



Statement of the U.S. Chamber of Commerce

FOR: Statement for the Record on the U.S. Environmental Protection Agency's Proposal, "Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act," 83 Fed. Reg. 24,850 (May 30, 2018)

TO: U.S. Environmental Protection Agency

BY: Jake Tyner,
Manager and Associate Policy Counsel

DATE: June 14, 2018

1615 H Street NW | Washington, DC | 20062

The Chamber's mission is to advance human progress through an economic, political, and social system based on individual freedom, incentive, initiative, opportunity, and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Statement Prepared for the U.S. Environmental Protection Agency
Public Hearing on, “Accidental Release Prevention Requirements: Risk Management
Programs under the Clean Air Act,” 83 Fed. Reg. 24,850 (May 30, 2018)

Washington, D.C.
June 14, 2018

Jake Tyner
U.S. Chamber of Commerce

Good Afternoon. My name is Jake Tyner and I am here on behalf of the U.S. Chamber of Commerce. The Chamber is the world’s largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber supports the U.S. Environmental Protection Agency’s (EPA) proposal to rescind or modify certain provisions of the amendments to the final Risk Management Program (RMP) rule.¹

The safety and security of facilities, employees, and communities are extremely important to the Chamber and its members. The Chamber’s members conduct risk management planning, invest in security, and believe that supporting an ongoing partnership between businesses and federal, state, and local officials is critical to ensuring facility safety today and in the future.

However, the Chamber has long opposed the 2017 Amendments to the RMP rule that EPA’s proposal seeks to now change because they were unreasonable, unnecessary, and adopted under a flawed process. EPA first issued the RMP rule amendments on January 13, 2017.² To that end, the Chamber joined a number of other industry associations (RMP Coalition) in petitioning EPA to reconsider the final RMP rule amendments in February

¹ Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act, 83 Fed. Reg. 24,850 (May 30, 2018).

² Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act, 82 Fed. Reg. 4,594 (Jan. 13, 2017).

2017.³ The petition focused on how a number of procedural deficiencies related to the RMP rule precluded an effective notice-and-comment rulemaking in violation of the Administrative Procedure Act (APA), as well as previously unknown purposeful and criminal circumstances surrounding the West, Texas incident that motivated the amendments. According to the Bureau of Alcohol, Tobacco, and Firearms, the incident was no accident. Notably, the incident inspired Executive Order 13650, “Improving Chemical Facility Safety and Security,” which serves as the driver for the amendments to the RMP rule.⁴

Over the course of spring 2017, EPA delayed the effective date of the RMP rule amendments a number of times in order to give serious and due consideration to the procedural, substantive, and security concerns raised in the reconsideration petitions.⁵ Ultimately, on June 9, 2017, EPA acted to delay the rule’s effective date for 20 months until February 19, 2019 in order to “consider the serious issues in the petitions for reconsideration” of the rule and “take further regulatory action, which could include proposing and finalizing a rule to revise” the RMP rule.⁶

The Chamber supported EPA’s delay of the RMP rule amendments’ effective date because it was the prudent course of action given the deficiencies in the rulemaking process for the RMP rule and the many concerns raised by stakeholders in their comments during the rule’s promulgation. In written comments submitted in May 2016, the Chamber noted

³ See RMP Coalition, Pet. for Recon. and Req. for Agency Stay Pending Recon. and Jud. Rev. of Final Rule entitled *Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act* (Feb. 28, 2017).

⁴ Exec. Order No. 13,650, Improving Chemical Facility Safety and Security, 78 Fed. Reg. 48,029 (Aug. 7, 2013).

⁵ See Delay of Effective Date for 30 Final Regulations Published by the Environmental Protection Agency Between October 28, 2016 and January 17, 2017, 82 Fed. Reg. 8,499 (Jan. 16, 2017) (Delaying the effective date until March 21, 2017); Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act; Further Delay of Effective Date, 82 Fed. Reg. 13,968 (Mar. 16, 2017) (Further delaying the effective date until June 19, 2017); Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act; Further Delay of Effective Date, 82 Fed. Reg. 16,146 (Apr. 3, 2017) (Proposing to further delay the effective date until February 19, 2019).

⁶ Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act; Further Delay of Effective Date, 82 Fed. Reg. 27,133 (June 14, 2017).

that provisions included in the RMP rule amendments were unnecessary, too costly, and that the changes in the amendments would not lead to safer outcomes for the chemical industry, its workers and the communities where these businesses reside.⁷ Specifically, those provisions:

1. Overlapped and conflicted with other existing federal programs designed to promote safety and security;
2. Included an unjustified alternatives analysis requirement;
3. Created security risks through public disclosure requirements and other measures;
4. Required unfeasible third-party auditing requirements;
5. Failed to be justified through an appropriate cost-benefit analysis; and
6. Did not comply with the Small Business Regulatory Enforcement Fairness Act (SBREFA) and address the many issues raised in the Small Business Administration (SBA) report and other advocacy communications by the SBA.

The proposal addressed today would rescind the amendments to the RMP rule related to technology and alternatives analyses, third-party audits, incident investigations, information availability, and several other minor regulatory changes. The proposal also would modify amendments related to local emergency coordination and emergency

⁷ Chamber of Commerce of the United States of America, et al., Comments on Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Further Delay of Effective Date (May 19, 2017), available at https://www.uschamber.com/sites/default/files/5.19.17-comments_to_epa_on_proposal_to_further_delay_effective_date_of_risk_management_program_rmp_rule.pdf. The RMP Coalition also intervened in the case, *Air Alliance Houston, et al., v. EPA*, in support of the respondent, EPA, who was sued for its decision to delay the RMP rule's effective date. The RMP Coalition noted in its brief that the delay is reasonable "in light of concerns that the RMP Amendments could jeopardize the security of regulated facilities and otherwise lead to unwelcome effects." The court has not yet issued its opinion.

exercises, and change the compliance dates for those provisions in order to address their shortcomings and make them effective and efficient at advancing emergency preparedness and response.

The Chamber supports the overarching goals of the Risk Management Program under the Clean Air Act, finds that the performance record of the existing RMP rule is efficiently advancing the safety and security objectives of those goals, and believes that the proposal appropriately addresses our concerns and removes unnecessary, overlapping, and overly burdensome requirements without jeopardizing safety or security.

Thank you for your time and consideration today.