

Title: COMAH Competent Authority process for exempting a local authority from the requirement to prepare an external emergency plan under the Control of Major Accident Hazards Regulations 2015

Open Government status

Fully open

Target audience

All relevant COMAH Competent Authority (CA) staff in HSE/ONR/EA/SEPA/NRW.

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Summary

1. This Operational Guidance (OG) covers the receipt, handling and consideration by the Competent Authority (CA) of an application to exempt a local authority (LA) from preparing an external emergency plan for an upper tier (UT) establishment under Regulation 15 of the Control of Major Accident Hazards Regulations (COMAH) 2015.

Introduction

2. Under COMAH Regulation 15(1), the CA may exempt an LA from the requirement to prepare an external emergency plan for an upper tier establishment. In principle,

anyone can make a request for the LA to be granted an exemption. In practice it is likely to be the operator of the establishment or the LA.

3. The applicant should make the request in writing and provide reasons.
4. The decision to exempt the LA from the duty to prepare an external emergency plan lies with the CA. Before an exemption can be granted, the CA needs to be satisfied from the information in the safety report that the establishment is incapable of creating a major accident hazard outside the establishment.

Action

CA responsibilities on receipt of an application

5. Exemption requests should be referred to the Band 2 (B2) team leader for allocation to the assigned COMAH Intervention Manager (CIM). For the small number of establishments where no CIM has been assigned, the relevant CA partner team leaders will delegate an inspector to consider the exemption request dependent on the establishment's major accident risk profile for health, safety and the environment.
6. The time associated with administering and assessing the external emergency plan exemption request is not COMAH cost recoverable.
7. A reasonable time for handling the exemption request is four months from receipt of the request depending on complexity.
8. Where the exemption request refers to an establishment for which there is no external emergency plan in place, for example a new establishment; the CIM or delegated inspector handling the request should be mindful of the legal requirement under Regulation 13 (2) for the LA to prepare the external emergency plan no later than six months after receipt of the necessary information from the operator (or such longer period not exceeding nine months agreed by the CA in writing). If an exemption request is not granted, the CA may agree in writing to extend the time for the external emergency plan to be drawn up by the LA by up to 3 months.
9. The CIM or delegated inspector arranges for:
 - Administrative support to send the applicant an acknowledgement of receipt template letter COMAH ADMINEXTEPEXEMP01 to advise that the exemption is to be considered (template letters are listed in Annex 1 and located on the COMAH web community). This letter must be sent within 10 days of receipt of the request;
 - Administrative support to send template letter COMAH ADMINEXTEPEXEMP02 to the operator of the establishment and/or the LA, depending on the origin of the applicant advising of the exemption request; and
 - Administrative support or Regulatory Compliance Officer (RCO) to record the exemption request information on the Notes tab on the site record for the establishment (see below).
10. The CIM should inform the team leader and relevant CA partner (HSE, EA, NRW, SEPA or ONR) of the exemption request.

Consideration of an exemption request

11. The CIM or delegated inspector, should consult the relevant Safety Report predictive assessor, agency inspector and RCO (as necessary) to discuss the exemption request. The CIM and others considering the application, should consider the information in the establishment's safety report and any recent modification or inventory changes, to form an opinion on whether the establishment is incapable of creating a major accident hazard outside the establishment. Responses from all relevant CA staff should be taken into account when deciding whether to grant or refuse the exemption.
12. The B2 team leader should be advised of the proposed outcome of the exemption request and provided with a summary of the basis of technical evidence that supports the decision to grant or refuse the exemption. The B2 team leader makes the final decision and authorises the exemption in writing as below.
13. If agreement on the exemption request cannot be reached, the B2 team leader should liaise with the CA staff to understand the detail of the disagreement and involve relevant team leaders to try to agree a resolution. If not resolved, the B2 team leader should escalate the matter to the respective operational unit heads for a decision in accordance with the arrangements in the Memorandum of Understanding between CA partners on the implementation of the COMAH Regulations 2015.

Decision to grant an external emergency plan exemption

14. If an external emergency plan exemption is granted, the B2 team leader issues template letter COMAH CIMB2 EXTEPEXEMP01 to the applicant (usually the LA or establishment operator) explaining the reasons for granting the exemption.
15. Where the applicant is other than the LA, the B2 team leader should ensure that copies of COMAH CIMB2 EXTEPEXEMP01 are sent to the LA or the relevant Emergency Planning Authority (EPA).
16. The B2 team leader should also ensure that copies of the COMAH CIMB2 EXTEPEXEMP01 are sent to the relevant partner agency.
17. The exemption decision should be reviewed as part of the establishment's 5-year review and revision cycle or when there has been a significant modification to the establishment.

Decision to refuse an external emergency plan exemption

18. If the request for an exemption to prepare an external emergency plan is refused, the B2 team leader should inform the applicant, explaining the reasons for refusal using template letter COMAH CIMB2 EXTEPEXEMP02.
19. The LA and/or operator can make representations to the CA against a refusal to grant an exemption via the CA's Regulatory Challenge Mechanism (see Annex 1 further information 3).
20. Where the CA subsequently withdraws an exemption granted under COMAH Regulation 15(1), the B2 team leader must specify in writing the date on which the exemption will cease.

COIN reporting

21. Administrative support should amend the COIN Site/COMAH Details/'External' box by the addition of a new record. Letters should be attached to the establishment site notes tab.

The screenshot shows the 'External' form with the following values:

- *EP Authority: North Lincolnshire Council
- Emergency Plan Required: Yes
- Emergency Plan Prepared: Yes
- Start Date: 01/01/2009
- End Date: 01/01/2012
- Date of Last EP Test: 23/04/2009
- Test Method: Desktop

If an exemption is granted, select 'No' in the 'Emergency Plan Required' box.

The screenshot shows the 'External' form with the following values:

- *EP Authority: (empty)
- Emergency Plan Required: No
- Emergency Plan Prepared: (empty)
- Start Date: 06/05/2015
- End Date: (empty)
- Date of Last EP Test: (empty)
- Test Method: (empty)

22. Administrative support should check the COIN Site/COMAH details /Public information box and amend the public information issues tab to 'No'.

The screenshot shows the 'Public Information Details' form with the following values:

- Public Information Issued: No
- Issue Date: 21/02/2014

Work recording

23. Activity under this OG should be recorded as COMAH nonchargeable as shown below.

Business unit (BU)	Activity	Invoice Comments
COMNC COMAH	Regulating	External Emergency plan exemption request

Further References

1. HSE Publication L111 - The Control of Major Accident Hazards Regulations 2015: Guidance on Regulations <http://www.hse.gov.uk/pubns/priced/l111.pdf>
2. Understanding COMAH: COMAH Intervention Manager – User Manual <http://www.hse.gov.uk/comah/guidance/user-manual.pdf>
3. Understanding COMAH: How COMAH Operators can challenge regulatory decisions made by the Competent Authority <http://www.hse.gov.uk/comah/guidance/challenge-mechanism.pdf>

Contacts

CEMHD Unit 4

Appendix 1: Listing of template letters

The following letter templates are located on the CA COMAH web community:

COMAH ADMIN EXTEPEXEMP01

External EP exemption request receipt confirmation to applicant

COMAH ADMIN EXTEPEXEMP02

External EP exemption request receipt to operator or LA if non- applicant

COMAH CIMB2 EXTEPEXEMP01

External EP exemption request granted

COMAH CIMB2 EXTEPEXEMP02

External EP exemption request refused