

September 17, 2018

Via Regulations.Gov

Docket Control Office (7407M)
Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0001

**Re: Significant New Use Rules On Certain Chemical Substances
Docket No. EPA-HQ-OPPT-2017-0414**

Dear Sir or Madam:

The Independent Lubricant Manufacturers Association (“ILMA”) submits these adverse comments on the following significant new use rules (“SNURs”) promulgated by EPA as direct final rules (83 Fed. Reg. 40986 (Aug. 17, 2018)) and set forth as proposed rules (83 Fed. Reg. 41039 (Aug. 17, 2018)):

- 40 C.F.R. § 721.11068, Alkanes, C20-28, chloro (PMN P-12-277)
- 40 C.F.R. § 721.11069, Slack waxes (petroleum), chloro (PMN P-12-278)
- 40 C.F.R. § 721.11070, Hexacosane, chloro derivs. and octacosane, chloro derivs. (PMN P-12-280)
- 40 C.F.R. § 721.11071, Alkanes, C20-24, chloro (PMN P-12-281)
- 40 C.F.R. § 721.11072, Alkanes C14-16, chloro (PMNs P-12-282 and P-14-684)
- 40 C.F.R. § 721.11073, Tetradecane, chloro derivs. (PMNs P-12-283 and P-14-683)
- 40 C.F.R. § 721.11074, Octadecane, chloro derivs.
- 40 C.F.R. § 721.11075, Alkanes, C18-20, chloro (PMN P-12-433)
- 40 C.F.R. § 721.11076, Alkanes, C14-17, chloro (PMN P-12-453)

ILMA and other industry stakeholders commonly refer to the above SNUR substances as “medium-chain chlorinated paraffins” (“MCCPs”) and “long-chain chlorinated paraffins” (“LCCPs”).

President, Dave Croghan, Maxum Petroleum

Vice President, Barbara Kudis, Allegheny Petroleum Products Company

Treasurer, Chuck Decker, American Oil & Supply International LLC

Secretary, Scott Schwindaman, Lubrication Engineers, Inc.

Immediate Past President, Beth Ann Jones,
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Chief Executive Officer, Holly Alfano

General Counsel, Jeffrey L. Leiter

ILMA objects to EPA's statement for each of the above SNURs that "[i]t is a significant new use to manufacture the chemical substance for more than 5 years." ILMA understands this statement to mean that EPA is making *ongoing* uses of MCCPs and LCCPs into new uses, triggering the need for significant new use notifications ("SNUNs") to be submitted and then further regulatory determinations made by the Agency. If ILMA's understanding of this language is correct, then EPA is acting outside its authority under the Toxic Substances Control Act ("TSCA").

ILMA requests that EPA withdraw the direct final rule for each of the above SNUR substances. As part of its proposed rulemaking for the MCCPs and LCCPs, the Agency should meet with affected stakeholders, including ILMA and its members, to discuss how to address these substances instead under TSCA Section 6 and end the regulatory fiction that the longstanding uses of MCCPs and LCCPs, including as extreme-pressure additives in metalworking fluids, are new uses under TSCA Section 5.

Introduction of ILMA and Its Members' Products

ILMA is a national trade association of 350 member companies. As a group, ILMA's Manufacturing Members blend, compound, and sell over 30 percent of nation's automotive lubricants, and over 75 percent of the metalworking fluids ("MWFs") utilized in the U.S. MWFs include products for grinding and machining of metals, known as "metal removal fluids," and for drawing, forming and stamping of metal parts, known as "forming fluids." MWFs can be further described as either "straight oil" products or "water dilutable" fluids. Straight oil MWFs are not intended to be further diluted with water, while water dilutable fluids may be further described as "emulsifiable oils" or "soluble oils," "semi-synthetics" and "synthetics." Soluble oils and semi-synthetics contain petroleum oils, while synthetics are petroleum oil-free.

ILMA members manufacture lubricant mixtures by compounding and blending other components, including lubricant base stocks purchased from refiners and re-refiners, and additives purchased from upstream chemical suppliers, including suppliers of MCCPs and LCCPs. ILMA members have extensive experience with MWFs containing MCCPs and LCCPs, so they are well situated to offer these comments to EPA.

ILMA is a signatory to the submission made to the above-referenced docket by the American Chemistry Council ("ACC") on behalf of a coalition of industry associations. These comments, therefore, supplement the ACC submission.

The Direct Final Rule Should Be Withdrawn Because the Use of the SNUR Substances as Additives in Lubricants Including Metalworking Fluids is Ongoing, Not New

EPA's regulatory activities with respect to chlorinated paraffins extends over 40 years. ACC's submission on behalf of the coalition details the last nine years of this timeline, starting with the Agency's 2009 enforcement actions against the Dover Chemical Corporation ("Dover") and INEOS Chlor America, Inc. (now INOVYN Americas) ("INOVYN"). ILMA incorporates ACC's timeline as it fully set forth herein.

What is abundantly clear from ACC's timeline is that EPA recognized that downstream processors, such as ILMA's members and their customers, were, and remain, dependent on MCCPs and LCCPs for a number of products and uses. ILMA has detailed to EPA in prior correspondence and meetings some of the critical uses of metalworking fluids containing these substances, including for sensitive Department of Defense applications. ILMA also has explained to the Agency the lack of acceptable substitutes for certain metalworking applications and the costs and time needed to reformulate MWFs, if at all possible.

ILMA believed EPA understood this dependence on MCCPs and LCCPs by downstream businesses who had been using the SNUR substances for years. To avoid disruptions, EPA permitted the continued manufacture of the individual MCCPs and LCCPs that already were in the market to continue after the Dover and INOVYN enforcement actions were resolved in 2012. At a minimum, Dover and INOVYN had been manufacturing the SNUR substances for more than five years when they submitted the agreed pre-manufacture notifications (“PMNs”) as part of the settlement of the enforcement actions. In reality, the uses of the individual MCCPs and LCCPs exceed five years and, in some instances, have been ongoing for decades.

ILMA, therefore, does not understand how EPA now designates the SNUR substances as significant new uses. In the preamble to the direct final rules, the Agency says that “[t]o establish a significant new use, EPA must determine that the use is not ongoing.” 83 Fed. Reg. 40986, 40995 (Aug. 17, 2018) (Section VII). EPA goes on to say that, “[t]he Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.” *Id.*

Based on the foregoing statements, how can EPA make the conclusion, for example, that there were no ongoing uses of the SNUR substances as “additives in lubricants including metalworking fluids prior to August 17, 2018”? EPA cannot ignore its own history of regulatory activities with chlorinated paraffins and the multiple submissions by ILMA and other stakeholders that the manufacture and use of the SNUR substances has been ongoing for more than five years prior to August 17, 2018. EPA by its own actions cannot now designate these ongoing uses as new ones. Accordingly, ILMA requests that EPA withdraw its direct final rule for each of the above SNUR substances.

Any SNUR Should Reflect the Testing Provisions in the Section 5(e) Orders to Ensure Uniform Treatment of Manufacturers and Importers

EPA’s SNUR language in the direct final rule exacerbates its ongoing regulatory fiction with respect to MCCPs and LCCPs. The section 5(e) orders for the SNUR substances contains a five-year manufacturing limit to drive the studies to be undertaken by the PMN submitters:

Beginning five years following the date of submission of a Notice of Commencement of Manufacture (“NOC”), the Company is prohibited from manufacturing (which under TSCA includes importing), processing, distributing in commerce, using, or disposing of the PMN substance in the United States, for any nonexempt commercial purposes, **unless the Company conducts the following studies on the PMN substances and submits all final reports and underlying data in accordance with the conditions specified in this Testing section.** This information is necessary for a reasoned evaluation of the environmental effects of the substances. After that period, the activities described in this paragraph may not resume until EPA has completed review of, and taken any regulatory action deemed appropriate by EPA based on, that information, except in accordance with the conditions described in this Order. [Emphasis added.]

ILMA understands this language to mean that the listed substances can continue to be manufactured after five years, although it will require affirmative action by EPA at that time. At a minimum, the Agency should amend the five-year manufacture restriction for each SNUR to tie it to the above-testing conditions imposed on the PMN submitters in the section 5(e) orders.

ILMA further understands that the purpose of the SNURs was to level the playing field for additional chlorinated paraffins manufacturers and importers entering the U.S. market – that is, treating uniformly the PMN submitters and any new market entrants. It is appropriate for EPA to amend the SNURs to capture better the testing provisions from the section 5(e) orders for the MCCPs and LCCPs entering the market by companies not subject to those orders.

Because of Significant Downstream Issues, EPA Should Move MCCPs and LCCPs to TSCA Section 6 for a Long-Term Remedy

In all of its correspondence and meetings with EPA on chlorinated paraffins, ILMA has never said or suggested that alternatives to chlorinated paraffins do not exist, particularly for water-dilutable MWFs. However, where viable replacements currently have not been found, there are a number of reasons to explain the continued reliance on MCCPs and LCCPs in MWFs. Such reasons include worker exposure concerns from the alternatives, tool efficiency, impact on parts metallurgy, quality or yield, certification or approval issues, and cost. Simply stated, there are limited number of “tools” in ILMA members’ “tool boxes” to reformulate away from MCCPs and LCCPs. They already have done so where possible to eliminate chlorine use instead an appropriate alternative, and the ongoing use of MCCPs and LCCPs in MWFs does not pose an unreasonable risk.

The five-year limitation in the SNURs as currently written will reignite, rather than extinguish, the uncertainty as to the prospective availability of the SNUR substances. Industry does not operate on a month-to-month basis. In order to remain competitive in the marketplace, industry undertakes long-term strategic planning that accounts for a multitude of variables (including governmental regulation) to ensure that business models, including their supply chains, remain viable and profitable. This planning typically goes on past five years, so the SNUR language, if not modified by EPA, will have significant ramifications for downstream users, including ILMA members and their customers.

EPA should stop trying to treat the SNUR chemicals as typical PMN substances under TSCA Section 5. The MCCPs and LCCPs are not being manufactured for non-exempt commercial purposes for the first time following the submission of the NOCs. They have been in commerce before EPA began its enforcement actions in 2009 against Dover and INOVYN. Since that time, the Agency expressly has allowed the SNUR chemicals to be continued to be manufactured for more than five years.

ILMA recommends that EPA proceed to resolve the regulatory status of MCCPs and LCCPs under TSCA Section 6. Certain of these SNUR substances are on the Agency’s 2014 update to the TSCA Work Plan. EPA already has a draft risk assessment on MCCPs and LCCPs. The Agency can use the test data generated by PMN submitters under the section 5(e) orders. EPA then can use its TSCA Section 6 authorities to determine whether the MCCPs and LCCPs present unreasonable risks. If the Agency still need additional testing, it can then issue orders under TSCA Section 4. This regulatory path under TSCA Section 6 will provide greater certainty to downstream users, including ILMA members and their customers, than the five-year “hammer” in the draft final rule and proposed rule.

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ILMA appreciates this opportunity to comment.

Sincerely,



Holly Alfano
CEO

cc: ILMA Board of Directors
ILMA MWF Committee
Jeffrey L. Leiter, Esq.