

**Toxics Use Reduction Act (TURA) Fees:
Background document for discussion on July 22, 2021**

Introduction

The TURA Ad Hoc Committee has been convened in order to review and strengthen the effectiveness and value of TUR planning to Massachusetts businesses while ensuring ongoing progress in reducing the use of toxics in the Commonwealth and increasing the adoption of safer materials. The Ad Hoc Committee has been asked to address five focus areas. This background document provides information on one of these focus areas: the TURA fees.

Background: Existing fee structure and proposed updates

Facilities subject to TURA requirements pay an annual fee. These fees are designated as retained revenue at the Department of Environmental Protection (MassDEP) through an annual appropriation in the state budget and are dedicated to the support of TURA program activities. These funds support the TURA program activities at the Toxics Use Reduction Institute (TURI), the Office of Technical Assistance (OTA), and MassDEP.

Under the existing fee structure, facilities pay a base fee and a flat per-chemical fee for each listed chemical used above threshold. Fees are capped at a maximum value. The base fee and maximum fee are tiered based on number of full time equivalent (FTEs) at the facility. Current fee values are as follows:

Current Fee Structure			
FTE's	Base Fee	Per Chemical	Maximum
≥10 to <50	\$1,850	\$1,100	\$5,550
≥50 to <100	\$2,775	\$1,100	\$7,400
≥100 to <500	\$4,625	\$1,100	\$14,800
≥500	\$9,250	\$1,100	\$31,450

The 2006 amendments provided the Administrative Council with the authority to update the fee structure. Following up on the new authorities provided through the amendments, the Advisory Committee and the Administrative Council have worked to develop and solicit input on updates to the fee structure; one effort spanned the period 2007-2008, and the second occurred in 2014.

The fee structure was not designed to distinguish among facilities based on the total quantity of chemical used; nor was it designed to distinguish among facilities based on the relative toxicity of chemicals used. As described below, in considering fee adjustments, program staff and members of the Advisory Committee and Administrative Council have considered possible ways to build in these factors.

The groundwork was laid for the 2006 amendments through a series of structured discussions among stakeholders, led by the Senate co-chair of the Joint Committee on Environment, Natural Resources, and Agriculture. Among other topics, the stakeholders discussed the issue of declining TURA program revenues over time. While that challenge was left to the

Administrative Council to address, the 2006 amendments included two changes that were anticipated to offset one another in terms of program revenues:

- Prior to the amendments, if a facility met the TURA reporting threshold for any chemical, the threshold was reduced to 10,000 lb/year for all chemicals reported at the facility. The amendments eliminated this provision. In addition, a fuel oil exemption was added for facilities that were not in the business of energy generation; this eliminated many reports for polycyclic aromatic compounds and benzo (g,h,i) perylene reports. These changes immediately reduced program revenue by approximately \$500,000. The MassDEP data release from 2006 provides the information on the change in the number of Form S's for this time period.
- Additional program revenue from designation of Higher Hazard Substances (HHS), which have a lower reporting threshold, was expected to offset these revenue reductions. However, the pace of HHS designations has been slower than anticipated. Revenue from HHS reporting resulting from the lower threshold was under \$200,000 in 2019.

Establishment of initial fees

The TURA statute directed the Administrative Council to set the fees to provide initial revenues between approximately \$4 and \$5.5 million in 1989 dollars and provided for the fees to be adjusted annually. The fees shown above were designed with the goal of reaching this revenue target in 1991.

Producer Price Index

The TURA statute requires that the Council adjust the fees annually to reflect changes in the Producer Price Index (PPI). However, this adjustment has never been carried out, and the fees have not changed since 1991.

The absence of this adjustment has had consequences for TURA program funding. Over the period 1991 to 2020, the PPI has increased by approximately 66%. Thus, program revenues would be considerably higher if the PPI adjustment had been applied.

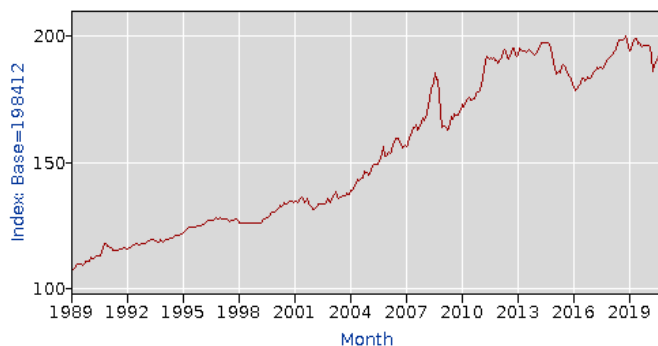


Figure 1. US Bureau of Labor Statistics Producer Price Index for Total Manufacturing Industries 1989-2020

2006 amendments

The 2006 amendments included a provision allowing the Council to change the fee structure, while retaining the structure of a base and per chemical fee, and a maximum fee. The amendments provided for the Council to consider potential revenues generated by the fees, the impact the fees would have on toxics users and their use of toxics, and the funding required for the program to meet its statutory obligations. The amendments also provided the Council with the authority to adjust the fee for Higher Hazard Substances.

Fee revision proposals: 2008-09

Pursuant to the 2006 amendments, in 2008 the TURA program convened a subcommittee of the Advisory Committee to review the fee structure and propose updates. The subcommittee considered a number of goals and proposed options for achieving those goals. Based on the subcommittee's work, the Advisory Committee concluded that a fee increase was necessary.

The goals of the subcommittee were to maintain the ability of the program to continue successful work, to minimize impacts on small businesses, and to take account of toxic chemical use in a more nuanced way than the original fee structure had done. The subcommittee also worked to create a better balance between fees based on the number of FTEs and those based on number or quantity of chemicals used. The subcommittee discussed a variety of ways to better reflect the potential health and environmental consequences of the activities of TURA filers, and to better distinguish among facilities with greater or lesser impacts.

The group's final recommendation included four key elements: the PPI adjustment, a fee reduction for very small businesses, higher fees for Higher Hazard Substances, and an adjustment to reflect volume of chemical use.

- *PPI*: one-time 50% increase to base fee, per-chemical fee, and maximum fee to reflect PPI changes to date, followed by an annual PPI adjustment.
- *Fee reduction for very small businesses*: divide the 10-50 FTE category into two sub-categories, with a lower base fee and maximum for the smallest businesses if they are using small quantities of chemicals.
- *Higher fees for HHS*: increase per-chemical fee for HHS.
- *Volume of use*: add a step-wise gradation to per-chemical fee (under 100,000 lb; up to 500,000 lb; up to 1 million lb; up to 5 million lb; and above 5 million lb).

Although the Advisory Committee completed its work on this topic, a formal proposal was not brought before the Council for a vote at that time.

Fee revision proposal: 2014

In 2014, the TURA program developed a simplified fee revision proposal. The Administrative Council voted to move forward with the proposed fee revision and the regulatory process was started. The Council chose to invite public comments on alternatives

to the proposed structure and whether the adjustment should be carried out in a single year or phased in over two years. The proposal was designed to bring program revenues back up to approximately \$4 million/year.

The proposed approach would have made a one-time increase to account for the PPI changes over the time period since 1991. After the one-time adjustment, the fees would be adjusted annually according to the statutory requirement. In addition, the proposal included three options for longer term changes.

These options were labeled A, B, and C; option B was the principal proposal, with options A and C providing possible variations.

- Option A was an across-the-board 50% increase in fees without any other changes.
- Option B included adjustments to mitigate impacts on the smallest businesses. Specifically, the elements were as follows:
 - *Per chemical fee*: A 50% increase in the per chemical fee from \$1,100 to \$1,650;
 - *Base fee*: A 50% adjustment to increase the base fee for facilities with 100 or more FTEs; no change in the base fee for businesses with fewer than 100 FTEs;
 - *Fee maximum*: A 50% increase in the maximum fee for businesses with fewer than 100 employees, and a 22% increase in the maximum fee for businesses with 100 to 499 employees. No other changes to the fee maximum values.
- Option C provided for a graduated increase in the base fee and additional adjustments to the maximum fees. This option would have led to a greater fee increase for facilities using larger numbers of chemicals. The components of Option C are:
 - *Per chemical fee*: A 50% increase in the per chemical fee from \$1,100 to \$1,650;
 - *Base fee*: Graduated increases in the base fee: No increase for the facilities with fewer than 50 FTEs; under 20% increase for facilities with 50-99 FTEs; under 35% increase for facilities with 100 -499 FTEs; and 50% increase for facilities with 500 or more FTEs.
 - *Fee maximum*: a 50% increase in the maximum fee for facilities with fewer than 50 FTEs; a 69% increase for facilities with 50-99 FTEs; and a 50% increase for facilities with 100-499 employees.

Regulatory process and public comments on 2014 proposal

There was an extensive public consultation process related to the proposals outlined above. The Administrative Council discussed the fee adjustment options at three meetings, open to the public, in July, August and September of 2014. At the August meeting, the Council specifically requested that stakeholders provide comments to inform deliberations at the September meeting. After hearing the comments, the Council voted to move forward with the regulatory process, and the proposed regulations were published in October 2014.

The Executive Office of Energy and Environmental Affairs (EEA) held four public meetings and solicited comments on the proposed revisions, including the three different options. Comments were also solicited through email and newsletter announcements.

EEA received written and/or oral comments from 10 individuals or organizations that attended the meetings, as well as 57 written comments (some of these were summaries of oral testimony).

As described in EEA's Response to Comments, the comments received focused on four main topic areas: the regulatory development process; the need for and value of the TURA program; adverse impacts and equity of the fees; and the time frame and implementation of the fees. EEA developed a detailed response to comments but did not move forward on the regulation as planned.

Regulatory development process. On this topic, some commenters questioned whether stakeholder notification had been sufficient and whether the authority existed to make a one-time fee adjustment accounting for the PPI changes over time. EEA responded that stakeholder outreach had been extensive, including notification of every past and present TURA filer about the proposal; EEA also noted the specific statutory authority for setting fee amounts, independent of the PPI adjustment.

Need for and value of the TURA program. Many commenters cited benefits of the TURA program for businesses, communities, public health and the environment. Some TURA filers provided specific examples of assistance received and noted benefits for overall operations and competitiveness. For example, one TURA filer stated,

“We look forward to working together with OTA in the future and would like to ensure that they have adequate funding to continue their outreach to Massachusetts businesses. I believe that with expanded OTA availability, small and medium-sized Massachusetts businesses can reduce costs, improve public safety, and improve competitiveness. My understanding is that the TURA compliance fees have been held steady for quite a while. An increase in those fees, or some other source of revenue would ensure that the improvements facilitated by OTA continue to help businesses remain efficient, competitive, and TURA compliant.”

Adverse impacts and equity of the fees. Some commenters stated that TURA fees place Massachusetts businesses at a competitive disadvantage compared with companies in other states, and that the fees are unfair for businesses that are unable to reduce their use of toxic chemicals. Regarding use of the fee revenue, some commenters stated that fees should only be used to provide services to TURA filers, while others said it was appropriate for the revenue to support broader TUR activities, in light of the costs imposed on society by the use of toxics.

In response, EEA noted that while the TURA program increases costs to filers, the program also helps filers to improve efficiency and reduce liabilities. The fees also serve to partially offset the costs to society from the use of toxic chemicals and the statute anticipates that they be used to promote toxics use reduction throughout the Commonwealth. EEA also noted that most of the TURA funds are used to support companies regulated under TURA, and that other states have fees on chemical use and hazardous waste, without the research, education and industry assistance that are supported by the TURA fees.

Time frame and implementation. Some commenters asked that any fee increase be phased in gradually. They noted that incorporating a fee increase after a company has completed its annual budget would present a hardship. A number of commenters also expressed general support for implementation of the fee adjustment.

In response, EEA stated that it planned to phase in the fee increase over two years. EEA also noted that businesses would be encouraged to make use of a provision allowing them to request to pay their fees in monthly installments, and that all such requests would be automatically approved in the first year.

After receipt of and response to comments, the regulation was not completed, and no further action was taken.

Other issues: fee waivers

The statute includes a provision allowing any facility to request a fee waiver if the facility is facing financial hardship.¹ In the past five years, one fee waiver request has been received.

During previous Ad Hoc Committee meetings, some TURA filers have suggested that fee waivers should be provided for any facility that considers their use of a toxic chemical to be “required.” This could include facilities manufacturing to military specifications, or facilities facing any existing customer requirements related to use of a listed chemical. An approach such as this would pose some challenges, including definition of “required” uses, incentives for TUR, and the need to address societal costs from toxic chemical use.

TURA reporting requirements have catalyzed a number of collaborative efforts to reduce toxics that were specified in the military supply chain. For example, some military specifications require the use of hexavalent chromium. The TURA program is working with businesses and DoD to test and prove safer substitutes for hexavalent chromium in this supply chain.

Consequences of revenue decline

The decline in resources has made it necessary for the three program agencies to cut back on staffing and funds that support technical assistance, training, grants and research in toxics use reduction and resource conservation, as well as implementation of the reporting and planning requirements and analysis and use of the TURA data. Staffing at MassDEP and OTA has been reduced by more than half, while TURI has had to curtail grant and research efforts, in addition to some loss of staffing. These reductions threaten to have an impact on the goals of the program: progress in TUR, savings for Massachusetts industries, and health and environmental benefits.

¹ Statutory language: “(G) Any toxics user who employs the equivalent of fewer than 100 full-time individuals may in instances of severe financial hardship, apply on or before July 1 of any year to the commissioner of the department. The commissioner may, for good cause shown, waive the fee for that year in whole or in part, or extend the time for paying any part of the fee. The commissioner shall annually report to the council the waivers granted.”

An updated fee structure would allow for the reestablishment and maintenance of vital program activities including improved electronic reporting systems; identification of additional facilities that should be reporting under TURA; on-site technical assistance; grants; supply chain work; and research on safer alternatives.

Questions for discussion

The following questions will be used to aid discussion at the July 22 meeting:

- What are the strengths and weaknesses of the fee adjustment proposals that were developed in 2008 and 2014?
- The subcommittee that worked on the fee revision proposals in 2008 found that improving equity in the fee structure requires increasing complexity of that structure. What is the best balance between equity and simplicity in the fee structure?
- What are the pros and cons of re-opening a discussion of fee adjustment options within the Advisory Committee and Administrative Council? What are the pros and cons of making no change to the TURA fees?
- In the course of the Ad Hoc Committee's deliberations, a variety of additional or augmented activities have been recommended for the TURA program. Revenue constraints may limit the program's ability to carry out these activities. In this context, should the program revisit a fee adjustment?
- Based on the information presented in this background paper, or other information available to you, do you have any additional thoughts on whether the TURA fees should be adjusted, and what would be the best approach?

Appendix A: Additional detail on the fee adjustment options proposed in 2014

All three of these options were designed to yield revenue of approximately \$4 million, based on the filer universe in 2014.

Fee Adjustment Option A (50% across the board increase)

The simplest approach would be to increase existing fees proportionally across the board to generate a revenue of approximately \$4.0 million.

Option A						
FTEs	Base fee		Per chemical fee		Fee maximum	
	Current	Proposed	Current	Proposed	Current	Proposed
≥ 10 to < 50	\$1,850	\$2,775	\$1,100	\$1,650	\$5,550	\$8,325
≥50 to < 100	\$2,775	\$4,162	\$1,100	\$1,650	\$7,400	\$11,100
≥ 100 to < 500	\$4,625	\$6,938	\$1,100	\$1,650	\$14,800	\$22,200
≥ 500	\$9,250	\$13,875	\$1,100	\$1,650	\$31,450	\$47,175

Fee Adjustment Option B

Option B includes adjustments to mitigate impacts on the smallest businesses. Also, in Option B the fee maximum is not increased for companies with 500 or more employees, as their maximum is already more than twice that of the size category below them.

Option B						
FTEs	Base fee		Per chemical fee		Fee maximum	
	Current	Proposed	Current	Proposed	Current	Proposed
≥10 to < 50	\$1,850	\$1,850	\$1,100	\$1,650	\$5,550	\$8,325
≥50 to < 100	\$2,775	\$2,775	\$1,100	\$1,650	\$7,400	\$11,025
≥100 to < 500	\$4,625	\$6,938	\$1,100	\$1,650	\$14,800	\$18,000
≥500	\$9,250	\$13,875	\$1,100	\$1,650	\$31,450	\$31,450

If Option B is implemented, facilities with 10-49 FTEs will reach the maximum fee with 4 chemicals, facilities with 50-99 FTEs will reach the maximum with 5 chemicals, facilities with 100-499 FTEs will reach the maximum with 7 chemicals, and facilities with 500 or more FTEs will reach the maximum with 11 chemicals.

Fee Adjustment Option C

Option C incorporates a graduated increase in the base fee, and additional adjustments to the maximum fees.

Option C						
FTEs	Base fee		Per chemical fee		Fee maximum	
	Current	Proposed	Current	Proposed	Current	Proposed
≥10 to < 50	\$1,850	\$1,850	\$1,100	\$1,650	\$5,550	\$8,325
≥50 to < 100	\$2,775	\$3,252	\$1,100	\$1,650	\$7,400	\$12,506
≥100 to < 500	\$4,625	\$6,221	\$1,100	\$1,650	\$14,800	\$22,200
≥500	\$9,250	\$13,875	\$1,100	\$1,650	\$31,450	\$31,450

If Option C is implemented, companies with 10-49 employees will reach the maximum fee with 4 chemicals, companies with 50-99 employees will reach the maximum with 6 chemicals, companies with 100-499 employees will reach the maximum with 10 chemicals, and companies with 500 or more employees will reach the maximum with 11 chemicals. The maximum fee for the 50-99 employee category is increased proportionally to reach the maximum fee at 6 rather than 5 chemicals.

Appendix B: Additional detail on benefits of a fee update

A fee update would directly benefit users by supporting additional industry sectors, small businesses, startups, and research into toxic chemical alternatives. A few examples of these benefits include the following:

Support industry sectors, including users of Higher Hazard Substances: Over the past fifteen years, the TURA program built a highly successful supply chain initiative that eliminated the use of lead by plastics compounders, wire and cable manufacturers, and electronic product manufacturers. This work has provided a competitive advantage in international markets, and the TURA program is applying a similar model in its work with aerospace and defense industries.

Support more small businesses: The TURA program supports small businesses through a combination of technical assistance, business grants, and regulatory innovation. Many LTQUs are small businesses such as metal finishers, plastics compounders, medical device manufacturers, surface coaters, and auto shops that stand to benefit significantly from education and financial and technical assistance.

Support startups and innovative technology: The consideration of safer alternative materials and processes is best performed before scale-up. For example, the TURA program has worked with individual small biotech companies to support making beneficial process changes early on.

Support more research into toxic chemical alternatives: The TURA program supports university research into chemical alternatives of interest to Massachusetts industry. Updating the fees would allow the program to support additional business sectors and research and grow Massachusetts' innovation economy in clean technology and green chemistry.

Economic benefits: Finally, maintaining effective programs produces economic benefits for Massachusetts businesses. Several company representatives have indicated that they have stayed in business in the Commonwealth, or hired or retained employees, because of the production efficiencies achieved as a result of the TURA program. Additional benefits include competitive positioning in European markets, savings from improved public and worker health and safety, and averted cleanup costs associated with pollution and spills.