If your facility has an accidental release of an extremely hazardous substance and it causes injury, death, or substantial property damage, you now need to add the Chemical Safety Board (CSB) to your notification call tree.

This notification is in addition to other current notifications required to be made to not only 9-1-1, but other agencies such as the National Response Center (NRC), local emergency planning committees, state environmental agencies, OSHA, DOT, MSHA, local tribes, and others, all of which have their own reporting rules, deadlines and criteria for reporting.

The new rule is in effect now and can be found at 40 CFR Part 1604.

**Where Did This Come From?**

The CSB is known for its investigation and videos analyzing the root causes of chemical accidents. Although closely associated with safety, the CSB is actually from EPA’s Clean Air Act. Congress’s intent was for them to be an independent investigative body focused on investigation rather than regulation. However, when CSB was created, there was a statute included that required them to establish a process where accidental releases would be directly reported to them. CSB looked at doing this for a number of years and tried to enact a formal regulation in 2009, but that failed. In the meantime, they have been choosing to satisfy the requirement through a clause in their legislation that allows them to use information forwarded to them by the NRC, even though the majority of CSB’s notifications comes from sources other than the NRC such as the media and the internet.

CSB was sued by air quality activists to force them to officially create that reporting mechanism, and in early 2019, a U.S. District Court ordered CSB to come up with a reporting regulation within one year. CSB worked on the draft rule throughout 2019, held the comment period over the 2019 Thanksgiving/Christmas holiday season, and then finalized it less than 3 weeks later.

**Criteria for Reporting**

1. The owner or operator of a stationary source must report any accidental release of a regulated substance or other extremely hazardous substance from a stationary source into ambient air resulting in a fatality, serious injury, or substantial property damage.
   * Accidental release of regulated or extremely hazardous substances = This is not tied to a list regulated substances like those found in the other EPA rules, it’s more broad, that is, any hazardous substances that end up causing death or hospitalizations.
   * Stationary source = Any building, structure, equipment or installation which belong to the same industrial group, are located on one or more contiguous properties, are under the control of the same person, and from which an accidental release can occur.
   * Ambient air = Different from EPA’s ambient air definition, it’s any portion of the atmosphere inside, adjacent to, or outside the stationary source – not just that which affects the general public, but affects anyone.
   * Serious injury = Like OSHA’s reporting rules, it’s hospitalizations.
   * Substantial property damage = $1,000,000 estimated or actual
2. Notify the CSB within 8 hours at report@csb.gov, or 202-261-7600.

*(Note: As of this writing, there are no links on the CSB website that give reporting instructions, other than a small link to the final rule within a news item, so please keep this information handy until something is created.)*

1. If your incident is already required to be reported to the NRC, you can give CSB your NRC identification number in order to save time and effort. This needs to be completed within 30 minutes of submitting to NRC.
2. You can revise information reported to the NRC or CSB within 30 days. You can also submit a revised report to CSB within 60 additional days if you can justify why the revised report could not have been submitted within that first 30 days.

**What Needs to Be Reported?**

* Name and contact info for the owner/operator and the person making the report;
* Location information and facility identifier;
* Approximate time of the accidental release and brief description;
* Whether fire, explosion, death, serious injury or property damage occurred;
* Name of the material(s) involved, CAS number(s), or other appropriate identifiers;
* The amount of the release, if known;
* Number of fatalities and serious injuries known;
* Estimated property damage at or outside the stationary source; and,
* Whether the release resulted in an evacuation impacting members of the general public and others and:
  + The number of persons evacuated;
  + Approximate radius of the evacuation zone; and,
  + The type of person subject to the evacuation order (i.e., employees, general public, or both).

**Enforcement**

The CSB isn’t an enforcement agency, but they can turn over recommendations for enforcement to EPA. In the preamble of the rule, CSB has said they’ll be giving a grace period of approximately a year for education purposes, unless they find your company knew it was supposed to report and didn’t.

**Ability and Future of CSB in Question**

The ability of the agency to even carry out this new regulation is somewhat in question. Heavy inspector losses to the private sector have reduced the agency’s capacity to less than 10 inspectors, and there are questions about the agency’s ability to take on the amount of reports that will be coming in.

The current administration has been trying to remove CSB from the budget for the past few years, and each time Congress has put them back in. Some of the reasons: the perception CSB is duplicating investigative efforts already conducted by other agencies; reports of problems found by the EPA Inspector General regarding mismanagement; the loss of inspectors; the months/years it can takes for the agency to issue their root cause findings; and, CSB’s more recent tendency to suggest new regulations as a result of its findings.

The agency’s ability to govern itself is also at a critical junction. The Board, which oversees the agency and its policies, is made from Senate-confirmed Presidential appointees. They are supposed to have five board members and are now down to just one because the terms of the others have expired. The remaining board member’s term will expire in August 2020. There is one person nominated for appointment, but that has yet to be voted on by the Senate.

If CSB can survive all of that, then there’s also the possibility the rule will be challenged in court because of its quickness to be enacted, its shortened and inopportunely-timed comment period and the perceived inadequate time it took to consider comments before finalization.

However, it’s a federal law and must be followed until further notice. [Download the entire rule here](https://www.csb.gov/assets/1/6/prepublicationcopy2-3-20.pdf), taken from the CSB website.