

Public Comment Guide: Tell EPA to Strengthen its “Safer Communities by Chemical Accident Prevention” Rule

On August 18, 2022, the Environmental Protection Agency (EPA) issued a [proposed rule](#) to partially restore critical chemical facility safety standards under the Risk Management Program (RMP) that were rolled back by the Trump administration in 2019. The Safer Communities by Chemical Accident Prevention rule proposes—for the first time ever—to require regulated facilities to account for the accelerating impacts of climate change. However, while the rule is a step forward, it does not go far enough to *prevent* chemical disasters, keep workers safe, and advance environmental justice.

EPA is holding [virtual public hearings](#) on September 26, 27, and 28; and written comments must be submitted to the regulatory docket by October 31.

How to Submit a Comment

Go to the [public comment page](#) on Regulations.gov for the proposed policy (docket EPA-HQ-OLEM-2022-0174-0003). While a submission can be typed directly into the website, uploading a separate document may be easier for you to edit, save, and submit. Either way, make sure all documents contain your name and contact information. Be sure to submit your comment by **October 31st, 2022, at 11:59 PM ET** and check your email for a confirmation.

Tips for Writing a Comment The most effective comments are thorough, unique, and specific. **If you are a scientist, technical expert, first responder, or a member of an impacted group such as a community member who lives near or works at an RMP facility, indicate this in your comment. The public comment process allows scientists and members of the public to help agencies understand a proposed rule’s full range of consequences** . Arguments made during this process are also often used as evidence in future court challenges, if needed.

Below is a summary of key points in the rule and the arguments UCS and allies are emphasizing. You can use these talking points to build your argument – see comments in red for more detail about what to comment on. You *do not* need to cover every category, feel free to pick one or two aspects to focus on.

Some additional best practices:

- [Read](#) the background of the rule (see also [EPA’s factsheet](#)) as well as the summary of proposed changes to understand the context of the agency’s current proposal.
- Write as concisely as possible.
- Lay out (and provide evidence for) any facts you believe the agency has ignored or overlooked.
- Describe the personal impact of the proposed rule, including how it will affect public and worker health and safety, emergency and first responder personnel, or your local environment.
- Address the benefits to public and worker health and safety from EPA’s proposed rule and point out where the rule falls short.
- Address potential negative impacts, flaws in EPA’s justifications for its proposed changes to the rule, overlooked impacts, or potential adverse consequences, and when available, attach key studies and research so they are on the record.
- It is not sufficient to simply say you disagree with the agency’s policy judgments. Remember to try to explain *why* you disagree.

Summary

The Risk Management Program, or RMP, requires each of the roughly [12,000 facilities](#) across the United States that use extremely hazardous substances to develop Risk Management Plans identifying the steps it is taking to prevent a chemical release and outlining its emergency response procedures should an accident occur. Risk Management Plans provide facility employees and local first responders with critical information needed to prepare for and respond to emergencies and can also help raise public awareness about chemical hazards and best practices.

While the RMP is necessary to protect workers, first responders, and the public from catastrophic chemical releases, the program does not go far enough to *prevent* chemical disasters. EPA [estimates](#) that roughly 150 serious accidents occur at RMP facilities each year, resulting in deaths, injuries, evacuations, and other harms. The issue is also a matter of environmental justice, as RMP facilities are [disproportionately located](#) near Black, Latino, and low-income people. People of color represent nearly half (47 percent) of those who live within one mile of RMP facilities.

The program has been undermined in recent years. In 2019, Trump's EPA [rolled back](#) key provisions that had been implemented under the Obama administration in 2017— including provisions that were championed for years by environmental justice and chemical safety advocates.

In 2021, EPA held public listening sessions, in which hundreds of advocates called on the agency to restore and strengthen the RMP program. On August 18, 2022, EPA issued the proposed Safer Communities by Chemical Accident Prevention rule. The proposal restores several key provisions from the 2017 Chemical Disaster Rule that were eliminated by the Trump administration in 2019. For example, it includes a requirement that facilities conduct a “root cause analysis after an RMP-reportable incident” that identifies underlying reasons why the incident occurred. Root cause analyses are needed to assess and address failures, which can help prevent future chemical releases.

But some of the provisions in this proposal are narrower in scope than the 2017 rule, covering a smaller number of facilities and processes. The proposal also fails to include key provisions, such as fence-line air monitoring, that can help detect unplanned releases and provide community members and first responders with information to safeguard public health. As described below, EPA must adopt the strongest possible rule to protect public and worker safety and prevent catastrophic chemical disasters.

EPA should do more to require facilities to prepare for climate-driven extreme weather events and power loss

Commenters should address the impact of climate change on their communities and the need for facilities to consider and plan for natural hazards, calling on EPA to require implementation of external hazard mitigation and backup power systems.

For the first time, EPA's proposed rule requires explicit consideration of natural or “external” hazards, such as flooding, wildfires, hurricanes, and snowstorms in hazard reviews for “Program 2” and “Program 3” facilities—in other words, for the most potentially dangerous chemical facilities such as refineries and chemical manufacturers.

There is widespread consensus among climate researchers around the world, including the UN's Intergovernmental Panel on Climate Change, that climate change is increasing the risk that extreme

weather events will be more severe and more frequent, including flooding, wildfires, and hurricanes. Such natural hazards can catalyze catastrophic chemical disasters in a variety of ways, including causing power loss and disabling or damaging equipment that contains highly hazardous chemicals. In Houston, Texas in 2017, for example, flooding from Hurricane Harvey disabled the refrigeration system at the city's Arkema chemical plant, causing organic peroxides to [combust](#). Twenty-one people were forced to seek medical care in the incident and more than 200 nearby residents were forced to evacuate.

A 2021 [report](#) co-authored by UCS, Center for Progressive Reform, and Earthjustice found that roughly **one-third** of RMP facilities throughout the United States are located in areas at risk from inland and coastal flooding, storm surge, or wildfires. The proposed rule will address these accelerating risks by requiring facilities to consider natural hazards, including those associated with climate change. The proposal also requires facilities to consider loss of power in hazard evaluations and provide a justification if these and hazard mitigation are not implemented. It does not, however, require facilities to implement backup power or to take other steps to mitigate natural hazards. Commenters should urge EPA to require facilities to implement natural hazard mitigation and backup power systems, and for the agency to take the steps needed to enforce this requirement.

EPA should expand the scope of the Safer Technology Alternative Assessment (STAA)

Commenters should address how important it is for safety and public health that industries seek out solutions that pose less inherent risk and danger to their employees and surrounding communities and that they implement all practicable alternatives that could save lives, prevent injuries, and avoid toxic exposure.

EPA's proposed rule restores and in some ways strengthens the 2017 requirements to assess safer alternatives at some of the most hazardous chemical facilities but it also dangerously narrows the scope and benefit of these provisions.

During the Trump administration, the 2019 RMP rule rolled back one of its most vital provisions for *preventing* hazardous chemical disasters – a requirement for certain facilities including refineries, chemical manufacturers, and pulp/paper mills, to conduct a “safer technology alternatives assessment” (STAA). These assessments are designed to determine whether high-risk facilities can adopt inherently safer technologies or processes that could help prevent future catastrophic chemical releases. While developing the 2017 RMP rule, EPA and the Occupational Health and Safety Administration (OSHA) wrote that “the first choice for managing chemical hazards and risks is the use of Inherently Safer Technology (IST) or Inherently Safer Design (ISD). IST and ISD are recognized approaches embraced by chemical process designers that are most effectively and powerfully applied at the process design stage. But they are increasingly applied by process operators to existing chemical processes.” For example, some refineries are phasing out the use of hydrofluoric acid (HF) as an unnecessary catalyst, as this chemical is linked to tragic disasters, including a 10-mile evacuation at the Husky refinery in Wisconsin in 2018, and a near-tragic release in Philadelphia that a worker's quick action averted in 2019. And, starting in 2010, Clorox shifted its process for making bleach at its production facilities from using toxic chlorine gas to diluting industrial bleach, thus eliminating the need for the transportation and storage of chlorine at these facilities. Such changes can help reduce dangers to workers and remove the risk of a potentially catastrophic disaster to surrounding communities.

Although the 2022 rule restores the STAA requirement, it narrows its scope to cover only 590 refineries and chemical manufacturers (out of roughly 12,000 total RMP facilities) within one mile of either type of facility. The proposed rule newly covers facilities that use hydrogen fluoride, a highly hazardous chemical, but it completely strips communities and workers at pulp/paper mills of this “safer alternative” protection. EPA itself acknowledges in the proposal that, regardless of proximity, refineries and chemical manufacturers have “high accident rates,” therefore in the interest of public and worker safety, the agency should require the STAA from all of the most potentially dangerous facilities, including petroleum, coal, chemical, and pulp/paper manufacturing processes, as well as wastewater treatment facilities and agriculture/fertilizer plants. Therefore, EPA should broaden the scope of the STAA requirement and also require that facilities implement the alternatives that these assessments identify.

EPA should strengthen prevention requirements such as third-party compliance audits and incident investigations

Commenters should emphasize the need for strong disaster prevention measures to ensure that communities do not have to experience harmful incidents before action is taken. Third-party audits and thorough incident investigation demonstrate a business “best practice,” particularly when a chemical disaster occurs; communities, residents, and workers should not have to endure two incidents before there is an unbiased and independent assessment of the safety failure.

The proposal partially restores a provision from the 2017 rule requiring compliance audits for each industrial process at a facility. However, the proposed rule weakens this provision to normally apply only to facilities that have had *two* accidental releases within a five-year period. Compliance audits are completed by a third-party and evaluate each element of a company’s risk management program to ensure it is up-to-date and being implemented. Furthermore, while the rule restores the requirement to complete a “root cause” analysis, the requirement is limited to only “reportable harm” incidents and does not require investigation of “near miss” events that also could cause significant harm.

The proposal is a step forward in restoring the incident investigation requirement, including root cause analysis, and third-party audit that was eliminated in the 2019 Trump rule. However, by modifying the audit requirement to largely apply to facilities that have had two accidental releases, rather than one—as required in the 2017 rule—the agency is leaving workers and communities in harm’s way. For example, the Westlake Chemical facility in Lake Charles, Louisiana has had 14 incidents in less than 10 years, including an explosion in January 2022 that injured six people. One of the previous incidents at this facility caused 136 people to evacuate and roughly 5,000 to shelter in place.

To ensure that workers and communities are not exposed to potentially catastrophic incidents *twice* within a five-year period before there is an assessment by unbiased and independent auditors, EPA should require a third-party compliance audit following every accidental release.

Furthermore, while the proposal restores the requirement for facilities to complete a root cause analysis following a catastrophic incident, the rule does not require facilities to investigate “near-miss” events—incidents that did not but could have caused harm, even catastrophe. EPA should define near miss events and require root cause analyses after both harmful incidents and near-miss events. Commenters should also support EPA’s proposal to require facilities to assess and follow the most current safety standards and practices (referred to as RAGAEP) and provide a justification if they are not implemented.

Finally, commenters should urge EPA to adopt more frequent compliance reporting and implement “Title V Clean Air Act” permit requirements for the nearly 1,900 facilities that are covered by both the RMP and Title V. RMP facilities that are major sources of air pollution are not currently subject to Title V requirements, which provide greater transparency and opportunity for public input and as a result, a stronger incentive for facilities to comply.

EPA should ensure that workers are included in disaster prevention and planning

Commenters should emphasize the importance of including and protecting workers, who often are those most knowledgeable about process safety concerns, emergency prevention, and planning.

The proposal expands worker participation in facility safety procedures by requiring facilities to consult with workers on implementing compliance audit and incident investigation recommendations, providing employees with methods to stop work under dangerous circumstances, and to anonymously report accidents or non-compliance. The rule could go further, however, by requiring employers to have employees and their representatives, at the decisionmaking table in developing risk management plans rather than merely requiring employers to consult with employees.

In 2019, the U.S. Chemical Safety and Hazard Investigation Board (CSB) [published](#) a digest highlighting four catastrophic incidents in Nevada, Louisiana, Washington, and California that led to 13 employee deaths, 179 employee injuries, and one incident where 15,000 residents had to seek medical evaluation. All four investigations concluded that the facility employee participation programs were inadequate, and contributed in part to the severity of these incidents. The proposal is responsive to recommendations by the CSB and countless labor unions and advocates calling for required and collaborative engagement with workers and their representatives.

However, these provisions can be expanded. For example, the “stop work authority”—which will require facilities to implement processes whereby employees may refuse to perform a task that they believe would result in a catastrophic release—only applies to the highest-hazard facilities. Commenters should urge EPA to require all the most potentially hazardous facilities (Program 2 and 3 facilities) to implement such stop work authority processes. Furthermore, for workers and their representatives to fully utilize stop work authority processes, EPA should require facilities and relevant agencies to provide training and resources.

Commenters should also urge EPA to explicitly require facility owners and operators to have employees and their representatives (chosen by the employees) at the decisionmaking table with veto power to participate in all stages of developing and implementing a risk management program, as well as access to all documents and information pertaining to the facility’s risk management plan.

EPA should require timely, multi-lingual community notification and real-time fenceline monitoring

Commenters should emphasize that timely, multilingual community notification systems must be required explicitly in the rule to protect the public and first responders during a chemical release, and that EPA should also require real-time fenceline monitoring to detect releases and provide the public with information about potentially toxic emissions, at least at the most hazardous facilities such as chemical manufacturers and refineries.

The proposal restores emergency planning and response requirements, including requiring timely notification of accidents to the public and requiring certain facilities to conduct field exercises every 10 years. However, a 10-year cycle of emergency response exercises is far too infrequent for communities' needs – and inconsistent with the Clean Air Act's compliance requirement. Furthermore, the proposal does not require facilities to implement fenceline air monitoring.

Current incident notification procedures are inadequate, with some community members not knowing about a release until hours afterward. The proposed rule will help hold owners and operators accountable by requiring all facilities to improve their emergency response plans. EPA proposes this in the preamble but also should explicitly require in the rule that facilities provide emergency response notifications in Spanish and other languages appropriate for the surrounding community.

The proposal also fails to require fenceline monitoring, which is a critical tool for detecting unplanned releases and monitoring emissions following incidents. A UCS, Rice University, and Texas Environmental Justice and Advocacy Services [study](#) of air pollution monitoring following the 2019 Terminals Company [chemical fire](#) in Houston emphasizes that current air monitoring networks are inadequate, leaving community members in the dark about the potential airborne toxins to which they are exposed. EPA must require RMP facilities to use real-time fenceline air monitors and make this information available to the public and first responders.

EPA should provide public online access to chemical facility information

Commenters should highlight how all members of the public should be able to access relevant chemical hazard information, and how this information can help them protect themselves and their communities in the event of a chemical release.

The proposal would provide limited access to chemical hazard information from facilities, only allowing people living within six miles of a facility to request specific information. This approach assumes that residents are aware that they live near an RMP facility and still puts an additional undue burden on community members.

As EPA acknowledges in the proposal, the public can only find information about RMP facilities through limited means, such as federal reading rooms, which are difficult to access and generally not located near the communities most impacted. Recognizing that public disclosure of this information would likely lead to a reduction in the number and severity of these accidents, EPA has expressed intentions of making RMP data more accessible to the public.

Rather than provide limited access to chemical hazard information based on proximity to a facility, EPA should develop, no later than December 2023, a public, multi-lingual online database where any member of the public can access RMP facility information and risk management plans.

EPA should account for cumulative health impacts, particularly in communities overburdened with multiple polluting facilities

Commenters should urge EPA to require facilities to evaluate cumulative impacts in the siting evaluation and alleviate the hazards identified in the siting evaluation. EPA should also specify the various cumulative impacts that the facility should consider in the evaluation.

The proposal requires facilities, when completing a process hazard analysis or hazard review, to evaluate how facility and equipment siting poses hazards that could cause harm to the surrounding community. The provision requires facilities to identify strategies to minimize these hazards, and to report if they have declined them. But the proposal does not require facilities to implement these protections, even if feasible.

While this requirement will provide surrounding communities with some increased protection from facility hazards, it does not do enough to alleviate these hazards. Nearly 200 million people in the United States live within “worst-case scenario zones” for chemical disasters, and often RMP facilities are in close proximity to one another, and also close to other polluting and hazardous operations in a community. People who live, work, and learn near these facilities are being exposed to a disproportionate burden of toxic emissions that will only be exacerbated during a catastrophic incident.

EPA should expand the coverage of the program, including the list of RMP-regulated substances

Commenters should urge EPA to redefine the definition of “stationary source” so it is clear that the entire facility must comply with RMP requirements if any part of it is covered. EPA should also expand the list of covered substances to include ammonium nitrate and other highly reactive chemicals that have been involved in catastrophic incidents, taking action to review and update this list no later than 2023.

Some highly hazardous chemicals and processes continue to not be covered under the Risk Management Program. In 2013, at the West Fertilizer Company facility in West, Texas, an [explosion](#) of ammonium nitrate—which is not an RMP-regulated substance—killed 15 people and caused more than 260 injuries. That facility was covered in part (due to another chemical process), but not required to fully comply with the RMP. This incident prompted the US Chemical Safety and Hazard Investigation Board to recommend that EPA regulate ammonium nitrate under the RMP. Yet EPA has so far taken no action yet and more incidents have occurred. In January 2022, nearly 600 tons of ammonium nitrate at the Weaver Fertilizer plant in Winston-Salem, North Carolina [caught fire and burned for four days](#), causing the evacuation of nearly 6,000 residents. Such incidents underscore the need to ensure that a facility covered in part must fully satisfy all requirements of the RMP rule.

Additional resources

- A 2022 [report](#) by the US Government Accountability Office that aligns with UCS’s 2021 findings that roughly one-third of RMP facilities are at risk of natural hazards.
- [Comments](#) from environmental justice advocates, faith leaders, public health practitioners, and members of Congress urging EPA to adopt a stronger rule.
- UCS’s [2021 comments](#) on the need to strengthen the Risk Management Program.
- [List of RMP facilities](#) (last updated May 2021)
- [List of RMP accidents reported to EPA](#) (last updated September 2022)

Once you've submitted a comment, please let us know by filling out [this form](#). We'd also appreciate hearing if this guide was useful to you and how we might improve future comment guides.