

# Consultation to Obtain Industry Input on the New TSCA Provision to Collect Fees

September 13, 2016



# GOALS FOR CONSULTATION MEETING

- Inform Industry of Cost Estimates
- Address lower of 25% or \$25M
- Identify Small Business fee considerations
- Identify proposals for fee structure to achieve lower of 25% or \$25M
- Identify proposals for fee payer distribution

# AGENDA – TUES., SEPTEMBER 13

- **Morning**

- Introduction
- Overview
- Costs associated with sections 4, 5, 6 and 14
- Small Business considerations
- Fee proposals dialogue with Industry

- **Afternoon**

- Fee proposals dialogue with Industry (continued)
- Industry proposals for fee payer distribution
- Next steps & close of meeting

# THE NEW LAW

- The “Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act” was signed by the President and went into effect on June 22, 2016
- Amends and updates the Toxic Substances Control Act of 1976
- Provides new funding source of up to 25% of costs to carry out Sections 4, 5, 6 and 14 or \$25 million (whichever is lower) in annual user fees, supplemented by Congressional appropriations

# FEES

- EPA has authority to collect fees from manufacturers and processors who:
  - Are required to submit test data (§4);
  - Submit notification of or information related to intent to manufacture a new chemical or new use of a chemical (§5);
  - Manufacture or process a chemical substance that is subject to a risk evaluation (§6); or
  - Request EPA to conduct risk evaluation on an existing chemical (§6)

# SECTION 26(B) OF TSCA

- EPA is required to consult with “parties potentially subject to the fees or their representatives”
  - “prior to the establishment or amendment of any fees”
- EPA shall prescribe:
  - “standards for determining the persons which qualify as small business concerns”
  - “lower fees for small business concerns”

Draft cost estimates under the provisions of TSCA as amended are presented here for purposes of discussion. Best estimates based on our current understanding of the program needs are provided below.

A	B	C	D
<b>**DRAFT COST ESTIMATES FOR PURPOSES OF DISCUSSION**</b>			
<b>Estimated Costs in Thousands</b>			
	<b>Estimated Lifecycle Cost Per Submission/Action</b>	<b>Estimated Number of Submissions/Actions Underway Per Year</b>	<b>Estimated Annual Costs</b>
<b>Section 5</b>			
	<b>Lifecycle Cost Per Submission</b>		
PMN (inc. SNUN/MCAN/TME/TERA)	\$ 59.63	463	\$ 27,608.69
LVE/LoREX/Tier II	\$ 16.90	288	\$ 4,867.20
Other Exemptions	\$ 0.12	340	\$ 42.16
NOC	\$ 11.60	305	\$ 3,538.00
Total			\$ 36,056.05
<b>Section 6</b>			
	<b>Lifecycle Cost Per Risk Evaluation</b>		
Risk Evaluation	\$ 3,670.89	20	\$ 24,472.60
Risk Management Costs			\$ 31,533.10
Other Section 6 Costs			\$ 618.37
Total			\$ 56,624.07
<b>Section 4</b>			
	<b>Lifecycle Cost Per Activity</b>		
Test Order	\$ 325.18	9	\$ 2,926.62
Test Rule	\$ 956.82	2	\$ 956.82
Consent Agreement	\$ 705.27	5	\$ 3,526.35
Total Test Rule/Order/Consent Agreement Cost			\$ 7,409.79
Other Section 4 Costs			\$ 1,252.10
Total			\$ 8,661.89
<b>Section 14</b>			
CBI Reviews Required Under the new provisions of TSCA			\$ 8,862.40
Total Costs for Administering Section 4, 5, 6 and 14			\$ 110,204.41
<b>**DRAFT COST ESTIMATES FOR PURPOSES OF DISCUSSION**</b>			

# SMALL BUSINESS DEFINITION

- **Small Business Definition for TSCA fees:**
  - **Current definition:** As stated in 40 CFR § 700.43, “Small business concern means any person whose total annual sales in the person’s fiscal year preceding the date of the submission of the applicable section 5 notice, when combined with those of the parent company (if any), are less than **\$40 million.**” This definition was promulgated in 1988.

# SMALL BUSINESS DEFINITION

- **Small Business Definition for TSCA fees** (*continued*):
  - **Method for updating:** As stated in 40 CFR § 700.3, “EPA shall make use of the Producer Price Index for Chemicals and Allied Products, as compiled by the U.S. Bureau of Labor Statistics, for purposes of determining the need to adjust the total annual sales values and for determining new sales values when adjustments are made EPA may adjust the total annual sales values whenever the Agency deems it necessary to do so, provided that the Producer Price Index for Chemicals and Allied Products has changed more than 20 percent since either the most recent previous change in sales values or the date of promulgation of this rule, whichever is later. EPA shall provide FEDERAL REGISTER notification when changing the total annual sales values.”
  - **Updated definition:** Adjusting the total annual sales threshold from 1988 to 2015 using the specified price index generates an updated value of approximately **\$91 million**.

# FEES APPROACH -- CONSIDERATIONS

- Some highlights from Industry comments on the implementation of the new TSCA provision to collect fees:
  - Support for Agency collection of fees for implementation of new TSCA
  - Keep fee structure simple and straightforward
  - Link fees to costs of section under which charged
  - Smaller fees for small business

# FEES APPROACH – CONSIDERATIONS:

- *Continued:*
  - Treat CBI as overhead versus per claim
  - Allow for fees to be segmented with process
  - Certain types of submissions or actions identified in the law for possible fee collection should either not be included or at a nominal rate
  - Transparency
  - Consider barriers to innovation
  - Allow industry to form consortia for risk evaluations and test orders

# NEXT STEPS

- EPA to:
  - Review and consider information from consultation with Industry
  - Consult with SBA
  - Draft proposed fees rule
- Expect proposed rule published by the end of the calendar year
  - Opportunity to provide comment
- Expect final rule in June 2017