

RMP Reconsideration Final Rule Fact Sheet

Overview

EPA has finalized changes to the Risk Management Program (RMP) Amendments (82 FR 4594, January 13, 2017) to better address potential security risks, reduce unnecessary and ineffective regulatory burdens on facilities and emergency responders, harmonize rather than conflict with the Occupational Safety and Health Administration's (OSHA) Process Safety Management standard, address the concerns of stakeholders, and save Americans roughly \$88 million a year.

The changes are intended to promote better emergency planning and public information about accidents and continue the trend of fewer significant accidents involving chemicals regulated under the RMP rule. The changes reflect issues raised in three petitions for reconsideration of the RMP Amendments as well as other revisions EPA identified in its review of that rule. The RMP Reconsideration Final Rule was signed on November 20, 2019.

Why did EPA reconsider the RMP Amendments Final Rule?

EPA reconsidered the final RMP Amendments Rule based on objections highlighted in three petitions submitted to the Agency under Clean Air Act Section 307(d)(7)(B) and based on its own review of that rule. The final rule addresses:

- Potential security risks associated with new information disclosure requirements introduced in the final Amendments rule.
- The Bureau of Alcohol, Tobacco, Firearms and Explosive's (BATF) finding that a key incident affecting US chemical safety policy, a fire and explosion in West, Texas, was caused by a criminal act (arson) rather than being the result of an accident.
- Concerns with the costs of the Amendments rule.
- Concerns that EPA did not adequately coordinate its rulemaking with OSHA.

EPA made changes to the RMP Amendments final rule to:

- Maintain consistency of RMP accident prevention requirements with the OSHA Process Safety Management (PSM) standard;
- Address security concerns;
- Reduce unnecessary regulations and regulatory costs;
- Revise some compliance dates to provide necessary time for program changes.

What are the changes included in the RMP Reconsideration Final Rule?

Major Provisions That Were Added in the RMP Amendments Rule and Are Rescinded in This Rule:

RESCINDED	RATIONALE
Third-Party Audits	
Requirement to hire a third-party (narrowly defined) to conduct the compliance audit after an RMP reportable accident (or after an implementing agency determines that conditions at the stationary source could lead to an accidental release of a regulated substance or identifies problems with the prior third-party audit)	• Rescinded. • Not necessary. EPA retains the ability to require third party audits under appropriate circumstances.
Safer Technologies and Alternatives Analysis (STAA)	
Requirement to assess theoretically safer technology and alternative risk management measures applicable to eliminating or reducing risk from process hazards; to consider inherently safer technology methods, such as chemical substitution and process redesign, to reduce risk; and to evaluate the practicability of any inherently safer technologies and designs considered.	• Rescinded. • Not practical to implement or necessary given that the evidence does not demonstrate reduction in accidents. • The costliest provision of the RMP Amendments accounting for \$70 million of the roughly \$88 million in annual cost savings from this rule. • Can be required in appropriate circumstances. • The RMP Amendments rule did not require implementation of any technologies considered; therefore, this rescission results in no impact on safety. • The RMP rule's existing Process Hazard Analysis provisions already encourage facilities to implement safer technologies by requiring periodic re-evaluation of process hazards and implementing appropriate hazard controls.

Incident Investigation Root Cause Analysis	
Requirement to conduct and document a root cause analysis after an RMP reportable accident or a near miss	Rescinded to maintain consistency with OSHA PSM standard. Many facilities may already use root cause analysis for incident investigations.
Facility Chemical Hazard Information	
Information very broadly defined must be made available by facility to public on request	- Rescinded. During interagency review of the RMP Amendments in 2016, one agency warned that requiring release of this information “could assist terrorists in selecting targets and/or increase the severity of an attack.” - This rescission addresses those concerns by eliminating the significant risk of the compelled release of information that could pose a security/terrorism threat without a demonstrated need for the information. - The information that is available to the public is listed below.
Other ‘minor’ prevention program changes	Mostly rescinded.

Retained Requirements with Modifications:

RETAINED/MODIFIED	RATIONALE
Enhanced Local Emergency Coordination Requirements	
<u>Retained</u> the requirement that facilities must coordinate annually with local response organizations and document coordination activities	- Worked well. - Good coordination between facilities and local responders is critical to reducing the impact(s) of incidents. - Compliance date: March 14, 2018 (Court mandate made this effective as of September 21, 2018)
<u>Modified</u> provision to reduce potential security risks associated with avoiding the unnecessary and open-ended information disclosure provision.	- Modifications enable emergency response planners to obtain information “necessary for” planning and implementation of local emergency response plans. - Compliance date specified above.

Emergency Exercise Provisions	
<u>Retained</u> annual notification drills	- EPA views these drills as important to confirm that emergency contact information is accurate and up to date. Compliance date: - Old: March 15, 2021 - New: Perform first notification exercise by five years after date of FR publication.
Tabletop and Field Exercises	
<u>Retained</u> requirement to perform field and tabletop exercises	- EPA views these exercises as important components of an emergency response program because they provide essential training for facility personnel and local responders Compliance date: - Old: Plan and schedule developed by March 15, 2021 - New: By four years after date of FR publication, the owner or operator shall have developed plans for conducting emergency response exercises.
<u>Retained</u> frequency of tabletop exercises (at least once every three years); Tabletop exercises involve discussion of actions (often in a role-playing mode) a facility and local responders would take to respond to an accidental release and are frequently part of a successful training program for facility personnel and local responders.	- Allows participants to identify key areas of communication and coordination between a facility and local responders. - Retaining the 3-year tabletop exercise frequency will ensure that local responders (many of whom in rural areas are volunteers) and facilities conduct regular emergency training without excessive resource demands. - Compliance date: - Old: March 15, 2021 - New: Perform first tabletop exercise by date seven years after date of FR publication.

Modified frequency of field exercises by removing the minimum frequency requirement of at least every ten years for field exercises; Modified to require owner/operator to consult with local emergency response officials to establish an appropriate frequency	• Modified to reduce burden on local emergency responders – many of whom in rural areas are volunteers. • Requirement for sources to have field exercises at least every ten years is impracticable because the burden it would impose on many local emergency response organizations with multiple RMP-covered facilities and small counties with limited resources – many of whom in rural areas are volunteers. • Compliance date: ○ Old: March 15, 2021 ○ New: No specified deadline to perform the first field exercise, other than that established by the owner or operator's exercise schedule in coordination with local response agencies.
Modified scope and documentation provisions for both field and tabletop exercises by only recommending, and not requiring, items specified for inclusion in exercises and exercise evaluation reports, while still requiring documentation of both types of exercises.	• Modified to reduce burden on facilities and local emergency responders – many of whom in rural areas are volunteers. • Compliance date for exercises specified above.
Facility Public Meeting	
Retained with modifications the requirement that a facility must hold a public meeting within 90 days of accident with an offsite impact (i.e. known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage)	• Modified the requirement to hold a public meeting after an incident that has offsite impacts, which will be the events of greatest public interest, as contrasted with releases with onsite impacts only. • In addition, public exchanges of information will improve the quality of incident investigations because the public may possess information the facility does not, such as information about public impacts. • Compliance date retained from RMP Amendments rule: Comply following any RMP reportable accident with offsite impacts that occurs after March 15, 2021.

Under this rule what information will be available to the public?

Under the final RMP Reconsideration rule, members of the public can continue to obtain access to RMPs through three different means:

- Read-only access to the full version of facility RMPs at reading rooms by appearing in person at a Federal reading room;
- Read-only RMP access directly from the local emergency planning committee in the location where the person lives or works; or
- Submitting a FOIA request to EPA.

In addition, the following information is available to the public and local emergency responders under the Emergency Planning and Community Right-to-Know Act (EPCRA), which was put in place before RMP:

- Facility name and location;
- Emergency contact information;
- Name of hazardous chemical at the facility above the threshold;
- Amount of the hazardous chemical (including the max amount on any single day and average daily amount);
- Max number of days the hazardous chemical is present at the facility;
- Type of storage and storage conditions; and
- Precise location of the hazardous chemical at the facility.

The final RMP Reconsideration rule rescinds the requirement for an owner or operator to provide, within 45 days of receiving a request by any member of the public, specified chemical hazard information for all regulated processes.

- This was rescinded because the consolidation of the required chemical hazard and facility information could highlight the vulnerabilities of a facility and potentially increase the risk of a terrorist attack on some facilities. It would have allowed anonymous requests for information, which prevented the ability to identify or screen the requester and made it easier to obtain this sensitive information about facilities around the country.
- This provision was not needed to ensure communities can obtain information about local facilities. This rule strikes the proper balance between a community's right-to-know and facility security and is responsive to the security concerns expressed by other agencies since 2016.

What information is available to local emergency responders under this rule?

This rule ensures emergency responders have access to all of the necessary safety information. The final RMP Reconsideration rule retains all of the coordination requirements from the RMP Amendments. The final rule clarifies that local emergency responders can obtain "other information necessary for developing and implementing the local emergency response plan."

What is EPA doing to prevent future incidents like the one that occurred in West, Texas in 2013?

The fire at the West Fertilizer facility was caused by arson¹ and involved a chemical² not covered by any version of the RMP rules. Therefore, none of the RMP requirements – whether promulgated by the previous administration or this administration – prevent criminal acts of arson or would have applied to the chemical involved in the fire and explosion at this facility.

Accident prevention is a top priority at EPA. This final rule retains all of the prevention provisions that have resulted in the long-term trend of fewer significant chemical accidents, which have declined more than 50% since the original requirements were put in place in 1999. The data demonstrate that the original RMP rule, which we are enhancing today, is effective at detecting, preventing, and mitigating accidental releases.

From 2007-2016, at least 90% of RMP facilities had no reported accidents and nearly half of accidents occurred at less than 2% of facilities reporting multiple releases. These data support EPA's risk-based approach that emphasizes compliance and focuses attention on the outliers through its current [National Compliance Initiative for Reducing Risks of Accidental Releases at Industrial and Chemical Facilities](#). EPA is prioritizing inspections and enforcement on high risk facilities and recently entered into the largest-ever settlement in the history of enforcing the RMP rule, valued at approximately \$150 million, in 2018.

¹ On May 11, 2016, the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATF) announced its conclusion that the fire at the West Fertilizer facility in 2013 was caused by arson and not a facility accident. The 2017 RMP Amendments final rule acknowledges this finding.

² The incident involved ammonium nitrate, which is often used as fertilizer and is not an RMP regulated substance. Following the West Fertilizer fire, EPA solicited public comment in 2016 on potential changes to the list of RMP regulated substances, including what actions to take to address ammonium nitrate. In the 2017 RMP Amendments, EPA did not propose revisions to the list of regulated substances.