CHAPTER 10: IMPLEMENTATION

10.1 IMPLEMENTING AGENCY

The implementing agency is the federal, state, or local agency that is taking the lead for implementation and enforcement of part 68 or the state or local equivalent. The implementing agency will review RMPs, select some RMPs for audits, and conduct on-site inspections. The implementing agency should be your primary contact for information and assistance.

WHO IS MY IMPLEMENTING AGENCY?

Under the CAA, EPA will serve as the implementing agency until a state or local agency seeks and is granted delegation under CAA section 112(l) and 40 CFR part 63, subpart E. You should check with the EPA Regional Office to determine if your state or county has been granted delegation or is in the process of seeking delegation. The Regional Office will be able to provide contact names at the state or local level. See http://yosemite.epa.gov/oswer/ceppoweb.nsf/content/regions.htm for addresses and contact information for EPA Regional offices.

IF THE PROGRAM IS DELEGATED, WHAT DOES THAT MEAN?

To gain delegation, a state or local agency must demonstrate that it has the authority and resources to implement and enforce a chemical accident prevention program that is at least as stringent as part 68. Some states and localities may choose to take delegation of the program for some, but not all, of the substances regulated under part 68. In the case of states and localities that take only "partial delegation" of the program, EPA is the implementing agency for the regulated substances not covered by the state or local program.

When EPA determines that a state or local agency has the required authority and resources, EPA may grant the program full or partial approval depending on whether the state or local program covers all or just some regulated substances. For those regulated substances covered, if the state or local rules differ from part 68 (a state's rules are allowed to differ in certain specified respects, as discussed below), EPA will adopt, through rulemaking, the state or local program as a substitute for part 68 in the state or locality, making the state program federally enforceable. In most cases, the state or locality will take the lead in implementation and enforcement, but EPA maintains the ability to enforce the state or local rules which EPA adopted for that jurisdiction. Should EPA decide that it is necessary to take an enforcement action against a facility in a delegated state or locality, the action would be based on the state or local rule that EPA adopted as a substitute for part 68. Similarly, citizen actions under the CAA would be based on the state rules that EPA adopted.

Although states and localities may choose to cover only a subset of part 68 regulated substances, they may not add or delete substances from the part 68 list of regulated substances; only EPA may determine the list of regulated substances for part 68 purposes. States and localities that take delegation are also not free to modify the form and manner of RMP reporting (although they may add to RMP requirements). Any state or local program must require covered facilities to submit RMPs as

provided by part 68, Subpart G. Consequently, even if you are located in a state or local jurisdiction that has taken delegation of the part 68 program, you will continue to file an RMP in the form and manner specified by EPA to the central location EPA designates. You should check with your state to determine whether you need to file additional data for state use or submit amended copies of the RMP with the state to cover state elements or substances.

If your state or locality has been granted delegation, it is important that you contact your state or local implementing agency to determine if the state or locality has requirements in addition to those in part 68. State and local rules may be more stringent than part 68. This document does not cover state and local requirements.

Qs & As
Delegation

Q. What states have been granted delegation?

A. The following states have been granted full or partial delegation:

Delaware Florida Georgia Kentucky Mississippi New Jersey
North Carolina North Dakota Ohio South Carolina

In addition, the following territories and local jurisdictions have been granted delegation: Puerto Rico, the Virgin Islands, Allegheny County (PA), Jefferson County (KY), and Forsythe County (NC).

Check with your EPA Regional office contacts for a current list of states, territories, and counties granted or seeking delegation.

Q. In what ways may state and local rules be more stringent? Does this document provide guidance on state and local differences?

A. States and localities may impose more detailed requirements, such as requiring more documentation or more frequent reporting, specifying hours of training or maintenance schedules, imposing equipment requirements or call for additional analyses. Some states and localities are likely to cover at least some additional chemicals and may use lower thresholds. This document does not cover these differences.

Q. Will the general duty clause be delegated?

A. EPA is not delegating implementation and enforcement of the general duty clause (CAA section 112(r)(1)). States, however, may adopt their own general duty clause under state law.

10.2 REVIEWS/AUDITS/INSPECTIONS (§ 68.220)

The implementing agency is required under part 68 (or a delegated state or local program) to review and conduct audits of RMPs. Reviews are relatively quick

checks of the RMPs to determine whether they are complete and whether they contain any information that is clearly problematic. For example, if an RMP for a process containing flammables fails to list fire and explosion as a hazard in the prevention program, the implementing agency may flag that as a problem. The RMP data system will perform some of the reviews automatically by flagging RMPs submitted without necessary data elements completed.

RMP audits are more comprehensive than reviews. Facilities may be selected for audits based on any of the following criteria, set out in §68.220:

- Accident history of the facility
- Accident history of other facilities in the same industry
- Quantity of regulated substances handled at the site
- Location of the facility and its proximity to public and environmental receptors
- The presence of specific regulated substances
- The hazards identified in the RMP
- A plan providing for random, neutral oversight

WHAT ARE AUDITS AND HOW MANY WILL BE CONDUCTED?

Audits are relatively detailed reviews of RMPs to determine compliance with part 68 and require revisions where necessary to ensure compliance. Audits help identify whether the underlying risk management program is being implemented properly. For example, the implementing agency may look for any inconsistencies in the dates reported for compliance with prevention program elements. If you reported that the date of your last revision of operating procedures was in June 2003 but your training program was last reviewed or revised in December 2001, the implementing agency is likely to ask why the training program was not reviewed to reflect new operating procedures.

The agency may look at other items that could indicate problems with implementation. For example, if you are reporting on a distillation column at a refinery, but used a checklist as your PHA technique, or you fail to list an appropriate set of process hazards for the process chemicals, the agency may seek further explanations as to why you reported in the way you did. The implementing agency may compare your data with that of other facilities in the same industrial sector using the same chemicals to identify differences that may indicate compliance problems.

If audits indicate potential problems, they may lead to requests for more information or to on-site inspections. If the implementing agency determines that problems exist, it may issue a preliminary determination listing the necessary revisions to the RMP, an explanation of the reasons for the revisions, and a timetable. Section 68.220 provides details of the administrative procedures for responding to a preliminary determination.

The number of audits conducted will vary from state to state and from year to year. Neither the CAA nor part 68 sets a number or percentage of facilities that must be

audited during a year. Implementing agencies will set their own goals, based on their resources and particular concerns.

WHAT ARE INSPECTIONS?

Inspections are site visits to check on the accuracy of the data reported in RMPs and on the implementation of all part 68 elements, including risk management program requirements. During inspections, the implementing agency will probably review the documentation for rule elements, such as the PHA reports, operating procedures, maintenance schedules, process safety information, and training. Unlike audits, which may only focus on the RMP but may lead to determinations concerning needed improvements to the risk management program, inspections will focus on the underlying risk management program itself.

Implementing agencies will determine how many inspections they need to conduct. Audits may lead to inspections or inspections may be done separately. Depending on the focus of the inspection (all covered processes, a single process, or particular part of the risk management program) and the size of the facility, inspections may take several hours to several weeks.

10.3 RELATIONSHIP WITH TITLE V PERMIT PROGRAMS

Part 68 is an applicable requirement for purposes of the CAA Title V permit program and must be listed in a Title V air permit. You do not need a Title V air permit solely because you are subject to part 68. If you are required to apply for a Title V permit because you are subject to requirements under some other part of the CAA, you must:

- List part 68 as an applicable requirement in your permit
- Include conditions that require you to either submit a compliance schedule for meeting the requirements of part 68 by the applicable deadlines or include compliance with part 68 as part of your certification statement.

You must also provide the permitting agency with any other relevant information it requests.

The RMP and supporting documentation are not part of the permit and generally should not be submitted to the permitting authority unless specifically requested.

If you have a Title V permit and it does not address the part 68 requirement, you should contact your permitting authority and determine whether your permit needs to be amended to reflect part 68.

10.4 PENALTIES FOR NON-COMPLIANCE

Penalties for violating the requirements or prohibitions of part 68 are set forth in CAA section 113. This section provides for both civil and criminal penalties. EPA may assess civil penalties of not more than $32,500 per day per violation. Anyone convicted of knowingly violating part 68 may also be punished by a fine pursuant to

Title 18 of the U.S. Code or by imprisonment for no more than five years, or both; anyone convicted of knowingly filing false information may be punished by a fine pursuant to Title 18 or by imprisonment for no more than two years.

Qs & As
Audits

Q. If we are a Voluntary Protection Program (VPP) facility under OSHA's VPP program, are we exempt from audits?

A. You are exempt from audits that are based on the accident history of your industry sector or on random, neutral oversight. However, part 68 includes other criteria for deciding what facilities to audit that are not affected by a VPP rating. An implementing agency that is basing its auditing strategy on one of these other criteria may select your facility to audit, although EPA expects that VPP facilities will generally not be a high priority for audits unless they have a serious accident.

Q. If we have been audited by a qualified third party, for ISO 14001 certification or for other programs, are we exempt from audits?

A. No, but you may want to inform your implementing agency that you have gained such certification and indicate whether the third party reviewed part 68 compliance as part of its audit. The implementing agency has the discretion to determine whether you should be audited.

Q. Will we be audited if a member of the public requests an audit of our facility?

A. The implementing agency will have to decide whether to respond to such public requests. EPA's intention is that part 68 implementation reflect that hazards are primarily a local concern.