



BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 700, 720, 723, 725, 790 and 791**

**[EPA-HQ-OPPT-2016-0401; FRL-9976-74]**

**RIN 2070-AK27**

**User Fees for the Administration of the Toxic Substances Control Act (TSCA)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; Availability of supplemental information and extension of comment period.

**SUMMARY:** EPA is extending the comment period for 30 days and is providing notice that EPA has added a supplemental analysis, titled “Supplemental Analysis of Alternative Small Business Size Standard Definitions and their Effect on TSCA User Fee Collection”, to the rulemaking docket for the proposed rule that published in the **Federal Register** on February 26, 2018. The supplemental analysis provides additional estimates for the impact of setting the small business definition based on an employee-based threshold.

**DATES:** Comments must be received on or before [*insert date 30 days after date of publication in the Federal Register*].

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2016-0401, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery*: To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Mark Hartman, Immediate Office, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-3810; email address: [hartman.mark@epa.gov](mailto:hartman.mark@epa.gov).

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Executive Summary**

#### *A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may be of particular interest to anyone who manufactures (including imports), distributes in commerce, or processes a chemical substance (or any combination of such activities) or submits or is required to submit information to the EPA under TSCA sections 4 or 5 or anyone who manufactures a chemical substance that is the subject of a risk evaluation under TSCA

section 6(b). The following list of North American Industry Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include, but are not limited to, companies found in major NAICS groups:

- Chemical Manufacturers (NAICS code 325),
- Petroleum and Coal Products (NAICS code 324), and
- Chemical, Petroleum and Merchant Wholesalers (NAICS code 424).

*B. What Should I Consider as I Prepare My Comments for the EPA?*

1. *Submitting CBI.* Do not submit this information to the EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket.

2. *Tips for preparing your comments.* When preparing, and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

## **II. What Action is the Agency Taking?**

In the **Federal Register** of February 26, 2018 (83 FR 8212) (FRL-9974-31), EPA proposed to establish and collect fees from certain manufacturers (including importers) and processors to defray some of the Agency costs related to activities under TSCA sections 4, 5,

6 and 14. EPA also proposed to revise the size standard used to identify businesses that can qualify as a “small business concern” under TSCA for the purposes of fee collection. A regulatory definition for a small business for a submission under TSCA section 5 was promulgated in 1988 and is based on the annual sales value of the business’s parent company. 40 CFR 700.43 currently states: “Small business concern means any person whose total annual sales in the person’s fiscal year preceding the date of the submission of the applicable section 5 notice, when combined with those of the parent company (if any), are less than \$40 million.” EPA proposed several changes to this definition. Consistent with the definition of small manufacturer or importer at 40 CFR 704.3,

EPA proposed to increase the current revenue threshold of \$40 million using the Producer Price Index (PPI) for Chemicals and Allied Products, as compiled by the U.S. Bureau of Labor Statistics (Data series WPU06 at <http://data.bls.gov/cgi-bin/srgatet>). Using a base year of 1988 and inflating to 2015 dollars resulted in a value of approximately \$91 million.

EPA also proposed to change the time frame over which annual sales values are used when accounting for a business’s revenue. Instead of using just one year preceding the date of submission, the Agency is proposing to average annual sales values over the three years preceding the submission. EPA proposed to apply this updated definition – adjusted for inflation and averaging sales revenue over three years – to not only TSCA section 5 submissions, but also to TSCA sections 4 and 6 submissions as well.

Pursuant to Executive Order 12866, EPA submitted to the Office of Management and Budget (OMB) an economic analysis of the potential costs and benefits associated with the proposed rulemaking. The Agency has since completed supplemental analysis that estimates

the impact of setting the small business definition based on an employee-based threshold. Specifically, EPA estimated the impact when the small business definition is set using the following: a) a fixed employee-based threshold that defines small businesses as those firms with 500 or fewer employees, and b) the thresholds set by the Small Business Administration, which vary by industry sector. A copy of the analysis, titled “*Supplemental Analysis of Alternative Small Business Size Standard Definitions and their Effect on TSCA User Fee Collection*”, is now available in the docket for this action (EPA–HQ–OPPT–2016–0401).

EPA requests comment on this analysis and whether an employee-based size standard would be more appropriate than a receipts-based size standard and what that employee level should be; whether the size standard, be it receipts-based or employee-based, should vary from industry to industry to reflect differences among the impacted industries; and what other factors and data sources the Agency should consider, besides inflation, when developing the size standard to qualify for reduced fee amounts. The supplemental analysis estimates the impact on fee amounts should an employee-based size standard be used to determine eligibility for reduced fees. In order to ensure that EPA meets the statutory requirement that fees are sufficient to defray 25% of the estimated Agency costs, EPA would need to recoup the revenue loss resulting from moving to one of the two employee-based small business definitions presented in the analysis by increasing the TSCA section 5 proposed general industry fees. The revenue losses would likely arise from TSCA section 5 submissions, given that EPA estimates more businesses would qualify for the lower fee levels under the employee-based definitions. Impacts to TSCA section 4 and 6 fee collections are unlikely as EPA expects that consortia will ensure that the full fee amount is remitted

regardless of the proportion of small businesses participating in the consortia. In the supplemental analysis EPA estimated the impact on fees if the revenue loss is recouped by allocating it proportionally among the proposed TSCA section 5 general fees. In this case, in order to recoup the entire amount, the general fee for PMN/MCAN/SNUN would increase by \$413, from \$16,000 to a new fee of \$16,413, and the general fee for Exemptions would increase by \$122, from \$4,700 to a new fee of \$4,822. If rounding to the nearest \$100, this results in new fees of \$16,400 and \$4,800, respectively, with 93% (\$196,000) of the \$211,000 fee revenue deficit recovered. EPA requests comments on this approach of ensuring that EPA continues to collect 25% of applicable Agency costs.

Comments on this supplemental analysis document should be submitted to the docket for the proposed rule. In addition, in order to give interested parties the opportunity to consider this additional analysis and prepare meaningful comments, EPA is hereby extending the comment period, which is set to end on April 27, 2018, until [*insert date 30 days after date of publication in the **Federal Register***].

### **List of Subjects**

#### *40 CFR Part 700*

Chemicals, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, User fees.

#### *40 CFR Part 720*

Chemicals, Environmental protection, Hazardous substances, Imports, Reporting and recordkeeping requirements.

#### *40 CFR Part 723*

Chemicals, Environmental protection, Hazardous substances, Phosphate, Reporting

and recordkeeping requirements.

*40 CFR Part 725*

Administrative practice and procedure, Chemicals, Environmental protection, Hazardous substances, Imports, Labeling, Occupational safety and health, Reporting and recordkeeping requirements.

*40 CFR Part 790*

Administrative practice and procedure, Chemicals, Confidential business information, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

*40 CFR Part 791*

Administrative practice and procedure, Chemicals, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 10, 2018

*Charlotte Bertrand*

*Acting Principal Deputy Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

[FR Doc. 2018-08427 Filed: 4/23/2018 8:45 am; Publication Date: 4/24/2018]