

EPA Rescinds Majority of 2017 RMP Requirements

Insight — 11/26/2019

On November 20, 2019, EPA issued the Risk Management Program (RMP) Reconsideration (Final Rule), rescinding the majority of the 2017 RMP Amendments. The Final Rule reduces regulatory burdens on RMP-covered facilities and ensures consistency between OSHA Process Safety Management (PSM) standards and the RMP requirements for Program 2 and Program 3 covered facilities. EPA signaled that rather than promulgate new regulations, it will focus its effort on ensuring compliance with existing RMP requirements.

By rescinding the vast majority of the substantive provisions added in 2017, this rulemaking has the greatest impact on Program 2 and Program 3 covered facilities—from refineries and chemical manufacturing facilities to gas processing plants and other large-scale industrial and agricultural sources.

Facilities with covered processes must incorporate these program elements into either an initial RMP or an RMP resubmission made after December 2024. Below is an overview of the impacts of the Final Rule on RMP covered facilities:

Accident Prevention Program

- Facilities with Program 2 and Program 3 processes that must undertake incident investigations:
 - Are no longer required to conduct a “root cause” analysis as part of an incident investigation after an RMP-reportable accident or an incident “that could reasonably have resulted in a catastrophic release.”
 - Must conduct incident investigations for incidents that “could reasonably have resulted in a catastrophic release,” but are not required to report data on these events.
 - EPA deleted the language referring to these events as a “near miss” to maintain consistency with PSM requirements, but this change does not alter the substantive triggers for incident investigations.
 - Must develop a report following the incident and establish an incident investigation team that includes at least one person knowledgeable about the process and others experienced with accident investigation.
 - EPA retained this provision for Program 2—and not just Program 3 facilities—and asserts that broadening the requirement to cover Program 2

facilities does not create any inconsistencies with the OSHA PSM program.

- Do not need to incorporate into their incident investigation reports certain conditions, including a 12-month completion deadline and a schedule to address recommendations.
- Program 2 and 3 facilities do not need to conduct independent third-party compliance audits after an RMP reportable incidents or for agency-directed audits.
- Compliance audits at Program 2 and Program 3 facilities do not need to address each covered process.
- Training requirements at Program 2 and Program 3 facilities are limited to employees operating a process. EPA removed the regulatory language explicitly requiring supervisors and others involved in a process to be involved in training; however, EPA notes that it has traditionally interpreted these provisions to apply to “any worker that is involved in operating a process, including supervisors.”
- Refineries, chemical manufacturing, and paper manufacturing facilities no longer are required to conduct a safer technologies and alternative analysis as part of their process hazard analysis.

Emergency Response Provisions

- All facilities must continue to provide local emergency planning and response organizations with the sources' emergency response plan and updated emergency contact information, but the Final Rule limits the contact information required and incorporates classified and restricted information protections.
- Program 2 and Program 3 facilities still must undertake annual notification and field and tabletop exercises, but the new rule provides facilities with four years after the date of publication of the Final Rule in the Federal Register to develop plans for conducting these exercises.
 - Tabletop exercises must be performed every three years, but the first exercise must be performed seven years after the date of publication in the Federal Register.
 - Field exercise requirements are retained, but the requirement for sources to perform these exercises every 10 years is rescinded and replaced with a requirement that facilities consult with local emergency response officials to establish an appropriate frequency. The compliance date of March 15, 2021 is rescinded and no deadline is in place (except the requirement that the source must coordinate with local emergency responders).
 - The scope of these exercises is no longer mandated, but documentation is still required.
- All facilities that experience an accident with offsite impacts—including known offsite deaths, injuries, evacuations, sheltering in place, property or environmental damage—continue to hold a

public meeting within 90 days of the accident.

- The compliance date for a public meeting would occur after any RMP reportable accident with offsite impacts that occurs after March 15, 2021.

Holland & Hart's EHS team guides facilities in the energy, mining, industrial and agricultural sectors through the RMP and PSM accident prevention program requirements, and has a depth of experience in managing the aftermath of industrial incidents. If you have questions about the RMP rule, or the interplay between PSM and RMP at your facility, please contact a member of our EHS team.

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