

The EPA Director of the Office of Emergency Management, Reggie Cheatham, signed the following supplemental proposed rule on 07/18/2018, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of public comment. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDsys website (<http://fdsys.gpo.gov/fdsys/search/home.action>) and on Regulations.gov (<http://www.regulations.gov>) in Docket No. EPA-HQ-OEM-2015-0725. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 68**

**[EPA-HQ-OEM-2015-0725; FRL-9981-07-OLEM]**

**RIN 2050-AG95**

**Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; Notice of data availability.

**SUMMARY:** EPA is providing notice that it is supplementing the record for the proposed Risk Management Program (RMP) Reconsideration rule published on May 30, 2018. We have placed into the rulemaking docket the November 2017 version of the RMP database containing risk management plans submitted to EPA. EPA used this version to support analysis of changes in the RMP reporting facility universe discussed in the Regulatory Impact Analysis of the proposed Reconsideration rule. To afford the public an opportunity to comment on the updated RMP database and its impacts on the proposed Reconsideration rule, EPA is extending the comment period for the proposed rule through **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**DATES:** Comments and additional material must be received on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

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**ADDRESSES:** Submit comments and additional materials, identified by docket EPA-HQ-OEM-2015-0725 to the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** James Belke, United States Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Ave., NW (Mail Code 5104A), Washington, DC, 20460; telephone number: (202) 564-8023; email address: [belke.jim@epa.gov](mailto:belke.jim@epa.gov), or Kathy Franklin, United States Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Ave., NW (Mail Code 5104A), Washington, DC, 20460; telephone number: (202) 564-7987; email address: [franklin.kathy@epa.gov](mailto:franklin.kathy@epa.gov).

**SUPPLEMENTARY INFORMATION:** Detailed background information describing the

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proposed RMP Reconsideration rulemaking may be found in a previously published document:

Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Proposed Rule (83 FR 24850, May 30, 2018).

## **I. What action is EPA taking?**

During the week of July 9, 2018 several stakeholders notified EPA that we had failed to provide in the rulemaking docket for the proposed RMP Reconsideration rule (referred to herein as the Reconsideration Proposal) the risk management plan data we used to compare the number of facilities reporting in the February 2015 version of the RMP database to those reporting in the November 2017 version. This analysis of the change in the number of facilities was presented in the Regulatory Impact Analysis (RIA) for the Reconsideration Proposal. Stakeholders requested that EPA supply the risk management plan data used in the RIA that supported the comparison analysis. They also requested that EPA extend the comment period for the Reconsideration Proposal for 60 days to allow the public to access and review the data so that they may have enough time to assess the impacts of the updated data on the proposal and provide comments.<sup>1</sup>

As a result, in this supplemental action, EPA is providing additional information in the docket for the proposed action. On July 11, 2018, EPA placed into the docket the November 2017 version of the database containing risk management plans submitted by RMP facilities. This database does not contain the restricted offsite consequence analysis (OCA) data. This database (Docket ID: EPA-HQ-OEM-2015-0725-0989) consists of a digital versatile disc (DVD)

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<sup>1</sup> Earthjustice first informed EPA about the failure to place the November 2017 version in the docket in an email dated July 9, 2018. Between July 10<sup>th</sup> through close of business on July 11<sup>th</sup>, EPA received requests for a 60 day-extension of the comment period from, or on behalf of, the: Utah Physicians for a Healthy Environment, Ohio Valley Environmental Coalition, the Union of Concerned Scientists, Coming Clean, Air Alliance Houston, Coalition For A Safe Environment, Clean Air Council, Sierra Club, the United Steelworkers, the United Autoworkers, and the States of New York, Illinois, Maine, Massachusetts, Oregon, Rhode Island, and Vermont.

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containing the RMP database as a 1.4 gigabyte size file in .mdb format. The database file is too large to be provided online through regulations.gov. To view or receive a copy of the DVD, contact the EPA Docket Center, Public Reading Room, as follows: In person/writing: Environmental Protection Agency, Docket Center 1301 Constitution Ave NW, 2822T, Room 3334 Washington, DC. 20004 Telephone: 202-566-1744 Fax: 202-566- 9744 Email: docket-customerservice@epa.gov. EPA will address all comments received on the supplemental data being provided and any comments submitted in response to this action in our final rulemaking action. EPA is extending the comment period for Reconsideration Proposal through [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

## **II. What is the background for this action?**

On May 30, 2018, EPA proposed a rule (Reconsideration Proposal) that seeks comment on various proposed changes to the final RMP Amendments rule (Amendments rule) issued on January 13, 2017 (82 FR 4594). The comment period for the Reconsideration Proposal was to end on July 30, 2018. The 2017 Amendments rule amended 40 CFR part 68, the chemical accident prevention provisions under section 112(r) of the CAA (42 U.S.C. 7412(r)).

The RIA for the Amendments rule utilized a February 2015 version of the RMP database to compile the universe of RMP facilities. The database reflected that approximately 12,500 facilities had filed current risk management plans with EPA and could have been potentially affected by the Amendments final rule. EPA had provided in the rulemaking docket, the non-OCA version of the risk management plan data submitted by facilities as of February 2015. (Docket ID: EPA-HQ-OEM-2015-0725-0311). For the RIA for the Reconsideration Proposal (Docket ID: EPA-HQ-OEM-2015-0725-0907), EPA compared the February 2015 version of the

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risk management plan database to the most recent version of the database from November 2017 for the purposes of understanding and comparing how the universe of RMP facilities had changed in the intervening period between developing the Amendments rule RIA and the Reconsideration Proposal RIA. EPA also developed a comparison of the number of RMP facilities by industry sector, by employee size, by RMP program level, by process complexity and by responding/nonresponding status. These counts of RMP facilities are presented in various data tables in Chapter 3 of the Reconsideration Proposal RIA and were extracted from the two versions of the RMP database. The comparison revealed that the number of RMP facilities and processes had experienced minor changes in the more than two years between rulemakings. In total, the number of RMP facilities decreased by 1.8% over the time-period and included small changes in the number of facilities in most industry codes and process levels. As discussed in Chapter 3 of the Reconsideration Proposal RIA, EPA determined that the differences between the databases were minor, with the exception of the number of accidents. As a result, EPA utilized the costs estimated for the 2017 Amendments rule RIA as the baseline set of costs to be impacted by the Reconsideration Proposal.

For the Amendments rule, EPA had also provided in the docket as a separate dataset data on accidents occurring at RMP facilities from 2004 – 2013, as reported in the risk management plan database as of February 2015. This accident data was provided in an Excel spreadsheet file (Docket ID: EPA-HQ-OEM-2015-0725-0002). This ten-year set of accident data was used as the basis of some of the cost estimates discussed in the Amendments rule RIA. EPA provided similar accident data in an Excel spreadsheet in the docket for RMP accidents occurring in 2014-2016 (Docket ID: EPA-HQ-OEM-2015-0725-0909), as a supporting document for the

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Reconsideration Proposal. EPA developed the latter spreadsheet from the November 2017 version of the database.

While the various parties requesting an extension of the comment period asked that EPA extend the period 60 days, we are extending the comment period through [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. EPA notes that the November 2017 database was used for limited purposes in the preparation of the Reconsideration Proposal. Primarily, it was used to corroborate that the information from the prior RIA regarding the universe of stationary sources subject to the RMP rule did not change significantly by the time we prepared the RIA for the Reconsideration Proposal. Tables in the Reconsideration Proposal RIA presented the information extracted from the database, so the public could always comment on the information. The major impact was the inability to verify the information from its source. The updated database also was used to confirm that the 2004 – 2013 trend of declining accident rates over time continued. EPA included in the Reconsideration Proposal docket an Excel spreadsheet on accident data for RMP accidents occurring from 2014-2016 that we derived from the November 2017 database.

Because the November 2017 database was used mostly for corroboration, we do not believe there were fundamental data about sources subject to the RMP Rule that could not have been observed in the 2015 database that was already in the docket. We also note that we have docketed the November 2017 RMP database (non-OCA version) as of July 11, 2018 and on July 10, 2018, provided it to the first party to draw our attention to it not being in the docket. In the interest of expeditiously completing the reconsideration process and putting into effect provisions of the Amendments that we intend to retain or modify, we believe closing comments

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on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]

strikes an appropriate balance.

Dated: \_\_\_\_\_

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Reggie Cheatham,

Director, Office of Emergency Management.