

## **Alert** | Environmental/OSHA



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### **EPA's Final Risk Management Program Reconsideration Rule More In-Step with OSHA's Process Safety Management Standards**

The Environmental Protection Agency recently announced a **final rule** rescinding major amendments to the Clean Air Act §112(r) Risk Management Program (RMP) regulations that were promulgated at the end of the Obama Administration in 2017. The 2017 revisions were promulgated partially in response to a 2013 explosion at a fertilizer company in West Texas, which caused 15 fatalities and injured more than 260 people,<sup>1</sup> and had yet to go fully into effect due to administrative and court challenges and because most of the compliance deadlines had not yet been triggered.

The provisions of the 2017 rule that have been rescinded include requirements:

- To assess theoretically safer technology and alternative analysis of risk management measures targeting process hazards;
- For third-party compliance audits after a reportable RMP accident; and
- To perform root cause analyses after RMP accidents or near misses.

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<sup>1</sup> U.S. Chemical Safety Board, West Fertilizer Explosion and Fire, **Final Report** (Jan. 28, 2016).

In rescinding the 2017 amendments, EPA noted that it was maintaining (actually returning to) consistency with the related Process Safety Management (PSM) program administered and enforced by the Occupational Safety and Health Administration (OSHA). While PSM is intended to address occupational exposures to the risk of chemical accidents, and RMP deals with the public and environmental exposures to those same risks, as a practical matter there is considerable technical and jurisdictional overlap between the two programs.

However, sufficient differences remain such that facilities should not assume compliance with one program ensures compliance with the other. There can also be significant differences in penalty outcomes, with EPA's RMP penalties frequently orders of magnitude larger than parallel OSHA PSM penalties arising from the same incident.

This "rollback" does not mean the RMP program has gone away: it remains in effect in its pre-2017 form, and the regulated industry should expect and be prepared for its enforcement. EPA has announced that enforcement of the RMP regulations and the companion Clean Air Act §112(r)(1) "general duty clause" will be national enforcement priorities in the coming years. Enforcement actions under the pre-2017, and now current, RMP regulations have generated penalties in the hundreds of thousands and sometimes millions of dollars, and have also led to criminal indictments. *See* [October 2019 GT Alert, United States Indicts Facility Owner Under Clean Air Act General Duty Clause](#). The same can be true regarding OSHA enforcement of the PSM standard, depending on the alleged safety infractions found during the inspection.

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