



675 North Washington Street
Suite 275
Alexandria, VA 22314
703.684.5574
www.ilma.org
ilma@ilma.org

January 17, 202

Submitted via www.regulations.gov

Mr. Marc Edmonds
Existing Chemicals Risk Management Division (7404M)
Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

**Re: Fees for the Administration of the Toxic Substances Control Act
Docket No.: EPA-HQ-OPPT-2020-0493**

Dear Mr. Edmonds:

The Independent Lubricant Manufacturers Association (“ILMA” or “Association”) submits the following comments on the Environmental Protection Agency’s (“EPA” or “Agency”) supplemental notice of proposed rulemaking (“SNPRM”) on fees for the administration of the Toxic Substances Control Act (“TSCA” or “Act”), 87 Fed. Reg. 68647 (Nov. 16, 2022).

EPA’s proposed revised fee amounts are too high, particularly when such increased fees likely will frustrate the purposes and goals of the 2016 TSCA amendments. Without a better and more detailed analysis and explanation of its resource needs, the Agency is frustrating its own mission and, importantly, will stifle innovation and development of new chemistries with better safety and sustainability profiles. As discussed below, ILMA recommends that EPA freeze the current fees for TSCA Section 5 activities for “small business concerns” and that the Agency not penalize those small businesses that join consortia.

Introduction of ILMA

ILMA, established in 1948, is an international trade association of over 300 lubricant manufacturers, distributors, and suppliers. The overwhelming majority of the Association’s member companies are “small businesses,” as defined by the Small Business Administration. As a group, ILMA Manufacturing Member companies manufacture and sell over 70 percent of the metalworking fluids (“MWFs”) and 25 percent of all lubricants utilized in North America. Many member companies export finished lubricants from the U.S. or maintain business arrangements for the international use of their proprietary formulae.

Independent lubricant manufacturers are neither owned nor controlled by companies that explore for or refine crude oil to produce lubricant base oils. Base oils are purchased from refiners and re-refiners, while lubricant additives are purchased from chemical companies. Independent lubricant manufacturers combine these components to manufacture high quality, often specialized, lubricants.

A 2020 study of the U.S. lubricants market by IHS Markit reveals that ILMA member companies in 2018 had \$14.6 billion in sales activity, contributed \$7.2 billion to GDP, and maintained 26,000 jobs that paid a total of \$2.7 billion in income.

ILMA's Interest in the SNPRM

ILMA supports EPA's implementation of the 2016 TSCA amendments in a manner that assures the TSCA programs (*e.g.*, new and existing chemicals) are both efficient and effective in protecting human health and the environment. The Association's members work, collaborate, and partner with their raw material suppliers and customers to address everchanging lubricant needs, which are essential to the functioning of the global economy. For example, ILMA members address challenges each day to improve the energy efficiency and durability of internal-combustion engine vehicles while at the same time reducing their emissions. Members currently are addressing the next generation of lubricants for electric vehicles.

Further, ILMA members strive to increase productivity and efficiency in a variety of industrial applications, including wind turbines, hydraulic pumps, compressors, and machinery gears, by supplying industrial oils and greases. Association members are hard at work developing "green" or sustainable formulations for many industrial machines.

Additionally, MWFs extend the life of machine tools used to bend, shape, or cut metal and coat the surfaces of work pieces. MWFs also dissipate heat and reduce friction, corrosion, and adhesion. ILMA members are working constantly to improve the effectiveness of MWF mixtures by adding emulsifiers, lubricity additives, coercion inhibitors, extreme pressure additives, and other chemicals.

ILMA members are committed to meeting their customers' expectations responsibly with chemistries that continue to evolve and with the goal of reducing greenhouse gas emissions. Accordingly, the Association appreciates the opportunity to provide comments to the Agency on its proposed amendments to the TSCA Fees Rule.

The Proposed Fee Increases Need Further Analysis

When Congress amended TSCA in 2016, stakeholders, including ILMA and its members, agreed that the amendments should provide EPA with the tools it needs to ensure the safe use of chemicals, enhance public confidence in those chemicals, and provide a more predictable regulatory environment while allowing for chemical innovation. Unfortunately, and as the Agency is aware, some of current methods by which the 2016 TSCA amendments are being implemented by EPA are preventing achievement of these goals. While EPA needs additional resources to more efficiently implement the programs authorized by the 2016 TSCA amendments, the Agency must strive for transparency and consistency in its TSCA decision-making practices, meet statutory deadlines, and issue decisions timely and in a predictable manner.

While the Association appreciates EPA's candor in stating that "a lack of resources" has been "[t]he primary challenge" in TSCA's implementation¹, the chemical industry cannot be expected to "cover" the Agency's budget shortfall. TSCA Section 2(b)(3) expressly provides that the Act should not "impede or create unnecessary economic barriers to technological innovation."² Rather, Congress intended that Act's "primary purpose [be] to assure that [] innovation and commerce in [] chemical substances and mixtures do not present an unreasonable risk of injury to health or the environment."³ In granting the Agency the authority to collect fees under the 2016 TSCA amendments, Congress expected "EPA to act prudently with this new authority."⁴

EPA's proposed TSCA fee increases unfortunately will have the opposite effects, falling short of Congress' directives. While ILMA supports EPA's efforts to adjust its TSCA fees when doing so will provide additional resources that are necessary to reliably implement the Act, the Agency has failed to explain in the SNPRM how fee payers and the public will see *demonstrable* improvements across the TSCA programs if the proposed increases to the TSCA fees are finalized. Simply, fee payers and the public expect EPA to meet its deadlines and issue TSCA determinations in a consistent and transparent manner, so the Agency needs to recognize the effect that the TSCA fees can have, especially in the Section 5 program. At the same time, EPA should look for ways to encourage cooperation and collaboration with the Agency to help reduce burdens on EPA's workload and review schedules.

Congress and fee payers also expect that the TSCA fees will not serve as a barrier to innovation. If the TSCA fees present such a barrier, EPA will continue to be faced with resource challenges. The proposed revised fee amounts, such as the 136% increase in the fees for new chemical evaluations under TSCA Section 5, from the current \$19,020 to the proposed amount of \$45,000 for businesses which do not qualify as "small businesses" under the TSCA Fees Rule, are too high, especially when the Agency provides only a very high-level explanation of how it derived the proposed fee amounts. One important element is the total cost of carrying out the relevant TSCA activities, especially with the additional appropriations recently provided by Congress.

Accordingly, EPA must carefully and better analyze its true resource needs for the TSCA program, explain these needs in detail, and only then decide whether the increased fees are warranted. Such an analysis and explanations are lacking in the SNPRM and must be performed by the Agency prior to its finalization of the TSCA Fees Rule.

The Proposed Fees for Section 5 Activities Are Too High

EPA's proposed fees for new chemicals activities under TSCA Section 5 are too high, especially when the recent increase in appropriations from Congress for the Agency's chemicals management program is considered. ILMA anticipates that the proposed Section 5 fees, if promulgated, will

¹ 87 Fed. Reg. 68647, 68649 (proposed Nov. 16, 2022) (to be codified at 40 C.F.R. 700).

² 15 U.S.C. § 2601(b)(3) (2021).

³ *Id.*

⁴ *See* H.R. Rep. No. 114-176 at 32 (2015).

have the undesired effect of impeding chemical innovation rather than reducing the Agency's backlog of reviews of new chemical substances notifications. It also is critical that novel chemistries submitted to EPA receive timely and transparent evaluations.

Since the promulgation of the 2018 TSCA Fees Rule, ILMA and its members have been concerned with the cost barriers of new chemical submissions, including for small businesses. This concern, in part, was generated by EPA's estimate in its 2018 TSCA Fees rule proposal that a 540 percent increase in PMN/SNUN/MCAN fees would result in a 20 percent decrease in submissions to the Agency. While some reduction in the number of Section 5 submissions is inevitable because of the statutorily mandated fee structure, it appears that Section 5 submissions have dropped off more than EPA anticipated after the promulgation of the 2018 TSCA Fees Rule. Accordingly, as part of the finalization of the SNPRM, EPA needs to consider such impacts and ensure that its cost-recovery efforts do not conflict with Congress' directive that EPA not "impede unduly or create unnecessary economic barriers to technological innovation."⁵

To ensure that the TSCA program does not create a bias toward existing chemistries, ILMA recommends that the fees for Section 5 activities be tied to the estimated number of new notifications to be reviewed, rather than based solely on program costs. This approach better aligns with the requirement in TSCA that EPA limit fees to those "that [are] sufficient and not more than reasonably necessary to defray the cost"⁶ related to the administration of the TSCA program. This approach, in the long term, will better match the Agency's overhead costs for evaluating new chemicals with maximizing the number of Section 5 submissions.

In terms of sheer dollar amount, EPA is proposing to increase the current fees for pre-manufacture notices ("PMNs") and significant new use rules ("SNURs") by 136 percent, from the current \$19,020 to the proposed amount of \$45,000 for businesses which do not qualify as small businesses under the regulation. EPA fails to explain in the SNPRM how such a significant percentage increase will reduce or eliminate the slowness and inefficiencies of the current new chemicals process. The process of developing new chemicals is extremely expensive even without regulatory fees, and such an increase will discourage innovators, resulting in fewer PMNs. Delays in evaluations by EPA impose additional costs on producers from the longer lead times to commercialization. Thus, raising the Section 5 fees by 136 percent without any improvement in review times by the Agency will create a disincentive to develop new chemical substances. While new chemical submissions to EPA will drop, perhaps easing the Agency's current case backlog, innovation in all areas that rely on new chemicals will suffer. Indeed, EPA may drive new chemicals to be submitted for consideration outside of the United States, in countries where regulatory costs are lower, and businesses can expect shorter review periods. An unintended consequence of the proposed fee increases for new chemicals activities is that approval of safer and more environmentally friendly chemicals will be delayed.

⁵ 15 U.S.C. § 2601(b)(3).

⁶ 15 U.S.C. §2625(b)(1).

The proposed fee increases for new chemicals, thus, will undermine TSCA's stated purpose. Again, EPA must assure that innovation does not pose an unreasonable risk to safety.⁷ The goal is to ensure *safety in innovation*, not to restrict innovation altogether. If TSCA's administration of new chemicals is made so expensive that innovators are unable or unwilling to pay the fees under the Act, then innovation is undermined, if not destroyed, and EPA's role of ensuring safety in innovation is made pointless.

Case in point: ILMA members that manufacture MWFs have been working with their suppliers to find cost-effective, environmentally friendly additives to replace chlorinated paraffins. For decades, chlorinated paraffins have been used as additives in specially formulated MWFs to provide critical lubrication performance in titanium and stainless-steel machining applications, which are critical for national defense and the manufacture of surgical devices. It is not appropriate to raise fees for PMN applications just at the time when innovation between ILMA members and their suppliers is needed most.

EPA Should Freeze the New Chemical Fees for Small Businesses

ILMA proposes that EPA freeze the Section 5 fees for "small business concerns" at their current level. The Agency estimates in the SNPRM that 29 percent of new chemical submissions will be from small business concerns eligible to pay the discounted Section 5 small business fee. EPA further estimates that the total annualized collections from the proposed new fees from small businesses that submit Section 5 notifications is \$666,810. This amount is more than offset by the recent \$20 million increase in congressional appropriations for the TSCA program under the 2023 Omnibus Appropriations Bill. Freezing the current small business fees for new chemicals will lessen the possible adverse effects on innovation by small businesses and provide them more predictability.

EPA Should Not Penalize Small Businesses That Join Consortia

ILMA members, both small and large, have benefited from joining consortia to share care costs in a number of areas, and on a number of projects. Consortia also benefit EPA, such as by simplifying communications with stakeholders during the risk evaluation process. However, the proposed loss of the discount for small business fee payers that elect to join a risk evaluation consortium that includes non-small business fee payers, penalizes those small businesses that want to collaborate and share resources. If a small business joins a consortium, then it must bear the increased cost, while any small business concern outside of the consortium enjoys the discount. This alone is a significant disincentive for any small business to join a consortium, even if the consortium determines the cost allocation among its members. Accordingly, EPA should extend the small business discount to all entities meeting the small business criteria in the final TSCA Fees rule.

EPA Should Finalize the Proposed Exemptions to the Risk Evaluation Provisions

⁷ See 15 U.S.C. § 2601(b)(3).

ILMA supports finalizing the six proposed fee exemptions for manufacturers of chemical substances undergoing EPA-initiated risk evaluation under TSCA Section 6 that would apply to: (1) importers of articles containing a chemical substance; (2) producers of a chemical substance as a byproduct; (3) manufacturers (including importers) of a chemical substance as an impurity; (4) producers of a chemical as a non-isolated intermediate; (5) manufacturers (including importers) of small quantities of a chemical substance solely for research and development; and (6) manufacturers (including importers) of chemical substances with production volume less than 2,500 lbs. Codifying these proposed exemptions in the TSCA Fees rule 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.

Conclusion

ILMA appreciates this opportunity to comment on EPA's proposed amendments to the TSCA Fees Rule. Fee payers, including ILMA members, understand the need for the Agency to have additional resources to properly implement the 2016 TSCA amendments in the manner intended by Congress. However, the fees must be reasonable and not serve as a barrier or disincentive to innovation. The proposed fees for Section 5 activities do not meet these tests. At a minimum, EPA should freeze the current Section 5 fees for small business concerns and should not penalize those small businesses that want to join cost-sharing consortia.

Sincerely,

Holly Alfano
CEO



cc: Board of Directors
Metalworking Fluids Committee
SHERA Committee
Jeffrey L. Leiter, Esq.
Benjamin Idzik, Esq.