



RETAIL INDUSTRY LEADERS ASSOCIATION

99 M Street, SE
Suite 700
Washington, DC 20003

www.rila.org

March 23, 2021

Via regulations.gov (EPA-HQ-OPPT-2020-0493)

ATTN: Marc Edmonds, Existing Chemicals Risk Management Division
Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460-0001

Re: Proposed Rule – Fees for the Administration of the Toxic Substances Control Act (TSCA); Request for Comment; 85 Fed. Register 1890 (Jan. 11, 2021); Docket ID: EPA-HQ-OPPT-2020-0493

Dear Mr. Edmonds:

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) proposed rule for updates and adjustments to the 2018 fees rule (hereinafter "2018 Fees Rule"), established under the Toxic Substances Control Act (TSCA) (Proposed Rule).

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.

RILA fully supports EPA's efforts to revise the 2018 Fee Rule to include commonsense exemptions to the scope of the Rule. By firmly placing reporting and fee obligations on the entities (i.e., manufacturers) with the greatest visibility and control over the chemical composition of finished consumer products, EPA will ensure more accurate reporting and streamlined and efficient implementation of the Rule.

RILA's May 2020 comments¹ pertaining to the first list of manufacturers (including importers) subject to TSCA Section (6) fee obligations raised several concerns with the implementation challenges and significant resource burdens retailers face when trying to determine whether imported articles are subject to TSCA risk evaluations and fee obligations.

RILA wishes to express its appreciation and express its support for the following key change to the 2018 Fees Rule included in the Proposed Rule:

- Exemption for importers of articles containing a chemical substance and companies that produce a chemical as a byproduct or manufacture or import as an impurity, or produce in *de minimus* amounts.

This issue is discussed in more detail below. RILA does not have any specific comments, concerns or objections with any of the other key revisions included in the Proposed Rule.

I. Fee Exemptions for Imported Articles and Scenarios Where Substances are Present as Byproducts/Impurities/De *Minimus* Amounts Are Appropriate and Will Significantly Mitigate Implementation Challenges

As RILA detailed in its May 2020 comments, 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. Manufacturers, not retailers, have access to data and information on product composition. Due to business and product design confidentiality, retailers, as purchasers and importers of finished consumer products, 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 that triggers a TSCA Section 6(d) fee obligation. Retailers' limited visibility is further attenuated where a chemical substance may only be present as a byproduct, impurity or in *de minimus* amounts. In order to even answer the threshold question of whether they should self-identify as being subject to Section 6 fee obligation, retailer-importers would be required to undertake a time and resource intensive process to review hundreds of thousands of imported articles.

RILA applauds EPA's recognition of the implementation challenges posed by the 2018 Fees Rule's inclusion of imported articles, byproducts/impurities, and scenarios where substances are present only in *de minimus* amounts. EPA's proposal to narrow the scope of the Rule will ensure a more streamlined process where those entities that have the greatest visibility into product design and chemical composition are responsible for self-identifying and contributing to TSCA section 6 fees. It will also mitigate the regulatory uncertainty that may drive many importers to self-identify and contribute to fees only out of an abundance of caution in cases where they lack the time or resources to devote to verify unequivocally whether they import products containing a high priority substance.

¹ See RILA, [Comments re: Preliminary Lists Identifying Entities Subject to TSCA Section 6 Fee Obligations](#) (May 27, 2020) Docket ID No. EPA-HQ-OPPT-2019-0677.

Closing

RILA appreciates the opportunity to provide these brief comments on the Proposed Rule and offers its support of EPA's effort to include these commonsense exemptions to Fees categories included in the 2018 Fees Rule. 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 / (202) 866-7477 or Kathleen McGuigan at kathleen.mcguigan@rila.org / (202) 869-0106.

Sincerely,

A handwritten signature in blue ink that reads "Susan Kirsch". The signature is written in a cursive, flowing style.

Susan Kirsch
Senior Director Regulatory Affairs and Compliance