Written Comments
Of the American Chemistry Council
To the Interagency Working Group on Improving Chemical Plant Safety and Security
Regarding Executive Order 13650, Improving Chemical Facility Safety and Security
December 18, 2013
ACC appreciates the opportunity to offer our perspective and recommendations regarding President Obama’s Executive Order on Improving Chemical Facility Safety and Security (EO). Nothing is more important to the membership of the American Chemistry Council (ACC) than the safety and security of our facilities, our employees, and our communities.

As the nation’s leading trade association for chemical manufacturers, ACC would like to express our strong desire to engage with the Chemical Facility Safety and Security Working Group. We believe ACC and its members have valuable insight regarding best practices, model programs, and broad experience that could help assist the Working Group as it moves forward with the important task of identifying approaches and opportunities to enhance the safety and security of chemical facilities.

**ACC Member Safety Performance Record**

ACC and our members are proud to be part of an industry group that has placed safety and security at the core of its operations. ACC member companies are committed to the safety of their workers, the safety of their products and processes, and the health and safety of the communities in which they operate.

A few statistics: ACC member companies have reduced worker recordable injury and illness rates at their facilities by 79 percent since 1990; today our injury rate is five times lower than the U.S. manufacturing sector as a whole; and we have reduced the number of process safety incidents by 58 percent since 1995.¹

**ACC Responsible Care® Program**

One important factor to this strong safety record is the ACC Responsible Care® Program. Responsible Care is the chemical industry’s comprehensive environmental, health, safety, and security performance initiative and is mandatory for membership in ACC. This obligation extends to all ACC members and to Responsible Care Partner companies across the supply chain, including transporters, distributors, packagers, and warehouses.

Through Responsible Care, ACC member companies report on their progress in meeting the following safety-related performance measures:

- Worker Safety
- Transportation Safety
- Process Safety

Under Responsible Care, our members and partners are required to implement a robust environmental, health, safety, and security management system, which is verified by independent

¹ For more information about ACC member safety performance, please visit: [http://responsiblecare.americanchemistry.com/Performance-Results/Safety](http://responsiblecare.americanchemistry.com/Performance-Results/Safety)
certified auditors. A core element of the Responsible Care® program is working with members of the local community and first responders to prepare for potential chemical incidents through education and planning.

In our recent commitment to continuous safety improvement, ACC and its members developed a new Process Safety Code as part of the Responsible Care program. This new code built upon existing process safety performance requirements under Responsible Care and is further evidence of ACC members’ commitment to safety throughout our chemical processing operations, safety management systems, and leadership. The Process Safety Code requires companies to develop and implement a comprehensive process safety management system to manage risk and seek opportunities to improve performance, including the consideration of safer alternatives. Companies must understand and prioritize process safety risks and see that all employees have the required knowledge, expertise, tools, and training to manage process risks in their operations.

We believe these efforts demonstrate the ongoing commitment of the chemical industry to be responsible operators, employers, and neighbors. This ongoing effort is also evidence of the valuable working knowledge we can offer to the Working Group to pursue workable and effective options through the EO.

In addition to Responsible Care, ACC operates CHEMTREC®, a 24/7 emergency call center located in Fairfax, VA. CHEMTREC® maintains millions of Safety Data Sheets and a network of subject matter experts who provide real-time emergency response information during an event. CHEMTREC® also provides a cost-effective method for hazardous materials shippers to comply with the U.S. Department of Transportation requirements to provide a 24-hour emergency contact on shipping documents. In addition, CHEMTREC® has established agreements with a number of U.S. federal agencies and mutual assistance agreements with national level emergency centers in many parts of the world, all in an effort to enhance hazardous materials transportation safety globally.²

ACC also sponsors TRANSCAER® (Transportation Community Awareness and Emergency Response), which is a voluntary national outreach effort focused on training local communities and emergency personnel on preparation and response to possible transportation incidents.³

**Recommendations**

In order to address the issues from the West, Texas, incident, the Executive Order (EO) wisely directs federal agencies and stakeholders to take stock of the full range of existing voluntary and regulatory programs, and then look for ways to make them more efficient and effective. With

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² For more information about CHEMTREC®, please visit: [http://www.chemtrec.com/](http://www.chemtrec.com/)
³ For more information about TRANSCAER®, please visit: [http://www.transcaer.com/](http://www.transcaer.com/)
that goal in mind, the following are several recommendations to address a number of key goals outlined in the EO:

Federal Recognition of Private Sector Programs

The EO directs the Working Group to devise options that take advantage of private sector initiatives that will help improve how the federal government oversees the management of chemical safety and security. We believe that increased regulatory recognition and the leveraging of industry performance improvement programs, such as ACC’s Responsible Care® program, are essential components for advancing the effectiveness of the current federal approach. By recognizing private sector initiatives, the federal government can incentivize the creation of similar safety and security improvement programs across the chemical sector, thus expanding its reach to “outlier” facilities, including small and medium size operations such as the West Fertilizer Company.

The approach taken under the SAFETY Act (Support Anti-terrorism by Fostering Effective Technologies Act) is a good example of how federal recognition of industry efforts can help drive increased performance. ACC looks forward to the opportunity to provide the Working Group with additional insight and information about the Responsible Care program and to explore ways to leverage private sector initiatives that will truly improve the state of chemical safety and security across the country.

Improved Information Sharing and Community Outreach

ACC recognizes that regulatory requirements alone will not guarantee safety. Thus, ACC fully agrees that the sharing of chemical information and emergency response plans with those who have a need to know is critical. As mentioned, ACC members are obligated under Responsible Care to do just that and to work closely with local emergency planning groups, fire departments, and local law enforcement to understand the risks and to be prepared. There are existing laws, such as the Emergency Planning and Community Right-To-Know Act (EPCRA) that mandate such information be shared. Sharing information with local first responders to address emergency situations is critical. ACC strongly supports the efforts under the EO to address improved coordination between agencies that possess this information and collaboration with local first responders and emergency planning committees.

ACC, however, does have concerns with widespread dissemination of certain information. The need for localities and the public to have critical information can be met without releasing sensitive facility security information or confidential business information to the general public. ACC believes that any proposal concerning enhanced information sharing must address the real life concern that sensitive facility security information or confidential business information, if provided broadly, could be used by those who wish to do us harm and potentially jeopardize community safety and security.
ACC recommends that the Working Group look closely at existing information sharing programs, both regulatory and voluntary, and identify information sharing deficiencies raised by the West incident and develop recommendations to address the deficiencies..

**Modernizing Risk Management Policies and Improving Coordination**

As a general matter, ACC believes that chemical safety and security are effectively being addressed by the numerous laws and regulations that are already in place today. Adding additional layers of new laws and regulations is not the answer and would likely contribute to regulatory confusion, which is hampering agencies ability to effectively enforce their existing safety and security oversight authority.

To make sure these programs stay current, ACC generally agrees that a periodic review of covered chemicals under the U.S. Environmental Protection Agency’s (EPA) Risk Management Plan (RMP) Rule, Occupational Safety and Health Administration’s (OSHA) Process Safety Management of Highly Hazardous Chemicals (PSM) standard, and the U.S. Department of Homeland Security’s (DHS) Chemical Facility Anti-Terrorism Standards (CFATS) is warranted. However, this process must be transparent and include all stakeholders to ensure that risks are considered in the context of real-world factors. The review process must be based on sound, scientific, and risk-based analysis and must consider economic impacts as well as technical feasibility. It should be consistent with the principles articulated under Executive Order 13563 that was issued by President Obama in 2011, namely that regulatory proposals accomplish the following: protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation; be based on the best available science; must allow for public participation and an open exchange of ideas; must promote predictability and reduce uncertainty; must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends; must take into account benefits and costs, both quantitative and qualitative; and must measure, and seek to improve, the actual results of regulatory requirements.

**Working with Stakeholders to Identify Best Practices**

The safety of employees and communities requires a strong ongoing partnership between industry and government. Many chemical facilities have taken steps to create a safer work environment and reduce risks of chemical incidents to nearby communities. ACC and its members work closely with government entities, such as OSHA and the Chemical Safety Board (CSB), and with other industry organizations to look for ways to enhance safety by improving the effectiveness of regulations, as well as look for better ways to share best practices and lessons learned.

ACC is an organization that has a vast amount of experience in addressing the issues the Working Group is studying. There are, however, other organizations that have valuable experience. We encourage the Working Group to actively engage with industry associations and
standard-making bodies so that the wealth of information on best practices can be readily shared. In this way, the Working Group can develop a plan on how these practices then can be shared and disseminated so that the problems brought to light by the incident in West, Texas, can be appropriately addressed. ACC looks forward to providing such information, as well as recommendations to help improve the performance of programs within the current regulatory framework.

**Identifying Best Practices to Reduce Chemical Risks through Safer Alternatives**

ACC believes that a regulatory approach focusing on safer alternatives would be counterproductive. However, the Working Group is charged with examining best practices to reduce safety and security risks in the production and storage of hazardous chemicals, including the use of safer alternatives. To meet this charge, the Working Group should include throughout its efforts stakeholders who possess the requisite knowledge and experience to help identify best chemical risk management practices and to establish the definition and scope of what is considered a “safer” alternative when compared to an existing process or chemical. As described in the Center for Chemical Process Safety and the American Institute of Chemical Engineers report (*Final Report: Definition for Inherently Safer Technology in Production, Transportation, Storage, and Use*)

4 on the definition of inherently safer technology (IST), “safer” only has a meaning when placed in proper context, and factors such as risk shifting, unintended consequences, feasibility, and economic impact must also be a part of the assessment. This definition, along with other well-established industry references on IST, should be used in Working Group discussions of safer alternatives best practices.

EPA understood the complexity of IST decisions when it promulgated the regulations for the RMP. EPA stated at the time that it did not believe an IST requirement would produce additional benefits beyond those existing under the general program structure. EPA acknowledged that assessment of inherently safer design alternatives has the most benefit in the development of new processes. Industry generally examines new process alternatives to avoid the addition of more costly administrative or engineering controls to mitigate a design that may be more hazardous in nature. Although some existing processes may be superficially judged to be inherently less safe than other processes, EPA believed these processes can be safely operated through management and control of the hazards without spending resources searching for unavailable or unaffordable new process technologies. If EPA is considering changing its view, stakeholder input would be essential.

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Inherently safer approaches or safer alternatives have been and will continue to be considered by facilities as a matter of course. In fact, one of the key elements under the ACC’s Responsible Care® Process Safety Code requires that ACC member companies consider safer alternatives as one of many risk reduction measures when conducting a risk assessment. The facility operator is in the best position to have a comprehensive picture as to what may or may not work and how the facility environment will be impacted by process changes. Companies must be permitted to continue to use all risk management tools and options at their disposal, and the consideration of available options must be placed in the context of the complexities of their unique operating environment. Because of these complexities, regulating the use of “safer alternatives” is not feasible. No one regulatory program addresses the holistic safety and security environment of a given facility and therefore no agency can fully appreciate and, therefore, regulate the entirety of a facility’s operations.

For example, EPA, under RMP, is concerned with preventing accidental releases of hazardous chemicals offsite and mitigating the consequences of such releases. OSHA’s PSM is concerned with preventing or mitigating the consequences of catastrophic releases of industrial processes in the workplace. CFATS, under the jurisdiction of DHS, is concerned with terrorism related threats posed to a facility, either because of the facility itself or because the chemicals used there that can be diverted and used for illicit purposes. While it is important to recognize that there may be overlap between the programs, they, by design, do not address the same issues. Therefore, any “safer approach” requirement that might be proposed to enhance any one of these programs would have to be limited in scope. Taken together, however, the array of existing regulatory programs encourages facilities to consider and implement safer alternatives where necessary.

Comments Regarding New Jersey’s IST Program

ACC has been asked to comment specifically on the IST provisions in New Jersey’s Toxic Catastrophe Prevention Act (TCPA), and we will be submitting more detailed comments in a separate submission. In short, we believe federalizing New Jersey’s complex IST requirements would provide little benefit and may hinder the federal government’s ability to implement existing safety and security programs by overemphasizing IST over other more potentially appropriate safety techniques. Presently, there is no one method to measure the effectiveness of a specific technology in the context of IST and, therefore, no objective approach to create a set of prescriptive rules that would be widely applicable to the complex and various processes used at chemical facilities. However, ACC members are committed to chemical safety and recognize IST as one potential tool to achieve this goal.

ACC believes the current performance based regulations in place today and the marketplace itself provide strong incentives for companies to consider and adopt 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 regulatory
component that specifically addresses IST as part of the EO is not only unwarranted but potentially harmful, as it would create regulatory confusion and continue to stretch agency and facility management resources.

**Focusing the Regulatory Scope**

Safety and security regulatory programs impact a broad spectrum of facilities that use, distribute, or store chemicals in the United States. For example, RMP and PSM affect a wide variety of industrial facilities, not solely the type of facilities to which the efforts under the Executive Order are directed. Even CFATS, which by name concerns chemical facilities, addresses a large variety of facilities, including chemical manufacturing, storage, and distribution facilities, as well as hospitals, universities, laboratories, microchip manufactures, and agricultural facilities. The Working Group needs to articulate the focus of its efforts and be cognizant that if regulatory enhancements are sought, they could impact a much larger universe of facilities than contemplated under this Executive Order.

**Conclusion**

Clearly, issues brought to light by the tragic incident in West, Texas, were the impetus for the Executive Order that established the Working Group. Therefore, any recommendations put forth under the EO must focus on addressing the fundamental problems that may be present in the current regulatory landscape and exactly what solutions would help prevent another incident like West. Otherwise, the efforts of this group will not fulfill the objective of the EO.

These goals can be accomplished through better coordination among federal, state, and local agencies, as well as improved enforcement and compliance assistance of existing regulations. Additionally, increased attention and resources should be given to outreach, education, and training in order to improve regulatory effectiveness and ensure that “outliers” are fully aware of their regulatory obligations.

In summary, we believe the Working Group should leverage industry initiatives, such as the Responsible Care® program, and build upon well-established regulatory programs. These programs provide a strong framework for managing chemical safety and security. We look forward to collaborating with the Working Group and other stakeholders as we work together to prevent future incidents and to ensure that America continues to benefit from a safe, secure, and strong chemical industry.