



January 13, 2020

Mr. Thomas Goonan
General Counsel
Chemical Safety and Hazard Investigation Board
1750 Pennsylvania Avenue, NW, Suite 910
Washington, D.C. 20006

**RE: ACCIDENTAL RELEASE REPORTING NOTICE OF PROPOSED
RULEMAKING; DOCKET # CSB-2019-0004**

Dear Mr. Goonan:

I am submitting comments on behalf of the Agricultural Retailers Association (ARA) and its member companies regarding the Chemical Safety and Hazard Investigation Board's (CSB) proposed rule entitled "Accidental Release Reporting". The CSB indicates the proposed rule's stated purpose is to ensure the agency receives rapid, accurate reports of any accidental release that meets the established statutory criteria.

State of Interest

ARA is a not-for-profit trade association that represents America's agricultural retailers and distributors. ARA members provide goods and services to farmers and ranchers which include: fertilizer, crop protection chemicals, seed, crop scouting, soil testing, custom application of pesticides and fertilizers, and development of comprehensive nutrient management plans. Retail and distribution facilities are scattered throughout all 50 states and range in size from small family-held businesses or farmer cooperatives to large companies with multiple outlets. ARA members are subject to accidental release and spill reporting requirements mandated by federal law and regulations, including any release "resulting in a fatality, serious injury or substantial property damages."

In 2014, ARA and The Fertilizer Institute (TFI) founded ResponsibleAg (RA) Inc., a non-profit organization to promote the public welfare by assisting agribusinesses as they seek to comply with federal environmental, health, safety and security regulations related to the safe handling and storage of fertilizer and agricultural input supplies. RA provides participating businesses a regulatory compliance assessment relating to the safe storage and handling of fertilizers and agricultural input supplies, recommendations for corrective action where needed and a robust suite of resources to assist in this regard. RA's Technical Committee, comprised of industry regulatory professionals, has developed an assessment checklist containing more than 300 questions and is used by auditors credentialed by the RA Certification Program to assess the level of compliance with each participating facility. This program helps participating members ensure they are compliant with environmental, health, safety and security regulations to keep employees, customers and our communities safe.

Comments

ARA supports the mission of the CSB and fully recognizes the importance of providing timely and accurate notice of a chemical release with significant offsite consequences. CSB was created under the Clean Air Act Amendments of 1990 with the purpose of 1) investigating and reporting on the cause or probable cause of any accidental chemical releases from stationary sources resulting in a fatality, serious injury, or substantial property damages; 2) make recommendations to reduce the likelihood or consequences of accidental chemical releases and propose corrective measures; and 3) establish regulations for reporting accidental releases.

CSB states that this proposed rule is designed to satisfy their statutory requirement. ARA believes the CSB should continue to rely on existing reporting systems such as the National Response Center (NRC) to meet the reporting obligations and not create any new duplicative requirements or obligations for covered facilities. Congress specifically stated under 42 USCS §7412 (r)(6)(C)(iii) that establishing by regulation requirements for reporting accidental releases “to the National Response Center, in lieu of the Board directly, shall satisfy such regulations. The National Response Center shall promptly notify the Board of any releases which are within the Board’s jurisdiction.” Congress also required the CSB to “coordinate its activities with investigations and studies conducted by other agencies of the United States having responsibility to protect public health and safety.”

The CSB has failed to adequately demonstrate that the National Response Center or existing required federal reporting programs such as the Emergency Planning and Community Right-to-Know Act (EPCRA), Risk Management Plan (RMP) program and other federal mandatory reporting programs are not working. If the CSB believes it required more information than is what is contained in National Response Center reports to meet their stated mission, ARA agrees with The Fertilizer Institute’s (TFI) recommendation that federal inter-agency and federal / state information and notification procedures need to be improved and enhanced through updated memorandums of understanding between CSB and EPA, OSHA, DHS, ATF, and any other relevant federal agencies.

ARA realizes the CSB is under Court order to issue a rule no later than February 5, 2020. CSB can easily satisfy the federal court mandate by utilizing the National Response Center reporting system and follow the intent of Congress. The creation of a new reporting system and database is unnecessary, will waste limited financial resources, and contrary with the agency’s mission to work with other federal agencies in a coordinated way.

Conclusion

Thank you for your review and consideration of ARA’s comments! Please contact me by phone at 202-595-1699 or email at richard@aradc.org if you have any questions or would like to discuss in further detail. ARA looks forward to continuing to work with CSB on ways to promote industry compliance with federal regulations through programs like RA and improve accidental release reporting where appropriate and necessary.

Sincerely,



Richard D. Gupton
Senior Vice President, Public Policy & Counsel