



EPA Region 10 CAA 112(r) Update

Vol. 3 No. 4
August/September 1999

Latest News on the Accidental Release Prevention Requirements of the Clean Air Act

INSIDE

New Law Changes CAA 112(r) 1

CAMEO Users News Bulletin 1

Risk Management Plans Available On-Line 2

Propane Industry to Distribute New Training Program 2

Questions and Answers on the New Law 2

**EPA Region 10 CAA
112(r) Update
EPA Region 10, Seattle**

*The Update covers the latest
issues related to
the Accidental Release
Prevention Requirements of the
Clean Air Act.*

*To be added to the mailing
list, send a message to
mcarthur.lisa@epa.gov
or call Lisa McArthur at
(206) 553-0383*

**Rolling out an RMP?
Having community meetings?
Holding a press conference?**

Send your announcement to
mcarthur.lisa@epa.gov or
fax to (206) 553-0175.

New Law Changes CAA 112(r)

On August 5, 1999, President Clinton signed into law the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act. This law establishes new provisions for reporting and disseminating information under Section 112(r) of the Clean Air Act. It has two distinct parts that pertain to:

- , Flammable fuels; and
- , Public access to Offsite Consequence Analysis (OCA or "worst-case scenario") data.

FLAMMABLE FUELS

Flammable fuels used as fuel or held for sale as fuel at a retail facility are removed from coverage by the RMP program. However, flammable fuels used as a feedstock or held for sale as fuel at a wholesale facility are still covered. A retail facility is a facility "at which more than one-half of the income is obtained from direct sales to end users or at which more than one-half of the fuel sold, by volume, is sold through a cylinder exchange program."

PUBLIC ACCESS TO OCA DATA

The law exempts OCA data from disclosure under the Freedom of Information Act (FOIA) and limits its public availability for at least one year. By August 5, 2000 the Federal government will publish regulations governing public access to OCA data. In the meantime, EPA will make the OCA data publically available without facility identification information, and *covered facilities must conduct public meetings to provide summaries of their OCA data.* Many LEPCs are inviting these facilities to hold their public meetings at LEPC

meetings, in order to direct more attention to local planning needs and concerns.

The OCA data will be available to "covered persons," including Federal, State and local officials, and members of Local Emergency Planning Committees, for emergency planning and response purposes.

For more information on changing requirements for flammable fuels, distribution of OCA data and public meetings, see the Questions and Answers section at the back of this newsletter, or go to www.epa.gov/ceppo/whatnew.html to pick up EPA's fact sheet on the new law.

CAMEO Users News Bulletin

The latest update of the CAMEO application package is now completed and available at no cost to parties that request it. This new package includes revisions for Y2K compliance, application bug fixes, improved import and export capabilities, and more.

The EPA National Service Center for Environmental Publications (NSCEP) is now the distributing agency for the CAMEO package. To obtain a copy of the new CAMEO application package on-line go to www.epa.gov/ceppo/cameo/request.htm and fill out the order form., or call 1-800-490-9198 to reach the NSCEP order desk. Refer to EPA# 550-C99-004 in your call.

Technical support is no longer available from the National Safety Council. Instead, users are directed to the new technical support website at

www.epa.gov/ceppo/cameo. Listservers and chat rooms will be available at this site in the near future. CAMEO users are also directed to their EPA regions for technical assistance.

As in the past, Frank Bovee at EPA Region 10 is available to provide technical assistance and training at no charge. Training is available upon request, but classes must be of a certain size, and computers must be provided. Frank may be reached at (206) 553-0269 or at bovee.frank@epa.gov

Risk Management Plans Available On-Line

14,401 Risk Management Plans (RMP) have been entered into EPA's on-line database at www.epa.gov/enviro, bringing the database up to date. The total number of RMPs received was closer to 16,000, but many could not be processed because of errors. For assistance in using this database, contact Lisa McArthur at (206) 553-0383.

Approximately 9,800 facilities reported ammonia over the threshold quantity, and approximately 5,000 facilities likewise reported chlorine. 1,908 accidents were reported by 1,138 facilities; of these accidents 656 involved ammonia and 312 involved chlorine.

Only 5% of facilities claimed processes that were Program 1; 50% claimed Program 2 processes, and 45% claimed Program 3 processes. Only 17 facilities to date have claimed that their RMPs contained Confidential Business Information.

Propane Industry To Distribute New Training Program

The National Propane Gas Association and the Propane Education and Research Council have developed a program and textbook on how to respond to propane emergencies. This text, [Propane Emergencies](#), is designed to help

emergency responders, primarily firefighters, develop the knowledge and skills necessary to safely and effectively manage a propane emergency in transportation or at a facility. The educational package includes the textbook, a facilitator's guide with instructor lesson plans, a presentation CD and companion videotape. The textbook will be distributed free of charge to fire departments, propane retailers, state fire marshals, metropolitan fire training academies, and to national and state firefighting associations. For more information, call 1-800-968-9484, or go to www.propanesafety.com

Questions & Answers on the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act

FLAMMABLE FUELS

Q: Do I have to submit an RMP for my facility if the only listed substances I have on-site are flammable fuels?

A. It depends. If your facility uses the flammable substance as a fuel, or your facility is a retail facility that holds the flammable substance for sale as a fuel, you do not have to submit an RMP. However, if your facility produces a flammable fuel, uses it as a feedstock in producing something else or does not meet the definition of a retail facility, you are still subject to the RMP program if you have more than a threshold amount of the substance in a process.

Q: Will flammable fuels be removed from the list of covered substances under Section 112(r) of the Clean Air Act?

A. EPA will soon issue a rule conforming the list of covered substances to the new law. The rule will revise the list to exclude flammable substances that are used as a fuel or held for sale as a fuel at a

retail facility. (Note that it is not necessary for EPA to complete this rule for flammable fuels to be removed from the RMP program. The effect of the new law was to remove fuels from the program.)

Q: How does the law affect the judicial stay on propane issued by the U.S. Court of Appeals or the administrative stay on flammable hydrocarbon fuels published by EPA?

A. The law does not directly affect the judicial stay on propane. The law and judicial stay are generally consistent as both provide relief to propane facilities. However, there are differences between the two. First, the law is permanent while the judicial stays is temporary and can be lifted by the court at any time. Second, the law applies to all listed flammable substances that are used as a fuel or held for sale as a fuel at a retail facility, while the judicial stay applies only to propane facilities (regardless of type).

The law essentially makes EPA's administrative stay moot. The purpose of the administrative stay was to relieve certain fuel facilities from RMP coverage while EPA completed the work necessary to create a permanent exemption for facilities having up to 67,000 pounds of flammable fuel in a process. The law reaches farther than the scope of the administrative stay, since it 1) removes from RMP coverage all listed flammable substances when used as a fuel or held for sale as a fuel at a retail facility, and 2) has no eligibility threshold. Therefore, EPA will issue a notice in the Federal Register withdrawing the administrative stay and the accompanying proposed rule.

Q: Is propane the only flammable fuel that is affected by the law?

A. No. The law applies to any listed flammable substance when it is used as a fuel or held for sale as a fuel at a retail facility.

Q: Will EPA issue a list of flammable fuels that could be affected?

A. Yes. As part of the rule revising the list to conform to the new law, EPA will include a list of the flammable substances that are commonly used as fuel. However, EPA will not attempt to include on the list

every flammable substance that might be used as a fuel. The law removes flammable substances from the RMP program based on use as a fuel, so any flammable substance could be affected if it is used as a fuel.

Q: Am I still covered if I am storing the substance for future use as a fuel?

A. No. If you are storing the substance for future use as a fuel on-site, or you are a retail facility and you are storing it for sale as a fuel, you no longer have to comply with the risk management program.

Q: If I no longer have to report my flammable fuel, am I still covered by the CAA General Duty Clause?

A. Yes. The law does not affect a source's standing in relation to the General Duty Clause. The General Duty Clause of CAA Section 112(r) requires facilities handling extremely hazardous substances, whether listed under Section 112(r) or not, to--among other things--design and maintain a safe facility.

PUBLIC ACCESS TO OFF-SITE CONSEQUENCE ANALYSIS (OCA) DATA

Q: I looked on RMP*Info and saw that there were several companies in my neighborhood that filed RMPs. How can I get the OCA data for these facilities?

A: Federal law restricts the public's access to the OCA sections of a facility's RMP until at least Aug. 5, 2000, but in the meantime you can get information about a facility's potential off-site consequences in one or more of the following ways:

Contact the facility directly. While facilities are not required to provide the public with copies of the OCA sections of their RMPs, virtually all facilities are required to hold a public meeting to summarize the information in those sections or post a public notice providing such a summary. (NOTE: Facilities that have only Program 1 processes are exempt from this requirement). Look in EPA's RMP*Info Database located at www.epa.gov/enviro for the contact name provided on the facility RMP form. The person indicated should be able to tell you about the facility's plans for the public

meeting and whether the facility is willing to provide you with a copy of the OCA sections of its RMP. In States that have taken delegation of the program, **contact the State Implementing Agency.** An agency official can share with you the information in the OCA sections of the RMP forms, although he or she cannot give you copies of the sections themselves. Depending on the State's law, you may have access to OCA information collected under State law. **Contact your EPA Regional Office.** A regional EPA official can share with you the information in the OCA sections of the RMP forms, although he or she cannot give you copies of the sections themselves. You may contact Lisa McArthur, your EPA Region 10 representative, at (206) 553-0383.

Contact your Local Emergency Planning Committee. An LEPC official can share with you the information in the OCA sections of the RMP forms, although he or she cannot give you copies of the sections themselves. For the name and phone number of your LEPC, check section 1, item 10 of the facility's RMP to see if the facility has provided that information. If you are interested in searching for facilities that are within the jurisdiction of your LEPC district you may want to start by visiting the LEPC Contact Database website via the RMP*Info Database located at www.epa.gov/enviro. This will lead you to a database that gives you the name and address of your nearest LEPC.

RESTRICTIONS FOR OCA DATA

Q: Exactly what materials are subject to the restriction?

A. The following materials are subject to restriction under the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (PL 106-40):

Sections 2 through 5 (concerning the off-site consequences of "worst case" and "alternative releases" of toxic and flammable substances) of the RMPs that facilities have submitted to EPA under 40 CFR part 68; the portions of EPA's electronic database created from those sections; and any statewide or national ranking of identified facilities derived from those sections.

Q: How are these materials restricted?

A. Disclosure and distribution of the OCA materials is limited at least until Aug. 5, 2000. The federal government must conduct an assessment and issue regulations by that date to govern the distribution of the OCA materials. Prior to Aug. 5, 2000, OCA materials are to be distributed only to "covered persons" (as defined in the law) with certain geographic restrictions. Covered persons may not disclose to the public the OCA materials in any form (electronic or paper), except as authorized by the law and regulations issued under the law.

Q: Who is a "covered person"?

A. There are three categories of "covered persons":

Federal covered person: An officer or employee of the United States or of an agent or contractor of the federal government; **State or local covered person:** An officer or employee of a State or local government or of an agent or contractor of a State or local government, or 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 (for example, a volunteer firefighter or a member of a State Emergency Response Commission (SERC) or Local Emergency Planning Committee (LEPC) established under the federal Emergency Planning and Community Right-To-Know Act), or an officer and employee of an agent or contractor of such an entity; and **covered researcher:** a researcher as identified by EPA under the qualified researcher provision of the law.

Q: Are private individuals or companies prohibited from distributing OCA materials?

A. Restrictions only apply to "covered persons". A private individual or entity is not prohibited from distributing OCA materials. Because a facility may choose to distribute the OCA sections of its RMP, covered persons may disclose to the public the OCA sections of an RMP that has been released to the public "without restriction" by the facility that submitted the RMP.

Q: What can "covered persons" share

with the public?

A. Covered persons are forbidden from publicly disclosing Sections 2 through 5 of an RMP because those sections could be compiled fairly easily into a large OCA database that could be posted on the Internet. Consequently, a covered person may not show or distribute duplicate copies of those RMP sections. However, a covered person is not prohibited from communicating the information in these sections orally or in writing as long as the format does not replicate Sections 2 through 5 of an RMP. A covered person may, for example, answer questions from the public about the potential off-site consequences of an accident at a particular facility using the information reported in that facility's RMP. A covered person also may disclose or distribute information contained in the executive summary of the RMP.

Q: What does "official use" mean?

"Official use" means "an action of a Federal, State, or local government agency or an entity [such as a SERC, LEPC or volunteer fire department] intended to carry out a function relevant to preventing, planning for, or responding to accidental releases."

Following are examples of what would constitute "official use" of OCA materials by a covered person:

Discussing with other covered persons and/or the public the information in sections 2 through 5 of a facility's RMP as it relates to emergency planning, prevention or response, so long as you do not disclose or distribute the OCA materials to the public or to other covered persons with whom you are not authorized to share the materials.

Analyzing the information in sections 2 through 5 of facilities' RMPs, or EPA's database created from those sections, to determine which facilities in your jurisdiction present the greatest risk to the public in case of an accidental release, so that you can focus your emergency planning, prevention or response efforts accordingly.

Communicating the results of the analysis described above to other covered persons

and/or the public, so long as the results do not rank facilities either nationally or statewide, or, if the results do take such a form, so long as they are communicated only to covered persons with whom you are authorized to share such materials.

Comparing the information in sections 2 through 5 of RMPs for facilities in your jurisdiction with those for facilities in other jurisdictions to gain insight into whether the facilities in your jurisdiction have appropriate accident prevention programs.

Communicating the results of the comparison described above with other covered persons and/or the public, so long as you do not disclose or distribute the OCA materials to the public or to other covered persons with whom you are not authorized to share the materials.

Considering the information in sections 2 through 5 of the RMPs submitted by facilities in your jurisdiction in making decisions about zoning or land use planning.

Following are examples of what would not constitute "official use" of the OCA materials by a covered person:

Disclosing (for example, by means of an overhead projector) or distributing (in paper or electronic form) the OCA materials as part of a public information or education campaign, even if one of the functions of your agency or entity is to inform or educate the public about chemical emergency risks.

Disclosing or distributing the OCA materials to a private party in a court suit involving a chemical accident at a facility (note that disclosure to court personnel may be permissible since they are covered persons).

Q: As a "covered person," to whom can I distribute the OCA materials?

You are prohibited from disclosing or distributing the OCA materials to the public until at least August 5, 2000, but you may share the OCA materials with certain categories of covered persons only as described below. If you distribute the OCA materials to another covered person, you should send a copy of this notice with

the materials so that the recipient will be informed of the applicable restrictions.

A Federal covered person may distribute to another Federal covered person, for that person's official use, any or all of the OCA materials; and a State or local covered person, for that person's official use, the OCA materials only for the facilities located in that person's State.

In addition, a Federal covered person who works for the EPA office designated to transmit OCA materials may distribute to a State or local covered person, at that person's request and for that person's official use, the OCA materials for facilities located in States other than that person's State; and a covered researcher, any or all of the OCA materials.

A State or local covered person may distribute the OCA materials for only the facilities located in his or her State to: a Federal covered person; a State or local covered person in his or her State; and a State or local covered person in a State contiguous to his or her State, for that person's official use.

A covered researcher may not disseminate any portion of the OCA materials received from EPA under the qualified researcher provision of the Act or any statewide or national ranking of identified facilities derived from those materials.

Q: Are there any exceptions to these distribution restrictions?

A. Yes. The restrictions described above do not apply to sections 2 through 5 of RMPs for facilities that have released those sections of their RMPs to the public without restriction. The Act requires any facility that releases those sections of its RMP to the public without restriction to notify EPA that it has done so. The Act further requires EPA to make publicly available a list of facilities that have so notified EPA. EPA will post that list on its RMP*Info website at www.epa.gov/ceppo

Q: What are the penalties for violating these restrictions?

A. A covered person who willfully violates a restriction or prohibition of the law, including any issued regulations, is subject

to a fine of not more than \$5,000; for organizations, the fine is not more than \$10,000. If unauthorized disclosure relates to more than one facility, disclosure of each facility's OCA information is a separate offense. The total of all penalties that may be imposed on a single person or organization cannot exceed \$1,000,000 for violations committed during any one calendar year.

FACILITY DISTRIBUTION OF OCA DATA

Q: Are facilities required to distribute OCA data to the public?

A. Facilities are not required to distribute the OCA sections of their RMPs to the public. However, virtually all covered facilities are required to hold a public meeting to summarize the information in those sections or, if they are small businesses, to publicly post such a summary. Facilities that have only Program 1 processes are exempt from this requirement. Facilities subject to the requirement must hold their public meeting or post their summary by Feb. 1, 2000, or have already done so between Aug. 5, 1998, and Aug. 5, 1999. A facility is also free to release the OCA sections of its RMP or a document providing the information in those sections, if it so chooses.

Q: If a facility distributed the OCA sections of its RMP to the community prior to passage of P.L. 106-40 without restrictions, must they notify EPA?

A. Facilities that distributed OCA sections of its RMP to the public without restriction prior to Aug. 5, 1999, are not required to notify EPA that they have done so.

Q: If a facility has released OCA sections of its RMP to the public, may covered persons distribute the data, too?

If a facility releases the OCA sections of its RMP to the public without restriction on or after Aug. 5, 1999, covered persons may distribute those sections to the public, too. Facilities that have released the OCA sections of their RMPs must notify EPA that they have done so.

EPA will compile a list of facilities that have provided unrestricted public access to

their OCA section.

STATE OCA DATA COLLECTION AND DISSEMINATION

Q: If a State collects OCA data directly from facilities under a State law and creates a database, is the data or the database covered by the new law?

A. No.

PUBLIC MEETINGS

Q: Who has to hold a public meeting?

A. All facilities, except those with only Program 1 processes, must hold a public meeting, although facilities that meet the definition of "small business stationary source" in the CAA may opt to publicly post a summary of their OCA data instead. Facilities must hold their public meeting or post their summary by Feb. 1, 2000, or have already done so between Aug. 5, 1998, and Aug. 5, 1999. The CAA definition of "small business stationary source" is one that is owned or operated by a person that employs 100 or fewer individuals; is a small business concern as defined in the Small Business Act; is not a major stationary source; does not emit 50 tons or more per year of any regulated pollutant; and emits less than 75 tons per year of all regulated pollutants.

Q: If a company did a "rollout," does that qualify as a public meeting? How many members of the public had to be present for the meeting to qualify?

A. Rollouts that occurred between Aug. 5, 1998, and Aug. 5, 1999, and that met reasonable requirements for public meetings (for example, they were open to the public, held after giving reasonable public notice, and had an agenda that included a discussion of OCA) qualify as a public meeting. The new law does not require that any particular number of persons must have attended for the meeting to qualify as a public meeting.

Q: Do small companies that opt to post an OCA summary instead of holding a public meeting need to notify the FBI that they have provided the public with their OCA summary?

A. Yes. EPA and FBI are working toward

clarifying what constitutes posting and notification.

Q: Can a small business use its RMP Executive Summary as the public notice?

A. Yes, provided that the business included in its Executive Summary a summary of the OCA information in its RMP.

~ ~ ~