

EPA Proposes Amendments to the Risk Management Program

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Summary of the Proposed Rule

On August 18, 2022, the U.S. Environmental Protection Agency (EPA) released a pre-publication version of its **Proposed Rule** to amend the Risk Management Program (RMP) regulations at 40 C.F.R. Part 68. EPA's Proposed Rule, referred to as the "Safer Communities by Chemical Accident Prevention," would significantly amend the RMP by reinstating 2017 revisions to the RMP that were either rescinded or modified in a 2019 Final Rule in response to petitions for reconsideration of the 2017 Final Rule.

Significant proposed changes include: (1) evaluating the effects of climate change as part of process hazard reviews and hazard analyses, (2) requiring a "safer technologies and alternatives analysis" (STAA) for certain RMP-regulated processes, and (3) requiring third-party compliance audits when certain conditions are met.

EPA will accept comments on the Proposed Rule for 60 days upon publication in the Federal Register.

Overview of the Proposed Changes

EPA proposes a number of changes to the RMP, including:

- (1) Evaluation of Natural Hazards and Power Loss – Requiring (a) an evaluation of natural hazards (including from climate change) and power loss under process hazard reviews and hazard analyses, and (b) justification when hazard evaluation recommendations are not adopted.
- (2) Facility Siting Justification – Requiring a justification when facility siting hazard recommendations from process hazard reviews and hazard analyses are not adopted.
- (3) Safer Technologies and Alternatives Analysis (STAA) – Requiring (a) certain RMP-regulated facilities in NAICS Codes 324 & 325 to perform an STAA, including the consideration of inherently safer technologies, and (b) justification when the STAA recommendations are not adopted.
- (4) Root Cause Analysis – Requiring a formal root cause analysis when facilities have an RMP-reportable accident.
- (5) Third-Party Compliance Audits – Requiring (a) third-party compliance audits when certain events occur at the facility, and (b) justification when the audit recommendations are not adopted.
- (6) Increased Employee Participation – Requiring more active participation by employees during process hazard analyses, compliance audits, and incident investigations.
- (7) Increased Emergency Preparedness and Response Planning – Requiring (a) non-responding RMP facilities to develop procedures for informing the public about accidental releases, (b) release notification data be provided to emergency responders, (c) a community notification system for notification of RMP-reportable accidents, (d) a 10-year frequency for field



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exercises with emergency responders, and (e) mandatory scope and reporting requirements for emergency response exercises.

(8) Increased Public Information Sharing – Requiring the facility to provide chemical hazard information to the public living within six miles of the facility upon request, and in the language requested.

Importantly, the Proposed Rule does not propose the addition of new substances to the RMP list of regulated substances; however, EPA indicates an intent to perform a periodic review of its list of regulated substances, with a focus on whether ammonium nitrate should be added to the list.

Next Steps

Although trade associations will file requests for an extension of the comment period, it is unlikely EPA will grant such requests as it anticipates issuing a Final Rule in August 2023. Companies with RMP-regulated processes should review the Proposed Rule, evaluate its impact on their operations, and submit comments either on the company's behalf or through a trade association within the 60-day public comment period. EPA will hold **virtual public listening sessions** on September 26-28, 2022, to solicit information and comments on the Proposal Rule.

Author's Note: Chris Leason is a shareholder in Gallagher & Kennedy and has represented national and international clients on complex environmental matters for over 29 years. Chris' unique experience as a practicing chemical engineer before attending law school enables him to tackle difficult and complex environmental issues and interact with technical resources to provide cost-effective solutions for his clients. Chris has earned an AV-Preeminent peer review rating by Martindale-Hubbell and is consistently listed in *Chambers USA* for Environmental Law.

Relevant to the RMP, Chris has prepared comments on six RMP proposed rules on behalf of trade associations, routinely counsels clients on RMP compliance, and represents clients in RMP enforcement actions brought by EPA and the U.S. Department of Justice. In fact, Chris obtained a stay of the 1996 RMP Final Rule in the D.C. Circuit for certain propane users and assisted the trade association client with drafting an amendment – which was signed into law by President Clinton – to the Clean Air Act that permanently excluded from the RMP facilities handling propane when used as a fuel or held for sale as a fuel at a retail facility.