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Technical Data Center  
Room N-2625  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

Via Electronic Submission: <http://www.regulations.gov>

**Re: Docket No. OSHA-2013-0026**  
**Executive Order 13650 – Improving Chemical Facility Safety and Security – Section 6(a)**  
**– Solicitation of Public Input on Options for Policy, Regulation, and Standards**  
**Modernization**

To the Executive Order Working Group:

The National Association of Chemical Distributors (NACD) submits the following comments to the Chemical Facility Safety and Security Working Group in response to **Section 6(a) – Solicitation of Public Input on Options for Policy, Regulation, and Standards Modernization**, Docket No. OSHA-2013-0026.

### **About NACD**

As the trade association representing the nation's chemical distribution industry, NACD offers a unique and important perspective on chemical safety and security. NACD members process, formulate, blend, re-package, warehouse, transport, and market chemical products for an industrial customer base of more than 750,000. NACD members operate in every state in the U.S. and throughout North America through more than 1,700 facilities. Most NACD members are small businesses. The typical member is privately owned with \$26 million in annual sales, 3 facilities, and 28 employees. More than 40 percent of NACD members are family-owned.

A member-voted condition of membership in NACD is a signed commitment to Responsible Distribution. Under this robust program, each member must follow 13 *Codes of Management Practice* in order to protect the environment, promote health and safety of employees and community members, enhance product stewardship, and ensure the security of its facilities and products. Under each Code, member companies have an active program designed to continuously improve safety and reduce incidents. Each member must develop, implement, and

undergo periodic third party verification of policies and procedures in each of the 13 areas, which range from Risk Management to Carrier Selection to Handling & Storage to Emergency Response & Public Preparedness to Community Outreach to Product Stewardship to Security.

Owners and managers of NACD member companies have a personal stake in the safety and security of their employees, companies, and communities. They demonstrate this through the commitment to Responsible Distribution, relationships with employees, involvement in local communities, including participation in Local Emergency Planning Committees, and through careful compliance with numerous environmental, transportation, safety, and security regulations at the federal, state, and local levels.

Chemical distributors are highly regulated by a myriad of agencies. NACD has created a 14 page and growing federal regulatory checklist for NACD members to help them stay compliant. While complying with all of these regulations is challenging, NACD members fully understand their importance and necessity because of the dangerous nature of chemicals if they are not handled properly.

NACD believes that there are three simple elements for an effective chemical safety and security regulatory regime that will prevent future tragedies such as the April 17, 2013 West Fertilizer explosion. First, regulations must be clear. Second, they must be consistent. Third, agencies must be willing to engage in compliance assistance and not just hard enforcement.

In order for facilities to achieve compliance, they must be able to clearly understand what steps they need to take to meet the requirements and what the agencies' expectations are. This is best achieved when the regulatory language is clear and the agencies develop helpful guidance documents. This facilitates implementation, promotes effective training of current and new employees, and leads to safer facilities.

NACD has serious concerns about proposals such as mandated inherently safer technologies (IST) that are not clearly defined, may not even be achievable, and could transfer risk. For example, chemical distributors maintain specific inventories of products in order to respond to the needs of customers. In cases where distributors might be required to reduce inventories of certain products, this would prevent these companies from effectively addressing their customers' needs. In addition, if facilities are required to reduce the amount of materials they have on-site as part of IST implementation, the result would be increased transportation of the materials, which would merely transfer the risk to different points along the supply chain and increase the likelihood of loading, unloading, or in-transit incidents.

In addition, regulations and enforcement must be consistent. A major concern about measures such as IST, general duty clauses, and "safety case" regulatory regimes is the fact that they are subject to the interpretation of a particular inspector. NACD members want to abide by the regulations, but this becomes difficult if satisfactory compliance depends on a facility's location in a particular region or who the individual inspector is.

In addition, while NACD understands the benefits of agencies sharing certain information among themselves such as regulatory databases, we have serious concerns about the prospect of one agency acting as a proxy inspector for another as this could lead to even more inconsistency in regulatory interpretation.

The third piece of effective regulation is compliance assistance and outreach. In creating NACD's checklist and meeting with agencies, NACD staff discovered that most agencies, including the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and the Department of Homeland Security (DHS), have excellent materials available on the web including guidance documents, fact sheets, webinars, FAQs and more. The problem is that it can be difficult to find these materials unless one is specifically looking for them. NACD encourages the agencies to commit to industry outreach to make the regulated community aware of these tools. Trade associations like NACD can help with these efforts in reaching our members, particularly small companies who do not have dedicated regulatory staff to read the *Federal Register* and other Washington publications every day. We have mechanisms including meetings, newsletters, and webinars to get the word out.

Everyone involved in this process shares the objective of making sure that chemical facilities and their communities are safe and secure. A regulatory system that is clear, consistent, and collaborative will go a long way in achieving this goal.

NACD is pleased to submit the following comments on options proposed in the 6(a) document relevant to the chemical distribution industry.

### **Process Safety Improvement and Modernization**

#### **Policy, Regulatory, or Guidance Options by the Agencies**

##### **Harmonization of RMP and PSM Programs**

EPA and OSHA are considering ways to modernize, clarify, and harmonize the EPA Risk Management Program (RMP) and the OSHA Process Safety Management (PSM) programs. In doing so, the agencies seek to maintain parallel requirements and ensure harmony between the regulations. While the focus of RMP is the community and environment surrounding a facility and the focus of PSM is the workforce inside a facility, these programs share common elements. Some facilities that are regulated by both programs have already harmonized them internally. While internal harmonization has been effective for some companies, NACD urges EPA and OSHA to use caution in making changes at the regulatory level. RMP and PSM have different chemical lists, thresholds, and approaches. In addition, the regulators in each respective agency must have a thorough knowledge of their own programs in order to effectively enforce them. Merging of these two complex programs could cause confusion and inappropriate regulation of certain facilities in some cases.

### Clarification of PSM Retail Exemption

The Working Group requests input on how the agency should clarify the PSM exemption for retail facilities. NACD agrees that the retail exemption needs clarification. As OSHA states itself in the December 9 Request for Information (RFI) on Process Safety Management and Prevention of Major Chemical Accidents, the agency has made inconsistent statements on the application of the retail facilities exemption. OSHA also asks in the RFI whether the agency's current enforcement policy adequately addresses workplace hazards associated with these facilities. NACD believes that the answer to this question is no, and that OSHA should clarify the retail exemption through a formal rulemaking process. Unless the exemption is made clear in the regulations themselves, it will be difficult for the agency to enforce the standard in a clear and consistent manner as has been the case to date with inconsistent interpretations. The rulemaking should include adequate data on risks and hazards that would preclude certain facilities from being eligible for the exemption and should give interested parties adequate opportunity to comment and submit their own data.

### Adoption of EPA's RMP Policy for Determining PSM Coverage of Concentrations on PSM Listed Chemicals

Appendix A of the PSM standard lists the chemicals and threshold quantities of those chemicals that subject facilities to PSM requirements. Appendix A includes specific concentrations for 11 of these chemicals but is silent on concentrations for the remaining 126 chemicals on the list. This has led to confusion and a variety of interpretation letters. NACD commends OSHA for considering ways to clarify applicability of the PSM standard. Adoption of EPA's Policy for RMP-listed chemicals is one option for consideration.

In addition, NACD recommends that OSHA and EPA modify the definition of "highly hazardous chemical" to exclude concentrations that do not possess toxic, release, flammable, or explosive properties.

NACD recommends that OSHA propose these changes and options through a formal rulemaking process rather than just a change in enforcement policy. Any proposed changes must be clearly outlined and presented to the public for comment.

### Opportunities for Better Consistency Between RMP and PSM Enforcement Policy and Guidance

Because the RMP and PSM programs have so many similar requirements such as incident analysis and mechanical integrity and because some facilities have harmonized their compliance programs internally, it would be advantageous for EPA and OSHA to ensure that expectations for meeting the requirements of these two programs are clear and consistent. This would both enhance facility compliance and promote a better understanding of the programs among regulators across the agencies.

### Additional Rulemaking, Policy Changes, or Guidance to Account for Human Factors

The Working Group asks if EPA, OSHA, and the Pipeline and Hazardous Materials Safety Administration (PHMSA) should initiate rulemaking, policy changes, or guidance to account for human factors in process safety, management of change, facility operating procedures, incident

investigation, training, process hazard analysis, and other elements. NACD believes that the most effective way to address the human factor is to make sure that requirements are clear and consistent, and that adequate training and guidance materials are available. Clarity and consistency in the regulations simplifies compliance and training of new and current workers. EPA, OSHA, and PHMSA all have excellent regulatory resources available through their websites and various training sessions, particularly PHMSA. NACD recommends that the agencies increase outreach efforts to ensure that the regulated community is aware of and receives applicable assistance from relevant agencies in proper utilization of these tools.

#### Lagging Indicators to Better Evaluate Performance

The Working Group asks if EPA, OSHA, and PHMSA should initiate rulemaking, policy changes, or guidance to use existing leading and lagging indicators to better evaluate performance. Many facilities already use leading and lagging indicators to evaluate their performance individually and to benchmark against others in a specific industry sector. Because of the diversity and complexity among the regulated community, NACD believes that this is an area best left to companies and specific industry sectors.

#### Root-Cause Analysis Guidance

The Working Group asks if it would be beneficial for the agencies to develop and publish guidance on conducting root-cause analyses following incidents. NACD believes that agency development of root-cause analysis is not necessary at this time. The U.S. Chemical Safety Board (CSB) conducts thorough investigations on major chemical incidents that include detailed root-cause analyses. The CSB also does an excellent job of making these materials available to the industry and the public through detailed reports and videos so that others may learn from the experiences and evaluate their own sites. The CSB effectively promotes the availability of these materials through press releases, social media, and the Board's web site. In addition, following an incident, it is common practice for the facility's insurer to conduct a root-cause analysis. For these reasons, NACD recommends that EPA, OSHA, and PHMSA devote their limited resources to other areas such as outreach to enhance compliance with existing regulations.

#### PSM Guidance for Small Businesses

The Working Group asks if it would be beneficial for OSHA to develop and publish PSM guidance for small businesses, particularly those that handle highly hazardous products that may not be their primary products. NACD agrees that development of PSM guidance for small business would be beneficial. Effective tools would include applicability trees, step-by-step instructions on how to set up a program, and checklists to ensure that all requirements are being implemented. OSHA has a precedent for developing useful tools for small businesses, most recently with the revised Hazard Communication Standard. The greatest challenge is how to reach those who could use the materials. NACD would welcome the opportunity to discuss with the agencies our ability to assist in disseminating the tools once developed among our membership. In addition, our membership can represent a viable channel to the marketplace to further assist in dissemination of the tools or information downstream to end users.

### Harmonization and Standardization of Terminology Among Agencies

The Working Group asks how EPA, OSHA, PHMSA, and the U.S. Coast Guard should harmonize and standardize terminology in order to clarify requirements and definitions across jurisdictions. NACD agrees that harmonization and standardization of terminology is a laudable goal that could simplify compliance.

### Expansion of Inspector Training to Include Best Practices

The Working Group asks whether inspector and compliance officer training should be expanded to include best practices and to improve process safety beyond regulatory requirements. NACD has concerns about this type of inspector training. Individuals' interpretation of what is "best" could lead to a bias against appropriate, while not state of the art, practices that achieve the desired safety state. The first priority for inspector training is to ensure that they have a clear and thorough understanding of the regulations themselves in order to effectively enforce them. Many regulations such as PSM are complicated, and it is a full-time job for inspectors to have a complete understanding of these rules in order to enforce them fairly and consistently. Because best practices vary among companies, industries, and other organizations, involving inspectors in this area could result in conflicting messages and less enforcement clarity. NACD supports the objective of finding ways to disseminate information on best practices, but the association believes that including this as part of inspector training would be too complicated and could lead to confusion or conflicting interpretations. NACD would be pleased to work with the agencies on other ways to disseminate information about industry best practices such as through joint industry and agency webinars, conferences, and guidance documents.

### Upgrading Software Tools Such as CAMEO and RMP\*Comp

The Working Group asks how EPA could upgrade its software tools such as CAMEO/ALOHA, MARPLOT, RMP\*Comp, and RMP\*eSubmit. NACD does not have any recommendations for upgrading these tools at this time. These are useful tools, and NACD recommends that EPA work to make sure that the regulated community is aware of these tools and how to use them as it has done with the Central Data Exchange (CDX) system on the chemical product reporting side through frequent notices and webinars.

### Safety Case Regulatory Model

The Working Group asks whether EPA, OSHA, and PHMSA should consider a "safety case" regulatory model to replace or supplement existing regulations such as PSM and RMP. NACD strongly believes that a "safety case" model would be counterproductive to the Executive Order's objective of improving chemical facility safety and security. Facilities, large and small alike, need regulatory clarity and consistency in order to effectively comply with the rules and to train new and current employees on these requirements. A "safety case" model is the opposite of clarity and consistency and would create confusion and uncertainty for both facilities and regulators. For such a system to work, **all** facility operators and **all** regulators would need extensive knowledge about and would need to constantly keep current on the latest safety measures and trends. This would be a monumental task, particularly for regulators, as best practices vary depending on the segment of the extremely diverse industries that handle and store chemicals.

In addition, such a “safety case” system would be far too subjective. Without clear standards, individual inspectors would be the ones to evaluate measures that are and are not acceptable to achieve the desired level of safety. Facility operators would have little knowledge of what constitutes compliance and would be subject to a particular inspector’s opinion of what is acceptable. Such a vague system would be unworkable across the board.

#### Safer Alternatives, Best Practices, and Best Methodologies

The Working Group asks if the agencies should evaluate the implementation of safer alternatives and best practices and requests input on the best methodologies for achieving this. NACD appreciates the Working Group’s recognition of the association’s Responsible Distribution program as an example of a safe practice to be promoted. NACD is committed every day to promoting and improving Responsible Distribution through education, outreach, and third-party verification of members; outreach to non-members to involve them in NACD and Responsible Distribution; and consideration of ways to continuously improve the program and members’ performance. NACD would be pleased to work with the agencies and others to continue to spread the word about Responsible Distribution and encourage others to participate or adopt similar programs.

On the other hand, NACD strongly opposes the concept of regulatory “inherently safer technology” (IST) mandates. Mandating IST, a vague and undefined term, is impractical and would significantly increase the potential for unintended consequences.

#### Specifically:

- No external entity can properly gauge which chemicals should be used in products in real time. Supply-chain disruptions require manufacturers to make minor, immediate product adjustments. An outside agency cannot properly address the broad range of factors such as risk-shifting, technical efficacy, cost, and product quality that a manufacturer must evaluate.
- Requiring manufacturers to hold smaller quantities of hazardous materials on site would exhaust their limited inventories faster. Distributors would need to deliver hazardous chemicals to these facilities more frequently, thereby significantly increasing the number of miles driven to deliver the same amount of product and ultimately increasing and shifting risk to the public roadways. In addition, there is a higher risk of incident during product loading and unloading. More shipments would increase the number of times chemicals must be loaded and unloaded, thereby increasing risk. Fixed-site risks are more manageable than those with a transportation component.
- Many incidents are the result of failure to comply with existing regulations. Adding a new, sweeping requirement such as IST would penalize companies that already comply. A better approach is more consistent enforcement of existing regulations and compliance assistance.

- Facilities already have strong incentives to adopt safer alternatives. For instance, meeting the obligations of the Chemical Facility Anti-Terrorism Standards (CFATS) has already provided incentive to optimize facilities' hazard profiles, thereby reducing hazard without impeding commerce.

#### Using Accident Data to Identify Trends and Direct Regulatory Resources Accordingly

The Working Group asks how EPA and OSHA should use RMP accident data to identify trends and use this data to direct resources toward regulatory guidance, compliance, and technical assistance. NACD agrees that the agencies should use accident data to identify trends, if the pool of data is statistically significant and can be scientifically extrapolated across affected industry sectors to develop realistic lessons learned. EPA has the best knowledge of how the agency databases work. Violation trend information would appear to be more helpful, as there are significantly more violations than incidents which are more impactful, but far fewer. Further, studying and releasing trend data about recurring violations points to causes of incidents, which can then be corrected elsewhere prior to incidents occurring. EPA currently issues thorough press releases following settlements for violations of RMP, Emergency Planning and Community Right-To-Know Act (EPCRA), and other regulations with descriptions of the violations and links to the EPA website for additional resources. This is helpful to the regulated community in learning what the agency's compliance priorities are, where facilities may be falling short, and what corrective actions they can take to ensure compliance. Year-end summary reports on these violations would also be helpful as PHMSA does with Hazardous Materials Regulations violations -

[http://phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/attachments\\_012758\\_original\\_2012\\_Penalty\\_Action\\_Report\\_Final.pdf](http://phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/attachments_012758_original_2012_Penalty_Action_Report_Final.pdf).

#### Worker Involvement in Hazard Investigations and Risk Management

The Working Group asks what opportunities exist for increased worker involvement in hazard investigations, recommending corrective actions, risk management, and preventing retaliation against those who report unsafe conditions. As the Working Group notes, worker participation is already required under the PSM and RMP programs. NACD supports worker involvement at this level; and our members involve workers extensively in their health, safety, security, and environmental programs through Responsible Distribution. However, NACD has concerns about further regulatory requirements regarding worker involvement. It can be challenging to define the appropriate workers to be involved in some activities, so this is best left to the individual facilities who have the best knowledge of their employees and expertise. NACD strongly opposes involvement of outside labor representatives who may lack adequate knowledge about a facility.

## **Options for Collaborating with Private Organizations on External Standards**

### Opportunities for EPA, OSHA, and NPPD to Work with Industry to Leverage Programs to Improve Safety and Security

NACD would strongly support increased agency initiatives to recognize effective industry programs such as Responsible Distribution. For example, if facilities are members of trade associations such as NACD and have implemented robust third-party verified programs such as Responsible Distribution, agencies could expedite the regulatory review and inspection processes for these facilities. There is precedent for this. Under RMP, facilities with Star or Merit rankings under OSHA's Voluntary Protection Program are exempt from certain audits. Another example is the U.S. Customs and Border Protection's (CBP) Customs-Trade Partnership Against Terrorism (C-TPAT) program. Under this program, companies sign an agreement to work with CBP to protect the supply chain, identify security gaps, and implement specific security measures and best practices. Companies also provide CBP with a security profile outlining the specific security measures they have in place. Once approved, C-TPAT members are considered low-risk and are therefore less likely to be examined.

Leveraging of industry programs would allow the government to focus limited resources on outreach to facilities that do not participate in programs such as Responsible Distribution or belong to trade associations such as NACD who keep members informed on regulatory requirements. In addition, government recognition of initiatives like Responsible Distribution would encourage the creation of similar performance improvement programs across the chemical industry, thus raising the safety and security profile of outlier facilities like West Fertilizer.

### Consensus Standards for EPA and OSHA Participation

The Working Group asks which consensus standards groups such as the National Fire Protection Association (NFPA) and the Center for Chemical Process Safety (CCPS) are good candidates for EPA and OSHA to stay current on chemical safety best practices. While NACD believes that it is beneficial for the agencies to be involved with these groups to stay current on best practices, NACD cautions against the agencies' specifying the applicability of consensus standards to the regulations. Doing so is tantamount to rulemaking without the opportunity for public comment and could result in inconsistent enforcement under general duty clauses

### Coverage of Additional Hazardous Chemicals or Categories of Chemicals Under Process Safety and Security Regulations

#### Agency Rulemaking to Cover Additional Hazardous Chemicals Under RMP and PSM

The lists of hazardous chemicals subject to the EPA RMP and OSHA PSM regulations are both comprehensive and were carefully considered when developed. The agencies should use caution in adding additional chemicals to these lists. EPA and OSHA should only amend these lists where substantial data has been developed on a scientific basis to warrant their inclusion. As part of this data analysis, the agencies must also demonstrate how inclusion would protect the community and environment under RMP or workers under PSM. Any additions to the list

must be subject to the formal rulemaking process with adequate opportunity to data submission and comment. Once adopted after a complete rulemaking procedure, EPA should be sure to add any new covered chemicals to Consolidated List of Lists. In the spirit of harmonization, NACD also recommends that the OSHA PSM list (including any additional chemicals) and the Department of Homeland Security (DHS) CFATS Chemicals of Interest (COI) lists be added to the List of Lists.

EPA and OSHA should not be permitted to add chemicals to the RMP or PSM lists without going through a formal rulemaking process that includes detailed hazard and cost-benefit analyses and the opportunity for comment. Following these normal procedures provides more certainty and stability to facilities and regulators alike, which enhances compliance.

#### DHS CFATS Chemicals of Interest List

The Working Group asks what additional chemicals DHS could consider adding to the CFATS COI list. NACD believes that it would be premature for DHS to add chemicals to the CFATS list at this time. DHS carefully considered the COI list in 2007 when it developed the CFATS program, and no case has been made to date justifying the need to include additional chemicals. The CFATS program is relatively new, and DHS should complete an entire cycle of Site Security Plan reviews and inspections before considering the addition of chemicals to the list. When and if DHS decides to consider additional chemicals, the agency should do so through the full rulemaking process with adequate opportunity for data submission, cost-benefit analyses, and public comment.

#### CFATS Harmonization with Other Programs

The Working Group asks whether DHS should attempt to harmonize CFATS security requirements with those of other security programs. NACD does not believe that harmonization of CFATS with other programs is warranted at this time. For example, some chemical facilities are already regulated under the U.S. Coast Guard's Maritime Transportation Security Act. The MTSA regulations have been in effect since 2003 and have worked well in securing waterfront facilities.

#### Chemical Reactivity Hazards

The Working Group asks whether OSHA and EPA should initiate rulemaking, policy changes, or guidance to cover chemical reactivity hazards under the PSM and RMP regulations and how to best define chemical reactivity hazards. NACD recommends that the agencies refrain from attempting to define or specifically cover chemical reactivity hazards in the regulations. Chemical reactivity involves too many factors and is too complex to be effectively defined. In fact, chemicals themselves are reactive by nature; they are meant to react. The fact that no consensus group such as the NFPA, nor state law that addresses reactive hazards such as the New Jersey Toxic Catastrophe Prevention Act has been able to reach a consensus on how to consistently define or regulate this area demonstrates its complexity.

Several regulatory programs already address reactive hazards. For example, PSM already covers several substances that are highly reactive, and PSM-regulated facilities evaluate reactivity during Process Hazard Analyses. In addition, the U.S. Department of Transportation (DOT) has product segregation rules to prevent reactive incidents in transit.

Because chemical reactive hazards are so difficult to define and regulate without creating an excessively complex system, NACD recommends that the agencies partner with process safety experts and industry organizations to provide more education and resources on reactive hazards. For example, the CAMEO program has a specific reactivity tool. In addition, the Chemical Safety Board (CSB) has a safety video on reactive hazards. The CCPS published a book called *Essential Practices for Managing Chemical Reactive Hazards* several years ago. Also, OSHA formerly had an Alliance designed to coordinate the dissemination of information on reactive hazards to facilities. The Alliance also included the EPA, universities, and major chemical industry trade organizations including NACD. NACD would support restarting this Alliance in order to improve information sharing on reactive hazards.

### **Coverage of Bulk Storage of Flammable Liquids Under Process Safety and Security Regulations**

#### **Clarification of the PSM Exemption for Atmospheric Storage Tanks**

The Working Group asks if OSHA should clarify the PSM standard's exemption for atmospheric storage tanks and if so, what the exemption should cover. In the 1997 *Meer* decision, an administrative law judge ruled that PSM coverage does not extend to flammables stored in atmospheric tanks, even if the tanks are connected to a process. As a result, facilities can exclude the amount of flammable liquid contained in an atmospheric storage tank, or in transfer to or from storage, from the quantity contained in the process when determining whether a process meets the 10,000-pound threshold quantity.

NACD strongly believes that atmospheric storage tanks should continue to be excluded from the PSM standard. Properly designed, manufactured, installed, operated, and maintained atmospheric storage tanks do not present a high level of risk and are already subject to a variety of existing regulations and industry standards. Inclusion of atmospheric storage tanks in the PSM standard would substantially expand the applicability of the PSM standard. This would result in considerable time and resources developing and implementing PSM programs to cover storage units that do not represent a high level of risk.

If OSHA chooses to address the atmospheric storage tank exemption, NACD urges the agency to do so only through a formal rulemaking process that includes detailed hazard and cost-benefit analyses and the opportunity for comment.

## **Process and Hazardous Chemical Security**

### **Options for Inclusion of Economic and Mission Criticality**

The Working Group asks whether DHS should incorporate economic and mission criticality into the CFATS risk-tiering methodology, as to date, the methodology has solely considered consequences to human life. DHS has already begun consideration of how to go about this through a Peer Review group that met throughout 2013. Changing the risk-tiering methodology will inevitably have a major impact on whether facilities are regulated and on their risk-tier levels. Companies have already adjusted business operations in relation to security risk, Changing the risk-tiering has the potential for significant financial and logistical business impacts on sites. If DHS does incorporate the additional factors, it will be essential to roll out the changes in a deliberative manner that minimizes disruption as much as possible.

### **Identifying Facilities Covered Under Existing Process Safety and Security Regulations**

#### **Registration Requirements Under RMP and PSM**

The Working Group asks whether facilities covered under PSM but not RMP should be required to register under the RMP reporting system as facilities covered by RMP are currently required to indicate whether they are covered by PSM. NACD has concerns about the prospect of giving EPA the authority to gather information on OSHA-regulated processes when these facilities are not subject to RMP. Rather than placing this additional burden on facilities, the government should improve its interagency communications so that the agencies can more effectively obtain relevant information from each other.

#### **DHS Identification of Facilities That Have Not Submitted Required Top Screens**

The Working Group asks how DHS can most effectively identify entities that have not submitted required top screens. NACD believes that DHS has made substantial progress in this area by cross referencing the EPA RMP list and sending notices to those facilities that had not filed Top Screens and by reaching out to states to help identify other facilities.

### **In Closing**

NACD appreciates the opportunity to submit comments on these important issues. NACD strongly believes that a regulatory system that is clear, consistent, and focused on compliance assistance is the most effective way to improve chemical facility safety and security. We encourage the Working Group to consider ways to improve outreach on and enforcement of existing programs, resources, and regulations rather than proposing measures such as a “safety case” regime and IST mandates, which would only increase confusion, complexity, and compliance difficulties.

If the agencies, including OSHA, EPA, DOT, decide to propose regulatory changes, NACD urges each agency to conduct full rulemaking processes, including Advanced Notices of Proposed Rulemaking for each initiative. This will provide opportunity for careful consideration of hazard and cost-benefit analysis and adequate data and comment submission from interested parties.

Thank you again for the opportunity to comment on these important issues. If you have any questions or need additional information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer C. Gibson". The signature is fluid and cursive, with the first name being the most prominent.

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