

EPA Releases Risk Management Program Final Rule

Alert

03.05.2024

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On March 1, 2024, the U.S. Environmental Protection Agency (EPA) signed its final “Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention” rule (the Final Rule). EPA’s issuance of the Final Rule concludes a seven-year back-and-forth to revise and enhance existing Risk Management Program (RMP) requirements. The Final Rule makes significant changes to the RMP program, adds more stringent requirements for regulated entities, and reiterates EPA’s commitment to active enforcement. It also highlights an opportunity for companies to evaluate applicability of the RMP at their facilities. If subject, regulated entities should consider whether their plans are fully implemented, as EPA continues to prioritize reducing accidental releases at industrial and chemical facilities as part of its National Enforcement and Compliance Initiatives.

RMP BACKGROUND

The RMP originates from Section 112(r) of the Clean Air Act and its implementing regulations at 40 C.F.R. Part 68, and is one of EPA’s mechanisms to address chemical accident prevention at facilities that use certain hazardous substances (listed at 40 C.F.R. 68.130). The implementing RMP regulations contain a number of requirements, including notification and coordination with local responders in the event of chemical emergencies, and the obligation for some facilities to submit a risk management plan. The requirements are similar to (and sometimes overlap with) the Occupational Safety and Health Administration’s (OSHA) Process Safety Management program.

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RMP FINAL RULE

In strengthening the RMP requirements, the Final Rule incorporates a number of long-standing goals of EPA. Some of the significant changes include:

- **“Natural Hazards” Definition:** The Final Rule revises the definition of “natural hazards” in 40 CFR 68.3 and requires facilities to consider in their hazard evaluations meteorological, environmental, or geological phenomena that have the potential for negative impact, accounting for impacts due to climate change. In addition, facilities must consider whether accidents cause or exacerbate hazards, as EPA notes that natural hazards can be a contributing factor for accidental releases rather than causing them independently.
- **Emergency Response Plans & Community Notification:** The Final Rule revises provisions for community notification of chemical accidents and the emergency response exercise program, including requiring owners or operators to partner with local response agencies to ensure a community notification system is in place, to document the collaboration, and to consult with federal and state agencies when determining an emergency response field exercise frequency of less than once every 10 years.
- **Public Information Requests:** The Final Rule makes several changes aimed at expanding the transparency and accessibility of information. For example, it expands the population eligible to submit information requests to facility owners and operators to include members of the public residing, working, or spending significant time in a 6-mile radius from the fence line of the facility. The Final Rule’s list of information required to be available upon request includes accident history, information about the facility’s emergency response program, and a list of recommendations declined by the facility. Owners and operators must provide the requested information to the requester within 45 days of receiving the request. EPA already maintains a [RMP Public Data Tool](#) online, but in its press release announcing the Final Rule, indicated its intent to update the tool to better highlight climate hazards and increase visibility.
- **Technical Clarifications & Enforcement Issues:** The Final Rule revises various technical aspects of and enforcement issues relating to the program. These changes include, but are not limited to, adding facility siting evaluations for inside and outside of buildings, as part of the process hazard analysis, defining “retail facility” as one in which more than half of the annual income is obtained from direct sales to end users, requiring the retention of hot work permits for three years, and mandating that regulated entities explain any deviations from the promulgated recognized and generally accepted good engineering practices.
- **Safer Technology and Alternatives Analysis (STAA):** In perhaps the most significant change, the Final Rule requires facilities in the petroleum refining (North American Industry Classification System [NAICS] 324) and chemical manufacturing (NAICS 325) sectors to conduct a STAA. A subset of facilities¹ with processes in these sectors are required to conduct a practicability assessment for “inherently safer

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technology or design” (IST/ISD). Finally, the subset of facilities required to perform a STAA must adopt at least one passive measure, or an IST/ISD, or a combination of active and procedural measures equivalent to or greater than the risk reduction of a passive measure. This passive measure provision was not included in the 2022 proposed rule.

- **Employee Participation:** The Final Rule adds a provision to require owners and operators to provide enhanced training and employee participation. EPA indicates it believes training is a way to ensure facility management and employees are aware of the information included in risk management plans and may help reduce invalidated noncompliance reports. EPA expects training will help employees identify, and owners and operators correct, issues that may prevent accidents. In addition to overall enhancements of the employee participation, the Final Rule incorporates stop work criteria, allowing employees at Program 3 facilities knowledgeable in the processes to shut down operations based on potential for a catastrophic release. Owners and operators are also required to develop and implement a process for employees to report unaddressed hazards that could lead to a catastrophic release, such reports must be maintained for three years.
- **Compliance Dates:** The Final Rule generally provides regulated entities three years from the effective date of the Final Rule (60 days after publication in the *Federal Register*) to comply with the RMP, though entities have an additional year (*i.e.*, four years from the effective date of final rule) to update and resubmit risk management plans accordingly, as well as a varying deadline to comply with the revised emergency response field exercise frequency provision that depends on the date of the entity’s most recent exercise.

CONSIDERATIONS FOR STATIONARY SOURCES SUBJECT TO RMP

While the Final Rule will inevitably be challenged, it provides regulated entities with an opportunity to evaluate their RMP compliance and make any necessary updates to avoid an enforcement action (under either the current regulations and/or Final Rule). While at it, companies also subject to OSHA’s Process Safety Management standard would be well-served to evaluate compliance under that scheme as well, as the two requirements are similar but not identical and are separately enforceable by each agency.

As noted above, enforcement of the RMP remains an EPA enforcement initiative. See [EPA Memorandum: Fiscal Year 2024—2027 National Enforcement and Compliance Initiatives](#). There are typically three types of enforcement cases: failure to submit a risk management plan; failure to implement a RMP; and cases in which there was an accident or release, where EPA cites failure to adequately implement a RMP and failure to comply with the Clean Air Act General Duty Clause. Civil penalties for violations of the RMP can now be assessed at a statutory maximum penalty of \$121,275 per violation per day, making compliance incredibly important. In 2023, EPA entered into more than 80 RMP settlements, which frequently involve amounts in

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the six-figure range. Enforcement actions that make it to the courts have previously resulted in penalties in excess of \$1 million alongside mandated requirements for vast facility improvements.

Stinson attorneys are knowledgeable in and available to assist with understanding and evaluation of EPA's Final Rule, compliance determinations, updates and training related to RMPs, process safety management standard, or enforcement defense.

1. The subset of facilities includes facilities in the petroleum refining or chemical manufacturing sectors that have: co-located sources within 1 mile, refinery HF alkylation processes, and those that have had a reportable accident within the past five years.

For more information on the final rule and how it affects the RMP requirements, please contact [Brittany Barrientos](#), [Aimee Guzman Davenport](#), [Andrew Davis](#), [Kristen Ellis Johnson](#), [Kyle Foote](#), [Betsy Smith](#), [Sarah Lintecum Struby](#), [Claire Williams](#), [Zachary Wright](#) or the Stinson LLP contact with whom you regularly work.

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