

The image features a red banner at the top left with the BakerHostetler logo. The background is a photograph of an industrial facility with large, curved, orange-colored structures and red piping. A semi-transparent white box in the center contains the title and date.

BakerHostetler

RMP Rulemaking Update

August 21, 2024

Introductions

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Origins of Process Safety Regulation

- Following several high-profile incidents in the late 1980s, Congress passed the 1990 Clean Air Act Amendments
- These amendments led to promulgation of Risk Management Program (RMP) regulations in 1996
 - As well as the OSHA PSM standard in 1992 and the creation of the Chemical Safety Board
- The RMP rule implements Section 112(r) of the 1990 Clean Air Act amendments to improve chemical accident prevention at facilities
 - The RMP rule requires facilities that use extremely hazardous substances to develop a Risk Management Plan
- Currently, there are approximately 12,000 facilities regulated by the RMP rule

31668 Federal Register / Vol. 61

**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 68

[FRL-5516-5]

RIN 2050-AD26

**Accidental Release Prevention
Requirements: Risk Management
Programs Under Clean Air Act Section
112(r)(7)**

AGENCY: Environmental Protection
Agency.

ACTION: Final rule.

New RMP Rulemaking

10 Years in the Making

- Executive Order 13650 – August 2013
- 2017 RMP Amendments – January 2017
 - Included provisions for STAA, Third Party Compliance Audits, etc.
- RMP Amendments Stay Rule – June 2017
 - Stayed implementation for 2 years; stay was vacated in August 2018
- RMP Reconsideration Rule – December 2019
 - Rolled back most provisions of 2017 RMP Amendments
- Change of Administration – January 2021
- Proposed “Safer Communities by Chemical Accident Prevention” Rule – August 2022
- **Final Amended Rule – March 11, 2024**



What's new in the Amended Rule?

Process Hazard Analysis (PHA)

Safer Technology and Alternatives Analysis (STAA)

Natural Hazards and Potential Power Loss

Facility Siting

RAGAGEP Considerations

Compliance Audits

Third-Party Audits

Incident Investigations

Process Safety Information (PSI)

Employee Participation

Emergency Response

Public Information Availability

PHA – STAA

- New requirement to conduct a Safer Technologies and Alternatives Analysis (STAA) as part of PHA
 - Evaluation must include (in this order):
 - Inherently Safer Technology or Design (IST or ISD)
 - Passive Measures
 - Active Measures
 - Procedural Measures
- Additional requirement to conduct a practicability assessment for IST/ISD
 - Applies to 1) processes at chemical, petroleum, and coal manufacturing (NAICS 324 or 325) facilities w/in 1 mile of another 324/325 facility, 2) petroleum processes with hydrofluoric acid in an alkylation unit, and 3) processes at NAICS 324 or 325 facilities that have had at least 1 RMP-reportable accident since the facility's most recent PHA
 - Includes determining and documenting the **practicability** of the IST or ISD considered
 - Additional requirement for this subset to implement at least 1 IST/ISD **or** 1 passive measure at the facility **or** a combination of active and procedural measures equivalent to or greater than the risk reduction of a passive measure after each STAA

Compliance Date:
May 10, 2027

PHA – STAA

- EPA Clarification on Compliance Date:
 - “Sources subject to this provision are among the largest and most complex sources regulated under 40 CFR part 68, and therefore PHAs and PHA updates and revalidations at these sources typically require a significant level of planning. While PHA updates are normally done at five-year intervals, the Agency recognizes that some sources may be far enough along with their PHAs that they will not be able to schedule their STAAs as part of their PHAs. Such sources have the option of not performing STAA as part of their PHA **so long as they perform a STAA within 3 years of the effective date of the final rule**. Considering updates or revalidations to the initial STAA activities will likely require less effort, the Agency expects many of these sources will later incorporate further STAA updates on their normal PHA update schedule.”

Compliance Date:
May 10, 2027

PHA – Natural Hazards and Potential Power Loss

- Must address and plan for “natural hazards that could cause or **exacerbate** an accidental release”
 - Natural hazards include “meteorological, climatological, environmental or geological phenomena that have the potential for negative impact, accounting for impacts due to climate change”

Currently Effective

- Must also explicitly identify the safeguards used or needed to control the hazards or prevent equipment malfunction or human error including standby or emergency power systems (*i.e.*, power loss)
 - Requires monitoring equipment associated with prevention and detection of accidental releases from covered processes to have standby or backup power to provide continuous operation

Compliance Date:
May 10, 2027

PHA – Facility Siting

- As part of hazard reviews (§ 68.50) and process hazard analyses (§ 68.67), facility (stationary source) siting must include evaluation of the placement of processes, equipment, buildings, and hazards posed by proximate facilities, and accident release consequences posed by proximity to the public
- Applies to existing facilities
 - Per EPA, analyze the hazards and use the information *reasonably* when determining what measures should be undertaken
- What are proximate facilities?
 - Those within release impact zones

Currently Effective

PHA – RAGAGEP Considerations

- Mandates consideration of the latest Recognized and General Accepted Good Engineering Practices (RAGAGEP) when conducting PHAs
 - Specifically, requires addressing “any gaps in safety between codes, standards, or practices to which the process was designed and constructed and the most current version of applicable codes, standards, or practices”
- Declined recommendations from the PHA between the facility’s existing RAGAGEP and the most current version of RAGAGEP must be included in the Risk Management Plan
- Consider retroactivity

Currently Effective

Third-Party Compliance Audits

Compliance Date: May 10, 2027

- Next compliance audit must be a third-party audit if:
 - There has been an RMP-reportable accident from a covered process, or
 - An implementing agency requires it due to conditions at the stationary source that could lead to an accidental release, or
 - If a previous third-party audit failed to meet the competency or independence criteria
- Within 90 days of audit completion, owner/operator must create a Findings Response Report
 - Includes determining an “appropriate response” to all findings
 - Includes creating a schedule for promptly addressing deficiencies
 - Requires certification (§ 68.80(f)(iv))
- Declined findings must be included in Risk Management Plan with justifications
- Submission to Board of Directors Audit Committee

Incident Investigations

- Applies to incidents meeting the 5-year accident history reporting requirements (§ 68.42)
- Requires an owner or operator to investigate specific factors:
 - Initiating event
 - Direct contributing factors
 - Indirect contributing factors
 - Root causes
 - New definition: “a fundamental, underlying, system-related reason why an incident occurred that identifies a correctable failure(s) in management systems and, if applicable, in process design”
- Root causes must be determined by conducting an analysis for each incident using a “recognized method”
- The Incident Report must be completed within 12 months of the incident
 - “Unless the implementing agency approves, in writing, an extension of time”

Compliance Date: May 10, 2027

Process Safety Information

- Refinement to language to clarify requirement to keep PSI “up to date” (§ 68.65)
 - Applies to program 2 and 3 processes

⦿ § 68.65 Process safety information.

- (a) The owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required by this part and shall keep process safety information **up to date**. The compilation of written process safety information is to enable the owner or operator and the employees involved in operating the process to identify and understand the hazards posed by those processes involving regulated substances. This process safety information shall include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process.

Currently Effective

Employee Participation

- Employee participation required on addressing, correcting, resolving, documenting, and implementing recommendations and findings from PHAs, compliance audits, and incident investigations
- Requires employee access to PHAs and other information under RMP Rule
 - Along with annual reminder that this information is available
- Requirement to provide stop work authority to knowledgeable employees
- Requirement to develop and implement a process to allow employees to make anonymous reports to the owner or operator and/or to EPA, including:
 - Unaddressed hazards that could lead to a catastrophic release
 - Unreported RMP-reportable accidents
 - Other RMP non-compliance
- Training required

Compliance Date: May 10, 2027

Emergency Response

- Maintain and implement procedures for informing the public and agencies about accidental releases (Non-responding facilities)
 - Compliance Date: May 10, 2027
- Partner with local emergency response agencies to ensure community notification system (Responding and non-responding facilities)
 - Compliance Date: May 10, 2027
- Make sure mechanisms are in place to notify emergency responders of need for response, including timely data and information (Responding and non-responding facilities)
 - Compliance Date: May 10, 2027
- Consult/coordinate with local emergency response officials to establish the appropriate frequency for field exercises (Responding facilities)
 - Compliance Date: May 15, 2027
- New Mandatory Documentation/Elements of Exercise Evaluation Reports (Responding facilities)
 - Compliance Date: May 10, 2027

Public Information Availability

- Chemical hazard information must be provided to certain members of the public, upon request (within 45 days of receiving the request)
 - The members of the public who can request this information include “persons residing, working, or spending significant time within a six-mile radius of the facility”
 - Verification requirement
 - The information required includes the names of regulated substance held in a process, safety data sheets, five-year accident history, emergency response program information, the list of scheduled emergency response exercises (except those within one year of the request), and LEPC contact information
 - Also includes certain declined recommendations and justifications from PHAs
 - This information must be provided in at least two major languages used in the community other than English, if requested
 - Ongoing notification requirement
 - 5-year recordkeeping requirement

Compliance Date: May 10, 2027

Notable

- Hot Work Permits (§ 68.85)
 - Change in document retention requirement to 3 years

Currently Effective



Updating Risk Management Plans

- Must include in Updated Risk Management Plan (among other things)
 - IST/ISD measures implemented since the last PHA
 - Declined recommendations and justifications from PHAs related to
 - Natural hazards
 - Potential power loss
 - Facility siting
 - Declined recommendations from the gap analysis between the facility's existing RAGAGEP and the most current version of RAGAGEP
 - Declined findings from third-party compliance audits and justifications

Compliance Date: May 10, 2028
(4 years)

Legal Challenges

- Industry Coalition sued EPA over the RMP updates
 - *Alliance for Chemical Distribution, et al., v. EPA*
- Group of Attorneys General also challenged the amended RMP rule
 - *State of Oklahoma, et. al. v. EPA*
- Cases were consolidated in the D.C. Circuit
- **Key Takeaway: The RMP rule and its changes are not currently stayed**





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