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Wendy Cleland-Hamnett
Acting Assistant Administrator
Office of Chemical Safety and Pollution Prevention
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001

Attention: Docket ID Number EPA-HQ-OPPT-2016-0426
Submitted to the Federal eRulemaking Portal (www.regulations.gov)

Re: Environmental Protection Agency's "TSCA Inventory Notification (Active-Inactive) Requirements"

Dear Ms. Cleland-Hamnett:

The American Fuel & Petrochemical Manufacturers ("AFPM") respectfully submits the attached comments on the Environmental Protection Agency's ("EPA" or the "Agency") proposed rule entitled "TSCA Inventory Notification (Active-Inactive) Requirements" at 82 FR 4255 (January 13, 2017).

AFPM is a national trade association representing approximately 400 companies that encompass virtually all U.S. refining and petrochemical manufacturing capacity. AFPM refining and petrochemical member companies are subject to the Toxic Substances Control Act (TSCA) and will be directly impacted as EPA implements the Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA). AFPM members manufacture petroleum products, base oils, waxes, base petrochemicals, and petrochemical derivatives, and will be subject to the reporting requirements outlined in this notice.

AFPM supports a TSCA Inventory reset that does not create obstacles in getting products to market. Any final rule must achieve the intent of Congress to keep an Inventory of substances that accurately reflects chemicals in the marketplace that are present in commercial amounts.

AFPM has long supported TSCA modernization and looks forward to working with EPA and other stakeholders throughout the implementation process.

Sincerely,

James Cooper
Senior Petrochemical Advisor

AFPM Comments on the Notice – TSCA Inventory Notification (Active-Inactive) Requirements

March 14, 2017

Docket ID No. EPA-HQ-OPPT-2016-0426

TABLE OF CONTENTS

COMMENTS BY TOPIC

The following comments are organized by general topic.

1.0 INFORMATION NECESSARY TO CREATE ACTIVE SUBSTANCES LIST

1.1 EPA should only require submission of the substance that was produced or imported.

The intent of Congress when crafting TSCA Section 8(b) was to create and keep up to date an Inventory of substances actually in commerce. It is widely agreed by Congress and stakeholders that the TSCA Inventory no longer reflects an accurate depiction of chemicals in commerce; therefore, Congress added provisions in the LCSA to reset the TSCA Inventory. Those provisions are quite clear that the sole purpose of the reset is to create an Active Inventory that lists chemicals in commerce, and create an Inactive Inventory that lists chemicals that may have been in commerce at some point in the past. Only the chemical names are necessary to create the Active and Inactive lists. Any other information runs counter to the objectives set out in Section 8(a)(5)(A) to avoid unnecessary reporting, reduce the costs of compliance and to limit reporting to the entities most likely to have that information.

1.2 EPA should only require submission of the substance that was manufactured and not require date ranges when reporting substances to the Active portion of the Inventory.

In Unit I.C., EPA first mentions a requirement for reporting the "date range when manufacture occurred," because the Agency could "obtain confirmation that the chemical substance in question had indeed been manufactured or processed" during the 10-year time period. EPA reiterates the proposed inclusion of date ranges in Unit III.C. and adds that the information is necessary to limit erroneous reporting outside of the lookback period, ensure the accuracy of the notices, and increase the reliability of commercial activity designations. AFPM does not agree that the reporting of date ranges will achieve any of these objectives.

Date ranges for manufacturing activities are typically not retained for 10 years, so it is very unlikely that companies will have that information. Because companies are unlikely to have date ranges going back 10 years, that information will do nothing to limit reporting of manufacture beyond the 10-year period – i.e., the erroneous reporting.

Date ranges will not ensure the accuracy of information contained in Form A. Companies will already be required to sign a statement verifying the accuracy of reported information. AFPM does not see how adding a date range assures Inventory accuracy.

Date ranges have no impact on the reliability of commercial activity designations. Again, companies will already be signing a statement that assures the accuracy of the submitted information, so adding date ranges does not verify whether a substance was produced or imported. In fact, knowing whether a substance was produced or imported has no purpose when creating an Active Inventory. Only the identification of the substance is necessary for the Inventory reset.

In summary, AFPM sees no purpose for requiring date ranges in Form A submissions. That information will be difficult, if not impossible to ascertain, which presents an unnecessary burden on reporters and runs counter to the objectives set forth in Section 8(a)(5)(A). Eliminating date ranges will reduce the cost of compliance and avoid unnecessary reporting, both of which are objectives outlined in Section 8(a)(5)(A). It will also avoid a situation where EPA is requiring reporting from a party not likely to have that information, which is another objective outlined in that subparagraph.

1.3 EPA should not require the type of commercial activity when reporting a substance to the Active portion of the Inventory.

Knowing whether a substance was produced domestically or imported is not necessary to determine whether the substance was in commerce during the past 10 years. The purpose of the Inventory reset is solely to create a list of chemicals that are active in commerce. It doesn't matter if the chemicals were produced or imported, since both fall under the definition of "manufacture." AFPM urges EPA to delete the requirement to report the type of commercial activity, which will further the Agency's goals of reducing "unnecessary" reporting and reducing the cost of compliance, both outlined explicitly in Section 8(a)(5)(A).

2.0 MOVING SUBSTANCES FROM INACTIVE TO ACTIVE

2.1 AFPM supports EPA's proposal to require simple notification of chemical identification and start date of manufacturing for companies that want to manufacture a chemical on the Inactive Inventory list.

AFPM commends EPA for proposing a simple, straightforward approach for moving a substance from the Inactive portion of the Inventory to the Active portion. The Notice of Commencement approach used to place new chemicals onto the TSCA Inventory has worked well over the years and is a valid model from which to draw, which EPA obviously recognizes. Transferring a substance from Inactive to Active status in no way prohibits EPA from using its full TSCA authority if the Agency finds that a there is a potential for exposure that leads to an unreasonable risk.

3.0 PERSONS SUBJECT TO REPORTING

3.1 EPA should provide guidance to newly merged companies and companies with new acquisitions, and provide those companies with subsequent opportunities to place chemicals on the Active portion of the Inventory, even if the company did not manufacture the chemical in the previous 10 years.

There are several instances where guidance from EPA may be necessary to ensure that companies are not unduly penalized because of specific business circumstances related to mergers, acquisitions and divestitures. For example, if a company acquires a business after June 21, 2016, including acquisitions during the 180-day reporting period, there is no current way to submit a Form A for those substances they wish to continue manufacture, because the acquiring company did not technically manufacture those substances during the previous 10-year period. EPA should develop guidance to allow flexibility in reporting and provide a grace period in situations that involve mergers, acquisitions and divestitures.

3.2 EPA should allow foreign manufacturers or their representatives to report chemicals to the Active Inventory.

There are cases where importers may wish to keep the name of their company confidential to protect the fact that they are importing or using a particular substance. EPA should provide a mechanism by which a foreign manufacturer can report a substance to the Active Inventory. The Agency has created similar mechanisms in the past. Allowing foreign companies to report information directly would enable U.S. manufacturers to protect information where disclosure of import could eviscerate a competitive advantage.

3.3 EPA should ensure that a company no longer intending to sell a chemical into commerce is not responsible for reporting to the Inventory reset, even if that company manufactured the substance within the past 10 years.

There are many reasons that businesses cancel or divest products or product lines. In cases where businesses or product lines are sold or merged, the new entity that intends to sell those substances into commerce should be responsible for and be afforded the opportunity to report for the purpose of being placed on the Active portion of the Inventory. The company that sold the business or product line should not be responsible for reporting because there is no longer an intent to distribute that substance for commercial purposes and there is a high likelihood that the pertinent records were transferred as part of the business transaction. One of the objectives of TSCA Section 8(a)(5)(A) is to limit reporting to the entity most likely to have the information. In this case, the seller would not likely have that information.

Another example is when a company experienced a temporary domestic supply disruption sometime in the past, which could have been the result of a supply shortage in the US, and was forced to obtain a substance from a non-domestic source for a limited time. The company had and still has no intent to import in the future, as this was a temporary situation. The company should not be required to report that substance to the Active Inventory if there was and still is no intent to distribute the substance in commerce in the future. The substance would likely be on the Inventory due to the domestic production.

3.4 EPA should explicitly list activities that are exempt from premanufacture notification requirements under §710.27 *Activities for which notification is not required*.

Chemicals that are manufactured solely for export under §720.30(e), manufactured solely for test marketing under §720.30(d), low-volume substances with low exposures under §723.50, and exempt polymers under §723.250 should be explicitly listed in §710.27 as activities for which notification is not required. Unit III.A.2.ii. excludes substances not listed on the TSCA Inventory; however, the proposed §710.27 does not list the activities above as activities for which notification is not required. AFPM requests that EPA make explicitly clear that these activities be excluded from reporting by listing them in §710.27.

4.0 SUBSTANCES THAT SHOULD BE ON THE ACTIVE INVENTORY

4.1 Polymers that are on the current TSCA Inventory should also appear on the Interim Active Inventory.

Polymers on the TSCA Inventory but not subject to CDR reporting are excluded from EPA's proposed Interim Active Inventory, including polymers with a "Y" designation. Many polymers were placed on the TSCA Inventory before EPA promulgated the polymer exemption under Section 5. These low risk polymers would likely meet the standard for the polymer exemption today. The purpose of the polymer exemption was to alleviate the need for EPA to expend resources reviewing these low-risk substances under the new chemicals program. These polymers should appear on the Interim Active Inventory to help avoid unnecessary reporting and reduce the cost of compliance, which are objectives found in Section 8(a)(5)(A).

5.0 REPORTING AND TREATMENT OF CONFIDENTIAL BUSINESS INFORMATION

5.1 AFPM commends EPA for eliminating the requirements for substantiation of CBI claims when reporting to the Active Inventory, especially for substances reported during the 2016 CDR reporting cycle, because those claims were recently substantiated.

In Unit III.E., Summary of the Proposed Rule, EPA does not include mandatory substantiation requirements for CBI claims for chemical identity made on Form A. Under a separate rule, to be promulgated at a future date, EPA will propose the substantiation requirements for those claims. AFPM generally supports the decision to postpone substantiation requirements for CBI claims older than five years and include them in the Review Plan, but believes substantiation for substances reported during the latest CDR cycle is unnecessary. AFPM also supports EPA's acceptance of early, voluntary substantiations with Form A submissions.

Section 8(b)(4)(B)(iii) compels EPA to require substantiation of CBI claims for chemical identities; however, Section 8(b)(4)(D)(i) excludes companies that have "substantiated the claim in a submission made to the Administrator during the 5-year period ending on the last day of the of the time period specified by the Administrator." The statute does not specify a particular type of submission for the substantiation, so AFPM interprets these provisions to apply to any CBI substantiation, including submissions under CDR.

AFPM agrees with the Agency decision to reduce the reporting burden by minimizing the information requirements, especially for CBI recently claimed and substantiated during the most recent CDR reporting cycle. Minimizing the information requirements would also help the Agency meet its obligations under Section 8(a)(5)(A) by not requiring reporting that is "unnecessary or duplicative" and minimizing "the cost of compliance."

AFPM supports EPA's decision to honor the existing CBI claims of manufacturers and processors, even if they were not the original CBI claimants. Through this decision, EPA acknowledges that businesses are acquired, merged and even leave the marketplace. The maintenance of an existing CBI claim can provide companies with an innovation-based competitive advantage that would not otherwise be afforded.

5.2 EPA should create an interim confidential portion of the Active Inventory for substances whose identities were claimed CBI during the 2016 CDR reporting cycle.

Substances whose identities were claimed as confidential on a submission to EPA during the 2016 CDR reporting cycle should be included as part of an Interim Confidential Inventory when EPA proposes an Interim Active Inventory. The CBI claims have already been substantiated and EPA should continue to protect the chemical identity from disclosure. There is no reason for the Agency to treat confidential substances differently than non-confidential substances when it comes to listing on the Interim Active Inventory.

6.0 ONE NOTICE PER SUBSTANCE

6.1 EPA should regularly update the Active list to avoid multiple reporting of any one substance.

To further achieve the objectives set forth in Section 8(a)(5)(A), EPA should update the Interim Active Inventory on a frequent and regular basis. This would alert others that manufacture those same substances and avoid redundant reporting, thereby reducing unnecessary reporting and the overall cost of

compliance. The purpose of the Active Inventory is to create a list of chemicals currently in commerce, not a list of manufacturers that produce or import those chemicals.

7.0 ROLE OF PROCESSORS

7.1 EPA should not require processors to report substances to the Active Inventory, but should provide opportunities for supply chain communication and voluntary processor notification to ensure active substances are captured.

AFPM supports EPA's proposal to make processor submissions voluntary and provide a 180-day period to take advantage of that opportunity. AFPM also believes that EPA should continue its role as a facilitator among players in various supply chains. There may be situations where certain companies want others to report on their behalf. EPA should work with supply chains and allow flexible approaches to reporting.

8.0 ENSURING ACCURACY AND REGULATORY CERTAINTY

8.1 EPA should declare in the final rule when the Agency will designate substances as Inactive.

To enhance regulatory certainty, EPA should name the date on which the Inventory is considered closed by specifying the date on which all substances not reported to the Active Inventory are designated to the Inactive Inventory. This will help facilitate compliance and internal communications efforts, by providing more clarity in the reporting process.

8.2 Enforcement Provisions to Distinguish Between Form B Submissions and Import Certifications of TSCA Compliance

To add greater clarity to this proposal, AFPM recommends the addition of rule language regarding penalties and enforcement for imported substances listed on the Inactive Inventory. Specifically, in the event that a timely Form B is not submitted for an Inactive substance that is imported, the resulting violation is limited to the provisions of §710.25(c) and not the import provisions of §707.20. To the extent that a material is "inactive," AFPM believes it is inappropriate and excessive to apply import restrictions, and potential enforcement and penalties, which were specifically designed to address materials that were never on the TSCA Inventory to begin with or evaluated for TSCA compliance. Substances listed on the Inactive Inventory are technically TSCA compliant, but have not been circulating in commerce in the past 10 years. Consequently, a minor violation of the new notification requirements could result in the delay or prevention of an import – an outcome that is not commensurate with the purpose behind a notification. AFPM urges EPA to implement this recommendation and explicitly clarify that the submission of a Form B is not the same infraction as importing a substance that was never on the TSCA Inventory and for which TSCA compliance has never been evaluated.

8.3 EPA should provide manufacturers the opportunity to correct previous submissions and make processor-requested submissions during the 180-day reporting period for processors.

To ensure the accuracy and reliability of the Active Inventory, EPA should allow for non-punitive corrections up until the date that the list is finalized. There is always a chance for error when reporting periods are short, so providing an opportunity to correct these minor errors will help ensure an Inventory that is up to date and a true reflection of chemicals in commerce. This is the overarching intent of TSCA Section 8(b).

There may also be situations where a processor identifies a substance that should be on the Active Inventory, but is not comfortable reporting the substance. This would be true for processors that have never responded to a TSCA information collection or those that have had very little experience with the Agency in general. The processor may prefer that the manufacturer make the appropriate Form A submission. EPA should allow manufacturers to report substances at the request of a processor during the processor reporting period.

9.0 CONCLUSION

AFPM appreciates the opportunity to comment on EPA's proposed Inventory reset. Overall, AFPM supports EPA's proposal to reset the TSCA Inventory and create an Active Inventory and an Inactive Inventory. The suggestions listed in these comments will help reduce burdens on the Agency, as well as help EPA achieve the objectives set forth in TSCA Section 8(a)(5)(A). AFPM looks forward to working with EPA and establishing an Inventory that is up to date and reflects the chemicals currently in commerce.