

US EPA ARCHIVE DOCUMENT

CHAPTER 10: IMPLEMENTATION

10.1 IMPLEMENTING AGENCY

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

WHO IS MY IMPLEMENTING AGENCY?

Under the CAA, EPA will serve as the implementing agency until a state or local agency seeks and is granted delegation under CAA section 112(l) and 40 CFR part 63, subpart E. You should check with the EPA Regional Office to determine if your state has been granted delegation or is in the process of seeking delegation. The Regional Office will be able to provide contact names at the state or local level. See <http://www.epa.gov/swercepp/pubs/112r-sts/112r-sts.html> for addresses and contact information for EPA Regions and state implementing agencies.

IF THE PROGRAM IS DELEGATED, WHAT DOES THAT MEAN?

To gain delegation, a state or local agency must demonstrate that it has the authority and resources to implement and enforce part 68 for all covered processes in the state or local area. Some states may, however, elect to seek delegation to implement and enforce the rule for only sources covered by an operating permit program under Title V of the CAA. When EPA determines that a state or local agency has the required authority and resources, EPA may delegate the program. If the state's rules differ from part 68 (a state's rules are allowed to differ in certain specified respects, as discussed below), EPA will adopt, through rulemaking, the state program as a substitute for part 68 in the state, making the state program federally enforceable. In most cases, the state will take the lead in implementation and enforcement, but EPA maintains the ability to enforce part 68 in states in which EPA has delegated part 68. Should EPA decide that it is necessary to take an enforcement action in the state, the action would be based on the state rule that EPA has adopted as a substitute for part 68. Similarly, citizen actions under the CAA would be based on the state rules that EPA has adopted.

Under 40 CFR 63.90, EPA will not delegate the authority to add or delete substances from § 68.130. EPA has proposed, in revisions to part 63, that the authority to revise Subpart G (relating to RMPs) will not be delegated. Even if your state or local authority is the implementing agency, you must file your RMP with EPA (see Chapter 9). You should check with your state to determine whether you need to file additional data for state use or submit amended copies of the RMP with the state to cover state elements or substances.

If your state has been granted delegation, it is important that you contact them to determine if the state has requirements in addition to those in part 68. State rules

may be more stringent than part 68. This document does not cover state requirements.

Qs & As DELEGATION

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

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

Q. Will the general duty clause be delegated?

A. The general duty clause (CAA section 112(r)(1)) is not included in part 68 and, therefore, will not be delegated. States, however, may adopt their own general duty clause under state law.

10.2 REVIEWS/AUDITS/INSPECTIONS (§ 68.220)

The implementing agency is required under part 68 to review and conduct audits of RMPs. Reviews are relatively quick checks of the RMPs to determine whether they are complete and whether they contain any information that is clearly problematic. For example, if an RMP for a process containing flammables fails to list fire and explosion as a hazard in the prevention program, the implementing agency may flag that as a problem. The RMP data system will perform some of the reviews automatically by flagging RMPs submitted without necessary data elements completed.

Facilities may be selected for audits based on any of the following criteria, set out in §68.220:

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

WHAT ARE AUDITS AND HOW MANY WILL BE CONDUCTED?

Under the CAA and part 68, audits are conducted on the RMP. Audits will generally be reviews of the RMP to review its adequacy and require revisions when necessary

to ensure compliance with part 68. Audits will help identify whether the underlying risk management program is being implemented properly. The implementing agency will look for any inconsistencies in the dates reported for compliance with prevention program elements. For example, if you report that the date of your last revision of operating procedures was in June 1998 but your training program was last reviewed or revised in December 1994, the implementing agency will ask why the training program was not reviewed to reflect new operating procedures.

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

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

The number of audits conducted will vary from state to state and from year to year. Neither the CAA nor part 68 sets a number or percentage of facilities that must be audited during a year. Implementing agencies will set their own goals, based on their resources and particular concerns.

WHAT ARE INSPECTIONS?

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

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

10.3 RELATIONSHIP WITH TITLE V PERMIT PROGRAMS

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

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

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

The RMP and supporting documentation are not part of the permit and should not be submitted to the permitting authority. The permitting authority is only required to ensure that you have submitted the RMP and that it is complete. The permitting authority may delegate this review of the RMP to other agencies.

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

10.4 PENALTIES FOR NON-COMPLIANCE

Penalties for violating the requirements or prohibitions of part 68 are set forth in CAA section 113. This section provides for both civil and criminal penalties. EPA may assess civil penalties of not more than \$27,500 per day per violation. Any one convicted of knowingly violating part 68 may also be punished by a fine pursuant to Title 18 of the U.S. Code or by imprisonment for no more than five years, or both; anyone convicted of knowingly filing false information may be punished by a fine pursuant to Title 18 or by imprisonment for no more than two years.

Qs & As
AUDITS

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

A. You are exempt from audits based on accident history of your industry sector or on random, neutral oversight. An implementing agency that is basing its auditing strategy on other factors may include your facility although EPA expects that VPP facilities will generally not be a high priority for audits unless they have a serious accident.

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

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

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

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

