

# EPA Regulation Updates



**Colorado Emergency  
Preparedness Partnership**

*Preparedness through Partnership*



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**November 2020**



# Agenda

## Recent EPA Rule Updates

- RMP Reconsideration Rule
- America's Water Infrastructure Act (AWIA)
- Clean Water Act Hazardous Substance-  
Worst Case Discharge Planning Regulations



# RMP Background

Clean Air Act Amendments of 1990

Created in response to industrial accidents

**Purpose:**

- prevent accidental releases of substances that can cause serious harm to the public and environment from short term exposure
- mitigate severity of releases that do occur

Requires sources holding specific toxic and flammable chemicals above threshold quantities in a process to develop risk management programs to prevent and mitigate chemical accidents.



# RMP-Risk Management Plans

- Covers facilities with one or more of the 140 regulated substances above threshold quantities.
- Requires facilities to:
  - Implement an accident prevention program
  - Implement an emergency response program
  - Conduct a hazard assessment
  - Submit a summary report “RMP” to EPA
- RMPs available to government, limited public access.



# RMP-Program Levels

Dependent on risk:

- Program 1
  - No public receptors in worst case scenario zone
  - No accidents w/offsite impacts in last 5 years
- Program 2
  - Facilities not in Program 1 or Program 3
- Program 3
  - Not eligible for Program 1
  - Already covered by OSHA PSM standard, or
  - Process in 1 of 10 specified NAICS codes



# RMP's-Owner/Operator Requirements

**1) Conduct Hazard Assessment (P1, P2, P3)**

**2) Develop and Implement an Accident Prevention Program (P2, P3)**

**3) Implement Emergency Response Program (P2, P3)**

**4) Develop Management System (P2, P3)**

**5) Submit Risk Management Plan to EPA (P1, P2, P3)**

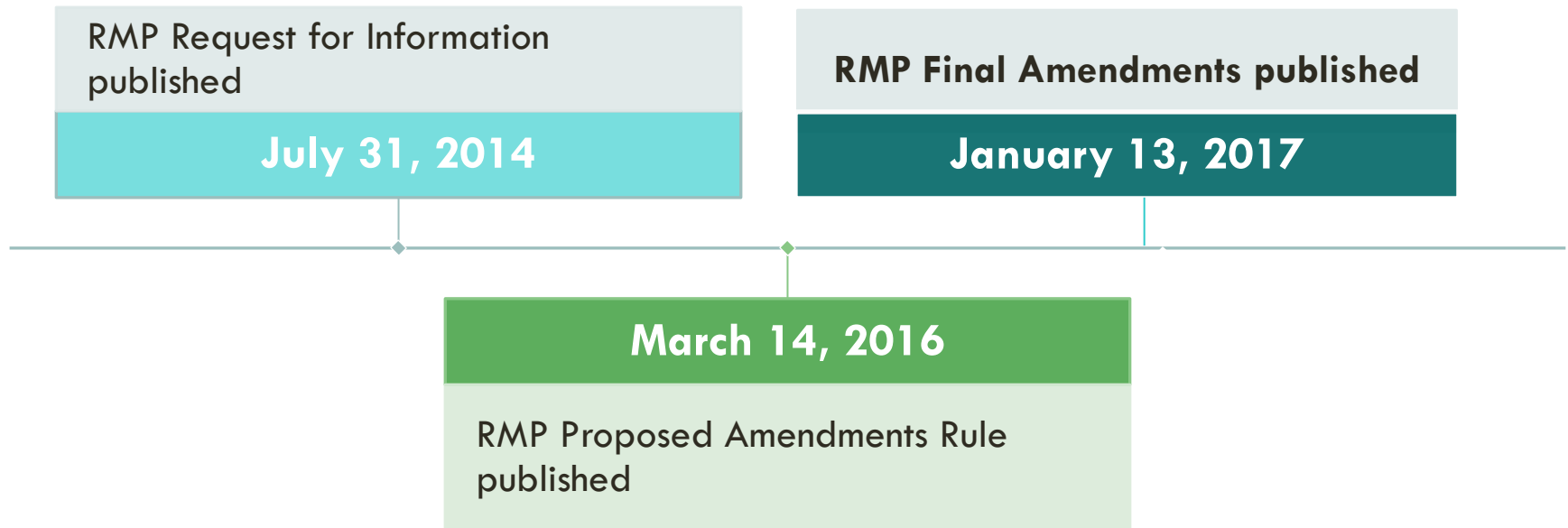


# Changes to RMP Regulations begin

- August 1, 2013: President Obama issued Executive Order **(EO) 13650 Improving Chemical Facility Safety and Security** following catastrophic chemical facility incidents in the US.
- Key areas of emphasis:
  - Strengthening community planning and preparedness
  - Enhancing federal operational coordination
  - Improving data management
  - Modernizing policies and regulations



# RMP Amendments rule timeline







# RMP Amendments Final Rule

## Accident Prevention Program (2<sup>nd</sup> req-P2/P3)

(40 CFR 68 Subparts C/D)

- Third party audits
- Safer technology and alternatives analysis
- Incident investigation root cause analysis

## Emergency Response Program (3<sup>rd</sup> req-P2/P3)

(40 CFR 68 Subpart E)

- Enhanced local emergency coordination requirements
- Emergency exercise provisions

## Information availability requirements (4<sup>th</sup> req P2/P3)

(40 CFR 68 Subpart H)

- Facility chemical hazard information
- Facility public meeting



# RMP Amendments Final Rule

## Other minor provisions

- Minor changes to accident prevention program provisions
- Technical corrections and clarifications
- Changes to risk management plan

## Compliance dates

- New local emergency coordination provisions  
**March 2018**
- New prevention program, exercises and information availability provisions  
**March 2021**
- Risk management plans update  
**March 2022**

# RMP Amendments Delayed

- June 2017- RMP Amendments Rule was delayed for 20 months.
- Work began on the RMP Reconsideration Rule





## Why was the RMP Amendments Final Rule reconsidered?

BATF finding that fire and explosion in West, Texas, was caused by a criminal act rather than accident

Potential security risks with information disclosure requirements in final Amendments rule

Concerns with the costs of the Amendments rule

Concerns that EPA did not adequately coordinate with OSHA

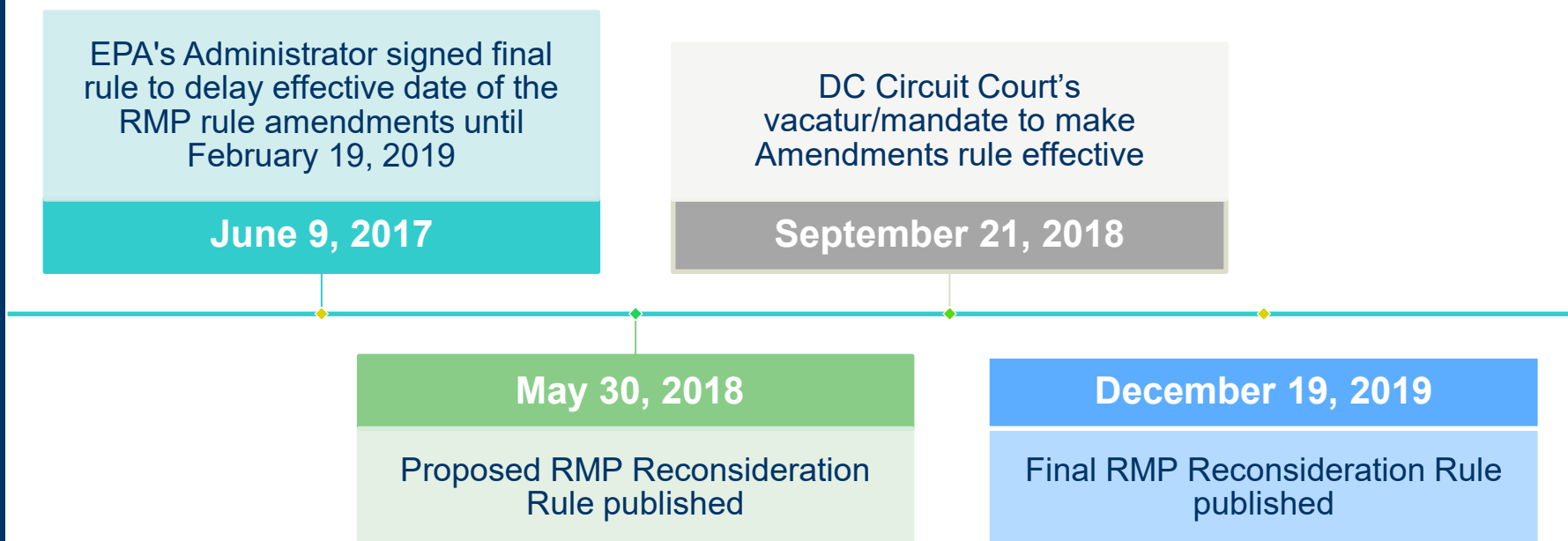


# RMP Reconsideration rule's aim

<b>Maintain</b>	consistency of RMP accident prevention requirements with the OSHA Process Safety Management (PSM) standard
<b>Address</b>	security concerns
<b>Reduce</b>	unnecessary regulations and regulatory costs
<b>Revise</b>	some compliance dates to provide necessary time for program changes.



# RMP Reconsideration final rule timeline





# RMP Reconsideration final rule

## 2<sup>nd</sup> requirement (P2/P3): Accident Prevention Program

Rescinded third party audits



Rescinded safer technology and alternatives analysis



Rescinded root cause analysis incident investigation



Retained **minor provisions**: Program 2 incident investigation team requirements and 'reports' term; safety information 'SDS' term



Rescinded all other **minor provisions**





# RMP Reconsideration final rule

## 3<sup>rd</sup> requirement (P2/P3)

### Emergency Response/Emergency Coordination

Retained **annual coordination** with local response organizations and documentation of coordinated activities



Modified provision to enable emergency response planners to **obtain information “necessary for”** planning and implementation of local emergency response plans







# RMP Reconsideration final rule

## 3<sup>rd</sup> requirement (P2/P3)

### Emergency Response/Emergency Exercise

Retained annual notification drills



Retained requirement to perform field and tabletop exercises



Retained tabletop exercises frequency, every 3 years



Modified **field exercises frequency** by removing minimum frequency requirement (owner or operator must still consult with response officials on frequency)



Modified **documentation requirements** by only recommending items for exercise reports





# RMP Reconsideration final rule

## 4<sup>th</sup> requirement (P2/P3): Management System-Information Availability

Rescinded requirement to provide  
chemical hazard information to public  
on request



Modified public meeting requirement  
to require meeting within 90 days only  
for accidents with off-site impacts

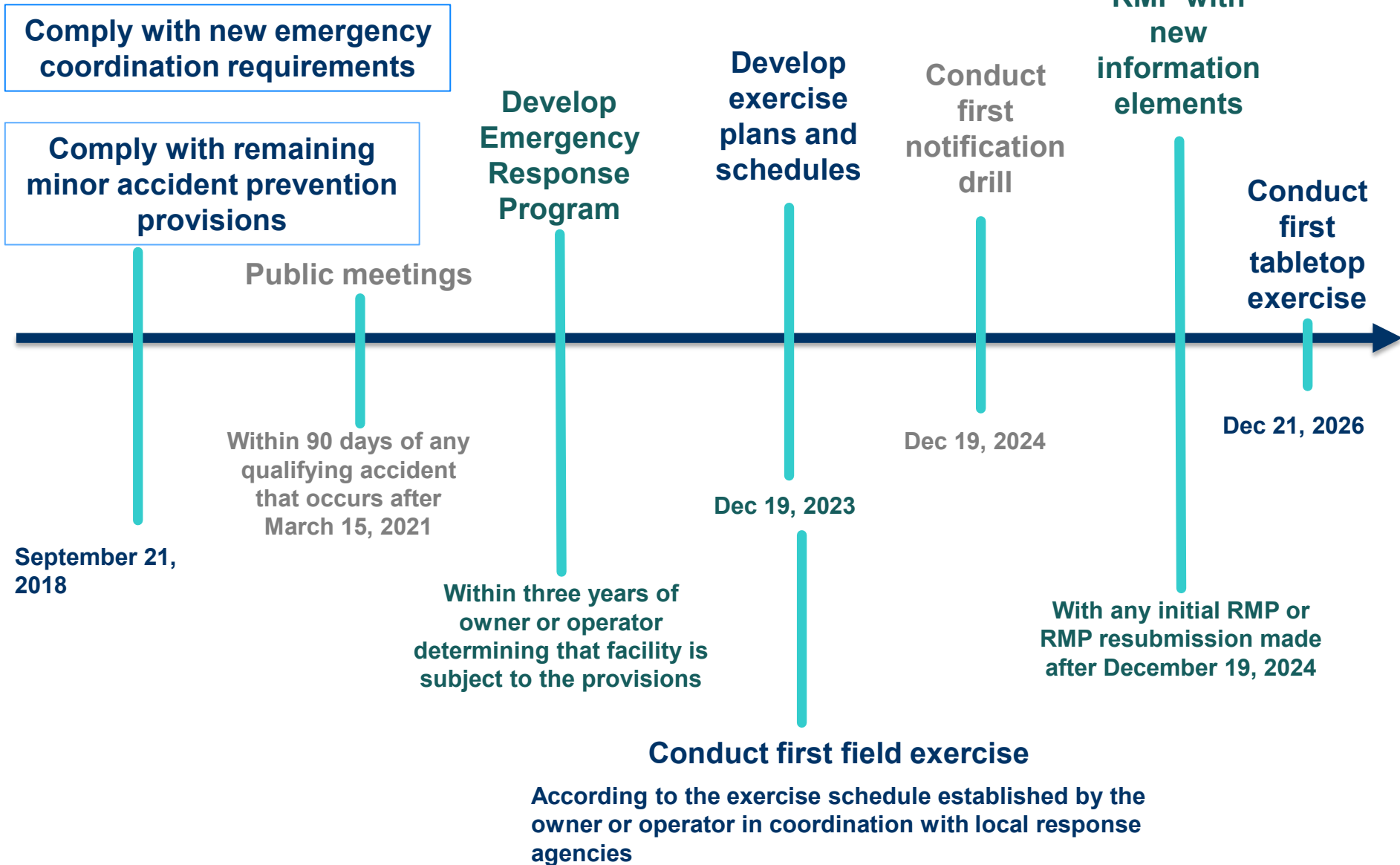


# What facility chemical information is available to the public now?



- Read-only access to the full version of facility RMPs at reading rooms by appearing in person at a Federal reading room
- Read-only RMP access directly from the local emergency planning committee in the location where the person lives or works
- Submitting a FOIA request to EPA
- Information available under the Emergency Planning and Community Right-to-Know Act

# RMP Reconsideration Final Rule- Compliance Dates





# RMP Reconsideration Final Rule Compliance Dates

What	Due Date
Public meetings	Within 90 days of any qualifying accident that occurs after March 15, 2021
Develop Emergency Response Program	Within three years of owner or operator determining that facility is subject to the provisions
Develop exercise plans and schedules	December 19, 2023
Conduct first notification drill	December 19, 2024
Conduct first tabletop exercise	December 21, 2026
Conduct first field exercise	According to the exercise schedule established by the owner or operator in coordination with local response agencies
Submit RMP with new information elements	The owner or operator would provide new information elements with any initial RMP or RMP resubmission made after December 19, 2024
Comply with new emergency coordination requirements	Already in effect as of September 21, 2018
Comply with remaining minor accident prevention provisions	Already in effect as of September 21, 2018



# What is EPA doing to prevent future chemical accidents?



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Retention of all prevention provisions that have resulted in long-term trend of fewer significant chemical accidents

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New RMP Reconsideration Rule provisions

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National Compliance Initiative for Reducing Risks of Accidental Releases at Industrial and Chemical Facilities

# America's Water Infrastructure Act

- AWIA signed in October 2018 amending the Safe Drinking Water Act.
- Provides for water infrastructure improvements throughout the country.
- How does this affect emergency planning/management? Amended EPCRA as well.





# AWIA

- **Sec 2013: Community water system risk and resilience**
  - Risk Assessments (RA) and Emergency Response Plans (ERP) requirements for community water systems
- **Sec 2018: Source water**
  - Notification requirements for response commissions and state primacy agencies
  - Tier II data availability for community water systems



# AWIA Section 2018

- Amends EPCRA
- Intended to mitigate risk of source water contamination
- Motivated by several recent source water contamination incidents (namely the Charleston, WV chemical spill in 2014).





# AWIA-Section 2018 Emergency Notification

AWIA amends EPCRA 304 to add sub-section 304(e).

- EPCRA 304- covers approx. 355 EHSs and over 700 hazardous substances subject to CERCLA (aka Superfund).

Requires SERCs/TERCs to promptly notify applicable state agency (typically state drinking water primacy agency) of any reportable release and provide agency with:

- Information collected under 304(b) from initial release notification
- Follow-up written report under 304(c)

# AWIA-Emergency Notification

- State primacy agency is then required to provide all information regarding release to any community water systems whose source water is affected.
- If there is no State Drinking Water Primacy Agency, then the SERC would need to directly notify the Community Water System.





# AWIA-SERC/TERC notification

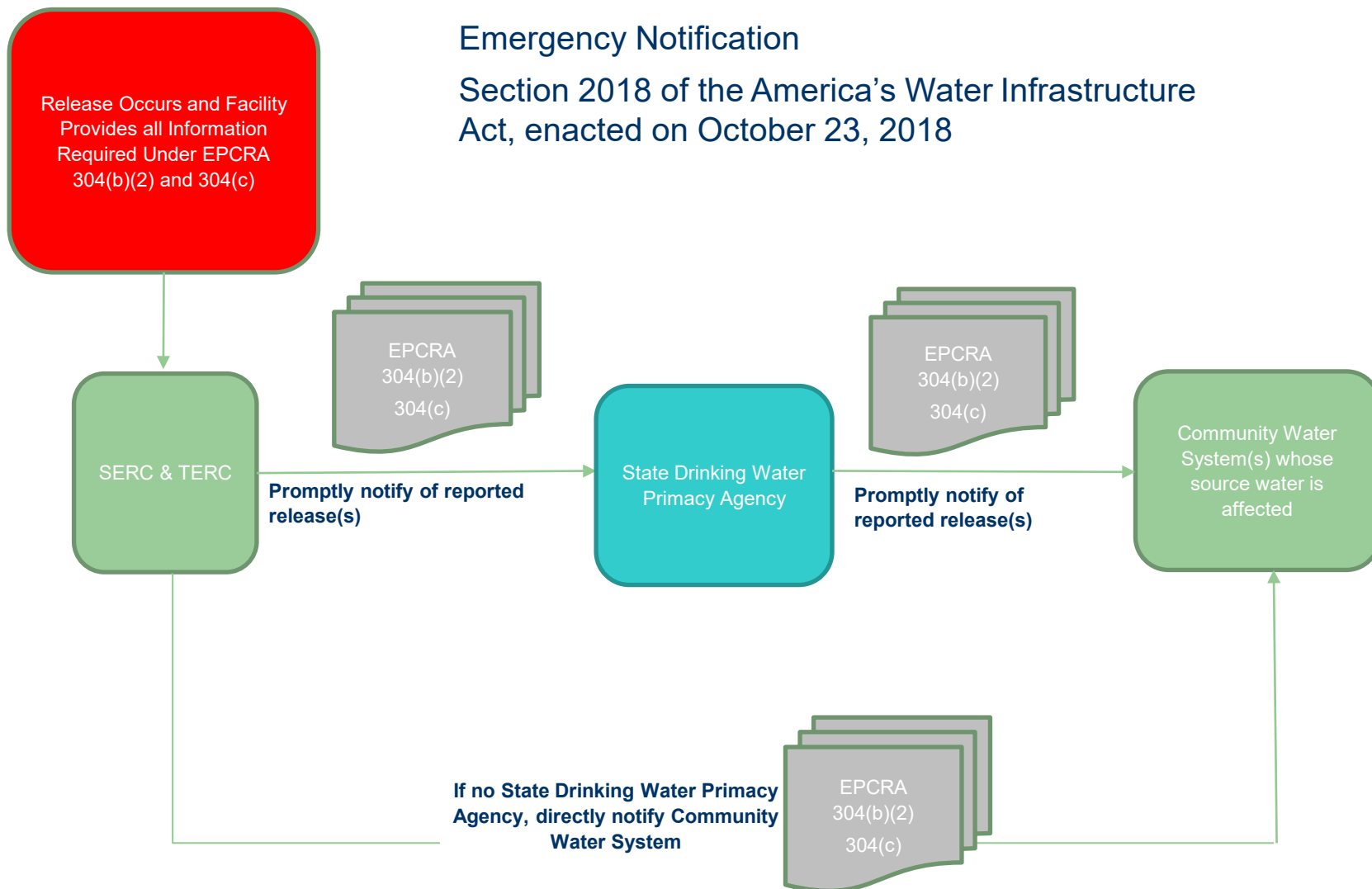
SERC/TERC shall provide the primacy agency with (this is the same information provided by the facility with the release):

- The chemical name or identity of any substance involved
- An indication of whether the substance is on the EHS list
- An estimate of the quantity released into the environment
- Time and duration of the release
- Medium or media into which release occurred
- Known/anticipated acute or chronic health risks
- Proper precautions to take, including evacuation
- Name and telephone of contact person



## Emergency Notification

Section 2018 of the America's Water Infrastructure Act, enacted on October 23, 2018





## AWIA Section 304 FAQ's

- **Are SERCs/LEPCs required to identify facilities reporting under Tier II that might impact sources of drinking water?**

No, that is not the responsibility of the SERC or LEPC.

The water system or state drinking water primacy agency should provide the SERC/LEPC with the source water protection area, and the SERC or LEPC should provide the water system with the chemical inventory data for that area.



# AWIA Section 304 FAQ's

- **Does a SERC/LEPC have to respond to requests for Tier II data from water systems located in another state?**

Yes, the SERC or LEPC is required to fulfill requests for Tier 2 chemical inventory data from community water systems for the portion of the source water area in the jurisdiction of the SERC or LEPC.



## AWIA- Section 2018 Chem Data Availability

- AWIA Section 2018(b) amends EPCRA 312 to add Community Water Systems.

Remember 312=Tier II Reporting

Requires SERCs/TERCs and LEPCs/TEPCs are to provide affected community water systems with hazardous chemical inventory data submitted on Tier II forms for their source water area, upon request from the water system.





## AWIA Section 312 FAQ's

- **Are SERCs/LEPCs expected to obtain data for facilities identified by utilities even if those facilities are not reporting?**

Yes, if the facility is located within water system's source water protection area.

If SERC/LEPC already has chemical inventory data on non-reporting facilities in a water systems' source water protection area, the SERC/LEPC might consider sharing that information with the water system prior to a formal request.

Data requests to the SERC/LEPC need to be specific (i.e.- specific facilities in the source water area).



# AWIA Section 312 FAQ's

- **What (if any) use restrictions should be placed on Tier II data provided to a water system?**
  - SERCs could require a water system to agree to a non-disclosure agreement prohibiting sharing of Tier II data beyond utility.
  - SERC/LEPC might consider allowing water systems to share Tier II data with other community water systems using the source and contractors who are helping the water system to analyze and manage the data.

# Where can LEPCs be involved?

- Community Water Systems over 3300 persons served will need to complete risk and resilience assessment and emergency response plan.
- These water systems should be reaching out and working closely with LEPCs when developing their emergency response plan.



# CWA Hazardous Substances

## Clean Water Act Hazardous Substance Worst Case Discharge Planning Regulations

Motivated by WV chemical spill incident in 2014

### Background-

Under CWA 311(j)(5), the President:

*shall issue regulations which require an owner or operator of a . . . facility . . . to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance."*



# CWA Hazardous Substances

Oil requirements promulgated in 1994 Facility Response Plans (FRP) under Subpart D, 40 CFR 112.

EPA never proposed worst-case discharge planning regulations for CWA hazardous substances under 311(j)(5).





# CWA Hazardous Substances

- EPA entered into a settlement agreement. The agreement requires the EPA proposes an action by March 2022 and a final action by September 2024.
- National workgroup has been formed and is currently reviewing if any action is necessary.
- Stay tuned!



# Questions?

## Preparedness and Site Assessment Section:

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