

US EPA Proposes New Toxic Substances Control Act Fee Rule

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On February 26, 2018, the US Environmental Protection Agency (US EPA) formally issued its [proposed rule](#) to charge new “user fees” under the amended Toxic Substances Control Act (TSCA). The amended TSCA authorizes US EPA to charge fees for a variety of activities under TSCA sections 4, 5 and 6, totaling up to 25% of the overall costs for the agency to conduct these activities. Comments on the proposed fee rule must be submitted to US EPA on or before April 27, 2018.

US EPA expects to collect approximately \$20.05 million annually during fiscal years 2019-2021 for the activities for which the new fees will be charged. US EPA has estimated that the overall cost to conduct these activities will be roughly \$80.2 million each year.

US EPA will collect fees from chemical manufacturers and processors: (1) who are required to submit information to US EPA pursuant to TSCA section 4 by a test rule, test order or enforceable consent agreement; (2) who, under TSCA section 5, submit a “notification of or information related to intent to manufacture” a new chemical substance (a Premanufacture Notice (PMN) or a Microbial Commercial Activity Notice (MCAN)) or a significant new use of a chemical (a Significant New Use Notice (SNUN)), including submissions related to exemptions; and (3) who manufacture or process a chemical substance that is subject to a risk evaluation under TSCA section 6(b), including a risk evaluation conducted at the request of a manufacturer.

US EPA is proposing user fees as follows:

- For TSCA section 4 activities: (1) a \$9,800 fee associated with a test order; (2) a \$29,500 fee associated with a test rule; and (3) a \$22,800 fee associated with an enforceable consent agreement.
- For TSCA section 5 submissions: (1) a \$16,000 fee for each PMN, SNUN, and MCAN; and (2) a \$4,700 fee for each TSCA exemption (i.e., Low Releases and Low Exposures (LoREX) Exemption, Low Volume Exemption (LVE), Test Marketing Exemption (TME), film article exemption, biotechnology Tier II exemption, and biotechnology Experimental Release Application (TERA)).
- For TSCA section 6 risk evaluations: (1) a \$1.35 million fee for an EPA-initiated risk evaluation; (2) a \$1.3 million fee for a manufacturer-requested risk evaluation for a chemical

included in US EPA's TSCA Work Plan; and (3) a \$2.6 million fee for a manufacturer-requested risk evaluation for a chemical not included in the TSCA Work Plan.

Lower fees for some activities are proposed for entities that qualify as a small business as follows:

- For TSCA section 4 activities: (1) a \$1,950 fee associated with a test order; (2) a \$5,900 fee associated with a test rule; and (3) a \$4,600 fee associated with an enforceable consent agreement.
- For TSCA section 5 submissions: (1) a \$2,800 fee for each PMN, SNUN, and MCAN; and (2) a \$940 fee for each TSCA exemption (i.e., LoREX, LVE, TME, film article exemption, biotechnology Tier II exemption, and TERA).
- For TSCA section 6 risk evaluations: (1) a \$270,000 fee for an EPA-initiated risk evaluation; (2) a \$1.3 million fee for a manufacturer-requested risk evaluation for a chemical included in US EPA's TSCA Work Plan; and (3) a \$2.6 million fee for a manufacturer-requested risk evaluation for a chemical not included in the TSCA Work Plan.

A full, lump sum payment of the fee for a TSCA section 5 activity would have to be made when the notice (including for an exemption) is submitted to US EPA. The payment relating to information required to be submitted pursuant to a section 4 test order or test rule would be due within 60 days of the effective date of the order or rule. The fee for section 4 information required to be submitted pursuant to an enforceable consent agreement would be due within 60 days of when the agreement is signed. For US EPA-initiated chemical risk evaluations, full payment would be due within 60 days of US EPA publishing the final scope of the risk evaluation. For manufacturer-requested risk evaluations, the fee would be due within 30 days after EPA notifies the manufacturer that US EPA has granted the request to conduct the evaluation.

US EPA is proposing that the fees would begin to be "incurred" starting on October 1, 2018, even though the fee rule may not be final by that date. US EPA will not actually start collecting any of the new fees, however, until the final rule is effective. Instead, US EPA intends to "record" actions that "would be expected to trigger payment of fees" and send out invoices for the incurred fees once the rule is final. US EPA would start collecting the fees the day after the final rule is published in the Federal Register.

US EPA would refund any fees paid for a TSCA Section 5 notice whenever the agency determines that the notice or fee was not required (for example, if it is determined that a substance is not subject to TSCA or is already on the TSCA Inventory). US EPA also is proposing to return 75% of the fee to a submitter if a Section 5 notice is withdrawn within 10 business days after its submission.

Failure to pay a fee would be a violation of TSCA and subject to an enforcement action by US EPA, with penalties possible up to the maximum statutory amount for each day until the required fee is paid. Each person subject to a fee would be responsible for such penalties regardless of whether they intended to pay the fee independently, as a joint submitter or through a consortium. Under the proposed rule, each joint submitter and each member of a consortium would be individually responsible for full payment of the fee, and subject to the penalties for non-payment, until the fee is paid in full.

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