



National Association of  
Chemical Distributors

October 31, 2022

U.S. Environmental Protection Agency  
Attention: Docket ID No. EPA-HQ-OLEM-2022-0174  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

The National Association of Chemical Distributors (NACD) submits the following comments in response to the Environmental Protection Agency's (EPA) Proposed Rule regarding **Docket ID No. EPA-HQ-OLEM-2022-0174, Accidental Release Prevention Requirements: Risk Management Program Under the Clean Air Act; Safer Communities by Chemical Accident Prevention**, published in the *Federal Register* August 31, 2022.

### 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. Despite this substantial economic impact, NACD members are predominantly small regional businesses, many of which are multi-generational and family owned. The typical chemical distributor has 26 employees and operates under an extremely low margin.

NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution<sup>®</sup>, 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<sup>®</sup> requires each member company to have an active program designed to continuously improve safety and reduce incidents. This assists NACD members with the Risk Management Plan (RMP) rule; the Emergency Planning and Community Right-to-Know Act (EPCRA); and many other important regulatory requirements. NACD members are stewards of their communities and

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the 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.<sup>1</sup>

NACD shares EPA's goals of preventing chemical accidents, improving preparedness, practicing environmental stewardship, and enhancing community partnerships. It is with these goals in mind that NACD urges the EPA to reconsider its amendments to the RMP regulations. As currently written, the RMP regulations are successfully reducing chemical accidents and improving emergency response. NACD is concerned that unnecessary and burdensome changes to the rule will put additional strain on businesses and jeopardize the chemical safety gains that have been made since 1996.

### **Cost Benefit**

Since the RMP regulations were codified in 1996, chemical accidents have been consistently trending downward. RMP incidents decreased by 70% from 1996 to 2016, and this trend is continuing as there was a 57% decrease in RMP incidents from 2007 to 2016 alone. These reductions demonstrate that RMP chemical accidents are extremely rare. Further, according to EPA data, 97% of RMP-regulated facilities did not have an RMP reportable incident from 2016 to 2020. NACD believes this data proves that current RMP regulations are achieving their purpose and reducing chemical accidents. Facility owners/operators and necessary employees have developed a full understanding of the regulations and embedded them into their daily processes. Changing these regulations threatens to disrupt the procedures of facilities and impede the progress that has been made under current RMP regulations.

Instead of requiring new regulations for all facilities covered by RMP, the EPA should focus on facilities that are noncompliant and/or experiencing the majority of accidents. When applying the 3% accident rate for facilities between 2016 and 2020 to the total 11,740 total facilities, only about 350 facilities experienced accidents in that timeframe. Moreover, this number is an overestimate as it does not account for facilities with multiple releases. NACD urges the EPA to focus its efforts on these facilities instead of broadly applying new regulations to all RMP facilities, the vast majority of which are in compliance and have successfully prevented having a release. Adopting a severe violator enforcement program similar to the one in place at the Occupational Safety and Health Administration (OSHA) would make the EPA's efforts more concentrated and effective while not unduly burdening compliant facilities.

Furthermore, when assessing the costs of the proposal, it appears that ensuring compliance will be costly to businesses. Facilities will be required to change their processes, develop systems for disclosing information to the public, hire third parties to conduct audits, undergo safer technology and alternatives analysis (STAA), and more. While EPA estimates that this will only equate to an undiscounted cost of roughly \$64,000 annually per facility, NACD members are concerned that this number is a gross underestimate. One NACD member

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<sup>1</sup> National Association of Chemical Distributors, "Responsible Distribution: Code of Management Practice," [nacd.com](https://www.nacd.com/responsible-distribution/about-responsible-distribution/code-of-management-practice/), NACD, <https://www.nacd.com/responsible-distribution/about-responsible-distribution/code-of-management-practice/>.



recently underwent a third-party audit which cost roughly \$45,000. Considering these costs, in addition to the labor hours and administrative expenses attached to other provisions of this proposal, NACD members estimate that the cost per facility can easily exceed \$100,000 per year.

When applying this cost to the chemical distribution industry and the American economy, there are clear impacts to inflation and economic loss. An analysis of the proposed rule conducted by John Dunham and Associates found that an annual cost of \$100,000 per RMP facility would result in a reduction of economic input from the chemical distribution industry of over \$51 million. When applied to the entire American economy, there would be a loss of over \$165 million. In addition to economic loss there is also an inflationary impact as the costs per ton of chemicals handled by distributors would rise by 0.13% or \$0.46 per ton.

While it is unclear if there will be a significant reduction of chemical accidents under the proposed changes, as there are so few under the current regulations, there will be an undeniable financial impact on businesses to comply with the rule. NACD urges the EPA to reevaluate its estimated cost for this proposed rule, especially as it applies to small businesses. It is not realistic to conclude that only 0.2% of small entities will experience a financial impact of more than 3%. Furthermore, NACD also urges the EPA to reexamine provisions within the proposal and assess whether they are truly necessary as unnecessary burdens may inhibit what is currently being done to successfully reduce accidents.

## **Hazard Evaluation**

In the proposal, the EPA makes several new recommendations in regard to hazard analysis for facilities with program 2 and program 3 processes. Specifically, new regulations concerning natural hazards, loss of power, and facility siting are proposed. NACD is concerned with issues of unclear language, impractical requirements, and duplicative work in the proposed changes to hazard evaluations.

- **Natural Hazards:** In the proposal, the EPA specifies new requirements for facilities evaluating natural hazards. Specifically, the proposal states that hazard reviews and process hazard analyses (PHAs) must include natural hazards related to climate change and other triggering events that could lead to a release. It would be extremely difficult for facilities to comply with this requirement as there is not a defined method of determining what hazards climate change could cause. It is unclear if it is even possible for facilities to predict accurately how climate change will impact their surroundings as there are a myriad of everchanging variables that must be considered. Attempting to accomplish this would be a monumental – if not impossible – task, especially for small businesses. NACD requests that EPA remove the addition of climate change when evaluating natural hazards.
- **Loss of Power:** The proposal also has facilities consider loss of power as a hazard to be evaluated in hazard reviews and PHAs. Part of the proposed requirements include a need for air pollution control or monitoring equipment to have standby or backup power if they are associated with the prevention/detection of an accidental release from an RMP-regulated process. This requirement is already covered by PHAs and



there is no need for it to be changed. Applying this broadly would require facilities that do not have a need for such safeguards, as determined by their PHA, to implement costly measures unnecessarily.

- **Facility Siting:** The proposed rule amends what is necessary in site evaluations, specifically requiring “the placement of processes, equipment, buildings, and hazards posed by proximate facilities, and accidental release consequences posed by proximity to the public and public receptors.” NACD is concerned with the term proximate facilities as this is not defined. Moreover, when these facilities are identified, it is not practical to expect them to share information with each other when accounting for concerns related to confidential business information and security information. Also, facilities covered by OSHA’s Process Safety Management (PSM) regulations already undergo similar facility siting requirements. Implementing this would be unnecessary and duplicative, while also creating the opportunity for inconsistent enforcement between the EPA and OSHA.

Each of these provisions are already included in OSHA’s PSM standards and it is unnecessary to include them in RMP. Having these categories included in RMP in addition to PSM would create duplicative work for facilities while also creating the opportunity for uneven enforcement of these provisions from the two agencies. NACD urges the EPA not to include these additional provisions in RMP regulations and instead allow OSHA to continue its oversight of these hazards.

Moreover, the proposed rule also requires facilities to list recommendations, related to the above categories, that are not adopted in risk management plans with justification. NACD believes that this exercise is unnecessary as there is no benefit listed in the proposal. While this does meet the goal of transparency the EPA has referenced throughout the proposal, it does not achieve any meaningful result as members of the community and others who may be looking at this data do not have the information that was used to make the decision. It appears that this requirement is adding transparency simply for the sake of transparency. Moreover, this requirement will likely cause facilities to consider a narrower scope of recommendations to avoid making this exercise more burdensome. Lastly, this is duplicative for facilities that must submit PHAs as they are already asked to justify why recommendations are not taken. For each of the above reasons, NACD urges the EPA to remove this requirement.

### **Inherently Safer Technologies**

The proposed rule implements requirements for certain facilities to undertake STAA. These facilities are those with a 324 or 325 North American Industry Classification System (NAICS) code that are within one mile of another facility with a 324 or 325 NAICS code or facilities with a 324 NAICS code that utilize hydrofluoric acid in certain processes. While NACD appreciates the initial spreadsheet that the EPA attached to the Technical Background Document detailing facilities thought to fall within the one-mile threshold, NACD urges the EPA to develop a more user-friendly, up to date, and accessible method of determining applicability of this provision.



In this section of the proposal, the EPA also requests input on whether inherently safer technology (IST) or inherently safer design (ISD) should be required when technically practicable. As the EPA states in the preamble, adding any requirements would be unnecessary because in instances where adopting ISTs/ISDs is practical and effective it is in the facility's best interest to adopt the new technologies - there is no need to add a requirement. NACD is concerned that requiring these technologies to be implemented may force facilities to adopt unnecessary measures at an immense expense as some technologies would cost millions of dollars to implement.

Moreover, there are scenarios where the adoption of a process that is considered to be inherently safer may not actually reduce risks in practice. For example, sodium hypochlorite can be deemed a safer alternative to chlorine gas as it is not listed under section 112(r) of the Clean Air Act (CAA). However, when applying sodium hypochlorite to certain chlorine gas processes, such as water treatment, there is a need for larger containers to store the chemical which poses the risk of a larger release that is also not as easily responded to because there is a chemical reaction taking place. While sodium hypochlorite may be safer on its own, this is not necessarily the case when being applied to different processes. Considering situations such as these, it is crucial that the EPA not require ISTs/ISDs to be adopted as there are instances where their adoption may not actually make a process safer. It is necessary to allow facilities to decide what is best on a case-by-case basis.

The EPA also requests input on whether it should broaden the scope of facilities required to perform STAAs. NACD agrees with the perspective the EPA shares in the preamble that RMP accidents are exceedingly rare and, therefore, requiring costly STAAs to be performed for all facilities is unnecessary. With these incidents being even less common for facilities outside of the 324 and 325 NAICS codes, NACD urges the EPA not to broaden the scope of STAA to additional facilities. Moreover, it is unknown whether additional STAAs would result in lower incident rates, as the EPA acknowledges that data linking the two has not been established.

Lastly, the EPA requests input on the use of the 1-mile distance from fencelines of two facilities with either a 324 or 325 NAICS code in the screening criteria. One concern with this provision is the use of a facility's fenceline as opposed to the location of its RMP-regulated process. The use of fencelines instead of the process location is unreasonable as there are facilities that have processes hundreds of yards from their fenceline. This additional distance should be accounted for in this provision, and NACD requests that the EPA use distances between processes as opposed to fencelines. Moreover, the justification the EPA uses to apply a distance radius of one mile is flawed. The EPA does reference statistics in the Technical Background Document; however, these statistics rely on small samples that can easily be manipulated by outliers. NACD urges the EPA to reexamine this data using the median measures when comparing the impacts of these two groups to determine better if there is a difference in their incident impacts.

### **Root Cause Analysis**

In the proposal, the EPA clarifies requirements for facilities with program 2 and 3 processes to conduct root cause analysis after a release that meets RMP criteria for five-year release history, investigating the factors that contributed to the incident. NACD recognizes the value



in adopting these requirements to ensure each RMP-related incident is thoroughly investigated to prevent future accidents. NACD agrees with EPA that these requirements are appropriate for RMP-related incidents.

In this section, the EPA also requests comment on defining “near-miss” to better identify incidents that require investigation. Due to the wide similarities between RMP regulations and OSHA’s PSM regulations, NACD urges the EPA to adopt a definition of “near-miss” that aligns with what is used in the PSM standard. OSHA defines a near-miss as a situation “in which a worker might have been hurt if the circumstances had been slightly different.” Adopting a definition that closely aligns with this would improve consistencies between RMP and PSM regulations.

### **Third-Party Compliance Audits**

The proposed rule requires facilities to undergo third-party compliance audits if they experience two RMP releases in a five-year period or experience one release and meet the NAICS code and distancing criteria mentioned earlier. As stated in the IST section of these comments, NACD urges the EPA to develop a more user-friendly, up-to-date, and accessible method of determining if an owner/operator’s facility lies within one mile of another facility with a 324 or 325 NAICS code. This is necessary to allow for owners/operators of these facilities to establish how this provision applies to their facility.

NACD is also concerned with costs that will be incurred on facilities to hire professionals and undertake these audits. The EPA already has the authority to initiate third-party compliance audits, and NACD urges the agency to use this authority instead of requiring individual facilities to initiate and oversee this process. Leveraging EPA authority in this matter would improve oversight to ensure that facilities follow this provision while also mitigating the costs facilities would be forced to pay to hire their own auditors.

The EPA also outlines several requirements that must be met by third-party compliance auditors for facilities to fulfill the requirement. These requirements include that no personnel involved in the audit accept future employment from the facility owner/operator for at least two years after the audit is concluded. NACD struggles to understand the value of this provisions and EPA’s authority to include this requirement, especially when there is no similar restriction in a facility’s ability to hire EPA personnel. This provision does not appear to improve the quality of audits and is outside the scope of the Clean Air Act. Regulations covering the hiring of employees are under the authority of the Department of Labor. If anything, facilities should be encouraged to hire individuals who facilitate successful audits and offer valuable recommendations. NACD recommends that the EPA remove this requirement from auditor eligibility.

This section also proposes to require that facilities list recommendations made by auditors that are not taken along with justification. Similar to the requirement suggested in the hazard analysis section, NACD believes that this is unnecessary and unjustified. Not only does this requirement not appear to provide any additional benefit to chemical safety, but it also uses recommendations made by auditors who do not have the same nuanced understanding of unique facility processes as those running the facility. NACD fears that including this in risk



management plans would create confusion among those who are not involved in the facility's processes while not adding to plant safety. NACD urges the EPA to remove this requirement.

### **Employee Participation**

The proposed rule makes several changes to the level of participation by employees in RMP risk management plans and facility processes. Notably, the proposal adds requirements to include employees in written plans of action, allow employees to have stop work authority, and provide systems for employees to report RMP compliance issues anonymously.

The requirement to include employees in written plans of action in this proposal is duplicative of PSM as this is already required in PHAs. NACD believes that RMP and PSM should be complementary of each other while avoiding the requirement of duplicative work. Moreover, this creates instances where identical regulations are enforced differently between EPA and OSHA. NACD recommends that this requirement not be added to RMP regulations.

The inclusion of broad stop work authority for employees in the proposal is very concerning for NACD members. Chemical processes can be extremely sensitive and abrupt stops are often dangerous. Moreover, the proposal does not offer any accountability for employees in their justification of why they believe a process could result in a catastrophic release. Any stop work authority given to employees must be done only in circumstances where the employee is intimately familiar with the process and the consequences of its stoppage. Giving this authority to all employees would leave facilities more susceptible to RMP incidents occurring and make the processes at RMP-covered facilities less safe. NACD urges the EPA to remove this provision from the proposal.

This section of the proposal also requires facilities to ensure employees can anonymously report RMP non-compliance or incidents. While increased oversight from employees can be beneficial in holding non-compliant sites accountable, there are some aspects of this provision that are problematic. First, it is very uncommon for all employees at a facility covered by RMP to have a complete technical understanding of the process. NACD is concerned that as written, the new requirement would lead to reports that are unfounded, which would burden facilities and the EPA in subsequent investigations. Also, creating a system to make employees anonymous is not practical in every facility. In smaller operations where only one employee is responsible for a process it would not be possible for a facility to ensure anonymity if the employee were to report an issue with that process. NACD urges the removal of this provision.

### **Emergency Response**

The proposed rule makes several changes to what is required of facilities when communicating with emergency responders and community members following an incident and conducting drills to prepare for possible incidents.

One proposed change allows for facilities to identify as non-responding. NACD supports this addition as it removes ambiguity and possible disagreements between facilities and regulators in instances where it is not clear whether a facility is a responding or non-responding facility.



However, the proposal does not clarify whether facilities must have neither defensive nor offensive responses to identify as non-responding. In scenarios where facilities do have defensive responding, but not offensive responding, NACD believes the owner/operator should have the ability to identify as a non-responding facility as these facilities are still reliant on first responders to respond to an incident. Not allowing these facilities to identify as non-responding would disincentivize the adoption of defense response procedures for some facilities and put unrealistic emergency requirements on facilities with only defense response capabilities.

The proposal also adds a requirement for non-responding facilities to notify the public, and emergency response agencies if an accidental release occurs. Facilities would additionally be required to ensure that a community notification system is in place. While it is necessary for responders and communities to be aware of any surrounding emergency, it is not reasonable to expect facilities to ensure the presence of a community notification system. It is the responsibility of local governments to ensure community notification systems are in place, regardless of the presence of a facility. Local governments have the capability to send wide alerts to the public, coordinate emergency personnel, and determine how best to direct the community to respond to an emergency. Moreover, these systems are necessary to account for scenarios where there is any emergency that requires public knowledge, including those that are not chemical accidents. It is not reasonable to place this burden on RMP facilities. Instead, facilities should be required to notify emergency responders who maintain the community notification system and can notify the public of an emergency. NACD urges the EPA to revise these provisions to remove requirements for facilities to ensure the presence of community notification systems.

An additional provision in the proposed rule requires facilities to provide “necessary entities” with “accurate and timely data” related to initial RMP accidental release information. NACD is concerned with this provision as it is duplicative and vague. Facilities are already required to notify and provide information of certain releases to the National Response Center, State Emergency Response Commission, and LEPCs in Title III of Superfund Amendments and Reauthorization Act under the Emergency Planning and Community Right-to-Know Act and Comprehensive Environmental Response, Compensation, and Liability Act. This does not belong under RMP and the CAA. Moreover, the term “accurate and timely data” is vague and subjective, especially when considering that the two are inversely related - it takes additional time to ensure more accurate data. NACD urges the EPA to remove this provision as it is duplicative and will only complicate the process of responding to an incident.

In this section, the EPA also stipulates minimum requirements for facilities to coordinate field exercises with LEPCs. NACD supports efforts by the EPA to encourage and require facilities to coordinate with LEPCs in circumstances where it is practical. However, it is important for the EPA to recognize that not every location has a functioning LEPC that can coordinate field exercises with facilities, and the EPA must provide carve-outs for such circumstances. While the proposal does stipulate that LEPCs can deem the once-every-10-year frequency infeasible, NACD urges the EPA to allow for facilities to demonstrate a good faith effort to coordinate with LEPCs or demonstrate the absence of an LEPC as exemptions from this requirement. This is necessary because the proposal does not account for instances where facilities are unable to receive responses from LEPCs.



NACD is also concerned that requirements to coordinate with LEPCs in this regulation will conflict with current OSHA regulations. OSHA has authority over emergency response regulations and coordination with LEPCs and the LEPC off-site plans that they are responsible for, creating additional requirements outside of what OSHA already has in place is duplicative and makes it more difficult for facilities to comply with regulations. There should be one standard that facilities can look to in order to ensure compliance, adding these regulations creates another opportunity for uneven enforcement between agencies and confusion among facilities. NACD urges the EPA to work with OSHA in the adoption of any new regulations related to emergency response regulations.

### **Information Availability**

Throughout the proposed rule, the EPA creates opportunities for community members to have more access to chemical information of facilities within six miles of where they reside. While NACD appreciates the intent behind these provisions, they would create a myriad of safety concerns while also burdening facilities.

Specifically, the information that can be requested contains sensitive business information as well as intimate information of potentially dangerous chemicals that are regulated under the Chemical Facility Anti-Terrorism Standards (CFATS). Making any of this information available to the public could hold serious consequences from a business and security perspective. NACD strongly urges EPA to keep all information included in this regulation limited to those who truly have a need to know. While the EPA references a lack of terrorist attacks using such data, NACD stresses that this is because access to the data has been carefully restricted and not publicly available.

Moreover, the screening criteria used for those who can request data lacks proper verifiability and justification. First, the EPA does not clarify what is meant by the requirement of a person to “reside” within six miles of a facility. As currently written, it appears that a person could use a post office box within six miles of a facility as their residence and have access to that facility’s information. This is very concerning as it would allow for individuals to acquire the information of a significant number of facilities and share it widely through mediums such as the internet, social media, etc., raising severe security concerns. Furthermore, the decision to use six miles as the radius for facilities to request data lacks proper justification. While the EPA references its determination that 90% of worst-case incidents are within six miles of a facility in the Regulatory Impact Analysis, the agency does not share how that was found. This information is necessary for adequate comments to be formed as it is not known what percent of worst-case incidents would fall under different radiuses. While the EPA does reference 67% of worst-case scenarios being within three miles, this is assuming a 10-minute release. However, a 10-minute release is unlikely and artificially raises a realistic distance for a worst-case scenario. NACD agrees with the Chemical Sector Coordinating Council’s recommendation to restrict the radius for the public to request information to one mile if this provision remains in the final rule.

The EPA also does not consider the administrative costs that will be borne by facilities to provide this information. In the Regulatory Impact Analysis, the EPA estimates that there will be an average of only one request by community members for each facility. NACD believes



that this is a severe understatement. Numerous regulated facilities are located within six miles of densely populated areas such as metropolitan cities and university campuses. These facilities have tens of thousands of individuals who could meet the threshold of residing within six miles of the facility. It is not unreasonable to assume that any given facility could receive information requests from numerous individuals in the community, resulting in substantial administrative cost and burden for the facilities to provide multiple sets of the information.

The information that facilities must provide under the proposed rule is extensive and could be confusing for individuals without the proper context. For example, the proposal requires facilities to provide Safety Data Sheets (SDSs). These are complex documents with substantial technical information. OSHA's Hazard Communication Standard includes extensive requirements for employers to train their workers on how to read an SDS. On the other hand, the RMP proposed rule contains no provision to ensure that anyone in the community would know how to read and understand an SDS.

NACD strongly recommends that the EPA reexamine the information availability requirements in this proposal. As written, these provisions create significant security vulnerabilities and administrative burdens while being completely unnecessary as regulations under title III of SARA already give the public the ability to access chemical hazard information. NACD urges the EPA to instead focus its efforts on improving LEPC presence throughout the country and leveraging these organizations as a resource to distribute facility data to the public safely. LEPCs have the ability to assist the public in interpreting complicated data and to safeguard anything that should not be publicly available. This is also more easily implemented as there is already a system in place - the public can already request information from LEPCs and attend LEPC meetings, and facilities already have relationships with them in areas where they are active. While there are areas where LEPCs are inactive or barely existent, NACD urges the EPA to fund these committees better and ensure they are active in every community instead of adding the above requirements. This would create a more comprehensive system for sharing data safely while also addressing other issues that are caused by inactive LEPCs.

Lastly, in the proposal the EPA requests comment on the possible future development of a system to develop non-offsite consequences analysis data annually. NACD is strongly against this proposal as it would provide security sensitive information to a wider audience with fewer security safeguards. There does not appear to be any benefit to providing this information to such a wide audience if there is a system in place for members of the public to request facility information through methods such as LEPCs as suggested above.

### **Technical Clarification**

In the proposal, the EPA makes a number of technical clarifications with regard to different aspects of RMP regulations. One technical clarification requires program 3 process facilities to include analysis of most recently promulgated recognized and generally accepted good engineering practices (RAGAGEP) in PHAs to identify possible gaps. Facilities also must identify RAGAGEP recommendations that are not implemented and include justification as to why they were not adopted.



NACD opposes these added regulations as they are unnecessary and duplicative. As mentioned earlier in this rule, the requirement for facilities to include recommendations not taken in their risk management plans is an exercise that does not have any demonstrable benefit to facility safety. Moreover, this analysis is already included as a part of PSM regulations. It is unnecessary to require facilities to include this information in their risk management plans as well and would result in unnecessary costs on facilities.

## Conclusion

NACD appreciates the opportunity to provide input as the EPA considers revisions to RMP regulations. It is in the best interest of NACD and its member companies to ensure RMP releases are prevented and responded to properly and swiftly when they do occur. We agree that RMP releases can be dangerous, personnel must be ready to act, and surrounding communities must be notified if a significant discharge does occur. However, NACD believes that current data proves that RMP regulations have been achieving these measures already as incidents have become increasingly rare.

NACD is concerned that the provisions in this proposed rule are duplicative, burdensome, and make security-sensitive chemical hazard data widely available. The EPA needs to communicate with agencies such as OSHA and the Department of Homeland Security (DHS) to reconsider these proposed changes to RMP regulations. This proposal should not be done in a vacuum when there are such broad implications for facilities that are covered by other regulations, such as PSM standards. As this proposal is written, PSM-covered facilities will be forced to undergo duplicative work while being subject to separate inspectors who may enforce these regulations differently. Similarly, the EPA and DHS must better coordinate their efforts to safeguard sensitive chemical hazard information as the information availability components in this proposal create several security vulnerabilities that are at odds with different DHS initiatives, such as CFATS. We urge the EPA to coordinate their efforts with these agencies, and others, to ensure any regulatory changes are consistent across different regulations, do not create any unneeded confusion among regulated entities or federal agencies, and do not inadvertently undo progress other agencies have made.

NACD members pride themselves on the safety of their facilities and care deeply about their surrounding communities. Each year, NACD member companies invest in their facilities, employees, and business practices to ensure that unintended discharges don't happen, and if they do that there are mitigation measures and a plan in place. As referenced earlier, 97% of facilities did not have an RMP-related release from 2016 to 2020. NACD believes that this is because industry is already taking proper steps to ensure that discharges are rare and are properly planned for. Creating a final rule that adds additional requirements may result in facilities taking important resources away from proven mitigation and planning measures to ensure they follow these new provisions. NACD urges the EPA to withdraw the proposed rule and allow the current RMP regulations to continue to operate successfully.



Sincerely,



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## MEMORANDUM

TO: Jennifer Gibson  
FROM: John Dunham  
DATE: September 20, 2022  
RE: Economic Impact of the Proposed EPA RMP Rule

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The Environmental Protection Agency is proposing changes to the existing Risk Management Program (RMP) regulations.<sup>1</sup> The EPA suggests that these changes will improve safety at facilities that use and distribute hazardous chemicals, even though the existing RMP regulations have been effective in preventing and mitigating chemical accidents in the United States.

The proposed revisions include several changes to the accident prevention program requirements, enhancements to the emergency preparedness requirements, changes to increase public availability of chemical hazard information, and changes or clarifications to certain regulatory definitions or points of clarification. Many of the proposed provisions target stronger provisions to facilities in close proximity to certain other facilities and/or facilities that have had recent accidents.

In its Regulatory Impact Analysis, the agency claims that the proposed rules will cost \$538.8 million (\$2022 discounted at 7 percent) over a 10-year period.<sup>2</sup> The Agency does not perform an alternative analysis in accordance with OMB guidelines.<sup>3</sup> It also does not examine the cost of the proposed rule across industries, but rather creates example cases for small, medium and larger firms. The agency does not report on total costs for each of these categories, but rather calculates an overall per firm discounted 10-year cost of the rules at \$45,894.<sup>4</sup>

According to the RIA, there are a total of 317 chemical wholesaler facilities that are subject to the proposed rules. This represents just 1.7 percent of the 18,385 chemical wholesale establishments documented by the US Department of Labor as of the first quarter of 2022.<sup>5</sup>

If the EPA analysis is correct, the cost of the rule to chemical distributors would be \$14,548,518 over 10 years or about \$1.5 million per year. This is, however, an unlikely assumption, as agency Regulatory Impact Analysis documents almost always underestimate costs. According to those NACD members that are subject to the rules, the overall cost of the provisions would likely be about \$100,000 per facility.

Using the EPA estimates, the proposed rule would cost the industry \$1,454,850 per year, and if passed through to buyers, would raise the price of chemicals by 0.6 percent. This is equivalent to roughly \$0.02 per ton of chemicals delivered.<sup>6</sup> Based on a model developed for the NACD by John Dunham &

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<sup>1</sup> *Regulatory Impact Analysis: Safer Communities by Chemical Accident Prevention Proposed Rule*, U.S. Environmental Protection Agency, April 19, 2022.

<sup>2</sup> Ibid.

<sup>3</sup> *Agency Checklist: Regulatory Impact Analysis*, Office of Management and Budget, Office of Information and Regulatory Affairs, October 28, 2010. Available at: [www.whitehouse.gov/sites/default/files/omb/inforeg/regpol/RIA\\_Checklist.pdf](http://www.whitehouse.gov/sites/default/files/omb/inforeg/regpol/RIA_Checklist.pdf), and *Regulatory Impact Analysis: A Primer*, Office of Management and Budget, Office of Information and Regulatory Affairs, August 8, 2011, at: [www.whitehouse.gov/sites/default/files/omb/inforeg/regpol/circular-a-4\\_regulatory-impact-analysis-a-primer.pdf](http://www.whitehouse.gov/sites/default/files/omb/inforeg/regpol/circular-a-4_regulatory-impact-analysis-a-primer.pdf).

<sup>4</sup> Based on *Regulatory Impact Analysis: Safer Communities by Chemical Accident Prevention Proposed Rule*, U.S. Environmental Protection Agency, April 19, 2022.

<sup>5</sup> *Quarterly Census of Employment and Wages*, US Department of Labor, Bureau of Labor Statistics, accessed September 20, 2022, at: <https://www.bls.gov/cew/data.htmqcew>. QCEW includes all firms with employee wages.

<sup>6</sup> This is based on the tonnage of all chemicals, with the costs spread out across the entire market.

Associates, this price increase will result in 10,701 tons of reduced chemical sales.<sup>7</sup> Lower sales volumes will result in reduced jobs as distributors need fewer truck drivers, clerks and warehouse staff.

**Table 1**  
**Economic Impact of the Proposed Rule on the Chemical Distribution Industry (EPA Estimated Cost)**

	<b>Direct</b>	<b>Supplier</b>	<b>Induced</b>	<b>Total</b>
Jobs	(8.07)	(8.68)	(20.21)	(36.97)
Wages	\$ (610,127)	\$ (586,126)	\$ (1,131,004)	\$ (2,327,257)
Output	\$ (2,352,156)	\$ (1,618,467)	\$ (3,645,114)	\$ (7,615,738)

As Table 1 shows, across the chemical distribution industry, about 8.1 FTE chemical distributor jobs could be lost due to the higher prices under the proposed rule. Including businesses that supply chemical distributors, and those that depend on re-spending by direct and supplier firm employees, the rule would lead to a total of nearly 37.0 FTE jobs and over \$2.3 million in lost wages and benefits. On top of this, the American economy would be more than \$7.6 million smaller.

If the cost of the proposed rule changes were to be \$100,000 per firm, the costs would be as high as \$317.0 million per year. This would increase the cost of chemicals handled by distributors by 0.13 percent, or \$0.46 per ton of chemicals.

Based on the model, this price increase will result in 231,663 tons of reduced chemical sales. Lower sales volumes will result in reduced jobs as distributors need fewer truck drivers, clerks and warehouse staff.

**Table 2**  
**Economic Impact of the Proposed Rule on the Chemical Distribution Industry (Estimated Cost of \$100,000 per Distributor)**

	<b>Direct</b>	<b>Supplier</b>	<b>Induced</b>	<b>Total</b>
Jobs	(175)	(189)	(439)	(803)
Wages	\$ (13,252,081)	\$ (12,733,036)	\$ (24,570,837)	\$ (50,555,954)
Output	\$ (51,074,523)	\$ (35,148,466)	\$ (79,161,116)	\$ (165,384,105)

As Table 2 shows, across the industry, about 175 FTE chemical distributor job could be lost due to the higher prices under the proposed rule. Including businesses that supply chemical distributors, and those that depend on re-spending by direct and supplier firm employees, the rule would lead to a total of over 800 FTE jobs and almost \$50.6 million in lost wages and benefits. On top of this, the American economy would be nearly \$165.4 million smaller.

It must be remembered that this is just the impact on the chemical distribution industry. Higher prices for chemicals will flow through nearly every other sector of the economy, leading to more job losses.

<sup>7</sup> Prepared for the National Association of Chemical Distributors by John Dunham & Associates, 2021. See methodology section,

## Demand Model Methodology

JDA's Regulatory Assessment Model (RAM) is an updated version of a multi-market demand model first developed by the American Economics Group (AEG) under contract with Philip Morris. It was completely rebuilt by Dr. Hyeyeon Park in 2001, and its structure was updated by JDA in 2019. The model was presented to the National Conference of State Legislatures, Senior Fiscal Analysts Seminar in Portland Maine, on September 4, 1999, where it was well received. In fact, at that time many state fiscal analysts asked if the model could be made available to them as a forecasting tool. The results from the model were also presented to the Tax Foundation Excise Tax Seminar, held in Jacksonville, Florida, on January 12, 2001 as part of a larger discussion on the economic impact of tobacco taxes.

Since then, the RAM model has been modified to work with nearly any product or market. It is designed to measure product sales in a multi-state market structure with differential pricing. The general methodology is a two-stage estimation of the demand equation linked to a non-linear programming model of import and export patterns. Data for the model comes from the 2021 Economic Impact Model of the Chemical Distribution Industry, as well as from the US Census Bureau, the Bureau of Economic Analysis, the Bureau of Transportation Statistics Commodity Flow Survey and JDA research. Caliper Corporation was used to estimate distances between states.

Estimates on what sales should be in each state are developed first. In this case, both demand and prices come directly from the Impact model. If cross-border sales were observable, the calculations would be complete; however, since they are not, the model must estimate them through non-linear programming techniques that solve the 51 demand functions simultaneously. The model adjusts the cross-price elasticities between states to balance the actual sales with expected demand.

Demand elasticities are calculated using a logarithmic demand curve with a base of -0.805 which is an average for chemical products.<sup>8</sup>

Once the linear program model balances, the model can be *shocked* with either new prices or demand values. By rebalancing the model following the shock, it is possible to calculate demand response estimates across all states (as well as cross-border sales changes).

Revenue and job impacts can then be estimated through linear extrapolation.

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<sup>8</sup> See: Gallaway, Michael, et. al., *Short-run and long-run industry-level estimates of US Armington elasticities*, [North American Journal of Economics and Finance](#), March 2003.