

2019 RMP Reconsideration Final Rule Questions and Answers

Q. What action did EPA take?

A. EPA finalized revisions to the Risk Management Program (RMP) Amendments (82 FR 4594, January 13, 2017).

Q. Why did EPA take this action?

A. EPA's final rule:

- More reasonably considers costs of the rule;
- Maintains consistency of the RMP prevention requirements with the OSHA PSM standard;
- Better addresses potential security risks;
- Promotes better emergency planning and public information; and
- Maintains the requirements that resulted in fewer significant accidents involving RMP-regulated chemicals.

The final rule addresses issues raised in three petitions for reconsideration of the 2017 RMP Amendments as well as other revisions EPA identified in its review of that rule.

Q. What are the changes to the RMP?

A. EPA has rescinded the following provisions added in the RMP Amendments rule: third party audits, safer technology and alternatives analyses, and incident investigation root cause analysis, as well as definitions that were added to § 68.3 associated with these provisions. The final rule also rescinds certain public information availability provisions and most other minor changes to the prevention program made in the Amendments rule. Other modifications were made to the emergency response provisions (see below).

Q. Why did EPA rescind these provisions?

A. EPA believes the costs of the added Amendments rule provisions were disproportionate to their benefits. EPA believes we can address facility non-compliance without imposing broad new requirements that are not needed for most facilities. Also, EPA wants to better coordinate any changes to the program with OSHA because EPA's program is designed from similar requirements of the OSHA Process Safety Management standard. The pre-Amendments RMP rule requirements have significantly reduced accidents and making changes to these overlapping requirements without a better showing of benefits of the changes would introduce needless complexity and make compliance and oversight more difficult. Some aspects of the Amendments rule would have generated information that, if accessed by the wrong parties, could present a security risk. The final Reconsideration rule places greater emphasis on security risks than the 2017 Amendments.

Q. What are the other minor changes to the program that EPA has rescinded?

A. EPA has also rescinded:

- The Program 2 requirement for the hazard review to include findings from incident investigations. § 68.50(a)(2)
- The Program 2 and 3 incident investigation, §§ 68.60 and 68.81:
 - Requirement for the incident investigation report to have specified added data elements, a schedule to address recommendations, a 12-month completion deadline;

- Requirement for investigating any incident resulting in catastrophic releases that also results in the affected process being decommissioned or destroyed.
- Clarifying text “(i.e., a near miss)” that was added to describe an incident that could reasonably have resulted in a catastrophic release.
- The Program 2 and 3 (§§ 68.54 and 68.71) requirements that applied training requirements to supervisors responsible for process operations as well as minor wording changes describing employees involved in operating a process in § 68.54.
- The Program 3 requirement in § 68.65 for the owner or operator to keep process safety information up-to-date.
- The Program 3 requirement in § 68.67(c)(2) for the process hazard analysis (PHA) to address the findings from all incident investigations required under § 68.81, as well as any other potential failure scenarios.
- The addition of the words “for each covered process” from the Program 2 and 3 compliance audit requirements in §§ 68.58 and 68.79.

Q. What are the minor changes in the requirements that EPA has retained?

A. EPA has retained:

- Two changes that revised the term “Material Safety Data Sheets” to “Safety Data Sheets (SDS)” in §§ 68.48 and 68.65.
- In the Program 2 incident investigation requirements, § 68.60, the change in the term investigation “summary(ies)” to “report(s),” and the requirement to establish an incident investigation team consisting of at least one person knowledgeable in the process involved and other persons with experience to investigate an incident.
- Minor revisions to the Emergency Response Program requirements in § 68.95:
 - In § 68.95(a)(1)(i): The owner or operator must inform Federal and state emergency response agencies about accidental releases (as well as the public and local emergency response agencies, which were already required to be informed under the pre-Amendments rule).
 - In § 68.95(a)(4): The owner or operator must base updates to the source’s emergency response plan on changes at the stationary source or new information obtained from coordination activities, emergency response exercises, incident investigations, or other available information.
 - In § 68.95(c), the term “local emergency planning committee” was replaced with the acronym “LEPC.”

Q. What modifications were made to the emergency coordination provisions?

A. EPA has modified the local emergency response coordination amendments by replacing the phrase in § 68.93(b) that requires facilities to share information that local emergency planning and response organizations identify as *relevant to* local emergency response planning with revised language pertaining to sharing information *necessary for* developing and implementing the local emergency response plan. EPA is also incorporating appropriate classified and restricted information protections to regulated substance and stationary source information required to be provided under § 68.93.

Q. What local emergency coordination provisions were retained?

A. EPA has retained the requirement in § 68.93 for owners or operators to annually coordinate their response needs with local emergency planning and response organizations to determine how the source is addressed in the community response plan and to be sure these organizations are aware of the

presence of regulated substances and quantities, process risks and the source's available response resources and capabilities. They must also provide the local emergency planning and response organizations with the stationary source's emergency response plan if one exists, emergency action plan, and updated emergency contact information, as well as request an opportunity to meet with the local emergency planning committee (or equivalent) and/or local fire department as appropriate to review and discuss these materials. Facilities must document annual coordination activities.

Q. Why did EPA modify the emergency coordination provisions?

A. The changes in the emergency coordination provisions primarily ensure that coordination occurs in a more secure manner than under the 2017 requirements. We have substituted the open-ended and somewhat vague ability of emergency response organizations to obtain any information "relevant to" local emergency response planning for a requirement to provide information "necessary for" the development and implementation of the local emergency plan. "Necessary for" tracks more closely the terms of EPCRA 303(d)(3) and 40 CFR 68.95(c) of the pre-2017 RMP rule. We slightly expand the applicability of this language to include non-responding sources subject to RMP Programs 2 and 3 and to sources not otherwise subject to EPCRA and retained the 2017 rule's provision that allows local emergency response organizations rather than just LEPCs to use this EPCRA-like language.

Q. What modifications were made to the emergency exercise provisions?

A. EPA has made the following changes to the emergency exercise provisions:

- EPA has removed the minimum frequency requirement for field exercises only, but still requires facilities to consult with local response officials on exercise plans and schedules.
- EPA is also establishing more flexible scope and documentation provisions for both field and tabletop exercises by only recommending, and not requiring, items specified for inclusion in exercises and exercise evaluation reports, while still requiring documentation of both types of exercises.

Q. What emergency exercise provisions were retained?

A. No changes were made to the annual notification drill required under § 68.96(a) or the provision for alternative means of meeting exercise requirements of § 68.96(c). The minimum frequency for tabletop exercises remains at three years. Documentation of both tabletop and field exercises is still required but the contents of exercise evaluation reports are left to the reasonable judgement of stationary source owners or operators and local emergency response officials (if they choose to participate in exercises). Evaluation reports of both tabletop and field exercises are required within 90 days of each exercise.

Q. Why did EPA modify the emergency exercise provisions?

A. These changes should reduce the cost and staffing burden of the exercise provisions both for sources and for local emergency response organizations. While EPA did not dollarize the cost savings of these changes, we took this approach to be conservative in our estimation of the benefit of these changes rather than to say there are no cost savings. We believe reducing and managing the burden of these provisions is important because, in order to have the emergency exercise provisions be most effective, we must structure the provisions to facilitate the voluntary participation of local emergency response organizations in these exercises. These organizations are neither directly regulated under the structure of the statute nor are they funded under EPA's budget. In particular, we believe the 10-year frequency requirement for field exercises would have been burdensome on local emergency response organizations with multiple RMP facilities. The field exercise frequency modification, along with scope

and documentation changes, allow for sources and response organizations to tailor the exercise plans reasonably and practicably for source-specific and community-specific conditions.

Q. What changes were made to the information availability provisions?

A. EPA has rescinded the requirement for owners and operators of regulated facilities to provide certain chemical hazard information to the public within 45 days of receiving a request, as well as the requirement for a stationary source to provide a notice of availability of the chemical hazard information and how to request it and where to access community emergency preparedness information, if available, including shelter-in-place and evacuation procedures. The rescinded information availability requirements were contained in § 68.210 (b) through (d) of the 2017 Amendments rule. Most of this information is already available to the public through other, more secure means. This chemical hazard information includes the following:

- RMP substance names
- Safety Data Sheets
- Five-year accident history information
- Emergency response program information
- Emergency exercise schedules
- Contact information for local emergency organizations.

Q. What information availability provisions were retained?

A. EPA has retained the Amendments rule provision requiring a public meeting after an accident with some changes. Under the final rule, owners and operators are required to hold a public meeting within 90 days of any accident at the source that has any offsite impact specified in § 68.42(a) (i.e., known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage), but are only required to provide the data required to be reported in the risk management plan five-year accident history (§ 68.42(b)), and only for the most recent accident (i.e., not for all accidents in the facility's five-year accident history). Owners and operators are not required to provide other chemical hazard information (i.e., that specified in § 68.210(b) of the 2017 Amendments rule) at the meeting. EPA has also retained the change to § 68.210 (a) which added 40 CFR part 1400 as a limitation on RMP availability (which addresses restrictions on disclosing RMP offsite consequence analysis information under CSISSFRRRA¹), and the provision for control of classified information in § 68.210 (f) [now redesignated as § 68.210(c)], which has been revised to cover classified and restricted information.

Q. What changes were made to risk management plan reporting requirements?

A. EPA has rescinded requirements to report in the risk management plan any information associated with the rescinded provisions of third-party audits, incident investigations, safer technology and alternatives analysis, and chemical hazard information availability. EPA has also slightly modified the emergency response contact information required by § 68.180(a)(1) to represent organization level contact information and not personal contact information. EPA has rescinded changes made to Program 3 § 68.175 reporting requirements that had deleted “the expected date of completion of any changes resulting from the PHA” and restored reporting of this information.

Q. What risk management plan information requirements of the Amendments rule were retained?

¹ Chemical Safety Chemical Safety Information, Site Security and Fuels Regulatory Relief Act.

A. EPA has retained the requirement to report whether a public meeting has been held following an RMP accident in § 68.160. EPA has also retained all of the Amendments rule's requirements for reporting information on emergency response coordination, emergency response programs and exercises in § 68.180.

Q. What changes did EPA make to compliance dates for provisions that are being retained?

A. EPA has amended the rule's compliance dates in § 68.10 to:

- Four years after the effective date of the final rule to have exercise plans and schedules in place.
- Up to five years after the effective date to perform the first notification drill.
- Up to seven years after the effective date to conduct the first tabletop exercise.
- Require applicable new information elements associated with public meetings, emergency response programs, and emergency response exercises to be provided in any risk management plan initial submission or update required by pre-Amendments regulations to be submitted later than five-years after the final rule effective date.

Q. What Amendments rule provisions have compliance dates that will remain unchanged?

A. EPA has retained the Amendments rule compliance date for public meetings, which requires owners or operators to hold a public meeting for any accident with offsite consequences that occurs after March 15, 2021. Also, EPA did not change the compliance date for the Amendments rule's emergency coordination provisions and the minor accident prevention provisions that were not rescinded by the final rule – sources were already required to comply with these provisions as of September 21, 2018, as a result of the DC Circuit Court's vacatur of the RMP Delay rule. These provisions remain in effect, and changes made to the emergency coordination provisions in the final rule go into effect immediately (i.e., on the date of publication of the final rule). EPA is also retaining the compliance date for the emergency response program requirements in § 68.95, which requires an owner or operator to comply with these provisions within three years of when the owner or operator determines that the stationary source is subject to the provisions.

Q. Overall, what changes have been made from the pre-2017 RMP rule?

A. EPA's changes are listed below by section:

- **Minor changes**
 - Revised the term "Material Safety Data Sheets" to "Safety Data Sheets (SDS)."
 - Changed the term investigation "summary(ies)" to "report(s)" in the Program 2 incident investigation requirements and requires facilities to establish an incident investigation team consisting of at least one person knowledgeable in the process involved and other persons with experience.
 - Minor revisions to the Emergency Response Program requirements in § 68.95:
 - In § 68.95(a)(1)(i): The owner or operator must inform Federal and state emergency response agencies about accidental releases (as well as the public and local emergency response agencies, which were already required to be informed under the pre-Amendments rule).
 - In § 68.95(a)(4): The owner or operator must base updates to the source's emergency response plan on changes at the stationary source or new information obtained from coordination activities, emergency response exercises, incident investigations, or other available information.

- In § 68.95(c), the term “local emergency planning committee” was replaced with the acronym “LEPC.”
- **Emergency coordination provisions**
 - Requires owners and operators to share information necessary for developing and implementing the local emergency response plan.
 - Requires owners or operators to annually coordinate their response needs with local emergency planning and response organizations to determine how the source is addressed in the community response plan and to be sure these organizations are aware of the presence of regulated substances and quantities, process risks, and the source’s available response resources and capabilities.
 - During annual coordination meetings, owners and operators are required to provide the local emergency planning and response organizations with the stationary source’s emergency response plan if one exists, emergency action plan, updated emergency contact information, and other information necessary for developing and implementing the local emergency response plan. Owners and operators are also required to request an opportunity to meet with the local emergency planning committee (or equivalent) and/or local fire department as appropriate to review and discuss these materials.
 - Requires responding facilities to consult with local response officials on field and tabletop exercise plans and schedules.
 - Requires facilities to document annual coordination activities.
 - Incorporated appropriate classified and restricted information protections to regulated substance and stationary source information required to be provided.
- **Emergency exercise provisions**
 - Requires owners and operators of facilities with any Program 2 or 3 process to conduct an annual notification exercise and maintain a written record of each notification exercise conducted over the last five years.
 - Requires responding facilities to conduct field exercises, but with no minimum required frequency. Requires responding facilities to conduct tabletop exercises at least every three years.
 - Provides alternative means of meeting exercise requirements through exercises conducted to meet other federal, state, or local requirements, or responses to an accidental release. Responding facilities are also encouraged to consider planning and conducting joint exercises with neighboring facilities to meet the rule’s requirements.
 - Requires documentation of both tabletop and field exercises, but the contents of exercise evaluation reports are left to the reasonable judgement of stationary source owners or operators and local emergency response officials (if they choose to participate in exercises).
 - Requires evaluation reports of both tabletop and field exercises within 90 days of each exercise.
- **Information availability**
 - Requires owners and operators to hold a public meeting within 90 days of any accident at the source that has any RMP-reportable offsite impact (i.e., known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage), but are only required to provide the data required to be reported in the risk management plan five-year accident history, and only for the most recent accident (i.e., not for all accidents in the facility’s five-year accident history).
 - Codifies already existing limits on RMP availability (i.e., restrictions on disclosing RMP offsite consequence analysis information under CSISSFRRRA¹) and modifies the provision

for control of classified information to incorporate restrictions for information controlled under homeland security laws and regulations.

- **Risk management plan reporting requirements**
 - Modifies the required emergency response contact information to represent organization level contact information and not personal contact information.
 - Requires facilities to report whether a public meeting has been held following an RMP accident.
 - Requires facilities to report information on emergency response coordination, emergency response programs, and exercises relating to the new requirements.

Q. When will facilities need to comply with the new requirements?

A.

What	Due Date
Public meetings	Within 90 days of any qualifying accident that occurs after March 15, 2021.
Develop Emergency Response Program	Within three years of owner or operator determining that facility is subject to the provisions.
Develop exercise plans and schedules	December 19, 2023
Conduct first notification drill	December 19, 2024
Conduct first tabletop exercise	December 21, 2026
Conduct first field exercise	According to the exercise schedule established by the owner or operator in coordination with local response agencies.
Submit RMP with new information elements	The owner or operator must provide new information elements with any risk management plan initial submission or update required by pre-Amendments regulations to be submitted no later than December 19, 2024.
Comply with new emergency coordination requirements	Already in effect as of September 21, 2018 as a result of the DC Circuit Court’s vacatur of the RMP Delay rule.
Comply with minor accident prevention provisions	Already in effect as of September 21, 2018 as a result of the DC Circuit Court’s vacatur of the RMP Delay rule.