

January 25, 2017

The Honorable Mitch McConnell
Majority Leader
S-230 U.S. Capitol
Washington, D.C. 20510

The Honorable Paul Ryan
Speaker of the House
H-232 U.S. Capitol
Washington, D.C. 20515

The Honorable Charles Schumer
Minority Leader
S-221 U.S. Capitol
Washington, D.C. 20510

The Honorable Nancy Pelosi
Minority Leader
H-204 U.S. Capitol
Washington, D.C. 20515

Dear Congressional Leaders:

As leading trade associations representing diverse sectors of the U.S. economy, we write to express our deep concern with a recent Environmental Protection Agency (EPA) rule, *Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act* (“RMP rule”).¹ The final RMP rule not only imposes significant new costs without identifying or quantifying the safety benefits that will be achieved through these new requirements, it may actually compromise the security of our facilities, emergency responders, and our communities. For these reasons, we believe it is appropriate that Congress disapprove the final RMP rule under the Congressional Review Act.

Safety is the first priority of our members and a core value embedded in the culture of our industries. In fact, data from the Bureau of Labor Statistics confirms that our industries are among the safest in the United States. Our companies routinely go above and beyond regulatory requirements for safety programs, demonstrating a commitment to safety and expending the resources necessary to continually improve safety performance. Our industries have a history of open communication and partnership with the communities that surround our facilities as well as local, state, and federal authorities. Community Advisory Panels (CAPs) and Local Emergency Planning Committees (LEPCs) have been in place for more than three decades, and these partnerships continue to be the foundation for open communication, information sharing, and coordinated emergency planning and preparation in our communities while safeguarding specific security plans.

The current RMP regulations include requirements that have produced and will continue to drive continuous safety improvements, provide robust protection for our employees and the public, and are not in need of revision.

Unfortunately, EPA’s final RMP rule fails to identify any meaningful safety benefit and may actually increase security risks given the rule’s expanded public information disclosure requirements. It is not just industry that has this concern. White House Office of Management and Budget records show that during interagency review the Department of Homeland Security officials, and others, repeatedly raised security concerns with the RMP rule. In fact, one official stated that “[h]aving facilities share this information would be precedent setting—currently the [Chemical Facility Anti-Terrorism

¹ Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act, 82 Fed. Reg. 4594 (Jan. 13, 2017) (to be codified at 40 C.F.R. pt. 68).

Standard (CFATS)], [Process Safety Management (PSM)], and [Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)] (licensee/permittee) programs do not share this level of detail with the public due to security concerns.” As demonstrated in a Department of Justice report released prior to the terrorist attacks of 9/11, it is well known that terrorists have considered using chemical releases from facilities as a weapon. Federal regulations should not make it easier for sensitive information to wind up in the hands of criminals and terrorists.

Beyond security concerns, it is unclear what, if any, safety benefits the final RMP will provide. As you know, the risk management program is intended to reduce risk beyond a facility’s fence line, while the Occupational Safety and Health Administration’s (OSHA’s) Process Safety Management (PSM) program addresses risk within the fence line. Despite this clear legal distinction, the majority of the purported benefits from the EPA rule revisions come from OSHA-regulated areas within the fence line.

The lack of identifiable and quantifiable benefits stands in stark contrast to the clear costs associated with this rule. Whether it be the requirement of third-party auditor participation that will reduce the pool of qualified auditors, changing well-established audit procedures already designed to maximize safety effectiveness, or imposing ineffective requirements to consider “inherently safer technology/design,” the final rule includes a litany of costly changes that have not been shown to increase safety.

Our associations support sensible regulations that can be shown to improve safety and security. Unfortunately, the final RMP rule fails this basic test. For this reason, we recommend that Congress disapprove the regulation under the Congressional Review Act. Doing so will protect national security and allow EPA to reconsider what, if any, revisions to the RMP regulations are needed to reduce the risk of an accidental release. We stand ready to work with you and the incoming Administration on this important issue.

Sincerely,

Agricultural Retailers Association
American Chemistry Council
American Coatings Association
American Forest & Paper Association
American Fuel & Petrochemical
Manufacturers
American Petroleum Institute
Corn Refiners Association
Environmental Technology Council
The Fertilizer Institute
Global Cold Chain Alliance
International Association of Refrigerated
Warehouses

International Institute of Ammonia
Refrigeration
International Liquid Terminals Association
Institute of Makers of Explosives
International Warehouse Logistics
Association
Louisiana Chemical Association
National Association of Chemical Distributors
National Association of Manufacturers
Society of Chemical Manufacturers and
Affiliates
U.S. Chamber of Commerce
The Vinyl Institute