National Association of Chemical Distributors

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July 26, 2021

U.S. Environmental Protection Agency
Attention: Docket ID No. EPA-HQ-OLEM-2021-0312
Acting Director Donna Salyer
Office of Land and Emergency Management
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Via Electronic Submission: http://regulations.gov

**Re: Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Request for Public Comment. Docket ID No. EPA-HQ-OLEM-2021-0312, 86 Fed. Reg. 28,828 (May 28, 2021)**

The National Association of Chemical Distributors (NACD) submits the following comments in response to the request for comments on the Risk Management Program rule made by the U.S. Environmental Protection Agency (EPA) in the May 28, 2021, *Federal Register* issue regarding **Docket Number EPA-HQ-OLEM-2021-0312, Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act.**

About NACD

The National Association of Chemical Distributors (NACD), established in 1971, is an international association of chemical distributors and their supply-chain partners. Member companies process, formulate, blend, re-package, warehouse, market, and transport chemical products for over 750,000 customers across the U.S. The industry that NACD represents is a major economic engine that generates $7.5 billion in tax revenue. NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution®, the association's third-party-verified environmental, health, safety, and security program. Through this verification, NACD members demonstrate their commitment to continuous improvement in every phase of chemical storage, handling, transportation, and disposal operations.

Owners and operators of NACD member companies have a personal stake in the safety and security of their employees, companies, and communities. They take their responsibility seriously and demonstrate this through their commitment to Responsible Distribution; their relationships with employees; involvement in local communities, including participation in Local Emergency Planning Committees (LEPCs); and careful compliance with numerous environmental, safety, and security regulations at the federal, state, and local levels. The comprehensive "Code of Management Practice" of NACD Responsible Distribution® requires each member company to have an active program designed to continuously improve safety and reduce incidents. This assists NACD members with the Emergency Planning and Community Right-to-Know Act (EPCRA); the Risk Management Plan (RMP) rule; and other important regulatory requirements including, but not limited to, waste management and conservation practice, emergency response and public preparedness, community outreach, security, job procedures and training, and corrective and preventative action. NACD members are stewards of their community and environment. As community partners, they host

household waste days, support local STEM programs and other school activities, open their facilities for public tours, participate in local community groups, and support local first responders. As environmental stewards, NACD members monitor and comply with EPA's regulations and guidelines; maintain strict accident prevention practices; and carry out precise storage, disposal, and waste management procedures.[1]

NACD shares EPA's goals of preventing chemical accidents, improving preparedness, environmental stewardship, and community partnerships but urges the agency to consider the following items as it re-evaluates the RMP rule in accordance with Executive Order 13990: Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990).

The Effectiveness of Existing Regulations Under the RMP Rule

EPA's current regulations under the RMP rule are comprehensive and robust and have proven effective in preventing chemical accidents. Based on the agency's own data, the number of accidents at RMP facilities has substantially decreased since the original 1996 rules took effect. In the May 30, 2018, proposed rule, EPA itself states, "The agency acknowledges that the continual decrease in accidental releases under the existing RMP rule is evidence that the existing rule is working and that additional costs may not justify the additional [2017 RMP Final Rule] requirements."[2]

NACD strongly believes the top priority of EPA should not be to expand RMP regulations for those already in compliance, but rather to dedicate its efforts to ensure all chemical facilities are aware of and have a full understanding of their safety and security regulatory obligations. Adding new complex requirements such as those that were included in the 2017 RMP final rule[3] is not the solution and would only create more regulatory confusion. A more effective approach to expanding regulatory requirements for EPA would be a commitment to outreach, compliance assistance, and strict enforcement of the existing regulations. In addition, an increased use of Tier II reports, expanded training of fire inspectors, and better interagency coordination would make a positive impact and would be a more effective use of EPA's resources.

Complementary Regulatory Program: EPCRA

EPA has well-established chemical management programs, such as EPCRA and the RMP rule whose initiatives complement and support each other. They effectively advance society-facility partnerships; inform emergency responders, fenceline communities, and government authorities of essential information to mitigate accidents; and protect communities from harmful pollutants.

EPCRA's "provisions help increase the public's knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment."[4] Under EPCRA, facilities immediately report accidental releases to state and local officials, regularly cooperate with state and local governments to prepare chemical emergency response plans, submit safety data sheets to local officials and local fire departments, and annually report

[1] National Association of Chemical Distributors, "Responsible Distribution: Code of Management Practice," nacd.com, NACD, https://www.nacd.com/responsible-distribution/about-responsible-distribution/code-of-management-practice/.
[2] *Federal Register*, Vol. 83, No. 104, May 30, 2018, page 24,871.
[3] 40 CFR Part 68.
[4] U.S. Environmental Protection Agency, "What is EPCRA?" epa.gov, EPA, June 28, 2021, https://www.epa.gov/epcra/what-epcra.

data to the toxic release inventory (TRI).[5] Aligning with EPRCA's objectives, the RMP rule "identifies the potential effects of a chemical accident, identifies steps the facility is taking to prevent an accident, and spells out emergency response procedures should an accident occur."[6] Further, facilities' RMPs are made available to the public to foster communication, awareness, and improve accident prevention.[7]

Through these existing regulatory programs, EPA has the tools and authority at its disposal to meet the directives outlined in E.O. 13990. Additional regulations would be repetitive and cumbersome and potentially would place contradictory obligations on facilities, which could derail or stall their efforts to comply with all regulations efficiently and appropriately.

Safer Technology and Alternatives Analysis

In its 2017 rule, EPA required RMP Program 3 facilities in NAICS codes 322, 324, and 325 to conduct Safer Technology and Alternatives Analyses (STAAs) as part of their process hazard analyses (PHAs). These STAAs included analyses of potential safer technologies and alternatives and a determination of feasibility of implementation of any inherently safer technologies (ISTs). In 2019, EPA rescinded STAA mandates from the 2017 rule.[8]

NACD opposed the STAA requirements in the 2017 rule. PHAs, which themselves are highly labor and resource intensive, are sufficiently rigorous in identifying hazards for facilities to address. It is not practical to require a facility to conduct an IST analysis as part of a PHA. A PHA is conducted on a defined process with defined chemicals. It cannot be done on a process that does not exist. To consider a substitute, a facility operator would need to design the new process before being able to conduct the analysis. This would be an expensive and time-consuming endeavor. For most facilities, an IST analysis would likely produce limited options that would not justify the cost and effort of the exercise itself.

In its 1996 RMP rulemaking, EPA also came to the same conclusion about an IST analysis mandate. In the *Federal Register* notice of the final RMP rule, the agency stated, "EPA does not believe that a requirement that sources conduct searches or analyses of alternative processing technologies for new or existing processes will produce additional benefits beyond those accruing to the rule already."[9] NACD agrees with EPA that the application of good PHA techniques often reveals opportunities for continuous improvement of existing processes and operations without a separate analysis of alternatives and that IST analysis will not produce additional benefits beyond those accruing to the rule already.

NACD strongly opposes the concept of future regulatory IST consideration and implementation mandates and urges EPA to maintain the current standard regarding STAA mandates in their upcoming evaluation.

National Security and Information Availability

NACD members work with their local emergency responders and LEPCs to ensure they have the information they need to be prepared for an incident. NACD supports the ongoing relationship and information sharing between these groups but cautions against EPA widening

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[5] *Ibid.*
[6] U.S. Environmental Protection Agency, Risk Management Plan (RMP) Rule Overview," epa.gov, EPA, July 2, 2021, https://www.epa.gov/rmp/risk-management-plan-rmp-rule-overview.
[7] *Ibid.*
[8] 40 CFR Part 68.
[9] *Federal Register*, Vol. 61, No. 120, July 20, 1996, page 31,699.

the scope of information availability and/or distribution sharing requirements because it raises serious safety and security concerns. For example, if the EPA were to require RMP-regulated facilities to distribute certain chemical hazard information for all regulated processes to the public in an easily accessible format, it leaves the country vulnerable to potential terrorist attacks. Anyone with an internet connection would have access to safety-sensitive information about a wide-variety of chemicals and therefore access to a roadmap for causing harm. It makes the chemical distributor's job and responsibility of running a safe operation difficult and not only puts fenceline communities at increased risk, but it also puts the wider public at risk. It is essential that EPA maintain their decision to limit the amount of information that is publicly available.

Conclusion

NACD appreciates the opportunity to provide these comments. We understand the importance of addressing the impacts of climate change and that it disproportionally impacts communities of color and low-income populations, but the industry requires clear and practical regulation to meet the agency's requirements, mitigate externalities, and prevent harm. On behalf of our membership, we urge EPA to rely on its existing programs to advance environmental stewardship and community partnerships because regulatory clarity and certainty promotes more effective compliance, not additional regulations. It is important for the U.S. to have a robust chemical industry, as it is an essential component of the economy and foundational element of American manufacturing and infrastructure. If rules are too onerous and confusing, the industry and jobs will be driven out to other countries.

If you have questions or require additional information, please do not hesitate to contact me.

Sincerely,

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