

# CLIENT ALERT

## EPA Signals Changes to Its Risk Management Plan Rule

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The Environmental Protection Agency published notice in the *Federal Register* on July 31, 2014, that it is considering significant revisions to its Risk Management Plan (RMP) rule, 40 C.F.R. pt. 68. EPA's announcement comes as a [request for information](#) entitled "[Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112\(r\)\(7\)](#)." An RFI often signals a federal agency's intent to pursue notice-and-comment rulemaking.

EPA's RFI was spurred by [Executive Order 13650](#), which President Obama issued on August 1, 2013, in response to an ammonium-nitrate explosion earlier that year at a fertilizer storage and distribution facility in West, Texas. EO 13650 directed EPA — along with the Occupational Safety and Health Administration, Department of Homeland Security, and other agencies with chemical safety and security programs — to lead a working group (E.O. Working Group) to determine, among other things, whether their respective regulatory programs should be revised to prevent similar accidents. In accordance with the goals of the Executive Order, OSHA last December issued a similar [RFI](#) relating to its Process Safety Management (PSM) standard, 29 C.F.R. § 1910.119 ([read our alert on OSHA's RFI](#)).

EPA's RFI asks whether the list of 140 regulated chemicals should be updated. As anticipated in light of earlier agency and E.O. Working Group pronouncements on this topic, EPA devotes considerable attention to explosives, including ammonium nitrate, a chemical which would also be subject to regulation under a proposed [DHS rule](#). When used as an explosive or stored in bulk, ammonium nitrate is regulated by OSHA, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, or both. But the regulation is not comprehensive, and through the RFI, EPA is considering whether "additional action to protect the community is needed." EPA also might add reactive substances — such as peroxides, oxidizers, and combustible dusts — to its list, which now includes only toxic and flammable gases and volatile liquids. A few chemicals have been identified as candidates for removal from the list since no facility has reported data for those chemicals. And EPA is also interested in comments regarding its authority to remove chemicals initially required by statute.

EPA identifies 7 topics in its RFI, including updating the list of regulated substances, that overlap with OSHA's RFI (but while OSHA focuses on worker and workplace safety, EPA focuses on effects on human health and the environment). The overlapping topics include the following:

- Update the list of regulated substances.
- Additional risk-management-program elements.
- Define and require evaluation of updates to applicable recognized and generally accepted good-engineering practices (RAGAGEP).
- Extend mechanical-integrity requirements to cover any safety-critical equipment.
- Require owners and operators to manage organizational changes.
- Require third-party compliance audits.
- Effects of OSHA PSM coverage on RMP applicability.

EPA is also exploring many topics not raised in OSHA's RFI. For example, the agency is considering whether the Clean Air Act's general-duty clause allows it to require regulated entities to identify and implement safer technologies. It also seeks comment on emergency response, including the need for drills, automated detection and monitoring, and coordination with local first responders. The full list of EPA topics not raised in OSHA's RFI includes the following:

- Safer technology and alternatives analysis (an issue which is also subject to lively legislative debate as Congress considers reauthorization of the DHS Chemical Facility Anti-Terrorism Standards (CFATS)).
- Emergency drills to test a source's emergency-response program or plan.
- Automated detection and monitoring for releases of regulated substances.
- Additional stationary-source location requirements.
- Compliance with emergency-response program requirements in coordination with local responders.
- Incident-investigation and accident-history requirements.
- Worst-case release scenario quantity requirements for processes involving numerous small vessels stored together.
- Public disclosure of information to promote regulatory compliance and improve community understanding of chemical risks.
- Threshold quantities and off-site consequence analysis endpoints for regulated substances based on acute exposure guideline level toxicity values.
- Program 3 NAICS codes based on RMP accident-history data.
- The "safety case" regulatory model.
- Streamlining RMP requirements, including whether RMP submissions should be certified by a "senior corporate official, such as the Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, or the equivalent to ensure corporate-wide awareness and accountability in the RMP submission."

Comments and other information in response to the RFI must be submitted to the [RFI docket](#) by October 29, 2014. Given the broad applicability of the RMP rule across many industrial sectors, a rulemaking of the sort contemplated by the RFI could have major operational and economic effects. Affected companies and trade associations thus should give this RFI serious attention and consider submitting comments and other information to EPA soon to get in on the ground floor of any such rulemaking.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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