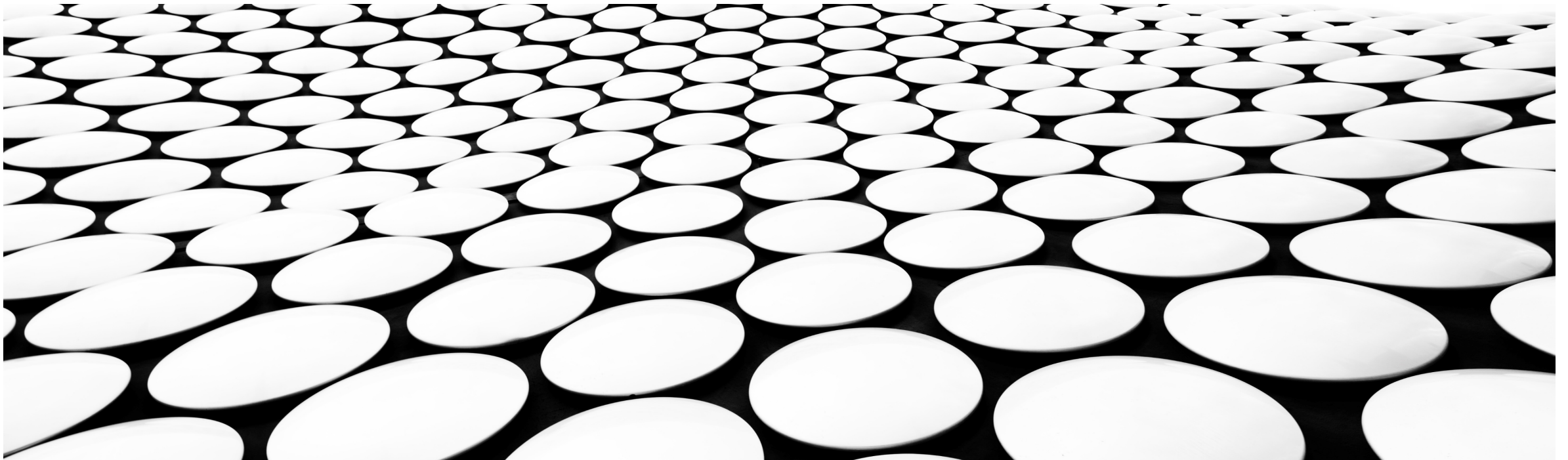


# ENVIRONMENTAL PROTECTION AGENCY

## [EPA–HQ–OPPT–2019–0677; FRL–10003– 14]

*PRELIMINARY LISTS IDENTIFYING MANUFACTURERS SUBJECT TO FEE OBLIGATIONS FOR EPA-INITIATED RISK EVALUATIONS UNDER SECTION 6 OF THE TOXIC SUBSTANCES CONTROL ACT (TSCA)*



# EPA FEES RULE

## REPORTING OBLIGATION

Who is subject to the upcoming *obligation to self-identify* as a manufacturer of a high-priority substance and *pay a portion of a fee* of more than a million dollars under EPA's Toxic Substances Control Act (TSCA) fees rule?

Many companies who may be unaware of that *obligation*, including many *importers of finished products*, such as electronics or products made with *composite wood*.

- Finished *products* [*goods*] are defined by TSCA VI as '*articles*'
- Finished goods incorporate composite wood products as component parts of finished goods
- Importers are *identified* based on the TSCA VI import declaration
- The obligation to self-identify results from formaldehyde [*HCHO*] being listed as a high priority chemical subject to risk assessment

# EPA FEES RULE

## REPORTING OBLIGATION

EPA has identified and initiated risk evaluations of *20 high-priority substances*.

Companies that *'manufactured'* any of those substances in the *past five years* must comply with EPA's fees rule, 40 C.F.R. Part 700, Subpart C, adopted under TSCA § 26(b).

- *March 27, 2020* companies must self-identify as a manufacturer or importer of articles that contain *any* of the 20 high-priority substances manufactured since January 27, 2015.
- Sometime around *June 20, 2020* to see the final lists of companies responsible for sharing the costs of the fees for the substances that it manufactured.
- Not later than *October 18, 2020* to pay its equal share of the fees, e.g. if there are 200 listed companies,  $\$1.3M/200 = \$6,500/\text{listed company}$ .

# EPA FEES RULE

## REPORTING OBLIGATION

For these purposes, *'manufacture'* includes, among other activities, domestic synthesis or *import of chemical substances* as byproducts or impurities, for research and development, and *in articles*.

The fee for each risk evaluation is \$1,350,000, with payment obligations *shared equally* among the manufacturers of each substance.

- More companies listed, less the payment obligation

Manufacturers *qualifying as small businesses* receive smaller obligations.

- The fees rule uses the SBA definition for manufacturing - maximum number of employees ranges from 500 to 1,500 (27% of all manufacturing businesses having a maximum employee cap at 500 employees).
- Small businesses may qualify for an *80% discount of the assessed fee*

# EPA FEES RULE

## REPORTING OBLIGATION

EPA designated 20 chemicals as high-priority substances for risk evaluations under TSCA § 6(b) on *December 30, 2019*.

This triggered an obligation for EPA to publish at the same time *preliminary lists of manufacturers* of those substances for purposes of the risk evaluation fee, 40 C.F.R. § 700.45(b)(3)(i).

EPA missed that *December 30 deadline*, instead publishing a notice of availability of those lists a month later, on *January 27, 2020*.

- The lists are available in the EPA docket.
- For HCHO, there are about 525 companies listed - none are furniture importers
- To create the list, EPA used TRI data [From R Report] – this excluded all importers of *'articles'* or finished goods.

# EPA FEES RULE

## REPORTING OBLIGATION

The *preliminary lists* are of limited assistance in identifying manufacturers of those 20 substances.

EPA assembled them primarily from information reported under the Chemical Data Reporting rule (CDR) and the Toxics Release Inventory (TRI) in the *previous six years*.

The fees rule says EPA will go back five years, 40 C.F.R. § 700.45(b)(2), but in the notice, EPA used *six years* to capture CDR and TRI data reported in 2012.

The preliminary list *do not include all importers of products containing a listed chemical*, and include companies that only qualified as manufacturers because they reported under the TRI as *processors or users* - roles that *do not trigger* a TSCA fee obligation.

# EPA FEES RULE

## REPORTING OBLIGATION

All companies that *'manufactured'* a listed substance in the *five years prior to publication* of the preliminary lists is subject to the fees requirement [40 C.F.R. § 700.45(b)(5)].

The fees rule does not define *'manufacturer'*

- TSCA § 3(9) defines 'manufacture' – *'to import into the customs territory of the United States ..., produce, or manufacture'*.
- As defined, *importers are considered manufacturers*
- Of note, *'If the domestic fabricator is NOT manufacturing formaldehyde [no], and NOT importing formaldehyde [no] or a formaldehyde-containing article [furniture], then that company is not subject to TSCA-fees requirements for the risk evaluation activity, and would not have to self-identify'* [2/20/20 email from Ryan Schmit].

# EPA FEES RULE

## REPORTING OBLIGATION

The key is how EPA defines *'article'* in 40 C.F.R. § 704.3:

*'a manufactured item (1) which is formed to a specific shape or design during manufacture, (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article, and that result from a chemical reaction that occurs upon end use of other chemical substances, mixtures, or articles; except that fluids and particles are not considered articles regardless of shape or design'.*

Furniture is defined as an article in TSCA VI; therefore, imported finished goods [i.e. furniture] are considered 'articles' and captured in the article definition of the fees rule.



# EPA FEES RULE

## REPORTING OBLIGATION

The *formaldehyde* listing brings in all *importers of articles* containing composite wood [e.g. *HWPW-CC panels* used as component parts of a finished good, i.e. *article*] made with a formaldehyde based resin to affix a ‘wood or woody-grass face veneer’ [as defined by TSCA VI].

- The *HWPW-CC panels* are produced using a *composite wood platform*, e.g. particle board or MDF, where the platform is produced using a UF resin.
- *HWPW-CC panels* utilize the composite wood platform and affix a wood or wood-grass face veneer using a UF resin.
- Since ULEF resin systems utilize HCHO, the reporting obligation would apply to those articles as well.
- If you are producing articles using a *NAF resin*, you’re still subject to the reporting obligation, unless you started producing the article *prior to the 6-yr window* EPA used to create the preliminary list.

# EPA FEES RULE

## REPORTING OBLIGATION

*Composite wood products [CWP] are found in many different types of finished goods [articles] such as cabinets, doors, furniture, flooring products, moldings, toys, mirror and photo frames, audio speakers, base boards, shelving, and countertops.*

- EPA regulates, but does not prohibit, the use of formaldehyde in composite wood products [40 C.F.R. Part 770].

The 'fee' is dependent on the number of companies on the final list of manufacturers of the chemical substance [as stated, there are currently 525 companies on the preliminary list for HCHO]

- If this was the *'final list of manufacturers'*, the fee would be **\$2,571.42**.
- All companies on the list pay equally – the fee isn't dependent on market share or size.
- The *exception*, as mentioned, is the discount for small businesses.

# EPA FEES RULE

## REPORTING OBLIGATION

The fees rule provides that members of a *consortium of manufacturers* [e.g. AHFA] may split the fee, with the consortium itself responsible for paying the full fee [40 C.F.R. § 700.45(f)(3)].

- Consortia decide for themselves how to determine how to split fees among their members [40 C.F.R. § 700.45(f)(3)(iii)].
- Even if a consortium is formed, *manufacturers are still obligated to self-report*.
- A consortium must notify EPA of its formation within 60 days of the publication of the *final scope document* [40 C.F.R. § 700.45(f)(3)(i)].
- EPA must publish the final scope documents by *June 20, 2020*.
- That means that the last date for a consortium to notify EPA of its formation is *August 19, 2020*.
- EPA has a formula for calculating fees for consortium and those who do not join [40 C.F.R. § 700.45(f)(5)].

# EPA FEES RULE

## REPORTING OBLIGATION

*All manufacturers* of one or more of the 20 substances, must self-identify to EPA for each applicable substance [40 C.F.R. § 700.45(b)(5)].

- The reporting obligation is required regardless of whether the manufacturer is included on a preliminary list.
- Each manufacturer must self-identify to EPA by *March 27, 2020*.
- Note, EPA is considering an extension of the self-reporting deadline.
- Each manufacturer must submit its contact information to EPA through the *Central Data Exchange* [<https://cdx.epa.gov/>] (CDX) [40 C.F.R. § 700.45(b)(5)(i)].

EPA will publish a final list of manufacturers subject to the fees rule for a substance no later than the date that it releases the *final scope document* for that substance [40 C.F.R. § 700.45(b)(7) - EPA must publish the final lists by *June 20, 2020*.

# EPA FEES RULE

## REPORTING OBLIGATION

EPA will inform consortia and individual companies of their fee amount as defined by the rule [40 C.F.R. §700.45(f)(5)(v)].

- The rule does not indicate when this will occur, however. It must occur on or after the last date for consortia to notify EPA of their formation, which will be not later than *August 19, 2020*.
- EPA expects to send invoices *electronically through CDX* to those on the final lists of manufacturers.
- A manufacturer must pay the fee for a substance in full, no later than 120 days after publication of the final scope document for that substance [40 C.F.R. § 720.45(g)(3)(iv)].
- The final scope document is due no later than *June 20, 2020* – therefore, payment is due no later than *October 18, 2020*.

# EPA FEES RULE

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- Payments are submitted electronically using a payment method available at [www.pay.gov](http://www.pay.gov) [40 C.F.R. § 700.45(g)(1)].

# EPA FEES RULE

## REPORTING OBLIGATION

Failure to pay the fee is a violation of TSCA § 15. 40 C.F.R. § 700.49(b).

- Violations are subject to penalties of up to *\$40,576 per fee not paid*, according to the latest notice adjusting TSCA penalties for inflation.
- EPA has not adopted an Enforcement Response Policy that covers such violations, so it is unclear what the actual penalty would be, but it is likely to be less than the maximum amount.

Actin Items: review the preliminary list; did you manufacture an article containing one or more listed substances since January 27, 2015; Article importers, such as many retailers, may want to review available composition information for the articles they imported, or contact their foreign suppliers for that information, to determine whether they manufactured any of the 20 substances as an importer of articles; affected companies should plan to self-report to EPA (CDX) by *March 27, 2020*.

Phthalates (5)	Flame Retardants (3)	Chlorinated Solvents (7)	Others (5)
Butyl benzyl phthalate (BBP) CAS #: 85-68-7	4,4'-(1-Methylethylidene)bis[2,6-dibromophenol] (TBBPA) CAS #: 79-94-7	1,1-Dichloroethane CAS #: 75-34-3	1,3-Butadiene CAS #: 106-99-0
Dibutyl phthalate (DBP) CAS #: 84-74-2	Phosphoric acid, triphenyl ester (TPP) CAS #: 115-86-6	1,2-Dichloroethane CAS #: 107-06-2	Ethylene dibromide (Ethane, 1,2-dibromo-) CAS #: 106-93-4
Di-ethylhexyl phthalate (DEHP) CAS #: 117-81-7	Tris(2-chloroethyl) phosphate (TCEP) CAS #: 115-96-8	1,2-Dichloropropane CAS #: 78-87-5	1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8-hexamethylcyclopenta [g]-2-benzopyran (HHCB) CAS #: 1222-05-5
Di-isobutyl phthalate (DIBP) CAS #: 84-69-5		o-Dichlorobenzene CAS #: 95-50-1	<b>Formaldehyde CAS #: 50-00-0</b>
Dicyclohexyl phthalate CAS #: 84-61-7		p-Dichlorobenzene CAS #: 106-46-7	Phthalic anhydride CAS #: 85-44-9
		trans-1,2-Dichloroethylene CAS #: 156-60-5	
		1,1,2-Trichloroethane CAS #: 79-00-5	



# EPA FEES RULE REPORTING OBLIGATION

