

## **Responses to Comments Received on Proposed Renewal of the Information Collection Request (ICR) for the User Fees for the Administration of the Toxic Substances Control Act (TSCA)**

### **Background**

On March 19, 2021 the U.S. Environmental Protection Agency (EPA) published a notice in the Federal Register (86 FR 16347), and sent consultation emails to three recipients announcing that it was planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for renewal of the User Fees for the Administration of the Toxic Substances Control Act (TSCA). The public comment period closed on May 18, 2021. The Agency received comments from the Environmental Defense Fund (EDF) and the Alliance for Automotive Innovation (Auto Innovators) in response to the notice.

### **Public Comments and EPA Responses**

#### **Environmental Defense Fund ([EPA-HQ-2020-0616-0008](#))**

EPA received one comment from EDF asserting that EPA is misreading TSCA as it relates to fees. EPA believes this comment is not within the scope of this ICR renewal and will not address it under this ICR. EDF has submitted a similar comment on the proposed 2021 TSCA Fee Rule, where EPA will address the comment.

#### **Alliance for Automotive Innovation ([EPA-HQ-OPPT-2020-0616-0007](#))**

*1. Comment- Rule Familiarization:* Auto Innovators comment that EPA's burden estimates for rule familiarization do not reflect the real costs of rule familiarization because most entities need more than one reviewer, and reviewers are likely to spend more than 0.5 hours reviewing the rule.

*Response:* EPA appreciates Auto Innovators for bringing attention to additional considerations regarding the burden estimates for rule familiarization. Because this ICR is connected to the renewal of an existing rule (*i.e.*, 2018 Fee Rule), there are no changes requiring additional familiarization relative to 2018. EPA will consider the issues raised in these comments when drafting burden estimates for the TSCA Fee Rule revisions which were proposed on January 11, 2021, and expected to be finalized in the coming year, and could contain changes requiring additional familiarization. Hence, EPA is confident that the burden of additional rule familiarization for potential newly affected entities is captured by the current estimate.

*2. Comment- Identification of Chemicals:* Auto Innovators states EPA's estimated impact analysis does not reflect the hours and costs required for companies that import chemical mixtures to reach into their supply chains and identify high priority chemicals.

*Response:* EPA recognizes and appreciates Auto Innovators concerns expressed regarding the issue of chemical identification. The list of fee payers compiled by EPA was largely sourced from manufacturers who had submitted reports for Chemical Data Reporting (CDR) and the Toxics Release Inventory (TRI). Hence, most companies

included here would have already identified their own association with the High Priority Substances (HPS) in question, and spent that information gathering time outside the scope of fee payment.

*3. Comment- Familiarization with CDX:* Auto Innovators identified a discrepancy between EPA's Central Data Exchange (CDX) guidance and the estimate given in this ICR. Auto Innovators point to EPA's CDX guidance, which mentions that programs with paper subscriber agreements and verification forms via mail may take 5-10 days to process. Auto Innovators assert that registering for CDX can take up to an hour to gather necessary information.

*Response:* EPA updated the estimate in accordance with CDX guidance to maintain consistency. Regarding the 5-10 day estimate for paper subscribers, this refers to elapsed time for documents to be submitted via post. Active time spent for paper subscribers to register would conform to the 15-20 minute figure set forth in the guidance.

*4. Comment- Self-Identification and Certification:* Auto Innovators comment that EPA should revise the self-identification estimates to include the time required to gather the information needed to complete CDX registration.

*Response:* EPA appreciates Auto Innovators for bringing attention to additional considerations regarding the burden estimates for self-identification and certification. Because this ICR is connected to the renewal of an existing rule, the 2018 Fee Rule, there are no changes requiring additional self-identification and certification relative to 2018. EPA is confident that the burden of additional self-identification and certification, for potential newly affected entities, is captured by the current estimate.

*5. Comment- Estimated of Hourly Costs:* Auto Innovators assert that the wage rates, based on 2001 and 2002 data, 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.

*Response:* Agency burden estimates were calculated using the 2020 general schedule (GS) wage rates for the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA locality pay area.<sup>1</sup> The 2001 and 2002 papers mentioned refer to the methodology used for calculating agency burden estimates; for individual rules and ICRs, agency burden estimates are calculated with the framework outlined in these documents, using the most current data available at the time of publication. With the publication of the final Fee Rule, these estimates will be further updated to reflect 2021 wage rates.

Regarding the comment on sufficient seniority of staff in calculating burden estimates: within the EPA, and throughout the federal government in general, a specific GS level does not necessarily denote whether a position is staff level or manager. A GS-13, step 5 position can refer to both a senior staff position and a managerial position, and it is EPA's position that the GS and step levels used to calculate the burden is suitable in this instance.

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<sup>1</sup> [SALARY TABLE 2020-DCB \(opm.gov\)](https://www.opm.gov/policy-data-oversight/salaries-tables/)

6. *Comment- Need to Consult:* Auto Innovators comment that EPA should meet with industry stakeholders to more accurately assess the time and resources required for each stage of compliance with the Fee Rule.

*Response:* Under TSCA section 26(b)(4)(E), EPA is required to consult and meet with parties potentially subject to the fees or their representatives prior to establishment or amendment of TSCA fees. Similarly, under TSCA section 26(b)(4)(F), EPA is required to adjust the fees as necessary every three years after consulting with parties potentially subject to the fees and their representatives. Since the publication of the final 2018 Fee Rule, EPA has held several outreach meetings with industry stakeholders on implementation issues. All of these outreach meetings are summarized at <https://www.epa.gov/tsca-fees/outreach-materials-tsca-administration-fees-rule>.

EPA also conducted outreach on the proposed 2021 TSCA Fee Rule. EPA hosted a public webinar on February 18, 2021 to provide an overview to stakeholders on the proposed revisions to the Fee Rule announced in December 2020. The webinar also gave the public an opportunity to provide comment to EPA on the proposed changes. EPA also briefed the Small Business Administration regarding engagement with small businesses in a roundtable on February 5, 2021. EPA will continue to engage with the Small Business Administration on key rule developments. EPA is committed to continued stakeholder outreach and intends to engage with companies, trade associations and consortia that represent affected manufacturers and processors. Any future outreach meetings will be summarized at <https://www.epa.gov/tsca-fees/outreach-tsca-administration-fees-rule>.

7. *Comment- Remove the Requirement for Self-Certification for Certain Activities:* Auto Innovators comment and suggest that EPA should remove certain self-certification requirements (*i.e.*, certification of cessation and certification of no manufacture) to reduce the reporting burden of companies.

*Response:* EPA appreciates the comment; however, EPA believes this comment is not within the scope of this ICR renewal.

8. *Comment-Conduct Current Survey of Hours Required to Respond to the Fee Rule and CDX:* Auto Innovators state that the reporting burdens do not accurately reflect the burden on downstream users of mixtures and recommend that EPA address this gap by surveying the downstream users that have experience with the 2018 Fee Rule.

*Response:* Generally, only chemical manufacturers (including importers) are subject to TSCA fees. For some fee-triggering events like test orders, new chemical notices, and manufacturer-requested risk evaluations, the responsible manufacturers are self-evident. Other entities, such as downstream users of a chemical who do not manufacture or import the chemical, are not subject to TSCA fees and therefore would not incur reporting burdens.