

August 16, 2021

U.S. Environmental Protection Agency
Attention: Docket ID No. EPA-HQ-OPPT-2021-0436
Ms. Susan Sharkey
Data Gathering and Analysis Division (7410M)
Office of Pollution Prevention and Toxics
1200 Pennsylvania Avenue, NW
Washington, DC 20004
Via Electronic Submission: <http://regulations.gov>

Re: Development of Tiered Data Reporting to Inform TSCA Prioritization, Risk Evaluation, and Risk Management; Opportunity to Comment. Docket ID No. EPA-HQ-OPPT-2021-0436, 86 Fed. Reg. 28,828 (July 14, 2021)

The National Association of Chemical Distributors (NACD) submits the following comments in response to the opportunity to comment on the potential tiered Toxic Substances Control Act (TSCA) Section 8 model reporting rule made by the U.S. Environmental Protection Agency (EPA) in the July 14, 2021, *Federal Register* regarding Docket Number EPA-HQ-OPPT-2021-0436, Development of Tiered Data Reporting to Inform TSCA Prioritization, Risk Evaluation, and Risk Management.

About NACD

The National Association of Chemical Distributors (NACD), established in 1971, is an international association of chemical distributors and their supply-chain partners. Member companies process, formulate, blend, re-package, warehouse, transport, and market chemical products for over 750,000 customers. The chemical distribution industry that NACD represents is a major economic engine, employing over 80,000 people and generating nearly \$7.5 billion in tax revenue for local communities across the country, all while delivering valuable products to every industry sector.

NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution®, the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations.

NACD Interest in Tiered Data Reporting for TSCA Section 8

NACD's nearly 450 member and Affiliate companies represent more than 85% of the chemical distribution capacity in the nation and 90% of the industry's gross revenue. They represent a wide-variety of business models and include national and international companies, but primarily they comprise small family-owned businesses. This potential reporting model is of interest to NACD and its members because of the potential rulemaking's coverage of

importers, processors, and distributors of chemical mixtures and substances for information collection.

NACD supports efficient, tiered, and targeted collection of information to inform the TSCA pre-prioritization, prioritization, risk evaluation, and risk management of chemicals. Targeted reporting ensures both the industry and the EPA's resources are used the most efficiently to gather the information needed by EPA. While recognizing that many details are yet to be clarified, NACD in general supports the concept of tiered reporting presented in Slides 14 and 15 of the slide deck presented at the July 27, 2021, EPA webinar. Each higher tier should focus on a subset of chemicals identified in an earlier tier and should reflect EPA's data needs in the appropriate timeframe. For example, EPA is urged not to gather data in the prioritization data set for chemicals that EPA might propose for prioritization five or ten years in the future.

EPA Must Target the Information Collection to What Is Necessary at Each Respective Stage of the Information Collection Process

NACD strongly encourages EPA to refrain from requiring the reporting of data that would be duplicative of information it already possesses, that EPA can obtain from publicly available sources, e.g., published health and safety studies. In addition, EPA should refrain from requiring data reporting that is not necessary for the effective implementation of TSCA in accordance with the Paperwork Reduction Act (44 U.S.C. § 3501 et seq.) or required under TSCA Section 8(a) and TSCA Section 8(a)(5). NACD strongly encourages EPA to adhere to the requirements for reporting under TSCA Section 8(a) to limit reporting by small manufacturers and processors to the specific situations described in TSCA Section 8(a)(3)(A)(ii) and consistent with TSCA Section 8(a)(5)(B).

EPA mentions the potential collection of TSCA Section 8(c) records of allegations of significant adverse impacts to health or the environment in the July 14, 2021, (86 Fed. Reg. 37152) *Federal Register* notice announcing the information collection and again mentioned it during the July 27, 2021, webinar. The scheme outlined in Slide 15 of the slide deck presented during the July 27, 2021, webinar, however, includes no TSCA Section 8(c) reporting. Because TSCA Section 8(c) records are only allegations and would have unclear value in the prioritization, risk evaluation, and risk management of chemicals and because TSCA Section 8(e) requires the immediate reporting to EPA of information that reasonably supports the conclusion that a chemical substance presents a substantial risk of injury to health or the environment, which can be based on TSCA Section 8(c) allegations, NACD supports EPA not requiring TSCA Section 8(c) record reporting. Should EPA further consider requiring the reporting of TSCA Section 8(c) records, the agency should evaluate the utility of the limited past Section 8(c) information collections, especially considering that reviewing all the Section 8(c) reports that EPA might receive would be a substantial burden on the agency given the nature of Section 8(c) reporting.

Further, NACD does not support a reporting scheme that would include continuing reporting of information post-risk management. If EPA has completed its risk management action, EPA should focus its effort and its data gathering authority on the substance(s) that EPA will prioritize next. Additionally, if EPA is of the view that industry should be required to gather data to demonstrate compliance with risk management restrictions, the agency should consider including periodic monitoring as part of the risk management rule.

EPA Should Target the Collection of Information on Companies Likely to Have the Information Relevant to the Effective Implementation of Each Respective Stage of the Information Collection Process.

EPA should consider creating exemptions under the potential TSCA Section 8-tiered model rule such as where the costs of compliance may outweigh the benefits associated with the collection of information. An example of these exemptions can be found under the TSCA Section 8(a) Chemical Data Reporting (CDR) rule at 40 C.F.R. Section 711.10. These include exemptions for persons manufacturing or importing for certain purposes or in certain manners, including, among others, persons that manufacture or import in small quantities for research and development; import as part of an article; manufacture or import as an impurity or as a byproduct with no commercial purposes and certain limited commercial purposes; and manufacture as a non-isolated intermediate and chemical substances that result from the chemical reactions described in 40 C.F.R. Section 720.30(h)(3) through (7). Additionally, EPA should consider creating a low volume reporting threshold similar to the CDR rule at 40 C.F.R. Section 711.8. The absence of any exemptions is likely to cast a very wide net and include potential reporters that have little, if any, information that will contribute meaningfully to EPA's decision-making.

In the development of any health and safety study information collection requirements under TSCA Section 8(d), EPA should limit reporting to manufacturers of chemical substances that are most likely to possess health and safety studies. Indeed, EPA has not found it necessary to require reporting by processors or distributors under TSCA Section 8(d) to date. In addition, EPA should clearly specify the types of processors that would be subject to reporting given the broad range of activities that can be considered "processing" under TSCA and the number of entities that could be impacted. Finally, as some distributors import chemical substances but do not repackage/use/otherwise handle chemical substances and are not likely to possess or be aware of health and safety studies on the imported chemical substances, they should not be covered by health and safety data reporting requirements.

Limiting the Scope of Chemicals Subject to Data Gathering Rules

EPA should remove from its data gathering rules chemicals that EPA has decided are not near-term candidates for prioritization so that there are no long-term, on-going, annual reporting burdens on these chemicals. In its presentations, EPA acknowledges that some chemicals "return to pool" after the COU Data Set and Prioritization Data Set tiers. NACD strongly encourages EPA to take this step rather than simply allowing the number of sets of chemicals that are subject to higher-tier data reporting to swell continually. Ensuring this would help alleviate the potential overburdening of EPA's and the industry's resources and bandwidth.

Conclusion

NACD appreciates the opportunity to provide these comments. We understand EPA's need for additional information to properly inform TSCA prioritization, risk evaluation, and risk management prioritization but urge the agency to consider carefully the additional reporting requirements. Specifically, NACD urges EPA to be efficient in its data collection, avoid duplicative information requests, collect available data from other sources (Toxic Release Inventory, CDR Data, etc.), and request only information necessary to complete EPA's data needs. The association and its members are committed to working with EPA as partners and are available to serve as a resource as the agency develops these reporting requirements.

Please do not hesitate to contact me with questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer C. Gibson". The signature is fluid and cursive, with the first name being the most prominent.

Jennifer C. Gibson
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