

TSCA Fee Payments for Manufacturers of Five High-Priority Substances



January 10, 2025

AUTHORS

Mark Duvall, Ryan Carra, Jackie Eisermann

Companies that manufacture any of five chemicals are facing substantial fee payments under the Toxic Substances Control Act. The U.S. Environmental Protection Agency (EPA) has published preliminary lists of manufacturers that it plans to hold financially responsible for risk evaluations of five high-priority substances under TSCA section 6(b). The Agency published a notice

announcing the availability of the preliminary lists of proposed manufacturers on December 31, 2024 at [89 Fed. Reg. 107099](#). The five high-priority substances for which risk evaluation fees will be assessed are acetaldehyde, acrylonitrile, benzenamine, vinyl chloride, and 4,4'-methylene bis(2-chloroaniline) (MBOCA). The preliminary lists themselves appear in the [docket](#). Manufacturers of those chemicals whose names do not appear on the relevant preliminary list must notify EPA by March 3, 2025.

Background

EPA recently designated those five chemical substances as high priority, meaning that they are at the top of EPA's priority list for section 6(b) risk evaluations. [89 Fed. Reg. 102900](#) (Dec. 18, 2024). Under TSCA section 26(b), EPA has the authority to offset costs associated with conducting risk evaluations under section 6(b), as well as certain other provisions of TSCA. Section 6(b) directs EPA to initiate risk evaluations for chemical substances to determine whether they present an unreasonable risk to health or the environment under their conditions of use.

Pursuant to the TSCA Fees Rule, codified at 40 C.F.R. Part 700, Subpart C, EPA will collect payment from companies that manufactured (including import) a chemical substance that is the subject of a risk evaluation under TSCA section 6(b) during the previous five years.

The fee totals \$4,287,000, which is to be shared among all identified manufacturers. The amount each entity pays will depend on the total number of entities identified, their production volumes, and the number of small businesses identified, which receive an 80% discount on their share of the fee. 40 CFR § 700.45(c).

Next Steps for Manufacturers

To compile the list of manufacturers subject to fees, EPA relies on information already at its disposal from the past five years, including submissions pursuant to TSCA sections 5(a) (Significant New Use Notice), 8(a) (Chemical Data Reporting), 8(b) (TSCA Inventory), and the Toxics Release Inventory, as well as relevant information submitted to other agencies. 40 C.F.R. § 700.45(b)(2).

However, entities that have manufactured (including imported) the five chemical substances in the previous five years whose names do not appear on the preliminary lists have a duty to self-identify and “**must** submit notice to EPA, irrespective of whether they are included in the preliminary list.” 40 C.F.R. § 700.45(b)(5) (emphasis added). Notifications are due by **March 3, 2025**.

Within this window, entities must provide the following information electronically via the Central Data Exchange (CDX), EPA’s electronic reporting portal, using the Chemical Information Submission System (CISS) reporting tool, as applicable:

- **Contact information:** Includes name and address of submitting company and other basic contact information.
- **Certification of cessation:** This applies to entities (whether named in the Preliminary List or not) that have manufactured any of the chemical substances in the five year period preceding publication of the preliminary lists (but have ceased manufacture prior to the certification cutoff date).
- **Certification of no manufacture:** This applies to entities named in a preliminary list that have not manufactured the chemical in the five year period preceding publication of the preliminary lists. It exempts those entities from fee obligations.
- **Certification of meeting exemption:** This applies to entities named in a preliminary list that meets one or more of the exemptions discussed below. A certification statement attesting the applicability of the exemption must be submitted and will exempt those entities from fee obligations.
- **Production volume:** Entities that are not exempt, and do not otherwise qualify for certifications of cessation or manufacture, must submit their production volume for the applicable chemical substance for the three calendar years prior to publication of the preliminary list – 2023, 2022, and 2021. Manufacturers should report volumes to two significant figures. Companies with multiple facilities producing the same chemical substance should include the total aggregated production volume from all facilities when calculating the average production volume.

Exemptions Available

Manufacturers are exempted from fee payment requirements if they meet one or more of the following criteria under 40 C.F.R. § 700.45(a)(3)(i) through (v) on or after the certification cutoff date, December 18, 2023, as follows:

1. Import articles containing that chemical substance;
2. Produce that chemical substance as a byproduct that is not later used for commercial purposes or distributed for commercial use;
3. Manufacture that chemical substance as an impurity;
4. Manufacture that chemical substance as a non-isolated intermediate; or
5. Manufacture small quantities of that chemical substance solely for research and development.

Manufacturers are also exempted if they meet the following criteria for the five years prior to and following publication of the preliminary lists:

6. Manufacture that chemical substance in quantities below a 2,500 lbs. annual production volume, unless all manufacturers of that chemical substance manufacture that chemical in quantities below a 2,500 lbs. annual production volume, in which case this exemption is not applicable.

The manufacturer must meet one or more of the listed exemptions in the successive five years and refrain from conducting manufacturing (including import) outside of those exemptions in the successive five years to qualify.

Next Steps

Companies should review the preliminary lists and, if not listed, evaluate whether self-identification, a certification, or an exemption is warranted well before the March 3, 2025 deadline and notify EPA accordingly.

After the close of the comment period, and once EPA has considered information received, EPA will publish final lists of manufacturers (including importers) subject to the TSCA Fees Rule. Beveridge & Diamond is available to assist.

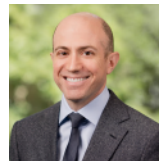
Beveridge & Diamond's [Chemicals Regulation](#) practice group and [Chemicals](#) industry group provide strategic, business-focused advice to the global chemicals industry. We work with large and small chemical and products companies whose products and activities are subject to EPA's broad chemical regulatory authority under TSCA and state chemical restrictions.

AUTHORS



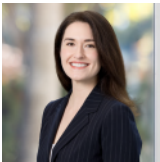
Mark Duvall

Principal, Washington, DC
mduvall@bdlaw.com
+1.202.789.6090



Ryan Carra

Principal, Washington, DC
rcarra@bdlaw.com
+1.202.789.6059



Jacqueline Eisermann

Associate, Washington, DC
jeisermann@bdlaw.com
+1.212.789.6044

ABOUT B&D

Beveridge & Diamond's more than 150 lawyers across the U.S. focus on environmental and natural resources law, litigation, and alternative dispute resolution. We help clients around the world resolve critical environmental and sustainability issues relating to their products, facilities, and operations.

Learn more at bdlaw.com

The content of this alert is not intended as, nor is it a substitute for, legal advice. You should consult with legal counsel for advice specific to your circumstances. This communication may be considered advertising under applicable laws regarding electronic communications.