ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter IV

[FRL–6584–7]

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DEPARTMENT OF JUSTICE

40 CFR Chapter IV

[AG Order No. 2299–2000]

RIN 1105–AA70

Accidental Release Prevention Requirements; Risk Management Programs Under the Clean Air Act Section 112(r)(7); Distribution of Off-Site Consequence Analysis Information

AGENCIES: Environmental Protection Agency and Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) and the Department of Justice (DOJ) are proposing a rule that would provide for access to information concerning the potential off-site consequences of hypothetical accidental chemical releases from industrial facilities. Under section 112(r) of the Clean Air Act, facilities handling large amounts of extremely hazardous chemicals are required to include this information in risk management plans which are submitted to EPA. As required by the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act, the proposed rule would provide for access by the members of the public and government officials to this information in ways that are designed to minimize the likelihood of accidental releases, the risk to national security associated with posting the information on the Internet, and the likelihood of harm to public health and welfare.

DATES: Comments: Comments on the proposed rule must be received by June 8, 2000. Hearings: A public hearing to discuss this proposed rule will be held on May 9, 2000, at 9 a.m.

ADDRESSES: Docket and Comments. Comments should be mailed to: Environmental Protection Agency, Office of Air and Radiation, Docket and Information Center, Ariel Rios Building, M6102, 1200 Pennsylvania Avenue, NW, Washington DC, 20460, Attn: Docket No. A–2000–20. By Federal Express or Courier: Waterside Mall, Room M1500, 401 M Street, S.W., Washington DC, 20460, Attn: Docket No. A–2000–20. Comments may be submitted on a disk in Wordperfect or Word formats. Please submit comments and any written testimony prepared for the public hearing in triplicate. Supporting information used to develop these proposed regulations is available for public inspection and copying from 8:00 a.m. to 5:30 p.m., Monday through Friday (except government holidays), at EPA's Air Docket at Waterside Mall, Room 1500, 401 M Street, S.W., Washington, DC 20460. A reasonable fee may be charged for copying. The assessments upon which this proposed rule is based also are available on the Internet at *www.usdoj.gov* and *www.epa.gov/ceppo.*

Hearings: The public hearing will be held at the EPA Auditorium at Waterside Mall, 401 M Street, S.W., Washington, DC 20460. People who want to testify at this hearing should call John Ferris, (202) 260–4043, or Vanessa Rodriguez, (202) 260–7913.

FOR FURTHER INFORMATION CONTACT: Brenda Sue Thornton, Trial Attorney, Criminal Division, Terrorism and Violent Crime Section, Department of Justice, 601 D Street, N.W., Room 6500, Washington, DC 20530, (202) 616–5210; John Ferris, Chemical Engineer, (202) 260–4043, or Vanessa Rodriguez, Chemical Engineer, (202) 260–7913, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency (5104),1200 Pennsylvania Avenue, N.W., Washington, DC 20460; or the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 (in the Washington, DC metropolitan area, (703) 412–9810). You may wish to visit the Chemical Emergency Preparedness and Prevention Office (CEPPO) Internet site at *www.epa.gov/ceppo.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Background

The federal government's efforts to prevent and mitigate chemical accidents have come largely in the wake of the 1984 chemical release in Bhopal, India, that killed thousands of people and injured hundreds of thousands more. Congress responded to the threat of chemical accidents in this country by enacting several pieces of legislation, including section 112(r) of the Clean Air Act (CAA), 42 U.S.C. 7412(r). In that section, Congress established a general duty on industrial facilities handling any extremely hazardous chemicals to do so safely (CAA section 112(r)(1)), and required EPA to establish a regulatory program to ensure that facilities that pose the greatest risk develop and implement a risk management program to detect and prevent or minimize accidental chemical releases (CAA section 112(r)(7)). Congress further directed that facilities submit to EPA risk management plans (RMPs) summarizing their risk management programs and including information about the potential effects on the public and environment of hypothetical worst-case and alternative scenario releases (CAA section 112(r)(7)(B)(ii)). Congress also provided that the RMPs shall be available to the public (CAA section 112(r)(7)(B)(iii)).

In accordance with CAA section 112(r), EPA issued a rule in 1994 listing the most potentially hazardous toxic and flammable chemicals and establishing a threshold of concern for each (59 FR 4478, January 31, 1994) (the ''List rule''). In 1996, EPA issued a rule requiring every facility with more than a threshold quantity of a listed chemical to develop and implement an accident prevention program based on an assessment of the hazards at that facility (61 FR 31668, June 20, 1996) (the ''RMP rule''). As required by CAA section 112(r), EPA specified in the RMP rule that the hazard assessment include an analysis of the potential consequences of worst-case and alternative scenario

chemical releases, and that the results of the off-site consequence analysis (OCA) information be reported in the facility's RMP. To date, approximately 15,000 facilities have submitted RMPs to EPA. (The list and RMP rules are codified as the Chemical Accident Prevention Provisions at 40 CFR part 68.)

B. What is Reported in an RMP

1. In General

An RMP is intended to provide information about the risk a facility poses to the surrounding community and to summarize the facility's program to manage that risk. Each RMP consists of nine sections and contains an executive summary, which is a prose description of a facility's risk management program, including a ''brief description'' of the potential off-site consequences of one or more hypothetical accidental releases from the facility. The rest of the data in the RMP generally consists of yes/no, check-off box, and numerical answers to standard questions. There are additional areas where facilities may include prose explanations for various entries, but (with the exception of the executive summary) these are optional. This format, while allowing the data to be easily submitted, compiled, and managed in electronic form, generally precludes facilities from submitting detailed information. More information on the content and form of RMPs is available at the CEPPO website (*www.epa.gov/ceppo*) and in the assessment prepared by EPA for this rule, which is available in the rulemaking docket.

2. OCA Data Elements in Sections 2 Through 5 of RMPs

For each covered process at a facility, the facility's RMP will contain the results of off-site consequence analyses for one or more hypothetical accidental worst-case and/or alternative release scenarios. Worst-case scenarios assume the release of the greatest amount of a regulated substance held in a single vessel or pipe under specified ambient and process conditions, taking into account administrative controls that limit the maximum quantity of the release and the effects of any passive mitigation features such as dikes or berms. Alternative release scenarios assume a release that is more likely to occur than the worst case, using release parameters chosen by the facility owner as appropriate for the scenario, and accounting for both passive and active mitigation features. The data elements comprising the OCA information for these scenarios are reported in sections 2 through 5 of the RMP. For toxic chemicals, sections 2 and 3 contain data on worst-case scenarios and alternative scenarios, respectively. For flammable chemicals, sections 4 and 5 report data on worst-case scenarios and alternative scenarios, respectively. A list of the data elements appears in Table A–1.

TABLE A–1.—DATA REPORTED IN OCA SECTIONS OF AN RMP

RMP sections	Data elements
2.1, 2.2, 3.1, 3.2, 4.1, 5.1	Chemical name, percent concentration, and physical state.
2.3, 3.3, 4.2, 5.2	Dispersion model used to conduct the analysis (e.g., ''lookup'' table, RMP*Comp software).
2.4, 3.4, 4.3, 5.3	Release scenario (e.g., gas leak, liquid spill and vaporization, pipe leak, etc.)
4.5, 5.5	Consequence endpoint assumed (e.g., explosion over pressure, radiant heat level) (flammable scenarios only; toxic endpoints are mandated by rule).
2.5, 2.6, 2.7, 3.5, 3.6, 3.7, 4.4, 5.4	Quantity released, release rate, and release duration (for worst-case, release rate and release duration are specified by rule).
2.8, 3.8	Wind speed (for worst-case, must be 1.5 meters/sec unless facility has other data).
2.9, 3.9	Atmospheric stability class (for worst-case, must be most stable [F] unless facility has other data).
2.10, 3.10	Topography of area surrounding the process or facility (urban or rural).
2.11, 3.11, 4.6, 5.6	Distance in miles to either the toxic or flammable endpoint.
2.12, 3.12, 4.7, 5.7	Estimated residential population within the endpoint distance.
2.13, 3.13, 4.8, 5.8	Public receptors (e.g., schools, residences, recreation areas, etc.) within the endpoint distance.
2.14, 3.14, 4.9, 5.9	Environmental receptors (e.g., national or state parks, etc.) within the endpoint distance.
2.15, 3.15, 4.10, 5.10	Passive mitigation considered (i.e., equipment that functions without human, mechanical, or energy input that is designed to limit a release).
3.16, 5.11	Active mitigation considered (alternative scenarios only).
	Graphics file name (optional). Facilities may include a map or other graphic to illustrate a release scenario.

C. The Passage of CSISSFRRA

As one way of satisfying CAA section 112(r)'s requirement that RMPs be made available to the public, EPA had considered posting RMPs on the Internet. In the RMP rule, after public notice and comment, EPA announced plans for an electronic centralized system for submitting and managing RMPs. With the help of a federal advisory committee, EPA designed an RMP form that lends itself to the creation of an electronic database. Many members of the advisory committee recommended that CAA section 112(r) would best be satisfied by placing RMPs on the Internet to afford the public easy access to them. Before EPA had implemented any plan for doing so, however, the Federal Bureau of Investigation and other representatives of the law enforcement and intelligence communities raised law enforcement and national security concerns about making RMPs electronically available. Specifically, the law enforcement and intelligence communities voiced concerns that releasing the OCA portions of RMPs via the Internet would enable Internet users anywhere in the world to search electronically for industrial facilities in the U.S. to target for purposes of causing a planned industrial chemical release, and that no record of such a query would be made.

These concerns eventually led to the passage of the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (CSISSFRRA), Public Law 106–40. In response to the concerns raised by the law enforcement and national security communities, EPA decided not to place the OCA portions of RMPs on the Internet. Similar concerns were next raised, however, that amendments to the Freedom of Information Act (FOIA) would nevertheless compel EPA to release the OCA portions of RMPs in electronic

format. Congress responded by passing CSISSFRRA, which in relevant part added a new subparagraph (H) to CAA section 112(r)(7).

D. What CSISSFRRA Does

CSISSFRRA exempts ''[OCA] information'' (CAA section 112(r)(7)(H)(iii)) from FOIA, 5 U.S.C. 552, and limits public access to OCA information for at least one year while the federal government assesses both the risks of posting the information on the Internet and the chemical safety benefits of providing public access to the information, and then issues regulations governing distribution of the information based on those assessments (CAA section 112(r)(7)(H)(ii)). In particular, the statute requires the President to assess ''(aa) the increased risk of terrorist and other criminal activity associated with the posting of [OCA] information on the Internet'' and ''(bb) the incentives created by public disclosure of [OCA] information for reduction in the risk of accidental releases'' (CAA section 112(r)(7)(H)(ii)(I)). It then provides that, based on those assessments, the President must ''promulgate regulations governing the distribution of [OCA] information in a manner that, in the opinion of the President, minimizes the likelihood of accidental releases and the risk described in subclause (I)(aa) and the likelihood of harm to public health and welfare'' (CAA section 112(r)(7)(H)(ii)(II)). CSISSFRRA defines ''[OCA] information'' as ''those portions of a [RMP], excluding the executive summary of the plan, consisting of an evaluation of 1 or more worst-case release scenarios or alternative release scenarios, and any electronic data base created by the Administrator [of EPA] from those portions'' (CAA section 112(r)(7)(H)(i)(III)). In effect, ''[OCA] information'' means sections 2 through 5 of RMPs and any electronic database EPA creates from those sections.

CSISSFRRA also requires that the regulations promulgated by the President meet certain additional requirements for public and governmental access. The regulations must, for example, ''allow[] access by any member of the public to paper copies of [OCA] information for a limited number of stationary sources located anywhere in the United States, without any geographical restriction,'' as well as ''allow[] other public access to [OCA] information as appropriate'' (CAA section 112(r)(7)(H)(ii)(II)(aa) & (bb)). They also must guarantee access to ''[OCA] information'' to government officials, referred to in the statute as ''covered persons,'' for their ''official use'' (see CAA sections 112(r)(7)(H)(i)(I) & (II) and (H)(ii)(II)(cc)-(ee)). Government officials include officers and employees of federal, state, or local government or their agents or contractors, and officers and employees of state and local emergency response organizations or their agents or contractors (see CAA section 112(r)(7)(H)(i)(I)). Emergency response officials include members of State Emergency Response Commissions (SERCs) and Local Emergency Planning Committees (LEPCs) created under the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA, 42 U.S.C. 11001 *et seq*).

While CSISSFRRA guarantees covered persons access to OCA information, it prohibits them from disseminating the information to the public except as authorized by the statute or the regulations issued under it (CAA section 112(r)(7)(H)(v)(I)). This prohibition on dissemination, however, applies only to OCA information disseminated ''in the form of a [RMP] or an electronic data base created by the Administrator [of EPA] from [OCA] information'' (CAA section 112(r)(7)(H)(xii)(II)). Thus, CSISSFRRA prohibits disclosure of RMP sections 2 through 5, and of OCA data conveyed in the ''form'' of those sections, and prohibits disclosure of EPA's OCA database. CSISSFRRA does not prohibit disclosure of the substance of OCA information, i.e., the individual pieces of OCA data reported in the OCA sections of RMPs, when the data is disclosed in a form different than those RMP sections (sections 2 through 5) or EPA's OCA database. State and local covered persons, then, may communicate to the public about the potential off-site consequences of chemical accidents in any way they choose, as long as they do not hand out copies of, or otherwise replicate, sections 2 through 5 of the RMPs, or provide direct access to the database. CSISSFRRA also prohibits covered persons from disclosing ''any statewide or national ranking of identified stationary sources derived from'' OCA information (CAA section 112(r)(7)(H)(v)(I)). Any covered person who willfully violates any of these prohibitions is subject to criminal penalties of up to $1,000,000 for violations committed in any one year (CAA section 112(r)(7)(H)(v)(II)).

CSISSFRRA also permits the public other means of access to the substance of OCA information (CAA section 112(r)(7)(H)(i)(II)). For example, it exempts RMP executive summaries from the definition of ''[OCA] information'' (CAA section 112(r)(7)(H)(i)(III)). In addition, CSISSFRRA requires virtually all covered facilities to conduct a public meeting or to post a public notice that summarizes their OCA information by February 5, 2000 (CSISSFRRA section 4(a)). CSISSFRRA also allows facilities to release their OCA information to the public without restriction, and once a facility has so released its OCA information, covered persons may do so as well (CAA section 112(r)(7)(H)(v)(III)). CSISSFRRA provides further access to this information, including access for qualified researchers (see CAA section 112(r)(7)(H)(iv); section 112(r)(7)(H)(vii); and section 112(r)(7)(H)(viii)).

E. The Delegation to DOJ and EPA

In a memorandum dated January 27, 2000 (published in the **Federal Register** at 65 FR 8631 (February 22, 2000)), the President delegated to the Attorney General and the Administrator of EPA authority to perform the required assessments and to promulgate the required regulations. The President assigned to the Attorney General the responsibility for assessing the increased risk of terrorist and other criminal activity associated with posting OCA information on the Internet (the ''risk assessment''). He assigned to the Administrator of EPA the responsibility for assessing the incentives for reduction in the risk of accidental chemical releases created by public disclosure of OCA information (the ''benefit assessment''). The President also jointly delegated to the Attorney General and the Administrator his duty to promulgate the regulations, subject to review and approval by the Office of Management and Budget (OMB). In this action, we (i.e., EPA and DOJ) are jointly proposing regulations pursuant to CSISSFRRA and the President's delegation. OMB has reviewed and approved the proposed rule.

II. The Assessments

This section summarizes the findings of the required risk and benefit assessments that, under CSISSFRRA, must form the basis for this proposed rule. These assessments, respectively, are available on the Internet at *www.usdoj.gov* and *www.epa.gov/ceppo*.

A. The Risk Assessment

Based upon an analysis of trends in international and domestic terrorism and upon the burgeoning interest in weapons of mass destruction (WMD) [1]

[1] Federal law defines WMD in 18 U.S.C. 2332a(c)(2) as any destructive device as defined in 18 U.S.C. 921, which includes explosive,

among criminals and, in particular, terrorists, the risk assessment concludes that the risk of terrorists attempting in the foreseeable future to cause a potentially catastrophic chemical release is both real and credible. Terrorists increasingly engineer their attacks to cause mass casualties to the populace and/or large-scale damage to property. In recent years, criminals have with increasing frequency attempted to obtain or to produce WMD to achieve these goals. However, traditional means of creating or obtaining WMD are generally difficult to execute. In contrast, breaching a containment vessel of an industrial facility with an explosive, or otherwise causing a chemical release, may appear less difficult to a terrorist and may also appear attractive in light of the pervasiveness of industrial facilities possessing toxic or flammable chemicals and their proximity to high-population areas. Certain types of facilities submitting RMPs, moreover, such as U.S. military, federal, and infrastructure facilities in the United States, are preferred terrorist targets. While security at some of these sites may reduce the concern that they will be targeted, no security is foolproof and not everyone intent on terrorist activity will be dissuaded by security measures.

Although no criminal or terrorist has yet successfully caused a chemical release from an industrial facility on U.S. soil, the risk assessment points out that domestic terrorist groups have, during the past two years, twice been caught by law enforcement plotting to cause industrial chemical releases for terroristic purposes at U.S. facilities. In addition, the assessment notes that foreign militaries and certain terrorist groups indigenous to other countries have successfully caused releases from industrial facilities using bombs or explosive material. These efforts have in effect converted the facilities into makeshift WMD.

The risk assessment concludes that posting certain portions of OCA information on the Internet would increase the risk that terrorists or other criminals will attempt to cause an industrial chemical release in the United States. Easy access to OCA information would be helpful to someone seeking to cause such a release because it would provide ''one-stop shopping'' for refined targeting information, allowing terrorists to select potential targets from among the 15,000 facilities that have submitted OCA information. The assessment finds that, in particular, the following pieces of OCA information would assist someone seeking to target and maximize an industrial chemical release:

- The name of the chemical involved in the worst-case and alternative release scenarios;
- The scenarios that produce the worst-case and alternative release scenarios (e.g., transfer hose failure, pipe leak, etc.);
- The projected quantity of chemical released in the worst-case or alternative release scenarios;
- The release rate for alternative release scenarios;
- The duration of the release in alternative release scenarios;
- Distance to endpoint or the distance that the chemical release will extend in the worst-case or alternative release scenarios;
- The endpoint for a flammable alternative release scenario;
- The residential population within the affected area in the worst-case or alternative release scenarios;
- The public receptors within the affected area (schools, residences, hospitals, prison/correctional facilities, recreation areas, or commercial/industrial areas) of the worst-case or alternative release scenarios;
- The environmental receptors within the affected area (national or state parks, forests, or monuments; officially designated wildlife sanctuaries, preserves, or refuges; federal wilderness area) of the worst-case or alternative release scenarios;
- Active mitigation systems in the worst-case or alternative release scenarios;
- Passive mitigation systems in the worst-case or alternative release scenarios; and
- Map or other graphic that illustrates a worst-case or alternative release scenario.

The risk assessment also finds that the increased risk of terrorist or other criminal activity associated with posting these portions of OCA information on the Internet varies among the specific pieces of information. The assessment thus separates OCA information that would be helpful to a terrorist or other criminal into three categories. The first category of OCA information provides a general account of the consequences of a chemical release in terms of the damage that it might inflict on the community. It consists of the distance to endpoint, the residential population within the distance to endpoint, the public receptors, the environmental receptors, and the map or graphic of the worst-case or alternative release scenario. The assessment finds that, because these pieces of OCA information would allow someone to compare the relative damage that could be caused by chemical releases from different sites and choose the best target from which to attempt to cause a release, they would be of the greatest value to terrorists and hence would present the greatest risk.

The second category of information consists of OCA information that provides a rough sketch of what is involved in triggering a release from an RMP facility. Included in this category are the name of the chemical involved in the worst-case or alternative release scenario; the projected quantity of chemical released; the release rate; the duration of the release; and the scenario that results in the release. The risk assessment concludes that this category of information, while less sensitive than the first category, still would pose an appreciable risk if posted on the Internet.

The third category of information consists of OCA information on passive and active mitigation measures. The assessment finds that this category of information, while it would be relevant to an attempt to cause a chemical release, is the least likely to be exploited by a terrorist, or else is already easily accessible to the public so that the incremental risk of releasing it in OCA data form would not significantly add to the risk already posed by its public availability.

The risk assessment concludes that Internet access to categories one and two of OCA information poses the greatest risk that they will be used in relation to an attempted industrial chemical release. The assessment notes that the method of dissemination and the degree to which OCA information is disseminated are of paramount concern in evaluating the risk posed by the release of that information to the public. The assessment finds that Internet access to OCA information would pose the greatest risk because of the wide dissemination of the information and the anonymity of the access. Paper copies of OCA information, if they were permitted to be carried away, would pose a similar risk because they could be easily scanned and converted into electronic copy that could then be posted on the Internet.

Although the substance of some of the OCA information that is cause for concern is already publicly available through means other than RMPs, the risk assessment finds (as does the benefit assessment summarized in the next section) that the category one information discussed above that would be most helpful to terrorists is not currently available in as readily accessible and user-friendly a format as the OCA information sections of an RMP. Moreover, the assessment finds that category two information,

incendiary, or gas devices; any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors; any weapon involving a disease organism; or any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.

particularly for alternative release scenarios, is also largely unavailable. Even if information comparable to that contained in categories one or two is currently publicly available, the assessment finds that it can only be converted to targeting information by someone with some degree of technical proficiency and background in such information. If those portions of OCA information that represent refined targeting or chemical release information were posted on the Internet, however, they would be accessible to anyone anywhere in the world who has access to the Internet, including agents of hostile foreign countries. Such unmonitored dissemination of this information in a manner that permits the recipient to obtain it anonymously and in a form that is easily understandable greatly increases the risk of its misuse.

B. The Benefit Assessment

The benefit assessment concludes that public disclosure of OCA information would likely lead to a significant reduction in the number and severity of accidental chemical releases. The prevention program requirements of the RMP rule are performance-based, in part because EPA considered that the public availability of RMPs would help ensure that facilities take all reasonable steps to reduce their risk of accidents. In addition, widespread access to OCA information would serve the function Congress originally intended in enacting the CAA—to inform members of the public and allow them to participate in decisions that affect their lives and communities. The public is not likely to generate the data contained in the OCA sections of RMPs on its own, and thus the greater the restrictions on access to OCA information, the greater the potential that public safety benefits are diminished. In support of these conclusions, the benefit assessment finds specifically as follows:

- Chemical accidents continue to impose considerable costs in terms of human lives and health, property, and public welfare. Facilities covered by the RMP rule reported that from mid-1994 to mid-1999 there were about 1,900 serious accidents that caused 33 deaths, 8,300 injuries, and the evacuation or sheltering of 221,000 people. These accidents cost the affected facilities more than $1 billion in direct damages and two to four times that in business interruption losses. These accidents also represent less than 10 percent of all unintended releases of hazardous substances reported to the government during this period.
- Given the opportunity, the public uses hazard information to take action that leads to risk reduction. Various segments of the public have strong incentives to use OCA information in ways that reduce risk. For example, the national publication of the Toxics Release Inventory (TRI) data by the government, followed by analysis by citizens' groups and the news media, appears to have spurred action by industry to reduce emissions. Nationally, reported TRI emissions have fallen 43 percent since 1988, a time in which industrial production has risen 28 percent. Although other factors contributed to the decline in emissions, negative press coverage appears to have led some facilities to reduce their TRI emissions.
- Ease of access to information is critical to public use and risk reduction. Data available in paper form on request from state or local agencies are rarely sought. For example, data on the location and identity of hazardous chemicals are requested about 3,500 times a year from LEPCs. (There are about 3,200 LEPCs in the country and about 560,000 facilities subject to requirements to report information on hazardous chemicals to LEPCs.) Meanwhile, environmental data on the Environmental Defense Fund's ''Scorecard'' website are at least 250 times more likely to be reviewed by the public than is information from LEPCs. Likewise, early indications are that meetings required by CSISSFRRA to explain OCA information to the public have drawn very few attendees even when citizens received individual invitations. In contrast, when industry has gone out to places the public already frequents (for example, a shopping mall) and provided consequence information directly to citizens, outreach and communication about chemical accident risks have been more successful.
- Information that puts hazards into context is far more likely to be used by the public than are ''raw'' data. The importance of such ''interpreted'' information (already analyzed in order to be understandable) is demonstrated by the increased use of TRI data when they were made available as part of Scorecard on the Internet. Although TRI data are available electronically through EPA's Envirofacts and the Right-To-Know Network (RTK-Net) websites, Scorecard ranks each facility on various indicators by county, state, and nation, and explains the health effects of chemicals emitted by that facility. The raw TRI data on RTK-Net were drawing 240,000 searches a year; Scorecard draws over a half million page views a month. OCA information is interpreted in that it reflects the results of analysis of data that the public might otherwise find difficult to understand. Ultimately, the best and most effective interpreted information would be generated during dialogue about OCA information and RMP data at the local and national levels among the public, government (particularly emergency response officials), and facilities.
- Although the substance of OCA information could be derived from other available data, the public is unlikely to do so. Derivation of such information requires some technical knowledge and time. While motivated and skilled individuals and organizations can use widely available existing data, guidance, and models to estimate off-site consequences with relative ease, the general public is unlikely to be able and willing to do so.
- A complete RMP containing OCA data is necessary to understand the extent of the hazard posed by a particular facility in comparison to other facilities in an area, within an industrial sector, or handling the same chemicals. The accident prevention rule requires facilities to conduct OCAs in a specified, systematic manner so that the public and others can understand the relative hazards and risks posed by facilities as a result of the type and amount of chemicals handled and the mitigation measures used. While the OCA information addresses the hazard, the complete RMP also addresses the steps to control the hazard. Understanding the extent of a hazard and how it is controlled leads to understanding the risk posed by a facility.
- Multiple segments of the public, particularly citizens, citizens' groups, and the media, are likely to become more interested in chemical safety and chemical release risk reduction to the extent they become aware of the potential consequences associated with worst-case and alternative release scenarios. The interest and concern about potential consequences will likely trigger comparisons and detailed analyses not only of OCA information but also of the safety and environmental performance of facilities. Widespread awareness of the comparisons and analyses would provide the public with a better understanding of accident risk; combining this understanding with other environmental risk information would likely stimulate better dialogue at the local and national levels among the public, government, and facilities to reduce chemical accident risks.
- Although CSISSFRRA provides for access to OCA information for state and local officials, including emergency planners and responders, and allows those officials to disseminate the substance of OCA information to the public, the penalties for disclosure contained in CSISSFRRA are having a chilling effect. Many of these officials are not willing to obtain OCA information or to communicate its substance and thereby risk accidental or inadvertent disclosure of OCA information, even though CSISSFRRA penalizes only its willful disclosure.

III. The Proposal

In developing our proposed approach, we have relied, as CSISSFRRA requires us to do, on the specific findings of the two assessments in a way that we believe most effectively minimizes the likelihood of accidental releases, the increased risk of terrorist activity associated with the posting of OCA information on the Internet, and the likelihood of harm to public health and welfare from chemical releases. In consideration of the two assessments, our proposed approach seeks to disseminate in an appropriately controlled manner those pieces of OCA information that the risk assessment found posed the greatest risk of being used in planning a terrorist or other criminal event and, in particular, to

minimize the risk associated with the posting of those pieces of information on the Internet.[2] To that end, we propose to make OCA information available in reading rooms geographically distributed across the United States. At the same time, our proposed approach recognizes that several pieces of OCA information pose less risk of being used for criminal purposes or are otherwise widely available already and, where that is the case, seeks to provide the data over the Internet. Placing OCA information on the Internet gives the public a fast and convenient way to obtain this information. While the Internet provides a tremendous benefit by offering people easy access to a wealth of information, we also recognize that it provides a new means for criminals and terrorists to carry out traditional criminal activities. We therefore have attempted to balance these interests by making as much information as appropriate available online, but not posting the information that the risk assessment found poses a significant risk for terrorist or criminal purposes. Further, to address the statute's requirement that we minimize the likelihood of harm to the public from chemical releases, our proposed rule includes several components intended to complement reading-room access to OCA information by providing additional information in easily accessible ways that would help the public better understand chemical accident risk and prevention. We anticipate that the proposed measures, taken together, would stimulate and enhance needed dialogue among members of the public, government, and industry at the local and national levels about how to minimize the risk of chemical accidents, however caused.

The assessments reveal that some OCA information is already publicly available to varying degrees. The substance of some OCA information is capable of being assembled from various public sources, although the actual OCA information itself represents the most up-to-date and complete information available. Furthermore, compiling other publicly available information into a form comparable to OCA information would require both extensive effort and technical proficiency. We have factored the issue of the public availability of OCA-like data into our decisions regarding how various pieces of OCA information should be treated. For example, while certain pieces of OCA information would otherwise have been considered to pose law enforcement and national security concerns, such as the passive and active mitigation systems considered in the worst-case scenarios, we believed that the public availability of almost identical information in other parts of RMPs meant that those pieces of OCA information should be handled as less sensitive pieces of OCA information and, hence, have treated them as such.

Finally, we have taken careful note of the benefit assessment's conclusions regarding the role of risk-related information in risk reduction and the ways that the public acquires and uses such information. In response to these conclusions, the proposal would ensure that all of the OCA information would be available to the public in some fashion, and some OCA information would be available in several forms. As explained above, any member of the public would have access to OCA information without geographical restriction for a limited number of facilities in federal reading rooms. In addition, the proposed rule would make as many OCA data elements as appropriate available to the public on the Internet, providing easy access to that information. The proposal also would make available on the Internet a ''risk indicator system'' which would provide the public a means of understanding some aspects of the risk expressed by OCA information without disclosing the actual OCA information itself. The indicator proposal responds to the finding that information that is already interpreted, easily understood, or put into context is far more likely to be used by the public in taking action that leads to risk reduction.

Further, the proposed rule would seek to enhance local access to OCA and related information. It would clarify that members of SERCs, LEPCs, and fire departments (as covered persons) may, even now, communicate to the public the substance, although not the form, of OCA information, and thereby contribute to public awareness and discussion of chemical risk reduction efforts and opportunities. It also would authorize members of SERCs, LEPCs, and local fire departments to provide read-only access to OCA information itself for all of the sources in an LEPC's jurisdiction and for sources with a vulnerable zone that extends into the LEPC's jurisdiction. This aspect of the proposal would potentially provide the public with more convenient access to OCA information for local facilities.

Together, the proposal's public access provisions would facilitate widespread public awareness of information regarding the safety and environmental performance of facilities. That awareness, in turn, would likely stimulate dialogue among members of the public, government, and industry about what further steps might be taken to reduce chemical risk. We believe that this scheme effectively responds to the benefit assessment's conclusion that it is the interaction of the public, government, and facilities that will ultimately yield the most benefit in reducing the risks of chemical accidents.

A. Public Access to OCA Information

1. Access to Paper Copies of OCA Information

In accordance with CSISSFRRA, this proposed rule would provide the public with access to paper copies of OCA information for a limited number of facilities located anywhere in the United States, without geographical restriction (see CAA section 112(r)(7)(H)(ii)(II)(aa)). Under the proposed rule, OCA information for facilities nationwide would be accessible to the public at reading rooms located at designated sites throughout the country, such as EPA regional offices and other federal facilities. There would be at least 50 reading rooms geographically distributed across the United States so that the public would have reasonable access to them. At these sites, members of the public would have access to OCA information for any facility and would be able to read it and to take notes from it. Members of the public would not, however, be permitted to remove the OCA portions of RMPs from a reading room or to mechanically reproduce those portions. Each reading room would be authorized to provide any member of the public with access to OCA information for up to 10 stationary sources per calendar month. Based on an analysis of the geographic distribution of RMP-covered facilities (available as part of the benefits assessment), we believe that, in most cases, this would permit members of the public to have access to OCA information about facilities in whose ''vulnerable zone'' they live or work, as well as to OCA information about additional facilities for purposes of comparison. At the same time, it would minimize the criminal risk associated with Internet access to the most sensitive pieces of OCA information by making it difficult to obtain large quantities of that information and to convert it to an electronic format for Internet posting.

[2] CSISSFRRA requires that the regulations allow access by any member of the public to paper copies of OCA information for a limited number of facilities without geographic restriction, and also permits other means of access as appropriate.

To implement the proposed limit on the number of facilities for which an individual could obtain access to paper copies of OCA information, the proposed rule would require that reading room personnel ask each individual to show a piece of personal identification issued by a federal, state, or local government agency (e.g., a driver's license) before the individual is given access to OCA information. This requirement is necessary because without checking personal identification, reading room personnel could not keep track of the number of facilities for which the individual had been given access to OCA information. Requiring reading room personnel to ask for personal identification also would decrease the likelihood that OCA information would be obtained by individuals seeking it for terrorism or other criminal purposes, because such individuals prefer to hide their activities from public view.

We anticipate that reading rooms would keep daily sign-in sheets that would record the names of each individual requesting OCA information, how many facilities' OCA information the individual had received to read, and which facilities those were. Whenever someone requested access to OCA information, reading room personnel would review the sign-in sheets for that day and the previous days during the month to determine how many, if any, facilities' OCA information that person already had received that month. These sign-in sheets would be protected under the Privacy Act (5 U.S.C. 552a). We envision that they will be retained for three years.

We also anticipate that reading rooms would generally provide access to RMP*Info, an electronic public access database on the Internet that includes the full text of RMPs except for the OCA sections. Where RMP*Info is not available for use by the public, we anticipate that the entire copy of each RMP would be made available to those who request it so that the OCA information may be reviewed in the context of the larger risk management plan.

We believe that the sort of reading-room access just described, in conjunction with the other provisions of this proposed rule, achieves the overall goal of the statute—to minimize the risk to the public posed by chemical releases, however caused, from the facilities submitting state, or local government agency (e.g., a driver's license) before the individual is given access to OCA information. This requirement is necessary because without checking personal identification, reading room personnel could not keep track of the number of facilities for which the individual had been given access to OCA information. Requiring reading room personnel to ask for personal identification also would decrease the likelihood that OCA information would be obtained by individuals seeking it for terrorism or other criminal purposes, because such individuals prefer to hide their activities from public view.

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We believe that the sort of reading-room access just described, in conjunction with the other provisions of this proposed rule, achieves the overall goal of the statute—to minimize the risk to the public posed by chemical releases, however caused, from the facilities submitting RMPs. While we considered permitting the actual release of paper copies to members of the public upon their request, we concluded that this would pose too great a risk because such copies could easily be converted into electronic format for Internet posting. Instead, we believe that a better approach would be a series of graduated means of access, starting with the above-described system of reading rooms which will be geographically distributed across the United States and which will provide any member of the public with access to all OCA information for any facility located anywhere in the United States, contingent upon some reasonable limitations such as a maximum number of facilities (10) per calendar month as to which an individual can obtain OCA information. We suggest augmenting this access, as set forth below, by providing two different additional means of Internet access to OCA information, and an alternative means by which members of the public can obtain access to paper copies of OCA information for the localities in which they live or work. Because this last avenue of access would be geographically limited to localities, we propose providing access to OCA information without the types of restrictions that would exist in the national reading rooms, such as limits on the number of facilities about which information could be obtained.

2. Internet Access to Selected OCA Information

In an effort to provide robust access to as much OCA information as practicable, the proposed rule also makes some OCA information available to the public through the Internet by posting it on EPA's website. The following pieces of OCA information for both the worst-case and alternative release scenarios would be posted on the Internet, along with other RMP data elements available in EPA's RMP*Info[3]:

- The concentration of the chemical (RMP Sections 2.1.b; 3.1.b);
- The physical state of the chemical (RMP Sections 2.2; 3.2);
- The duration of the chemical release for the worst-case scenario (RMP Section 2.7);
- The statistical model used (RMP Sections 2.3; 3.3; 4.2; 5.2);
- Endpoint used for flammables for the worst-case scenario (RMP Section 4.5);
- Wind speed during the chemical release (RMP Sections 2.8; 3.8);
- The atmospheric stability (RMP Sections 2.9; 3.9);
- The topography of the surrounding area (RMP Sections 2.10; 3.10);
- The passive mitigation systems considered (RMP Sections 2.15; 3.15; 4.10; 5.10); and
- The active mitigation systems considered (RMP Sections 3.16; 5.11).

The proposed rule would exclude the following pieces of OCA information from being posted on the EPA website:

- The name of the chemical involved (RMP Sections 2.1.a; 3.1.a; 4.1; 5.1);
- The scenario involved (RMP Sections 2.4; 3.4; 4.3; 5.3);
- The quantity of chemical released (RMP Sections 2.5; 3.5; 4.4; 5.4);

[3] Certain pieces of OCA information are being released because they are fixed values and are widely available to the public. The values for the duration of a chemical release and the endpoint used for flammables for the worst-case scenario are fixed numbers that can be found in EPA's guidance for submitting worst-case scenario data and on the RMP form.

- The release rate of the chemical involved for the worst-case scenario (RMP Section 2.6);
- The release rate of the chemical involved in the alternative release scenario (RMP Section 3.6);
- The duration of the chemical release in the alternative release scenario (RMP Section 3.7);
- Distance to endpoint (RMP Sections 2.11; 3.11; 4.6; 5.6);
- Endpoint used for flammables for the alternative release scenario (RMP Section 5.5);
- Residential population within the distance to endpoint (RMP Sections 2.12; 3.12; 4.7; 5.7);
- Public receptors within the distance to endpoint (RMP Sections 2.13; 3.13; 4.8; 5.8);
- Environmental receptors within the distance to endpoint (RMP Sections 2.14; 3.14; 4.9; 5.9); and
- Map or other graphic used to illustrate a scenario (RMP Sections 2.16; 3.17; 4.11; 5.12).

These pieces are not being posted on the Internet in view of the risk assessment's findings that Internet posting of these OCA data elements would increase the risk of a chemical release caused by a terrorist or criminal.

Our proposal to post some but not all OCA information on the Internet is guided by the findings in the two assessments. The pieces of OCA information that would not be posted are restricted to those that the risk assessment found to pose a significant risk of being used for terrorist or other criminal purposes. The pieces of OCA information that would be posted, by contrast, pose less incremental risk, and we anticipate that Internet release of these pieces of information would have the benefit of facilitating dialogue between members of the public, state and local officials, and the facilities. Information about active and passive mitigation systems that has been included in worst-case and alternative release scenarios, for example, would provide the public with knowledge about measures that industry is taking to limit the potential damage that could result from a chemical release. Finally, the pieces of information that would not be posted would remain accessible to members of the public at federal reading rooms and potentially at the local level through various other means provided for by this proposed rule. We anticipate that these additional means of access would help ensure that members of the public have meaningful access to the full range of OCA information, while reducing the risk that the most sensitive pieces of that information would be used for criminal purposes.

3. Risk Indicator System

The proposed rule would set up a ''risk indicator'' system that would provide the public a means of understanding, via Internet inquiry, some aspects of the risk expressed by OCA information without giving them via the Internet the actual OCA information itself or individual portions thereof. The risk indicator system would consist primarily of query and response software located in RMP*Info. Members of the public would be able to enter a specific address (such as that of a home, school, or place of employment) and learn if that address might be within the ''vulnerable zone'' (*i.e.,* within the worst-case or alternative release scenario's ''distance to endpoint'') of at least one facility currently submitting an RMP to EPA. (As discussed further below, because the data reported in RMPs is not sufficient to precisely map the vulnerable zones for chemical releases, the indicator could not definitively state whether an address is or is not within a vulnerable zone.) Members of the public who do not have access to the Internet would be able to obtain the same information by calling the EPA hotline or by mailing a request to the Administrator of EPA.

The risk indicator system also would inform individuals of several means by which they can obtain additional information. Any federal reading rooms and relevant local reading rooms under this proposed rule, for example, would be sources for identifying the facility or facilities whose vulnerable zones extend to the address entered into the indicator system. EPA would revise RMP*Review, the software designed for use by federal, state, and local ''covered persons,'' so that it would include a version of the indicator with the capability easily to identify the names of the facilities whose vulnerable zones may extend to an address. Therefore, individuals could potentially obtain this information from federal, state, and local ''covered persons.'' (We understand that provision of this information by state and local officials could require additional resources and therefore that not all state and local officials may be able to respond to requests for the information.) Our intention is that all of this contact information would be readily accessible or linked to the indicator located in RMP*Info.

We believe that the risk indicator system would encourage members of the public to seek additional information about the risk of chemical releases in their communities and about steps that they may take to reduce that risk, and thereby would encourage the sort of dialogue among community members, government agencies (especially LEPCs), and industry that is vital to prevention of chemical accidents. Once an individual learned the identity of facilities that could present a risk, he or she could refer to those facilities' RMPs in RMP*Info to learn more about them, including their accident histories and the steps that each facility is taking to prevent accidents. If the individual wanted to view all of the OCA information for a facility, he or she could contact the facility directly (facilities are encouraged but not required to provide the actual OCA information) or could visit one of the designated OCA information reading rooms. Finally, the individual could gain this and further information on risk by contacting an LEPC, SERC, local fire department, or other state or local ''covered person.'' As we explain in the next section, federal, state, and local covered persons are authorized and encouraged by the proposed rule to provide reading-room access to copies of OCA information. They also are permitted to convey and discuss the substance of OCA information, so long as they do so in a way that does not replicate the OCA sections of RMPs or EPA's OCA database. LEPCs also have access to, and are free to provide individuals with, hazardous chemical inventory reports submitted by facilities, local emergency response plans, and other information beyond that contained in RMPs.

We have some concerns with the precision of the risk indicator system because it would utilize the latitude/longitude and the distance to endpoint portions of OCA information reported by facilities. Because the latitude/longitude readings reported by facilities can be taken at any point within the facilities, and because some facilities can be quite large, we are concerned that some addresses would be reported to be in a vulnerable zone of a facility when in fact they are not. However, we believe that these concerns are outweighed by the usefulness of the risk indicator system as a means of stimulating members of the public to pursue more precise and accurate information about local risk. To the extent that the indicator helps members of the public to understand that they may be in a vulnerable zone, it provides valuable information above that which is currently available. At this time, RMP*Info allows an individual to learn only the names of facilities that have submitted RMPs in a particular city or county; there is currently no easy way of finding out if the off-site

consequences of any of the facilities' worst-case scenarios could affect particular addresses. The proposed indicator would provide such information.

4. Enhanced Access to Local OCA Information

Enhancing public access to OCA information for local sources is another key element of today's proposed rule. We believe that chemical safety is most effectively addressed at the local level, and the benefit assessment confirms that members of the public and local officials working together and with industry have the potential to promote chemical accident prevention. LEPCs and fire departments are closest to the facilities subject to accident prevention rules and the communities potentially affected by any accidents at those facilities. For more than a decade, EPA has endeavored to strengthen LEPCs so that they can realize their potential to prevent and respond to accidental releases. We therefore believe that LEPCs and fire departments can and should be encouraged to play an important role in the communication of OCA information to members of the public. Also, to the extent federal outlets for reading-room access to paper copies of OCA information may be located some distance from some members of the public, gaining access through LEPCs or other local government officials may be a preferable alternative. While we would not require local officials to provide such access, we would strongly encourage them to do so, particularly in light of their key role in chemical safety at the local level.

The proposed rule includes several provisions for achieving this objective. The proposed rule authorizes members of LEPCs or local fire departments to set up reading rooms or other facilities where members of the public could read, but not remove or mechanically copy, paper copies of the OCA information for all of the sources in the LEPC's jurisdiction and for any sources whose vulnerable zone extends into the LEPC's jurisdiction. A LEPC could, for example, have a binder of OCA information for all of the sources meeting this criterion and provide the public with access to the binder. Members of the public would be permitted to read and take notes from the OCA information, but not to remove or mechanically reproduce it. The proposed rule would impose no limit on the number of facilities for which members of the public may review paper copies of OCA information made available by LEPCs or fire departments and would not require LEPCs to ask members of the public to show any identification to gain access to the information. SERCs would be permitted to provide a person the same access to paper copies of OCA information as that person would receive at his or her LEPC. Members of LEPCs, fire departments, and SERCs who provide public access to OCA information in this manner would not be subject to criminal liability or penalties under CSISSFRRA.

As mentioned above, the benefit assessment revealed that many local government officials are reluctant to obtain OCA information from EPA or to share the substance of that information with the public, at least in part out of concern that criminal penalties attach to unauthorized disclosure of OCA information. To address this concern, the proposed rule includes a provision in the section governing disclosure of OCA information that makes clear what CSISSFRRA already allows—that covered persons, including local government officials, may share with the public data reported in the OCA sections of RMPs, just not the OCA sections of the forms themselves. In other words, a covered person may convey, orally or in writing, the OCA results for a facility, so long as he or she does not hand out a copy of, or otherwise replicate, the OCA sections of the facility's RMP form itself or provide access to EPA's OCA database. A local official, for instance, may prepare a hand-out for a community meeting that includes OCA data for local (and other) facilities in a format different than that used for sections 2 through 5 of RMPs.

We believe that these proposals for enhanced local access to OCA information would help to realize the benefits of public disclosure of OCA information identified in the benefit assessment and would help satisfy the public's interest in access at the local level to information about the sources of chemical accident risks that could affect them directly. We anticipate that members of the public seeking OCA information held by LEPCs and local fire departments would be more likely to ask about the other information available from LEPCs under EPCRA regarding chemical hazards in the community. This would enhance the already-important role of the LEPCs in local chemical safety and accident prevention. At the same time, by limiting local access to paper copies of OCA information to a relatively small number of sources (those that are directly relevant to the community in question), this proposal addresses the legitimate security concerns discussed in the risk assessment.

5. Additional Information on Chemical Accident Risk

As a supplement to the provisions of the proposed rule, EPA also would make available to the public additional information on chemical accident risk through an Internet website. The information would enable citizens to become better informed about the nature and consequences of chemical accidents in general and the different ways chemical accident risks might be addressed. Citizens could then use this information together with any OCA data obtained about specific facilities to engage in productive dialogues at the local, state, and federal levels about preventing chemical accidents and minimizing the consequences of any accidents that do occur.

As described further below, EPA would provide the following information about chemical accident risk at or through the Internet website, *http://www.epa.gov/ceppo.* Some version of much of this information is already available there. EPA would seek to supplement that information as necessary or appropriate to provide the public with a full understanding of chemical accident risk and prevention.

RMPs (except for the OCA information, sections 2 through 5) are currently available to the public through RMP*Info, which is available at the website mentioned above. RMP*Info allows an individual to learn the names of facilities that submitted RMPs in a particular city, town, or county, and then view the RMPs for those facilities. RMP*Info is part of EPA's Envirofacts, a data warehouse which provides a single point of access to select environmental data. Through Envirofacts, the public can have easy access to other information about facilities that have submitted RMPs.

EPA will make available an updated list of LEPC, SERC, and other emergency response contacts. From the EPA website, industry and the public can access the LEPC/SERC Net, a page maintained by EPA and the Unison Institute, which provides a list of LEPC and SERC contacts searchable by LEPC locality name, city, or state.

EPA has facilitated research on accident histories based on the data provided in RMPs. The Wharton School at the University of Pennsylvania is looking at RMP data to compare accident histories by process, chemical, and industry sector. The results of the Wharton School's analysis will be posted on EPA's website when they become available. In addition, the EPA website provides links to various websites with information and

databases concerning accident histories, including the National Reporting Center; the Emergency Response Notification System (ERNS); the Accidental Release Information Program (ARIP) database; the Chemical Safety Board accident investigations and database; and several databases of worldwide incidents.

EPA maintains contact information and external site links to organizations from industry, government, and community groups with experience in fostering risk communication and chemical accident risk reduction. Many of these organizations have published guidance or primers on risk communication which can be obtained through the Internet or through EPA's National Service Center for Environmental Publications. EPA maintains additional external links to trade associations and other organizations that may provide information to assist facilities with RMP compliance and safe chemical management practices. EPA will expand the number of links to environmental organizations, industry trade groups, and academic institutions to provide the public with a comprehensive means of finding chemical risk and safety information.

EPA and other organizations have developed guidance to assist community members to work with facility management and local officials to better understand and manage the risks posed by the storage of large quantities of toxic or flammable chemicals. EPA has revised the guide, ''Chemicals in Your Community,'' and made it available electronically on EPA's website. The guide provides a checklist of suggestions for how community members can work with facility management and local officials to better understand and assess the risks posed by the storage of large quantities of toxic or flammable chemicals.

Through a cooperative agreement with EPA, the National Safety Council (NSC) has revised ''Chemicals, the Press & the Public,'' which is a journalist's guide to chemical information which will be available on the NSC website at *http://www.nsc.org* (which is linked to EPA's website). Copies are also available from EPA's document center at (800) 490–9198.

EPA is developing examples of facilities and industries that can serve as models for ''best practices'' in chemical accident risk prevention. EPA has developed RMP Network, which is designed to share successful practices in RMP implementation, risk communication, and use of data. Projects undertaken by industry, small businesses, state and local government, non-profits, citizen groups, and others will be represented in this series. The projects detailed in RMP Network are easily reproducible and low cost, and promote partnership-building in the community. Under a cooperative agreement with EPA, NSC will also post summaries of industry best practices on their website.

EPA and other organizations are developing background information about the nature of chemical accident risk, and that information will be posted on EPA's website when it becomes available. EPA's website also has links to a web-based Chemical Guide (*http://chemicalguide.com*). This chemical guide is a tool to help the public better understand the chemicals used in their community. Another link to assist the public is the NSC website (*http://www.nsc.org/xroads.cfm*). This website is aimed at the news media and provides suggestions for information to request of facility management and local officials, for approaches to sifting through the information, and for presenting the information in a way that helps communities interpret local RMPs. This website also includes five guides to chemical risk management that assist communities in evaluating chemical risks.

Through a cooperative agreement between EPA and Clean Air Action (a non-profit organization), a primer will be developed for lay persons on basic risk management terms and principles that would help to provide a basis for understanding chemical accident risks.

Taken together, these tools will help give the public a better understanding of the general nature of the risks associated with potential accidental releases posed by hazardous chemicals. They provide assistance in understanding the data that is available and how it can be used to build a snapshot of chemical use in a community. They also encourage the public to contact key groups and organizations and provide guidance on how to become directly involved in decisions at the local level that affect public health and safety.

B. Access to OCA Information by Government Officials

Today's proposed rule also addresses, in Subpart C, how the Administrator of EPA would provide access to OCA information to federal, state, and local ''covered persons'' when they request the information for their ''official use.'' This subpart would essentially codify the provisions of CSISSFRRA that appear in CAA section 112(r)(7)(H)(ii)(II)(cc)–(ee).

IV. Request for Comments

We acknowledge the significant public interest and diversity of views on the issues addressed in this proposal. With this in mind, we are seeking your comments on any and all aspects of this proposed rule, including our overall approach to achieving the goals of the statute, the alternatives we have considered, and any other alternatives commenters may wish to suggest. We are particularly interested in receiving comments in the following areas and on the following issues:

Access to Paper Copies of OCA Information

- What types of federal outlets would be appropriate for providing reading-room access to paper copies?
- Where should reading rooms be located, and how should they be dispersed geographically to provide for optimal public access to paper copies?
- How should reading rooms be operated to best minimize the risk associated with the dissemination of OCA information?
- Is providing access to OCA information for 10 facilities per month an appropriate limit on access to paper copies, or would some other limit (for example, some greater number such as 20 facilities or some other lesser number) better meet the statutory test for overall risk reduction?
- As an alternative to reading room access to OCA information, should paper copies of the information be released to the public upon request, with a limit placed on the number of facilities for which any individual could receive OCA information in a given period? How effectively would this alternative approach provide information to those persons who would benefit from it, what would be the security concerns associated with it, and what steps could be taken to address those concerns?
- Are there other ways of providing access to paper copies of OCA information that would better minimize the overall risk (i.e., both terrorism-and accident-related) of chemical release?

Internet Access to Selected OCA Information

- Should any additional pieces of OCA information, such as those that the risk assessment places in the third risk category, not be posted on the Internet? Should other pieces of OCA information be posted on the Internet that would not be posted under this proposed rule, such as the information in the second risk category?

Risk Indicator System

- Is the proposed risk indicator a useful mechanism for assisting the public in understanding certain aspects of the risk of chemical accidents and for creating incentives that would reduce the risk of accidental releases?
- Should the risk indicator system specify how many facilities have vulnerable zones that extend to a particular address and include the identities of those facilities in its response to queries, thereby allowing members of the public to learn this information without the need to contact ''covered persons''?

• What security concerns would be associated with the implementation of the risk indicator system as described in the proposal and with the alternative suggested above? In light of those concerns, would implementation of such a system do more harm than good to the overall statutory goal of minimizing both the terrorism-and accident-related risks of chemical releases?

• The risk indicator system contemplates that, in response to an inquiry about a particular address, a person would receive information telling him or her whether the address may be in a vulnerable zone and, if so, whom to contact for additional information (such as officials at the relevant LEPC). Would it be useful to provide alternative ways of learning the identities of facilities that may affect a particular address? Federal officials, for example, could provide the identity of facilities through a telephone hotline mechanism to assist individuals for whom obtaining this information at the state or local level is too inconvenient or difficult. In the alternative, federal officials could provide by mail the identities of the facilities whose vulnerable zones affect the address at issue, if the request were accompanied by documentation indicating that the address for which the additional information is sought is that of the requestor's residence, workplace, or school, or that of a family member. What security, practicality, burden, or other concerns, if any, would be associated with implementation of either the hotline or mail system as discussed above? Are there other, better alternatives to substitute for the suggested method of having members of the public contact their local LEPC for additional information?

Enhanced Access to Local OCA Information

• Should LEPCs or local fire departments be allowed to distribute paper copies of OCA information to the public that could be taken away from the local reading site and/or be permitted to mail that information to members of the public, thus eliminating the need to travel to the LEPC's reading site? Or would doing so raise unacceptable terrorism-related security concerns?

• The proposed rule would authorize LEPCs and local fire departments to provide read-only public access to OCA information for facilities in the LEPC's jurisdiction and for any other facility which has a vulnerable zone that extends into the LEPC's jurisdiction. For facilities outside an LEPC's jurisdiction, would it be easier for an LEPC to implement this provision if it were authorized to provide access to OCA information for any facility within 25 miles of the LEPC's boundaries (virtually no vulnerable zones are greater than 25 miles in diameter), or would this approach lead to an inappropriately broad scope of access? Would some other method be preferable for implementing local reading-room access?

• The proposed rule would not require LEPCs, SERCs, and local fire departments to collect identifying information from individuals wishing to view copies of local OCA information. Would it be appropriate to require individuals viewing local OCA information at LEPCs, SERCs, and local fire departments to provide identifying information before doing so, just as they would do at a federal reading room under the proposal? Or would the extra security offered by this approach be outweighed by the burden it would impose on these state and local organizations?

Additional Information on Chemical Accident Risk

• Are there other types of general information about chemical risk and safety that should be made available to facilitate public understanding and dialogue about these issues?

V. Judicial Review

Under CAA section 307(b)(1), 42 U.S.C. 7607(b)(1), judicial review of this rule, once promulgated, would be available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of publication of the final rule. Under CAA section 307(b)(2), 42 U.S.C. 7607(b)(2), the final rule could not be challenged later in civil or criminal proceedings brought by the government to enforce it.

VI. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information that we considered in the development of this rule. The docket is a dynamic file, because it allows members of the public and industries involved readily to identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket serve as the record for purposes of judicial review. (See CAA section 307(d)(7)(A), 42 U.S.C. 7607(d)(7)(A).)

The official record for this rulemaking has been established under Docket No. A–2000–20 (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as Confidential Business Information, is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address specified in the **ADDRESSES** section at the beginning of this document.

B. Executive Order 12866

OMB has determined that this proposed rule would be a ''significant regulatory action'' under Executive Order 12866, section 3(f), ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). OMB also has determined that the proposed rule would not be economically significant because it would have an annual effect on the economy of less than $100 million and would not 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. Under the terms of Executive Order 12866, OMB has reviewed the proposed rule.

C. Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 5, 1996).

D. Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), does not apply to this rule because it is not economically significant under Executive Order 12866.

E. Executive Order 13084

Under Executive Order 13084, ''Consultation and Coordination with Indian Tribal Governments,'' section 3, Consultation (63 FR 27655, May 19, 1998), federal agencies may not promulgate a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the regulating agencies consult with those governments before formal promulgation of the rule. Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments or impose substantial direct compliance costs on those communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not appear to apply to this rule.

We welcome comments on the effect of this rule on communities of Indian tribal governments.

F. Executive Order 13132

Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999), requires federal agencies 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 section 6 of Executive Order 13132, a federal agency 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 the agency issuing the regulation consults with state and local officials early in the process of developing the proposed regulation. A federal agency also may not issue a regulation that has federalism implications and that preempts state law unless the agency consults with state and local officials early in the process of developing the proposed regulation.

CSISSFRRA currently restricts the dissemination of OCA information by state and local officials and supersedes inconsistent provisions of state or local law. The proposed rule would narrow those restrictions, allowing certain state and local entities to provide the public with read-only access to OCA information for local facilities. We have consulted with state and local representatives of the Accident Prevention Subcommittee of the CAA Advisory Committee (under the Federal Advisory Committee Act (FACA)) about the implementation of the OCA provisions of CSISSFRRA. In response to concerns some have raised about a potentially chilling effect of CSISSFRRA's restrictions on state and local officials' willingness to obtain OCA information and to communicate the substance of that information to the public, the proposed rule includes a provision clarifying that state and local officials can share OCA data with the public as long as they do so in a way that does not disseminate or permit mechanical replication of the OCA sections of RMPs or provide access to EPA's OCA database. As noted above, the proposed rule would also authorize some state and local officials to share OCA information itself in certain ways.

We welcome comments on whether this rule has federalism implications within the meaning of Executive Order 13132. We will continue to consult with state and local representatives of the FACA subcommittee, and other representatives of state and local governments, as the rulemaking proceeds.

G. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), agencies are required to give special consideration to the effect of federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. However, an agency need not prepare a regulatory flexibility analysis if the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

In accordance with 5 U.S.C. 605(b), we certify that today's proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. Although the rule would authorize small governmental jurisdictions to provide read-only access to OCA information, it does not require those jurisdictions to provide that access. The rule contains a prohibition on local government officials (and other government officials) disclosing OCA information to the public except in authorized ways, but that prohibition already exists under CAA section 112(r)(7)(H)(v). Moreover, we do not expect that any burden resulting indirectly from the provisions of this rule would have a significant economic impact on the operations of local governments.

H. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1656.08) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., N.W., Washington, DC 20460; by e-mail at farmer.sandy@epamail.epa.gov; or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www.epa.gov/icr.

This proposed rule would impose minimal information collection requirements, but would require recordkeeping. The respondent universe for this rule is state and local officials and members of the public.

None of the respondent activities for state and local agencies are mandatory and all depend on the state or local agency deciding to obtain OCA information and/or communicating the substance of the information or the information itself to the public. The respondent activities for these agencies include reading and understanding the Security Notice to federal, state, and local officials and researchers; requesting the OCA information and certifying that they are covered persons; providing secure storage for the CD Rom or paper copies when not in use; learning how to use the database and software, if needed, to produce a copy of an RMP; providing a location for the public to review RMPs for local facilities; ensuring that members of the public do not remove or copy RMPs they review; and making OCA data available in formats other than the RMP format.

The number of respondents undertaking one or more of these activities is estimated to be at least one agency in each of the 50 states; these agencies are assumed to be the SERCs and may be environmental protection agencies, emergency management agencies, or both. In addition, it is assumed that at least one agency in the 3,043 U.S. counties will elect to obtain OCA information and/or make OCA information or the substance of that information available.

The counties are estimated to spend one hour per week and states are estimated to spend four hours per week providing information to the public. Because the work to be performed is either retrieving a paper copy from a file cabinet or downloading a file from the database, then either returning the copy to the file or shredding it, it is assumed that these tasks will be carried out by clerical and administrative staff. It is assumed that one county official per county and one state official per state would submit a written request for the OCA information. The total burden hours for counties and states are estimated to be 169,670 hrs annually (509,010 hours for three years) at a cost of $3,051,170 annually ($9,153,510 million for three years).

For members of the public, the respondent activity includes showing a piece of personal identification and entering their name and the names of the facilities whose OCA information they wish to view at a federal reading room. It is assumed that two people from each county will visit these reading rooms annually. The total burden hours for the public to sign in at the reading rooms and provide personal identification are estimated to be 507 hours annually (1520 hours for three years) at a cost of $9,890 annually ($29,670 for three years).

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

Comments are requested on the federal government's need for the information being collected, the accuracy of the provided burden estimates, and any suggested methods for minimizing the respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., N.W., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after April 27, 2000 a comment to OMB is best assured of having its full effect if OMB receives it by May 30, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. Unfunded Mandates Reform Act of 1995

Today's proposed rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it contains no requirements that might significantly or uniquely affect small governments. Under the proposal, small governments that wish to obtain OCA information would be required to request it, and once they obtained it, would be prohibited from disseminating it except in accordance with the rule. We do not expect that these provisions would impose a significant burden. Moreover, certain members of small governments would be authorized, but not required, to provide public access to OCA information in a manner that is less burdensome than would be required of federal covered persons. Therefore, no actions were deemed necessary under the Unfunded Mandates Reform Act of 1995.

J. Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 40 CFR Part 1400

Environmental protection, Chemicals, Chemical accident prevention.

Dated: April 19, 2000.

Carol M. Browner,

Administrator.

Dated: April 19, 2000.

Janet Reno

Attorney General.

For the reasons set forth in the preamble, EPA and DOJ propose to establish chapter IV of title 40 of the Code of Federal Regulations, consisting of subchapter A, part 1400, as follows:

CHAPTER IV—ENVIRONMENTAL PROTECTION AGENCY AND DEPARTMENT OF JUSTICE

SUBCHAPTER A—ACCIDENTAL RELEASE PREVENTION REQUIREMENTS; RISK MANAGEMENT PROGRAMS UNDER THE CLEAN AIR ACT SECTION 112(R)(7); DISTRIBUTION OF OFF-SITE CONSEQUENCE ANALYSIS INFORMATION

PART 1400—DISTRIBUTION OF OFF-SITE CONSEQUENCE ANALYSIS INFORMATION

Subpart A—General

Subpart B—Public Access

Subpart C—Access to Off-Site Consequence Analysis Information by Government Officials

Subpart D—Other Provisions

Authority: Public Law No. 106–40, 113 Stat 207 (42 U.S.C. 7412(r)).

Subpart A—General

§ 1400.1 Purpose.

Stationary sources subject to the chemical accident prevention provisions of 40 CFR part 68 are required to analyze the potential harm to public health and welfare of hypothetical chemical accidents and submit the results of their analyses to the U.S. Environmental Protection Agency as part of risk management plans. This part governs access by the public and by government officials to the portions of risk management plans containing the results of those analyses and certain related materials.

§ 1400.2 Definitions.

For the purposes of this part:

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

(b) *Administrator* means the Administrator of the U.S. Environmental Protection Agency or her designated representative.

(c) *Attorney General* means the Attorney General of the United States or her designated representative.

(d) *Federal government official* means—

(1) An officer or employee of the United States; and

(2) An officer or employee of an agent or contractor of the federal government.

(e) *State or local government official* means—

(1) An officer or employee of a state or local government;

(2) An officer or employee of an agent or contractor of a State or local government;

(3) An individual affiliated with an entity that has been given, by a state or local government, responsibility for preventing, planning for, or responding to accidental releases, such as a member of a Local Emergency Planning Committee (LEPC) or a State Emergency Response Commission (SERC), or a paid or volunteer member of a fire or police department; or

(4) An officer or employee or an agent or contractor of an entity described in paragraph (e)(3) of this section.

(f) *LEPC* means a Local Emergency Planning Committee created under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 *et seq.*

(g) *Member of the public* or person means an individual located in the United States.

(h) *Official use* means an action of a federal, state, or local government agency or an entity described in paragraph (e)(3) of this section intended to carry out a function relevant to preventing, planning for, or responding to accidental releases.

(i) *Off-site consequence analysis (OCA) information* means sections 2 through 5 of a risk management plan (consisting of an evaluation of 1 or more worst-case release scenarios or alternative release scenarios) and any electronic database created by the Administrator from those sections.

(j) *Off-site consequence analysis (OCA) data* elements means the results of the off-site consequence analysis conducted by a stationary source pursuant to 40 CFR part 68, subpart B, when presented in a format different than sections 2 through 5 of a risk management plan or any Administrator-created electronic database.

(k) *Off-site consequence analysis (OCA) rankings* means any statewide or national ranking of identified stationary sources derived from OCA information.

(l) *Risk management plan (RMP)* means a risk management plan submitted to the Administrator by an owner or operator of a stationary source pursuant to 40 CFR part 68, subpart G.

(m) *SERC* means a State Emergency Response Commission created under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 *et seq.*

(n) *State* has the same meaning as provided in 42 U.S.C. 7602(d) (a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

(o) *Stationary source* has the same meaning as provided in 40 CFR part 68 subpart A, § 68.3.

(p) *Vulnerable zone* means the geographical area that could be affected by a worst-case or alternative scenario release from a stationary source, as indicated by the off-site consequence analysis reported by the stationary source in its risk management plan. It is defined as a circle, the center of which is the stationary source and the radius of which is the ''distance-to-endpoint,'' or the distance a toxic or flammable cloud, overpressure, or radiant heat would travel after being released and before dissipating to the point that it no longer threatens serious short-term harm to people or the environment.

Subpart B—Public Access

§ 1400.3 Public access to paper copies of off-site consequence analysis information.

(a) *General.* The Administrator and the Attorney General shall ensure that any member of the public has access to paper copies of OCA information for a limited number of stationary sources located anywhere in the United States, without any geographical restriction, in the manner prescribed by this section.

(b) *Reading-room access.* Paper copies of OCA information shall be available in at least 50 reading rooms geographically distributed across the United States. The reading rooms shall allow any person to read, but not to remove or mechanically reproduce, paper copies of OCA information, in accordance with paragraphs (c) and (d) of this section.

(c) *Limited number.* A reading room established under this section shall provide any person with access to a paper copy of the OCA information for up to 10 stationary sources per calendar month.

(d) *Personal identification.* A reading room established under this section shall provide a person with access to a paper copy of OCA information only after a reading room representative has viewed the person's driver's license or another piece of identification issued by a federal, state, or local government agency.

§ 1400.4 Risk indicator system.

(a) *In general.* The Administrator shall provide access to a computer-based indicator that shall inform any person whether an address specified by that person might be within the vulnerable zone of one or more stationary sources, according to the data reported in RMPs. The indicator also shall provide information about how to contact the appropriate LEPC or SERC, or EPA, to obtain further information.

(b) *Methods of access.* The indicator shall be available on the Internet or by request made by telephone or by mail to the Administrator to operate the indicator for an address specified by the requestor. SERCs, LEPCs, and fire departments are authorized and encouraged to operate the indicator as well.

§ 1400.5 Internet access to certain off-site consequence analysis data elements.

The Administrator shall include only the following OCA data elements in the risk management plan database available on the Internet:

(a) The concentration of the chemical (RMP Sections 2.1.b; 3.1.b);

(b) The physical state of the chemical (RMP Sections 2.2; 3.2);

(c) The statistical model used (RMP Sections 2.3; 3.3; 4.2; 5.2);

(d) Endpoint used for flammables in the worst-case scenario (RMP Section 4.5);

(e) The duration of the chemical release for the worst-case scenario (RMP Section 2.7);

(f) Wind speed during the chemical release (RMP Sections 2.8; 3.8);

(g) The atmospheric stability (RMP Sections 2.9; 3.9);

(h) The topography of the surrounding area (RMP Sections 2.10; 3.10);

(i) The passive mitigation systems considered (RMP Sections 2.15; 3.15; 4.10; 5.10); and

(j) The active mitigation systems considered (RMP Sections 3.16; 5.11).

§ 1400.6 Enhanced local access.

(a) *OCA data elements*—Consistent with 42 U.S.C. 7412(r)(7)(H)(xii)(II), members of LEPCs, SERCs, and fire departments and any other government official may convey to the public OCA data elements orally or in writing, as long as the data elements are not conveyed in a format that replicates sections 2 through 5 of a risk management plan or any electronic database developed by the Administrator from those sections. Disseminating OCA data elements to the public in a manner consistent with this provision does *not* violate 42 U.S.C. 7412(r)(7)(H)(v) and is *not* punishable under federal law.

(b) *OCA information*—

(1) Members of LEPCs or fire departments organized by local government are authorized and encouraged to allow any member of the public to read, but not to remove or mechanically copy, paper copies of OCA information (i.e., sections 2 through 5 of risk management plans) for stationary sources located within the jurisdiction of the LEPC and for any other stationary sources that have a vulnerable zone that extends into that jurisdiction.

(2) Members of LEPCs and fire departments are not required to limit the number of stationary sources for which a person can read OCA information or to view a person's personal identification before allowing the person to read OCA information.

(3) Members of SERCs are authorized and encouraged to allow any person to read, but not to remove or mechanically copy, paper copies of OCA information for the same stationary sources that the LEPC in whose jurisdiction the person lives or works would be authorized to make available to that person.

(4) Any member of an LEPC, SERC, or fire department who allows a person to read OCA information in a manner consistent with this subsection shall not be in violation of 42 U.S.C. 7412(r)(7)(H)(v) or any other provision of federal law.

Subpart C—Access to off-site consequence analysis information by government officials.

§ 1400. 7 In general.

The Administrator shall provide OCA information to government officials as provided in this section. Any OCA information provided to government officials shall be accompanied by a copy of the notice prescribed by 42 U.S.C. 7412(r)(7)(H)(vi).

§ 1400.8 Access to off-site consequence analysis information by federal government officials.

The Administrator shall provide any federal government official with the OCA information requested by the official for his or her official use. The Administrator shall provide the OCA information to the official in electronic form, unless the official specifically requests the information in paper form. The Administrator may charge a fee to cover the cost of copying OCA information in paper form.

§ 1400.9 Access to off-site consequence analysis information by state and local government officials.

(a) The Administrator shall make available to any state or local government official for his or her official use the OCA information for stationary sources located in the official's state.

(b) The Administrator also shall make available to any state or local government official for his or her official use the OCA information for stationary sources not located in the official's state, at the request of the official.

(c) The Administrator shall provide OCA information to a state or local government official in electronic form, unless the official specifically requests the information in paper form. The Administrator may charge a fee to cover the cost of copying OCA information in paper form.

(d) Any state or local government official is authorized to provide, for official use, OCA information relating to stationary sources located in the official's state to a state or local government official in a contiguous state.

Subpart D—Other Provisions

§ 1400.10 Limitation on public dissemination.

Except as authorized by this part and by 42 U.S.C. 7412(r)(7)(H)(v)(III), federal, state, and local government officials, and qualified researchers under 42 U.S.C. 7412(r)(7)(H)(vii), are prohibited from disseminating OCA information and OCA rankings to the public. Violation of this provision subjects the violator to criminal liability as provided in 42 U.S.C. 7412(r)(7)(H)(v) and civil liability as provided in 42 U.S.C. 7413.

§ 1400.11 Limitation on dissemination to state and local government officials.

Except as authorized by this part and by 42 U.S.C. 7412(r)(7)(H)(v)(III), federal, state, and local government officials, and qualified researchers under 42 U.S.C. 7412(r)(7)(H)(vii), are prohibited from disseminating OCA information to state and local government officials. Violation of this provision subjects the violator to civil liability as provided in 42 U.S.C. 7413.

§ 1400.12 Qualified researchers.

The Administrator is authorized to provide OCA information, including facility identification, to qualified researchers pursuant to a system developed and implemented under 42 U.S.C. 7412(r)(7)(H)(vii), in consultation with the Attorney General.

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