May 11, 2026

Via Regulations.gov

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Re: Proposed Rule, Environmental Protection Agency; "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Common Sense Approach to Chemical Accident Prevention"; 91 Fed. Reg. 8970 (Feb. 24, 2026); Docket ID No. EPA–HQ–OLEM–2025–0313

Dear Ms. Guarino:

We, the undersigned Associations, respectfully submit these comments on the U.S. Environmental Protection Agency's ("EPA" or "Agency") Notice of Proposed Rulemaking, "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Common Sense Approach to Chemical Accident Prevention" ("Proposed Rule" or "proposal").[1]

Together, we represent a broad cross-section of member companies that strongly value the safety of their employees and neighboring communities. Recognizing the critical importance of safety, our member companies engage in a multitude of voluntary measures to promote and enhance process safety at their facilities. Many of those companies have also spent decades aligning their voluntary safety practices with the regulatory performance-based framework of EPA's Risk Management Program ("RMP") and the Occupational Safety and Health Administration's ("OSHA") Process Safety Management ("PSM") regulations. As a result of these efforts, as the proposal recognizes, reportable accidents and major incidents have steadily decreased in the United States.[2] The Associations believe that some of the provisions in EPA's latest proposal correctly acknowledge and account for this decline in process safety-related accidents over the past decade. Further, many provisions of the proposal empower the regulated community to address and implement process safety in manners that are most appropriate and effective for individual regulated facilities — something that the 2024 RMP amendments failed to do.[3]

At the same time, the Associations provide the following comments to ensure that the final rule stemming from EPA's proposal is fully consistent with statutory authority, supported by the administrative record, and structured to preserve the effectiveness of the performance-

[1] 91 Fed. Reg. 8,970 (Feb. 24, 2026).
[2] *Id.* at 8,976 (noting that there were 147 accidents among 12,396 registered facilities in 2014 while there were only 8 accidents among 11,510 registered facilities in 2023).
[3] EPA, *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention*, 89 Fed. Reg. 17,622 (Mar. 11, 2024) ("2024 Rule").

based RMP framework. Each of these opportunities for refinement is explained in more detail below.

I. In Proceeding to a Final Rule, EPA Must Appropriately Consider the Scope of the Agency's Statutory Authority and the Broader Context in Which RMP is a Part.

Section 112(r)(7) of the Clean Air Act, enacted as part of the Clean Air Act Amendments of 1990, authorizes EPA to promulgate regulations governing the prevention and mitigation of accidental releases of regulated substances.[4] Yet that authority is not without limit. The statute explicitly authorizes EPA to issue "reasonable regulations" that provide for accident prevention "to the greatest extent practicable."[5] It further limits EPA's jurisdiction by defining "accidental releases" as "an unanticipated emission of a regulated substance or other extremely hazardous substance *into the ambient air*" and turned EPA's focus primarily to *off-site consequences* associated with accidental releases.[6]

In addition to requiring EPA to promulgate accidental release regulations, the 1990 Clean Air Act Amendments called for OSHA to establish its own process safety framework for chemical accident release prevention and mitigation to address risks to employees from catastrophic releases of highly hazardous chemicals within the workplace.[7] In doing so, the statute provided OSHA with 12 months following enactment of the 1990 Amendments to establish its first set of process safety requirements, as compared to the three years provided to EPA under Section 112(r).[8] Thus, the statute contemplated OSHA's regulations to be established first, with EPA's regulations to supplement those requirements to focus specifically on the potential impacts on offsite consequences.[9]

To ensure consistency between OSHA and EPA's chemical accident release programs, Section 112(r)(7) directs EPA to utilize the expertise of the Secretary of Labor — i.e., OSHA — and the Secretary of Transportation when promulgating its RMP regulations.[10] Two years after the 1990 Amendments, OSHA promulgated its first PSM Regulations.[11] Three years later, after significant coordination with stakeholders, EPA promulgated its RMP regulations.[12] The RMP requirements generally run parallel with and are nearly identical to the PSM requirements.

The result is a dual regulatory regime where the same stationary sources are very frequently subject to both RMP and PSM requirements. EPA explained in the first RMP rulemaking that covered sources should not be subject to inconsistent requirements for chemical accident prevention and that it specifically adopted requirements identical to the PSM

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[4] 42 U.S.C. §§ 7412(r)(7).
[5] *Id.* § 7412(r)(7)(B)(i).
[6] *Id.* §§ 7412(r)(7), (r)(2)(A) (emphasis added).
[7] Pub. L. No. 101-549, § 304, 104 Stat. 2399 (Nov. 5, 1990).
[8] *Id.*; 42 U.S.C. § 7412(r)(7).
[9] §§ 7412(r)(7), (r)(2)(A) (emphasis added).
[10] 42 U.S.C. § 7412(r)(7)(B)(i) (directing EPA to use OSHA's expertise in promulgating RMP rules).
[11] OSHA, *Process Safety Management of Highly Hazardous Chemicals; Explosives and Blasting Agents*, 57 Fed. Reg. 6356, 6356 (Feb. 24, 1992).
[12] EPA, Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7), 61 Fed. Reg. 31,668, 31688 (June 20, 1996).

standards.[13] Thus, consistency between the programs is not only crucial for practical considerations but was also specifically contemplated at the time of original regulation promulgation. Moreover, by requiring that EPA consult with OSHA on its chemical accident prevention program but not including the same directive to OSHA, it is clear that the Clean Air Act contemplates OSHA as the key agency with jurisdiction over chemical accident prevention programs and EPA's program should *supplement*, not overwrite or supplant, OSHA's program.[14]

This consistency is not merely important in theory. The "regulatory divide" between on- and off-site impact is often illusory because compliance cannot predict the scope of impact that an incident will cause and employees need to be trained uniformly on the programs' requirements. Similarly, the legislative history for the 1990 Clean Air Act amendments confirms that cross-agency consistency is important to ensure that compliance burdens are not unduly burdensome or duplicative.[15] Divergent or inconsistent requirements create confusion, increase compliance costs, and risk undermining safety by forcing facilities to manage parallel but misaligned systems.[16] By contrast, alignment allows facilities to implement a single, integrated process safety management system that addresses both worker safety and offsite risk, thereby improving clarity, consistency, and effectiveness.

Outside of consistency with PSM regulations, EPA's RMP regulations must also be reasonable, as required by the Agency's statutory directive.[17] It is well established that agency action must rest "on a consideration of the relevant factors" in part to determine the reasonableness of the action.[18] Such a directive requires that EPA balance safety objectives with feasibility, costs, and real-world implementation considerations like those associated with facilities subject to multiple regulatory programs administered by different agencies.[19,20] EPA must ensure that each proposed regulatory requirement is supported by evidence demonstrating that the requirement meaningfully contributes to process safety. Regulatory requirements that

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[13] *See* 61 Fed. Reg. at 31,668–70.
[14] 42 U.S.C. § 7412(r)(7)(B)(i); *see also id.* § 7412(r)(7)(G) (providing that EPA's exercise of authority under Section 112(r) "shall not … be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health" for purposes of triggering 29 U.S.C. § 653(b)(1), which provides that OSHA does not apply to "working conditions of employees with respect to which other Federal agencies, and [certain] State agencies…, exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health").
[15] *See* Committee on Environment and Public Works, Clean Air Act Amendments of 1989: Report of the Committee on Environment and Public Works, U.S. Senate, Together with Additional and Minority Views, to Accompany S. 1630 (Dec. 20, 1989), available at https://www.regulations.gov/document/EPA-HQ-OEM-2015-0725-0645.
[16] *See* 91 Fed. Ref. at 8,977 ("As outlined in specific detail in each applicable section below, we believe there were several instances where the 2024 SCCAP rule departed unnecessarily from OSHA PSM standards. As explained below, we have determined that this resulted in a combination of unnecessary burdens on facilities and caused confusion as to what the requirements actually were.").
[17] 42 U.S.C. § 7412(r)(7)(B)(i) ("[T]he Administrator [of EPA] must promulgate *reasonable* regulations….") (emphasis added).
[18] *Motor Vehicle Mfrs. Assn. of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 31 (1983) (*State Farm*).
[19] *See id.* (agency action must rest "on a consideration of the relevant factors").
[20] *Michigan v. EPA*, 576 U.S. 743, 752–754 (finding that costs are included in "all relevant factors" when evaluating the appropriateness of a rulemaking).

are not supported by such evidence exceed EPA's statutory authority and constitute arbitrary and capricious action.[21]

EPA's proposal seeks to revise numerous provisions of the 2024 Rule to reduce unnecessary regulatory burden, maintain robust protections for human health and the environment, and provide facility-specific process safety experts the flexibility needed to best protect their facilities and the communities surrounding them. The stated purpose of the proposal is to "realign RMP requirements with OSHA PSM requirements" and "eliminate unnecessary burdens placed on facilities where there are not specific data" that supports safety benefits.[22] The Associations support EPA's stated objectives of ensuring that RMP requirements are both effective and practicable, and agree that EPA should revisit and revise the regulatory provisions promulgated in the 2024 Rule that lack an adequate connection to accident prevention.

Many of the provisions in EPA's proposal satisfy both the legal requirements for well-justified agency action and the relevant practical considerations. However, certain proposed changes still risk running afoul of legal and practical requirements. The Associations urge EPA to carefully address these issues prior to promulgating a final rule.

II. There are Several Opportunities for EPA to Refine and Improve Key Aspects of EPA's Proposed Rule.

A. #1—STAA.

1. EPA Should Rescind All STAA Requirements in Their Entirety, in Part Because the Administrative Record Does Not Support Retaining Any STAA Requirement.

The Associations support EPA's proposal to rescind the STAA evaluation, implementation, and practicability requirements for existing facilities and further urge that EPA rescind all STAA requirements in their entirety. The administrative record demonstrates that STAA requirements impose substantial costs without corresponding evidence of safety benefits and therefore do not satisfy the Clean Air Act's requirement that regulations be reasonable and practicable. EPA's Regulatory Impact Analysis ("RIA") expressly acknowledges that the Agency "is unaware of causal evidence linking accident risk to the specific provision modifications proposed in this rule."[23] The RIA further explains that EPA is unable to "sufficiently quantify or monetize estimated benefits."[24] Rather than a traditional cost-benefit

[21] *State Farm*, 463 U.S. at 43 (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947) ("Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. The reviewing court should not attempt itself to make up for such deficiencies: we may not supply a reasoned basis for the agency's action that the agency itself has not given.").
[22] 91 Fed. Reg. at 8,977.
[23] EPA, Regulatory Impact Analysis, Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act; Common Sense Approach to Chemical Accident Prevention Proposed Rule, EPA-HQ-OLEM-2025-0313-0058, at 61 (Jan. 2026) ("RIA").
[24] *Id.* at 75.

analysis, EPA provides a "breakeven analysis" in which EPA provides estimates of the number of accidents and average damages associated with those accidents that would be necessary for the STAA provisions to offset costs associated with STAA requirement implementation.[25] This breakeven analysis determines that rescission of the STAA practicability and implementation requirements from the 2024 Rule would result in a cost-savings of approximately $196 million.[26] Given, again, that EPA does not have causal evidence linking accident risk to any provision modifications in the proposal, the Associations agree that the STAA practicability and implementation rescission is appropriate because EPA apparently has: (1) no causal evidence that maintaining those requirements would result in a reduction of accident risk, and (2) no causal evidence that rescinding those requirements would result in an increase of accident risk.

At the same time, the RIA also states that EPA's proposal to maintain the STAA initial evaluation requirement for new Program Level 3 processes "would break even if it reduces average annual accident damages by at least $9 million or approximately two accidents."[27] But EPA still fails to include any data or information on how the STAA initial evaluation requirement it proposes to maintain would result in that reduction. Of particular significance, EPA also recognizes that the "majority of RMP-reportable accidents causing offsite impacts between 2014 and 2023 occurred at facilities that would not be subject to the STAA provisions as finalized in the 2024 [Rule]."[28] There is no justification for departing from EPA's acknowledgment in its original 1996 RMP rulemaking that there would be no risk reduction or safety improvements from mandating STAA. Such a departure now would simply fall short of EPA's obligation to engage in reasoned decision-making.[29]

2. There is No Adequate Rationale for Imposing STAA Requirements on Processes that Present "Heightened Risk."

The Associations further urge EPA to decline to impose additional STAA requirements on processes deemed to present "heightened risk." The RIA demonstrates that accident occurrence is highly variable and that most facilities do not experience recurring incidents.[30] Imposing broad requirements at facilities across the regulated industry without any data evidencing that these requirements would result in a reduction of risk would be arbitrary and capricious. Further, imposing additional STAA requirements on processes that present "heightened risk" *de facto* creates additional program levels by creating additional compliance obligations for some, but not all, preexisting program level 3 processes.[31] EPA specifically recognized this problem in its proposal, acknowledging that the creation of additional program

[25] *Id.* at 75–76.
[26] *Id.* at 75.
[27] *Id.* at 76.
[28] 91 Fed. Reg. at 8,979.
[29] 61 Fed. Reg. at 31,699–00 ("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…. Industry generally examines new process alternatives to avoid the addition of more costly administrative or engineering controls to mitigate a design that may be more hazardous in nature. Although some existing processes may be superficially judged to be inherently less safe that other processes, EPA believes these processes can be safely operated through management and control of the hazards without spending resources searching for unavailable or unaffordable new process technologies.").
[30] RIA, at 29–30.
[31] 91 Fed. Reg. at 8,979.

levels is not cohesive with the original 1996 RMP rulemaking and creates an additional unnecessary burden:

> In applying the STAA evaluation provisions to only sources with processes in NAICS codes 324 and 325, and the practicability and implementation provisions to a subset of those facilities, the EPA in effect created additional Program levels that do not align with those established by the 1996 RMP rule. The EPA now recognizes that the addition of these new unofficial Program levels may have created an unnecessary burden for affected industry groups and is not supported by the data, for the reasons described below.[32]

In light of these considerations, the Associations submit that retaining even a narrowed STAA requirement would perpetuate regulatory obligations that are not supported by data, would not improve safety, and would divert resources from more effective safety measures.

3. There is No Adequate Rationale for Requiring STAA-Related Considerations During Process Hazard Analyses ("PHAs").

The Associations also recommend that EPA decline to require that any STAA-related passive, active, and procedural measure considerations be considered as part of PHAs. EPA explains that STAA is most appropriately considered at the design stage of new processes.[33] Requiring repeated evaluations similar to STAA during PHA revalidation would impose significant additional burden without the corresponding safety benefits that EPA alleges are present. And, as discussed above, EPA acknowledges there is no causal evidence linking accident risk to implementing STAA requirements. Thus, EPA should decline to require facilities to consider passive, active, and procedural measures as part of PHAs.

4. EPA Should Decline to Include STAA-Related Information in RMP Submittals.

To the extent that any STAA-related provisions are retained for new program level 3 processes, EPA proposes a data collection provision that would require owners and operators of facilities with new program level 3 processes to include in their RMP submittals information about the requisite STAA evaluations conducted during the design phase of the new process, "including categories of safer design considered/implemented and not implemented and determining factors not for implementing safer designs."[34] The Associations oppose such a provision.

That proposed requirement would compel facilities to disclose sensitive process-level information that goes beyond the core purpose of the RMP program. As EPA recognizes, detailed information regarding process design, hazard mitigation strategies, and alternative technologies can raise significant security concerns if made more broadly accessible.[35]

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[32] *Id.*
[33] 91 Fed. Reg. at 8,982.
[34] *Id.*
[35] *See* RIA, at 9.

Requiring disclosure of STAA-related evaluations — particularly where such information may reveal process vulnerabilities, substitution options, or mitigation strategies — could increase the risk of misuse and undermine facility security without providing corresponding safety benefits. It could further require companies to submit information that may eventually become public even though such information is typically protected as confidential business information. Requiring facilities subject to STAA requirements to include STAA-related information in their RMP submittals would put those facilities at an unfair and unjustified disadvantage by providing information to potential competitors about specific process design, capabilities, and limitations.

Additionally, the proposed reporting requirement would impose unnecessary and duplicative administrative burdens on regulated facilities. EPA itself recognizes that it lacks data linking specific regulatory provisions, including STAA-related measures, to reductions in accident frequency or severity.[36] Requiring facilities to submit such information would add compliance obligations that are not supported by evidence and divert resources from more effective, site-specific safety measures.

B. #3—Third-Party Compliance Audits.

1. Mandatory Third-Party Audit Requirements are Unlawful and Should be Rescinded Outright.

The Associations support EPA's proposal to rescind the third-party audit provisions adopted in the 2024 Rule and urge the Agency to eliminate those requirements altogether. EPA's proposal includes its main proposal — total rescission of the third-party audit requirements — and its alternative proposal, which would retain the third-party audit provisions from the 2024 Rule with some modifications.[37] Specifically, the EPA's alternative proposal would generally retain a third-party audit provision but modify the applicability trigger so that a third-party audit would be required after *two* RMP-reportable incidents, not one as contemplated in the 2024 Rule, and it would sunset this requirement after 10 years.[38] According to EPA, this would allow the Agency to collect information on the effectiveness of third-party audits.[39]

However, the 2024 Rule's third-party audit requirements — and, in fact, any provision requiring owners and/or operators to utilize third-parties to inspect or audit their compliance obligations — are unlawful, overly burdensome, and lacking in a sufficient basis to justify the need for such provisions. The modifications contemplated by EPA's alternative proposal do not cure these defects.

The current third-party audit requirements, which EPA's alternative proposal would maintain, require: owners and operators of audited facilities to develop a findings report that includes: (1) an "appropriate response" to each audit report finding; (2) a schedule for "promptly" addressing deficiencies; and (3) "a certification, signed and dated by a senior corporate officer, or an official in an equivalent position, of the owner or operator of the

[36] *See id.* at 61.
[37] 91 Fed. Reg. at 8,986–87.
[38] *Id.*
[39] *Id.*

stationary source…."[40] That certification must certify under penalty of law that the findings were appropriately responded to and that deficiencies were corrected.[41] If any false material statements, representations, or certifications are made, the relevant corporate official could even be subject to significant fines and imprisonment for knowing violations.[42]

The requirements further require that the owner or operator implement a schedule to address deficiencies identified in the audit findings and "immediately provide a copy of [the audit report and audit findings response report] to the owner or operator's audit committee of the Board of Directors, or other comparable committee or individual…."[43] EPA does not directly supervise the fulfillment of any of these requirements. At no point is EPA required to review the audit reports. Thus, the requirements treat an adverse audit finding as conclusive proof of a violation and immediately require that owners and operators implement a series of legally required mitigation and mandatory corrective actions.

These third-party audit requirements, if enacted, would effectively subdelegate enforcement powers to a private party because those audit findings trigger legal obligations without intervention from EPA. Such subdelegation attempts have been found by courts to be unconstitutional under the nondelegation doctrine: "An agency delegates its authority when it shifts to another party 'almost the entire determination of whether a specific statutory requirement…has been satisfied' or where the agency abdicates its 'final reviewing authority.'"[44] Absent clear statutory authority, federal agencies "may not subdelegate to outside entities — private or sovereign…."[45] Nothing in Section 112(r)(7) allows EPA to subdelegate its enforcement authority to third-parties. Additionally, Section 114 of the Clean Air Act limits access to records and the right of entry in RMP inspections and investigations to "the Administrator or his authorized representatives[.]"[46] Multiple federal appellate courts have found under the Clean Air Act that private employees of contractors for EPA are not "authorized representatives" for the purposes of RMP inspections, as EPA's Office of the Inspector General has recognized.[47]

Furthermore, the mandatory board reporting provision of the third-party audit requirements unlawfully regulates corporate governance. Section 112(r)(7) does not grant EPA authority to determine how regulated facilities must communicate internally with their corporate

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[40] 40 C.F.R. § 68.80(f)(1).
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Fund for Animals v. Kempthorne*, 538 F.3d 124, 133 (2d Cir. 2008) (quoting *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554, 567 (D.C. Cir. 2004)); *Nat'l Park & Conservation Ass'n v. Stanton*, 54 F. Supp. 2d 7, 19 (D.D.C. 1999)) (internal citations omitted); *see also Ass'n Am. Railroads*, 575 U.S. at 50–51 (expressing skepticism of regimes that allow private parties to wield coercive regulatory power over others).
[45] 359 F.3d at 565–556.
[46] 42 U.S.C. § 7414(a)(2).
[47] *See* Office of Inspector Gen., EPA, Early Warning Report: Use of Contractors to Conduct Clean Air Act Risk Management Program Inspections in Certain States Goes Against Court Decisions (Mar. 28, 2012) (citing *United States v. Stauffer Chem. Co.*, 684 F.2d 1174, 1182 (6th Cir. 1982); *United States v. Stauffer Chem. Co.*, 647 F.2d 1075 (10th Cir. 1981)), available at https://www.epa.gov/sites/production/files/2015-09/documents/20120328-12-p-0376.pdf.

board of directors. Instead, state corporate laws and federal securities laws, for public companies, establish such requirements.[48]

The mandatory board reporting requirement upends the fundamental division of responsibilities between management and the board of directors. Addressing the findings of a third-party audit is a basic management function — part of the day-to-day operation and control of the company — while the board's role is one of oversight and guidance. The Clean Air Act does not purport to disrupt standard principles of corporate law and thus cannot displace the "entire corpus of state corporation law" with little to no justification and no actual improvement to process safety.[49] EPA itself appears to recognize this in its proposal.[50]

Finally, EPA correctly recognizes that the available data is too limited to adequately extrapolate for use in justifying which facilities should be required to conduct third-party audits and what those benefits, if any, would be.[51] Similarly, there is not sufficient data to conduct an appropriate cost-benefit analysis. Without sufficient data, retaining third-party audit requirements would rest on speculation, rather than reasoned analysis, and thus be unduly burdensome and unjustified.

2. Even If EPA Were to Retain Third-Party Audit Requirements, EPA Would Be Obliged to Take a Far More Targeted Approach in This Area.

Because the third-party audit framework is unlawful, EPA may not maintain it at all. Nonetheless, even if the framework were lawful, EPA would still be required to significantly limit that framework's applicability.

First, if third-party audits were retained, a two-accident trigger — limited to RMP-reportable accidents with offsite impacts — would be preferable to the 2024 Rule's broader criteria.[52] Root causes of process safety incidents can vary broadly. A single incident does not indicate a programmatic level issue. A two-accident trigger would better focus regulatory attention on facilities with demonstrated performance issues. In addition, EPA should not stray into OSHA's lane and attempt to regulate incidents with solely onsite impacts. Doing so would exceed EPA's authority, as made clear by Congress in defining "accidental release" to mean unanticipated emissions of regulated substances "*into the ambient air*."[53]

Second, if third-party audits were retained, a 10 year sunset provision would be preferable to no sunset provision. That would allow for an evaluation of whether the requirement produces measurable safety benefits over time without subjecting companies to the requirement in perpetuity.

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[48] *See*, e.g., P.L. 107-204, Sarbanes-Oxley Act of 2002.
[49] *United States v. Bestfoods*, 524 U.S. 51, 63 (1998).
[50] 91 Fed. Reg. at 8,989 ("[T]he Agency also acknowledges that there is no data supporting that elevation of this information would result in increased compliance….there was no necessity for the Agency to speculate on corporate structure and reporting by inserting a prescriptive reporting element into a performance-based program.").
[51] *Id.* at 8,986.
[52] *Id.* at 8,989.
[53] 42 U.S.C. § 7412(r)(2)(A) (emphasis added).

Third, if third-party audits were retained, EPA should provide greater flexibility regarding who may conduct audits, and should not limit that category to parties employed by a third-party firm. The proposal acknowledges concerns about the availability of third-party auditors: "[T]he Agency also did not have data to show whether there is an adequate pool of third-party auditors available to implement the regulations."[54] Opening the pool to qualified personnel of a sister facility or subsidiary's corporate parent would further preserve technical objectives while reducing unnecessary barriers to compliance. In many instances, personnel from a sister facility may be best situated to conduct audits of a facility that is not their own due to deep knowledge of similar process technologies and process safety gaps that may exist at their own facilities.

Fourth, if third-party audits are retained, EPA should allow extensions of the 90-day deadline for completing audits. Process safety audits are complex and require careful technical evaluation. Personnel availability, thorough evaluation of options, internal approval processes, and other considerations all impact a facility's ability to determine appropriate responses to audit findings. Rushing to meet arbitrary deadlines will only result in incomplete or inadequate responses. A reasonable extension mechanism ensures that audits are meaningful exercises rather than "check the box" compliance. Relatedly, any extension process should not include mandatory reporting to EPA. Mandatory reporting may chill the use of such processes.

We emphasize that the third-party audit framework is unlawful in its entirety and must be rescinded. Indeed, if EPA retains any part of the framework, there is a high likelihood that the framework would trigger a legal challenge. Our strong recommendation is that EPA entirely eliminate third-party audits from the rule.

C. #2—Information Availability.

1. EPA's Proposal Does Not Adequately Consider Security and Confidentiality Concerns Associated with the Information Availability Provisions, including Concerns Related to Newly Available, Sophisticated Technology.

The information availability requirements adopted in the 2024 Rule — including the establishment and maintenance of the currently-offline RMP Public Data Tool[55] — should be eliminated in their entirety because, as written, they are unduly burdensome and fail to recognize significant safety and security concerns. EPA acknowledges that the 2024 Rule imposed significant administrative burdens on regulated facilities by requiring them to respond to individual information requests and maintain detailed disclosures.[56] Similarly, EPA's proposal recognizes that these requirements may not provide commensurate safety benefits.

Beyond the administrative burden, mandating expanded information disclosure would raise serious security concerns not adequately addressed in the proposal. Detailed information regarding chemical inventories, process design, and hazard mitigation strategies could expose

[54] *Id.* at 8,987.
[55] The tool is currently "offline while the Agency evaluates and makes enhancements to reflect changes to the information of the Risk Management Program." EPA, *How to Access Risk Management Plan Information*, https://www.epa.gov/rmp/how-access-risk-management-plan-information (last updated Apr. 29, 2026).
[56] RIA, at 42–44.

facility vulnerabilities if made more widely accessible and can be misused by hostile actors. This is even more true than before given developments in technologies that are now widely available, but were not during the first iterations of the information availability provisions, including artificial intelligence tools. Such technologies can easily, quickly, and accurately aggregate and analyze sensitive information both for individual facilities and multiple facilities within a given area.

EPA's proposal does not adequately grapple with these considerations and their impacts on physical and cybersecurity risks to facilities. The Associations therefore support the rescission of these provisions in full as necessary to protect sensitive facility information while avoiding unnecessary compliance obligations.

Moreover, rescission is necessary because this provision does not adequately handle the business sensitivity associated with some of the information, like process design for example, that may be competitively sensitive.

For the same reasons (including safety, security, and burden considerations), the Public Data Tool should remain offline, and indeed should be removed from EPA's website. The Associations support EPA's action of taking the tool offline.

2. If EPA Were to Retain the Information Availability Provisions and the RMP Public Data Tool, Codification of Certain Requirements Would Be Necessary to Define and Limit the Information Made Public Via the Tool.

The Associations recommend complete rescission of both the information availability provisions in 40 C.F.R. § 68.210(d) and the data collection provisions associated with the RMP Public Data Tool because national security and confidentiality concerns have not been adequately addressed by EPA in either the 2024 Rule nor its latest proposal and, outside of the Public Data Tool (which, for the reasons we have explained, is inadvisable), EPA has no stated purpose for such information availability and data collection provisions. Additionally, EPA provides little justification for how these information and data collection provisions and a public tool — seemingly accessible from anywhere in the world — would actually improve safety at individual facilities.

Nonetheless, if EPA were to retain the information availability and data collection provisions and the RMP Public Data Tool, the Associations would urge the Agency to clearly define and limit the information made public via the RMP Public Data tool in the final rule. Codifying the scope of information included in the tool would provide necessary regulatory certainty and ensure that the scope of what data are considered "sensitive" does not expand over time through administrative action. Without such limitations, the tool could evolve in ways that increase both compliance burdens and security risks beyond what is contemplated in the proposal, including risks associated with artificial intelligence tools as discussed in Section I.C.1.

Finally, if EPA were to retain the information availability provisions, the related data collection provisions. and the RMP Public Data Tool, the Associations would also urge that EPA remove the provision requiring facilities to provide information regarding emergency response exercise schedules. Public disclosure of exercise timing, frequency, or scope could create

security vulnerabilities by revealing operational patterns or preparedness gaps. Disclosures of emergency response exercise schedules provide no clear benefit to surrounding communities. Nor are they necessary to ensure effective coordination with local emergency responders. The inclusion of such information in public disclosures is therefore not based on reasoned decision-making.

Although these steps would be advisable, the Associations emphasize that they would not be adequate. The Associations strongly urge that the information availability provisions, the related data collection provisions, and the RMP Public Data Tool be eliminated in their entirety.

D. #4—Employee Participation.

The Associations agree with EPA's proposal to rescind the expanded employee participation requirements adopted in the 2024 Rule and to restore the existing regulatory framework. Taking these steps is key to ensuring that EPA does not overstep its jurisdiction. The 2024 Rule's expanded requirements in this area introduced new obligations without sufficient evidence demonstrating improved safety outcomes.[57] The requirements further overlapped or departed from OSHA's PSM requirements for employee participation, despite OSHA's clear jurisdiction over employees and workplaces. A key example is the provisions requiring new processes for reporting employee noncompliance or safety concerns. Avenues for reporting concerns — both internally and externally — already exist for employees and such concerns are reported to OSHA, which has exclusive jurisdiction over workplaces and employees.

Similarly, the Associations support EPA's proposal to restore the training requirements that existed prior to the 2024 Rule and thus realign these requirements with OSHA's PSM program.[58] Such training requirements do not provide quantifiable safety benefits. Nor is EPA the appropriate agency through which additional employee training should be mandated. OSHA is the agency with jurisdiction over workplaces and employees and thus any RMP training requirements should be consistent with OSHA's PSM regulations. EPA's proposal achieves this consistency.

Again, EPA should not infringe upon OSHA's purview when it has no statutory authority to do so. The Associations agree that rescinding the expanded provisions in this area as detailed in EPA's proposal would appropriately reduce unnecessary burden, maintain effective employee participation mechanisms, and appropriately acknowledge EPA's limited jurisdiction over employees. Rescinding these provisions would further avoid confusion and unnecessarily complicate compliance where the preexisting framework already appropriately addresses employee participation concerns.

E. #8—Power Loss.

The Associations support EPA's proposal to rescind the 2024 Rule provisions that: (1) required Program 2 hazard review requirements and the Program 3 PHA requirements to emphasize potential power loss evaluation, and (2) required facilities to have standby or backup

[57] 91 Fed. Reg. at 8,991.
[58] *Id.*

power for air pollution control or monitoring equipment for RMP-regulated processes.[59] Prior to these new requirements, facilities already considered power loss as a potential hazard in PHAs under the existing RMP regulations. Unnecessary regulatory provisions that depart from PSM requirements upend the longstanding harmonization between the RMP and PSM frameworks. By rescinding the 2024 Rule amendments amplifying the requirement to include power loss as an evaluation in hazard reviews and PHAs, EPA would restore the balance between RMP and PSM frameworks and the nature of the performance-based process safety requirements. In so doing, the Agency would further cure potential confusion and avoid the hazards of misdirecting resources to address process safety requirements where threats do not actually exist.[60]

Further, EPA's proposed rescission of the requirements for standby or backup power for air pollution control or monitoring equipment for RMP-covered processes would realign the RMP program with its intended purpose: prevention and mitigation of accidental releases. Maintenance of pollution control and monitoring equipment is not the intended focus of chemical accident prevention. Using regulatory frameworks intended to prevent serious catastrophic releases of regulated substances to require backup power for ambient air monitoring devices is simply too removed from the authority granted to EPA by Section 112(r)(7). Thus, EPA is right to propose to rescind those requirements and to realign regulatory requirements with the statute.

F. #7—Natural Hazards.

The Associations support EPA's proposal to remove amplifying language associated with emphasizing natural hazards in hazard reviews and PHAs. As EPA's proposal properly acknowledges, reviews of natural hazards were already required by the regulations prior to the 2024 Rule; increased emphasis on such requirements creates potential confusion and potential diversion of resources required to focus on other more prevalent hazards.[61] In addition to supporting EPA's proposed rescission, the Associations oppose the development or use of compliance assistance tools that could effectively impose standardized approaches to evaluating natural hazards.[62] While such tools may be intended to provide guidance, they risk being treated as de facto requirements, thereby undermining the flexibility inherent in the RMP framework. This flexibility is necessary to allow appropriate subject matter experts — i.e., facility owners and operators and their technical staff — the ability to best protect human health and the environment in communities surrounding their facilities. Requiring prescriptive measures that may or may not apply to every facility would divert resources from measures that better enhance safety at a specific site and would impose unjustified cost expenditures.

G. #5—Community and Emergency Responder Notification.

The Associations oppose EPA's proposed updates to the RMP*eSubmit system that would require facilities to provide additional information regarding community notification systems. Such a requirement would be unduly burdensome and contrary to established

[59] *Id.* at 8,997.
[60] *Id.* at 8,998.
[61] 91 Fed. Reg. at 8,996.
[62] *Id.* at 8,997.

regulatory frameworks for emergency preparedness and response.[63] Although framed as a reporting enhancement, this proposed requirement effectively expands facility obligations beyond the core requirements of the RMP program. EPA acknowledges throughout the proposal that additional reporting and documentation requirements can impose administrative burdens without clear evidence of improved safety outcomes. There is no clear evidence that the proposed RMP*eSubmit reporting requirement would improve safety outcomes.

Further, the proposed revisions in this area are inconsistent with the statutory framework governing emergency preparedness and response. Under RMP and related statutes like the Emergency Planning and Community Right-to-Know Act ("EPCRA"), responsibility for community notification and emergency response coordination is shared with, and often led by, local emergency planning committees and public authorities. Facilities, as primarily private entities, simply do not have the requisite information or systems to be able to establish or maintain community-wide systems. Shifting this responsibility to regulated entities is neither contemplated by nor appropriate based on the statute. Requiring facilities to report on systems outside their control would create compliance uncertainty and could result in incomplete or inconsistent information. The Associations therefore request that EPA make clear in the final rule that community notification systems are not the responsibility of facility owners or operators.

H. #10—Emergency Response Exercises.

The Associations oppose EPA's proposal to add fields in RMP submittals requiring facilities to report on instances in which Local Emergency Planning Committees ("LEPCs") or other response organizations are unresponsive. Although intended to improve transparency, this requirement would expand reporting obligations in a manner that is not directly tied to accident prevention or risk reduction. In some instances, it could strain or worsen relationships between regulated entities and governmental bodies and could put facilities in the difficult position of evaluating the performance of authorities that could be directly involved in enforcement against the relevant facility. If EPA seeks to better understand LEPC responsiveness or identify gaps in emergency preparedness, the Agency should obtain that information directly from LEPCs or other responsible authorities.

I. #11—Safety Information and RAGAGEP.

1. EPA Should Restore PSM Alignment and Preserve Facility Discretion Over RAGAGEP.

EPA's proposal to rescind the 2024 Rule revisions to PSI and RAGAGEP requirements appropriately would restore alignment with OSHA's PSM standard. The 2024 Rule introduced additional complexity and departed from the established PSM framework, creating uncertainty for facilities subject to both programs. By returning to language that mirrors OSHA's requirements, the proposal would promote consistency and allow facilities to operate under a unified process safety regime. Such alignment is critical to ensuring compliance with both programs at facilities.

[63] *Id.* at 8,994.

Flexibility in selecting RAGAGEP is a critical requirement for facilities and one that OSHA already recognizes. Facilities differ widely in design, operation, and risk profile. EPA's proposal recognizes that owners and operators are best positioned to determine which standards apply to their facilities. Similarly, OSHA declined to adopt specific codes and standards into its original 1993 PSM final rule, preferring to adopt "RAGAGEP" as the standard instead. Prescriptive requirements would substitute rigid rules for expert judgment — a move that would both contradict the performance-based nature of RMP and contradict OSHA's decision to decline to impose rigid rules.

2. The Contemplated RAGAGEP Reporting Requirements Are Unduly Burdensome.

We oppose EPA's proposed requirement to add RAGAGEP disclosures to required information for RMP submittals that would increase documentation requirements while offering limited additional insight into facility risk management. EPA's proposal downplays the significance of such a burden, stating: "bulk of the burden would be on the first submission, and then for subsequent submissions the RMP*eSubmit system would allow users to reuse and modify the list from the prior submission."[64] The proposal fails to recognize how the preexisting requirement to maintain equipment with up-to-date RAGAGEP would impact these proposed submission requirements. Codes and standards change and are updated regularly, which is one of the reasons why OSHA has already declined to adopt specific codes and standards. Large facilities have hundreds of applicable engineering documents, at least, and requiring regular updates and submittals of these lists would impose an undue burden on facilities for no recognizable safety benefits.

J. #13—Hot Work Permits.

As discussed in Section I above, it is crucial to align the RMP and PSM regulatory frameworks, and thus to avoid confusion, redundancy, and potential conflicts amongst requirements both aimed at increasing process safety at regulated facilities. The 2024 Rule hot work provisions created divergence between the two frameworks and added complexity without improving safety outcomes. We support realigning hot work permit requirements for RMP with PSM requirements to avoid unnecessary recordkeeping burdens and to maintain focus on measures that actually provide clear benefits to process safety.

K. #9—Declined Recommendations.

Lastly, EPA's proposal to rescind the 2024 Rule requirements governing declined recommendations is well-founded and should be finalized without modification. The 2024 Rule required facilities to document and justify each recommendation that was not adopted, creating a new layer of administrative obligations. Those requirements expanded recordkeeping without evidence of a decrease in accidental releases.

Mandating formal documentation of declined recommendations risks shifting focus away from substantive risk management and toward defensive recordkeeping. Facilities may feel compelled to generate extensive written justifications to satisfy regulatory expectations rather

[64] 91 Fed. Reg. at 9,003.

than concentrate on implementing effective safety measures. That dynamic does not enhance safety. Such requirements also introduce a potential chilling effect on internal safety processes by disincentivizing personnel to evaluate options candidly. Rescinding these provisions restores an appropriate balance and allows facilities to allocate resources to measures proven to reduce accidental releases.

CONCLUSION

EPA's proposal represents an important and appropriate step toward restoring a balanced, performance-based Risk Management Program that reflects both the statutory framework and the Agency's experience implementing prior revisions. The proposal appropriately recognizes that certain 2024 Rule provisions imposed substantial burdens without corresponding evidence of improved safety outcomes. The proposal's reassessment would appropriately refocus the rule on demonstrated risk and practical implementation considerations.

At the same time, several aspects of the proposal warrant refinement and improvement to ensure that the final rule fully achieves these objectives. A final rule that adopts the changes outlined above would more fully achieve EPA's objectives of improving safety, reducing unnecessary burden, and ensuring a coherent and effective regulatory framework.

The Associations appreciate the opportunity to comment on the Proposed Rule and look forward to continued engagement with EPA as it finalizes this important rulemaking. Please do not hesitate to reach out to Chad Whiteman, cwhiteman@uschamber.com, if you have any questions or would like additional information.

Sincerely,

U.S. Chamber of Commerce
American Coatings Association
American Coke and Coal Chemicals Institute
American Gas Association
Corn Refiners Association
The Fertilizer Institute
National Mining Association