DECEMBER 17, 2019 | OSHA RULEMAKINGS & STANDARDS

Coalition to Comment on CSB's Proposed Accidental Release Reporting Rule

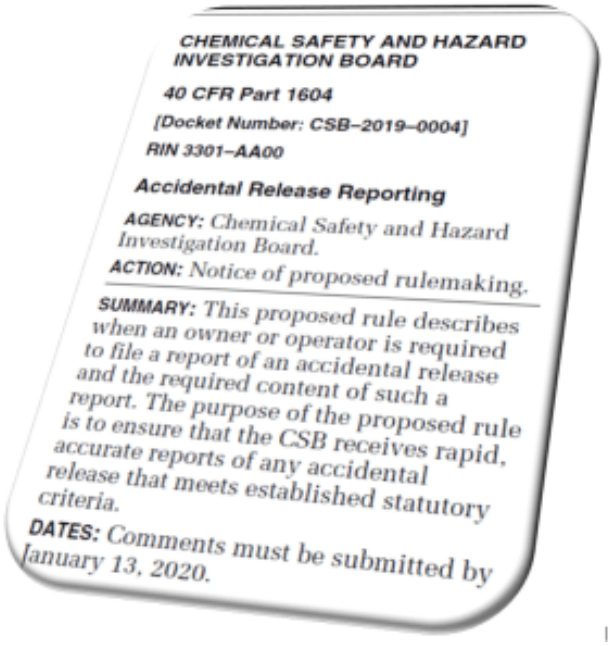
Last week, the CSB issued a Notice of Proposed Rulemaking for its accidental release reporting rule, which establishes the criteria for when facility owners and operators are required to report to CSB accidental chemical release incidents and what must be included in those reports. Here is a link to an article we posted that summarizes the CSB's proposal and background about the situation. If promulgated, the rule would require owners and operators of stationary sources to report to the CSB ***within four hours*** any accidental chemical releases that results in a:

- Fatality;
- Serious injury; or
- Substantial property damage.

A release reporting rule was mandated by the CSB's enabling statute (decades ago), but the Agency had never issued such a rule. In February of this year, however, a federal court ordered the CSB to promulgate a final reporting rule within 12 months of the court's ruling—by mid-February 2020. With CSB waiting until the 11th hour to publish this NPRM, interested stakeholders have only a very small window to make sure their concerns about the proposed rule are heard. **Comments are due to the CSB by January 13, 2020,** and because the deadline to promulgate the rule is court-mandated, there likely will be no extension of the comment period.

Although the proposal indicated that CSB contemplated some of the duplicative effort that a separate CSB reporting rule would require, the proposed rule does not come close to addressing employers' legitimate

concerns about the burden this reporting requirement will place on employers at a time when their attention should be focused on emergency response. To compound the problem, the scope of reportable incidents and criteria for reportability aligns neither with CSB's investigative jurisdiction nor with other agencies' already-existing reporting requirements, and, as formulated, could create disincentives for robust internal reporting of incidents.



CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Part 1604

[Docket Number: CSB–2019–0004]

RIN 3301–AA00

Accidental Release Reporting

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule describes when an owner or operator is required to file a report of an accidental release and the required content of such a report. The purpose of the proposed rule is to ensure that the CSB receives rapid, accurate reports of any accidental release that meets established statutory criteria.

DATES: Comments must be submitted by January 13, 2020.

Conn Maciel Carey's national OSHA • Workplace Safety Practice Group is coordinating an ad hoc coalition of employers to prepare a set of comments to submit to the CSB. Our interest is to assemble a group of cross-sector organizations to support the preparation of comprehensive comments to address the CSB's proposed rule, and to raise to the CSB our concerns with the expansiveness of its proposed definitions, how the rule should better align with existing reporting regulations, the impact that the rule might have on employers' internal reporting policies, and the implications of this enforceable rule on CSB's unique position as a non-enforcement agency, among other concerns.

Assuming many of our industry friends are interested in supporting this effort, which we expect, the cost per organization should be less than $1,000.

In light of the **January 13th** comment deadline, please contact Eric J. Conn (the Chair of Conn Maciel Carey's OSHA practice) right away if you are interested in joining the coalition.