

**Motor & Equipment Manufacturers Association**

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*Via Regulations.gov*

March 14, 2017

Dr. Jeffrey T. Morris  
Acting Director  
Office of Pollution Prevention and Toxics  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460-0001

**RE: TSCA Inventory Notification (Active-Inactive) Requirements  
Proposed Rule [Docket No. EPA-HQ-OPPT-2016-0426]**

Dear Dr. Morris:

The Motor & Equipment Manufacturers Association (MEMA) offers the following comments in response to “TSCA Inventory Notification (Active-Inactive) Requirements” (Inventory Reset) issued by the U.S. Environmental Protection Agency (EPA) on January 13, 2017.<sup>1</sup>

MEMA represents more than 1,000 companies that manufacture motor vehicle systems and parts for use in the light- and heavy-duty vehicle original equipment and aftermarket industries.<sup>2</sup> Motor vehicle component manufacturers are the largest sector of manufacturing jobs in the U.S. and directly employ over 871,000 workers in all 50 states.

MEMA supported the passage of the “Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act” (LCSA) amending the Toxic Substances Control Act (TSCA). We are proponents of a cohesive federal chemical law that will provide certainty for our members who manufacture, supply and sell motor vehicle components across the United States. An updated federal chemical regulation framework that improves the regulation of chemicals in commerce will give consumers, our customers and public health advocates confidence that chemicals in commerce are being used safely. The long-term success of LCSA depends on a transparent, systematic procedure for evaluating the safety of chemicals, and the Inventory Reset is the first step in this important process.

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<sup>1</sup> 82 Fed Reg 4255, January 13, 2017.

<sup>2</sup> MEMA represents its members through four divisions: Automotive Aftermarket Suppliers Association (AASA); Heavy Duty Manufacturers Association (HDMA); Motor & Equipment Remanufacturers Association (MERA); and, Original Equipment Suppliers Association (OESA).



While MEMA supports several proposals in the Notice of Proposed Rulemaking (NPRM) on the Inventory Reset, we have the following recommendations:

- Remove recordkeeping requirements for manufacturers and processors;
- Remove the requirement for manufacturers and processors to include date ranges for the retrospective reporting;
- Clarify the definition of “processors”; and,
- Limit the amount of confidential business information (CBI) substantiation questions.

### **MEMA Supports the Following Proposals**

MEMA strongly supports EPA’s proposed staggered two-step process outlined in the NPRM for retrospective reporting required under TSCA § 8(b)(4)(A). Chemical manufacturers have the primary responsibility of the Inventory Reset and the two-step process would allow manufacturers to report first. Then, after a preliminary inventory is set based on reporting by chemical manufacturers, there would be a voluntary period for processors to report. The two-step process would be used to report any chemical manufactured or processed within the last 10 years. First, MEMA supports that processor reporting is voluntary during the retrospective reporting period. There may be substances produced or used infrequently from stockpiles and, in these cases, processors will be in the best position to notify EPA of the use of these chemicals within the last ten years. Second, MEMA supports the proposed staggered two-step process primarily because this procedure is efficient and would benefit processors and it eliminates duplicative, confusing data collection if both manufactures and processors were required to report simultaneously. Further, this two-step process should reduce the overall reporting burden on processors and generally the burden on the regulated industry. Most importantly, as cited in the preamble to the NPRM, this provision is consistent with the statutory direction which requires that the required reporting is not “unnecessary and duplicative.”<sup>3</sup>

EPA states that it interprets the language in TSCA § 8(b) as encompassing the reporting exemptions for persons who import chemical substances solely as part of articles.<sup>4</sup> MEMA supports this exemption for companies that import chemical substances as part of articles from reporting under the retrospective and forward-looking reporting. Importers of these articles may not have the requisite knowledge of the chemical substances contained in these imported articles. Further, this information could be extremely burdensome, if not impossible, to obtain.

EPA has interpreted the language in TSCA § 8(b)(6) as directing the agency to use the data compiled from the 2012 and 2016 Chemical Data Reporting (CDR) to create the interim “active” inventory. MEMA supports the proposal of creating an initial inventory with data already reported by the regulated industry and gathered by EPA.

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<sup>3</sup> TSCA § 8(a)(5)(A)

<sup>4</sup> 82 *Fed Reg* at 4259

### **MEMA Questions the Following Proposals**

EPA's proposal would require that manufacturers and processors – if reporting for the retrospective period under TSCA § 8(b)(4)(A) – provide the specific date range of manufacture or processing within the 10-year span.<sup>5</sup> MEMA has concerns with this proposed requirement. If processors processed a chemical substance as much as 10 years ago, those specific dates – first and last date of process – may not be available to the processor. Many companies' corporate retention record policy is shorter than 10 years; moreover this exceeds TSCA's five-year record retention requirement. If a record is available for that timeframe, that level of detail may not be available to the processor. It is unclear as to why EPA needs the exact dates of manufacture and processing in order to designate a chemical as active in commerce. Further, this level of detail is not required by the statute. Therefore, EPA should remove this requirement from the final rule.

MEMA opposes the proposal that requires manufacturers and processors to retain records that documents any information reported to EPA for up to five years.<sup>6</sup> Since, EPA does not provide a basis for this record retention requirement, MEMA requests that this proposal is also removed from the final rule because this requirement would be arbitrary, burdensome and unnecessary. At a minimum, EPA should clarify that the reporting requirements in § 710.35 do not apply to processors.

MEMA urges EPA to clarify the term "processing." EPA states in the NPRM that it will base TSCA § 8(b) reporting on the definitions in 40 CFR Part 710, and, therefore, will not propose modifying the definitions.<sup>7</sup> However, these definitions are very simplistic and processors would appreciate further clarification of these terms and definitions in the final rule. Further, "processing" should not include assembling parts into articles when it does not involve the "preparation of a chemical substance or mixture" after its manufacturer, "as part of a mixture or article containing the chemical substance or mixture." If the definition is expanded it would include all assemblers of products as processors, which subjects them to reporting the chemicals in the articles as part of the forward-looking requirements. This misinterpretation would have a significant negative impact on downstream users of articles and increase exponentially the burden on processors. Making key terminology clear is imperative.

EPA's proposed CBI substantiation questions required to keep chemicals on the confidential portion of the inventory are too broad and burdensome.<sup>8</sup> Much of the information needed to answer these questions will not be readily available to the manufacturers, importers or processors without substantial research. We urge EPA to reduce the scope of questions needed for CBI substantiation.

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<sup>5</sup> §710.29

<sup>6</sup> §710.35

<sup>7</sup> §710.3

<sup>8</sup> §710.37



## **Conclusion**

MEMA supports many of the proposals in the NPRM, particularly the two-step process allowing voluntary reporting for processors and the exemption for companies that import chemical substances as part of articles. However, MEMA urges EPA to eliminate unnecessary burden on businesses and to limit requirements to what is germane and necessary to designate substances as active or inactive on the TSCA inventory.

MEMA welcomes the opportunity to work further with EPA on this and other critical TSCA framework issues. Please contact me at (202) 312-9247 or [lholfmes@mema.org](mailto:lholfmes@mema.org) if you have questions or require any further information on these comments.

Respectfully Submitted,

A handwritten signature in black ink that reads "Laurie Holmes". The signature is written in a cursive, flowing style.

Laurie Holmes  
Senior Director, Environmental Policy