Before the United States Environmental Protection Agency
Proposed Revisions to TSCA Fees Rule
86 Fed. Reg. 18900 (Jan. 11, 2021)
Docket EPA-HQ-OPPT-2020-04933

Comments of the Chemical Users Coalition

The Chemical Users Coalition ("CUC") appreciates the opportunity to provide these comments regarding the U.S. Environmental Protection Agency's ("EPA's" and "the Agency's") Proposed Revisions to the Toxic Substances Control Act ("TSCA") Fees Rule published in the Federal Register of January 11, 2021.[1]

CUC is an association of companies from diverse industries interested in chemical regulatory policy from the perspective of entities that typically acquire and use, rather than manufacture, chemical substances and manufactured products (including articles).[2] CUC encourages regulators, such as EPA, to develop a robust body of information concerning chemical substances and articles when such materials are under consideration for regulatory action, including a thorough understanding of the conditions of use for such substances and articles. When such information is sought, acquired, and considered carefully by regulators, they can more effectively develop and implement potential requirements when necessary to effectively and efficiently protect health and the environment in a manner that enables the regulated community to pursue technological innovation simultaneously with sustainable economic development in the United States.

CUC member have been engaged constructively with EPA personnel on the myriad of issues that arose in the course of implementing the Fees Rule. We have appreciated and supported EPA's efforts to take into consideration the unique perspectives of CUC's members as importers, users, and distributors of manufactured articles, their components, and highly complex durable equipment.[3] With these important considerations in mind, our members wish to affirm our support for the proposed Fees Rule revisions generally and offer comments to clarify the importance of certain key features of the proposal.

1. The Exemptions Proposed to Fees for TSCA § 6 Risk Evaluation Fees are Critical

CUC supports finalizing each of the proposed exemptions to the Risk Evaluation provisions of the Fees Rule. The exemptions in proposed 40 CFR 700.45(a)(3)(i) (for imported articles) is especially important to CUC members who all are producers of highly technical products that are comprised of numerous specialized components—many of which are imported for assembly in the US. These components constitute finished articles supplied by hundreds or thousands of different providers within multiple, global supply chains. Entities that manufacture

[1] 86 Fed. Reg. 18900 (January 11, 2021).
[2] The members of CUC are Airbus S.A.S., The Boeing Company, HP Incorporated, IBM Company, Intel Corporation, Lockheed Martin Corporation, Raytheon Technologies Corporation, Sony Electronics, Inc. and TDK U.S.A. Corporation..
[3] http://www.chemicaluserscoalition.org/ckfinder/userfiles/files/CUC%20Comments%20to%20EPA%20061220.pdf

and import innumerable complex pieces of equipment would find it impossible to ascertain whether the components they receive and use are comprised of (or contain as impurities) certain high-priority chemical substances. Moreover, the process of chemically analyzing the composition of finished articles presents technical challenges that would make it impossible for CUC members to reasonably and responsibly ascertain whether articles they import contain a chemical undergoing a Risk Evaluation. Thus, the proposed exemption from the Fees Rule for High Priority Substances in articles, and for the presence of such substances which might be present as unintentional (or unidentified) impurities in commercial products (proposed § 700.45(a)(3)(iii)), are particularly important for CUC members.

CUC members also support the inclusion of these exemptions in the Section 6 Risk Evaluation Fees context because these proposed provisions generally align with existing exemptions that have been consistently applied in other TSCA reporting requirements (e.g., to the TSCA Section 5 rules and the Section 8 Chemical Data Reporting regulations). Codifying the proposed exemptions also is important because they are intended to make permanent the terms of the No Action Assurance that was issued for the first 20 High Priority chemical substances subject to fee assessments for TSCA Risk Evaluations. Reaching closure on this issue by codifying the exemptions is particularly of interest to those entities that relied on the terms of the No Action Assurance when responding to the "self-identification" procedures for Fees imposed for the initial 20 High Priority Substance Risk Evaluations,

In addition to the proposed exemptions discussed above, CUC wants to emphasize as well the importance of including in the final rule the exemption from fees for Risk Evaluations involving High Priority Substances when an entity produces, imports (or otherwise acquires), and supplies such substances for use solely for research and development purposes. *See* proposed Section 700.45(a)(3)(v). When chemicals are used solely in research and development efforts, exposures are minimal, and the uses undertaken are generally subject to the supervision of highly qualified engineers, scientists, and technicians who appreciate the nature of potential risks and the need to take precautions to preclude risks from chemical exposures. Moreover, the quantities involved are, by definition, finite, and (due to the limited quantities and practices involved) the opportunities for environmental releases minimal. Furthermore, R&D materials generally are not a significant source of revenue for the producers, importers, distributors, or users of such substances. Finally, entities that acquire and use chemical substances for R&D purposes generally do not purchase and track such materials in the same manner as commercial chemical products and formulations. Thus, the R&D exemption will avoid the unnecessary imposition in the Fees Rule context of new administrative requirements that are not necessary. Further, requiring entities that produce (including import), use and potentially distribute R&D substances to pay TSCA fees in equal measures with traditional chemical manufacturers would disproportionately allocate an unfair share of costs to those engaged solely in activities related to acquiring and using R&D substances. For these reasons, CUC endorses codifying the R&D exemption.

CUC members recommend that EPA clarify the language proposed in the exemption in Section 700.45(a)(3)(vi) for small quantity manufacturers (i.e., 2,500 lbs./year) prior to finalizing the proposed amendments. First, the use of the term "and/or" at the conclusion of the text proposed for the R&D exemption (Section 700.45(a)(3)(v)) and prior to the "low volume"

exemption (Section 700.45(a)(3)(vi)) creates unnecessary ambiguity. The use of this term unintentionally implies that the R&D exemption and the low-volume exemption are somehow linked or interdependent. The use of the term "or" between the exemptions listed should assist in removing this ambiguity and make clear that an entity might be eligible for any of the six exemptions being proposed if the criteria are met. Further clarification could be achieved by replacing the phrase "as *described* in § 700.43" in proposed Section 700.43(a)(3)(vi) (which is the same cross-citation in the R&D exemption) with "as *defined* in § 700.43…". This will clarify that the cross-citation pertains to the definition for the term "production volume" as it appears in proposed Section 700.43.

2. Exemptions Proposed for Section 6 Fees Should Pertain to Test Rules and Orders

CUC further recommends that when the amendments are issued in final form, the proposed exemptions also be incorporated into the fees provision related to Section 4 Test Rules and Testing Orders. Among the exemptions proposed, CUC recommends in particular that the proposed exemptions from the Section 6 Risk Evaluation Fees for importers of substances when present in articles, importers (and manufacturers) of substances present as impurities, and producers and importers of substances solely for R&D purposes should be carried over into the Fees for Test Rules and Test Orders. Doing so would create a more reasonable and consistent regulatory structure to the Fees Rule and enable administrative ease as EPA implements fee assessments in both Section 4 (testing) and Section 6 (evaluation) contexts.

3. Volume-Based Fees Allocations Should be Applied in Sections 4 and 6 Situations

CUC also supports EPA's proposal to allocate fees based on production volume shares for assessing costs of Section 6 Risk Evaluations. In addition, CUC recommends expanding this approach for use in Section 4 Test Rules and Testing Orders. Doing so will ensure greater fairness in the Fees Rule by distributing cost sharing on the basis of the comparative market share of the major producers and importers of an affected chemical. The current Fees Rule's allocation formula, based on per-capita division of the Risk Evaluation Fees results in an unfair economic burden being placed on businesses that produce comparatively smaller volumes of a substance. In addition, it is reasonable to apply the same allocation formulas for fees EPA imposes in the contexts of both Risk Evaluations and Test Rules and Test Orders.

Conclusion

CUC appreciates the opportunity to provide comment on the proposed amendments to the TSCA Fees Rule and supports the Agency's continued successful implementation of the TSCA rule and the proposed exemptions. Our members would be pleased to meet with EPA personnel to discuss these comments.