**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 68**

**[A–91–73; FRL–5168–2]**

**RIN 2050–AD26**

## Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7)

**AGENCY:** Environmental Protection Agency.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** On October 20, 1993, EPA proposed risk management program regulations, mandated under the accidental release provisions of the Clean Air Act (CAA). The purpose of the proposed rule is to reduce the number and severity of chemical accidents. Based on information presented during public hearings and in comments on the proposed rule, EPA is requesting additional comment on the following regulatory options and issues: approaches for increasing compliance flexibility and decreasing cost while still ensuring preparedness by tiering the regulatory requirements to take into consideration differences between various types, classes, and kinds of sources, devices, and systems; the hazard assessment approaches (including worst-case scenarios); accident information reporting; public participation in risk management program and plan oversight; inherently safer approaches for sources' design and operations; and the implementation of CAA section 112(r) regulations, including methods of integrating these requirements into the title V permitting requirements and the codification of approved state section 112(r) requirements.

**DATES:** *Comments:* Comments must be submitted on or before May 12, 1995.

*Hearings:* The Agency will hold a hearing on March 31 from 9 a.m. until 4 p.m.

**ADDRESSES:** *Comments:* Written comments may be mailed or submitted to: U.S. Environmental Protection Agency, Attn: Docket (A–91–73), Room 1500, 401 M Street, SW, Washington, DC 20460. Comments must be submitted in duplicate. Comments may also be faxed to the docket at 202–260–4400, as long as faxes are followed by hard copies.

*Hearings:* The hearing will be held at the EPA Auditorium, 401 M Street, SW, Washington, DC. People who want to testify at this hearing should call 703–934–3158 by March 27.

*Docket:* Supporting information used in developing the accidental release prevention regulations is contained in Docket No. A–91–73. This docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday (except government holidays) at the address listed above. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Dr. Lyse D. Helsing at (202) 260–6128, Chemical Emergency Preparedness and Prevention Office (5101), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or the Emergency Planning and Community Right-to-Know Hotline at 1–800–535–0202.

**SUPPLEMENTARY INFORMATION:**



## I. Introduction and Background

### *A. Statutory Authority*

This supplemental notice of proposed rulemaking is being issued under sections 112(r) and 301(a)(1) of the Clean Air Act (CAA) as amended (42 U.S.C. 7412(r) and 7601(a)(1)).

### *B. Relationship of Section 112(r) to Other Requirements of the Clean Air Act*

The Clean Air Act Amendments of 1990 amend CAA section 112 and add a new paragraph (r). The intent of CAA section 112(r) is to prevent accidental releases to the air and minimize the consequences of releases by focusing preventive measures on chemicals that pose the greatest risk to the public and the environment. For a summary of the statutory requirements of section 112(r) and related statutory provisions, see the notice of proposed rulemaking (NPRM) (58 FR 54190; October 20, 1993).

Since the October 20, 1993, notice, the Environmental Protection Agency (EPA) has taken various additional regulatory actions relevant to the section 112(r) program. EPA promulgated the *List of Regulated Substances and Thresholds for Accidental Release Prevention* on January 31, 1994 (59 FR 4478). The list of regulated substances and thresholds will determine which sources must comply with the accident prevention regulations.

CAA section 112(l) contains the statutory authority for EPA to approve and delegate specific Federal authorities to states. EPA promulgated a rule under section 112(l) on November 26, 1993 (58 FR 62262) that addresses the approval of both state programs for section 112 that mirror the Federal requirements and programs that differ from Federal requirements. Approval of state rules addressing section 112(r) requirements is addressed in the section 112(l) rule.

Certain other regulatory actions that predate the October 20, 1993, NPRM are relevant to today's supplemental notice. Specifically, section 112(r) is addressed in CAA title V, operating permits, and the subsequent rulemaking in 40 CFR part 70 (part 70) published on July 10, 1992 (57 FR 32250). Section 112(r) listed substances are ''regulated air pollutants,'' and the accident prevention regulations developed under section 112(r)(7) are ''applicable requirements'' for the purposes of CAA title V and part 70.

### *C. Summary of the Proposed Risk Management Program Rule*

The proposed rule would require sources to:

- Register with EPA not later than three years after publication of the final rule;
- Develop and implement a risk management program that includes a hazard assessment, prevention program, and emergency response program, and maintain on-site documentation of the program's implementation. The hazard assessment would include offsite consequence analyses and a five-year accident history;
- Develop and submit to Federal, state, and local authorities a risk management plan (RMP) that documents the risk management program. This plan will be available to the public; and
- Update the risk management program and plan as required by rule, audit, or process or chemical changes at the source.

The risk management program addresses the general requirements of CAA section 112(r)(7)(B) for regulations to provide for accidental release detection and prevention. The risk management plan, referred to as the

RMP in this notice, addresses the specific requirements of CAA section 112(r)(7)(B) for a plan that provides governmental entities and the public with information on the hazards found at sources and the source's plans for addressing the hazards. These hazards would be identified and addressed through implementation of the risk management program elements. Therefore, the RMP would summarize the results of hazard assessments and the implementation of the risk management program requirements. The proposed rule also contains a system to audit the RMPs, including criteria for selecting sources for audits.

## II. Discussion of Issues and Approaches

During public hearings on the proposed rule, in comments provided on the proposed rule, and through additional sources, EPA has learned that six areas of the proposed rule need clarification and further comment prior to development of a final rule. In addition to the regulatory provisions and alternatives in the proposed rule, EPA is requesting comment on regulatory options under consideration in the following areas: approaches for tiering the regulatory requirements to take into consideration differences between various types, classes, and kinds of sources, devices and systems; the hazard assessment approaches (including worst-case scenarios); accident information reporting; public participation in risk management program and plan oversight; inherently safer approaches for design and operation; and the implementation of section 112(r) regulations including methods of integrating these requirements into the title V permitting requirements. All regulatory provisions and alternatives under the proposed rule remain as options for the final rule. EPA will consider carefully comments already submitted. Therefore, commenters on this notice should not duplicate comments already submitted, but should focus on the issues in this notice.

### *A. Approaches for Tiering the Regulatory Requirements*

Many commenters asked for a tiered approach (i.e., applying different requirements to different sources). Commenters have presented several reasons why a tiered approach is needed:

- Commenters stated that, if a source cannot cause offsite impacts, the source should not have to meet the requirements of the rule.
- Commenters stated that the rule should be streamlined to ensure that the requirements are appropriate for each type of source covered and eliminate duplicative coverage where possible. Commenters argued that CAA section 112(r)(7)(B)(i) allows EPA to take into account differences in size, operations, processes, class and categories of sources, and voluntary actions.
- Commenters, particularly states, were concerned about whether the final rule can be implemented effectively. Substantial requirements imposed on lower risk sources may undermine the program because implementing agencies and the public will find it more difficult to identify and focus on the most serious risks. Resources spent on unproductive regulatory requirements better might be used to analyze and develop new accident prevention technologies.
- Commenters have stated that, based on their experience implementing similar accident prevention rules in New Jersey, California, and Delaware, and implementing the OSHA PSM standard, the rule would impose substantially higher costs on affected sources than EPA had originally estimated. These commenters argued that the costs of the rule should reasonably be related to benefits obtained. Commenters noted that EPA is required under CAA section 112(r)(7)(C) to consider the effects on small businesses.

In light of data and information supplied by commenters during the initial comment period and developed by EPA subsequent to publication of the initial proposed rule, EPA believes that it would be unreasonable to apply the proposed rule prevention program to all sources subject to part 68. EPA is considering a tiered approach to achieve the program objectives of ensuring that the effort is appropriate to the potential risk and recognizing the prevention steps that sources are already required to take under other regulatory programs. EPA believes a tiered implementation framework may be a reasonable way to reduce the cost without sacrificing accident prevention benefits.

EPA is proposing the use of three tiers, representing increasing levels of effort, in defining requirements for sources. The tiers would apply to different categories and classes of sources based on their potential risk and steps already being taken. In light of the various comments summarized above, EPA does not believe that the third tier, which would be the proposed prevention program and would entail the greatest level of effort among the alternatives discussed below should apply to all sources. EPA solicits comments on this position.

Under the Common Sense Initiative (CSI), the Agency is working with a broad cross section of stakeholders to examine regulations affecting six industry sectors. These sectors are petroleum refining, metal finishing, iron and steel, automobile manufacturing, electronics and computers, and printing. Under CSI, the Agency and stakeholders together will be looking for approaches that provide more environmental protection at less cost for these industry sectors. The tiering approaches discussed in this notice incorporate these CSI principles.

Discussion of Issues and Approaches

The CAA mandates that each source with more than a threshold quantity of a regulated substance develop and implement a risk management plan that includes an offsite consequence analysis, a five-year accident history, a prevention program, and an emergency response program. Under its proposed rule, EPA would require the submission of an RMP that summarizes each of the elements listed. The risk management program specifies the activities required for each of the broad elements. The original proposal would require every source affected by the rule to complete all specified activities and submit an RMP. EPA is proposing today to create the following three tiers of risk management programs:

Tier 1: A brief RMP would demonstrate and certify that the source's worst-case release would not reach any public or environmental receptors of concern.

Tier 2: A streamlined risk management program would require sources to conduct an offsite consequence analysis, document a five-year accident history, implement prevention steps, have an emergency response plan, and submit an RMP. The rule would not require specific steps to comply with the prevention and emergency response programs.

Tier 3: The full risk management program and plan would be that described in the proposed rule.

In addition to the approach in the proposed rule, EPA has developed two alternative approaches to assigning sources to the tiers in a way that takes into consideration risk as well as differences between types, classes, and kinds of sources:

Approach 1: Sources that could meet the requirements of Tier 1 would comply with Tier 1; manufacturers with 100 or more full-time employees (FTEs) producing pulp (SIC code 2611), chlor-alkalis (2812), industrial inorganics, not elsewhere classified

(nec) (2819), plastics and resins (2821), industrial organics, nec (2869), nitrogen fertilizers (2873), agricultural chemicals, nec (2879), and petroleum refineries (2911) would comply with Tier 3 requirements; all other sources would comply with Tier 2 requirements. In addition, eight years after the effective date of the rule, sources in SIC codes 2812, 2819, 2869, 2873, and 2911 with 20 to 99 FTEs would be required to meet Tier 3 requirements.

Approach 2: Sources that could meet the requirements of Tier 1 would comply with Tier 1; other sources with fewer than 100 full-time employees (FTEs) would comply with Tier 2 requirements; all other sources would comply with Tier 3 requirements.

Discussion of Tier Requirements

Tier 1 (No Impact Tier). A source in Tier 1 would be a source that is subject to part 68 because it has more than a threshold quantity of a regulated substance, but that does not pose a risk to public or environmental receptors. A source would be eligible for Tier 1 if the owner or operator can demonstrate that, in a worst-case release, there are no public and environmental receptors of concern within the impact distances specified by rule. Sources would not be eligible for Tier 1 if they have had a significant accidental release (as defined in the proposed rule) in the previous five years. To ensure that emergency responders are aware of the hazards at the sites, sources that exceed a threshold only for flammable or explosive regulated substances (i.e., they have no listed toxics above the threshold quantity) would need to post a sign at all normal access routes that warns the public and emergency responders about the hazard (fire or explosion) and lists an emergency contact telephone number. The owner or operator of a source eligible for Tier 1 that handles a regulated toxic substance would need to show that the local emergency response plan prepared under the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) section 303, 42 U.S.C. 11003, specifically addresses their source. For regulated substances that are not extremely hazardous substances (EHSs) under EPCRA, the owner or operator of the source would need to certify that source emergency response planning and measures have been coordinated with local first responders. EPA requests comments on this approach. Sources meeting these criteria would be required to register, submit an RMP consisting of the registration and standard one-paragraph statement (see rule text), and maintain records of compliance with these requirements.

The provisions described above would satisfy each element of section 112(r)(7)(B)(ii) while recognizing that it is reasonable for this class of sources to be addressed in a simple manner. The hazard assessment element of the program would be satisfied by verifying that there were no receptors within the potential impact zone of the worst-case accidental release and by the absence of any significant accidental release within the previous five years. In addition, EPA proposes that, in lieu of obtaining a professional survey, an owner or operator could rely on visual approximations of the distances surrounding the source to public and environmental receptors for comparison to the distance generated by the worst-case release. The prevention program would not require additional prevention activities because the characteristics of the process are such that there are no potential public or environmental impacts. A standardized RMP ensures that local emergency planners and the state know that the source has been assessed by the owner or operator.

EPA believes that Tier 1 will be most suitable for operations that handle flammable substances or explosive substances in locations that are relatively distant from the public. In lieu of presenting a distance table for explosives in this part, EPA would allow a source to be eligible for Tier 1 if it maintained a distance to the public and environmental receptors consistent with 27 CFR part 55 or 30 CFR parts 56, 57, or 77. These regulations, promulgated by the Bureau of Alcohol, Tobacco and Firearms (BATF) and the Mine Safety and Health Administration (MSHA) incorporate the American Table of Distances (ATD). The distances identified in the ATD are more conservative than the EPA listing criteria and should, therefore, protect the public and the environment from the effects that caused EPA to list explosives.

Based on the known properties of flammable substances and explosives, it is possible to use conservative assumptions and calculate the maximum distance at which an overpressure or heat effect of concern can be detected. Distances for potential impacts of accidental releases for flammable substances and processes could be determined by consulting distance tables or derived using the following calculation method described in Flammable Gases and Liquids and Their Hazards:

$$D = C \times (nE)^{1/3},$$

where D is the distance in meters to a 1 psi overpressure; C is a constant for damages associated with 1 psi overpressures or 0.15, n is a yield factor of the vapor cloud explosion derived from the mechanical yield of the combustion and is assumed to be 10 percent (or 0.1) and E is the energy content of the explosive part of the cloud in Joules. E can be calculated from the mass of substance in kilograms times the heat of combustion (hc) in Joules per kilogram as follows:

$$E = \text{mass} \times hc$$

Combining these two equations gives:

$$D = 0.15 \times (0.1 \times \text{mass} \times hc)^{1/3}$$

If distances to receptors are greater than the distance given by the calculation method, then a source could be eligible for Tier 1.

EPA has received a study addressing the potential consequences of accidental releases from oil and gas exploration and production (E&P) sources that may provide a more suitable method for calculating impact distances from these sources than the general formula presented above. The study, *Hazard Assessment of E&P Facilities Potentially Subject to the EPA's Risk Management Program Regulations*, was submitted by the American Petroleum Institute in January 1995 and is available in the docket (see **ADDRESSES** section of this rule). Generally the study purports to show that given the composition of produced hydrocarbons at the source and certain physical characteristics of an E&P source, such as operating phase and piping size, one may estimate the potential impact distances for vapor cloud explosions and radiant heat effects of an accidental release. EPA is announcing the availability of this study and seeks comment on whether EPA should allow E&P sources to use the results of the study to determine worst-case release impact distances.

For listed toxic substances, EPA is proposing that sources use the lookup tables discussed in Section B below. Sources would use the lookup tables to determine the impact distance for their worst-case releases. If a source can demonstrate that there are no public or environmental receptors of concern within the distance, the source would be eligible for Tier 1.

EPA seeks comment on whether Tier 1 is appropriate for the sources discussed above. In particular, EPA seeks comment on whether Tier 1 is appropriate for sources that have toxic regulated substances present in more than a threshold quantity. Should sources be allowed to determine that they have no offsite impacts for toxics

based on site-specific analyses rather than the lookup tables? Is the criterion of no significant accidental release in the previous five years appropriate as a condition for Tier 1 eligibility? Are additional response preparedness activities necessary beyond what has been specified for sources in this tier?

Tier 2 (Streamlined Program). Sources would be required to register with EPA, conduct a hazard assessment, develop a five-year accident history, prevention program, and emergency response program, and submit an RMP summarizing these elements.

The rule would not specify the prevention program in detail, but a source's program would have to cover the statutory elements of training, maintenance, safety precaution, and monitoring. The prevention program section of the RMP would describe the steps the source takes to train employees and maintain the facility, the safety precautions used, and monitoring. Sources may be able to meet these requirements through compliance with other, already existing Federal regulations. For example, almost all sources are subject to OSHA regulations. The Hazard Communication Standard (29 CFR 1910.1200) requires training on hazards and preventive actions. OSHA has numerous rules related to safety precautions. Certain industries (e.g., handlers of anhydrous ammonia and LPG) have specific OSHA standards. Propane handlers are also generally subject to state and local laws based on NFPA–58, a storage and handling standard for propane. Sources could cite compliance with these standards as part of their description of their prevention steps. Sources that are in compliance with the OSHA process safety management (PSM) standard or with chemical and refinery industry standards would be able to cite compliance with these because they parallel EPA's proposed prevention program.

One mandated prevention element not usually addressed in regulations, except OSHA PSM, is maintenance. Sources would be required to describe how they maintain a safe facility; EPA would not, however, specify maintenance steps. EPA emphasizes that, under CAA section 112(r)(1), all sources already are required to identify their hazards and design and maintain a safe facility and would continue to be subject to this general duty under today's proposed rule.

The response program would document procedures for informing the public and local entities about accidental releases, procedures to be used on site to respond to an accidental release, and a description of employee training measures regarding emergency situations. EPA requests comment on whether Tier 2 sources should be required to exercise the emergency response program under proposed § 68.45 or whether a streamlined response program would be sufficient. EPA notes that, for both Tier 2 and Tier 3 (described below), compliance with other Federal contingency and emergency response planning requirements (e.g., RCRA, OPA–90) would be considered adequate to meet the emergency response requirements of the rule. EPA asks for comment on what other Federal emergency response measures would satisfy the requirements of section 112(r)(7)(B)(ii)(III). In particular, does HAZWOPER (29 CFR 1910.120) fulfill the requirement for ''a response program providing for specific actions * * * so as to protect human health and the environment''? If a source is specifically addressed in an emergency plan under EPCRA section 303, should that satisfy the response program element of the CAA? Should EPA require that the LEPC meet the membership, planning process, and public availability requirements of EPCRA sections 301, 303 and 324 for a source to rely on an EPCRA local emergency plan?

The streamlined approaches under Tier 2 fulfill the statutory provisions of section 112(r)(7)(B)(ii), while exercising the discretion granted under section 112(r)(7)(B)(i) to recognize ongoing prevention activities at classes of sources. Requirements for hazard assessments and response programs for sources would be similar to those in the original proposal as modified by other portions of today's notice. The five-year accident history would be based on the proposed rule. The prevention program would place less burden on sources that are subject to other governmental or industrial programs or that seem to present a lesser risk of a significant accidental release than other sources, based on public data and inferences drawn from such data. The RMP will fulfill the right-to-know aspects of section 112(r) by requiring a source to summarize data about its hazard assessment, prevention, and response program activities and make this information available to the public. EPA seeks comments on the proposed Tier 2 requirements. Specifically, EPA seeks comment on whether additional, specific prevention activities should be required to address safety precautions, maintenance, monitoring, and training (e.g., any particular requirements of the proposed rule targeted at these activities) and on whether there are additional governmental regulations and industry or third-party standards which fulfill the mandate of a prevention program under section 112(r).

Tier 3—Full Rule. Tier 3 sources would be required to comply with the detailed prevention program of the rule, as finalized. The RMP would address hazard assessment, the prevention program, and the emergency response program. EPA intends that the final prevention program will be the OSHA PSM standard plus the requirement for a management system.

Discussion of Assignment to Tiers

Sources would be eligible for Tier 1 based on a demonstration and certification of no impact on public or environmental receptors. All other sources would be allocated to either Tier 2 or Tier 3. Tier 2 is a default tier for those sources not specifically assigned to Tier 3.

EPA's preferred approach would assign sources in specific four-digit SIC codes to Tier 3. To identify such SIC codes, EPA analyzed its ARIP database for the period from 1987 through 1993. EPA believes that SIC codes in which more than 10 sources with 100 or more full-time employees reported regulated substance releases (not limited to accidental releases under part 68) and more than 20 percent of such sources had releases that had impacts onsite or offsite would be candidate SIC codes for Tier 3 during the initial implementation of part 68. EPA also considered the quantities released and the number of sources in the SIC code as reported in Census data. EPA used some judgment when looking at SIC codes in Census data because the Census reports only the one SIC code per source that represents the greatest financial activity even when many SIC codes apply. Thus, the Census may be likely to understate the total number of sources in a 4-digit SIC code, especially in the chemical industry, because sources in certain industries typically involve many different operations. EPA believes that chemical releases that are not accidental releases and releases in which workers were injured should be included in an analysis of accidental releases for the purposes of section 112(r) because all such releases may indicate a failure of company safety practices. EPA requests comments on this conclusion and data indicating that this assumption is valid (or not) for the groups discussed below.

Based on the analysis described above, EPA identified eight four-digit SIC codes that have a release history that supports requiring sources in such codes to implement a Tier 3 program.

These SIC codes are: 2611 (pulp mills), 2812 (chlor-alkali), 2819 (industrial inorganics nec), 2821 (plastics and resins), 2869 (industrial organics nec), 2873 (nitrogen fertilizer), 2879 (agricultural chemicals nec), and 2911 (refineries). In all of these industries, the number of facilities reporting releases was more than 20 percent of the number in each SIC code using Census data.

Four industrial categories that EPA does not believe would be appropriate under the accident history criteria for Tier 3 are 2865 (cyclic crudes), 3312 (steel mills), 2816 (industrial inorganic pigments), and 4911 (electric utilities). Less than 20 percent of the releases reported from cyclic crude sources and steel mills had impacts. In the cyclic crude industrial category, while 16 sources reported releases (approximately 25 percent of the SIC code), only three sources had releases with impacts. The largest release at 11 of the cyclic crude sources exceeded 1,000 pounds, and three of these sources had largest releases exceeding 10,000 pounds. Given the size of releases from cyclic crude sources, EPA requests comments on whether they should be required to meet Tier 3 requirements. In the steel mill sector, while 18 sources reported releases (approximately 14 percent of the industry), only 3 had impacts. However, six of these sources reported releases exceeding 10,000 pounds. The industrial inorganic pigment industry was just below the candidate SIC code criteria for facilities reporting releases and percentage of impact releases. While nearly half the industry reported releases, only two facilities had releases that were more than 1000 pounds, and none had releases that exceeded 10,000 pounds. Although there were a high number of releases reported by electric utilities, only about 2 percent of the industry accounted for the reported releases.

EPA would initially limit Tier 3 to sources in the eight categories with 100 or more full-time employees because these sources have the most significant accident histories. However, certain smaller sources also have accident histories that would support eventual Tier 3 treatment. EPA conducted an analysis of sources with 20–99 full-time employees and identified five categories that, based on accident history, would become Tier 3 sources 8 years after promulgation: 2812, 2819, 2869, 2873, and 2911. The flammable substance accident history for refineries with 20–99 full-time employees supports eventually requiring these sources to comply with Tier 3. The four other industries all had a significant percentage of impact releases relative to the number of facilities reporting toxic releases. Three groups (industrial inorganics, industrial organics, and nitrogen fertilizer) had more than ten facilities reporting toxic releases, while two groups (chlor-alkali and nitrogen fertilizer) had more than 30 percent of the SIC code reporting releases. EPA may review this determination based on data gathered during the eight-year period. The full program would be phased in to allow these sources to benefit from the expertise gained by governmental agencies and larger industry during initial implementation of the full program; the phase in would also ease the cost burden on these smaller companies by giving them more time to implement the program. EPA would calculate full-time employees based on the definition in 40 CFR 372.3. Full-time employees would include contractors on site.

EPA also requests comment on a second approach to tiering. EPA would include in Tier 3 all sources with more than 100 FTEs. Larger sources not eligible for Tier 1 would be subject to Tier 3 because of the size of their operations and the likelihood that they have larger quantities of regulated substances on site, as well as because of their technical capabilities to undertake the program relative to most small manufacturers and non-manufacturers. EPA does not favor this approach, however, because many of these large sources do not have a significant record of accidental releases.

EPA requests comment on the two alternatives or on other criteria for placing sources in tiers under the risk management program. EPA may adopt, in whole or in part, any or all of the approaches to eligibility for Tier 2 in the final rule. The first approach focuses on industry segments that have a history of releases from a number of sources. This approach would remove from Tier 3 individual sources that may have had a history of accidents, but are part of sectors that have not had numerous accidents. It would also remove from Tier 3 entire sectors based on an accident history, which in the future may change. Should a change occur, EPA would revise the rule to include these sectors in Tier 3. Should such sources and segments be exempt from adopting process safety management principles until problems in the industry become pervasive? In addition to placing sources in Tier 3 based on industry segment, should a source be placed in Tier 3 if it has had one or more significant accidental releases in a five-year period? Conversely, should a source in an industry segment in Tier 3 be allowed to move to Tier 2 if it has not had a significant accidental release in the past five years? The Agency requests comment on the oversight and compliance burdens that would be placed on implementing agencies and sources by a site-specific tiering approach. Should proximity to significant numbers of people (either residential population, workers, or other people) be used (alone, or in conjunction with other criteria discussed above) to qualify a source for potential Tier 3 treatment? Should EPA structure the audit provisions of proposed § 68.60 to allow for implementing agencies to require Tier 2 sources to undertake more specific prevention activities if an audit uncovers inadequate risk management programs? Are there additional industries (two-digit or four-digit SIC codes) that should not be eligible for Tier 2 under either approach? Under approach 2, are there sources with more than 100 FTEs that should be eligible for Tier 2 because of industry-specific standards or the simplicity and nature of their processes? EPA believes the preferred approach is the most appropriate level for national implementation. EPA notes that state implementing agencies have the authority under the CAA to impose more stringent requirements.

Qualified Third Party. EPA is seeking comments on whether provisions should be made to employ a ''qualified third party,'' under implementing agency oversight, to assist certain regulated sources in achieving and maintaining compliance with the RMP rule. In raising this issue, EPA is cognizant of the recent National Performance Review recommendations to OSHA on the use of third parties, and growing reliance on ''qualified third parties'' to facilitate compliance with other regulations, to audit the performance of regulated third parties, and verify compliance status on a periodic basis. Such arrangements, thereby, assist both the regulated community and the regulating agencies in ensuring compliance with regulations. EPA requests comments whether to use qualified third parties for this program as well as specific suggestions on how appropriately to include qualified third parties in the present rulemaking.

One way to incorporate ''qualified third party'' review into the RMP tiering framework might be to assign certain sources that participate in the Voluntary Protection Program (VPP) to Tier 2. The VPP is a voluntary program sponsored by OSHA and industry that recognizes strong safety practices, including process safety management. Within

VPP, a ''Star'' rating indicates the highest level of worker safety practices in all aspects measured by the program, while a ''Merit'' rating indicates sound practices with specific qualifications. One commenter suggested that EPA should integrate Star and Merit status into the risk management program. It is not clear whether Star and Merit ratings are relevant to protecting the public and the environment from accidental releases because the VPP only directly measures worker safety impacts. EPA invites comment on whether a source that obtains Star rating or a Merit rating without qualifications related to process safety management should be eligible for Tier 2 even when it is part of an industry sector that otherwise is subject to Tier 3. Should implementing agencies and the public rely on Star or Merit status as a good indicator that the source poses a lesser risk of a significant accidental release than other sources in the same industry sector?

Comments on other types of ''qualified third party'' options to facilitate responsible self-enforcement of the RMP rule will also be useful, particularly as they relate to subsectors of regulated sources which have demonstrated the capacity for establishing and enforcing voluntary safety procedures, or to subsectors in which the regulated sources or their associations have indicated an interest in developing such capacity. Comments from state and local officials, emergency responders, and the public regarding the use of third party arrangements are sought.

*B. Hazard Assessment*

EPA received substantial comments on hazard assessment topics during the four public hearings, the comment period, and a one-day forum on worst-case scenarios. Commenters made the following main points:

- Commenters questioned the intended use of the worst case, arguing that EPA failed to provide a clear description of its purpose.
- Commenters questioned whether EPA would require sources to conduct separate analyses for each hazard for substances that are both flammable and toxic. Commenters suggested that the number of assessments could be limited by analyzing only the substance that has the potential for the most serious offsite impacts.
- Commenters stated that, although the proposed definition of worst case as instantaneous loss of the total contents of a process may be possible for sources that have simple systems, instantaneous loss of the total process contents is not technically feasible for complex systems and, therefore, would provide no useful information to the public or the source.
- Commenters stated that failure to account for at least well-designed passive mitigation systems reduces the incentive for installation of such systems.
- Commenters argued that EPA should specify in the final rule certain methodological assumptions that sources would use to analyze release scenarios.
- Several commenters argued that the worst-case meteorological conditions defined in the proposed rule (F stability and 1.5 meters/second wind speed) were too conservative.
- Commenters expressed concern that the results of the offsite consequence analyses would be difficult to compare between sources without specification of the assumptions.
- Commenters asked for clarification of what EPA expects sources to do to define offsite populations and environmental impacts.

Clarification of the Purpose of Worst-Case Analyses. Sources and the public need to assess and understand the extent of the impact associated with an uncontrolled major accident. EPA does not intend that worst-case analyses should be used as the sole or primary basis for emergency planning or accident prevention actions. The results of the worst-case analyses, in combination with other more likely release scenario assessments, as contained in the RMP, should be used to build a dialogue and a working partnership between the source and the public, response agencies, workers, and various levels of government for chemical accident prevention, response, and preparedness.

Worst-Case Release Definition

EPA is considering alternatives to the definition of worst-case release in proposed § 68.3. EPA is proposing to redefine a worst-case release as the release of the largest quantity of a regulated substance resulting from a vessel or process piping failure. The worst-case analysis would involve a 10-minute release under worst-case meteorological conditions (F stability and 1.5 meters per second wind speed) and would consider passive mitigation measures.

The 10-minute release time is used in the Technical Guidance for Hazards Analysis. EPA believes that this release duration is reasonable and accounts for comments arguing that an ''instantaneous'' release is not realistic. As described in the Technical Guidance, a 10-minute release is intended to represent modeling of a continuous release rather than a ''puff'' release. Therefore, for modeling purposes, the release rate (per minute) to the air for gases would be the quantity released divided by 10. Liquids would be assumed to form a pool in 10 minutes, with the release rate to the air determined by volatilization rate. This approach to liquid releases differs from that of the Technical Guidance, which specifies an instantaneous release. Alternatively, the Technical Guidance could be used, but no time frame would be specified; the liquid quantity would be assumed to form a pool for calculation of the volatilization rate. EPA requests comments on the appropriate release duration and justification for its basis.

EPA is considering the revision of proposed § 68.15(c) to incorporate the effects of passive mitigation systems, but not active mitigation systems, into the worst-case release scenario, if such systems are capable of withstanding destructive events (e.g., fires, explosions, floods, hurricanes, and earthquakes). Passive systems would include dikes, catch basins, and drains for liquids, and enclosures for both liquids and gases. EPA requests comment on its definition of ''passive mitigation system'' and requests examples of other such devices. Scenarios involving passive mitigation systems that have connections to the environment (such as a rainwater drain valve) would have to assume failure of that connection. The threat of natural disasters would be specific to certain geographic regions, and sources could certify that their passive mitigation meets or exceeds local natural disaster design standards as capable of withstanding destructive natural events. Underground storage tanks might also be considered a passive mitigation system for liquids to the degree that overlying soils would reduce the volatilization rate to the air in the event of a worst-case accidental release. However, overlying soil is not likely to contain high pressure gas releases. EPA requests comment on this issue.

Incorporation of passive mitigation measures into the worst-case release analysis could be left to implementing agency discretion. Such discretion would result in an increased administrative burden on that agency and cross-jurisdictional differences in the methodology used for worst-case analyses. EPA is considering allowing the incorporation of active mitigation measures in the hazard assessments for more likely accidental release scenarios.

EPA seeks comment on several possible ways to define the relevant quantity of regulated substance in a

vessel or process piping for a worst-case release scenario. One alternative would be to define the quantity as the maximum possible vessel inventory, without regard for operational practices and administrative controls. This quantity would represent a physical maximum, but would exaggerate the potential worst case for sources that never operate at the physical maximum inventory of the vessel. The process piping failure scenario would assume that the inventory contained in vessels or other process equipment on either side of the piping failure location would be released through the pipe break at full pipe flow.

A second, preferred alternative would be to require that the determination of the worst-case release scenario be based on the maximum possible vessel inventory unless there are internal administrative controls (written procedural restrictions) that restrict inventories to less than the maximum. The operational limit would be described in the worst-case release analysis in the RMP. Exceedance of any administrative control on vessel inventory would be a violation of § 68.15 (failure to perform a worst-case analysis) unless the administrative control was revised and the worst-case analysis updated to reflect any changes in the analysis. An exceedance would also result in a violation of § 68.50 unless the RMP was updated within the timeframes set out in that section. Acknowledgement of such administrative controls would reflect the efforts of sources that have intentionally reduced inventories of regulated substances for process safety reasons. EPA seeks comment on whether administrative controls are sufficiently reliable or whether a mechanical control should be required in addition to the administrative control.

A third alternative for defining the relevant quantity would be to base the quantity on historic or projected maximum operating inventories without regard for administrative controls. The maximum operating inventory would be specified in the RMP. Exceedance of the maximum operating inventory also would be a violation of §§ 68.15 and 68.50 as described above. EPA does not favor this third alternative because it does not believe that historic or projected operating practices represent the maximum possible amount of a chemical that could be stored in a vessel unless there is a specific management operational restriction at the source.

EPA is also considering providing the implementing agency with the discretion to determine the appropriate quantity for the worst-case release scenario on a site-specific or industry-specific basis. Implementing agency discretion would result in an increased administrative burden on the implementing agency and cross-jurisdictional differences in the methodology used for the worst case analyses. EPA also requests comment on whether the scenario should consider the additional amount of substance that could potentially drain or flow from process equipment interconnected with the failed vessel or pipeline.

Applicability of the Hazard Assessment Requirements

A number of commenters stated that multiple analyses of similar substances would not improve the information provided to the public. EPA is proposing the following requirements for substances and processes affected by the rule:

- A single worst-case release scenario would be analyzed for all flammables on site; only one flammable substance would be analyzed for other more likely scenarios as well;
- A single worst-case release scenario would be analyzed for all explosives on site; only one explosive substance would be analyzed for other more likely scenarios as well; and
- A single worst-case release scenario would be analyzed for all toxic substances at the source; other more likely release scenarios would be analyzed for each toxic substance covered by the rule.

The appropriate hazard category would be the hazard for which the regulated substance was listed. This proposal would reduce to a maximum of three the number of worst-case analyses required of each source in the RMP. Additional screening analyses to determine the appropriate worst-case scenario may be necessary, but only one worst-case release scenario would be reported for each hazard category. Sources would, within the constraints of the worst-case release definition, describe the greatest offsite impacts presented by potential catastrophic accidents involving regulated toxic, flammable, and explosive substances. The potential worst-case impacts of substances and processes not described in the RMP would be less than those described. As an alternative, EPA could require analysis of only one worst-case scenario by each stationary source. This approach would require the analysis of the one scenario that presents the worst offsite consequences. A significant drawback to a one-scenario analysis is that the different types of worst-case hazards (for toxics, flammables and explosives) would not all be described.

EPA would require more likely release scenarios per hazard category for flammables and explosives, but per substance for listed toxics. Toxic substances each have different exposure concentrations of concern, but flammables and explosives can be treated uniformly within hazard categories. EPA seeks comment on whether a single toxic substance could be considered representative of all toxic substances at a source or in a process.

Hazard Assessment Methodology and Calculations

EPA intends to develop ''lookup'' tables for all listed substances to assist sources in determining the impact distances for their release scenarios. The tables will specify potential impact distances for releases of substances under conditions that are relevant to dispersion. Sources will only have to define their release scenarios and develop the information, such as release rate, needed to use the tables. The tables will provide impact distances that sources can then map. For explosives, the American Table of Distances will serve as the lookup table. For toxics and flammables, the lookup tables will be developed and made available for public review and comment prior to the publication of the final rule. The tables, and accompanying guidance, will represent a revision of the Technical Guidance for Hazards Analysis. The tables will provide distances under varying conditions, including worst-case. In developing the tables, EPA will select one level of concern value for each toxic substance. EPA seeks further comment on whether it should use a single endpoint to the extent possible to develop the tables (e.g., the 1/10 IDLH unless one does not exist for a substance), or a hierarchy of endpoints (e.g., ERPG–3; if one does not exist, then the 1/10 IDLH; and finally toxicity data if no other value is available). For flammables, should EPA use overpressure or both overpressure and radiant heat effects as endpoints? EPA requests comment on the lookup table approach. The tables and the methodology used to develop them will be made available for public review and comment.

The purpose of providing lookup tables is three-fold. First, if each source conducts its own dispersion modeling, the results will be extremely difficult to compare among sources; different models and different assumptions can produce widely varying results. Second, because of the differences in models and the impact of changing assumptions

(e.g., a different wind speed), the results of dispersion modeling are best used to provide a general idea of impact; models do not have a level of predictive accuracy that can reliably differentiate between, for example, a release with a four-mile zone and one with a five-mile zone. Third, dispersion modeling is expensive, especially for sources that are outside of the chemical industry. Given that the results of sophisticated modeling may not be more accurate than results derived from simple tables, EPA decided that a simpler approach that would provide comparable data among sources was preferable. Sources that wish to conduct more sophisticated modeling may, but would not be required to do so, under the rule. For sources that want to do modeling, a number of models available in the public domain exist; EPA has published guidance on the use of these models. An alternative approach would be to limit use of the lookup tables to Tier 2 sources and require Tier 3 sources to conduct air dispersion modeling. EPA requests comments on this alternative.

Offsite Consequence Analysis

EPA agrees with commenters that further direction is necessary with respect to assessments of potentially affected populations and the environment. Section 68.15(e)(3) of the proposed rule requires an analysis of populations within distances of potential exposure. The preamble to the proposed rule specified that sensitive populations potentially affected by a release should be identified. Although much of this information is readily available, identification of some sensitive populations, such as day care centers and nursing homes, could require considerable effort, especially where the vulnerable zone crosses several jurisdictions. In addition, sources in the same area would be required to duplicate each other's efforts.

To limit the effort required to define offsite populations, EPA is proposing that offsite populations be defined using available Census data. Information on the number of children and people over 65 may be considered a proxy for sensitive populations. With the assistance of the Bureau of the Census and NOAA, EPA is developing a geographic information system, LandView, that will facilitate analysis of resident populations. In addition, EPA may require sources to identify public arenas or institutions that are potentially affected. These arenas or institutions would be limited to those identified on available street maps or Census TIGER files.

EPA has proposed that sources analyze both potential human health impacts and environmental impacts in hazard assessments and consider such impacts in designing prevention and response programs. ''The environment'' is specifically mentioned twice in section 112(r)(7)(B) as a receptor to be protected by emergency response measures. First, section 112(r)(7)(B)(i) states that regulations under subparagraph B ''shall include procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the environment.'' Second, under the response program provisions of the risk management plan, the plan must address ''specific actions to be taken in response to an accidental release of a regulated substance so as to protect human health and the environment.'' Also, a third reference to ''the environment'' is ambiguous and may refer not only to response measures, but also to other aspects of risk management plans (CAA 112(r)(7)(B)(ii)).

The structure of the CAA's accidental release provisions integrates the assessment of potential hazards and the prevention of accidents with response planning to prevent potentially hazardous conditions from resulting in accidents and ensure that the response measures are adequate in the event of an accidental release. EPA supports this integrated approach to planning with respect to accidents. EPA believes it is reasonable for sources to address not only human health impacts, but also environmental impacts in the hazard assessment. In light of the mandatory CAA language requiring that the environment be addressed as a receptor for purposes of emergency response, EPA invites comments on this approach.

EPA recognizes that one of the concerns of commenters about addressing the environment in a hazard assessment was that the proposed rule discussion of environmental impacts was not specific enough. Consequently, EPA would revise § 68.15(e)(4) of the proposed rule to require identification of sensitive environments (rather than analysis of potential environmental damage) within the radius determined by the worst-case and more likely accidental release scenario analyses. In addition, EPA would revise § 68.15(h)(3)(v) to require sources to list the sensitive environments within the accidental release scenario radii in the RMP. To identify receptors, the source could call the appropriate state or Federal agencies to determine if any sensitive environments were within the impact distances.

EPA requests comments on the use of all or part of Appendix I of the NOAA Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments (59 FR 14714, March 29, 1994) for determination of sensitive environments. Appendix I lists the following sensitive environments and identifies responsible Federal agencies: wetlands (as defined in 40 CFR part 230.3); critical habitat for designated or proposed endangered/threatened species; habitat used by designated or proposed endangered/threatened species or marine mammals; national marine sanctuaries; national parks; Federal wilderness areas; national estuary program areas; near coastal waters program areas; clean lakes program critical areas; national monuments; national recreational areas; national preserves; national wildlife refuges; coastal barrier resource system; national river reach designated as recreational; Federal or state designated wild and scenic rivers; national conservation areas; hatcheries; waterfowl management areas; cultural resources; areas of critical environmental concern; and the national forest system. Accidental releases of volatile substances may not represent a major threat to certain of the sensitive environments listed above. For example, wetlands, national marine sanctuaries, national monuments, national estuary program areas, near coastal waters program areas, and clean lakes program critical areas may not be threatened by accidental releases to the air. They could, however, be threatened by volatile liquid releases. In addition, deposition of listed substances from accidental releases of toxics to the air could also represent a threat to these sensitive environments. EPA requests comment on whether these, and other, specific sensitive environments should be removed from consideration for identification of sensitive environments.

*C. Accident Information Reporting*

The proposed rule addresses emergency notification (§ 68.45(b)) and self-investigation of accidental releases (§ 68.40). However, other than the five-year accident history in the RMP and emergency reporting under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and EPCRA, sources are not required to report any accident data or results of accident investigations. Certain accidental release information that otherwise is not available could be useful to states and EPA to learn which types of sources are having problems, understand more about accident causes, track trends in chemical accidents and

prevention activities, monitor the progress of the risk management program, focus future prevention activities, and avoid overregulation of industry sectors or substances.

EPA is evaluating how such accidental release information needs might be met so as to impose a minimal burden on sources and avoid redundancy. One approach would be to require submission of information on any accidental release of a regulated substance if the release results in death, injury, evacuation, property damage, or offsite environmental impacts. If the source experiencing such an accident is subject to the OSHA PSM requirements or Tier 3 requirements described above, then the owner or operator could submit to EPA and the state a copy of the accident investigation report generated under 29 CFR 1910.119(m)(4) or 40 CFR 68.40. For sources not subject to these requirements, or alternatively all sources, owners or operators could submit an accidental release information survey form to collect a brief, but accurate description of the event and its consequences, the substance and amount released, root causes, initiating events and contributing factors causing the release, and changes or potential changes at the source to prevent a recurrence. EPA requests specific information on the types of questions that should be included. EPA also seeks comments on which accidents should be reported (e.g., should any investigated deviation be reported?), reporting triggers (e.g., threshold quantities or reportable quantities released), whether reporting formats can be used to streamline or eliminate duplicative reporting, and if the submission of these data raises liability concerns.

Another approach EPA is considering would be to have EPA request information developed under existing regulations, such as OSHA PSM accident investigation requirements or EPCRA section 304 follow-up notices. Under this approach, sources would not need to develop any new information for EPA, but could provide EPA with documents prepared under other regulations. EPA could supplement such information as necessary by undertaking surveys to acquire specific data on accidents based on these existing documents. EPA requests comment on this approach. Specifically, EPA seeks information on what the appropriate mechanism for obtaining data on accidents would be.

The approach outlined above would not affect a source's current obligations to report releases of certain regulated substances under CERCLA section 103 or EPCRA section 304. For purposes of CERCLA section 101(10)(H), part 68 is not a control regulation, and the RMP is not a permit allowing the accidental release of any specific quantity of a regulated substance.

*D. Public Participation*

A number of commenters have asked that EPA require sources to involve the public in development and review of the risk management program. Several commenters have identified key points at which public involvement is appropriate, including at the outset of the planning process, upon completion of the process hazard analysis (PHA), prior to submittal of the RMP, prior to RMP revisions, after an accident, after an accident investigation, and during response drills involving action outside the plant.

EPA believes that the public is a key stakeholder in preventing chemical accidents and that sources have the responsibility to make the public aware of the hazards associated with potential accidental releases. EPA is committed to encouraging public involvement. EPA's favored approach would encourage sources to use existing groups, primarily the local emergency planning committees (LEPCs), as a conduit for communications between the source and the public. Many sources covered under part 68 are already obligated to participate on, and perform emergency preparedness and planning activities with their LEPCs under EPCRA. In areas where there is no functioning LEPC or its equivalent, sources, local first responders, citizens, and others need to develop and support the LEPC or its equivalent. EPA expects sources to work with the LEPC during the development of the RMP as well as after its submission. Similarly, EPA expects the public to contact the LEPC for information from the source whenever it has questions or concerns. EPA notes that the RMP is not a one-time document; the RMP reflects the risk management program at the source and will change as activities at the source change. Sources, therefore, should be involved in a continuing dialogue with the LEPC about the prevention and emergency response programs as they evolve to address changes at the source. EPA prefers this approach because, just as one size of risk management program is not appropriate for all sources, a rigid set of public participation requirements would not be reasonable for all sources.

A second approach would require a source to take steps to involve the public in discussions concerning the content of its RMP and describe those steps in the RMP. EPA would not specify the steps, but would provide guidance on ways a demonstration could be made. The source could describe its community outreach efforts during the planning process in on-site records that would be available to the public or could summarize these activities in the RMP. Similarly, a source could maintain a record on site of community outreach actions taken after submittal of the RMP. EPA would provide guidance on ways such a demonstration could be made. For example, sources could choose to notify the public through a general circulation newspaper that the RMP was available and make copies available; the source could publish the RMP in a newspaper or on electronic bulletin boards; or the source could hold a public meeting on the RMP or use local TV public service channels to target a local audience or to broadcast logistics for upcoming meetings. EPA requests comment on whether public participation activities should be limited to Tier 3 sources. Another suggested approach for public participation was to allow the public, by petition, to trigger audits of completed RMPs by the implementing agency. EPA does not favor this approach because it could generate an excessive burden for implementing agencies.

*E. Inherently Safer Approaches*

The manufacture, processing, and use of chemicals is inherently risky. EPA believes that fulfillment of the risk management program requirements entails ongoing attention to hazard identification, hazard analysis, risk management (assessment, reduction and control, or elimination), and public outreach. This process should lead to continuous improvement and the evolution of safer sources through a wide range of actions involving reduction of the inherent risk and control or mitigation of the hazards. During the proposed rule hearings, several presenters argued that, like pollution prevention, accident prevention could be more successful if the program were to focus on the elimination of hazards to make processes inherently safer rather than on an attempt to control or mitigate existing hazards. It was suggested that sources be required to examine different approaches or technologies through a process of technology options analysis (TOA), or a ''state-of-the-art'' search and analysis of safety alternatives as required by New Jersey in its Toxic Catastrophe Prevention Act regulations, to find, and adopt, inherently safer chemical pathways and processing techniques. In addition to TOA and state-of-the-art searches, the Center for

Chemical Process Safety has published a guideline containing a checklist for evaluating the inherent safety of processes (Guidelines for Engineering Design for Process Safety, CCPS, 1993). Commenters suggested that EPA formalize the search for alternative technologies by making TOA or similar reviews a required part of PHAs and by requiring sources to document and share the results in the RMP.

Such costly analyses are probably best conducted during the design of new processes, when, according to industry commenters, they often are already part of the design process to identify cost-effective approaches to improving safety. In addition, if alternative technologies are discovered, whether for new or existing processes, further analysis is necessary to determine whether risks are inadvertently being transferred by the new technology from one location to another. Adoption of new technologies without such analyses may inadvertently impose greater individual or societal risk. EPA recognizes, however, that there are many opportunities to make processes inherently safer without large-scale adoption of new technologies. These opportunities may become apparent through the PHA. Some sources have already performed such analyses and have successfully taken action to make their processes inherently safer. Consequently, EPA does not favor inclusion of a specific requirement in the initial program for an analysis of the inherent safety of processes or for adoption of new technologies. EPA, however, strongly encourages industry to consider implementing inherently safer approaches when appropriate and include a discussion of any such studies and actions it takes in RMP updates. EPA is considering further study of this issue with all stakeholders and requests comment on this issue.

*F. Implementation and Integration of Section 112(r) With State Programs*

Section 112(r) places responsibility on sources to prevent accidents and share information about their accident prevention efforts. However, EPA believes, and Congress intended, that successful chemical emergency prevention, preparedness, and response efforts require active state and local involvement. The legislative history and CAA section 112(r) requirements support and build on the existing state and local infrastructure by requiring that RMPs be submitted to states and local planning entities. [See, e.g., S. Rep. No. 228, 101st Congress, 1st session, at 193 and 225.] EPA encourages and supports any state or local efforts to develop comprehensive plans for coordination and integration of section 112(r) with state and local programs mandated under the CAA, EPCRA, and other environmental statutes and planning and safety programs under OSHA and other agencies.

The ways in which state and local organizations are, or could become, involved in the implementation and integration of section 112(r) are described in more detail below. About 15 percent of the sources subject to the section 112(r) requirements will already have or will need to get operating permits from state air permitting authorities under part 70 by the time the RMPs are due. In the final part 68 rule, EPA intends to clarify the responsibilities of sources subject to part 70 permitting requirements and section 112(r), the air permitting authority with respect to section 112(r), and state or local agencies who elect to implement section 112(r) for all other sources. EPA worked closely with and directly involved several state and local air program officials and state emergency response and prevention representatives in the development of the preamble and regulatory language to prepare approaches detailed in the following sections. These approaches best reflect the concerns of the states about air permit program implementation and the needs for comprehensive participation in chemical accident prevention, preparedness, and response at the state and local level.

Applicable Requirements and Permitting Authority Responsibilities for Section 112(r)

Under CAA section 504(a) and EPA's implementing regulations (§ 70.6(a)(1)), part 70 permits must contain conditions sufficient to assure compliance with all CAA applicable requirements. Part 70 defines ''applicable requirement'' to include any standard or requirement of section 112, and includes any requirement concerning accident prevention under section 112(r)(7).

In the preamble to part 70 (57 FR 32275, July 21, 1992), EPA stated its belief that section 112(r) was not intended to be implemented or enforced primarily through part 70 permits. EPA cited the provisions of section 112(r)(7)(F), which provides that, notwithstanding title V, no source must obtain a permit solely because it is subject to the requirements of section 112(r). The part 70 preamble stated that it was sufficient for a part 70 source subject to 112(r) to ''indicate in its permit [application] that it has complied with any requirement to register an RMP, or alternatively to indicate in its compliance plan and schedule of compliance its intent to comply with such requirement.'' Thus the preamble set forth the view that all that was required of a part 70 source with respect to 112(r) was a statement in its permit application that it has registered the RMP or has submitted a schedule to do so. By stating explicitly that section 112(r) requirements were not to be implemented or enforced primarily through the permit, the preamble defined a narrow role for the permit: one of ensuring submittal of the RMP, but not ensuring the quality of the RMP or the implementation or enforcement of section 112(r) regulations in any particular way. The preamble also did not say what conditions must be in the permit to assure compliance with applicable 112(r) requirements (even though the preamble went on to provide that the RMP itself need not be included in a title V permit). Finally, the preamble was silent on the issue of responsibilities the permitting authority might have in assisting the implementing agency in assuring compliance with section 112(r) requirements.

This view was necessarily preliminary, since it was developed before any part 68 rulemaking that could clarify how the permit must assure compliance with ''applicable requirements'' relative to section 112(r). The part 70 preamble does not preclude part 68 rulemaking from clarifying and even expanding the responsibilities of permitting authorities (e.g., a completeness review of the RMP) with respect to implementation of section 112(r) requirements through part 70 permits.

Today's proposal would go beyond the part 70 preamble, principally by setting forth the part 70 measures necessary to ''assure compliance with'' applicable section 112(r) requirements. In addition, today's proposal would establish limits on the responsibilities of the air permitting authority for assuring compliance with section 112(r) within the part 70 program as opposed to the greater responsibilities envisioned for an implementing agency.

''Applicable Requirements'' for Part 70 Sources

One principal objective of the regulations proposed today is to clarify the minimum content of part 70 permits with respect to section 112(r) ''applicable requirements.'' EPA also intends to revise the definition in part 70 of ''applicable requirement'' relative to section 112(r). This definition will include the requirements of part 68,

when promulgated, to which part 70 sources are subject. EPA expects to define this term to mean §§ 68.10 to 68.58 or specific provisions within those sections. The part 70 rulemaking would be done as part of the phase II rulemaking addressing remaining issues raised by the part 70 litigants. This rulemaking is expected to be proposed this fall and finalized in early 1996.

EPA does not believe that each permit must restate every requirement in section 112(r) or part 68 as a permit condition to comply with the part 70 applicable requirement definition. The permit could instead meet this requirement by containing a set of standard conditions that require compliance by the source with applicable section 112(r) requirements.

These permit conditions are proposed in § 68.58 and would require that each permit contain, at a minimum, conditions that require source action consistent with the following:

(1) Registration with the implementing agency (EPA or the appropriate state or local agencies) and submittal of an RMP, or a revised plan, to the part 70 permitting authority or other state or local agency designated by the state for this purpose, by the deadline under this part and certification upon submission that the plan is complete and accurate;
(2) Submittal of any additional information required for completeness;
(3) Annual certification of implementation of the risk management program as described by the RMP; and
(4) If the permit is issued prior to the RMP submittal date, a compliance schedule for submittal of the RMP.

In addition, the RMP would be a reporting and recordkeeping requirement under part 70. There is no requirement to include the RMP in the permit.

EPA proposes that a ''complete'' RMP would be one certified by the source to contain all necessary elements in sufficient detail to meet part 68. The necessary elements of an RMP are contained in proposed § 68.50, and new §§ 68.13 and 68.14. As general criteria for completeness, an RMP would need to address all aspects of the three main elements of the risk management program, i.e., hazard assessment, prevention program, and emergency response program. EPA intends to issue guidance to assist sources and permitting authorities in determining completeness of RMPs, including a checklist addressing the required elements of an RMP.

The completeness review of the RMP would be independent of the completeness determination for the permit application. While the RMP may be submitted with the permit application, in most situations the RMP will be submitted separately on its own deadline, since almost all permit applications will have been submitted well in advance of the RMP deadline. Accordingly, if another state or local agency has received 112(l) delegation as the implementing agency for section 112(r), EPA presumes that agency, under a cooperative agreement with the permitting authority, could determine completeness of the RMP. In this situation, the state should establish appropriate procedures to ensure review of the plan for completeness. For example, the agreement could specify that the permit authority would not be obligated to review the RMP for completeness and could write the permit to require submittal of the RMP only to the state or local implementing agency, rather than to the permitting authority. Or, the state might decide that the permitting authority should retain the responsibility to review the RMP for completeness, even if another state or local agency has been designated as the implementing agency. EPA requests comment on this approach and whether a designated agency should also include EPA, provided that EPA and the permitting agency agree that EPA should take on the completeness review responsibility as the implementing agency.

The proposed permit conditions should ensure a complete RMP submittal, because failure to comply with these conditions would be enforceable as a permit violation. Other permit conditions would call for the source to submit a compliance schedule if it has not yet completed its RMP, to provide any information requested to determine the RMP's completeness, and to revise, update, and resubmit existing RMPs according to part 68 criteria. For example, when a source covered by section 112(r) and part 70 revises its process to add or eliminate a regulated substance, the source would need to prepare a revised RMP according to § 68.50(h) and submit it to the air permitting agency within 6 months. Failure to do so would potentially be a violation of both parts 68 and 70. Further, the permit would require a certification of the source's implementation of its risk management program, as described by the RMP. With the possible exception of the compliance schedule, EPA believes these permit conditions will be standard terms applicable to all part 70 sources subject to 112(r). EPA believes these standard terms would live on in the permit after submittal of the RMP, and there would be no reason to change them after an RMP is submitted or revised.

EPA is not proposing any specific requirements for part 70 permit applications beyond those already required in § 70.5, particularly the requirements that sources must cite and describe all applicable requirements, certify compliance with those requirements, or submit compliance schedules as necessary. Sources that submit applications after promulgation of part 68 would cite and describe part 68 as the applicable requirement, certify compliance (or that the source will comply in the future), and submit a compliance schedule for meeting section 112(r) deadlines. Sources that handle greater than threshold quantities of section 112(r) regulated substances should be able to identify themselves as potentially subject to section 112(r) in their initial part 70 applications. EPA is not requiring that the RMP be submitted with the permit application. Given the expected promulgation date of part 68 and the three-year compliance date for submittal of the RMP, EPA expects submittal of permit applications and issuance of most permits will occur long before the submittal deadline for RMPs (with the possible exception of part 70 programs with source-category limited interim approvals where it could take five years from interim approval to issue all permits).

EPA also believes it is not necessary to require submittal of the RMP as a permit revision at the submittal deadline for the RMP. EPA is concerned that permitting authorities may be required by state law or regulation to process the application and to incorporate RMP information in the permit if the RMP were included as part of the formal permit application. This result obviously would not be desired. The purpose of reviewing the RMP for completeness is to obtain a complete RMP, not to initiate any form of permit action. EPA seeks comment, however, on whether it should require the RMP as part of the permit application, or as an addendum to the application or to allow the permitting authority the option to ask for the RMP in either form for permit applications after the date plans must be submitted.

Role of Part 70 Permitting Authority

Under today's proposal the part 70 permitting authority or the designated agency (for completeness review) would be responsible for:

(1) Verifying that an RMP was submitted when required and that it is complete, i.e., it contains the elements required under §§ 68.50, 68.13, or 68.14;
(2) Verifying that the source has submitted an annual certification that it is properly implementing a risk management program as required by part 68 and as described by the RMP;
(3) Taking enforcement action (including penalties) for failure to submit a complete RMP revised plan, or the annual certification; and
(4) Incorporating and enforcing permit conditions specifying a compliance schedule for submittal of a complete RMP.

These four tasks are the extent of the responsibilities of the permitting authority, unless it is granted delegation under section 112(l) as the implementing agency. Tasks (1) and (2) could be transferred to another state or local agency designated by the state under a cooperative agreement.

The first task of the permitting authority or designated agency would be to determine if the RMP is complete. The permit would require the source to submit the RMP by the part 68 deadline; part 68 would require the source to certify as to the RMP's completeness. If the RMP or any revisions were determined to be incomplete, the permitting authority or designated agency would notify the source that the submittal was incomplete, state the deficiencies, and give the source a deadline to submit the requested information and/or revise the RMP. EPA requests comment on the definition of a complete RMP.

The obligation to submit an RMP to the permitting authority or designated agency is a reporting requirement of a permit, but the contents of the RMP are not permit terms or conditions. Under today's rule, the completeness determination required under proposed § 68.58(b)(1) is independent of the completeness determination required by CAA section 502(b)(6). It is not necessary for the permitting authority to provide public notice of completeness findings. The permitting authority may, however, wish to document and provide the public with a notice of completeness findings using electronic bulletin boards or other mechanisms. EPA seeks comments on this approach. EPA also seeks comment on whether it should establish deadlines for the determination of completeness by the permitting authority. EPA could select the 60-day deadline used for part 70 application completeness; however, EPA is aware that some states may find this deadline too short if a high number of part 70 sources are subject to 112(r). EPA solicits comments on other possible deadlines: six months, one year, or by permit renewal.

The permitting authority or designated agency must be able to determine if a source is subject to the requirement to submit an RMP. EPA believes that this capability is already required under part 70 since, under that regulation, a permitting authority must be able to ask for any specific information that may be necessary to implement and enforce other applicable requirements or to determine the applicability of such requirements [§ 70.5(c)(5)]. Thus, if a source fails to mention whether it is subject to 112(r) in its permit application, the permitting authority must have the authority to ask for information on the application to determine section 112(r) applicability. This information must be included in permit applications due before the promulgation of part 68, since the permitting authority or designated agency must determine which permits will require reopening after part 68 is promulgated if standard permit conditions reflecting part 68 are not added. EPA believes this approach is sufficient and is prepared to rely on the resourcefulness of permitting authorities in identifying sources subject to 112(r), but solicits comment on whether EPA should make more specific demands of permitting authorities in determining applicability with respect to section 112(r) requirements.

The implementing agency will have the authority under § 68.60 to require revisions to the RMP. Permitting authorities may find, as a result of the completeness review or during regular part 70 inspections, that revisions are necessary. The permitting authority should share this information with the implementing agency for appropriate action. The implementing agency should also share findings from RMP reviews and source audits with the permitting authority. EPA requests comment on whether the permitting authority should be able to require sources to make revisions to an RMP whenever the permitting authority determines revisions are necessary.

In light of the possibility that at least some permitting authorities may need to expand their capabilities to meet these new responsibilities, states should reexamine several aspects of their current part 70 program. First, states should assess whether they have adequate legal authority to review RMPs for completeness, or to require their submission if not part of a permit application. Second, states should determine if they have adequate statutory and regulatory authority to determine whether a source is subject to part 68. This authority may be vested in an emergency response agency. Third, many permitting authorities may face resource or budget constraints if additional workload were taken on to implement section 112(r) requirements. This might require an adjustment in fee schedules, because there is no reason to assume a decrease in other workload costs. States may wish to consider raising title V fees for all sources, raising permit fees only for sources subject to both parts 70 and 68, or imposing a fee on all sources subject to part 68 to provide resources for state and local program implementation. Permitting authorities may be limited on the amount of fees collectable for permit activities. EPA requests comment on alternative funding mechanisms or the resource reductions in other programs that may be necessary to complete the responsibilities described in this notice. Fourth, some permitting agencies may need to obtain technical training in the implementation of section 112(r) requirements. EPA intends to provide training and technical assistance to implementing agencies and permitting authorities.

Given these expectations, EPA is prepared to presume that approved part 70 permit programs are adequate to carry out the additional section 112(r) requirements proposed today, unless the Agency receives specific information to the contrary. EPA also assumes that if modifications to state part 70 permit programs are necessary, they can be made with minimal burden.

Finally, under the CAA provisions, permitting authority liability would generally be determined by state law. Congress's intent in enacting section 112(r) was not to expand liability for any government entity. Liability associated with implementation of section 112(r) is addressed below.

### Incorporation of Part 68 Requirements Into Part 70 Permits

According to the CAA, once part 68 requirements are promulgated, existing sources have three years to comply with these requirements. New sources constructed after promulgation of part 68 must comply by three years after promulgation except that sources constructed later than 3 years after promulgation must comply upon startup. However, until the risk management program rule is promulgated, the only applicable requirement for sources is the List of Regulated Substances and their Thresholds rule under section 112(r)(3)–(5). Thus, EPA expects that when a

source submits a part 70 application before part 68 is final, it would identify to the permitting authority those activities at the source that are subject to the part 68 requirements according to the list rule criteria, but state that the risk management program requirements are not yet applicable to it. This identification is consistent with the requirement in § 70.5(c)(5) for the permit application to include specific information necessary to determine whether the source is subject to applicable requirements.

Permits issued before promulgation of part 68 will presumptively need to be reopened at the time of promulgation of part 68 and revised within 18 months to include the part 68 permit requirements. Alternatively, the permitting authority could place the standard part 68 permit conditions in a permit issued before promulgation of part 68 and make the conditions effective upon promulgation of part 68. Unlike most MACT standards, EPA believes the part 68 permit requirements will be essentially standard conditions with little source-to-source variation. Consequently, incorporating part 68 requirements (unless they were included during initial permit issuance) should require only the part 70 administrative amendment process. As proposed in the part 70 revisions for MACT standards, the permitting authority or designated agency should provide to the public a list of sources whose permits are proposed to be reopened. Public comment on the list of sources could help the permitting authority identify other sources subject to section 112(r).

Reopened and reissued permits would include all permit requirements of § 68.58, including a compliance schedule for submittal of the RMP according to part 68 deadlines. After part 68 is promulgated, part 70 permits and applications will be required to contain compliance schedules which, in part, require the submittal of a complete RMP.

Solicitation of Comment on Alternatives

Although no specific alternatives are proposed, EPA seeks comment on two other approaches for the definition of applicable requirements, permitting authority responsibilities, and permit content with respect to section 112(r). EPA will consider various alternatives offered by commenters between these two approaches as alternatives to the approach described above.

The first option places no additional responsibilities on the permitting authority beyond those set forth in EPA's guidance contained in an April 13, 1993, policy memorandum from John Seitz, Director of the Office of Air Quality Planning and Standards (OAQPS), to EPA Regional Air Division Directors (available in the docket). In that memorandum, EPA required part 70 permitting authorities to obtain legal authority sufficient to: (1) Determine whether a source is obligated to register and submit an RMP; (2) secure verification from part 70 sources that any required submittal was prepared and submitted; (3) obtain annual certifications from sources that the plan is being implemented; and (4) include as a permit condition a compliance schedule for submitting a plan if the source fails to submit the plan when originally due. Unlike today's proposal, this option does not require the permitting authority to determine completeness of the plan. It does not make specific requirements with respect to the content of part 70 permits. This option would not rely significantly on part 68 to expand or clarify the April 13 guidance.

An advantage of this approach is that it imposes no additional expectation on part 70 agencies or sources subject to both part 68 and part 70 beyond the April 13, 1993, policy memorandum. Therefore, permitting authorities would not be expected to reassess current legal authority, resources or fee structure for adequacy in implementing section 112(r).

However, the April 13 policy guidance was prepared before the risk management program rule was proposed and before public comments were received indicating that the relationship between part 70 and part 68 was not clear. Further, the April 13 criteria do not account for implementation of the risk management program by the source (as opposed to implementation of the plan) and there is no review of the RMP by the permitting authority to ensure that the plan contains the elements required by part 68. Consequently, in a June 24, 1994, memorandum (available in the docket) from John Seitz and Jim Makris, Director of the Chemical Emergency Preparedness and Prevention Office (CEPPO), to EPA Regional Division Directors, EPA indicated that the ''approval criteria in the April 13 memorandum * * * may not be sufficient to ensure compliance with all 'applicable requirements' established in the risk management program rule.'' By not requiring a review of the RMP for completeness or setting forth standard permit conditions that would assure compliance with part 68, the permitting authority's role in implementing section 112(r) relies mainly on the certification of submittal of the RMP by the source. Air permitting authorities would be unable to assure compliance with the requirements of part 68 as required unless another state or Federal implementing agency agrees to become the designated agency for that state and is willing to certify for the air permitting authority that the RMP is complete. Such a program may fall short of minimal title V statutory requirements of assuring compliance with all applicable requirements. The Agency requests comment on whether the permitting agency may be able to satisfy title V by certification by the implementing agency.

A second approach at the opposite end of the spectrum would require permits to address all the hazard assessment, prevention program, and emergency response program activities under part 68, in addition to the registration, RMP submission, program implementation and plan revision requirements. Each requirement in part 68 would be specified as a permit condition. For example, the permit would include a requirement for pre-startup safety reviews of all process changes or that accidental release mitigation equipment at the source (e.g., spray curtains) be tested monthly. Upon part 68 promulgation, all existing permits at part 70 sources would need to be reopened to add permit conditions relative to section 112(r). The permitting authority would need to examine carefully each RMP and risk management program at each permitted source to make sure it is complete and to craft the permit conditions specific to each source and then issue a new permit. Permitting authorities would be expected to perform periodic inspections of each permitted source to verify whether the risk management program was being implemented as described by the RMP, to examine program implementation to verify compliance with permit conditions, and to determine whether the RMP needed to be revised as a result of permit conditions or changes at the source.

This approach would be consistent with approaches for implementation of emission standards or other air toxics provisions under titles III and V of the Clean Air Act because it would consolidate the essential elements of the source's compliance requirements in the permit and would ensure the full involvement of the permitting authority in chemical accident prevention. It also would provide significant enforcement leverage through the permit and through inspections to ensure compliance with the source's risk management program and with the part 68 requirements.

This approach still does not call for the permitting authority to perform

audits or to examine the quality of the RMP or program, which EPA believes is the responsibility of the implementing agency. It does, however, impose considerable resource and expertise burden on the permitting authority. EPA does not believe it is appropriate to include risk management program elements as permit conditions since these elements will be highly source-specific and subject to change as the source develops and implements its program. The permit would need to be changed every time the program or plan changed. This approach appears to go well beyond the need for part 70 permits to assure compliance with applicable section 112(r) requirements and duplicates other local, state, and Federal efforts.

There may be alternatives to the two extremes described in this section and to the proposed approach. EPA requests comment on other alternatives. EPA also requests that if other approaches are offered, commenters address the advantages and disadvantages of the approach with respect to the parts 68 and 70 programs and to the overall chemical emergency prevention, preparedness, and response effort.

Implementation of Section 112(r) for All Sources

Congress intended a Federal-state partnership in implementing all of section 112, including section 112(r). The implementation envisioned by Congress for accident prevention focuses on coordination and sharing of accident prevention information among various state and local agencies within the same state. Implementation of section 112(r) means that the implementing agency takes responsibility for the compliance and enforcement of section 112(r) requirements. Further, section 112(r)(7)(B)(iii) indicates that EPA shall establish, by rule, an auditing system to review regularly and, if necessary, require revision in RMPs. Although permitting authorities are responsible for assuring part 70 source compliance with part 68 requirements, EPA believes that the implementing agency should take responsibility for RMP reviews and audits. Consequently, EPA believes the implementing agency must: (1) Receive part 68 registrations; (2) inspect sources for compliance, regulatory development, and enforcement; (3) receive, review, and periodically audit RMPs according to § 68.60; and (4) require revision of plans when necessary to ensure compliance with the requirements of part 68.

In the proposed rule, ''implementing agency'' was not defined. EPA is proposing to define implementing agency as the state or local agency that obtains delegation for an accidental release prevention program under subpart B of part 63 under section 112(l). The implementing agency could, but is not required to be the state or local air permitting authority. EPA encourages the permitting authority to assess its capabilities with respect to carrying out the duties of the implementing agency and, if appropriate, seek delegation for part 70 sources. If a state or local agency does not take delegation, EPA would assume the responsibility for implementation of section 112(r).

EPA is also proposing that implementing agencies develop their own scheme to prioritize RMP reviews, audits, and source inspections using criteria as proposed in § 68.60. EPA would not specify the number of inspections, reviews, or audits to be completed. Alternatively, EPA could require that an implementing agency review all RMPs within five years of submission, or that no less than all Tier 3 submissions be reviewed and audited within five years of submission, or that a certain percentage (for example, 1.5 percent of all plans or only those in certain tiers), be reviewed and audited within five years of submission. In addition, while paper reviews of the RMPs are important, it is critical that implementing agencies perform audits at facilities to examine and compare actual prevention practices at the source with information contained in the RMP. EPA recognizes that this effort can consume considerable resources and require particular expertise for implementing agencies. EPA plans to issue guidance for implementing agencies on review and audit criteria and to develop training for inspections, reviews, and audits. In addition, EPA would propose that implementing agencies make use of safety audits performed by sources, as required by OSHA PSM (29 CFR part 1910.119(o)) and proposed § 68.38, as part of this inspection process. The implementing agency can use this information not only to determine whether the source is making progress toward accident prevention, but also to offer assistance to sources. EPA requests comment on whether a minimum number of reviews and audits should be established and, if so, the minimum number, Tier and the basis for the minimum number and Tier, and the tools and training that should be developed to assist implementing agencies with audits at sources.

State and local involvement in the implementation of the section 112(r) requirements for all sources is critical to the success of the accident prevention program. In addition, air pollution control, worker safety, pollution prevention, and public safety goals can be achieved most effectively only through the direct involvement of state and local officials. EPA expects that SERCs, LEPCs, and other state and local emergency preparedness and response organizations will make full use of the chemical emergency prevention, preparedness, and response information in the RMP, regardless of which agency is implementing the section 112(r) requirements.

A streamlined and cohesive section 112(r) program will be best achieved if a state or local agency takes delegation to be the implementing agency for all section 112(r) sources. The use of tiered approaches to implement the 112(r) program would assist states by enabling them to focus their greatest accident prevention efforts on those sources that pose the greatest potential risk to the community. These approaches attempt to minimize the additional effort needed by states to cover all section 112(r) sources. Table 1 below shows the kinds of effort and expertise necessary for review and audit of RMPs. If a state or local organization has the resources and expertise and is willing to become an implementing agency for part 70 sources, EPA encourages it to consider becoming an implementing agency for all 112(r) sources, since the organization would have had the experience of dealing with the most complex RMPs, reviews, and audits of part 70 sources. EPA believes that divided implementation of 112(r) for part 70 sources and non-part 70 sources, between EPA and state and local agencies, could cause considerable confusion for the regulated community and lead to ineffective and uncoordinated chemical accident prevention. Implementation for all sources by one state organization could serve to bring the state and local coordination needed to achieve broad environmental, worker, and public safety goals.

TABLE 1.—COSTS TO IMPLEMENTING AGENCY

| Risk management program and plan activity | National annualized implementation costs ($mm) | | | | | |
|---|---|---|---|---|---|---|
| | Until 1999 | | 1999 to 2004 | | Yearly after 2004 | |
| | Approach 1 | Proposed rule | Approach 1 | Proposed rule | Approach 1 | Proposed rule |
| Program management | 1.3 | 1.3 | 1.8 | 1.8 | 1.8 | 1.8 |
| Auditor training | 0.3 | 0.3 | | | | |
| Technical help for sources | 0.5 | 0.5 | 0.3 | 0.3 | 0.08 | 0.08 |
| Workshops/training | 0.4 | 0.4 | 0.15 | 0.15 | | |
| RMP filing | | | 0.06 | 0.06 | 0.05 | 0.05 |
| Initial review of plan | | | 0.5 | 1.1 | 0.5 | 1 |
| Audits | | | 0.6 | 1.9 | 0.5 | 1.6 |
| Totals | 2.6 | 2.6 | 3.5 | 5.4 | 2.6 | 4.2 |

[Note that the columns do not add to the total because EPA-only activities including registration and regional oversight are not included in the table. All costs are annualized and discounted at a 4 percent rate. Approach 1 refers to the Tiering section. It assumes accident history is used to segregate sources into tiers. The initial review and audits of Tier 2 sources should take 1 hour and 2 hours, respectively and that all Tier 2 manufacturers would be audited every 10 years. Non-manufacturers would be audited every 10 or 20 years. These figures are likely to be upper-bound estimates; actual costs will vary based on the degree of selective program oversight necessary and cost savings as experience is gained.]

State or local organizations that want to become an implementing agency for section 112(r) can seek delegation under section 112(l). Section 112(l) contains the processes for (1) formally transferring implementation and enforcement responsibility from EPA to a state or local agency; (2) transferring responsibility for ensuring source compliance with section 112 requirements to an agency other than the permitting authority; and (3) allowing states to implement and enforce their own toxics requirements in lieu of Federally promulgated section 112 requirements. EPA's implementing regulations for section 112(l) outline several mechanisms for approval of state and local air toxics programs and for delegation of federal authorities to state or local agencies (58 FR 62262; November 26, 1993). Permitting authorities with approved part 70 programs are well equipped to seek delegation as the implementing agency for part 70 sources, since the state's permit program contains adequate authorities, adequate resources for implementation, and an expeditious compliance schedule as required under section 112(l)(5).

Each state has the flexibility to place the program in an appropriate agency, including with the air permitting agency if it so desires. A state may want to consolidate both its occupational safety and process safety management programs in its worker safety agency. Some states may wish to have an agency that is currently a member of the SERC, but not the air permitting authority, serve as the implementing agency, provided it can meet the approval criteria of section 112(l) and coordinate its activities with other affected state/local programs. In states where the SERC itself is a state agency, the state may want the SERC to be the implementing agency. EPA is requesting that states that provide comments on this notice indicate if they plan to implement the program, and if so, whether an agency that currently is a member of the SERC, or if the SERC itself will take responsibility.

EPA recognizes that states have concerns about resources, availability of expertise, and possible liability associated with accidental release prevention. EPA plans to develop guidance and training and provide assistance to states to help build expertise and to illustrate how effective programs can be developed and implemented. EPA seeks input on the types of training and technical assistance states and local agencies will need to promote efficient and effective implementation of section 112(r) regulations for all sources. The model RMPs being developed for specific industry sectors and technical guidance to help sources comply with the accidental release prevention requirements also are designed to minimize the burden on state and local programs. EPA seeks input on the types of guidance in support of program implementation that would be most useful to states.

EPA agrees that Congress did not provide funding for implementation of non-part 70 sources. EPA is exploring the possible expansion of CAA section 105 grants to fund state programs that will cover non-part 70 112(r) sources. State and local organizations may also wish to consider opportunities for collecting fees specifically for section 112(r) activities, similar to fee-based systems used for funding EPCRA activities. Some states have established ''polluter-pays'' type fee systems that are based on multiples of the threshold quantity of extremely hazardous substances or section 112(r)(3) regulated substances handled at the source. Sources could be required to submit a fee to the implementing agency with their registration or with their RMP. EPA seeks comment on these approaches, particularly with respect to the experience of states that have tried or are developing user fee systems.

Finally, states have raised concerns about possible liability associated with the section 112(r) program. Section 112(r), unlike other CAA requirements that deal primarily with chronic hazards, involves acute hazards with the potential for catastrophic accidents resulting in immediate deaths and injuries. Generally, the liability of state and local entities for their actions in handling section 112(r) information would be controlled by state law concerning governmental immunity. As the CAA and the legislative history of section 112(r) make clear, Congress did not intend to create new liability for governmental entities when it enacted the accident prevention provisions.

Specific language in section 112(r)(1) was included to provide liability protection to governments and to avoid arguments from industry that the filing of plans with emergency planners somehow immunized a company from liability. Section 112(r)(1) states that, ''Nothing in [section 112(r)] shall be interpreted, construed, implied, or applied to create any liability or basis for compensation for bodily injury or any other injury or property damages to any person which may result from accidental release of such substances.'' The Environment and Public Works Committee inserted the above-quoted provision into the Senate's version of the CAA Amendments explicitly because of EPA's concern that the general duty clause and other portions of the accident prevention provisions would create some governmental

liability in the event of an accidental release. (S. Rep. No. 228, 101st Cong., 1st sess., at 210 (1989).) EPA expressed concern that liability in the event of an accident would shift to the government if a source identified a potential event in a hazard assessment, and the Agency failed to require the source to remove or reduce the hazard. (*Id.*) Another fear was that an owner or operator would argue that the Agency's failure to require a hazard to be addressed would be a defense for a source in a liability suit for injuries or damages caused to a third party. (*Id.*) To prevent either result, the Environment and Public Works Committee included in the precursor of section 112(r)(1) virtually identical language to that quoted above. (*Id.*)

State and local agencies are encouraged to work with their attorneys general to determine the extent of their sovereign immunity under state law. Under common law or statute, nearly all states have retained some immunity from tort suit. One common law theory of sovereign immunity that may apply in several states would be the immunity that extends to purely governmental activities, as distinguished from proprietary activities. Emergency prevention and response activities would be examples of traditional governmental activities under this theory. Another immunity theory that may apply provides immunity for discretionary activities (activities that involve judgment). Other states may have enacted specific legislation that prevents governments from being sued for activities connected to emergency response. If a state, in the judgment of its attorney general, lacks sufficient sovereign immunity to ensure state and local agencies will not be subject to liability for bodily injury or property damage in the event of an accidental release, then EPA encourages the state to enact legislation specifically providing immunity for state and local agencies carrying out functions under section 112(r). Of course, even with sovereign immunity from tort suits, EPA, states, and local entities may remain subject to FOIA suits, penalties for violation of trade secret protections under section 114(c), or mandatory duty suits (such as EPA's failure to promulgate regulations or act on listing petitions) that may allow for attorney's fees.

## III. Required Analyses

### *A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735; October 4, 1993), EPA must determine whether the regulatory action is ''significant,'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal government or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under the terms of the Executive Order 12866, it has been determined that this rule is a ''significant regulatory action.''

EPA prepared a draft regulatory impact analysis for the proposed list rule and an addendum to the analysis for the proposed risk management program rule. EPA has prepared a revised economic impact analysis (EIA) for the risk management program rule to reflect the final list rule, the impacts of the options being considered in this notice, and comments on the draft regulatory impact analysis. The revised EIA is available in the docket.

In developing its supplemental notice, EPA considered creating three tiers for risk management program requirements described above. EPA analyzed the three options for assigning sources to the tiers, approaches 1 and 2 described in Section IIA above and the application of the proposed rule to all sources as approach 3. Total annual costs and benefits for each approach are presented in Table 2. This table does not include projected costs or benefits associated with three issues upon which EPA is taking comment in this notice: public participation, accident reporting, and inherently safer approaches because EPA's preferred approaches on these issues would impose no additional requirements on sources.

TABLE 2.—TOTAL ANNUALIZED COSTS AND BENEFITS

| Approach | Number of sources | Annual cost of program | Annual benefits of programs |
|---|---|---|---|
| 1 | 49,200 (Tier 1)<br>72,100 (Tier 2).<br>1,300 (Tier 3). | $104 million | $121.5 million. |
| 2 | 49,200 (Tier 1)<br>57,100 (Tier 2).<br>16,300 (Tier 3). | $339 million | $175 million. |
| 3 | 122,600 (Tier 3) | $696 million | $299 million |

Based on the final list and thresholds, EPA estimates that approximately 122,600 sources would be affected by the proposed rule. The primary cost for Tier 2 was assumed to be the RMP. Tier 3 costs are strongly influenced by the tiering assumptions and by whether sources are expected to be covered by the OSHA PSM standard. The analysis assumed that a source in compliance with the OSHA PSM standard for a process would incur no additional costs to comply with many elements of EPA's prevention program. In addition, for some prevention program elements (e.g., training), some sources were assumed to be in compliance because of current activities; the only additional cost for these sources was documentation for the element. Large chemical companies and all refineries were assumed to be complying with industry standards that are the equivalent of the prevention program. These sources were assumed to bear no additional costs for some elements of the prevention program (for processes not covered by OSHA). Because EPA will require sources to submit, in the RMP, information on their hazards and steps being taken to reduce risks, EPA expects that sources and processes currently implementing PSM under OSHA or industry standards will take additional steps to ensure that their PSM programs are effective. Specifically, the EIA assumed that

sources covered by other programs would provide more program oversight, would conduct more training and refresher training, and carry out more maintenance activities; sources were also assumed to implement more capital improvements. EPA notes that because of a lack of data, the EIA made a number of assumptions on which the cost estimates are based. For example, the analysis assumed the number of listed toxic substances at large chemical companies ranged from 4 to 12; the analysis also assumed that the number of covered processes was equal to the number of substances. EPA seeks comments and any data commenters may be able to provide on whether these assumptions are reasonable.

The draft RIA prepared for the proposed list rule based its benefits calculations on the assumption that manufacturers and certain other sources would have two significant releases per year. Many commenters stated that this assumption was not justified, based on existing accident data. Consequently, the benefits analysis has been revised to reflect actual accident data and is based on EPA databases, other accident databases, and searches of newspaper reports. Based on these data, the annualized cost of all U.S. accidents involving listed toxic substances was estimated at $245 million; the annualized cost of all accidents involving listed flammables was estimated at $767 million. The costs of accidents includes deaths, injuries, evacuations, property damage, lost business, environmental damage, and litigation.

Benefits attributable to the risk management program rule are affected by two factors: The extent to which other, similar rules already provide the benefit and the expected effectiveness of these rules when fully implemented. Most of the processes covered by EPA's rule are also covered by the OSHA PSM rule. When OSHA adopted the PSM standard, it estimated, based on anecdotal evidence, that by 1997 the standard would prevent 80 percent of the accidents at OSHA-covered sources. EPA believes that the risk management program rule will increase compliance with the OSHA standard and cause many OSHA- and EPA-affected sources to achieve a higher level of safety because of the public availability of the RMP and the reviews and audits that will be conducted by implementing agencies. The RMP submission will provide implementing agency officials with a better basis for identifying and targeting problem sources; EPA expects that the RMP information will also benefit state and Federal OSHA inspectors.

Based on an industry study, the analysis estimated that the effectiveness of the EPA standard in accident reduction would be 50 percent. Accident reduction from the EPA standard applies to processes not covered by the OSHA standard and to the 20 percent of accidents not prevented by the OSHA standard. EPA estimates that the annual, quantifiable benefits of the rule will range from $121.5 million to $299 million, depending on the approach.

The quantifiable benefits are probably understated. Although the EIA assigns a value to the likelihood of a Bhopal-scale accident occurring in the U.S. in any single year, the analysis did not attempt to assign values to other catastrophic accidents that have occurred elsewhere in the world, but have not as yet occurred in the U.S. For example, the 1984 explosion at a LPG gas terminal in Mexico City killed more than 400 people offsite; an explosion in Flixborough, England, damaged more than 1,000 buildings offsite. Similar sources exist in the U.S. and have the potential to have catastrophic accidents with offsite impacts. Because of the difficulty of assigning probabilities and values to such incidents, the EIA does not include them among the quantifiable benefits, but these sources are covered by the proposed rule, and compliance with the rule will reduce the likelihood of such catastrophic accidents.

Other, intangible benefits are also attributable to the rule. For example, the definition of offsite populations, using Census data, will assist both sources and the public to identify areas where environmental justice concerns need to be addressed. The process hazard analysis is likely to identify areas where pollution prevention steps can be implemented, which may produce cost savings and reduce potential health effects offsite.

Most importantly, the information available in the RMP will have an intrinsic value to the public. EPA has not attempted to measure the value of this information, but experience with EPCRA Toxic Release Inventory (TRI) data indicates that such information creates many benefits. The simple requirement to make information public under TRI has stimulated industry to take steps to reduce emissions to avoid public concern and assure the local community that the source is a good neighbor. The public benefits from the reduced risk; the source benefits from better relations with the community. The latter can have direct, economic benefits to the source. Industry commenters on the rule noted that when the public distrusts a source, the public has resisted permit changes or zoning variances that the source needs to improve operations. Better information and the public-industry dialogue that follows can make it easier for sources to gain public support for needed changes. Government agencies and public interest groups can target their efforts at those sources that pose the greatest potential risk, rather than assuming that all sources pose a high level of risk or misdirecting their efforts toward sources that have effective safety programs.

### *B. Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act of 1980, Federal agencies must evaluate the effects of the rule on small entities and examine alternatives that may reduce the effects. EPA has prepared an analysis of the effects on small entities, available as Chapter 8 of the EIA. EPA believes that the rule as proposed in 1993 would create a severe, adverse effect on small manufacturers. For the smallest chemical manufacturers, the initial costs of the initial proposed rule could equal their annual net income; for chemical companies with 20 to 99 employees, the initial cost of the proposed rule would approach their annual net incomes. The initial proposed rule imposes lower costs on non-manufacturers and, therefore, is less likely to create an adverse impact on them. The tiering approach considered in this notice would reduce the impact on small businesses significantly. Under the tiering approach, the impact on small business would be small. The tiering approach would also substantially reduce the impact on small communities.

### *C. Enhancing the Intergovernmental Partnership*

The Clean Air Act requires EPA to develop chemical accident prevention regulations under section 112(r)(7) that include release prevention and response provisions, including RMPs. As discussed above, Congress intended the states to play a key role in implementing the rule. Both state and local agencies are mandated to receive the RMPs. This interrelationship of Federal, state, and local agencies is a continuation of the philosophy developed under EPCRA, where each level of government is seen as a stakeholder with important roles to play. To consult in a regular and meaningful way with state, local, and tribal officials in the development of the risk management program rule, EPA has met with state and local officials. Before

the proposed rule was drafted, EPA conducted focus groups with state and local officials in three states that had risk management program laws. EPA invited these states and several others to attend a two-day seminar to elicit further information. EPA has held meetings with states several times during the rule-making process, working through its Regions and through associations of state officials likely to be involved in implementing the rule. In addition, a large number of state and local agencies attended the four public hearings and submitted comments on the proposed rule. During the development of the implementation and integration provisions (§ 68.58), EPA consulted with state and local air and emergency planning agencies. EPA will seek further input from states during development of the final rule.

*D. Paperwork Reduction Act*

The information collection requirements in this notice have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et sec*. An Information Collection Request document has been prepared by EPA (EPA No. 1656.02) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA, 401 M Street, SW (Mail Code 2136), Washington, DC 20460 or by calling (202) 260–2740.

This collection of information has an estimated reporting burden averaging 3 to 4 hours per response for Tier 1, 16 to 30 hours per response for Tier 2, and for Tier 3 10 to 88 hours per response for non-chemical manufacturers and 392 to 3720 hours per response for chemical manufacturers. There is no annual recordkeeping burden for Tiers 1 and 2; in Tier 3 there is an estimated annual recordkeeping burden per respondent averaging 11 hours (for the non-chemical industry) to 1000 hours (for the chemical industry). These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA, 401 M Street, SW (Mail Code 2136), Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' The final Rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

**List of Subjects in 40 CFR Part 68**

Environmental protection, Chemicals, Hazardous substances, Intergovernmental relations.

Dated: February 28, 1995.

**Carol M. Browner,**

*Administrator.*

For the reasons set out in the preamble, the proposal published on October 20, 1993 (58 FR 54190) is amended as set forth below.

## PART 68—[AMENDED]

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

**Authority:** 42 U.S.C. 7412(r), 7601.

2. Section 68.3 as proposed is now amended by revising the introductory text, adding five definitions and revising one proposed definition ''Worst case release'' to read as follows:

### § 68.3 Definitions.

As used in this part, all terms not defined shall have the meaning given to them by the Clean Air Act (42 U.S.C. 7401 *et seq.*). For purposes of § 68.58 of this part, terms such as ''permitting authority,'' ''applicable requirement'' and ''source'' have the same meaning given to them in part 70 of this chapter unless otherwise defined in this section.

* * * * *

*Covered process* means a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.

* * * * *

*Designated agency* means the state or local agency designated by the air permitting authority as the agency responsible for the review of an RMP for completeness.

*Full-time employee* means 2,000 hours per year of full-time equivalent employment. A source would calculate the number of full-time employees by totaling the hours worked during the calendar year by all employees, including contract employees, and dividing that total by 2,000 hours.

*Implementing agency* means the state or local agency that obtains delegation for an accidental release prevention program under section 112(l) of CAA which is subpart E of part 63. The implementing agency may, but is not required to be, the state or local air permitting agency. If a state or local agency does not take delegation, EPA will be the implementing agency for that state.

*Mitigation* means activities, technologies or equipment that are designed to capture or control substances after they are released to the environment or upon loss of containment. Passive mitigation means equipment, devices or technologies that function without human, mechanical or other energy input.

* * * * *

*Worst case release* means the release of the largest quantity of a regulated substance resulting from a vessel or process line failure.

3. Section 68.10 as proposed is revised to read as follows:

### § 68.10 Applicability.

(a) *Tier 1.* The owner or operator of a stationary source with a covered process that meets the eligibility criteria of § 68.13 shall comply with §§ 68.12—68.13 no later than [three years from the date of final rule publication].

Alternative 1 for paragraphs (b), (c) and (d):

(b) *Tier 2.* Except as provided in paragraphs (a), (c), and (d) of this section, the owner or operator of a stationary source with a covered process shall comply with §§ 68.12 and 68.14 no later than [three years after the date of final rule publication].

(c) *Tier 3.* Except as provided in paragraph (a) of this section, the owner or operator of a stationary source with 100 or more full-time employees shall comply with §§ 68.12 and 68.15 through 68.55 no later than [three years from the date of final rule publication] for any covered process in Standard Industrial Classification Code 2611, 2812, 2819, 2821, 2869, 2873, 2879, or 2911. For all other covered processes at the stationary source, the owner or operator shall comply with §§ 68.12 and 68.14.

(d) *Deferred Tier 3.* Except as provided in paragraph (a) of this section, the owner or operator of a stationary source that has 20 or more full-time employees and a covered process in Standard Industrial Classification Code 2812, 2819, 2869, 2873, or 2911 shall:

(1) Comply with §§ 68.12 and 68.14 no later than [three years from the date of final rule publication]; and

(2) Comply with §§ 68.12 and 68.15 through 68.55 no later than [eight years from the date of final rule publication].

Alternative 2 for paragraphs (b) and (c):

(b) *Tier 2.* Except as provided in paragraphs (a) and (c) of this section, the owner or operator of a stationary source with a covered process shall comply with §§ 68.12 and 68.14 no later than [three years after the date of final rule publication].

(c) *Tier 3.* Except as provided in paragraph (a) of this section, the owner or operator of a stationary source with

a covered process shall comply with §§ 68.12 and 68.15 through 68.55 no later than [three years from the date of final rule publication] if the stationary source has 100 or more full-time employees.

4. Section 68.13 is proposed to be added to subpart B to read as follows:

**§ 68.13 No impact sources (Tier 1).**

(a) *Sources that exceed a threshold quantity only for flammable or explosive regulated substances.*

(1) *Eligibility.* The owner or operator of a stationary source that is subject to this part and that does not exceed the threshold quantity for a toxic substance shall comply with paragraph (a)(2) of this section if the source has not had significant accidental release for 5 years and:

(i) For a source that exceeds the threshold for an explosive regulated substance, the source is subject to 27 CFR part 55 or 30 CFR parts 56, 57, or 77 and the distance from the process to a public or environmental impact is no closer than the distance to inhabited buildings provided in the American Table of Distances (27 CFR 55.218) for the quantity of explosives in the process; or

(ii) For a source that exceeds the threshold for a flammable regulated substance, the distance from the point of release under the worst case release scenario to a public or environmental impact is greater than the distance as calculated using the following formula for the maximum quantity present in the process:

$$\text{Distance (meters)} = 0.15 \times (0.1 \times \text{mass} \times \text{hc})^{1/3}$$

where mass is the quantity of flammable substance in kilograms, and hc is the heat of combustion in Joules per kilogram.

(2) *Program and plan requirements.* (i) The owner or operator shall place a sign at all normal access routes that warns the public and emergency responders concerning the hazard presented by the regulated substance at the site and provides an emergency contact telephone number. Such sign shall be in English and any other language commonly spoken as a primary language in the area.

(ii) The owner or operator shall submit the following as a risk management plan to the implementing agency, the State Emergency Response Commission (if the implementing agency is not a member of such Commission), the Local Emergency Planning Committee with jurisdiction for the area where the source is located:

(A) A copy of the registration required by § 68.12 (this copy may be before the certification required by § 68.12(b)(6));

(B) The following statement:

Based on the criteria in 40 CFR 68.13(a)(1), the worst case accidental release for the source described on the attached form (registration) presents no potential for public or environmental impact given the nature of the process and the chemicals stored at the source. For the past 5 years, this source has not had a significant accidental release, as defined in 40 CFR 68.3. No additional measures are necessary to prevent public and environmental impacts from accidental releases. In the event of a fire or a release of the regulated substance indicated on the registration, entry within [distance for given quantity of regulated substance under American Table of Distances or paragraph (a)(1)(ii) of this section] of the source may pose a danger to public emergency responders. Therefore, public emergency responders should not enter this area except as arranged with the contact person indicated on the registration. The undersigned certifies that, to the best of my knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete. [Signature].

(iii) The owner or operator shall maintain for five years documentation of the determination of eligibility under paragraph (a)(1) of this section and a copy of the risk management plan under paragraph (a)(2)(ii) of this section.

(b) *Sources that exceed a threshold quantity for toxic regulated substances.*

(1) *Eligibility.* The owner or operator of a stationary source that exceeds the threshold quantity for a toxic substance shall comply with paragraph (b)(2) of this section if:

(i) The stationary source has not had a significant accidental release in the last five years,

(ii) The stationary source can demonstrate the lookup table distance for a worst-case release is less than the distance to a public or environmental receptor; and

(iii) The emergency response plan under 42 U.S.C. 11003 addresses appropriate response to an accidental release at the source.

(2) *Plan and program requirements.* (i) The owner or operator of a stationary source that meets the eligibility criteria of paragraph (b)(1) of this section shall submit the following as a risk management plan to the implementing agency, the State Emergency Response Commission (if the implementing agency is not a member of such Commission), and the Local Emergency Planning Committee with jurisdiction for the area where the source is located:

(A) A copy of the registration required by § 68.12 (this copy may be before the certification required by § 68.12(b)(6));

(B) The following statement:

Based on the criteria in 40 CFR 68.13(b)(1), the worst case accidental release for the source described on the attached form (registration) presents no potential for public or environmental impact within _____ kilometers of the source given the nature of the process and the chemicals stored at the source. For the past 5 years, this source has not had a significant accidental release, as defined in 40 CFR 68.3. No additional measures are necessary to prevent public and environmental impacts from accidental releases. In the event of an accidental release of the regulated substance indicated on the registration, emergency response should be conducted according to the emergency response plan under 42 U.S.C. 11003, which is available at [location]. Therefore, public emergency responders should not enter this area except as provided under that plan. The undersigned certifies that, to the best of my knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete. [Signature].

and

(ii) The owner or operator shall maintain for five years documentation of the determination of eligibility under paragraph (b)(1) of this section and a copy of the risk management plan under paragraph (b)(2)(i) of this section.

5. Section 68.14 is proposed to be added to subpart B to read as follows:

**§ 68.14 Streamlined risk management program (Tier 2).**

(a) The owner or operator of a stationary source eligible for this part shall comply with § 68.15.

(b) The owner or operator of a stationary source shall establish a prevention program which includes safety precautions and maintenance, monitoring and employee training measures to be used at the source to prevent accidental releases. The prevention program shall identify other federal accident prevention requirements to which the source is subject, including national voluntary standards and measures required by 42 U.S.C. 7412(r)(1).

(c) The owner or operator of a stationary source shall prepare an emergency response program which documents specific actions to be taken in an emergency response to an accidental release, including:

(1) Procedures for informing the public and local entities about accidental releases;

(2) Procedures to be used on site to respond to an accidental release; and

(3) A description of the employee training measures used to educate employees regarding emergency situations.

(d) The owner or operator of a stationary source shall submit a risk management plan summarizing paragraphs (a) through (c) of this section to the implementing agency, the State Emergency Response Commission (if the implementing agency is not a member of such Commission), and the Local Emergency Planning Committee with jurisdiction for the area where the source is located. The owner or operator shall retain a copy of the risk management plan for 5 years.

6. Section 68.58 is proposed to be added to subpart B to read as follows:

**§ 68.58 Permit content and air permitting authority requirements.**

(a) The requirements in this section apply to sources subject to both part 68 and part 70 of this Chapter. Each part 70 permit shall contain conditions requiring the following provisions, for any activity and/or emission unit subject to this part:

(1) By the deadlines set out in this part, the source shall register and submit an RMP or revised plan and shall certify upon submission that such plan is accurate and complete. Submission of the plan by deadlines required under this part shall satisfy the reporting requirements of 40 CFR 70.6(a)(3)(ii)(A).

(2) The source shall submit any additional information requested by the permitting authority or other designated state or local agency necessary to determine completeness of the RMP.

(3) The source shall annually certify compliance with, and implementation of, risk management program requirements described in this part and as described by the submitted RMP or revised plan.

(4) For part 70 permits that are issued prior to the deadline required for registering and submitting the RMP and do not contain permit conditions meeting the provisions of paragraphs (a)(1) through (3) of this section, the source no later than *[3 years from the effective date of the final rule]* shall submit an application for a permit revision consistent with § 70.7 of this chapter to establish conditions consistent with these required in paragraphs (a)(1) through (3) of this section.

(5) For part 70 permits issued on or after the deadline required for registering and submitting the RMP, the source shall register and submit any plan required by this part no later than *[3 years from the effective date of the final rule].*

(6) For new emissions units or activities at previously permitted part 70 sources which become subject to this part after *[the effective date of the final rule],* the source shall submit an application for permit revision consistent with the provisions of § 70.7 of this chapter upon startup of such units and/or activities or no later than *[3 years from the effective date of the final rule],* whichever is later.

(7) If a previously permitted part 70 source has not submitted an RMP as required, then the source shall provide:

(i) A compliance plan, including a compliance schedule for the submittal of the required plan; and

(ii) An application for a permit revision to establish permit conditions meeting paragraphs (a) (1) through (7) of this section unless such conditions are already contained within the part 70 permit.

(b) The permitting authority must, at a minimum, perform the following tasks to meet § 70.4(b)(3)(i) of this chapter with respect to part 70 sources subject to section 112(r) of CAA and this part.

(1) Verify that an RMP or a revised plan is submitted when required by this part, and that it is complete, i.e., it contains the elements required under §§ 68.50, 68.13, or 68.14;

(2) Verify that the source has submitted an annual certification that it is properly implementing a risk management program as required by this part and as described by the applicable RMP;

(3) Take enforcement action (including penalties) on sources that fail to submit a complete plan or a revised plan, an annual certification, or accidental release report as required by this part;

(4) Incorporate and enforce permit conditions that specify a compliance schedule for submittal of a complete RMP, for permits issued prior to reporting deadlines of this part or if a part 70 source subject to this part fails to submit a complete plan as required.

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