



# RETAIL INDUSTRY LEADERS ASSOCIATION

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May 27, 2020

*Via regulations.gov (EPA-HQ-OPPT-2019-0677)*

ATTN: Benjamin Dyson, Chemical Control Division  
Office of Pollution Prevention and Toxics  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW, Room 7407M  
Washington, D.C. 20460-0001

**Re: Preliminary Lists Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations Under Section 6 of the Toxic Substances Control Act (TSCA); Notice of Availability and Request for Comment; 85 Fed. Register 4661 (Jan. 27, 2020).**

Dear Mr. Dyson:

The Retail Industry Leaders Association (RILA) appreciates the opportunity to submit comments on the U.S. Environmental Protection Agency's (EPA's or Agency's) Preliminary Lists Identifying Manufacturers Subject to Fee Obligations for EPA-Initiated Risk Evaluations Under Section 6 of the Toxic Substances Control Act (TSCA) (hereinafter Fee Notice) Notice of Availability and Request for Comment.

By way of background, RILA's members include the largest and most innovative retailers. The retail industry employs over 42 million Americans and accounts for \$1.5 trillion in annual sales. RILA and its member companies strongly support the mission and goals of the EPA to protect human health and the environment, including preventing exposure risk from chemical substances that may be present in consumer goods and products. RILA members have robust compliance programs in place and work closely with trusted suppliers to ensure that all products that they sell meet or exceed all applicable U.S. safety standards and legal requirements.

EPA's January 27, 2020, Fee Notice identified preliminary lists of manufacturers of the first set of 20 chemical substances designated as a High Priority Substance for risk evaluation and for which fees will be charged. This action represents the first time that EPA will issue fees under its Final Rule on Fees for the

Administration of TSCA (the Fees Rule),<sup>1</sup> in which the Agency established a fee program to defray some of the costs of administering certain TSCA provisions. EPA's action covers more than the traditional manufacturers of chemicals to apply to "entities that manufacture a chemical substance (including import of the chemical substance or import of an article containing the chemical substance) undergoing a risk evaluation under TSCA section 6(b)."<sup>2</sup> As importers of finished consumer goods, retailers potentially fall under the scope of the Fee Notice.

For the reasons set forth below, the Fee Notice's self-identification requirements create unique compliance challenges and pose significant resource burdens for retailers. RILA makes two recommendations pertaining to the Fee Notice and any future cycles of risk evaluation fee notice obligations, and in relation to EPA's anticipated rulemaking that "would look at potential exemptions to the TSCA Fees Rule in response to stakeholder concerns about implementation challenges."<sup>3</sup>

EPA should:

- Better account for supply chain complexities, including the information readily available to retailers and other entities downstream from chemical manufacturers, when issuing fee obligations and self-identification requirements for future TSCA section 6(b) risk evaluations; and
- Move forward with the planned rulemaking to revisit the Fee Rule's treatment of importers of articles and incorporate reasonable and appropriate exemptions to self-identification requirements.

Each of these recommendations is discussed in more detail below.

### **1. The Broad Scope and Timing of Self-Identification Requirements Failed to Adequately Account for Supply Chain Complexities and Information Available to Downstream Importers of Finished Articles**

In interpreting and implementing the Fees Rule broadly to tie Section 6 risk evaluation fees and self-identification requirements to importers of articles, EPA inadvertently cast a very wide net. This overly broad scope places the same reporting obligations on retailer importers and other downstream stakeholders as those that are required of primary chemical manufacturers.

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<sup>1</sup> [83 Fed. Reg. 52694](#).

<sup>2</sup> [85 Fed. Reg. 4661](#).

<sup>3</sup> See U.S. EPA, [Information on Plan to Reduce TSCA Fees Burden and No Action Assurance](#) (webpage).



Retailers typically do not manufacture the finished consumer products they sell and have limited visibility into the manufacturing process and sourcing of raw materials and components. Instead, retailers have global supply chains and depend on a vast number of suppliers to provide the range and volume of products that U.S. consumers need and rely on. For myriad reasons, including streamlining and enhancing efficiency of global supply chains, retailers often will import these products directly from overseas suppliers. As purchasers and importers of finished consumer products, and due to business and product design confidentiality, retailers typically are not supplied with product composition information at a detailed level that would allow them to readily discern whether a product may contain a High Priority Substance and thus trigger an obligation to self-identify under the Fee Notice. Data and information that is readily available to importers is not the same as the information known to product manufacturers or the chemical producers and processors that make and supply the raw materials formulated into finished articles imported for sale in the U.S. market. Retailers' limited visibility becomes even more attenuated when finished articles within scope include those where the chemical substance may only be present in *de minimis* amounts or as a manufacturing byproduct or impurity. Simply put, the information available to domestic chemical producers and importers of chemicals is fundamentally different than the information available to importers of finished articles, including articles like ink pens where chemicals are part of the finished consumer products.

Retailers import hundreds of thousands of consumer products each year. It would be extremely resource- and time-intensive for retailers to conduct an adequate review or obtain supply-chain verification of all imports to determine if any contain a High Priority Substance. Even without the added complexity and resource constraints due to the COVID-19 crisis, this task would be onerous under "normal" circumstances. It would be unrealistic if not impossible for a retailer to conduct this review process for each of the twenty identified High Priority Substances in the limited time provided under the current Fee Notice. Other stakeholders have expressed similar concerns regarding potential compliance challenges. For example, product manufacturers have expressed serious concern with the daunting task of obtaining the necessary information from their suppliers on the individual articles that make up a complex piece of equipment, such as a television or mobile phone.<sup>4</sup> It stands to reason that the level of complexity and difficulty only increases as you move further downstream in the value chain to retailers that import finished goods.

Moreover, EPA's coupling of the self-identify and Fee Notice comment deadlines has created additional challenges. Retailers have found it difficult to gather the necessary information and obtain clarity and greater regulatory certainty to enable informed decisions on whether they were even required to self-identify for the May 27, 2020 deadline. As a result, some retailers may choose to self-identify in this first round of fee collection for Section 6 risk evaluations out of an abundance of caution due to the time

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<sup>4</sup> See [Chemical Users Coalition, Letter to AA Dunn, U.S. EPA \(Jan. 29, 2020\)](#); and [Assoc. of Home Appliance Mfgs., Comments re: Administration of TSCA Fees \(Feb. 24, 2020\)](#), Docket ID. No. EPA-HQ-OPPT-2019-0677.



constraints and significant resources burdens entailed with obtaining and reviewing accurate and reliable information on potentially thousands of products. Clearly, overreporting and potentially inaccurate reporting is not the intended result of these rules and does not support EPA's TSCA implementation efforts.

In future cycles of issuing TSCA 6(b) fee obligations for EPA-initiated risk evaluations, RILA recommends that EPA take into account the complexities of supply chains and availability of detailed chemical information and assign self-identification obligations to those entities that have the best visibility into the manufacturing and conditions of use of a designated High Priority Substance. EPA should also provide sufficient time between the issuance of any future Fee Notices identifying entities subject to fee and self-identification requirements and the deadline to self-identify. EPA should also decouple any deadlines to self-identify with deadlines for public comment. RILA recommends the Agency engage with impacted stakeholders to identify an appropriate and adequate timeframe for self-identification reporting that allows for gathering accurate and reliable information.

## **2. Amending the Fees Rule to Incorporate Exemptions to Self-Identification Requirements is Appropriate and Should be Expedited**

The above-identified implementation issues and self-identification challenges underscore the need for EPA to revisit the Fees Rule and provide clear and appropriate exemptions from its self-identification requirements. RILA and its members are encouraged by and applaud EPA's clear recognition of the implementation burdens and regulatory uncertainties stemming from the Fee Notice acknowledged in its recent "No Action Assurance Memo," and concurrent announcement of plans to reopen and amend the Fees Rule to propose certain exemptions to the rule's self-identification requirements associated with EPA-initiated risk evaluations.<sup>5</sup> Specifically, EPA stated it intends to propose exemptions from self-identification for manufacturers (including importers) that:

- Import the chemical substance in an article; or
- Produce the chemical substance as a byproduct; or
- Produce or import the chemical substance as an impurity

While this is only a preliminary statement, and RILA intends to engage in EPA's planned rulemaking process, at face value these exemptions are a clear step in the right direction to appropriately reduce regulatory burdens and narrow the scope of the universe of reporting entities subject to EPA-initiated risk evaluation self-identification obligations. These exemptions to TSCA 6(b) self-identification requirements are also

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<sup>5</sup> [U.S. EPA Memorandum, "No Action Assurance Regarding Self-Identification Requirement for Certain "Manufacturers" Subject to the TSCA Fees Rule" \(March 24, 2020\).](#)



aligned with other reporting and regulatory obligations under TSCA that do not attach to manufactured articles (e.g., Chemical Data Reporting, Significant New Use Rules and Premanufacture Notices).

RILA urges the EPA to prioritize and move forward with this rulemaking in the near term, and to consider feedback gathered from RILA and other stakeholders in comments on the current Fee Notice as it develops its proposed Fees Rule amendments.

### **Closing**

RILA appreciates the opportunity to provide these brief comments on the Fee Notice and offers its support of EPA's future rulemaking to amend the Fees Rule to incorporate appropriate and reasonable reporting exemptions. RILA and its members look forward to further engagement with the Agency during its rulemaking process, and its many efforts that serve to protect consumers from exposure to toxic chemicals and unsafe products.

If you have any questions or need any additional information, please contact me at [susan.kirsch@rila.org](mailto:susan.kirsch@rila.org) or (202) 866-7477.

Sincerely,

Susan Kirsch  
Director Regulatory Affairs and Compliance

