

**INITIATION OF PRIORITIZATION UNDER THE
TOXIC SUBSTANCES CONTROL ACT (TSCA);
REQUEST FOR COMMENT**

Office of Pollution Prevention and Toxics
United States Environmental Protection Agency

**AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS
COMMENTS**

Attention: EPA-HQ-OPPT-2023-0601; FRL-11581-01-OCSP

March 18, 2024
Dr. Michal Freedhoff
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

I. Introduction

The American Fuel & Petrochemical Manufacturers (“AFPM”) respectfully submits these comments on the Environmental Protection Agency’s (“EPA” or “the Agency”) Federal Register notice titled, “Initiation of Prioritization Under the Toxic Substances Control Act (“TSCA”); Request for Comment” (“Proposed Prioritization” or “Proposal”). EPA proposes to categorize five chemicals (acetaldehyde, acrylonitrile, aniline, vinyl chloride, and MBOCA) as high priorities for risk evaluation and potential risk management under TSCA Sec. 6.¹ AFPM’s comments highlight the following concerns with the Proposed Prioritization:

- The focus on closed-system petrochemical intermediates with extremely low potentials for exposure,
- Reliance on the flawed 2014 TSCA Work Plan that inaccurately characterizes petrochemical intermediates as being used as ingredients in consumers goods; and,
- Departure from the Congressionally mandated risk-based approach to a hazard-based approach to prioritization.

Based on the concerns raised in these comments, EPA should withdraw the Proposed Prioritization and focus on chemicals that present the greatest potential for exposure, such as those found in consumer products.

II. AFPM Interest in the Proposed Framework

AFPM is the leading trade association representing the manufacturers of the fuels that keep America moving and petrochemicals that are the essential building blocks for organic chemistry, including plastic products that improve the health, safety, and living conditions of humankind and make modern life possible. AFPM members are committed to sustainably manufacturing safe, high-performing fuels and the petrochemicals and derivatives that growing global populations and economies need to thrive.

AFPM members produce four of the five chemicals being proposed as high priorities in this Proposal. Together these chemicals are needed to manufacture thousands of products that literally enable our modern life. By way of example, acetaldehyde is an important building block (i.e., intermediate) to make acetic acid and the polyvinyl acetate (“PVA”) derived from it. PVA is used to make Elmer’s Glue[®] and found in a wide variety of other adhesives for packaging, envelopes, etc. Acrylonitrile is a building block to make polyacrylonitrile fibers, which are the carbon fibers that reinforce everything from artificial limbs to airplane bodies, and tennis rackets to automobile body parts and wind turbine blades. It is also used to make adiponitrile for the manufacture of nylon, in addition to ABS plastics for computer keyboards and Lego[®] blocks. Aniline is a building block that makes one of the components of polyurethane foam, which is found in mattresses (memory foam), car seat cushions, building insulation needed to conserve energy, and a number of other applications. Aniline is also used to make acetaminophen. Vinyl chloride is a building block that makes PVC pipes, vinyl plank flooring, vinyl windows, and

¹ See 88 *Fed. Reg.* 87423, “[Initiation of Prioritization Under the Toxic Substances Control Act \(TSCA\); Request for Comment.](#)” EPA-HQ-OPPT-2023-0601; FRL-11581-01-OCSPP, published December 18, 2023.

vinyl siding. These intermediates are produced and used in closed-systems and highly regulated in industrial and manufacturing settings. These processes transform these intermediates into new molecules that have proven safe in commerce.

AFPM member companies are regulated under TSCA, and their products have been and will continue to be subject to TSCA risk evaluations. If properly implemented, TSCA can be critical to ensure sound chemical management. Unfortunately, in this case, EPA is using TSCA to target industrial chemicals used to make plastics as a means to limit plastic production. These efforts under TSCA appear to be designed to disrupt critical plastics supply chains despite these chemicals being used in industrial settings and in closed processes that are highly regulated, resulting in a miniscule risk of exposure.

III. General Comments on the Prioritization Proposal

EPA is not meeting its statutory obligations for designation of high-priority substances.

EPA is required under TSCA Sec. 6(b)(3)(C) to “designate at least one high-priority substance upon the completion of each risk evaluation.”² TSCA Sec. 6(b)(2)(D) directs the Agency to give preference to chemicals “that are listed in the 2014 update of the TSCA Work Plan for Chemical Assessments [“2014 TSCA Work Plan”] as having a Persistence and Bioaccumulation Score of 3,” and “are known human carcinogens and have high acute and chronic toxicity.”^{3,4} All of the chemicals in the Proposed Prioritization have persistence and bioaccumulation scores of less than 3. To circumvent Congressional direction, EPA points to a general hazard category score in Unit III.B., but this general hazard score should not apply here because none of the proposed substances are “known human carcinogens *and* have high acute *and* chronic toxicity” (emphasis added).⁵

TSCA Sec. 6(b)(1)(A) stipulates that the “process to designate the priority of chemical substances shall include a consideration of the hazard and exposure potential.”⁶ Sec. 6(b)(1)(B)(i) reiterates Congressional direction when it requires EPA to prioritize substances that “may present an unreasonable risk of injury to health or the environment because of a potential hazard and a potential route of exposure under the conditions of use.”⁷

In the 2014 TSCA Work Plan, the Agency claims that these intermediates are used as ingredients in consumer products, which is not supported by current knowledge of these products.⁸ None of the substances in the Proposed Prioritization present a potential for significant exposure because all are intermediates used in closed systems. These petrochemicals, like other intermediates, are consumed in the chemical reaction process and transformed into totally

² See [TSCA Sec. 6\(b\)\(3\)\(C\)](#).

³ See [TSCA Sec. 6\(b\)\(2\)\(D\)](#).

⁴ See [2014 update of the TSCA Work Plan for Chemical Assessments](#).

⁵ See *88 Fed. Reg. 87423*, “[Initiation of Prioritization Under the Toxic Substances Control Act \(TSCA\); Request for Comment](#),” EPA–HQ–OPPT–2023–0601; FRL–11581–01–OCSPP, published December 18, 2023. p. 87425.

⁶ See [TSCA Sec. 6\(b\)\(1\)\(A\)](#).

⁷ See [TSCA Sec. 6\(b\)\(1\)\(B\)\(i\)](#).

⁸ See [2014 update of the TSCA Work Plan for Chemical Assessments](#).

different molecules. In this Proposal, EPA is disregarding the exposure component of the risk equation and moving toward a hazard-based approach to prioritization, which runs counter to Congressional intent.

EPA focuses mostly on hazard, not risk, as a determining factor for prioritization.

In Unit III.A. of the Proposal, EPA notes that “data availability was a significant driver of the Agency’s selections” and that “chemicals ultimately designated as High-Priority Substances for risk evaluation should have a robust data landscape,” which penalizes manufacturers of key petrochemicals just because they possess more full hazard data sets.⁹ There are no provisions in TSCA Sec. 6 that direct or authorize EPA to use completeness of hazard data as a criterion for high-priority designation. Focusing on hazard data is a hazard-based approach to chemicals management and contradicts the whole intent of TSCA. Congress intended TSCA to be a risk-based approach, which is evident throughout the entire statute. EPA should abandon its attempt to focus on hazards and fully consider the potential for exposure, or in this case the lack thereof, and prioritize chemicals the way that Congress intended.

EPA does not demonstrate that these chemicals present a significant potential for exposure.

In Unit III.B., EPA generally notes that the proposed chemicals were reported in 2020 under the Chemical Data Reporting (“CDR”) rule but the Agency does not provide any information on what it found in the CDR to support that the conditions of use for any of the chemicals could lead to a significant potential for exposure.¹⁰ Information reported under the CDR rule is general usage information and there is no legitimate reason that EPA cannot aggregate it to support its assertions in the Proposal.

IV. Conclusion

AFPM has serious concerns about EPA’s approach when selecting chemicals for consideration as high priorities. The Agency has provided no information to support a finding of significant potential exposure for any of the substances. The four petrochemical intermediates are only used in closed systems to make other chemicals and are consumed in the process. The TSCA statutory language is very clear that EPA must demonstrate a potential for exposure that could lead to an unreasonable risk. The Agency has not provided any information that would lead to the conclusion that any of the chemicals could present a significant potential for exposure. EPA has also selected chemicals that do not have the required persistence, bioaccumulation, and toxicity levels that TSCA requires. EPA must rescind the current Proposal and either provide information that leads to a conclusion that these chemicals may present an unreasonable risk, which demands a strong case for potential exposure, or propose five alternative chemicals that the Agency can scientifically support.

⁹ See 88 Fed. Reg. 87423, “[Initiation of Prioritization Under the Toxic Substances Control Act \(TSCA\); Request for Comment](#).” EPA-HQ-OPPT-2023-0601; FRL-11581-01-OCSP, published December 18, 2023. p. 87424.

¹⁰ *Id.* at 87425.

Sincerely,

A handwritten signature in black ink, appearing to read "James Cooper". The signature is fluid and cursive, with the first name "James" and last name "Cooper" clearly distinguishable.

James Cooper
Senior Petrochemical Advisor