



UH, OH. HERE COMES MORE REGULATIONS THAT WE NEED TO WORRY ABOUT.

PART 2

By: Bill Lape, SCS Engineers

Many of us are getting tired of being hit on the side of the head with the regulatory pendulum which just can't seem to settle down and stop. In fact, it seems to be accelerating. In the last edition of the Breeze, Jeff Marshall and I wrote about the Clean Water Act changes that affect very large facilities with more than 100,000 lbs of ammonia. In this issue, I want to highlight some of the Chemical Accident Prevention provisions that became effective on May 10 of this year.

We have seen some of the new provisions before. After President Obama's Executive Order #13650, which called for OSHA, EPA, and DHS to enhance their coordination and information sharing amongst themselves and amongst state and local regulatory and response agencies, as well as "modernizing" policies, regulations, and standards, all three agencies issued

requests for information regarding proposed rule changes to 29 CFR 1910.119, the OSHA PSM standard, 40 CFR Part 68, EPA's Chemical Accident Prevention Provisions, and 6 CFR 27, DHS' Chemical Facility Anti-Terrorism Standard. Of these three, only EPA was able to work through the rulemaking process, issuing draft rule changes in March 2016 and publishing final rule changes in January 2017.

These changes included requiring that supervisors with process operational responsibilities be trained in the same manner as those employees working on or around a covered process. It included requirements for Third Party Compliance Audits. It set a deadline for completing incident investigations, and it included changes to Emergency Response requirements, including notification exercises for all facilities, and field and table-top

exercises for responding facilities. It also included more detailed coordination requirements for all facilities with their local first responders. It also required that covered facilities, known as stationary sources, provide certain information to the public, upon request.

With the change in Administration in January 2017, the Trump Administration sought to rescind the RMP rule changes through the Congressional Review Act. When this failed, the administration stated that they would not enforce the changes. After this stance was taken to court, the EPA, under the Trump Administration, started a rulemaking process to roll back the regulatory changes.

In December 2019, the EPA published revisions to the revisions (cue: eye roll) in the Federal Register. These rule changes eliminated the changes to the prevention

program requirements that conflicted with OSHA's PSM requirements, such as the deadline for incident investigations. It eliminated the third-party audits. It eliminated the requirement to provide information to the public, but instituted a requirement to hold a public meeting after a facility experienced an RMP reportable accident with offsite consequences. It kept most of the Emergency Response provisions that were promulgated in 2017 with some minor changes.

During the Biden Administration, tasked his EPA with creating Safer Communities Through Chemical Accident Prevention. EPA then embarked on another rule making process. In March of 2024, EPA published these revised rules with an effective date of May 10, 2024.

Here is a quick summary of the changes, along with due dates in the chart to the right.

Note that some of the provisions that were originally in the January 2017 rule, such as the incident investigation deadline and third-party audits, have returned. The requirement to make information available to the public is back, with some modifications.

If you are going to a conference in Grapevine this year, I will be reviewing these regulatory changes in more detail, and I will attempt to provide some strategies to comply with them.

Please feel free to email me with questions at NH3isB2L@gmail.com.

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May 10, 2024	
Process Safety Information <i>40 CFR 68.65(d)(2)</i>	Ensure and document that process is designed and maintained in compliance with RAGAGEP.
Hot Work Operation <i>40 CFR 68.83(c)</i>	Permit shall be retained for three years after completion of hot work operations.
PHA <i>40 CFR 68.67(c)</i>	Process hazard analysis addresses stationary source siting and natural hazards that could cause or exacerbate a release.
SOP <i>40 CFR 68.69(a)(4)</i>	In operating procedures, include documentation when monitoring equipment removed due to safety concerns from imminent natural hazards.
March 15, 2027 <i>(or within 10 years of emergency response field exercise between 3/15/17 to 8/31/2022)</i>	
Emergency Response Field Exercise <i>40 CFR 68.10(h)</i> <i>40 CFR 68.96(b)</i>	Responding facilities must conduct simulated release exercises before the specified date and at least once every 10 years thereafter, unless emergency response agencies agree to alternate schedule. Document exercise details, participants, results evaluation, program recommendations, and schedule a plan of action.
May 10, 2027	
Standby or Backup Power <i>40 CFR 68.10(g)(1)</i>	<ul style="list-style-type: none"> Implement continuous operation of monitoring equipment associated with prevention and detection of accidental releases from covered processes
Third Party Audits <i>40 CFR 68.10(g)(2)</i> <i>40 CFR 68.79</i> <i>40 CFR 68.80</i>	<ul style="list-style-type: none"> Conduct third-party compliance audit when facilities have an RMP-reportable accident Implementing agency must notify O/O if need for third-party audit and engage in resolution discussions within 30 days. Appeals must be submitted within 30 days thereafter Engage with a third-party auditor or assemble auditing team that is led a third-party, who meets competency and independence criteria. Have written policy/procedure to ensure compliance with their requirements by all personnel. Ensure this policy/procedure is referenced in the final audit report. Prepare a findings response report within 90 days of receiving the final audit report, signed and dated by senior corporate officer or equivalent official of the O/O. Submit a copy to the audit committee of the Board of Directors and retain it for two report cycles.
Incident Investigation Root Cause Analysis <i>40 CFR 68.10(g)(3)</i> <i>40 CFR 68.81(h)</i>	When incidents meet accident history reporting requirements <ul style="list-style-type: none"> Report must be completed within 12 months of the incident, unless otherwise approved Report must include root causes that contributed to the incident. The root cause is determined through analysis of each incident
Employee Participation <i>40 CFR 68.10(g)(5)</i> <i>40 CFR 68.83</i>	<ul style="list-style-type: none"> Distribute annual written or electronic notice to indicate plan is accessible Provide necessary training to ensure involved parties are informed of the plan Consult knowledgeable employees to address, correct, document, and implement findings of process hazard analyses, compliance audits, and incident investigations Allow knowledgeable employees authority to recommend and shut down operation or process, based on the potential for a catastrophic release Develop system for employees or their representatives to report unaddressed hazards that could lead to catastrophic releases to the EPA
Emergency Planning <i>40 CFR 68.10(g)(6)</i> <i>40 CFR 68.90(b,c)</i>	<ul style="list-style-type: none"> Provide emergency responders with timely data and information detailing current understanding and estimates of nature of the accidental release Maintain and implement procedures to inform public and emergency response agencies about accidental releases. Ensure community notification system is in place
Availability of Information <i>40 CFR 68.10(g)(7)</i> <i>40 CFR 68.210</i>	<ul style="list-style-type: none"> Ensure chemical hazard information is publicly accessible to those living or working more than 50% of the time within 6 miles of fence, providing hazardous chemical information in English and up to two other common languages of area upon request Notify the public about accessing information through public platforms (ex. Company website, social media, etc) and respond to requests for information within 45 days. Maintain record of people requesting chemical hazard information for five years afterward
May 10, 2028	
Risk Management Plan <i>40 CFR 68.10(i)</i> <i>40 CFR 68.160(b)(22)</i> <i>40 CFR 68.173(e)(8,9)</i> <i>40 CFR 68.170(i)</i>	The following must be submitted as an RMP update: <ul style="list-style-type: none"> Communication and location of notification of available chemical hazard information is available to the public within 6 miles of stationary source. Declined recommendations from safety gaps between original standards and current ones, natural hazard, power loss, and siting hazard evaluations and justifications Identify if the latest compliance audit was third party and any declined findings with justification.