

Public Comment Guide for EPA's Proposed Reconsideration of Accidental Release Prevention Requirements under the Risk Management Program

On May 17, 2018 Environmental Protection Agency (EPA) Administrator Scott Pruitt signed a [proposed rule](#) that reverses critical [improvements](#) to chemical facility safety standards established by the Obama administration's previous January 2017 rule updating the agency's Risk Management Program (RMP). Pruitt's proposal was formally [published in the Federal Register](#) on May 30. There is a [public hearing](#) scheduled in Washington, D.C. on June 14 and written comments must be submitted to the [regulatory docket](#) by July 30.

Tips for Writing a Comment

- Read the background of the rule as well as the summary of proposed changes to understand the context of the agency's current proposal.
- Write concisely but provide the relevant details.
- Lay out facts the agency has ignored or overlooked.
- Describe the personal impact of the proposed rule, including how it will impact public and worker health and safety as well as the local environment. Use the [online map](#) of chemical facility incidents to highlight any of the ~2,300 incidents from 2004-2013 that could have impacted you, your family, or others you know. You can also use the most recent EPA [incident data](#) from 2014-2016, which identifies 458 incidents since EPA started working on the Chemical Disaster Rule. Also consider highlighting [incidents that have occurred since](#) Pruitt's EPA first delayed the 2017 RMP rule.
- Address the benefits to public and worker health and safety provided by the 2017 RMP rule that the proposed rule eliminates.
- Highlight the flaws in EPA's justifications for its proposed changes.

Background

The EPA's January 2017 RMP rule, commonly known as the "Chemical Disaster Rule," was a key component of the federal government's response to the 2013 [Executive Order \(EO\)](#) "Improving Chemical Facility Safety and Security." The EO tasked key federal agencies involved in chemical facility safety with reviewing and improving their existing chemical safety programs. EPA received the authority to address and prevent chemical disasters from Congress in 1990 via amendments to the Clean Air Act. The agency finalized the original RMP in 1996 and had not updated it until the Obama administration finalized its modernization efforts in early 2017.

The 2013 EO was itself in response to the catastrophic 2013 fertilizer facility explosion in West, Texas that killed 15 people, including 12 first responders, as well as injured more than 260 people and damaged more than 150 off-site buildings. The specific update to the RMP rule had additional motivation. In documenting its need to improve the existing RMP program, the Obama EPA [noted](#) that between 2004 and 2013, more than 1,500 reportable incidents occurred at RMP chemical facilities, almost 500 of which had off-site impacts. During these incidents, nearly 60 people died, some 17,000

people were injured or sought medical treatment, almost 500,000 people evacuated or sheltered-in-place, and more than \$2 billion in property damages occurred. EPA [found](#) that “most of these serious accidents are preventable if the necessary precautions and actions are taken.”

To update the rule, EPA engaged in an extensive process that included requesting information from the chemical industry and the public as well as conducting several public hearings across the nation. The agency also received more than 160,000 comments. In the final rule, EPA directly responded to more than 200 of those comments, including ones from industry, state and local governments, members of the public, and public interest organizations. Despite this extensive outreach, however, under Pruitt the agency twice delayed implementation of the rule, citing [petitions](#) from the [chemical industry](#) and [some states](#).

Instead of continuing to delay the old rule, Pruitt’s new rule simply eliminates the vast majority of the improvements to chemical facility safety created by the old rule. See below for information on the key components of the 2017 RMP rule that would be eliminated by Pruitt’s proposal, and use these points to help prepare your public comment.

Preventing Chemical Incidents and Disasters

The Pruitt proposal revokes important improvements to the RMP program and requests comment on these changes. These provisions and their benefits are discussed in detail below.

Some of the improvements included in the 2017 RMP rule that Pruitt proposes to remove:

- 1) A requirement that industrial facilities presenting the highest risks undertake a [safer technology alternatives assessment](#) (STAA);
- 2) A requirement that an “incident analysis” include determining the “root cause” of the incident to avoid such incidents in the future; and
- 3) A requirement that qualified, independent third-party audits be conducted when a facility has an incident to ensure the cause of the incident is addressed

Safer Technology Alternatives Assessment Requirement

The Pruitt proposal would eliminate the requirement for facilities to assess safer alternatives for the most dangerous chemical facilities as identified by the 2017 rule.

[Commenters should address how important it is for safety that industries seek out solutions that inherently pose less risk and danger to their employees and surrounding communities.]

Arguably the most vital component of the 2017 RMP rule was a requirement that the most potentially dangerous chemical facilities (called “Program 2” and “Program 3” facilities) conduct a “safer technology alternatives assessment” (STAA). These assessments would determine whether high-risk facilities could adopt inherently safer technologies or processes that would help prevent future chemical release catastrophes.

While developing the 2017 RMP rule, EPA and the Occupational Health and Safety Administration (OSHA) [indicated](#) 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, starting in 2010, [Clorox shifted production](#) of its bleach product at its production facilities from using chlorine to diluting industrial bleach, thus eliminating the need for the transportation and storage of chlorine at these facilities. This change removes the risk of a potentially catastrophic disaster from the release of toxic chlorine gas into surrounding communities. The [disastrous health impacts](#) from such a release are illustrated in the use of chlorine gas as a chemical weapon.

The U.S. Chemical Safety and Hazard Investigation Board (CSB), the governmental agency charged with investigating major chemical facility incidents and preparing recommendations to address the causes of those events, [recommended](#) more stringent requirements on documenting and implementing the use of inherently safer systems analysis and incident investigations than the 2017 RMP rule mandated.

Incident Analysis & Hazard Review Requirements

The Pruitt proposal would delete the requirement for root-cause analysis of accidents and near-misses. The proposal also removes the requirement that the team investigating an incident include at least one person knowledgeable in the process as well as include other persons with experience investigating an incident. The proposal also eliminates the common-sense requirement to include incident investigation reports in hazard reviews.

[Commenters should highlight how root-cause analyses, knowledgeable investigative teams, and documentation of investigations play critical accountability roles.]

The 2017 RMP rule recognized the need for identifying the fundamental causes of chemical facility incidents so that they could be addressed to avoid future incidents. The rule included a requirement that high-risk facilities identify the “root cause” as part of an incident investigation of a catastrophic release or an incident that could have reasonably resulted in a catastrophic release (i.e., a “near-miss”). In its comments to EPA when the 2017 rule was still in the proposal stage, the CSB strongly supported this requirement, noting that “investigating the root causes of incidents is a valuable tool for using lessons learned to prevent future incidents and agrees with the information EPA outlines for inclusion in the incident investigation report.”

Under the 2017 RMP rule, facilities are also required to undertake a “hazard review” to identify the hazards posed by their industrial processes and regulated substances, the opportunities for equipment malfunction or human error that could result in a chemical release incident, and the safeguards in place to control the identified hazards and prevent a chemical release incident. Facilities are also required to document that any problems identified in the review are addressed in a timely manner. These reports are required to be updated every five years. The 2017 rule included a requirement that the hazard review also include findings from investigations of previous incidents at the facility that would provide insight into a potential pattern of safety problems at these facilities.

Compliance & Third-Party Audits Requirements

The Pruitt proposal would eliminate the compliance audit requirement covering each industrial process at a facility, as well as entirely eliminate all requirements for independent third-party audits.

[Commenters should emphasize that third party audits demonstrate a business best practice, particularly when a chemical disaster occurs, as communities, residents, and workers deserve to have an unbiased and independent assessment of the safety failure.]

Under the 2017 RMP rule, facilities were required to file documentation every three years indicating that an audit had been conducted to ensure compliance with RMP regulations for each industrial process at the facility. To avoid potential conflict-of-interest concerns regarding companies using their own staff to conduct these audits, the 2017 rule required that facilities use an independent third-party to audit compliance with regulations after reporting an incident or if a regulatory agency found that conditions at a facility may lead to a chemical release. The 2017 rule included requirements for third-party auditor competency and independence as well as listed responsibilities for third-party audit reports and audit findings response reports.

The Pruitt proposal is requesting public comment on whether a third-party audit or root-cause analysis should be required under unspecified “certain well-defined regulatory criteria.” For third party audits, EPA indicates such criteria might include requiring audits following multiple RMP-reportable accidents or multiple regulatory violations of particular gravity.

Vulnerable Populations Potentially At Risk From Chemical Facility Incidents

Pruitt’s rollback of the 2017 RMP rule puts millions of people—and particularly vulnerable populations of low-income communities and communities of color—potentially at risk.

[Commenters should highlight how the proposed rule could affect their community, family, and neighbors. Use this [map](#) to see if there has been an incident in your area from 2004-2013. For a list of incidents from 2014-2016, see the EPA’s own RMP facility accident [data](#).]

According to a 2014 [report](#) by the Environmental Justice Health Alliance for Chemical Policy Reform, almost 135 million people live within “vulnerability zones” (the area potentially impacted by a worst case chemical release) from more than 3,400 of the highest-risk RMP facilities.

Of particular concern in the 2014 report is finding that Blacks and Latinos are disproportionately represented in areas close to these facilities, with Blacks 75% more likely and Latinos 60% more likely to live near such facilities. The poverty rate in these areas is 50% greater than for the U.S. as a whole. A 2016 [report](#) from the Center for Effective Government (CEG) found that people of color make up nearly one-half of the total population living within a one-mile “fenceline zone” near these dangerous facilities and are almost twice as likely as whites to live in these areas. People of color living in poverty are significantly more likely to live in fenceline zones than whites not living in poverty.

According to the CEG report, the greatest disparities were among poor children of color. For example, low-income children of color are more than twice as likely to live in fenceline zones compared to their peers who are living above the poverty line. An earlier [study](#) found that larger, more chemical-intensive facilities tend to be located in counties with larger Black populations and in counties with high levels of income inequality. It also found a greater risk of chemical accidents and spills at facilities in counties with larger Black populations.

Children are [particularly vulnerable](#) to the potential health impacts from exposure to toxic chemicals. A 2014 [report](#) from CEG found that approximately 20 million children (more than one-third of all U.S. children) attend schools in the vulnerability zones from the 3,400 highest-risk facilities. The 2016 CEG report found that approximately five million children (nearly one-tenth of all U.S. children) attend one of the 12,000 schools located within a one-mile radius of RMP facility vulnerability zones.

Pruitt's proposed RMP rule limits its acknowledgement of the burdens on low-income populations and people of color to a single sentence. The proposal reads that "EPA believes that this action may have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples." In its attempt to minimize this disproportionate impact, however, the analysis in the proposed rule oversimplifies its calculations by stating that measurements of the benefits of a reduction in chemical facility releases could be offset by an increase in national security risks; therefore these benefits were not taken into account for the Regulatory Impact Analysis. As a result, the Pruitt EPA proposal finds that the disproportionate difference for minority and low-income populations is only 11% and 10% greater than the national rate, whereas the previous EPA analysis found the difference to be 31% and 29% greater, respectively.

Public Access to Chemical Facility Information and Response to Chemical Facility Incidents

Public Access to Chemical Facility Information

The Pruitt proposal would remove a provision that required facilities to provide the public with information critical to the surrounding communities' understanding of the potential risks from these facilities, including how to protect themselves should a release occur and what potential health risks they might face from a recent release incident.

[Commenters should highlight how access to sources like emergency plans and the contact information for coordinating officials in local government would be helpful to personal and family plans should a chemical disaster occur.]

The 2017 RMP rule added several new requirements for facilities to provide the public with information within 45 days of a request, including for: their RMP regulated chemicals and related safety data for those chemicals; accident history; emergency response program information; information on scheduled emergency response exercises; and contact information for the Local Emergency Planning Committee (LEPC).

The facility owner or operator is required to notify the public that this requested information is available through a company website, social media platform, or through other publicly accessible means. The facility owner/operator is also required to provide information on where the public can access information on community preparedness, including shelter-in-place and evacuation procedures. The facility owner/operator would also be required to hold a public meeting within 90 days of a reportable incident and provide the public with information such as identification of the chemical(s) and amount released, other chemical hazard information related to the released chemical(s), the type of event that caused the release, on-site and off-site impacts, what factors initiated the release, and whether off-site responders were informed of the event.

Preparing for Response to Chemical Facility Incidents

The Pruitt proposal would delete the requirement that facilities provide emergency planners and first-responders with additional information needed for responding to a chemical release. The proposal would return to the status quo, where companies have more leeway to refuse to share relevant safety information with first responders. The proposal would allow facilities to claim that information regarding the facility's hazardous chemicals or processes is protected as "confidential business information" and would allow them to provide the LEPCs and first-responders only with "sanitized" information or to refuse to provide the information entirely by claiming that information is deemed "classified" under federal rules.

[Commenters should highlight that first responders and emergency personnel need such information to both safely respond to and mitigate a chemical disaster, as it contributes to their determination to enter or not enter a facility. Commenters should additionally push for better coordination between emergency responders and facilities with the potential for catastrophic damages].

To improve the ability of first-responders to respond to a chemical facility release, the 2017 RMP rule included a requirement that facilities coordinate and document response needs at least annually with LEPCs and response organizations such as fire departments. The rule required this coordination to include providing the LEPCs and response organizations with information on the facility's regulated substances, the quantities of those substances, the risks presented by covered processes, the resources and capabilities at the facility to respond to an accidental release of a regulated substance, the facility's emergency response plan if one exists, the emergency action plan, updated emergency contact information, and any other information that local emergency planning and response organizations identify as relevant to local emergency response planning.

The Pruitt proposal would also drop the requirement that field exercises be conducted at least every 10 years. The proposal would replace the components specified for inclusion in both the field and tabletop exercises, as well as the documentation of those exercises, as merely recommendations rather than requirements. The proposal delays the dates by which exercise plans are prepared and tabletop exercises undertaken, with no deadline for field exercises. Alternatively, the proposal is taking comment on eliminating the field and tabletop exercise requirements altogether or keeping all of the 2017 RMP rule exercise program requirements except for the field exercise.

As the 2018 hurricane season begins, the [2017 Arkema chemical facility disaster underscores](#) the potential impact from the delay in imposing these 2017 RMP requirements. Located in the Houston suburbs, the Arkema facility lost power due to the extensive flooding caused by Hurricane Harvey, with the loss of refrigeration for stored volatile chemicals ultimately resulting in chemical tank explosions. The first responders at the site had no knowledge of what chemicals were in the facility (as would have been required were the 2017 RMP rules in place), and these responders reported that they became immediately ill upon exposure to fumes from the explosion. Several of these first responders subsequently [filed a lawsuit](#) against Arkema.

The Pruitt Proposal's Flawed Justifications for Weakening the Rule

EPA Needs to Wait for OSHA

[Commenters should emphasize that EPA is not required to wait for action from other agencies. EPA has the power under the Clean Air Act to implement chemical release regulations separate from OSHA.]

One justification for eliminating the chemical facility safety improvements included in the 2017 RMP rule was that EPA needed to coordinate RMP safety-related revisions with updates to OSHA's Process Safety Management (PSM) program. While the 2013 EO instructed both EPA and OSHA to review and where necessary revise their chemical facility safety programs, there was no requirement that they issue their revised rules simultaneously. Moreover, EPA admits that it has already been in continuous coordination with OSHA.

Waiting for OSHA to revise its own standards is merely a delay tactic. While OSHA initiated their review process with a request for information in late 2013, historically it has taken many years, and often decades, for OSHA to revise its regulations. Revision of the PSM program is listed in the federal government's most recent [Regulatory Agenda](#) as a "long-term action" with the "next action undetermined" at a date "to be determined." To suggest that EPA must wait for OSHA to complete its work on revising the PSM standard has no basis in federal regulation procedural requirements or the 2013 EO.

The 2017 RMP Rule Changes Cost Too Much

[Commenters can mention that California's stricter chemical facility standards calculated that the economic benefits to industry of fewer chemical disasters outweighed the costs of implementing safer practices.]

In response to industry complaints regarding the costs of the 2017 RMP rule, the Pruitt proposal indicates that the now-eliminated or revised components of the 2017 rule place a "substantial economic burden" on the facilities subject to the rule. The proposal estimates that removing the key improvements to the 2017 RMP rule will save industry about \$88 million annually. The vast majority of those "savings" come from dropping the safer alternatives analysis requirement (\$70 million) and third-party audits (~\$10 million).

A 2006 survey of chemical facilities by the [Center for American Progress \(CAP\)](#), however, identified more than 200 facilities that had switched to safer processes and found that 87% of respondents at those plants reported that they did so for \$1 million or less. Additionally, California recently adopted more stringent safety analysis requirements for oil refineries in response to the 2012 disastrous explosion and fire at Chevron's Richmond, California oil refinery that resulted in 15,000 nearby residents seeking medical care. A [study](#) by the Rand Corporation of the costs and benefits of California's improved oil refinery safety rules found that avoiding a major refinery incident would save a refinery about \$220 million, without counting the potential savings from eliminated associated damage to surrounding communities or worker fatalities and injuries. Avoiding a single major incident at a chemical facility such as an oil refinery would save more than twice the estimated annual cost of the 2017 rule.

More Enforcement Will Solve Chemical Facility Safety Problems

[Commenters can mention that the EPA enforcement budget has routinely received budget cuts. Additionally, enforcement of a weakened rule will not protect communities, workers, and vulnerable communities from chemical disasters, as evidenced by the 44 chemical incidents that have occurred since Pruitt delayed the rule.]

Instead of implementing the 2017 RMP rule improvements, Pruitt's proposal suggests the EPA can handle chemical facility safety through better enforcement of the pre-2017 regulations by focusing on "the small numbers of problematic facilities." The proposal additionally asserts that there was already a "low and declining accident rate" for RMP facilities.

While improving enforcement of RMP requirements is certainly needed, it doesn't negate the need for facility safety improvements. Further, EPA's data leaves out "near-miss" events where no RMP chemical ended up being released—even if those near-misses were themselves large explosions or fires that caused considerable damage. Moreover, it is extraordinarily disingenuous for the Pruitt EPA to highlight improved enforcement while simultaneously proposing massive cuts to EPA's [budget](#) and staff, including cuts to enforcement efforts.

As for the "low and declining accident rate" rationale, a more critical look at the data for that conclusion is instructive. First, EPA acknowledges that the accident data for 2014–2016 are incomplete and may increase as many facilities report incidents on a rolling five-year cycle with the next "wave" of reports covering those years expected in 2019. Even based on the incomplete recent data, the drop in the 10-year average number of incidents per year from 2004–2013 (152) and 2007–2016 (137) amounts to only a relatively small 10% change. Moreover, 137 major chemical incidents each year is completely unacceptable, especially for the workers and communities impacted. According to a [report](#) by Earthjustice, the Environmental Justice Health Alliance (EJHA), the Texas Environmental Justice Advocacy Services (T.E.J.A.S.), and the Union of Concerned Scientists and partners, there have been at least 44 publicly known incidents since the rule was delayed over a year ago, with the most recent as of the writing of this document occurring in Pasadena, TX. The 2017 RMP improvements would be expected to substantially reduce the frequency of these events

Providing Public Information Endangers National Security

[Commenters should mention that such information is already available through federal reading rooms, but by increasing access to specific, non-security related information, communities and families can better plan in the event of a chemical release.]

Perhaps the most disingenuous rationale in the Pruitt proposal is the claim that providing the public with information regarding facilities' toxic chemicals and potential risks endangers national security by providing information that could be used by terrorists. The proposal suggests that requiring facilities to serve as a single source for this information to the public makes it easier for terrorists to identify potential targets and that requiring the public to obtain the information (where available at all) via a request to the LEPC, through documents at a federal reading room (which typically are only in large metropolitan areas), or through a Freedom of Information Act request (which often take months to fill) is sufficient to allow people that live near a regulated facility to improve their awareness of risks to the community and to be prepared to protect themselves in the event of a chemical release.

Instead, as noted in the [comments](#) submitted by several national security experts in support of the 2017 RMP rule, requiring that facilities analyze inherently safer technologies and adopt them when feasible enhances national security since the underlying threat of a toxic chemical release is eliminated. If EPA really cares about national security, it needs to retain this requirement of the 2017 rule.