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OSHA Docket Office
Docket No. OSHA-2013-0020
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-2013-0020
Process Safety Management and Prevention of Major Chemical Accidents – Request
for Information**

The National Association of Chemical Distributors (NACD) is pleased to submit the following comments to the U.S. Occupational Safety and Health Administration (OSHA) in response to the **Request for Information on Process Safety Management and Prevention of Major Chemical Accidents**, Docket No. OSHA-2013-0020.

About NACD

NACD is an international association of more than 400 chemical distributors and their supply-chain partners. The association represents more than 85% of the chemical distribution capacity in the nation and 90% of the industry's gross revenue. NACD members are responsible for more than 150,000 direct and indirect jobs in the United States while operating in all 50 states through nearly 1700 facilities. NACD members are predominantly small regional businesses, many of whom are multi-generational family-owned. The typical chemical distributor has 26 employees and operates under an extremely low profit margin.

Worker safety is a top priority for NACD members. NACD members meet the highest standards in safety and performance through mandatory participation in Responsible Distribution, NACD's third-party verified environmental, health, safety, and security (EHS&S) program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations. NACD members have achieved a strong safety record under Responsible Distribution. Member companies' safety rating is consistently better than non-member companies in the Chemical & Allied Merchant Wholesale Industry and nearly twice as good as all manufacturing combined.¹

¹ Based on 2012 data reported by 100% of NACD Member Companies, and the most recent data from the U.S. Bureau of Labor Statistics and the U.S. Bureau of Economic Analysis.

OSHA's Process Safety Management Standard (PSM) is a comprehensive and robust regulation that requires facilities with highly hazardous chemicals to implement technologies, procedures, and management practices to protect workers from chemical releases. A key component of the PSM standard is a requirement for facility operators to perform a process hazard analysis, which is a thorough review of what could go wrong and what safeguards must be implemented to prevent uncontrolled chemical releases. The PSM standard also mandates written operating procedures; employee training; pre-startup safety reviews; evaluation of the mechanical integrity of critical equipment; and written procedures for managing change. In addition, the PSM standard specifies a permit system for hot work; investigation of incidents involving releases or near misses of covered chemicals; emergency response planning; compliance audits at least every three years; and trade-secret protection.

OSHA recognizes itself that the PSM standard "has been effective in improving process safety in the United States and protecting workers." Because PSM is already a comprehensive and robust regulatory program and because the Standard has been effective in preventing process safety incidents and protecting workers, NACD believes that OSHA should focus its efforts on PSM compliance assistance, training, and enforcement rather than making changes to the regulation.

If OSHA determines that changes to PSM are absolutely necessary, the agency should do so through a complete and formal rulemaking process that maximizes the opportunity for data submission, thorough cost-benefit analyses, and public comment. The rulemaking process should include an Advance Notice of Proposed Rulemaking. In addition, because changes to the PSM standard would have a substantial impact on small businesses, OSHA would need to follow the Small Business Regulatory Enforcement Fairness Act (SBREFA) and convene a Small Business Advocacy Review Panel to thoroughly assess the proposal's impact on small business.

NACD is pleased to submit the comments on the following elements of OSHA's Request for Information:

Clarifying the PSM Exemption for Atmospheric Storage Tanks

OSHA requests comment on revising paragraph (a)(1)(ii)(B) of the PSM standard to clarify that the regulation covers all stored flammables when connected to, or in close proximity to, a process. OSHA is proposing this to reverse the 1997 *Meer* decision, in which 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 pose 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.

Expanding PSM Coverage and Requirements for Reactivity Hazards

OSHA requests comment on how the PSM standard could be amended to address chemical reactivity hazards. NACD recommends that OSHA refrain from attempting to define or specifically cover chemical reactivity hazards through the PSM standard. 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. No organization such as the National Fire Protection Association (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, demonstrating the complexity of the issue.

PSM already covers several highly reactive substances, and PSM-regulated facilities evaluate reactivity during Process Hazard Analyses. There are also other regulations that address reactive hazards. For example, the U.S. Department of Transportation has product segregation rules to prevent reactive incidents in transit.

Because chemical reactive hazards are so difficult to define and to regulate without creating an excessively complex system, NACD recommends that OSHA and other agencies partner with process safety experts and industry organizations to provide more education and resources on reactive hazards. For example, the National Oceanic and Atmospheric Administration's CAMEO program, which the Environmental Protection Agency (EPA) recommends for use to assess chemical hazards, has a specific reactivity tool. In addition, the Chemical Safety Board (CSB) has a safety video on reactive hazards. The Center for Chemical Process Safety (CCPS) published a book titled *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. This association would support restarting the Alliance in order to improve information sharing on reactive hazards.

Updating the List of Highly Hazardous Chemicals in Appendix A of the PSM Standard

The list of hazardous chemicals subject to the OSHA PSM regulation is comprehensive and was carefully considered when developed. OSHA should use caution in adding additional chemicals to the list. The agency should only amend the list where substantial data has been developed on a scientific basis to warrant the inclusion of additional chemicals. As part of this data analysis, OSHA must also demonstrate how inclusion would increase worker safety. The agency should also modify the definition of "highly hazardous chemical" to exclude chemical

concentrations that do not possess toxic, reactive, flammable, or explosive properties. Any additions to the Appendix A list must be subject to the formal rulemaking process that includes detailed hazard and cost-benefit analyses and the maximum opportunity for data submission and comment.

Revising the PSM Standard to Require Additional Management-System Elements

OSHA is requesting comments on additional management system elements that could be added to the PSM standard such as elements from the CCPS Risk Based Process Safety program. While it may be worthwhile for OSHA to consider the latest management system elements, it will be important to complete a thorough analysis on how these changes would impact the regulated community and if the elements would be appropriate for the broad range of regulated facilities. PSM already includes significant management system elements. In addition, one of the objectives of Executive Order 13650 is to reduce government stove-piping. Accordingly, any management system changes must be globally considered in relation to all agency requirements to ensure clarity and consistency as well as providing that each regulatory agency primarily addresses its core scope of authority. Again, any proposed changes would need to go through the formal rulemaking process.

Amending PSM to Require Evaluation of RAGAGEP Updates

OSHA requests comments on a proposal to require facility operators to evaluate and document updates to recognized and generally accepted good engineering practices (RAGAGEP). NACD opposes this proposal because it is unnecessary, would be too costly and time consuming, and would provide limited or no benefit relative to the burdens. The regulations currently ensure that employers examine all pertinent safety updates applicable to RAGAGEP. Under the current regulations, an essential practice for facility operators is to review the most updated industry standards and practices as part of the PSM process hazard analysis. Employers should not be forced to re-document their safety evaluations every time an update to a standard is published. This would be unworkable, considering the fact that codes and standards are continually updated. If this requirement were to be implemented, staff would need to constantly monitor code changes, obtain the new codes from the various code organizations (frequently at a substantial cost), re-write the company's procedures to incorporate the changes, implement the updates, and train all impacted employees on the changes. This would be a never-ending cycle that would be particularly burdensome for small businesses.

Expanding the Scope of Paragraph (j) of PSM to Cover Mechanical Integrity of Any Safety Critical Equipment

OSHA requests comments on expanding the mechanical-integrity requirements of the PSM standard to cover all equipment the employer identifies as critical in addition to the equipment specifically listed in the standard. NACD believes the expansion of Paragraph (j) is unnecessary. The elements currently listed in the standard cover the vast majority of safety-critical equipment. In addition, employers already have the flexibility to expand beyond this list where appropriate. The current provision strikes a good balance between clarity and flexibility and need not be amended.

Revising the PSM Standard to Require Emergency Planning with Local Authorities

OSHA proposes adding a requirement for facilities to coordinate emergency planning with local emergency-response authorities to the PSM standard. NACD believes such a requirement in the PSM standard would be duplicative and unnecessary. The requirement for coordination with local emergency responders is already sufficiently addressed in several other regulations including OSHA's Hazardous Waste Operations and Emergency Response rules, EPA's Clean Air Act Chemical Accident Prevention Provisions, as well as Department of Homeland Security (DHS) and Department of Transportation (DOT) regulations.

In addition, facilities provide information on their chemicals to various agencies and response organizations as required by other regulations such as EPA's Risk Management Plan, EPA's Emergency Planning and Community Right-to-Know Act Tier II reporting, and DHS's Chemical Facility Anti-Terrorism System (CFATS). Rather than adding another duplicative requirement to the PSM standard, OSHA should work with other government agencies and state/local organizations to recognize measures already in place and to access information. Any additional requirements to provide emergency response planning information should be harmonized between regulatory agencies. Adding a coordination requirement to the PSM standard would simply add another layer of confusion to the already cumbersome list of federal requirements that Executive Order 13650 was created to address.

In addition, NACD has concerns about federal mandates for industry to coordinate with local authorities. NACD strongly supports the concept of coordination with these local officials in principle. In fact, under Responsible Distribution, NACD members are required to coordinate with local emergency responders by making them aware of the potential hazards of the chemicals they have on site, conducting plant tours, and coordinating emergency response plans. Our concern about regulatory mandates is that many local emergency response providers have limited resources and are not always available to devote the manpower and resources to these activities. Every community is different; and while this may be doable in some areas, others simply do not have the resources. Industry cannot compel the local authorities to be involved in the process, so the regulatory burden should not be placed on industry. NACD is concerned about the prospect of members being placed in the position of being in violation of the regulations because the local response authorities simply do not have adequate time and resources to devote to these activities in some communities.

Revising the PSM Standard to Require Third-Party Compliance Audits

OSHA requests comments on whether the PSM standard should be amended to require third-party audits and if the frequency requirements for audits should be increased from the current three years. NACD believes that both of these changes are unnecessary.

OSHA should continue to provide facility operators the ability to select the audit method most suited to their individual operations, whether internal or using third-party firms. A mandate to use third-party auditors would impose substantial costs on companies. In addition, internal company audits provide many benefits that would be lost with third-party audits. For example, some companies have hired personnel to perform internal auditing functions, including PSM

audits. Adopting a regulatory mandate to perform third-party audits could cost jobs such as this and further reduce mutual safety goals whereby these employees also supplement other safety and environmental auditing. Some companies may not be able to support both in-house internal auditing and contract auditing.

Facilities should continue to have the flexibility to select the audit methods most appropriate for their unique operations. Of utmost importance is that the auditor have a thorough knowledge of a facility's processes.

In addition, NACD believes that the case has not been made to justify increasing the frequency of required audits from the current three years.

Changing Enforcement Policy of the PSM Exemption for Retail Facilities

OSHA requests input on what the retail facilities exemption should cover and whether OSHA's current enforcement policy adequately addresses workplace hazards associated with these facilities. NACD agrees that the retail exemption needs clarification. As OSHA states itself, the agency has made inconsistent statements on the application of the retail facilities exemption. NACD believes that OSHA's current enforcement policy does not adequately address the issues 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.

Changing Enforcement Policy for Chemicals Listed in Appendix A of the PSM Standard Without Specific Concentrations

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 worthy of consideration. If OSHA chooses to pursue this change, NACD recommends the agency do so through a formal rulemaking process rather than through a change in enforcement policy. Any proposed changes must be clearly outlined and presented to the public for comment.

In Closing

NACD appreciates the opportunity to submit comments on these important issues. NACD strongly believes that regulations that are clear, consistent and have adequate compliance assistance resources are most effective in ensuring the safety of workers and facilities.

PSM is one of the most comprehensive, complex, and robust regulations with which chemical facilities must comply. PSM has been impressively effective in preventing chemical incidents for

those facilities in compliance. Fatal incidents have occurred at facilities that were in violation of the standard. Because of PSM's complexity, compliance can be challenging, particularly for small businesses. Rather than making the PSM standard even more complex, NACD strongly recommends that OSHA focus its efforts on outreach, compliance assistance, and effective enforcement of the current standard. This would be the most effective way to bring facilities into compliance and prevent future accidents.

If OSHA chooses to pursue regulatory changes to the PSM and other standards, NACD urges the 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, written in a professional style.

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