

## OVERVIEW OF EPA'S UNSOUND AND UNSUPPORTED CHANGES TO CHEMICAL SAFETY PROGRAM

### **Background**

In 2016, the U.S. Environmental Protection Agency (EPA) proposed significant new regulatory requirements to its Risk Management Program (RMP) rule including expanded public access to chemical facility information, a prescriptive third-party auditing regime, and consideration and documentation of any potential inherently safer technology and design (IST/ISD) changes to every RMP process. During the public comment period, the Agency received nearly 5,000 substantive comments, including letters from Congress, Attorneys General, Conference of Mayors, and other local officials voicing concerns with EPA's proposed changes to the RMP.

EPA published its final rule, adopting many of its proposed changes, in the Federal Register on January 13, 2017. The new rule takes effect on March 21, 2017, and will impact more than 12,500 facilities nationwide.

### **EPA Failed to Meet Statutory Requirements to Justify Its New Rule**

EPA did not meet its statutory obligations to demonstrate the need for additional costly requirements and how these requirements would improve chemical safety commensurate with their additional regulatory burdens. For example, EPA estimates the required IST/ISD analysis *alone* will cost over \$70 million annually.

When correctly implemented and enforced, the RMP requirements that existed before EPA's new rule have been highly effective in preventing accidental chemical releases. The prior RMP rule has been in place for nearly 20 years, and during that time RMP accidents have steadily declined. Based on data provided by EPA, the number of accidents at RMP facilities has dramatically decreased by roughly 60 percent over that time.

While it is appropriate for the Agency to use its regulatory authority to protect human health and the environment, it must do so by considering stakeholder input, sound science, and cost/benefit analysis in its actions and/or decisions. EPA failed to do so and its final rule will create significant new operating costs without being shown to provide any quantifiable benefits in reducing the risk of accidental chemical releases.

### **New Rule Creates New Security Concerns**

EPA is mandating that companies provide facility-specific chemical information to any member of the public upon request. This new requirement creates both national and local security concerns, since the unrestricted and required release of sensitive chemical hazard and operational information could result in dangerous unintended consequences.

Specifically, the new rule requires facility owner/operators to respond to any request by a

member of the public within 45 days of receipt for chemical hazard information at the facility, including:

- List of regulated hazardous chemicals located at the site
- Summary of emergency response program
- List of all scheduled response exercises

EPA provides the facility with no discretion to deny any request that may raise red-flags and with no safeguards to ensure those requesting the information have a need-to-know for purposes of community emergency preparedness.

Unfettered access to chemical hazard and operational information without any safeguard will allow it to fall into the wrong hands and could be used to plan and execute an attack on a chemical facility. It is noteworthy that the Department of Homeland Security expressed concern with EPA's expanded information disclosure requirements during interagency of the rule.

Sensitive chemical information with important security ramifications should only be made available to those parties with a legitimate need-to-know for purposes of emergency response and community preparedness.