

January 17, 2017

Lynne Blake-Hedges
Senior Economist
Chemistry, Economics and Sustainable Strategies Division
Office of Pollution Prevention & Toxics
Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460
Via Electronic Filing at <http://www.regulations.gov>

RE: TSCA Reporting and Recordkeeping Requirements; Standards for Small Manufacturers and Processors; Notice, Docket ID No. EPA-HQ-OPPT-2016-0675 (December 15, 2016)

Dear Ms. Blake-Hedges:

The National Association of Chemical Distributors (NACD) submits the following comments in response to the notice published by the U.S. Environmental Protection Agency (EPA) regarding docket no. EPA-HQ-OPPT-2016-0675, TSCA Reporting and Recordkeeping Requirements; Standards for Small Manufacturers and Processors.

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 Agrees with EPA That a Revision of the Definition is Warranted

NACD is strongly supportive of EPA's preliminary determination within the notice that a revision is warranted of the size standards for the small manufacturer definition. However, we are concerned that EPA seems only to approach the need for revision as an effort to update the revenues listed in the current standard. The Small Business Administration (SBA) letter to EPA¹ suggests something similar: "Advocacy believes that EPA should be considering whether the existing size standard is structured appropriately, not just whether an inflation adjustment is warranted." NACD strongly believes that the current definition is outdated and

¹ Letter from Small Business Administration Chief Counsel Darryl L. DePriest to U.S. EPA Administrator Gina McCarthy "TSCA Reporting and Recordkeeping Requirements; Standards for Small Manufacturers and Processors (Docket ID. EPA-HQ-OPPT-2016-0675)", January 11, 2017

cannot be fixed by simply adjusting the revenue; the definition should be modified to a completely different standard.

EPA Should Change the Small Manufacturer Definition to an Employee-Based Standard

NACD strongly believes the current EPA definition of small manufacturer (which has not been revised since 1988) is so far from the reality of the chemical industry as to be completely unworkable.

Even if EPA were to adjust the dollar figures within the current definition, the number of businesses meeting the definition of small manufacturer would be so low that the entire process of revising the definition would be fruitless. A revenue-based standard is discriminatory against companies that produce or import low-volume, high-value products. A company may import very few chemicals but not qualify for the small manufacturer definition because the value of the few products imported is so high. Further, the revenue-based standard of the current definition does not distinguish between revenue and profit, which is extremely important when considering small businesses.

Although not all importers of chemicals are manufacturers, chemical distributors who import are treated as manufacturers through EPA's small manufacturer definition, despite having completely different business models and profit margins. The employee-based standard would correct this imbalance as importers and manufacturers are more similar in that regard.

NACD therefore recommends establishing a definition of small manufacturer that is employee-based, rather than revenue-based, which will much more accurately reflect the business size of companies in the chemical industry. EPA, in consultation with SBA, should closely evaluate the chemical industry (manufacturers, importers, and processors) to determine the number of employees to be used in an employee-based definition that would most appropriately balance the benefits and costs to the agency and to the employer.

NACD believes that for EPA to complete a true review of the definition several alternative options, including the employee-based standard, should be considered. If EPA continues to use the revenue-based standard, the agency should provide data that demonstrates how the updated revenue-based standard will still assist small businesses with regulatory relief.

If EPA Will Not Change the Definition to Employee-Based, EPA Should Make Efforts to Improve All Aspects of the Current Definition

Within the current definition, the first standard is \$4 million and is intended to cover all businesses, regardless of how much they produce or import. The second, \$40 million standard covers businesses that manufacture or import chemicals, but only if the chemicals imported or produced total less than 100,000 lbs. per year. If a business manufactures or imports more than 100,000 lbs. per year, it cannot qualify for the small manufacturer definition.

For importers, 100,000 lbs. per year is approximately three containers of chemicals, yet this can vary slightly depending upon the weight of the product. This is an extremely small amount for those familiar with the chemical industry where hundreds of tons are moved every year by some small businesses with very few employees. Our estimate is that fewer than 5% of chemical distributors meet the current definition of "small manufacturer or processor." Therefore, if EPA decides to update the revenue threshold without simultaneously updating

the pound threshold, there will be virtually no change in the number of small businesses covered by the definition.

To resolve this problem, NACD strongly believes that the pound limit threshold should be removed from the definition. If EPA insists on maintaining a revenue-based standard for small businesses, it is essential that the agency remove the outdated and inaccurate pound-based threshold as a part of the first standard in the definition and continue forward with a single revenue-based standard.

If EPA still persists in including a pound-based standard within the definition, the agency should show compelling data proving why 100,000 lbs., or the updated figure that is chosen, is appropriate for the chemical industry and is not just chosen at random. We recommend that EPA gather data from the U.S. Census Bureau, which maintains information about all imports into the U.S., or EPA's own Toxic Release Inventory records, which contain data on certain chemical imports, to understand better the amount of chemicals being imported into the U.S. and to create a standard that would be appropriate within the definition.

A small manufacturer definition should help small businesses, not make an impossible standard that is unrealistic for the chemical industry.

Conclusion

NACD thanks EPA for addressing the outdated small manufacturer definition. We highly recommend that EPA obtain further industry input to avoid creating a definition that is still unworkable and does not meet the overall purpose of having a small manufacturer definition due to an unreachable standard.

EPA should review other small business standards within its own definitions and definitions from other agencies also intended to provide regulatory relief. EPA should also closely review SBA's letter to EPA which includes their recommendations for revising the definition.² Finally, NACD especially urges EPA to continue working closely with SBA as EPA is drafting the new definition, even after the statutorily required initial consultation, given SBA's expertise with small businesses.

Thank you for the opportunity to comment on this important issue. If you have questions or need additional information, please do not hesitate to contact me.

Sincerely,



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² *Id*