May 17, 2021

Submitted electronically at regulations.gov

Mr. Marc Edmonds
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Mr. Edmonds:

The Alliance for Automotive Innovation[1] (Auto Innovators) appreciates the opportunity to provide comments on EPA's notice: "Agency Information Collection Activities; Proposed Renewal of an Existing Collection and Request for Comment; User Fees for the Administration of the Toxic Substances Control Act (TSCA)" [86 FR 14904, March 19, 2021].

While we believe that EPA has made a good-faith effort to estimate the reporting burden associated with the fees rule and other recent TSCA rulemakings, we are concerned that EPA has significantly underestimated the reporting costs for companies that assemble consumer products and complex durable goods. Because EPA typically does not regulate industries further down the supply chain, we believe it is important to provide more information about the time and systems required to determine the applicability of this rule to our operations. Our comments on this notice are focused on the estimated burden for Section 6 activities[2] and fall into two major categories: (1) hours and systems required to review the TSCA User Fees Rule, and (2) recommendations on how to reduce review and reporting burdens.

(1) Hours and Systems Required to Review the TSCA User Fees Rule

Rule Familiarization

EPA assumes that each firm subject to a fee will spend 0.5 hours becoming familiar with the requirements and developing an understanding of what actions are necessary to comply with the fee payment requirements. This is estimated as a one-time burden to occur the first time a firm is affected by the requirements. EPA assumes that no firm will be subject to any of the fee-triggering actions under TSCA

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[1] Formed in 2020, the Alliance for Automotive Innovation is the singular, authoritative and respected voice of the automotive industry. Focused on creating a safe and transformative path for sustainable industry growth, the Alliance for Automotive Innovation represents the manufacturers producing nearly 99 percent of cars and light trucks sold in the U.S. The organization, a combination of the Association of Global Automakers and the Alliance of Automobile Manufacturers, is directly involved in regulatory and policy matters impacting the light-duty vehicle market across the country. Members include motor vehicle manufacturers, original equipment suppliers, technology and other automotive-related companies and trade associations. The Alliance for Automotive Innovation is headquartered in Washington, DC, with offices in Detroit, MI and Sacramento, CA. For more information, visit our website http://www.autosinnovate.org.

[2] These comments are provided under the assumption that EPA's proposed exemptions from the fees rule (86 FR 1890, January 11, 2021) remain in place.

Sections 4, 5, or 6 more than once over the three-year period of this information collection request (ICR). Therefore, the average burden per respondent for each of the three years of analysis is calculated as 0.5/3 = 0.167 hours/year.[3]

This analysis does not reflect the real costs of rule familiarization. First, it is inaccurate to assume that only those entities that will ultimately be subject to the fees rule will incur rule familiarization costs. Every entity that manufactures, processes or uses a TSCA chemical will need to review the rule to verify if it needs to pay a user fee. EPA's estimate that 150 entities will need to review and become familiar with the rule is therefore a significant underestimate. In order to accurately present rule familiarization burden to the Office of Management and Budget (OMB), EPA should account for all chemical manufacturers and users, including importers of mixtures. Second, most entities will need more than one reviewer. To determine applicability, most entities will ensure that the rule is reviewed by both a regulatory specialist and a member of the legal team. Third, each reviewer is likely to spend more than 0.5 hours reviewing the rule. For reference, the last TSCA Fees User Rule,[4] published as a final rule in 2018, was 24 pages long and provided for complex determinations regarding eligibility for exemptions. Just a cursory review of this previous rule takes one to two hours. If the analysis is updated to accurately reflect the number of entities that will need to review the rule and the hours needed to understand its requirements, the burden will be significantly higher than that estimated in the numbers to be submitted to OMB.

Identification of Chemicals

After rule familiarization, an entity must determine (1) if it is exempt or, if not, (2) if it manufactures, imports or uses any of the chemicals covered by the rule. For a primary chemical manufacturer or importer, this is a fairly straightforward task. By contrast, entities that import chemical mixtures such as adhesives, paints, greases, etc., may not have compositional information readily available. Time needed to reach back into the supply chain is not reflected in EPA's estimated impact analyses. For the automotive sector, gathering this type of information may require reaching out to each manufacturing facility and requesting a detailed review of every Material Safety Data Sheet (MSDS) that accompanies any mixture used in the facility.[5] For each chemical or chemical mixture, hundreds of facilities will require the plant manager at that facility to review and verify the MSDS and report MSDS information back to the corporate lead for aggregation of the MSDS information. This task alone would take between five to ten hours per facility per chemical, and additional time for the lead to compile and aggregate the information. In the event that an MSDS is not available, the automotive manufacturer would likely have to test the substance to be sure of its constituents. Testing mixtures that are often used in minute quantities can be very costly and would add to the overall burden imposed by this rule. We recommend that EPA account for this key step when estimating the total burden, i.e., hours and costs, associated with the compliance process and that EPA accurately reflect the thousands of entities that will need to complete this step.

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[3] Supporting Statement for an Information Collection Request (ICR) Under the Paperwork Reduction Act (PRA) for EPA ICR No.: 2569.02; OMB Control No.: 2070-0208.

[4] EPA, "Fees for the Administration of the Toxics Substances Control Act." [83 FR 52694, October 17, 2018], https://www.regulations.gov/document/EPA-HQ-OPPT-2016-0401-0072.

[5] The resources used to review SDSs may vary depending on any tracking systems in place within a facility, and availability of tracking system may vary facility to facility or company to company.

Familiarization with CDX

EPA estimates that 100 entities will need to register for the EPA's Central Data Exchange (CDX) and that registering with CDX will require 0.167 hours per entity.[6] In its own CDX guidance EPA's estimate of registering for CDX is two times higher than 0.167 hours: "Registering for CDX takes as little as 15-20 minutes from start to finish. However, programs with paper subscriber agreements and verification forms via mail can take 5-10 days."[7] Real world experience in registering for CDX would indicate it can take upwards of an hour to gather all the information necessary to register and then complete the electronic forms.

Self-Identification and Certification

Firms that are either subject to fees or have been identified by EPA as being subject to fees under TSCA Section 6 EPA-Initiated Risk Evaluations must submit notice to EPA, identifying whether they (1) manufacture the identified chemical, (2) have already ceased manufacturing prior to the defined cutoff dates and will not manufacture for five years into the future, or (3) have not ever manufactured the chemical substance. Firms are required to provide certain basic contact information and certify their statements of Cessation and/or No Manufacture. EPA estimates 100 firms are expected to report this information to EPA as a result of approximately seven EPA-Initiated Risk Evaluations per year. Each report is estimated to take 0.83 hours. EPA estimates this burden to occur once per respondent over the three-year period. As with previous comments regarding identification of chemicals, reviewing records as to when a chemical may have ceased to be used as part of a mixture will require an extensive review of both MSDSs and facility invoices. The 0.83-hour estimate developed by EPA may account for actually filling out the self-identification but does not account for collecting the data necessary to answer the questions. We recommend that EPA revise these estimates to include the time required to gather the information needed to complete CDX registration.

Estimation of Hourly Costs

EPA's estimates of wage rates are based on 2002 and 2001 data, and these estimates are now almost two decades out of date. An overhead rate of 17% is used based on assumptions in "Wage Rates for Economic Analysis of the Toxics Release Inventory Program" (Rice, 2002), and the "Revised Economic Analysis for the Amended Inventory Update Rule: Final Report (U.S. EPA, 2001)."[8] These wage rates are inconsistent with current wage rates and do not reflect the seniority of staff required to review and verify all of the components associated with reporting. For example, a loaded wage rate of $83.28 for corporate managers and $77.78 for senior technical staff is outdated. EPA has used the GS-13 step 5 wage rate of $84.26 per hour to estimate EPA costs associated with reviewing the fees rule submission. A GS-13 is a non-managerial level position, and yet EPA has estimated managerial positions in affected entities as only $83.28 per hour. We recommend that EPA update the wage rate assumption to reflect 2021-2022 wage rates, and inclusion of both non-managerial and managerial level positions that will be involved in decisions related to reporting and notification to EPA.

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[6] https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0616-0006 Supporting Statement.

[7] https://cdx.epa.gov/About/AboutSystemInformation#REG2.

[8] https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0616-0006 Supporting Statement.

(2) Recommendations on How to Reduce Review and Reporting Burdens

Need to Consult

TSCA § 26(b)(4)(E) requires that EPA, "prior to the establishment or amendment of any fees under paragraph (1), consult and meet with parties potentially subject to the fees or their representatives, subject to the condition that no obligation under the Federal Advisory Committee Act (5 U.S.C. App.) or subchapter II of chapter 5 of title 5, United States Code, is applicable with respect to such meetings." We ask that EPA meet with representatives of impacted industry sectors to more accurately assess the time and resources required for each stage of compliance with the Fees Rule. These meetings will lead to more efficient reporting and understanding of reporting requirements, ultimately ensuring a better, more efficient process for EPA and all entities.

Remove the Requirement for Self-Certification for Certain Activities

Firms that are either subject to fees or have been identified by EPA as being subject to fees under TSCA Section 6 EPA-Initiated Risk Evaluations must submit notice to EPA, identifying whether they (1) manufacture the identified chemical, (2) have already ceased manufacturing prior to the defined cutoff dates and will not manufacture for five years into the future, or (3) have not ever manufactured the chemical substance. Items 2 and 3 seem to be of little value, and if these requirements were removed, reporting burden would be decreased significantly. If a company has ceased manufacture or has never manufactured the chemical substance, there is no reason to conclude that reporting that information to EPA would assist EPA in identifying companies subject to paying fees.

Conduct Current Survey of Hours Required to Respond to the Fees Rule and CDX

While EPA's estimates regarding the reporting burden associated with the Fees Rule may be appropriate for primary chemical manufacturers, they do not accurately reflect the burden on downstream users of mixtures. We recommend that EPA address this gap by surveying the downstream users that have experience with the 2018 Fees Rule. This exercise will give EPA and OMB a more realistic assessment of the burden imposed by this rule.

In conclusion, we appreciate EPA's efforts to estimate the burden that this rule imposes on regulated entities. It is important that there be a clear articulation of not only the benefits of any regulatory program but also the costs imposed by that program. As our comments have highlighted, we believe that EPA has significantly underestimated the burden imposed by this rule. Before this ICR is submitted to OMB, we ask that EPA take the necessary steps to refine these burden estimates to more accurately reflect 2021 wage rates and the actual hours required to review the rule and determine whether or not an entity must comply.

Sincerely,

Julia M. Rege
Vice President, Energy and Environment