

UH, OH... HERE COMES MORE REGULATIONS THAT WE NEED TO WORRY ABOUT.



In the last issue of the Breeze, I began the process of describing the changes to 40 CFR Part 68 and providing possible means for achieving compliance. This month's article will continue that process.

■ By Bill Lape, SCS Engineers

EMERGENCY RESPONSE

RULE CHANGES TO 40 CFR 68.90 (EPA 40CFR68.90, 2024)

Several changes have been made to the requirements for identifying as a “non-responding” source. These explicitly list items that were typically inferred as being required previously.

The first adds text to the requirement that appropriate mechanisms are in place to notify emergency responders when there is a need for a response, including providing timely data and information detailing the current understanding and

best estimates of the nature of the accidental release. The owner or operator may satisfy the requirement in this paragraph (b)(3) through notification mechanisms designed to meet other Federal, State, or local notification requirements, provided the notification meets the requirements of this paragraph (b)(3), as appropriate;

The second adds an additional requirement to be considered as “non-responding.” 40 CFR 68.90(b)(6) states: “The owner or operator maintains and implements, as necessary, procedures for informing the public and the appropriate Federal, State,

and local emergency response agencies about accidental releases and partnering with these response agencies to ensure that a community notification system is in place to warn the public within the area potentially threatened by the accidental release. Documentation of the partnership shall be maintained in accordance with § 68.93(c)."

STRATEGIES FOR COMPLIANCE

To comply with these changes, the facility's Emergency Action Plan (EAP) needs to be reviewed, and possibly updated. First, ensure that all agencies that may need to be notified are included in the emergency notification list. This includes the National Response Center, the State Emergency Response Commission (SERC), as defined in each state, and the Local Emergency Planning Committee (LEPC), as defined by each state, and often by each county or city. It is important to bear in mind that if a facility is located close to a border, there may be multiple SERCs or LEPCs that would potentially need to be notified. In addition, some states have additional reporting requirements, often Department of Natural Resources or some other environmental related agency. Also, the triggers for notifying the U.S. Chemical Safety Board (CSB) and how to do so should also be included. A flowchart detailing the triggers for CSB notification is included in Figure 1.

Second, when to call must also be clearly defined in the EAP. The first option would be to simply identify the triggers set by the Federal government for calling the NRC, and as set by the state for calling the SERC and the LEPC. For instance, the EAP for a facility could state that the NRC must be called if the incident has released more than 100 pounds of ammonia in less than 24 hours. If the facility is in Massachusetts, the state and local calls would be triggered if more than 10 pounds of ammonia was released in less than 24 hours.

How to determine those amounts? Often it is difficult, if not impossible, to have an accurate idea of how much has been released. Option 2 would be to call every time ammonia is released. However, with these calls being public record, it would not reflect well on the facility's owner or operator if every nuisance packing leak

AMMONIA RELEASE/INCIDENT CSB REPORTING PROCESS CHART

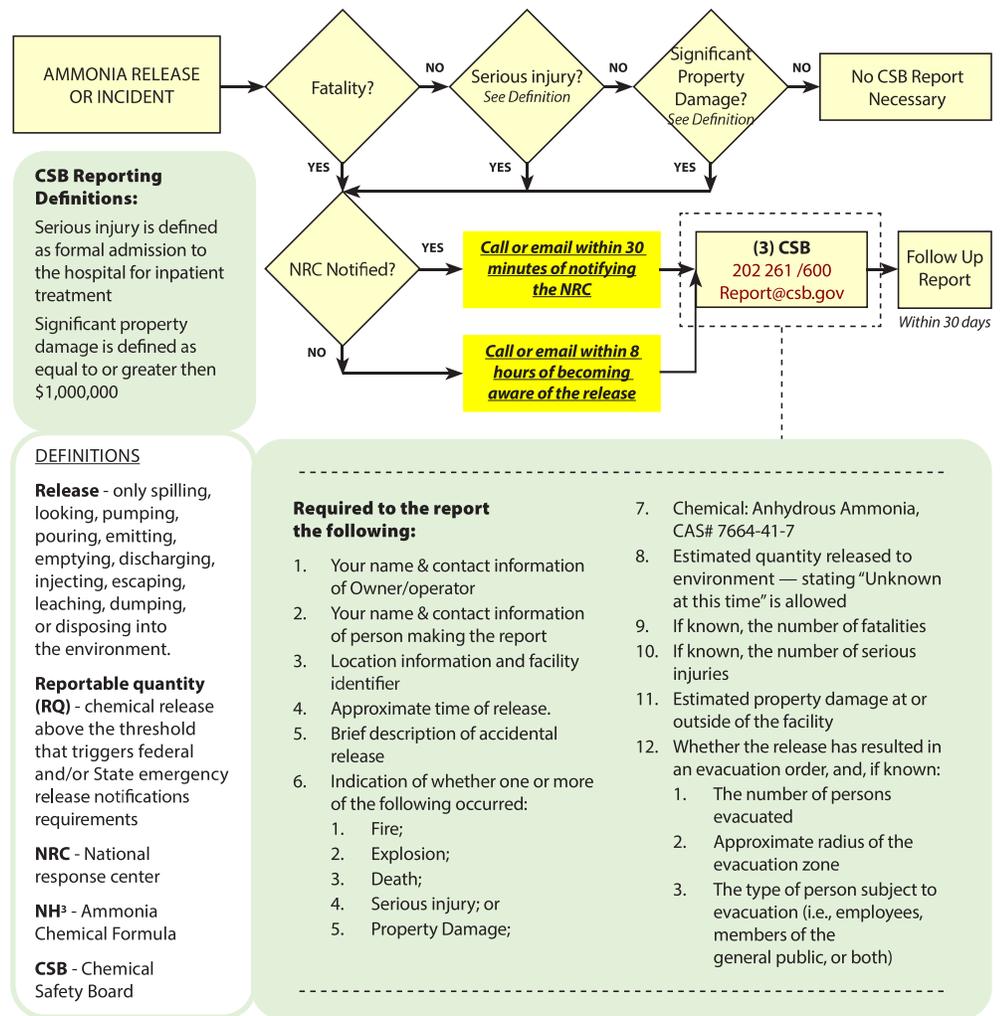


Figure 1: USCSB Notification Flowchart

was reported. A better option would be to create easy to follow guidelines for calling that ensure that all reportable releases are reported but limits how many incidents that don't require notification are reported.

Some example criteria that could be used to trigger notification are as follows:

- Measured PPM over the IDLH, or over the limits of the facility's PPE, whichever is lower.
- Pool or a spray of liquid ammonia
- Visible cloud of ammonia (not including wisps from a valve packing)
- Leak does not meet the above criteria but lasts longer than a pre-determined number of minutes

Other criteria that could be added to the above list based upon the difficulty of determining a release amount:

- Any safety relief valve lift to atmosphere
- Condenser tube leak

Finally, be sure to include in the EAP a list of personnel who are authorized and trained to make the notifications and include a statement in the EAP indicating that the local first responders will notify the public, if they deem it warranted, in the event of an accidental release.

With these new requirements, be sure to comply with the coordination requirements in 40 CFR 68.93, or at least document the annual attempts to do so, and conduct the notification exercise

required under 40 CFR 68.96(a) on an annual basis. While the recent changes are due May 10, 2027, the coordination requirement was first due in 2018 and the deadline to conduct the first notification exercise is December 19, 2024.

RULE CHANGES TO 40 CFR 68.95 (EPA 40CFR68.95, 2024)

Several changes have been made to the requirements for “responding” sources.

First, 40 CFR 68.95(a)(1)(i) required the inclusion of “procedures for informing the public and the appropriate Federal, State, and local emergency response agencies about accidental releases,” but now includes the additional requirement of “partnering with these response agencies to ensure that a community notification system is in place to warn the public within the area potentially threatened by the accidental release. Documentation of the partnership shall be maintained in accordance with § 68.93(c).”

One other informational change is the addition of the same text as was found in the section on the requirements for “non-responding” sources. The regulations note that “responding” facilities’ ERPs “shall include providing timely data and information detailing the current understanding and best estimates of the nature of the release when an accidental release occurs and be coordinated with the community emergency response plan developed under 42 U.S.C. 11003. The owner or operator may satisfy the requirement of this paragraph (c) through notification mechanisms designed to meet other Federal, State, or local notification requirements, provided the notification meets the requirements of this paragraph (c), as appropriate.”

STRATEGIES FOR COMPLIANCE

With these new requirements, ensure that the plan includes the appropriate release notification mechanisms as discussed previously.

Also, as with the “non-responding” sources, be sure to comply with the coordination requirements in 40 CFR 68.93, or at least document the annual attempts to do so, and conduct the notification exercise required under 40 CFR 68.96(a) on an annual basis. If the local response agencies agree to coordinate with the facility, be sure to discuss methods of notifying the public

and ensure that the ERP is updated to reflect the results of that conversation. As mentioned previously, while the recent changes are due May 10, 2027, the coordination requirement was first due in 2018 and the deadline to conduct the first notification exercise is December 19, 2024.

RULE CHANGES TO 40 CFR 68.96 (EPA 40CFR68.96, 2024)

With the new regulatory changes “responding” sources are once again required to conduct field exercises with the local response agencies at least once every ten years, with the first one due by March 15, 2027.

40 CFR 68.96(b)(1) also states that if the local emergency response agencies feel that such frequency is impractical, they must document it in writing. In addition, if local emergency response agencies agree, “the owner or operator shall consult with local emergency response officials to establish an alternate appropriate frequency for field exercises.”

STRATEGIES FOR COMPLIANCE

Be sure to comply with the coordination requirements in 40 CFR 68.93, or at least document the annual attempts to do so. If the local response agencies do not wish to conduct field exercises at least once every ten years, ensure that not only is that documented in writing, but also what is determined to be an appropriate frequency for such exercises.

It should be noted that local responders are unlikely to state that such exercises have no merit and do not need to be conducted. It is more likely that the response agencies will state their desired frequency. It is also likely that as deadlines approach, the frequency of such exercises may slip. It is important should this happen that documentation is provided by the response agencies to help the facility avoid possible citations.

The best method of ensuring that field exercises, and tabletop exercises, for that matter, are conducted on the required frequency is to build a relationship with the local response agencies. The best way to achieve this is to join the Local Emergency Planning Committee and participate in the meetings.

INCIDENT INVESTIGATION

RULE CHANGES TO 40 CFR 68.81 (EPA 40CFR68 SUBPART D, 2024)

The new regulations have established several incident investigation requirements when the incident meets the accident history reporting requirements under §68.42, which include on-site injuries, deaths, and significant property damage, and known off-site deaths, injuries, property damage, environmental damage, evacuations, or shelters-in-place.

First, such reports on such incidents must be completed within 12 months of the incident, unless the implementing agency (e.g. EPA) approves, in writing, of an extension. Second, the report on such incidents must include root causes.

STRATEGIES FOR COMPLIANCE

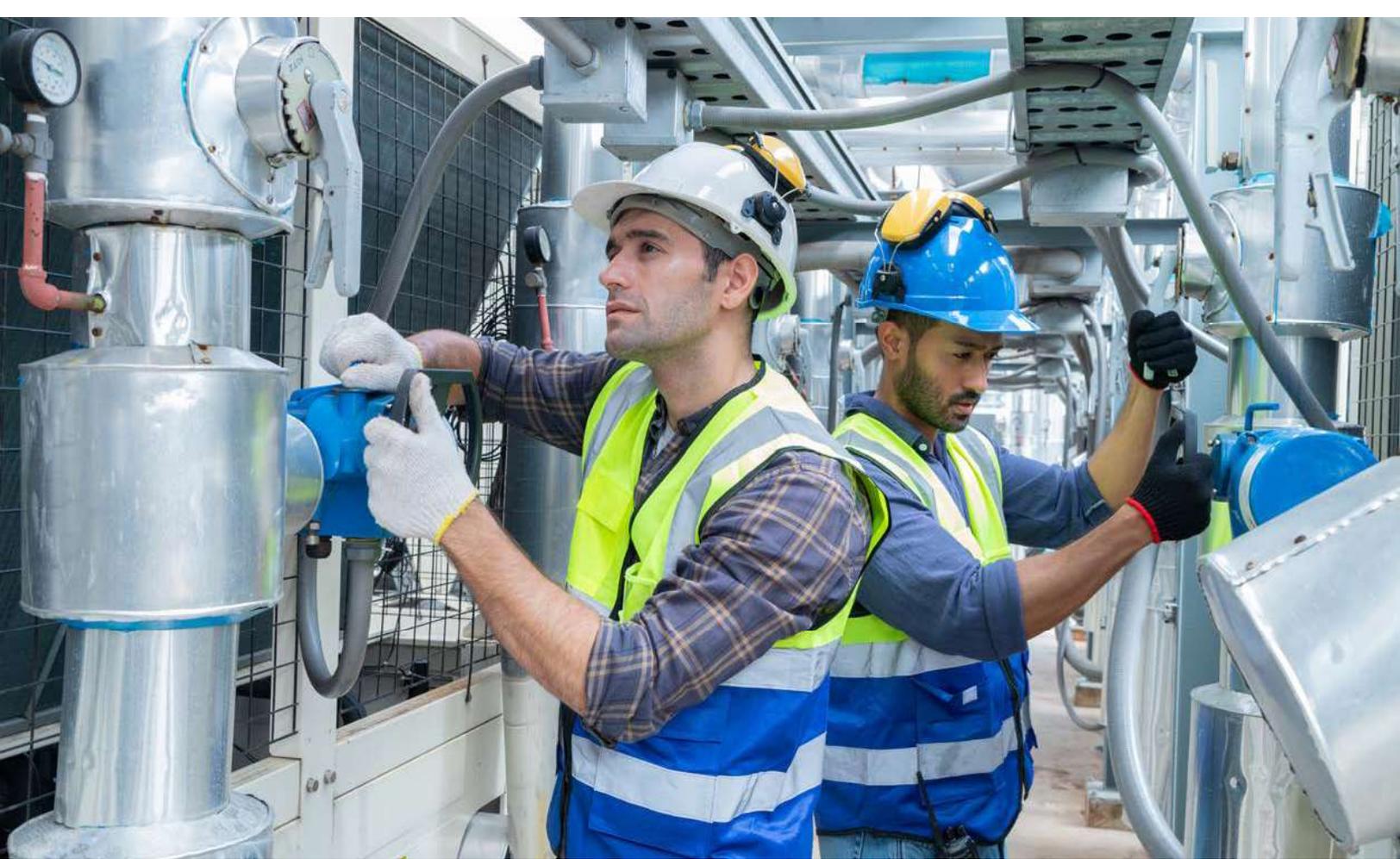
To comply with this change requires that the incident investigation program be updated to define the due dates for the report and the criteria that triggers those due dates. In addition, a root cause analysis technique, such as the 5-why technique, should be selected and identified in the program.

The final step to complying with this change in requirements is to train facility or corporate personnel who are responsible for conducting incident investigations on the use of the selected root cause technique. The deadline for compliance with this part is May 10, 2027.

COMPLIANCE AUDITS

RULE CHANGES TO 40 CFR 68.79 (EPA 40CFR68 SUBPART D, 2024)

With the new regulations a return to the third part audit requirement from the 2017 changes has occurred with some minor modifications. The new regulation requires that the next required compliance audit must be a third party audit when the facility experiences an RMP reportable accident as defined in §68.42(a) or “when an implementing agency requires a third-party audit due to conditions at the stationary source that could lead to an accidental release of a regulated substance, or when a previous third-party audit failed to meet the competency or independence criteria of §68.80(c).” Appeals to the third-party audit



requirement are possible. The appeals process is detailed in 40 CFR 68.79(g). It is important to note that while the regulation allows for the third-party audit to be completed in the timeframe corresponding to the next regular compliance audit, the implementing agency may require that it be conducted sooner.

RULE CHANGES TO 40 CFR 68.80 (EPA 40CFR68 SUBPART D, 2024)

The third-party audit team must be led by a third-party auditor meeting the competency and independence requirements outlined in paragraph (c). Any team members working for the third-party auditor's firm must also meet the independence requirements of paragraph (c)(2).

The third-party auditor must be knowledgeable in the 40 CFR Part 68 regulations, experienced with ammonia refrigeration system audits and in applicable recognized and generally accepted good engineering practices (RAGAGEP), and trained or certified in proper auditing techniques. The owner or operator of the facility being audited must determine and document that the third-party auditor meets these requirements.

The third-party auditors must act impartially when auditing the facility and developing the audit report. They must receive no financial benefit from the outcome of the audit, apart from payment for the auditing services. All third-party personnel involved in the audit must sign and date a conflict-of-interest statement documenting that they meet the independence criteria. The regulations do allow for retired employees of the company being audited may qualify as independent if their sole continuing financial attachments to the owner or operator are employer financed retirement and/or health plans.

The third-party audit firm must have written policies and procedures to ensure that all personnel comply with the competency and independence requirements. Also, the firm must ensure that all third-party personnel involved in the audit do not accept future employment with the owner or operator of the stationary source for a period of at least two years following submission of the final audit report. However, they are allowed to conduct additional third-party audits in the two-year time frame, should the owner or operator need them.

The audit report must include the policies and procedures that the third party audit firm has put in place to ensure competency and independence is maintained. It also must include the summaries of qualifications for all team members, along with information demonstrating that all third-party auditors meet the competency requirements. Finally, any significant revisions between the draft and final versions of the report must be summarized within the final report.

The regulation, in 40 CFR 68.80(e) defines specific certification language that must be included in the report:

"I certify that this RMP compliance audit report was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information upon which the audit is based. I further certify that the audit was conducted and this report was prepared pursuant to the requirements of subpart D of 40 CFR part 68 and all other applicable auditing, competency, independence, impartiality, and conflict of interest standards and protocols. Based on my personal knowledge and

experience, and inquiry of personnel involved in the audit, the information submitted herein is true, accurate, and complete.”

Once the final audit report is received, the owner or operator must develop a findings response report as soon as possible, but no later than 90 days after receiving the final audit report. This report must contain:

- A copy of the final audit report
- An appropriate response to each of the audit report findings
- A schedule for promptly addressing deficiencies
- A certification, signed and dated by a senior corporate officer, or an official in an equivalent position, of the owner or operator of the facility.

This certification must also use language spelled out in the regulations:

“I certify under penalty of law that I have engaged a third party to perform or lead an audit team to conduct a third-party audit in accordance with the requirements of 40 CFR 68.80 and that the attached RMP compliance audit report was received, reviewed, and responded to under my direction or supervision by qualified personnel. I further certify that appropriate responses to the findings have been identified and deficiencies were corrected, or are being corrected, consistent with the requirements of subpart D of 40 CFR part 68, as documented herein. Based on my personal knowledge and experience, or inquiry of personnel involved in evaluating the report findings and determining appropriate responses to the findings, the information submitted herein is true, accurate, and complete. I am aware that there are significant penalties for making false material statements, representations, or certifications, including the possibility of fines and imprisonment for knowing violations.”

The owner or operator must implement the schedule to address deficiencies identified in the audit findings response report and must document the action taken to address each deficiency and the date that the action was completed.

The finding response report and the

documentation of the documentation detailing the addressing of the findings must be submitted to the owner or operator's audit committee of the Board of Directors, or other comparable committee or individual, if applicable.

The two most recent final third-party audit reports, their associated finding response reports, and the documentation of actions taken to address deficiencies must be kept on hand.

STRATEGIES FOR COMPLIANCE

Update your Compliance Audit Program detailing the triggers for conducting a third-party audit, as well as the requirements for conducting such audits. This should include how to evaluate a third-party auditor's competency and independence, a list of the documentation required in the audit report, and how to develop a finding response report. It should also include details on required communication related to the third-party audit, including submitting the documentation to the senior corporate officer for certification, submitting the certified documentation to the implementing agency, and communicating the information to the audit committee of the Board of Directors, or other comparable committee or individual.

Note that it is vitally important that the senior corporate officers and the audit committee of the Board of Directors, as well as Facility Management, understand their responsibilities when third-party audits are to be conducted. This training should also include the criteria for RMP reportable accidents and the importance of avoiding them. The deadline to comply with this part is May 10, 2027.

AVAILABILITY OF INFORMATION TO THE PUBLIC

RULE CHANGES TO 40 CFR 68.210 (EPA 40CFR68.210, 2024)

A requirement to make information available to the public was first introduced in the 2017 regulatory changes. With the 2024 changes, there are some new requirements.

First, the RMP is required to be made available to the public. This has been implemented by the EPA using a web site presented earlier.

Second, the public meeting requirement, as implemented in the 2019 changes is still triggered by an RMP reportable accident with known offsite consequences.

Third, the owner or operator must now make the following information available to any member of the public residing, working, or spending a significant time within 6 miles of the fenceline of the stationary source:

1. Regulated substances information. Names of regulated substances held in a process
2. Safety Data Sheets. SDSs for all regulated substances located at the facility
3. Accident history information. Provide the five-year accident history information required to be reported under § 68.42
4. Emergency response program. The following summary information concerning the stationary source's compliance with § 68.10(f)(3) and the emergency response provisions of subpart E of this part as applicable:
 - a. Whether the stationary source is a responding stationary source or a non-responding stationary source
 - b. Name and phone number of local emergency response organizations with which the owner or operator last coordinated emergency response efforts, pursuant to § 68.180
 - c. For stationary sources subject to § 68.95, procedures for informing the public and local emergency response agencies about accidental releases;
5. Exercises. A list of scheduled exercises, excluding dates, required under § 68.96 occurring within one year from the date of request
6. LEPC contact information. Include LEPC name, phone number, and web address as available
7. Declined recommendations and justifications. Include declined recommendations and justifications required under §§ 68.170(e)(7) and 68.175(e)(7) through (9)



The information must be made available in English or in at least any two other commonly spoken languages by the population potentially affected.

The owner or operator must provide on-going notification on a company website, social media platforms, or through other publicly accessible means that:

1. Information specified in paragraph (d) of this section is available to the public residing, working, or spending significant time within 6 miles of the stationary source upon request. The notification shall:
 - a. Specify the information elements, identified in paragraph (d) of this section, that can be requested
 - b. Provide instructions for how to request the information including verification of presence within 6-miles (e.g., email, mailing address, and/or telephone or website request)
2. Identify where to access information on community preparedness, if available, including shelter-in-place and evacuation procedures.

This information must be provided within 45 days of receiving a request. Records of requests must be kept for five years. The deadline for implementing this system for information requests is May 10, 2027.

STRATEGIES FOR COMPLIANCE

Implementation of a system to comply with this part can take any one of probably 100 different directions and it is outside the scope of this article to fully evaluate each of the possible means of implementing each part of this requirement. However, there are some serious questions that must be asked as soon as possible, so that answers can be developed with enough time to implement a compliant system.

Here are some of the questions that need to be asked, along with some, but certainly not, of the possibilities.

1. How will requests be submitted?
2. Who will manage the requests?
 - a. Facility personnel
 - i. New job responsibility for existing position?
 - ii. Do the personnel with the knowledge to field the

requests have the margin for the additional responsibility, especially if there is a flood of requests?

- iii. New position?
- b. Corporate role
 - i. New job responsibility for existing position?
 - ii. New position?
3. Where will the information be kept?
4. How will the information be kept up to date?
5. How will requests be vetted to determine if they come from a requestor that meets the criteria?
6. What is “significant time” and how is that determined?
7. How will the information be provided?
8. How are available languages determined?
9. How are language translations going to be accomplished?

As should be evident from the list of questions, there are multiple stakeholders

who will be needed to implement a program to comply with this requirement. This includes personnel from operations, risk, environmental, health & safety, IT, legal, and, of course, senior c-suite executives.

RMP ESUBMIT

RULE CHANGES TO 40 CFR 68.160-175 (EPA 40CFR68 SUBPART G, 2024)

To wrap up the changes, there are several new items that will be required to be reported on the RMP submittal. The following list of items must be submitted prior to May 10, 2028:

1. Method of communication and location of the notification that chemical hazard information is available to the public residing, working, or spending significant time within 6 miles of the stationary source, pursuant to § 68.210(d).
2. Inherently safer technology or design measures implemented since the last PHA, if any, and the technology category (substitution, minimization, simplification and/or moderation). –

not applicable to most facilities with ammonia refrigeration

3. Recommendations declined from natural hazard, power loss, and siting hazard evaluations and justifications.
4. Recommendations declined from safety gaps between codes, standards, or practices to which the process was designed and constructed and the most current version of applicable codes, standards, or practices.
5. The date of the most recent compliance audit; the expected date of completion of any changes resulting from the compliance audit and identification of whether the most recent compliance audit was a third-party audit, pursuant to §§ 68.79 and 68.80; and findings declined from third-party compliance audits and justifications.

It is important to note that if a facility's RMP resubmission is due prior to the deadline of May 10, 2028, two resubmissions may be required. It is to the facility's advantage to implement as many of the new require-

ments prior to their next scheduled resubmission. With the myriad of changes to the RMP provisions and the relatively short timeframe for implementing some complicated requirements prior to their deadlines, it is important to for each owner or operator to start the process as soon as possible. Review each new requirement. Identify the party responsible for each section's update. Create teams to address a requirement, if necessary. Identify the tasks required to complete the requirements to comply with each section. Develop a schedule to complete the tasks. Hold people accountable and reach out for help if progress is stalled.

Please feel free to email me with questions at NH3isB2L@gmail.com.

Bill Lape is Project Director for SCS Engineers. Bill is a Certified Industrial Refrigeration Operator, a Certified Refrigeration Service Technician, and is the current Executive Vice President of the Refrigerating Engineers and Technicians Association.



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