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Chemical Safety Board to Require Reporting of Significant Accidental Releases

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On February 5, 2020, the U.S. Chemical Safety & Hazard Investigation Board (“CSB”) announced a new rule that will require owners and operators of stationary sources to report certain unanticipated emissions of regulated or hazardous substances to the CSB. The new reporting requirement takes effect 30 days after the rule is published in the Federal Register, which is expected to occur this week. This alert addresses the kinds of events that trigger the new reporting requirement, when reports must be made, information required to report, potential consequences for not reporting, and where to get help with the new rule.

What kinds of events are covered by the new rule?

Under the new rule, reports are required for accidental releases of a regulated or extremely hazardous substance, as defined under the Clean Air Act, which result in a fatality, inpatient hospitalization, or property damage in excess of \$1,000,000.

When must reports be made?

Reports must be submitted to the CSB within eight hours of the release. Importantly, owners or operators who submit reports to the National Response Center (“NRC”) following an accidental release can satisfy the new CSB rule by simply submitting the NRC identification number to the CSB within 30 minutes of submitting the NRC report. Reports can be submitted by phone at (202) 261-7600 or email at report@csb.gov.

What information must be included in the reports?

The reports must include information about the facility, the released substance, the nature of the release, any injuries or damage, and impact on the general public. Details about injuries and damage need only be included “if known” at the time of the report.

What are the consequences of not reporting?

While the CSB is not an enforcement agency, the new rule provides that the CSB can refer violations to the EPA for enforcement, which may include administrative penalties, civil action, or criminal action. There will be a one-year grace period during which the CSB will not refer reporting failures for enforcement unless the failure was intentional.

Where can I get help with the new rule?

Holland & Hart's Workplace Safety and Emergency Response team guides facilities through all aspects of the regulatory compliance process, from prevention to emergency response following workplace incidents. If you have questions about the new CSB rule, please contact a member of the EHS team.

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