

1001 G Street, N.W.  
Suite 500 West  
Washington, D.C. 20001  
tel. 202.434.4100  
fax 202.434.4646

**Writer's Direct Access**  
**Lawrence P. Halprin**  
(202) 434-4177  
halprin@khlaw.com

January 14, 2020

**Via Electronic Mail**

OIRA Desk Officer for the  
Chemical Safety and  
Hazard Investigation Board  
Office of Management and Budget

**Re:** Chemical Safety and Hazard Investigation Board  
Accidental Release Reporting  
40 CFR Part 1604  
[Docket Number: CSB-2019-0004]  
RIN 3301-AA00

Dear OIRA Desk Officer:

The purpose of this communication is to explain why the Accidental Release Reporting Rule, as proposed by the Chemical Safety and Hazard Investigation Board (CSB), does not comply with the requirements of the Paperwork Reduction Act (44 U.S.C. Ch. 35) and, therefore, the associated Information Collection Request (ICR) should not be approved by OMB.<sup>1</sup>

**Introduction**

In the materials contained in the NPRM, the CSB estimated that the proposed rule would result in the filing of approximately 200 reports per year. Based on the unauthorized and inappropriate wording of the proposed rule, we estimate the rule would require between 20,000 and 50,000 reports per year. The basis for this estimate and the legal failings of the proposed rule are

---

<sup>1</sup>The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to, nor be subject to a penalty for, failure to comply with a collection of information unless that collection has obtained Office of Management and Budget (OMB) approval and displays a currently valid OMB Control Number.

explained below and in further detail in the attached comments that were submitted to the rulemaking docket by The Vinyl Institute.

### **Congressional Authorization and the CSB's Proposal**

In short, the CSB was authorized by Congress to adopt a rule requiring the reporting of any *accidental release of regulated substances* (regulated under 40 CFR 68) or **other highly hazardous substances** into the *ambient air* from a *stationary source* that results in a fatality, **serious injury** or *substantial property damages*.

Instead, the CSB proposed a rule requiring the reporting of any unanticipated release of any physical, chemical, biological or radioactive material (regardless of whether the material has any inherent hazards) from its containment at a stationary source into any space above the surface of the earth that results in either (1) any negative change in an individual's medical condition (however minor) that can be detected by a medical professional (e.g., a minor bruise) or (2) at least \$1 million in any form of aggregate property damage above, on or below the surface of the earth.

### **Basis for Estimating Number of Anticipated Responses to ICR**

As further explained in the attached comments, BLS estimates there were approximately 17,410 lost workday cases in 2018 due to workplace exposure to arguably unanticipated releases of "harmful substances." The overall ratio of total OSHA-recordable cases to lost workday cases is approximately 3 to 1 (2.8 million to 0.9 million). Therefore, one could reasonably estimate that the total number of OSHA-recordable cases associated with unanticipated releases of materials resulting in any detectable negative change in an individual's medical condition would be approximately 52,000, all of which apparently would have to be reported to the CSB under its proposed rule.

For two reasons, the estimated number of reports under the rule, as proposed should be significantly greater. First, the CSB appears to have expanded the scope of its reporting rule beyond OSHA-recordable cases, possibly to include all first aid cases, in removing the word "significant" from the phrase "any injury or illness diagnosed by a physician or other licensed health care professional" in the proposed definition of "serious injury." Second, these numbers do not include unanticipated releases of non-harmful or inert substances such as water (ice, cold water, hot water or steam) that result in any detectable negative change in an individual's medical condition. Furthermore, these numbers do not include cases involving the general public that are not captured by the BLS workplace injury and illness data collection system.

The attempt by the CSB to assess the burden of compliance with this proposed rule, including the effort related to familiarization with the proposed rule, ignores the fatal threshold problem of

## KELLER AND HECKMAN LLP

OIRA Desk Officer for the  
January 14, 2020  
Page 3

trying to become familiar with and comply with a rule that is so clearly overbroad and ambiguous as to be incomprehensible.

Based on the foregoing summary and the attached detailed comments, we believe it is clear, with respect to the proposed rule and underlying ICR, that:

- (1) They are NOT necessary for, and will materially interfere with, the proper performance of the functions of the CSB;
- (2) The information they require, as written, DOES NOT have practical utility;
- (3) They DO NOT reduce to the extent practicable and appropriate the burden on persons subject to the rule;
- (4) They are NOT written using plain, coherent, and unambiguous terminology and are NOT understandable to those who are to respond;
- (5) They are NOT to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;
- (6) They have NOT been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public.

The solution to the foregoing legal shortcomings is for the CSB to rewrite the proposed rule in a way that effectively and efficiently conforms to the authority granted to the CSB by the Clean Air Act, the intent of Congress in granting that authority, and the requirements of the PRA, all as more fully explained in the attached comments filed by The Vinyl Institute.

If you have any questions regarding this matter, please feel free to contact me or Richard Krock at The Vinyl Institute. Thank you for your consideration.

Respectfully submitted,

/s/Lawrence P. Halprin, Partner  
Keller and Heckman LLP  
1001 G Street, N.W.  
Suite 500 West  
Washington, D.C. 20001  
tel: 202.434.4177 | fax: 202.434.4646 | [halprin@khlaw.com](mailto:halprin@khlaw.com)

Enclosure

cc: Richard Krock

4845-8029-6881, v. 1