

January 17, 2023
Marc Edmonds
Existing Chemicals Risk Management Division (7404M)
Office of Pollution Prevention and Toxics
Environmental Protection Agency
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Washington, DC 20460-0001
edmonds.marc@epa.gov

Re: Fees for the Administration of the Toxic Substances Control Act (EPA-HQ-OPPT-2020-0493)

Dear Mr. Edmonds,

On behalf of the Household & Commercial Products Association¹ (HCPA) and its members, we wish to convey our comments on the proposed supplement to the Fees for the Administration of the Toxic Substances Control Act (TSCA) in docket EPA-HQ-OPPT-2020-0493. HCPA is committed to ensuring that modernized TSCA succeeds and supports the Agency in having sufficient resources from both industry and Congressional appropriations to administer the Act.

As many in industry have experienced and the recent Inspector General report confirmed,² there is a clear need for additional resources within the EPA TSCA program. In the supplemental notice of proposed rulemaking, the Agency puts forward a comprehensive breakdown of the cost of full implementation of TSCA. That being said, the cost of the TSCA program is defined by what the EPA and the Administration request from Congress to

¹ HCPA is the premier trade association representing the interests of companies engaged in the manufacture, formulation, distribution and sale of more than \$180 billion annually in the U.S. of familiar consumer products that help household and institutional customers create cleaner and healthier environments. HCPA member companies employ hundreds of thousands of people globally. HCPA represents products including disinfectants that kill germs in homes, hospitals and restaurants; air fresheners, room deodorizers, and candles that eliminate odors; pest management products for pets, home, lawn, and garden; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used every day.

² The EPA's Fiscal Years 2020 and 2019 Toxic Substances Control Act Service Fee Fund Financial Statements, <https://www.epa.gov/office-inspector-general/report-epas-fiscal-years-2020-and-2019-toxic-substances-control-act>

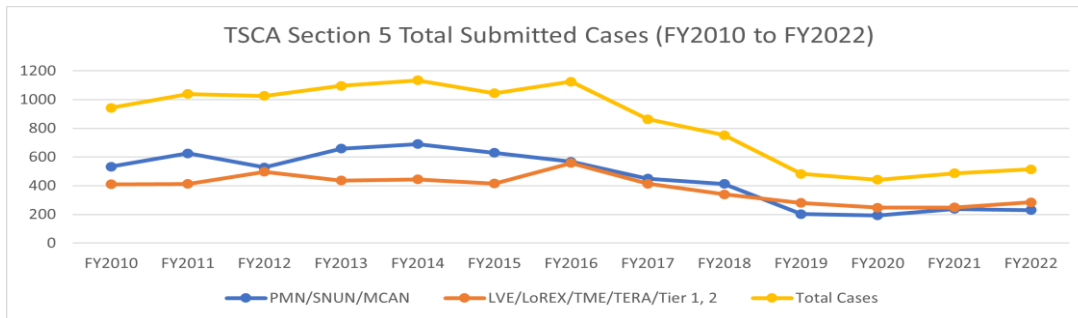
implement the program. In FY23, EPA requested \$124M from Congress to implement, sections 4, 5, and 6, 8, and 14³ under TCSA authorized by TSCA EPA can charge fees to defray 25% of the cost to implement section 4, 5, and 6 portion of this budget category. Accordingly, HCPA urges EPA to give our comments careful consideration as the Agency works towards an effective and balanced approach for collection of fees to offset the administrative costs for the implementation of the Act.

HCPA is concerned that, to date, the Agency has not requested appropriations sufficient to cover the cost of implementing the TSCA program. As noted in the supplement proposal and supporting documents, the Agency estimates the cost of implementing the program is \$181M, but the fiscal year 2023 appropriations request was only \$124M (which includes Section 8 & 14 funding). If EPA thought the cost of implementing the program was \$181M and that EPA could collect 25% of the cost through fees, then EPA would have requested \$136M (\$136 plus 0.25 x \$181M). It is our view that the Agency should have been making appropriations requests consistent and reflective of the cost of implementing the TSCA program and to do otherwise would overburden industry and contradict Congressional intent.

While the number of fee-generating actions in the supplemental proposal are consistent with expectations and TSCA mandates, the level of effort associated with these activities is appreciably less clear. For example, the Agency “estimates that it will receive 210 PMNs, SNUNs, and MCANs per year, and another 290 exemption applications per year” and the current New Chemicals statistics page cites TSCA Section 5 caseloads reasonably similar to these values.⁴

³ EPA refers to this budget category as CRRR (Chemical Risk Review and Reduction), see page 487 of <https://www.epa.gov/system/files/documents/2022-05/fy23-cj-05-epm.pdf>

⁴ Statistics for the New Chemicals Review Program under TSCA. <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/statistics-new-chemicals-review>, accessed 1/15/2023.



However, the number of Section 5 activities under TSCA has dropped appreciably since 2016 with increased statutory requirements that have not been adequately accounted for in the supplement proposal. Further, the value of \$54,162,600⁵ of costs associated with Section 5 Activities and the corresponding 185.2 full-time equivalent (FTE) estimate is not clear or supported and these values form the basis for corresponding fees. It would also benefit the Agency to provide an indication of how the FTE estimate compares to the current level of FTE implementing TSCA Section 5 activities. This step would provide an indication to the many companies that have experienced considerable delays that additional fees would provide the Agency with sufficient resources to complete action in timely manner.

Additionally, the activity load of 2.7 actions per FTE appears very low, i.e., the Agency’s estimate of 500 total actions divided by 185.2 FTE. It is unclear how the Agency determined these estimates and as noted in the recent Inspector General Report 23-F-0005 *The EPA’s Fiscal Years 2020 and 2019 Toxic Substances Control Act Service Fee Fund Financial Statements* there are questions as to whether the Agency has “an adequate methodology to properly record all costs for administering certain provisions of TSCA.”⁶ HCPA strongly recommends that the Agency more robustly support these burden estimates and implement the IG recommendation to accounting practices associated with TSCA. For example, for many years, the Office of Pesticide Program required all staff to account for their time across various regulatory activities (i.e., amendments, new chemicals, existing chemicals, section 18). This system, referred to as Time Accounting Information System (TAIS), allowed EPA to estimate with a reasonable degree of accuracy what it cost the agency to administer FIFRA/FFDCA. A similar approach within OPPT

⁵ See Section IIB of the Technical Support Document

⁶ Office of the Inspector General Report 23-F-0005, *The EPA’s Fiscal Years 2020 and 2019 Toxic Substances Control Act Service Fee Fund Financial Statements*, December 29, 2022. <https://www.epa.gov/office-inspector-general/report-epas-fiscal-years-2020-and-2019-toxic-substances-control-act>

would give EPA a much more defensible approach to estimate the cost to administer the TSCA program. These more robust estimates would then underpin EPA and Administration budget requests to implement the program.

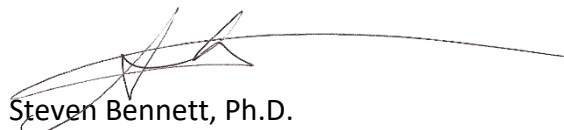
HCPA does not take issue with the Agency interpreting that the 25% of TSCA implementation costs applies to the total aggregate cost and that the Agency can recover an amount above or below 25 percent of the costs for an individual section of TSCA. This flexibility reflects real-world practicality and affords the Agency the opportunity to incentivize certain types of actions, however, this flexibility should be carefully considered and not unduly burden or disincentivize other types of actions.

We want to reiterate our concern that the fee associated with manufacturer-requested risk evaluations may discourage requests for low priority chemicals to undergo evaluation or at least limit requests to large volume chemicals, for which manufacturers can more readily recoup the costs.⁷ HCPA suggests that EPA utilize appropriate evaluations, such as chemicals on the EPA Safer Chemical Ingredient List (SCIL) and risk assessments conducted under Canada's Chemical Management Plan substances of low concern list and that the Agency develop training, similar to Sustainable Futures, to incentivize manufacturer-requested risk evaluations of low priority chemicals.

In conclusion, HCPA is committed to assisting the EPA and improving the implementation of TSCA and ensuring a robust and equitable fee structure is an integral foundation. HCPA is pleased to provide input and thanks the EPA for taking these comments into consideration.

If you or your staff have any questions or would like to discuss our comments further, please do not hesitate to contact me at sbennett@thehcpa.org.

Sincerely,



Steven Bennett, Ph.D.
Executive Vice President, Scientific & Regulatory Affairs

⁷ <https://www.regulations.gov/comment/EPA-HQ-OPPT-2020-0493-0058>