

ALERT

Inventory Reset Under the Toxic Substances Control Act

August 14, 2017

The Environmental Protection Agency (EPA) published the final rule establishing the process for the TSCA “Inventory Reset” under the Toxic Substances Control Act (TSCA) on August 11, 2017. The final rule is effective as of the same day because the deadline for manufacturers to submit retrospective reports under this rule is fixed by statute at “180 days after the date on which the final rule is published in the Federal Register.” Retrospective manufacturer reports are due no later than February 7, 2018. It is therefore important for companies to prepare to notify EPA of those chemicals that are active in commerce.

EPA also released the following actions (click for summaries):

- [Prioritization of Existing Chemicals Under the Toxic Substances Control Act](#)
- [Risk Evaluation of Existing Chemicals under the Toxic Substances Control Act](#)
- [Scoping Released for First 10 Chemicals to Undergo New Risk Evaluation Process](#)

Overview of Reset Reporting

The final rule outlines the procedures for the Inventory Reset, which is the process required by amended TSCA by which EPA will designate chemical substances on the TSCA Chemical Substances Inventory (TSCA Inventory) as active or inactive. Those chemicals designated as active are candidates for the prioritization and risk evaluation processes. The final rule includes the opportunity to make joint

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submissions, which may ease the burden of reporting for importers if done properly.

Retrospective reporting applies to manufacturers and importers of chemicals that were manufactured for nonexempt commercial purposes during the 10-year period ending June 21, 2016. Manufacturers and importers have 180 days after the final rule is published in the Federal Register to submit these reports. Reports will need to be filed online using the Central Data Exchange (CDX) reporting portal and an automated “pick list” to facilitate the entry of chemical substances based on known search criteria such as the Chemical Abstract Services Registry Number. In the case of substances that are on the confidential portion of the Inventory, selections will be made using the TSCA Accession number and/or generic name.

There are now four categories of excluded substances. First, chemicals reported under the Chemical Data Reporting program in 2012 and 2016 will not need to be re-reported. A list of these will be available on EPA’s website. Second, substances which are on the Inventory as a result of premanufacture notification submissions do not need to be re-reported. Third, chemical substances that are normally exempt from PMN reporting, such as naturally occurring substances, that do not appear on the Inventory do not require reporting (however, if an Inventory listing does exist for your otherwise exempt substance, this could change your status and the rules should be consulted). Fourth, under the final rule, a manufacturer is exempt from the retrospective notification requirements for a chemical substance if the manufacturer has a CDX receipt that shows EPA received a Form A from another manufacturer.

The final rule also establishes procedures for notifying EPA when an inactive chemical substance becomes active. Companies that wish to begin manufacturing, importing, or processing an inactive substance will need to file a report before manufacturing or processing the inactive chemical. The soonest these reports can be filed is 90 days before the anticipated date of manufacturing or processing, after which EPA will transfer the substance to the active list. EPA originally proposed to require forward-looking notices not more than 30 days before the date that actual manufacturing or processing began. These changes provide companies with more flexibility to comply with the notice requirement in recognition of common or unavoidable changes to commercial schedules.

Processor reporting during the upcoming retrospective reporting period is voluntary and these particular companies have up to 420 days after the final rule is published in the Federal Register to report. Thus, the retrospective processor reporting period will end on October 5, 2018. In contrast, forward-looking reporting for processors or their U.S. suppliers will be mandatory to resume commercial activity on an inactive substance.

The final rule addresses the transitional period between June 22, 2016 (the day after the lookback period for retrospective reporting ends) and the date that EPA designates chemical substances on the Inventory as active or inactive (the day that forward-looking reporting begins). EPA will identify chemical substances proposed for inactive designation in the first version of the updated Inventory that is published on EPA’s TSCA Inventory web page. Those substances do not become officially inactive for an additional 90 days, and companies may submit an NOA Form B even before that to identify them as active.

With respect to confidential business information (CBI) claims for both retrospective and forward-looking reporting, those making retrospective reports for chemicals whose chemical identity was previously claimed as CBI will need to re-assert the CBI claim by submitting a retrospective report. They need to notify to reassert CBI applies in the case of excluded chemicals. For example, even if a chemical was reported for the 2016 CDR or by another manufacturer, a company that wants to maintain a CBI claim for the chemical identity must still submit its own Form A to make the CBI claim. Substantiation for CBI claims need to be provided at different times depending on whether the CBI claim is new or being reasserted.

Other substantive changes made in the final rule to address comments EPA received on the proposed rule include:

- EPA has eliminated the requirement to report the date range that a substance was in commerce, and has revised the NOA Form A certification statement to require only an affirmation that manufacturing or processing of the chemical substance occurred during the lookback period.
- For both the retrospective and forward-looking reporting, EPA eliminated the requirement to report commercial activity type.
- Although the final rule did not create a formal withdrawal process, the rule allows a manufacturer to withdraw a Form A no later than 420 days after the final rule is published or correct a Form A by filing a new Form A within 180 days after the final rule is published. EPA also will allow a submitter to request to withdraw its Form B if EPA has not yet altered the Inventory status of the substance.
- EPA rewrote the substantiation questions for CBI claims.

Key Takeaways

While the information requirements in the final rule may appear more modest than as originally proposed, anyone familiar with CDR reporting knows that these exercises take a substantial amount of time and resources. Coordinating with suppliers on joint submissions will take time initially, but may ultimately be a key way to manage reporting resources. Processors will need to decide whether and when to prepare Form As to secure their supply chain. It is essential to identify your existing CBI claims and decide whether these need to be reasserted, so that chemical substances currently on the confidential Inventory remain confidential. In those cases, even if a manufacturer may not otherwise need to report, filing a Form A may still be necessary solely to preserve CBI claims.

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