

**CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA**

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EXECUTIVE VICE PRESIDENT &
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January 25, 2018

VIA ELECTRONIC FILING

The Honorable E. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

RE: Approaches for Identifying Potential Candidates for Prioritization for Existing Chemicals Risk Evaluation Under Amended TSCA; Notice of Public Meeting and Opportunity for Public Comment, 82 Fed. Reg. 51,415 (Nov. 6, 2017); Docket No. EPA-HQ-OPPT-2017-0586

Dear Administrator Pruitt:

The U.S. Chamber of Commerce (the Chamber), the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, strongly supports the U.S. Environmental Protection Agency's (EPA's or Agency's) efforts to examine possible approaches for identifying potential candidate chemicals for prioritization under the amended Toxic Substances Control Act (TSCA).¹

I. Background

The Chamber has long supported a high-quality and science-based chemical management and evaluation program. After close to a decade of reform efforts, President Obama signed the Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA) into law on June 22, 2016. The LCSA amended TSCA for the first time since the statute was enacted in 1976 and provided for much-needed improvements to the chemical management and evaluation program.²

Among the changes made to TSCA was the addition of a mandate for EPA to prioritize and evaluate the risks of existing chemical substances by designating them as either high-priority or low-priority.³ If a chemical is designated as high-priority, it immediately undergoes a risk evaluation,

¹ Approaches for Identifying Potential Candidates for Prioritization for Risk Evaluation Under Amended TSCA; Notice of Public Meeting and Opportunity for Public Comment, 82 Fed. Reg. 51,415 (Nov. 6, 2017).

² Pub. L. No. 114-182, 130 Stat. 448 (June 22, 2016).

³ 15 U.S.C. § 2605(b)(1)(A) (1976), as amended by Pub. L. No. 114-182.

where it is evaluated for hazard and exposure to both the environment and humans, including those potentially exposed or susceptible subpopulations, under the conditions of use.⁴ If a chemical is designated as low-priority, a risk evaluation is not warranted at that time.⁵

When EPA proposed the Prioritization rule, it initially included a “Pre-Prioritization” phase, which, although not required by the statute, was meant to provide considerations and criteria for identifying potential high- and low-priority chemical candidates, as well as general hazard and exposure considerations.⁶ The Chamber, as well as other stakeholders, submitted comments to EPA in response to the proposed Prioritization rule, expressing concern that it provided very little detail as to the criteria EPA would use to select chemicals during the Pre-Prioritization phase and how EPA would ultimately carry that phase out.⁷

EPA removed the Pre-Prioritization phase from the final Prioritization rule in response to the comments it received.⁸ The Agency noted that it would engage in an additional stakeholder process on the matter and subsequently issue an appropriate final action in order to ensure successful implementation of EPA’s existing TSCA chemicals program.⁹

To that end, on December 11, 2017, EPA held a public meeting to discuss possible approaches and tools for identifying potential candidate chemicals for prioritization. Additionally, the Agency issued a guidance document for discussion, which identified six possible approaches to solving the issue in an efficient and transparent manner:

1. The TSCA Work Plan as a Tool for Identifying Potential Candidates;
2. Canada’s Chemicals Management Plan;
3. EPA’s Safer Chemicals Ingredients List;
4. A Functional Category Approach, Based on Use and Exposure Potential;
5. A Functional Category Approach, Based on Chemical Structure and Function; and
6. A Systematic Integration of Traditional and New Approaches.¹⁰

The Chamber submits these comments in response to that public meeting and appreciates EPA’s willingness to engage stakeholders on this important matter. The Chamber believes that if EPA ultimately chooses to engage in a Pre-Prioritization phase, it should strive to identify existing chemicals for prioritization in a complete and efficient manner. Specifically, EPA should properly

⁴ *Id.*

⁵ *Id.*

⁶ Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act, 82 Fed. Reg. 4,825 (proposed Jan. 17, 2017)

⁷ *See, e.g.*, U.S. Chamber of Commerce, Comments on Proposed Rule: Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act (Mar. 20, 2017), *available at* https://www.uschamber.com/sites/default/files/3.20.17-comments_to_epa_on_proposed_procedures_for_prioritization_of_chemicals_for_risk_evaluation_under_tsc.pdf.

⁸ Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act, 82 Fed. Reg. 33,753 (July 20, 2017).

⁹ *See supra* note 1.

¹⁰ *See* U.S. ENVTL. PROT. AGENCY, DISCUSSION DOCUMENT: POSSIBLE APPROACHES AND TOOLS FOR IDENTIFYING POTENTIAL CANDIDATE CHEMICALS FOR PRIORITIZATION (Nov. 14, 2017), *available at* <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OPPT-2017-0586-0003&contentType=pdf>.

consider related testing requirements that are included elsewhere in the statute and make sure that all prioritization decisions are made in a transparent manner and based on complete and high-quality data. The Chamber believes that addressing these concerns are fundamental to spurring U.S. innovation and economic development.

II. EPA Should Address All Relevant Testing Requirements in TSCA

If EPA chooses to develop a Pre-Prioritization phase, it should properly address relevant testing requirements that are included elsewhere in the statute. EPA failed to do this when it first proposed a Pre-Prioritization phase. For example, section 4(a) of the statute provides for a number of different testing requirements. Section 4(a)(2)(B) provides the EPA Administrator with the authority to, if deemed necessary, “require the development of new information related to a chemical substance or mixture for the purposes of prioritizing a chemical.”¹¹ Moreover, section 4(a)(3) requires that the EPA Administrator issue a “statement of need” for the development of new information, while section 4(a)(4) mandates that the EPA Administrator employ a tiered screening and testing process when requiring the development of new information.¹²

Nowhere in the originally proposed Pre-Prioritization process were those sections addressed. The Chamber believes that it is necessary that EPA address these provisions, as well as all other relevant testing requirements in the statute, when developing a new Pre-Prioritization phase in order to ensure that the Agency is developing an efficient, high-quality, and science-based process for identifying existing chemicals for prioritization.

III. All Prioritization Decisions Should be Made in a Transparent Manner Based on Complete and High-Quality Data

If EPA chooses to develop a Pre-Prioritization phase, the Agency should utilize complete and high-quality data and make all related decisions in a transparent manner. EPA also failed to do this when it first proposed a Pre-Prioritization phase. Rather, the Agency chose to take a more opaque approach to informing prioritization decisions and the risk evaluation process, as well as gathering information on substances with “insufficient information.”

The Chamber believes that utilizing the aforementioned testing methods, coupled with adhering to the scientific standards set forth in section 26 of the statute – namely, using the best available science and utilizing a weight-of-scientific-evidence approach – will aid EPA inform the prioritization and risk evaluation processes in a more transparent manner.¹³

Moreover, EPA should ensure that whatever approach it chooses for identifying chemicals for prioritization does not contain the same flaws associated with the original Pre-Prioritization process. For example, EPA failed to define the criteria and methodology by which it would choose which active chemicals from the TSCA Inventory would be included in the pool of candidate chemicals for prioritization. Admittedly, EPA *did* identify the criteria by which it would narrow the

¹¹ 15 U.S.C. § 2603(a)(2)(B).

¹² *Id.* at § 2603(a)(3)-(4).

¹³ *Id.* at § 2625(h)-(i).

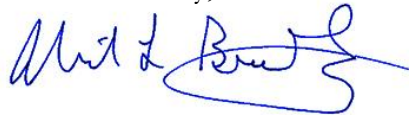
pool into a list of candidate chemicals for prioritization, but it is necessary that the Agency provide additional details as to how it will further narrow that list.

The draft guidance document provided at the public meeting is a solid first step towards tackling the issue of how to appropriately identify chemicals for prioritization. However, as EPA further engages stakeholders and ultimately makes that decision, it is necessary that the Agency address these issues as completely as possible. Doing so is essential to developing an efficient, high-quality, and science-based process for identifying existing chemicals for prioritization.

IV. Conclusion

The Chamber appreciates the opportunity to comment on this important matter, as it is imperative that EPA develop an efficient, high-quality, and science-based process to identify existing chemicals for prioritization under the TSCA. If you have questions regarding these comments, please contact me at (202) 463-5533 or at environment@uschamber.com.

Sincerely,

A handwritten signature in blue ink, appearing to read "Neil L. Bradley". The signature is fluid and cursive, with a large loop at the end.

Neil L. Bradley