

COMAH COMPETENT AUTHORITY STRATEGY FOR COMAH REGULATION 8 - SAFETY REPORT REVIEW & REVISION

1 SUMMARY

1.1 This paper invites industry's views on the COMAH Competent Authority's (CA)¹ strategy for COMAH Regulation 8 - safety report review and revision.

1.2 In particular, views are sought on the proposed approach in relation to the '5-year review' of safety reports, how to encourage other 'change' review activity in the interim, and how industry and HSE can best work together to achieve industry-wide adoption of the 'living safety report' concept.

2 BACKGROUND

2.1 COMAH Regulation 8 implements Articles 9(5) and Article 10 of the Seveso II Directive (96/82/EC). Operators of COMAH 'top-tier' (TT) establishments are required to review their safety reports:

- at least every 5 years (referred to in this paper as the '5-year review' or '5YR') (Regulation 8(1)(a));
- because of new facts or to take account of new technical knowledge about safety matters (Regulation 8(1)(b));
- whenever the operator makes a change to the safety management system which could have significant repercussions with respect to the prevention of major accidents or the limitation of consequences of major accidents to persons and the environment (Regulation 8(1)(c));
- in advance of any proposed modification to the establishment or an installation, the process carried on, or the nature or quantity of dangerous substances present and where that modification could have significant repercussions as above (Regulations 8(4)(a)).

2.2 The operator should also revise the report where necessary, and inform the CA of the details forthwith or prior to any proposed modification. An operator should also inform the CA where a safety report has not been revised after a 5YR.

2.3 The 5YR period for first safety reports submitted expires in February 2005. A larger group will expire a year later. However, there has been little other 'change' review and revision activity since safety reports were first submitted. Many operators are also unclear as to the minimum requirements of Regulation 8. Some believe that they must resubmit all of their safety report every 5-years.

2.4 Operators and the CA therefore risk expending disproportionate effort on the first cycle of 5YR activity, particularly for those reports reaching their 5-year anniversary in 2005. The CA strategy seeks to address this.

¹ The COMAH Competent Authority is a statutory body established under COMAH to enforce the Regulations and discharge certain statutory functions. In England and Wales the CA is the Health & Safety Executive (HSE) and the Environment Agency (EA). In Scotland, the CA is the HSE and the Scottish Environment Protection Agency (SEPA).

3 CA STRATEGY

3.1 The CA's strategy regarding review and revision aims to:

- minimise the anticipated 'hump' of review/revision activity in February 2005 and avoid any 'humps' in future years.
- ensure operators and the CA spend proportionate effort on safety report review and revision activity whilst ensuring reports continue to provide the CA up-to-date information about TT establishments in a systematic and timely manner to help them, in particular:
 - make informed and robust judgements over whether operators' preventive and mitigatory measures are seriously deficient, revise the CA's intervention plans, and inform decisions over developments on or near to establishments.
 - respond proportionately to the impact of new facts and technical knowledge about safety matters leading to revisions to safety reports, and significant managerial and physical changes at and around TT COMAH establishments.
- minimise office-based revision assessment activity, maximise verification, and integrate assessment more closely with intervention plans.
- where necessary, inform the COMAH Regulations Review.
- reflect recent developments (eg. ALARP and societal risk), and the CA's and stakeholders' broader experience of implementing COMAH, eg.
 - the introduction of revision plans as part of the safety report assessment outcome aimed at curtailing the assessment process;
 - the longer than expected time taken to complete some assessments;
 - continued lack of common understanding of the purpose of safety reports and the broader role of permissioning in the overall regulation of onshore major hazard industries.

3.2 The above will be achieved through a package of measures including:

- clarifying the purpose of safety report review and revision;
- shifting operators' focus away from 5YRs and towards 'change' review activity during the life-cycle of establishments;
- improved guidance for operators and CA assessment procedures; and
- effective engagement with operators before, during and after review and revision activity.

3.3 Some of these measures need to be developed and implemented quickly to provide enough time for the CA and operators to develop and implement any additional review and revision arrangements in time for the first 5-year anniversary of safety reports from February 2005, and for the CA to adjust, where necessary, its intervention plans for 2004/05 and beyond.

3.4 The next 18 months also provides an opportunity to test these ideas and work with operators and other stakeholders to move to a position whereby the intended benefits of the COMAH regime are fully realised in the medium- to longer-term.

3.5 The review of the COMAH Regulations is currently underway to implement the amendments to the Seveso II Directive. COMAH Amendment Regulations are planned for by June 2005. HSE is also taking the opportunity to make other minor changes to COMAH to clarify the law and assist compliance. These include clarifying the Reg 8 requirement to 'inform' the CA of revisions, and a new requirement to record on the public register the confirmation that a SR has been reviewed at the 5-year point, but not revised (Reg 8(2)). These proposals will be included in a Consultative Document on the amending regulations in the Summer 2004.

4 THE '5-YEAR REVIEW' (5YR)

4.1 Many operators believe they must re-submit their safety reports every 5 years. Operators are in fact free to conduct a full review at any time before the 5-year time limit expires, for example, as part of a programme of SMS audit/reviews. An interim 'change' review will also count provided it involves a review of the full report: the 5-year 'clock' is then reset.

4.2 On the basis that interim 'change' reviews should capture any significant issues impacting on the accuracy of the safety report in the interim, the 5YR:

- provides a 'back-stop' opportunity to reflect on those minor changes in the intervening 5-year period that did not trigger 'change' reviews but are cumulatively significant and may impact on the quality of the safety report.
- should be a relatively 'light-touch' process for operators and resulting in little new information being revealed in safety report revisions sent to the CA.
- be of sufficient breadth and depth to confirm that the report continues to meet the purposes in COMAH Schedule 4 Part 1 and contains the minimum information in Part 2.
- should cover not only the original submission but also any supplementary material or further information provided to the CA (eg. in response to the assessment process) and which form part of the safety report.
- is also an opportunity to consolidate this supplementary material through any revisions.

4.3 All operators should begin to plan **now** for their 5YRs and ensure they have robust mechanisms for collating information and intelligence on new facts and new knowledge and for tracking all changes to their SMS and modifications to inform the full review process.

5 CHANGE REVIEWS

5.1 The CA aims to improve operators' performance in this area in the short term and sees this as the key to minimising 5YR review/revision activity and promoting the life-cycle continuous improvement of safety reports.

5.2 The CA plans to publish **improved guidance** for CA inspectors and operators by the Autumn that:

- describes how operators' safety management systems and change management arrangements should support the review/revision process.
- helps operators judge whether 'change' reviews are required and encourage more change review activity in the interim. Criteria could include, for example, when the nature of the new facts/new knowledge means that the safety report no longer meets the purposes in COMAH Schedule 4 Part 2.
- advises on the scope, depth and breadth of 'change' reviews.
- helps operators provide revision information in a systematic way to assist the assessment process and avoid unnecessary work (and costs) for the CA and operator.
- describes enforcement benchmarks to help CA inspectors respond proportionately to breaches of the law.

5.3 The CA also propose **intervention/inspection strategies** that:

- focus on inspection of the design and implementation of operators' change management arrangements, including consideration of operators' decision making on whether safety report reviews are required.
- examine operator's arrangements and plans for conducting 5YRs focusing initially on those operators whose safety reports are 5-years old from February 2005; and
- seek to agree with operators how revisions can be best presented to the CA to facilitate the assessment process.

5.4 The CA also wants to engage with industry and employee representative organisations to develop mechanisms within the onshore major hazards sector for obtaining intelligence and disseminating more effectively information on, for example, changes in legislation, developments in technical standards, and information about incidents occurring elsewhere, and for alerting TT operators of new facts and knowledge that are likely to require safety report reviews.

6 ASSESSING SAFETY REPORT REVISIONS

6.1 The CA plans to assess all safety report revisions received where those revisions are considered necessary under Regulation 8. The CA will:

- adopt a proportionate and targeted approach. For example, where revisions are minimal or insignificant to the control or mitigation of major accidents then the CA will spend relatively little time on assessment.
- look to minimise office-based assessment and evaluate revisions as part of planned on-site verification activity as far as possible.

- review and revise the ‘modifications’ assessment procedure in the CA Safety Report Assessment Manual (SRAM) to provide sufficient flexibility to reflect the broad variation in modifications and allow more on-site activity.
- develop structured, fit for purpose procedures for other ‘change’ and the 5-year review.
- determine an approach for handling information that the operator has conducted a 5-year review but has decided not to revise the report.

6.2 The CA will also develop new assessment procedures that will, for example:

- include an ‘initial read’ stage to judge the significance of the revisions, and determine an appropriate depth and breadth of assessment;
- focus on key objectives of the assessment process and what the CA wants to achieve;
- ensure any requests for further information are justified and capable of support through formal enforcement mechanisms, with the operator given a clear view of what is needed;
- deliver clear and robust conclusions supported by evidence;
- be informed by the outcomes of any previous revision assessments and earlier discussions between the operator and CA.

6.3 To help minimise the resources expended on (and costs of) the assessment process, the CA will encourage operators to support safety report revisions (or a decision not to revise a report following the 5YR), with information:

- describing the initiator for the review (eg. Modification; SMS change),
- describing their mechanism for judging that a review was required,
- describing how they conducted the review, and
- justifying their conclusions.

6.4 In the case of a review of the whole report (eg. a 5YR), this demonstration should also include:

- reference to interim ‘change’ reviews/revisions conducted,
- a description of changes or other issues that did not merit interim ‘change’ reviews since the initial submission or last full review, and
- a description of how they collated this information,
- a reference to issues identified in improvement plans following previous assessment or intervention together with details of progress made, issues completed or expected dates of completion, and
- where revisions are incorporated into the report rather than submitted as an appendix or supplement to the original, a brief covering document signposting the changes. This will enable the assessment team to focus effort on the new information without having to re-assess the entire report.

7 LIVING SAFETY REPORT

7.1 In the longer term the CA is also keen to promote the 'living safety report' concept and improve the overall usefulness of safety reports for industry, the public, and other stakeholders. Currently, the CA's experience is that few safety reports are truly embedded within the operators' SMS. Their primary purpose is often viewed as meeting the assessment 'hurdle' imposed by the legislation.

7.2 The 'living safety report' concept has become common terminology following the Cullen Inquiries into Rail Safety after the Ladbroke Grove accident. It requires revisions to the safety report at the time of the change. However, this risks that continuous or regular revision becoming over-bureaucratic and without proportionate benefit in health, safety and environmental protection. To guard against this the CA needs to work with industry to establish a common shared understanding of the demonstration requirement and move to ensuring that only necessary information is contained in safety reports.

7.3 The CA wants to move to a position whereby safety reports contain the minimum amount of information to meet the demonstration requirements, and "sign post" the detail of the operators' measures and controls. The details would be available on site and be more properly a matter for CA inspection. However, the CA recognises that it is unrealistic to expect all of industry to achieve this through the first tranche of 5YRs. However, the CA expects this concept to have bedded in across industry before 2010.

8 ACTION

8.1 Industry's views are invited on the CA's overall strategy for COMAH safety report review and revision outlined in this paper, and in particular on:

- the approach described in Part 4 in relation to the 5YR of safety reports,
- how to encourage 'change' review activity (Part 5) in the interim, and
- how industry and HSE can best work together to achieve industry-wide adoption of the 'living safety report' concept (Part 7).

8.2 Views should be sent **by Monday 17 May 2004** to HID OPU1, Major Hazards Permissioning Team, Health & Safety Executive, 3rd Floor, St Anne's House, University Road, Bootle, Merseyside L20 3RA, or by Email to: 'contact.opu1@hse.gsi.gov.uk'

8.3 The contact for this paper is Tim Beals, HM Principal Inspector, HID OPU1, Tel. 0151 952 4885.