March 13, 2017

Via Electronic Submission

Ms. Myrta R. Christian
Chemistry, Economics, and Sustainable Strategies Division (Mailcode 7401M)
Office of Pollution Prevention and Toxics
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460-0001

Re: TSCA Inventory Notification (Active/Inactive) Requirements – Docket: EPA-HQ-OPPT-2016-0426

Dear Ms. Christian:

The Independent Lubricant Manufacturers Association (“ILMA” or “Association”) submits these comments on the Environmental Protection Agency’s (“EPA” or “Agency”) proposed rule to reset and designate all chemicals on the Toxic Substances Control Act (“TSCA”) Inventory as either “active” or “inactive.” Sections 8(b)(4)(A) and 8(b)(5) of the Frank R. Lautenberg Chemical Safety for the 21st Century Act (“LCSA”) require EPA to issue its retrospective reporting rule and prospective notification requirement (collectively the “Inventory Reset.”) As a general matter, ILMA supports EPA’s efforts to adhere to its statutory obligations to promulgate a mechanism to ascertain what substances manufacturers, importers and processors are actively making and using in commerce. However, the Association recommends some changes to the proposed rule to streamline reporting obligations and to ease burdens for both industry and the Agency.

Introduction to ILMA

ILMA is national trade association with 350 member companies, and its “manufacturing members” blend, compound, and sell over 25 percent of the United States’ lubricant needs (e.g., passenger car motor oils, gear oils, and hydraulic fluids) and over 75 percent of the metalworking fluids utilized in the country. Independent lubricant manufacturers are by definition neither owned nor controlled by companies that explore for or refine crude oil to produce lubricant base stocks or that produce chemical additives. Base oils are purchased from refiners and re-refiners, who are also competitors in the sale of finished products. Additives are purchased from chemical suppliers, who also may be competitors in the sale of finished products. ILMA members succeed by processing, producing, and distributing high-quality, often specialized, lubricants. ILMA’s manufacturing members are “processors” for TSCA purposes.
General Comments – Scope of the Proposed Rule

ILMA commends the Agency for following Congress’ directive and proposing a narrowly-tailored rule that is responsive to the LCSA’s dictates to require only reporting the information necessary to determine what substances on the TSCA Inventory are “active” or “inactive”. The Association supports EPA’s proposal to include information received from the 2012 and 2016 Chemical Data Reporting (“CDR”) periods on the list of active substances. ILMA agrees with the Agency allowing any manufacturer, importer or processor submitting a notice under the Inventory Reset to maintain an existing confidential business information (“CBI”) claim. Further, the Association supports the reporting exemption in the proposed rule for the manufacturing or processing of chemicals explicitly for research and development purposes.

Processor Notifications Must Remain Completely Voluntary

EPA’s overall approach to reporting is sensible – that is, requiring manufacturers and importers to do so and permissively allowing for voluntary reporting from processors. Under the proposed rule, chemical manufacturers and importers would have to notify EPA within 180 days after the final rule is published in the Federal Register (FR). Processors would have the option to report up to 360 days after publication of the final rule in the FR. This additional time is intended to grant processors an opportunity to review the information received by EPA from manufacturers and importers and ascertain whether any substances important to their operations are absent or initially deemed inactive.

This is the proper procedure to implement as compulsory notifications from processors would needlessly burden both industry and EPA. However, for the likely small number of chemical substances that are not reported by manufacturers and importers, ILMA recommends that the additional 180-day window of time should start from the date the Agency publishes its draft list of active and inactive substances. Otherwise, processors could potentially lose valuable examination time if there is a significant interval between when manufacturers report and when the Agency publishes its draft list. Therefore, the Agency should start the 180-day clock once draft substance designations are published.

ILMA also suggests that EPA make electronic reporting optional for processors. While the Association understands the benefits of electronic submissions, many processors are small businesses and include companies not familiar with the Central Data Exchange reporting system. As a result, EPA should include an option for paper submission in the final rule for processors.

EPA’s Cost and Time Estimates for Processors are Too Low

In the proposed rule, the Agency suggests that the total number of potentially impacted processors is in excess of 161,000 – those that may initiate “rule familiarization.” ILMA is uncertain how EPA arrived at the number 161,000 for the universe of impacted processors within the United States. According to TSCA, a processor “means any person who processes a
chemical substance or mixture,” and process “means the preparation of chemical substance or mixture, after its manufacture, for distribution in commerce – in the same form or physical state as, or in different form or physical state form, that in which it was received by the person preparing such substance or mixture or as part of an article containing the chemical substance or mixture.” From ILMAs’s vantage point the number of industry sectors that would be covered and the individual businesses encapsulated therein would far exceed that estimated total. EPA should revisit that approximation in its final rule and better explain its origins.

Additionally, the Agency estimates that of those processors that study the rule, it would only require four hours per company at an expense of $300. That number is simply inaccurate. While processors appropriately are not required to report under the proposed rule, in practice every entity will do their responsible due diligence to ensure that every chemical substance important to their operations is reported and therefore prospectively available for use. This will require extensive interaction with multiple components within a business that know what is used to ensure there is no delay or interruption in their day-to-day operations. Therefore, the time and expense associated with compliance with the rule for processors will be in excess of four hours and $300 per business. The final rule should more appropriately consider the realities of business due diligence and reflect a more accurate time and cost burden on processors.

**CBI Claims Process Must Be Better Defined**

What is required and the overall procedure to submit a CBI claim needs clarification. For all new CBI claims, other than for specific chemical identity, the proposed rule notes TSCA § 14(c)(1)(B) and 14(c)(5) require that companies must submit a specific certification statement that outlines the basis for the CBI claim. Additionally, EPA states that it may conduct another rulemaking to more specifically define requirements for CBI claims going forward, especially for those claims pertaining to chemical identity. As currently written, the proposed rule is vague regarding what specific documentation and in what form a company must provide to reach the threshold the Agency will determine is sufficiently substantiated.

Does this only include the requirements delineated in the statute including: those measures taken to protect the confidentiality of the information, a determination that the information is not required to be disclosed or otherwise made available to the public under any other federal law, a reasonable basis to conclude that disclosure of the information is likely to cause substantial harm to the competitive position of the person, and a reasonable basis to believe that information is not readily discoverable through reverse engineering?

The statute also expressly states that a “person asserting a claim to protect information from disclosure under this section shall substantiate the claim, in accordance with such rules as the Administrator has promulgated or may promulgate” and “the Administrator shall develop guidance.” It is unclear how a company may substantiate a claim using guidance and rules that the Agency has not yet developed.
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EPA also published a January 19, 2017 FR Notice – Statutory Requirements for Substantiation of Confidential Business Information Claims Under the Toxic Substances Control Act – Vol. 82, No. 12. That Notice outlines an interpretation of TSCA § 14(c)(3) as requiring substantiation of non-exempt CBI claims at the time of submission to the Agency. A more detailed explanation and analysis in the final rule of how it, the statute’s CBI requirements, the January 19, 2017 FR Notice, and 40 C.F.R. 711.30 interact is necessary.

Trade secrets and formulations are the life-blood of chemical manufacturers and processors. As such, it is imperative that the Agency construct a concrete set of rules, perhaps an express form for completion, which states without any confusion what the absolute requirements are for each type of CBI submission under the amended law. This will avoid a needlessly protracted interaction between the CBI submitter and the Agency, and will give industry what it needs – certainty.

**Conclusion**

Overall, the proposed rule is practical, and ILMa appreciates this opportunity to comment and acknowledges EPA’s efforts to follow the TCSA’s requirements. However, the Association recommends that EPA incorporate the recommendations outlined above in the final rule.

Sincerely,

[Signature]

Holly Alfano  
Chief Executive Officer

Cc:   ILMa Board of Directors  
      ILMa SHERA and MWF Committees  
      John K. Howell, Ph.D.  
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