



26 March 2021

Re: Docket ID #: EPA-HQ-OPPT-2020-0493
Fees for the Administration of the Toxic Substances Control Act

The U.S. Environmental Protection Agency (EPA) has proposed updates and adjustments to the 2018 fees rule established under the Toxic Substances Control Act (TSCA). We understand that the principal benefit of the rule is to provide EPA a sustainable source of funding necessary to administer certain provisions of TSCA and enable EPA to better protect human health and the environment, including in low-income and minority communities. We are aware that the EPA's proposed updates were informed by the implementation of the 2018 fees rule, consultations with stakeholders, and experience conducting section 6 risk evaluations to include scoping, hazard identification, exposure assessment, risk characterization, and risk management.

CTA, IPC, and ITI¹ value the opportunity to provide comments to the proposed rule. Our organizations appreciate EPA's recognition in 2020 of the implementation challenges that the electronics industry faced in attempting to comply with the 2018 fees rules. EPA's issuance of the "No Action Assurance" in combination with the plan to initiate a new rulemaking process provided relief and clarity to the industry.

We strongly support the narrowing of the scope of the rule to exclude the following entities:

- Importers of articles containing a chemical substance;
- Companies that produce a chemical substance as a byproduct;
- Companies that manufacture or import as an impurity;
- Companies that use chemicals solely for research and development purposes;
- Companies that produce a chemical in de minimus amounts; and
- Companies that manufacture a chemical that is produced as a non-isolated intermediate.

The following comments aim to ensure additional clarity and feasibility to comply with the rule.

Define "small manufacturers."

EPA is proposing to allocate fees across manufacturers (including importers) and account for small businesses and small manufacturers to ensure a more representative distribution of fees due to the potential variation in production volumes. In section III.B.1. and Table 5 of the proposed rule, EPA describes the methodology for calculating fees and identifies small manufacturers as part of the calculation, however, the term "small manufacturers" is not defined nor is it used elsewhere in the proposed rule. If EPA intended to say "small business concern" then we suggest that this edit be made to the final rule. However, if the term is being used to represent the companies that manufacture (including import) a chemical substance in quantities not to exceed 2,500 lb, then these "small manufacturers" would be exempt from fee obligations and do not need to be included in the fee calculations unless all manufacturers of a chemical substance manufacture that chemical in quantities below 2,500 lb. We request that EPA define or describe what is meant by the term "small manufacturers" in section III.B.1. and Table 5. and the significance of these entities to the fees calculation.

¹ CTA, IPC, and ITI represent over 5000 member companies including printed circuit board manufacturers, electronics manufacturing services, cable and wire harness manufactures, electronics industry suppliers, original equipment manufacturers, innovators, and information and consumer technology leaders. Collectively, over 80 percent of the companies represented by our membership qualify as small and medium-sized businesses and start-ups. Our members represent the complex, global supply chain of electronics – what our members make is used in thousands of products found in homes and businesses around the world.

Clarify time periods for "2,500 lb" exemption.

The proposed rule associates varying time frames with the "2,500 lb" exemption. In section III.D.1., the exemption (called an exception) does not apply if all manufacturers of a substance manufacture that chemical in quantities less than 2,500 lb limit as determined based on annual production volume and at the same time the exemption does apply if the manufacturer meets the exemption criteria for the five-year period preceding and following the publication of the preliminary list. And, if the "small manufacturers" term used in the fee calculations of section III.B.1. and Table 5 is synonymous with those companies that meet the "2,500 lb" exemption, then that is based on an average annual production volume from the four calendar years prior to the year certification was made. We request that EPA consistently reference the time period for the "2,500 lb" exemption as an average annual production volume based on the four calendar years prior to the year certification was made. We request that the Agency improve the explanation of the five-year period referenced in section III.D.1.

Clarify how to calculate quantities for "2,500 lb" exemption.

EPA has clarified that it is not proposing a concentration-based exemption in addition to the "2,500 lb" exemption. We request that EPA clearly state how to determine if the exemption applies to chemical mixtures containing high-priority substances; absent clarification, companies will assume that the "2,500 lb" exemption applies to the percentage of the high-priority substance in the mixture and not the total mass of the mixture.

Decrease the likelihood of unintended consequences.

Recent EPA and industry experiences with the current TSCA fees rule, the risk evaluations of the First 10 chemicals, the scoping documents for the 20 high-priority substances, and the risk management for persistent, bioaccumulative, and toxic (PBT) chemicals have shown that the implementation of TSCA is best managed with frequent collaboration and engagement with stakeholders. In the last four years, some unintended consequences occurred, and EPA communicated that it was aware and working to address them. For example, in March 2021, the Agency announced a new 60-day comment period for five final rules for PBTs and a temporary "No Action Assurance" for one of the PBT chemicals to ensure that the supply chain of articles containing this PBT is not interrupted while the Agency collects more information during the new comment period. In March 2020, the Agency responded to industry concerns regarding the implementation of the 2018 fees rule with a "No Action Assurance" to address, in part, the unintended consequences associated with importing articles.

The 2020 "No Action Assurance" and other steps that EPA took to update the preliminary lists of companies alleviated unnecessary financial and compliance-related stress for many, but not all, companies. The proposed updates and adjustments to the 2018 fees rule were too late for some companies, in particular two member companies (one that is a small business) that import high-priority substances in quantities less than 2,500 lb on average over the previous four years.

The proposed rule demonstrates that EPA is responding to lessons learned during the implementation of the current fees rule, however, these lessons were mostly unpredictable. In 2018, the Agency did not know which chemicals would make up the list of 20 high-priority substances nor which companies would be identified on preliminary lists of companies obligated to pay fees in support of the EPA-initiated risk evaluations of these substances. In 2021, the Agency is in a similar position to 2018: it does not know with certainty how the updated fees rule will apply in 2022 through 2024. EPA does not know which substance(s) will be prioritized for the next risk evaluation(s), the timing or content of the next scoping document, nor the composition of the companies that will be obligated to pay fees. Even with the best intentions for a fair rule, it is not possible to predict how it will be executed given the number of unknowns. Given recent EPA and industry experiences with TSCA, it is unfair to EPA and to future obligated companies to expect that an updated fees rule in 2021 will be able to be executed as intended in 2022 through 2024; retrospective updates are unfair to all obligated companies.

Therefore, we request that EPA consider two options. The first is to embed a contingency plan into the updated rule that will document EPA's intentions for fair and appropriate future fee allocations should there be unintended consequences in 2022 through 2024. The contingency plan can provide the Agency with the flexibility it will need to

move efficiently to make timely improvements that reflect the knowledge at the time the fees rule is implemented. The second option decreases the likelihood of unintended consequences resulting from our collective inability to predict the future: begin the process of identifying fee-paying companies for a chemical substance after the scoping document for that chemical substance has been published. This shift in timing will allow more time to increase awareness about fee-payment obligations among the community of likely payers. This option does not impact the proposed installment payment plan, but the initiation of the timing for the installments would begin after the list of fee payers is finalized and published.

Again, CTA, IPC, and ITI value the opportunity to submit comments to this proposed rule and to work with EPA to find reasonable and practical solutions that enable fair allocation of fee obligations in support of the various TSCA activities. We especially appreciate EPA’s recognition of the existing “2,500 lb” thresholds in existing regulations and its incorporation into the updated fees rule; we support the Agency’s proposal for fair, representative, and appropriate fee allocations based on chemical production volume.

We thank EPA for its efforts as well as the opportunity to engage during this current rulemaking process. We appreciate the meaningful conversations we’ve had, and we appreciate EPA’s continued collaboration with CTA, IPC, and ITI.

Sincerely,



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