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Office of Pollution Prevention & Toxics
Environmental Protection Agency
1200 Pennsylvania Ave, NW Washington, DC 20460
Via Electronic Filing at <http://www.regulations.gov>

RE: *TSCA Reporting and Recordkeeping Requirements; Standards for Small Manufacturers and Processors; Notice, Docket ID No. EPA-HQ-OPPT-2016-0675 (December 15, 2016)*

Dear Ms. Blake-Hedges:

These comments are submitted by Safer Chemicals Healthy Families (SCHF), a coalition of national, state and local organizations committed to assuring the safety of chemicals used in our homes, workplaces and in the many products to which our families and children are exposed each day.

On June 22, 2016, President Obama signed into law the Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA) which improves and strengthens the 1976 Toxic Substance Control Act (TSCA), the nation's primary chemicals management law. SCHF and its partners took a leadership role during the LCSA legislative process, advocating the most protective legislation possible to reduce the risks of toxic chemicals in use today. We are now participating actively in all phases of LCSA implementation in order to better assure that the new law achieves its purpose of increasing evaluation, testing and regulation of chemicals that may pose risks to human health and the environment.

TSCA section 8(a)(3)(B) requires EPA, after consultation with the Administrator of the Small Business Administration (SBA), to set standards for determining "small" manufacturers and processors who are exempt from reporting under sections 8(a)(1) and 8(a)(3). In section 8(a)(3)(C) of the amended law, Congress directed EPA, after consulting with SBA and providing public notice and an opportunity for comment, to make a determination as to whether revision of the standards is warranted.

On December 15, 2016, EPA published a notice outlining its thinking on the definition of "small" manufacturers and processors and seeking public comment. The Agency explained that it set standards for applying this definition under TSCA section 8(a) in 1988, codified at 40 CFR 704.3. It indicated that it had reviewed these standards and decided preliminarily that a revision is warranted.

EPA reopened the comment period on its notice on May 9, 2017, in order to enable the public to consider feedback received in April 2017 from SBA in response to EPA's consultation request.

SCHF is concerned that the industry comments filed on the December 15 notice and the latest SBA submission do not reflect the larger context of the TSCA small business exemption. The overriding goal of TSCA reporting requirements is to enable EPA to collect – and the public to obtain – information on chemical uses and exposures necessary for evaluating chemical safety and examining the need for restrictions to eliminate unreasonable risks to health and the environment. The law contains safeguards to prevent overly broad or poorly justified reporting rules: reporting can be required "only to the extent . . . necessary for the effective enforcement of this Act", may not be "unnecessary or duplicative," and

must limit “reporting obligations to those persons likely to have information relevant to the effective implementation of this title.”

In light of these hurdles, EPA reporting rules under section 8(a) will be vetted carefully to avoid unwarranted reporting burdens and focus narrowly on information for which the Agency has a strong articulated need under the law. The “small business exemption” provides additional protections against reporting costs for firms lacking the financial capability to bear them but must be interpreted in light of the important public health goals of reporting and the safeguards already in place to limit the scope of reporting.

The current EPA standard for small manufacturer and importers under section 8(a) is as follows:

“Small manufacturer or importer means a manufacturer or importer that meets either of the following standards:

(1) First standard. A manufacturer or importer of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than \$40 million. However, if the annual production or importation volume of a particular substance at any individual site owned or controlled by the manufacturer or importer is greater than 45,400 kilograms (100,000 pounds), the manufacturer or importer shall not qualify as small for purposes of reporting on the production or importation of that substance at that site, unless the manufacturer or importer qualifies as small under standard (2) of this definition.

(2) Second standard. A manufacturer or importer of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than \$4 million, regardless of the quantity of substances produced or imported by that manufacturer or importer.

We see no need to raise the first standard. Although industry commenters and SBA have requested adjustment of the standard, they have identified no adverse financial consequences from applying the standard to the few section 8(a) rules EPA has promulgated nor, more generally, any reason to conclude that firms with sales greater than \$40 million per year cannot afford the modest costs of TSCA reporting. We also disagree that EPA should reframe how the standard is set – for example, by shifting away from the metric of annual revenues to some other metric such as total employees. Annual sales is a reasonably accurate indicator of a firm’s financial capabilities and other metrics may in fact be less precise.

We would, however, recommend lowering the manufacturing and importation volume threshold under which an otherwise qualified firm would not be considered a “small manufacturer or importer.” The current threshold is 100,000 tons for a particular chemical at a specific site. This is well above the minimum volume of 25,000 pounds production or importation per site that triggers reporting under EPA’s Chemical Data Reporting (CDR) rule, which is the only section 8(a) rule broadly applicable to industry now in effect. Thus, the current standard allows for significant under-reporting of production or import activities for chemicals that EPA is screening for risk evaluations or other action under LCSA. At the time it promulgated the CDR rule, EPA estimated it would take 13.57 hours and \$1,176 to complete

a full report for 1 chemical substance.¹ These are minimal costs and should have negligible financial impacts for all but the smallest manufacturers and importers.

40 CFR 704.3(3) provides that EPA will monitor changes in the Producer Price Index (PPI) for Chemicals and Allied Products and may modify its standards for “small” manufacturers and importers if the Index has changed by more than 20 percent since the standards were established. In its December 15 notice, EPA found that the PPI has increased by well above 20% since the 1988 standards were promulgated and preliminarily decided that the \$4 million “second standard” should be reconsidered to reflect this change. We do not oppose taking PPI increases into account but would urge EPA to proceed cautiously and consider any increase in the dollar threshold in the larger context of LCSA implementation and the information the Agency needs for a comprehensive picture of chemical use and exposure.

We appreciate the opportunity to submit these comments.

Respectfully submitted,

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¹ 76 Federal Register 50816, 50854 (August 16, 2011).