



Risk Management Program Rule Updates



NATALIE VANLIEW, PE

**Principal Consultant,
Trinity Consultants**



EHS 2019 Summit

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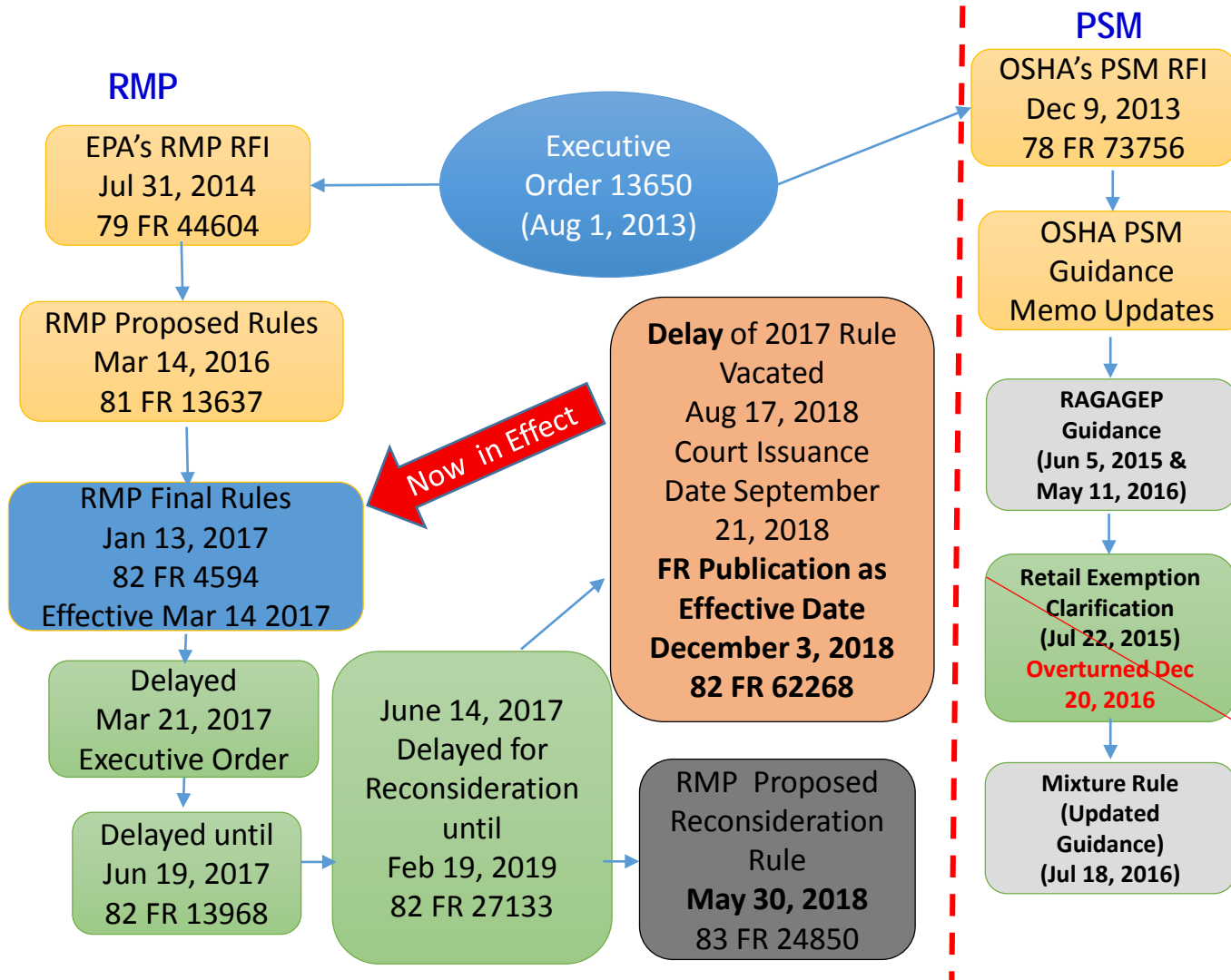
Agenda



- RMP Rule Revision History
- DC Circuit Court Vacatur
 - Immediate Requirements
 - March 2021 Requirements
- Comparison to May 2018 PROPOSED RMP Rule Reconsideration
- Q&A and Discussion

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Rule Revision History



DC Circuit Court Vacatur

- August 17, 2018 decision by subset of court
- CAA Section 7607(d)(7)(B) grants authority to delay for reconsideration but limits that delay to 3 months
- CAA Section 7412(r)(7) grants authority to promulgate regulations with effective date to assure compliance “as expeditiously as possible” but no time limit
- Court determined EPA could not delay the RMP Final Rules for reconsideration for longer than 3 months
- Vacates the June 14, 2017 rule that delayed RMP Final Rules until February 20, 2019
- Issuance Date of decision was September 21, 2018
 - Rehearing petitions have been addressed
 - EPA FR publication of decision was December 3, 2018



Groups of RMP Regulations

Bucket 1 - Rules that apply now and remain in proposed Reconsideration Rule

Bucket 3 – Rules that apply starting March 15, 2021 or later, remain in proposed Reconsideration Rule, and may continuously apply

Bucket 2 – Rules that apply now but are removed in proposed Reconsideration Rule

Bucket 4 - Rules that apply starting March 15, 2021 or later, deleted in proposed Reconsideration Rule, and may not apply continuously.



RMP Compliance Steps

- “Bucket 1 - Apply now & remain” - implement now and plan to continue those requirements
- “**Bucket 2 - Apply now & removed**” – implement now but watch Reconsideration Rule to see if they are removed
- “**Bucket 3 - Apply in 2021 & remain**” – evaluate now if these will affect your sites/processes and develop plan to implement by March 15, 2021 (likely their earliest effective date); watch Reconsideration Rule to see if they remain
- “**Bucket 4- Apply in 2021 & removed**” – evaluate now if these will affect your sites/processes, watch Reconsideration Rule to see if they are removed.
 - Based on what applies to your site, develop an internal “drop” date by which you develop plan to implement by March 15, 2021 if the Reconsideration Rule has not been finalized



Legend for Rule Change Slides

Red Text – added in 2017 Rule

~~Strikeout~~ or *Italics* – added in 2017 Rule but removed in Proposed Reconsideration Rule

Blue Text – Alternate in Proposed Reconsideration Rule



Vacatur - Immediate Impacts

“Bucket 1” – December 3, 2018 effective date AND remain in the proposed Reconsideration Rule

Rule Section	Significant Changes	Citations
Definitions	CBI, LEPC; SDS	68.3; 68.48/ 68.65; 68.210
Applicability / Recordkeeping (5 years)	All compliance deadlines; ER program elements; Table corrections; Establishes Public meeting; DOD/CBI	68.10; 68.90; 68.95; 68.130; 68.160; 68.200; 68.210
General Requirements	Adds ER coordination, program, and exercises to Level 2 & 3 responsibilities	68.12; Detailed requirements have later compliance dates
ER coordination Activities	Lists coordination activities for Program 2 and 3 sites (Original effective date was March 14, 2018)	68.93

Note: The language in 68.210 to provide *“any other information” identified by the LEPC or emergency responders during coordination activities as relevant to planning* is NOT included in the primary proposed RMP Reconsideration rule, but is included as an **alternative**. DOD/CBI information is retained but moved to 68.93.



Definitions & Recordkeeping

- **CBI** – Confidential Business Information
- **LEPC** – Local Emergency Planning Committee established under 42 U.S.C. 11001(c)
- 68.200 – Records kept for 5 years **at the stationary source**, unless Level 2 exceptions
- *Reconsideration deleted definitions for*
 - *Root cause*
 - *ISTD & STAA categories*
 - *Practicability*
 - *Third Party Audits*



RMP Table Corrections

- No changes to the list of regulated substances (68.130, Tables 1-4)
 - Ammonium Nitrate not addressed
 - Coordinate future changes with OSHA and DHS
 - Clerical errors in CAS # are corrected
 - Table 1 – Correct allyl alcohol CAS # 107-18-6
 - Table 4 – Corrected 1,3-butadiene CAS #106-99-0; deleted redundant second CAS# column



Emergency Response Status

- Final rule flipped location of responding and non-responding applicability
- Responding facility if (now 68.90(a))
 - Default is to be a responding site unless you meet the requirements of 68.90(b) as non-responding site
- Non-responding facility if (now 68.90(b))
 - Employees will not respond to accidental releases of regulated substances
 - Included in community emergency response plan for toxics
 - Coordinated with local fire department for flammables
 - Mechanisms in place to notify emergency responders



Emergency Response Coordination

- **New section 68.93 – All Level 2 & 3 programs**
- Coordinate with local responders at least annually, to
 - **Ensure local responders are aware of your regulated substances, their quantities & risks, and your response resources & capabilities**
 - Address changes at the source & in source emergency plan
 - Address changes in local community response plan
 - **Provide copy of source emergency plan and emergency contact info**
 - **Reconsideration removed or modified requirement to “provide any other information”**
- Document coordination activities
- Applies to non-responding and responding facilities at Level 2 & 3 sites
 - Level 1 sites already require coordination (68.10(b)(3))
- **Responding sites must coordinate Emergency Exercises schedule**
 - Establish schedules and plans before the March 15, 2021 deadline
- **“Bucket 1” - address this now & likely continuously comply**
 - Reverts to Final Rule effective date of **March 14, 2018**
 - **Reconsideration – effective in 1 year**



Emergency Response Program



- Additional ERP requirements (68.95)
 - Procedures for informing the public and the appropriate **Federal, state,** and local emergency response agencies about accidental releases
 - Review and update the ERP **as appropriate** to incorporate recommendations / lessons from ER exercises, & incident investigations, **and inform employees of changes**
 - **Develop and implement ERP within 3 years of determining it is necessary**

Vacatur - Immediate Impacts

Bucket 2 – December 3, 2018 effective date AND are removed in the proposed Reconsideration Rule

Rule Section	Significant Changes	Citations
Definitions	Root cause, ISTD & STAA categories, practicability, third-party audit	68.3
Applicability	Compliance deadlines - removed elements	68.10
Hazard Review / PHA	Review incident investigation findings	68.50 (a)(2) / 68.67 (c)(2)
Process Safety Information	Maintain up-to-date (no timeframe provided)	68.65(a)
Training (Initial & Refresher)	Include supervisors with covered process operational responsibilities	68.54 / 68.71 Employees “involved in”
Incident Investigation	Include near miss & destroyed process; Recommendations schedule; Level 2 edits	68.60 / 68.81
Compliance Audits	Audit EACH covered process every 3 years	68.58 (a) / 68.79 (a)



Interim RMP Requirements

- *Incident Investigations and their reports*
 - *Must include near miss and destroyed processes*
 - *Defines incident investigation team and report details (Level 2)*
 - *Complete report within 12 months of incident date*
 - *Include schedule to address recommendations*
 - *Additional details in incident investigation report*
 - *Include their findings in Hazard Review / PHA*
- *Determine “supervisor” roles for covered process SOP training*
 - *Initial and refresher training*
 - *Level 2 – “supervisors responsible for directing operations”*
 - *Level 3 – “supervisors with process operational responsibilities”*
- *Ensure compliance audits address each covered process (not just a matrix approach)*
- *PSI –maintain “up-to-date” for Level 3 sites*
- *All of these are removed in the proposed Reconsideration Rule*
- *“Bucket 2” items*



Incident Investigation & Team

- Investigate each incident that
 - Resulted in catastrophic release *including when affected process is decommissioned or destroyed following, or as a result of, the incident*
 - *Update RMPlan accident history before you de-register the site*
 - Could have reasonably resulted in a catastrophic release (*near miss*)
- *5 year recordkeeping requirement*
- *Complete report within 12 months of event, unless extension granted by agency*
- Alternative Proposal for Level 2 - Incident Investigation Team, Report and Recordkeeping requirements
 - Team to include personnel with process knowledge
 - Doesn't include contract employee in team



Incident Investigation Report

Level 2 and 3 Requirements modified to be

- Date, ~~time, location~~ of incident
- Date investigation began
- Description of incident ~~in chronological order, including all relevant facts~~
 - ~~Name and amount of chemical released & event duration~~
 - ~~Consequences to people & environment~~
 - ~~Emergency response actions taken~~
- Contributing factors, ~~including initiating event, direct & indirect contributing factors, and root causes~~
- Recommendations ~~and schedule for addressing them~~



Safety Information & Hazard Analysis

- Safety Information / PSI (68.48 / 68.65)
 - Reference Safety Data Sheets (SDS) not MSDS
 - *Level 3 requirement for PSI to be kept “up-to-date” (no timeframe)*
 - *Reconsideration reverts to requirement to update PSI before a PHA*
- Level 2 still requires Safety Information be “up-to-date”
- Hazards Analysis / PHA (68.50 / 68.67)
 - Level 2 – “Opportunities for equipment malfunctions or human errors that could cause an accidental release, *including findings from incident investigations*”
 - Level 3 – “Findings from incident investigations, *including “near miss”*, and any other potential failure scenarios”
 - *Reconsideration reverts language for items required in review to original rule language*



Training Requirements



- *Determine “supervisor” roles for covered process SOP training*
 - *Initial and refresher training*
 - *Level 2 – ~~“supervisors responsible for directing operations”~~*
 - *Level 3 – ~~“supervisors with process operational responsibilities”~~*
- *Reconsideration removes the above “employee” definition changes that broadened training requirements to include supervisors*
- *Reconsideration reverts to previous definitions which require SOP training for*
 - Employees presently operating and newly assigned to covered processes (68.54 / 68.71)
 - Impacts initial and refresher training

Vacatur – Potential Impacts

Buckets 3 & 4 - Effective date of March 15, 2021 or later

Rule Provision	Compliance Date	Affected Provision Citations
Information sharing - public meeting after RMP reportable	March 15, 2021	68.210(e) - moved to (b)
ER notification, field & tabletop exercises	March 15, 2021	68.96, with modifications
New RMPlan data requirements	March 14, 2022;	68.160-68.190
<i>Root cause analysis</i>	<i>March 15, 2021</i>	<i>68.60(d)(7) & 68.81(d)(7)</i>
<i>Third-party audit</i>	<i>March 15, 2021</i>	<i>68.58 (f)-(h), 68.59, 68.79(f)-(h) & 68.80</i>
<i>STAA - Level 3, NAICS 322, 324, 325</i>	<i>March 15, 2021</i>	<i>68.67(c)(8)</i>
<i>Information sharing - process data</i>	<i>March 15, 2021</i>	<i>68.210(b)-(d)</i>

Note: These requirements become effective on the listed date if they are not removed or revised in a future final version of the RMP Reconsideration rule. Items in italics are NOT included in the proposed version of the Reconsideration Rule.



Summary of Interim Rule Timing

- Public meeting after RMP Reportable
 - Reverts to Final Rule effective date of March 15, 2021
 - **Reconsideration – effective in 2 years**
- ER Notification, Field and Tabletop Exercises
 - Reverts to Final Rule effective date of March 15, 2021
 - **Reconsideration – effective in 4 years**
- RMPlan Data Requirements
 - Reverts to Final Rule effective date of March 15, 2022
 - **Reconsideration – effective in 5 years**
- **All of the above are included in the proposed Reconsideration Rule**
 - **Effective dates could be based on FR publication of the final Reconsideration Rule instead of 2017 Rule dates**
- “Bucket 3” items



Public Meeting After RMP–Reportable

- Requirement for public meeting within 90 days after RMP-reportable incident
 - Provide information required under §68.42 (RMP-reportable event)
 - Not clear if just for this incident or for past 5 years
 - Other relevant chemical hazard information, such as that listed for chemical hazard summaries
 - Date of the public meeting will be reported in site RMPlan Registration Information after RMP*eSubmit modifications
- Bucket 3 item – still in Reconsideration Rule



Emergency Response Exercises

- New section 68.96 – Effective March 15, 2021
- (a) Notification exercises – all Level 2 & 3
 - Annually test emergency response notification mechanisms – contact information is accurate
 - Responding sites can combine with other exercises
 - Maintain records of exercises for last 5 years
 - *Conduct first exercise within 5 years of rule effective date*
- (b) Tabletop and field exercises – responding sites
 - Coordinate with & invite local public responders
 - Field (simulated) release -actual response and its report can meet this requirement
 - 2017 Final rule “at least every 10 years”
 - *RMP Reconsideration “at appropriate interval”*
 - Tabletop
 - 2017 Final Rule “at least every 3 years”
 - *RMP Reconsideration – first exercise within 7 years of rule effective date and at least every 3 years after*
 - Evaluation report within 90 days of exercise
 - Recommendations and schedule to resolve them
- *Red italics are dates from the proposed Reconsideration Rule*
- Alternate proposal would delete all provisions of 68.96(b)



Tabletop Exercise Scope

Discussion of:

- Notification procedures for public, government & responding agencies
 - *Federal, state and local ER agencies*
- Emergency response actions – evacuation, medical treatment
- Identification of facility, and contractor if applicable, emergency response personnel & their responsibilities
- Coordination with local responders
- Emergency equipment deployment procedures
- Any other actions identified in ERP
- *Reconsideration language modified from a “shall” to a “should” list of topics*



Field Exercise Scope

Tests of:

- Notification procedures for public, government & responding agencies
 - *Federal, state and local ER agencies*
- Emergency response actions – evacuation, medical treatment
- **Communication systems**
- **Mobilization** of facility, and contractor if applicable, emergency response personnel & their responsibilities
- Coordination with local responders
- Emergency equipment deployment procedures
- Any other actions identified in ERP
- *Reconsideration language modified from a “shall” to a “should” list of topics*



Potential Final Rule Requirements

- Root Cause Analysis - Incident Investigations
- Third-Party Audit
- Information Sharing with the Public
- Safer Technologies and Alternatives Analysis
 - Level 3, NAICS 322, 324, 325 only
- *All of the above are effective March 15, 2021 and were removed in the proposed Reconsideration Rule*
- *“Bucket 4” Items*



Public Chemical Hazard Summary

Section 68.210 – Provide within 45 days of request by public

- RMPlan (Subpart G)
- *Regulated chemical hazard information summaries*
 - *Names & SDSs of regulated substances (but not quantities)*
 - *5-year accident history information (68.42) – can't claim CBI*
 - *Emergency response status, coordinating LEPC & their contact information, & procedures to notify the public about accidental releases*
 - *ER exercise schedules*
 - *Provide ongoing notification that this information is available and how to request it (post on company website or social media platform, etc.)*
- Provide sanitized version if CBI
- Rules for DOD classified information still apply
- *These requirements removed in proposed Reconsideration Rule*



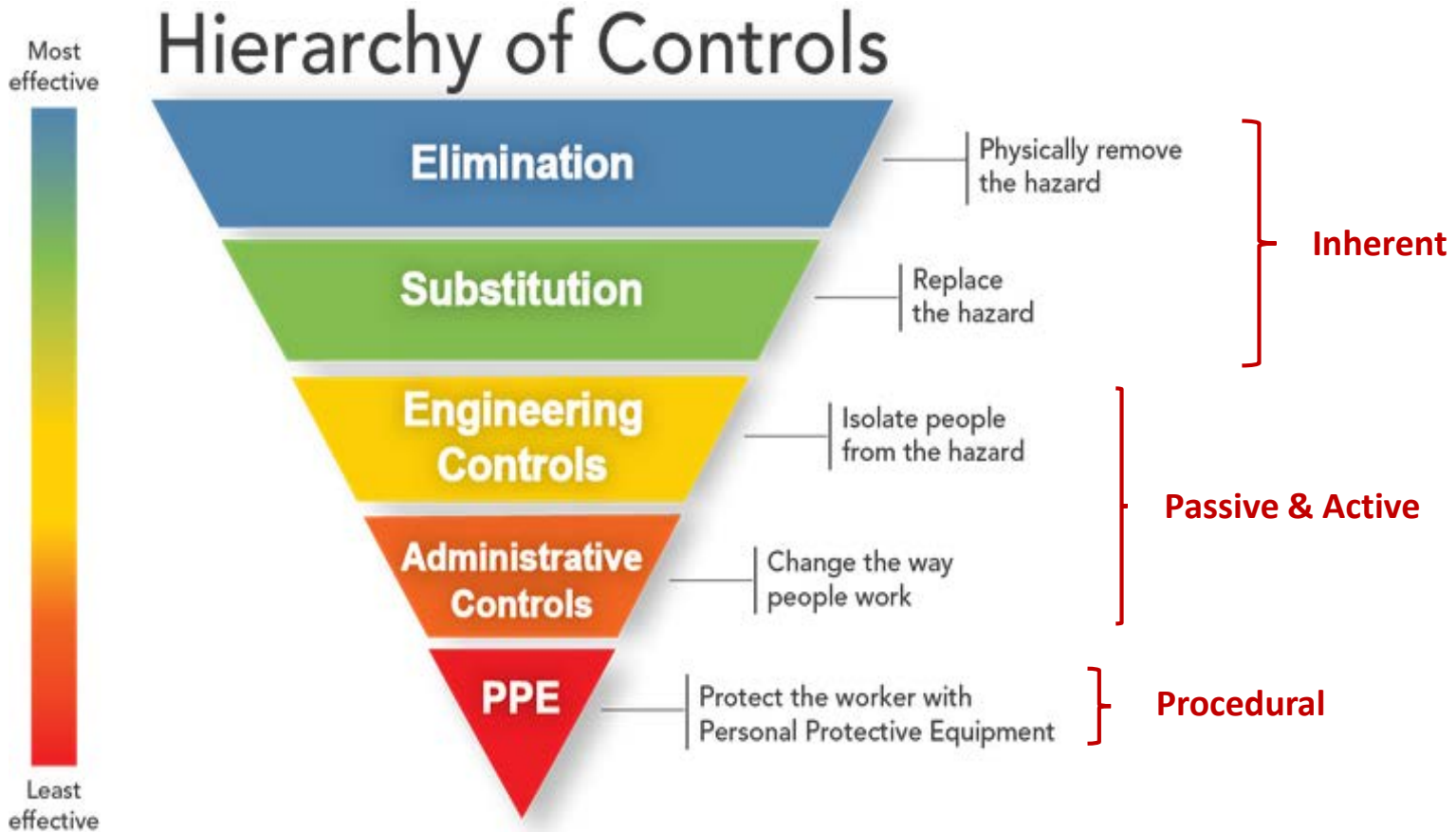
Process Hazard Analysis - STAA

Program Level 3– NAICS codes 322,324 & 325

- As part of the PHA, conduct Safer Technology and Alternatives Analysis (STAA)
- Consider in the following order of preference
 - *Inherently Safer Technology or Design (ISTD)*
 - Passive measures
 - Active measures
 - Procedural measures
- *Owner or operator must determine the practicability of ISTD identified in STAA*



Strategies for STAA



Source: NIOSH website: <http://www.cdc.gov/niosh/topics/hierarchy/>

Groups of RMP Regulations

Bucket 1 - Rules that apply now and remain in proposed Reconsideration Rule

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Bucket 2 – Rules that apply now but are removed in Reconsideration Rule

Bucket 4 - Rules that apply starting March 15, 2021 or later, deleted in proposed Reconsideration Rule, and may not apply continuously.



Bucket 1 & 3 Items – 2017 Final Rule

- Emergency Response Coordination Activities
 - Reverts to Final Rule effective date of **March 14, 2018**
 - **Reconsideration – effective in 1 year**
- Public meeting after RMP Reportable
 - Reverts to Final Rule effective date of March 15, 2021
 - **Reconsideration – effective in 2 years**
- ER Notification, Field and Tabletop Exercises
 - Reverts to Final Rule effective date of March 15, 2021
 - **Reconsideration – effective in 4 years**
- RMPlan Data Requirements
 - Reverts to Final Rule effective date of March 15, 2022
 - **Reconsideration – effective in 5 years**
- **All of the above are included in the proposed Reconsideration Rule, but their effective dates may be based on FR publication date of the final Reconsideration Rule**



Bucket 2 Items – 2017 Final Rule

- Review Incident Investigation findings in your Hazard Review / PHA
- Maintain PSI “up-to-date” (no timeframe provided)
- Determine “supervisor” roles for covered process SOP training (initial & refresher)
- Ensure incident investigations include near miss and destroyed processes
 - Include schedule to address recommendations
- Ensure compliance audits address each covered process (not just a matrix approach)
- All of the above are effective now but were removed in the proposed Reconsideration Rule



Bucket 4 Items - 2017 Final Rule

- Third-Party Audit
- Root Cause Analysis for Incident Investigations
- Information Sharing with the Public
- Safer Technologies and Alternatives Analysis
 - Level 3, NAICS 322, 324, 325 only
- Effective March 15, 2021 under 2017 Rule
- All of the above were removed in the proposed Reconsideration Rule





Questions & Discussion

Contact Information (913) 894-4500 (office)

Trinity Consultants
9777 Ridge Drive
Suite 380
Lenexa, KS 66219



Natalie VanLiew, P.E. nvanliew@trinityconsultants.com

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