

ALERT

TSCA Inventory Notification (Active-Inactive) Rule Deadline for Mandatory Reporting: One Month to Go

January 10, 2018

Chemical manufacturers and importers have only one month left to file the Inventory Notification (“Inventory Reset”) reports required by the 2016 amendments to TSCA ahead of the February 7, 2018 deadline.

Companies who manufactured or imported non-exempt chemicals in any quantity from June 21, 2006 - June 21, 2016, must report these chemicals to EPA via the Chemical Data Exchange (CDX) system on or before this date. Manufacturers and importers who do not submit timely reports for their chemicals could be subject to future penalties. Reporting by processors of domestically-sourced chemicals is completely voluntary, but a surprising number of processors are making these reports. Companies that are voluntarily reporting as processors may not want to take the time to distinguish ingredients they import from those they do not, and are keenly interested in ensuring the own compliance now rather than in the future.

Based on our own experience advising clients on Inventory Reset, filing reports on behalf of companies, using the joint submitter tool, and speaking with EPA, we understand what a significant challenge this exercise is. For example, reporting companies must determine what a “reasonable effort” entails for collecting information on the chemicals they manufactured or imported during the 10 year lookback period, and many companies are grappling with how to properly report information claimed as confidential by foreign suppliers. Our experience shows that each company’s circumstances are raising unique complications, making the process more than a simple e-filing exercise.

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Environment & Product Regulation
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Approximately 60 days after the close of the mandatory reporting period in early February, EPA will publish a draft Updated TSCA Inventory that identifies the active substances in U.S. commerce. After that, processors will be able to continue to submit Notice of Activity (NOA) Form A reports on a voluntary basis until October 5, 2018.

We think that importers are having difficulties with reporting, because EPA reports a very low number of joint submissions have been filed as of this time even though mandatory reporting began last August. It is important to remember that companies who import an ingredient cannot have their Inventory Reset reporting obligation completely discharged by another party, such as their supplier, except through the joint submission tool or by obtaining a receipt of the filed NOA Form A.

Joint submissions present coordination challenges, and regular communication among the filers is needed during the process. Mechanical failures, like system rejection of the identifier numbers that foreign suppliers need to enter information, is a roadblock we've seen that requires working with EPA staff to resolve. Based on our experience, the reportedly low number of joint submissions EPA has received to-date may indicate that a large number of submissions still need to be filed.

These reports will enable EPA to designate chemical substances on the TSCA Inventory as either "active" or "inactive" and will inform EPA's prioritization of chemicals for risk evaluation. At the end of this exercise, we will have a TSCA Inventory that more accurately reflects the number of chemicals in U.S. commerce today. Active and inactive designations for each chemical substance will be included as part of the Agency's regular publications of the TSCA Inventory, and in the future, an NOA Form B report will need to be filed to lawfully manufacture, import, or process an inactive substance.

We hope that many of you have discharged your Inventory Reset reporting obligation. We trust that all of you who need to be are in some stage of completing this exercise. But, you or your joint submission partners may be falling behind, not getting the responses you need from agency inquiries, or having problems with the CDX filing system. If you are running into questions or need help troubleshooting CDX as the mandatory period of Inventory Reset draws to a close, do not hesitate to contact Tracy Heinzman, Martha Marrapese, or Saskia Mooney in Wiley Rein's Consumer Product Regulation Practice for assistance.

Save the Date

On April 11, 2018 at 12 p.m. ET, Wiley Rein's Consumer Product Regulation Practice will host a webinar on lessons learned to-date, the legal consequences of errors and how to correct them, and providing and obtaining compliance assurance.