

Ask the Expert

What are the business impacts of the EPA's proposed TSCA Inventory Reset Rule?

The U.S. Environmental Protection Agency (EPA or Agency) announced on 13 January 2017 the long-awaited proposal for the chemical inventory reset under the Toxic Substances Control Act (TSCA). Comments on the proposed rule will be accepted until 14 March 2017.

3E Analysis:

EPA Proposals on the TSCA Chemical Substance Inventory (Inventory)

EPA's rule envisages two main proposals pursuant to TSCA section 8(b):

- *Retroactive e-Notices*
 - Firstly, the Agency proposes that all the chemical substances that manufacturers and importers want listed on the Inventory must be notified electronically (e-notification) through CDX. Consequentially, the Agency will move forward on designating reported substances as "active" or "inactive," and will display this designation on the Inventory. If a chemical is deemed reportable but no e-notification is provided, the substance will be automatically labeled as "inactive" in U.S. commerce.
 - The e-notification will be required in a retroactive manner, and will cover the ten-year time period ending on 21 June 2016; this "lookback period" is set by statute. Substances that were added to the Inventory on or after 22 June 2016 do not require further reporting, since these were already designated as "active." The reporting proposed in the 13 January 2017 announcement only covers the period from 21 June 2006 until 21 June 2016. However, if industry members reported before 22 June 2016 but now wish to claim protection from disclosing a chemical identity, this claim will be treated by the Agency as a new claim rather than maintenance of an existing claim for these purposes.
- *Forward-Looking e-Notices*
 - Secondly, EPA further proposes "forward-looking" e-notifications. These will apply to "inactive" substances for which non-exempt commercial activities are resumed. Upon receipt of such notice, the Agency will change the status of the chemical on the Inventory, and will display an "active" designation.

Chemicals Subject to e-Notifications and those Exempted

Chemical substances that will be considered for reporting are those domestically manufactured, including imported, for non-exempt commercial purposes.

Substances exempted from reporting are those that:

- were not listed on the Inventory as of 22 June 2016,
- were manufactured under a TSCA section 5(h) exemption,
- are listed both on the non-confidential portion of the Inventory and on the interim list of "active" substances, or
- are naturally occurring chemical substances - these substances are automatically added to the Inventory and are "active" substances that do not require filing an e-notification.

Proposed Timeline for Reporting

Stakeholders can expect for the retrospective reporting requirements to be finalized by 22 June 2017, which is the deadline for the final rule to be published in the Federal Register. As to when the reporting will be required, potentially affected manufacturers (including importers) have a maximum time allowance of no later than 180 days after the final rule is published. Processors, on the other hand, benefit from a maximum time allowance of no later than 360 days after the publication of the final rule to notify only those chemicals that were not reported by the manufacturer. However, processors are an exceptional player to this proposed reporting requirement because they have the option of continuing to process chemicals without the need to report until EPA designates said chemicals as "inactive."

If commercial activities related to chemicals designated as "inactive" resume after the reporting period, the chemicals must be reported to the Agency prior to substance manufacturing or processing. These "forward-looking" notices must be submitted 30 days before the actual date of manufacturing or processing activity.

Reportable Information

The following information would be required to be reported under the proposed rule:

- *Retroactive e-Notices from Manufacturers and Processors*
 - Chemical identity
 - Type of commercial activity
 - Date range of manufacture for nonexempt commercial activity during the reportable 10-year time period
 - Desire to maintain existing CBI
- *Forward-Looking Reporting Content*
 - The forward-looking reporting scenario has the same coverage, content-wise, as the retroactive e-notices, except that manufacturers and processors of inactive substances will also need to report the actual date of manufacturing or processing for nonexempt commercial purposes, rather than the 10-year period.

Proposed Reporting Proceedings

Potentially affected industry members can expect to submit the e-notifications in the same manner as they would for TSCA's Chemical Data Reporting (CDR) and Pre-Manufacture Notifications (PMN). That is, submitters would be required to utilize EPA's CDX electronic reporting portal using Notice of Activity (NOA) and Notice of Commencement (NOC) forms.

Business Impact

Industry members that domestically manufacture, import or process, or intend to do so in the near future, any of the substances listed on the Inventory for nonexempt commercial purposes can expect to be actively impacted by the developments of this rule. EPA proposes, pursuant to the TSCA mandate, to collect the referenced data for the time frame from 21 June 2006 to 21 June 2016. Manufacturers will have up to 180 days from the date on which the final rule is published in the Federal Register to submit NOAs and NOCs through EPA's CDX. Processors will have up to 360 days.

The Agency will accept comments on this proposed rule if filed on or before 14 March 2017. Comments may be filed electronically, or may be hand delivered or mailed to the Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.