



Society of Chemical Manufacturers & Affiliates



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Office of Pollution Prevention and Toxics (OPPT)
Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001
Docket ID No. EPA-HQ-OPPT-2017-0648

Via regulations.gov submission

RE: Partial Update of the TSCA Section 8(b) Inventory Data Base, Production and Site Reports (Chemical Data Reporting)

To whom it may concern:

The Society of Chemical Manufacturers & Affiliates (SOCMA) appreciates the opportunity to submit comments on the U.S. Environmental Protection Agency's Information Collection Request (ICR) entitled: "Partial Update of the TSCA Section 8(b) Inventory Data Base, Production and Site Reports (Chemical Data Reporting)."¹

SOCMA is the only U.S.-based trade association solely dedicated to the specialty and fine chemical industry. Our members play an indispensable role in the global chemical supply chain, providing specialty chemicals to companies in markets ranging from aerospace and electronics to pharmaceuticals and agriculture.

SOCMA member companies are subject to TSCA and are directly affected by reporting and recordkeeping requirements under the statute. These comments address two issues that both warrant rulemaking by EPA before the 2020 CDR reporting cycle begins: (i) the "small manufacturer or processor" standards under Section 8(a), and (ii) the markedly more adverse impact upon reporting companies of the 2,500 lb reporting threshold for chemicals subject to Section 5 orders or rules, given the dramatic increase in such restrictions since TSCA was amended.

EPA Must Update the Section 8 Small Manufacturer or Processor Standards Promptly

Many manufacturers and processors within SOCMA's membership are small businesses, and as such, have a particular interest in EPA's revision of the CDR reporting requirements - namely, the TSCA section 8(a) standards for determining which manufacturers and processors qualify as small manufacturers and processors.² To ensure that an update can be completed before the next CDR cycle commences, EPA should expeditiously initiate a rulemaking on these size standards.

EPA has a statutory obligation to assess the adequacy of its codified standards for what constitutes a small manufacturer or processor under Section 8(a). Almost two years ago, EPA preliminarily concluded that

¹ 83 FR 36928 (July 31, 2018).

² See 40 C.F.R. § 704.3.

revisions to the current size standards “are indeed warranted”.³ EPA codified its \$40 million/\$4 million criteria for small business entities in 1988, and these threshold values have never undergone revision. As EPA has set small business standards for other TSCA purposes, it has determined that some measure of inflation adjustment is warranted. Most notably, in its ongoing user fees rulemaking, EPA has proposed to adjust the \$40 million “small business concern” threshold previously established for purposes of Section 5 by the Producer Price Index, which in 2015 dollars would be \$91 million, and to base it on a three-year average of sales.⁴ EPA has since also solicited comments on establishing an employment-based threshold for TSCA fees purposes.⁵ Similarly, in the 2017 TSCA Nanoscale Reporting Rule, the Agency updated for the \$4 million sales figure contained in the “first standard” established for Section 8 purposes, resulting in an annual sales threshold of \$11 million for that small business exemption.⁶

In spite of these circumstances, the Agency’s Spring 2018 Regulatory Agenda has deferred a proposed rule on the CDR size standards to September of this year and notes uncertainly that EPA “may include updates” to the standards.⁷ SOCMA is highly troubled by these developments and by the Agency’s lack of urgency regarding this matter. SOCMA, along with other stakeholders, have provided EPA with numerous comments in response to ICRs in 2016 and 2017 to assist the Agency in its update of the size standards.⁸

As CDR has undergone revision, an increasing number of small manufacturers and processors who should be the subject of regulatory relief are being required to comply with new, burdensome reporting requirements. The threshold for reporting of TSCA inventory substances (not subject to a TSCA action) was reduced from 100,000 lbs to 25,000 lbs per manufacturing site. If the threshold limit is exceeded in any single year of the CDR cycle, the production volume for each year must be reported, rather than just the year of excess. The reporting threshold for chemical substances subject to a TSCA action was also reduced from 25,000 lbs to 2,500 lbs.

Policy changes occurring within EPA’s New Chemicals Review Program further compound the regulatory burden for specialty chemical manufacturers. The Agency has shifted toward using a two-step approach on the vast majority of Pre-Manufacture Notices (PMNs), subjecting most new chemicals to 5(e) consent orders on a company’s intended uses followed by Significant New Use Rules (SNURs) for any other potentially foreseeable uses. This precautionary approach will undoubtedly result in a vast increase in the number of small companies who will be subject to CDR reporting in 2020.

These developments merit urgent action. EPA should promptly initiate a rulemaking to update its size standards for CDR, taking into particular account the most recent feedback provided to the Agency earlier this year in the TSCA user fees rulemaking.⁹ As SOCMA iterated in its comments on the proposed fees rule, both EPA and the regulated community would benefit significantly from a single, consistent classification system to identify small businesses.

Because the definition of a small business varies significantly depending on the unique characteristics of each industry sector, SOCMA again recommends that EPA set both an employee- and revenue-based threshold for Section 8(a) data reporting. The current revenue-only approach is an inadequate measure

³ 81 FR 90840 (Dec. 15, 2016).

⁴ 83 FR 8212, 8224 (Feb. 26, 2018).

⁵ *Id.* at 17782 (April 24, 2018).

⁶ See 82 FR 3641, 3654 (Jan. 12, 2017).

⁷ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201804&RIN=2070-AK33>.

⁸ See SOCMA comments in Appendix A.

⁹ 83 FR 8212 (Feb. 2, 2018), 83 FR 17782 (April 4, 2018).

for identifying small business activity in the chemical industry, particularly among specialty chemical manufacturers whose operations and production scales are highly concentrated.

EPA Should Re-evaluate the Impact of the 2,500 lb Reporting Threshold for Chemicals Subject to Section 5 Orders or Rules In Light of the Dramatic Increase in Such Restrictions

In addition to updating the Section 8(a) size standards, EPA should also begin reevaluating its existing reporting threshold for chemical substances that are the subject of Section 5 rules or orders. The lowering of the threshold from 25,000 lbs to 2,500 lbs for chemicals subject to legal restrictions occurred before the 2016 TSCA amendments, at a time when the roughly 90% of new chemicals passed EPA review without a consent order or Significant New Use Rule (SNUR). Now, approximately 80% of new chemicals result in a SNUR, meaning that a regulatory burden that was once being applied judiciously to chemicals raising particular concerns is now routinely being applied to virtually all new chemicals.¹⁰ As EPA itself admits, “Promulgation of a significant new use rule (SNUR) can be an effective and efficient way to address reasonably foreseen conditions of use about which EPA has concerns, as part of the basis for EPA to conclude that the chemical is not likely to present an unreasonable risk of injury to health and the environment under the conditions of use under section 5(a)(3)(C).”¹¹ If EPA has decided that nearly all new chemicals entering U.S. commerce will be subject to the regulatory burden of a SNUR, it must reevaluate the reasoning by which it determined that the 2,500 lb threshold was reasonable for chemicals subject to Section 5 restrictions. This will ensure that chemicals that “are not likely to present an unreasonable risk” are not subject to the same degree of reporting as chemicals that EPA has found “present an unreasonable risk” or are “imminently hazardous.”

Thank you very much for your willingness to seek feedback from stakeholders. SOCMA looks forward to an expeditious resolution of this matter and continued engagement on revisions to CDR. If you have any question about these comments, please do not hesitate to contact me at rothsteinj@socma.com or 571-348-5122.

Respectfully submitted,



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¹⁰ See <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/statistics-new-chemicals-review>.

¹¹ See *U.S. Environmental Protection Agency Significant New Use Rule (SNUR) Programs and Environment and Climate Change Canada / Health Canada Significant New Activity (SNAc) Provisions*, Page 6, <https://www.epa.gov/sites/production/files/2018-04/documents/2018-04-10-english-version-of-snur-snac-primer.pdf>