

January 23, 2014

President of the United States
The White House
1600 Pennsylvania Ave., NW
Washington, D.C. 20500

To the President of the United States and the Interagency Working Group on Improving Chemical Facility Safety and Security:

We appreciate the serious and important task the Interagency Working Group (IWG) has been given in implementing Executive Order (EO) 13650 – Improving Chemical Facility Safety and Security. The safety and security of our facilities, our employees, and our communities is paramount, which is why many of our organizations have actively participated in the listening sessions for the EO and have offered many comments and recommendations.

While it is encouraging to see several options in the IWG’s recent report that could help create a more unified and effective approach to addressing safety, we are concerned that the report’s focus on “safer alternatives” could derail the overall effort.

We believe opportunities exist to further improve safety and security and will continue to offer our expertise to assist the Working Group, but we strongly oppose any proposal that will create a federal requirement to assess or implement so-called Inherently Safer Technologies (IST).

IST decisions are extremely complex and cannot be and should not be determined by any governmental agency. The potential for creating unintended consequences is high, and the Environmental Protection Agency (EPA) has long held that IST requirements would not produce additional benefits beyond those that already exist in the current Risk Management Plan (RMP) program structure.¹

Inherently safer approaches to manufacturing processes have been and will continue to be considered by facilities as a matter of course, and the facility operators—not the government—are in the best position to understand the full ramifications of implementing IST. No one regulatory program or government agency can properly address the broad range of factors such as risk shifting, technical efficacy, cost, and product quality that a facility must consider and address when choosing appropriate safety and security measures, much less all of the different site-specific scenarios for the approximately 12,000 facilities that could be impacted by an IST requirement under the RMP. In addition, decisions by government officials to require alternatives could impose new risks, such as more hazardous materials in transportation, if facilities must reduce inventories of certain substances.

¹ Federal Register Volume 61, Number 120, FR Doc o: 96-14957 (Thursday, June 20, 1996): Pages 31668-31730, <http://www.gpo.gov/fdsys/pkg/FR-1996-06-20/html/96-14597.htm>

Operators need to take an all-inclusive approach when looking at the safety profile of a facility, and they must factor in the requirements of the numerous overlapping regulatory programs that help shape this approach. EPA, the Occupational Safety and Health Administration, the U.S. Department of Transportation, the U.S. Department of Homeland Security (DHS), and the Bureau of Alcohol, Tobacco, Firearms and Explosives all have existing regulatory programs that require operators to examine their operations and make them as safe and secure as possible. To attempt to overlay an IST requirement would negatively impact all of these various safety and security programs and create an impossible bureaucratic burden.

The current performance-based regulations in place today and in the marketplace itself already provide strong incentives for companies to consider and adopt “safer alternatives” such as IST. These programs allow facility operators to use all of the risk management tools and options at their disposal, while considering the complexities of their unique operating environment. Adding a new regulatory requirement focused on IST is not only unwarranted but potentially detrimental. At a minimum it would divert scarce federal agency resources away from the primary objective of the EO—namely, to identify and engage “outlier” facilities. At worst, IST would overwhelm federal agencies with thousands of complex evaluations, without requisite staff expertise to properly review the submissions. One EPA official has already said such an approach would be “monumentally difficult” for the Agency to accomplish.²

The IWG can help create a safer and more secure regulatory environment by addressing shortfalls through options that will improve coordination between government agencies and enhance outreach, while recognizing opportunities to better implement existing regulatory programs. Pursuing options related specifically to IST would ultimately jeopardize the success of the EO by both distracting attention from much needed improvements and threatening to create unnecessary and duplicative regulatory requirements that would not contribute to enhancing safety and security.

We remain steadfast in our commitment to safety and helping the IWG pursue opportunities that will improve the effectiveness of current regulatory programs.

Sincerely,

Agricultural Retailers Association
American Chemistry Council
American Forest and Paper Association
American Fuel & Petrochemical Manufacturers
American Petroleum Institute
The Chlorine Institute

² Larry Stanton, director of EPA's Office of Emergency Management, as quoted by Dave Reynolds, “EPA Looks To New Jersey Program As Possible Model for IST Requirements,” *Inside EPA* (December 2, 2013), <http://insideepa.com/Risk-Policy-Report/Risk-Policy-Report-12/03/2013/epa-looks-to-new-jersey-program-as-possible-model-for-ist-requirements/menu-id-1098.html>

The Fertilizer Institute
Institute of Makers of Explosives
International Liquid Terminals Association
National Association of Chemical Distributors
National Association of Manufacturers
Society of Chemical Manufacturers and Affiliates
U.S. Chamber of Commerce

cc: The Honorable Eric H. Holder, Jr., Attorney General
The Honorable Thomas J. Vilsack, Secretary of Agriculture
The Honorable Thomas E. Perez, Secretary of Labor
The Honorable Anthony Foxx, Secretary of Transportation
The Honorable Jeh Johnson, Secretary of Homeland Security
The Honorable Gina McCarthy, Administrator, Environmental Protection Agency