



Comments of Jennifer C. Gibson
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before the

Executive Order 13650 Improving Chemical Facility Safety and
Security Webinar Listening Session

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Good Afternoon. My name is Jennifer Gibson. I am Vice President of Regulatory Affairs for the National Association of Chemical Distributors – NACD. Thank you for the opportunity to comment today.

NACD and its over 400 member companies are vital to the chemical supply chain providing products to over 750,000 end users. NACD members are leaders in health, safety, security, and environmental performance through implementation of Responsible Distribution, a third-party verified management practice established in 1991 as a condition of membership.

Under this robust program, each member must implement measures to continuously improve safety and reduce incidents under 13 distinct *Codes of Management Practice* which range from Risk Management to Carrier Selection to Handling & Storage to Emergency Response & Public Preparedness to Community Outreach to Product Stewardship to Security. Companies who fail to develop and implement these programs are terminated from NACD membership.

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 their commitment to Responsible Distribution, relationships with employees, involvement in local communities, including participation in LEPCs, and through careful compliance with numerous environmental, transportation, safety, and security regulations at the federal, state, and local levels.

The chemical regulatory system in this country is both comprehensive and complex. Particularly for small companies, it is challenge to stay on top of all of the regulations, even for NACD members who have the benefits of resources from their trade association and environmental, health, safety, and security measures already implemented through Responsible Distribution. Chemical distributors are very highly regulated by a myriad of agencies. I have created a 14 page and growing **federal** regulatory checklist for NACD members to help them stay compliant. While keeping up with all of these regulations is challenging, NACD members fully understand their importance because of the dangerous nature of chemicals if they are not handled properly.

As the Working Group considers ways to enhance and modernize chemical regulations, NACD recommends that before considering new requirements that would add to the system's complexity, that the Working Group focus on the current system to ensure first that the regulations are as clear as possible; second, that they are enforced consistently; and third, that compliance assistance and outreach be a primary focus of the agencies.

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 such as checklists and applicability trees. This facilitates implementation, promotes effective training of current and new employees, and ultimately results in safer facilities. NACD has serious concerns about

proposals such as mandated inherently safer technologies that are not clearly defined and may not even be achievable for many facilities.

In addition, regulations and enforcement must be consistent. A major concern about measures such as IST and general duty clauses is the fact that they are subject to the interpretation of a particular inspector. NACD members want to do the right thing, 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, I discovered that most agencies, including EPA, OSHA, DHS, and DOT have excellent materials available including guidance documents, fact sheets, webinars, FAQs and more. The problem is that it can be difficult to find these materials, so we encourage the agencies to commit to industry outreach to make the regulated community aware of these tools. In addition, if there is a way to develop sort of a one-stop shop to determine chemical safety and security regulatory applicability, that would help. One of the participants in the November session offered the excellent suggestion of expanding the EPA List of Lists to include CFATS, PSM, Hazardous Materials Regulation, and

other chemicals. This would be a good first step. And the next step is to get the word out about the list and materials.

A major concern for the Working Group is what to do about outliers – those who do not belong to trade associations who such as NACD who provide regulatory resources and have our own environmental, health, safety, and security programs such as Responsible Distribution. There are a couple of steps the Working Group can take to address this issue. First, as you are already starting to do, it is critical to increase coordination with state and especially local officials. LEPCs and local fire chiefs should have the best knowledge of what facilities are in their areas. They can provide this information to agencies such as DHS and EPA, who in turn, can make sure that the locals are knowledgeable about federal regulatory requirements so that they can share information with the facilities.

Second, we encourage federal agencies to leverage programs such as NACD's Responsible Distribution so that you can dedicate your limited resources to finding and reaching out to the outlier facilities.

We all share 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.

I appreciate the opportunity to present NACD's views and look forward to providing additional input throughout this process.