs to make minor administrative changes (*e.g.*, correction of a phone number or contact name), or changes owners but covered process operations do not change. Corrections do not entail the review and revision of all nine sections of the RMP, nor do they affect the five-year anniversary date for updating and resubmitting the RMP.

De-registrations (or revised registrations as these are referred to in

section 68.190(c)) occur when the source is no longer covered by the program (*e.g.*, the source no longer uses any regulated substances or no longer holds regulated substances in amounts that exceed the threshold quantities). The source submits a letter requesting de-registration, with the RMP being retained in the reporting system database for 15 years.

A withdrawal occurs when a source that was never subject to the program submits an RMP in error. Such a source submits a letter requesting a withdrawal, and its RMP is taken out of the reporting system database altogether.

Sources subject to the rule on June 21, 1999, were required to submit an RMP by that date. For those sources that submitted an RMP on June 21, 1999, their five-year anniversary date will be June 21, 2004. Other sources that submitted an RMP before the original deadline, have re-submitted an RMP since, or have become subject to the RMP rule since June 21, 1999, will have different anniversary dates.

II. Discussion of Proposed Changes

A. Changes to RMP Submission Requirements

1. Five-Year Accident History

EPA proposes that facilities who have an accident that meets the criteria for the five-year accident history be required to update and re-submit their RMP within six months of the date of the accident.

The five-year accident history element for the RMP (40 CFR 68.42) requires the owner or operator of a stationary source to record information in their RMP on all accidental releases from covered processes in the past five years 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. This requirement includes the release of any chemical from a covered process, not just the release of a regulated substance from that covered process. During the first year of RMP submissions, approximately 1,150 sources reported in their five-year history that their facility had an accidental release that met the criteria for including information on these releases in their RMP.

The regulations require that each time a source re-submits its RMP, the five-year accident history is updated. Information on accidental releases in the previous RMP submission that are now outside the five-year time frame is removed while information on recent accidental releases is added. However, unless a source re-submits its RMP sooner than the five-year anniversary date, information on more recent accidental releases will not be submitted in an RMP for potentially 5 years. The five-year accident history is valuable information for chemical accident prevention and preparedness efforts by not only industry but by many stakeholders, including emergency responders. Consequently, EPA is proposing to require that sources update and re-submit their RMP within six months of an accidental release that meets the five-year accident history reporting criteria.

EPA believes this proposed requirement would help spur significant improvements in the accident prevention and reporting programs of sources at which reportable releases occur. Accidents can be caused by failures in a source's accident prevention program. This new re-submission trigger would require the source to review its accident prevention program in light of the accident, and to update its RMP with any changes to the program. While all physical or procedural improvements may not be finished and completely implemented within the 6-month accident reporting deadline, the Agency believes that review of the process hazard analysis and other elements of the program can be completed within six months. The Agency also believes that sources would benefit greatly from the prompt scrutiny of the accident, allowing the findings of an accident investigation to better influence any safety recommendations.

EPA also believes the proposed requirement would have the additional benefit of improving reporting of accidental releases. By providing the details of the accident soon after the accident takes place, the source would be likely to provide more complete and accurate information in its accident reporting. Current requirements allow sources to compile an accident report for the RMP up to 5 years after the accident occurs.

The proposed submission requirement would also allow EPA and interested stakeholders to determine on an annual basis if the rate of accidents is increasing or decreasing, rather than waiting five years to see such data. It would also enable all involved in chemical accident prevention to identify trends in accident causes, examine if there are problem areas or a need for assistance in specific industry sectors, and identify effective prevention measures that could be shared so that other sources may avoid similar accidents.

This change would modify the schedule for updating and re-submitting an RMP, but it should not significantly change the associated burden. If a source had a reportable accident, it would need to update and re-submit an RMP within 6 months. However, the source would not need to resubmit again, provided there are no other accidents or major changes, for another 5 years.

An alternative that was also considered would require sources with new accidents that meet the criteria for reporting in the 5-year accident history to update their RMP on a fixed date every year. This option would have the Agency receiving RMPs at the same time from all of the sources who have had accidents that meet the criteria during the previous 12 months. This option would provide EPA with an annual report of all of the significant accidents that have occurred at reporting sources, and the changes that were made due to these accidents. EPA is not proposing this option at this time, because the Agency prefers to give the same amount of time for reporting (six months) to all sources. For example, if the fixed date for annual accident reporting was established as June 21, a source having an accident on June 15 would have no time to significantly investigate the accident and provide a meaningful report. Nonetheless, EPA is requesting comment on this option and whether it is preferable to requiring the re-submissions within six months of a significant accident.

2. Emergency Contact Information

EPA proposes to require that facilities correct their emergency contact information within one month of a change in the information.

The RMP has become a primary source of information for the federal government's efforts in the homeland security area. The emergency contact information is important not only to state and local responders, but also for the federal government. Under current requirements, if the information for the emergency contact becomes outdated (*e.g.*, change of emergency contact's phone number, emergency contact leaves the position, etc.), the source may take up to five years to report these changes. Implementing agencies that have audited RMPs report that much of the information for emergency contacts is outdated or otherwise inaccurate. For these reasons, EPA is proposing to require that facilities correct their emergency contact information within one month of a change in the information. Explained in the following section in detail is also a proposal for an

additional email address data element; this would also trigger the requirement to correct emergency information within one month of a change. These changes to emergency contact information would be considered corrections and would not require a complete updating and re-submission of the RMP. EPA requests comment on this proposal.

B. Changes to Executive Summary

EPA proposes to remove the requirement for sources to briefly describe the off-site consequence analysis (i.e, worst-case accidental release scenario(s) and the alternative accidental release scenario(s) within the executive summary of the RMP.

Section 112(r)(7) of the Clean Air Act requires sources subject to the risk management program requirements to conduct an off-site consequence analysis (OCA) for one or more hypothetical accidental worst case and alternative release scenarios and report the results of the analysis in the RMP. In 1999, Congress passed the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (CSISSFRRA), governing the distribution of ''off-site consequence [OCA] information.'' The statute defines ''OCA information'' as the OCA sections of the RMP (sections 2 through 5) and any EPA database derived from those sections, but expressly excludes the executive summary section of the RMP. Under CSISSFRRA, EPA and the Department of Justice jointly issued regulations restricting access to OCA information and certain related information. This regulation (40 CFR part 1400) was published in the **Federal Register** on August 4, 2000 (65 FR 48108).

Promulgated prior to the passage of CSISSFRRA, § 68.155(c) of the RMP rule currently requires sources to briefly describe in their RMP executive summary ''the worst-case release scenario(s) and the alternative release scenario(s), including administrative controls and mitigation measures to limit the distances for each reported scenario.'' EPA, along with federal law enforcement agencies, believes that due to its sensitive nature, this information should not be included in executive summaries, which are available to the public without restriction under 40 CFR part 1400. For this reason, EPA is proposing to remove the requirement to summarize OCA results, and requests that sources not voluntarily provide this specific information, in the executive summary. Facilities must continue to provide details of the OCA in sections 2 through 5 of the RMP. The public would continue to have restricted access to OCA information in the manner required by the regulations at 40 CFR part 1400. EPA requests comment on this proposed change.

C. New Data Elements

1. Emergency Contacts E-Mail Address

EPA proposes to add a mandatory data element to the RMP for sources to provide the e-mail address (if any) for the emergency contact.

Section 68.160(b)(6) of the RMP rule currently requires facilities to provide the name, title, telephone number, and a 24-hour telephone number of an emergency contact person. Similarly, § 68.160(b)(14) allows facilities to optionally provide an e-mail address for the source or parent company. From time to time, EPA is made aware of specific hazards. For example, in the Hazardous Materials Accident Report: Hazardous Materials Release From Railroad Tank Car With Subsequent Fire at Riverview, Michigan, July 14, 2001, the National Transportation Safety Board (NTSB) included the following recommendation:

> ''[EPA should] notify all facilities that are required to submit risk management plans to the Environmental Protection Agency that tank car excess flow valves cannot be relied upon to stop leaks that occur during tank car loading and unloading operations and that those companies that have included reliance on such valves in their risk management plans should instead identify and implement other measures that will stop the uncontrolled release of product in the event of a transfer line failure during tank car loading or unloading.'' (NTSB, R–02–17)

Having an e-mail address for the emergency contact would allow the Agency to quickly and directly communicate hazard information such as that provided above by the NTSB. Providing such notifications in a timely manner to all sources subject to RMP requirements would improve sources access to critical process safety information.

Additionally, RMPs have become a critical source of information for the federal government's homeland security efforts. In our new environment of heightened security, it may become necessary for an RMP implementing agency to communicate directly and on short notice with sources subject to the RMP program, or with a portion of that universe. The e-mail address for a source's emergency contact would be a necessary piece of information for this to occur.

As noted above, EPA is also proposing that any change to the email address for a source's emergency contact be followed by a corresponding change to the source's RMP within a month of the address change. This requirement would trigger a correction; a re-submission would not be required for this particular change. The Agency requests comments on this proposal and also on the extent to which sources may not have an e-mail address. Some sources, such as small agricultural retailers or fertilizer warehouses, may not have e-mail capability.

2. Reason for Subsequent RMP Submissions

EPA is proposing to add a mandatory data element to the RMP for sources to identify the purpose of submissions that revise or otherwise affect their previously filed RMPs.

As noted above, sources are required to submit, update and resubmit their RMP by the schedule specified in section 68.190 of the RMP rule. Since the initial June 1999 reporting deadline, EPA has received thousands of submissions containing corrections, re-submissions, de-registrations (revised registrations) or withdrawals of previously submitted RMPs. However, at this time the RMP electronic submission program does not have an entry that provides the reason for the submission, making it difficult at times for RMP implementing agencies to determine their purpose.

This proposal would add a new data element in the RMP for sources to indicate what they are submitting and why. For example, a source that modifies its RMP to correct minor technical errors, make minor administrative changes (*i.e.*, updates to contact names, addresses, telephone numbers, e-mail addresses), fill in missing data elements, or reflect facility ownership changes, would indicate that it was making such a correction. Similarly, a source that revised the RMP for its update and re-submission as required every five years or when certain changes are made, such as introducing a regulated substance in a process, would indicate that it was sending an RMP re-submission and why. A source that was previously required to submit an RMP, but due to changes in operations was no longer required to report, would indicate why it was submitting a de-registration (revised registration) of the chemical or process. Sources that had originally submitted an RMP in error (*i.e.* they were never subject to RMP regulation) would indicate why they were withdrawing their RMP from the national database. To help sources provide this information, we would anticipate adding to the RMP electronic submission program a pop-up menu of typical reasons for submissions. Sources

would simply click on the appropriate menu item or, if none is appropriate, briefly state the reason for the change.

This additional reporting element is intended to assist the Agency and other implementing agencies in understanding the reason a source is submitting a revised RMP or asking to remove an existing one. This information would also provide a check on the RMP submission to ensure that information is provided accurately. Further, this proposed reporting requirement would provide important information on changes occurring in industry, providing insight into chemical usage and process safety management. For example, monitoring the number of sources de-registering their RMPs because they have substituted the regulated substance for a non-regulated substance, or decreasing the quantity of a regulated substance in a process, would provide some indication of the extent to which inherently safer or alternative technologies are being utilized by the sources subject to the RMP. This information would be of interest to sources that could learn from identified trends and industry practices in the area of chemical process safety management. The Agency is requesting comments on this proposal.

The Agency also recognizes that the terminology used to identify the various types of submissions may cause some confusion, and is requesting comments that may help clarify those terms. Specifically, the Agency is considering changing the term revised registrations to de-registrations, which more clearly conveys the action being taken and is the term used in the implementation materials for the RMP.

3. Contractor Information

EPA is proposing to add a mandatory data element in the RMP for sources that use a contractor to help prepare their RMPs to so indicate.

Through RMP audits, implementing agencies have learned that many RMPs have been prepared in large part by contractors. Use of contractors for this purpose is allowed under the RMP rule. However, some implementing agencies have noted potential systemic errors in the way some contractors prepare RMPs. Concern has also been raised that, in some cases, sources whose RMPs are largely prepared by contractors are not sufficiently familiar with the contents of their RMPs. EPA is proposing to require an additional data element in the RMP for sources who use a contractor to help develop and fill out the RMP. Those sources would be required to provide the name of the contractor who helped prepare the RMP and a phone number to contact the contractor.

This new data would allow the implementing agencies to monitor the use of contractors for RMP preparation and provide appropriate follow-up. For example, RMP auditors could use the information to more easily identify systemic errors linked to a particular contractor, and could then share this information with the source submitting the RMP, thus improving the overall quality of the sources' safety management programs. Ultimate responsibility for RMP implementation would continue to reside on the stationary source's owner or operator. EPA requests comments on this new requirement.

D. Revisions to RMP Submit Format

Uncontrolled/Runaway Reactions

EPA is proposing to expand the list of possible causes of accidental releases to the reporting of sources' five-year accident history so an owner or operator can indicate whether an accident involved an uncontrolled/runaway reaction.

In its report, Improving Reactive Hazard Management (December 2002), the U.S. Chemical Safety and Hazard Investigation Board (CSB) recommended that EPA ''[m]odify the accident reporting requirements in RMP*Info to define and record reactive incidents. Consider adding the term 'reactive incident' to the four existing 'release events' in EPA's current 5-year accident reporting requirements (Gas Release, Liquid Spill/Evaporation, Fire, and Explosion). Structure this information collection to allow EPA and its stakeholders to identify and focus resources on industry sectors that experienced the incidents; chemicals and processes involved; and impact on the public, the workforce, and the environment'' (CSB recommendation 2001–01–H–R4).

Based on this recommendation, EPA is proposing to revise RMP reporting of the five-year accident history (40 CFR 68.42) to allow the owner or operator to indicate whether the accident involved an uncontrolled/runaway reaction.

The new element would provide sources with an additional choice to more accurately report accidents that involved uncontrolled or runaway reactions. This information is important when measuring whether the accidents involved simple releases of the chemical (*e.g.*, broken valve, broken pipe) or were the result of a process upset. This new information would provide a better understanding of the types of accidents occurring at regulated sources.

III. Other Issues

Collection of OSHA Occupational Injury and Illness Data in Conjunction With the RMP Filing Required Under 112(r) of the CAA

EPA and others use the information reported in the RMP accident history in combination with other data to better understand accident risks and to gauge the trends with respect to risk and accident prevention across various industry sectors. Health and safety indicators could also provide information to industry, government, and other researchers in understanding the factors that affect chemical accident prevention. Under 29 CFR part 1904, the Occupational Safety and Health Administration (OSHA) requires employers to maintain logs of employee reportable injury and illness statistics (OII) for every calendar year. Employers need to have these records available for compliance officers to review upon inspections, and the records for each year must be kept for 5 years.

Three of these records are of special interest to EPA: (1) Total Incidence Rate, (2) Workdays Lost to Injuries, and (3) Illness and Workdays under Restricted Duties. EPA is considering whether future RMP submissions should be required to include data for these three records, aggregated for five most recent calendar years. With renewed emphasis on quantifying the risks and benefits related to chemical accidents, and on the trends in key sectors covered by existing regulations, these data, if collected, would allow an objective analysis of any statistical relationship between levels of reported injuries and illnesses, accidental releases and a variety of other elements driving chemical industry preparedness and prevention activities. The ability to link to injury and illness data and the indicators they provide on health and safety at chemical facilities could provide extremely valuable information both to EPA and to industry for understanding the factors that underlie chemical process safety. Given that RMPs are submitted by a large number of chemical facilities, providing OSHA OII data in RMPs would greatly facilitate analysis of trends in the U.S. chemical industry on accidental releases and the relationship of these, if any, to facility safety levels.

RMP submitters could provide the aggregate statistics requested with only minimal additional effort in filling out the RMP. For the government to obtain this data by other means would require significant effort. The Bureau of Labor Statistics (BLS) only collects this data from a representative sample of

companies/facilities and not from the entire set of facilities covered under RMP; linking BLS data to the RMP records outside of the RMP data collection would require a significant expenditure of time and resources even though it would lack a complete data set. EPA would expect little additional burden on industry for the collection of this information since OSHA already requires that it be maintained. EPA is requesting comments on the practicability and burden of adding these data elements to RMP reporting requirements, and on the potential value they may yield. EPA is also requesting comments with respect to other data elements that may serve this purpose.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.'' It has been determined that this proposal is not considered to be a ''significant regulatory action'' within the meaning of the Executive Order and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1656.10.

EPA is proposing to add three data elements to the Risk Management Plan (RMP), to modify one data element, and to remove the obligation to discuss the off-site consequence analysis in the executive summary of the RMP. EPA is also proposing to modify the submission schedule under the risk management program for sources who have significant accidents, and for those who change the information for the emergency contacts. This action may increase some burden on facilities that currently submit risk management plans to EPA.

The most recently recorded number of sources subject to this proposed action, if adopted, is 14,930. The public reporting burden estimated for familiarizing with this rule amendment is 2.0 hours for each source. Estimated unit burden for the new RMP data elements is 0.25 hours. The burden for change in submission schedule for RMP due to significant accidents ranges from 3.0 hours for wholesale to 9.0 hours for large chemical manufacturers. The burden for change in submission schedule for RMP due to change in emergency contact information is 0.1 hour for each source.

The total annual burden for rule familiarization, addition of new elements to the RMP, and for the change in RMP submission schedule is 33,943 hours (101,829 hours for 3 years), with an annual cost of $992,400 ($2,977,200 for 3 years).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID number OAR–2003–0052. The public docket is available for viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566-1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number OAR–2003–0052. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 31, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by September 2, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business that is defined by the Small Business Administration by category of business using North American Industrial Classification System (NAICS) and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-

profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, we have concluded that this action would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule would not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. The nationwide capital cost for these rule amendments is estimated to be zero and the annual nationwide costs for these amendments are estimated to be less than $1 million. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Act. EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. The new data elements and submission requirements would impose only minimal burden on these entities.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule focuses on requirements for regulated facilities without affecting the relationships between governments in its implementation. Thus, Executive Order 13132 does not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local officials and implementing agencies in developing this rule. EPA held a RMP Implementing Agency meeting in Atlanta, October 21 and 22, 2002. State and local implementing agencies in attendance included representatives from Alabama, California, Colorado, Delaware, Florida, Georgia, Hawaii, Iowa, Kentucky, Louisiana, Mississippi, New Jersey, North Carolina, Ohio, Pennsylvania, and South Carolina. Participants were invited to provide feedback regarding the program and related software, as well as suggestions for improvements.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. The proposed rule focuses on requirements for all regulated sources without affecting the relationships between tribal governments in its implementation, and applies to all regulated sources, without distinction of the surrounding populations affected. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

The Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposal is not subject to Executive Order 13045 because it does not involve regulatory decisions that are based on

public health or safety risks, nor would it establish environmental standards intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

Lists of Subjects in 40 CFR Part 68

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: Sec. 112(r) of the Clean Air Act.

Dated: July 23, 2003.

Marianne L. Horinko,

Acting Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 68 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS

1. The authority citation for part 68 continues to read as follows:

Authority: 42 U.S.C. 7412(r), 7601(a)(1), 7661–7661f.

2. Section 68.155 is amended by removing paragraph (c) and redesignating paragraphs (d) through (g) as paragraphs (c) through (f).

3. Section 68.160 is amended by revising paragraph (b)(6), redesignating paragraphs b(14) through b(18) as paragraphs b(15) through b(19), and adding a new paragraph b(14) as follows:

§ 68.160 Registration.

* * * * *

(b) * * *

(6) The name, title, telephone number, 24-hour telephone number, and the e-mail address (if an e-mail address exists) of the emergency contact;

* * * * *

(14) The name, the mailing address, and the telephone number of any contractor who helped prepare the RMP;

* * * * *

5. Section 68.190 is amended by revising paragraphs (b)(6) and (b)(7), by adding a new paragraph (b)(8), by redesignating paragraph (c) as paragraph (d), and by adding new paragraphs (c) and (e) to read as follows:

§ 68.190 Updates.

* * * * *

(b) * * *

(6) Within 6 months of a change that requires a revised offsite consequence analysis as provided in § 68.36;

(7) Within 6 months of a change that alters the Program level that applied to any covered process; and

(8) Within 6 months of the date of an accidental release of any chemical from a covered process, where the accidental release meets the criteria for reporting in the 5-year accident history as provided in § 68.42(a).

(c) The owner or operator of a stationary source shall submit a correction to the RMP for any change in the emergency contact information required by § 68.160 (b)(6) within one month of the change.

* * * * *

(e) Following submission of an initial RMP, an owner or operator submitting any subsequent version or revision of the RMP shall identify the type of submission being made and the reason for it. The types of submission include:

(1) Corrections (*e.g.*, changes to fix minor technical errors, update administrative information, provide missing data elements or reflect facility ownership changes) which do not require an update and revision of the RMP under this section;

(2) Re-submissions under paragraph (b) of this section;

(3) De-registrations (revised registrations) under paragraph (c) of this section; and

(4) Withdrawals of an RMP for any facility that was erroneously considered subject to part 68.

* * * * *

[FR Doc. 03–19281 Filed 7–30–03; 8:45 am]

BILLING CODE 6560–50–P