

# Independent Lubricant Manufacturers Association

2018 Management Forum

Fort Lauderdale, Florida

Safety, Health, Environmental &  
Regulatory Affairs Committee

April 19, 2018

- Call to Order
- Antitrust Review
- Introductions
- Review and Adopt Minutes

# National Association of Manufacturers - Manufacturing Summit 2018

- ▶ Tuesday, June 19, 2018 - Wednesday, June 20, 2018
- ▶ Mandarin Oriental Hotel in Washington, D.C.
- ▶ Great opportunity to convey issues and concerns to elected officials specific to lubricant manufacturers
- ▶ More information on ILMA's website

# OSHA's Electronic Injury and Illness Rule Reporting Update

# OSHA Electronic Reporting

- ▶ All workplaces with 250 + employees had to submit information electronically from their 2016 Form 300A by December 31, 2017.
- ▶ Establishments with 20-249 employees in specified “high-risk industries” - covers manufacturing
  - ▶ by December 31, 2017.

# OSHA Electronic Reporting - Next Steps

- ▶ For non-responders, OSHA drafted enforcement memo to direct actions if a made a “good faith” effort to electronically report.
  - ▶ If an employer can document its good faith efforts to comply (*e.g.*, show that OSHA’s system was at fault) compliance officers should not issue a citation or fine.
- ▶ Importantly - Data collected from 2016 300As used for targeted facility inspections.

## Electronic Reporting Rule - Possible Revisions

- ▶ At SBA Roundtable, OSHA did not indicate if it would eliminate the public posting of the information
- ▶ Did confirm that it will propose amending the regulation to remove the requirement that employers with 250 or more employees submit OSHA Forms 300 and 301
- ▶ It will ask for public comment on utilization of Employer Identification Numbers (EIN) for future electronic injury and illness data submissions
  - ▶ Perhaps other aspects of the rule modified

# OSHA Electronic Reporting - FOIA Litigation

- ▶ NGO filed a complaint in the U.S. District Court, requesting that court compel OSHA to produce the electronic injury and illness records that covered employers submitted last year.
- ▶ OSHA denied both requests completely, stating that the information was covered by the FOIA Exemption “would disclose techniques and procedures for law enforcement investigations or prosecutions.”
  - ▶ No judicial resolution yet
- ▶ Many industry groups and businesses have questioned the public disclosure aspect of the regulation, believing that the information could easily be misinterpreted or misconstrued
- ▶ Again, TBD how OSHA will handle moving forward

# OSHA Electronic Reporting Rule - Dates

- ▶ Submission dates change moving forward
- ▶ Employers can currently submit their 2017 Form 300A data
- ▶ Deadline to report is July 1, 2018
- ▶ Starting in 2019 - Deadline shifts to March 2



Department of Labor

Overtime Rule Update

# Overtime Rule

- ▶ Fair Labor Standards Act requires employers to compensate employees time and one half for all hours worked in excess of 40
- ▶ Certain exemptions, including for Executive, Administrative, and Professional.
- ▶ In order for an employee to be exempt from overtime compensation:
  - ▶ First, that individual must be paid on a salary basis.
  - ▶ Second, the salary must meet or exceed a certain minimum threshold.
  - ▶ Third, the employee must perform certain duties.

# Overtime Rule

- ▶ Obama Admin. raised the minimum salary threshold from \$455 per week or \$23,660 (set in 2004) to \$913 per week or \$47,476.
- ▶ Legal challenges ensued, resulting in judge first enjoining and then invalidating rule late August 2017.
- ▶ Found that DOL had exceeded its authority with the rule, but the judge said the Agency does have the ability to use a salary test, but eligibility for overtime pay must be based on a combination of a worker's duties and wages.
  - ▶ Restored previous \$23,660 level

# Overtime Rule

- ▶ DOL issued RFI and received over 160,000 comments before September 2017 deadline
- ▶ As expected, variety of opinion of how DOL should proceed
- ▶ DOL stated in its unified regulatory agenda that it would publish new PR in October 2018
- ▶ Puts new FR in mid to late 2019 - best case scenario
  - ▶ Likely a salary threshold between current level and Obama level - TBD.
  - ▶ \$23,660 level remains in interim

# Hazard Communication Standard 2012

Jeff Leiter

# WHMIS 2015 Update

Jim Eggenchwiler, Esq.

The Redstone Group

# CANADA WHMIS UPDATE

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## 1. 2018 Enforcement Dates:

- a. Chemical Manufacturers and Importers: June 1, 2018 (a/k/a Phase One) (postponed in May 2017 Health Canada postponed the Effective Date of WHMIS 2015 from June 1, 2017 to June 1, 2018) Pre-registered volumes imported at May 31, 2018 may be sold w/o restriction or penalty
- b. Chemical Distributors: September 1, 2018 (a/k/a Phase Two)

## 2. Confidentiality Claims: Remains the Same

- a. Application must be submitted identifying the items claimed for confidentiality approval with fee payment;
- b. Interim substitution of pending claim statement in lieu of the data claimed as confidential;
- c. Upon approval, replace interim statement with approved statement.

# CANADA WHMIS UPDATE

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3. Chemical Name Required (no change from WHMIS 2015)

4. Recent Amendment to the Canada Hazardous Products Regulations:

The amendment allows:

- a. The use of prescribed concentration ranges to protect ingredient concentrations and concentration ranges that are considered CBI without having to submit claims for exemption under the HMIRA. (Ranges are stated on the following slide.)
- b. The concentrations and concentration ranges must be disclosed on the SDS as:
  - i. Either the actual concentration or actual concentration range of the ingredient in the hazardous product; or
  - ii. one of the following concentration ranges that includes the actual concentration or actual concentration range of the ingredient:

## ADDITIONAL APPLICATION RULES

### NEW PERMITTED RANGES

- (a) from 0.1 to 1%;
- (b) from 0.5 to 1.5%;
- (c) from 1 to 5%;
- (d) from 3 to 7%;
- (e) from 5 to 10%;
- (f) from 7 to 13%;
- (g) from 10 to 30%;
- (h) from 15 to 40%;
- (i) from 30 to 60%;
- (j) from 45 to 70%;
- (k) from 60 to 80%;
- (l) from 65 to 85%;
- (m) from 80 to 100%.

If the actual concentration range falls between 0.1 and 30% and does not fit entirely into one of the prescribed concentration ranges of (a) to (g), a single range created by the combination of two applicable consecutive ranges between (a) and (g) may be disclosed instead, provided that the combined concentration range does not include any range that falls entirely outside the actual concentration range in which the ingredient is present in the hazardous product.

The amendment also requires any supplier who uses a prescribed concentration range to protect from disclosure the actual concentration or concentration range to provide immediately following that prescribed range a statement to the effect that the actual concentration or concentration range is withheld as a trade secret.

# REACH 2018

Jim Eggenschwiler, Esq.  
The Redstone Group

# EU REACH IN TRANSITION

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## 1. May 31 2018 Deadline Impact:

- a. Unregistered Substances Limited to 1 t/y per Importer
- b. Pre-registered volumes imported at May 31, 2018 may be sold w/o restriction or penalty
- c. Pre-registrations that are not registered by May 31, 2018 is of no regulatory value: Holders cannot proceed directly to Registration.
- d. Post-deadline Registration must be preceded by “Inquiry” process resulting in ECHA permission to Register:
  - i. Inquiry Dossier demonstrating substance conformity to Substance Identity Profile (SIP);
  - ii. ECHA acknowledgment of SIP conformity and approval to Register;
  - iii. Requires Inquiry Dossier + Registration Dossier;
  - iv. SIP conformity more stringent in many cases.

# EU REACH IN TRANSITION

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## 2. eSDS Expected & Enforced

- a. Lack of data not an excuse (Registrations are presumed to have occurred);
- b. Member State Authorities are already enforcing and issuing large fines & penalties (recently issued a €70,000 fine for first instance);

## 3. More Enforcement Initiatives

- a. SIP Conformity
- b. Supply-chain Qualification
- c. Recordkeeping/Certificates of Registration Coverage

# Waters of the U.S. (WOTUS) Update



# WOTUS Update

- ▶ EPA and the Army Corps issued their final rule on WOTUS in 2015, expanding significantly EPA's authority under the Clean Water Act (CWA) to regulate waterways.
- ▶ The CWA instructs EPA to “prepare or develop comprehensive programs for preventing, reducing, or eliminating the pollution of the navigable waters. . .” of the United States.
- ▶ Appropriate definition of “navigable waters” has been contested for years.

# WOTUS Update

- ▶ Expansive definition is important for industry as it increased the number of facilities subject to EPA regulations
- ▶ Lawsuits in different courts at the trial and appellate levels. In October 2015, the Sixth Circuit issued a nationwide “stay,” temporarily halting implementation of the WOTUS rule.
- ▶ In January 2018, the Supreme Court sided with industries’ argument that the federal district courts should hear the first legal challenges to the regulation
  - ▶ Reversing the stay of the Sixth Circuit and remanding the case with instructions to dismiss for lack of jurisdiction

# WOTUS Update

- ▶ After decision, EPA and the Corps published a final rule in the *Federal Register* in February 2018, announcing a new applicability date of February 6, 2020 for Obama era rule
- ▶ The postponement to 2020 clarified intent to “maintain the status quo” following the Supreme Court’s removal of the Sixth Circuit’s stay.

# WOTUS Update

- ▶ The agencies have begun a two-step rulemaking process to reconsider the WOTUS rule
  - ▶ In accordance with Trump EO
- ▶ First step was a proposal to rescind the Obama-era definition of WOTUS and re-codify the previous definition
- ▶ Second step, the agencies to reconsider and revise the scope of the regulation overall

# WOTUS Update

- ▶ According to Unified Agenda, the Agency is expected to finalize the Obama-era WOTUS definition repeal in April 2018, and propose a replacement regulation in May 2018
  - ▶ Recodification at OMB - OIRA
- ▶ Forthcoming regulation expected to be much more limited in scope

# TSCA Implementation: Inventory Reset



# TSCA - Inventory Reset

- ▶ Toxic Substances Control Act significantly amended for first time in June 2016 since it was enacted in 1976.
- ▶ Frank Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act (LCSA).
- ▶ EPA finalized rule in 2017 to determine what chemicals are “active” and “inactive” in commerce. The regulation is commonly referred to as the “Inventory reset rule.”
  - ▶ In 1976 all chemicals grandfathered in and placed on Inventory
  - ▶ EPA wants to determine what industry is currently using
  - ▶ Importantly will not involve removal of substances

# TSCA - Inventory Reset

- ▶ Manufacturers and importers had until **February 7, 2018** to submit notifications to EPA using the Agency's Central Data Exchange (CDX) reporting portal.
  - ▶ Mandatory reporting
  - ▶ Submission of Notice of Activity From A
  - ▶ Some exemptions (e.g., previously reported during 2012 or 2016 CDR periods)
  - ▶ EPA published April 12 list of currently active substances
  - ▶ ILMA crafted letter for members to confirm compliance w/ suppliers
- ▶ Processors have until **October 5, 2018**, to report substances voluntarily to EPA.
  - ▶ Permissive, not mandatory, but beneficial.

## TSCA - Inventory Reset

- ▶ Review closely the “draft” inventory
- ▶ Consider voluntary submission to ensure prospective availability of materials.

# EPA TSCA User Fee Proposed Rule

# TSCA - User Fee Proposed rule

- ▶ TSCA amendments gave EPA ability to promulgate a user fee rule for payments from chemical manufacturers, importers, and processors to defray the costs to implement and administer the statute.
- ▶ Agency seeking to have fees rule become operative on **October 1, 2018**

# TSCA User Fee Proposed Rule

- ▶ Overall, user fees will be collected for activities such as Section 4 testing, Section 5 new chemical reviews, and Section 6 existing chemical risk evaluations.
  - ▶ No fees associated with any CBI claims or for any risk management actions
- ▶ EPA is authorized to collect through user fees 25 percent of the costs associated with implementing the amendments, which the Agency approximates to be \$80.2 million.
- ▶ EPA estimates that it could collect approximately \$20.05 million per year from fees from those TSCA activities for fiscal years 2019, 2020, and 2021.

<b>Proposed Fee Category</b>	<b>Proposed Fee</b>
<b>TSCA Section 4</b>	
Test Order	\$9,800
Test Rule	\$29,500
Enforceable Consent Agreement	\$22,800
<b>TSCA Section 5</b>	
PMN and Consolidated PMN	\$16,000
SNUN	\$16,000
MCAN and Consolidated MCAN	\$16,000
LoREX	\$4,700
LVE	\$4,700
TME	\$4,700
Tier II Exemption	\$4,700
<b>TSCA Section 6</b>	
EPA Initiated Risk Evaluation	\$1,350,000
Manufacturer-requested risk evaluation on a chemical included in the Work Plan	\$1,300,000
Manufacturer-requested risk evaluation on a chemical NOT included in the Work Plan	\$2,600,000

# ILMA - User Fee Comments

- ▶ ILMA highlighted concerns with EPA's high user fees for large entities
- ▶ Some fee components are unjustifiable - nearly \$400,000 for a literature review
- ▶ ILMA comments - Look for other cost savings internally to pass along
- ▶ Thankfully, some proposed relief for small entities

<b>Proposed Fee Category</b>	<b>Proposed Small Business Fee</b>
<b>TSCA Section 4</b>	
Test Order	\$1,950
Test Rule	\$5,900
Enforceable Consent Agreement	\$4,600
<b>TSCA Section 5</b>	
PMN and Consolidated PMN	\$2,800
SNUN	\$2,800
MCAN and Consolidated MCAN	\$2,800
LoREX	\$940
LVE	\$940
TME	\$940
Tier II Exemption	\$940
<b>TSCA Section 6</b>	
EPA Initiated Risk Evaluation	\$270,000
Manufacturer-requested risk evaluation on a chemical included in the Work Plan	\$1,300,000
Manufacturer-requested risk evaluation on a chemical NOT included in the Work Plan	\$2,600,000

# EPA Small Entity Fee Schedule

- ▶ Proposing adjusting size standard to \$91 million
- ▶ If “small,” then eligible for reduced fees
- ▶ ILMA proposed alternative, lower schedule for small businesses in its comments
- ▶ ILMA also highlighted some concerns wherein a consortium of large and small entities is formed
  - ▶ Encouraged EPA to clarify how fees will be allocated in that instance
- ▶ Review full comments on ILMA’s website
- ▶ Overall - EPA will look to industry for much more \$\$\$ from industry moving forward

# EPA Spill Prevention, Control & Countermeasure Rule Expansion

## Hazardous Substances

# EPA SPCC Rule

- ▶ EPA will have a proposed rule to regulate hazardous substances under Clean Water Act (CWA) Section 311 by June 2018, and a final, court-mandated rule by 2019.
  - ▶ Result of sue-and-settle lawsuit during Obama Admin.
- ▶ The practical impact could be to expand EPA's SPCC Rule to include tanks that contain “hazardous substances.”
- ▶ Since the court approved the settlement, EPA has a project team working on the proposed rule
  - ▶ Initiated an Information Collection Request via the *Federal Register*
  - ▶ Began research and analysis of existing hazardous substances rules
  - ▶ Held work group meetings
  - ▶ Secured contractor resources to support the project team.

# EPA SPCC

- ▶ Many ILMA members' facilities are already subject to EPA's SPCC program
- ▶ Must implement a plan certified by a registered professional engineer that lays out how the facility operator will keep an oil spill from leaving the “four corners” of the facility
- ▶ New rule could have fairly significant cost impacts for covered entities, including ILMA members
- ▶ Proposed Rule at OMB - expected to be published soon

# Rail Customer Coalition Update (RCC)

# RCC

- ▶ ILMA joined last year the Rail Customer Coalition (RCC), a group of trade associations/businesses that addresses issues with the freight rail industry, including decreased competition, rates and fees, outdated rail transportation policies, and service issues.
- ▶ Initially joined to help address members' issues with operational changes with the railroad CSX.
- ▶ More info: <https://www.freightrailreform.com>

# RCC - Recent Activities

- ▶ RCC sent a letter to the Senate Commerce, Science & Transportation Committee urging confirmation of President Trump's 2 nominees to serve on the Surface Transportation Board (STB) - Patrick Fuchs & Michelle Schultz
  - ▶ STB is the independent, bi-partisan board that provides oversight to common carriers
  - ▶ Both non "rail insiders" - should serve interests of rail shipping community
- ▶ Confirmation hearing on April 11 - went reasonably well for both
  - ▶ Vote timeline uncertain - No committee vote scheduled

# RCC

- ▶ Confirmations key to address issues such as reciprocal switching - greater shipping options via transfers at interchanges and others
- ▶ Contact ILMA with any freight rail issues

# Trucking ELDs

- ▶ The Federal Motor Carrier Safety Administration's (FMCSA) Electronic Logging Devices (ELDs) rule forces truckers to switch from paper logs to ELDs effective end of 2017
  - ▶ Ensure that they comply with the Federal hours-of-service rule that limits driving to no more than 11 hours a day
- ▶ Inspectors began placing commercial motor vehicle drivers out-of-service as of April 1 if they were non-compliant with the regulation at weight stations/traffic stops
- ▶ If pulled off the road, driver must wait 10 hours to return to service

# Trucking ELDs

- ▶ Rule became effective last December
  - ▶ Enforcement was phased-in through April 1 to give truckers more time to comply with the regulation.
- ▶ Between mid-December and April 1, some state enforcement officers began documenting ELD violations on roadside inspection reports, but most inspectors did not impose fines.
- ▶ Concern that new requirements will result in delays
- ▶ Contact ILMA with any logistics issues