

Environment, Land Use & Natural Resources ADVISORY

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EPA Finalizes Sweeping New Safety Standards and Public Disclosure Requirements for Chemical Accidents

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On March 1, 2024, the Environmental Protection Agency (EPA) adopted finalized amendments to the Clean Air Act Risk Management Program (RMP) Rule, which is aimed at protecting at-risk communities from chemical accidents. The Safer Communities by Chemical Accident Prevention Rule requires industrial facilities, particularly those in sectors with high accident rates, to comply with new, more stringent requirements for accident prevention, response, and public disclosure of information.

Who Does the Final Rule Apply To?

The Final Rule applies to facilities subject to the chemical accident prevention requirements at 40 CFR Part 68 and covers all 11,740 regulated RMP facilities across the country. These facilities include petroleum refineries, chemical manufacturers and distributors, water and wastewater treatment systems, food and beverage manufacturers, paper manufacturers, and agricultural chemical distributors/wholesalers.

What Does the Final Rule Require?

Measures adopted in the Final Rule include:

- Requiring petroleum refineries and chemical manufacturers to conduct safer technologies and alternatives analysis (STAA) evaluations, with a certain subset of facilities required to conduct inherently safer technologies and designs (IST/ISD) practicability assessments and implement at least one passive measure, or equally protective combination of active measures and procedural controls.
- For incidents meeting the accident history reporting requirements under the RMP Rule, requiring an investigation into the initiating event, direct and indirect contributing factors, and root cause of the incident. A report must be prepared at the conclusion of the investigation within 12 months of the incident. The root cause must identify a correctable failure in management systems and, if applicable, in process design.

- Requiring a third-party audit for an RMP facility following a reportable release under the RMP Rule. Owners or operators must determine an appropriate response to each finding in the audit report, develop and provide a response report within 90 days, and implement and document actions taken to address deficiencies identified in the audit. Audit documents must be provided to the owner's or operator's audit committee of its board of directors.
- Requiring owners or operators to consult with employees on recommendations and findings of process hazard analyses, compliance audits, and incident investigations. Written employee participation plans must allow employees to anonymously report unaddressed hazards, RMP-reportable releases, or noncompliance. Employee participation plans must also contain information on stop-work and shutdown procedures based on the potential for a catastrophic release.
- Requiring owners or operators to provide first responders with timely data and information about accidental releases, partner with local first responders to ensure a community notification is in place, and document the collaboration.
- Requiring an owner or operator to provide certain chemical hazard information upon request by any member of the public residing, working, or spending significant time within a six-mile radius of the facility fence line. The information must be provided in at least two major languages used in the community other than English via website, social media, or other publicly accessible means.

What Should My Facility Do to Prepare?

Regulated RMP facilities should familiarize themselves with the Final Rule and develop plans for compliance. The Final Rule provides three years to comply with many of its new requirements, which are likely to require significant capital investments. The EPA estimates a total annualized cost of \$260 to \$300 million for implementation of the Final Rule, with STAA implementation accounting for the largest share of new compliance costs (\$169 to \$205 million). The EPA further estimates an average cost of \$72,525 for private sector small entities, with 3% of them expected to have costs greater than \$1 million.

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