

September 9, 2019

Ms. Pamela Myrick  
Environmental Assistance Division  
U.S. Environmental Protection Agency - Mail Code 7404M  
1200 Pennsylvania Ave, NW  
Washington, DC 20260

**RE: Statutory Requirements for Substantiation of Confidential Business Information (CBI) Claims Under the Toxic Substances Control Act (TSCA); Docket ID No. EPA-HQ-OPPT-2017-0026 (July 16, 2019)**

Dear Ms. Myrick:

On behalf of the National Association of Chemical Distributors (NACD), I am writing to request that the U.S. Environmental Protection Agency (EPA) rescind its new policy of no longer issuing Notices of Deficiency (NOD) for Confidential Business Information (CBI) claims and providing claimants 30 days to correct the issue.

EPA announced this new policy in a July 16, 2019, *Federal Register* notice, and the change took effect August 15, 2019. NACD has since heard from several member companies that are concerned about this change. We urge EPA to rescind the policy change and continue to provide NODs and 30-day remedy periods to claimants whose CBI claim submissions were found incomplete or deficient. While it is not statutorily required of the EPA to provide an NOD with the subsequent 30-day period for revision to CBI claimants with deficient submissions, it would be in the best interest of the EPA, the claimants, and industry as a whole to rescind the policy change terminating this practice.

As of August 15, 2019, when a claimant receives notice that their CBI claim is deficient, the only option available, according to TSCA section 14 (g)(2)(D), to maintain their chemical substance's confidentiality is to take judicial action against the EPA<sup>1</sup>. The judicial process is laborious, requiring considerable time, effort, and resources from both parties involved. Although the practice of providing CBI claimants with an NOD and a 30-day revision period also requires time, effort, and resources, it is a considerably lower burden, for both the EPA and claimants, than taking a deficient CBI claim to court. The period following receipt of an NOD, given to claimants to remedy their submission's deficiency, is a short one of 30 days. This provides claimants with a less burdensome and timely resolution to deficient CBI claims.

As industry and the agency move forward and grow in familiarity with the reformed TSCA and with the new method of submitting CBI claims, fewer NODs will be necessary. In EPA's July 16, 2019, notice in the *Federal Register*, the agency stated, "Since the March 21, 2017 effective date of the interpretation, EPA has sent out 984 notices of deficiency, the vast majority which relate to submissions received *before* [emphasis added] March 21, 2017. Only 97 notices have been generated, to date, that related to filings directed to EPA *after* [emphasis added] March 21, 2017."<sup>2</sup> Here, the agency itself noted that there is a significant trend of familiarization with the CBI claims submissions process from industry. It should also be noted that as familiarization grows, fewer deficient claims of CBI will be submitted, and therefore less time, effort, and resources will be required in providing and responding to NODs from all parties. Reestablishing the practice of providing NODs and 30-day periods to remedy deficiencies will not only be less burdensome for EPA

---

<sup>1</sup> 84 FR 33940

<sup>2</sup> 84 FR 33940

and claimants but will likely become less frequent over time. The same cannot be said for the judicial process that may follow deficiency notices currently in practice.

NACD respectfully requests that the EPA return to providing NODs and revision periods for deficient CBI claims, some of which may be simple remedies to procedural flaws. NACD believes that rescinding the EPA's policy change terminating the practice of providing NODs and a period of 30 days to revise the error supports the interests of the agency, the claimants, and the competitiveness of the industry as a whole.

Sincerely,



Jennifer Gibson  
Vice President, Regulatory Affairs

---

#### About NACD

NACD is an international association of nearly 430 chemical distributors and their supply-chain partners. NACD members represent more than 85% of the chemical distribution capacity in the nation and generate 90% of the industry's gross revenue. NACD members, operating in nearly every U.S. state through more than 3,000 facilities, are responsible for 75,000 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<sup>®</sup>, 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.