

# What if Congress Doesn't Overturn or the Administration Withdraw EPA's New Chemical Risk Management Program Rule Amendments?

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On December 21, 2016, U.S. Environmental Protection Agency (EPA) Administrator Gina McCarthy signed a final rule to amend the Agency's longstanding Clean Air Act (CAA) Section 112(r) chemical "Accidental Release Prevention" regulations—also known as the "Risk Management Program" regulations.<sup>1</sup> The fate of this rule, applicable to numerous chemicals, is uncertain. It is scheduled to be published in the Federal Register before President Obama leaves office, but will not take effect until two months later, and has been targeted for early attention and likely vacating by Congress or the new Administration on its own.

But, if the RMP amendments survive, what will they mean?

The Risk Management Program rules were first adopted in 1996 to establish systems to reduce the likelihood or severity of accidental releases of listed dangerous chemicals and thus protect the safety of facility employees, emergency responders, and the public. However, in August 2013—a few months after a devastating and highly publicized explosion occurred at a fertilizer facility in West Texas—President Obama ordered EPA to take steps to strengthen the rules.<sup>2</sup> These amendments are the result.<sup>3</sup>

The base regulations target stationary sources (facilities) that hold specific "regulated" substances in excess of threshold quantities that vary by chemical (e.g., 500 lbs., 10,000 lbs., etc.). The regulated substances include many widely used chemicals such as butane,

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hydrogen, propane, and methane as well as specialty and industrial-use chemicals.

Under the base regulations, covered facilities are required to assess their potential chemical release impacts, undertake steps to prevent releases, plan for emergency response to releases, and summarize this information in a risk management plan (RMP) submitted to EPA. The release prevention steps vary depending on the type of activities (and processes) involved. EPA shares RMP information with state and local officials to help them plan for and prevent chemical accidents and releases using facility-specific information.

The new amendments expand requirements related to chemical process safety, local authority accident planning and response, and public awareness of chemical hazards at regulated sources. They add requirements such as additional analyses of safer technology and alternatives as part of the hazard analysis for certain processes; third-party audits and incident investigation root cause analysis for certain processes; enhancements to the emergency preparedness requirements; increased public availability of chemical hazard information; and several other changes to certain regulatory definitions and data elements submitted in risk management plans. More details on the changes are included in the box below.

Typical facilities covered by RMP requirements and thus the new rule include, among others, petroleum refineries, chemical manufacturers, food processors and distributors who have ammonia refrigeration systems, pulp and paper mills, primary and secondary metal manufacturers, propane and agricultural retailers, chemical wholesalers, drinking water and wastewater treatment systems, electric utilities, and Federal installations such as military bases and Department of Energy facilities.

EPA developed this rule with significant public input, including hosting a public hearing on March 29, 2016. EPA made significant revisions to the proposal based on this input. Nonetheless, substantial objections remain. These include objections to the added burdens the amendments impose and to possible security risks from increased availability of information of potential interest to terrorists.

### **Selected Amendments**

- Make certain RMP information available to the public upon request;
- Hold a public meeting within 90-days of an accident subject to reporting under § 68.42 (i.e., an RMP reportable accident);
- Hire a third-party to perform or lead a 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;
- Conduct and document a root cause analysis after an RMP reportable accident or a near miss;
- Conduct and document a Safer Technology and Alternatives Analysis (STAA) for a subset of facilities in North American Industrial Classification System (NAICS) codes 322 (paper manufacturing), 324 (petroleum and coal products manufacturing), and 325 (chemical manufacturing);

- Meet and coordinate with local responders annually to exchange emergency response planning information;
- Conduct an annual notification drill to verify emergency contact information; and
- Responding facilities conduct and document emergency response exercises including:
  - A field exercise at least every ten years, and
  - A tabletop exercise at least every three years.

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<sup>1</sup> Pre-Publication Copy of the Final Amendments to the Risk Management Program (RMP) Rule (U.S. EPA, Dec. 21, 2016) amending 40 C.F.R. Part 68 (available at <https://www.epa.gov/rmp/pre-publication-copy-final-amendments-risk-management-program-rmp-rule>).

<sup>2</sup> Executive Order 13,650, "Improving Chemical Facility Safety and Security," 78 Fed. Reg. 48,029 (Aug. 1, 2013).

<sup>3</sup> EPA also cites as a driver 1,500+ other chemical accidents that were reported by RMP facilities over the past 10 years. According to EPA, the West Texas and other accidents caused nearly 60 deaths; 17,000 people being injured or seeking medical treatment; almost 500,000 people being evacuated or sheltered-in-place; and more than \$2 billion in property damages.