

INSIGHTS

EPA Proposes Changes to Risk Management Plan Rules

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On August 19, the U.S. Environmental Protection Agency (EPA) posted the pre-Federal Register publication of its latest effort to revise the Risk Management Plan (RMP) rule – this time titled the “Safer Communities by Chemical Accident Prevention” or SCCAP rule. EPA proposes to reinstate many of the 2017 revisions (e.g., third-party audits, safer technology analysis, and enhanced information sharing with the public) that it rescinded in 2019, but the new proposed rule would do so in a more limited manner. Consistent with other EPA actions under the Biden Administration, the key underlying principles supporting the changes are reducing the impacts of climate change and ensuring that overburdened environmental justice communities have access to detailed information about nearby facilities to assist with their participation in activities that can affect their neighborhoods.

Some highlights to the proposed revisions include:

- Clarifications specifying that natural hazards, power loss, and proximity to communities should be part of the process hazard analysis (PHA)
- Requiring a Safer Technologies and Alternative Analysis (STAA) as part of the PHA for any refinery using hydrofluoric acid (HF) in an alkylation unit and for refineries and chemical manufacturers and other facilities in NAICS codes 324, 325 that are within a 1-mile radius of another RMP facility
- Specifying that a root cause analysis must be performed as part of the incident investigation that follows “RMP-reportable” releases
- Third-party compliance audits for a facility that has two RMP-reportable accidents within a 5-year period or after any RMP-reportable accident at a refinery or chemical plant that is located within a 1-mile radius of another RMP facility – though auditor independence requirements are relaxed when compared to the 2017 rule
- Employee participation relating to the implementation of recommendations from PHAs, incident investigations, and audits; stop-work authority in certain circumstances; and reporting accidents and other RMP non-compliance issues

- Field training exercises with local responders at least once every 10 years, with the locals able to opt out (current rule does not establish a minimum frequency)
- Requirements around prompt community-wide notifications of RMP-reportable releases
- More information available to the public, including the recommendations from hazard analysis and code/standard gap analysis that the facility declines to implement and STAA implemented since last PHA
- Requirement to keep hot work permits for 5 years

While heavily criticizing the Trump administration 2019 Reconsideration Rule, which revised or eliminated many of the elements added by the 2017 Obama Administration RMP revisions, the agency did take some lessons from the 2017 and 2019 rules and has supported the proposal with analysis of the RMP accident history database, highlighting certain historical accidents in the US and overseas. While this proposal does cure some of the weaknesses of the original 2017 revisions, many of the policy and implementation concerns are still present (e.g., security concerns about more detailed information publicly available).

If implemented, companies will need to carefully review PHA and compliance audit protocols to match the new requirements and consider how to document instances where they decide not to implement a recommendation as that information would now be subject to public disclosure. Additionally, companies will need to consider how they will communicate with their neighbors as more details about operations and accidents is made available.

The above is not a complete summary of all the proposed revisions. Companies subject to the RMP program should carefully review the proposals and consider potential impacts on their operations. Since the rule is scheduled to have only a 60-day comment period that runs from date of publication in the Federal Register, we thought it best to give you a quick alert so that you can get your experts to review and determine if formal comments should be submitted.

Please contact Steven Cook at 713.221.1355 or steven.cook@bracewell.com or Whit Swift at 512.494.3658 or whit.swift@bracewell.com for further information about the proposal.

The pre-publication proposed rule can be found [here](#).