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VIA ELECTRONIC FILING

Dr. Jeffery Morris
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RE: TSCA Inventory Notification (Active-Inactive) Requirements (82 Fed. Reg. 4,255) (January 13, 2017); Docket Nos. EPA-HQ-OPPT-2016-0426; FRL-9956-28; RIN: 2070-AK24

Dr. Morris:

The U.S. Chamber of Commerce ("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, offers these comments to the U.S. Environmental Protection Agency ("EPA") on EPA's proposed "TSCA Inventory Notification (Active-Inactive) Requirements" ("the proposed rule").[1] The Chamber provides these comments to assist EPA in its development of a new chemical evaluation and management program that is effective and based on high-quality and sound science.

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[2] ("LCSA") into law on June 22, 2016, amending the Toxic Substances Control Act[3] ("TSCA") for the first time since it was enacted in 1976.

[1] 82 Fed. Reg. 4,255 (Jan. 13, 2017).
[2] Pub. L. No. 114-182, 130 Stat. 448 (June 22, 2016).
[3] 15 U.S.C. § 2601 et seq. (1976). Hereinafter, all references to TSCA include the LCSA amendments.

On January 13, 2017, EPA published the proposed rule in the *Federal Register*.[4] There are currently more than 85,000 chemical substances in the stream of commerce in the United States ("the Inventory") that are not exempt from TSCA's reporting requirements, and the proposed rule seeks, among other things, to identify which of those chemicals are "active" and "inactive" substances in the stream of commerce, as many of those chemicals are no longer in use.[5]

Specifically, the proposed rule requires that manufacturers report certain information regarding each chemical substance on the Inventory that the manufacturer has manufactured for a nonexempt commercial purpose between June 22, 2006 and June 21, 2016 to EPA no later than 180 days after the final rule is published in the *Federal Register*.[6] Processors are also subject to this "lookback" provision, although it is not a mandate and they are given an additional 180-day window if they decide to report so that they may ensure that their chemicals are active.[7]

Those chemicals for which EPA receives a valid notice, as described above, will be designated as active in the stream of commerce, while any chemicals for which EPA does not receive a notice will be considered inactive, but not removed from the Inventory.[8] After the initial reporting period, if one wishes to begin manufacturing or processing an inactive chemical, they must notify EPA no more than 30 days in advance of manufacturing or processing that substance.[9]

The Chamber asserts that certain provisions of the proposed rule impose duplicative and unnecessary burdens on our members as they work to comply with the many new requirements of LCSA. EPA should correct the proposed rule to make it amenable to all parties involved.

II. The Proposed Rule Imposes Unnecessary and Duplicative Reporting Requirements on Affected Stakeholders

The main purpose of the proposed rule is to notify EPA of those chemicals that are active in the stream of commerce. Section 8(a)(5)(A) of TSCA mandates that the proposed rule should avoid requiring notification that is "unnecessary or duplicative."[10] In order to achieve the goal of reducing duplicative reporting, the Chamber believes that EPA should make the following changes to the proposed rule: 1) expand the types of reporting that are accepted for identifying

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[4] *See* note 1.
[5] *Id*.
[6] 15 U.S.C. § 2607(b)(4)(A)(i); 82 Fed. Reg. at 4,258. Importers are subject to the same requirements are manufacturers.
[7] *Id*. ("This proposed rule would allow processors to report during the retrospective reporting period, extended to not later than 360 days after the date on which the final rule is published in the Federal Register (which will be 180 days after EPA's publication of the first version of the TSCA Inventory with preliminary commercial activity designations).").
[8] 15 U.S.C. § 2607(b)(4)(A)(ii-iv); 82 Fed. Reg. at 4,258 (EPA is statutorily required to make this determination by December 22, 2017).
[9] 15 U.S.C. § 2607(b)(5)(B); 82 Fed. Reg. at 4,260.
[10] 15 U.S.C. § 2607(a)(5)(A); 82 Fed. Reg. at 4,258.

active chemicals; and 2) eliminate the need to report a date range or specific date from the reporting requirements.

a. EPA Should Acknowledge Active Chemicals in Commerce Without the Need for "Unnecessary or Duplicative" Notification

EPA proposes to publish an interim inventory that includes both the 2012 and 2016 Chemical Data Reporting ("CDR") sets, as well as those chemicals reported after June 22, 2016.[11] Reporting would not be required for chemical substances that are on the interim list of active substances *so long as they are on the public portion of the Inventory*.[12] This is also true for chemical substances that are on the confidential portion of the Inventory.

To avoid duplicative notification, EPA should allow other types of reporting, beyond the interim Inventory, to be accepted for identifying active chemicals. For example, if a manufacturer has filed a notice of commencement of manufacture or import ("NOC"), in the last ten years, EPA already has information readily available for that chemical substance. Additionally, EPA has CDR data prior to the 2012 reporting cycle. As such, EPA should acknowledge those active chemicals in an effort to reduce duplicative reporting.

b. EPA Should Eliminate the Need to Report a Date Range or the Specific Date of Manufacture or Import for a Chemical

The proposed rule's requirement that a manufacturer or processor include a date range or specific date of manufacture in its report creates an unnecessary burden. Under the proposed rule, all notices must include "*the first date and the last date* that each reportable chemical substance was domestically manufactured in the United States, imported into the United States, or both domestically manufactured in the United States and imported into the United States during the lookback period."[13]

Some affected stakeholders may not keep extensive records that include the history of their chemical, and larger companies that work with a broad range of chemicals may need to conduct very significant investigations involving a wide variety of subject matter experts over a short, 180-day period.

Moreover, the proposed rule requires that an "authorized official must certify that the submitted information has been completed in compliance with the requirement…and that the confidentiality claims made on the form are true and correct…"[14] The certification statement is a

[11] 15 U.S.C. § 2607(a)(6).
[12] 82 Fed. Reg. at 4,259 (EPA acknowledges that "[s]uch reporting would be unnecessary; since EPA already has reporting data to establish that the chemical substance was in active commerce at some time between June 21, 2006 and June 21, 2016.").
[13] 82 Fed. Reg. at 4,266 (emphasis added).
[14] *Id.* at 4,267.

legally binding guarantee that all the information is accurate, and as such, the need for specific dates or a range becomes unnecessary.

III. EPA Should Clarify the Meaning of "Known or Reasonably Ascertainable"

The reporting provisions in the proposed rule require that "a person [who has] submitted information…must report to the extent that such information is *known to or reasonable ascertainable* by that person."[15] This provision poses an issue, as many affected stakeholders may not have such records available, considering TSCA only has a five-year record-keeping requirement and the lookback period is ten years.

Additionally, for large companies, it could take quite a bit of manpower, and would likely be expensive and burdensome to identify those records, especially if the company has gone through a merger or has been acquired by another company. EPA should provide additional guidance on this provision or alter it to exempt companies from reporting if they are unable to obtain records due to those aforementioned reasons.

IV. EPA Should Improve the Electronic Reporting System

a. EPA Should More Frequently Update the Inventory with Reported Chemicals

EPA must strive to develop an efficient system for reporting active chemicals. The proposed rule requires that all reporting be done through EPA's existing Central Data Exchange system ("CDX").[16] While the CDX reporting system is an effective reporting tool, the reporting procedures related to the proposed rule should be improved.

EPA should update the interim Inventory in "real-time" as chemicals are reported. Likewise, EPA should only require one active notification per chemical, regardless of who reports it, since the purpose of the proposed rule is to identify nothing more than which chemicals are active in the stream of commerce. These changes would be extremely beneficial to all affected stakeholders, allowing industry to view chemicals as they are reported, thus reducing both the volume of notifications that EPA has to process and the volume of notifications that industry members would need to submit, as well as minimizing the cost to small manufactures and processors.

Additionally, the effects of those changes would be embraced at all stages of the supply chain. For instance, communication down complex supply chains to determine when a chemical is active or has been reported is an onerous burden for U.S. manufacturers and without "real-time" updates, it may require an extended period of time to check a chemical's inventory status. A requirement of only one notification for a chemical to be considered active would also avoid disruption to the supply chain, as foreign suppliers would be able to check whether substances in

[15] *Id.* at 4,266 (emphasis added).
[16] *Id.* at 4,256.

their mixtures are on the active inventory list.

b. EPA Should Provide Guidance on Using the Chemical Data Exchange System or Alternative Reporting Measures

EPA should provide training or support materials to aid manufacturers and processors in using the CDX system or develop an alternative method for reporting that those manufacturers and processors can use. Electronic reporting is not always a fully dependable means of reporting. History has proven that technology is susceptible to failures and "bugs," so it would be in EPA's best interest to provide an alternative means of reporting. While the Chamber and other affected stakeholders generally support the use of the CDX system for reporting, reporting parties will likely encounter issues with the CDX system.

V. Conclusion

The Chamber appreciates the opportunity to comment on this important matter. It is imperative that EPA develop an efficient, high-quality, and science-based chemical management and review program in accordance with the new TSCA and ensuring that the proposed rule is developed correctly is a step in the right direction.

If you have questions regarding these comments, please contact me at wkovacs@uschamber.com or at (202) 463-5457.

Sincerely,

William L. Kovacs