

## **Prepublication Copy Notice:**

The Administrator of the United States Environmental Protection Agency signed the following document on February 10, 2026:

Title: **Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act; Common Sense Approach to Chemical Accident Prevention**

Action: **Proposed rule**

Docket No.: **EPA-HQ-OLEM-2025-0313**

This is a **prepublication version** of the document that EPA is submitting to the docket for public comment. While the Agency has taken steps to ensure the accuracy of this prepublication version of the document, **it is not the official version** of the document for purposes of public comment or judicial review. Please refer to the official version of the document that will appear in the docket.

Once the official version of the document publishes in the docket, the prepublication version of the document posted on the agency's internet will be replaced with a link to the document that appears in the docket.

For more information about the docket and instructions for commenting, please consult the "ADDRESSES" section in the front of the document.

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6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 68**

**[EPA-HQ-OLEM-2025-0313; FRL-5766.8-01-OLEM]**

**RIN 2050-AH37**

### **Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act; Common Sense Approach to Chemical Accident Prevention**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA or Agency) is proposing to amend its Risk Management Program (RMP) regulations by making several proposed changes to the 2024 Safer Communities by Chemical Accident Prevention (SCCAP) rule. The proposed revisions include changes to provisions relating to safer technology and alternatives analyses, information availability, third-party audits, employee participation, community and emergency responder notification, stationary source siting, natural hazards, power loss, declined recommendations documentation, emergency response exercises, process safety information (PSI) and recognized and generally accepted good engineering practices (RAGAGEP), deregistration form information collection, hot work permit retention, and the retail facility definition. These proposed amendments seek to improve chemical process safety by avoiding duplicative requirements, realigning RMP requirements with Occupational Safety and Health Administration (OSHA) Process Safety Management (PSM) requirements, and eliminating unnecessary burdens placed on facilities where there is not specific data available to show that the current RMP standards would reduce or have reduced the number of accidental releases.

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**DATES:** Comments must be received on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments on the information collection provisions of the proposed rule under the Paperwork Reduction Act (PRA) must be received by the Office of Management and Budget’s Office of Information and Regulatory Affairs (OMB-OIRA) on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Please refer to the PRA section under “Statutory and Executive Order Reviews” in this preamble for specific instructions.

*Public hearing:* The EPA will hold a virtual public hearing on **[INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** at <https://www.epa.gov/rmp/common-sense-approach-chemical-accident-prevention-proposed-rule>. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-HQ-OLEM-2025-0313, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, OLEM Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand Delivery or Courier: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center’s hours of operations are 8:30 a.m. to 4:30 p.m., Monday – Friday (except Federal Holidays).

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*Instructions:* All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov>, including personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

The virtual hearing will be held at <https://www.epa.gov/rmp/common-sense-approach-chemical-accident-prevention-proposed-rule>. The hearing will convene at 12:00pm ET and will conclude after all speakers have presented, but no earlier than 5:00pm ET. Refer to the **SUPPLEMENTARY INFORMATION** section below for additional information.

**FOR FURTHER INFORMATION CONTACT:** Kristina Guarino, Office of Land and Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566-1235; email address: [guarino.kristina@epa.gov](mailto:guarino.kristina@epa.gov). Please also contact Kristina Guarino if you are a person with disabilities who needs a reasonable accommodation at no cost to you.

**SUPPLEMENTARY INFORMATION:**

*Preamble acronyms and abbreviations.* The EPA uses multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

**List of Abbreviations and Acronyms**

ANSI	American National Standards Institute
ASTM	American Society for Testing and Materials
ASME	American Society of Mechanical Engineers
CAA	Clean Air Act
CAAA	Clean Air Act Amendments
CBI	Confidential Business Information
CCPS	Center for Chemical Process Safety

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CFR	Code of Federal Regulations
CSB	Chemical Safety and Hazard Investigation Board
CSISSFRA	Chemical Safety Information, Site Security and Fuels Regulatory Relief Act
DOJ	Department of Justice
E.O.	Executive Order
EPA	U.S. Environmental Protection Agency
EPCRA	Emergency Planning and Community Right-To-Know Act
FAQ	Frequently Asked Question
FDA	U.S. Food and Drug Administration
FOIA	Freedom of Information Act
FR	<i>Federal Register</i>
GDC	General Duty Clause
HF	hydrogen fluoride
ICR	Information Collection Request
ISD	inherently safer design
IST	inherently safer technology
LEPC	local emergency planning committee
NAICS	North American Industry Classification System
NFPA	National Fire Protection Association
NJDEP	New Jersey Department of Environmental Protection
NTTAA	National Technology Transfer Advancement Act
OCA	offsite consequence analysis
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration
PBI	Proprietary Business Information
PHA	process hazard analysis
PRA	Paperwork Reduction Act
PSI	process safety information
PSM	process safety management
RAGAGEP	recognized and generally accepted good engineering practices
RFA	Regulatory Flexibility Act
RIA	Regulatory Impact Analysis
RMP	Risk Management Program or risk management plan
RTC	Response to Comment
SBAR	Small Business Advocacy Review
SCCAP	Safer Communities by Chemical Accident Prevention
SISNOSE	significant economic impact on a substantial number of small entities
SNPRM	supplemental notice of proposed rulemaking
STAA	safer technology and alternatives analysis
TQ	threshold quantity
UMRA	Unfunded Mandates Reform Act

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## **I. Public Participation**

### *A. Written Comments*

Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2025-0313, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to the EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). Please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

### *B. Comment Headings*

Commentors should review the discussions in the preamble and may comment on any matter that is addressed by the proposed rule. For comments submitted through postal mail or <https://www.regulations.gov>, the EPA is requesting commenters to identify their comments on specific issues by using the appropriate number and comment headings listed below to make it simpler for the Agency to process your comment. If your comment covers multiple issues, please

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use all the heading numbers and names that relate to that comment. The comment headings are listed as follows:

1. For comments submitted on Safer Technologies and Alternatives Analysis (STAA), use “#1 – STAA” as the comment header. The proposal on this issue can be found in section IV.A.
2. For comments submitted on information availability, use “#2 – Information Availability” as the comment header. The proposal on this issue can be found in section IV.B.
3. For comments submitted on third-party compliance audits, use “#3 – Third-Party Compliance Audits” as the comment header. The proposal on this issue can be found in section IV.C.
4. For comments submitted on employee participation, use “#4 – Employee Participation” as the comment header. The proposal on this issue can be found in section IV.D.
5. For comments submitted on community and emergency responder notification, use “#5 – Community and Emergency Responder Notification” as the comment header. The proposal on this issue can be found in section IV.E.
6. For comments submitted on stationary source siting, use “#6 – Stationary Source Siting” as the comment header. The proposal on this issue can be found in section IV.F.
7. For comments submitted on natural hazards, use “#7 – Natural Hazards” as the comment header. The proposal on this issue can be found in section IV.G.
8. For comments submitted on power loss, use “#8 – Power Loss” as the comment header. The proposal on this issue can be found in section IV.H.

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9. For comments submitted on declined recommendations, use “#9 – Declined Recommendations” as the comment header. The proposal on this issue can be found in section IV.I.

10. For comments submitted on emergency response exercises, use “#10 – Emergency Response Exercises” as the comment header. The proposal on this issue can be found in section IV.J.

11. For comments submitted on safety information and RAGAGEP, use “#11 – Safety Information and RAGAGEP” as the comment header. The proposal on this issue can be found in section IV.K.

12. For comments submitted on deregistration form information collection, use “#12 – Deregistration Form Information Collection” as the comment header. The proposal on this issue can be found in section IV.L.

13. For comments submitted on retention of hot work permits, use “#13 – Retention of Hot Work Permits” as the comment header. The proposal on this issue can be found in section IV.M.

14. For comments submitted on retail facility definition, use “#14 – Retail Facility Definition” as the comment header. The proposal on this issue can be found in section IV.N.

15. For comments submitted on compliance dates, use “#15 – Compliance Dates” as the comment header. The proposal on this issue can be found in section IV.O.

16. For comments submitted on numbering corrections, use “#16 – Numbering Corrections” as the comment header. The proposal on this issue can be found in section IV.P.

17. For any comments not falling under one of the preceding categories, please identify using “#17 – OTHER” as the comment header.

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### *C. Participation in Virtual Public Hearings*

The EPA will begin pre-registering speakers for the hearing upon publication of this preamble in the *Federal Register* (FR). To register to speak at the virtual hearing, please see the online registration form available at <https://www.epa.gov/rmp/common-sense-approach-chemical-accident-prevention-proposed-rule> or contact Kristina Guarino at (202) 566-1235 or [guarino.kristina@epa.gov](mailto:guarino.kristina@epa.gov) to register to speak at the virtual hearing. The last day to pre-register to speak at the hearing will be **[INSERT DATE 11 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the EPA will post a general agenda for the hearing that will list preregistered speakers in approximate order at <https://www.epa.gov/rmp/common-sense-approach-chemical-accident-prevention-proposed-rule>.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearings; however, please plan for the hearing to run either ahead of schedule or behind schedule.

Each commenter will have three minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) to Kristina Guarino at [guarino.kristina@epa.gov](mailto:guarino.kristina@epa.gov). The EPA also recommends submitting the text of your oral comments as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearings.

Please note that any updates made to any aspect of the hearings are posted online at <https://www.epa.gov/rmp/common-sense-approach-chemical-accident-prevention-proposed-rule>.

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While the EPA expects the hearings to go forward as set forth above, please monitor the Agency's website or contact Kristina Guarino at [guarino.kristina@epa.gov](mailto:guarino.kristina@epa.gov), to determine if there are any updates. The EPA does not intend to publish a document in the *Federal Register* announcing updates.

If you require the services of a translator or special accommodations such as audio description, please preregister for the hearings with Kristina Guarino and describe your needs by **[INSERT DATE 11 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The EPA may not be able to arrange accommodations without advanced notice.

## **II. General Information**

### **A. Does this action apply to me?**

This proposed rule would apply to those facilities (referred to as “stationary sources” under the Clean Air Act (CAA) that are subject to the chemical accident prevention requirements at 40 Code of Federal Regulations (CFR) part 68. This includes stationary sources holding more than a threshold quantity (TQ) of a regulated substance in a process. See 40 CFR 68.130. This proposed rule will not impact the existing scope and applicability of the General Duty Clause (GDC) in CAA section 112(r)(1), 42 U.S.C. 7412(r)(1). See 40 CFR 68.1. Table 1 provides industrial sectors and the associated North American Industry Classification System (NAICS) codes for entities potentially affected by this action. The Agency's goal is to provide a guide on entities that might be affected by this action. However, this action may affect other entities not listed in this table. If you have questions about the applicability of this action to a particular entity, consult the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

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**Table 1—Industrial Sectors and Associated NAICS Codes for Entities Potentially Affected By This Action**

Sector	NAICS code <sup>1</sup>
Administration of Environmental Quality Programs	924
Agricultural Chemical Distributors	
Crop Production	111
Animal Production and Aquaculture	112
Support Activities for Agriculture and Forestry Farm	115
Supplies Merchant Wholesalers	42491
Chemical Manufacturing	325
Chemical and Allied Products Merchant Wholesalers	4246
Food Manufacturing	311
Beverage Manufacturing	3121
Oil and Gas Extraction	211
Other	44, 45, 48, 54, 56, 61, 72
Other manufacturing	313, 326, 327, 33
Other Wholesale	
Merchant Wholesalers, Durable Goods	423
Merchant Wholesalers, Nondurable Goods	424
Paper Manufacturing	322
Petroleum and Coal Products Manufacturing	324
Petroleum and Petroleum Products Merchant Wholesalers	4247
Utilities	221
Warehousing and Storage	493

<sup>1</sup> For descriptions of NAICS codes, see <https://www.census.gov/naics/>.

*B. What is the purpose of the proposed regulatory action?*

The purpose of this document is to propose changes to the RMP rule in order to improve safety at facilities that use and distribute regulated substances by avoiding duplicative requirements, re-aligning RMP requirements with OSHA PSM requirements, and eliminating unnecessary burdens placed on facilities where there is not specific data available to show that the current RMP standards would reduce or have reduced the number of accidental releases. The RMP regulations have benefited from technological advances that have resulted in improvements in preventing and mitigating chemical accidents in the United States. However,

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we have preliminarily concluded that revisions could maintain protection of human health and the environment from chemical hazards while also reducing regulatory burden. As further explained in detail in the following sections, the EPA therefore proposes to rescind or modify several changes to the Risk Management Program made by the 2024 SCCAP rule as a result of Agency review.

*C. What is the Agency's authority for proposing this action?*

The statutory authority for this proposed action is provided by section 112(r) of the CAA as amended (42 U.S.C. 7412(r)). Specifically, CAA section 112(r)(7) (42 U.S.C. 7412(r)(7)) authorizes the EPA to promulgate requirements that meet the elements set out in the statute. When promulgating rules under CAA section 112(r)(7)(A) and (B), the EPA must follow the procedures for rulemaking set out in CAA section 307(d) (see CAA sections 112(r)(7)(E), 42 U.S.C. 7412(r)(7)(E) and 307(d)(1)(C), 42 U.S.C. 7607(d)(1)(C)). Among other things, CAA section 307(d) sets out requirements for the content of proposed and final rules, the docket for each rulemaking, opportunities for oral testimony on proposed rulemakings, the length of time for comments, and judicial review.

*D. What are the costs and benefits of this action?*

1. Summary of Estimated Costs

Table 2 presents a summary of the annualized proposed rule costs and cost savings estimated in the Regulatory Impact Analysis (RIA), which is available in the docket for this proposed action. In total, the EPA estimates annualized cost savings of \$234.7-240.3 million at a 3% discount rate and \$236.2-241.9 million at a 7% discount rate.

**Table 2—Summary of Estimated Costs Over a 10-Year Period**

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[Millions, 2022 dollars]

Cost Elements	Total Undiscounted	Total Discounted (3%)	Total Discounted (7%)	Annualized (3%)	Annualized (7%)
Rule Familiarization (new)	\$13.4	\$13.0	\$12.5	\$1.5	\$1.8
STAA Initial Evaluation (new)	\$88.4	\$75.4	\$62.1	\$8.8	\$8.8
<b>Total Cost*</b>	<b>\$113.0</b>	<b>\$99.3</b>	<b>\$85.1</b>	<b>\$11.6</b>	<b>\$12.1</b>
Rule Familiarization (previous)	(\$39.7)	(\$38.5)	(\$37.1)	(\$4.5)	(\$5.3)
Safer Technology Alternatives Analysis (STAA):					
<i>Initial Evaluation (previous)</i>	(\$176.4)	(\$158.2)	(\$138.3)	(\$18.5)	(\$19.7)
<i>Practicability Assessment</i>	(\$256.9)	(\$230.2)	(\$201.0)	(\$27.0)	(\$28.6)
<i>Implementation</i>	(\$1,700.4)	(\$1,438.9)	(\$1,172.6)	(\$168.7)	(\$167.0)
Third-party Audits*	(\$75.2)- (\$18.7)	(\$64.2)- (\$15.9)	(\$52.8)- (\$13.1)	(\$7.5)-(\$1.9)	(\$7.5)-(\$1.9)
Employee Participation Plan	(\$110.1)	(\$93.9)	(\$77.3)	(\$11.0)	(\$11.0)
Backup Power for Perimeter Monitors	(\$3.3)	(\$2.8)	(\$2.3)	(\$0.3)	(\$0.3)
RMP Justifications:					
<i>No Backup Power</i>	(\$0.2)	(\$0.1)	(\$0.1)	(\$0.0)**	(\$0.0)**
<i>Natural Hazards</i>	(\$0.4)	(\$0.4)	(\$0.3)	(\$0.0)**	(\$0.0)**
<i>Facility Siting</i>	(\$0.4)	(\$0.4)	(\$0.3)	(\$0.0)**	(\$0.0)**
<i>RAGAGEP</i>	(\$0.3)	(\$0.2)	(\$0.2)	(\$0.0)**	(\$0.0)**
Community Notification System	(\$2.7)	(\$2.3)	(\$1.9)	(\$0.3)	(\$0.3)
Information Availability	(\$127.0)	(\$108.3)	(\$89.2)	(\$12.7)	(\$12.7)
<b>Total Cost Savings*</b>	<b>(\$2,493.0)- (\$2,436.4)</b>	<b>(\$2,138.3)- (\$2,090.1)</b>	<b>(\$1,773.4)- (\$1,733.7)</b>	<b>(\$250.7)- (\$245.0)</b>	<b>(\$252.5)- (\$246.8)</b>
<b>Total Net Cost*</b>	<b>(\$2,391.2)- (\$2,334.6)</b>	<b>(\$2,049.9)- (\$2,001.7)</b>	<b>(\$1,698.8)- (\$1,659.1)</b>	<b>(\$240.3)- (\$234.7)</b>	<b>(\$241.9)- (\$236.2)</b>

\*Totals may not sum due to rounding. Total cost savings refers to the sum of monetized cost savings among all cost-saving elements. Net costs refer to the sum of all monetized costs and cost savings in the proposed rule. Negative values reflect cost savings. Third-party Audits, Total Cost Savings, and Total Net Costs present two values in each cell, the first reflecting costs avoided under co-proposed option #1 that would immediately rescind the third-party audit requirement, and the second reflecting costs avoided under co-proposed option #2 that would retain a modified the third-party audit requirement for 10 years.

\*\*Costs are zero due to rounding. Unrounded costs are (\$15,798) for No Backup Power, (\$42,307) for Natural Hazards and Facility Siting, and (\$27,582) for RAGAGEP.

The largest annualized cost savings of the proposed rule is the safer technology and alternatives analysis (STAA) implementation cost savings (\$168.7 million at a 3% discount rate

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and \$167.0 million at a 7% discount rate), followed by practicability assessment (\$27.0 million at a 3% discount rate and \$28.6 million at a 7% discount rate), STAA initial evaluation (\$18.5 million at a 3% discount rate and \$19.7 million at a 7% discount rate), information availability (\$12.7 million at both 3% and 7% discount rates), employee participation plans (\$11.0 million at both 3% and 7% discount rates), familiarization with 2024 SCCAP rule (\$4.5 million at a 3% discount rate and \$5.3 million at a 7% discount rate), and third-party audits (\$1.86 million at both 3% and 7% discount rates). Two provisions impose new costs: STAA initial evaluations for new Program 3 processes (\$8.8 million at both 3% and 7% discount rates) and rule familiarization (\$1.5 million at a 3% discount rate and \$1.8 million at a 7% discount rate). The remaining provisions result in annualized cost savings under \$1 million, including backup power for perimeter monitors (\$0.3 million at both 3% and 7% discount rates), community notification systems (\$0.27 million at both 3% and 7% discount rates), and RMP declined recommendation documentation for no backup power, natural hazards, facility siting, and RAGAGEP (\$0.13 million at both 3% and 7% discount rates).

The Agency estimates that the 2,257 potentially regulated private sector small entities potentially impacted by this proposed rule would experience cost savings of, on average, \$87,400 over the 10-year analysis period, or \$197.24 million in total. The 590 small government entities potentially affected by this proposed rule would experience cost savings of, on average, \$2,150 over the same period. These estimates are conservatively based on the proposed rule with avoided third-party audit costs under co-proposed option #2, which would have lower cost savings than under option #1. The EPA has estimated this proposed rule would not have a significant economic impact on a substantial number of small entities (SISNOSE) under the Regulatory Flexibility Act (RFA). The EPA requests comment on the estimated costs of this

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action, including the EPA's assumptions, data, and methods. Additionally, the EPA requests comment on any costs already incurred in complying with the 2024 SCCAP rule, i.e., have facilities already incurred costs for rule familiarization, Safer Technologies and Alternatives Analysis, or other requirements of the 2024 SCCAP rule.

## 2. Summary of Benefits

In this proposed action, the EPA is seeking to provide clarity, remove redundant or unnecessary regulatory requirements, and realign the Risk Management Program with OSHA's PSM standard. If finalized, this proposed rule would ensure long-term information access to the public to promote community response planning and preparedness while balancing site security concerns. The proposed action would also refocus requirements for regulated facility owners and operators on addressing areas that pose the greatest risk to a process. See the discussion of each proposed change below for more information. Additional information on potential benefits and disbenefits is also provided in Chapter 6 of the Regulatory Impact Analysis in the docket for this rulemaking. The EPA requests comment on the estimated benefits of this action, including the EPA's assumptions, data, and methods. Additionally, the EPA requests comment on the relative benefits and costs of the regulatory alternatives considered; specifically, the EPA requests comment on the assumption that lower-cost alternatives will yield lower benefits and higher-cost alternatives will yield higher benefits.

## **III. Background**

### *A. Overview of the EPA's Risk Management Program*

The EPA originally issued the RMP regulations in two stages. The Agency published the list of regulated substances and Threshold Quantities (TQ) in 1994: "List of Regulated Substances and Thresholds for Accidental Release Prevention; Requirements for Petitions Under

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Section 112(r) of the Clean Air Act as Amended” (59 FR 4478, January 31, 1994), hereinafter referred to as the “list rule.”<sup>1</sup> The Agency published the RMP final regulation, containing risk management requirements for covered sources, in 1996: “Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7)” (61 FR 31668, June 20, 1996), hereinafter referred to as the “1996 RMP rule”.<sup>2,3</sup> Subsequent modifications to the list rule and the 1996 RMP rule were made as discussed in the 2017 Amendments rule (“Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act” (82 FR 4594, January 13, 2017), hereinafter referred to as the “2017 Amendments rule”), the 2019 Reconsideration rule (“Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act” (84 FR 69834, December 19, 2019), hereinafter referred to as the “2019 Reconsideration rule”), and the 2024 SCCAP rule (“Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention” (89 FR 17622, March 11, 2024), hereinafter referred to as the 2024 SCCAP rule).

Prior to development of the EPA’s 1996 RMP rule, OSHA published its PSM standard in 1992 (57 FR 6356, February 24, 1992), as required by section 304 of the 1990 Clean Air Act Amendments (CAAA), using its authority under 29 U.S.C. 653. The OSHA PSM standard can be found in 29 CFR 1910.119. Both the OSHA PSM standard and the EPA’s RMP rule aim to prevent or minimize the consequences of accidental chemical releases through implementation

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<sup>1</sup> Documents and information related to development of the list rule can be found in the EPA docket for the rulemaking, docket number A-91-74.

<sup>2</sup> Documents and information related to development of the 1996 RMP rule can be found in the EPA docket number A-91-73.

<sup>3</sup> 40 CFR part 68 applies to owners and operators of stationary sources that have more than a TQ of a regulated substance within a process. The regulations do not apply to chemical hazards other than listed substances held above a TQ within a regulated process.

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of management program elements that integrate technologies, procedures, and management practices. In addition to requiring implementation of management program elements, the RMP rule requires any covered source to submit (to the EPA) a document summarizing the source's risk management program—called a risk management plan (RMP).

The EPA's risk management program requirements include conducting a worst-case scenario analysis and a review of accident history, coordinating emergency response procedures with local response organizations, conducting a hazard assessment, documenting a management system, implementing a prevention program and an emergency response program, and submitting a risk management plan that addresses all aspects of the risk management program for all covered processes and chemicals. A process at a source is covered under one of three different prevention programs (Program 1, Program 2, or Program 3) based directly or indirectly on the threat posed to the community and the environment by an accidental release. Program 1 has minimal requirements and applies to processes that have not had an accidental release with offsite consequences in the last five years before submission of the source's risk management risk management plan, and that have no public receptors (e.g., schools, hospitals) within the worst-case release scenario vulnerable zone for the process. Program 3 applies to processes not eligible for Program 1 and to processes covered by the OSHA PSM standard or classified in specified industrial sectors; it also has the most requirements. Program 2 has fewer requirements than Program 3 and applies to any process not covered under Programs 1 or 3. Programs 2 and 3 both require a hazard assessment, a prevention program, and an emergency response program, although Program 2 requirements are less extensive and more streamlined. For example, the Program 2 prevention program was intended to cover, in many cases, simpler processes at smaller businesses and does not require the following process safety elements: management of

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change, pre-startup review, contractors, employee participation, and hot work permits. The Program 3 prevention program is fundamentally identical to the OSHA PSM standard and designed to cover those processes in the chemical industry.

#### *B. Events Leading to this Proposed Action*

On January 13, 2017, the EPA published amendments to the RMP rule (82 FR 4594). The 2017 Amendments rule was prompted by E.O. 13650, “Improving Chemical Facility Safety and Security.”<sup>4</sup> The 2017 Amendments rule contained various new provisions applicable to RMP-regulated facilities addressing prevention program elements, including STAA, incident investigation root cause analysis, third-party compliance audits, emergency response coordination with local responders (including emergency response exercises), and availability of information to the public. In December 2019, the EPA finalized revisions to the RMP regulations to reconsider the rule changes made in January 2017. The 2019 Reconsideration rule rescinded certain information disclosure provisions of the 2017 Amendments rule, rescinded most of the new accident prevention requirements added by the 2017 rule, and modified other provisions of the 2017 Amendments rule.

The 2024 SCCAP rule was prompted by Executive Order (E.O.) 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis” (86 FR 7037). E.O. 13990 directed Federal agencies to review existing regulations and take action to address priorities established by the former Administration, which included bolstering regulations in response to the impacts of climate change and prioritizing environmental justice. As a result, the EPA again made updates to the RMP regulations through the 2024 SCCAP rule.

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<sup>4</sup> Available at <https://obamawhitehouse.archives.gov/the-press-office/2013/08/01/executive-order-improving-chemical-facility-safety-and-security>.

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These revisions included several changes to the accident prevention program requirements, including STAA, root cause analysis, employee participation, third-party audit, emergency preparedness, and information availability requirements, as well as several other changes to certain regulatory definitions or points of clarification.

On January 20, 2025, President Trump issued E.O. 14148, titled “Initial Rescissions of Harmful Executive Orders and Actions” (90 FR 13037), which revoked E.O. 13990. On the same date, President Trump also issued E.O. 14154, “Unleashing American Energy”, which directed agencies (including the EPA) to review agency actions that potentially burden the development of domestic energy resources (90 FR 8353). In response, the EPA reviewed the 2024 SCCAP rule with respect to potentially burdensome requirements for facilities with processes in NAICS code 324 and, more specifically, facilities with processes in NAICS code 324 with hydrofluoric acid alkylation, a process used in petroleum refining. To align the RMP regulations with the Administration priorities outlined in E.O. 14148 and E.O. 14154, the Agency evaluated the RMP regulations and is proposing to take the actions set out in this preamble.

The EPA seeks comment on the proposed amendments detailed throughout this document, including with respect to the substance of the proposed changes; their impacts on safety, cost, and effective compliance; and any significant reliance interests the Agency should consider in deciding whether to finalize changes to the existing provisions at issue in this rulemaking. We request that any suggestions for alternative options include an appropriate rationale and supporting data for the Agency to be able to consider such alternative in a final action. To the extent submitted comments repeats or relies on material submitted in the docket used for the 2017 Amendments rule, the 2019 Reconsideration rule, or the 2024 SCCAP rule, we

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request that commenters include the relevant material in the submitted comment with a specific reference to the portion of the material cited as support.

### *C. The EPA's Authority to Revise the RMP Rule*

Congress granted the EPA authority to establish accident prevention rules under two provisions in CAA section 112(r)(7). Under CAA section 112(r)(7)(A), the EPA may set rules addressing the prevention, detection, and correction of accidental releases of substances listed by the EPA by rule (“regulated substances” listed in the tables 1 through 4 to 40 CFR 68.130). Such rules may include requirements related to monitoring, data collection, training, design, equipment, work practice, and operational requirements. In promulgating its regulations, the EPA may draw distinctions between types, classes, and kinds of facilities by taking into consideration various factors including size and location. This provision also indicates that the EPA has discretion regarding the date rules will take effect. Regulations become effective “as determined by the Administrator, assuring compliance as expeditiously as practicable.”

Under CAA section 112(r)(7)(B), Congress directed the EPA to develop “reasonable regulations and appropriate guidance” that provide for the prevention and detection of accidental releases of regulated substances and for response to such releases “to the greatest extent practicable.” Congress required an initial rulemaking under this subparagraph by November 15, 1993. CAA section 112(r)(7)(B) sets out a series of mandatory subjects to address, interagency consultation requirements, and provisions that allowed the EPA to tailor requirements to make them reasonable and practicable. The regulations needed to address “storage, as well as operations” and emergency response after accidental release; the EPA was to use the expertise of the Secretaries of Labor and Transportation in promulgating the regulations. This provision gave the EPA the discretion to recognize differences in factors such as “size, operations, processes,

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class, and categories of sources” and the voluntary actions taken by owners and operators of regulated sources to prevent and respond to accidental releases (CAA section 112(r)(7)(B)(i)). At a minimum, the regulations had to require any stationary source with more than a threshold quantity of regulated substances to prepare and implement a risk management plan. Such a plan is needed to provide for compliance with rule requirements under CAA section 112(r) and include a hazard assessment with release scenarios, accident history, release prevention program, and response program (CAA section 112(r)(7)(B)(ii)). Plans were to be registered with the EPA and submitted to various planning entities (CAA section 112(r)(7)(B)(iii)). These initial rules had to apply to sources three years after promulgation or three years after a substance was first listed for regulation under CAA section 112(r) (CAA section 112(r)(7)(B)(i)). The EPA fulfilled its initial obligations under section 112(r)(7)(B) with the 1996 RMP rule (61 FR 31668), but the Agency views section 112(r)(7)(B) to give the EPA continuing authority to improve the RMP regulations to achieve the statutory directives.

In addition to the direction to use the expertise of the Secretaries of Labor and Transportation in CAA section 112(r)(7)(B), the statute more broadly requires the EPA to consult with these secretaries when carrying out the authority of CAA section 112(r)(7) and to “coordinate any requirements under [CAA section 112(r)(7)] with any requirements established for comparable purposes by” OSHA (CAA section 112(r)(7)(D)). This consultation and coordination language derives from and expands upon provisions on hazard assessments in the bill that passed in the Senate as its version of what eventually became the 1990 CAAA, section 129(e)(4) of S.1630. The Senate Committee Report noted that the purpose of the coordination requirement is to ensure that “requirements imposed by both agencies to accomplish the same

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purpose are not unduly burdensome or duplicative.”<sup>5</sup> Thus, the mandate for coordination in the area of safer chemical processes was incorporated into CAA section 112(r)(7)(D). In the same legislation, Congress directed OSHA to promulgate a process safety standard that became the PSM standard (see CAAA of 1990 section 304).

The EPA used its authority under CAA section 112(r)(7) to issue the 1996 RMP rule (61 FR 31668), the 2017 Amendments rule (82 FR 4594), the 2019 Reconsideration rule (84 FR 69834), and the 2024 SCCAP rule (89 FR 17622). The Agency is also implementing this authority in this proposed rulemaking. These proposed amendments address three requirements of the RMP regulations: accident prevention program, emergency preparedness, and information availability. The prevention program provisions in this proposed rule address the prevention and detection of accidental releases and include the following topics: stationary source siting, STAA, third-party compliance auditing, natural hazards, power loss, safety information and RAGAGEP, hot work permit retention, and employee participation. The emergency response provisions in this proposed rule modify existing provisions that provide for owner or operator responses to accidental releases. The information availability provisions discussed in this document generally assist in the development of emergency response procedures and measures to protect human health and the environment after an accidental release (CAA section 112(r)(7)(B)(i)).<sup>6</sup> When determining which amendments would result in reasonable regulations that would also prevent and detect accidental releases of regulated substances to the greatest extent practicable, the EPA

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<sup>5</sup> Committee on Environment and Public Works, Clean Air Act Amendments of 1989: Report of the Committee on Environment and Public Works, U.S. Senate, Together with Additional and Minority Views, to Accompany S.1630 (December 20, 1989), <https://www.regulations.gov/document/EPA-HQ-OEM-2015-0725-0645>.

<sup>6</sup> Incident investigation, compliance auditing, and STAA are also authorized as release prevention requirements pertaining to stationary source design, equipment, work practice, recordkeeping, and reporting. Information disclosure is also authorized as reporting (CAA section 112(r)(7)(A)).

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took into consideration multiple factors including—but not limited to—eliminating unnecessary burdens placed on facilities where there is not specific data available to show that the current RMP standards would reduce or have reduced the number of accidental releases, avoiding duplicative requirements, and realigning RMP requirements with OSHA PSM requirements. This proposed rulemaking therefore proposes substantive amendments to 40 CFR part 68 and is authorized by CAA section 112(r)(7)(A) and (B), as explained herein.

In considering whether it is legally permissible for the EPA to modify provisions of the RMP rule while continuing to meet its obligations under CAA section 112(r), the Agency notes that it has made discretionary amendments to the 1996 RMP rule several times without dispute over its authority to issue discretionary amendments (64 FR 964, January 6, 1999; 64 FR 28696, May 26, 1999; 69 FR 18819, April 9, 2004). According to the decision in *Air Alliance Houston v. EPA*, 906 F.3d 1049, 1066 (D.C. Cir. 2018), “EPA retains the authority under Section 7412(r)(7) [CAA section 112(r)(7)] to substantively amend the programmatic requirements of the [2017 RMP amendments] . . . subject to arbitrary and capricious review.” Therefore, the EPA has determined it has ample statutory authority to modify the provisions of the current RMP regulations in a reasonable manner that is reasonably explained.<sup>7</sup>

More generally, the Supreme Court has consistently held that unless provided otherwise by statute, agencies are free to change their existing policies, so long as they provide a reasoned explanation for the change, display awareness of the change, and consider “serious reliance

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<sup>7</sup> See *Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29 (1983). In addressing the standard of review to reconsider a regulation, the Supreme Court stated that the rescission or modification of safety standards “is subject to the same test” as the “agency’s action in promulgating such standards [and] may be set aside if found to be ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law’” (463 U.S. at 41, quoting 5 U.S.C. 706). The same standard that applies to the promulgation of a rule applies to the modification or rescission of that rule.

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interests.” *FDA v. Wages & White Lion Invs., LLC*, 145 S. Ct. 898, 917 (2025) (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)). The agency must also show that the changes in policy are permissible under the statute, and that “there are good reasons for [them], and that the agency believes [them] to be better” than prior policies. *Fox Television*, 556 U.S. at 515. To that end, the agency does not need to demonstrate that the new policy is better than the prior one, “[n]or must it provide a more detailed justification than what would suffice for a new policy created on a blank slate.” *Wages & White Lion*, 145 S. Ct. at 918; *See Fox Television*, 556 U.S. at 515. As explained in detail above, the policy changes proposed in this action are permissible under the statute. Additionally, as explained both in this section and throughout the preamble, the EPA has determined that there are good reasons for the policies described in this proposed rule and the EPA believes them to be better than policies we are proposing to rescind or amend.

As described in the 2022 SCCAP proposed rule, the Agency justified adding regulatory requirements to the prevention program provisions of the 2019 Reconsideration rule, STAA, incident investigation, root cause analysis, and third-party compliance audits based on, *inter alia*, a “broader based, rule-driven” approach in order to “have stationary sources handling dangerous chemicals work to prevent potentially catastrophic incidents” (87 FR 53565, August 31, 2022). The 2024 SCCAP rule was designed so that facilities would be more proactive in changing their processes rather than relying on case-specific enforcement actions to be the catalyst for facility updates (89 FR 17635). As described in the proposal for that action, the EPA thus attempted to focus on “certain classes of facilities [that] are more likely to have accidents near communities” by taking into consideration the size of the facility, the quantity of the substances handled, and the location of the facility in relation to other RMP facilities (87 FR 53565). Therefore, the 2024

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SCCAP rule attempted to focus on certain perceived higher risk facilities by distinguishing among classes and categories of sources by industry and process type, as well as likelihood of an accidental release that may impact a community. However, as explained throughout this preamble, revolving entire new and costly provisions<sup>8</sup> around only a portion of facilities identified by the EPA as being higher risk, resulted in duplicative and/or superfluous requirements, thereby adding unnecessary burden and costs onto many facilities subject to the Risk Management Program.

The Agency acknowledges that while accidental releases remain a significant concern to communities, the number of accidental releases has steadily declined over the ten-year period evaluated for this proposed rulemaking, with 147 accidents (within 12,396 registered facilities) in 2014 to 81 accidents (within 11,510 registered facilities) in 2023.<sup>9</sup> Because of that, it is clear that many of the sources subject to the 2024 SCCAP final rule prevention measures already had successful prevention programs in place. In fact, as explained in more detail in each section of this preamble, some of the requirements in the 2024 SCCAP rule were added without having specific data showing that those updates to the regulations would result in the decline of accidental releases, nor has recent data demonstrated such a result. We therefore believe it is better not to impose substantial regulatory requirements on entire industry sectors subject to the Risk Management Program on the basis of information about individual incidents and opinions where more comprehensive data do not demonstrate the efficacy of such a requirement across the board. For example, we believe the data do not adequately support the conclusion that incorporating new requirements such as those finalized for STAA, third-party audits, and

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<sup>8</sup> For example, the 2024 SCCAP rule's STAA provisions accounted for \$253.2M.

<sup>9</sup> Exhibits 3-13a and 3-13.1. Accident History Document.

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retention of hot work permits would address safety issues or prevent accidental releases (see sections IV.A., C., and M. for further discussion of STAA, third-party audits, and retention of hot work permits, respectively). In order to address this gap in analysis, in addition to proposing specific updates and/or rescissions to the 2024 SCCAP requirements the EPA is requesting comment on how better to acquire data on some of these proposed requirements so that the EPA continues to ensure that its requirements are preventing accidental releases to the greatest extent practicable, while being reasonable and not unduly burdensome.

Thus, rather than take the 2024 SCCAP approach with new STAA requirements on a subset of existing facilities and with new auditing and investigation requirements at all Program 2 and 3 facilities with one accident, the EPA has concluded for this proposed rulemaking that it could obtain accident-prevention benefits at lower cost through STAA requirements on only new processes coming into the Risk Management Program and by requiring third-party audits at facilities that have had two or more accidents in a five-year period. Through oversight on a source-specific basis, when the EPA identifies a facility that is not implementing a successful prevention program, the Agency has the ability to seek injunctive relief that includes appropriate safety measures. This approach is supported by the observed reduction in the rate of RMP-reportable accidents over many years. Therefore, in this proposed rulemaking, the EPA is considering a more reasonable and practicable approach to accident prevention in order to avoid an unnecessary increase in compliance costs for the entire regulated community.

An additional benefit to the EPA's proposed changes would be to realign RMP requirements with OSHA requirements to the extent we can do so consistently with the EPA's statutory directive. While the EPA generally has broad authority to prevent accidental releases separate from OSHA requirements, the statute also requires that the EPA "coordinate any

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requirements ... with any requirements established for comparable purposes by [OSHA.]” CAA section 112(r)(7)(D). As mentioned above, the legislative history for this section outlines that the purpose of the coordination requirement is to ensure that “requirements imposed by both agencies to accomplish the same purpose are not unduly burdensome or duplicative.”<sup>10</sup> As outlined in specific detail in each applicable section below, we believe there were several instances where the 2024 SCCAP rule departed unnecessarily from OSHA PSM standards. As explained below, we have determined that this resulted in a combination of unnecessary burdens on facilities and caused confusion as to what the requirements actually were. Therefore, this proposed rule aims to be consistent with the EPA’s historic practice by realigning RMP regulations, where reasonable and appropriate, with OSHA regulations in order to ensure that the RMP requirements are not unduly burdensome. In so doing, the EPA does not delegate to OSHA or assign it primacy in the subject matter. The EPA does not take the position that neither agency can act without the other moving in sync. Rather, reflecting on the potential burden of the changes adopted in the 2024 SCCAP rule as well as the lack of data concerning the benefits of the rule-driven approach adopted in the 2024 SCCAP rule, we believe continued coordination with OSHA on the issues being addressed would lead to better accident prevention.

Finally, this proposed rule addresses important security concerns that were raised during the 2022 SCCAP proposed rule comment period and since the 2024 SCCAP rule was finalized, specifically revolving around information availability. The EPA reaffirms its view of the importance of balancing the public's need for chemical hazard information with chemical facility

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<sup>10</sup> *Supra* FN [8]. Committee on Environment and Public Works, Clean Air Act Amendments of 1989: Report of the Committee on Environment and Public Works, U.S. Senate, Together with Additional and Minority Views, to Accompany S.1630 (December 20, 1989), <https://www.regulations.gov/document/EPA-HQ-OEM-2015-0725-0645>.

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security. From the beginning, one of the objectives of the Risk Management Program has been to improve the availability of information about chemical hazards to community members and emergency planners in order to improve emergency preparedness. As addressed more fully in section IV.B., this proposed rule would rescind certain provisions from the 2024 SCCAP rule, while also proposing to modify others. For example, the EPA is proposing to retain, albeit in a more controlled manner, the RMP Public Data Tool. This would allow people to search for facilities nearby while also balancing important security concerns by limiting search criteria to the county-level and eliminating the mapping feature. The EPA's proposed revisions aim to ensure that the information shared with the public provide stability and certainty to concerned individuals while also saving on costs to the facility and safeguarding information that could be used improperly.

The EPA acknowledges that this compliance- and performance-driven approach is similar to the EPA's justification for the 2019 Reconsideration rule (84 FR 69843), which was subsequently reconsidered in the 2024 SCCAP rule. However, as explained above and in each individual proposed regulation update below, the EPA is proposing options to reduce the burden and overall costs from the 2024 SCCAP rule. Further, the EPA is initiating this rulemaking before the compliance dates for the 2024 SCCAP rule go into effect to put the regulated entities and the surrounding communities on notice of the EPA's proposed changes. The EPA is committed to conducting this rulemaking expeditiously to avoid disruption of any serious reliance interests related to certain SCCAP compliance dates (89 FR 17680).<sup>11</sup> By focusing on

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<sup>11</sup> The 2024 SCCAP rule requires regulated sources to comply with new STAA, incident investigation root cause analysis, third-party compliance audit, employee participation, emergency response public notification and exercise evaluation reports, and information availability provisions, unless otherwise stated, three years after the effective date of the final rule, which is May 10, 2027. The Agency stated that time is needed for facility owners and

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requirements that would prevent accidental releases while also not being unduly burdensome to facilities, the EPA continues to fulfill its statutory duty to promulgate reasonable regulations to provide to the greatest extent practicable for the prevention and detection of accidental releases.

#### **IV. Proposed Action**

This proposed action addresses 14 substantive issues: safer technologies and alternatives analyses (STAA), information availability, third-party audits, employee participation, community and emergency responder notification, stationary source siting, natural hazards, power loss, declined recommendation documentation, emergency response exercises, process safety information (PSI) and recognized and generally accepted good engineering practices (RAGAGEP), deregistration form information collection, hot work permit retention, and the retail facility definition.

The EPA's main objectives through this proposed rulemaking are to avoid duplicative requirements, realign RMP requirements with OSHA PSM requirements, and eliminate unnecessary burdens placed on facilities where there are not specific data available to show that the current RMP standards would reduce or have reduced the number of accidental releases. Below, the EPA presents several proposed amendments for consideration and public comment. Additional information can be found in the Technical Background Document and the Accident History document in the rulemaking docket.<sup>12</sup> The Agency seeks comment on the information in those documents as well.

##### *A. Safer Technologies and Alternatives Analysis (STAA)*

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operators to understand the revised rule; train facility personnel on the revised provisions; learn new investigation techniques, as appropriate; research safer technologies; arrange for emergency response resources; incorporate changes into their RMPs; and establish a strategy to notify the public that certain information is available upon request.

<sup>12</sup> Available in the docket, Docket ID No. EPA-HQ-OLEM-2025-0313.

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The 2024 SCCAP rule added STAA requirements to the existing RMP regulations in 40 CFR 68.67 governing PHAs for Program 3 processes. STAA is a means of evaluating chemical processes to identify opportunities to use inherently safer technology or design measures (IST/ISD), as well as consider other passive, active, or procedural measures to reduce the risk of accidental releases of regulated substances.

- IST/ISD measures are those that minimize the use of regulated substances, substitute less hazardous substances, moderate the use of regulated substances, or simplify processes to make accidental releases less likely, or the impacts of such releases less severe.<sup>13</sup>
- Passive risk management measures are those that use design features to reduce either the frequency or consequence of the hazard without human, mechanical, or other energy input. Examples include pressure vessel designs, dikes, berms, and blast walls.<sup>14</sup>
- Active risk management measures or engineering controls rely on mechanical or other energy input to detect and respond to process deviations. Examples of active measures include alarms, safety instrumented systems, and detection hardware (such as hydrocarbon sensors).<sup>15</sup>

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<sup>13</sup> CCPS. 2009. *Inherently Safer Chemical Processes: A Life Cycle Approach*, 2nd ed., American Institute of Chemical Engineers, CCPS New York, Wiley;

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

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- Procedural, or administrative, measures include operational practices or policies that prevent or minimize incidents, such as policies limiting the filling of a tank to less than capacity or checklists to follow when starting up a process.<sup>16</sup>

For additional background and explanation on STAA, refer to the EPA’s discussion of safer technology and alternatives in the 2016 Amendments proposed rule and the 2022 SCCAP proposed rule (81 FR 13638; 87 FR 53556).

The 2024 SCCAP rule adopted three measures related to STAA. The rule required:

- All regulated facilities with Program 3 processes in NAICS codes 324 (petroleum and coal products manufacturing) and 325 (chemical manufacturing) to conduct a STAA evaluation under 40 CFR 68.67(c)(9)(i);
- For a subset of facilities with processes in these sectors to conduct a practicability assessment for IST/ISD under 40 CFR 68.67(c)(9)(ii). This applied to:
  - Co-located sources within one mile of another stationary source having a covered process in NAICS code 324 or 325,
  - Refinery hydrogen fluoride (HF) alkylation processes, and
  - Those that have had a reportable accident since the most recent process hazard analysis (PHA); and
- For the same subset of facilities to implement at least one practicable passive measure or similarly protective combination of active or procedural measure(s) resulting from each STAA practicability assessment (40 CFR 68.67(h)).

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<sup>16</sup> *Id.*

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The EPA understands that there is value in examining safer alternatives and considering IST for improving process safety, and that owners and operators should consider and address inherent safety at their facilities, as appropriate. The Agency also has determined that the EPA's legal authority to require a STAA evaluation arises under both paragraphs (A) and (B) of CAA section 112(r)(7) (87 FR 53563-53564 and 89 FR 17647). However, the EPA also understands that STAA measures impose significant costs and other burdens on regulated entities. As a result, the EPA is proposing to remove these regulatory requirements for existing facilities to reduce burden on sources that are already implementing effective prevention programs. The EPA is proposing to retain STAA evaluation criteria for new processes entering the Risk Management Program.

For the reasons outlined in further detail in the following subsections, the EPA is proposing to rescind the STAA implementation requirements under 40 CFR 68.67(h). The EPA is also proposing to modify the STAA evaluation and practicability provisions under 40 CFR 68.67(c)(9) by removing the requirement for all facilities with Program 3 regulated processes in NAICS codes 324 and 325 to conduct a STAA evaluation and the requirement for a narrower subset of facilities with Program 3 processes in NAICS codes 324 and 325 to conduct a practicability assessment for IST/ISD. Rather, in this document, the EPA proposes that the initial STAA evaluation requirement currently in 40 CFR 68.67(c)(9)(i) apply to all *new* Program 3 processes, regardless of NAICS code. The Agency proposes that processes considered to be new, and subject to these requirements, include any newly designed and built processes at existing or newly operating facilities. This would include processes that become operational and subject to the RMP rule three years after the effective date of this final rule. The EPA seeks comments on what should be considered a new process, and alternative options for how to set this requirement.

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## 1. Background on IST/ISD

In the 1995 supplemental notice of proposed rulemaking (SNPRM) for the initial requirements under CAA section 112(r)(7), the EPA solicited comments on requiring IST (60 FR 13534-13535, March 13, 1995). Prior to the 2017 Amendments rule, however, the EPA had not required RMP facilities to conduct a STAA or implement identified IST/ISD. The 2017 Amendments rule added a requirement to the PHA for owners or operators of facilities with Program 3 regulated processes in NAICS codes 322 (paper manufacturing), 324 (petroleum and coal products manufacturing), and 325 (chemical manufacturing) to conduct a STAA as part of their PHA and evaluate and document the practicability of any IST identified.

In the 2019 Reconsideration rule, the EPA removed the 2017 STAA requirement for all facilities based on an accident history analysis (84 FR 69834). As stated in the 2022 SCCAP proposed rule, “EPA analyzed accident history data in the RMP database, both nationally and in States and localities with programs that contained some or all the elements of the prevention program provisions...The analysis suggested that accident rates in jurisdictions that adopted STAA-like programs were not lower than national accident rates. Based on this assessment, EPA concluded that STAA regulations would likely not be effective at reducing accidents if applied on a national scale, relative to the pre-2017 program.<sup>17</sup> Instead, EPA decided to take a source-specific, compliance-driven approach, using oversight and enforcement tools to identify sources that could benefit from STAA and to then seek STAA adoption at such sources.” 87 FR 53576.

In the 2022 SCCAP proposed rule, the EPA, relying in part on comments received from the New Jersey Department of Environmental Protection (NJDEP) regarding data from their

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<sup>17</sup> *Id.*

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State program which has STAA- and IST-like regulations in place, determined that the low accident counts in New Jersey (zero to two per year) in the relevant sectors prevented the Agency from reaching meaningful conclusions regarding the effectiveness of STAA provisions (87 FR 53578). The Agency concluded that it was more appropriate to emphasize the views of the Chemical Safety and Hazard Investigation Board (CSB) and other researchers, case studies, and the EPA's technical judgement rather than the analysis in the 2019 Reconsideration rule. That analysis compared accident rates of facilities regulated under the New Jersey Toxic Catastrophe Prevention Act Program to national rates for RMP facilities and helped form the basis for rescinding STAA (87 FR 53579).

The 2024 SCCAP rule added a requirement for all regulated sources in NAICS codes 324 and 325 to conduct a STAA evaluation as part of a PHA. The 2024 SCCAP rule also added additional requirements for a subset of facilities, including: those with Program 3 processes in NAICS codes 324 and 325 that are located within one mile of another stationary source having a covered process in NAICS code 324 or 325, in NAICS code 324 with hydrofluoric acid alkylation covered processes, and in NAICS codes 324 and 325 that have had one accident meeting the accident history reporting requirements under 40 CFR 68.42 since the most recent PHA. In addition to the STAA evaluation, the 2024 SCCAP rule required this subset of facilities to conduct an IST/ISD practicability assessment and implement 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 after each STAA.

## 2. STAA Applicability

The EPA is proposing to revise the STAA applicability provisions as delineated in the 2024 SCCAP rule. Specifically, the EPA is proposing to rescind the STAA implementation and

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practicability requirements for all sources in the petroleum and coal products manufacturing (NAICS 324) and chemical manufacturing (NAICS 325) sectors located within one mile of another RMP-regulated 324 or 325 facility; all facilities with processes in NAICS 324 using HF in an alkylation unit; and all facilities with Program 3 processes in NAICS codes 324 and 325 that have had an accidental release that meets the accident history reporting requirements under 40 CFR 68.42 since the facility's most recent PHA. The EPA is also proposing to rescind the STAA evaluation requirements for all covered processes in NAICS codes 324 and 325.

By limiting the applicability of the STAA provisions to processes under specific NAICS codes in the 2024 SCCAP rule, the Agency has determined that it inadvertently created new Program levels. In the 1995 SNPRM, the EPA proposed the use of three "Tiers," which became "Programs" in the 1996 RMP rule, to ensure that the effort to achieve the program objectives is appropriate to the potential risk. The tiered approach also accounted for the prevention steps that sources were already required to take under other regulatory programs. To establish which sources would be assigned to Program 3, the EPA analyzed its Accidental Release Information Program database for the period from 1987 to 1993 and identified sources in specific Standard Industrial Classification codes (later replaced by NAICS codes) that had a release history which supported requiring those sectors to implement a Program level 3 prevention program. Program 3 also applies to processes subject to the OSHA PSM standard (29 CFR 1910.119). In applying the STAA evaluation provisions to only sources with processes in NAICS codes 324 and 325, and the practicability and implementation provisions to a subset of those facilities, the EPA in effect created additional Program levels that do not align with those established by the 1996 RMP rule. The EPA now recognizes that the addition of these new unofficial Program levels may have created an unnecessary burden for affected industry groups and is not supported by the data,

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for the reasons described below. Therefore, the EPA is proposing a compliance- and performance-driven approach to STAA rather than establishing over-broad regulatory requirements that could impose unnecessary burdens on regulated facilities, many of which are already performing well. A compliance- and performance- driven approach is more practicable because it provides regulatory relief to sources implementing effective programs and the EPA can tailor compliance activities to sources with less effective prevention programs.

By requiring that a subset of processes comply with the STAA provisions in the 2024 SCCAP rule, the Agency mistakenly added an additional burden to complex processes that were already subject to the full risk management program. These already comprehensive risk management program regulations have been effective in preventing and mitigating chemical accidents in the United States. The total number of accidental releases at Program 3 RMP facilities declined by 45% over the ten-year period evaluated for this proposed rulemaking, with 147 accidents having occurred in 2014 and 81 accidents in 2023.<sup>18</sup> For Program 3 sources in NAICS codes 324 and 325, the number of RMP-reportable accidents declined by 43%, from 65 accidents in 2014 to 37 in 2023.<sup>19</sup> Therefore, imposing these STAA provisions on whole industry sectors when most individual sources have successful accident prevention programs adds additional, unnecessary burden to owners and operators who are usually in the best position to make the determination of when it is appropriate to evaluate and implement safer technologies.

For this proposed action, the EPA reviewed accident data over a 10-year period, from 2014-2023. Facilities with processes subject to the STAA provisions as finalized by the 2024 SCCAP rule also had low rates of accidents having offsite impacts, including offsite deaths,

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<sup>18</sup> Exhibit 3-13a. Accident History Document.

<sup>19</sup> *Id.*

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injuries, evacuations, sheltering in place, property damage, or environmental damage. Between 2014 and 2023, the total number of RMP-reportable accidents having had offsite impacts, across all sectors and Program levels, was 335 accidents (within 11,510 registered facilities in 2023; roughly 33 accidents per year).<sup>20</sup> Over this time period, the subset of facilities subject to the 2024 SCCAP rule STAA provisions (662 registered RMP facilities) had 91 accidents (approximately 9 accidents per year) with offsite impacts resulting in \$12.92 million in property damage, accounting for approximately 27% of accidents with offsite impacts and 6.4% of property damages, respectively.<sup>21</sup> The majority of RMP-reportable accidents causing offsite impacts between 2014 and 2023 occurred at facilities that would not be subject to the STAA provisions as finalized in the 2024 SCCAP rule. The EPA, therefore, now believes that it is more appropriate to take a performance-based approach to STAA. This will allow the Agency to focus compliance efforts on facilities that are having accidents, especially those having offsite impacts affecting the surrounding community without burdening those facilities that are not having accidents.

The subset of processes required to comply with the STAA practicability and implementation provisions in the 2024 SCCAP rule also showed a decline in accidents at facilities with these processes over time, with 50 accidents occurring in 2014 and 35 accidents (within 662 registered STAA facilities) occurring in 2023.<sup>22</sup> Between 2019 and 2023, a total of 184 accidents occurred at facilities with processes subject to the STAA practicability and implementation provisions required by the 2024 SCCAP rule.<sup>23</sup> In 2023, 662 RMP facilities had processes that met the requirements to be subject to those 2024 SCCAP rule provisions.<sup>24</sup> Using

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<sup>20</sup> Exhibit 3-12. Accident History Document.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

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the 2023 facility count, and not accounting for facilities that had multiple accidents, approximately 28% of this subset of facilities had an RMP-reportable accident over the 5-year period. Thus, 72% of facilities subject to the STAA practicability and implementation provisions finalized in the 2024 SCCAP rule did not have an RMP-reportable accident between 2019 and 2023<sup>25</sup>. With most facilities not having any reportable accidents, applying the STAA provisions to these specific industry sectors places additional burdens on owners or operators of facilities that are not having accidents without providing any tangible benefits.

The 2024 SCCAP rule also applied more stringent regulatory requirements for facilities in NAICS codes 324 and 325 located within one mile of another stationary source having a covered process in NAICS code 324 or 325. The EPA does not dispute that communities near densely co-located facilities in these NAICS codes have experienced more frequent accidents than communities near other facilities in these NAICS codes and have had more offsite impacts from releases than other communities have experienced (87 FR 53577). However, the EPA has determined that utilizing the median distance of one mile between facilities with processes in NAICS codes 324 and 325 in the period from 2016 to 2020 to the nearest facilities with a process in NAICS code 324 or 325 imposed an undue burden for these sources by requiring them to conduct a STAA practicability analysis and implement at least one passive, or other, combination of measures. The EPA is not aware of any evidence to show that neighboring facilities increase the hazards at nearby facilities. Additionally, the EPA recognizes that its prior statements regarding the possibility of a “knock-on” release occurring due to the proximity of densely co-located refining and chemical manufacturing facilities are flawed because the Agency

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<sup>25</sup> Exhibit 3-13a.1. Accident History Document.

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is not aware of any accidents occurring at co-located facilities with processes in NAICS code 324 or 325 that have led to an accidental release at a nearby facility.

The 2024 SCCAP rule also required owners or operators of processes in NAICS code 324 with hydrofluoric acid alkylation covered processes to comply with additional STAA requirements. The EPA discussed HF in the 2022 SCCAP proposed rule and the 2024 SCCAP final rule (87 FR 53576; 89 FR 17646). HF is a toxic chemical that is lethal at 30 ppm. It is covered by the Risk Management Program when more than 1,000 pounds are used in a process. See 40 CFR 68.130. The Agency recognizes that the extreme toxicity of HF is of concern to the public. The EPA also acknowledges that there are potentially safer alternatives available for HF alkylation that have been successfully implemented by refineries, such as sulfuric acid alkylation, ionic liquid alkylation, or solid acid catalyst alkylation.<sup>26, 27</sup> These alternatives, along with other IST/ISD, active, passive, and procedural measures may be considered by owners and operators of HF alkylation processes when conducting a STAA evaluation. However, placing burdensome STAA practicability assessment and implementation requirements on owners and operators of NAICS 324 sources with HF alkylation processes may result in facilities limiting their consideration of more costly options, even if they may be more effective in preventing accidental releases. The EPA recognizes that owners and operators are in the best position to

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<sup>26</sup> Chevron, Chevron and Honeywell Announce Start-up of World's First Commercial ISOALKYTM Ionic Liquids Alkylation Unit, last modified April 13, 2021, <https://www.chevron.com/stories/chevron-and-honeywell-announce-start-up-of-isoalky-ionic-liquids-alkylation-unit>.

<sup>27</sup> United Steelworkers, A Risk Too Great: Hydrofluoric Acid in U.S. Refineries (April 2013), <https://assets.usw.org/resources/hse/pdf/A-Risk-Too-Great.pdf>.

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determine whether it is appropriate to assess the practicability of, and ultimately implement, alternatives, especially because the costs of implementation can be as high as \$900 million.<sup>28</sup>

Although the list of regulated substances established by the 1994 List rule includes HF, it also includes an array of other substances that may cause harm to human health and the environment (59 FR 4478). For this proposed rule, the EPA examined the average annual number of RMP-reportable accidents per facility by chemical between 2014 and 2023. In so doing, the EPA found an average of 4.5 accidents per year occurred at an average of 139 facilities with HF covered processes, or 0.032 accidents per facility.<sup>29</sup> The EPA found that multiple other chemicals, including phosgene, hydrogen sulfide, and chlorine dioxide, among others, had higher annual frequencies of accidents occurring per facility over HF.<sup>30</sup> When looking at the average annual number of RMP-reportable accidents per process over the same time period, the average annual number of accidents occurring per HF process was 0.024.<sup>31</sup> This frequency was less than that of other chemicals, including methyl mercaptan and hydrogen selenide, among others.<sup>32</sup> Additionally, the 10-year monetized accident costs per 2023 facility and per 2023 process shows that accidents involving HF did not cause significantly more damage than accidents involving other regulated substances.<sup>33</sup> Program 3 facilities in NAICS 324 with HF alkylation covered processes, subject to STAA implementation requirements, had higher rates of accidents between 2014 and 2023 (1.42 per 2023 facility and 0.09 per 2023 process) and monetized accident costs

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<sup>28</sup> The EPA located cost estimates to modify or replace an HF alkylation unit, ranging from \$50 million to \$900 million. *See* Regulatory Impact Analysis: Safer Communities by Chemical Accident Prevention: Final Rule. August 30, 2023. <https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0587>.

<sup>29</sup> Exhibit 3-13j.1. Accident History Document.

<sup>30</sup> *Id.*

<sup>31</sup> Exhibit 3-13j.2. Accident History Document.

<sup>32</sup> *Id.*

<sup>33</sup> Exhibit 3-13k. Accident History Document.

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(\$31.8 million per 2023 facility and \$2.1 million per 2023 process).<sup>34</sup> However, only six of these 43 facilities were responsible for 89% of the 2014-2023 monetized accident costs at Program 3 facilities in NAICS 324 with HF alkylation covered processes.<sup>35</sup> Based on this analysis, the EPA has tentatively determined that the majority of affected sources are effectively managing the risks of these processes. As a result, the EPA has tentatively determined that placing additional requirements on all owners and operators of HF alkylation processes is not justified and a compliance- and performance-driven program is more appropriate.

The 2024 SCCAP rule also placed additional STAA requirements on facilities with processes in NAICS codes 324 and 325 that had one accident meeting the accident history reporting requirements under 40 CFR 68.42 since the most recent PHA. As the EPA has stated in previous rulemakings, a past accident is one of the best predictors of future accidents that could potentially threaten a facility's nearby community (89 FR 17649). Rather than requiring these sources to perform a STAA practicability assessment and implement one passive, or other, combination of measures, the EPA is proposing to take a more compliance- and performance-driven approach to these sources having accidents. As the EPA described in the 2019 Reconsideration rule, this approach prioritizes inspections at facilities that have had an accidental release (84 FR 69843). By using a compliance- and performance-driven approach, the Agency may require STAA actions through enforcement actions that are specific to a facility or situation, and therefore more appropriate, without placing a broad requirement to conduct a practicability assessment that may not appropriately address the risks at a given facility that has had an accident. This approach also addresses the potential for risk-shifting (described in section IV.A.5.

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<sup>34</sup> Exhibit 3-13a and Exhibit 3-13b. Accident History Document.

<sup>35</sup> Exhibit 3-13a, Exhibit 3-13b, and Exhibit 3-17. Accident History Document.

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below) at these already accident-prone facilities. Therefore, the EPA is proposing to assess all sources that have had accidents through a compliance- and performance-driven approach, which may result in enforcement actions that require STAA-like actions to be taken as injunctive relief for sources with less effective prevention programs, where the Agency determines that such relief is appropriate. Because the Agency can pursue imposing these requirements through enforcement actions, imposing a blanket requirement on these facilities is unnecessary and potentially overbroad.

### 3. STAA Implementation

The EPA is proposing to rescind the STAA implementation requirements under 40 CFR 68.67(h) for the subset of facilities with Program 3 regulated processes in NAICS codes 324 and 325. These implementation requirements represented the largest annualized cost of the 2024 SCCAP rule (\$168.7 million at a 3% discount rate and \$167.0 million at a 7% discount rate) (89 FR 17623).<sup>36</sup> With the estimated total annualized cost of the final rule being \$256.9 million at a 3% discount rate and \$259.0 million at a 7% discount rate over a 10-year period, this provision alone accounted for approximately 67% of the total cost of the 2024 SCCAP rule (89 FR 17623).<sup>37</sup> Over the period 2014-2023, the monetized impacts of accidents for sources subject to the STAA implementation and practicability requirements averaged \$277.57 million per year (2022 dollars).<sup>38</sup> Thus, for the monetized benefits of the STAA implementation provisions to

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<sup>36</sup> Note the 2024 SCCAP rule reported the annualized cost of STAA implementation as \$204.9 million at a 7% discount rate due to a calculation error corrected above.

<sup>37</sup> Note the 2024 SCCAP rule reported the annualized cost of the final rule as \$296.9 million at a 7% discount rate due to a calculation error corrected above.

<sup>38</sup> Exhibit 3-15. Accident History Document.

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outweigh the costs, these provisions would need to reduce accident costs by at least 60% of historical monetized accident costs.<sup>39</sup>

In addition, the STAA initial evaluation and practicability assessment provisions are prerequisites for STAA implementation. Therefore, the cost of the initial evaluation and practicability assessment provisions should be considered too when assessing the costs and benefits of the STAA implementation provisions. The estimated total annualized cost of all three of these provisions for the subset of sources subject to the STAA implementation requirements is \$208.9 million at a 3% discount rate and \$209.7 million at a 7% discount rate over a 10-year period.<sup>40</sup> Thus, for the benefits of the STAA implementation provisions, inclusive of evaluation and practicability assessment at these implementing facilities, to outweigh the monetized accident damages, these provisions would need to reduce accident costs by at least 75% of historical monetized accident costs. The EPA is not aware of any data to suggest that the STAA measures in the 2024 SCCAP rule would reduce monetized accident damages by half, much less three-quarters. The RMP program already relies on using layered prevention and mitigation strategies that may be as effective, if not more effective, than some ISTs. By using a defense-in-depth strategy, owners and operators may be able to achieve high levels of protection without implementing costly safer technologies. As a result, the EPA recognizes that the STAA implementation requirements impose an unnecessary burden on regulated entities with little to no demonstrable safety benefits.

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<sup>39</sup> As described in the 2024 SCCAP rule RIA, monetized accident costs omit certain unmonetized damages.

<sup>40</sup> See Exhibit 6-2: STAA Costs for Implementation Facilities in the 2025 Regulatory Impact Analysis (RIA) Chapter 6: Benefits of the Proposed Rule.

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Moreover, implementing a safer technology or other passive, active, or procedural measure does not ensure accident prevention. As stated in the 2024 SCCAP rule, requiring facilities to implement IST can involve extensive changes to a facility's process (89 FR 17652). Specifically, previous comments on the STAA provisions have raised the concern of risk shifting when implementing STAA requirements. The EPA acknowledges that any change to a process, especially if it involves substitution of alternative chemicals and/or major process redesign to existing processes, can introduce new hazards, such as unfamiliar processes or previously unidentified chemical hazards. However, these hazards may not always be recognized during the STAA evaluation stage, leading to risk shifting and potential adverse consequences of changes made. Because of this, implementing IST/ISD or passive, active, and/or procedural measures may not result in the intended accident reduction. In other words, while technologies that may be implemented may be inherently safer for one aspect of a process, they may not address all potential safety concerns. For example, implementing a safer technology would not automatically address the root cause of accidents. Each facility requires a site-specific evaluation of potential hazards and, as such, owners and operators are in the best position to make a determination of if or when to implement safer technologies. To that end, the Agency expects that owners and operators will determine where the highest risks are at their facilities and follow industry best practices to make the switch to safer technologies when practicable. As a result, the Agency has tentatively determined that the STAA implementation requirements are not justified and a compliance- and performance-driven program that directly targets sources with less effective prevention programs through enforcement actions is more appropriate because it does not unduly burden sources that have effective prevention programs. Therefore, the EPA is

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proposing to rescind the STAA implementation requirements under 40 CFR 68.67(h) for the subset of facilities with Program 3 regulated processes in NAICS codes 324 and 325.

#### 4. STAA Practicability Assessment

The EPA is proposing to rescind the STAA practicability requirements under 40 CFR 68.67(c)(9)(ii) for the subset of facilities with Program 3 regulated processes in NAICS codes 324 and 325. These requirements represent the second largest annualized cost of the 2024 SCCAP rule (\$27.0 million at a 3% discount rate and \$28.6 million at a 7% discount rate) (89 FR 17623). The Agency acknowledges that there is value in assessing the practicability of implementing safer technologies when appropriate; however, requiring a subset of owners and operators of regulated processes to perform a practicability assessment alone may not result in tangible benefits, and therefore does not justify the cost.

By proposing to rescind the requirement for a subset of facilities to conduct STAA practicability assessments, the EPA intends to remove an overly burdensome paperwork requirement that likely would not result in improved safety. Conducting a practicability assessment alone, without implementing a practicable passive or other measure, would not provide benefits to owners or operators that would aid in protecting workers, surrounding communities, and the environment from chemical accidents. Additionally, the results of a STAA evaluation and practicability assessment are highly dependent upon the specific risk being evaluated, such as technological failures, natural disasters, human errors, acts of malfeasance, etc. The IST/ISD considerations for each individual risk being evaluated would likely often yield different, and perhaps contradictory, results when the same chemical process is evaluated relative to different causes of accidental releases. This could lead to uncertainty on how to assess practicability, as the results of an evaluation, and therefore what is practicable, depend on the risk

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being evaluated. Even then, solutions deemed “practicable” to address one risk factor may not result in the greatest reduction of overall risk. Additionally, owners or operators need to consider the potential tradeoffs associated with a “practicable” solution addressing one risk factor that may inadvertently increase another. Assessing tradeoffs is a part of assessing practicability of safer technologies; however, it lacks clarity for compliance. Therefore, the EPA is proposing to rescind the STAA practicability requirements of under 40 CFR 68.67(c)(9)(ii) for the subset of facilities with Program 3 regulated processes in NAICS codes 324 and 325.

## 5. STAA Evaluation

The EPA is proposing to modify the STAA evaluation provisions in 40 CFR 68.67(c)(9)(i) by removing the requirement for all facilities with Program 3 regulated processes in NAICS codes 324 and 325 to conduct an STAA evaluation. Instead, the EPA proposes to require an initial STAA evaluation for all new Program 3 processes, regardless of NAICS code. As described above, new processes would include new processes designed and added to existing RMP facilities and newly built facilities. The Agency has long held the view that STAAs are likely best conducted during the design of new processes. For example, in the 1995 RMP SNPRM, the EPA stated “such costly analyses are probably best conducted during the design of new processes, when, according to industry commenters, they often are already part of the design process to identify cost-effective approaches to improving safety” (60 FR 13535). While the EPA maintains that many IST options may still be practicable after the initial design phase and that STAA involves more than just IST, the Agency also recognizes that the best opportunity for evaluating and implementing IST is during the early phases of process design, as described by the National Research Council in its 2012 report, “The Use and Storage of Methyl Isocyanate

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(MIC) at Bayer CropScience.”<sup>41</sup> The EPA, therefore, proposes that during the design phase of new processes, owners or operators are required to consider and document, in the following order of preference, IST/ISD, passive measures, active measures, and procedural measures; to minimize the risk of catastrophic release. This will provide tangible benefits that evaluations of existing processes may not due to cost and technological constraints. The EPA also proposes that the STAA evaluation be performed by a team knowledgeable in process safety and equipment design. Through these proposed requirements, the EPA maintains that a combination of risk management measures may be used to achieve the desired risk reduction.

Since data on STAA-like provisions that are required by some State and local prevention programs (*i.e.*, the Contra Costa County Health Services and NJDEP IST regulations) are limited, it is difficult to assess the effectiveness of these provisions. To aid the Agency in understanding the effectiveness of an STAA evaluation, the EPA also proposes to collect information on STAA evaluations conducted during the design phase of new processes, including categories of safer design considered/implemented and not implemented and determining factors not for implementing safer designs.<sup>42</sup> Categories for designs considered/implemented and not implemented may include: use of safer substance; moderation of substance; minimization of substance; simplification of process; and other techniques considered. The Agency also proposes collecting information on causal factors for not implementing a safer design, including costs, or technical infeasibility. Additionally, the Agency proposes collecting information on the determining factors for implementing safer designs, which may include: regulatory requirements;

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<sup>41</sup> National Research Council, *The Use and Storage of Methyl Isocyanate (MIC) at Bayer CropScience*. Washington, DC: The National Academies Press (2012). <https://doi.org/10.17226/13385>.

<sup>42</sup> See Technical Background Document – Safer Technologies and Alternatives Analysis (STAA) Information Collection – Initial Evaluation for New Processes.

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cost savings; accident prevention; and other reasons. The EPA expects that collecting data on safer technologies would help inform future guidance related to STAA and seeks comment on the value of collecting this information from new processes.

## 6. Proposed Regulatory Changes

For the reasons stated above, the EPA is proposing to modify 40 CFR 68.175 by removing paragraphs (e)(8) and (e)(9) and revising paragraph (e)(7) to apply to new Program 3 processes. The EPA is proposing that new Program 3 processes include new processes designed and added to existing RMP facilities and those designed and built at newly operating facilities. Processes considered new would commence operation three years after the effective date of this rule. The EPA is proposing to modify the PHA provisions by removing paragraph (h) from 40 CFR 68.67, rescinding the STAA implementation requirements. The EPA is also proposing to remove paragraph (c)(9)(ii) from 40 CFR 68.67, rescinding the STAA practicability requirements. The EPA is also proposing to modify paragraph (c)(9)(i) to specify that the STAA evaluation applies only to new Program 3 processes, as described above. The EPA seeks comment on these proposed revisions. The EPA also seeks comment on whether paragraph (c)(9)(iii) should be modified to clarify that the STAA evaluation for new processes shall be performed by a team knowledgeable in process design, or if the paragraph is not necessary and should be removed.

## 7. Alternative Options

The EPA considered other options and is seeking comment on these alternative approaches. The Agency seeks comment on requiring STAA implementation to capture processes with “heightened risk,” which could include facilities:

- Found to have not reported RMP accidents;

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- With one accident that resulted in offsite injuries;
- Found to have multiple “serious” violations during an EPA inspection; and
- With substantial property damage due to a reportable accident.

The EPA also seeks comment on additional conditions that may qualify a process to be considered of “heightened risk.”

The EPA seeks comment on a regulatory process that would allow facilities to seek an exemption from STAA implementation by appealing to the EPA Administrator. Owners or operators seeking an exemption would need to justify how they are addressing risk separately from STAA implementation.

The Agency seeks comment on requiring the STAA practicability analysis for new Program 3 processes, regardless of NAICS code. This would include new processes at new and existing facilities, similar to what the Agency proposed above for the STAA initial evaluation. As this is likely occurring as a part of the design process, the Agency does not expect that a practicability analysis for new processes would add additional burden to owners and operators. Additionally, the Agency seeks comment on requiring the STAA practicability analysis and initial evaluation for processes with heightened risk, as outlined above. Finally, the EPA seeks comment on rescinding the STAA initial evaluation criteria and adding clarifying language that all Program level 3 processes must consider passive, active, and procedural measures as a part of the PHA.

### *B. Information Availability*

In the 2017 Amendments rule, the EPA added new information availability requirements under 40 CFR 68.210, including the requirement for the owner or operator to provide, within 45 days of receiving a request by any member of the public, without limits, specified chemical

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hazard information for all RMP-regulated processes. The provision required the owner or operator to provide ongoing notification on a company website, on social media platforms, or through other publicly accessible means such that the information is available to the public upon request, along with the information elements that may be requested and instructions for how to request the information. The rule also added that a public meeting shall be held no later than 90 days after an RMP-reportable accident. The EPA explained that the purpose of the provision was to ensure communities can access the necessary chemical hazard information to protect first responders and residents and thereby mitigate the impacts of potential RMP accidents (82 FR 4665). To justify implementation of the provision, the EPA cited two studies in the 2017 RIA which indicated that information availability regarding local facility chemical inventories improves the efficiency of nearby property markets by adjusted property values and the allocation of resources to emergency response and preparedness.<sup>43</sup>

In the 2019 Reconsideration rule, the EPA rescinded the information availability requirements because a benefit-versus-risk calculation that the 2017 Amendments rule “underweighted security concerns in balancing the positive effects of information availability on accident prevention and the negative effects on public safety from the utility to terrorists and criminals of the newly available information and dissemination methods” (84 FR 69885). In the rationale for rescinding the provisions, the EPA cited the Department of Justice (DOJ) report “Assessment of the Increased Risk of Terrorist or Other Criminal Activity Associated with Posting Off-Site Consequence Analysis Information on the Internet,” which found that

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<sup>43</sup> Regulatory Impact Analysis—Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, section 112(r)(7), p. 73 (December 16, 2016). <https://www.regulations.gov/document/EPA-HQ-OEM-2015-0725-0734>.

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assembling otherwise-public data is valuable to criminal actors in identifying and focusing on sources that could be targets of criminal acts.<sup>44</sup> The goal of DOJ’s assessment was to determine which variables and forms of dissemination would create vulnerabilities enabling a terrorist attack. In the 2019 Reconsideration rule, the EPA also stated that the 2017 provisions would make otherwise-public information anonymously accessible via the web and other means in a more consolidated fashion (84 FR 69887). The EPA observed that this consolidated information “may present a more comprehensive picture of the vulnerabilities of a facility than would be apparent” otherwise, and thus potentially increasing terrorist risk (84 FR 69887). Therefore, the EPA removed the information availability provisions but retained the public meeting requirement.

Then, in the 2024 SCCAP rule, the EPA again finalized provisions for facilities to share information, but limited the requirement to people residing, working, or spending significant time within six miles of a facility. The EPA cited two studies showing that information availability did not contribute to intentional criminal acts and that no industries now regulated under RMP had been subject to any intentional events since the 1970s (89 FR 17675). Another study cited in the 2024 SCCAP rule demonstrated that well-informed communities were better prepared for accidents (89 FR 17675). To support adding the six-mile radius limit, the EPA referenced data showing that 90% of toxic worst-case distances to endpoints are within six miles (89 FR 17672). The EPA also required that facilities must share, upon request, declined recommendations related to potential safety gaps between codes, standards, or practices to which

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<sup>44</sup> Department of Justice. April 18, 2000. Assessment of the Increased Risk of Terrorist or Other Criminal Activity Associated with Posting Off-Site Consequence Analysis Information on the Internet. <https://www.regulations.gov/document/EPA-HQ-OEM-2015-0725-2003>.

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the process was designed and constructed and the most current version of applicable codes, standards, or practices (89 FR 17642). In addition, the EPA required that information be provided in multiple languages and a record of members of the public requesting information to be retained for five years. When the 2024 SCCAP rule was finalized, the EPA released the Public Data Tool, a website maintained by the Agency which made most RMP non-offsite consequence analysis (non-OCA) data available to the public.

As discussed in further detail below, the EPA is now proposing to provide RMP information through the RMP Public Data Tool instead of requiring owners or operators to provide this information to members of the public upon request.

The EPA is also proposing to rescind multiple provisions on information availability from the 2024 SCCAP final rule, including notification of availability of information, timeframe to provide requested information, declined recommendations, access in multiple languages, recordkeeping, and documenting the notification method and location in the RMP.

#### 1. Proposed Modifications to the RMP Public Data Tool

The EPA is proposing to rescind the requirement in 40 CFR 68.210(d) for owners or operators to provide chemical hazard information to members of the public upon request and codify in the regulation what information is shared through the RMP Public Data Tool. The data made available on the RMP Public Data Tool for each facility would include: 1) regulated substance names; 2) Safety Data Sheets for all regulated substances; 3) accident history information; 4) emergency response information, including whether the facility is a responding or non-responding facility, name and phone number of LEPC, and notification procedures in the event of a release; and 5) scheduled exercises. In terms of the functionality of the tool, the EPA also proposes to modify the RMP Public Data Tool by removing the map display and restricting

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the search function to county or facility name, as this would allow residents to search for facilities nearby that they may be unaware of, while balancing security concerns. This function would also be sufficient to cover a requestor that resides, works, or spends a significant time within the six-mile radius, and the public can reach out to the LEPC identified in the RMP Public Data Tool for more information, if needed.

This would provide more stability and certainty around what is consistently available to the public. Additionally, information sharing through the RMP Public Data Tool would apply uniformly to all facilities and provide more visibility to the information being disseminated. To balance information transparency and better protect sensitive chemical information, the EPA is proposing to limit search criteria in the data to county-level and eliminate the mapping feature.

Rescinding these information availability requirements and making the information available through the RMP Public Data Tool would reduce the burden on RMP-regulated facilities and help avoid the costs of information sharing requirements under the 2024 SCCAP rule, which was estimated to be \$12.8 million annually. Lastly, the proposed requirements could help fill informational gaps created by non-active LEPCs and disseminate awareness of non-active LEPCs if their information is provided through the RMP Public Data Tool. Under the Emergency Planning and Community Right-to-Know Act (EPCRA) sections 301 and 303, LEPCs must develop an emergency response plan, review the plan at least annually, and provide information about chemicals in the community to residents. According to a 2023 survey, there are 2,554 active LEPCs, while approximately 1,236 LEPCs are reported as inactive or unknown

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based on submissions from 49 states and two territories.<sup>45</sup> Information on where LEPCs are inactive could help target resources, planning, and preparedness to higher risk areas.

In the 2022 SCCAP proposed rule, the EPA provided rationale for potential non-rule RMP policy changes to allow the public access to RMP facility information. The EPA explained that the Agency had restricted access to the RMP database even though CAA 112(r)(7)(H) and its implementing regulations in 40 CFR part 1400 only restrict a portion of the database (offsite consequence analysis, or OCA data). The EPA is committed to safeguarding OCA information in accordance with requirements in the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (CSISSFRA) 42 U.S.C. 7412(r)(7)(H)(ii), which allows for any member of the public to access paper copies of OCA information for a limited number of facilities. This OCA information remains accessible to the public only in Federal reading rooms or upon voluntary disclosure by the source itself. The EPA nonetheless finds there are many weaknesses with the current approach of visiting reading rooms in which members of the public can view RMPs, obtaining RMP information from State and local government officials with RMP data access, or submitting a Freedom of Information Act (FOIA) request to the EPA for non-OCA RMP information. While current OCA provisions allow for a person visiting a reading room to request information of up to 10 facilities per year regardless of location and the OCA information for all facilities with a vulnerable zone that extends into the jurisdiction of the LEPC or Tribal emergency planning committee (TEPC) where the person lives or works, there are a limited number of reading rooms even in large States, and these reading rooms generally are not located

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<sup>45</sup> EPA. “National Survey of State Emergency Response Commissions (SERCs),” Revised March 2025. [https://www.epa.gov/system/files/documents/2025-04/national-survey-of-the-state-emergency-response-commissions\\_revised-march-2025.pdf](https://www.epa.gov/system/files/documents/2025-04/national-survey-of-the-state-emergency-response-commissions_revised-march-2025.pdf).

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close to the communities potentially impacted by process safety at particular facilities. While the reading room restrictions are necessary for OCA information, the restrictions in locations and access can nonetheless make them an inefficient way to access information in the RMPs that Congress chose not to restrict when it enacted CSISSFRA. Therefore, the EPA is proposing to provide access to information through the RMP Public Data Tool. In addition, other programs within the EPA, such as the Toxics Release Inventory have demonstrated that facility and chemical information can be made publicly available in a readily accessible format and without increased security risks. The EPA requests comment on the proposed changes to the RMP Public Data Tool and whether these changes satisfy the need for access to RMP information while addressing security concerns.

## 2. Proposed Rescinded SCCAP Provisions

Because the EPA is proposing to rescind the requirement to provide chemical hazard information upon request, the EPA is also proposing to rescind related information availability requirements that mandate how and when such information should be provided. The EPA has tentatively determined that there is no longer a need for notification of availability of information under 40 CFR 68.210(f) if the information will exist on a publicly available EPA website. Additionally, the RMP Public Data Tool would indicate that a requestor could ask the LEPC for more information, should the public wish to have more information than what the data tool would provide. Likewise, there would no longer be a need for the 45-day timeframe to provide the information requested since the EPA is proposing to alleviate the burden on facilities to provide the information.

In this action, the EPA is separately proposing to rescind the requirement to document declined recommendations for potential safety gaps between previous codes, standards, or

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practices to which the process was designed/constructed and the most current version of applicable codes, standards, or practices (see section IV.I.). Based on this proposed rescission, the EPA is also proposing to remove the requirement to make declined recommendations available to the public.

The EPA is also proposing to rescind the requirement from the 2024 SCCAP rule to provide information to the public in multiple languages. This proposed rescission eliminates the translation costs for facilities<sup>46</sup>, which could be significant without adding commensurate benefit.<sup>47</sup> Further, this would align with E.O. 14224, “Designating English as the Official Language of The United States,” signed on March 1, 2025, which specifies that English is the official language of the United States (90 FR 11363).

Regarding the recordkeeping requirements, since members of the public would no longer need to contact a facility to request chemical hazard information because of the availability of the RMP Public Data Tool, there would no longer be a need for a recordkeeping requirement. Additionally, because the EPA is proposing to remove the requirement for an owner or operator to notify the public that information is available, if finalized, there would no longer be a need for an owner or operator to document the notification method and location in the RMP. Therefore, the EPA is proposing to remove the recordkeeping requirements in 40 CFR 68.210(h).

### 3. Previous Comments on Information Availability

In developing this proposed rule, the EPA reviewed comments on previous RMP rulemakings. Although the 2024 SCCAP rule provisions were supported by a wide variety of

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<sup>46</sup> See Exhibit 4-17: Proposed Rule Unit and Facility Costs, Rescinded Requirement to Translate Information into Two Languages (2022 dollars) in the 2025 RIA Chapter 4: Costs and Cost Savings of Proposed Rule Provisions

<sup>47</sup> EPA, Response to Comments on the 2022 Proposed Rule, p. 252, December 15, 2023. Available at <https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0583>, hereinafter referred to as “the 2024 SCCAP rule RTC”; 89 FR 17636; March 11, 2024.

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stakeholder groups, including individuals, advocacy groups, mass comment campaigns, unions, State attorneys general, city governments, State commissions, and industry trade associations, other industry groups raised several concerns.<sup>48</sup> Commenters presented various arguments against expanded information availability requirements, including that the EPA lacked evidence for the provisions' effectiveness,<sup>49</sup> the provisions would be burdensome or costly,<sup>50</sup> the provisions were redundant or duplicative of EPCRA requirements,<sup>51</sup> the six-mile radius lacked justification,<sup>52</sup> and the provisions would generate security risks for terrorist or cybersecurity attacks on facilities.<sup>53</sup> In response to these comments, the EPA said that the added requirements were important to help the public understand how facilities address the hazards that may affect their community to control that risk.<sup>54</sup> The EPA also cited studies that demonstrate the benefits of sharing information, including a 2021 study in which researchers attempted to compile a database of intentional acts upon chemical processing facilities and found documentation of 84 incidents in the chemical and petrochemical industries.<sup>55</sup> According to the database, no terrorist event in process industries (excluding transportation and pipelines) has occurred in North America after the 1970s (87 FR 53603). At this time, the EPA is not aware of any new data

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<sup>48</sup> EPA-HQ-OLEM-2022-0174

<sup>49</sup> EPA-HQ-OLEM-2022-0174-0205; 0239; 0241; 0263.

<sup>50</sup> EPA-HQ-OLEM-2022-0174-0165; 0180; 0184; 0193; 0196; 0201; 0202; 0213; 0215; 0226; 0233; 0234; 0239; 0262; 0268; 0271; 0272; 0275; 0458.

<sup>51</sup> EPA-HQ-OLEM-2022-0174-0164; 0196; 0233; 0262; 0267; 0268; 0272.

<sup>52</sup> EPA-HQ-OLEM-2022-0174-0180; 0193; 0205; 0207; 0213; 0215; 0217; 0223; 0226; 0234; 0238; 0268; 0272; 0458; 0460.

<sup>53</sup> EPA-HQ-OLEM-2022-0174-0163; 0180; 0181; 0184; 0201; 0207; 0215; 0217; 0226; 0229; 0232; 0233; 0234; 0237; 0238; 0239; 0244; 0253; 0262; 0263; 0267; 0268; 0271; 0272; 0458.

<sup>54</sup> The 2024 SCCAP rule RTC at p. 247.

<sup>55</sup> Valeria Casson Moreno et al., "Analysis of Physical and Cyber Security-Related Events in the Chemical and Process Industry," *Process Safety and Environmental Protection* 116 (2018), 621–31, <http://doi:10.1016/j.psep.2018.03.026>; 2) Matteo Iaiani et al., "Analysis of Events Involving the Intentional Release of Hazardous Substances from Industrial Facilities," *Reliability Engineering & System Safety* 212 (2021), 107593, <http://doi:10.1016/j.res.2021.107593>.

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showing a correlation between certain sensitive RMP data being made available to the public and increased criminal activity or intentional releases. The EPA also cited a 2020 publication that showed that access to pre-incident information, such as facility location and potential disasters, allows communities to be better prepared for disasters like RMP-reportable accidents.<sup>56</sup> Since the 2024 SCCAP rule was finalized, a 2025 update to that publication reviewed the effects of pre-incident education on public preparedness and found that any pre-incident education improved knowledge and intention to act, with more intensive training leading to greater engagement and response to emergency or disaster situations.<sup>57</sup> Therefore, the EPA has determined that providing chemical hazard information to the general public allows people that live or work near a regulated facility to improve their awareness of risks to the community and be prepared to protect themselves in the event of an accidental release.

Under EPCRA's regulatory provisions at 40 CFR part 370, subpart D, a person can access an SDS or hazardous chemical inventory information for a specific facility by reaching out to the LEPC. However, the EPA has determined that information should be more easily accessible to the public than the existing mechanisms. Additionally, EPCRA and other state and local-implemented laws has been uneven across the country.<sup>58</sup>

The EPA conducted a benefits assessment under CAA section 112(r)(7)(H)(ii)(I)(bb) in 2000 which described the benefits of providing community access specifically to OCA

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<sup>56</sup> Holly Carter, John Drury, and Richard Amlot, "Recommendations for Improving Public Engagement with Pre-incident Information Materials for Initial Response to a Chemical, Biological, Radiological or Nuclear (CBRN) Incident: A Systematic Review," *International Journal of Disaster Risk Reduction* 51 (2020), 101796, doi:10.1016/j.ijdr.2020.101796.; the 2024 SCCAP rule RTC at p. 276.

<sup>57</sup> Boyce, Niki and Symons, Charles and Carter, Holly and Majumdar, Arnab, "How Can We Improve Public Engagement with Pre-Incident Information for Initial Response to a Mass Casualty Emergency? Recommendations from a Systematic Review." Pre-print (2025), <http://dx.doi.org/10.2139/ssrn.5231947>.

<sup>58</sup> The 2024 SCCAP rule RTC at p. 250.

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information and addressed the benefits of public disclosure of risk management plan information. The EPA found that public disclosure of risk management plan information would likely lead to a reduction in the number and severity of accidents, which also supports this proposed action (89 FR 17670).

#### 4. Proposed Regulatory Changes

For the reasons outlined above, the EPA requests comment on its proposal to codify the RMP Public Data Tool with potential modifications as described above. The EPA proposes to revise 40 CFR 68.210(d) by replacing the phrase “[t]he owner or operator of a stationary source shall provide, upon request by any member of the public residing, working, or spending significant time within 6 miles of the fenceline of a stationary source” with “EPA shall provide through an online Public Data Sharing tool.”

Additionally, the EPA requests public comment on its proposal to rescind the 2024 SCCAP rule provisions 40 CFR 68.210(d)(7), “Declined Recommendations and justifications,” along with 40 CFR 68.210(e), “Languages,” 40 CFR 68.210(f), “Notification of availability of information,” 40 CFR 68.210(g), “Timeframe to provide requested information,” and 40 CFR 68.210(h), “Recordkeeping.” The EPA also requests comment on its proposal to remove 40 CFR 68.160(b)(22), which requires owners or operators to document in the RMP the method and the location for notifying the public within a six-mile radius that information is available.

#### 5. Alternative Options

As an alternative, the EPA requests comment on rescinding all 2024 SCCAP rule information availability provisions but retaining the RMP Public Data Tool, but not codifying it, with the same modifications as described above in the primary proposal. This approach would relieve the burden on facilities from having to share information with the public, as communities

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and emergency planners would still have access to RMP information. As detailed above, the proposed limited search function could mitigate the risk of criminal activity and that information sharing through the RMP Public Data Tool would apply uniformly to all facilities; provide increased visibility of the information being disseminated; and be reliably available to the public moving forward. The EPA requests comment on this alternative.

Another alternative is to rescind all the 2024 SCCAP rule provisions and take the RMP Public Data Tool offline permanently. This option would address concerns raised by the regulated community related to risks of criminal activity and intentional releases resulting from information being readily available and revert the information availability requirements to those implemented prior to the 2024 SCCAP rule. Under this alternative, members of the public could still view risk management plans at Federal reading rooms, obtain risk management plan information from State or local government officials with RMP data access, or submit a FOIA request to the EPA. However, under this option, communities and emergency responders may not have access to critical information for emergency planning response. In the 2022 SCCAP proposed rule, the EPA acknowledged that if data is not provided to the public, the Agency could be in violation of FOIA requirements to make information requested via FOIA three or more times “available for public inspection in an electronic format” when the information is likely to be requested again (87 FR 53602). The EPA requests comment on this alternative.

The EPA further requests comment on alternatives to fully rescinding the requirement to provide information in multiple languages. For example, the EPA could limit the information required to be shared in multiple languages to immediate emergency situations, or limit the requirement to English and, if different, the single language predominant in the area.

### *C. Third-Party Compliance Audits*

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## 1. Background

Compliance audits have been required as part of the Risk Management Program for both Program 2 and Program 3 processes under 40 CFR 68.58 and 68.79 since the rule was first promulgated in 1996 (61 FR 31668; June 20, 1996). These requirements were designed to ensure the owner or operator certifies compliance with the Risk Management Program every three years. The compliance audit provisions require audits be conducted by at least one person knowledgeable in the process; that the owner or operator develop a report of audit findings; the owner or operator determine and document a response for each of the compliance audit findings and correct deficiencies; and the owner or operator retain the two most recent compliance audit reports.

With the 2024 SCCAP rule, a compliance audit is required to be conducted by a third-party auditor if a Program level 2 or 3 facility has had an accidental release meeting the criteria under § 68.42(a) or if an implementing agency requires a third-party audit due to conditions at the stationary source that could lead to an accidental release of a regulated substance, or when a previous third-party audit failed to meet the competency or independence criteria of 40 CFR 68.59(c) See 40 CFR 68.58(f) and 68.79(f).

Although third-party compliance audits were discussed in the 1995 SNPRM (60 FR 13530), requirements for a third-party audit program were not codified until the 2017 Amendments rule (82 FR 4594), which were subsequently rescinded with the 2019 Reconsideration rule (84 FR 69834), and then reinstated with a few key differences in the 2024 SCCAP rule (89 FR 17622). The Agency maintains that there could be value in requiring third-party audits where “independent third-party auditing can assist the owners and operators, the EPA (or the implementing agency), and the public to better determine whether the procedures

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and practices developed by the owner and/or operator under subparts C and/or D of the RMP rule (*i.e.*, the prevention program requirements) are adequate and being followed” (81 FR 13654, March 14, 2016). However, one of the common threads underlying this proposed rulemaking and all previous rulemakings is that the Agency has limited data demonstrating the extent to which those benefits would be realized specifically through RMP requirements. As stated in the 2016 Amendments proposed rule (81 FR 13655), the EPA has required third-party audits in enforcement settlement agreements, which has provided clear direct benefit in those cases, but the Agency has not been able to extrapolate a dataset to justify and determine which facilities should be required to conduct third-party audits and what the benefits of those audits would be as it relates to regulatory compliance.

In the 2022 SCCAP proposed rule, the Agency cited other successful third-party audit programs to support requiring third-party compliance audits under the Risk Management Program (87 FR 53585). In reviewing those examples for this proposed rulemaking, however, the Agency questions whether they are definitive in proving benefits for a regulatory RMP third-party audit program. The examples provided in the 2022 proposed rule included other Federal and state agencies’ third-party verification programs, which are not directly comparable to the Risk Management Program, or included trade-association third-party verification programs, which are voluntary instead of the regulatory requirement codified through the 2024 SCCAP rule. For all the examples provided, there was no quantitative data to support how a third-party audit program, replacing a self-audit program, would increase regulatory compliance.

The 2017 Amendments rule and the 2024 SCCAP rule also relied on outcomes from CSB investigations to support the third-party audit requirements, but only a handful of examples were provided, and the benefits of a third-party audit are unclear. As stated in the 2017 Amendments

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rule, the third-party audit requirements were intended to address poor compliance audits as a contributing factor to the severity of past chemical accidents (81 FR 13654-13655).<sup>59</sup> The 2022 SCCAP proposed rule echoed those issues by stating: “In the 2016 proposed amendments, EPA explained that poor compliance audits have been cited by EPA and CSB as a contributing factor to the severity of past chemical accidents” (87 FR 53585). The EPA continues to believe that in some cases, RMP facilities are not conducting adequate compliance audits. Because of this, the agency is taking comment through joint proposals.

The potential issues with requiring and implementing third-party audits are well documented through the EPA’s three most recent rulemakings. For example, in the 2018 Reconsideration proposed rule, the EPA referred to the OSHA Small Business Advocacy Review (SBAR) panel, stating: “The August 2016 OSHA SBAR panel report did not fully support third-party audits. Instead, the SBAR panel recommended further review of the need and benefits of third-party audits; the sufficient availability, adequate process knowledge and degree of independence needed of third-party auditors; and whether facilities should decide the best type of audit appropriate for their process.” (83 FR 24864, May 30, 2018). Since then, except for information from a handful of enforcement-driven third-party audits, the Agency continues to lack direct data on the need for third-party audits. Concerns continued as evidenced by comments received on the 2022 SCCAP proposed rule. During the comment period, many commenters expressed concerns about the availability of third-party auditors and burdens associated with finding qualified auditors.<sup>60</sup> At that time, the Agency’s response was, in part,

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<sup>59</sup> A further discussion of specific CSB investigations identifying issues with compliance audits can be found in the 2016 proposed rule; *see* 81 FR 13654-55; March 14, 2016).

<sup>60</sup> The 2024 SCCAP rule RTC at p. 173.

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that “EPA believes the provision, as adopted, ensures additional available independent auditors to act in an independent and impartial manner, allowing more flexibility in choosing auditors for all industries while also ensuring quality will not suffer.”<sup>61</sup> Even though the 2024 SCCAP rule included flexibilities in the requirements for how a third-party audit team is assembled, the Agency also did not have data to show whether there is an adequate pool of third-party auditors available to implement the regulations.

Due to the lack of data to provide a clear direction for implementing a third-party audit program, the Agency is co-proposing two options: (1) rescind all the 2024 third-party audit provisions, and (2) modify the 2024 provisions to focus on facilities with two accidents in a five-year period; require data on the third-party audits to be submitted to the EPA; and put in place a sunset provision after the regulations have been in effect for 10 years.

## 2. Proposal #1 – Rescind Third-Party Compliance Audits

Through the prior three rulemakings (2017, 2019, and 2024), the EPA has not only changed position on whether to require third-party audits, but also on what facilities should be required to conduct a third-party audit should they be required. For example, in the 2017 Amendments rule, the Agency required facilities with Program 2 and Program 3 processes having one accident to conduct a third-party audit. In the 2019 Reconsideration rule, the EPA rescinded the third-party audit requirements. Then in the 2022 SCCAP proposed rule the EPA proposed third-party audits for facilities with Program 2 and Program 3 processes having either two accidental releases within five years meeting the criteria in 40 CFR 68.42(a) from a covered process at a stationary source; or one accidental release within five years meeting the criteria in

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<sup>61</sup> *Id.*

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40 CFR 68.42(a) from a covered process at a stationary source in NAICS code 324 or 325, located within one mile of another stationary source having a process in NAICS code 324 or 325. In 2024, the EPA ultimately finalized third-party audits for all Program 2 and Program 3 processes having one accidental release meeting the criteria in 40 CFR 68.42(a) in the SCCAP final rule. The Agency's inconsistency has caused regulatory uncertainty for owners and operators of RMP-covered processes. This inconsistency is due in part to a lack in appropriate data to provide a clear direction for implementing a third-party audit program, as described above. Because of this, the Agency is proposing to rescind the third-party audit requirements.

The Agency is also proposing to rescind the provision for implementing agencies to require third-party audits due to conditions at the stationary source that could lead to an accidental release of a regulated substance (under 40 CFR 68.58(f)(2) and 68.79(f)(2)). For the reasons previously outlined, the 2024 provision is unnecessary and creates regulatory uncertainty for owners and operators under the Risk Management Program. However, the Agency has been using, and will continue to use, third-party compliance audits as part of enforcement agreements.

The 2024 provision allowed an implementing agency to require a third-party audit due to "conditions at the stationary source that could lead to an accidental release of a regulated substance." While the Agency continues to agree conceptually with this provision, without having parameters on what those "conditions" could be, it could create significant confusion and uncertainty for regulated entities and implementing agencies. While the 2024 provisions under 40 CFR 68.58(g) and 68.79(g) attempted to mitigate this issue by establishing an appeal process for the Agency-required third-party audits, it merely added to the resource burden placed upon facilities and the Agency. The Agency is therefore proposing to rescind both the provision for

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implementing agencies to require third-party audits under 40 CFR 68.58(f)(2) and 68.79(f)(2) and the provision establishing an appeals process under 40 CFR 68.58(g) and 68.79(g).

### 3. Proposal #2 – Modify the Third-Party Compliance Audit Requirements

For this proposal, rather than completely rescinding the third-party audit requirements, the Agency would instead modify the third-party audit requirements to apply to a subset of facilities over a limited 10-year window while the Agency collects data on the value of the third-party audit requirements. The Agency is proposing to target facilities that have had two RMP-reportable accidents in a five-year period for third-party audits. The short-term goal would be to ensure those facilities are complying with the Risk Management Program. The long-term goal would be to collect enough information on the effectiveness of third-party audits, to evaluate whether third-party audits have the perceived benefits that have been contemplated since the 1995 SNPRM. This proposal therefore includes a sunset provision after 10 years.

#### a. Two-Accident Applicability Criteria

In the 2024 SCCAP rulemaking, the EPA pivoted from proposing third-party audits for facilities having two accidents within a five-year period, as initially outlined in the 2022 SCCAP proposed rule, to requiring audits for facilities that have had only one accident. The pivot was based primarily on comments received on the proposed rule, and the justification for the change was that just one 40 CFR 68.42(a) accidental release was a serious matter, with real consequences both on and off-site as well as significant costs (89 FR 17660).

While the Agency still holds that view, each RMP accidental release has its own underlying root cause and set of circumstances that led to the accident, which is why the Agency already requires incident investigation including root cause analyses, under §§ 68.60 and 68.81,

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to determine the cause. Therefore, not every single RMP process having had an accident may warrant or benefit from a third-party audit.

The Agency also explained in the 2024 SCCAP rule that “EPA does not believe affected communities should have to experience the adverse consequences of a second reportable accident before an objective party comes in to evaluate the facility for compliance. The pattern of repeated accidents at RMP facilities provide a reasoned basis for EPA’s focus on these facilities to apply a greater level of risk reduction measures” (89 FR 17660). While the EPA continues to agree with this statement, the Agency also acknowledges that it does not have the necessary predictive data to identify which facilities are likely to have second accidents. For example, as shown by data in the 2022 SCCAP proposed rule, only a subset of facilities having one accident will have a second (87 FR 53581-53582). For reference, from 2016-2020, 70 facilities had multiple accidents, and from 2019-2023, 57 facilities had multiple accidents. Also from 2014-2023, 580 facilities had only one RMP-reportable accident and 177 had more than one RMP-reportable accident.<sup>62</sup> Among the 801 facilities having an RMP-reportable accident during 2004-2013, 522 (65%) did not experience another RMP-reportable accident within 10 years.<sup>63</sup> While the Agency aims to prevent all accidental releases, it nonetheless recognizes that requiring third-party audits broadly and without targeting the facilities and circumstances that would benefit from an external audit could be counterproductive—if the quality of the third-party audit is poor, it could result in confusing, inconsequential, or possibly even detrimental recommendations – diverting facility resources away from actual safety concerns to, instead,

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<sup>62</sup> Exhibit 3-13a. Accident History Document.

<sup>63</sup> Facilities with 1+ Accidents 2004-2013 and Subsequent Accidents within 10 Years (millions, 2024 dollars). Accident History Document

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address third-party recommendations. Furthermore, the Agency acknowledges that facility resources allocated to process safety are not unlimited. Some facilities that are required to conduct a third-party audit may not experience tangible benefits from an external audit, which may result in facility resources used to manage and coordinate with third-party auditors being pulled from other process safety responsibilities.

In relation to determining applicability, the five-year period would be a rolling period. For example, the clock for the five-year period would specifically begin following the first RMP-reportable accident. Any additional RMP-reportable accidents that occur within five years of the first accident would meet the applicability for a third-party audit and begin the clock for the next five-year period. Should an RMP-reportable accident happen in year six, then that would be the beginning of a new five-year period timeframe.

Pursuant to the statements and justification outlined in the 2022 SCCAP proposed rule, which targeted facilities having multiple accidents in a five-year period, the Agency maintains that there may be circumstances where, after multiple accidents, a facility would benefit from the insight of a third-party auditor. As stated in the 2022 SCCAP proposed rule and now echoed for this proposal, “[t]he proposed provisions for this action [reflect that the most accident-prone facilities have not been able to properly evaluate and apply appropriate prevention program measures to regulated processes to stop accidents from occurring and that the availability of some qualified third-party auditors may be limited]” (87 FR 53586). Furthermore, “[w]hen RMP facilities have multiple accidents within a 5-year period, EPA is concerned that those facilities have not been able to identify measures on their own (through incident investigations, hazard evaluations, and compliance self-audits) to properly evaluate and apply appropriate prevention program measures to stop accidents from occurring” (87 FR 53584).

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For these reasons and the reasons outlined throughout this section, the Agency is proposing that third-party audits be required for facilities that have had two or more accidents in a five-year period. The Agency seeks comment on the applicability criteria of two accidents in five years as well as how to calculate the five-year timeframe.

With both co-proposals, the Agency is proposing to rescind the provision for implementing agencies to require third-party audits due to conditions at the stationary source that could lead to an accidental release of a regulated substance (under §§ 68.58(f)(2) and 68.79(f)(2)). The rationale for the proposed rescission is detailed in the preceding section.

#### b. Sunset Provision

Within this modification co-proposal, the Agency is also proposing to sunset the third-party audit provisions. Specifically, the Agency is proposing a 10-year sunset date after the initial compliance date of third-party audit provisions. As stated previously, one of the objectives of establishing the proposed third-party audit program is to clearly and finally identify the effectiveness of the program. At the end of the sunset period, the Agency should have enough data to determine if the program should continue as is, be modified, or simply be sunset. The sunset date holds the EPA accountable to evaluate the program and take action if the program has benefits that warrant continuing. The EPA seeks comment on the sunset provision in general, and specifically what other timeframes the EPA should consider for the sunset period.

#### c. Independence Criteria

Similar to the applicability criteria for third-party audit regulations, the Agency does not have data showing what auditor independence criteria would result in producing the most effective compliance audits. The Agency continues to agree with the independence concepts provided in the 2024 rulemaking and the requirements set under 40 CFR 68.59(b) and (c) and

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68.80(b) and (c) (see the 2022 SCCAP proposed rule and the 2024 SCCAP final rule for further discussion). However, in this proposed rule, the Agency is raising three issues for clarification: the cooling-off period under 40 CFR 68.59(c)(2)(iv) and 68.80(c)(2)(iv); the auditor experienced with the stationary source type and processes being audited under 40 CFR 68.59(c)(1)(ii) and 68.80(c)(1)(ii); and the audit team members not employed by the third-party auditor under 40 CFR 68.59(b)(2)(ii) and 68.80(b)(2)(ii).

*Rescinding the two-year cooling off period.* The cooling off period in 40 CFR 68.59(c)(2)(iv) and 68.80(c)(2)(iv), as finalized in the 2024 SCCAP rule, was intended to ensure auditor independence and impartiality, but is potentially problematic for several reasons. The provisions state that “all third-party personnel involved in the audit do not accept future employment with the owner or operator of the stationary source for a period of at least two years following submission of the final audit report.” This is referred to as “the cooling-off period.” A high-level, potential problem could be whether this restriction even contributes to facility compliance with the Risk Management Program, which is the goal of a third-party audit.

Additionally, some large companies operating multiple facilities are subject to the regulations. By accepting the work to conduct a third-party audit on one facility, the auditor would not only be restricted from conducting other unrelated work at that facility, but also from conducting work at other facilities under the same corporate umbrella. This restriction may impact the willingness of contractors to accept the third-party audit work, which further compounds the already limited pool of chemical process safety experts. In effect, this provision may not only be deterring certain process safety experts from accepting the third-party audit work, but also not allowing those process safety experts to provide their expertise in certain situations, including additional work at the facility they audited, which may benefit the most.

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This would be potentially counterproductive, since the goal of the provision is to ensure these facilities comply with the Risk Management Program. Furthermore, while the Agency continues to agree with the concept of independence of the third-party auditor, the Agency does not have any data to support whether the cooling-off period would have benefits that lead to less accidental releases.

The Agency is proposing to rescind the cooling-off period requirement because of the reasons identified above. Additionally, the Agency believes that removing the third-party auditor qualification restriction will be more beneficial than attempting to retain auditor independence and impartiality through a cooling-off period. The Agency seeks comment on this rescission. Specifically, the Agency seeks comment on whether there is any data that could be collected related to third-party auditors accepting future employment with owners or operators that are subject to the audit that would reflect the effectiveness of the third-party compliance audit. At the sunset of the 10-year timeframe for the proposed third-party audit requirements, the Agency should be able to evaluate the effectiveness of audits through the facility's safety records and EPA inspections, for which the cooling-off period may be irrelevant.

Conversely, if the Agency retains the cooling-off requirements, what provisions could be added to address the issues identified? For example, how could the Agency address cooling-off requirements for auditors working on Federal, state, or locally owned or operated facilities (*i.e.*, would the auditor be restricted from future employment with the EPA because he or she conducted an audit on a Department of Defense facility)? The Agency seeks comment on shortening the cooling-off period and excluding work unrelated to the third-party audit.

*Experienced with the stationary source type and processes.* The Agency maintains that the provisions at 40 CFR 68.59(c)(1)(ii) and 68.80(c)(1)(ii) are appropriate. A third-party

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compliance auditor should be experienced with the stationary source type and process. The provision is intentionally generalized to allow for maximum flexibility while still requiring that the auditor is capable to perform the work. The Agency seeks comment on retaining this provision, and if there are alternatives that may capture the intent.

*Audit team members not employed by the third-party auditor.* The Agency is clarifying the provisions under 40 CFR 68.59(b)(2)(ii) and 68.80(b)(2)(ii) which allow for the audit team to include current and former company personnel. Specifically, in the scenario where a facility's sister facility may offer the most knowledgeable personnel to assist with a third-party compliance audit, this would be permissible under provisions 40 CFR 68.59(b)(2)(ii) and 68.80(b)(2)(ii). Although, the lead auditor would still need to meet the independence criteria. To further support this position, the following is an excerpt from the 2017 Amendments rule: "Other personnel not employed by the third-party auditor firm (e.g. facility personnel or employees of another consulting firm with specialized expertise). These personnel are not required to meet the competency and/or independence criteria of the rule. EPA agrees with commenters who suggest that allowing facility personnel and other knowledgeable but non-independent contractors and consultants to participate in the audit would improve the audit teams' performance and outcomes" (82 FR 4619). The Agency seeks input on this issue, as well as comment on whether a process to grant waivers from the independence criteria for the lead auditor would be necessary or preferable.

#### d. The 90-Day Deadline for Audit Responses

In 40 CFR 68.59(f)(1) and 68.80(f)(1), which were codified with the 2024 SCCAP rule, the Agency added the following deadline for audit responses: "As soon as possible, but no later than 90 days after receiving the final audit report, the owner or operator shall determine an

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appropriate response to each of the findings in the audit report.” The 2024 rulemaking Response to Comment (RTC) document states that this is appropriate timeframe, allowing for a schedule that could extend beyond 90-days, but balancing the need for prompt redress.

The Agency continues to support the 90-day deadline for audit responses. However, the Agency seeks comment on whether an extension process should be established. Such a process could include a notice to the EPA, along with limited information on why the extension is needed. The Agency is also soliciting comment on whether a 60-day extension is a more appropriate length of time.

#### e. Mandatory Board Reporting of Third-Party Audits

Under 40 CFR 68.59(f)(3) and 68.80(f)(3), the owner or operator shall immediately provide a copy of the third-party audit findings response report and implementation schedule, when completed, to the owner or operator's audit committee of the Board of Directors or another comparable committee or individual, if applicable. The Agency justified this provision in the 2024 rulemaking RTC document stating that ensuring audit committees of the Board of Directors with audit findings will ensure they are aware of deficiencies and can work potential remedies into budgeting and operations decisions in a timely manner.<sup>64</sup>

While the Agency continues to see a benefit with the concept of elevating time-sensitive safety information to the highest levels in the corporate structure, the Agency also acknowledges that there is no data supporting that elevation of this information would result in increased compliance. Furthermore, the Agency now recognizes that the Board of Directors may not be the appropriate decision-makers with respect to issues resulting from the audit process—therefore,

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<sup>64</sup> The 2024 SCCAP rule RTC at p. 170-171.

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there was no necessity for the Agency to speculate on corporate structure and reporting by inserting a prescriptive reporting element into a performance-based program. For these reasons, the Agency is proposing to rescind the mandatory board reporting requirements under 40 CFR 68.59(f)(3) and 68.80(f)(3).

#### f. Findings Report Certification Statement

40 CFR 68.59(f)(1)(iv) and 68.80(f)(1)(iv), which were added with the 2024 SCCAP rule, require a certification statement with the audit findings response report, which is to be signed and dated by a senior corporate officer, or an official in an equivalent position, of the owner or operator of the stationary source. The required certification statement includes acknowledging that the person signing has engaged in a third-party audit, certifies the audit findings response report, and is punctuated with, “I am aware that there are significant penalties for making false material statements, representations, or certifications, including the possibility of fines and imprisonment for knowing violations.” The rationale for the certification requirement can be found in the 2024 rulemaking RTC document,<sup>65</sup> but to summarize, the conditions triggering a third-party audit are serious enough to warrant a certification statement to further ensure that the facility staff and corporate officers are reviewing the third-party compliance audit findings diligently. The Agency continues to support this concept but is also soliciting comment on this provision since the Agency is co-proposing to modify the applicability criteria for third-party audits.

#### g. Data Gathering

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<sup>65</sup> The 2024 SCCAP rule RTC at p. 179-180.

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The limited implementation of the proposed third-party audits would allow the EPA to assess third-party audit effectiveness, but only if the correct data is collected. At a high-level, if the proposed regulations are finalized, the Agency would be able to evaluate accident history at facilities before and after conducting third-party compliance audits. The Agency could also evaluate violations and compliance rates if inspections are conducted at the regulated facilities. Separately, the Agency could begin to aggregate information on the EPA's enforcement-driven third-party audits and potentially work with other implementing agencies on any data they may have on third-party audits. However, that may only provide a partial view of the utility of third-party audits. Therefore, the Agency seeks comment on what other data sources the EPA could use, and more importantly what other data elements should the EPA collect during the 10-year window when a subset of facilities would be conducting third-party audits. Should the EPA collect information on the make-up of the audit teams to evaluate if there appears to be sufficient chemical process safety experts capable of performing compliance audits for the Risk Management Program? Or to see how the make-up for the audit team may impact the quality of the audit? Should the Agency collect information on the audit findings report and audit findings report responses to evaluate both the third-party auditor and owner or operator's ability to address deficiencies in a timely and effective manner? The Agency seeks comment on collecting data to evaluate the effectiveness of third-party audits.

#### h. Other Provisions

For the co-proposal to modify the current requirements to only require third-party audits for facilities having two or more accidents in five years, at this time the Agency is only proposing changes to the third-party requirements at 40 CFR 68.58(f), (g), and (h); 68.59(c)(2)(iv); 68.79(f), (g), and (h); and 68.80(c)(2)(iv). However, since the Agency is

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proposing to modify the applicability criteria for third-party audits, the Agency seeks input on all other provisions in 40 CFR 68.59 and 68.80.

#### 4. Proposed Regulatory Changes

The Agency is co-proposing: (1) rescinding all third-party audits, and (2) requiring third-party audits for facilities with two RMP-reportable accidents in a five-year period. The second proposal includes a sunset date for the third-party compliance audit requirements.

Even though the Agency is co-proposing to rescind all third-party audit provisions, the regulatory text in this proposal reflects the co-proposed retention and modification of the third-party audits for Program 2 and Program 3 facilities having two or more RMP-reportable accidents in a five-year period.

Specifically, the EPA is proposing to:

- Revise 40 CFR 68.58(f)(1) and 68.79(f)(1) to two RMP-reportable accidental releases in a five-year period for the third-party audit applicability criteria.
- Rescind 40 CFR 68.58(f)(2) and 68.79(f)(2) which are the provisions for implementing agencies to require an audit based on conditions at the stationary source that could lead to an RMP-reportable accident.
- Rescind 40 CFR 68.58(g) and 68.79(g) which are the appeals process requirements for third-party audits when required by the implementing agency.
- Modify 40 CFR 68.58(h) and 68.79(h) by deleting the phrase “unless a different timeframe is specified by the implementing agency”.
- Rescind 40 CFR 68.59(c)(2)(iv) and 68.80(c)(2)(iv) which is the two-year cooling-off provision.

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- Modify existing section 40 CFR 68.10(g)(2) to delay the effective date of the third-party audit provisions from May 10, 2027, to three years after the promulgation of a final rule for this action. The proposed regulatory section is 40 CFR 68.10(j)(1).
- Modify existing section 40 CFR 68.10(g)(2) to include a sunset date 10 years after the effective date of the third-party audit requirements. This would be 13 years after promulgation of the final rule for this action. The proposed regulatory section is 40 CFR 68.10(j)(1).

## 5. Alternative Options

The Agency seeks comment on whether any of the RMP-reportable accident factors should be discounted when determining if facilities are required to conduct a third-party audit. For example, if a facility had an RMP-reportable accident that resulted in significant property damage onsite, but no injuries or deaths and no offsite damages, should that accident “count” towards the applicability for third-party audits? Similarly, what about accidents only resulting from onsite injuries that were “minor”?

Additionally, the Agency seeks comment on what other information could be used to identify or target facilities and/or processes that could benefit from a third-party compliance audit. The EPA seeks comment on the following potential criteria for inclusion in the third-party audit program: facilities found to have not reported an RMP-reportable accident; facilities with one accident that resulted in offsite injuries; and facilities for which a reportable accident resulted in substantial property damage, whether at the facility or offsite.

The EPA seeks comment on the 2024 provision allowing implementing agencies to require a third-party audit based on conditions at the stationary source. Specifically, how could

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“conditions” be defined? Is there a specific set of conditions that would provide regulatory certainty to this provision?

Finally, the Agency seeks comment on industry programs and standards for third-party compliance audits. Specifically, the Agency is requesting comment and information on potentially incorporating by reference industry standards for non-self-audits in lieu of the independent third-party audit regulations codified with the 2024 SCCAP rule and proposed to be modified with this NPRM.

#### *D. Employee Participation*

In the 2024 SCCAP rule, the EPA finalized new employee participation provisions for owners and operators of facilities with Program 2 and Program 3 processes. The rule added Program 2 employee participation provisions at 40 CFR 68.62, which require owners or operators to develop written employee participation plans and provide access to hazard reviews and all other information developed pursuant to the Program 2 prevention program requirements. The 2024 SCCAP rule aligned the employee participation requirements for Program 2 with existing Program 3 employee participation requirements at 40 CFR 68.83. The 2024 SCCAP rule also added new provisions for both Program 2 and Program 3 owners and operators. Under the 2024 SCCAP rule, owners and operators are required to provide annual notice to employees that the written plan of action is available and explain how it can be accessed and to provide training on the plan, as necessary. Additionally, the 2024 SCCAP rule added a new provision that requires Program 2 and Program 3 owners or operators to implement a process to allow employees to report hazards to the owner or operator and/or the EPA, where reporting may be anonymous or with attribution, and requires records of reports to be maintained for three years, at 40 CFR 68.62(b) and 68.83(e).

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The Agency requires owners and operators of facilities with Program 3 processes to consult knowledgeable employees on addressing recommendations and findings of PHAs, compliance audits, and incident investigations at 40 CFR 68.83(c). Additionally, at 40 CFR 68.83(d), the 2024 SCCAP rule requires owners or operators to provide employees knowledgeable in the process with authority to recommend partial or complete shutdown of a process and allow a qualified operator to partially or completely shut down a process, in accordance with operating procedures, based on the potential for a catastrophic release.

The EPA is not proposing to reopen the employee participation provisions for facilities with Program 2 processes at 40 CFR 68.62(a) for owners or operators to develop an employee participation plan, provide notice to employees that the plan is available (40 CFR 68.62(a)(1)), and provide employees and their representatives access to hazard reviews and all other information required to be developed under the Program 2 prevention program (40 CFR 68.62(c)). However, the EPA proposes to rescind the requirements at 40 CFR 68.62(a)(2) for owners or operators of facilities with Program 2 processes to provide training on the plan. For facilities with Program 3 processes, the EPA similarly proposes to rescind the training requirement at 40 CFR 68.83(a)(2). The EPA is retaining the requirement at 40 CFR 68.83(a)(1) for owners or operators of facilities with Program 3 processes to provide annual notification that the employee participation plan is available. As explained below, the EPA proposes to rescind the requirements for owners or operators of facilities with Program 2 and Program 3 processes to develop a process for employees to report to the owner or operator and/or the EPA unaddressed hazards, accidents, and other noncompliance either anonymously or with attribution, and retain a record of the report for three years (40 CFR 68.62(b)(1)-(3) and 68.83(e)(1)-(3)).

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As explained below, for facilities with Program 3 processes, the EPA proposes to rescind the requirement at 40 CFR 68.83(c) for owners or operators to consult with employees on addressing recommendations and findings from PHAs, compliance audits, and incident investigations. The EPA also proposes to rescind requirements for owners or operators of facilities with Program 3 processes to provide employees knowledgeable in the process the authority to (1) recommend that the operator in charge of a unit partially or completely shut down a unit (40 CFR 68.83(d)(1)), and (2) allow a qualified operator in charge of a unit to partially or completely shut down a unit, in accordance with operating procedures established in 40 CFR 68.69(a) based on the potential for a catastrophic release (40 CFR 68.83(d)(2)).

As the EPA established in its 1993 RMP proposed rule “Risk Management Programs for Chemical Accidental Release Prevention,” the Agency’s longstanding view has been that employee participation provisions are worker protection issues and are, therefore, primarily in OSHA’s area of concern (58 FR 54205, October 20, 1993). In response to comments received on the EPA’s 1993 proposed rule regarding ensuring consistency with OSHA and having a complete prevention program, the EPA added employee participation provisions to its 1996 RMP rule (61 FR 31697). The 1996 RMP rule adopted 40 CFR 68.83 verbatim from OSHA except for changing “employer” to “owner or operator” (61 FR 31697). Additionally, the EPA has maintained the view that the Program 3 prevention program requirements should be identical to OSHA’s PSM standard to avoid confusion and redundant requirements and to ensure that sources develop one accidental release prevention program that protects workers, the general public, and the environment (61 FR 31697). Because it is OSHA’s responsibility to protect workers, the Agency continues to believe that the employee participation provisions should align with OSHA’s PSM standard to the extent we are able to do so consistent with the EPA’s

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statutory directive. The EPA therefore is proposing to realign the RMP employee participation requirements with OSHA PSM requirements.

#### 1. Plan Development, Annual Notice and Training

The EPA is not proposing to reopen the 2024 SCCAP rule provisions for owners and operators of facilities with Program 2 processes to develop a plan and provide annual notice to employees (40 CFR 68.62(a)) as well as to provide access to hazard reviews and other prevention program information (40 CFR 68.62(c)) to maintain alignment with Program 3 and OSHA requirements. The EPA maintains that providing annual notification of the plan is not an onerous requirement, and that requirements for plan development, notice, and retaining access to hazard reviews would ensure employee awareness of the plan and knowledge of prevention program requirements and improve accident prevention at facilities with Program 2 processes. The EPA maintains that the requirement to provide annual written or electronic notice to employees indicating that the plan is ready and how to access the information, although not identical to OSHA PSM requirements, does not create confusion or redundant requirements because the burden on owners and operators is so minimal. The Agency is not re-opening this provision for comment.

The EPA is proposing to rescind the training requirements for owners and operators of facilities with Program 2 processes (40 CFR 68.62(a)(2)) or Program 3 processes (40 CFR 68.83(a)(2)). The Agency intends this rescission to realign the employee participation provisions with the OSHA PSM standard, thereby making it less burdensome on facilities while continuing to ensure that these processes are being operated safely. The 2024 SCCAP rule also requires owners or operators of Program 2 or Program 3 processes to develop and implement a process to allow employees and their representatives to anonymously report unaddressed hazards that could

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lead to a catastrophic release, unreported RMP-reportable accidents, or other noncompliance in 40 CFR 68.62(b) and 68.83(e) (89 FR 17662). The training requirements introduced in the 2024 SCCAP rule were intended in part to potentially help reduce unvalidated noncompliance reports resulting from these provisions, which some commenters indicated could become a concern (89 FR 17665). The EPA anticipates that by rescinding the employee accident and noncompliance reporting requirements for Program 2 and Program 3 processes (see section IV.A.2. below), unvalidated noncompliance reports and related training would no longer be a concern. Further, the Agency has tentatively determined that there is not enough information demonstrating that training on the employee participation plan is necessary to justify this requirement; instead, the EPA encourages owners or operators to provide training on the plan should they receive any requests from management, employees, or their representatives.

## 2. Employee Accident and Noncompliance Reporting

The EPA is proposing to rescind the employee accident and noncompliance reporting requirements at 40 CFR 68.62(b) and 68.83(e) for facilities with Program 2 and Program 3 processes. The addition of these requirements in the 2024 SCCAP rule was redundant with existing methods for noncompliance reporting, described below. The EPA's goal in rescinding these requirements is to eliminate unnecessary provisions and realign the employee participation provisions with the OSHA PSM standard.

In the 2022 SCCAP proposed rule, the EPA included a comment from the 2021 listening session that provided data analysis showing a late reporting rate of 6.7% in accident reporting pursuant to 40 CFR 68.195(a) (87 FR 53596). In the 2024 SCCAP final rule, the EPA instituted the employee accident and noncompliance reporting provisions, in part, to address this issue. The EPA continues to recognize that timely reporting of accidents is important. However, prior

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to the 2024 SCCAP rule provisions, the RMP rule already required owners or operators to correct the submitted RMP within six months of any accidental release meeting the five-year accident history requirement. Additionally, employees have always had the ability to report accidents and noncompliance to the EPA without specific guidelines being codified in the regulatory text. For example, employees and the public may report information related to a violation of the CAA to the EPA via an existing website or to another appropriate Federal agency or department. The EPA website also features resources for employees and the public to understand the difference between a possible violation and an emergency and provides the phone number to the National Response Center.<sup>66</sup> Employees and the public also have options for contacting Agency personnel regarding the RMP Rule.<sup>67</sup> Additionally, OSHA's Whistleblower Protection Program (42 U.S.C. 7622) provides protections for employees reporting violations of the CAA.<sup>68</sup> These existing protections, along with efforts by owners and operators to create a welcoming atmosphere for employees to internally discuss safety concerns, allow employees to express their concerns about unaddressed hazards and noncompliance without fear of repercussions. The Agency expects that owners or operators will continually improve their efforts to enhance safety cultures, strengthen safety teams, and foster employee communication. Due to existing methods for reporting hazards and requirements for reporting accidents, the addition of accident and noncompliance reporting provisions for Program 2 and Program 3 to the

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<sup>66</sup> EPA. "Report Environmental Violations," last updated May 22, 2024, <https://echo.epa.gov/report-environmental-violations>.

<sup>67</sup> EPA. "Contact Us about the Risk Management Program Rule," last updated May 28, 2025, <https://www.epa.gov/rmp/forms/contact-us-about-risk-management-program-rule>.

<sup>68</sup> OSHA Fact Sheet: Filing Whistleblower Complaints under the Clean Air Act - <https://www.osha.gov/sites/default/files/publications/OSHA3784.pdf>.

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2024 SCCAP rule was not necessary and should be removed to better align the employee participation provisions with OSHA's PSM requirements.

### 3. Recommendation Decisions

The EPA is proposing to rescind the 2024 SCCAP rule provision for facilities with Program 3 processes to consult employees on addressing recommendations and findings of PHAs, compliance audits, and incident investigations (40 CFR 68.83(c)). The EPA intends this proposed rescission to realign the provisions with the OSHA PSM standard. The EPA notes that the intent of the 2024 SCCAP rule provision for recommendation decisions was to provide employees with the opportunity to provide their perspective based on their knowledge of the process and safety concerns. The Agency upholds that employees directly involved in operating and maintaining a process are the most knowledgeable about the daily requirements for operating and maintaining equipment safely. Prior to the 2024 SCCAP rule, sources were required to involve at least one person knowledgeable in the process in PHAs, compliance audits, and incident investigations (40 CFR 68.67(d), 68.79(b), and 68.81(c), respectively). Accordingly, the resulting recommendations from those activities should already reflect the knowledge of employees, rendering the 2024 SCCAP rule provision for employee participation in recommendation decisions unnecessary. The EPA is not currently aware of any information that suggests that these redundant requirements have had any demonstrable impact on safety and seeks comments offering any specific information to that effect.

The Agency maintains that involving directly affected employees in discussions and decisions on Program 3 processes helps ensure that the most effective recommendations are considered. However, the EPA expects that those "knowledgeable in the process" are already involved in PHAs, compliance audits, and incident investigations and are also involved in

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addressing recommendations resulting from these program elements. The Agency therefore requests comment to assist in determining whether rescinding this provision and realigning with the OSHA PSM standard would remove redundant requirements while maintaining an appropriate level of employee involvement in recommendation decisions.

#### 4. Stop Work Authority

The EPA is proposing to rescind the 2024 SCCAP rule provision for stop work authority (40 CFR 68.83(d)) for Program 3 processes. The EPA intends this rescission to realign the provisions with the OSHA PSM standard. In the 2022 SCCAP proposed rule, the EPA explained that, although the RMP regulations in place prior to the 2022 proposed rule did not contain explicit requirements for stop work, the RMP rule already addressed many aspects of a stop work authority that provide a means to identify and resolve imminent operational risks before they occur (87 FR 53591). For example, operating procedures developed under the RMP rule (40 CFR 68.69) already address how and under what circumstances a facility should conduct normal and temporary operations, emergency shutdown (including the assignment of a responsible qualified operator to do so), emergency operations, and normal shutdown. Operating procedures should also address when process operations deviate from operating limits, steps to correct and avoid deviation, safety and health conditions to consider, and safety systems and their functions. Mechanical integrity requirements (40 CFR 68.73(e)) ensure equipment deficiencies that are outside acceptable limits are corrected in a safe and timely manner or before further use to assure safe operation. The associated trainings for operating procedures (40 CFR 68.71) and maintenance (40 CFR 68.73(c)) are key to ensuring that those processes are well understood. The EPA explained that it believed that all these components create a stop work authority as they address the circumstances and procedures to identify unsafe operations (87 FR 53591). The stop

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work provision in the 2024 SCCAP rule was intended to ensure facilities' employees are aware of these existing authorities to manage unsafe work by requiring owners or operators to document these authorities in the employee participation plan (89 FR 17663). In the preamble to the 2024 SCCAP rule, the EPA emphasized that "this provision is not intended to create new authorities or require additional components to those already developed" (89 FR 17663).

As described above, previous RMP rule requirements, although not containing explicit requirements for stop work, already address many aspects of a stop work authority that provide a means to identify and resolve imminent operational risks before they occur (*i.e.*, operating procedures for normal, temporary, and emergency operations; mechanical integrity requirements to ensure equipment deficiencies are corrected in a safe and timely manner; associated trainings on operating procedures and maintenance). Therefore, the EPA has determined that the additional requirement to document specifically prescribed stop work authority in the employee participation plan is unnecessary and may inadvertently cause confusion and impose an unexpected regulatory burden for regulated entities who interpret the requirement to impose to require new stop work authorities or require additional components to those already developed. As such, the Agency expects that rescinding this provision and realigning with the OSHA PSM standard would remove redundant requirements that created unnecessary confusion and burden for regulated entities without generating any demonstrable safety benefits.

## 5. Proposed Regulatory Changes

For the reasons stated above, the EPA proposes to remove the following language from 40 CFR 68.62(a)(2) and 68.83(a)(2): "Training shall be provided as often as necessary to ensure employees and their representatives, and management involved in the process, are informed of the details of the plan." The EPA proposes to remove the accident and noncompliance reporting

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provisions at 40 CFR 68.62(b) and 68.83(e). The EPA proposes to remove the new language regarding recommendation decisions at 40 CFR 68.83(c) and revert to the pre-2024 language (current 40 CFR 68.83(f)). Similarly, the EPA proposes to remove the new stop work authority provision at 40 CFR 68.83(d). The EPA seeks comment on these proposed provisions.

## 6. Alternative Options

In addition, the EPA considered other options and is seeking comment on these alternative approaches. The EPA requests public comment on retaining 40 CFR 68.62(a)(2) and 68.83(a)(2), including any data to support that training on the employee participation plan would contribute to chemical accident prevention. The EPA additionally seeks comment on how owners or operators and the EPA would determine the effectiveness of training on the employee participation plan.

The EPA also requests comment on a requirement for owners or operators to develop and implement a process to allow employees to report noncompliance concerns only to the owner or operator as a part of the employee participation plan, with reporting to the EPA still available through existing channels (*i.e.*, the EPA's website or through regional contacts). The Agency also seeks comment on requiring owners or operators to provide information on the EPA's existing noncompliance reporting options as a part of the employee participation plan.

Finally, the Agency solicits comment on whether there are opportunities for the EPA to ensure that employees are aware of their authorities to manage unsafe work through existing operating procedures and mechanical integrity provisions. Additionally, the EPA solicits comment on including additional language (in italics) in the initial training requirement at 40 CFR 68.71(a)(1) to clarify that, in addition to understanding the procedures for emergency operations, employees shall be made aware of the risks that could potentially lead to such an

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event. For example: “Each employee presently involved in operating a process, and each employee before being involved in operating a newly assigned process, shall be trained in an overview of the process and in the operating procedures as specified in 40 CFR 68.69. The training shall include emphasis on the specific safety and health hazards, *identifying imminent operational risks that may lead to emergency operations including shutdown and how to perform these operations*, and safe work practices applicable to the employee's job tasks.”

#### *E. Community and Emergency Responder Notification*

The 2024 SCCAP rule added requirements for RMP facilities to implement procedures for informing the public about accidental releases or to meet the requirement with other existing notification mechanisms under 40 CFR 68.90(b)(3) and 68.95(c); to partner with local response agencies to ensure a community notification system is in place to warn the public within the area “potentially” threatened by an accidental release and to document the collaboration under 40 CFR 68.90(b)(6) and 68.95(a)(1)(i); and to provide necessary entities with initial accidental release information under 40 CFR 68.90(b)(3) and 68.95(c) (89 FR 17666). The EPA explained that the purpose of these provisions was to require RMP-regulated facilities to provide information to surrounding communities so they can appropriately prepare for potential emergencies (89 FR 17666). In the 2022 SCCAP proposed rule, the EPA cited data on the extent of accidents with offsite impacts, including those in which no local or offsite responders were notified; several case studies of effective emergency response in the event of a chemical accident that included redundant communication systems or in which an improved community notification system could have supported appropriate public notification; and multiple industry guidance documents that outline the importance of having a coordinated effort to ensure public notification of accidental releases (87 FR 53556).

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In this action, the EPA is proposing to modify the community notification requirements from the 2024 SCCAP rule. Specifically, the EPA is proposing to further clarify who is responsible for notifying the community of an accidental release by adding language to 40 CFR 68.90(b)(6) and 68.95(a)(1)(i) to emphasize that RMP facility owners and operators are responsible for coordinating with local officials when community notifications are necessary following an accidental release. The Agency is also proposing to modify related documentation requirements in the same section.

#### 1. Community Notification System and Coordination Clarification

The 2022 SCCAP proposed rule provisions were supported by a wide range of stakeholder groups, including advocacy groups, State attorneys general, mass comment campaigns, individuals, and local governments.<sup>69</sup> However, some public commenters opposed the requirement for RMP facilities to be solely responsible for community warning systems and notification of emergencies. Some commenters said that the language in the proposed provision should be changed from “and ensure that” to “and partner to ensure that” a community notification system is in place.<sup>70</sup> Therefore, in the 2024 SCCAP rule, the EPA clarified that RMP facility owners and operators should *partner* with local response agencies to ensure a community notification system is in place (89 FR 17666).

It was not, and is not, the EPA’s intention to transfer inherent government responsibilities to RMP-regulated facilities. Rather, the EPA’s intention for this provision was, and remains, for facility owners and operators to work *with* the local responders to ensure that, during a release, a

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<sup>69</sup> EPA-HQ-OLEM-2022-0141; 0143; 0151; 0179; 0191; 0208; 0209; 0211; 0240; 0243; 0252; 0255; 0257; 0264; 0269; 0383; 0413; 0444; 0460.

<sup>70</sup> EPA-HQ-OLEM-2022-0184; 0237.

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notification system is in place that will notify the public of a potential emergency situation. The Agency has determined that in most cases, local government emergency response officials will be the entities providing the notice, since that is typically the case and the role of those officials. The EPA's intention of the joint roles and responsibilities of facilities and local emergency responders has remained consistent since the 1996 RMP rule. As stated in the response to comments on the 1995 RMP proposed rule, public notification is typically handled by the local responders, however, in some cases the facility may make the notifications.<sup>71</sup>

The EPA is thus proposing modifications to clarify that facility owners or operators should coordinate with local emergency responders to ensure that, during a release, all necessary information is available to notify the community of the incident. This coordination can occur as part of the annual emergency response coordination meeting under 40 CFR 68.93 and/or notification exercise under the 40 CFR 68.96(a) requirements. If no community notification system is in place, then the facility personnel should partner with local officials to determine how to relay information in a timely manner to protect the community from harm. Therefore, because the EPA is clarifying the joint responsibility between facilities and local responders and the fact that a specific notification "system" may not necessarily be appropriate in all circumstances, the EPA has concluded that there is no need for a requirement for a facility to develop, operate, and maintain a community notification system.

To clarify who is responsible for notifying the community of an accidental release, the EPA proposes adding language to 40 CFR 68.90(b)(6) and 68.95(a)(1)(i) to emphasize that RMP

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<sup>71</sup> EPA, Risk Management Plan Rule: Summary and Response to Comments, Part 6 of 12, p. 18-38, May 24, 1996. Docket No. A-91-73, Document Number IX-C-1. Available at <https://www.regulations.gov/document/EPA-HQ-OAR-2004-0365-0008>.

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facility owners and operators are responsible for coordinating with local officials when community notifications are necessary following an accidental release. That is, facility personnel would partner with emergency responders to ensure responders have the necessary accidental release information to convey through community notification systems. This proposed language would ensure that facility representatives and local emergency responders understand their roles and responsibilities for timely notification to the surrounding communities should an accidental release occur.

## 2. Documentation Requirements

The Agency is also proposing to modify related documentation requirements. The 2024 SCCAP rule included documentation requirements under 40 CFR 68.90(b)(6) and 68.95(a)(1)(i) to capture the partnership of the owner or operator and the emergency response agency with respect to a community notification system. The EPA is proposing to eliminate these documentation requirements and instead replace them with the collection of two data elements: (1) the type of community notification system; and (2) whether the local responder or the owner or operator will send the notification to the community. The EPA is proposing that both data elements be submitted by the owner or operator with their RMP submission to the EPA under 40 CFR 68.180.

By collecting the type of notification systems and the party responsible for sending the notification, implementing agencies could easily determine if there are local response agencies and owners and operators that need assistance with their notification procedure. The EPA's goal is to ensure that all communities have an adequate notification system in place. For non-responding facilities (facilities whose employees will not respond to accidental releases and instead will use other resources), the existing regulations under 40 CFR 68.180(b)(1)(iii) already

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cover submission of “What mechanisms are in place to notify the public and emergency responders when there is a need for emergency response.” However, for this requirement, the Agency has historically only collected the answer to the question “Does your facility’s ER plan include procedures for informing the public and local agencies responding to accidental releases?”, which lacks specificity that could better inform community preparedness. The Agency is thus proposing to update the RMP\*eSubmit System to document the type of community notification system and who is responsible for sending notifications. Additionally, for responding facilities, the Agency is proposing to mirror this requirement under 40 CFR 68.180(b)(2).

The Agency is also soliciting comment on sharing these data elements through the RMP Public Data Tool, via proposed 40 CFR 68.210. The EPA intends that sharing information on what emergency notification system is in place would allow communities surrounding RMP facilities to appropriately prepare for and respond to potential emergencies.

### 3. Proposed Regulatory Changes

For the reasons stated above, the EPA seeks comment on its proposal to amend 40 CFR 68.90(b)(6) and 68.95(a)(1)(i) to clarify the EPA’s intention to require facilities partner with local emergency response agencies to ensure that necessary information is available to responders and add language to clarify that responders may relay that information through a community notification system to warn the public. Specifically, the EPA is proposing to replace “. . . and partnering with these response agencies to ensure that a community notification system is in place” with “Further, the owner or operator partner with response agencies to ensure that responders have the necessary information to relay through a community notification system . . . .” The EPA also proposes to remove the documentation requirements in 40 CFR 68.90(b)(6) and

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68.95(a)(1)(i) related to the partnership between the owner or operator and the local emergency response agencies and instead add a new subparagraph at 40 CFR 68.180(b)(2)(v) to require owners or operators to provide basic information about notification mechanisms and responsibilities in their RMP submissions.

Additionally, the EPA seeks comment on whether there should be any difference in the requirements for responding and non-responding facilities. The Agency seeks comment on whether the proposed regulatory text under 40 CFR 68.180(b)(2)(v), for responding facilities, needs to specify a notification mechanism for the public and emergency responders or solely the public.

Further, the Agency seeks comment on what types of public notification mechanisms should be included in the options in RMP\*eSubmit for owners or operators (*e.g.*, Integrated Public Alert & Warning System). The Agency is also soliciting comment on what other data should be collected with respect to a community notification system. The Agency seeks comment on whether there should be an indicator for the facility to identify when the local emergency planning agency has not been responsive to attempts to coordinate. Additionally, the EPA requests comment on whether the Agency should collect and share information on how communities can “register” for the community notification system.

Finally, the EPA solicits comment on other actions the Agency could take to identify and correct gaps in emergency notification procedures and mechanisms.

#### *F. Stationary Source Siting*

As stated in the 2022 SCCAP proposed rule, “siting” is a “longstanding regulatory requirement” for Program 2 and 3 facilities (87 FR 53567). In the 2024 SCCAP final rule, the EPA added regulatory language to explicitly clarify stationary source siting as inclusive of the

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placement of processes, equipment, buildings within the facility, and hazards posed by proximate facilities, and accidental release consequences posed by proximity to the public and public receptors for both Program 2 hazard reviews under 40 CFR 68.50(a)(6) and Program 3 process hazard analyses under 40 CFR 68.67(c)(5).

The Agency intended to add the amplifying language to the siting requirement in the 2024 SCCAP rule to clarify the longstanding regulatory requirement without imposing any additional regulatory burden (87 FR 53567). The EPA's rationale was that the siting of processes and equipment within a stationary source can impact the surrounding community not only through the proximity of an accidental release to offsite receptors adjacent to the facility boundary (*e.g.*, people, infrastructure, environmental resources), but also through increasing the likelihood of a secondary "knock-on" release by compromising nearby processes (87 FR 53571). Therefore, the 2024 SCCAP rule expanded the regulatory text in 40 CFR 68.67(c)(5) for Program 3 facilities to read: "Stationary source siting, including the placement of processes, equipment, and buildings within the facility, and hazards posed by proximate stationary sources, and accidental release consequences posed by proximity to the public and public receptors" and explicitly added siting, including the same amplifying text included for Program 3 facilities, to the hazard review for Program 2 facilities under 40 CFR 68.50(a)(6).

The EPA is proposing to rescind the amplifying regulatory text for Program 3 facilities under 40 CFR 68.67(c)(5)<sup>72</sup> and for Program 2 facilities under 40 CFR 68.50(a)(6), *i.e.*, the language "including the placement of processes, equipment, and buildings within the facility, and hazards posed by proximate stationary sources, and accidental release consequences posed by

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<sup>72</sup> The proposed 40 CFR 68.67(c)(5) would thus read: "Stationary source siting[.]" See proposed reg text at the end of this proposal.

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proximity to the public and public receptors.”<sup>73</sup> The general requirement to consider stationary source siting for Program 2 facilities would remain as finalized in the 2024 SCCAP rule at 40 CFR 68.50(a)(6)

The EPA is proposing to refocus the RMP stationary source siting requirements to be consistent with the OSHA PSM requirements for the reasons the EPA outlined in the 1996 RMP rule. In response to comments on the 1995 RMP proposed rule, the Agency said that the EPA adopted OSHA’s language on PHAs to maintain consistency with the OSHA PSM standard, and therefore did not add explicit language on the consideration of external events.<sup>74</sup> Furthermore, the amplifying siting language of the 2024 SCCAP rule is redundant of existing regulatory requirements and may have unintentionally created an additional regulatory burden for regulated entities. Prior to the 2024 SCCAP rule, hazards from proximate facilities were already taken into account with other hazards evaluated during the hazard review under 40 CFR 68.50(a) for Program 2 processes and PHA under 40 CFR 68.67(a)–(c) for Program 3 processes. The requirement to consider “stationary source siting” during these hazard evaluations has always meant that facilities should consider the location of covered vessels and evaluate whether their location creates risks for offsite public or environmental receptors, as well as onsite receptors.<sup>75</sup> As the EPA noted in its response to comments on the 1995 RMP proposed rule, “sources must consider the hazards created by external events in any appropriate risk management program” and, as such, sources would normally consider whether a process is vulnerable to damage caused

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<sup>73</sup> The proposed 40 CFR 68.50(a)(6) would thus read: “Stationary source siting[.]” See proposed reg text at the end of this proposal.

<sup>74</sup> EPA, Risk Management Plan Rule: Summary and Response to Comments, Part 5 of 12, p. 9-23, May 24, 1996. Docket No. A-91-73, Document Number IX-C-1. Available at <https://www.regulations.gov/document/EPA-HQ-OAR-2004-0365-0007>.

<sup>75</sup> EPA, Is EPA's PHA stationary source siting requirement analogous to OSHA's PSM? <https://www.epa.gov/rmp/epas-pha-stationary-source-siting-requirement-analogous-oshas-psm>.

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by external events as part of a properly conducted PHA and evaluate the potential consequences if such events damaged the integrity of the process.<sup>76</sup> By specifying criteria for stationary source siting in the 2024 SCCAP rule, the EPA may have inadvertently created an additional burden for regulated entities who interpret the amplifying language as requiring a separate analysis for each individual element of the siting provision—placement of processes, equipment, buildings within the facility, and hazards posed by proximate facilities, and accidental release consequences posed by proximity to the public and public receptors—regardless of whether a hazard was identified. Therefore, the EPA is now proposing to rescind the amplifying language which caused confusion and unnecessarily added a redundant requirement as part of the siting evaluations.

In developing this proposed rule, the EPA again reviewed input provided by public commenters on the 2022 SCCAP proposed rule. A few commenters expressed support for the EPA’s proposal to amplify the siting requirements.<sup>77</sup> One commenter said that it would ensure the protection of human health and the environment,<sup>78</sup> while another stated that if it is practicable for a facility to take an action to eliminate or lessen hazards associated with RMP processes through different siting, it should be required to do so.<sup>79</sup> In response to these comments, the EPA stated that the proposal offered several examples of accidental releases which illustrate the significant effects of the lack of sufficient distance between the source boundary and neighboring residential areas, such as West Fertilizer Company in 2013,<sup>80</sup> Superior Refining Company, LLC in 2018,<sup>81</sup>

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<sup>76</sup> EPA, Risk Management Plan Rule: Summary and Response to Comments, Part 5 of 12, p. 9-23, May 24, 1996. Docket No. A-91-73, Document Number IX-C-1. Available at <https://www.regulations.gov/document/EPA-HQ-OAR-2004-0365-0007>.

<sup>77</sup> EPA-HQ-OLEM-2022-0174-0228; 0444; 0460; 0275.

<sup>78</sup> EPA-HQ-OLEM-2022-0174-0257.

<sup>79</sup> EPA-HQ-OLEM-2022-0174-0444.

<sup>80</sup> CSB, “West Fertilizer Explosion and Fire,” last modified January 28, 2016, <https://www.csb.gov/west-fertilizer-explosion-and-fire/>.

<sup>81</sup> CSB, “Husky Energy Refinery Explosion and Fire,” accessed January 28, 2022, <https://www.csb.gov/husky-energy-refinery-explosion-and-fire/>.

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and LG Polymers in 2020.<sup>82</sup> Additionally, several commenters opposed the amplifying language, arguing that it created an expansion of the siting requirements. One commenter stated that it would be a costly and arduous undertaking to determine exactly what facilities are proximate and understand their internal operations.<sup>83</sup> Others said that implementing the facility siting requirements are unnecessary and duplicative because facilities covered by OSHA's PSM regulations already undergo similar requirements.<sup>84</sup>

In this proposed action, the EPA continues to emphasize the significance of evaluating all external hazards. However, the EPA also notes that, prior to the 2024 SCCAP rule, hazards from proximate facilities were already taken into account with other hazards evaluated during the Hazard Review under 40 CFR 68.50(a) and PHA under 40 CFR 68.67(a)-(c). The 2024 SCCAP rule thus may have created an unintended consequence of diverting facility staff from evaluating the hazards present at their own facilities and focusing on hazards posed by proximate facilities. Therefore, the EPA is proposing to remove the amplifying language and for facilities to continue to use available resources and any additional industry-specific guidance to properly evaluate siting hazards.

## 1. Proposed Regulatory Changes

For the reasons explained above, the EPA proposes to modify 40 CFR 68.50(a)(6) and 68.67(c)(5) by deleting the text: "including the placement of processes, equipment, and buildings within the facility, and hazards posed by proximate stationary sources, and accidental release

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<sup>82</sup> Doyle, Amanda, "Hundreds Hospitalized After Styrene Gas Leak in India," *The Chemical Engineer*, last modified May 7, 2020, <https://www.thechemicalengineer.com/news/hundredshospitalised-after-styrene-gas-leak-in-india>.

<sup>83</sup> EPA-HQ-OLEM-2022-0174-0261.

<sup>84</sup> EPA-HQ-OLEM-2022-0174-0180; 0205; 0207; 0217; 0226; 0229; 0232; 0234; 0253; 0458.

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consequences posed by proximity to the public and public receptors.” The EPA requests comments on these proposed revisions.

## 2. Alternative Options

As an alternative to modifying this text, the EPA is requesting comment on retaining the clarifying language from the 2024 SCCAP rule, except for the language “and hazards posed by proximate stationary sources.”

Additionally, the amplifying language for facilities to address hazards posed by proximate facilities may be more appropriately addressed as guidance, outreach, or compliance assistance. To that end, the EPA seeks comment on what activities the Agency could take to better ensure that regulated facilities are accounting for siting issues.

### *G. Natural Hazards*

In the 2024 SCCAP rule, the EPA added amplifying regulatory text to emphasize that natural hazards are among the hazards that must be addressed in Program 2 hazard reviews and Program 3 PHAs. Under the Risk Management Program, a natural hazard is defined as: “meteorological, climatological, environmental or geological phenomena that have the potential for negative impact, accounting for impacts due to climate change. Examples of such hazards include, but are not limited to, avalanche, coastal flooding, cold wave, drought, earthquake, hail, heat wave, hurricane, ice storm, landslide, lightning, riverine flooding, strong wind, tornado, tsunami, volcanic activity, wildfire, and winter weather.” (40 CFR 68.3). The added provisions were intended to ensure that the threats of natural hazards are properly managed by RMP-regulated facilities in order to mitigate accidental releases and reduce the potential for adverse impacts (87 FR 53567-53568). The EPA provided evidence of risks to RMP-regulated facilities resulting from natural hazards in its justification for the addition of these provisions (*Id.*).

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For the reasons stated below, the Agency is now proposing to remove the amplifying regulatory text under 40 CFR 68.50(a)(5) and 68.67(c)(8) requiring natural hazards to be evaluated under the Program 2 hazard review and the Program 3 PHA, respectively. However, the Agency is not proposing to change the long-standing and well-documented requirement that external hazards, including natural hazards, need to be evaluated as part of the hazard review or PHA. Instead, the Agency proposes to return to the regulatory text prior to the 2024 SCCAP rule, which had hazard evaluation requirements at 40 CFR 68.50(a) for Program 2 processes and at 40 CFR 68.67(a)–(c) for Program 3 processes (see 87 FR 53567 for more discussion on the requirements prior to the 2024 SCCAP rule).

The EPA is proposing this change because by creating a stand-alone regulatory provision for evaluating natural hazards, the 2024 SCCAP rule may have inadvertently created additional burden for hazard analysis and PHA teams by indirectly requiring separate processes for evaluating natural hazards versus all other hazards. While the Agency continues to require facilities to evaluate risks from natural hazards, it should be done in the context of evaluating all hazards under 40 CFR 68.50(a) and 68.67(c). The EPA has determined that it was unnecessary and confusing to specifically call out natural hazards in 40 CFR 68.50(a)(5) and 68.67(c)(8).

Specifically, the EPA notes that the amplifying language added by the 2024 SCCAP rule under 40 CFR 68.50(a)(5) and 68.67(c)(8) is redundant with the existing pre-2024 provisions under 40 CFR 68.50(a) and 68.67(c). By adding amplifying language, the rule creates confusion as to how the natural hazards should be evaluated. For example, 40 CFR 68.67(c)(1) requires evaluation of hazards and (c)(3) requires evaluation of controls applicable to the hazards. These new requirements raise the question whether natural hazards are still being evaluated under 40 CFR 68.67(c)(1) and (c)(3), or only separately under 40 CFR 68.67(c)(8). Although owners and

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operators should be capable of ensuring their hazard evaluations address the natural hazards-related requirements from the 2024 SCCAP rule, the amplifying language created a potential change in the process when none was needed. Additionally, this proposal would realign the regulatory text at 40 CFR 68.67(c) with the OSHA PSM requirements at 29 CFR 1910.119(e)(3). This alignment would further eliminate confusion and reduce the burden on regulated facilities.

Another potential pitfall is that emphasizing natural hazards over other hazards may inadvertently prioritize evaluating those hazards over other, more likely scenarios. In the 2022 SCCAP proposed rule, the Agency provided data that some, but not all, RMP accidents report a natural cause as the initiating event and include unusual weather conditions as a contributing factor.<sup>85</sup> At the time, the EPA added clarifying language to promote awareness of these potential accidents and support prevention.<sup>86</sup> According to the Agency's data from 2004–2023, facilities reported 45 RMP-reportable accidents (3% of total) as having a natural hazard cause as the initiating event of their accident and 81 RMP-reportable accidents (2% of total) as having unusual weather conditions as a contributing factor of their accident; 100 reportable accidents cited either weather as an initiating event and/or unusual weather conditions as a contributing factor (4% of total). In contrast, 1,468 reportable accidents (52%) were initiated by equipment failure and 1,181 by human error (42%).<sup>87</sup> The EPA is concerned that a regulatory emphasis on natural hazards could inadvertently require a source to divert resources and focus from other, more prevalent hazards. The RMP rule provisions are performance-based because facilities owners and operators are best situated to determine the hazards and risks present and incorporate

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<sup>85</sup> Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

<sup>86</sup> The 2024 SCCAP rule RTC at p. 33.

<sup>87</sup> EPA, Technical Background Document: Common Sense Approach to Chemical Accident Prevention RMP Rule. June 2025. Available in the docket, Docket ID No. EPA-HQ-OLEM-2025-0313.

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that information into the PHA or hazard review. This proposed revision is consistent with a performance-based regulatory approach.

In general, the EPA acknowledges that regulatory text does not need to be used to promote awareness of an already existing regulation. Although there may still be value in promoting awareness to mitigate accident rates, the Agency can provide outreach and compliance assistance using more appropriate mechanisms than amending regulatory text, such as a guidance document.

As discussed in more detail in the 2024 SCCAP rule (89 FR 17636-17638), the EPA maintains that extreme weather and natural hazards can increase the likelihood of an accidental release and should be examined in order to prevent or mitigate releases of RMP-regulated substances at covered facilities.<sup>88</sup> However, the Agency notes that adding duplicative regulatory requirements may not ensure that natural hazards are evaluated more effectively. Instead, the duplicative requirement may have the unintended consequence of creating confusion that results in hazard analyses not properly weighing the risks to processes at their facilities and an inefficient use of resources.

Since the 1996 RMP rule, the EPA has said that events such as floods and high winds should be considered as potential release-initiating events when conducting a PHA, and the RMP guidance further expanded on this point.<sup>89</sup> The EPA still generally agrees that the hazard evaluation amplifications in the 2024 SCCAP rule are consistent with common industry practice and would impose no new requirements or costs on facilities that are in compliance with the RMP rule; however, the Agency may not have accounted for how a seemingly small change to

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<sup>88</sup> The 2024 SCCAP rule RTC at p. 30.

<sup>89</sup> EPA, General RMP Guidance - Chapter 6: Prevention Program (Program 2) (April 2004).

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the regulatory text can create new processes and procedures for regulated entities, which may present a more than negligible cost.

For these reasons, the EPA solicits comment on removing or including amplifying language text under 40 CFR 68.50(a)(5) and 68.67(c)(8) for natural hazards to be evaluated under the Program 2 hazard analysis and the Program 3 PHA, respectively, as well as other language that could be more useful in characterizing risk.

### 1. Proposed Regulatory Changes

For the reasons stated above, the EPA proposes to amend 40 CFR 68.50(a)(5) by deleting the text: “Natural hazards that could cause or exacerbate an accidental release; and” the EPA similarly proposes to amend 40 CFR 68.67(c)(8) by deleting the text: “Natural hazards that could cause or exacerbate an accidental release.”

### 2. Alternative Options

As an alternative, the EPA proposes to modify the regulatory text at 40 CFR 68.50(a)(1) and 68.67(c)(1) to state: “The hazards, *including natural hazards*, . . .”. The EPA requests public comment on this alternative.

*Potential Compliance Assistance Tools.* The EPA has considered and seeks comment on multiple alternatives to provide natural hazards assessment compliance assistance. These are briefly discussed below and in more detail in the Technical Background Document (TBD).<sup>90</sup>

The EPA has considered exploring and developing compliance assistance tools that could provide data on natural hazards that could adversely impact facility processes.<sup>91</sup> This would

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<sup>90</sup> EPA, Technical Background Document: Common Sense Approach to Chemical Accident Prevention RMP Rule. June 2025. Available in the docket, Docket ID No. EPA-HQ-OLEM-2025-0313.

<sup>91</sup> EPA, Technical Background Document: Common Sense Approach to Chemical Accident Prevention RMP Rule. p. 1, June 2025. Available at in the docket, Docket ID No. EPA-HQ-OLEM-2025-0313.

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provide information uniformly to all facilities and provide more visibility on the information being disseminated as well as relieve the burden on facilities for locating and applying data. However, there remain utility, data interpretation, and security concerns when implementing tools that identify potential hazards at particular locations. For example, data interpretation may be difficult—the EPA has considered setting initial “levels of concern” to aid in identifying potential hazards at a particular location. While there could be an option for a tool to only be made available behind a log-in screen for greater security, this would also limit the availability of the data to the general public. The EPA could also identify a list of codes and standards relevant to specific natural hazards that a facility owner or operator could then use to cross check against their operations. This could reduce the facility burden in terms of locating and identifying those codes and standards. However, the EPA would not make the actual code or standard available and there is the potential for results to be so numerous as to be unhelpful and overwhelming; preliminarily, the EPA research identified hundreds of potential codes and standards.

Another option would be for the EPA to make a list of potentially relevant optional data sources available publicly, from which the regulated community could pick and choose which data sources to use based on risks at their facilities. This would increase the burden on facilities to determine what data sources to use, and how, but would also increase flexibility.

In addition to those detailed above, the EPA seeks comment on other compliance assistance tools or techniques the Agency should consider.

## *H. Power Loss*

### 1. Background and Rationale for Proposed Action

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In the 2024 SCCAP rule, the EPA implemented two new power loss requirements. First, the EPA added a requirement emphasizing hazard evaluation from power loss for Program 2 and Program 3 processes in their hazard reviews and PHAs (87 FR 53569-53571). Second, the EPA required facilities to have standby or backup power for air pollution control or monitoring equipment associated with the prevention and detection of accidental releases from RMP-regulated processes and to document when monitoring equipment associated with the prevention and detection of accidental releases from covered processes is removed due to safety concerns from imminent natural hazards. The EPA is now proposing to rescind these provisions.

## 2. Hazard Evaluation from Power Loss

With the 2024 SCCAP rule, the Agency made similar changes to both the Program 2 hazard review requirements and the Program 3 PHA requirements. For Program 2 hazard reviews, the Agency added the phrase “including standby or emergency power systems” to the end of the first half of the sentence in 40 CFR 68.50(a)(3), which reads: “The safeguards used or needed to control the hazards or prevent equipment malfunction or human error including standby or emergency power systems; ...” For Program 3 PHAs, the Agency added the phrase “and standby or emergency power systems” to the end of the first sentence in 40 CFR 68.67(c)(3), which currently states: “Engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases and standby or emergency power systems.”

The EPA has always intended that employers address the impact of a power grid failure in their hazard analyses. In the 2022 SCCAP proposed rule, the EPA stated: “EPA believes making more explicit this already-existing accident prevention program requirement, to evaluate hazards of the process will ensure the threats of power loss are properly evaluated and managed

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to prevent or mitigate releases of RMP-regulated substances at covered facilities.” (87 FR 53570). Because evaluating hazards from power loss was already required under 40 CFR 68.50(a)(3) and 68.67(c)(3), the EPA has determined that the 2024 additions were unnecessary and do not provide any demonstrable safety benefits. Furthermore, adding unnecessary language has the potential to cause confusion with the regulated community, leading regulated entities to spend time and effort to interpret and comply with a perceived new requirement when there is none. Instead of amplifying existing requirements with modified regulatory text, the Agency can identify options for owners or operators to address power loss in their hazard reviews or process hazard analyses through implementation mechanisms, such as outreach, compliance assistance, guidance, and inspections.

Finally, the EPA has determined that by making the changes in the 2024 SCCAP rule, the language for Program 3 PHA was taken out of alignment with the OSHA PSM PHA language at 29 CFR 1910.119(e)(3)(iii), which may also create unnecessary confusion for regulated entities. As stated throughout this proposed rule, while alignment with OSHA is not statutorily required, the Program 3 PHA and OSHA PSM PHA requirements should be aligned “to avoid confusion and redundant requirements and to ensure that sources develop one accidental release prevention program that protects works, the general public, and the environment” (61 FR 31687).

Thus, for the reasons identified above, the EPA proposes to rescind the 2024 SCCAP rule provision emphasizing evaluation of power loss in 40 CFR 68.50(a)(3) and 68.67(c)(3). The EPA seeks comment on this proposal including on any significant reliance interests in the language added in 2024 with respect to power loss.

### 3. Standby or Backup Power for Monitoring Equipment

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In the 2024 SCCAP rule, the Agency added a prescriptive requirement for Program 2 and 3 facilities to “ensure monitoring equipment associated with prevention and detection of accidental releases from covered processes has standby or backup power to provide continuous operation.”<sup>92</sup> By requiring facilities to have standby or backup power, the EPA intended for facilities to conduct continuous monitoring of RMP-regulated substances at covered processes during and following a natural disaster in order to measure potential exposure to chemical substances and to prevent accidents related to accidental releases (87 FR 53571). The Agency was concerned that, in these scenarios, disabled equipment would not become operational again until much later, after the event or threat had passed (87 FR 53571).

The pre-SCCAP provisions already required owners or operators to evaluate and address hazards from monitoring through the PHA at 40 CFR 68.67(c)(3), which requires PHAs to address “[e]ngineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases. (Acceptable detection methods might include process monitoring and control instrumentation with alarms, and detection hardware such as hydrocarbon sensors.)” Similarly, the pre-SCCAP requirements included a hazard review of both “safeguards used or needed to control the hazards or prevent equipment malfunction or human error” and “any steps used or needed to detect or monitor releases” at 40 CFR 68.50(a)(3) and (4), respectively. Those requirements for both Program 2 and 3 processes would include an evaluation of backup power for monitoring, if it addresses hazards. However, with the requirements in the 2024 SCCAP rule,

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<sup>92</sup> See 40 CFR 68.50(a)(3) and 68.67(c)(3).

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the EPA did not ask for a new evaluation or review under the PHA or hazard review, but instead added a prescriptive requirement to have standby or backup power in specified situations.

In the 2024 SCCAP rule, the EPA took the position that there may be situations where backup power is not critical to chemical release prevention. Rather than requiring implementation of standby or emergency power for the entirety of an RMP process, the EPA instead required a source to consider the appropriateness of backup power for the entirety of their process and to explain decisions not to implement backup power to that scale, consistent with the performance-based structure of the rule.<sup>93</sup> However, there may be situations where standby or backup power for monitoring equipment is not critical to chemical release prevention either. As a result, allowing owners and operators to consider the appropriateness of backup power and explain whether they decide not to implement it is preferable for monitoring and detection methods as well. The prescriptive requirement for backup power on monitors is not consistent with the performance-based structure of RMP, which relies on examination of process safety issues by the source, rational decision-making on the part of owners and operators, and oversight by implementing agencies through compliance assistance and enforcement and the public through disclosure. The EPA recognizes that facility owners and operators are in the best position to evaluate and address hazards in the process, including the need for emergency power for monitors, and therefore the EPA should not prescribe emergency power for monitors.

Additionally, the EPA is concerned that the requirements to have standby or backup power for monitors or detection devices and to document when monitors are taken down could introduce unintended consequences. For example, there could be additional hazards introduced

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<sup>93</sup> The 2024 SCCAP rule RTC at p. 49.

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into the covered process by adding backup power for monitors, and the documentation requirement could dissuade owners or operators from using monitors, since monitors are not required for all Program 2 or Program 3 processes. The EPA recognizes that while backup power could have some mitigation benefits for facilities, facilities are in the best position to determine when backup power is most appropriate to realize those benefits.

The Agency finalized another related requirement in 2024 under 40 CFR 68.52(b)(9) and 68.69(a)(4) for owners or operators to document when monitoring equipment associated with prevention and detection of accidental releases from covered processes is removed due to safety concerns from imminent natural hazards. The EPA is proposing to rescind these documentation requirements because they could also have unintended consequences, such as by distracting facility personnel from recovery efforts following a natural disaster by focusing on regulatory documentation requirements. The EPA recognizes that after the hazardous situation has passed, the facility staff could provide documentation on when the monitoring equipment is removed, but the EPA notes that there is no data showing that the documentation requirement would provide benefits to accident prevention or emergency response. Furthermore, the EPA acknowledges that the documentation may not be needed, since the gap in monitoring data would coincide with the natural disaster.

For the reasons specified above, the EPA proposes to rescind the 2024 SCCAP rule provisions related to backup power for monitors in 40 CFR 68.50(a)(3), 68.52(b)(9), 68.67(c)(3), and 68.69(a)(4). The EPA requests comment on these proposed revisions, including on any significant reliance interests in the existing regulatory language.

#### 4. Proposed Regulatory Changes

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The EPA proposes to amend the regulatory text at 40 CFR 68.50(a)(3) by deleting the phrase “including standby or emergency power systems; the owner or operator shall ensure monitoring equipment associated with prevention and detection of accidental releases from covered processes has standby or backup power to provide continuous operation;”.

The EPA proposes to delete 40 CFR 68.52(b)(9): “Documentation when monitoring equipment associated with prevention and detection of accidental releases from covered processes is removed due to safety concerns from imminent natural hazards.”

The EPA proposes to modify 40 CFR 68.67(c)(3) by deleting the phrases “and standby or emergency power systems” and “[t]he owner or operator shall ensure monitoring equipment associated with prevention and detection of accidental releases from covered processes has standby or backup power to provide continuous operation;”.

The EPA proposes to modify 40 CFR 68.69(a)(4) by deleting the phrase “including documentation when monitoring equipment associated with prevention and detection of accidental releases from covered processes is removed due to safety concerns from imminent natural hazards.”

## 5. Alternatives Considered

The EPA notes that for “monitoring/detection system in use,” in the current RMP system, the user can check any of the following: “process area detectors,” “perimeter monitors,” “none,” and “other (specify)” with an open text field to include additional information. The EPA requests comment on other information the Agency could collect to better target safety and/or compliance issues. In addition, the EPA solicits comment on implementation opportunities for the Agency to ensure that power loss is being evaluated, including by updating and re-releasing the safety alert

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“Chemical Accidents from Electric Power Outages.”<sup>94</sup> Finally, the Agency solicits comment and data that would support retaining the 2024 SCCAP rule provisions.

### *I. Declined Recommendations*

#### 1. Background and Rationale for Proposed Action

The 2024 SCCAP rule added requirements that Program 2 and Program 3 facilities report justifications for declining hazard analysis and PHA recommendations from natural hazards, power loss, and siting under 40 CFR 68.170(e)(7) and 68.175(e)(8). Additionally, under the 2024 SCCAP rule, Program 3 facility owners or operators are required to report recommendations declined from safety gaps between codes, standards, or practices under the PHA in 40 CFR 68.175(e)(9). At the time, the EPA indicated that the requirements would facilitate better community understanding of identified hazards and remedies not implemented which, in turn, would promote better community emergency planning. The EPA also considered that facility owners and operators might be motivated to further improve their safety performance in response to community oversight (89 FR 17642).<sup>95</sup>

The EPA is proposing to rescind the requirements introduced in the 2024 SCCAP rule for documenting declined recommendations for natural hazards, power loss, siting, and RAGAGEP under 40 CFR 68.170(e)(7), 68.175(e)(8), and 68.175(e)(9). The EPA is proposing this change to reduce confusion for communities, better align the EPA and OSHA’s PHA provisions, eliminate unnecessary burden for regulated entities, and alleviate unintended consequences from public pressure on RMP-regulated facilities.

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<sup>94</sup> EPA, “Chemical Accidents from Electric Power Outages,” last modified September 2001, <https://www.epa.gov/sites/default/files/2013-11/documents/power.pdf>.

<sup>95</sup> See also the 2024 SCCAP rule RTC at p. 256.

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Prior to the 2024 SCCAP rule, the EPA required facilities to document their resolutions to PHA recommendations, but the documentation was not required to be sent to the EPA with submission of the risk management plan. In the 1996 RMP rule, to prevent overburdensome requirements and to maintain consistency with OSHA, the EPA adopted the language from OSHA's PSM standard. In response to comments on the 1995 RMP proposed rule, the EPA said that the Agency recognizes that PHA teams often make broad recommendations and that not all recommendations will be correct or will resolve the problem found in the best way. Thus, the EPA gave regulated parties discretion to choose appropriate responses to team recommendations. The EPA said that to ensure that thorough consideration is given to team recommendations, regulated entities must analyze and document in writing the rationale for failure to adopt or modify a team recommendation.<sup>96</sup> This proposed action would realign these requirements with OSHA's PSM standard and reduce unnecessary information sharing burdens placed on facilities. In terms of the documentation requirement itself, the EPA now agrees with commenters who pointed out that the 2024 SCCAP requirements were unnecessary because this information is already documented as part of the PHA or hazard review and that adding it to the RMP only produces double documentation without added benefit.<sup>97</sup>

Moreover, the EPA has no data that supports a conclusion that declined recommendations from natural hazards, power loss, siting, and RAGAGEP gap analysis are more important than declined recommendations from other hazards evaluated. Selectively asking for declined recommendations on portions of the hazard analysis and PHA could create unnecessary

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<sup>96</sup> EPA, Risk Management Plan Rule: Summary and Response to Comments, Part 5 of 12, p. 9-30, May 24, 1996. Docket No. A-91-73, Document Number IX-C-1. Available at <https://www.regulations.gov/document/EPA-HQ-OAR-2004-0365-0007>.

<sup>97</sup> EPA-HQ-OLEM-2022-0174-0181; 0223, 0262.

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confusion for regulated entities. Additionally, the requirement to submit a justification to the EPA could have the unintended consequence of the PHA team not documenting some ideas as “recommendations” to avoid the burden and perceived risk of submitting a rationale for declining that recommendation to the EPA. According to RMP guidance, the PHA process is intended to be a thought exercise for which “a well-done PHA should identify all failure scenarios that could lead to significant exposure of workers, the public, or the environment.”<sup>98</sup>

The EPA maintains that when local citizens have adequate information and knowledge about the risks associated with facility hazards, facility owners and operators may be motivated to further improve their safety performance in response to community oversight. However, there could be unintended consequences to this public pressure approach (89 FR 17642). The requirement under 40 CFR 68.67(d) focuses the decision-making on how to evaluate and address hazards with the appropriate experts. While there may be some value in this information being provided to communities, the pressure from community oversight could result in the facility prioritizing issues raised by community members rather than those hazards identified by the PHA expert technical team as having the highest risk.

Furthermore, a list of declined recommendations could be quite lengthy, which could be confusing and alarming to communities. The Agency has not identified any studies that point to such data points as being leveraged by the public in terms of preparedness or accident prevention. Due to the complex nature of hazard evaluations and analyses, there is risk of the public misunderstanding the reasons why a facility might take another path (to avoid risk shifting, etc.).

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<sup>98</sup> EPA, Chapter 7: Prevention Program (Program 3), p. 7-6, April 2004. <https://www.epa.gov/rmp/general-rmp-guidance-chapter-7-prevention-program-program-3>.

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## 2. Proposed Regulatory Changes

The EPA proposes to rescind all requirements for documenting declined recommendations for natural hazards, power loss, siting, and RAGAGEP, by deleting the rule text at 40 CFR 68.170(e)(7), 68.175(e)(8), and 68.175(e)(9). The EPA requests comment on this proposal, including on any significant reliance interests.

## 3. Alternative Options

As an alternative, the EPA requests comment on retaining the 2024 SCCAP rule requirements for documenting declined recommendations and on how documentation submitted to the EPA on PHA recommendations and resolution of recommendations could be used by the EPA to identify and target issues in the RMP.

### *J. Emergency Response Exercises*

In the 2017 Amendments rule, the EPA added a requirement for Program 2 and Program 3 facilities to conduct field exercises simulating an accidental release once every 10 years, prepare a written report with specific contents, and coordinate with local emergency responders to establish plans for field and tabletop exercises in 40 CFR 68.96. If owners or operators were unable to coordinate with local emergency responders, the EPA believed it would be in the owner or operator's best interest to document those unsuccessful attempts, but did not require documentation (82 FR 4657). The 2019 Reconsideration rule retained the 2017 Amendments rule provision but removed the minimum frequency for field exercises and recommended, rather than required, the contents of the written report. In the preamble for the 2019 Reconsideration rule, the EPA noted that some local response organizations may be unable or unwilling to participate; in these cases, the owners or operator should document those attempts and make reasonable ongoing efforts to consult with that entity (84 FR 69904). The 2024 SCCAP rule

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reinstated the 10-year field exercise requirements removed by the 2019 Reconsideration rule, with exemptions for facilities that could not meet the frequency and mandatory report components. The 2024 SCCAP rule reiterated the 2017 Amendment rule's logic regarding documentation of coordination attempts (89 FR 17669).

The EPA is proposing to retain the Agency's emergency response exercise requirements from the 2024 SCCAP rule but seeks comment from the public to help inform the EPA's consideration of whether changes are needed to address the current lack of a mechanism for facility owners and operators to indicate an inability to coordinate with LEPCs despite a good faith effort to do so.

The EPA is aware that not all areas have active LEPCs and in some areas, LEPCs may not have the capacity to participate in exercises or coordinate with a facility in their exercise requirements. For example, in the EPA's 2023 National Survey of State Emergency Response Commissions, there are 2,554 active LEPCs, with approximately 1,236 LEPCs reported as inactive or unknown.<sup>99</sup> Currently, there is no mechanism for facility owners or operators who tried to coordinate with their LEPC to indicate that the owner or operator attempted coordination and that the LEPC did not respond or declined to participate.

In the 2016 Amendments proposed rule, the EPA proposed requirements for both field exercises and tabletop exercises as well as a requirement for owners or operators to coordinate with local public emergency response officials in planning and conducting those exercises and to invite local officials to participate in those exercises. However, local responder participation in

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<sup>99</sup> EPA. "National Survey of State Emergency Response Commissions (SERCs)," Revised March 2025. [https://www.epa.gov/system/files/documents/2025-04/national-survey-of-the-state-emergency-response-commissions\\_revised-march-2025.pdf](https://www.epa.gov/system/files/documents/2025-04/national-survey-of-the-state-emergency-response-commissions_revised-march-2025.pdf).

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an exercise was not required for a facility to comply with the exercise provisions (81 FR 13676). Additionally, the EPA proposed a requirement at 40 CFR 68.96(b)(3) for the owner or operator to evaluate each exercise and prepare a written report within 90 days of the exercise, which would include, among other information, an evaluation of the adequacy of coordination with local emergency response authorities, and other external responders, as appropriate (81 FR 13676). In response to that proposal, several commenters suggested that the EPA require that facilities and/or small businesses make a reasonable attempt to make arrangements with local responders and document any failure to complete such arrangements.<sup>100</sup> The Agency agreed with commenters suggesting that owners or operators should document unsuccessful attempts to coordinate with local response organizations, but did not require owners or operators to do so. The EPA believed owners or operators would document their attempts to demonstrate their good faith efforts to conduct coordination activities.<sup>101</sup>

The EPA clarified in the 2017 Amendments rule that if local emergency response agencies were unable or unwilling to coordinate on exercises, owners or operators could establish appropriate exercise frequencies and plans on their own, provided they met the minimum requirements set forth in 40 CFR 68.96. The Agency suggested owners or operators annually revisit their exercise schedules and plans to give local response officials an opportunity to provide input, even if they continued to be unable to participate in exercises (82 FR 4657).

In the 2019 Reconsideration rule, the EPA revisited the issue of emergency response exercises. The Agency addressed coordination with local responders by allowing owners or operators that made and documented good faith annual coordination efforts to avoid enforcement

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<sup>100</sup> EPA-HQ-OEM-2015-0725-0476; 0494; 0502; 0510; 0521; 0527; 0555, 0561, 0595.

<sup>101</sup> EPA-HQ-OEM-2015-0725-0729. *See page 170.*

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penalties for failing to conduct coordination activities due to a lack of participation by local responders.<sup>102</sup> The EPA stated that owners or operators should document their attempts to consult with local responders and continue to make reasonable ongoing efforts to consult with appropriate local public response officials for exercise coordination and participation (84 FR 69904).

In the 2024 SCCAP rule, the EPA reiterated the logic the Agency used in the 2017 Amendments rule. The EPA did not require owners or operators to document unsuccessful coordination attempts, but believed owners or operators would do so to demonstrate their good faith efforts to conduct coordination activities (89 FR 17669).

Because not every facility is located in an area with an active LEPC and some LEPCs may not have the capacity to participate in exercises or coordinate with facilities, the EPA is soliciting comment on adding a requirement to document a facility's good faith coordination efforts to alleviate uncertainty and confusion for owners and operators who want to ensure compliance with the requirement. To help inform the EPA's consideration of whether changes are needed to address the current lack of a mechanism for facility owners and operators to indicate an inability to coordinate with LEPCs despite a good faith effort to do so, the EPA solicits comment on adding a provision whereby facility owners or operators can indicate they made a good faith effort to coordinate field exercises with their LEPC. The EPA also solicits comment on requiring documentation of these good faith efforts, retention of that documentation, and how owners or operators should retain that documentation.

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<sup>102</sup> EPA-HQ-OEM-2015-0725-2086. *See page 194.*

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### *K. Safety Information and Recognized and Generally Accepted Good Engineering Practices (RAGAGEP)*

In the 2024 SCCAP rule, the Agency codified several changes to the Program 2 safety information at 40 CFR 68.48 and Program 3 PSI in 40 CFR 68.65. The Agency also finalized regulatory changes for gaps in safety for codes and standards under the Program 3 PHA at 40 CFR 68.67(c)(10), which is related to the altered provisions for RAGAGEPs under PSI at 40 CFR 68.65. Specifically, this proposal addresses four changes made in the 2024 SCCAP rule: (1) a conforming change to add “up to date” to the Program 3 PSI requirements at 40 CFR 68.65(a), which had already existed prior to the 2024 rulemaking in the Program 2 safety information at 40 CFR 68.48(a); (2) conforming changes to align the Program 2 and 3 regulatory text under 40 CFR 68.48(b) and 68.65(d)(2) related to ensuring processes are designed and maintained in compliance with RAGAGEPs; (3) a change to the Program 2 safety information at 40 CFR 68.48(b) to delete the phrase “Compliance with Federal or state regulations that address industry-specific safe design or with industry-specific design codes and standards may be used to demonstrate compliance with this paragraph” that does not exist under the corresponding regulatory text for Program 3 at 40 CFR 68.65(d)(2); and (4) the gap analysis for codes and standards under Program 3 in the PHA at 40 CFR 68.67(c)(10).

#### 1. Up to Date

The EPA has required facilities to demonstrate that their safety information is being kept “up to date” as part of its Program 2 prevention program since 1996, 40 CFR 68.48(a). However, since approximately 2017, whether and/or how the explicit regulatory text in 40 CFR 68.48(a) aligns with the Program 3 PSI requirements in 40 CFR 68.65(a) has been in flux. For example, the 2017 Amendments rule modified 40 CFR 68.65 PSI for Program 3 processes to more clearly

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demonstrate that PSI must be kept “up to date” as a continuing obligation and to align with longstanding Program 2 requirements (82 FR 4675). Then in the 2019 Reconsideration rule, the EPA rescinded this language stating that it was unnecessary because management of change requirements already address changes that affect covered processes, and 40 CFR 68.75(d) already required PSI to be updated when changes covered by the management of change provisions affect PSI (84 FR 69884). Then in the 2024 SCCAP rule, the EPA again refined the language of 40 CFR 68.65 to clarify that the requirement to keep PSI up-to-date explicitly applies to Program 3 processes, thereby aligning with Program 2 requirements. In doing so, the EPA stated in the 2022 SCCAP proposed rule that this language was simply a clarification of the PSI requirements (87 FR 53604). The Agency is proposing to retain the “up to date” language added to the PSI regulations with the 2024 SCCAP rule because the compliance assistance benefits from the added clarification outweigh the perceived drawbacks, which are regulatory redundancy and misalignment with OSHA PSM. The 2024 SCCAP rule acknowledged that the requirement to keep PSI up-to-date was addressed in other parts of the Program 3 requirements, including the management of change requirements (40 CFR 68.75) and pre-startup review requirements (40 CFR 68.77) (89 FR 17676). However, the EPA nonetheless outlined the need for the revised PSI requirements under 40 CFR 68.65 stating, “EPA believes that refining the language of 40 CFR 68.65 to reflect existing requirements clarifies that such PSI is required to be up to date for Program 3 processes—just as it is for Program 2 processes— without the need for evaluating compliance with management of change, conducting a pre-startup safety review, or meeting PHA requirements.” (89 FR 17676). Making explicit the requirement to keep PSI up-to-date better aligns the EPA’s program levels and avoids regulatory confusion.

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The relationship between PSI being “up to date” and the timing requirements for evaluating gaps in safety for codes and standards may have inadvertently caused confusion under the 2024 SCCAP rule. The “up to date” addition to 40 CFR 68.65(a) can create the appearance that facilities are required to evaluate codes/standards at the exact minute a new version is published, which is not reasonable. The Agency’s policy regarding the RAGAGEP gap analysis is stated below. This potential complication was not the intent of the “up to date” addition to § 68.65(a) as an analysis of new RAGAGEPs, and addressing any associated hazards at a facility, cannot occur on that quick of a timeframe. That said, the Agency’s position is that the maintenance of PSI is a continuing obligation that requires it to be kept current and accurate throughout the life of the process. It is not simply tied to the PHA five-year timeline as some in industry have interpreted. OSHA has stated, and the EPA agrees, that PSI is important to other areas of the program including, but not limited to, the development of training programs and operating procedures, for contractor use when working with a process, for use when conducting management of change and pre-startup safety reviews, and for local emergency preparedness planners (57 FR 6411). For all of those uses, timely and accurate PSI is required to make informed decisions.

The Agency is thus proposing to retain the “up to date” language because it is merely clarifying language that can lead to increased compliance among facilities with the regulations. The Agency is soliciting comment on this issue generally, but specifically on any regulatory gaps or potential scenarios where PSI is not required to be kept up to date. Finally, the Agency seeks comment on how to provide effective outreach so Program 3 facilities understand their requirements under PSI.

## 2. Ensuring Processes are Designed and Maintained in Compliance with RAGAGEPs

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Separately, in preparation for this proposed rulemaking, the EPA went back to review the 2022 SCCAP proposed revisions and the 2024 SCCAP final rule updates for the RAGAGEP language. For the conforming changes at 40 CFR 68.48(b) and 68.65(d)(2), the EPA proposed to harmonize the Program 2 and Program 3 provisions to ensure compliance with RAGAGEPs (87 FR 53604). For example, prior to the 2024 SCCAP rule changes, 40 CFR 68.48(b) stated “[t]he owner or operator shall ensure that the process is designed in compliance with recognized and generally accepted good engineering practices . . .,” while 40 CFR 68.65(d)(2) stated, “[t]he owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices.” Specifically, prior to the 2024 SCCAP rule, Program 3 language required the “documentation” of compliance with RAGAGEP, whereas with the 2024 SCCAP rule, Program 3 language requires owners or operators to “ensure and document” compliance with RAGAGEP. Similarly, for Program 2, prior the 2024 SCCAP rule, owners or operators are required to “ensure” compliance with RAGAGEP, but with the 2024 changes, they need to “ensure and document” compliance. Additionally, the language for Program 3 refers to “equipment,” while the language of Program 2 refers to the “process.” Programs 2 and 3 were aligned to generally state that owners or operators are required to ensure and document compliance of their processes with RAGAGEP.

With these changes ultimately finalized in the 2024 SCCAP rule, the EPA was attempting to align Program 2 and Program 3 language (87 FR 53604). However, this resulted in the Program 3 language deviating from the corresponding OSHA PSM regulatory text at 29 CFR 1910.119(d)(3)(ii), which states: “The employer shall document that equipment complies with recognized and generally accepted good engineering practices.” While the Agency is not required to align its regulations with OSHA regulations, the Agency nonetheless recognizes that

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the misalignment could potentially lead to confusion by regulated entities, thereby making the requirements more difficult to implement.

Additionally, the 2024 SCCAP rule did not fully align the Program 2 and Program 3 language. The term “and maintained” was added to the Program 3 regulatory text, but was not added to the Program 2 text, which could also lead to implementation questions and issues.

For these reasons, the Agency is therefore proposing to rescind the 2024 provisions, because the Agency expects that the 2024 regulatory changes could cause unnecessary confusion with respect to the misalignment of Program 3 and OSHA PSM regulatory text. Moreover, there is no evidence that these changes would solve compliance issues. The Agency seeks comment on this proposal. Specifically, the Agency seeks comment on what portion of the 2024 rule changes, related to “ensure and document” and “process” or “equipment,” that regulated owners and operators perceive as a new burden.

### 3. Compliance with Federal or State Regulations that Address Industry-Specific Safe Design

In the 2024 SCCAP rule, the Agency removed the following sentence from the Program 2 safety information at 40 CFR 68.48(b): “Compliance with Federal or state regulations that address industry-specific safe design or with industry-specific design codes and standards may be used to demonstrate compliance with this paragraph.” The Agency explained in the 2022 SCCAP proposed rule that in some cases, Federal or State regulations lag behind current RAGAGEP and thus do not provide the same level of protection (87 FR 53604). In this proposal, the Agency is retaining this deletion but is also soliciting comment on the impacts associated with deleting this phrase.

### 4. RAGAGEP Gap Analysis

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The 2024 SCCAP rule finalized requirements in 40 CFR 68.67(c)(10) intended to clarify that PHAs must include an analysis of the most recently promulgated RAGAGEP in order to identify any safety gaps between practices related to the facility's design, maintenance, and operation and the most current version of RAGAGEP. In the 2024 SCCAP rule, the EPA noted "this PHA modification merely clarifies when facilities must, at a minimum, conduct or review previous analyses when determining their compliance with 40 CFR 68.65(d)(2) and (3)" (89 FR 17679-17680). The EPA received comment on the 2022 SCCAP proposed rule that the existing PSI requirements already addressed gaps in RAGAGEP through 40 CFR 68.65(d)(3).<sup>103</sup> Commenters also claimed that the EPA failed to provide any demonstrable safety benefit to support a RAGAGEP gap analyses and asserted that, because it was intended as a clarification of an existing requirement and was thus excluded from the RIA, the EPA did not consider the costs of its regulatory addition.<sup>104</sup> The EPA responded that this PHA modification was intended to be a clarification and maintained that evaluation of updated RAGAGEP was already a requirement. The EPA pointed to enforcement cases demonstrating that position and finalized the changes (89 FR 17680).

In this proposed rulemaking, the Agency continues to emphasize that facilities are required to evaluate and address hazards, or gaps in safety, identified via changes to codes and standards pursuant to 40 CFR 68.48 and 68.65. The Agency's position on this issue is further

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<sup>103</sup> The 2024 SCCAP rule RTC at p. 292.

<sup>104</sup> The 2024 SCCAP rule RTC at p. 290-292.

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explained in the 2016 OSHA memo<sup>105</sup> and the EPA frequently asked question (FAQ).<sup>106</sup> The content of the EPA FAQ is as follows:

EPA expects owners and operators to regularly review new and updated RAGAGEP applicable to their industry to determine where safety gaps exist within their current process. If the updated document explicitly provides that new clauses or requirements are retroactive, those updates are relevant to determining whether the owner or operator's practice continues to conform to RAGAGEP per 40 CFR 68.65(d)(2). Where RAGAGEP are updated to be more protective but are not explicitly retroactive, per 40 CFR 68.65(d)(3), the owner or operator should thoroughly evaluate how their process could still be considered safe amid new industry knowledge. Simply indicating that a process incident at your facility has yet to occur is an inappropriate evaluation for choosing not to adhere to updated RAGAGEP, especially considering changes to RAGAGEP may result from industry accidents, industry operating experience, improved understanding of existing hazards and newly recognized hazards. Oftentimes it will be difficult for the owner or operator to document equipment is designed, maintained, inspected, tested, and operating in a safe manner when there is extensive industry knowledge that indicates aspects of older process operations are no longer safe. Implementation of new industry practices can often relieve compliance issues with process safety information (PSI) requirements under 40 CFR 68.65.

The 2024 SCCAP rule's expansion of the regulatory requirements in 40 CFR 68.65(d)(2) and (3) into a stand-alone section under the PHA (40 CFR 68.67(c)(10)) created confusion and possibly procedural changes for certain regulated entities that may have specific and separate teams that each carry out PSI and PHA requirements. In the 2024 rulemaking, the Agency received comment on allowing PHA teams to focus on process hazards using appropriate team members and methodologies and not detract from the PHA by burdening it with extraneous requirements, such as RAGAGEP gap analysis. The commenter added that the EPA failed to

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<sup>105</sup> OSHA memo, "RAGAGEP in Process Safety Management Enforcement," May 11, 2016, <https://www.osha.gov/laws-regs/standardinterpretations/2016-05-11>

<sup>106</sup> EPA FAQ "Complying with process safety information (PSI) resulting from new and updated recognized and generally accepted good engineering practices (RAGAGEP)," May 2025, <https://www.epa.gov/rmp/complying-process-safety-information-psi-resulting-new-and-updated-recognized-and-generally>.

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consider how the gap analysis requirement may be inappropriate for and reduce effectiveness of the PHA by cluttering the PHA process with an extra analytical requirement that the PHA team may be ill-suited to perform.<sup>107</sup> In reviewing the 2024 SCCAP final rule regulations for this proposed action, the Agency now acknowledges that the 2024 requirement added under the PHA may have procedurally changed work and inadvertently increased burden for certain facility groups, such as the PHA teams. Additionally, the language added to 40 CFR 68.67(c)(10) is not consistent with the language in 40 CFR 68.65(d)(2), which could also create confusion regarding implementation.<sup>108</sup>

For the reasons described above, the Agency is now proposing to rescind the regulatory text at 40 CFR 68.67(c)(10). The Agency maintains that the program was operating adequately and without any regulatory gaps with the pre-2024 regulatory language, which is supported by the successful enforcement cases cited in the 2024 SCCAP rule. Furthermore, these proposed revisions would better align with the parallel OSHA PSM requirements at 29 CFR 1910.119(e), thus eliminating unnecessary confusion of the regulated community. The Agency seeks comment on this proposed rescission, as well as comment on how the 2024 regulatory changes could be modified to add clarity to the Agency's position. We are also soliciting comment on what outreach or compliance assistance the Agency could take to ensure that facilities are evaluating current RAGAGEP for safety gaps.

## 5. Proposed Regulatory Changes

For 40 CFR 68.48, Program 2 safety information, the Agency proposes to:

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<sup>107</sup> The 2024 SCCAP rule RTC at p. 292-293.

<sup>108</sup> The 2024 language specified "gaps in safety between the codes, standards, or practices" whereas the language in PSI, § 68.65(d)(2), states "recognized and generally accepted good engineering practices."

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- Rescind the 2024 addition of “and document” from 40 CFR 68.48(b).
- Retain the 2024 removal of “Compliance with Federal or state regulations that address industry-specific safe design or with industry-specific design codes and standards may be used to demonstrate compliance with this paragraph” from 40 CFR 68.48(b).

For 40 CFR 68.65, Program 3 PSI, the Agency proposes to:

- Retain the 2024 addition of “and shall keep process safety information up to date” from 40 CFR 68.65(a).
- Retain the 2024 change from “the rule” to “this part” in 40 CFR 68.65(a).
- Rescind the 2024 changes to 40 CFR 68.65(d)(2).

For 40 CFR 68.67, Program 3 PHA, the Agency proposes to:

- Rescind the 2024 addition of 40 CFR 68.67(c)(10), “Any gaps in safety between the codes, standards, or practices to which the process was designed and constructed and the most current version of applicable codes, standards, or practices.”

For 40 CFR 68.175, Program 3 submission requirements, the Agency proposes to:

- Rescind the 2024 addition of 40 CFR 68.175(e)(9), “Recommendations declined from safety gaps between codes, standards, or practices to which the process was designed and constructed and the most current version of applicable codes, standards, or practices.” (See section IV.I. of this preamble for more information).

## 6. Alternative Options

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The Agency is also soliciting comment and suggestions on how to make the regulatory language clearer with respect to safety information and compliance with RAGAGEPs.

The EPA seeks comment on collecting codes and standards from Program 2 and Program 3 facilities through the RMP submission requirements under 40 CFR 68.170 and 68.175. Under 40 CFR 68.170(d), Program 2 facilities are required to submit, with their five-year submission, “[t]he date of the most recent review or revision of the safety information and a list of Federal or state regulations or industry-specific design codes and standards used to demonstrate compliance with the safety information requirement.” However, the corresponding requirement for Program 3 facilities, under 40 CFR 68.175(d), only includes “[t]he date on which the safety information was last reviewed or revised.” There is no requirement for Program 3 facilities to submit a list of the codes and standards used.

For Program 2 facilities, the EPA system for collecting RMP submissions, RMP\*eSubmit, provides checkboxes for the following: National Fire Protection Association (NFPA) 58 (or State law based on NFPA 58), OSHA (29 CFR 1910.111), ASTM, ANSI, ASME, None, and Other, where the “Other” category includes an open text field.<sup>109</sup> The Agency seeks comment on collecting more specifics for codes and standards beyond the current checkbox approach of just identifying an organization. Specifically, the Agency seeks comment on how to use this data to identify facilities that have not considered the appropriate codes and standards to operate safely.

Additionally, no codes and standards data are currently collected by the EPA for Program 3 facilities. The Agency seeks comment on the benefits and burden for Program 3 facilities to

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<sup>109</sup> See section 8.3, pages 113-114, of the RMP\*eSubmit User Manual (December 2023), <https://www.epa.gov/rmp/rmpesubmit-users-manual>

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submit that information with their RMP. We recognize some complex facilities may be operating with hundreds of codes and standards, which could create a burden for facilities to submit their list of codes and standards. However, the bulk of the burden would be on the first submission, and then for subsequent submissions the RMP\*eSubmit system would allow users to reuse and modify the list from the prior submission. Also, even if the list of a few hundred standards had to be manually entered, the list should be readily available to the facility owner and operator, so the only burden should be keying-in the data to RMP\*eSubmit. As for the benefits, by simply requiring facilities to enter codes and standards into the system, the Agency could potentially identify gaps in safety and provide compliance assistance for facilities that did not list certain sector-specific standards.

The EPA also solicits comment on the following questions: If the Agency were to collect this information, would it be possible to aggregate the information into a comprehensive list of codes and standards to be used by both industry and the Agency? The Agency does not have a list of all codes and standards to create a dropdown list in the system for facilities to select, so if the Agency were to collect this information it may be through open text fields, which would require the Agency to spend time and resources sorting through the data. Also, what kind of data would need to be collected with the code or standard, such as specific identifiers or dates of revision used?

At a higher level, the EPA is seeking comment on how the Agency could provide better oversight and compliance assistance to facilities to ensure that safety gaps in codes and standards are appropriately considered and addressed by facility owners and operators.

#### *L. Deregistration Form Information Collection*

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Existing RMP regulations require that owners or operators of a facility that deregisters from the Risk Management Program notify the EPA through a deregistration form. The RMP rule text states at 40 CFR 68.190(c): “If a stationary source is no longer subject to this part, the owner or operator shall submit a de-registration to EPA within six months indicating that the stationary source is no longer covered.” Sources may deregister for various reasons, including reducing their inventory of all regulated substances below threshold quantities, eliminating the use of any regulated substance, and termination of operations at the facility. As further explained in this section, the EPA is proposing to update the information requested in its deregistration form to better understand how facilities have made their processes safer.

Currently, the Agency requests minimal data through the deregistration form, including identifying information about the facility being deregistered, the date of deregistration, and the reason for deregistration.<sup>110</sup> Since facilities are deregistering—and thus no longer subject to the RMP rule—all additional data collected is voluntary. In the 2024 SCCAP rule, the EPA finalized IST/ISD measures and alternatives information submission requirements for active Program 3 facilities at 40 CFR 68.175(e)(7), and, through the preamble, encouraged deregistering facilities to voluntarily meet the same requirements (89 FR 17654). In this action, the EPA is proposing to retain the voluntary nature of information collection upon deregistration of facilities while requesting that deregistering facilities provide additional information about their use of safer technologies and alternatives in the deregistration form.

The EPA received multiple comments during listening sessions preceding the 2022 SCCAP proposed rule that requested the Agency improve the reporting and public availability of

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<sup>110</sup> See also EPA, Office of Land and Emergency Management. *Risk Management Plan RMP\*eSubmit User's Manual* (December 2023). Available at: <https://www.epa.gov/rmp/rmpesubmit-users-manual>.

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successful practices facilities use to reduce and remove RMP chemical hazards (87 FR 53579).<sup>111</sup> Commenters advocated for an information center of best practices similar to existing EPA information centers, such as the Pollution Prevention Resource Exchange.<sup>112</sup> The EPA continues to recognize the benefits of information sharing through the EPCRA and from Agency studies (89 FR 17655).

Additionally, commenters responding to the 2022 SCCAP proposed rule noted that the EPA does not have existing systems to “investigate and report adaptive solutions used by facilities, particularly when changes prevent hazards,” and suggested that the EPA collect more information from these deregistering facilities to indicate if they have made changes to make their processes safer.<sup>113</sup> The commenters discussed that many facilities do not provide the EPA with data when deregistering, stating that “[a]s of October 2016, some 1,998 deregistered RMP facilities reported no longer using any regulated substance, 1,888 had terminated operations, 1,215 reduced inventories below threshold quantities, 934 reported ‘other,’ and 1,470 left the query blank.”<sup>114</sup>

In the 2024 SCCAP rule, the EPA noted that accident and safety data from deregistering facilities are sometimes not captured because the facility is no longer subject to RMP requirements when it deregisters (89 FR 17624). By requesting additional information from these facilities, the EPA may be able to compile additional data on how some facilities, of their own accord, choose to make their processes safer and which safer alternatives and technologies

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<sup>111</sup> EPA-HQ-OLEM-2021-0312-0014; 0058; 0148.

<sup>112</sup> EPA. Pollution Prevention Resource Exchange (P2RX). Available at: <https://www.epa.gov/p2/pollution-prevention-resource-exchange-p2rx#:~:text=The%20Pollution%20Prevention%20Resource%20Exchange,and%20measured%20P2%20program%20results>.

<sup>113</sup> EPA-HQ-OLEM-2022-0174-0220.

<sup>114</sup> EPA-HQ-OLEM-2022-0174-0220.

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are effective. Such information would be useful for the EPA to understand when facilities make modifications to their processes in relation to deregistering, what modifications they make, and if those modifications may be helpful for other facilities. The EPA expects that modifying the deregistration form to include these new fields would be a minimal burden for facilities to provide information on safer technologies and alternatives.

Therefore, the EPA is proposing to add new, optional fields to the RMP deregistration form to help compile data and identify safer alternatives that could be implemented at other facilities (see Technical Background Document for details).<sup>115</sup> The Agency is not proposing any changes or additions to the regulatory text, as the fields would be voluntary. This information would be requested within the same form that the EPA requires a facility to submit when deregistering under 40 CFR 68.190(c). The EPA plans to update the Information Collection Request (ICR) to reflect changes associated with these new fields and ensure compliance under the PRA.

The EPA has included an outline of the potential information that would be collected from deregistering facilities in the Technical Background Document in the docket for this rulemaking.<sup>116</sup> The EPA does not intend for this to be a cumbersome exercise, but rather one that is based on information facilities likely already have and can easily provide.

The EPA seeks comment on the proposed inclusion of voluntary information collection in the deregistration form, including edits to, additions to, or deletions of specific data fields. The

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<sup>115</sup> EPA. Technical Background Document: Common Sense Approach to Chemical Accident Prevention RMP Rule. June 2025. Available in the docket, Docket ID No. EPA-HQ-OLEM-2025-0313.

<sup>116</sup> EPA. Technical Background Document: Common Sense Approach to Chemical Accident Prevention RMP Rule. June 2025. Available in the docket, Docket ID No. EPA-HQ-OLEM-2025-0313.

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EPA also seeks comment on the anticipated burden associated with completing and submitting the form for facilities that deregister.

#### *M. Retention of Hot Work Permits*

In the 2024 RMP SCCAP rule, the EPA modified the hot work permit retention requirements in 40 CFR 68.85. Prior to the 2024 SCCAP rule, the EPA required owners or operators to maintain hot work permits until completion of the hot work operations; with the 2024 SCCAP rule, the EPA required owners or operators to retain hot work permits for three years after completion of the hot work. In the 2022 SCCAP proposed rule, the Agency stated that the retention of hot work permits after the completion of operations could support implementing agencies in determining if the facility has been conducting hot work in compliance with the requirements of 40 CFR 68.85 (87 FR 53604). In this rule, the EPA proposes to rescind the three-year retention period for hot work permits and reinstate the requirement to keep the permit on file until completion of the hot work operations, consistent with OSHA PSM requirements at 29 CFR 1910.119(k)(2).<sup>117</sup>

The rationale provided in the 1996 RMP rule, which initially introduced hot work permits into the Risk Management Program, supports alignment between the OSHA PSM standard and the Risk Management Program. The EPA introduced hot work permits in the 1996 RMP rule in response to comments the Agency received on the 1995 RMP proposed rule stating that the EPA should include the OSHA PSM provisions in its Risk Management Program (61 FR 31697). As stated in the 1996 RTC document: “EPA believes that adding contractor and hot work permit provisions creates greater consistency between its final rule and OSHA’s PSM

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<sup>117</sup> 29 CFR 1910.119(k)(2): “... The permit shall be kept on file until completion of the hot work operations.”

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standard and facilitates source compliance by reducing undue burden and eliminating the confusion of having to comply with disparate regulations. A source in compliance with OSHA PSM will be in compliance with EPA's Program 3 prevention program.”<sup>118</sup> Additionally, while the 1996 RTC document supported the need for issuing a permit to carefully control the use of flame or spark-producing equipment, no information in the rulemaking addressed the need to actually retain the hot work permits, let alone justify a safety basis to retain hot work permit documentation after the completion of the hot work activity.<sup>119</sup>

In response to the 2022 SCCAP proposed rule regarding the modified retention requirements for hot work permits, a few commenters expressed support for the proposed five-year retention period for hot work permits so that inspectors can ensure hot work permits are being used appropriately.<sup>120</sup> Commenters cited fires during hot work at Evergreen Packaging Paper Mill in Canton, NC,<sup>121</sup> and Sunoco Logistics Partners in Nederland, TX,<sup>122</sup> as reasons why the retention of hot work permits is needed. However, the EPA notes that the incidents at Evergreen Packaging Paper Mill and Sunoco Logistics Partners did not result in recommendations by the U.S. CSB that the EPA or OSHA change the regulations to retain hot work permits after completion of hot work activity. The EPA also notes that the hot work safety guidance issued by the CSB does not identify safety concerns related to recordkeeping retention

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<sup>118</sup> EPA, Risk Management Plan Rule: Summary and Response to Comments, Volume 2, pp. 22-41, May 24, 1996. Docket No. A-91-73, Document Number IX-C-1. Available at <https://www.regulations.gov/document/EPA-HQ-OAR-2004-0365-0009>.

<sup>119</sup> EPA, Risk Management Plan Rule: Summary and Response to Comments, Volume 2, pp. 22-41, 22-45, and 22-46, May 24, 1996. Docket No. A-91-73, Document Number IX-C-1. Available at <https://www.regulations.gov/document/EPA-HQ-OAR-2004-0365-0009>.

<sup>120</sup> EPA-HQ-OLEM-2022-0174-0181; 0216; 0460.

<sup>121</sup> CSB, “Evergreen Packaging Paper Mill - Fire During Hot Work,” last modified April 6, 2022, <https://www.csb.gov/evergreen-packaging-paper-mill---fire-during-hot-work/>.

<sup>122</sup> CSB, “Sunoco Logistics Partners Flash Fire,” last modified September 28, 2022, <https://www.csb.gov/sunoco-logistics-partners-flash-fire/>.

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for hot work permits.<sup>123</sup> Therefore, the issue at those facilities was not a lack of retention of their hot work permits. Rather, the issue was that the facilities in question were not following already established hot work requirements.

In contrast, other commenters stated that the retention of hundreds of expired hot work permits for five years is unnecessary and creates a substantial recordkeeping and administrative burden for facilities or provides no added safety benefits to the facility or surrounding community.<sup>124</sup> Other commenters on the 2022 SCCAP proposed rule stated that the proposed five-year retention period for hot work permits would be inconsistent with OSHA's PSM rule.<sup>125</sup> The EPA indicated in the 2024 SCCAP rule that the Agency coordinated with OSHA throughout the rulemaking process to ensure the intent of adding specificity and clarification to the RMP regulations does not create conflicts with the requirements of the OSHA PSM standard.<sup>126</sup> However, while the three-year retention period ultimately finalized in the 2024 SCCAP rule does not create a conflicting requirement, the new requirement did take the RMP Program 3 and OSHA PSM requirements out of alignment. For example, under the 2024 SCCAP regulations, a facility will have to retain hot work permits under the EPA's RMP, but not under OSHA's PSM standard. Therefore, the hot work provisions finalized in the 2024 SCCAP rule resulted in an unnecessary burden that the EPA is now proposing to correct.

For the reasons outlined above, the EPA has tentatively determined that the three-year hot work permit retention requirement is unnecessary because of the existing framework of provisions already covering hot work under 40 CFR 68.75(a), 68.85(b), and 68.175(n).

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<sup>123</sup> CSB, "Safe Hot Work Practices," last modified May 1, 2025, <https://www.csb.gov/recommendations/hot-work/>.

<sup>124</sup> EPA-HQ-OLEM-2022-0174-0184; 0193; 0207; 0233; 0237; 0238; 0242; 0244; 0267; 0268.

<sup>125</sup> EPA-HQ-OLEM-2022-0174-0207; 0242; 0268.

<sup>126</sup> The 2024 SCCAP rule RTC at p. 279.

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Specifically, under 40 CFR 68.75(a), verification that hot work permit procedures and processes are being followed is required through compliance audits, which should include a review of hot work permit templates and procedures. Part of those procedures includes, as stated under 40 CFR 68.85(b), the “permit shall document that the fire prevention and protection requirements in 29 CFR 1910.252(a) have been implemented prior to beginning the hot work operations; it shall indicate the date(s) authorized for hot work; and identify the object on which hot work is to be performed.” Finally, 40 CFR 68.175(n) requires facility owners or operators to submit the date of the most recent review or revision of hot work permit procedures, which is intended to ensure that facilities account for reviews and revisions to hot work permit procedures. Thus, the EPA has tentatively determined that these provisions are sufficient to ensure facilities safely conduct hot work operations.

While the Agency continues to acknowledge the necessity of regulating hot work operations, which can enhance chemical accident prevention, the EPA lacks a record showing additional chemical accident prevention benefits specifically from retaining expired hot work permits. In the Technical Background Document, data can be found from OSHA’s national database and NJDEP State data, a delegated State that requires hot work permit retention, on hot work citations.<sup>127</sup> The OSHA data contain 18 citations from 2015 to 2025, and the New Jersey data shows 34 citations from 2005 to 2023. The cases show a range of issues from what appears to be facilities performing hot work under dangerous circumstances, to mere paperwork violations. Moreover, there is not adequate data available to examine or determine if retaining hot work permits contributes to preventing accidental releases. The Agency does not have

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<sup>127</sup> EPA. Technical Background Document: Common Sense Approach to Chemical Accident Prevention RMP Rule. June 2025. Available in the docket, Docket ID No. EPA-HQ-OLEM-2025-0313.

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methods and procedures to aggregate and subsequently mine hot work permitting data. Without evidence of safety benefits associated with retaining hot work permits, the EPA has tentatively determined that this recordkeeping requirement is unnecessary. Further, rescinding this provision as proposed would bring the RMP hot work permits provisions back into alignment with the OSHA PSM standard, avoiding confusion among facilities that are subject to both regulations.

The EPA requests public comment on the Agency's proposal to rescind the hot work permit three-year retention requirement, as well as the alternatives described below. The EPA also solicits comment on cost estimates for facilities to retain a limited set of hot work permits. Finally, the EPA solicits comment on the EPA's assessment that the OSHA and New Jersey data do not show safety issues with hot work activity that could be addressed through retention of hot work permits as well as on any significant reliance interests.

#### 1. Proposed Changes

The EPA proposes to amend 40 CFR 68.85 by removing paragraph (c) and revising paragraph (b) to read as follows: "The permit shall document that the fire prevention and protection requirements in 29 CFR 1910.252(a) have been implemented prior to beginning the hot work operations; it shall indicate the date(s) authorized for hot work; and identify the object on which hot work is to be performed. The permit shall be kept on file until completion of the hot work operations." This language would be aligned with the OSHA PSM standard.

#### 2. Alternative Options

As an alternative to rescinding the three-year retention period, the EPA is considering whether a source should be required to retain a hot work permit if there was an accidental release during work addressed by the permit to support incident investigation and root cause identification. As a second alternative, the EPA is considering whether a source should retain

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only the most recent hot work permit per process for up to three or five years to verify that facilities operate in compliance with hot work permit procedures. The EPA seeks comment on these alternatives.

The Agency is also soliciting comment on the burden of retaining hot work permits. The Agency requests information from regulated facilities on their processes for issuing and retaining hot work permits and what changes were needed to comply with the 2024 three-year record retention requirement. If permits are not currently being retained electronically, how are facilities issuing permits? Are facilities only manually writing out a form with pen or pencil and then discarding the form after the hot work is completed?

Finally, if hot work permits are discarded immediately after completion of hot work operations, the Agency seeks comment on how Program 3 facilities conduct their audit obligations under 40 CFR 68.79 without reviewing prior hot work permits to ensure the hot work activities are being carried out safely.

#### *N. Retail Facility Definition*

##### 1. Background and Rationale for Proposed Action

The RMP rule excludes flammable substances used as fuel or held for sale at retail facilities from the RMP (40 CFR 68.126).<sup>128</sup> In the 2024 SCCAP rule, the EPA revised the definition of a “retail facility” to establish a clear period during which to calculate the quantity of a facility’s direct sales to end users—thus determining when a facility is eligible for the flammable substance exclusion. This revision aimed to eliminate uncertainty and reduce the sales documentation burden that the owner or operator of a regulated facility must maintain to

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<sup>128</sup> The specific flammable substances that would be excluded are listed in tables 3 and 4 of 40 CFR 68.130.

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establish its status as a retail facility (89 FR 17679). The 2024 SCCAP rule allowed facilities to select either a fiscal year or a calendar year when determining income from direct sales to end users (89 FR 17622).

In comments to the 2022 SCCAP proposed rule (87 FR 53556), industry trade associations opposed revisions to the retail facility definition stating that it was an unnecessary change.<sup>129</sup> Specifically, a couple of commenters urged the EPA to maintain its existing definition of a retail facility, reasoning that it was consistent with the definition set forth in the CSISSFRA of 1999 and OSHA PSM standard enforcement guidance and interpretations.<sup>130</sup> At the time, the EPA disagreed with these comments, stating that the Agency coordinated with OSHA throughout the rulemaking process to ensure the intent of adding specificity and clarification did not create conflicts with the requirements of the OSHA PSM (89 FR 17679).

After reevaluating the 2024 revision to the “retail facility” definition, the Agency has tentatively determined that the definition may not be thorough enough to cover all scenarios. For example, a new facility may not have a full year of operations upon which to base this determination, while other facilities may have significant variance in retail versus non-retail sales over different time periods or measure their business operations on specific time frames not tied to fiscal or calendar year. As a result, the EPA seeks comment on whether the EPA should further modify the “retail facility” definition to address new facilities and facilities with significant fluctuations in the proportion of annual sales that come from direct sales to end users. The Agency anticipates that new facilities may not have sales data for the previous year. The EPA also expects facilities with significant fluctuations in annual sales may find that the

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<sup>129</sup> EPA-HQ-OLEM-2022-0174; 0229; 0272.

<sup>130</sup> EPA-HQ-OLEM-2022-0202; 0229; 0272.

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oscillation changes their exemption status from year to year. The unintended effect would force facilities to register and deregister from the program as sales shift because they are required to submit a deregistration form to the EPA under 40 CFR 68.190(c) once they are no longer subject to the program. This leads to unnecessary changes in status and recordkeeping requirements. However, to avoid gamesmanship of time periods to avoid regulation and potential disagreements on the assessment periods between the regulated community and the EPA, the Agency seeks to establish a time period over which a facility would be locked into its calendar choice. Therefore, while the Agency still agrees with the changes made in the 2024 SCCAP rule, it is now proposing to further clarify that language.

## 2. Proposed Regulatory Changes

The Agency is proposing to amend the definition for retail facility under 40 CFR 68.3 to include alternate timeframes to address additional scenarios and solicits comment on this proposed language. The proposed definition would be changed as follows:

*Retail facility means* a stationary source meeting either of the following criteria:

1. More than one-half of the income from direct sales to end users, or more than one-half of the fuel sold, by volume, is sold through a cylinder exchange program during one of the following periods:
  - Previous full calendar year
  - Previous fiscal year
  - Previous 12 months

Facilities must select one of these timeframes as their basis for assessment and maintain consistency in their choice for a minimum of three consecutive years.

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2. For new facilities with less than a full calendar year of operational history: More than one-half of the income generated since the commencement of operations is obtained from direct sales to end users, or more than one-half of the fuel sold, by volume, during the same period is sold through a cylinder exchange program. For the purpose of this definition, “commencement of operations” refers to the date on which a threshold quantity of a regulated substance is present at the facility.

The EPA is requesting comment on these proposed revisions to the “retail facility” definition. The EPA is also requesting comment on whether to rescind the 2024 modifications to the retail facility definition. The EPA requests supporting data, regulatory language, and information that would support any further amendments to the retail facility definition. Specifically, the Agency is requesting any data on facilities with sales that fluctuate over the threshold on an annual basis.

#### *O. Compliance Dates*

The 1996 RMP rule was applied 3 years after promulgation of the rule on June 20, 1996, which is consistent with the last sentence of CAA section 112(r)(7)(B)(i). The statute does not directly address when amendments should become applicable. However, in keeping with prior rulemakings, the EPA proposes that the modified or new provisions in this proposed rule would go into effect three years after the effective date of the final rule (*i.e.*, from the date of publication in the *Federal Register*). Those proposed provisions include STAA and third-party compliance audits requirements. The 2024 SCCAP provision for backup power for monitoring equipment is proposed to be rescinded, so the EPA also proposes to have the corresponding compliance date requirements removed from 40 CFR 68.10(g)(1). The compliance date for availability of information at 40 CFR 68.10(g)(7) is also proposed to be deleted, because the

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modified requirement, as proposed, in 40 CFR 68.210 would shift responsibility from owners or operators to the Agency. The compliance dates for the 2024 SCCAP rule provisions for root cause analysis, employee participation, and emergency response at 40 CFR 68.10(g)(3), (5), and (6) would remain as is, as May 10, 2027, because all or some portion of each provision is proposed to be retained.

The Agency seeks comment on the compliance dates for this action.

#### *P. Technical Corrections to Address Incorrect Numbering*

As part of the 2024 SCCAP rule changes to the regulatory text, three paragraphs were inserted before 40 CFR 68.10(g); existing paragraphs (g), (h), and (i) became (j), (k), and (l). The renumbered paragraphs are cited in other locations of the rule eight times, but those references were not changed. These references occur three times in 40 CFR 68.10, four times in 40 CFR 68.12, and one time in 40 CFR 68.180. The Agency is proposing to correct these references as part of this action.

Additionally, the 2024 SCCAP rule added 40 CFR 68.62 to the rule but did not change the reference in 40 CFR 68.12 to include the new section. The Agency is proposing to correct 40 CFR 68.12(c)(3) by changing “68.60” to “68.62”.

## **V. Statutory and Executive Order Reviews**

Additional information about these statutes and E.O.s can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

### *A. Executive Order 12866: Regulatory Planning and Review*

This action is a significant regulatory action as defined under section 3(f)(1) of Executive Order 12866. Accordingly, it was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in

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the docket. The EPA prepared an analysis of the potential costs and benefits associated with this action. The Regulatory Impact Analysis is available in the docket (Docket ID No. EPA-HQ-OLEM-2025-0313). Chapters 4–6 of the RIA developed for this proposed action provide additional details on costs and benefits.

*B. Executive Order 14192: Unleashing Prosperity Through Deregulation*

This action is expected to be an E.O. 14192 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the EPA’s analysis of the potential costs and benefits associated with this action.

*C. Paperwork Reduction Act (PRA)*

The information collection activities in this proposed rule have been submitted for approval to the OMB under the PRA. The ICR document that the EPA prepared has been assigned the EPA ICR number 1656.20. A copy of the ICR is available in the docket for this rule, and it is briefly summarized here.

This new ICR amends existing information collection activities related to a previously approved ICR (1656.18), OMB Control No. 2050-0144. That ICR covers the 1996 RMP rule, originally promulgated on June 20, 1996; and the current rule, including previous amendments, codified as 40 CFR part 68.

On March 11, 2024, the EPA published the 2024 SCCAP rule, which added several requirements for RMP-regulated entities, including requirements that would impose information collection burdens on regulated entities. The EPA is now proposing a rule that reevaluates the 2024 SCCAP rule, including retaining, retaining with modification, or rescinding provisions from the 2024 SCCAP rule. The EPA had previously submitted an ICR associated with the 2024 SCCAP rule to OMB for review but withdrew that ICR when deciding to undertake this new

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proposed rule. Therefore, the ICR submitted to OMB with this proposed rule includes the proposed revised information requirements that are part of the proposed revision to the rule, as well as information requirements that were promulgated in the 2024 SCCAP rule and proposed to be retained or retained with modifications by the proposed revision to the rule.

*Respondents/affected entities:* The industries that are likely to be affected by the requirements in the proposed regulation fall into numerous NAICS codes. The types of stationary sources affected by the proposed rule range from petroleum refineries and large chemical manufacturers to water and wastewater treatment systems; chemical and petroleum wholesalers and terminals; food manufacturers, packing plants, and other cold storage facilities with ammonia refrigeration systems; agricultural chemical distributors; midstream gas plants; and a limited number of other sources that use RMP-regulated substances. Among the stationary sources potentially affected, the Agency has determined that 2,257 are regulated private sector small entities and 590 are small government entities.

*Respondent's obligation to respond:* Mandatory ((CAA sections 112(r)(7)(B)(i) and (ii), CAA section 112(r)(7)(B)(iii), CAA section 114(c), and CAA section 114(a)(1))).

*Estimated number of respondents:* 14,226.

*Frequency of response:* On occasion.

*Total estimated burden:* 136,465 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* \$18,982,128 (per year); includes \$4,679,535 annual operations and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

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Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. OMB must receive comments no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

*D. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule relieves regulatory burden. The small entities subject to the requirements of this action include small businesses and small governmental entities. The rule relieves regulatory burden by proposing to repeal or modify several provisions imposing costs on small entities. Of the 2,257 potentially regulated private sector small entities impacted, all but four will experience some regulatory relief. The remaining four may experience an economic impact between one and three percent of revenues.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain an unfunded mandate of \$100 million (adjusted annually for inflation) or more (in 1995 dollars) as described in UMRA, 2 U.S.C. 1531-1538, and does not

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significantly or uniquely affect small governments. The costs involved in this action are estimated not to exceed \$187 million in 2024 dollars (\$100 million in 1995 dollars adjusted for inflation using the gross domestic product implicit price deflator) or more in any one year.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action has Tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized Tribal governments, nor preempt Tribal law. There are approximately 260 RMP facilities located on Tribal lands. Tribes could be impacted by the final rule either as an owner or operator of an RMP-regulated facility or as a Tribal government when the Tribal government conducts emergency response or emergency preparedness activities under EPCRA.

The EPA consulted with Tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes on previous RMP rulemakings. The EPA will consult again with Tribal officials as it develops this regulation to permit them to have meaningful and timely input into its development. Consultation will include conference calls, webinars, and meetings with interested Tribal representatives to ensure that their concerns are addressed before the rule is finalized. In the spirit of E.O. 13175 and consistent with the EPA policy to promote communications between the EPA and Tribal governments, the EPA specifically solicits comment on this proposed rule from Tribal officials.

*H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety*

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## *Risks*

E.O. 13045 directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to E.O. 13045 because the EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. The EPA does not believe there are disproportionate risks to children because this action does not directly address hazard assessments, but mandates that plans require hazard assessments that should include relevant considerations if there is the potential for disproportionate risks to children. However, the EPA's *Policy on Children's Health* applies to this action.

### *I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action is not anticipated to have notable, adverse impacts on emissions, costs or energy supply decisions for the affected electric utility industry.

### *J. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

## **List of Subjects in 40 CFR Part 68**

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

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Lee Zeldin,  
Administrator.

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For the reasons stated in the preamble, EPA proposes to amend Title 40, chapter I, part 68, of the Code of Federal Regulations is proposed to be amended as follows:

## **PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS**

1. The authority citation for part 68 continues to read as follows:

**Authority:** 42 U.S.C. 7412(r), 7601(a)(1), 7661-7661f.

### **Subpart A-General**

2. Amend § 68.3 by:

- a. Removing the definition “Natural hazard”.
- b. Revising the definition “Retail facility”.

The revision reads as follows:

### **§ 68.3 Definitions.**

\* \* \* \* \*

*Retail facility* means a stationary source meeting either of the following criteria:

1. More than one-half of the income from direct sales to end users, or more than one-half of the fuel sold, by volume, is sold through a cylinder exchange program during one of the following periods:
  - Previous full calendar year
  - Previous fiscal year
  - Previous 12 months

Facilities must select one of these timeframes as their basis for assessment and maintain consistency in their choice for a minimum of three consecutive years.

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2. For new facilities with less than a full calendar year of operational history: More than one-half of the income generated since the commencement of operations is obtained from direct sales to end users, or more than one-half of the fuel sold, by volume, during the same period is sold through a cylinder exchange program. For the purpose of this definition, “commencement of operations” refers to the date on which a threshold quantity of a regulated substance is present at the facility.

\* \* \* \* \*

3. Amend § 68.10 by:

- a. Revising in the introductory text of paragraph (a) the text “Except as provided in paragraphs (b) through (i) of this section,” to “Except as provided in paragraphs (b) through (k) of this section,”.
- b. Revising paragraph (g).
- c. Redesignating paragraphs (j), (k), (l), (m), and (n) as paragraphs (l), (m), (n), (o), and (p).
- d. Adding paragraphs (j) and (k).
- e. Revising in the newly redesignated paragraph (m) the text “either paragraph (g) or paragraph (i)” to “either paragraph (l) or paragraph (n)”.
- f. Revising in the newly redesignated paragraph (n) the text “the requirements of paragraph (g)” to “the requirements of paragraph (l)”.

The revisions and additions read as follows:

**§ 68.10 Applicability.**

\* \* \* \* \*

- (g) By May 10, 2027, the owner or operator shall comply with the following provisions promulgated on May 10, 2024:

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- (1) Incident investigation root cause analysis provisions in §§ 68.60(h) and 68.81(h);
- (2) Employee participation provisions in §§ 68.62 and 68.83;
- (3) Emergency response provisions in §§ 68.90(b) and 68.95(a); and

\* \* \* \* \*

(j) By **[DATE 3 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]**, the owner or operator shall comply with the following provisions promulgated on **[DATE OF PUBLICATION OF THE FINAL RULE IN FEDERAL REGISTER]**:

(1) Third-party audit provisions in §§ 68.58(f), 68.59, 68.79(f), and 68.80. The third-party audit provisions under §§ 68.58(f), 68.59, 68.79(f), and 68.80 will not be in effect beyond **[DATE 13 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]**;

(2) Safer technology and alternatives analysis provisions in § 68.67(c)(8);

(k) By **[DATE 4 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]**, the owner or operator shall comply with the risk management plan provisions of subpart G of this part promulgated on **[DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]**.

\* \* \* \* \*

4. Amend § 68.12 by:

a. Revising in the introductory text of paragraph (b) the text “as provided in § 68.10(g),” to “as provided in § 68.10(l),”.

b. Revising in paragraph (b)(4) the text “program rule (40 CFR 68.10(g)(1))” to “program rule (40 CFR 68.10(l)(1))”.

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c. Revising in the introductory text of paragraph (c) the text “as provided in § 68.10(h),” to “as provided in § 68.10(m),”.

d. Revising in paragraph (c)(3) the text “through 68.60 or implement” to “through 68.62 or implement”.

e. Revising in the introductory text of paragraph (d) the text “as provided in § 68.10(i)” to “as provided in § 68.10(n)”.

### **Subpart C—Program 2 Prevention Program**

5. Amend § 68.48 by revising paragraph (b) to read as follows:

#### **§ 68.48 Safety information.**

\* \* \* \* \*

(b) The owner or operator shall ensure that the process is designed in compliance with recognized and generally accepted good engineering practices.

\* \* \* \* \*

6. Amend § 68.50 by:

a. Revising paragraphs (a)(3), (4), and (5).

b. Removing paragraph (a)(6).

The revisions read as follows:

#### **§ 68.50 Hazard review.**

(a) \* \* \*

(3) The safeguards used or needed to control the hazards or prevent equipment malfunction or human error;

(4) Any steps used or needed to detect or monitor releases; and

(5) Stationary source siting.

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\* \* \* \* \*

7. Amend § 68.52 by:

a. Revising paragraphs (b)(7) and (8).

b. Removing paragraph (b)(9).

The revisions read as follows:

**§ 68.52 Operating procedures.**

\* \* \* \* \*

(b) \* \* \*

(7) Consequences of deviations and steps required to correct or avoid deviations; and

(8) Equipment inspections.

\* \* \* \* \*

8. Amend § 68.58 by:

a. Revising paragraph (f).

b. Removing paragraphs (g) and (h).

The revision reads as follows:

**§ 68.58 Compliance audits.**

\* \* \* \* \*

(f) The next required compliance audit shall be a third-party audit when two accidental releases within five years meeting the criteria in § 68.42(a) from a covered process at a stationary source have occurred.

9. Amend § 68.59 by:

a. Revising paragraphs (c)(2)(ii) and (iii).

b. Removing paragraphs (c)(2)(iv) and (f)(3).

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The revisions read as follows:

**§ 68.59 Third-party audits.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) Receive no financial benefit from the outcome of the audit, apart from payment for auditing services. For purposes of this paragraph (c)(2)(ii), retired employees who otherwise satisfy the third-party auditor independence criteria in this section may qualify as independent if their sole continuing financial attachments to the owner or operator are employer-financed or managed retirement and/or health plans; and

(iii) Ensure that all third-party personnel involved in the audit sign and date a conflict of interest statement documenting that they meet the independence criteria of this paragraph (c)(2).

\* \* \* \* \*

10. Amend § 68.62 by:

- a. Revising paragraph (a).
- b. Removing paragraph (b).
- c. Redesignating paragraph (c) as paragraph (b).

The revision reads as follows:

**§ 68.62 Employee participation.**

\* \* \* \* \*

(a) The owner or operator shall develop a written plan of action regarding the implementation of the employee participation requirements required by this section. An annual written or electronic

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notice shall be distributed to employees and their representatives indicating that the plan is readily available to view, and how to access the information.

\* \* \* \* \*

#### **Subpart D—Program 3 Prevention Program**

11. Amend § 68.65 by revising paragraph (d)(2) to read as follows:

##### **§ 68.65 Process safety information.**

\* \* \* \* \*

(d) \* \* \*

(2) The owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices.

\* \* \* \* \*

12. Amend § 68.67 by:

a. Revising paragraphs (c)(3), (5), and (8).

b. Removing paragraphs (c)(9), (10), and (h).

The revisions read as follows:

##### **§ 68.67 Process hazard analysis.**

\* \* \* \* \*

(c) \* \* \*

(3) Engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases.

(Acceptable detection methods might include process monitoring and control instrumentation with alarms, and detection hardware such as hydrocarbon sensors.)

\* \* \* \* \*

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(5) Stationary source siting;

\* \* \* \* \*

(8) Safer technology and alternative risk management measures applicable to eliminating or reducing risk from process hazards for the following covered processes and shall meet all of the following requirements:

(i) For new covered processes, the owner or operator shall consider and document, in the following order of preference, inherently safer technology or design, passive measures, active measures, and procedural measures. A combination of risk management measures may be used to achieve the desired risk reduction.

(ii) The analysis shall be performed by a team that includes members with expertise in the process being evaluated, including at least one member who works in the process. The team members shall be documented.

\* \* \* \* \*

13. Amend § 68.69 by revising paragraph (a)(4) to read as follows:

**§ 68.69 Operating procedures.**

(a) \* \* \*

(4) Safety systems and their functions.

\* \* \* \* \*

14. Amend § 68.79 by:

a. Revising paragraph (f).

b. Removing paragraphs (g) and (h).

The revision reads as follows:

**§ 68.79 Compliance audits.**

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\* \* \* \* \*

(f) The next required compliance audit shall be a third-party audit when two accidental releases within five years meeting the criteria in § 68.42(a) from a covered process at a stationary source has occurred.

15. Amend § 68.80 by:

- a. Revising paragraphs (c)(2)(ii) and (iii).
- b. Removing paragraphs (c)(2)(iv) and (f)(3).

The revisions read as follows:

**§ 68.80 Third-party audits.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) Receive no financial benefit from the outcome of the audit, apart from payment for auditing services. For purposes of this paragraph (c)(2)(ii), retired employees who otherwise satisfy the third-party auditor independence criteria in this section may qualify as independent if their sole continuing financial attachments to the owner or operator are employer-financed or managed retirement and/or health plans; and

(iii) Ensure that all third-party personnel involved in the audit sign and date a conflict of interest statement documenting that they meet the independence criteria of this paragraph (c)(2).

\* \* \* \* \*

16. Amend § 68.83 by:

- a. Revising paragraph (a).
- b. Removing paragraphs (c), (d), and (e).

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c. Redesignating paragraph (f) as paragraph (c).

The revision reads as follows:

**§ 68.83 Employee participation.**

(a) The owner or operator shall develop a written plan of action regarding the implementation of the employee participation requirements required by this section. An annual written or electronic notice shall be distributed to employees and their representatives indicating that the plan is readily available to view and how to access the information.

\* \* \* \* \*

17. Amend § 68.85 by:

a. Revising paragraph (b).

b. Removing paragraph (c).

The revision reads as follows:

**§ 68.85 Hot work permit.**

\* \* \* \* \*

(b) The permit shall document that the fire prevention and protection requirements in 29 CFR 1910.252(a) have been implemented prior to beginning the hot work operations; it shall indicate the date(s) authorized for hot work; and identify the object on which hot work is to be performed. The permit shall be kept on file until the completion of the hot work operations.

**Subpart E—Emergency Response**

18. Amend § 68.90 by revising paragraph (b)(6) to read as follows:

**§ 68.90 Applicability.**

\* \* \* \* \*

(b) \* \* \*

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(6) The owner or operator maintains and implements, as necessary, procedures for informing the public and the appropriate Federal, State, and local emergency response agencies about accidental releases. Further, the owner or operator shall partner with response agencies to ensure that responders have the necessary information to relay through a community notification system that is in place to warn the public within the area potentially threatened by the accidental release.

19. Amend § 68.95 by revising paragraphs (a)(1)(i) to read as follows:

**§ 68.95 Emergency response program.**

(a) \* \* \*

(1) \* \* \*

(i) Procedures for informing the public and the appropriate Federal, State, and local emergency response agencies about accidental releases. Further, the owner or operator shall partner with response agencies to ensure that responders have the necessary information to relay through a community notification system that is in place to warn the public within the area potentially threatened by the accidental release.

**Subpart G—Risk Management Plan**

**§ 68.160 [Amended]**

20. Amend § 68.160 by removing paragraph (b)(22).

21. Amend § 68.170 by:

a. Revising paragraphs (e)(5) and (6).

b. Removing paragraph (e)(7).

The revisions read as follows:

**§ 68.170 Prevention program/Program 2.**

\* \* \* \* \*

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(e) \* \* \*

(5) Monitoring and detection systems in use; and

(6) Changes since the last hazard review.

\* \* \* \* \*

22. Amend § 68.175 by:

a. Revising paragraph (e)(7).

b. Removing paragraphs (e)(8) and (9).

The revision reads as follows:

**§ 68.175 Prevention program/Program 3.**

\* \* \* \* \*

(e) \* \* \*

(7) For new processes, inherently safer technology or design measures evaluated, if any, and the technology category (substitution, minimization, simplification and/or moderation).

\* \* \* \* \*

23. Amend § 68.180 by:

a. Revising in paragraph (a)(1) the text “pursuant to § 68.10(g)(3)” to “pursuant to § 68.10(1)(3)”.

b. Revising paragraphs (b)(2)(iii) and (iv).

c. Adding paragraph (b)(2)(v).

The revisions and addition read as follows:

**§ 68.180 Emergency response program and exercises.**

\* \* \* \* \*

(b) \* \* \*

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(2) \* \* \*

(iii) The date of the most recent field exercise, as required in § 68.96(b)(1);

(iv) The date of the most recent tabletop exercise, as required in § 68.96(b)(2); and

(v) What mechanisms are in place to notify the public and emergency responders when there is a need for emergency response.

### **Subpart H—Other Requirements**

24. Amend § 68.210 by:

a. Revising the introductory text of paragraph (d).

b. Removing paragraphs (d)(7), (e), (f), (g), and (h) .

The revisions read as follows:

#### **§ 68.210 Availability of information to the public.**

\* \* \* \* \*

(d) *Chemical hazard information.* EPA shall provide through an online Public Data Sharing tool, the following chemical hazard information for all regulated processes:

\* \* \* \* \*