

SEPTEMBER 27, 2022 | OSHA RULEMAKINGS & STANDARDS

Process Safety Update: The Latest on EPA's RMP and OSHA's PSM Rulemakings


By [Eric J. Conn](#), [Micah Smith](#), and [Beeta Lashkari](#)

EPA RMP Public Hearing

This week, on September 26-28, 2022, EPA has been hosting virtual public hearings related to its Risk Management Program (RMP) rulemaking. Specifically, the hearings are addressing the RMP [Safer Communities by Chemical Accident Prevention \(SCCAP\)](#) proposed rule, which was signed by EPA Administrator Michael S. Regan on August 18, 2022, and proposes revisions to the RMP Rule to further protect vulnerable communities from chemical accidents, especially those living near facilities with high accident rates. Per the EPA, "The proposed rule would strengthen the existing program and includes new safeguards that have not been addressed in prior RMP rules."

The virtual public hearings will provide the opportunity to present information, comments or views pertaining to the SCCAP proposed rule. In addition, EPA is accepting written comments during the public comment period, which closes on October 31, 2022.

For background, the RMP Rule has had a [long and tortured rulemaking and litigation history](#). EPA amended the RMP Rule on January 13, 2017, in the final days of the Obama Administration, following President Obama's Executive Order (EO) 13650, "Improving Chemical Facility Safety and Security," which directed EPA and other federal agencies to modernize policies, regulations, and standards to enhance safety and security in chemical facilities. More details on the EO in the "OSHA PSM Stakeholder Meeting" section below.

EPA then received three petitions for reconsideration of the 2017 rule, and in December 2019, EPA issued a final rule reconsidering the changes made in January 2017. There are petitions for judicial review of both the 2017  amendments and the 2019 reconsideration rules. Specifically, the 2019 reconsideration rule challenges are being held in abeyance until October 3, 2022, by which time the parties must submit motions to govern, and the case against the 2017 amendments rule is in abeyance pending resolution of the 2019 reconsideration rule case.

So far as the SCCAP proposed rule is concerned, EPA issued a [fact sheet](#) describing many of the proposed changes, including, but not limited to (*indicates provisions that have not been addressed in prior RMP rules):

- **Prevention Program (Subparts C and D)**

- **Natural hazards and power loss*:**
 1. Adding amplifying regulatory text to emphasize that natural hazards (including those that result from climate change) and loss of power are among the hazards that must be addressed in Program 2 hazard reviews and Program 3 process hazard analyses.
 2. Requiring a justification in the Risk Management Plan when hazard evaluation recommendations are not adopted.*
- **Facility Siting:**
 1. Emphasizing that facility siting should be addressed in hazard reviews and explicitly define the facility siting requirement for Program 2 hazard reviews and Program 3 process hazard analyses.
 2. Requiring a justification in the Risk Management Plan when facility siting hazard recommendations are not adopted.*
- **Safer technologies and alternatives analysis (STAA):**
 1. Requiring a STAA and practicability of inherently safer technologies and designs considered for
 1. RMP-regulated processes classified under North American Industrial Classification System (NAICS) code 324 and 325 within one mile of another RMP-regulated facility that also has a process classified under NAICS code 324 or 325 and
 2. RMP-regulated hydrofluoric acid alkylation processes classified under NAICS 324.
 2. Requiring a justification in the Risk Management Plan when STAA recommendations are not adopted.* Increased access to this information promotes transparency and gives more opportunities for the public to be involved.
- **Root cause analysis:** Requiring a formal root cause analysis incident investigation when facilities have had an RMP-reportable accident.
- **Third-party compliance audits:**
 1. Requiring the next scheduled compliance audit be a third party audit when an RMP-regulated facility experiences:
 1. two RMP-reportable accidents within five years, or
 2. one RMP-reportable accident within five years by a facility with a Program 3 process classified under NAICS code 324 or 325 within one mile of another RMP regulated facility that also has a process classified under NAICS code 324 or 325.
 2. Requiring a justification in the Risk Management Plan when third-party compliance audit recommendations are not adopted.*
- **Employee participation*:**
 1. Requiring employee participation in resolving process hazard analyses, compliance audit and incident investigation recommendations and findings.
 2. Outlining stop work procedures in Program 3 employee participation plans.
 3. Requiring Program 2 and Program 3 employee participation plans to include opportunities for employees to anonymously report RMP-reportable accidents or other related RMP non-compliance issues.

• **Emergency Response (Subpart E)**

- **Community Notification of RMP Accidents*:**

1. Requiring non-responding RMP facilities to develop procedures for informing the public about accidental releases.
2. Requiring release notification data be provided to local responders.
3. Ensuring a community notification system is in place for notification of RMP-reportable accidents.

- **Emergency Response Exercises:**


1. Requiring a 10-year frequency for field exercises unless local responders indicate that frequency is infeasible.
2. Requiring mandatory scope and reporting requirements for emergency response exercises.

- **Information Availability (Subpart H, § 68.210)**

- **Enhanced Information Availability*:** New requirements for the facility to provide chemical hazard information upon request to residents living within 6 miles of the facility, in the language requested. Under the current regulation, facilities are not required to provide this information.

EPA's specific questions about these and other topics are included in the [Federal Register notice about the proposed rule](#). We will be tracking developments, including on the upcoming public hearings, and will continue to provide updates throughout the rulemaking.

OSHA PSM Stakeholder Meeting

On Tuesday, August 30, 2022, OSHA announced that it was scheduling an informal stakeholder meeting to address the resurrection of OSHA's rulemaking for amendments/updates to the Process Safety Management (PSM) standard. The meeting was originally scheduled for Wednesday, September 28, 2022 (the last day of EPA's scheduled public RMP hearing), but OSHA [rescheduled the PSM stakeholder meeting to October 12, 2022](#), from 10 a.m. to 4 p.m. EDT via Webex. In the [Federal Register notice regarding the meeting](#), which will be held virtually and recorded, OSHA states that it will provide a brief overview of its work on the PSM rulemaking to date, and invites participants to provide public comments related to potential changes to the standard that OSHA is considering. 

Stakeholders can [register online](#) to attend the meeting or reserve time to provide verbal comments. The public is also invited to submit written comments to the Federal eRulemaking Portal using Docket Number OSHA-2013-0020. Written comments were originally due October 28, 2022, but, due to the rescheduling of the informal stakeholder meeting, written comments are now due by November 14, 2022.

As background, OSHA provides that, since its publication in 1992, the PSM standard has not been updated, and that the 2013 ammonium nitrate explosion at a fertilizer storage facility in West, TX renewed OSHA's interest in PSM reform. In response to that incident, on August 1, 2013, Pres. Obama issued Executive Order (EO) 13650, Improving Chemical Facility Safety and Security. The EO directed OSHA and several other federal agencies to, among other things, modernize policies, regulations, and standards to enhance safety and security in chemical facilities by completing certain tasks, including, specifically, directing that, within 90 days, OSHA should publish a Request for Information (RFI) to identify issues related to modernization of its PSM standard and related standards necessary to prevent major chemical accidents.

To that end, OSHA published the RFI in December 2013, and subsequently initiated and completed a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel review in June 2016. Since then, however, and following the transition from the Obama Administration to the Trump Administration, the PSM rulemaking was moved to the Long-Term Actions list on OSHA's regulatory agenda. Nonetheless, OSHA continued to work on the PSM rulemaking and PSM was placed back on the Unified Agenda in the spring of 2021, after the transition back to a Democratic Administration with Pres. Biden in the White House.

To dust off the rulemaking, OSHA plans to hold a stakeholder meeting to “reengage stakeholders and solicit comments on the modernization topics mentioned in the RFI and [SBREFA] panel report, as well as any additional PSM-related issues stakeholders would like to raise.”

The potential changes to the scope of the current PSM standard that OSHA is considering include:

1. Clarifying the exemption for atmospheric storage tanks;
2. Expanding the scope to include oil- and gas-well drilling and servicing;
3. Resuming enforcement for oil and gas production facilities;
4. Expanding PSM coverage and requirements for reactive chemical hazards;
5. Updating and expanding the list of highly hazardous chemicals in Appendix A;
6. Amending paragraph (k) of the Explosives and Blasting Agents Standard (Sec. 109) to extend PSM requirements to cover dismantling and disposal of explosives and pyrotechnics;
7. Clarifying the scope of the retail facilities exemption; and
8. Defining the limits of a PSM-covered process.

The potential changes to particular provisions of the current PSM standard that OSHA is considering include:

1. Amending paragraph (b) to include a definition of RAGAGEP;
2. Amending paragraph (b) to include a definition of critical equipment;
3. Expanding paragraph (c) to strengthen employee participation and include stop work authority;
4. Amending paragraph (d) to require evaluation of updates to applicable recognized and generally accepted as good engineering practices (RAGAGEP);
5. Amending paragraph (d) to require continuous updating of collected information;
6. Amending paragraph (e) to require formal resolution of Process Hazard Analysis team recommendations that are not utilized;
7. Expanding paragraph (e) by requiring safer technology and alternatives analysis;
8. Clarifying paragraph (e) to require consideration of natural disasters and extreme temperatures in their PSM programs, in response to EO 13990;
9. Expanding paragraph (j) to cover the mechanical integrity of any critical equipment;
10. Clarifying paragraph (j) to better explain “equipment deficiencies”
11. Clarifying that paragraph (l) covers organizational changes;
12. Amending paragraph (m) to require root cause analysis;
13. Revising paragraph (n) to require coordination of emergency planning with local emergency-response authorities;
14. Amending paragraph (o) to require third-party compliance audits;

15. Including requirements for employers to develop a system for periodic review of and necessary revisions to their PSM management systems (previously referred to as "Evaluation and Corrective Action"); and
16. Requiring the development of written procedures for all elements specified in the standard, and to identify records required by the standard along with a records retention policy (previously referred to as "Written PSM Management Systems").

While OSHA has begun to take steps in the PSM rulemaking again, there is very likely a long road ahead. In 2012, [the Government Accountability Office \("GAO"\) found that it took OSHA an average of more than seven years to develop and issue safety and health standards](#). While it has been over nine years since the EO was signed that prompted this rulemaking, the PSM rulemaking was on pause for half of that time. As developments are made, we will be sure to provide updates.