CPMA
COLOR PIGMENTS MANUFACTURERS ASSOCIATION, INC.

March 10, 2017

Mr. Jeffrey T. Morris
Acting Director, Office of Pollution
Prevention and Toxics
Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, DC 20460-0001

Docket Number: EPA-HQ-OPPT-2016-0426

Re: Comments of the Color Pigments Manufacturers Association, Inc. on EPA's Proposed Rule Entitled "TSCA Inventory Notification (Active-Inactive) Requirements"

Dear Mr. Morris:

I am writing on behalf of the Color Pigments Manufacturers Association, Inc. ("CPMA" or the "Association") regarding EPA's Proposed Rule to require a retrospective electronic notification of chemical substances on the Toxic Substances Control Act ("TSCA") Inventory that were manufactured (including imported) for non-exempt commercial purposes during the ten-year time period ending on June 21, 2016 (the "Inventory Reset").[1] The Inventory Reset is required by Sections 8(b)(4)-(6) of TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act ("Amended TSCA").[2]

The CPMA is an industry trade association representing small, medium and large color pigments manufacturing companies in North America. In addition, the Association represents foreign color pigments manufacturers that sell products in North America and suppliers of intermediates and other chemicals products that serve North American color pigments manufacturers. The Association provides United States and international advocacy programs in support of the color pigments industry on matters pertaining to environmental, health and safety issues, and trade. Color pigments are widely used in product compositions of all kinds, including paints, inks, plastics, glass, synthetic fibers, ceramics, color cement products, textiles, cosmetics and artists' colors.

On November 1, 2016, CPMA submitted pre-proposal comments regarding several issues involved in the Reset of vital importance to the color pigments issue.[3] We would like to thank the EPA for favorably addressing all of these issues in the Proposed Rule.

[1] 82 Fed. Reg. 4255 (Jan. 13, 2017).
[2] Pub. L. No. 114-182 (June 22, 2016).
[3] These comments were entered into the docket as document number EPA-HQ-OPPT-2016-0426-0020.

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In general, the Proposed Rule properly follows the requirements of Section 8(b) regarding the Inventory Reset. Below, we note several aspects of the Proposed Rule that we particularly support. We also offer some additional recommendations on specific issues of potential concern. In the process, we also reemphasize our previous comments.

I. CPMA Strongly Supports EPA's Proposal to Define Reportable Chemicals for the Inventory Reset by Using Only the Existing TSCA Inventory Entries for Reporting

Section 8(b) mandated EPA simply to determine which chemical substances are in active commerce, and to do so under tight time constraints. The statute gives no indication that EPA should (or may) redefine Inventory definitions; indeed, as noted below, that statute expressly forbade it from doing so in some cases. EPA has wisely chosen to maintain the existing definitions across the board:

> EPA is not proposing to modify the 40 CFR part 710 definitions in any manner that either is not conforming to Part 704, 710, or 720, or is a purely technical correction (e.g., eliminating references to the Canal Zone from the definition of "State"). Any other changes to the definitions in 40 CFR part 710 are beyond the scope of this proposal. 82 Fed. Reg. 4256.

The preamble adds: "As a general matter, the retrospective reporting requirement of this proposed rule would apply to chemical substances listed on the TSCA Inventory that were manufactured for a nonexempt commercial purposes during the 10-year period ending on June 21, 2016." 82 Fed. Reg. 4258.

As we explained in November and reiterate now below, with respect to Class 2 nomenclature and statutory mixtures, EPA's approach was mandated by Congress, and is also good policy.

A. The Established Nomenclature and Entries Used to Describe the Existing Class 1 and Class 2 Entries on the TSCA Inventory Should Remain Unchanged in Order to Reflect Congress's Intent in Amending TSCA.

Since the original TSCA Inventory was adopted in the late 1970s, EPA and industry have relied on established nomenclature systems to describe numerous types of substances. These include variable polymers, zeolites, complex inorganic color pigments and surfactants, among others. Congress's concern to preserve these systems is reflected in Section 8(b)(3)(A)(i) of Amended TSCA, which states that EPA "shall maintain the use of Class 2 nomenclature," applicable to non-specific variable substances, on the TSCA Inventory, as it was "in use on the date of enactment" of Amended TSCA.

Any implementation of the Inventory Reset that strictly follows the current TSCA Inventory entries for Class 2 substances would be the most efficient use of both industry's and EPA's resources. Conversely, any change in nomenclature impacting the existing entries on the TSCA Inventory would generate an enormous and unwarranted burden on industry.

B. The Existing Definitions for Statutory Mixtures Should Continue to Be Used in the TSCA Inventory, Including the Guidance Documents and Advisory Correspondence Which EPA Has Generated and Which Industry Has Relied on for Many Years.

Pursuant to "old" TSCA Section 8(b)(2), EPA developed a number of carefully defined categorical entries in the TSCA Inventory covering complex variable chemical products. These entries allow the manufacturer to use the overall categorical entry on the TSCA Inventory to describe substances generated in the process of manufacturing the complex variable mixture. Variable composition mixtures, including the

statutory mixtures glass, frit, ceramic materials, steel, Portland Cement and alumina cement, purposefully encompass thousands of compounds that, depending on the desired characteristics of the end product and adjustment in specific ingredient compounds, may or may not be created in variable manufacturing processes.

As with the Class 2 nomenclature discussed above, in Section 8(b)(3)(A)(iii) of Amended TSCA, Congress instructed EPA to "treat the individual members of the categories of chemical substances identified by the Administrator as statutory mixtures, as defined in Inventory descriptions established by the Administrator, as being included on the [TSCA Inventory]."

EPA has generated a significant body of policies, guidance and advisory letters for interpreting the scope of these categorical entries, such as the 1995 guidance entitled "Toxic Substances Control Act Inventory Representation for Products Containing Two or More Substances: Formulated and Statutory Mixtures." These documents should remain in effect. This will allow for consistent and efficient transition to the improved TSCA Inventory after the Inventory Reset.

The categorical and statutory mixture products are manufactured and sold world-wide using categorical entries on national inventories like TSCA. Any change in these established categories, which could involve designating thousands, or tens of thousands, of specific reaction products as something other than mixtures, would create significant regulatory disharmony for large sectors of international commerce. For its part, EPA would be faced with having to process numerous premanufacture notice (PMNs) for minor variants in classes of materials that EPA concluded long ago are not likely to pose an unreasonable risk to health or the environment. EPA would also need to obtain CAS numbers for new entries that it might attempt to derive from the existing listings.

C. EPA Should Allow For Inventory Corrections Without Requiring "Privity"

EPA has long provided for correction of errors in TSCA Inventory entries pursuant to its "Guidelines under Which Substances Found to Be Incorrectly Identified in the TSCA Inventory Can Be Corrected by EPA."[4] EPA has not generally permitted a company to correct or supplement a TSCA Inventory listing unless the company submitted an original TSCA Inventory survey (or is its successor in interest) in the late 1970s. In many cases, companies which submitted original survey responses for the TSCA Inventory have stopped production of a substance in favor of competitors which began production after the initial TSCA Inventory was complete. Or they may have gone out of business altogether. Manufacturers who participate in the Inventory Reset should have the rights which have been accorded original manufacturers to request corrections to entries. Due to improvements in analytical instruments and new information developed since the late 1970s, EPA should also allow current manufacturers which choose to do so an opportunity to review and correct scientific errors in existing TSCA Inventory entries as part of the Inventory Reset. Crucially, EPA should make clear that manufacturers will not be penalized in any way for submitting corrections. EPA's overriding goal in the Reset process should be to make the Inventory as correct as it possibly can be.

II. EPA Should Adopt a "One and Done" Approach to Reporting by Manufacturers. Such an Approach Is Consistent with EPA's Proposed Processor Reporting

Amended TSCA does not require every manufacturer to report every commercial activity. As a practical matter, one notification by a manufacturer will cause EPA to mark a substance as "active." EPA has already proposed to use the 2012 and 2016 CDR (Chemical Data Reports) to establish an "interim list of active substances" that manufacturers would not need to report. This is a wise way to avoid unnecessary duplicate reporting and lower reporting burdens on manufacturers and EPA. Since reporting for the

[4] 45 Fed. Reg. 50544 (July 29, 1980).

Inventory Reset will be electronic through EPA's CDX (Central Data Interchange), further duplicate reporting could be avoided by updating the active list on an as close-to-real-time basis as possible, so that manufacturers can check the "active" status in CDX or elsewhere on the EPA website first before making their notification. Such a "one and done" approach to manufacturer reporting would dramatically lessen reporting burdens on industry and EPA. CPMA notes that, under the new "1 in, 2 out" executive order, federal agencies are operating under a "regulatory cap" for this fiscal year of zero regulatory cost increases.[5] EPA could substantially reduce the costs of this proposed rule by "one and done" and by dropping date range reporting (discussed next).

Consistently, CPMA supports EPA's approach to processor reporting. Much of the chemical industry involves the production of formulated products such as ink, paint, plastic and glass. Manufacturers of formulated products should be afforded an opportunity to ensure that all necessary ingredient materials are represented on the TSCA Inventory. EPA's proposal to provide an extended reporting period for optional processor reporting accomplishes this goal.

By the same token, they should not have to report a chemical if manufacturers have already. Amended TSCA imposes no legal requirement for duplicate reporting; indeed, it requires EPA, "to the extent feasible . . . not [to] require reporting which is unnecessary or duplicative [and to] minimize the cost of compliance with . . . section [8]." CPMA thus supports EPA's proposed approach not to require processor reporting during the first "round" of Reset reporting.

III. CPMA Opposes Requiring Reporting of Actual Production Dates

CPMA does not support the proposed requirement that manufacturers completing the Inventory Reset survey disclose dates for manufacturing activity within the last ten years. EPA says it wants this information in order to "obtain confirmation that the chemical substances in question had indeed been manufactured or processed" (82 Fed. Reg. 4256) during the lookback period. EPA already requires submitters to certify to the truth and accuracy of their submissions (see proposed § 40 C.F.R. § 710.29(d)(5)). The cost of researching actual manufacturing dates since June 21, 2006 from stored archive records could increase reporting burdens for many manufacturers literally by orders of magnitude. The benefits of this information to EPA, if any, do not warrant the cost. Amended TSCA has no requirement for EPA to collect this information; to the contrary, as just noted, it requires EPA instead to avoid unnecessary reporting and to minimize compliance costs. EPA should drop this aspect of the proposal.

IV. EPA Should Conform Its Proposed Definitions to Those Terms Actually Used in The Statute

A. "Manufacture or process for a nonexempt commercial purpose"

Section 8(b)(4)(A)(i) requires EPA to require manufacturers and processors to report chemical substances that they "manufactured or processed for a nonexempt commercial purpose" during the lookback period. Accordingly, the quoted language is the only term that EPA needs to define for purposes of this rule. In the preamble, EPA wisely notes that:

> it would be incongruous to establish a more comprehensive reporting obligation for the import of inactive existing chemical substances under TSCA section 8(b)(5) (i.e., including import as part of an article), than would be applicable to the import of new chemical substances under TSCA section 5. 82 Fed. Reg. 4259.

[5] E.O. 13771, § 2(b), 82 Fed. Reg. 9339 (Feb. 3, 2017)

Thus, the preamble explains, "manufacturing or processing for an exempt commercial purpose" should be construed and defined to adopt the exemptions contained in the current Section 5 regulations (40 CFR § 720.30), plus the exclusions for importation as part of an article contained in the current CDR regulations (40 C.F.R. § 711.10(b)). Id. That is the only term regarding manufacture or processing that EPA needs to define for this rule.

Instead, however, EPA proposes to (i) create definitions of "manufacture [and process] for commercial purposes," (ii) require entities engaged in either activity to report, and then (iii) exempt those entities to the extent they engage in one of a list of activities, some of which are defined by reference to 40 CFR § 720.30(g) or (h). So, for example, EPA proposes this new definition:

> "Manufacture for commercial purposes means: (1) To manufacture, produce, or import with the purpose of obtaining an immediate or eventual commercial advantage, and includes, among other things, the "manufacture" of any amount of a chemical substance or mixture (i) for commercial distribution, including for test marketing, or (ii) for use by the manufacturer, including use for product research and development or as an intermediate. (2) The term also applies to substances that are produced coincidentally during the manufacture, processing, use, or disposal of another substance or mixture, including byproducts that are separated from that other substance or mixture and impurities that remain in that substance or mixture. Byproducts and impurities without separate commercial value are nonetheless produced for the purpose of obtaining a commercial advantage, since they are part of the manufacture of a chemical substance for commercial purposes." [emphasis added] 82 Fed. Reg. 4263.

The same underlined text is proposed for the definition of the term "process for commercial purposes."

This is all unnecessary and confusing. The current PMN regulation states that a Premanufacturing Notice ("PMN") submission is not required for any impurity or any byproduct which is not used for a commercial purpose in a new chemical. Similarly, small quantities of substances for research and development, and chemicals contained in imported articles are exempt from PMN notifications.

The Proposed Rule correctly states that "the manufacturing or processing of impurities, or byproducts that have no subsequent commercial purpose, would not trigger reporting obligations under this proposed rule." 82 Fed.Reg. 4259. Since impurities and byproducts are not reportable to the TSCA Inventory as either new chemicals using PMNs or existing chemicals under the Inventory Reset, there is no purpose for additional text specifically incorporating impurities and byproducts in the definition of "manufacture for commercial purposes." This also applies to substances for research and development and to substances contained in imported articles.

B. Inventory

EPA proposes to add a new definition for the term "inventory" as follows:

> 'Inventory' means the TSCA Chemical Substance Inventory, which is EPA's comprehensive list of confidential and non-confidential chemical substances manufactured or processed in the United States for non-exempt commercial purpose that EPA compiled and keeps current under section 8(b) of the Act.

Again, the term “inventory” is defined to exclude impurities and byproducts contained in chemicals which are manufactured for "exempt" commercial purposes. The new proposed definition for “manufacture for commercial purposes,” combined with the proposed definition of “inventory,” which is limited to "non-exempt commercial purposes,” could easily be misinterpreted as a fundamental change in the TSCA Inventory regarding the obligations for reporting impurities or byproducts. The Proposed Rule must be consistent with current regulations and within itself regarding in the definition of “manufacture for commercial purposes.”

V. CBI issues

CPMA supports EPA’s proposed “transfer” of CBI claims to successors in interest such that a CBI claimant does not have to be the company that originally asserted the claim. See 82 Fed. Reg. 4261.

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Please let me know if you have any questions regarding these comments or if we can be of any further assistance as you move toward finalizing the Inventory Reset (or any other TSCA implementation issue).

Sincerely,

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Executive Director

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