ALLIANCE FOR CHEMICAL DISTRIBUTION
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February 28, 2025

The Honorable Vince Micone
Acting Secretary, Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Dear Acting Secretary Micone,

I write to you on behalf of the Alliance for Chemical Distribution (ACD) in reference to the Trump Administration's Executive Order (EO) 14219, "Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative." As you are aware, this EO requires agencies to notify the Office of Information and Regulatory Affairs (OIRA) of regulations that meet certain criteria and therefore ought to be rescinded or changed. In this letter, I would like to bring to your attention several recent regulatory initiatives proposed or finalized by the Department of Labor (DOL) in the previous administration that we believe meet the criteria outlined in EO 14219 and need to be addressed immediately.

ACD supports and champions the chemical distribution experts the world depends on to safely, reliably, responsibly, and sustainably move the chemical products essential to our daily lives. ACD's more than 400 chemical distribution industry members are primarily small, multi-generational family-owned businesses. These chemicals include chlorine, citric acid, and many others that are essential to every industry including public safety, infrastructure, agriculture, and transportation.

Five regulations meet the criteria set forth in EO 14219, requiring their identification to OIRA and ultimate rescission or modification. The criteria met include (1) imposing significant costs upon private parties that are not outweighed by public benefits, (2) harming the national interest by significantly and unjustifiably impeding technological innovation, and (3) imposing undue burdens on small businesses and impeding private enterprise and entrepreneurship. By identifying these projects to OIRA, changes can be made to safeguard American businesses from the disastrous impact of these overly burdensome regulations. This will support the American economy, American workers, and American businesses.

- **Hazard Communication Standard:** On May 20, 2024, the Occupational Safety and Health Administration (OSHA) published a final rule updating its Hazard Communication Standard. Under this standard, employers must evaluate potential hazards of chemicals and communicate information about these hazards and appropriate protective measures to employees through hazard classification, safety data sheets (SDSs), and labels. Revisions to the standard have a significant impact on chemical distributors as they must update their SDSs, labels, and training to conform to the changes.

- Downstream Uses: The rule requires section two of SDSs to include "hazards associated with the chemical's intrinsic properties, including: (A) a change in the chemical's physical form and (B) chemical reaction products associated with known or reasonably anticipated uses or applications." These hazards can be extensive for certain chemicals and extremely difficult for employers to fully determine. Additionally, the term "reasonably anticipated" is vague, making it difficult for employers to confidently know if they have done enough to comply with this provision. This additional requirement is an immense lift for employers and will cause significant time and effort to be dedicated to showing hazards that their employees have no reasonable risk of being exposed to.
- Lack of Compliance Time: This rule requires all manufacturers, importers, and distributors to comply with the modified provisions on the same date. This creates untenable scenarios for chemical distributors who are not privy to information necessary to create an SDS and rely on information from the chemical's manufacturer. This was a significant problem for ACD members during the last update to the hazard communication standard in 2012 as manufacturers updated their SDSs just days or weeks before the compliance deadline, giving distributors an unrealistic timeline to implement these changes on their downstream SDSs. In comments to the proposed rule, ACD requested a staggered implementation timeline based on a business's role in the supply chain, but this was ignored by OSHA in the final rule.
- ACD Recommendation: ACD urges the incoming OSHA Administration to revise the recently finalized Hazard Communication rule. The requirement to include downstream uses is overly burdensome, will not enhance safety, and should be removed. Additionally, a staggered compliance deadline must be adopted, otherwise, entities downstream will be put in a position where it is impossible to comply with the new regulation in time.

- **Worker Walkaround Designation Process:** On April 1, 2024, OSHA published the final rule "Worker Walkaround Representative Designation Process." This final rule significantly expands who can serve as a third-party employee representative during an OSHA inspection, going so far as to include union representatives in a non-union workplace.
  - Security and Safety Concerns: ACD members house a wide range of chemicals and have various chemical processes occurring at their facilities, some of which can be dangerous. This rule effectively undermines any safety or security efforts as it forces facilities to grant entry to individuals without undergoing any necessary background or other safety checks. Such individuals can be given intimate access and information regarding which chemicals are stored on the premises, where they are stored, and what they are used for without permission from facility owners/operators.
  - Lack of Need for Regulation: Under previous regulations, third parties were already permitted to serve as employee representatives if deemed reasonably necessary to the inspection by the Compliance Safety and Health Officer. For decades this was used to permit the involvement of appropriate third parties that

were essential for a proper inspection, such as translators, industrial hygienists, or safety engineers. There is no evidence that previous regulations blocked necessary third-party representatives or did anything to reduce the quality of inspections.

- Refusal to Adequately Respond to Public Input: The proposed rule received over 11,000 public comments, the vast majority in opposition to the rule. However, OSHA made almost no changes in the final regulation, neglecting to meaningfully take public input into account.
- ACD Recommendation: ACD urges the new DOL Administration to rescind this rule. The first Trump Administration rescinded a letter of interpretation published during the Obama Administration that sought to permit union representatives to serve as employee representatives in non-union workplaces. Rescinding this final rule would continue to protect workplaces from unauthorized third parties gaining entrance to facilities.

- **Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings:** On August 30, 2024, OSHA published the proposed rule "Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings." This proposal creates a new OSHA standard to protect workers from heat-related illness and injury. The standard establishes several new requirements for employers, requiring them to take mitigation measures to protect workers who are exposed to temperatures above a heat index of 80 degrees Fahrenheit.
  - Cost of Regulation – When applying the rule's estimated cost, it is calculated that this rule would reduce the economic output of the chemical distribution industry by over $24.0 million and take away 83 jobs from the industry. When applying how this impact to chemical distribution would affect the American economy, it would reduce economic output by over $78.6 million and take away almost 400 jobs. This is only when applying costs to the chemical distribution industry, meaning the total impact when applied to all affected industries will be much higher. In fact, OSHA's own Regulatory Impact Analysis estimated that the net cost of the rule across all industries could be as high as $7.8 billion annually.
  - Lack of Evidence Supporting Need for Regulation: Under current regulations, OSHA already has the authority to ensure employers are taking measures to protect their workers from heat via the General Duty Clause. In fact, OSHA has an active National Emphasis Program focused specifically on heat hazards in the workplace. The Agency is already taking actions to protect workers from heat, making the adoption of this standard wholly unnecessary. This proposal will only put more burdens on businesses, especially smaller businesses that may not have the breadth of resources needed to adopt each of the prescriptive requirements in this proposal.
  - One-Size-Fits-All Approach: This rule applies the same requirements to all workplaces where temperatures reach an 80-degree heat index or higher, with few exceptions. This means a business employing individuals who work in a warehouse at 80 degrees with fans circulating air must comply with the same standard and many of the same requirements as a landscaping company with employees in direct sunlight at excessive temperatures. Also, this rule fails to account for differences in regional climate, requiring businesses in Florida, where

temperatures are above 80 degrees for most of the year, to follow the same procedures as businesses in the Midwest that rarely experience such heat. This places an immense burden on businesses in hotter regions as they must ensure the provisions of this standard are in place for much of the year, despite 80 degrees being a mild temperature that their workers are accustomed to.

- Contradictions with Small Business Advocacy Review Panel: The proposed rule neglected to implement many recommendations made in the Small Business Advocacy Review (SBAR) panel report on this standard. First, the SBAR panel recommended that the rule not be adopted, and asked guidance from OSHA be published instead. Second, the panel recommended that 80 degrees was too low for an initial heat trigger and for this temperature to be increased. Third, the panel recommended that the rule not be overly prescriptive or take a one-size-fits-all approach and instead be flexible for employers. Unfortunately, OSHA did not adopt any of these recommendations in the rule, effectively ignoring small business concerns.
- ACD Recommendation: ACD recommends that OSHA not finalize a heat standard. Instead, the Agency should continue protecting workers from heat through enforcement via the General Duty Clause and its National Emphasis Program. Additionally, the Agency should publish guidance to better support businesses' ability to protect their workers from heat, as the SBAR panel suggested.

- **Emergency Response Standard:** On February 5, 2024, OSHA proposed a new standard, the "Emergency Response Standard." This standard would place several new requirements on businesses that employ workers responsible for firefighting, emergency medical services, technical search and rescue services, or responding to emergencies as a collateral duty to their daily work assignments.
  - Cost of Regulation: When applying the rule's estimated cost, it is calculated that this would reduce the economic output of the chemical distribution industry by over $370 million and take away 1,273 jobs from the industry. When applying how this impact to chemical distribution would affect the American economy, it would reduce economic output by over $1.2 billion and take away 5,836 jobs. This is only when applying costs to the chemical distribution industry, meaning the total impact when applied to all affected industries will be much higher. This is especially true of emergency response employers, many of which run on extremely tight margins.
  - One-Size-Fits-All Approach: This standard takes an overly broad approach, imposing requirements on employers that may be unnecessary and do not apply to their operations. Chemical distributors may be covered by this standard as they have employees who respond to emergencies as a collateral duty to their daily work assignments. However, chemical distributors are already covered by existing regulations, such as OSHA's Hazardous Waste Operations and Emergency Response and Process Safety Management standards. Moreover, many of the requirements in this rule are clearly geared toward protecting employees who regularly respond to incidents, meaning various requirements would not apply to chemical distribution facilities where incidents are rare.

- Threat to Local First Responders: Comments made by local fire departments raised grave concerns that this proposal has the potential to decimate smaller fire and emergency medical service departments. Comments submitted by the Lake Delta Volunteer Fire Department indicated concerns that this proposal may cause the department to "close [their] doors due to lack of funding" and would require the department to "increase fundraising efforts twentyfold" just to secure the resources needed to comply with this proposal. Also, in his opening statement to the U.S. House Committee on Homeland Security's hearing on this rule, the National Volunteer Fire Council's Massachusetts Director, Joe Maruca, stated that the requirements of this rule are "economically infeasible." This rule's potential to cause substantial harm to local emergency service departments threatens not only ACD members that rely on their local departments, but also countless communities across the US that rely on local departments as well.
- ACD Recommendation: ACD urges OSHA to either not finalize this rule or do so with substantial changes. Any final rule must better account for employers that are already covered by existing OSHA regulations and include additional exemptions for such facilities. Also, any requirements must consider difficulties in funding many first responder employers face and ensure requirements are easy to implement and not overly costly.

- **Independent Contractor Rule:** On January 10, 2024, the DOL published the final rule "Employee or Independent Contractor Classification Under the Fair Labor Standards Act." This final rule changes the criteria for identifying employees as independent contractors under the FLSA. The new regulation requires employers to conduct an economic reality test using the totality of the circumstances instead of assessing two core factors along with three subordinate factors, which was the process previously in place. This rule has already forced employers to reclassify many workers who were considered independent contractors to instead be employees.
  - Cost of the Regulation: When applying the rule's cost, it is estimated that this would reduce the economic output of the chemical distribution industry by nearly $7.8 million and take away 26 jobs from the industry. When applying how this impact to chemical distribution would affect the American economy, it would reduce economic output by over $25 million and take away 122 jobs. This is only when applying costs to the chemical distribution industry, meaning the total impact when applied to all affected industries will be much higher.
  - Ambiguity of Classification Process: There is extreme ambiguity in this new process as there is no longer a structured hierarchy of factors in place. The previous regulation gave employers more certainty, knowing that if both core factors pointed to one classification, employers could confidently classify their workers. The new standard which lacks this hierarchy, makes classification much more difficult for employers as each factor must be weighed equally. This creates immense confusion if several factors indicate a different classification.
  - Threat to Supply Chain Resiliency: Specific to supply chain stakeholders, there are often periods of dramatic shifts in demand, such as holiday and harvest seasons and periods of emergency. For members in the supply chain to meet this

demand, it is often necessary to hire independent contractors to fill the employment gap, most notably in the form of truck drivers. However, these businesses cannot hire these workers as employees because the spikes in demand are short-lived and the companies, many of which are small businesses, do not have the finances or administrative bandwidth to either make these workers employees for such a short period or hire them indefinitely to prepare for eventual spikes. This new classification process has made the supply chain less resilient while also financially harming small businesses.

- ACD Recommendation: ACD urges the DOL to change the process for classifying independent contractors much like it did under the first Trump Administration when it finalized changes to the classification process in 2021. That regulation finally gave certainty to employers, and we believe rescinding it was a mistake.

While worker safety and economic well-being are paramount, these proposals do little to benefit workers and place immense burdens on employers. Instead, these proposals do more to hurt workers as they are causing businesses to struggle and lay off employees. There is no question all five are subject to EO 14219, and we urge you to identify them when making your report to OIRA.

In the previous Trump administration, ACD had great success working with the DOL to implement regulations that were beneficial to American businesses and workers alike. We look forward to continuing working with you to reach similar goals over the next four years.

If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

Eric R. Byer
President and CEO
Alliance for Chemical Distribution

cc: The Honorable Lori Chavez-DeRemer
Secretary of Labor Designate

The Honorable Russel Vought
Director, Office of Management and Budget

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February 28, 2024

The Honorable Kristi Noem
Secretary
U.S. Department of Homeland Security
1790 Ash St SE, Washington, DC 20032

Dear Secretary Noem:

I write to you on behalf of the Alliance for Chemical Distribution (ACD) in reference to the Trump Administration's Executive Order (EO) 14219, "Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative." As you are aware, this EO requires agencies to notify the Office of Information and Regulatory Affairs (OIRA) of regulations that meet certain criteria and, therefore, ought to be changed or rescinded. In this letter, I would like to bring to your attention a recent initiative proposed by the Department of Homeland Security (DHS) in the previous administration that we believe meets the criteria outlined in EO 14219 and needs to be addressed immediately.

ACD supports and champions the chemical distribution experts the world depends on to safely, reliably, responsibly, and sustainably move the chemical products essential to our daily lives. ACD's more than 400 chemical distribution industry members are primarily small, multi-generational family-owned businesses. These chemicals include chlorine, citric acid, and many others that are essential to every industry including public safety, infrastructure, agriculture, and transportation.

One regulatory project meets the criteria set forth in EO 14219, requiring their identification to OIRA and ultimate rescission or modification. The criteria met include (1) imposing significant costs upon private parties that are not outweighed by public benefits, (2) harming the national interest by significantly and unjustifiably impeding technological innovation, and (3) imposing undue burdens on small businesses and impeding private enterprise and entrepreneurship. By identifying this project to OIRA, changes can be made to safeguard American businesses from the negative impact of overly burdensome regulations. Ensuring these reporting regulations are efficient, harmonized, and scoped appropriately will support the American economy and secure the nation's critical infrastructure.

Cybersecurity threats are one of the most significant risks threatening critical infrastructure. American businesses, especially those categorized as critical infrastructure, are subject to dozens of cybersecurity reporting requirements at the international, federal, and state levels. American businesses are even subject to multiple cyber incident reporting requirements under DHS. ACD agrees that cyber incident reporting should be required so the federal government can detect and quickly disrupt malicious actors as soon as possible and identify the evolving

tactics of our adversaries so that we can strategically reduce risk. However, the plethora of reporting requirements that American businesses are subject to are defeating the purpose of the regulations. Due to conflicting timelines and reporting requirements, companies are spending their time worrying about complying with ten different regulations instead of mitigating the attacks.

- ACD Recommendations: ACD recommends that the Trump Administration advance the efforts to harmonize the regulatory requirements for cybersecurity and ransomware reporting. A single regulatory agency, such as the Cybersecurity and Infrastructure Security Agency, should receive, manage, and disseminate information and coordinate the response to cybersecurity incidents. There is a way for the Administration to quickly achieve this by ensuring the final regulations for the Cyber Incident Reporting for Critical Infrastructure Act (CIRCIA) allow for covered entities to report cyber or ransomware incidents to *a single* agency if the entity is covered by several federal cyber incident reporting requirements. This would ensure that information is shared with the government quickly and that federal resources are used efficiently to triage and respond to incidents. There is no need for every federal agency to require its own cyber incident reporting; it is a waste of precious time and resources. Significantly, it only increases our nation's vulnerabilities. The threshold for reporting should be risk-based and high enough to prevent over-reporting. If the reporting threshold is too low, the government will be inundated with reports, and the actual threats may be lost in the fray. Moreover, the information surrounding these incidents initially is limited. The government should focus on the critical data elements that are essential to assist impacted businesses and respond to incidents.

Aggregate annual estimates for the impacts of cyber incidents in the U.S. range from under $1 billion to over $242 billion, with more extreme estimates reaching over $7 trillion. A cyber incident that impacts a critical infrastructure entity has not only financial implications but also national security, environmental, public health, and supply chain implications. Ensuring the U.S. has robust, efficient, and harmonized cybersecurity regulations, reporting requirements, and government response is essential to protecting every facet of American society. There is no question that this rulemaking is subject to EO 14219, and we urge you to identify this rulemaking when making your report to OIRA.

In the previous Trump administration, ACD had great success working with DHS to implement regulations beneficial to national security and American businesses. We look forward to continuing working with you to reach similar goals over the next four years.

If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

Eric R. Byer
President and CEO
Alliance for Chemical Distribution

cc: The Honorable Russel Vought, Director, Office of Management and Budget