

March 24, 2017

Mr. Jeffery Morris  
Director  
Office of Pollution Prevention & Toxics  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
Washington, DC 20460  
Via direct email to [christian.myrta@epa.gov](mailto:christian.myrta@epa.gov)

**RE: TSCA Inventory Notification (Active-Inactive) Requirements; Proposed Rule, Docket ID No. EPA-HQ-OPPT-2016-0426 (January 13, 2017)**

Dear Mr. Morris:

The National Association of Chemical Distributors (NACD) submits the following comments in response to the proposed rule published by the U.S. Environmental Protection Agency (EPA) regarding docket no. EPA-HQ-OPPT-2016-0426, TSCA Inventory Notification (Active-Inactive) Requirements (the proposed rule).

#### About NACD

NACD is an international association of nearly 440 chemical distributors and their supply-chain partners. NACD members represent more than 85% of the chemical distribution capacity in the nation and generate 93% of the industry's gross revenue. NACD members, operating in all 50 states through nearly 1,800 facilities, are responsible for more than 155,000 direct and indirect jobs in the United States. NACD members are predominantly small regional businesses, many of which are multi-generational and family owned.

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 Recognizes EPA Efforts to Conduct Outreach and Be Responsive to Industry and Small Businesses

Since the passage of the Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act (LCSA) in June 2016, NACD has been working to provide information to EPA while the agency develops the implementing rules and guidance. We have appreciated EPA's outreach efforts and hope EPA will continue a dialogue between the regulated industry and the agency.

NACD supports the following provisions of the proposed rule:

EPA Should Allow an Exemption to Reporting for Chemicals Reported Under CDR

NACD agrees with EPA's interpretation that the "interim list of active substances" should include both the 2012 and 2016 CDR data. These chemicals have already been reported to EPA within the past 10 years as being active in commerce; therefore, it is appropriate for EPA to put those chemical substances on the interim list and exempt the reporting of those chemical substances from the current inventory reset process.

EPA Should Allow Processors to Voluntarily Report After the 180-Day Manufacturer Period

The proposed rule allows processors to report chemical substances to EPA for the inventory reset process after the 180-day manufacturer reporting period on a voluntary basis. NACD supports EPA's efforts to include processors and believes the agency is appropriately recognizing the role that processors have in the chemical industry.

NACD recommends EPA make the following changes to provisions of the proposed rule:

EPA Should Not Collect Information on The Date Range When Chemicals Were Manufactured or Imported

EPA has proposed to request a range of dates when chemicals were manufactured or imported during the inventory reset process. EPA should revise this to exclude requiring the date range because the statute does not require EPA to collect this information. LCSA only requires that companies notify EPA that manufacturing or importing of a specific chemical *occurred* during the 10-year lookback period. EPA should consider the significant burden that it will place upon companies to try to gather and verify information about the date range of each chemical. The information systems which may have carried this information have likely transitioned to multiple different platforms and the institutional knowledge may have disappeared through regular turnover. It would be particularly difficult when companies have merged, been sold or shut down altogether. Additionally, TSCA record retention requirements state that companies must keep records for only five years and EPA should consider that even ten years ago, there were companies that relied only on paper records. The additional burden and significant man-hours it would take to gather this information do not justify the benefits. As EPA states in the preamble to the proposed rule, TSCA section 8(a)(5)(A) specifies that EPA shall avoid reporting that is "unnecessary or duplicative."

EPA Should Remove the Requirement to Distinguish Between Imported and Manufactured or Clarify Certain Definitions

In the Notice of Activity Form A, EPA is proposing to EPA should be aware that their own definition of "manufacturer" in many regulations includes importers, and asking companies to distinguish between manufacturing and importing a chemical could prove difficult. In this proposed rule, EPA creates two different and distinct definitions for

“manufacturer” and “importer”, however; the definition of “manufacture”, describes the act as “to manufacture, produce, *or import*, for commercial purposes.”

Some manufacturers may manufacture and import the same chemical depending upon a variety of factors. As the purpose of the inventory reset is to identify chemicals in commerce, whether the chemical is imported or not is irrelevant. EPA also does not properly consider that for a company to disclose whether a chemical is imported or manufactured may be business-sensitive, regardless of whether the chemical substance itself is subject to a confidential business information (CBI) claim. NACD recommends EPA should either clarify its definitions or entirely remove the requirement to distinguish between manufacture and import on the Notice of Activity Form A.

#### EPA Should Have a Reasonable Enforcement Policy and Correction Process

Although EPA has not elaborated on how it will enforce the inventory reset requirements, NACD recommends EPA outline in the final rule that it will take into consideration all due diligence efforts a company has taken to report all its chemicals manufactured or imported from previous submissions (such as CDR) to EPA. EPA should also consider outlining how and when it will grant enforcement relief or reduction to companies that may wish to self-disclose discovered errors when completing research for the inventory reset. As mentioned above, some companies may not have documents going back 10 years or may discover that errors were made in previous reports to EPA. If EPA is hoping to gather the most accurate information possible, there should be either a waiver for errors discovered or an outline of how and when the agency will grant enforcement relief. Unless there is a policy such as those in place, some companies may be too intimidated to self-disclose an error. EPA may wish to use its own “Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations” to guide its thinking in how it will evaluate self-disclosed violations.<sup>1</sup>

Additionally, EPA should establish a process for corrections of errors that may occur during the original submission process, that is, outside of the notification period which will begin after the inventory reset. This error correction process will benefit EPA by allowing the agency to receive updated and accurate information for the inventory reset and accommodate natural human error in the initial retrospective TSCA inventory reset submission process.

#### EPA Should Allow for “One and Done” Reporting

EPA should not require companies to report chemicals which have already been previously reported to the inventory reset. The purpose of the reset is to allow EPA to understand what chemicals are currently active in commerce in the U.S., not to create a database on which companies are handling which chemicals. It is in EPA’s interest from a data collection and evaluation perspective to allow companies to forgo reporting chemicals that have already been reported during the inventory reset submission period. By relieving companies of their duty to report chemicals that are already included, EPA will reduce duplicative reporting and the burden on

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<sup>1</sup> Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, Final Policy Statement (April 11, 2000) 65 Fed. Reg. 19618

manufacturers. NACD recommends EPA post on its website a current list of all chemicals identified as active to date, which would allow manufacturers and importers to avoid duplicative reporting.

Small businesses especially would benefit from the “one and done” reporting mechanism as they are disproportionately affected by new regulations and reporting requirements. By instituting a “one and done” reporting mechanism, EPA can meet its obligation under LCSEA to “minimize the cost of compliance... on small manufacturers and processors.”

#### EPA Should Update the Hours of Regulatory Burden for Complying with the Reset

EPA’s estimates for the actual costs of establishing the proposed reporting requirements for manufacturers and processors are vastly underestimated. EPA estimates the average firm will submit seven chemicals in a submission for a total cost of \$1,346 during the retrospective period. These figures result in a cost estimate of \$192 per chemical. EPA also estimates 4,692 respondents will submit during the initial retrospective review period for a total burden of 86,793 total hours. These figures result in an hourly estimate of 18 hours per respondent. However, this does not correspond with our estimates of the burden. A cost estimate of 18 hours per respondent who is filing seven chemicals on average means the average respondent is only spending 2.5 hours on each submission. We believe a more reasonable estimate is approximately 4.5 hours per each submission. This estimate is drawn from collecting information from our member companies on the hourly burden of their CDR submissions for 2016 and averaging how long it took each company to submit their data.

EPA also has not adequately considered that companies must spend considerable time accounting for those chemicals manufactured which were less than the threshold quantity for CDR or were exempt from CDR reporting, and therefore not already included on EPA’s interim active list. In other words, EPA should also include in its hourly estimate the hours that companies must spend determining which chemicals they are not required to report. Companies will be required to search through old records and verify whether a chemical was reported to the CDR or not to understand if they need to report to the inventory reset. It is likely the burden for the initial inventory reset will take even longer than a CDR submission as it is an entirely new process and will require gaining an understanding of the final rule when published, gathering the appropriate data, and finally submitting each chemical. Companies will be required to review records up to ten years old which may require considerable time and resources to complete. These burdens should be reflected in the cost and time estimates for the proposed rule. EPA should update the total hours of regulatory burden in the final rule to reflect a more accurate estimate and consequently update the total cost estimate for an average firm and the total cost estimate of the proposed rule.

#### Conclusion

NACD thanks EPA for the opportunity to present our comments on this proposed rule. We appreciate EPA’s efforts to make the inventory reset process workable for all reporting

companies and especially for small businesses. We recommend EPA maintain a dialogue with all interested parties as the inventory reset process moves forward.

If you have questions or need additional information about the comments, please do not hesitate to contact me.

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.

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