

Handling of COMAH safety report submission requirements during the Covid-19 pandemic

The purpose and primary duty of COMAH is that all measures necessary must be taken to prevent major accidents and mitigate the effects of those that do occur to people and the environment. Despite the demanding circumstances created by the current Covid-19 crisis that overriding requirement will stand.

The COMAH Competent Authority (CA) understands the potential impact of Covid-19 on establishments and is engaging with COMAH businesses on an individual and sector basis.

There is generally no capacity within COMAH to issue exemptions to duties (Reg 15 being the exception), and as such failure to comply with requirements must be considered a breach. Despite this there is flexibility within our enforcement frameworks to ensure that regulatory decisions made by the CA are pragmatic and this will be used to the fullest extent.

This note deals with Safety Report submissions and the scenarios that may arise during the current situation, noting the primary objective is that the hazards and risks from any activity undertaken are identified, understood and properly controlled

Safety Reports are a written demonstration of how the operator of an Upper Tier (UT) establishment discharges its duties under COMAH. In itself it does not affect or influence the risk control or mitigation measures in place, but reflects them. Safety Reports are required, broadly, in four categories;

- a) New UT establishments must submit a Safety Report to the CA within a reasonable period of time prior to the start of construction / operation / modification leading to a change in inventory above the UT threshold. Construction, operation or modification may not commence until the operator has received conclusions of the CA's examination of the Safety Report.
- b) Where a review and revision is carried out as a result of a modification under 10(2)(d) the report must be sent to the CA before the modification is carried out.
- c) Where a review and revision is carried out as a result of various changes in knowledge or facts under Regulation 10(2)(a), (b), (c) or (e), the report must be sent to the CA within a reasonable time following that information becoming available.
- d) Notwithstanding anything else, Safety Reports must be reviewed and where necessary revised every five years and submitted to the CA for examination.

Where an establishment intends to make a change that would trigger either a new or revised Safety Report (i.e. scenarios a) or b) above) that is directly related to Covid-19 response or impacts but the current circumstances unavoidably preclude them from producing such a report, they should speak to their CIM as soon as possible. Operators will still need to be assured the risks are being appropriately managed

with appropriate control and mitigation measures in place and the CA will discuss ways to seek assurance this is being done on a case by case basis.

The requirement for five-year review safety reports is essentially a backstop to ensure cumulative issues that have occurred over the period but which have not triggered a review in themselves are given consideration. This requirement assumes there is no significant change that has affected the major accident risk profile at the site. Where this is the case every effort must still be made to ensure that a revised report (or a letter to the CA indicating a review has shown no need for a revision) is provided within the 5-year period. Where an operator is of the view that a revision is necessary, but circumstances unavoidably preclude this, they should speak to their CA COMAH Intervention Manager (CIM) about timings as soon as practical. The CA will exercise pragmatism in such cases.

Similarly, for any changes under Regulation 10(2)(a), (b), (c) or (e), where an operator is of the view that a revision is necessary, but circumstances unavoidably preclude this, then discuss with the CIM about timings as soon as practical.

The CA's enforcement frameworks provide sufficient flexibility to ensure that decisions on legal requirements in COMAH are pragmatic and appropriate given the circumstances. The controls in place to reduce risk and mitigate incidents are the primary consideration, and the CA will exercise this flexibility taking into account the difference between administrative breaches and breaches with a potential major hazard risk.

Agreed by: HSE, ONR, EA, NRW & SEPA

Agreement Date: 3.4.20