

March 20, 2017

Mr. Jeffery Morris
Director
Office of Pollution Prevention & Toxics
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460
Via direct submission to Regulations.gov

RE: Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act; Proposed Rule, Docket ID No. EPA-HQ-OPPT-2016-0654 (January 19, 2017)

Dear Mr. Morris:

The National Association of Chemical Distributors (NACD) submits the following comments to the proposed rule published by the U.S. Environmental Protection Agency (EPA) regarding docket no. EPA-HQ-OPPT-2016-0654, Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act.

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.

If EPA Tries to Evaluate Every Condition of Use, The Risk Evaluation Process Will be Needlessly Cumbersome and Inefficient

EPA states that a risk evaluation must encompass all known, intended, and reasonably foreseen activities associated with the subject chemical substance and that the agency interprets the Frank R. Lautenberg Chemical Safety for the 21st Century Act (the statute) to mean the agency must evaluate every condition of use. EPA also acknowledges this process will be time consuming, but that it is possible. NACD argues that it will be virtually impossible

for EPA to evaluate efficiently and thoroughly all the conditions of use for every chemical prioritized for evaluation, particularly given the high number of chemicals to be evaluated and the agency's limited resources.

EPA should use its authority to make individual determinations for each chemical as to which conditions of use need to undergo a complete risk evaluation. If EPA ultimately uses its authority to determine that certain conditions of use will not be evaluated, NACD recommends EPA make an affirmative determination that certain conditions of use do not present an unreasonable risk for said chemical. When EPA makes an affirmative determination as such, it will reduce confusion and provide the public and industry assurance of EPA's determination.

EPA Should Not Waive Post-Scoping Concerns of Industry

EPA proposes that any information about conditions of use not raised during the draft scope document to the conditions of use will be waived and that the information cannot form the basis for an objection or challenge in a future administrative or judicial proceeding. EPA also notes the agency is not proposing to preclude parties from raising newly discovered information, or from raising issues that could not have been fairly raised during the comment period. However, NACD remains concerned and disagrees with this proposal. It is impossible to predict what issues will arise in the future and for EPA to preclude itself from taking new information into consideration is impractical and in conflict with the intent of the law. NACD recommends EPA remove this provision and retain only that EPA may use its own discretion in determining whether the new information is relevant or circumstantial to the scoping document once the scoping comment period has ended.

EPA Should Explicitly State How and When It Will Apply Section 26 Requirements to Risk Evaluations and Provide Clear Definitions

In the final rule, EPA should state how the agency plans to use the Section 26 scientific standards in relation to risk evaluations. NACD recommends EPA explain in the risk evaluation rule each of the steps EPA carries out that will require compliance with Section 26 requirements. NACD furthermore recommends EPA provide definitions for "best available science" and "weight of the evidence," as these terms will hold EPA accountable to the science that may be used in prioritization and risk evaluations. Clear definitions of these terms will also provide needed consistency and transparency for all parties involved.

EPA Should Exclude Substances and Uses that Are Not Regulated Under TSCA In the Risk Evaluation Rule

EPA should exclude in written detail the various substances and uses that are exempted from TSCA within the risk evaluation final rule. Excluded substances include pesticides, food, drugs, cosmetics, etc. EPA should also specifically exclude conditions of use where other agencies hold jurisdiction. The Occupational Safety and Health Administration governs the regulations of chemicals in the workplace, and the Consumer Product Safety Commission regulates chemicals in children's products and toys, among other consumer uses.

EPA Should Provide Clarity Around Risk Management Actions

NACD supports EPA's authority to issue risk management actions for certain chemicals. However, EPA should make an affirmative determination that risk management actions are "conditions of use" specific and do not apply broadly to a chemical as a whole. This determination is based on EPA's discretion to conduct risk evaluations on one, some, or all conditions of use of a chemical. EPA should very clearly state that if an unreasonable risk determination is found for one condition of use, the agency will move forward on issuing a risk management action for that condition of use, only.

EPA Should Allow Downstream Businesses Extended Time for Compliance When Enforcing Risk Management Actions

Under TSCA, EPA has the discretion to allow up to five years for the regulated industry to come into compliance with any risk management actions. We strongly urge EPA to allow extended time for compliance for downstream suppliers. As companies come into compliance, it makes sense for manufacturers to be responsible first for achieving compliance and then distributors later. Distributors often hold stock on certain items and should not be prohibited from selling their current stock or purchasing chemicals from a manufacturer up until the compliance date of that manufacturer. NACD recommends EPA outline in the final rule that it plans to recognize the reality of the supply chain in risk management actions by allowing extended compliance deadlines for downstream supply chain members. NACD recommends that EPA work with downstream users in establishing appropriate timeframes, but preliminarily recommends a general minimum of one year delayed compliance for downstream users. In addition, EPA should allow extended compliance dates for all small businesses.

NACD Urges EPA to Allow Significant Time for Public Comment on Draft Scopes and Draft Risk Evaluations

Members of the regulated community should be allowed enough time to evaluate and respond to the draft scope and draft risk evaluations as they are proposed by EPA. EPA is proposing a standard 30-day comment period on the draft scope and draft risk evaluation. The 30-day comment period on the draft risk evaluation is mandated by the statute, but nothing in the statute precludes EPA from extending the amount of time given for comment. To ask the regulated community to review information in 30 days that EPA potentially took years to develop may not be appropriate in all cases, particularly if several are released within the same time period. NACD recommends EPA evaluate each scope and risk evaluation on a case-by-case basis to determine how long each comment period should be.

EPA Should Provide Further General Clarity on How the Agency Will Consider Small Businesses During the Risk Evaluation Process

EPA does not provide any information in the proposed rule as to how it will consider small businesses that may be involved in the risk evaluation process, such as those that will be impacted by risk management actions. The agency did not conduct a Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) panel prior to proposing the risk evaluation proposed rule. Given the rapid timetable mandated by the statute, it is

understandable that EPA may not have had enough time to conduct an SBREFA panel. Instead, the Small Business Administration Office of Advocacy held a small business roundtable workshop on the prioritization and risk evaluation proposed rules for a half day with EPA's participation on February 17, 2017.

At this workshop, EPA presented on the prioritization and risk evaluation proposed rules; however, the presentations did not outline the impacts on small businesses. Largely the questions after the presentations focused on various provisions within the proposed rules and did not focus on the challenges small businesses might experience working and complying with the proposed rules. Given this, we strongly believe EPA should provide further information about how the agency will reach out to small businesses to educate them about the rule and how EPA will involve small businesses that may be affected at each stage in the prioritization and risk evaluation processes.

NACD notes EPA has not designated a chemical in decades and the supply chain, the business models, and the number of involved entities have significantly changed since then. Although EPA may be accustomed to working with manufacturers, the ripple effect of this proposed rule on risk evaluation and the subsequent actions on chemicals will be felt throughout the supply chain. EPA should recognize that it will likely encounter many newly regulated entities and prepare accordingly. NACD also recommends the agency outline a plan for how EPA will involve all downstream entities when conducting risk evaluations and taking actions on chemicals.

Conclusion

NACD appreciates EPA's consideration of our comments. If you have questions or need additional information about the comments, please do not hesitate to contact me.

Sincerely,



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