



October 31, 2022

**Comments on EPA proposed rule:
EPA Risk Management Program (RMP) Rule
Docket ID No. EPA-HQ-OLEM-2022-0174**

The Honorable Michael Stanley Regan
Administrator, Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Regan,

National Taxpayers Union (NTU), the nation's oldest taxpayer advocacy organization, appreciates the opportunity to provide comments on the Environmental Protection Agency's (EPA) Proposed Accidental Release Prevention Requirements: Risk Management Program Under the Clean Air Act; Safer Communities by Chemical Accident Prevention (EPA-HQ-OLEM-2022-0174). NTU has significant concerns that a rush to modify this program would entail major commitments of taxpayer resources toward an initiative that is already functioning well, in the process shifting EPA's focus away from necessary managerial reforms for other programs that are functioning poorly.

As you may know, throughout its 53-year history, NTU has maintained an abiding interest in the fiscal aspects of environmental policy and EPA's operations. Continuing our long history of demanding oversight from the Superfund initiative created in 1980, last year we led a [coalition](#) of 10 free-market organizations expressing opposition to a 10-year, \$13 billion Superfund excise tax increase in the Infrastructure Investment and Jobs Act that was completely unmoored from any purpose of environmental clean-up.¹ In April of this year, an NTU [analysis](#) raised serious questions about the direction of EPA's Integrated Risk Information System (IRIS) assessments, many of which are behind schedule, conducted under less-than-ideal circumstances, and have imposed large burdens on customers of chemical manufacturers.²

Given conditions such as these, taxpayers are troubled over why EPA would divert any share of its \$9 billion-plus budget into a new RMP rule. The EPA established the Risk Management

¹ Aiello, Thomas. "[Coalition Opposes Business Tax Hike Included in Senate Infrastructure Bill](#)." National Taxpayers Union, July 13, 2021.

² Aiello, Thomas. "[Coalition Opposes Business Tax Hike Included in Senate Infrastructure Bill](#)." National Taxpayers Union, July 13, 2021.



Program (RMP) to prevent and reduce the release of certain hazardous substances. RMP requires facilities to develop comprehensive safety plans every five years and share information with emergency responders. EPA reviews risk management plans mandated by the program and conducts inspections to ensure compliance.

The current standards of RMP have been proven effective at maintaining safety, and have helped to develop the kind of public-private partnership in regulation that ought to serve as a model for IRIS and other EPA programs – indeed, for regulatory initiatives throughout the government. The implementation of RMP has seen a decrease of 67 percent of incidents from 1998 to 2016 according to the EPA.³ In fact according to the Society of Chemical Manufacturers and Affiliates (SOCMA) during the last 10 years only 8 percent of RMP regulated facilities were responsible for all reported RMP incidents. To further illustrate the effectiveness of the current RMP standards 76 percent of RMP chemical manufacturing facilities have had zero incidents since 1996.⁴

In the face of such success, the EPA has decided to implement changes to the rule that can have devastating impacts that will create more regulatory burden and confusion while increasing costs for the chemical industry and other covered businesses, likely without providing sufficient evidence of benefit. In this current economic climate where businesses are still struggling to overcome inflation and other increased costs of doing business, labor shortfalls, as well as supply shortages now is a particularly disadvantageous time to be adding to the burden of small businesses all across America.⁵

The robustness of the chemical supply chain, or lack thereof, affects taxpayers in numerous ways. Many types of substances, including silicones, formaldehyde, and petroleum products, are key ingredients in goods such as medical supplies purchased by Medicaid, flooring materials in government buildings, and parts in military vehicles, not to mention fuels. Any regulatory barriers that impose additional costs to overcome in the manufacturing and marketing process, which the current RMP role will likely do, mean more expensive purchases for taxpayers.

³ “Environmental Protection Agency. (2022). “RMP Accidents 2004-2020 (Appendix A); Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7) Safer Communities by Chemical Accident Prevention.” Accessed via Regulations.gov.

⁴ Environmental Protection Agency. (2022). “RMP Accidents 2004-2020 (Appendix A); Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7) Safer Communities by Chemical Accident Prevention.” Accessed via Regulations.gov.

⁵ Environmental Protection Agency. (2022). “RMP Accidents 2004-2020 (Appendix A); Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7) Safer Communities by Chemical Accident Prevention.” Accessed via Regulations.gov.



The EPA attempt to fix a system that is working perfectly well is a waste of time and resources. The new rule includes the additional requirements of third party auditing, natural hazard considerations, as well as emergency response planning; these changes will cause covered facilities to revisit and revise their RMP plans at significant cost. According to the American Chemical Council Natural hazards have been the cause of only 1% of incidents reported at chemical manufacturing plants. It is a miscalculation by the EPA to apply an outset amount of burden in order to capture low priority risks within the RMP. As part of these new requirements facilities will now be responsible for documenting any revisions between their draft and final version of compliance audits as well as provide justifications for rejected RMP recommendations further adding to man hours and costs to adhere to the program requirements.⁶

The EPA has thus far not granted requests for a prudent extension of the public comment period surrounding EPA-HQ-OLEM-2022-0174. Yet it is clear that greater time for deliberation could benefit all parties in arriving at answers to key questions such as:

- [How can EPA accommodate and administer the new EPA rule within its existing or near-term expected resources, given other urgent demands? After all, the Government Accountability Office \(GAO\) has cited *Transforming EPA's Process for Assessing and Controlling Toxic Chemicals* as part of its “High Risk List” for waste, fraud, and abuse of tax dollars, with IRIS coming under specific criticism. Why should RMP, a program acknowledged to be working well, be substantially disrupted when other safety areas under EPA’s management are seriously floundering?⁷](#)
- [How different are the circumstances surrounding the economy and the chemical sector today versus the last time an RMP revision was proposed, and how does the current revision differ from the rule proposed under the Obama Administration? It has been more than five years since the Obama Administration proposed changes to RMP – a period that has seen major changes in the nature of supply chain actors, not to mention inflationary trends, materials shortages, and other regulatory initiatives. The current RMP rule varies significantly with the 2017 rule, and EPA is under pressure already to examine other RMP revisions. GAO recently noted that EPA is not collecting enough data on the impact of natural hazards on the security of certain chemical facilities.⁸](#)
- [Are there additional costs and benefits associated with the current RMP rule that could be further refined? In its reconsideration of the 2017 RPM rule in late November 2019, EPA](#)

⁶ “COVID-19 recovery in hardest-hit sectors could take more than 5 years.” McKinsey & Company, July 29, 2020.

⁷ Government Accountability Office. (2022). “Transforming EPA's Process for Assessing and Controlling Toxic Chemicals.”

⁸ “EPA Proposes Expansive Changes to EPA RMP Rule.” EHS Law Insights, October 1, 2022.



cited as much as \$884 million in undiscounted avoided costs to the private sector in its decision to rescind that rule, along with unquantifiable benefits to information security for affected facilities.⁹How, precisely, would that figure be estimated today? The new RPM rule raises some of the same concerns as the 2019 document did over “data transparency” improvements potentially creating increased terrorism risks to sensitive manufacturing and handling sites.

- Have other agencies been adequately consulted in the current process for EPA-HQ-OLEM-2022-0174? A significant fraction of the 12,000-plus facilities that could be impacted by this new rule would fall under the classification of a small or medium enterprise. Has the Small Business Administration’s Office of Advocacy been presented with the opportunity to furnish its views on the new rule? The Occupational Safety and Health Administration, as well as the Department of Homeland Security, have undertaken reviews and initiated thoughtful steps in response to the 2013 incident in Texas that triggered EPA’s first RPM revision proposals. We understand that OSHA is continuing to move carefully in this policy area. A terrible waste of tax dollars could result if these agencies’ activities overlapped, or worse conflicted with, EPA’s effort. Now is the time to determine whether this could be the case with EPA-HQ-OLEM-2022-0174.

It is unfortunate that the EPA has chosen now as the time to over-engineer the RMP rule, with an impact that would be devastating for the countless small businesses that participate in this industry, as well as the consumers and taxpayers the industry serves. As the EPA considers the comments and recommendations from stakeholders, NTU urges the EPA to engage in good faith and extend its time table to implementation.

Thank you,

Pete Sepp
NTU President

Alex Milliken
Policy and Government Affairs Manager

⁹ Environmental Protection Agency. (2019). “Reconsideration of the 2017 Amendments to the Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7)”