

January 13, 2020

Chemical Safety and Hazard Investigation Board  
Attention: Docket Number: CSB-2019-0004  
Mr. Thomas Goonan, General Counsel  
1750 Pennsylvania Avenue, NW, Suite 910  
Washington, DC 20006

Via Electronic Submission: <http://www.regulations.gov>

The National Association of Chemical Distributors (NACD) is pleased to submit the following comments in response to the U.S. Chemical Safety and Hazard Investigation Board (CSB) Notice of proposed rulemaking, **Accidental Release Reporting, Docket Number CSB-2019-0004, 84 Fed. Reg. 67,899 (December 12, 2019)**.

#### About NACD

NACD is an international association of nearly 430 chemical distributors and their supply-chain partners. NACD members represent more than 85 percent of the chemical distribution capacity in the nation and generate 90 percent of the industry's gross revenue. NACD members, operating in nearly every U.S. state through more than 3,000 facilities, are responsible for more than 75,000 direct and indirect jobs in the United States. NACD members are predominantly small regional businesses, many of which are multi-generational and family owned.

NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution®, the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous improvement in every phase of chemical storage, handling, transportation, and disposal operations.

NACD members value the CSB's mission and work. The lessons learned through CSB investigations as described in the agency's detailed reports are important for enhancing safety. NACD members consistently use these reports as well as CSB's recommendations and well-produced videos to improve safety performance at their facilities.

NACD agrees that CSB needs certain information to deploy personnel effectively to incident investigations and understands that CSB is under a court order to issue a rule to require facilities to report accidental releases to the agency. NACD appreciates CSB's stated intention to minimize the burden and avoid duplication for regulated entities; however, some of the proposed definitions and requirements are overly broad and would create undue burdens for chemical distribution facility owners and operators. NACD appreciates the opportunity to express these concerns and offer recommendations to make the requirements less burdensome while ensuring CSB is able to obtain the information needed.

## Burden Estimate - Costs

NACD believes the costs of complying with the new requirements are likely to be higher than the figures CSB provides in the proposed rule's estimate. Most companies have release reporting procedures and/or protocols in place. With an added notification requirement, policies and procedures will need to be reviewed, revised, and approved by management. Once approved, these procedures will need to be distributed, and then personnel will need to be trained on them. This will also include designating personnel to be responsible for the reporting. Finally, training records will need to be generated and updated. NACD recommends that the CSB revise its cost estimate to include the costs of updating policies and procedures, training, and assigning staffing to comply with the rule.

## Proposed Definitions

### Serious Injury

NACD is particularly concerned about the CSB's proposed definition of "serious injury" as follows:

Serious injury means any injury if it results in any of the following:

- (1) Death; one or more days away from work; restricted work, or transfer to another job; medical treatment beyond first aid; loss of consciousness; or
- (2) Any injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness

This definition is overly broad and would result in reporting numerous minor incidents to the CSB that do not warrant the deployment of agency resources. The terms "**Any** (emphasis added) injury or illness diagnosed by a physician or other licensed health care provider" and "medical treatment beyond first-aid" would include conditions such as a sprained ankle, a laceration requiring stitches and follow up removal, or a small first degree burn.

CSB states in the proposed rule that the serious injury definition is based on the Occupational Safety and Health Administration's (OSHA) Recording and Reporting Occupational Injuries and Illnesses regulations.<sup>1</sup> CSB further states that use of this existing OSHA definition would contribute to greater understanding and would facilitate compliance. While NACD appreciates CSB's goal of providing regulatory consistency, we strongly believe OSHA's definition is far too broad for purposes of the release reporting rule. OSHA's Recording and Reporting rule applies to the broad workplace community and covers common workplace occurrences, most of which do not involve chemical releases.

NACD recommends that CSB set a much higher bar for the definition of serious injury to include only those resulting in employees being admitted to the hospital for treatment. This would cover truly significant injuries such as amputations, brain or spinal cord injuries, extensive chemical burns, compound fractures, or major limitation of the use of a body organ

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<sup>1</sup> 29 CFR 1904.7

such as the lungs. This also would track more closely with Subpart E of OSHA's Recording and Reporting Rules, Reporting Fatality, Injury and Illness Information to the Government.<sup>2</sup>

A narrower definition of serious injury would both facilitate reporting from regulated entities and prevent CSB from receiving unnecessary reports that do not warrant deployment of the agency's limited and valuable resources.

### Substantial Property Damages

NACD recommends that CSB not lower the \$1,000,000 threshold in the proposed substantial property damages definition. NACD agrees with CSB's assessment that the \$1,000,000 threshold should likely capture major releases in rare cases where there are no deaths or serious injuries while also making the best use of the regulated community's and the agency's resources. In addition, in many cases, the extent of property damage will not be known until well after the incident has occurred.

### Four-Hour Deadline to Report Releases

NACD believes the four-hour deadline to report releases is inadequate and unrealistic. NACD urges the CSB to lengthen this deadline to 24 hours.

When a release occurs, the focus is on responding to and mitigating the incident, which typically takes longer than four hours. In the immediate aftermath of an incident, the focus must be on response and mitigation rather than the distraction of gathering and reporting information to CSB. While Environmental Protection Agency (EPA) regulations require immediate reporting to local and state organizations and the National Response Center (NRC) for the release of designated substances, these notifications trigger the deployment of government resources to address the incident. On the other hand, while CSB serves an important role in investigating incidents and determining root causes, the agency is not involved in response activities.

In contrast to the CSB's proposed four-hour reporting window, OSHA requires notification within eight hours of a fatality and 24 hours of in-patient hospitalization, amputation, or eye loss.<sup>3</sup> EPA requires notification for spills of reportable quantities within a 24-hour period upon discovery that a reporting criteria has been triggered.<sup>4</sup>

In addition, the more information CSB requires, the more time regulated facilities will need to report. This would be particularly challenging for facility operators while still responding to incidents. A 24-hour reporting window would give facility operators a reasonable amount of time to respond to and mitigate emergencies before gathering and submitting the information to CSB. Further, it would allow time to provide more complete information, which would be of greater use to CSB in making personnel deployment decisions.

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<sup>2</sup> 29 CFR 1904.39

<sup>3</sup> 40 CFR 1904.39

<sup>4</sup> 40 CFR 355.33

## **Reporting to Both the NRC and the CSB**

While NACD appreciates CSB's effort to avoid duplication by allowing facility owners and operators who have reported with the NRC to provide CSB with the NRC report identification numbers rather than filing complete separate reports, NACD believes this requirement remains unnecessarily duplicative and burdensome. NACD believes the NRC and CSB should be able to communicate directly with each other without requiring facilities to make an additional submission. Although the proposed rule only requires the facility to provide the NRC identification number to the CSB, this would still take facility personnel time away from incident response and recovery activities. NACD urges the CSB to work with the NRC to obtain the information rather than placing an additional reporting burden on facilities.

## **Information Required to be Reported**

Some of the information the CSB proposes to require in an accidental release report, including the estimated property damage and whether the release has resulted in an evacuation order impacting members of the general public and others, would be difficult to obtain, especially under a four-hour reporting deadline. NACD appreciates the fact that the CSB recognizes the challenges of collecting certain information and for including the "if known" qualifier for several of the elements.

## **Enforcement Grace Period and Compliance Assistance**

NACD welcomes CSB's proposal to provide a one-year grace period before enforcement actions are taken against facilities for non-knowing violations of the new reporting requirements. NACD also is pleased with CSB's stated commitment to provide guidance materials to facilitate compliance. This is important to ensure the regulated community understands the new obligations.

## **Conclusion**

NACD appreciates the opportunity to provide these comments. We urge CSB to adopt the recommendations, particularly to tighten the definition of serious injury, to expand the reporting timeframe to 24 hours, and to obtain information directly from reports already submitted to the NRC rather than imposing an additional reporting burden on facilities. These changes will allow CSB to meet its obligations under the 2019 court order and to obtain information needed to make resource deployment decisions while minimizing confusion and duplication for regulated facilities.

If you have questions or require additional information, please do not hesitate to contact me.

Sincerely,



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