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NEWSLETTER

EPA Inventory "Reset" Rule to Focus EPA's Resources

September 2016

This December, EPA is to propose the so-called "Inventory Reset Rule" required by Section 8(b)(4) of the reformed TSCA, in order to identify chemicals currently in use.

Because EPA's mandate to review the tens of thousands of "existing" chemicals already on the Inventory would be excessively burdensome, Congress also directed EPA to focus its energies on only those chemicals that are actually still in use. The Inventory Reset Rule will provide the mechanism for EPA to do so **by requiring chemical producers and importers to notify EPA of Inventory chemicals that they have manufactured over the past 10 years.**

EPA must publish the final Inventory Reset Rule, with reporting procedures, by June 2017. **The reset notice requirements are not expected to be extensive, i.e., nothing at all like a new chemical pre-manufacture (PMN) notice.** But manufacturer notices will be due 180 days after the Reset Rule is issued, and EPA also has the authority to require processors to report.

EPA will then update the Inventory to identify which chemicals are "active" (notice received) and "inactive" (no notice received). To get ahead of this effort, **EPA has promised that prior to publication of the June 2017 Reset Rule it will prepare an "interim" active substances list** consisting of all chemicals reported under the TSCA 2016 Chemical Data Reporting (CDR) rule, although the practical impact of this is unclear.

Inactive chemicals will remain on the Inventory, but EPA will not expend resources prioritizing and assessing them for risk. However, it will be a violation of TSCA to manufacture or process an inactive

Practice Areas

Environment & Product Regulation
Toxic Substances Control Act (TSCA)

substance without first notifying EPA. This will give the Agency a chance to put the "inactive" chemical back on its radar screen for prioritization.

During the inventory reset process, **existing confidentiality claims for previously "active" substances will have to be reasserted,** but need not be substantiated. Manufacturers cannot seek confidential treatment of substances already listed on the non-confidential portion of the Inventory. However, "inactive" chemicals on the Confidential Inventory will retain their confidential status without any action needing to be taken. EPA is also required to issue a follow-on rule, with procedures for industry to substantiate CBI claims, within one year of publishing the first compiled list of active chemicals. EPA will then have five years to approve or deny the CBI claim (with a possible extension of two years).

Companies that manufacture or import chemicals need to be paying attention to EPA's actions to implement the Inventory Reset Rule. Companies that file a CDR report in 2016 may need to confirm that their CDR reports triggered "interim" active status listing on the Inventory when EPA issues that first list, and then file any additional reports once the final rule is published (*e.g.*, on CDR exempt substances). Just as important, processors also need to be paying attention in case EPA decides to require processor reporting. Even if the Agency does not call for processor reporting, processors cannot use any substance that is not on the active list without first notifying EPA. Thus, it makes sense for processors to encourage reset reporting by domestic suppliers.