



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

October 2004

### **SECURITY NOTICE To Federal, State and Local Officials Receiving Access to the Risk Management Program's Off-site Consequence Analysis Information**

With this notice, the U.S. Environmental Protection Agency (EPA) is providing you with access to the off-site consequence analysis (OCA) information you requested. As you know, OCA information is certain forms of data about the potential public health and environmental consequences of hypothetical chemical accidents at industrial facilities. Under EPA regulations implementing section 112(r)(7) of the Clean Air Act (CAA), industrial facilities having large amounts of certain extremely hazardous substances must prepare and submit Risk Management Plans (RMPs). Covered facilities must report the results of OCAs for worst-case and alternative scenario chemical accidents in sections 2 through 5 of their RMPs ("the OCA sections"). EPA has developed an electronic database that includes the information in the OCA sections. You have requested from us a copy of the OCA sections of one or more RMPs and/or the related EPA database. While you may share with the public the data in those sections and database, ***it is a violation of federal law for you to disclose or distribute to the public the OCA sections themselves or the related database, except as authorized by statute or regulation.***

In this notice we briefly describe the federal statute and regulations that govern the distribution of the OCA sections of RMPs and the related database. The statute and regulations authorize government officials to distribute some or all of that information to each other and to the public under specified conditions designed to protect the information from Internet dissemination. The statute and regulations also prohibit government officials from distributing the information under any other conditions. Here we outline what you may and may not distribute to whom and the ***criminal*** penalties for violating the applicable restrictions. For more detailed information, we strongly recommend that you read the Federal Register notice issuing and explaining the regulations at 65 FR 48108 (August 4, 2000).

#### **A. What federal law establishes these restrictions?**

The Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (CSISSFRA), signed into law on August 5, 1999, is the basis for the regulations and restrictions described in this notice. CSISSFRA was enacted to address concerns that Internet posting of a ***large database created from the OCA sections of RMPs would pose law enforcement and national security risks.*** CAA section 112(r)(7) had required public access to RMPs including the

OCA sections. CSISSFRRA amended CAA section 112(r)(7) by adding a new subparagraph (H). CAA section 112(r)(7)(H)(ii) required the President to conduct assessments of both the increased risk of terrorist and other criminal activity that would result from posting OCA information on the Internet and the chemical safety benefits of allowing public access to the information. It further required the President to issue regulations, based on the assessments, governing distribution of OCA information. On behalf of the President, EPA and the Department of Justice (DOJ) conducted the assessments and issued these regulations allowing public access to OCA information in ways that are designed to minimize the likelihood of chemical accidents, the risk associated with Internet posting, and the likelihood of harm to public health and welfare. The regulations, codified at 40 CFR Part 1400, also provide for distribution of OCA information to federal, state and local officials. In addition, the regulations extend the prohibition in CSISSFRRA against government officials and researchers distributing OCA information except as authorized by CSISSFRRA or the regulations themselves. In this notice we refer to the regulations as the “OCA regulations.”

**B. What information is subject to the restrictions on distribution?**

CSISSFRRA and the OCA regulations extend the restrictions on distribution only to the two classes of information described below:

**1. OCA information**

CSISSFRRA and the OCA regulations define “OCA information” as

- o the OCA portion (i.e. sections 2 through 5) of RMPs that facilities have submitted to EPA under 40 CFR Part 68; and
- o any EPA electronic database created from those portions.

It is important to understand that the definition of OCA information is narrow in scope. First, it does **not** include the Executive Summary portion of RMPs. Since Executive Summaries are not formatted in a way that lends itself to creation of a large OCA database that could be posted on the Internet, the definition of OCA information excludes them. Although there was a requirement to include a brief description of OCA information in the Executive Summaries, this was amended in 2004, and facilities are no longer required to do so.

Second, the definition does not include the results of the analysis reported in the OCA sections of an RMP or the related database when presented in a different format. CSISSFRRA states that it “does not restrict the dissemination of [OCA] information by any covered person in any manner or form except in the form of a [RMP] or of an electronic data base created by [EPA]” (Clean Air Act section 112(r)(7)(H)(xii)(II)) (emphasis added). Sections 2 through 5 of RMPs are sensitive because those sections could be compiled fairly easily into a large OCA database that could be posted on the Internet. EPA’s OCA database is even more sensitive because it could easily be posted on the Internet. Consequently, CSISSFRRA’s prohibitions extend to RMP sections 2 through 5 and the related EPA database (i.e. “OCA information”) but

*not* to the OCA results reported in those sections or the database. To capture this distinction, the OCA regulations created the term “**OCA data elements**” to refer to the results of OCAs when presented in a format different than sections 2 through 5 of an RMP or EPA’s database. This notice uses “OCA data elements” for the same purpose.

## 2. **OCA rankings**

The OCA regulations define OCA rankings as

- o any statewide or national ranking of identified facilities derived from the OCA portion of RMPs.

## C. **Who is subject to the restrictions on distribution?**

CSISSFRRRA applies its restrictions to “covered persons.” The OCA regulations use the term “government officials” to refer to the largest categories of covered persons. The three categories of covered persons are:

1. **Federal government officials:** An officer or employee of the United States or of an agent or contractor of the Federal Government.
2. **State or local government officials:** An officer or employee of a State or local government or of an agent or contractor of a state or local government, or an individual affiliated with an entity that has been given, by a state or local government, responsibility for preventing, planning for, or responding to accidental releases (*for example*, a volunteer firefighter or a member of a State Emergency Response Commission (SERC) or a Local Emergency Planning Committee (LEC) established under the federal Emergency Planning and Community Right-to-Know Act), or an officer and employee of an agent or contractor of such an entity.
3. **Covered researcher:** A researcher as identified by EPA under the qualified researcher provision of CSISSFRRRA (CAA section 112(r)(7)(H)(vii)).

CSISSFRRRA itself provides that the distribution restrictions apply “only to covered persons” (CAA section 112(r)(7)(H)(xii)(I)). Accordingly, the OCA regulations apply the restrictions only to covered persons. **Members of the public, including private individuals and entities, are *not* prohibited from distributing OCA information or rankings.**

## D. **What are the restrictions on distribution?**

CSISSFRRRA required that the OCA regulations provide the public with some access to OCA information. Specifically, it required the regulations to govern distribution of OCA information in a manner that would minimize the likelihood of chemical accidents, the risk associated with Internet posting of OCA information, and the likelihood of harm to public health and welfare. At a minimum, the regulations were to allow any member of the public access to paper copies of OCA information for a “limited number” number of facilities and with other

access “as appropriate.” They were also to provide government officials with access to OCA information in accordance with specified geographical restrictions. The regulations could extend the restrictions on distribution of OCA information by government officials as needed to meet the statutory test of minimizing the overall risk of chemical releases and to implement the specific provisions described above.

The OCA regulations issued by EPA and DOJ provide the public with limited, controlled access to OCA information. To provide that access, the regulations significantly expand the authority of government officials at the federal, state and local level to provide public access to OCA information under conditions designed to minimize overall risk. Briefly, the regulations require the federal government to allow any member of the public to obtain access to OCA information for up to 10 facilities per calendar month located anywhere in the country, without geographical restrictions. Access will be provided at 50 or more federal reading rooms distributed across the United States and its territories. Reading room access will begin by December 31, 2000. In addition, to help members of the public learn about chemical hazards in their communities, the regulations directed EPA to establish a vulnerable zone indicator system over the Internet or by phone or mail which has been available since October 5, 2000. Further, the rule authorizes and encourages state and local agencies involved in chemical emergency planning, prevention, or response to provide the public with read-only access to OCA information for local facilities. For further information about these rule provisions, please see 65 FR 48108 (August 4, 2000).

The following section of this notice describes what OCA information the regulations authorize different categories of government officials to provide to other categories of government officials and to the public. It does not, however, attempt to describe the requirements that may apply to providing access. For instance, the regulations require federal reading room personnel to ascertain the identity of persons requesting access to OCA information before providing them with access. The OCA regulations and the Federal Register notice issuing them should be consulted to learn about the requirements for providing access.

With regard to OCA rankings, the rule codifies CSISSFRRA’s prohibition on distribution of OCA rankings to the public. Consequently, as a government official you may develop OCA rankings and share them with other government officials, but you may not share them with the public.

**E. May I share OCA information with other government officials?**

The OCA regulations authorize you to distribute some or all OCA information to other government officials based on the category of government official to which you belong and to which your intended recipient belongs, as described below. **Any time you distribute OCA information to another government official, you should send a copy of this notice with the materials so that the recipient will be informed of the applicable restrictions.**

1. **A Federal government official may**

- distribute to another Federal government official, for that person's official use, any or all OCA information;
- distribute to a state or local government official, for that person's official use, OCA information only for the facilities located in that person's state.

In addition, a **Federal government official who works for EPA** may

- distribute to a state or local government official, at that person's request and for that person's official use, OCA information for facilities located in states other than that person's state

2. A state **or local government official** may:

- distribute OCA information for **only** the facilities located in his or her state to a Federal government official for that person's official use;
- distribute OCA information for **only** the facilities located in his or her state to a state or local government official in his or her state for that person's official use ; and
- distribute OCA information for **only** the facilities located in his or her state to a state or local government official in a state **contiguous** to his or her state for that person's official use.

F. **May I share OCA information with the public?**

The OCA regulations authorize you to provide the public with read-only access to some OCA information depending on the category of government official to which you belong and, in some cases, depending on where the member of the public lives or works, as described below.

1. A **Federal government official who helps operate a federal reading room** may provide any member of the public with read-only access to OCA information for

- up to 10 stationary sources located anywhere in the country, without geographical restriction, in a calendar month; and
- stationary sources located in the jurisdiction of the LEC where the person lives or works and for any other stationary source that has a vulnerable zone that extends into that LEC's jurisdiction.

2. A **state government official** may, to the extent authorized by the state's SEC or a related state government agency, provide any member of the public with read-only access to OCA information for

- stationary sources located in the jurisdiction of the LEC where the person lives or works and for any other stationary source that has a vulnerable zone that extends into that LEC's jurisdiction.

3. A **local government official** may, to the extent authorized by the relevant LEC or a related local government agency, provide any member of the public with read-only access to OCA information for

- stationary sources located in the jurisdiction of the LEC and for any other stationary source that has a vulnerable zone that extends into that LEC's jurisdiction.

**G. Are there any exceptions to the distribution restrictions?**

Yes. The restrictions described above do not apply to the OCA sections of RMPs for facilities that have released those sections of their RMPs to the public without restriction (see CAA section 112(r)(7)(H)(v)(III)(aa)). CSISSFRRRA requires any facility that releases the OCA sections of its RMP to the public without restriction to notify EPA that it has done so (CAA section 112(r)(7)(H)(v)(III)(bb)). CSISSFRRRA further requires EPA to make publicly available a list of facilities that have so notified EPA.

**H. What other OCA-related information may I share with the public?**

As explained above, CSISSFRRRA and the OCA regulations restrict the distribution of only OCA information and OCA rankings. You are free to share any other OCA-related information with the public. For example, you may provide any member of the public with the results of the computer-based vulnerable zone indicator that EPA is required to make available. You may also share with the public OCA data elements (defined above).

**I. Do these restrictions override the public information laws of my state or locality?**

In general, yes. However, CSISSFRRRA provides that a state that collects *under its own law* information on the off-site consequences of chemical releases is not precluded from making that data available to the public (CAA section 112(r)(7)(H)(x)(II)).

**J. What does "official use" mean?**

"Official use" is defined by CSISSFRRRA to mean "an action of a federal, state, or local government agency or an entity [such as a SEC, LEC or volunteer fire department] intended to carry out a function relevant to preventing, planning for, or responding to accidental releases" (CAA section 112(r)(7)(H)(i)(II)).

Following are examples of what would constitute "official use" of OCA information (i.e. the OCA sections of RMPs and EPA's database created from those sections) by a government official:

- Analyzing the OCA information for facilities in your jurisdiction for purposes of emergency planning, prevention or response.
- Communicating the results of the analysis described above to other government officials and/or the public as part of emergency planning, prevention or response efforts, so long as you do not distribute the OCA information itself to the public or to other government officials except as authorized by the OCA regulations; for example, you may communicate OCA data elements to the public and any other government official.
- Analyzing the OCA information for facilities in your jurisdiction to determine which facilities present the greatest risk to the public in case of a accidental release, so that you can focus your emergency planning, prevention or response efforts accordingly.
- Communicating the results of the analysis described above to other government officials and/or the public, so long as the results do *not* rank facilities either nationally or statewide, or, if the results do take such a form, so long as they are communicated *only* to other government officials.
- Comparing the OCA information for facilities in your jurisdiction with the OCA information for facilities in other jurisdictions, to gain insight into whether the facilities in your jurisdiction have appropriate accident prevention programs.
- Communicating the results of the comparison described above with other government officials and/or the public, so long as you do not distribute the OCA information itself to the public or to other government officials except as authorized by the OCA regulations.
- Considering the OCA information for facilities in your jurisdiction in making decisions about zoning or land use planning.
- Providing the public and other government officials with access to OCA information in accordance with the OCA regulations.
- Accessing OCA information as needed to operate the vulnerable zone indicator system.

Following are examples of what would *not* constitute “official use” of OCA information by a covered person:

- Distributing (in paper or electronic form) OCA information to the public as part of an information or education campaign except to the extent authorized by the OCA regulations.

- Disclosing or distributing OCA information to a private party in a court suit involving a chemical accident at a facility, except where the private party is the owner or operator of the facility. (Note, however, that disclosure to judges and court employees would be permissible since they are government officials).

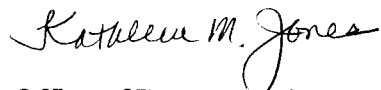
**K. What are the penalties for violating the restrictions?**

A covered person who willfully violates a restriction of CSISSFRRRA or the OCA regulations is subject to a fine for an infraction under title 18 of the United States Code, section 3571. For individuals, the fine is not more than \$5,000; for organizations, the fine is not more than \$10,000. If unauthorized disclosure relates to more than one facility, disclosure of each facility's OCA information is a separate offense. The total of all criminal penalties that may be imposed on a single person or organization cannot exceed \$1,000,000 for violations committed during any one calendar year. A government official who violates the provisions of the OCA regulations is also subject to civil liability under the provisions of the CAA section 113.

**L. Where can I get more information about the restrictions?**

A set of questions and answers concerning CSISSFRRRA and the OCA regulations is available at <http://www.epa.gov/emergencies>. EPA, in consultation with other federal agencies, will continue to add new questions and answers as the need arises.

October 2004



Office of Emergency Management