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Fee Reauthorization and Improvement Act of 2026.”*

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Submitted Testimony of Michal Ilana Freedhoff

Chairman Capito, Ranking Member Whitehouse, and Members of the Committee, thank you for the opportunity to testify today – it’s always great to be here. My name is Michal Freedhoff and I have been a Senior Policy Advisor at Holland and Knight here in Washington, DC for about 10 months. I am here in a personal capacity based on my prior experience working as a Congressional staffer for Senator Markey and with other Members of this Committee on the 2016 Lautenberg Chemical Safety Act amendments to the Toxic Substances Control Act (TSCA), and working as the Senate-confirmed Assistant Administrator for EPA’s Office of Chemical Safety and Pollution Prevention - the office charged with implementing TSCA - for the entirety of the Biden Administration. I also want to make clear that while Holland and Knight represents clients related to the TSCA fees reauthorization process, I do not. My views are my own, informed by my experience as the only person who both played a significant role in negotiating the 2016 law *and* led its implementation at EPA.

This Committee played a central role in shaping the compromise that ultimately was enacted into law almost 10 years ago with near-unanimous support. At the time, Congress knew it was making foundational changes to the outdated and inadequate 1976 chemical safety law. The old law gave EPA *discretionary* authority to regulate existing chemicals that a court ultimately dealt a fatal blow to when it overturned the Bush Administration’s asbestos ban. Congress replaced it with a new law that *required* EPA to continuously and comprehensively evaluate the safety of existing chemicals and write rules to address the unreasonable risk the Agency’s scientists identified – and included statutory deadlines for all of that new work. The old law gave EPA *discretionary* authority

to restrict new chemicals, but did not require EPA to conduct a formal review and determination of the new chemicals' risks before the chemicals went into commerce after 90 days. Congress replaced it with a new law that *required* EPA to conduct a formal risk assessment on each new chemical *before* they could enter commerce – and retained the 90-day deadline for all of that new work.

The 2016 amendments to TSCA represented the first major rewrite of a bedrock environmental statute in a generation, and it took years of work and significant compromises along the way before Congress's work was complete. There are just under seven months left before EPA's authority to collect fees to defray some of the costs of implementing TSCA expires.

The discussion draft released by the Committee clearly shows an attempt to avoid a complete rewrite of the law's 'unreasonable risk' safety standard, focuses mostly on the new chemicals program, and largely leaves the existing chemicals program untouched. However, there are some provisions that could seemingly allow some new chemicals to go into commerce without a full safety review. There are also a number of provisions that are unduly complicated and prescriptive that will take the already-depleted Agency years to implement, drawing staff resources away from reviewing new chemicals, and making the program even less efficient in the meantime. While I am encouraged to see the creative effort to identify some process and other changes that could ultimately be further shaped to help the Agency do its work more efficiently, I think the scope and implementation requirements included in the draft will need to be simplified and narrowed in order to best set EPA up for success, and ensure that the Agency's chemical safety work remains protective of people and the environment.

What follows are some broad principles drawn from my experience both in Congress and at EPA that I believe would help Congress advance a successful TSCA fees reauthorization process and result in the improved ability of EPA to realize the potential Congress hoped it would when it enacted the 2016 law. I've also included some examples of provisions in the Discussion Draft that are, or in some cases are not, consistent with these principles.

Principle #1: Any statutory changes made to the new chemicals provisions should help EPA review new chemicals more quickly, but should not come at the expense of the policy Congress adopted in 2016 that ensures a formal risk review and determination is completed before commercialization can occur.

Recognizing this Committee's particular interest in the new chemicals program, I wanted to share some insights both about the legislative process 10 years ago and the way EPA has implemented the law. My current colleague and Senate EPW Committee counterpart when we negotiated the law, Dimitri Karakitsos, recently testified in the House. He noted that EPA's technical assistance to Congress as we negotiated the 2016 law maintained that the changes Congress was considering to the new chemicals provisions would simply codify existing Agency practices at the time. That's my memory as well. When I got to EPA, I learned that some of the career staff who work in the new chemicals program were also told that the changes Congress was considering in 2016 would not change their day-to-day jobs too much, and they described their shock when they saw the law after it was enacted and realized how significant the changes actually were.

A second thing I learned at EPA that I don't remember hearing while Congress was negotiating the law, was that between 1976-2016, EPA typically did formal risk assessments on only about 20% of the new chemicals that came into the Agency. The other 80% went into commerce without one. Some of the time, that was because EPA took a quick look and felt confident the new chemical could be safely used, but other times, EPA didn't know enough to be sure of safety, and the 90-day clock ran out before EPA could do anything about it.

When I reflect on the decades of industrial chemicals policy that led to difficult problems like the hundreds of heavily contaminated Superfund sites, the ubiquity of some unsafe chemicals in drinking water, cancer clusters known to be caused by improper disposal of toxic chemicals and the scourge of lead poisoning -- problems that came at an enormous cost not just in dollars but to people's health and lives -- I can't help but think that if the 2016 new chemicals provisions had been there all along, we might have avoided some of these environmental and public health harms by ensuring that the chemicals we need to power our semiconductors, batteries, phones and everything else we rely on for our daily lives were safety made, used and disposed of *before* they got into our air, water, land and bodies.

At the same time, I agree that Congress intended for the new chemicals program to ensure both safety *and* speed. While additional resources would go a long way to addressing the delays the program has experienced for the last 10 years, I still believe there are ways the Agency could work smarter not harder, as Senator Markey often says. When I was at EPA, we adopted policies and approaches that greatly sped up the review of some types of new chemicals without sacrificing safety as the agency learned more about their risks, and I know that the first Trump Administration

made similar efforts. There is more along these lines that could be done, and some of that could include new direction from Congress.

Provisions in the Discussion Draft that Could Erode EPA's Safety Review of New/Existing Chemicals

- The changes to the definition of 'conditions of use' include provisions that could require EPA to assume that if one company uses effective exposure control measures for a chemical substance, all companies (including companies that have not even begun to use the substance) do, and that they always will. There are also provisions that could, for example, prohibit EPA from considering it to be an unreasonable risk if a chemical substance burns a worker's skin or causes eye or respiratory distress every single time the worker comes into contact with the substance – even if that happens multiple times a day.
- The provisions related to deeming the 'equivalency' of some types of chemicals to other types of chemicals that are already on the TSCA Inventory seem designed to allow some substances to skip EPA's new chemicals review altogether. This is especially concerning since most of the chemicals on the TSCA Inventory were grandfathered into the original 1976 TSCA without any safety review whatsoever, and others may have been placed on the TSCA Inventory after 1976 but before the more rigorous new chemicals review provisions were enacted in 2016.
- Changing the finding EPA can make for new chemicals from a 'may present unreasonable risk' to a 'more likely than not to present unreasonable risk' could be difficult for EPA to make in the absence of the data EPA believes it needs in the first place. This is compounded by other changes to EPA's new chemicals review process which could leave EPA without sufficient information. While I have heard the criticism that EPA sometimes engages in

lengthy reviews due to its efforts to gather information and assess risk of conditions of use that go well beyond the known or intended uses identified by the submitter, this provision seems to require EPA to know more about the risk a chemical substance may pose even under the intended conditions of use than it sometimes does. I also worry that the provision could be read to mean that EPA might not be able to pursue the hazard data or exposure information that would be necessary to complete its review if EPA was not already sure whether the chemical substance was “more likely than not” to present an unreasonable risk. Finally, since this would be a change from current law that could imply there is a higher bar for EPA to meet, it is extremely important for Congress to consider any possible changes carefully and be very clear about what is meant. It would also be useful to seek EPA’s perspective on how it would interpret this provision, should it be enacted.

- Although the Discussion Draft includes placeholders for the amount of time for the review of different types/tiers of new chemicals, it is not clear whether, if the review period expires before EPA completes its review, the new chemical could enter commerce anyway. The provisions also prevent EPA from making a request to extend the review period “to accommodate delays in the review of the Administrator” – even in the case of significant resource shortfalls or personnel departures that are not the fault of the Agency. If these provisions are intended to result in an automatic end to the EPA’s review of a new chemical before EPA’s work is complete, this would be a return to the less protective pre-2016 new chemicals review process.
- The Stewardship Pathway in the Discussion Draft appears to allow for new chemical submittals under this pathway to go into commerce without a complete review even of the intended uses of the chemical substance. I do, however, appreciate that Stewardship

Pathway chemicals are not placed on the TSCA Inventory so as to ensure EPA review of other future uses must still occur.

- While provisions related to EPA’s Low Release or Exposure Exemptions authority (and the newly contemplated de minimis quantity authorization) seek to impose environmentally-protective boundaries (eg ineligibility for specified types of known toxic substances, specifications related to personal protective equipment and engineering controls, drinking water and air emissions limitations), it is difficult to contemplate or capture every scenario in which a chemical used in “smaller” quantities may nevertheless be harmful now or decades from now in legislative text. Thus, it is possible that chemicals that should properly go through a more robust standard new chemicals review will not be required to do so under these provisions. This is a particular concern since EPA would also be required to undergo a lengthy rulemaking every time it believed it was necessary to exclude categories of chemicals from eligibility for these exemptions/authorizations.

Provisions in the Discussion Draft that Could Help EPA Review New Chemicals Protectively and More Efficiently

- The Sustainable Futures Program historically helped companies understand EPA’s screening models and process and prepare more robust new chemicals submittals. It largely ceased to exist following the enactment of the 2016 law, in part due to incompatibility with the new law’s requirements and in part due to resource constraints. Given sufficient resources and EPA personnel, restarting and reinvigorating the program could be very helpful to increasing the efficiency of EPA reviews.
- Policies that seek to focus EPA on categorizing substantially similar chemicals or tiers/types of chemicals and developing and implementing standardized scientific review

policies and/or streamlined ways to review them could build on similar efforts made in past Administrations (eg., photo-acid generators, mixed metal oxides) and result in added efficiency of review without sacrificing safety or bypassing EPA review.

Principle #2: In keeping with the spirit of the 2016 fees provision's design, changes or additions to the law should enjoy similar levels of bipartisan support that the original 2016 law had, and Members of this Committee should continue and build on their efforts to find consensus. That will likely mean narrowing the scope of changes in this Discussion Draft.

Congress knew that the directives for EPA to greatly change and increase its chemical safety work would cost money. And indeed, the inclusion of the TSCA fees provision was one of several key policies that Senators Markey and Durbin insisted on before they became the 59th and 60th Senators to support passage of the Senate TSCA bill in late 2015. Congress modeled the fees provision on a similar fees provision in the Pesticide Registration Improvement Act. The pesticide fees also require periodic re-authorization by Congress, and those analogous reauthorization efforts provide an opportunity for Congress to make adjustments to the underlying pesticide law and associated EPA policies. It's certainly the case that when Congress decided to sunset the TSCA fees authority, it knew that could also be an opportunity to see if the law was working as intended and make any needed adjustments. But it's also the case that all of the successful pesticide fees reauthorizations to date have been strongly bipartisan, consensus endeavors. In fact, in one instance, a pesticide fees reauthorization could not be passed by the Senate for about a year because of the objections of a single Senator, just as passage of the Senate TSCA bill in late 2015 was held up for several months due to the unrelated objections of a different single Senator. It's

my strong belief that for this TSCA fees reauthorization effort to be successful, particularly in the short amount of time before the fees authority expires, it needs to include only those changes that can be supported by the same sort of strong bipartisan and bicameral consensus the 2016 law had.

Principle #3: EPA should be provided with sufficient funding for TSCA implementation. This can be accomplished by re-authorizing TSCA fees, providing additional appropriations, raising the current \$9 million cap in advance fees payments as part of the annual appropriations process, and ensuring EPA follows the law's requirements to prioritize and conduct risk evaluations on additional existing chemicals (since EPA collects significantly more fees from existing chemical risk evaluations than from any other activity, and since fees can only be collected for a risk evaluation after EPA publishes its final scope).

During my time leading EPA's chemical safety office, the former Administrator and I testified to Congress a number of times regarding the need for EPA's TSCA program to be adequately resourced, President Biden's budget requests consistently asked for the amount of money we believed we needed to implement the law as Congress intended, and both GAO and EPA's Inspector General also noted the chronic resource shortfalls.

TSCA fees are an important part of making sure EPA's chemical safety office can function as Congress intended and as Americans expect. Unfortunately, even with TSCA fees, in the almost 10 years since the law was enacted, EPA has never had what it needed to review either existing chemicals or new chemicals within the strict statutory deadlines Congress set - and the resources

shortfall has likely been made even more acute due to the departure of so staggeringly many of the Agency's most senior and experienced scientists, lawyers and managers in the past year.

Early in the Biden Administration, I told Congress that the new chemicals program was operating with only about half the resources we believed it needed to meet Congress's objective of ensuring new chemicals were reviewed protectively *and* got to market quickly. And although Congress did provide the agency with an increase in funding, what I said several years ago remains largely true. While some stakeholders occasionally attributed the slow pace of new chemicals review to some purposeful intent of the Biden Administration to hinder innovation, the truth is that EPA completed its review of more new chemicals submittals in 2024 than in 2025¹. Neither I nor the amazingly dedicated and brilliant EPA career staff wanted anything other than a new chemicals program that keeps people safe and keeps American industry and innovation strong. To be clear, I'm not criticizing the current OCSPP political leadership's pace of new chemicals review, because I still believe that a main reason why four Administrations have struggled with a new chemicals backlog and meeting the 90 day deadline set by Congress is because the Agency does not have enough resources to do the job.

It is not just the new chemicals program that has failed to meet its statutory deadlines. Despite the importance of giving EPA the tools it needed to successfully regulate existing chemicals in commerce as well as state preemption to the negotiations on the 2016 law, 35 of the 40 existing chemicals that are in some stage of review under TSCA are not subject to state preemption because

¹ See both [Statistics for the New Chemicals Program under TSCA | US EPA](#) and [B&C's 2026 Forecast for U.S. Federal and International Chemical Regulatory Policy Shares Predictions for FIFRA in the New Year - Bergeson & Campbell, P.C.](#)

of the consistent inability of EPA to meet the law's statutory deadlines, leaving states free to take any action they would like on those substances. These delays have become more acute in the past year, as not a single proposed or final rule under section 6 of TSCA has been issued for chemicals whose risk evaluations have been completed, no *draft* scopes of the 5 existing chemical risk evaluations whose *final* scopes were due 9 months ago have been published, and none of the required steps in the 9-12 month statutory prioritization process for another set of 5 existing chemicals have been taken even though the 12-month mark was reached last December. Congress's objective when it directed EPA to comprehensively and continuously evaluate the risk of existing chemicals and then write rules to address the risks it found was to create a credible federal chemical safety program, and in so doing, avoid a state patchwork of regulations. EPA is also at risk of falling short of that objective.

While additional resources are not the only solution to EPA's failure to meet TSCA's new and existing statutory deadlines, and there are certainly statutory and/or process changes that could be made to both the new and existing chemicals program that could help, it is my belief that increased resources will remain a crucial part of helping EPA meet its statutory deadlines. I appreciate the Discussion Draft's inclusion of a placeholder for an authorization level for the implementation of TSCA, and recommend that engagement with EPA to obtain the analysis that was used to develop the FY 24 or 25 budget requests could be instructive for the Committee.

Principle #4: Congress should engage in thorough discussion with EPA leadership, including career leaders, to ensure that its contemplated approaches both achieve the desired policy objective, and ideally improve upon, but at minimum do not reduce, EPA's efficiency.

Finally, I want to say a word about the importance of ensuring that whatever changes are made to the 2016 law are implementable by the Agency and do not unintentionally add more delays to either the existing or new chemical safety programs. About 25% of the Agency's staff have left EPA in the last year – an almost unimaginable loss of talent and expertise. In OCSPP, those who have left their roles include the top career deputy, one of three office directors, 2 deputy office directors and 8 of 16 division directors, along with dozens of scientists, branch chiefs and other key experts. The part of OCSPP that administers TSCA has about 40 fewer staff than the roughly 360 people it had at the end of the Biden Administration. Moreover, the sub-part of the General Counsel's office that supports chemical and pesticide safety efforts has lost about a third of the attorneys who worked there in the past year.

Every time a new rule has to be written, every time new guidance has to be issued, every time new policies need to be developed, every time new petitions need to be responded to or every time new litigation has to be defended against, the people who do that work are diverted from the core new and existing chemical safety work they are already struggling to complete. That's not a reason in and of itself not to make changes to the law – but it does speak to the benefit of trying to keep the changes as surgical and implementable as possible.

Provisions in the Discussion Draft that Could be Difficult or Very Time-Consuming to Implement

- The Discussion Draft mandates that EPA stand up numerous new programs, functions, processes, rulemakings, guidance documents and other requirements, generally in one year or less. Quite simply, this amount of work is not implementable as drafted, and would not

have been implementable even *before* EPA lost about 25% of its staff in just a single year. These mandates would likely have the effect of diverting many if not all of the most senior new chemicals scientists, engineers, lawyers and managers away from the review of new chemicals, having exactly the opposite effect on efficiency as intended.

- The provisions that require both written explanation and meetings with EPA for submitters who wish to contest the tier in which their new chemical substance was placed are likely to consume weeks, if not months, that could otherwise be spent reviewing the new chemical substance.
- I understand the purpose of Third Party Assessors and the Stewardship Program are likely intended, at least in part, to assist EPA in its review of new chemicals submissions, and I recognize the intent of not placing those ‘Stewardship’ substances on the TSCA Inventory is likely to ensure the substances won’t be used for other purposes absent an EPA new chemicals safety review. However, I believe there could be unintended implementation challenges associated with resource sufficiency, the protection of confidential business information, conflicts of interest (for example, if the same company that is an EPA-accredited Third Party Assessor is also hired by a submitter as its consultant to prepare its new chemicals submittal for EPA review), and less formal review of these substances by EPA. I encourage the Committee to consider whether there are other ways to focus EPA’s review on the uses identified by the submitter in the notice that do not pose such challenges or erode safety (for example, the Draft allows a ‘Stewardship’ chemical to go right into commerce before EPA completes its review in some instances), assuming that this was the purpose of these provisions in the Discussion Draft.

- Provisions that require a ‘robust interagency review’ of TSCA risk evaluations could add many months to the time it takes to conduct each TSCA risk evaluation. When I was at EPA, I was told that during the first Trump Administration, formal interagency review of draft and final risk evaluations added 9-15 months to the timeline for each one. I strongly agree that EPA should informally seek the input of other Agencies as it prioritizes chemicals for risk evaluation and undertakes its analysis, and indeed, when I was at EPA, a task force existed to do just that. However, since other Agencies always have the opportunity for formal interagency review of proposed and final TSCA rules, there is no need to add a formal interagency review of draft and final TSCA risk evaluations as well.
- I agree that peer review is an important way to ensure that TSCA risk evaluations are consistent with the best available science, but suggest that instead of the provisions in the Discussion Draft, the Committee consider requiring that peer review of the scientific components of a risk evaluation be done consistent with EPA’s Peer Review Handbook. This is because there are times when a separate, in-person review for a full draft risk evaluation is not necessary (for example, when the Science Advisory Committee on Chemicals (SACC) has already peer-reviewed most of the novel science and/or methodologies included in the risk evaluation, in which case the SACC could appropriately be asked to do a narrower review of the parts of the novel science or methodologies in the risk evaluation that had not yet been reviewed). It is also important to note that the costs of doing an in-person SACC meeting are significantly higher than other peer review methodologies that are consistent with EPA’s Peer Review Handbook.

Provisions in the Discussion Draft that Could Help Increase EPA Efficiency

- While the tiering provisions that require EPA to categorize different types of new chemicals notices into different tiers could increase efficiency of review, it would be instructive to ask EPA how long it would take to determine or verify the tier each submittal should be assigned to and whether the initial tiering process would meaningfully add to EPA's total review time.
- Though also noted above, policies that seek to focus EPA on categorizing substantially similar chemicals or tiers/types of chemicals and developing and implementing standardized policies and/or streamlined ways to review them could build on similar efforts made in past Administrations (eg., photo-acid generators, mixed metal oxides) and result in added efficiency of review.
- Section 21 citizen petitions calling on EPA to proceed directly to a section 6 rule for an existing chemical substance without first going through the prioritization and risk evaluation process are a consistent drain on EPA's resources that, in my opinion, do not result in public health benefits that go beyond those that would be realized if the chemical substance was put through the normal prioritization and risk evaluation process in the first place. When such petitions are received, EPA has two choices; One, it can grant the petition, and develop the data or other information it needs (that would normally be derived through a risk evaluation) to write a scientifically and legally defensible rule – all without being able to collect TSCA fees for the work. Two, it can deny the petition, and face the potential of costly and lengthy litigation. In both instances, EPA is forced to divert staff and other resources away from its existing chemicals work, and in neither instance would a section 6 existing chemical rule for the petitioned chemical substance be likely to be written faster than it would have been had the chemical substance gone through the normal

prioritization and risk evaluation process. Changes to better align the section 21 petition process with the prioritization and risk evaluation process in section 6 would help EPA conserve its resources, but I would recommend that the provision be revised to allow petitioners to ask EPA to prioritize the chemical for risk evaluation, so that EPA can begin to undertake systematic review of the scientific literature and collect other data from industry and the public about the chemical substance during the prioritization period (as it does for other chemical substances before the risk evaluations commence). I am also unsure as to why the changes to the judicial review provisions associated with this section only allow a petitioner to ask a court to force EPA to reconsider its denial of their petition, rather than initiate the action the petition was seeking in the first place. While EPA's resources are undeniably strained by citizen petitions, these changes to judicial review seem to weaken the petition process beyond what I believe to be warranted.

Thank you again for the opportunity to testify today- and thank you for your continued efforts to ensure the law we all worked so hard to enact 10 years ago achieves its full promise and potential. I'd be happy to answer any questions.