

Conference Call Transcript
TSCA Fees Associated with EPA-initiated Risk Evaluations
December 19, 2019
02:00 PM ET

OPERATOR: This is Conference # 1480769

Operator: Ladies and gentlemen, thank you for standing by and welcome to the EPA-Initiated Risk Evaluations and the TSCA Administration Fees Rule Conference Call. At this time, all participants are in a listen only mode. Please be advised that today's conference is being recorded. If you require any further assistance please press star zero.

I would now like to hand the conference over to your speaker today, Mr. [Ryan Schmit], thank you please go ahead.

Ryan Schmit: Thank you and thank you to everyone here for joining. Again my name is Ryan Schmit, I work in EPA's Office of Pollution Prevention and Toxics. I'm here today to talk a little bit about TSCA fees for EPA initiated risk evaluation. And I'm joined with some of my EPA colleagues also in the office of pollution prevention and toxics, Mr. Mike Burns, Mr. Hans Scheifele, and Mr. Ben Dyson. All of us work on TSCA issues and fees issues as well. So tomorrow, you may be aware, December 20th, that EPA expects to post final high priority designations for 20 twenty chemical substances, marking the beginning of risk evaluations for those chemicals under TSCA.

And as you are also probably aware, there are fees associated with each of these chemical risk evaluation activities. So the purpose of today's call is to provide a bit of a refresher, the requirements that are associated with the TSCA fees rule, which was finalized in October of 2018 including what to expect moving forward and how to prepare for the upcoming 20

risk evaluation activities. So we appreciate some of the questions we received from you in advance of this call and we'll try to address them during the call, but we're also happy to continue to answer questions in the weeks and months ahead as this process moves forward.

So with that I'll speak a little bit about some of the background and I'll be brief about that, and we'll get into some of the next steps. So in 2016, TSCA was amended and provided EPA with expanded authority to collect fees from chemical manufacturers, and importers to help defray a portion of the cost associated with overall TSCA implementation efforts. The rule required EPA to establish a fee structure by rule, which we finalized in October of last year. And further rule, there are now fees associated with a variety of TSCA activities under sections relating to testing and information development requirements.

Section five, which is related to our new chemicals program, and section six, they will focus specifically on the requirements and process associated with fees for EPA initiated risk evaluations under TSCA section six. So one of the most commonly asked questions is who is required to pay these fees. The rule requires all domestic manufacturers and importers of the high priority chemical undergoing an EPA initiated risk evaluation to pay a portion of the fee. And unlike other TSCA regulations, there are no exemptions in the TSCA fees rule for specific groups of manufactures or importers.

So in advance of this call and the months that followed the finalization of the fees rule we received a number of questions in this area. So for example the following manufactures and importers would be covered and would be required to pay fees, so it would include importers of articles containing the high priority chemical include manufacturers of a high priority chemical as a buy product. It would include manufacturers of the high priority chemical as an impurity and it would include manufacturers or importers of even very small amounts of the high priority chemical, so in other words there's no to de minimis level or threshold that was established by the rule.

Processors and other downstream users of the high priority chemicals would not be covered, would not be required to pay fees. So for example domestic manufacturers of goods that might incorporate the high priority chemical into the product, but who do not actually make or import the

high priority chemical are not covered and not required to pay fees. So one of the frequent examples or questions that we get come from for example folks in the furniture manufacturing industry.

These folks are manufacturers of a good, manufacturers of furniture, but they are not actually makers of the high priority chemical or importers of that high priority chemical, and in that instance the furniture manufacture is not actually a manufacturer of the chemical and therefore not required to pay the fee. I received a number of other questions about some more complex scenarios. For example, joint ventures between multiple manufacturers or questions about what happens if there's a transfer of ownership of the manufacturing or an importing company during or after the process to identify fee payers.

We will be following up with those commenters directly and hope to post some more information on our website in the coming months. So what are the next steps for paying fees? The TSCA fees rule lays out the general process for identifying entities who are subject to the risk evaluation fee. This includes publication of a preliminary list of the manufacturers and importers who are subject to the fee and the opening of a public comment period, and after consideration of those public comments publication of a final list. The rule also describes the responsibilities of manufacturers and importers of high priority chemical including an obligation to self-identify as a manufacturer and importer through EPA's central data exchange system, and the opportunity to certify as a small business concerns, as well as the opportunity to make certain certifications in order to avoid fee applications.

Further the rule describes how individual fee amounts will be calculated and assessed to responsible fee payers and when those payments are due. So we'll talk about each of those steps and what to expect. First with respect to the preliminary list, to develop those lists of manufacturers and importers of the high priority chemical EPA looked to publicly available reporting data from our chemical data reporting rule and the toxics release inventory. And while we considered using other sources of information, we ultimately chose to rely on these two sources for development of the preliminary list.

And as such those preliminary lists may be under inclusive. EPA expects the preliminary list to be supplemented and refined during and following

the comment period, which I will describe a bit later. And importantly, EPA plans to announce the availability of the preliminary list in early to mid-January of next year not concurrently with the publication of the final high priority designations. So you can expect publication of separate Federal Register notice announcing the availability of the list as well as additional communications through our TSCA email listserv.

Following publication of those preliminary list, there would be an opportunity for public comment and certifications as I mentioned. So the publication will coincide with the opening of a 60-day public comment period. The rule requires a minimum of 30 days, so we're providing twice that minimum. For manufacturers and importers of the high priority chemical, the EPA CDX system is now set up to facilitate the required and optional certifications consistent with the requirements and the fees rule. For those who may not be familiar with CDX, we will be providing instructions on how to register, which are currently available on EPA's CDX website, and will also be identified when the preliminary lists are published.

EPA CDX home page has some helpful frequently asked questions. There's also a CDX help desk that can help walk you through the entire registration process. In addition, there's also user guide available with instructions on how to specifically use the CDX application and submit payments for these purposes. Manufacturers and importers of high priority chemical must use CDX to do all of the following: To self-identify as a manufacturer or importer subject to the fee obligation irrespective of whether or not they're listed on the preliminary list. So we did receive some question on this, if folks are not identified on the preliminary list they must nevertheless report into EPA through CDX to self-identify, that is a required feature of the final fees rule.

Manufacturers and importers must also provide certain basic company information. CDX will be required to certify as to whether or not they qualify as a small business concerns. The definition of small business concern is available in the final rule. It's also on our website and it's an employee based model that's modeled after the small business administration's own small business definition. Where appropriate manufacturers and importers can certify and CDX has to not manufacturing or importing the high priority chemical in the last five years and therefore not responsible for a fee. And finally, where

appropriate manufacturers and importers can certify as to having ceased that activity for the chemical prior to a cutoff date that's identified in the rule, and certify that they won't reenter the market for a period of five years, and therefore also not responsible for the fee.

The cutoff date is the date prior to when prioritization initiated for that high priority chemical, and so in the case of all 20 chemicals that will be announced tomorrow that day is prior to March 20, 2019. EPA will use the information collected through CDX to facilitate future communications with manufacturers and importers, and where appropriate to invoice apportionment of the TSCA of the risk evaluation fee. Following the comment period, EPA will consider responses received from manufacturers and importers, and other public input received in the docket and develop finalists of responsible fee payers.

You can expect that you'd be able to publish those lists no later than concurrent with publication of the final risk evaluation scope documents or by June 2020. Manufacturers and importers who are identified on that final list will be a subject to a portion of the TSCA fee for the risk evaluation activity. Another feature of the final rule was to form consortia and pay in that manner as well. So manufacturers and importers may pay the fee either individually or through a consortium of fee payers. Formation of a consortium is not a requirement, but our systems and our implementation activities contemplate that and we will facilitate that in.

The rule requires that EPA be notified of formation of a consortium and the names of its members within 60 days of publication of the final list or by August of 2020. Again CDX will facilitate this process by allowing manufacturers to identify an association with the consortium. Turning to the fee payments themselves. The total fee payment for an EPA initiated risk evaluation is \$1.35 million, which will be shared amongst the manufacturers and importers identified on the final list. The amount each entity is responsible for will vary depending on the total number of fee payers identified and the number of small versus non-small businesses. For example if there are a hundred manufacturers and importers identified and each is initially responsible for 1% of the total fee amount for \$1350.

Small business concerns would receive an 80% discount off of that base fee and then the remainder of the total fee would be divided amongst the non-small business entities. The formula for calculating this division of

payments is in the rule including a description of how fees would be assessed certain complex multiple payer's scenarios such as where there may be a mix of small and non-small businesses, and individual payers through a consortium. EPA expects to begin sending invoices through CDX shortly after the close of opportunities of former consortium should be around that August 2020 time frame again.

Because fee amounts are dependent on the number and membership of consortia, this is the earliest possible date that EPA can begin invoicing. Fee payments are then due 120 days from the publication date of the final scope of the risk evaluation or by October 2020, and must also be made within the CDX systems. That concludes our refresher of the TSCA fee rule requirements. I wanted to thank all of you for calling in to list and again you should expect to see the final high priority designations tomorrow, but the preliminary list of manufacturers and importers to be published after the holidays in early to mid-January.

Of course, we will be here to help answer any questions you may have and we'd like to know that there'll be a transcript of this call made available on our website. In addition, for folks who have not visited already, we have a variety of useful information on our fees website, which can be access at www.epa.gov/TSCA-fees. Again, thanks to all the folks who have listen today. We look forward to working with you in the future, and with that I'll turn it back over to our operator.

Operator: Ladies and gentlemen, this concludes today's conference call. Thank you for participating, you may now disconnect.