



Mar 23, 2016

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U.S. EPA Continues its Focus on Chemical Risks

Will Your Business be Affected?

On March 14, 2016, U.S. Environmental Protection Agency's proposed amendments to the Risk Management Program (RMP) regulations were published in the Federal Register (81 Fed. Reg. 13,638). The RMP regulations are implemented under Section 112(r) of the Clean Air Act and are designed to prevent chemical accidents at facilities and help local emergency response agencies prepare for and respond to chemical emergencies. These proposed rules are the latest development in U.S. EPA's implementation of the directive in Executive Order 13650 (August 1, 2013) to improve chemical safety and security. On February 18, 2016, U.S. EPA officially added "Reducing Risk of Accidental Releases at Industrial and Chemical Facilities" as one of its National Enforcement Initiatives for 2017–2019.

The RMP regulations apply to any processes at stationary sources with regulated substances in excess of designated threshold quantities. Importantly, the RMP rules do not apply only to large chemical and industrial facilities, but they also commonly apply to other smaller operations such as ammonia refrigeration facilities, wastewater treatment plants, propane storage facilities, warehouses, and chemical distributors.

Under the RMP regulations, facilities subject to the rule are required to evaluate potential impacts in the event of an accidental release, and develop and implement a program to prevent releases, plan for emergency response to releases and submit a Risk Management Plan that summarizes this information to U.S. EPA. Such facilities are subject to compliance inspections by U.S. EPA.

The proposed amendments would add a number of requirements to the RMP regulations, including:

- Requiring a root cause analysis within a year of a catastrophic release or a near miss. Information from the root cause

analysis would be included in the RMP accident history.

- Performance of third-party audits at facilities that have an RMP reportable accident. U.S. EPA may also require a third party audit at any covered facility. In addition, the rule would require facilities to provide draft third-party audit reports or other documents to U.S. EPA upon request.
- Evaluation of safer technology alternatives as part of the process hazard assessment for Program 3 facilities in the categories of paper manufacturing (NAICS Code 324), coal and petroleum products manufacturing (NAICS Code 322), and chemical manufacturing (NAICS Code 325).
- Facilities that are not emergency response facilities must coordinate with local emergency responders at least annually. Coordination with local authorities must be documented. If local public responders are not capable of responding to accidental releases, the facility can satisfy the emergency response requirement by using response contractors or mutual aid agreements with other sources.
- Requiring emergency response exercises, including annual notification exercises, for all facilities. Responding facilities would be required to conduct annual tabletop emergency response exercises and field exercises every five years, followed by a written report documenting the exercise within 90 days.
- Requiring facilities to disclose incident investigation reports, summaries of inherently safer technologies adopted, and emergency response exercise reports to their local emergency response committee (LEPC).
- Consistent with U.S. EPA's Next Generation Compliance initiative, facilities would be required to provide the public with chemical hazard information, summaries of emergency response exercises and LEPC contact information in an easily accessible manner, such as on the company website, posting in public libraries, or publishing it in local papers.

Several of these proposed amendments, including the third-party audit requirement and the emergency response exercises, could add significant costs and increase the burden on facility personnel,

especially at smaller facilities that are subject to the RMP. In addition, the requirement that facilities coordinate and document cooperation with local emergency responders and perform emergency response exercises has the potential of becoming very burdensome. The proposed rule states that compliance with the emergency response exercise requirements does not require participation by the local emergency responders (typically the fire department), but that the local emergency responder must be invited. However, if the annual coordination activities indicate that the local emergency response capabilities are not adequate, the facility would be required to develop its own emergency response program, contract with a response contractor, or enter into a mutual aid agreement with another source. Under the proposed rule, the burden of ensuring local emergency responder capabilities is placed on the facilities.

Beyond the added regulatory requirements under the proposed rule, facilities that are currently subject to the rule can expect U.S. EPA's focus in this area to continue to increase. As noted above, U.S. EPA recently added "Reducing Risk of Accidental Releases at Industrial and Chemical Facilities" as a National Enforcement Initiative for 2017–2019. Even prior to this formal designation as a National Enforcement Initiative, U.S. EPA was active in its enforcement of the RMP regulations, both in the number of cases brought and the amount of civil penalties assessed. In 2016, U.S. EPA has already settled over 30 RMP cases resulting in nearly \$900,000 in civil penalties and Supplemental Environmental Projects to resolve the violations.

Comments to the proposed rule are due on or before May 13, 2016. For more information on the proposed rule, please contact [Chris Kahn](#), [Kevin McMurray](#) or any other attorney in Frost Brown Todd's [Environmental Practice Group](#).

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