March 26, 2021

Mr. Marc Edmonds
Existing Chemicals, Risk Management Division
Office of Pollution Prevention and Toxics
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Comments of the American Chemistry Council on EPA's Fees for the Administration of the Toxic Substances Control Act (TSCA), 86 Fed. Reg. 1890 (Jan. 11, 2021); Docket No. EPA-HQ-OPPT-2020-0493; FRL-10018-40

Dear Mr. Edmonds:

The American Chemistry Council (ACC) appreciates the opportunity to comment on the Environmental Protection Agency's (EPA) proposed Fees for the Administration of the Toxic Substance Control Act (TSCA).

If you have any questions, please contact me at Kat_Gale@americanchemistry.com.

Sincerely,

Kat Gale

Kat Gale
Manager, Regulatory & Technical Affairs
American Chemistry Council

COMMENTS OF THE AMERICAN CHEMISTRY COUNCIL ON TSCA §26(B) PROPOSED TSCA USER FEES RULE

March 26, 2021

Executive Summary

The American Chemistry Council (ACC) supports the efficient and effective implementation of the 2016 amendments to the Toxic Substances Control Act (TSCA), including EPA's current effort to propose and finalize a TSCA fees rule to defray the cost of implementing sections 4, 5, 6, and 14 of the statute.[1] ACC has advocated that EPA should have the resources necessary to implement TSCA consistently throughout the TSCA modernization process and beyond.[2]

In our comments below, ACC makes the following suggestions to improve EPA's approach to collecting fees under TSCA section 6:

- Fees should be calculated based on a set-fee rather than a per-chemical methodology to provide industry greater economic certainty and minimize EPA's burden compiling the final lists of responsible parties, invoicing, and payment collection associated with the High-Priority Substances (HPS).
- The agency's proposed methodology uses an average of actual production volume, which would present confidential business information (CBI) concerns for companies claiming this sensitive information as confidential, an excessive reporting burden, and unnecessarily further complicates the calculations and collections of fees.
- EPA's final fees rule should clearly substantiate EPA's cost increase for the section 6 program by providing actual data and should address the issue of late-market entrants ("free riders") by implementing a system by which these free riders are barred from the market until contribution to the TSCA fee is made.
- The final fees rule also should:
    - provide a path back into the market for any manufacturer that has certified out of the market by contributing to the TSCA fee;
    - incorporate the use of additional import data sources such as U.S. Customs and Border Protection data and eliminate the use of data from the Toxics Release Inventory (TRI) to develop the preliminary lists of parties responsible for fees;
    - include an exemption for the import of substances as a byproduct;
    - include wire transfer as method of payment for the collection of section 6 fee payments; and
    - eliminate the double collection of EPA-Initiated Risk Evaluation fees for certain HPS that have been exported for processing and re-imported for sale in the United States.

[1] ACC also supports Congress' "intent to ensure that EPA has the resources it needs to implement the new and strengthened regulatory requirements of a modernized TSCA." 114 – 67, June 18, 2015, Pg. 30.

[2] House Committee on Energy and Commerce, *Revisiting the Toxic Substances Control Act of 1976*, Statement by Cal Dooley, February 26, 2009, p. 98.

General Comments

I. Program Cost Estimates and Activity Assumptions / Fee Amounts

A. EPA Must Provide Adequate Information to Determine Whether the Proposed Fees Are Fair and Reasonable

TSCA §26(b)(4)(F) requires EPA to review fees every three years and increase or decrease the fees as necessary to adjust for inflation and ensure that funds deposited in the Fund are sufficient to defray the agency's costs as set forth in TSCA. In granting EPA the authority to collect fees under amended TSCA, Congress expected "EPA to act prudently with this new authority." *See* H.R. Rep No. 114-176 at 32 (2015).

The Independent Offices Appropriations Act (IOAA) is also applicable to TSCA fees. The IOAA requires that fees and charges for government services be fair and based on "(A) the costs to the Government; (B) the value of the service or thing to the recipient; (C) public policy or interest served; and (D) other relevant facts." 31 U.S.C. § 9701(b) (originally codified at 31 U.S.C. § 483a). Under the IOAA, "[a]n agency may not charge more than the reasonable cost it incurs to provide a service, or the value of the service to the recipient, whichever is less." *Engine Manufacturers Ass'n v. EPA*, 20 F.3d 1177, 1180 (D.C. Cir. 1994) (citing *National Cable Television Ass'n, Inc. v. FCC*, 554 F. 2d 1094, 1104-07 (D.C. Cir. 1976)). Therefore, "[i]t is essential that an agency make clear the basis for a fee it assesses under the IOAA, so that a reviewing court can determine whether or not the 'value to the recipient' standard is met." *National Cable Television Ass'n*, 554 F.2d at 1100.

Moreover, the Administrative Procedure Act (APA) "requires the agency to make available to the public, in a form that allows for meaningful comment, the data the agency used to develop the proposed rule." *Engine Manufacturers Ass'n*, 20 F.3d at 1181 (citing 5 U.S.C. § 553(b)). An agency must "give adequate reasons for its decisions," and the requirement to give a "satisfactory explanation for its actions" is "satisfied when the agency's explanation is clear enough that its path may reasonably be discerned." *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016).

In this case, it is not possible to provide meaningful comment on whether the proposed fees are fair and reasonable because EPA has not provided sufficient documentation of EPA's actual costs from the previous three years or the basis for its estimated costs for fiscal years 2022-2024. While EPA provides general information on the factors it considered in estimating its costs, it does not provide any documentation of these costs. Moreover, the agency has not considered whether the proposed fees exceed the value to the recipient in cases where the section 6 risk evaluation fee could exceed the profit margin of the substance being evaluated.

II. Methodology for Calculating Fees

A. Allocation of TSCA Section 6-EPA Initiated Risk Evaluations Fees

ACC does not support the proposed methodology for calculating TSCA Section 6-EPA Initiated Risk Evaluation fees. The proposed methodology uses an average of actual production volume, which would present CBI concerns for companies claiming this sensitive information as

confidential. Fee-paying companies are business competitors and for those that choose to maintain their production volume as confidential, they could be forced into involuntary disclosures of CBI if the fee calculations are based on volume in the manner proposed.

In addition, the collection of production volume data is a detailed and time-consuming process. If a chemical is identified during an off-Chemical Data Reporting (CDR) year, obtaining and reporting this data presents a significant burden on industry that could be ameliorated with a different approach. Further, the calculation of numerous fees based on numerous multipliers also presents a significant burden on EPA to track and recalculate invoices and fees with each modification to the final lists. Finally, the proposed EPA methodology would present additional barriers to allow for the creation of a post-certification market-entry/re-entry ("Market Entry") system. If the currently proposed methodology were to be used, the recalculations of numerous fees would result, including the disbursement of numerous checks and payment verification by EPA. All of these items combined would be excessively burdensome.

ACC offers the following alternative methodologies for calculating fees for consideration by EPA:

1. Set Fees – Total Program Costs

ACC proposes a methodology for calculating the section 6 EPA-Initiated Risk Evaluation fees based on the full cost of the section 6 program rather than per substance. As currently proposed, the estimated cost of administering the TSCA section 6 EPA-Initiated Risk Evaluation program is $51,200,000. Under this *Set Fee* approach, the full cost of the program would be calculated across the total number of estimated manufacturers/importers expected to be included in the EPA-Initiated Risk Evaluations into four bands of set fees (i.e., per volume bands). The estimated number of manufacturers/importers used to set the fees would be calculated using historical data from the previous cycles of HPS.

a) Manufacturers/importers ("Manufacturers") would be divided into four tiered bands based on the average production volume from the four years prior to certification.
b) The four-tiered bands would be based on the EU REACH metric tonnage bands, i.e., 1-10 tonnes per year; 10-100 tonnes per year; 100-1000 tonnes per year; and >1000 tonnes per year. Each band would have a set fee, regardless of the number of entities identified as responsible for fees (i.e., EPA would collect more fees on the substances with more companies and those, especially, with more significant volume, which would also represent the likely complex risk evaluations needed for such substances.)
c) Small businesses would continue to receive the 80% discount under this methodology. The amount to be paid by a small business would be 20% of the value of a large business in the same tonnage band.
d) Finally, as part of this approach, a multiplier would need to be incorporated to differentiate the fee between each band. ACC is recommending a multiplier 1, 2, 4, 8 for the four bands.

Example: Number for tonnage bands are hypothetical numbers. Actual data would require EPA analysis.

Total Fee per Substance:	$2,560,000
Number of Substances:	20
Total Fee (All Substances):	$51,200,000

	1-10 Metric Tonnes Band (1x)	10-100 Metric Tonnes Band (2x)	100-1000 Meteric Tonnes Band (4x)	>1000 Metric Tonnes Band (8x)	Total # Companies
Small Companies:	20	23	15	5	63
Large Companies:	25	50	80	36	191

Fee/company	**1-10 Band**	**10-100 Band**	**100-1000 Band**	**>1000 Band**	**Total Fees Collected**
Small Companies:	**$13,365**	**$26,729**	**$53,459**	**$106,917**	**$2,218,533**
Large Companies:	**$66,823**	**$133,647**	**$267,293**	**$534,586**	**$48,981,467**
					$51,200,000

Remodeling the section 6 EPA-Initiated Risk Evaluation program with this *Set-Fee* approach eliminates the issues identified above with EPA's proposed methodology. It would also ensure predictability for the regulated community from a budgeting perspective, it would be simpler for EPA to calculate and track, and there would be no need to recalculate the invoices based on changes to the final responsible fee payor lists. Finally, ACC's proposed methodology, incorporating a Market-Entry structure into the scheme would be simplified, with no need for reimbursements to Manufacturers as all new entrants/re-entrants would make payments directly to EPA.

2. Alternate Methodology: Tiered Bands – Per Substance

As an alternative to the Set-Fee approach, ACC proposes a four-tiered payment methodology based on the current per substance calculations. Similar to the *Set-Fee* methodology, this *Tiered Bands* methodology will separate manufacturers into tiered bands based on the EU REACH-like metric tonnage bands, i.e., 1-10 tonnes per year, 10-100 tonnes per year, 100-1000 tonnes per year, and >1000 tonnes per year based on the average of its production volume over the previous four calendar years. And, the fee per band will then be calculated using a multiplier (ACC proposes using a multiplier of 2x or 1, 2, 4, 8.) Small businesses would continue to receive the 80% discount under this methodology, whereas the tonnage band for a small business would be 20% of the value of a large business in the same tonnage band.

Similar to the *Set-Fee* methodology, this *Tiered Bands* methodology creates greater equity in fee distribution, eliminates CBI concerns because manufacturers are not reporting actual production volumes and the approach uses fewer multipliers for the calculations of fees. However, unlike

the *Set-Fee* methodology, this *Tiered Bands* methodology does not provide the regulated community with predictability of fee payments, final invoices would continue to be recalculated with every modification to the final payor list, the two group system presents the possibility that high-volume small businesses may pay more than non-small businesses, and this methodology presents complications when implementing a Market Entry system.

B. Payment Structures for Section 6 Risk Evaluations

As noted above, although the proposed increase of the cost for both the Manufacturer Requested Risk Evaluations (MRRE) and EPA-Initiated Risk Evaluations appears unsubstantiated, ACC appreciates and supports the proposed modifications to the payment of TSCA Section 6 fees. Providing manufacturers additional time to pay the fees associated with the TSCA Section 6 program over multiple fiscal years provides industry greater certainty so that it can budget and plan for the expense and should provide EPA with more stable revenue in between HPS identification years. Incorporating the proposed payment structure with the *Set-Fee* methodology proposed would provide ongoing fiscal predictability to manufacturers in that regardless of when a chemical is designated a HPS for risk evaluation, a manufacturer will be able to budget and approximate when those fees will be due. Further, including both the proposed payment structure and ACC's proposed *Set-Fee* methodology in the final rule will eliminate the uncertainty regarding the total fee amounts and due dates of the final fee assessments that existed with the current 20 risk evaluations.

III. Fee Categories

A. Test Orders

ACC does not support EPA's proposed methodology of using this new fee structure as an opportunity to "incentivize companies to correctly follow section 4 test order guidelines." Companies subject to a test order are subject to TSCA section 16 enforcement penalties for non-compliance with a test order, and therefore, an additional fee to "incentivize" companies to comply with an order is unnecessarily punitive. ACC and consortia managers are working diligently with EPA on the recently released test orders to discuss and negotiate timelines, as well as the terms of compliance, based on a variety of factors, e.g., lab capabilities, appropriateness of testing protocols, etc., many of which are beyond industry control. EPA should omit this fee from its proposal.

If EPA rejects ACC's comments in this regard, ACC urges EPA to re-propose a fee for test orders for public comment that addresses the following topics: (1) what precisely would trigger this fee; (2) what would be considered "noncompliance;" (3) would any resubmission of additional data require the full fee and why; and (4) what would be the circumstances under which such a fee would not be triggered?

B. Bona Fide Notice

ACC supports the addition of a new fee for Bona Fide Notices (BFN) provided that EPA incorporates a deadline of 30 calendar days for EPA to complete the BFN request from industry because the response to a BFN is frequently delayed. Should EPA reject the addition of a 30 calendar day deadline for completion of the BFN, ACC opposes including a separate fee for BFNs. ACC believes that any potential benefit EPA might derive from this fee is likely outweighed by the administrative costs associated with the invoicing and processing of this payment by EPA.

C. Notice of Commencement

ACC does not support including a new fee category for Notice of Commencements (NOC), as the bulk of the work associated with evaluating and processing a new chemical substance is managed during the PMN review, not in listing a chemical on the TSCA Inventory or the confidential inventory.

Alternatively, if additional fees under TSCA section 5 are truly warranted, ACC recommends increasing the cost of the PMN fee by an amount that corresponds to the ratio of PMNs submitted to those that proceed to commencement (on average), to capture the work performed on those notices. PMN-to-NOC is not a 1:1 equivalency. By adding a small increase to the PMN fee, EPA would collect this proposed fee for all PMN submissions and, therefore, recoup the costs associated with the work performed.

IV. Entities Subject to Fees

ACC supports EPA's proposed exemptions to the Entities Subject to Fees associated with EPA-initiated risk evaluations for: 1) manufacturers that import the chemical substance in an article; 2) manufacturers (including importers) of a substance that is produced or imported as an impurity; 3) manufacturers of a substance that is produced as a non-isolated intermediate;[3] 4) manufacturers of small quantities of a chemicals solely for research and development;[4] and 5) entities that manufacture a chemical substance in quantities not to exceed 2,500 lbs.[5]

As EPA correctly noted in its proposal, the manufacturers initially subject to but later excluded from the fees rule experienced significant burdens that would have or did create uncertainty, extensive testing of products and articles, and an inability to comply with EPA's certifications of cessation/manufacture language. These burdens would have outweighed the revenue EPA would have derived for substances that were manufactured or imported at low volumes. The proposals to exclude these manufacturers from EPA-Initiated Risk Evaluations alleviates that burden and creates a more equitable arrangement for fee payors. Further, excluding these manufacturers has no impact on the overall fees EPA expects to collect or the conditions of use contained in a final scope document of a given risk evaluation. ACC and its members understand that with the reduction in the number of responsible fee payors, those manufacturers remaining on the final fee payor lists will not only be expected to pay a higher proportion of the risk evaluation fee but may also be paying for the evaluation of a condition of use that they may not support.[6] ACC also appreciates the proposed exemption for manufacturers of a substance that is produced as a byproduct. However, ACC requests that this exemption be revised to read as follows:

> Manufacturers **(including importers)** of a substance that is produced or **imported** as a byproduct.

Importing a HPS as a byproduct has the potential to create the same or similar burdens on companies as the importation of an impurity. If a byproduct is imported as part of a mixture, an importer may not know that the HPS is contained within the mixture unless expressly informed

[3] 40 CFR 704.3
[4] 40 CFR 700.43
[5] 40 CFR 711.8(b) and 40 CFR 711.15
[6] By "support," ACC means sells into the market for that particular condition of use.

by the exporter. As such, the same uncertainties that this exemption and the previous No-Action Assurance were designed to eliminate would continue to exist unless EPA adopts ACC's recommendation.

V. Self-Identification

A. Final Lists

ACC does not support EPA's proposal to continually modify the final fee payor lists as warranted. The continued addition and subtraction of fee payors from the final lists creates significant uncertainty and poses budgeting burdens on companies, if the current proposed methodology is used. Alternatively, ACC proposes EPA publish three lists:

a. Preliminary List;
b. Interim List: concurrently with the publication of the final scope documents; and
c. Final List: 60 days after the publication of the final scope documents.

Publishing an Interim List will allow EPA and fee payors to review the lists, communicate with one another, and conclude any potential consortia formation within the 60-day window preceding publication of the Final List. Providing a final end-date alleviates the uncertainty and budgeting concerns manufactures would face under EPA's current proposal. Further, incorporating EPA's proposal to extend the timing requirements for payments and consortia notifications with this proposed publication sequence, Manufacturers would have an additional 120 days from the date of publication of the final list to coordinate the payment of the initial fee and an additional 30 days to make a final decision about consortia membership.

B. Issuing Preliminary Lists

ACC appreciates EPA's clarification in the proposed rule of the techniques a manufacturer can use to self-identify, correct errors, certify no manufacture and no intent to manufacture, and communicate concerns to EPA and we request that these clarifications be included in the final rule.

C. Developing Preliminary Lists

Although not discussed in this proposed rule, ACC proposes EPA amend the language used in the 2018 Fees Rule regarding the development of the preliminary lists. Specifically, ACC proposes that EPA not rely on data obtained in the Toxics Release Inventory (TRI), as that data relies on reported chemical release information from all users of a specific substance and is not indicative of manufacturing or importing substances. The use of TRI data, for the development of the 2019 preliminary lists created excessive time burdens on both EPA to review and create the preliminary lists and on industry to self-identify as non-manufactures in order to be removed from the final lists. Chemical Data Reporting (CDR) information is an accurate data source to use for the development of the preliminary lists.

Additionally, ACC proposes that EPA use other data sources that focus on import data, such as the U.S. Custom and Border Patrol Data (ACE). As reflected in the implementation of the 2018 Fees rule, the use of TRI resulted in EPA capturing companies that are not within the scope of the TSCA Fees rule, resulting in the waste of EPA and industry resources reviewing, discussing, and removing those companies from the fee payor lists. The use of a more robust import data

source, such as ACE, will improve EPA's preliminary data relied upon in implementation of the TSCA fees rule.

ACC's proposed edits to the 2018 language are reflected in italics and bold as follows:

a) Modify: § 700.45(b)(2) Fee payments. (Data Sources)
b) *Identifying manufacturers subject to fees*—(2) *Data sources.* To compile the preliminary list, EPA will rely on information submitted to the Agency (such as the information submitted under sections 5(a), 8(a), ***and*** 8(b)~~, and to the Toxics Release Inventory~~) as well as other information available to the Agency, including publicly available information ***(e.g., Panjiva)*** or information submitted to other agencies to which EPA has access, ***(e.g., U.S. Custom and Border Patrol data)***. To be able to include the most recent CDR data and to account for annual or other typical fluctuations in manufacturing, EPA will use the five most recent years of data submitted or available to the Agency to develop the preliminary list.

D. Self-Identification

ACC supports EPA's proposal to exclude from the self-identification requirements: 1) importers of the chemical substance in an article; 2) manufacturers of a substance that is produced or imported as an impurity; and 3) manufacturers of the substance that is produced as a byproduct. As noted above, ACC proposes that the exemption and the self-identification exemption be applied to the import of byproducts as well.

Further, ACC supports EPA's proposed document-retention policy for ordinary business records for a period of five years post-certification as it applied to the proposed Research & Development, non-isolated intermediates and production volume under 2,500 lbs exemptions. ACC does not support EPA's collection of actual production volumes, as noted above, as the collection and reporting of this information poses significant CBI concerns, as well as data-collection burdens. Alternatively, the reporting of average production volume based on the previous four years of data, and then corresponded into one of four bands (0-10 tonnes; 10-100 tonnes; 100-1000 tonnes; and >1000 tonnes) would eliminate these concerns.

E. Market Entry/Market Re-entry

ACC proposes the elimination of the "free rider" system, a system by which manufacturers that were not previously in the market of a HPS–prior to the initiation of the HPS prioritization process—can choose to enter the market following the publication of the final scope documents and be excluded as a fee payor. ACC proposes that EPA adopt a process to permit companies to resume entry into the market for any manufacturer that certified out of the market during the self-identification period. The current "free rider" system, where a manufacturer can enter the market as soon as the TSCA fee is collected without paying a fee, is unfair to those manufacturers that paid a fee for the risk evaluation. Further, barring manufacturers from participating in the market for a period of five years, especially in light of the proposed Research & Development exemption, may impede or create unnecessary economic barriers to technological innovation, contrary to Congressional intent.

ACC offers the following proposals to incorporate these suggested changes:

a. Post Certification Market Re-entry Proposal:

i. Proposal based on the *Set-Fees* Methodology:
Manufacturers/Importers (M/I) that have certified out of the market will have an option to re-enter the market during the subsequent five-year period by notifying EPA of intent to re-enter the market and pay the set fee associated with the tier band it anticipates manufacturing the HPS. EPA would require that the "re-entrant" not exceed the volume limit that it selected during the five-year post-certification period. All fees assessed will be paid directly to EPA. Re-entrants may begin the manufacture/import of the HPS once payments have been confirmed by EPA. Failure to comply with this standard will constitute a violation of the Certification and subject the re-entrant to TSCA enforcement penalties.

ii. Proposal based on Per chemical language:
M/I that have certified out of the market will have an option to re-enter the market during the subsequent five-year period by paying each M/I identified on the Final List of the relevant HPS, the equitable share to enter the market as described below.[7] The M/I seeking to re-enter the market will choose to re-enter the market in a specific volume tier band. EPA would require that the "re-entrant" not exceed the volume limit that it selected during the five-year post-certification period. The calculation for any fee reimbursements will be based on the current fee calculations (i.e., as if the entrant were one of the original fee-paying entities). Reimbursements (i.e., the differences in what another M/I should have paid if the re-entrant had participated originally and the amount that they actually paid) due to the other fee paying entities will be paid to each M/I listed on the current Final List. However, should the individual payments be less than $1,000 to small M/I and/or $5,000 to large M/I, entrants will not be required to issue these payments, but will include language in its Certification as to why these payments were not made. Certification of payment must be provided to EPA prior to the manufacture or import of the HPS. Failure to comply with this standard will be a violation of the Certification and subject the re-entrant to TSCA Enforcement penalties.

b. Post-Final Scope Publication Market Entry

i. Proposal based on the *Set Fees* Methodology:
M/I who have not manufactured or imported a HPS prior to the publication of the final scope documents in the Federal Register will be precluded from entering the market during the subsequent five-year period unless it notifies EPA of its intent to enter the market and pays the set fee associated with the tier band it anticipates manufacturing the HPS. EPA would require that the "new entrant" not exceed the volume limit that it selected during the five-year post-certification period. All fees will be paid directly to EPA. New entrants can begin the manufacture/import of the HPS once payments have been confirmed by EPA. Failure to comply with this

[7] If a M/I is identified as CBI on a final list, Re-Entrant will contact EPA and request EPA to contact the CBI M/I to obtain a mailing address of where to send the Fees payment.

standard will be a violation of the Certification and subject the new entrant to TSCA Enforcement penalties

ii. Proposal based on Per chemical language:
M/I who have not manufactured or imported a HPS prior to the publication of the final scope documents in the Federal Register will be precluded from entering the market during the subsequent five-year period unless it individually pays each M/I on the most recent Final List for the relevant HPS the equitable share to enter the market as described below.[8] The M/I seeking to enter the market will choose to enter the market in a specific volume tier. EPA would require that the "new entrant" not exceed the volume limit that it selected during the five-year post-certification period. The calculation for any fee reimbursements will be based on the current fee calculations (i.e., as if the entrant were one of the original fee-paying entities). Reimbursements (i.e., the differences in what another M/I should have paid if the new entrant had participated originally and the amount that they actually paid) due to the other fee paying entities will be paid to all M/I listed on the current Final List. However, should the individual payments be less than $1,000 to small M/I and/or $5,000 to large M/I, entrants will not be required to issue these payments, but will include language in its Certification as to why these payments were not made. Certification of payment must be provided to EPA prior to the manufacture or import of the HPS. Failure to comply with this standard will be a violation of the Certification and subject the new entrant to TSCA Enforcement penalties.

VI. ***Timing*****:**

ACC appreciates and supports EPA's proposed modifications to the notification period for consortia formation from 60 to 90 days, as well as the extension of the first fee payment for the EPA-Initiated Risk Evaluation from 120 days to 180 days from the publication of the final scope documents. Both of these proposed modifications alleviate significant timing issues on companies during the early days of the planning, implementation, and payment process.

Specifically, ACC appreciates that EPA recognized and has tried to address many of the challenging issues identified by current consortia during their formation. The proposed addition of 30 days will allow time for continued engagement among consortia members, as well as others considering joining a consortium. Companies must evaluate many considerations when deciding how to proceed regarding EPA's risk evaluations.

VII. Fee Amounts

Fee Amounts for Small Businesses

ACC supports the 80% reduction in fees to small businesses; however, the discount should be a straight 80% reduction, not a sliding scale. ACC's proposed Methodologies for Calculating Fees in Section II of these comments reflects how this fee should be captured in a more equitable manner.

[8] If a M/I is identified as CBI on a final list, New Entrant will contact EPA and request EPA to contact the CBI M/I to obtain a mailing address of where to send the Fees payment.

VIII. Collection of Fee Payments:

ACC requests that a modification to the "Payment Method" language in the 2018 Fees Rule to allow manufacturers to pay fees via wire transfers. The 2018 Fees rule limited payments of TSCA fees to ACH debits or credit card payment. Neither of these options are appropriate mechanisms for sums as significant as the fees invoiced for the EPA-Initiated Risk Evaluations, which, in some cases, were hundreds of thousands of dollars. Credit card payment authorizations are limited to amounts less than $25,000 per transaction and it is unreasonable to expect companies to authorize disclosure of their confidential bank account information to any entity.

ACC suggests the following modification to the language from the 2018 Fees Rule:

I. Payment of Fees and Refunds

4. Payment method. ~~EPA originally proposed to accept payment of fees through two different electronic payment options: Pay.gov and Fedwire. However, upon further review, EPA has determined that Fedwire is not a viable option for the Agency's current financial systems. As such, the final rule~~ ***EPA*** will ~~only~~ allow electronic payment through the secure, Pay.gov collection portal. ~~As indicated in the proposed rule,~~ Pay.gov provides customers the ability to electronically complete forms and make payments twenty-four hours a day. Because the application is web-based, customers can access their accounts from any computer with internet access. Manufacturers (and processors, where appropriate) would be expected to create payment accounts in Pay.gov and use one of the electronic payment methods currently supported by Pay.gov (e.g., ***wire transfer,*** Automated Clearing House debits (ACH) from bank accounts, credit card payments, debit card payments, PayPal or Dwolla). Because Pay.gov does not accept paper checks as payment, EPA will not accept paper checks as payment for TSCA services. Additional instructions for making payments to EPA using Pay.gov are found at https://www.epa.gov/financial/additionalinstructions-making-payments-epa.

IX. Double Collection of TSCA Fees

The current TSCA Fees rule requires a manufacturer that imports a HPS originally manufactured in the United States and later exported, solely for the purpose of processing/other, and then reimported for sale into the United States to pay the TSCA fee associated with an EPA-Initiated Risk Evaluation. Thus, there are many cases where a substance would be paid for twice (i.e. by separate companies for both activities—manufacture and import.) Both the manufacturer and importer are currently paying a fee for the same HPS. Only the original manufacturer of the HPS should be responsible for the payment of the TSCA fee. By continuing with this current practice, industry could face trade barriers or other financial (e.g. competitive) burdens. ACC proposes a change to this procedure and offers the following language:

In cases where an importer is able to substantiate that the HPS it has purchased was originally manufactured domestically, only the original manufacturer of a HPS would be responsible for the TSCA fee payment. It is the Importer's obligation to confirm that the fee for the manufacture of the HPS is accounted for by the original manufacturer and obtain a certification from the original manufacturer. EPA will create a certification that allows these importers to opt-out of the payment of fees by confirming with the original manufacturer on the Preliminary List for the HPS of its commercial status, and providing the certification to

EPA if requested by EPA.[9] If Importer cannot obtain a certification from the original manufacturer, the Importer would remain responsible for the payment of the fee.

In some instances, exported shipments of a HPS may be returned into the U.S. EPA has mistakenly treated processors as importers in these cases when they are not, and included them on the final lists as importers based solely on returned exported shipments.[10] A domestically manufactured HPS that was shipped in error and returned should not convert the role of processor to importer and therefore a payor of the TSCA fee. If the processor is able to substantiate that the HPS it has purchased was originally manufactured domestically, only the original manufacturer of a HPS would be responsible for the payment of the TSCA fee.

***

Thank you again for the opportunity to comment. Please let me know if you have any questions.

Sincerely,

Kat Gale

Kat Gale
Manager, Regulatory & Technical Affairs
American Chemistry Council

[9] Examples: Polymer exemption certifications
[10] Other examples include: the recall of a processed HPS after its export; the residue of a processed HPS remained in a returned canister after export – there is no commercial value in the canister; and/or the shipment was refused by a purchaser.