american cleaning institute®

submitted electronically via regulations.gov (Docket ID No. EPA–HQ–OPPT–2020–0493; FRL–7911–04–OCSPP*)*

Denise Keehner, Director
Office of Pollution Prevention and Toxics
US Environmental Protection Agency
1200 Pennsylvania Avenue NW,
Washington, DC 20460-0001
(via http://www.regulations.gov)

Subject: Fees for the Administration of the Toxic Substances Control Act (TSCA)
40 CFR Part 700 (November 16, 2022): Docket No. EPA–HQ–OPPT–2020–0493

Dear Ms. Keehner,

The American Cleaning Institute® (ACI)[1] appreciates the opportunity to provide written comments to the United States Environmental Protection Agency on the *Fees for the Administration of the Toxic Substances Control Act (TSCA)*. ACI's member companies represent manufacturers, formulators, and distributors of cleaning products in the United States who will be impacted by the proposed updates and adjustments to the TSCA Fees Rule. ACI supports advancements in the TSCA administration process and increasing efficiency across the TSCA programs. However, ACI and our members are concerned about the substantial size of the proposed increases in TSCA fees to implement sections 4, 5, 6 and 14 of TSCA.

ACI agrees that EPA does not have the full financial and human resources necessary to implement the amended TSCA. While ACI and our members continue to advocate for the Office of Pollution Prevention and Toxics (OPPT) to receive federal appropriations commensurate with achieving fundamental improvements to the TSCA program, we are nonetheless concerned about the substantial increase of TSCA administration fees imposed on manufacturers, formulators and distributors. The level of fees going forward should not be set in such a way that they are intending to compensate for the EPA's budgetary shortfalls EPA experienced by decisions the Agency made previously with respect to the manner in which fees were not collected during the initial years of implementing the TSCA amendments, and subsequent decisions to "revisit" and to "re-do" substantial portions of previously issued determinations (all of which have contributed to delays with TSCA implementation).

The current TSCA Fees rule was published pursuant to the amended TSCA, however the risk evaluations for the first ten substances to undergo risk evaluations were well underway at the time of

[1] ACI represents the $60 billion U.S. cleaning product supply chain. ACI members include the manufacturers and formulators of soaps, detergents, and general cleaning products used in household, commercial, industrial and institutional settings; companies that supply ingredients and finished packaging for these products; and chemical distributors. ACI serves the growth and innovation of the U.S. cleaning products industry by advancing the health and quality of life of people and protecting our planet. ACI achieves this through a continuous commitment to sound science and being a credible voice for the cleaning products industry. US 172566883v5

the rule's publication. The Agency determined at that time that fees for the first ten risk evaluations would not be retroactively collected. The first ten risk evaluations were completed within the 3.5 years allowed by the amended TSCA. However, EPA decided to reopen the first ten risk evaluations, rather than beginning risk evaluations for the next set of 20 chemicals. This reassessment of the first ten risk evaluations led to significant delays, caused EPA to miss additional deadlines and increased costs for the TSCA Section 6 program generally. The bases for increasing costs under the Fees Rule Supplemental Proposal should not be biased by expenses generated by decisions to re-work those Risk Evaluations as many of the unanticipated costs can be attributed to policy changes made by the current EPA leadership.

The currently proposed amended fees are almost double the increases that EPA proposed in 2021. The 2021 proposed fees themselves nearly doubled for EPA-initiated risk evaluations for both Work Plan and non-Work Plan chemicals from the fees established in the 2018 fees rule. It is important for the affected stakeholders to understand with specificity the reasons for such substantial increases. ACI requests that EPA provide a more detailed substantiation for the increased program costs. In doing such, EPA should provide the referenced detailed budgetary analysis undertaken in spring of 2021.

Section 4 Program Costs

The proposed new fee amounts for Section 4 activities are not reasonable. The basis EPA has articulated for the increased fee amounts does not reflect current EPA activity. Based on current timelines with issued test orders, it is unlikely that the EPA will issue 75 test orders per year, and consequently, using that number as a target for the establishment of fees is not appropriate. The effect of the significant increase in the proposed fee amount is compounded by the fact that the regulated entities that are recipients of the Test Orders will need to not only pay the increased fee, but also for the full cost of the required testing. To minimize the impact of fees for Section 4 activities, ACI asks that EPA utilize its authorities under Section 8 to engage in more robust data gathering activities prior to using its authority under Section 4. ACI also recommends that EPA notify industry far in advance of test order issuance so companies can better budget for the fees.

Section 5 Program Costs

The proposed increased fee amounts for actions under Section 5 are not reasonable. The EPA justified the fee amounts by stating that the Agency would need 185 full-time employees (FTEs) for the Pre-Manufacturing Notice (PMN) program for reviewing 500 cases per year. This would mean that each FTE would manage roughly 2.7 cases per year. Handling 2-3 chemical cases should not equate to a full year's work for a full-time employee. ACI would like the Agency to more thoroughly explain the need for 185 FTEs for Section 5 activities. If benefits from work done for Section 5 activities are expected to provide benefits to the agency beyond just the Section 5 program, the costs of managing this program should be split appropriately between the budgets of OCSPP and ORD.

ACI and its members understand that the increases in fees are supposed to account for anticipated implementation efforts. However, the fee proposal does not consider the current back log of existing chemicals and it does not provide any metric to correlate how increased fees will translate into specific EPA plans to address this issue. Such plans should be described in the supplemental proposal and the supporting documents before the final rule should be issued that will increase fees substantially with no assurance in any increased efficiencies or decreases in review times for PMN submissions.

Section 6 Program Costs

ACI believes that the rework activities for previously completed risk evaluations may be unfairly inflating the projected costs of an EPA-initiated risk evaluation. As mentioned above, it is unreasonable to increase the fees on the regulated community if the Agency's expenses in prior years are attributable to rework resulting from the Agency's policy changes. The increased fees, coupled with the resulting extended timelines for risk evaluations will negatively impact the economic viability of the cleaning product industry.

General Comments on Fee Levels

The regulated community should not be asked to pay more in fees without a specific assurance that there will be measurable benefits eventually observed. To date, EPA has been missing deadlines both for new chemical approvals and for risk evaluations on existing chemicals. This process has hampered the manufacturing sector's ability to put safer, more sustainable chemistries on the market for consumers. The proposed fees for pre-manufacturing notices (PMNs) and both manufacturer- and EPA-initiated risk evaluations will drive manufacturers to halt development of some chemistries before they are able to reach consumers. This increase in fees has the potential to delay or inhibit important innovation in the US. Consequently, the developers of new products will be discouraged from introducing new and innovative materials that may present preferred profiles with respect to human health and environmental effects.

Ensuring environmental justice concerns are addressed is a shared priority of EPA, ACI and ACI members. It is imperative that both government and industry consider the chemical exposures resulting from use of existing products and the availability of and accessibility to safer, more sustainable products for our most at-risk communities. If new chemistries cannot be approved for the marketplace, or they are only approved after significant funds and time are expended, these communities will be forced to use existing chemistries, as newer ones will either not be available or will not be affordable. Either way, at-risk communities will be deprived of important new tools that could potentially improve lives throughout the US.

The EPA's proposed methodology for Risk Evaluation fee allocation is confusing. It does not allow manufacturers to calculate their anticipated fees in advance. Consequently, it is impossible for manufacturers to plan for set aside funding for associated risk evaluations. A more predictable allocation methodology is needed. Additionally, using the proposed fee allocation methodology, the calculated fee difference between the top 20% of volume manufacturers and the bottom 80% is substantial and should be further explained. A tiered bands approach from 2021 for allocation methodologies is more predictable and equitable.

Furthermore, ACI and our members are worried that even with the increased fees, the regulated community will not receive completed evaluations in a timely manner. There is no guarantee that the fees will result in a more efficient and lean process. Because of the aforementioned concerns, it is our suggestion that EPA not raise the fees beyond the amounts laid out in the 2021 rule.

Fee related proposals

ACI appreciates the additional exemptions proposed and the timeframe for test orders and test rule payments. The extended timeframes provide industry with greater flexibility and stability. ACI also supports the 80% reduction in fees for small businesses. ACI supports the options for wire transfer for Section 6 activities, but believes that more clarification is needed on the mechanics of the proposed split payment across multiple credit cards for PMN fees.

ACI recommends the following amendments are made to the proposed TSCA fee rule:

- A realistic, updated timeline for when evaluations will be completed for both new and existing chemical evaluations, in association with the current TSCA fees.
- An extended explanation should be provided for what benefits will be seen by the regulated community if the proposed fee increases become final.
- EPA should provide a more predictable allocation methodology.
- EPA should provide an explanation for how these increased fees will address environmental justice concerns.
- The rule should provide for the ability of a manufacturer to receive a full fee refund if submissions are not reviewed and decisions are not made in a timely manner.
- EPA should include importers in its byproduct exemption to be consistent with other exemptions.
- The R&D exemptions should align across all TSCA rules with the standard definitions in the 40 CFR 720.36 and 720.78.

Conclusion

ACI appreciates the opportunity to comment on EPA's proposal for Fees for the Administration of TSCA. ACI and member companies are continually looking to improve our practices and products,. The 2022 proposed fees could cripple innovation in product development, and that is something ACI and our members want to avoid. We hope the EPA reevaluates the proposed fees and how the current fee structure is implemented. We welcome the opportunity to discuss our concerns and address any questions EPA may have about information in this submission..

Sincerely,

D.Stanton

Darius Stanton, ACI Director of Regulatory Affairs