

Environmental Protection Agency

§ 300.405

may be applicable or relevant and appropriate. For purposes of identification and notification of promulgated state standards, the term *promulgated* means that the standards are of general applicability and are legally enforceable.

(5) The lead agency and support agency shall identify their specific requirements that are applicable or relevant and appropriate for a particular site. These agencies shall notify each other, in a timely manner as described in §300.515(d), of the requirements they have determined to be applicable or relevant and appropriate. When identifying a requirement as an ARAR, the lead agency and support agency shall include a citation to the statute or regulation from which the requirement is derived.

(6) Notification of ARARs shall be according to procedures and timeframes specified in §300.515 (d)(2) and (h)(2).

(h) *Oversight.* The lead agency may provide oversight for actions taken by potentially responsible parties to ensure that a response is conducted consistent with this part. The lead agency may also monitor the actions of third parties preauthorized under subpart H of this part. EPA will provide oversight when the response is pursuant to an EPA order or federal consent decree.

(i) *Other.* (1) This subpart does not establish any preconditions to enforcement action by either the federal or state governments to compel response actions by potentially responsible parties.

(2) While much of this subpart is oriented toward federally funded response actions, this subpart may be used as guidance concerning methods and criteria for response actions by other parties under other funding mechanisms. Except as provided in subpart H of this part, nothing in this part is intended to limit the rights of any person to seek recovery of response costs from responsible parties pursuant to CERCLA section 107.

(3) Activities by the federal and state governments in implementing this subpart are discretionary governmental functions. This subpart does not create in any private party a right to federal response or enforcement action. This subpart does not create any duty of the

federal government to take any response action at any particular time.

[55 FR 8839, Mar. 8, 1990, as amended at 59 FR 47447, Sept. 15, 1994]

§ 300.405 Discovery or notification.

(a) A release may be discovered through:

(1) A report submitted in accordance with section 103(a) of CERCLA, *i.e.*, reportable quantities codified at 40 CFR part 302;

(2) A report submitted to EPA in accordance with section 103(c) of CERCLA;

(3) Investigation by government authorities conducted in accordance with section 104(e) of CERCLA or other statutory authority;

(4) Notification of a release by a federal or state permit holder when required by its permit;

(5) Inventory or survey efforts or random or incidental observation reported by government agencies or the public;

(6) Submission of a citizen petition to EPA or the appropriate federal facility requesting a preliminary assessment, in accordance with section 105(d) of CERCLA;

(7) A report submitted in accordance with section 311(b)(5) of the CWA; and

(8) Other sources.

(b) Any person in charge of a vessel or a facility shall report releases as described in paragraph (a)(1) of this section to the National Response Center (NRC). If direct reporting to the NRC is not practicable, reports may be made to the United States Coast Guard (USCG) on-scene coordinator (OSC) for the geographic area where the release occurs. The EPA predesignated OSC may also be contacted through the regional 24-hour emergency response telephone number. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or predesignated OSC immediately, reports may be made immediately to the nearest USCG unit. In any event, such person in charge of the vessel or facility shall notify the NRC as soon as possible.

(c) All other reports of releases described under paragraph (a) of this section, except releases reported under paragraphs (a)(2) and (6) of this section,

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shall, as appropriate, be made to the NRC.

(d) The NRC will generally need information that will help to characterize the release. This will include, but not be limited to: Location of the release; type(s) of material(s) released; an estimate of the quantity of material released; possible source of the release; and date and time of the release. Reporting under paragraphs (b) and (c) of this section shall not be delayed due to incomplete notification information.

(e) Upon receipt of a notification of a release, the NRC shall promptly notify the appropriate OSC. The OSC shall notify the Governor, or designee, of the state affected by the release.

(f)(1) When the OSC is notified of a release that may require response pursuant to §300.415(b), a removal site evaluation shall, as appropriate, be promptly undertaken pursuant to §300.410.

(2) When notification indicates that removal action pursuant to §300.415(b) is not required, a remedial site evaluation shall, if appropriate, be undertaken by the lead agency pursuant to §300.420, if one has not already been performed.

(3) If radioactive substances are present in a release, the EPA Radiological Response Coordinator should be notified for evaluation and assistance either directly or via the NRC, consistent with §§300.130(e) and 300.145(f).

(g) Release notification made to the NRC under this section does not relieve the owner/operator of a facility from any obligations to which it is subject under SARA Title III or state law. In particular, it does not relieve the owner/operator from the requirements of section 304 of SARA Title III and 40 CFR part 355 and §300.215(f) of this part for notifying the community emergency coordinator for the appropriate local emergency planning committee of all affected areas and the state emergency response commission of any state affected that there has been a release. Federal agencies are not legally obligated to comply with the requirements of Title III of SARA.

[55 FR 8839, Mar. 8, 1990, as amended at 59 FR 47447, Sept. 15, 1994]

40 CFR Ch. I (7-1-20 Edition)

§ 300.410 Removal site evaluation.

(a) A removal site evaluation includes a removal preliminary assessment and, if warranted, a removal site inspection.

(b) A removal site evaluation of a release identified for possible CERCLA response pursuant to §300.415 shall, as appropriate, be undertaken by the lead agency as promptly as possible. The lead agency may perform a removal preliminary assessment in response to petitions submitted by a person who is, or may be, affected by a release of a hazardous substance, pollutant, or contaminant pursuant to §300.420(b)(5).

(c)(1) The lead agency shall, as appropriate, base the removal preliminary assessment on readily available information. A removal preliminary assessment may include, but is not limited to:

(i) Identification of the source and nature of the release or threat of release;

(ii) Evaluation by ATSDR or by other sources, for example, state public health agencies, of the threat to public health;

(iii) Evaluation of the magnitude of the threat;

(iv) Evaluation of factors necessary to make the determination of whether a removal is necessary; and

(v) Determination of whether a non-federal party is undertaking proper response.

(2) A removal preliminary assessment of releases from hazardous waste management facilities may include collection or review of data such as site management practices, information from generators, photographs, analysis of historical photographs, literature searches, and personal interviews conducted, as appropriate.

(d) A removal site inspection may be performed if more information is needed. Such inspection may include a perimeter (*i.e.*, off-site) or on-site inspection, taking into consideration whether such inspection can be performed safely.

(e)(1) As part of the evaluation under this section, the OSC shall determine whether a release governed by CWA section 311(c)(1), as amended by OPA section 4201(a), has occurred.