



May 19, 2017

Sent via electronic submission to <http://www.regulations.gov>

Comments submitted by the American Petroleum Institute in response to Federal Register Notice Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Further Delay of Effective Date, Docket Number EPA-HQ-OEM-2015-0725, Federal Register Vol. 82, No. 62, RIN 2050-AG82

The American Petroleum Institute (API) appreciates the opportunity to provide written comments on the EPA's proposal to extend the effective date of the stayed Risk Management Program Rule Amendments until February 19, 2019. "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Further Delay of Effective Date," 82 Fed. Reg. 16,146. API represents over 625 oil and natural gas companies, leaders of a technology-driven industry that supplies most of America's energy, supports more than 9.8 million jobs and 8 percent of the U.S. economy, and, since 2000, has invested nearly \$2 trillion in U.S. capital projects to advance all forms of energy, including alternatives.

API submitted comments on May 13, 2016 on the stayed RMP rule that identified the oil and natural gas industry's concerns with the rule and proposed changes to the rule to most effectively promote chemical facility security and safety. API is a part of the "RMP Coalition," which submitted a petition for reconsideration with the EPA on February 28, 2017 under section 307(d)(7)(B) of the Clean Air Act.

API supports the EPA's proposal to extend the effective date of the stayed RMP rule until February 19, 2019. Such an extension has a firm legal basis and would not jeopardize the EPA's mission of protecting communities or the environment. API recognizes EPA's general rulemaking authority under section 307(d) of the Clean Air Act, which allows a rulemaking to extend the effective date of the stayed RMP rule.

In addition to this broad authority, there is legal support for extending the effective date under section 112(r)(7)(A) of the Clean Air Act, which provides that "Regulations promulgated pursuant to this subparagraph shall have an effective date, *as determined by the Administrator*, assuring compliance as expeditiously as practicable."¹ This statutory language expressly provides that the effective dates of regulations are to be "determined by the Administrator." The statutory authority of the Administrator of the EPA to "determine" a rule's effective date provides the Administrator with significant discretion on how and when to establish such dates. A "determination" by its very nature involves the consideration of alternatives and the exercise of choice. Section 112(r)(7)(A) of the Clean Air Act by its plain language therefore gives the

¹ 42 U.S.C. § 7412(r)(7)(A).

Administrator significant discretion to set the stayed RMP rule's effective date for February 19, 2019.

That statute also provides that such effective dates will “assur[e] compliance as expeditiously as practicable.” The words “as practicable” provide the Administrator with further discretion to consider facts or circumstances that bear on the wisdom and feasibility of a particular effective date. Notably, Clean Air Act section 112(r)(7)(A) does not impose *any* maximum time limit for a rule's effective date. That is because Congress did not intend to limit the Administrator's discretion in this area. This congressional intent is evident by the fact that when congress used the expression “as expeditiously as practicable” in other provisions of section 112, *it provided specific time limits for regulatory action in those areas.*² By contrast, the absence of a specific time limit in section 112(r)(7)(A) demonstrates Congress's intent to provide the Administrator with full discretion in this area.

Imposing a February 2019 effective date is practicable under the present circumstances because EPA has committed to prepare a notice of proposed rulemaking “in the near future” that will provide interested parties an opportunity to comment on the issues raised in the petitions for reconsideration.³ Moreover, the agency has stated that it is considering “taking further regulatory action”⁴ on the stayed RMP rule, which very well may lead to significant revisions to the stayed RMP rule. Based on the EPA's stated intent of reconsidering the stayed RMP rule, a failure to meaningfully extend the stayed rule's effective date would mean that covered facilities would have to comply with a new rule for a brief period of time, and then restructure their compliance framework again to comply with possibly significant rule revisions. To proceed with implementing a stayed rule that will likely soon be changed would require hundreds of facilities to spend significant employee and financial resources to change internal systems—only to have to change them yet again when the rule is revised. That regulatory whiplash could divert resources away from practices that would best promote safety. Moreover, implementation of the stayed RMP rule would create inconsistencies with OSHA Process Safety Management regulations. Delaying the effective date of the stayed RMP rule would provide EPA and OSHA with sufficient time to better align the requirements to best promote safety and reduce unnecessary regulatory burdens. In addition, the extension will prevent the increased security and safety risks that are inherent in the stayed rule as described in the RMP Coalition's filings while EPA conducts its reconsideration.

EPA itself acknowledges that simply preparing for compliance with the stayed RMP rule requires substantial time and resources. In the final rule's discussion of compliance dates, EPA noted that sufficient time is “necessary for facility owners and operators to *understand* the revised rule; *train* facility personnel on the revised provisions; *learn* new investigation techniques, as appropriate; *research* safer technologies; *arrange for* emergency response resources and response training; *incorporate change into their risk management programs*; and

² See Clean Air Act sections 112(e)(1) (regulations regarding emission standards; two to ten years), 112(i)(3)(A) (compliance schedule for existing sources; three years), 112(j)(5) (equivalent emission limitation by permit for existing sources; three years), and 112(k)(3)(F) (EPA strategy to control emissions of hazardous air pollutants from urban areas; nine years).

³ 82 Fed. Reg. at 16,148.

⁴ Id. at 16,146.

establish a strategy to notify the public that certain information is available upon request”
(emphasis added).⁵

In summary, it would be practicable and would promote safety for the EPA Administrator to set an effective date of the stayed RMP Rule for February 19, 2019. There is legal support for such an extension and compelling policy reasons for doing so. The RMP regulations that have protected communities for the past twenty years would continue to remain in effect while EPA determines how to improve the stayed RMP rule in a new regulatory proceeding.



Ron Chittim
Manager – Downstream/Refining
American Petroleum Institute
1220 L Street, NW
Washington, D.C. 20005
202/682-8176
chittim@api.org

⁵ Id. at 4,676.