DEPARTMENT OF JUSTICE

40 CFR Chapter IV

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter IV

RIN 2050–AE80

Accidental Release Prevention Requirements; Risk Management Programs Under the Clean Air Act Section 112(r)(7); Distribution of Off-Site Consequence Analysis Information

AGENCIES: Department of Justice and Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) and the Department of Justice (DOJ) are promulgating a rule that provides for access to information concerning the potential off-site consequences of hypothetical accidental chemical releases from industrial facilities. Under section 112(r) of the Clean Air Act (CAA), facilities handling large quantities of extremely hazardous chemicals are required to include that information in a risk management plan (RMP) submitted to EPA. As required by the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (CSISSFRRA), this rule provides members of the public and government officials with access to that information in ways designed to minimize the likelihood of accidental releases, the risk to national security associated with posting the information on the Internet, and the likelihood of harm to public health and welfare.

DATES: This rule is effective on August 4, 2000.

ADDRESSES: Supporting information used to develop the proposed rule and the final rule is contained in Docket No. A–2000–20. The docket is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday (except government holidays), at Waterside Mall, Room M1500, 401 M Street, S.W., Washington, DC 20460. A reasonable fee may be charged for copying. The assessments upon which this rule is based are also available on the Internet at http://www.usdoj.gov and http://www.epa.gov/ceppo.

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SUPPLEMENTARY INFORMATION: This rule was published in the **Federal Register** as a proposed rule on April 27, 2000 (65 FR 24834). This **Federal Register** action announces EPA and DOJ's final decisions on the rule.

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I. Introduction

A. Statutory Authority and Background

As more fully described in the notice of proposed rulemaking (NPRM) (65 FR 24853 (April 27, 2000)), the federal government's efforts to prevent and mitigate chemical accidents are reflected in several pieces of legislation, including section 112(r) of the CAA, 42 U.S.C. 7412(r). In that section, Congress imposed a general duty on industrial facilities handling any extremely hazardous chemicals to do so safely (CAA section 112(r)(1)), and required EPA to establish a regulatory program for facilities that pose the greatest risk (CAA section 112(r)(7)). Congress directed that the regulatory program require covered facilities to develop and implement a risk management program for preventing accidental chemical releases and minimizing the consequences of releases that do occur. Congress further mandated that facilities perform an off-site consequences analysis (OCA) for one or more hypothetical accidental worst case and/or alternative release scenarios and report the results of the analysis in a risk management plan (RMP) to be submitted to federal, state, and local government agencies and made available to the public.

EPA issued the rules establishing the regulatory program required by CAA section 112(r) on January 31, 1994 (59 FR 4478) and June 20, 1996 (61 FR 31668, the ''RMP rule''). In those rules, EPA continued the philosophy that EPA embraced in implementing the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). Specifically, EPA recognized that regulatory requirements by themselves will not guarantee safety, and that providing the public with information about hazards in a community can and should lead government officials and the public to work with industry to prevent accidents. EPA thus relied on the public availability of RMPs to stimulate further chemical risk reductions efforts, which occur primarily at the local level where the risk is found.

Over 15,000 facilities are subject to the RMP rule. In an effort to reduce the burden of collecting and disseminating RMPs, EPA designed an electronic RMP

form that could be placed on the Internet for purposes of public access. However, the Federal Bureau of Investigation and other representatives of the law enforcement and intelligence communities raised concerns that releasing the OCA portions of RMPs via the Internet would enable individuals anywhere in the world anonymously to search electronically for industrial facilities in the U.S. to target for purposes of causing an intentional industrial chemical release. In response to those concerns, EPA posted RMPs on the Internet (*www.epa.gov/ceppo/*) without the sections of the RMP that contain OCA results (sections 2 through 5). However, those OCA sections, and any EPA electronic database created from those sections, were still subject to public release in electronic format pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552. On August 5, 1999, CSISSFRRA was enacted (Pub. L. No. 106–40) to provide at least a one-year exemption from FOIA for ''OCA information,'' including the OCA portions of RMPs and any EPA database created from those portions. CSISSFRRA amended section 112(r)(7) of the CAA by adding a new subparagraph (h).

CSISSFRRA requires the President, by the end of the one-year period of the FOIA exemption, to decide how to disseminate OCA information. Specifically, CSISSFRRA requires the President to assess ''the increased risk of terrorist and other criminal activity associated with the posting of [OCA] information on the Internet'' and ''the incentives created by public disclosure of [OCA] information for reduction in the risk of accidental releases'' (CAA section 112(r)(7)(H)(ii)(I)). Based on those assessments, the President is required by August 5, 2000, to promulgate a regulation governing access to OCA information in a manner that minimizes the likelihood of chemical releases, however caused. Until that time, CSISSFRRA limits public access to OCA information but provides government officials access for purposes of preventing, planning for, or responding to chemical releases. The President delegated to the Attorney General and the Administrator of EPA the authority to conduct the required assessments and rulemaking (see the delegation memorandum at 65 FR 8631 (February 22, 2000)). The proposed and final rules are subject to approval by the Director of the Office of Management and Budget (OMB).

The risk and benefits assessments were completed and used as the basis for the proposed rule. The conclusions of those assessments are fully described in the NPRM. Briefly, the risk assessment found that an increased risk of terrorist or other criminal activity would accompany the release of certain items of OCA information via the Internet. That information could be used by terrorists or other criminals for purposes of targeting or maximizing the results of industrial chemical releases. The benefits assessment concluded that public disclosure of OCA information would likely lead to a significant reduction in the number and severity of accidental chemical releases. It also found that ease of public access to information is important to the public's use of that information. The risk and benefits assessments are available in the docket for this rulemaking and on the EPA and DOJ websites (*www.epa.gov/ceppo/* and *www.usdoj.gov*).

B. The Proposed Rule

Based on the risk and benefits assessments, EPA and DOJ proposed providing the public with several means of obtaining access to OCA information and information about the risk expressed by OCA information. The complete proposal is contained in the NPRM. A brief summary follows.

In order to minimize the risk of Internet dissemination of OCA information while still providing public access to that information, we proposed to provide the public with access to paper copies of OCA information for covered facilities at 50 or more federal reading rooms geographically distributed across the United States. At the reading rooms, members of the public would have access to OCA information for a limited number of facilities, located anywhere in the country, and would be able to read the information and take notes from it, but not remove or mechanically reproduce it. Reading rooms would be authorized to provide any member of the public with access to OCA information for up to 10 stationary sources per calendar month. Based upon an analysis of the geographic distribution of RMP-covered facilities, we concluded that the 10 per individual per calendar month limit would still permit most members of the public to have access to OCA information for facilities in whose ''vulnerable zone'' they live or work, as well as to OCA information for a few other facilities located elsewhere.

In addition, we proposed making the less sensitive items of OCA information available to the public on the Internet by posting them on EPA's website. Those items of OCA information included information about passive and active safety systems used by facilities; we explained that that information would facilitate risk reduction dialogues among members of the public, state and local officials, and facilities. Only the items of OCA information for which the risk assessment found there was a significant risk of use for terrorist or other criminal purposes would be excluded from Internet posting.

We also proposed creating a ''risk indicator'' system as a tool for providing the public with a means of understanding, via Internet inquiry, some aspects of the risk expressed by OCA information. Members of the public would be able to enter a specific address (such as that of a home, school, or place of employment) into the risk indicator system and learn if that address might be within the ''vulnerable zone'' of at least one facility that submitted an RMP to EPA. Members of the public who do not have access to the Internet would be able to obtain the same information by calling the EPA hotline or by mailing a request to the Administrator of EPA. The risk indicator system also would inform individuals of several means by which they could obtain the names of the facilities and additional information.

Further, we proposed authorizing and encouraging members of local emergency planning committees (LEPCs), state emergency response committees (SERCs), or local fire departments to allow members of the public to read, but not remove or mechanically copy, paper copies of OCA information for all of the covered facilities in the LEPC's jurisdiction and for any facilities whose vulnerable zone extended into the LEPC's jurisdiction. To further supplement public access, under the proposed rule, EPA would make available to the public additional information on chemical accident risk through an Internet website. The proposal also addressed how EPA would provide access to OCA information to federal, state, and local government officials for their ''official use'' by codifying the provisions of CSISSFRRA that appear in CAA section 112(r)(7)(H)(ii)(II)(cc)–(ee). Finally, the proposal called for establishing further provisions as needed to implement CSISSFRRA, such as prohibiting the unauthorized release of OCA information and authorizing the Administrator to provide OCA information to qualified researchers under CAA section 112(r)(7)(H)(vii).

II. Discussion of Comments on the Proposed Rule

The proposed rule was published for comment in the **Federal Register** on April 27, 2000. The comment period ended on June 8, with 68 comments

submitted. Commentors represented industry, trade associations, public interest groups, journalists, environmental groups, law enforcement, emergency response groups, state/local entities, and the general public. In addition, on May 9, 2000, EPA and DOJ held a public hearing on the proposed rule at which nine presenters representing public interest groups, environmental research groups, state and local emergency planning groups, and the general public provided comments about the proposed regulation. We are responding to most comments on the proposed rule in this preamble. We respond to additional comments in a supplemental document included in the public docket for this rulemaking.

A. Risk and Benefits Assessments

As noted above, the assessments were available on the EPA and DOJ websites. We received comments on both the benefits assessment and the risk assessment expressing a wide range of opinion. We note at the outset that CSISSFRRA did not call for the assessments to be developed through a public rulemaking process (see CAA section 112(r)(7)(H)(ii)). Instead, CSISSFRRA required the President to conduct the assessments and then, ''based on the assessments,'' to promulgate regulations governing the distribution of OCA information. In requiring regulations, CSISSFRRA ensured the public an opportunity to participate in the government's consideration of the extent to which and the manner in which OCA information should be made available based on the assessments. Preparation of the risk assessment, however, necessarily called for the exercise of expert judgment in sensitive areas of law enforcement and national security, areas in which the President is typically accorded broad discretion. We thus believe that Congress did not intend the assessments to be subject to public evaluation except to the extent they do, or do not, adequately support the rule being promulgated. We nonetheless appreciate the careful consideration that the assessments received from the public and respond below to the significant concerns that were raised.

In regard to the approach taken by both assessments, several commentors asserted that the assessments were fundamentally flawed because they failed to quantify the risk and benefit of disseminating OCA information. EPA and DOJ disagree with that comment. Given the short time frame the agencies had to develop the assessments and lack of a clear basis for estimating the probability of a chemical accident or criminal incident involving an industrial facility, it would have been difficult, if not impossible, to obtain or develop sufficient data to support such an analysis. To begin with, since OCA information is not yet publicly available, its effect on the risk and benefits to be assessed cannot be measured directly. In addition, because the RMP program took effect only last year and trends in terrorism are changing, there is little other data regarding the precise issues that the assessments were required to address.

Furthermore, EPA and DOJ believe that statistical evaluation of the benefits and costs relating to the release of OCA information on the Internet was not necessary to determine how OCA information should be disseminated, which is the purpose of this rulemaking exercise. In the benefits assessment, an analysis of the effect of public release of Toxic Release Inventory (TRI) data indicated that information dissemination leads to further risk reduction efforts. In the risk assessment, an analysis was conducted of trends related to weapons of mass destruction and recent terrorist events. Each assessment used those analyses as the basis for assessing the benefits and risks related to dissemination of OCA information. The findings that resulted from those analyses informed the rule. We believe that that methodology was appropriate for purposes of determining how best to disseminate OCA information.

1. Benefits Assessment

As noted above, the reaction to the benefits assessment was mixed. Many commentors agreed with the conclusions regarding the benefits of public disclosure of OCA information. Other commentors took issue with some of the assessment's findings.

Several commentors contended that there was no basis for drawing an analogy between the TRI program experience and what might be expected for OCA information because TRI data records are based on anticipated lawful releases, derived from estimates or actual measurements, while OCA information is based on hypothetical, unanticipated releases. We disagree that an analogy between TRI data and OCA information is inappropriate. As noted in the benefits assessment, although TRI data represent actual releases while OCA information represents hypothetical releases, our reason for examining the TRI program experience was the fact that TRI data are made publicly available in an easily used and understood format. The assessment noted a correlation between the ready accessibility of TRI data and the extensive use made of it by community and environmental groups, the news media, state and local governments, and industry, and concluded that a similar correlation might reasonably be expected from the dissemination of OCA information.

Some commentors disagreed with the benefits assessment's contentions that the publication of TRI data contributed to reductions in TRI emissions. They attributed TRI emissions reductions mainly to economic incentives, technical considerations, and CAA regulatory programs. The commentors were also critical of the methodology and the conceptual and statistical support for the assessment's analysis of the effect of negative media attention on TRI emissions reductions. They criticized, for example, the assessment's focus on the ''worst polluting'' facilities selected by EPA. They took issue with comparisons between large facilities with correspondingly large releases to small facilities with small releases, and comparisons between supposedly similar facilities that may have differed in terms of process or industry classification. They questioned, moreover, whether the analysis captured the full range of TRI data available beginning in 1987. Based on those criticisms, the commentors viewed the TRI analogy as an invalid basis for the benefits assessment's conclusion that wide public access to OCA information would help reduce the risk of chemical accidents.

As the assessment noted several times, a number of different factors contributed to TRI emissions reductions. Nonetheless, according to the literature reviewed for the assessment, the interest in TRI data—either in the form of published reports, negative press accounts, or the publication of TRI data by a company—was one of the factors affecting TRI emissions reductions. As explained in Appendix D of the assessment, the media relied on total emissions data to label certain facilities as the ''worst polluters.'' EPA compared the total TRI emissions reduction rates of those ''worst polluting'' facilities with the overall TRI emissions reduction rates for all other facilities (both large and small) since TRI data were first published in 1989 (which includes data collected in 1987 and 1988). The ''worst polluting'' facilities featured in news accounts appeared to have reduced their emissions significantly more than did the other facilities. EPA also compared ''worst polluting'' facilities to others listed under the same TRI industry

classification because facilities in the same industry classification were likely to have similar processes. EPA recognizes that within a single industry classification there could be differences in chemical processes that might account for some of the differences in TRI emissions. Those variations, however, would not affect the results of the assessment's comparative analysis of TRI emissions reduction rates for facilities that were subject to significant negative publicity and those that were not. As indicated in Appendix D, moreover, even the reduction rates of facilities with relatively low levels of emissions that were the subject of negative press accounts were significantly greater than those of other facilities not subject to negative publicity. In light of that evidence, we continue to believe that if OCA information, like TRI data, were made publicly available in an easily understood format, there would be increased public understanding and dialogue about accidental release risk and risk reduction. We further believe that the resulting public pressure could lead to the adoption of additional risk reduction measures.

Other commentors contended that the benefits assessment should not use the term ''risk reduction'' when referring to the TRI program since TRI data does not communicate ''risk,'' which is often understood to be the consequence of an event multiplied by the probability that the event will occur. They also questioned whether the OCA information has value for risk reduction. As the benefits assessment explained in detail in Chapter 6, however, OCA information by itself does not communicate risk; rather, OCA information in context and in comparison with other information can provide insights about risk. As stated in Chapter 6, ''[F]rom this comparison and understanding of potential risk, unacceptable risks can be reduced. * * *''

Several commentors also claimed that the assessment's figures for the costs of chemical accidents were outdated and likely overstated because they did not take into account the significant risk reduction benefits of the RMP rule. They suggested, for example, that many companies reduced their inventories of hazardous chemicals in order to avoid being subject to the RMP rule. We believe that the costs of chemical accidents reported in the benefits assessment are based on the most current accurate data available. Some of the data come from the RMP five-year accident histories—data provided by the RMP facilities themselves.

We recognize that before RMPs were required, many responsible chemical facility owners and operators were aware of the need for chemical accident prevention as the result of efforts by a variety of organizations, including the Center for Chemical Process Safety, the American Chemistry Council (formerly the Chemical Manufacturers Association) via the Responsible Care™ program, the Occupational Safety and Health Administration, and others. The objective of the benefits assessment was not to quantify the cumulative impact of voluntary process safety initiatives or of the 1996 RMP rule. Instead, as required by CSISSFRRA, the focus of the assessment was to evaluate the nature and extent of risk reduction benefits that would likely occur if OCA information were widely available and easily accessible to the public. We remain convinced that the assessment correctly concluded that readily available, easily accessible and interpreted OCA information, in combination with RMP information, would stimulate public dialogue about chemical risks and would result in at least some of the 15,000 covered facilities implementing additional risk reduction measures.

Lastly, several commentors asserted that the benefits assessment overstated the importance of OCA information and underestimated the value of the data already released in executive summaries or available through local sources of risk information. The benefits assessment acknowledged that many facilities have provided OCA data in their executive summaries, and that individuals with sufficient effort and know-how could generate their own offsite consequence data from publicly available information. In fact, some organizations have already published their own databases of ''worst-case'' scenarios based upon data less accurate than OCA information. However, the assessment also noted that the amount of OCA data included in executive summaries varies widely, and that OCA data in executive summaries cannot be easily sorted or compared. In addition, OCA results prepared by those outside the company are often erroneous because they are based on incomplete or inaccurate information. The OCA information in an RMP is generated by the company submitting it, and takes into account site-specific information; consequently, the OCA information portions of RMPs contain the most reliable data for comparison purposes and for understanding risks. The assessment made clear, however, that OCA information for a single facility is of limited value, and is far more useful when evaluated in the context of the facility's entire RMP, and compared to OCA information reported by similar facilities or by facilities handling similar chemicals.

2. Risk Assessment

Like the benefits assessment, the risk assessment prompted a range of comments. Some commentors generally agreed with its conclusions. Others, citing DOJ's expertise, deferred to the assessment's findings, but urged DOJ to consider additional risks. In contrast, some commentors claimed that the assessment's conclusions were overstated in light of the availability of data comparable to OCA information or that it failed to consider factors that would reduce the risk assessed.

Some commentors expressed concern that the risk assessment understated the security concerns posed by the dissemination of OCA information. Some of those commentors asserted that the assessment should have considered the potential danger that OCA information could be disseminated by persons taking handwritten notes that could be posted on the Internet. In fact, the risk assessment addressed that potential risk. While the assessment recognized that dissemination of handwritten notes was cause for concern, it concluded that the risk posed by that was less than that posed by release of government documents containing OCA information. Handwritten notes would not carry the same presumption of accuracy and reliability generally associated with government documents. Handwritten notes also would require significant time and effort to transcribe, making them less likely to be used for purposes of creating a large electronic OCA database that could be posted on the Internet.

Other commentors stated that the risk assessment did not discuss other potential risks associated with the release of OCA information, such as exploitation of the data for purposes of conducting industrial espionage or locating precursor chemicals for purposes of creating illicit drugs. We note, however, that CSISSFRRA requires the risk assessment to weigh whether posting OCA information on the Internet would increase the risk of criminally-caused chemical releases. While the release of OCA information may pose other risks as well, we did not, and, given time constraints, could not, assess those risks.

By contrast, a number of commentors asserted that the assessment overstated or mischaracterized the risk posed by the dissemination of OCA information.

Those commentors made several points. First, one stated that the assessment did not discuss the ''increased risk'' posed by dissemination of OCA information on the Internet (quoting CAA section 112(r)(7)(H)(ii)(I)(aa)). Rather, the commentor offered, it merely concluded that OCA information would be helpful to a terrorist or criminal. In fact, however, the risk assessment did address the issue of ''increased risk,'' as required by CSISSFRRA. It concluded that OCA information would provide someone seeking to target or maximize an industrial chemical release with helpful information that is not currently available, and, therefore, that posting OCA information on the Internet would increase the risk of a terrorist using the information for that purpose.

Other commentors argued that information identical or similar to OCA information is already publicly available, and, therefore, the risk assessment overstated the risk posed by posting OCA information on the Internet. The risk assessment acknowledged that some items of OCA information and information comparable to OCA information are currently available to the public. However, the risk assessment also found that the items of OCA information most likely to be used by a terrorist to plan or execute an attack (*e.g.,* the distance to endpoint, the population within the distance to endpoint, and public and environmental receptors affected) have not been assembled into a publicly available resource that would be as comprehensive and accessible as OCA information would be if posted on the Internet, particularly in its database form. While several commentors noted that RMP executive summaries are currently available on the Internet, both the risk and benefits assessments found that the quantity and quality of OCA data contained in the posted executive summaries vary considerably. Some executive summaries include all of the OCA data elements while others include little or none. Consequently, OCA data that have been released through the executive summaries do not constitute a comprehensive collection of OCA information. Moreover, OCA data included in the executive summaries cannot be electronically searched in a manner that would allow the sort of comparisons among RMP facilities that would facilitate targeting. The risk assessment thus reasonably concluded that full publication of OCA information on the Internet would pose a significantly greater risk than that currently posed by the public availability of executive summaries and other information, even though executive summaries have been posted on the Internet.

Similarly, some commentors questioned the risk posed by OCA information, since data similar to OCA information could be calculated using publicly available sources of information. The risk assessment found that calculating information like OCA information using available sources of data would be possible but would require significant effort and know-how. To date, no comprehensive collection of data on the off-site consequences of chemical releases is available on the Internet. To the extent that EPCRA information is available on the Internet, the risk assessment found that such information does not pose the same degree of risk as would OCA information because EPCRA information does not furnish the type of targeting data (such as the distance a chemical release would travel and the population that lives within that area) that could be used to plan terrorist events. Furthermore, the assessment found that some publicly available information similar to the key items of OCA information is only available through SERCs and LEPCs, and is not Internet-accessible. The risk assessment found that the ability to access information anonymously posed significant security concerns and that, for information attainable only through personal contact, for example, by contacting a SERC or LEPC, there is less of a risk that the information would be misused by criminals, who typically avoid such contact in executing their plans. Thus, to the extent that information similar to OCA information is currently available, it can be obtained only through means that do not pose a risk comparable to that which would be created by Internet access to OCA information.

Another commentor maintained that OCA information has already entered the public domain because every covered facility in its state had held the public meeting required by CSISSFRRA section 4. That section specifies that every covered facility must provide the public with a summary of the OCA portions of its RMPs at a meeting or in a public notice no later than February 1, 2000. We do not believe, however, that those meetings (and notices) provided OCA information in a way that presents a significant risk. Facilities were required to share only a summary of their OCA information, and facilities were free to do so in various ways, making it unlikely that the information they shared with the public was sufficiently detailed or uniform to make it easy to assemble and distribute over the Internet. Also, the meetings were a one-time requirement and thus are not an ongoing source of OCA information.

Several commentors questioned the risk assessment's conclusions regarding the helpfulness of OCA information to terrorists and criminals; they asserted that it does not provide a ''roadmap'' for terrorists and that it fails to provide all of the information that a terrorist would need to conduct an attack. The risk assessment, however, did not claim that OCA information provides a comprehensive ''how-to'' manual for attacks on chemical facilities. Nor did it claim that OCA information provides all of the information that would be sought by someone seeking to cause an intentional chemical release. Rather, the risk assessment found that OCA information supplies some pieces of information that would be useful to someone seeking to target or maximize an industrial chemical release. The risk assessment noted that information such as the population that could be affected, the distance that a plume of chemical could radiate, and the types of buildings and landmarks in the local area are precisely the type of information that would be of interest to a terrorist seeking to maximize the effect of an industrial chemical attack. Thus, even if OCA information does not provide a ''roadmap'' for terrorists or all of the necessary information for an attack, it still provides crucial pieces of information that would increase the risk of terrorist or other criminal activity.

A few commentors argued that several of the examples cited in the risk assessment were irrelevant to whether terrorists or criminals in the United States might seek to cause an industrial chemical release. In particular, those commentors considered irrelevant the examples of chemical releases that occurred in Bosnia and the incidents involving criminals in the United States who had personal knowledge of the industrial facilities they targeted. We disagree. Those incidents were included in the risk assessment because they establish specific, important points relevant to the risk assessment. The examples in Bosnia demonstrate that it is in fact possible to cause large-scale chemical releases using explosives or other means; and the two criminal incidents that occurred in the United States demonstrate that criminals in this country have indeed considered using—although they have not successfully caused—chemical releases to inflict mass casualties.

Lastly, two commentors asserted that the risk assessment should have taken into account the risk reduction that would be achieved by informing the

community of OCA information. We agree that the dissemination of OCA information can assist the community in preventing, preparing for, and responding to chemical releases, regardless of how they are caused, and thereby may mitigate the damage that such releases could cause. However, that point does not contradict the risk assessment's finding that the release of OCA information on the Internet would increase the risk of an intentional chemical release or other related criminal conduct. Moreover, while the benefits assessment concluded that public release of OCA information would likely result in a significant reduction in chemical risk, it did not find that the reduction in risk would offset the increase in risk that would accompany Internet dissemination of OCA information. As explained above, we do not have sufficient data to estimate the number of lives that could be lost or saved by various approaches to the dissemination of OCA information. But we are concerned that terrorists or criminals would use anonymous Internet access to OCA information to maximize the effects of a release, and that those effects are likely to be large compared to the effects of unintentional releases. Moreover, it will take time for the public release of OCA information to create the incentives that will in turn lead to risk reduction. The increased risk created by Internet dissemination of OCA information, by contrast, would be immediate. For those reasons, we do not believe that unfettered release of OCA information would achieve the statutory objective of minimizing the risks of chemical releases, however caused.

3. The Assessments and the Proposed Rule

We received a number of comments related to the assessments and their role in informing the proposed rule. Some commentors believed that the proposed rule appropriately balanced the findings of the assessments. Those commentors noted the tension between the concerns raised in the assessments, but offered that the proposed rule represented a reasonable accommodation of those concerns. Others asserted that the conclusions of the risk assessment were given too much weight in view of the evidence presented, or that the conclusions of the benefits assessment were given too little weight.

One commentor noted that while the benefits assessment chronicled actual, significant damages from accidental releases in terms of casualties, evacuations, and property damage, the risk assessment did not cite a successful terrorist attack on an industrial facility in the United States. The commentor was thus concerned that the proposed rule ignored the ''very real risks'' of chemical accidents in favor of what the commentor characterized as ''greatly exaggerated fears of the unknown.''

While there have thankfully been no successful terrorist or criminal chemical releases in the United States (although there have been several abroad), the risk assessment discussed two recent plots to cause chemical releases that were thwarted by law enforcement. As the risk assessment also pointed out, it is important to recognize that the consequences of an intentional release could be devastating. A chemical release intended and designed to cause maximum damage to property and life—as terrorist events increasingly are—would have dire consequences. The fact that an intentional release has not yet occurred in the United States does not mean that the risk of such an incident should be discounted or ignored. Nor does it mean that steps to prevent such an incident should not be taken. As the risk assessment concluded, trends suggest that the odds of such an event are increasing. The rule recognizes that fact and balances that concern with the benefits to be gained from providing the public with access to OCA information.

Similarly, one commentor asserted that the proposed rule sought to eliminate the risk associated with posting OCA information on the Internet rather than balancing that risk with the incentives for risk reduction that would be created by making the information available to the public. We disagree. CSISSFRRA requires the government to promulgate a regulation that ''minimizes'' the likelihood of accidental and intentional releases based upon the findings of the risk and benefits assessments. The proposed rule was designed to do so. It would not have eliminated all the risks cited by the risk assessment. To further reduce the risk, the proposal could have called for any member of the public to have access to OCA information for no more than one facility per month or even per year, or could have made reading rooms less numerous. Instead, the proposal called for any member of the public to obtain OCA information for up to 10 facilities per month at the 50 or more reading rooms across the country. It also called for an Internet-based risk indicator system to stimulate the public's interest in OCA information and the potential for risk reduction. The proposed rule thus was an attempt to minimize the risk of chemical releases, however caused, by providing the public with access to OCA information while establishing safeguards intended to discourage criminal use of the information.

Several commentors asserted that the proposed rule was ''arbitrary and capricious'' because it failed to make a rational connection between the facts found in the benefits assessment and the decisions made in regard to the rule. In particular, the commentors pointed to the benefits assessment's findings that the public will use information to reduce risks to the extent the information is easy to access, understandable, and in a format that facilitates comparison and analysis. They claimed that the proposed rule would make OCA information difficult to obtain. They argued that the proposed restrictions would thus undermine the potential benefits of releasing OCA information, and that EPA and DOJ essentially disregarded the benefits assessment's findings.

We agree that there must be a rational connection between the regulatory limitations established in this rulemaking and the findings in the benefits and risk assessments. However, the final rule should not, and cannot, respond to each of the assessments' findings standing alone. CSISSFRRA requires the final regulations to govern the distribution of OCA information in a manner that ''minimizes the likelihood of accidental releases and the [increased risk of terrorist and other criminal activity associated with the posting of OCA information on the Internet] and the likelihood of harm to public health and welfare,'' in light of the assessments. To meet that requirement, the findings of both assessments must be considered to determine how best to distribute OCA information in a way that reduces the risk to public health and welfare of chemical releases, however caused. We believe the final rule is informed by the findings of both the benefits and the risk assessments.

Another commentor asserted that EPA and DOJ's justification for withholding OCA information from the Internet is ''unique and arbitrary.'' The commentor argued that, if posting OCA information on the Internet is unacceptably dangerous due to the assistance it could give a terrorist in identifying a potential target and planning an attack, then many other types of information on the Internet could be seen as equally dangerous, such as baseball schedules and stadium seating capacities. The commentor explained that a terrorist could use that information to determine potential casualty figures for a planned attack during a game.

This criticism misinterprets the basis of our concern about OCA information. The risk assessment found evidence that terrorists are increasingly interested in using weapons of mass destruction (WMD) and that chemical releases can be triggered from an industrial facility, thereby converting that facility into a WMD. Based in part on that evidence, the assessment concluded that posting OCA information on the Internet would increase the risk of terrorists or criminals targeting chemical facilities for attack. OCA information provides data that is qualitatively superior to the sort of information cited by the commentor. In particular, OCA information includes the number of people, the size of the area, and the types of buildings and landmarks that could be affected by a chemical release. As the assessment emphasizes, that is *precisely* the type of information that terrorists seek for purposes of planning an attack. Stadium seating capacities and schedules, by contrast, provide information only about the number of people that could be affected. For those reasons, EPA and DOJ conclude that the release of some items of OCA information presents a terrorism risk that warrants their exclusion from the Internet. Moreover, the fact that chemical facilities, as opposed to baseball stadiums and many other places where the public congregates, are themselves potential WMD, makes clear that there is heightened risk in making OCA information easily available to terrorists or other criminals.

We also received a comment that the proposed rule makes OCA information more difficult to access than information currently reported under EPCRA section 312, even though the benefits assessment found that EPCRA section 312 information was not widely used because it was difficult to obtain. However, the commentor did not correctly characterize the benefits assessment's findings. The benefits assessment found that several reasons account for the infrequent use of EPCRA section 312 information. First, the public is not aware of the availability of the EPCRA information because limited resources have allowed only about half of the SERCs and LEPCs to publicize its availability. Second, the effort required by members of the public to locate their SERC or LEPC and request that information has been a disincentive. Lastly, EPCRA data is not in a format that is easily understood by the public.

As will be described in more detail later, under the final rule, the public will more likely be aware of OCA information and have the means to access and understand it. First, the EPA's website on the Internet—a widely accessible medium—will inform the public of the existence and availability of OCA information. Second, the website will provide contact information and instructions for obtaining access to OCA information, so members of the public will not have to locate that information for themselves. Third, OCA information will be accessible from more sources than is EPCRA section 312 information; while EPCRA section 312 information is available only through SERCs and LEPCs, OCA information will be available through federal reading rooms, as well as through SERCs, LEPCs, and other related state and local agencies that opt to provide access to local OCA information, as described in more detail later. Fourth, some OCA information will be readily accessible on the Internet. Finally, the public is more apt to use OCA information because it is easier to comprehend than is the EPCRA section 312 data. OCA information does not require calculations or analysis to determine the potential consequences of potential releases; it communicates that information directly and is designed to allow easy comparisons among RMP facilities.

B. General Comments on the Rule

We received comments raising a variety of general or overarching concerns with the proposed rule. One commentor asserted that the proposed rule does not further right-to-know efforts. Other commentors argued that terrorists will be able to get OCA information while the proposed rule's restrictions on OCA information will only harm the public. As stated above, DOJ and EPA agree that the public's right-to-know is an important element in the reduction of accidental releases and that risk reduction benefits will flow from the public's access to OCA information. Accordingly, the proposed rule provided the public with multiple avenues for obtaining access to OCA information, including federal reading rooms, LEPCs, SERCs, and fire departments that opt to provide read-only access. It also provided the public with hazard information through a risk indicator system and clarified that state and local government officials, as well as federal officials, can communicate the substance of OCA information to the public as long as they do not release the restricted forms of that information. While the proposed rule would not have permitted unfettered release of OCA information, it would have provided for dissemination of OCA information in ways that are consistent with right-to-know efforts and would have allowed the public and industry to better prevent and prepare for chemical releases, whether or not intentionally caused. As explained further in this preamble, the final rule adopts and improves on those public access provisions.

One commentor argued that the proposed system for providing the public with access to OCA information would undermine the utility of the CAA's citizen suit enforcement provision by denying members of the public the information they need to prosecute such suits. But as noted above, the system would not deny public access to OCA information, only control it. Federal, state, and local reading rooms, and the Internet would all be potential outlets for the information. As described later, we have also sought to improve the proposed system's ability to assure reasonable access to OCA information by all members of the public.

One commentor expressed concern that the proposed regulation would ''disenfranchise'' U.S. citizens located outside the country by withholding access to OCA information from them. The basis for that concern was our proposal to define ''member of the public or person'' as an individual located in the United States. We did not intend to withhold access to OCA information from any U.S. citizen. Rather, we intended only to limit our reading room obligation to establishing rooms in the United States, where the vast majority of persons affected by RMP facilities are located. Given the resource implications of establishing federal reading rooms, we considered it appropriate to commit to locating at least 50 rooms in the United States and retain discretion to locate more elsewhere. We continue to believe that that is the appropriate course to take.

As described later, we are developing an approach to operating reading rooms that will give us flexibility in where we locate them; to the extent we learn that there is demand for reading room access by U.S. citizens abroad, we will consider providing reading room access in appropriate locations. Nonetheless, we realize that the definition of ''member of the public or person'' need not be limited in the way proposed to accomplish our objective. The reading room provision of the rule itself specifies that the required reading rooms be located across the United States. Moreover, we realize that the proposed definition would have been problematic for some other rule provisions that used the terms ''public'' or ''person.'' We have thus deleted the phrase ''located in the United States'' from the definition. At the same time,

we have revised the rule provision calling for a system that indicates whether an address is within a facility's vulnerable zone so that our obligation extends only to persons located within any state (defined to include the 50 states, the District of Columbia, and U.S. territories). The vast majority of persons affected by vulnerable zones are within a state, and we consider it reasonable and prudent to limit our obligation in order to limit the potential impact of that obligation on our resources. We expect, however, to answer inquiries from persons located outside the U.S. unless those inquiries become voluminous.

Several commentors voiced concern that, without ready access to OCA information, the public would be unable to hold EPA accountable for the effectiveness of the RMP program. We disagree. We do not believe that changes over time in any single set of data (*e.g.,* distance to endpoint) are sufficient to measure the effects of the RMP program on a facility's practices. Differences in OCA data may reflect differences in assumptions and models used in conducting the analysis. Other RMP information, including accident histories and information about prevention and response programs, offers a more comprehensive basis for measuring a facility's progress or comparing facilities' safety practices. Moreover, RMP information except for OCA information is already available on the Internet. Consequently, there is already a wealth of information that an individual can use to determine the compliance status of an individual facility, even without the additional OCA information offered by the proposed rule. We thus believe that the ready access to that information sufficiently enables interested individuals to evaluate the effectiveness of the RMP program.

One commentor claimed that the proposed rule distorted the notion of a ''public record'' because the proposed rule would not allow publicly released OCA information to be copied or carried away from reading rooms. The commentor noted that the proposal treated OCA information as ''public'' in the setting of the reading rooms but prohibited it from release to the public in the context of the Internet. We find that the proposal's treatment of OCA information is consistent with CSISSFRRA's statutory framework. Congress anticipated that OCA information in different forms could be disseminated differently; under CSISSFRRA the government is required to provide the public with access to paper copies of OCA information in limited quantities, and in addition the government is required to assess whether and how to provide OCA information on the Internet (CAA section 112(r)(7)(H)(ii)(II)). Thus, the proposed rule's approach to dissemination of OCA information was well within the scheme contemplated by the CSISSFRRA.

We received a comment that the proposed rule is illogical because it tracks members of the public who review OCA information at federal reading rooms but allows companies to release OCA information to the public without restriction. Both of those aspects of the proposed rule, however, flow from the statute itself. First, CAA section 112(r)(7)(H)(ii)(II)(aa) specifies that the final rule must provide access to paper copies of OCA information for a ''limited number'' of facilities. The only way the government can implement the ''limited number'' provision is to limit the number of facilities for which an individual can receive access to OCA information. Second, CAA section 112(r)(7)(H)(v)(III) contemplates that facilities will release their OCA information to the public if they so choose. It provides that the statute's restrictions on dissemination of OCA information do not apply to information released without restriction by facilities, and it requires facilities that provide OCA information to the public under those terms to notify the Administrator, who is directed to maintain a public list of such facilities. Congress thus clearly intended to allow facilities to release their OCA information as they consider appropriate. Congress' approach to facilities' release of their own information does not conflict with the concern expressed in the risk assessment that large quantities of OCA information would be disseminated in a searchable format on the Internet. Individual facilities separately releasing their OCA information does not significantly raise that concern.

Relatedly, one commentor asserted that the federal government should provide access to OCA information that facilities release without restriction. As noted above, CSISSFRRA requires EPA to make publicly available a list of the facilities that have notified EPA that they have released their OCA information without restriction. Approximately 1,000 facilities have notified EPA, and EPA has made a list of those facilities available on its website. That list will enable members of the public to obtain OCA information from those facilities. At the same time, CSISSFRRA does not require that EPA and DOJ make publicly available the OCA information released by listed facilities. Neither EPA nor DOJ will provide the OCA information merely because it has been released by the listed facilities, for the security reasons cited above.

Several commentors asserted that even greater restrictions should have been proposed because the rule would not stop OCA information from being hand-copied and posted on the Internet. We do not believe Congress intended for us to prevent members of the public from hand-copying the OCA data that they view. CAA section 112(r)(7)(H)(ii)(II)(aa) guarantees the public ''access'' to paper copies of OCA information for at least a limited number of facilities, and the utility of ''access'' would be greatly diminished if the public had to rely on memory alone to recall that information. Also, CAA section 112(r)(7)(H)(viii) expressly precludes mechanical and electronic copying of the electronic OCA information made available under that provision. It is silent with regard to copying by hand. The fact that Congress expressly precluded mechanical and electronic copies suggests that it was aware of the problem of copying and made an affirmative decision to prohibit only certain forms of copying. We thus believe that Congress' silence with regard to copying by hand is properly interpreted to mean that hand copies are to be permissible.

Another commentor claimed that the best manner of determining whether the proposed rule provided adequate public access to OCA information compared to other alternatives was to give the full RMP database to qualified researchers so that they could use it to conduct a peer review analysis of the proposal. CSISSFRRA mandates that the means of disseminating paper copies of OCA information be based upon assessments conducted by the government; it does not appear to contemplate the sort of peer review process that the commentor proposed. Further, it is unlikely that the short time frame provided by the statute would have allowed for such a process. Moreover, we do not believe that the commentor's method of assessing the various alternatives for providing the public with access to OCA information would be preferable to the method of analysis that we conducted through our assessments. We agree, however, that there are public benefits to providing qualified researchers with access to OCA information. CSISSFRRA does not require that this rulemaking establish a means of doing so, but we are working on devising and implementing a system for giving qualified researchers access to

OCA information, as required by CAA section 112(r)(7)(H)(vii).

One commentor asserted that it was unnecessary for the public to receive information about facilities outside their communities, and that a facility's OCA information should only be available to members of the community in which it is located. Such an approach, however, would be inconsistent with CSISSFRRA and the findings of the benefits assessment. CAA section 112(r)(7)(H)(ii)(II)(aa) expressly guarantees access to paper copies of OCA information for a limited number of facilities ''located anywhere in the United States, without any geographical restriction.'' The benefits assessment also notes that a person interested in assessing a local facility's safety practices may find it useful to compare that facility's OCA information with that of similar facilities located elsewhere.

Some commentors suggested that the creation of 50 federal reading rooms, or approximately one per state, has environmental justice implications. The Environmental Justice Executive Order (Exec. Order No. 12898, 59 FR 7629 (1994)) requires that each federal agency conduct all activities affecting the environment or human health in a manner that does not discriminate by race, color, or national origin, and address, as appropriate, any disproportionately high and adverse human health or environmental effects on minority and low-income populations. Executive Order 12898 also encourages agencies to work to ensure that public documents relating to human health and the environment are readily accessible to the public. We believe that our approach, including various means of access in addition to federal reading rooms, will not have a disparate impact upon minority groups or low-income groups. As discussed below, we are committed to providing reasonable access to everyone seeking to view OCA information and have made changes to the rule reflecting that intention. We expect that the vast majority of federal reading rooms will be placed in urban areas with relatively large minority and low-income communities. Those locations will provide practical access to OCA information for those communities, some of which have historically suffered from a disproportionate environmental hazard burden. The rule provides for additional access to OCA information by allowing state and local government agencies to provide access under the ''enhanced local access'' section of the rule. Also, the vulnerability zone indicator system, which is accessible via email, telephone, and U.S. mail, will provide an individual with additional data on some aspects of the risk expressed by OCA information.

Some commentors also expressed concern that little had been done to involve minority and poor communities in the development or public review of the proposed rule, contrary to the Environmental Justice Executive Order. EPA and DOJ disagree. Especially in light of the relatively short period of time we had to conduct the risk and benefits assessments, as well as to propose and finalize this rule, we believe that we provided a reasonable opportunity for review of the proposed rule by minority and poor communities in compliance with that Executive Order. The proposed rule outlining the federal government's policy was published in the **Federal Register** and available on the EPA website. In addition, we provided additional notice of the proposal by holding a public hearing and providing individual notification to thousands of individuals across the country, including state and local government agencies.

Another commentor faulted the proposed rule for not acknowledging Indian country, tribal governments, or tribal equivalents of SERCs and LEPCs. CSISSFRRA itself does not address Indian country or tribes. It amends the CAA, which defines ''state'' in a way that does not include Indian country. However, CAA section 301(d) authorizes EPA to promulgate regulations specifying those CAA provisions for which it is appropriate to treat Indian tribes as states. EPA has promulgated that regulation (63 FR 7271 (Feb. 12, 1998)), which provides that tribes can take delegation of programs under CAA section 112, including the RMP program, if EPA finds they meet specified criteria. Thus, a tribe found to meet those criteria may be treated as a state and receive and disseminate OCA information to the same extent and in the same manner as any state under the rule being promulgated.

C. Rule's Impact on Risk Reduction

A number of commentors agreed that the proposed rule generally provided for public access to OCA information in a way that would minimize the likelihood and consequences of chemical releases, however caused. Some of those commentors noted that other information available in RMPs, under EPCRA or other programs, would, on their own or in tandem with OCA information, allow the public to learn about and understand the hazards and risks posed by chemical plants in their communities. In contrast, some commentors expressed concern that the proposed rule would not minimize overall risk, and even more significantly, might increase overall risk by making it too difficult for the public to access OCA information that could be used to reduce the likelihood of accidents.

Some commentors argued that the proposed rule would take away a risk reduction tool without decreasing existing dangers. We disagree with that statement. The agencies did not propose to ''take away a risk reduction tool,'' since there still would be public access to OCA information. In order to reduce the risk associated with Internet posting of OCA information, the proposed rule delineated procedures for obtaining access to the information and limitations on the amount of information that could be obtained by any member of the public. It provided for access to up to 10 facilities' OCA information per individual per month, access that would allow members of the public in the vast majority of counties to obtain information for local facilities and a few additional facilities for a basis for comparison. In addition, the proposal in no way attempted to restrict the use of that risk reduction tool once obtained.

A few commentors argued that the proposed rule encouraged secrecy, which would breed incompetence and complacency. While we agree that secrecy can have such an effect, in this case the public will have access to OCA information, so facilities' information will be far from secret. In addition, other RMP information currently available on the Internet, including information concerning facilities' accident prevention programs, provide important information for assessing and comparing facilities' practices. Likewise, other publicly available environmental reports—such as those concerning accidents reported under EPCRA and the Comprehensive Environmental Response, Compensation, and Liability Act—are useful in evaluating a facility's safety practices. OCA information provides a particularly simple way of roughly assessing and comparing the hazards facilities pose, but it is not the only information capable of communicating such hazards, as a number of commentors pointed out.

Several commentors argued that, by making OCA information difficult to access, the proposed rule would force the public to rely on government officials for risk information without being able to check the accuracy of that information. Other commentors claimed that the public might resort to other forms of less reliable, more exaggerated information that would make local risk

reduction efforts more difficult. Relatedly, another commentor argued that, to the extent other, more exaggerated information is generated as a substitute for OCA information, terrorists and other criminals may be led to believe that consequences of a release would be greater, thereby increasing the risk of a release. The fundamental premise of those comments is that the rule would render OCA information inaccessible. We disagree. As mentioned above, we are committed to making OCA information reasonably available to the public and have made changes in the final rule to ensure such access. Consequently, local and state governments need not ask the public to trust their representations but may provide access to OCA information and other information that the public may use to verify government assertions about the risk of chemical releases.

Several commentors asserted that the proposed rule, in validating the idea that public dissemination of OCA information poses a risk, would have a ''chilling effect'' on local officials' communication of OCA data, thus curtailing accident prevention efforts that result from public awareness and pressure. We did not intend to create such a chilling effect. Indeed, we believe dialogue among government, the public, and industry is essential to further risk reduction efforts. As we explained in the proposal, we have attempted to address the concern about CSISSFRRA's perceived chilling effect by explaining in the rule the ways in which state and local government agencies may legitimately disseminate OCA information, or descriptions thereof, to the public. In fact, the rule encourages appropriate local and state agencies to provide public access to such information, which should counter any inference to the contrary. Further, it is worth reiterating that government officials may be held criminally liable only for ''willful'' violations of the restrictions on OCA information dissemination. In other words, the government would be required to demonstrate that the official knew his or her actions to be unlawful. EPA and DOJ moreover, will continue to provide guidance to state and local covered persons to explain the extent to which they may lawfully disseminate OCA information, or communicate the substance of that information, under the final rule.

Similarly, one commentor expressed concern that the proposed rule might discourage members of industry from participating in SERCs and public meetings at which OCA information is discussed. In particular, the commentor asserted that proposed section 1400.6(b) could be interpreted to render it unlawful for industry members serving on SERCs to provide OCA information for their facilities to the public, if those facilities have not formally decided to release that information. In many instances, whether CSISSFRRA is applicable will depend upon the context in which OCA information is being disseminated. For example, in the instance cited by the commentor, 1400.6(b)'s restrictions on dissemination apply only if the member of industry is distributing OCA information to the public in his or her capacity as a representative of the SERC. In addition, CSISSFRRA does not restrict his or her ability to participate in public discussions about OCA information; in fact, CSISSFRRA section 4 anticipates that members of industry will engage in such discussions with the public.

Several commentors argued that, if the rule makes public access to OCA information difficult, it should compensate for any resulting decrease in risk reduction incentives by requiring facilities to secure their sites and/or take prescribed risk reduction steps, such as reducing their inventory of dangerous chemicals or substituting safer chemicals to the extent feasible. Other commentors disagreed, asserting that requiring facilities to make themselves secure from terrorist attacks or to take other risk reduction measures would be an inappropriate remedy for the risk posed by broad release of OCA information. To begin with, we note that CSISSFRRA requires the final rule to ''govern[] the distribution of [OCA] information.'' It does not call on the government to decide whether to impose further substantive requirements on facilities to reduce the risk of chemical releases, however caused. In the short time available to conduct the assessments and rulemaking on the distribution of OCA information, it was not possible for us to address the broader policy, programmatic, and legal issues posed by the commentors' suggestion for additional regulatory requirements. CSISSFRRA does, however, include a requirement that DOJ, in consultation with relevant federal, state, and local agencies, as well as members of industry and the public, conduct studies to examine the issue of site security at RMP facilities and the extent to which the RMP rule effectively addresses that issue. DOJ is working to comply with that requirement. In the meantime, EPA has issued a site security alert informing industry of various risks posed by criminal activity related to chemical facilities.

D. Reading Rooms

1. General Comments on Reading Rooms

As indicated above, the proposed rule called for providing the public with access to paper copies of OCA information through the creation of at least 50 federal reading rooms geographically distributed across the United States. Several commentors expressed concern that the costs of creating federal reading rooms could outweigh the benefits. Further, several other commentors suggested that it would be more appropriate for LEPCs, SERCs and/or other local groups to be the principal providers of OCA information; some commentors also urged EPA to help fund such efforts. Some commentors recommended that the reading room approach be abandoned or scaled down out of concern that reading rooms would not adequately safeguard the OCA information and could result in the widespread dissemination of OCA material. Other commentors questioned whether federal reading rooms would provide reasonable access, particularly for people who live some distance from reading rooms. Finally, other commentors supported the federal reading room approach but made suggestions about how to make reading rooms more effective and secure.

For the reasons discussed below, we continue to believe that providing the public with access to paper copies of OCA information is best done through reading rooms. We are developing an implementation approach for federal reading rooms that will allow read-only access to OCA information in a reasonably secure manner that is convenient for the public and efficient for the government. We do not believe that existing federal statutes authorize us to rely solely on LEPCs, SERCs, or other state or local entities to provide reading room access; requiring such agencies to do so, moreover, might raise constitutional concerns regarding the appropriate relationship of federal and state power. CSISSFRRA makes the federal government responsible for distributing OCA information. Nevertheless, LEPCs, SERCs, and other emergency prevention, planning, and response agencies can play an important part in facilitating public access to OCA information, and the final rule being promulgated encourages them to do so. We also intend to provide assistance to interested state and local agencies.

As for whether reading rooms can provide reasonable access, we are committed to establishing a network of federal reading rooms and other potential state and local outlets (further

described below) that would ensure that every member of the public has a reasonable opportunity to obtain access to OCA information. We believe that federal reading rooms can and will be an appropriate and cost-effective mechanism for providing the required public access to OCA information.

2. The Number of Paper Copies

We received a comment interpreting the limit on the number of RMP facilities for which an individual may view paper copies of OCA information as 10 per person per visit. Today's notice clarifies that the limit is 10 per person per month, regardless of the number of reading room visits a person makes. Any person may visit a reading room multiple times during a single calendar month to view the OCA information for the same 10 facilities. A person may not visit multiple reading rooms to view OCA information for more than 10 different facilities in a single month. We have changed the text of the regulation to clarify that point.

We received many comments on what the appropriate ''limited number'' should be. Some commentors expressed concern that the proposed limit of 10 per month was too generous considering the potential criminal use of that information and suggested a lower number, such as 10 per year. Several commentors indicated that the proposed limit of 10 was arbitrary, unreasonable, and/or would hamper the goal of providing the public with access to paper copies of OCA information because the proposed limit of 10 per month would be insufficient for citizens living or working in areas with high concentrations of RMP reporting facilities, or would hinder individuals wishing to conduct nationwide comparative research. Finally, some commentors stated that the limit of 10 per month was appropriate.

Several commentors also raised issues concerning the application of the 10 per month limit. One commentor suggested that the limit apply not to individuals but to organizations, so that an organization could not use its employees or members to compile collectively OCA information for more than the prescribed ''limited number'' of facilities. Another commentor argued that members of the public have a legitimate interest only in OCA information for facilities in their community, and that the limited number should thus be applied in a way that provides access to information only for such facilities. Two other commentors recommended that OCA information be provided only to state and local officials with emergency planning, prevention, or response responsibilities.

We note at the outset that CSISSFRRA requires that these regulations provide access for ''any member of the public'' to paper copies of OCA information for a limited number of facilities ''located anywhere in the United States, without any geographical restriction'' (CAA section 112(r)(r)(H)(ii)(II)(aa)). We thus do not have the discretion to deny the public access to paper copies of OCA information, to establish a limit that applies to organizations instead of individuals, or to restrict the geographical scope of the facilities for which a member of the public may request OCA information. The benefits assessment also makes clear that public access to OCA information would stimulate further risk reduction and that the public's ability to compare the hazards and safety practices of similar facilities located in different places is important to stimulating that risk reduction.

With respect to the appropriate numbers limit, we explained in the proposal that we chose a limit of 10 facilities per individual per month based on consideration of many of the issues expressed in the comments received. As required by the law, we weighed the risks that would result from unlimited reading room access to paper copies against the benefits that would accrue from public awareness of potential release hazards, as communicated through OCA information. A limit was proposed that would hinder the ability of an individual or group to gather large quantities of OCA information to post on the Internet, while allowing individuals in most parts of the country or in most counties to gain access to OCA data for all the facilities in their community and a few more for purposes of comparison.

In determining that limit, we conducted an analysis of the geographic distribution of RMP facilities across the nation. The analysis showed that 82% of all counties that have RMP facilities have no more than 10 such facilities. Because residents of most counties would be able to review OCA information for all the facilities in their county in a single visit to a federal reading room, EPA and DOJ believed that a limit of 10 per month would provide reasonable access for persons living or working in areas with RMP facilities. Moreover, under the 10 per month limit, in the great majority of those counties, residents would also be able to review OCA data for RMP facilities located outside their county.

At the same time, we recognized that the proposed limit of 10 per individual per month would not permit all members of the public to obtain OCA information for every facility in their own communities. The proposed rule, therefore, included provisions to authorize and encourage LEPCs, SERCs, and fire departments to supplement the access provided by federal reading rooms by providing read-only access to OCA information for facilities located in the LEPC's jurisdiction and facilities with vulnerable zones that extend into that jurisdiction. However, as discussed more fully below, we received comments that many LEPCs and SERCs would be unwilling and/or unable to provide such access.

In passing CSISSFRRA, Congress emphasized that members of the public should have access to OCA information, particularly for facilities in their local communities (see 145 Cong. Rec. S7545, daily ed. June 23, 1999 (statement of Sen. Chafee)). We agree that every member of the public should be able to access OCA information for facilities in the communities where he or she lives or works without making multiple trips to a federal reading room. We have thus decided to require federal reading rooms to provide any person with access to OCA information that the LEPC in whose jurisdiction the person lives or works is authorized to provide (*i.e.,* access to OCA information for facilities located in the jurisdiction of the LEPC and facilities with a vulnerable zone that extends into that jurisdiction). That access will be in addition to access to OCA information for up to 10 facilities located anywhere in the country, without geographical restriction. With reading room access to OCA information for local facilities assured, access to OCA information for 10 facilities located anywhere will allow members of the public to compare facilities in their community with similar facilities located elsewhere and to learn about facilities in communities where they might move or where relatives or friends live or work.

In providing federal reading room access to OCA information for a person's local facilities, we do not want to discourage LEPCs, SERCs, and others from providing local access to the same. Obviously, it will be more convenient for a member of the public to access information locally than at a federal reading room that may be located many miles away. Also, we want to encourage dialogue between members of the public and their local officials responsible for chemical emergency planning and response. By making local OCA information available locally, LEPCs,

SERCs, and other state and local agencies can encourage the public to become involved in chemical risk reduction efforts. As more fully discussed in the next section of this notice, we are committed to helping LEPCs, SERCs, and others provide that local access.

3. Operation of Reading Rooms

Some commentors suggested that federal reading rooms be open at nights and on weekends. We understand that some members of the public may find it difficult to reach reading rooms during the normal work week. However, due to cost, personnel, and security concerns, reading rooms will be located in federal buildings, which are typically open only during normal business hours. We will explore the extent to which reading rooms can also be open at other hours to accommodate members of the public.

As urged by several commentors, we have endeavored to develop a cost-effective and secure means of operating federal reading rooms. At some reading rooms, access will be available on a walk-in basis because the OCA data will be maintained at the reading room. At other reading rooms, however, the OCA data will not be maintained on-site, and therefore a person wishing to view OCA data at those reading rooms will need to contact a central office at a toll-free number at least three days prior to the date on which the person would like to view the OCA information at the reading room. During the toll-free call, the requestor will be asked to provide his or her name, telephone number, and the names of the facilities for which he or she is requesting OCA information. That information will enable the central office to schedule an appointment for the requestor at a reading room, relay the requested copies of OCA information to that reading room, and, if necessary, contact the requestor. That information will not be retained beyond the requestor's appointment date.

As discussed below, at the reading room, the requestor will need to display photo identification issued by a federal, state, or local government agency, sign a sign-in sheet, and certify that the requestor has not received access to OCA information for more than 10 facilities during that calendar month. The requestor will then receive access to the requested OCA information. Requestors will be limited to access to paper copies of OCA information for a total of 10 facilities during a calendar month, regardless of how many reading rooms they visit during a single month.

As discussed above, any person will also receive access at a federal reading room to OCA information that the LEPC in whose jurisdiction the person lives or works is authorized to provide (*i.e.,* access to OCA information for facilities located in the jurisdiction of the LEPC and facilities with a vulnerable zone that extends into that jurisdiction). Persons seeking such access will also be asked to sign in and to provide proof demonstrating that he or she lives or works in the LEPC jurisdiction for which the OCA information has been requested. They will not, however, be required to sign a certification.

4. The Number of Reading Rooms

We received a range of comments on the appropriate number of reading rooms. Several commentors suggested that fewer reading rooms would be adequate and appropriate while many commentors expressed concern that 50 reading rooms would not provide reasonable public access due to issues such as time and travel costs, especially in large states and for low income groups.

We are committed to providing reasonable access to OCA information. We intend to establish reading rooms in virtually every state, the District of Columbia, and outlying territories having RMP facilities. In addition, we will work to set up additional reading rooms in states that have a significant number of RMP facilities, such as California and Texas. While we anticipate establishing more than 50 reading rooms, we have not increased the number of rooms required by the rule because the need for additional rooms may be affected by the extent to which state or local government agencies provide access under the enhanced access provisions of the rule. Moreover, as we implement the reading room provision and learn more about the demand for reading rooms in different parts of the country, it may become appropriate to relocate reading rooms.

5. The Location of Reading Rooms

As for the specific locations of the federal reading rooms, a number of commentors suggested a number of factors to consider in determining locations. We agree with those suggestions and have decided to use the following criteria in making our decisions: equitable distribution across the United States and its territories; the density of the population surrounding the location; the availability of public transportation to the location; the ability to provide security at the location; and the availability of federal offices that could readily implement the reading room requirement at reasonable cost. Federal offices, it should also be noted, are handicapped accessible. The location of federal reading rooms will be posted on EPA's and DOJ's websites when they are determined.

6. Security Measures at Reading Rooms

We proposed that a reading room representative be required to view a government document identifying that individual before granting that individual access to OCA information. Some commentors stated that that requirement would have a chilling effect on the public's use of reading rooms because some people may be reluctant to show identification to the government. Other commentors urged that we require photo identification to ensure that the person presenting the identification is in fact the person to whom the identification was issued.

We recognize that some individuals may be reluctant to show identification to a government official. However, the personal identification requirement is a reasonable means of accomplishing the statutory requirement that individuals have access to ''a limited number'' of paper copies of OCA information. Further, as noted in the risk assessment, EPA and DOJ believe that the identification requirement will also decrease the likelihood that OCA information would be obtained by individuals seeking it for criminal purposes because such individuals prefer to conceal their activities. With respect to the type of identification, EPA and DOJ agree that photo identification issued by a local, state, or federal government agency (*e.g.*, a driver's license or passport) should be required. That requirement will significantly reduce the risk that someone will attempt to use identification not his or her own.

One commentor suggested that there should be some type of identification validation system to ensure the accuracy of an individual's identification document. EPA and DOJ have concluded that it would be too costly to create an independent identification validation mechanism. The responsibility for checking individuals' identification documents will be left to those operating the federal reading rooms. EPA and DOJ do not consider that to be a significant problem, since the majority of locations at which the reading rooms will be located are federal agencies that have security staff that already visually check the identification of all persons seeking entry to the federal facility or other areas of limited access. Individuals using the federal reading rooms will have their identification checked in the same manner as would any member of

the public seeking entry into federal buildings.

As discussed above, the final rule will require federal reading rooms to provide any member of the public with access to the OCA information that the LEPC where the person lives or works would be able to provide to them. To implement that provision, it will be necessary for reading rooms to check identification and documentation to ensure that a requestor receives access only to the local OCA information to which he or she is entitled (i.e., OCA information for stationary sources located within the jurisdiction of the LEPC in which the individual lives or works and for any other stationary sources that have a vulnerable zone that extends into that LEPC's jurisdiction). We will create guidelines for federal reading room personnel regarding such procedures.

In the NPRM we described procedures by which reading rooms would determine whether a requestor had exceeded the 10 per month allotment. We anticipated that reading rooms would keep daily sign-in sheets to record the name of any person who received access to OCA information and the name and number of facilities to which that person had received access. Whenever someone requested access to OCA information, reading room personnel would review the sign-in sheets for that day and the previous days during the month to determine how many, if any, facilities' OCA information that person had already received that month. We noted that sign-in sheets would be protected under the Privacy Act (5 U.S.C. 552a) and would be retained for three years.

We received several comments on the record keeping aspect of the proposed rule. Several commentors expressed concern that the use of sign-in sheets would raise privacy concerns, and one commentor expressed a related concern that the proposed rule was silent as to how the federal government would use the information. Other commentors agreed with the identification requirement and the concept of keeping some type of record, but recommended that the final rule require record keeping and a corresponding check on people using a reading room in order to ensure that they have not had access to OCA information for more than 10 facilities per month. Two commentors suggested that EPA and DOJ establish a national database as a means of enforcing the 10 paper copy per month limit.

We recognize that privacy concerns are raised whenever the government collects information about individuals. We also are mindful of the need, identified by the risk assessment and required by CSISSFRRA, to limit the number of facilities for which individuals can access OCA information in paper form. We thus have endeavored to design a system that will effectively implement the limitation but minimize the need for keeping records on individuals' access to OCA information.

Specifically, we will use the sign-in sheet system discussed in the NPRM (65 FR 24853 (April 27, 2000)), and keep the sign-in sheets in a manner that will minimize privacy concerns and that will not entail the creation of a system of records under the Privacy Act. The Privacy Act applies to records retrieved by name within systems of records. Federal reading rooms will not create an elaborate tracking system; they will not index or otherwise manipulate the sign-in sheets according to individuals' names. Instead, a reading room representative will visually inspect the sign-in sheet(s), which will be organized chronologically, for the month in which an individual seeks access to paper copies to see if that individual's name appears on the sign-in sheet(s) for dates earlier in the month and, if so, if that individual has already received OCA information for the allotted 10 facilities without geographical restriction.

We believe that the sign-in system will help deter individuals from seeking improperly to obtain OCA information exceeding the 10 facilities per month national limit. To further deter individuals from attempting to exceed their allotment by visiting more than one federal reading room in a month, reading room personnel will be instructed to provide access to OCA information only to individuals who have signed a certification that they have not exceeded their allotment. The certification will inform members of the public that they may be subject to criminal penalties under federal law for falsely certifying that they have not received OCA information for more than 10 facilities that month.

It should also be noted that the information recorded on sign-in sheets may be used by law enforcement in the event of a duly authorized investigation of a violation of civil or criminal law. For that reason, the reading rooms will retain the sign-in sheets for three years. In the event that the sign-in sheets are compiled into a system retrieved by name for purposes of such an investigation, they will be subject to the Privacy Act and will be handled accordingly. Federal law enforcement agencies have already established Privacy Act systems applicable to their indexed investigative records, and if the information from sign-in sheets were so compiled, it would receive those protections.

The reading room records will not be used beyond the purposes outlined above (*i.e.*, to ensure compliance with the 10 facility per month limit and to carry out authorized law enforcement investigations).

In deciding to adopt the sign-in certification approach, EPA and DOJ have decided not to institute a national database for enforcing the 10 facility per month limit, as some commentors recommended. We anticipate sign-in sheets with certifications should provide adequate assurance that the monthly limit on OCA information is not exceeded. However, after gaining experience with the federal reading rooms, we will evaluate whether the sign-in sheet system is in fact effective. For that purpose, we will review a sample of sign-in sheets for several reading rooms to determine if the existing system is adequately enforcing the limit. Based on that review, DOJ, EPA, and OMB will consider whether a national database or other tracking system should be instituted to enforce the limit.

One commentor asserted that the establishment of such records would violate the Paperwork Reduction Act of 1995 because it would not provide the government with information that has practical utility. That assertion is not correct. As discussed above, the information collected would have practical utility, namely to ensure that the statutory and regulatory limit on access to OCA information in paper form is properly applied.

7. Alternatives to Reading Rooms

We expressly asked for comments on whether, as an alternative to reading room access to information, paper copies should be released to the public upon request. Some commentors stated that there should be an alternative system of direct delivery of OCA paper copies to interested parties. They asserted that the proposed federal reading room system would be insufficient to provide OCA paper copy access to all interested citizens. In addition, they indicated that, because only a limited number of federal reading rooms would be established, some citizens would find it inconvenient to travel the distances necessary to access the information.

Other commentors opposed off-site distribution of paper copies or allowing individuals to take away paper copies from reading rooms. Some noted that such a system would pose a significant security risk because it would increase the risk of OCA information being

disseminated widely, thus violating the intent of CSISSFRRA. Some emphasized that paper copies, once outside the control of the government, could easily be scanned into an Internet database and that such a system would provide potential terrorists with the type of Internet access to OCA information that the proposed rule was designed to prevent. Further, in noting that potential terrorists may forgo attempts to gain access to OCA information if they must do so in person and submit to an identification check, some commentors stated that the mail delivery alternative would lessen the deterrence benefit of on-site access.

We have considered the alternatives of mail delivery of OCA information to interested citizens and the distribution of take-away copies, and have determined that both would present an unacceptable security risk. With respect to mail delivery upon request, any safeguards, such as a requirement of proof of residence at the delivery location, could easily be circumvented by an individual or group establishing a ''phantom residence.'' We also agree with the commentors who noted that requiring persons to go to a federal reading room and provide identification would provide some deterrence to those potential terrorists who might wish to keep their interest in the information hidden. We further agree that, once paper copies have left the federal reading rooms, they can easily be scanned onto the Internet where they could be viewed anonymously by those with criminal intent. Anonymous access to significant amounts of OCA information is precisely what this rule is designed to prevent. As a result, the final rule will use reading rooms to provide access to paper copies because reading rooms allow for that access to occur within a controlled setting.

E. Enhanced Local Access to OCA Information

Commentors generally supported the proposed rule's provisions for enhanced local access as a promising means of facilitating the public's access to OCA information and public-private dialogue about chemical safety in their communities. Many of those commentors, however, also pointed out a number of obstacles to making enhanced local access a reality and suggested ways of overcoming those obstacles.

A key element of the proposal for enhanced local access was clarification that state and local government officials (as well as federal officials) may communicate to the public the substance of OCA information (*i.e.*, the OCA data elements reported in RMPs), even though they may not disseminate the official forms in which the data is reported and compiled (*i.e.*, the OCA portions of RMPs and EPA's OCA database). While developing the proposed rule, we learned that many state and local officials were concerned that CSISSFRRA may preclude them from communicating OCA data in any form. As we explained in the proposal, the ''scope'' section of ''CSISSFRRA'' (CAA section 112(r)(7)(H)(xii)(II)) expressly provides that the statute ''does not restrict the dissemination of [OCA] information by any covered person [defined by CSISSFRRA as government officials and qualified researchers] in any manner or form except in the form of a risk management plan or an electronic data base created by the Administrator from [OCA] information.'' In other words, while covered persons may not disseminate the OCA portions of RMPs or any EPA database created from those portions, they may discuss or otherwise communicate the data reported in those portions. We thus proposed capturing that important point in the proposed regulations.

We received comments supporting and questioning the proposed clarification. Several commentors from LEPCs and SERCs indicated the clarification was helpful but sought further guidance on how OCA data could be lawfully disseminated. Other commentors were concerned that the clarification was not consistent with the law, and that communication of OCA data was risky because it is dissemination of the information's content, not its format, that they believed poses the risk. Another commentor expressed concern that the clarification could be interpreted to allow dissemination of the restricted portions of RMPs with only minor changes in format, which would undermine the protections of CSISSFRRA.

After revisiting CSISSFRRA and its legislative history, we have concluded that the proposed rule's clarification not only is consistent with the law but virtually mirrors it. As noted above, CSISSFRRA itself provides that it does not restrict the dissemination of OCA information in any manner or form except in two specified forms—the OCA portions of an RMP and any EPA database created from those portions. RMPs, including the sections containing OCA data, are designed to make information contained therein easy to compile into an electronic database, which would be capable of Internet posting. The legislative history confirms that Congress intended to make clear that government officials could communicate the substance of OCA information if not the restricted forms of that information—in order to allow the type of public dialogue that is important to chemical emergency prevention, planning, and response. As one House member explained, CSISSFRRA was passed to address the risk posed by Internet posting of a large OCA database, not to prevent public officials from sharing OCA data for individual plants with their communities. (See 145 Cong. Rec. H6083, daily ed. July 21, 1999 (statement of Rep. Dingell)).

We share the concern voiced by one commentor that the protections provided by CSISSFRRA would be undone if minor changes in the format of OCA information were sufficient to allow a government official to disseminate lawfully the OCA portions of RMPs or EPA's OCA database. We believe CSISSFRRA's scope provision must be interpreted in a common sense manner that achieves Congress' intent both to protect OCA information from Internet dissemination and to allow government officials to discuss risk. As noted above, Congress' concern with the OCA portions of RMPs arose from the fact that they are easy to compile into an electronic database. Minor changes in format most likely would not change that problematic characteristic. We have thus removed the word ''replicate'' from the relevant provision of the final rule in order to avoid the implication that minor changes in the format of OCA information would be sufficient to permit their release. That change is consistent with the point made by the House member cited above who stated that OCA information may be used ''in any other format that avoids compilation of a national database.'' Under that view, for example, discussion of OCA data at a public meeting would be appropriate because it would not be a form of communication amenable to the creation of such a database.

Several LEPCs asked us to further clarify how they may communicate the substance of OCA information (referred to as ''OCA data elements'' in the rule). We appreciate their concerns and plan to provide additional guidance in the future. Because it is impossible to foresee all the ways in which government officials may wish to communicate OCA data elements, we believe it would be most efficient and productive to work with representatives of LEPCs, SERCs, and other relevant government agencies in reviewing possible means of communication and responding to inquiries about the same.

Many commentors expressed doubt that the enhanced local access provisions would work as proposed. They noted that, because many LEPCs are inactive or have limited funding, few LEPCs would be willing or able to afford to provide secure OCA read-only access. Relatedly, a national organization of fire department officials expressed strong opposition to the proposed specification of fire departments as institutions that could volunteer to provide the public with local OCA information. One commentor suggested we authorize not only LEPCs and fire departments but also other local government agencies involved in chemical emergency planning, prevention, or response, such as police and planning departments. Local governments would then have several options for providing the public with read-only access.

We recognize that a large number of LEPCs are currently inactive, but EPCRA survey data indicate that most heavily populated industrial areas have active LEPCs. Those LEPCs are providing EPCRA information (chemical inventory data and contingency plans, some of which include possible consequences of hypothetical accidents) to the public. Although the final rule does not require LEPCs to disseminate OCA information, we expect that those with active EPCRA public information programs could easily provide enhanced local access to OCA information.

Since some areas of the country do not have active LEPCs, we have decided to expand the types of entities that are authorized to provide read-only access, as suggested by a commentor. The final rule provides that LEPCs and any other ''related local government agency'' may provide the public with read-only access to OCA information for facilities in the LEPC's jurisdiction and any other facilities with a vulnerable zone that extends into that LEPC's jurisdiction. Related local government agencies include fire, police, and planning departments and any other local government agency involved in chemical emergency planning, prevention, or response.

One commentor asked whether state agencies that take delegation of the CAA 112(r) program would be authorized to provide read-only access. The final rule expands the types of state entities that may provide read-only access to OCA information. Along with SERCs, any ''related state government agency'' (*e.g.,* emergency management, environmental protection, and natural resources departments involved in chemical emergency planning, prevention, or response) would be authorized to provide a person with access to OCA information that the LEPC in whose jurisdiction that person lives or works could provide. Thus, a state agency that takes responsibility for implementing the RMP program under CAA section 112(r) may provide that access. It is also worth noting that the final rule does not prescribe the locations where read-only access to OCA information may be provided by LEPCs, SERCs, and state and local government agencies. They may provide access at any facility they choose, including municipal buildings and courthouses.

As described earlier, to further address concerns that enhanced local access may not become a reality in every part of the country, we have also decided to require federal reading rooms to provide any member of the public with access to OCA information that the LEPC in whose jurisdiction the person lives or work would be authorized to provide. By expanding the number of state and local entities that may provide enhanced access and the scope of access to OCA information that federal reading rooms are required to provide, we believe the final rule will provide reasonable access to OCA information for all members of the public.

Several commentors recommended that the federal government provide LEPCs and SERCs with the resources necessary to provide local access, including a binder containing all of the OCA information that a particular LEPC would be authorized to show the public. A commentor also requested model procedures for operating a local OCA reading room. Further, a few commentors suggested that, in those communities with RMP reporting facilities that do not have LEPCs, EPA work with the local governments to establish them. We agree that federal assistance and guidance are warranted. As explained below, we intend to supply the binders suggested by one of the commentors to LEPCs, SERCs, and related local and state agencies that decide to provide enhanced local access. Providing that and other support to local access efforts will become an important component of the EPA's chemical accident prevention program.

Additional commentors stated that most LEPCs and SERCs would be unable to determine whether a facility outside their jurisdiction has a vulnerable zone that would affect their area. One commentor suggested that the final rule should simply authorize LEPCs to distribute the OCA for any facility within 25 miles of their local boundaries. We are not changing our approach in today's final rule. As noted above, we intend to provide any LEPC or related local agency willing to provide local access with a binder that contains the OCA information it is authorized to show the public. We will also work with SERCs and related state agencies to provide them with a similar resource (depending on the number of facilities in a state, binders may be too cumbersome, so there may be a need to explore other means of providing the information). Moreover, contiguous LEPCs can, and often do, work together to determine which RMP facilities have vulnerable zones that affect their areas. LEPCs, SERCs and other emergency planning organizations have historically engaged in joint planning activities to better prepare for emergencies. We are thus confident that the rule's provision allowing local or state agencies to share OCA information with adjoining jurisdictions can be implemented in a manner that would assist LEPCs and SERCs to determine which facilities outside their jurisdictions have vulnerable zones that extend into their jurisdiction.

Two SERCs and one LEPC commented that the proposal to authorize SERCs to provide individuals with OCA information on the basis of that individual's residence or workplace was too burdensome. They questioned whether SERCs would be able to verify the requestor's place of residence or workplace. We understand that SERCs and related state agencies will have to request and review proof of residence and/or workplace. Federal reading rooms will have to do the same for any person requesting OCA information on those bases. We believe that that requirement is necessary, however. SERCs have much broader jurisdictions than do the vast majority of LEPCs. Thus, the number of facilities within their jurisdictions is typically much greater. If SERCs were allowed to share OCA information for all the facilities in their jurisdictions with any member of the public, the risk of persons using SERCs to amass OCA information would be significant. To avoid that risk, we must limit the amount of OCA information a SERC or related state agency can share. We appreciate the extra work that that may involve, but believe it would be manageable. A driver's license or other identification can establish someone's home address while a pay stub can establish a work address. As we address the same issue in federal reading rooms, we will share our ideas and experiences with the states.

One commentor also questioned our authority to limit the release of OCA information to individuals on the basis of their residence or workplace. The

commentor claimed that there is no statutory authority for such a limitation. In fact, the local enhanced access provision is being implemented under CAA section 112(r)(7)(H)(ii)(II)(bb), which authorizes the regulation to allow public access to OCA information ''as appropriate.'' In light of the previously discussed concerns that would arise were SERCs allowed to provide OCA information for the entire state, we believe that it is appropriate to adopt the residence and workplace limitation for local agency dissemination of OCA information.

Several commentors from LEPCs and SERCs expressed great reservation about the potential criminal liability associated with the improper disclosure of OCA information. Some stated that, because of those concerns, they have not requested the OCA information that they are entitled to obtain and are authorized to show the public. The final rule is intended to address those concerns. It makes clear that state and local (as well as federal) officials may communicate OCA data elements to the public in a form other than the OCA sections of RMPs and EPA's OCA database. It also authorizes LEPCs, SERCs, and related local and state agencies to show the OCA sections of RMPs to members of the public in accordance with specified geographical limitations. In a subsequent section of this preamble, we discuss what OCA information state and local officials may share with one another. Moreover, as we noted earlier, government officials may be held criminally liable for unlawfully disseminating OCA information only if they ''willfully'' violate CSISSFRRA (*i.e.,* by distributing OCA information with the knowledge that they are doing so unlawfully).

One commentor asserted that only local persons who live or work within the vulnerable zone of a facility should have access to local reading rooms. Several commentors also recommended that local reading room staff be required to implement the same security procedures that federal reading rooms will follow—asking users for photo identification and recording information about their access to OCA information. That, the commentors argued, would close a loophole in the proposal that would allow persons to obtain OCA information without being tracked. We understand that asking local providers of OCA information to follow security procedures would further reduce the risks identified by the risk assessment. However, we did not propose those security procedures at the local level because of the burden that that would create and the effect that that burden might have on the ability and willingness of local entities to provide OCA information access. We also took into account the fact that the vast majority of LEPCs have a relatively small number of RMP facilities located in, or affecting, their jurisdiction. We thus concluded that any risk posed by local read-only access without additional security procedures was small. The comments we received from LEPCs, SERCs, and others confirm our concerns about requiring local agencies to follow the type of security procedures that federal reading rooms will follow. Indeed, the comments indicate that local agencies will find it a challenge to provide local access, even with the help we intend to provide. We have thus decided not to impose any further requirements on local agencies willing to provide read-only access to local OCA information.

We also do not agree that local access should be restricted to local residents. First, implementing such a restriction would require local agencies to institute much, if not all, of the security procedures that we have decided would be too burdensome. Second, members of the public who do not live or work in a community may nevertheless have a legitimate interest in obtaining OCA information for that community. For example, a requestor may have relatives who live in the community, or may be considering purchasing a home or working in the area.

Lastly, several commentors recommended that LEPCs be authorized to provide take-away paper copies of local OCA information. Several others recommended against permitting LEPCs to do so. We have concluded that if users were permitted to obtain paper copies of OCA information LEPC-by-LEPC, it would not be long before a large collection would be accumulated and possibly posted on the Internet. For that reason, the final rule retains the proposed prohibition on LEPC and SERC dissemination of take-away paper copies of local OCA information.

F. Risk Indicator System (Vulnerable Zone Indicator System)

Many of the comments on the proposed risk indicator system were positive, stating that the system would provide useful information that would encourage the general public to become more active in addressing chemical safety concerns in their communities. At the same time, those and other commentors raised various concerns with the system and made suggestions for improving it. A few commentors considered the system so troublesome that they urged us to abandon it altogether.

Several commentors thought the proposed indicator system might frighten recipients of the information and had the potential for depressing property values. They noted that the system would communicate information based on worst-case release scenarios that are highly unlikely and that the information provided would necessarily be imprecise given the nature of RMP data. Based on those concerns, some commentors urged us not to implement the system, or to convert the system so that it would identify the RMP facilities near a particular address, but would not indicate whether facilities' vulnerable zones extend to that address. Other commentors recommended that we avoid potential misunderstandings by including in the system caveats explaining the nature and limitations of the vulnerable zone derivations.

We continue to believe that an indicator system can help spark the public's awareness of chemical risks in its community and interest in working with government and industry to reduce them. Members of the public can already use RMP*Info to locate nearby facilities by asking the system to search for facilities by zip code or county. We proposed an indicator system to allow members of the public to determine if their homes, schools, or other places of interest might be affected by a worst-case or alternative scenario release from a facility. The benefits assessment found that the public is more apt to use such interpreted data, and we thus developed the indicator system as a way of providing the public with information that communicates risk without disseminating OCA information itself. At the same time, we agree that it is important that users of the indicator system understand the nature and limitations of the information thereby provided. We will therefore design the system to include sufficient explanatory information so that users will not become unduly alarmed if the system reports that their address might be in a vulnerable zone. The system will display a notice explaining that it is designed to perform the limited function of helping users quickly determine whether the off-site consequences of any facility's worst-case or alternative release scenarios might affect a particular address. It will also explain the limitations of the data used to calculate the vulnerable zones.

Relatedly, several commentors thought the proposed name, ''Risk Indicator System,'' was inaccurate because it would not provide an indication of ''risk,'' understood to be

the probability of an event multiplied by the consequences of that event. Those commentors suggested changing the name of the indicator system to ''Hazard Indicator System'' or ''Vulnerable Zone Indicator.'' We agree with those comments, and have decided in the final rule to change the name of the system to ''Vulnerable Zone Indicator System'' (VZIS). That name more accurately reflects the limited purpose and capabilities of the system.

Several commentors expressed concern that the proposed indicator system could be used to determine distance to endpoints and thus would provide useful targeting information. We do not agree. The indicator system will consist of very limited query and response software located in RMP*Info. The information provided by the system will be whether an address might be within a vulnerable zone. There will be no indication whether the address is at or near the outer boundary of a vulnerable zone. Nor will the system provide the name or location of the facility that is the origin of the vulnerable zone. Thus, no one would be able to determine from the indicator system the distance to endpoints reported as part of OCA information.

A number of commentors asserted that the proposed indicator system should be deployed only if it identifies the facility that is the origin of the vulnerable zone and/or the chemical involved in the hypothetical release defining the zone. They were concerned that, without that information, the system would alarm users without providing them with the information necessary to address their concerns. A number of other commentors recommended strongly against identifying facilities, arguing that to do so would compromise the security achieved by the rule's restrictions on access to OCA information. Some commentors suggested that the indicator system instruct users on how to obtain facility identities; one recommended including instructions on how to contact the facility or facilities directly.

We recognize that system users who learn that their address might be within a vulnerable zone would likely want to learn more about the hazards they may face. Indeed, we hope that that would be their reaction. However, we remain concerned that the indicator system would pose security concerns if the public could immediately obtain, on an anonymous basis, the name of the facility and chemical involved. Instead, we intend that the system furnish instructions on how to obtain the names of facilities in whose vulnerable zones they live or work.

Several commentors stated that the indicator system should not direct recipients of the indicator system data to LEPCs or SERCs for further information unless those agencies have agreed to provide access to such information. We agree in part with those commentors. We believe that chemical safety is most effectively addressed at the local level. SERCs, LEPCs, and other state and local entities are generally in closer contact than is EPA with local facilities and communities that would be affected by releases. For more than a decade, EPA has endeavored to work cooperatively with local agencies so that they can realize their potential to help prevent and respond to accidental releases. We therefore believe that SERCs, LEPCs, and other local entities can and should be encouraged to assume an important role in communicating OCA information to members of the public. While we do not intend for the indicator system to direct users specifically to SERCs and LEPCs, the indicator system will inform users of the several ways, including through their SERCs and LEPCs, through which they can obtain additional information about the facilities whose vulnerable zones might affect an address of interest. We have thus revised the last sentence in proposed § 1400.4(a) accordingly.

While we cannot at this time name all potential sources of information, at least facility names, locations, and vulnerable zones will be available at all federal reading rooms and all SERCs, LEPCs, or other state and local agencies that opt to provide local access to OCA information. The indicator system will note specifically state and local entities that do not seek and/or provide that information. The system will also advise users that, once they know the name of a facility, they can turn to RMP*Info to learn more about the facility's chemical accident history and the steps the facility is taking to prevent such accidents. Individuals may also contact a facility directly to request access to OCA information. The system will also inform users that they can obtain not only OCA information but further information on risk through contacting a SERC, LEPC, or other state or local ''covered person.'' Federal, state, and local government officials are authorized and encouraged in the proposed rule to provide reading-room access to OCA information, and are permitted to convey and discuss the substance of OCA information, as long as they do so in a manner that does not disseminate the OCA sections of the RMPs or EPA's OCA database.

Several commentors also expressed concern about whether the indicator system would be easy for local covered persons to operate. EPA intends to provide an enhanced version of the RMP*Review software to those federal, state, and local covered persons providing local access so that they can easily identify the facilities whose vulnerable zones extend to a particular address, and provide that facility identification information to individuals who request it.

Some commentors worried that the indicator system would ''rate'' facilities for potential risk. Nothing in the proposed rule required the indicator system to include rating information, and no such requirement has been added to the final rule. The risk a facility poses is a function of many factors, at least some of which are site-specific. No computer system could adequately account for all relevant factors. As discussed below, we intend to maintain a website of chemical safety-related information that will assist the public in assessing hazards posed by facilities and measures that can reduce those hazards. In addition, RMP*Info already allows the public to learn about facilities' prevention and response programs.

G. Internet-Accessible OCA Information

As explained in detail in the NPRM, the risk assessment segregated the OCA information that would be helpful to terrorists or other criminals into three categories. The first category of OCA information provided a general account of the consequences of a chemical release in terms of the damage that might be inflicted on the community. It was composed of the distance to endpoint, the residential population within the distance to endpoint, the public receptors, the environmental receptors, and the map or graphic of the worst-case or alternative release scenario. The second category of information consisted of OCA information that provided a rough sketch of what is involved in triggering a release from an RMP facility. Included in this category were the name of the chemical involved in the worst-case or alternative release scenario; the projected quantity of chemical released; the release rate; the duration of the release; and the scenario that results in the release. The third category of information consisted of OCA information on passive and active mitigation measures.

The risk assessment concluded that Internet access to categories one and two of OCA information posed the greatest risk of being used in relation to an attempted industrial chemical release. However, there were certain

items of OCA information within category two that posed less risk because they were fixed values that were widely known. Thus, the proposed rule would have posted on the Internet the OCA information in category three and parts of the information in category two, but withheld the remaining information in category two and all of category one.

We solicited public comment on whether any additional items of OCA information should be placed on the Internet or whether any items of OCA information that we have proposed posting should not be. The comments we received were divided. Some commentors asserted that the risk assessment's findings in regard to the dangers of posting category 2 information should be heeded and that no category 2 information should be placed on the Internet. Others argued that category 3 information should not be posted because the risk assessment found that it would be helpful to terrorists (although the assessment found that it would be much less so than would category 1 or 2 information). Still others argued that no OCA information, especially the passive and active mitigation system information in category 3, should be placed on the Internet.

Other commentors maintained that the OCA information that we proposed posting would be meaningless unless viewed in the context of the rest of the OCA information. Several commentors similarly argued that all OCA information should be placed on the Internet without restriction. Still another commentor believed that at least the chemical name should be included in the information posted.

We have considered those comments and still believe that the public will benefit from posting the items of OCA information that we proposed. Such information can be used for purposes of comparing various risk reduction characteristics of RMP facilities. Further, posting it would not create an unacceptable security risk. While some commentors have expressed concern about the release of information about active and passive mitigation measures, similar RMP information has already been released on the Internet and the release of that information was found by the risk assessment to pose the least degree of risk. Furthermore, such information is precisely the type of information that could be used by the public to further its dialogue with industry.

In regard to the comments that all OCA information be placed on the Internet, the risk assessment found that wholesale release of OCA information in that manner would unacceptably heighten the risk of intentional releases. Similarly, we disagree with the comment concerning the names of chemicals. While we recognize that there would be public benefit resulting from the posting of that information, we find that the risk that it could be used in concert with other OCA information for illicit purposes is too great to permit it to be posted. As one commentor noted, while an individual item of OCA information may not appear to pose a significant risk standing alone, its release could raise ''mosaic'' concerns: some items of OCA information may not raise significant security concerns considered individually but pose greater concerns when assembled with other items of OCA information. For example, some items of OCA information in category 2 can be used to calculate items of information that are in category 1. We believe that while the items of OCA information that we proposed posting will not pose mosaic problems, others would. Thus, only the items of OCA information that were proposed to be posted will be placed on the Internet.

H. Access to OCA Information by Government Officials

The proposed rule called for codifying CSISSFRRA's provisions regarding access to OCA information by state and local governmental officials for ''official use.'' We received comments raising questions and concerns about various aspects of the proposed codification.

One commentor criticized the proposed definition of ''official use,'' claiming that it would exclude the use of OCA information for purposes of enforcing the RMP rule or other legal requirements. We disagree. The proposed definition of ''official use'' is substantively identical to the statutory definition of that term. Consequently, to the extent that definition limits the use of OCA information, we have no discretion to change that result. However, we believe that the statutory and regulatory definition of ''official use'' does permit the use of OCA information in enforcement actions against facilities. ''Official use'' is defined as ''an action of a federal, state, or local government agency or an entity [such as LEPC, SERC or volunteer fire or police department] intended to carry out a function relevant to preventing, planning for, or responding to accidental releases.'' (Final rule, § 1400.2(h)). Determining compliance with, and enforcing the terms of, the RMP rule is surely carrying out a function relevant to preventing, planning for, or responding to accidental releases. The same can be said about determining compliance with, and enforcing, EPCRA and other legal requirements related to chemical accident prevention, planning, and response.

Several commentors raised concerns about the proposed restrictions on state and local officials' dissemination of OCA information to their counterparts in other states. One commentor considered the restrictions arbitrary and claimed they would interfere with useful communications among states. Another commentor urged us to avoid hindering OCA information sharing between fire and emergency service personnel from jurisdictions involved in joint planning. By contrast, another commentor recommended that the rule not allow a state or local official access to OCA information for facilities not located in the official's state.

Based on our review of the statute and its legislative history, we believe that the proposed provisions for state and local official access are legally required. CSISSFRRA itself expressly provides that the final rule must allow for state and local officials to gain access to OCA information for facilities not only in their own state but in other states as well. EPA will provide state or local government officials with OCA information for their state upon request. In addition, to avoid unnecessarily broad dissemination of OCA information to state and local officials, CSISSFRRA requires that those officials specifically request information for facilities in other states, rather than provide that the federal government unilaterally distribute it to them. CSISSFRRA leaves no doubt, however, that the final rule must allow a state or local official, upon request, to access OCA information for official use for his or her state or any other states. Morever, as the benefits assessment points out, persons interested in evaluating the safety practices of local facilities may find it helpful to compare OCA information for those facilities with that of similar facilities located elsewhere. This statement is as true for government officials as it is for members of the general public.

Similarly, CSISSFRRA itself limits the extent to which a state or local official can share OCA information with officials of other states or of localities in other states. It specifies that the regulations allow such officials to share OCA information for their states with officials of contiguous states. We do not anticipate that this limitation will hinder useful communication among officials of different states and localities. Since under CSISSFRRA and the final

rule any state or local official may request OCA information for facilities in any state, it will not be necessary for state and local officials to disseminate their own information. A state or local official interested in obtaining information for a noncontiguous state may simply request it from EPA, and an official interested in sharing that information with another state's officials may suggest to those officials that they request it themselves.

The commentors' general point that the rule not hinder communications among government officials nevertheless is well taken. We have reviewed the relevant regulatory provisions and made several changes to improve their clarity and practicality. While the proposed rule authorized EPA to provide a state or local official with OCA information for ''his or her'' official use, the final rule deletes the quoted language so that every official in a state or locality with an official use for the information need not request it separately. Relatedly, we have revised the regulatory language to make clear that officials within a state or locality may share OCA information with one another for official purposes. Consequently, an official from a county planning department, for example, may request OCA information for official use and distribute it to his or her colleagues who also need to review the information ''to carry out a function relevant to preventing, planning for, or responding to accidental releases.''

As indicated above, CSISSFRRA provides government officials with access to OCA information for ''official use.'' One commentor suggested that EPA ensure that the government official requesting OCA information has an ''official 'need to know.' '' We believe that approach is unnecessary and impracticable. CSISSFRRA contains a definition of ''official use'' that describes the purposes for which such officials may lawfully use OCA information. The final rule adopts the statutory definition verbatim. Before providing OCA information to a government official as required under CAA section 112(r)(7)(H)(iv) (regarding availability of OCA information during the first year following enactment of CSISSFRRA), we ask the official to state in writing that access is for ''official use'' as defined by the statute. If the official uses OCA information for other than official purposes, he or she might be exposed to administrative, and possibly criminal, sanctions. As an added precaution, and as required by CSISSFRRA, we will continue to provide officials receiving OCA information with a security notice that includes examples of what constitutes ''official use.''

Finally, several states and LEPCs commented on the logistics of obtaining and safeguarding OCA information. One commentor urged us not to charge local officials for paper copies of OCA information, particularly in light of the proposal that LEPCs and other state and local entities be allowed to make paper copies of OCA information available to the public in read-only form. Another commentor urged us to provide OCA information in an ''organized'' way, that is, according to LEPC jurisdiction. As stated above we intend to provide paper copies of OCA information, free of charge, for facilities on the basis of LEPC jurisdiction to LEPCs, SERCs, and others interested in providing read-only access. For local and state officials with limited electronic resources, we also intend to provide paper copies of OCA information for facilities within their state.

I. Other Provisions

The proposed rule also included provisions prohibiting government officials, as well as researchers who receive OCA information under CAA section 112(r)(7)(h)(vii), from disseminating OCA information and ''OCA rankings'' to the public except as authorized by the rule or a specified provision of CSISSFRRA. The proposed rule defined ''OCA rankings'' as ''any statewide or national ranking of identified stationary sources derived from OCA information.'' One commentor criticized that definition, claiming that it is vague and raises due process issues. The commentor also was concerned that the definition would prevent state or local officials from ranking facilities based on parameters similar or even identical to the data reported in the OCA sections of RMPs.

The proposed definition was drawn virtually verbatim from CSISSFRRA, which prohibits government officials and qualified researchers from disseminating to the public OCA information ''or any statewide or national ranking of identified stationary sources from such information'' (CAA section 112(r)(7)(H)(v)(I)). We believe the statutory language, and thus the regulatory definition, are not unconstitutionally vague, as individuals clearly can identify in advance what constitutes a ranking of stationary sources, on a statewide or nationwide basis, and whether the OCA information provided to them was used to create the ranking. We do not believe the definition prevents state or local officials from using information other than OCA information to rank facilities. ''OCA information'' is defined by CSISSFRRA and the rule as the OCA portions of RMPs and any EPA database created from those portions; ''RMP'' is defined as the risk management plan submitted to EPA pursuant to the RMP rule. If state or local officials, without resort to OCA information, have developed or gained access to data similar or even identical to the OCA data reported in RMPs, they are not precluded from using that data to rank facilities.

III. Discussion of Final Rule

After considering the comments received, we have sought to craft a final rule that meets CSISSFRRA's requirements and reflects consideration of both assessments' findings. CSISSFRRA's requirements include providing any member of the public with access to paper copies of OCA information for a ''limited number'' of facilities (CAA section 1129r)(7)(H)(ii)(II)(aa)) and other access ''as appropriate'' (CAA section 112(r)(7)(H)(ii)(II)(bb)). The risk assessment concluded that posting certain portions of OCA information on the Internet would increase the risk that terrorists or other criminals will attempt to cause an industrial chemical release in the United States. Easy access to OCA information would assist someone seeking to identify the most lethal potential targets from among the 15,000 facilities that have submitted OCA information. The benefits assessment, however, concluded that public disclosure of OCA information would likely lead to a significant reduction in the number and severity of accidental chemical releases. Widespread access to OCA information would serve the functions Congress originally intended in enacting the CAA and requiring the collection of OCA information to inform members of the public of potential environmental hazards and to allow them to participate in decisions that affect their lives and communities.

While chemical accidents take a significant toll on life, property, and the environment each year, we believe that the property damage, personal injuries, and loss of life resulting from a single, successful terrorist attack on a chemical facility could be considerable and would likely cause more damage than would many accidental chemical releases. We therefore have attempted to balance those concerns by making as much OCA information as appropriate available online, but not posting the information that the risk assessment found would, if disseminated without restriction, pose a significant risk for terrorist or criminal purposes. Although

the Internet provides a tremendous benefit by offering people easy access to a wealth of information, we also recognize that it provides a new means for criminals and terrorists to carry out traditional criminal activities. The final rule provides several means for individuals to obtain OCA information not only for facilities within their community but also for a sufficient number of facilities located elsewhere, thereby enabling individuals to compare facilities' safety and prevention measures and records. Those means are described below.

Both the proposed and final rules have been approved by the Director of OMB.

A. Access to Paper Copies of OCA Information

The final rule creates federal reading rooms to fulfill CSISSFRRA's requirement to provide individuals with access to paper copies of OCA information of a limited number of facilities. A minimum of 50 federal reading rooms will be geographically located across the United States, with approximately one federal reading room per state. The number and location of those reading rooms may be adjusted based upon public demand and the agencies' experience in administering them.

Under the rule, any person shall be provided with access to a paper copy of the OCA information for up to 10 stationary sources per calendar month located anywhere in the country, without geographical restriction. In addition, the final rule directs federal reading rooms to provide access to paper copies of OCA information for facilities located within the LEPC jurisdictions where the individual lives or works and for any additional facilities that have vulnerable zones that extend into those LEPC jurisdictions. Individuals will be allowed to read and take handwritten notes from, but not remove or mechanically reproduce, the paper copy of OCA information.

Reading room personnel will be required to ascertain a requestor's identity by viewing a photographic identification for an individual issued by a government agency and obtain a signature on a sign-in sheet and a certification before providing that person with access to OCA information for up to 10 facilities per month without geographical restriction. Similarly, reading room personnel will be required to view documentation of where an individual lives or works and obtain a signature on a sign-in sheet before providing any person with access to the OCA information that the LEPC in whose jurisdiction lives or works would be authorized to provide. Reading rooms will also be required to keep records to ensure that no individual receives OCA information beyond the limits established by the rule.

B. Enhanced Access to Local OCA Information

Several provisions of the final rule are designed to enhance the public's access to OCA information for local stationary sources. In response to comments regarding the appropriate governmental agencies to provide enhanced access, EPA and DOJ have modified the final rule to permit related local government agencies and related state government agencies, as defined in the regulation, to provide access. The rule authorizes and encourages LEPCs and related local government agencies to provide read-only access to OCA information for sources located within an LEPC's jurisdiction and for any other stationary sources that have a vulnerability zone extending into that jurisdiction. Likewise, SERCs and related state government agencies are authorized and encouraged to provide read-only access to the same OCA information that the LEPC in whose jurisdiction the person lives or works would be authorized to provide. Federal reading rooms are similarly authorized to provide read-only access to OCA information. Such information will not be subject to the 10 facility per month limit.

The final rule also codifies the statutory provisions of CSISSFRRA that allow any member of an LEPC or SERC or any other state or local government official to convey to the public any OCA data elements orally or in writing, provided that the data elements are not conveyed in the format of sections 2 through 5 of an RMP or any electronic database that EPA has developed that includes OCA data elements.

C. Vulnerable Zone Indicator System

The final rule establishes a ''vulnerable zone indicator system'' (VZIS) which provides persons located in any state with a means of obtaining, via electronic mail or other inquiry, information regarding the risk expressed by OCA information without providing Internet access to the OCA information itself. Members of the public will be able to learn whether a specific address (such as that of a home, school, or place of employment) falls within a reported ''vulnerable zone'' (*i.e.,* within any RMP facility's worst-case or alternative release scenario's ''distance to endpoint''). Electronic mail inquiries will usually receive a response within two working days. Members of the public who do not have access to the Internet will be able to obtain the same information by calling an EPA toll-free number or by sending regular mail to the Administrator of EPA. VZIS will consist primarily of query and response software located in RMP*Info.

VZIS will also provide individuals with information on how to identify the specific facilities affecting the address submitted to VZIS. It will also provide contact information and sources of additional information explaining chemical accident risk. Any federal reading room or local reading room providing enhanced access under this rule, for example, may be a source for identifying the facility or facilities whose vulnerable zones extend to the address entered into the indicator system, as well as the location of the facilities. System users will be provided with the addresses and telephone numbers of the federal reading rooms. The system will also supply users with up-to-date contact information for the SERCs and LEPCs, and note that only some LEPCs provide local OCA information access services. The indicator system will advise users that, once they know the name of the facility, they can use RMP*Info to learn more about the facility's chemical accident history and its accident prevention measures, and they may contact the facility directly to gain access to OCA information.

D. Internet Access to Selected OCA Information

The final rule makes some items of OCA information available to the public through the Internet by posting it on EPA's website. Those provisions of the final rule are identical to those in the proposed rule. The items of information that will be posted on the Internet are those that the risk assessment found would pose the least serious security risk if posted on the Internet. The following items of OCA information will be posted on the Internet, along with other RMP data elements available in EPA's RMP*Info:

- The concentration of the chemical (RMP Sections 2.1.b; 3.1.b);
- The physical state of the chemical (RMP Sections 2.2; 3.2);
- The duration of the chemical release for the worst-case scenario (RMP Section 2.7);
- The statistical model used (RMP Sections 2.3; 3.3; 4.2; 5.2);
- The endpoint used for flammables for the worst-case scenario (RMP Section 4.5);
- The wind speed during the chemical release (RMP Sections 2.8; 3.8);

- The atmospheric stability (RMP Sections 2.9; 3.9);
- The topography of the surrounding area (RMP Sections 2.10; 3.10);
- The passive mitigation systems considered (RMP Sections 2.15; 3.15; 4.10; 5.10); and
- The active mitigation systems considered (RMP Sections 3.16; 5.11).

The final rule precludes the following items of OCA information from being posted on the EPA website based upon the risk assessment's findings that their release on the Internet would pose significant security concerns:

- The name of the chemical involved (RMP Sections 2.1.a; 3.1.a; 4.1; 5.1);
- The scenario involved (RMP Sections 2.4; 3.4; 4.3; 5.3);
- The quantity of chemical released (RMP Sections 2.5; 3.5; 4.4; 5.4);
- The release rate of the chemical involved for the worst-case scenario (RMP Section 2.6);
- The release rate of the chemical involved in the alternative release scenario (RMP Section 3.6);
- The duration of the chemical release in the alternative release scenario (RMP Section 3.7);
- The distance to endpoint (RMP Sections 2.11; 3.11; 4.6; 5.6);
- The endpoint used for flammables for the alternative release scenario (RMP Section 5.5);
- The residential population within the distance to endpoint (RMP Sections 2.12; 3.12; 4.7; 5.7);
- The public receptors within the distance to endpoint (RMP Sections 2.13; 3.13; 4.8; 5.8);
- The environmental receptors within the distance to endpoint (RMP Sections 2.14; 3.14; 4.9; 5.9); and
- Any map or other graphic used to illustrate a scenario (RMP Sections 2.16; 3.17; 4.11; 5.12).

E. Additional Information on Chemical Accident Risk

As a supplement to the provisions of this rule, EPA will make available to the public additional information on chemical accident risk through an Internet website. Some of that information is currently available through EPA's website. RMPs (except for the OCA information, sections 2 through 5) are currently accessible to the public through RMP*Info. Through Envirofacts, the public can easily access other information about facilities that have submitted RMPs. EPA's website also has links to a web-based chemical guide (*http://chemicalguide.com*). Another helpful link found on the EPA website that provides valuable information to the public is the NSC website (*http://www.nsc.org/xroads.cfm*), which is aimed at the news media and provides suggestions for information to request of facility management and local officials, for approaches to sifting through the information, and for presenting the information in a way that helps communities interpret local RMPs.

EPA is also developing new sources of information through which the public can learn about chemical accident risk. Research on accident histories based on the data provided in RMPs and other sources, both national and international in nature, will be posted on the EPA website. Moreover, EPA will expand the number of links to environmental organizations, industry trade groups, and academic institutions to provide the public with a comprehensive means of finding chemical risk and safety information. EPA will also provide guidance that it, along with other organizations, has developed to assist community members and interested groups to work with facility management and local officials to better understand and manage the risks posed by the storage of large quantities of toxic or flammable chemicals. EPA is developing examples of facilities and industries that can serve as models for ''best practices'' in chemical accident risk prevention and successful practices in RMP implementation. EPA and other organizations are developing background information about the nature of chemical accident risk, and that information will be posted on EPA's website when it becomes available. In addition, through a cooperative agreement, EPA and Clean Air Action (a non-profit organization) will develop a primer for lay persons on basic risk management terms and principles that help to provide a basis for understanding chemical accident risks. EPA will be making available an updated list of LEPC, SERC, and other emergency response contacts.

That information is intended to give the public a better understanding of the general nature of the risks associated with potential accidental releases posed by hazardous chemicals. In combination with OCA data about specific facilities, that information, we expect, will better enable the public to engage in productive dialogues at the local, state, and federal levels to prevent chemical accidents and to minimize the consequences of accidents that occur. EPA will provide that information through its Internet website, *http://www.epa.gov/ceppo.* Much of that information is already available there. EPA will continue to supplement that information as necessary or appropriate to provide the public with a full understanding of chemical accident risk and prevention.

F. Access to OCA Information by Government Officials and Other Provisions

The final rule adopts the proposed provisions for access to OCA information by federal, state, and local government officials, as well as qualified researchers. In accordance with CAA section 112(r)(7)(H)(ii)(II)(cc)–(ee), the final rule provides state or local government officials with access, for official use, to OCA information for facilities located in their states, and, at the officials' request, for facilities located in other states. Also in keeping with that section, the final rule allows state or local government officials to share for official use OCA information for facilities within their state with one another and with state or local government officials in contiguous states. Similarly, the final rule allows federal government officials to share OCA information with each other for official use.

The final rule also establishes the other necessary provisions of the distribution system for OCA information. Specifically, it prohibits the dissemination of OCA information by government officials and qualified researchers (researchers who receive OCA information under CAA section 112(r)(7)(H)(vii)) to the public and to state and local officials except as authorized by the rule and a related CAA provision. It also authorizes the Administrator to disseminate OCA information as required by two other CAA provisions concerning qualified researchers and a read-only information technology system (CAA section 112(r)(7)(H)(viii)).

G. Effective Date and Implementation Schedule

The final rule is effective immediately so that we may continue to make OCA information available to government officials (''covered persons'') without interruption. CSISSFRRA and its legislative history make clear that Congress intended government officials to have ongoing access to OCA information to help them perform their jobs, as related to chemical emergency planning, prevention, and response. CAA section 112(r)(7)(H)(iv) requires EPA to make OCA information available to government officials during the ''transition period,'' the year following the enactment of CSISSFRRA when the assessments and the rulemaking must be conducted. (see 145 Cong. Rec. S7545, daily ed. June 23, 1999 (statement of Sen. Chafee)). However, that authority

ends on the earlier of the date of promulgation of the regulations or the one-year anniversary of the enactment of CSISSFRRA, August 5, 2000. In order to avoid a gap in government officials' access to OCA information, we believe that there is good cause to make the final rule effective immediately, pursuant to 5 U.S.C. 553(d)(3).

We will need time to implement and coordinate the operation of the federal reading room system. We believe we can complete that process within three months and begin opening reading rooms soon thereafter. We anticipate that federal reading room access will be available by December 31, 2000. To provide public access to OCA information as soon as possible, we will not wait for every reading room to be operational before opening any reading room. We will begin operating reading rooms as they become available, and will post on EPA's website the locations of reading rooms as they open.

The vulnerable zone indicator system will begin operation no later than October 5, 2000. That will permit us to develop, test, and deploy the software systems necessary for the implementation of VZIS. Further, the OCA information to be disseminated on the EPA website will be posted by December 31, 2000.

IV. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information that we considered in the development of this rule. The docket is a dynamic file because it allows members of the public and industry readily to identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket serve as the record for purposes of judicial review. *See* CAA section 307(d)(7)(A), 42 U.S.C. 7607(d)(7)(A).

The official record for this rulemaking has been established under Docket No. A–2000–20 (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as Confidential Business Information, is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address specified in the **ADDRESSES** section at the beginning of this document.

B. Executive Order 12866

OMB has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). OMB also has determined that this rule would not be economically significant because it would have an annual effect on the economy of less than $100 million and would not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. Under the terms of Executive Order 12866, OMB has reviewed the rule.

C. Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 5, 1996).

D. Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), does not apply to this rule because it is not economically significant under Executive Order 12866.

E. Executive Order 13084

Under Executive Order 13084, ''Consultation and Coordination with Indian Tribal Governments,'' section 3, Consultation (63 FR 27655, May 19, 1998), federal agencies may not promulgate a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the regulating agencies consult with those governments before formal promulgation of the rule. This rule does not significantly or uniquely affect the communities of Indian tribal governments or impose substantial direct compliance costs on those communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule. Nonetheless, we consulted two tribal organizations that represent tribal environmental officials (Tribal Association on Solid Waste & Emergency Response, and National Tribal Environmental Council) and neither expressed any concerns with the provisions of this rule.

F. Executive Order 13132

Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999), requires federal agencies to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, a federal agency may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or the agency issuing the regulation consults with state and local officials early in the process of developing the proposed regulation. A federal agency also may not issue a regulation that has federalism implications and that preempts state law unless the agency consults with state and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The statute itself—CSISSFRRA—currently restricts the dissemination of OCA information by state and local officials and supersedes inconsistent provisions of state or local law. This rule only slightly narrows those statutory restrictions, allowing certain state and local entities to provide the public with read-only access to OCA information for local facilities. Nevertheless, we have consulted with seven organizations that represent state and local elected officials in developing this rule (*i.e.,* National Governors Association, National Conference of State Legislatures, U.S. Conference of Mayors, National League of Cities, Council on State Governments, International City/County Management Association, National Association of Counties, and National Association of Towns and Townships). We have also consulted with state and local

representatives of the Accident Prevention Subcommittee of the CAA Advisory Committee (under the Federal Advisory Committee Act (FACA)) about the implementation of the OCA provisions of CSISSFRRA. In response to concerns some have raised about the potential chilling effect of CSISSFRRA's restrictions on state and local officials' willingness to obtain OCA information and to communicate the substance of that information to the public, this rule includes a provision clarifying that state and local officials can share OCA data with the public as long as they do so in a way that does not disseminate or permit mechanical replication of the OCA sections of RMPs or provide access to EPA's OCA database. As noted above, this rule also authorizes some state and local officials to share OCA information itself in certain ways.

Section 4 of the Executive Order contains additional requirements for rules that preempt state or local law, even if those rules do not have federalism implications (i.e., the rules will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected state and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate state and local officials regarding the conflict between state law and federally protected interests within the agency's area of regulatory responsibility. Consequently, we consulted to the extent practicable with the seven organizations mentioned above. Other than requesting further clarification on the proposed rule, none of those organizations raised federalism concerns with the rule's approach.

G. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, agencies are required to give special consideration to the effect of federal regulations on small entities and to consider regulatory options that might mitigate any such effect. However, an agency need not prepare a regulatory flexibility analysis if the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions.

In accordance with 5 U.S.C. 605(b), we certify that this rule does not have a significant economic impact on a substantial number of small entities. Although the rule authorizes small government jurisdictions to provide read-only access to OCA information, it does not require those jurisdictions to provide that access. This rule contains a prohibition on local government officials (and other government officials) disclosing OCA information to the public except in authorized ways, but that prohibition already existed under CAA section 112(r)(7)(H)(v). Moreover, we do not expect that any burden resulting indirectly from the provisions of this rule will have a significant economic impact on the operations of local governments.

H. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1981.01) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., N.W., Washington, DC 20460; by e-mail at *farmer.sandy@epamail.epa.gov;* or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.* The ICR for the proposed rule was listed as ICR No. 1656.08. To avoid confusion with the ICR for the full RMP Program (*i.e.,* RMP Program Requirements and Petitions to Modify the List of Regulated Substances under section 112(r) of the CAA), the ICR has been changed for the final rule. The information requirements are not enforceable until OMB approves them.

This rule will impose minimal information collection requirements but will require record keeping. The respondent universe for this rule is state and local officials and members of the public.

None of the respondent activities for state and local agencies are mandatory and all depend on the state or local agency deciding to obtain OCA information and/or communicating the substance of the information or the information itself to the public. The respondent activities for those agencies include reading and understanding the Security Notice to federal, state, and local officials and researchers; requesting OCA information and certifying that they are covered persons; providing secure storage for the CD Rom or paper copies when not in use; learning how to use the database and software, if needed, to produce a copy of OCA information; providing a location for the public to review OCA information for local facilities; ensuring that members of the public do not remove or mechanically copy OCA information they review; and making OCA data available in formats other than the RMP format.

The number of respondents undertaking one or more of these activities is estimated to be at least one agency in each state, territory, and the District of Columbia. These agencies are assumed to be the SERCs and may be environmental protection agencies, emergency management agencies, or both. Based on a recent survey, EPA estimates that there are 1,500 active LEPCs (in compliance with EPCRA). These agencies may request OCA information from EPA for their own use for emergency planning. Out of these, we estimate that only 1,000 LEPCs will be providing local access by the third year covered by this ICR. EPA estimates the total burden hours for state and local agencies to be 86,000 hours annually (258,000 hours for three years) at a cost of $2,400,000 annually ($7,200,000 for three years).

For members of the public, the respondent activity includes calling for an appointment, displaying photographic identification, and signing a sign-in sheet and a certification form at a federal reading room. If an individual would like to obtain information on local facilities, he or she would need to provide documentation demonstrating his or her place of residence or employment. In addition, members of the public are assumed to use the VZIS system and to make follow-up calls to obtain additional information. It is assumed that approximately 20,000 people will use the VZIS system each year and that 5,000 of those will seek additional information. Those individuals without access to the Internet will be able to call an EPA toll-free number or send the request by mail. The total burden hours for the public are estimated to be 14,000 hours annually (42,000 hours for three years) at a cost of $293,000 annually ($879,000 for three years).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. That includes the time needed to review instructions to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing, and

providing information; to adjust existing ways to comply with any previously applicable instructions and requirements; to train personnel; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The OMB control numbers for the information collection requirements in this rule will be listed in an amendment to 40 CFR part 9 in a subsequent **Federal Register** document after OMB approves the ICR.

I. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it contains no requirements that might significantly or uniquely affect small governments. This rule requires small governments that wish to obtain OCA information to request it, and once they obtain it, they will be prohibited from disseminating it except in accordance with the rule. We do not expect that those provisions will impose a significant burden. Moreover, certain members of small governments would be authorized, but not required, to provide public access to OCA information in a manner that is less burdensome than would be required of federal covered persons. Therefore, no actions are deemed necessary under the Unfunded Mandates Reform Act of 1995.

J. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. § 804(2). This rule will be effective August 4, 2000.

V. Judicial Review

Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of publication of this rule. Under section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged later in civil or criminal proceedings brought to enforce these requirements. This rule has been promulgated pursuant to CAA section 307(d).

List of Subjects in 40 CFR Part 1400

Environmental protection, Chemicals, Chemical accident prevention.

Dated: July 31, 2000.

Janet Reno,

Attorney General.

Dated: July 31, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, EPA and DOJ establish chapter IV of title 40 of the Code of Federal Regulations, consisting of subchapter A, part 1400, as follows:

CHAPTER IV—ENVIRONMENTAL PROTECTION AGENCY AND DEPARTMENT OF JUSTICE

SUBCHAPTER A—ACCIDENTAL RELEASE PREVENTION REQUIREMENTS; RISK MANAGEMENT PROGRAMS UNDER THE CLEAN AIR ACT SECTION 112(r)(7); DISTRIBUTION OF OFF-SITE CONSEQUENCE ANALYSIS INFORMATION

PART 1400—DISTRIBUTION OF OFF-SITE CONSEQUENCE ANALYSIS INFORMATION

Subpart A—General

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1400.4 Vulnerable zone indicator system.
1400.5 Internet access to certain off-site consequence analysis data elements.
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1400.8 Access to off-site consequence analysis information by federal government officials.
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1400.12 Qualified researchers.
1400.13 Read-only database.

Authority: 42 U.S.C. 7412(r)(7)(H)(ii).

Subpart A—General

§ 1400.1 Purpose.

Stationary sources subject to the Chemical Accident Prevention Provisions of 40 CFR part 68 are required to analyze the potential harm to public health and welfare of hypothetical chemical accidents and submit the results of their analyses to the U.S. Environmental Protection Agency as part of risk management plans. This part governs access by the public and by government officials to the portions of risk management plans containing the results of those analyses and certain related materials. This part also restricts dissemination of that information by government officials.

§ 1400.2 Definitions.

For the purposes of this part:

(a) Accidental release means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(b) *Administrator* means the Administrator of the U.S. Environmental Protection Agency or his or her designated representative.

(c) *Attorney General* means the Attorney General of the United States or his or her designated representative.

(d) *Federal government official* means—

(1) An officer or employee of the United States; and

(2) An officer or employee of an agent or contractor of the federal government.

(e) *State or local government official* means—

(1) An officer or employee of a state or local government;

(2) An officer or employee of an agent or contractor of a state or local government;

(3) 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, such as a member of a Local Emergency Planning Committee (LEPC) or a State Emergency Response Commission (SERC), or a paid or volunteer member of a fire or police department; or

(4) An officer or employee or an agent or contractor of an entity described in paragraph (e)(3) of this section.

(f) *LEPC* means a Local Emergency Planning Committee created under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 *et seq*.

(g) *Member of the public or person* means an individual.

(h) *Official use* means an action of a federal, state, or local government agency or an entity described in paragraph (e)(3) of this section intended to carry out a function relevant to preventing, planning for, or responding to accidental releases.

(i) *Off-site consequence analysis (OCA) information* means sections 2 through 5 of a risk management plan (consisting of an evaluation of one or more worst-case release scenarios or alternative release scenarios) for an identified facility and any electronic database created by the Administrator from those sections.

(j) *Off-site consequence analysis (OCA) data elements* means the results of the off-site consequence analysis conducted by a stationary source pursuant to 40 CFR part 68, subpart B, when presented in a format different than sections 2 through 5 of a risk management plan or any Administrator-created electronic database.

(k) *Off-site consequence analysis (OCA) rankings* means any statewide or national rankings of identified stationary sources derived from OCA information.

(l) *Qualified researcher* means a researcher who receives OCA information pursuant to 42 U.S.C. 7412(r)(7)(H)(vii).

(m) *Related local government agencies* means local government agencies, such as police, fire, emergency management, and planning departments, that are involved in chemical emergency planning, prevention, or response.

(n) *Related state government agencies* means state government agencies, such as emergency management, environmental protection, health, and natural resources departments, that are involved in chemical emergency planning, prevention, or response.

(o) *Risk management plan (RMP)* means a risk management plan submitted to the Administrator by an owner or operator of a stationary source pursuant to 40 CFR part 68, subpart G.

(p) *SERC* means a State Emergency Response Commission created under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 *et seq*.

(q) *State* has the same meaning as provided in 42 U.S.C. 7602(d) (a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

(r) *Stationary source* has the same meaning as provided in 40 CFR part 68 subpart A, § 68.3.

(s) *Vulnerable zone* means the geographical area that could be affected by a worst-case or alternative scenario release from a stationary source, as indicated by the off-site consequence analysis reported by the stationary source in its risk management plan pursuant to the applicable requirements of 40 CFR Part 68. It is defined as a circle, the center of which is the stationary source and the radius of which is the ''distance-to-endpoint,'' or the distance a toxic or flammable cloud, overpressure, or radiant heat would travel after being released and before dissipating to the point that it no longer threatens serious short-term harm to people or the environment.

Subpart B—Public Access

§ 1400.3 Public access to paper copies of off-site consequence analysis information.

(a) *General.* The Administrator and the Attorney General shall ensure that any member of the public has access to a paper copy of OCA information in the manner prescribed by this section.

(b) *Reading-room access.* Paper copies of OCA information shall be available in at least 50 reading rooms geographically distributed across the United States and its territories. The reading rooms shall allow any person to read, but not remove or mechanically reproduce, a paper copy of OCA information, in accordance with paragraphs (c) through (g) of this section and procedures established by the Administrator and Attorney General.

(c) *Limited number.* Any person shall be provided with access to a paper copy of the OCA information for up to 10 stationary sources located anywhere in the country, without geographical restriction, in a calendar month.

(d) *Additional access.* Any person also shall be provided with access to a paper copy of the OCA information for stationary sources located in the jurisdiction of the LEPC where the person lives or works and for any other stationary source that has a vulnerable zone that extends into that LEPC's jurisdiction.

(e) *Personal identification for access to OCA information without geographical restriction.* Reading rooms established under this section shall provide a person with access to a paper copy of OCA information under paragraph (c) of this section only after a reading room representative has

(1) Ascertained the person's identity by viewing photo identification issued by a federal, state, or local government agency to the person; and

(2) Obtained the person's signature on a sign-in sheet and a certification that the person has not received access to OCA information for more than 10 stationary sources for that calendar month.

(f) *Personal identification for access to local OCA information.* Reading rooms established under this section shall provide a person with access to a paper copy of OCA information under paragraph (d) of this section only after a reading room representative has

(1) Ascertained where the person lives or works by viewing appropriate documentation; and

(2) Obtained the person's signature on a sign-in sheet.

(g) *Record keeping.* Reading room personnel shall keep records of reading room use and certifications in accordance with procedures established by the Administrator and the Attorney General. These records shall be retained for no more than three years. Federal reading rooms will not index or otherwise manipulate the sign-in sheets according to individuals' names, except in accordance with the Privacy Act.

§ 1400.4 Vulnerable zone indicator system.

(a) *In general.* The Administrator shall provide access to a computer-based indicator that shall inform any person located in any state whether an address specified by that person might be within the vulnerable zone of one or more stationary sources, according to the data reported in RMPs. The indicator also shall provide information about how to obtain further information.

(b) *Methods of access.* The indicator shall be available on the Internet or by request made by telephone or by mail to the Administrator to operate the indicator for an address specified by the requestor. SERCs, LEPCs, and other related state or local government agencies are authorized and encouraged to operate the indicator as well.

§ 1400.5 Internet access to certain off-site consequence analysis data elements.

The Administrator shall include only the following OCA data elements in the risk management plan database available on the Internet:

(a) The concentration of the chemical (RMP Sections 2.1.b; 3.1.b);

(b) The physical state of the chemical (RMP Sections 2.2; 3.2);

(c) The statistical model used (RMP Sections 2.3; 3.3; 4.2; 5.2);

(d) The endpoint used for flammables in the worst-case scenario (RMP Section 4.5);

(e) The duration of the chemical release for the worst-case scenario (RMP Section 2.7);

(f) The wind speed during the chemical release (RMP Sections 2.8; 3.8);

(g) The atmospheric stability (RMP Sections 2.9; 3.9);

(h) The topography of the surrounding area (RMP Sections 2.10; 3.10);

(i) The passive mitigation systems considered (RMP Sections 2.15; 3.15; 4.10; 5.10); and

(j) The active mitigation systems considered (RMP Sections 3.16; 5.11).

§ 1400.6 Enhanced local access.

(a) OCA data elements. Consistent with 42 U.S.C. 7412(r)(7)(H)(xii)(II), members of LEPCs and SERCs, and any other state or local government official, may convey to the public OCA data elements orally or in writing, as long as the data elements are not conveyed in the format of sections 2 through 5 of an RMP or any electronic database developed by the Administrator from those sections. Disseminating OCA data elements to the public in a manner consistent with this provision does not violate 42 U.S.C. 7412(r)(7)(H)(v) and is not punishable under federal law.

(b) OCA information. (1) LEPCs and related local government agencies are authorized and encouraged to allow any member of the public to read, but not remove or mechanically copy, a paper copy of the OCA sections of RMPs (i.e., sections 2 through 5) for stationary sources located within the jurisdiction of the LEPC and for any other stationary source that has a vulnerable zone that extends into that jurisdiction.

(2) LEPCs and related local government agencies that provide read-only access to the OCA sections of RMPs under this paragraph (b) are not required to limit the number of stationary sources for which a person can gain access, ascertain a person's identity or place of residence or work, or keep records of public access provided.

(3) SERCs and related state government agencies are authorized and encouraged to allow any person to read, but not remove or mechanically copy, a paper copy of the OCA sections of RMPs for the same stationary sources that the LEPC in whose jurisdiction the person lives or works would be authorized to make available to that person under paragraph (b)(1) of this section.

(4) Any LEPC, SERC, or related local or state government agency that allows a person to read the OCA sections of RMPs in a manner consistent with this paragraph (b) shall not be in violation of 42 U.S.C. 7412(r)(7)(H)(v) or any other provision of federal law.

Subpart C—Access to off-site consequence analysis information by government officials.

§ 1400. 7 In general.

The Administrator shall provide OCA information to government officials as provided in this subpart. Any OCA information provided to government officials shall be accompanied by a copy of the notice prescribed by 42 U.S.C. 7412(r)(7)(H)(vi).

§ 1400.8 Access to off-site consequence analysis information by federal government officials.

The Administrator shall provide any federal government official with the OCA information requested by the official for official use. The Administrator shall provide the OCA information to the official in electronic form, unless the official specifically requests the information in paper form. The Administrator may charge a fee to cover the cost of copying OCA information in paper form.

§ 1400.9 Access to off-site consequence analysis information by state and local government officials.

(a) The Administrator shall make available to any state or local government official for official use the OCA information for stationary sources located in the official's state.

(b) The Administrator also shall make available to any state or local government official for official use the OCA information for stationary sources not located in the official's state, at the request of the official.

(c) The Administrator shall provide OCA information to a state or local government official in electronic form, unless the official specifically requests the information in paper form. The Administrator may charge a fee to cover the cost of copying OCA information in paper form.

(d) Any state or local government official is authorized to provide, for official use, OCA information relating to stationary sources located in the official's state to other state or local government officials in that state and to state or local government officials in a contiguous state.

Subpart D—Other Provisions

§ 1400.10 Limitation on public dissemination.

Except as authorized by this part and by 42 U.S.C. 7412(r)(7)(H)(v)(III), federal, state, and local government officials, and qualified researchers are prohibited from disseminating OCA information and OCA rankings to the public. Violation of this provision subjects the violator to criminal liability as provided in 42 U.S.C. 7412(r)(7)(H)(v) and civil liability as provided in 42 U.S.C. 7413.

§ 1400.11 Limitation on dissemination to state and local government officials.

Except as authorized by this part and by 42 U.S.C. 7412(r)(7)(H)(v)(III), federal, state, and local government officials, and qualified researchers are prohibited from disseminating OCA information to state and local government officials. Violation of this provision subjects the violator to civil liability as provided in 42 U.S.C. 7413.

§ 1400.12 Qualified researchers.

The Administrator is authorized to provide OCA information, including facility identification, to qualified researchers pursuant to a system developed and implemented under 42 U.S.C. 7412(r)(7)(H)(vii), in consultation with the Attorney General.

§ 1400.13 Read-only database.

The Administrator is authorized to establish, pursuant to 42 U.S.C. 7412(r)(7)(H)(viii), an information technology system that makes available to the public off-site consequence analysis information by means of a central database under the control of the federal government that contains information that users may read, but that provides no means by which an electronic or mechanical copy of the information may be made.

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