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Transparency in Carbon Emissions, Conflict Minerals, Chemistry and Other Sustainability Issues



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Green Disclosures for Consumer Products—A Sustainable Transparency

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What Does It Mean to Be Sustainable?

A Traditional Definition

Sustainability calls for policies and strategies that meet society's present needs without compromising the ability of future generations to meet their own needs

Source: <http://www.epa.gov/sustainability/basicinfo.htm#sustainability>



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A More Recent Public Policy Perspective

Sustainability is

The satisfaction of basic economic, social and security needs now and in the future without undermining the natural resource base and environmental quality on which life depends.

Source: <http://www.epa.gov/sustainability/basicinfo.htm#sustainability>



A Business Perspective

The Goal of Sustainability is

To increase long-term shareholder and social value, while decreasing industry's use of materials and reducing negative impacts on the environment.

Source: <http://www.epa.gov/sustainability/basicinfo.htm#sustainability>



Sustainability

From a business perspective,
accomplished by

- Capturing system dynamics,
- Building resilient and adaptive systems,
- Anticipating and managing variability and risk,
- And earning a profit.

Source: <http://www.epa.gov/sustainability/basicinfo.htm#sustainability>



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Synergy

Sustainability is synergy between
business and the environment

Source: <http://www.epa.gov/sustainability/basicinfo.htm#sustainability>



Transparent Compliance Under the Umbrella of Sustainability

Traditional Sustainability Objectives

- Recycle
- Conserve Energy
- Building Green
- Reduce Waste
- Reduce Water Use
- Consume Responsibly
- Reduce Transportation Footprint

Compliance Objectives

- Reduce/Eliminate Hazardous Ingredients
- Reduce Product GHG and VOC Emissions
- Eliminate/Reduce Use of Suspect Materials—conflict minerals, rare or endangered species
- **Disclose** Product Hazards/Risks
- **Disclose** Compliance



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Environmental Disclosure Laws May Have the Goal of Making Businesses More Environmentally Transparent

**But Disclosure Requires Knowledge of
PRODUCT:**

- Sourcing & Manufacturing Process
- Country of Origin
- Materials
- Ingredients
- Design
- Testing & Measurement Standards
- Product Limitations & Restrictions



Disclosures to Government Agencies

- U.S. Securities and Exchange Commission (SEC)
- U.S. Environmental Protection Agency (EPA)
- U.S. Customs & Border Protection
- U.S. Consumer Product Safety Commission (CPSC)



Retailer Disclosure Responsibilities

- Disclosures At Import or Export
- Product Registration
- Product Testing and Certification
- Reporting
- Labeling
- Packaging
- Advertising
- Product Recall Notifications



The Retailer Dilemma

- Retailers rarely manufacture their own products
- Retailers rely upon suppliers & their disclosures to achieve compliance
- The primary (limited) source of product information comes from the Product's Material Safety Data Sheet (MSDS).
- Due to enforcement focus over the last several years, Retailers have become a secondary means of ensuring compliance among manufacturers



Limited Availability of Product Information —The MSDS

- An MSDS discloses some environmental, health and safety workplace hazards, exposure risks, first aid and limited handling information for a specific product based upon its ingredients and formula.
- An MSDS is produced by the product manufacturer and made available to Retailers upon request.
- In the United States, MSDS's have to be accessible in the workplace as a part of OSHA's Hazard Communication requirements –disclosure of potentially harmful substances and workplace hazards.
- MSDS's must also be made available to local fire departments and local and state emergency planning officials under Section 311 of the Emergency Planning and Community Right to Know Act (EPCRA)
- An MSDS is also often used to assess regulatory compliance needs.
- But an MSDS won't tell you everything that you need to know—It won't always tell you about VOCs, GHGs, Conflict Minerals, Country of Origin and it generally is only available for chemical products.



Changes to the MSDS

- In 2002, the U.N. Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonized System (“GHS”) of Classification and Labeling of Chemicals adopted GHS standards.
- The GHS is a single, harmonized system for classification of chemicals according to their health, physical, and environmental effects.
- The GHS also provides harmonized communication elements, including labels and material safety data sheets.
- In 2005, U.S. OSHA announced it would initiate efforts to implement the GHS framework through revisions to the Hazard Communication Standards (“HCS”)—29 CFR 1910.1200.
- <http://www.osha.gov/dsg/hazcom/ghoshacomparison.html>



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- Proposed Rulemaking issued in Sept. 2009
- Comment period ended Dec. 2009
- Public Hearings on these changes in Mar. 2010.
- Post hearing comment ended June 2010.



Examples of Revisions to the HCS

- Labels: Chemical manufacturers and importers will provide a label that includes a harmonized signal word, pictogram, and hazard statement for each hazard class and category. Precautionary statements must be included.
- MSDS: Will have a specified 16-section format.



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The MSDS 16-Section Format



Table 1.5.2 Minimum information for an MSDS

(1) Product and company identification

- GHS product identifier
- Other means of identification.
- Recommended use of the chemical and restrictions on use.
- Supplier's details (including name, address, phone number etc).
- Emergency phone number

(2) Hazards identification

- GHS classification of the substance/mixture and any regional information.
- GHS label elements, including precautionary statements. (Hazard symbols may be provided as a graphical reproduction of the symbols in black and white or the name of the symbol e.g. flame, skull and crossbones.)
- Other hazards which do not result in classification (e.g. dust explosion hazard) or are not covered by the GHS.



(3) Composition/ Information On Ingredients

Substance

- Chemical identity
- Common name, synonyms etc.
- CAS number, EC number etc.
- Impurities and stabilizing additives which are themselves classified and which contribute to the classification of the substance

Mixture

- The chemical identity and concentration or concentration ranges of all ingredients which are hazardous within the meaning of the GHS and are present above their cut-off levels.
- Cutoff level for reproductive toxicity, carcinogenicity and category 1 mutagenicity is $\geq 0.1\%$
- Cutoff level for all other hazard classes is $\geq 1\%$

Note: For information on ingredients, the competent authority rules for CBI take priority over the rules for product identification.

(4) First-aid measures

- Description of necessary measures, subdivided according to the different routes of exposure, i.e. inhalation, skin and eye contact and ingestion.
- Most important symptoms/effects, acute and delayed.
- Indication of immediate medical attention and special treatment needed, if necessary



- (5) Fire-fighting measures
 - Suitable (and unsuitable) extinguishing media. Specific hazards arising from the chemical (e.g. nature of any hazardous combustion products).
 - Special protective equipment and precautions for fire-fighters

- (6) Accidental release measures
 - Personal precautions, protective equipment and emergency procedures.
 - Environmental precautions.
 - Methods and materials for containment and cleaning up.

- (7) Handling and storage
 - Precautions for safe handling.
 - Conditions for safe storage, including any incompatibilities

- (8) Exposure controls/personal protection
 - Control parameters e.g. occupational exposure limit values or biological limit values.
 - Appropriate engineering controls.
 - Individual protection measures, such as personal protective equipment



(9) Physical and chemical properties

- Appearance (physical state, color etc)
- Odor
- Odor threshold
- pH
- melting point/freezing point
- initial boiling point and boiling range
- flash point:
- evaporation rate
- flammability (solid, gas)
- upper/lower flammability or explosive limits
- vapor pressure
- vapor density
- relative density:
- solubility(ies)
- partition coefficient: n-octanol/water:
- auto-ignition temperature decomposition temperature



(10) Stability and reactivity- Chemical stability.

- Possibility of hazardous reactions.
- Conditions to avoid (e.g. static discharge, shock or vibration)
- Incompatible materials
- Hazardous decomposition products

(11) Toxicological information

Concise but complete and comprehensible description of the various toxicological (health) effects and the available data used to identify those effects, including:

- information on the likely routes of exposure (inhalation, ingestion, skin and eye contact);
- Symptoms related to the physical, chemical and toxicological characteristics;
- Delayed and immediate effects and also chronic effects from short- and long-term exposure.
- Numerical measures of toxicity (such as acute toxicity estimates).



(12) Ecological information

- Ecotoxicity (aquatic and terrestrial, where available).
- Persistence and degradability
- Bioaccumulative potential
- Mobility in soil
- Other adverse effects

(13) Disposal considerations

- Description of waste residues and information on their safe handling and methods of disposal, including any contaminated packaging.



(14) Transport information

- UN number
- UN Proper shipping name.
- Transport Hazard class(es).
- Packing group, if applicable.
- Marine pollutant (Yes/No).
- Special precautions which a user needs to be aware of or needs to comply with in connection with transport or conveyance either within or outside their premises.

(15) Regulatory information

- Safety, health and environmental regulations specific for the product in question.

(16) Other information

- Other information including information on preparation and revision of the SDS



Examples Where the Goals of Compliance and of Sustainability Could Overlap

- Disclose/Inform to Shareholders/SEC on Product Environmental/Safety Risk
- Disclose Use of Conflict Minerals
- Disclose Reductions of Greenhouse Gas Emissions (GHG)



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Disclose/Inform on Product Environmental/Safety Risks



- **SEC Regulations and Statutes**
 - Commission Guidance Regarding Disclosure Related to Climate Change—17 CFR Parts 211, 231 and 241
 - Regulation S-K—Items 101, 103, 303 and 503(c)
 - The Securities Act’s Rule 408(a)
 - Form 8-K Disclosures—Rule 12b-20
 - Staff Legal Bulletin No. 14E—Excluding/Allowing Shareholder Environmental Proposals on Proxy Statements



Where To Make the SEC Disclosures

- Registration statements under the Securities Act of 1933
- Annual or other periodic reports
- Going private transaction statements
- Tender offer statements
- Annual reports to security holders
- Proxy and information statements
- Any other documents required to be filed under the Exchange Act of 1934



What To Disclose

Regulation S-K:

- Item 101—the material effects that compliance with local, state and federal environmental laws will have (if enacted) on capital expenditure, earnings and competitive position of the parent and its subsidiaries.
 - Costs required to improve facilities and equipment to reduce emissions to meet regulatory limits
 - Changes to profit or loss from increased/decreased demand for goods and changes in cost of goods sold (due to compliance)



Materiality

Information “to which there is a substantial likelihood that a reasonable investor would attach importance in deciding to buy or sell the securities registered.”

17 CFR 240.12b-2 (Exchange Act); 17 CFR 230.405 (Securities Act); Staff Accounting Bulletin (SAB) 99.



Environmental Materiality

- Material expenditures needed to comply due to
 - Changes to the product
 - Changes to internal processes or controls
 - Changes in staffing
 - Changes to the market
 - Changes to facility needs
- Material expenditures from non-compliance due to
 - Cost of litigation defense
 - Cost of clean-up
 - Cost of product recall
 - Civil, criminal or administrative penalties

See *Levine v. NL Industries* 926 F.2d 199, 203 (2d Cir. 1991); *In re Occidental Petroleum Corp. Exchange Act Release No. 16950*, 20 SEC Docket 567, 570 (July 15, 1980).



Regulation S-K:

- Item 103—
 - describe **material** pending legal proceeding involving parent or subsidiary as a party or where company property is the subject of litigation.
 - Administrative or judicial legal action (material) contemplated by local, state or federal gov't.
 - Legal proceeding—Examples: administrative or judicial; notice of violation; administrative order even if not followed by a proceeding; or injunction.
 - Instruction 5--a legal proceeding is reportable if:
 - The proceeding is material to the business or financial condition of the company OR
 - Involves primarily a claim for damages, monetary sanctions, capital expenditure, deferred charge, charge to income, and exceeds 10 percent of current assets OR
 - A government authority is a party and it involves potential monetary sanctions, unless reasonably believe it will result in sanctions less than \$100,000.



On Reportable Legal Proceedings, consider:

- *Basic v. Levinson*, 485 U.S. 224, 229-31 (1988);
- *TSC Industries, Inc. v. Northway, Inc.* 426 U.S. 438 (1976);
- *Wielgos v. Commonwealth Edison Co.*, 892 F.2d 509, 516-517 (7th Cir. 1989);
- *In re United States Steel*, Fed. Sec. L. Rep. (CCH) Par. 82,319 at 82,383-82,384;
- Environmental Disclosure Requirements Under the Federal Securities Laws, by Richard M. Schwartz and Donna Mussio of Fried, Frank, Harris, Shriver & Jacobson LLP (March 2009).



Additional Reference Materials

- *Financial Performance, Pollution Measures, and the Propensity to Use Corporate Responsibility Reporting: Implications for Business and Legal Scholarship* by Adam Sulkowski and Steven White, 21 *Colo. J. Int'l Env'tl. L. & Pol'y* 491 (Summary 2010).
- *Green SOX for Investors: Requiring Companies to Disclose Risks Related to Climate Change*, by Joey Tsu-Yi Chen 5, *J. Bus. & Tech. L.* 325 (2010)
- *A New Season for Environmental Risk Factors and Related Disclosures*, by David B.H. Martin, 1773 *PLI/Corp* 979 (November 2009)
- *A Behavioral Framework for Securities Risk*, by Tom C.W. Lin, 34 *Seattle U.L. Rev.* 325 (Winter 2011)
- *The Securities and Exchange Commission and Corporate Social Transparency*, by Cynthia A. Williams, 112 *Harv. L. Rev.* 1197 (April 1999)
- *Warming Up to Climate Change Risk Disclosure*, by Jeffrey M. McFarland, 14 *Fordham J. Corp. & Fin. L.* 281 (2009)
- *Corporate Governance and the Environment: Beyond the Transactional Audit Environmental Action Program Model*, by Daniel Riesel and Michael D. Zarin, 12 *Cardozo L. Rev.* 1297 (April 1991)
- *A New Direction for Shareholder Environmental Activism: The Aftermath of Caremark*, by Geoffrey C. Rapp, 31 *Wm & Mary Env'tl L. & Pol'y Rev.* 163 (2006)



Regulation S-K:

- Item 303—Disclose discussion and analysis of financial conditions and results of operations
 - Known environmental trends, events, demand, commitments or uncertainties reasonably likely to have a material effect on financial conditions or operating performance
 - Decreased demand for goods that produce GHG
 - Increased demand for goods that reduce GHG
 - Increased competition to develop innovative green products
 - Property damage and disruption to operations from climate change
 - Increased insurance premiums and deductibles or loss of coverage for operations and facilities located in areas subject to severe weather patterns or change.
 - Environmental change triggering product, operation, market or other internal adjustments affecting financial conditions



Regulation S-K:

- Item 503(c):
 - The most significant risk factors that make an investment in the company speculative or risky.
 - Knowledge of an environmental impact or release due to operations, conduct of officers, changes in law, release of contaminants



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Disclosure of Shareholder Environmental Proposals in Proxy Statements

Prior Staff Guidance:

Can Exclude a shareholder proposal relating to environmental or public health risk evaluations where, if viewed as a whole, it is an “internal assessment of the risks or liabilities that the company faces as a result of its operations.”

See Staff Legal Bulletin No. 14C.



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Disclosure of Shareholder Environmental Proposals in Proxy Statements

More Recent Staff Guidance. Disclosable if:

- It “transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote”
- “so long as a sufficient nexus exists between the nature of the proposal and the company” and
- it does not involve matters “so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight” and as long as
- shareholders do not seek to “micro-manage” through “probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.”

See Staff Legal Bulletin No. 14E (SLB); Securities Exchange Act Rule 14a-8(i)(7) and Rule 14a-8(i)(u); Exchange Act Release No. 40018 (May 21, 1998).



Recent SEC Staff Responses to Corporate Requests for No Action Letters on Green Shareholder Proxy Requests

- No Action Letter to Coca-Cola Company (Feb. 17, 2010). Request to board that bottled water concerns be addressed. “Proposals that concern customer relations and decisions relating to product quality are generally excludable under Rule 14a-8(i)(7).” No SEC Enforcement Action.



No SEC Enforcement Action Recommended

- No Action Letter to The Home Depot, Inc. (Mar. 4, 2009). Proposal requesting issuance of report on policy options to reduce consumer exposure and increase consumer awareness regarding mercury and any other toxins contained in its private label n:vision brand products. Finding that pursuant to Rule 14a-8(i)(7) the proposal related to company's ordinary business operations (i.e., sale of particular products).



No SEC Enforcement Action Recommended

- No Action Letter to Nextel Corp. (Mar. 16, 2010), Proposal requesting explanation why company failed to adopt an ethics code that reasonably deters CEO wrongdoing and promotes ethical conduct. Finding that proposals concerning adherence to ethical business practices and the conduct of legal compliance programs are generally excludable under rule 14a-8(i)(7).



No SEC Enforcement Action Recommended

- No Action Letter to Tyson's Food, Inc. (Nov. 25, 2009). Proposal requesting company adopt policy and practices re. hog production and suppliers to phase out routine use of animal feeds containing antibiotics and implement certain animal raising practices. Finding that proposal dealt with matters relating to ordinary business operations under rule 14a-8(i)(7).



SEC Enforcement Action Would Be Recommended If Request is Excluded

- Action Letter to Cabot Oil & Gas Corp (Jan. 28, 2010). Proposal to include a report on the environmental impact of fracturing operations, potential polices for reducing environmental damage from fracturing and **material risks** due to environmental concerns regarding fracturing. Finding that not excludable under rule 14a-8(i)(7) since focuses primarily on environmental impacts of operations and does not seek to micromanage. Also, insufficient information to determine if the proposal would impact ongoing litigation.



SEC Enforcement Action Would Be Recommended If Request is Excluded

- Action Letter to The Southern Company (Jan. 21, 2011). Proposal to have board prepare a report on efforts, above current compliance, to reduce environmental and health hazards associated with coal combustion waste contaminating water, including implementation of caps, liners, groundwater monitoring, and leachate collection systems, and how these efforts may reduce legal, reputational and other risks to finances and operations. This was a request to modify/update company's existing Coal Combustion Byproducts report
- Finding that not excludable under 14a-8(i)(10).



SEC Enforcement Action Would Be Recommended If Request is Excluded

- Action Letter to PPG Industries, Inc. (Jan. 15, 2010). Proposal requesting board to prepare report on how PPG ensures that it responsibly disclose environmental impacts in all of the communities in which it operates. Finding not excludable under rule 14a-8(i)(7) since it requires an assessment of risk—focusing primarily on environmental impacts of operations and not micromanagement.



SEC Enforcement Action Would Be Recommended If Request is Excluded

- Action Letter to ConocoPhillips (Feb. 22, **2006**). Proposal requesting board to prepare report on how company ensures that it is accountable for environmental impacts in all of the communities in which it operates. Finding not excludable under rule 14a-8(i)(10) or (11).



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Disclose Use of Conflict Minerals



Conflict Minerals Are:

- Gold
- Cassiterite—tin oxide mineral
- Columbite-tantalite--used to manufacture condensers, micro-chips and processors, and cell phones
- Wolframite—A principal ore of Tungsten. Tungsten or its alloys are used for filaments for electric lamps, electron and television tubes, electrical contact points for automobile distributors, heating elements for electrical furnaces, and space, missile, and high-temperature applications.



Originating From

The Democratic Republic of the Congo (DRC) or adjoining countries.

The DRC borders the

- Republic of the Congo to the west
- Central African Republic and South Sudan to the north;
- Uganda, Rwanda, and Burundi in the east;
- Zambia and Angola to the south; the Atlantic Ocean to the west; and
- is separated from Tanzania by Lake Tanganyika in the east.

-



Disclosures

Annually Disclose:

Whether you manufacture or contract to have manufactured products containing conflict minerals that are necessary to the functionality or production of your product



What Does it Mean to Contract to Have Manufactured?

1. You have any influence over the product's manufacturing or
2. You offer a generic product under your own brand name or a separate brand name, regardless of whether you have any influence over the manufacturing specifications of the product.



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Who Must Disclose?

Issuers—those companies that are required to file reports with the SEC under the Exchange Act of 1934



Method and Form of Disclosure

- Independent Third Party Supply Chain Traceability Audits performed in conformance with standards set by the Comptroller General of the United States in accordance with SEC promulgated rules.
- Report the Audit Information annually by posting on company website and to the SEC.
- Maintain records demonstrating whether or not the products contain conflict minerals.



If the conflict minerals did originate in the DRC countries, then submit a Conflict Minerals Report to the SEC and make Report available on your company website containing:

- A description of the products containing conflict minerals that are not “DRC conflict free.”
- The facilities used to process these conflict minerals
- The conflict minerals’ country of origin.
- The efforts to determine the mine or location of origin.
- Disclose whether the minerals are recycled or scrap sourced.
- Disclose the due diligence efforts taken, including any recognized standards used.



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Disclose Reductions of Greenhouse Gas Emissions (GHG)



EPA's GHG Reporting Program

- 40 CFR Part 98 (74 Fed. Reg. 5620) requires reporting of GHG data and other information from large sources and **suppliers** in the United States.
- Purpose—to collect accurate and timely GHG data to inform policy decisionmakers.



Who Must Comply with Rule 98 and other similar rules?

- Suppliers of certain products that would result in GHG emissions if released, combusted or oxidized.
- Direct emitting source categories.
- Facilities that inject CO₂ underground for geologic sequestration or other purposes.



Methods of Reporting GHG

- Electronic Greenhouse Gas Reporting Tool (e-GGRT)—uses web forms.
- Extensible Markup Language (XML) Reporting Schema
 - Upload GHG data directly in lieu of using web forms.
 - Uses specifications designed to create common electronic data formats to facilitate data sharing and comparison

See

<http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>



Examples of Products Impacted by Recent GHG Emissions Standards

- Equipment Pre-charged with Fluorinated GHGs or containing fluorinated GHGs in closed-cell foams
- New Nonroad Spark-Ignition Engines, Equipment and Vessels.



Engines, Vehicles, Vessels and Aircraft

Under the Mandatory Reporting of Greenhouse Gases (GHGs) rule, all vehicle and engine manufacturers **outside of the light-duty sector** must report emission rates.

The light-duty sector includes (subject to other GHG standards): cars, SUVs, small pickup trucks and vans.

See Title II of the Clean Air Act.



Examples of mobile source categories:

- Marine diesel engines—40 CFR Parts 94, 1042, and 1065
- Marine spark ignition engines/personal watercraft--40 CFR Parts 1045 and 1065. Spark-ignition engines used in marine vessels, including outboard engines, personal watercraft and sterndrive/inboard engines
- Spark-ignition (SI) nonroad engines rated below 25 horsepower (19 kW) used in household and commercial applications, including lawn and garden equipment, utility vehicles, generators, and a variety of other construction, farm and industrial equipment



Who must comply:

- U.S. manufacturers of engines and
- Foreign manufacturers that import engines into the U.S. market.
- In some cases, it also includes domestic companies that are required to meet EPA certification requirements when they import foreign--manufactured engines.



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Exclusions:

manufacturers treated as a “small business” or “small-volume manufacturers” under EPA’s existing mobile source emission regulations. “Small” is uniquely defined within each respective section of the CFR.



What Emissions to report:

- carbon dioxide, (CO₂),
- nitrous oxide (N₂O), and
- methane (CH₄) (but not for aircraft engines)



How to measure GHG Emissions:

Use prescribed testing and measurement procedures currently used for existing criteria reporting requirements.

For guidance, see the preamble to the respective sections of the CFR.



When to Report:

- CO₂ --reporting begins with the 2011 model year of the product.
- CH₄ --reporting begins with the 2012 model year.
- N₂O--reporting begins with the 2013 model year or whenever the manufacturer introduces NO_x aftertreatment technology, whichever is later.



NOTE:

- 40 CFR Part 91—Original exhaust emission standards and compliance program
- 40 CFR Part 1045 – Exhaust emission standards for 2010 and later model year engines
- 40 CFR Part 1060—Evaporative emission standards
- 40 CFR Part 1065—Engine-testing regulations for 2010 standards
- 40 CFR Part 1068—General compliance provisions for evap standards and 2010 exhaust standards
- 40 CFR 89, 1039, and 1065-- Nonroad diesel engines
- 40 CFR Parts 90, 1054 and 1054-- Nonroad small spark ignition engines and equipment
- 40 CFR Parts 1048 and 1065--Nonroad large spark ignition engines
- 40 CFR Parts 86 and 1065-- Highway heavy-duty engines
- 40 CFR Part 87-- Aircraft engines
- 40 CFR Parts 1033 and 1065-- Locomotive engines
- 40 CFR Part 86-- Highway heavy-duty vehicles (chassis-certified)
- 40 CFR Part 86-- Highway motorcycles
- 40 CFR Part 1051 and 1065-- Snowmobiles
- 40 C FR Parts 86 and 1051-- Off-highway motorcycles and ATVs



Proposed Mandatory Reporting Rule for Additional Sources of Fluorinated Greenhouse Gases (GHGs)

- Who does it apply to:
 - Importers and exporters of Fluorinated GHGs contained in pre-charged equipment or closed-cell foams.

What does it apply to:

- Pre-charged equipment charged with fluorinated GHG prior to sale or distribution or offering for sale or distribution (includes full and partially (holding) charged equipment) such as:
 - Appliances
 - Appliance components
 - Electrical Equipment
 - Electrical equipment components



What to Report:

- Collect the data on your product
- Calculate the fluorinated GHG within the equipment or foam
- Follow the specified procedures for
 - Quality Assurance
 - Missing Data
 - Recordkeeping and
 - Reporting (an annual report containing):



Provide the information required by the General Provisions at 40 CFR 98.3(c) and ALSO:

- Total mass of each fluorinated GHG imported or exported in pre-charged equipment or closed-cell foams
- For each type of pre-charged equipment, the identity of the fluorinated GHG used as a refrigerant or electrical insulator, charge size (including holding charge, if applicable), and the number of pieces of equipment imported or exported.
- For closed-cell foams imported or exported inside of appliances, for each appliance type, the identity of the fluorinated GHG contained in the foam, the quantity of fluorinated GHG contained in the foam in each appliance, and the number of appliances imported or exported.
- For closed-cell foams not imported or exported inside appliances, for each foam type, the identity of the fluorinated GHG contained in the foam, the density of the fluorinated GHG in the foam, and the quantity of foam imported or exported.
- Dates when the pre-charged equipment or closed-cell foams were imported and exported
- Ports of entry through which the pre-charged equipment or closed-cell foams passed
- Countries from or to which the pre-charged equipment or closed-cell foams were imported or exported.



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How to Get This Done

Sustainable Compliance Tools



Sustainable Compliance Tools

- Life Cycle Assessments (LCA)
- Supply Chain and Manufacturing Programs
- Environmental Management Systems (EMS)



Life Cycle Assessment

A tool to assess the environmental aspects and potential impacts of a product, process or service (from cradle to grave)



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U.S. EPA's Supply Chain and Manufacturing Programs

- Clean Processing
- Design for the Environment (DfE)
- Green Suppliers Network
- Green Chemistry Program
- Lean Manufacturing
- National Partnership for Environmental Priorities Program
- EnergyStar
- WaterSense

Source: <http://www.epa.gov/sustainability/basicinfo.htm#sustainability>



Environmental Management Systems

A set of processes and practices that enable a company to reduce its environmental impact and increase its operating efficiency

- Plan—Identify environmental need and set goals
- Do—Implement, train, operational control
- Check—monitor and correct



- **IDENTIFY** the responsible (accountable) Executive(s).
- **APPOINT** an Environmental Compliance Officer (“ECO”) to develop a written Environmental Compliance Program (“ECP”), implement a process for environmental management and auditing of program needs.
- **ORGANIZE** an Environmental Compliance Task Force (“ECTF”)



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IDENTIFY Departmental/Division Teams from:

- Merchandising
- Logistics
- Marketing
- Facility Operations
- Direct Sales and Special Orders
- IT & Information Security
- Finance
- Risk Management
- Legal
- Internal Audit
- Human Resources



COMPLETE:

1. Establish a budget for the Environmental Compliance Program (“ECP”) covering program:
 - development
 - implementation
 - Training
 - oversight/auditing
 - recordkeeping retention, identification & controls
 - annual, quarterly and other reporting
 - annual or quarterly fees (to government)
 - licensing, permits, registration, application processing & maintenance
 - staffing
 - outsourcing of some responsibilities, and
 - equipment acquisition & management (tangible and intangible).



2. Establish a Compliance Schedule (include all dates and requirements for the above budgeted program items)
3. Initiate regular and periodic ECTF meetings.
4. Evaluate/assess the departmental/division environmental needs and risks
5. Determine the effectiveness and completeness of existing environmental processes and controls
6. Develop and distribute a written ECP, Standard Operating Procedures (SOPs) and training modules covering all impacted employees.



7. Create supplemental internal controls and incorporate into the ECP, SOPs and training modules.
8. Establish a process for ensuring company-wide coordination with the Legal team for legal representation at all negotiations with federal and state environmental and consumer product agencies concerning non-compliance issues or government investigations/inspections.
9. Develop and implement a data retrieval and storage process for maintaining and updating compliance records.



10. Role out of company-wide training for employees and suppliers/manufacturers.
11. Issue quarterly reports to executive level management, an annual Environmental Compliance Report and an annual presentation to the COMPANY Board of Directors Audit Committee, if appropriate.
12. Assess, determine whether any regulatory reporting or disclosure requirements have been triggered—implement.



Product Import Compliance Checklist

- Know what you are importing--understand the products that you import and the vulnerabilities associated with these products.
- Know the details such as use, packaging, size, quantity, quality, product composition, specifications, safety concerns, etc.
- Know whether the product is intended for commercial sale or use in the U.S.



- Know your supply chain--the foreign firms that produce or source the products you purchase and any other firms with which you do business and through which such products pass (e.g., consolidators, trading companies, distributors)
 - Name, address, type of business, and who they use for raw material sourcing, processing, packaging, storage and transportation.
 - Do they have a product safety & compliance program that will meet your U.S. regulatory compliance needs?
 - What's their proof?



- Know the risks and compliance history of your products, including those of the manufacturer, distributor or transporter.
- Understand the hazards that may arise during the product life cycle, including all stages of production
- Ensure proper control and monitoring of these life cycle and supply chain hazards
- Establish a Product Environmental and Safety Management Program--develop and maintain clear written policies, specifications, processes and recordkeeping.



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- Know the U.S. Requirements that apply to the product (from cradle to grave)
- Verify product and supply chain compliance with U.S. requirements throughout the supply chain and product life cycle
- Regularly check U.S. regulatory agency policy statements, guidance and other available information they publish to assist your industry.



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- Establish a clear management structure for product compliance—defining and documenting functions, responsibilities and reporting relationships for people involved.
- Assign responsibility for product control and compliance to specific individuals and ensure they understand their role within the organization.
- People assigned to product compliance should have training, knowledge, expertise, experience, skills and competence to perform their role.



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- Establish a communication and information sharing system to allow for informative decisionmaking within the organization, and where appropriate, with third parties (e.g., federal, state and local authorities).
- Control, monitor and improve operational continuity to achieve product compliance.
- Take corrective and preventive action when a product is found not in compliance with U.S. requirements



- **What form of integrity checks will you perform?**
 - Periodic inspections of foreign manufacturers, distributors and suppliers involving verification of preventative controls, records retention, sampling of products and raw materials.
 - Purchasing from certified sources, where possible.
 - Purchase from sources in countries where laws are comparable to U.S. requirements
 - Conduct paper audits--reviewing
 - production and processing records
 - written controls for monitoring devices
 - sampling and testing records
 - corrective action plans
 - procedures in place established to verify U.S. regulatory compliance
 - Control, monitor and verify product compliance prior to and during import entry and while in U.S. distribution
 - Investigate the root cause of non-compliance, take corrective action, as needed to remediate and prevent harm and to correct the discrepancy.



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CONCLUSION



CONCLUSION

KNOW:

Your PRODUCT

Your MANUFACTURER

Your REPORTING OBLIGATIONS



IN A NUTSHELL—what we covered

The Regulation of:

- **GHGs—Greenhouse Gas Emissions**
- **Conflict Minerals—gold, tin, etc.**
- **Product Safety/Health Information—
Ingredients & Use**



Disclose To:

- Government—the Big Four:
 - U.S. EPA
 - U.S. Customs
 - U.S. SEC
 - U.S. CPSC
- Shareholders
- Public



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Disclosure From:

- Manufacturers
- Importers
- Companies that are subject to the jurisdiction of the SEC



Disclose What:

- Country of Origin
- Hazards & Emissions—health, safety and environmental
- Ingredients/Materials Used in Manufacture
- Testing and Certification Records



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Disclose When:

- Upon Import
- Annually
- Prior to Offering for Sell or Distribution
- Upon Shipment to Retail or Industrial Purchaser
- Upon Request by Government or the Public



Disclosure Method:

- With Import Entry Papers--Certificates of Conformity/Compliance
- With Annual SEC Filings
- On Company Website
- On Government Website
- On Material Safety Data Sheet
- On Labels and Packaging
- In Direct Document Submissions to Government Agency for Approval--Applications and Requests for Approval