

TSCA Implementation Update

August 16, 2017

Inventory Reset Has Started: The six-month window for mandatory reporting by manufacturers and importers via electronic CDX submissions began August 11. While the information needs are modest, the long lookback period (10 years) and numerous carve-outs from having to report make for a challenging exercise. These reports must be submitted to EPA no later than February 7, 2018. Companies that purchase domestically-sourced chemicals and incorporate them into mixtures or articles (processors) have a longer window to report – and can voluntarily report through October 5, 2018. The challenge these companies face is more basic: they will need to know whether and what to report. In parallel, EPA has released a list of substances that are exempt from reporting because they are known to the agency to be active based on Chemical Data Reporting (CDR) rule reports filed in 2012 and 2016 and premanufacture notices (PMNs) filed since 2006. For these companies, this list is a good starting point, to see if you can locate your ingredients. In addition, processors should consider using this time to contact suppliers for compliance assurance to avoid duplicative reporting of chemicals reported by their manufacturers and ensure the chemicals important to your business are being reported. **It is important to report:** next year at this time it will be unlawful to manufacture, import, or process a chemical if it is designated as “inactive” without submitting an additional notice to EPA. Domestic companies could face fines and imported chemicals may be seized by Customs.

Prioritization and Risk Evaluation: Also on August 11th the Natural Resources Defense Council, Safer Chemicals Healthy Families Coalition, the Environmental Defense Fund and other environmental advocacy organizations filed lawsuits challenging the EPA’s final Prioritization and Risk Evaluation Rules. While the petitions are light

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on details, they generally allege that EPA abused its discretion when issuing the final rules. The specific issues the petitioners have with the final rules are not yet clear, but these groups have publicly expressed concern with EPA's interpretation of how it will review the conditions under which a chemical is known or reasonably foreseen to be used. Therefore, companies that make, import, process or use a chemical that is being evaluated by EPA now or in the future need to consider getting involved and supporting these rules as they now stand. The deadline to intervene is 30 days from the filing of the first petitions, meaning that any potential intervenors have until Monday, September 11 to file. Although the lawsuits were filed separately in the 2nd, 4th, and 9th Circuit Courts of Appeal, they are likely to be consolidated. Given the tight deadlines under the updated law, we would expect EPA to proceed with implementing TSCA as planned while these cases work their way through the courts. Longer term, however, these lawsuits could place real resource constraints on the agency and/or slow down TSCA implementation if EPA is forced to rethink these rules.

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