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July 7, 2017

Louise P. Wise  
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-2017-0144**

*Submitted to the Federal eRulemaking Portal ([www.regulations.gov](http://www.regulations.gov))*

**Re: Environmental Protection Agency's "Assignment and Application of the 'Unique Identifier' Under TSCA Section 14"**

Dear Ms. Wise:

The American Fuel & Petrochemical Manufacturers ("AFPM") respectfully submits the attached comments on the Environmental Protection Agency's ("EPA" or the "Agency") *Federal Register* notice entitled "Assignment and Application of the 'Unique Identifier' Under TSCA Section 14" at 82 FR 21386 (May 8, 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 21<sup>st</sup> Century Act (LCSA), including provisions related to confidential business information (CBI).

AFPM supports EPA's efforts to implement section 14(g)(4) of the LCSA and offers these comments in a constructive manner.

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 - Assignment  
and Application of the "Unique Identifier"  
Under TSCA Section 14**

**July 7, 2017**

**Docket ID No. EPA-HQ-OPPT-2017-0144**

## COMMENTS BY TOPIC

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The following comments are organized by general topic.

### **1.0 PROTECTION OF CONFIDENTIAL BUSINESS INFORMATION (CBI) AND ESTABLISHMENT OF A UNIQUE IDENTIFIER SYSTEM**

#### **1.1 The additional language found at the end of Section 14(b), which explicitly identifies information that is not considered disclosable health and safety information, makes clear that EPA must make all reasonable efforts to protect from disclosure chemical identities that are claimed as confidential.**

The language added at the end of Section 14(b)(2) was a deliberate signal from Congress to the Agency that the protection of chemical identities, molecular formulas and portions of mixtures is paramount.

“This paragraph does not authorize the disclosure of any information, including formulas (including molecular structures) of a chemical substance or mixture, that discloses processes used in the manufacturing or processing of a chemical substance or mixture or, in the case of a mixture, the portion of the mixture comprised by any of the chemical substances in the mixture.”

Congress clearly understands that chemical identities themselves are often intellectual property that can give U.S. manufacturers a competitive advantage in an increasingly global marketplace. AFPM is encouraged that EPA also recognizes and acknowledges this in its *Federal Register* notice, when seeking ideas to use a unique identifier – explicitly required in Section 14(g)(4) – that links together different components of chemical information, yet prevents the disclosure of CBI.

#### **1.2 Congress did not bind EPA to one specific approach when establishing a unique identifier system.**

In Part II of the *Federal Register* notice, EPA clearly identifies scenarios under which CBI could be unintentionally divulged. EPA acknowledges that there could be several ways to interpret Section 14(g)(4)(C), and that the intent of Congress was to simply require EPA to provide a mechanism by which information related to a particular chemical could be linked, but still protected from potential disclosure. Section 14(g) does not specify a mechanism to implement unique identifiers, nor does it specify that there can only be one unique identifier for each chemical; rather, Section 14(g)(4)(A)(i) requires EPA to “develop a system to assign a unique identifier to each specific chemical identity for which the Administrator approves a request for protection from disclosure.” Since there can be more than one company claiming a chemical identity as CBI, there is nothing that prohibits the Agency from assigning more than one unique identifier for that chemical. EPA acknowledges this in its second alternative.

### **2.0 EFFECTIVE DATE FOR UNIQUE IDENTIFIERS**

#### **2.1 EPA should limit the use of unique identifiers to CBI claims made after the date of enactment of the LCSA.**

The use of unique identifiers is a new concept and has not been associated with previous CBI claims. If EPA were to try and assign unique identifiers to all past CBI claims it would create an administrative

burden that would take years to meet. AFPM recommends limiting the use of unique identifiers to CBI claims made after the enactment date of the LCSA.

### **3.0 LINKING CBI AND NON-CBI INFORMATION**

#### **3.1 EPA should implement measures to avoid direct linkage between confidential information and non-confidential information.**

EPA outlines two alternative approaches in Section II. The first alternative would have EPA assign the unique identifier to both CBI and non-CBI information. The Agency asserts that this would be inconsistent with its general policy of limiting CBI to a narrow set of circumstances. Additionally, to carry out this practice, EPA would have to review all of the non-confidential submissions against the full list of confidential chemical identities, resulting in a significant burden on the Agency. EPA also questions whether the “original, unaltered and non-CBI submissions” could be disclosable under a Freedom of Information Act (FOIA) request. AFPM acknowledges the complexity of this approach and believes a different, simpler approach would be more appropriate.

In its second alternative, EPA offers the idea of each company getting its own unique identifier for a particular confidential chemical identity to prevent competitors from cross-checking information from one manufacturer to the next. While this alternative provides a simpler mechanism for unique identifiers, it does not fully protect from disclosure in situations where one company claims certain information (other than chemical identity) confidential but another company does not.

EPA should not use the same unique identifier for both CBI and non-confidential information. Using the same identifier could allow a foreign competitor to carefully review non-confidential information and find clues to uses, functions, exposure scenarios and other information that could be exploited to link back to a particular chemical identity.

#### **3.2 EPA should use different unique identifiers for each company and for each type of information (i.e., CBI versus non-confidential).**

The Agency makes a good case in its second alternative that employs a unique identifier for each company claiming a chemical identity as confidential. That alternative, however, does not address the situation where one company claims a certain piece of information but the other company does not. AFPM proposes that EPA take the second alternative one step further and employ a similar approach that distinguishes between CBI and non-CBI. For example, if Company A submits a pre-manufacture notice (PMN) and claims the chemical identity as CBI, EPA would assign a unique identifier that links that CBI claim specifically to Company A (e.g., Chem ID 1). If Company B submitted a *bona fide* intent request, then EPA would assign a different unique identifier that links the chemical identity specifically to Company B (e.g., Chem ID 2). Further, if Company A submits information from a health and safety study, which cannot be claimed as CBI, EPA would assign a different unique identifier that links Company A to non-confidential information associated with Chem ID 1 (e.g., Chem ID 1a). The same would be afforded if Company B submitted non-confidential information related to Chem ID 2 (e.g., Chem ID 2a).

The only remaining scenario is information not submitted by a manufacturer. Information could come in from another government entity, a university or other non-commercial party. All of that information could be assigned its own unique identifier (e.g., Chem ID 3).

#### **4.0 OTHER TSCA SECTIONS**

##### **4.1 EPA should consider information that could be submitted under all sections of TSCA when developing a unique identifier system.**

EPA receives information under several different sections of TSCA. EPA should look at those reporting scenarios, including when and how it makes information available to the public, when designing the unique identifier system. This effort will help minimize unintended scenarios under which CBI could be inadvertently disclosed.

#### **5.0 CONCLUSION**

AFPM appreciates the opportunity to comment on options for EPA's unique identifier system. EPA has acknowledged its responsibility in protecting American intellectual property and is seeking creative solutions to avoid unintended disclosure of CBI. AFPM believes that assigning unique identifiers that distinguish between reporting entities, as well as CBI versus non-CBI information, will achieve the intent of Congress and protect intellectual property.