

## Proposed EPA Revisions to RMP Rule Could Increase Burden on Chemical Facilities

On March 14, 2016, the United States Environmental Protection Agency (EPA) issued proposed revisions to EPA's Risk Management Program or "RMP" regulations under §112(r) of the Clean Air Act. EPA's proposal is intended to improve chemical process safety, assist local emergency authorities in planning for and responding to accidents, and improve public awareness of chemical hazards at regulated sources. However, the rule has been criticized for including overly stringent requirements, such as those that would trigger third party audits, and for creating a potential burden on local emergency planning committees to receive and protect sensitive information.

EPA's proposed RMP revision was spurred by an August 1, 2013 Executive Order following several major chemical accidents in the U.S., including most notably an explosion at a fertilizer facility in West, Texas that caused several fatalities. The Executive Order required various federal agencies, EPA and OSHA among them, to form a Chemical Facility Safety and Security Working Group to identify measures to minimize the occurrence of major chemical incidents at chemical facilities. The Working Group's resulting May 1, 2014 report to President Obama recommended a number of initiatives, including modernizing the RMP.

EPA's existing RMP regulations have been in effect since the late 1990s, and require stationary sources using threshold quantities of listed toxic and flammable substances to develop and implement an RMP. The RMP rule contains numerous detailed requirements and affects a broad range of industrial sectors. RMPs must include a process hazard analysis or "PHA" (modeled on OSHA's Process Safety Management standards) and must analyze the possible off-site consequences of the release of regulated substances. Regulated facilities must also conduct regular inspections of process equipment, record standard and emergency operating procedures for regulated processes, train relevant personnel in those procedures and conduct regular safety and compliance audits.

EPA's proposed RMP revisions occupy approximately 125 pages and embody, among other things, revised PHA requirements for certain facilities that include a safer technology and alternatives analysis (including inherently safer technologies (ISTs)). The rule would also require third-party audits following an RMP reportable accident, or when ordered by an implementing agency based on noncompliance with accident prevention requirements. Similarly, the rule would require a "root cause investigation" for all RMP reportable accidents and "near misses" within 12 months of the incident. In addition, certain RMP facilities would be required to coordinate annually with local emergency responders to ensure response capabilities exist and to test their emergency response program through notification, tabletop, and/or field exercises. EPA would also require all RMP facilities to provide specified chemical hazard information to local emergency response officials, as well as public meetings once every five years and within 30 days of an RMP reportable accident.

The Clean Air Act currently authorizes penalties for RMP violations of up to \$37,500 per violation per day. EPA's increasing emphasis on RMP enforcement has been marked by average civil penalties that have risen from approximately \$6,000 in 2009 to approximately \$33,000 in 2013. Because RMP violations typically consist of paperwork deficiencies which may persist for years without discovery, penalties for seemingly minor violations may result in large penalties. It therefore seems likely that regulated chemical facilities will be at even greater risk of enforcement under a more detailed, rigorous RMP program.

EPA will be accepting comments until May 13, 2016 on the proposed RMP amendments, which may be viewed at: <https://www.epa.gov/rmp/proposed-changes-risk-management-program-rmp-rule>.

To learn more, contact [Steven J. Ricca](mailto:sricca@bsk.com) at 716.416.7047 or [sricca@bsk.com](mailto:sricca@bsk.com).



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