

Motor & Equipment Manufacturers Association

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Via Regulations.gov

March 20, 2017

Ms. Wendy Cleland-Hamnett
Acting Assistant Administrator
Office of Pollution Prevention and Toxics
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0001

**RE: Notice of Proposed Rulemaking; Procedures for Prioritization of
Chemicals for Risk Evaluation Under the Toxic Substances Control Act**
[Docket No. EPA-HQ-OPPT-2016-0636]

Dear Ms. Cleland-Hamnett:

The Motor & Equipment Manufacturers Association (MEMA) offers the following comments in response to the Notice of Proposed Rulemaking (NPRM) "Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act" (Procedures for Prioritization or Prioritization) issued by the U.S. Environmental Protection Agency (EPA) on January 17, 2017.¹

MEMA represents more than 1,000 companies that manufacture motor vehicle systems and component parts for use in the light- and heavy-duty vehicle original equipment and aftermarket industries.² 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 21st 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 that manufacture, supply and sell motor vehicle components across the United States. MEMA supports an updated federal chemical regulation framework that improves the regulation of chemicals in commerce and gives consumers and our customers 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. To that end, Procedures for Prioritization is of interest to MEMA.

¹ 82 Fed Reg at 4825

² 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).



MEMA provides the following recommendations to the NPRM on the Procedures for Prioritization:

- Define statutory terms included in TSCA § 26;
- Provide a follow-up rulemaking for the proposed pre-prioritization process;
- Reevaluate its chemical prioritization process, especially low priority chemicals; and,
- Communicate priority designation of chemicals effectively.

EPA Must Address and Define Key Terms

We urge the Agency to define and further explain terms and processes used in this Procedures for Prioritization NPRM. EPA declines to define statutory terms included in TSCA § 26 such as “sufficiency of information,” “reasonably available,” “best available science,” and, “weight of evidence.” EPA states that defining these terms is “unnecessary and ultimately problematic” because these terms are “not novel” and “discussed extensively in existing Agency guidance.”³ MEMA respectfully disagrees with the Agency’s conclusion that these terms are discussed in detail in existing Agency guidance. In fact, these concepts are not defined in the *Risk Characterization Handbook* and the *Framework for Human Risk Assessment to Inform Decision Making*. Therefore, EPA must define in the final rule how these terms will be interpreted so the regulated community clearly understands how these terms will be used. Congress intended that these terms be used consistently to aid in “open and transparent science” by the Agency.⁴ Defining these terms will ensure that EPA’s process is transparent and consistent – both are paramount to the success of the LCSA’s prioritization process.

EPA Must Conduct a Separate NPRM for its Pre-Prioritization Process

Based on TSCA § 6(b)(1) through (3), the Agency proposes to handle chemical prioritization in four phases: 1) pre-prioritization, 2) initiation, 3) proposed designation and 4) final designation.⁵ Since TSCA mandates that EPA take no longer than nine to 12 months to complete the prioritization process on a chemical, EPA proposes a pre-prioritization process to gather data while it avoids triggering the statutory clock.⁶

MEMA is concerned that EPA’s description of the pre-prioritization process is too vague especially since the statute does not require this stage, which is also not subject to deadlines. As downstream users of chemicals, motor vehicle suppliers need more transparency on how the pre-prioritization process would work. For instance, how many times and at what point will EPA have stakeholder outreach? Also, how and when

³ 82 Fed. Reg. 4828

⁴ See Congressional Record at page 3518 and 3522, <https://www.congress.gov/crec/2016/06/07/CREC-2016-06-07-pt1-PgS3511.pdf>

⁵ 82 Fed. Reg. 4826

⁶ TSCA § 6(b)(1)(C)

will EPA gather information during this process? Because these and other questions will need to be addressed, EPA must provide the regulated community more details to increase clarity and transparency on the pre-prioritization process. To that end, MEMA urges EPA to conduct a follow-up proposed rulemaking focused on the pre-prioritization process to allow for stakeholder comment on a more detailed proposal of this phase.

EPA Must Reevaluate its Chemical Prioritization Designation Process, Especially Low Priority

MEMA strongly recommends that EPA reevaluates how the Agency has proposed to handle its prioritization process, particularly how it proposes to designate low priority chemicals. Under the procedure outlined by EPA, the bar is set extremely high for a low priority designation and it seems unlikely that few, if any, chemicals will qualify as low priority.

EPA interpretation of the statutory language directs the Agency to prioritize chemicals based on all “intended, known, or reasonably foreseen” conditions of use.⁷ In the NPRM, EPA also explains that it will prioritize chemicals on all conditions of use and not on narrow uses of a chemical (i.e. designate some uses as low priority and other uses as high priority). While MEMA agrees that EPA is directed to evaluate a chemical based on all conditions of use, EPA should not evaluate misuse and speculative conditions of use. Further, MEMA is concerned that, as proposed, a chemical can be designated as high priority based on one condition of use, but low priority chemicals must be determined as low priority based on every condition of use.

MEMA is concerned that EPA’s proposed approach will result in very few, if any, chemicals being designated as low priority. Under LCSA, Congress did not intend for EPA to designate only a handful of chemicals as low priority. Congress intended that the Agency focus its risk evaluation resources on high priority chemicals.⁸ Further, EPA’s outlined approach will result in an extremely slow process where determinations of safe uses of certain chemicals would be held captive for long periods of time. For instance, if a chemical is designated as high priority and it has 10 conditions of use, and, in the end, EPA declares nine of those uses are safe and only one use poses an unreasonable risk, then those nine uses must wait a long time (up to three and a half years) for EPA to declare them safe. Meanwhile, the designation of the chemical (and all conditions of use) as high priority could send confusing signals to the marketplace.

As downstream chemical users, MEMA wants EPA designating chemicals as low priority to send appropriate market signals that certain chemicals used in commerce are safe. MEMA also has an interest in fast and efficient prioritization and risk evaluation. MEMA supported the passage of LCSA because EPA’s increased authority to regulate chemicals in commerce would provide more certainty for downstream chemical users

⁷ 82 Fed. Reg. 4829

⁸ See Congressional Record at page 3519, <https://www.congress.gov/crec/2016/06/07/CREC-2016-06-07-pt1-PgS3511.pdf>

that certain chemicals are safe. Getting this process right – the process of designating chemicals as high or low priority – is key to the success of LCSA. MEMA urges EPA to reevaluate the possibility of designating some conditions of use as low priority and other conditions of use as high priority.

EPA Must Effectively Communicate Priority Designations

At a minimum, the Agency must commit to communicating low or high priority designations in a way that is neither an affirmation of risk nor of safety. These designations need to be communicated to the public carefully and clearly so these categories do not create problems for downstream processors by sending premature market signals. MEMA supported EPA having a stronger § 6 authority in order to provide the motor vehicle suppliers the regulatory certainty essential for investment decisions on chemicals to use years into the future. If EPA fails to communicate designations clearly, this certainty will be lost.

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

Respectfully Submitted,



Laurie Holmes
Senior Director, Environmental Policy