

ALERT

TSCA Inventory Reset Confirms Half of Listed Substances are in Commerce

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Article in Brief

On April 12, 2018, the U.S. Environmental Protection Agency (EPA) published the Toxic Substances Control Act (TSCA) Inventory "Active" chemical list. Starting in 2019, it will be illegal to manufacture, import, or process chemicals not on this list. It is imperative that companies ensure their chemicals are "Active" to avoid business interruptions.

Immediately following our webinar on Wednesday on why processors should engage in TSCA Inventory Reset reporting between now and October, yesterday EPA released the April 2018 TSCA Chemical Substance Inventory. Now and going forward, the TSCA Inventory identifies the chemical substances that are "Active" in U.S. commerce based on:

- 2012 and 2016 Chemical Data Reporting (CDR);
- Notices of Commencement (NOCs) received since June 21, 2006; and
- Notice of Activity (NOA) Form A's received by the agency through the February 7, 2018 deadline for manufacturers and importers to submit under the TSCA Inventory Notification (Active-Inactive) rule, which is more commonly called "TSCA Inventory Reset."

Separately, EPA has released a list of substances reported under TSCA Inventory Reset between February 8 through March 30. This ensures that processors, who still have the opportunity to submit until October 5, have the most up-to-date view of which ingredients on the TSCA Inventory are not yet designated as "Active" and have the opportunity to report the chemicals as Active themselves.

The new lists show that 50% of the chemicals on the prior TSCA Inventory were manufactured, imported and processed from June 2006 - June 2016. Of the 86,073 current listings on the public and confidential TSCA Inventory, 42,037 chemicals were reported as "Active" by March 30, 2018 (7,300 Active chemicals are listed on the confidential Inventory). This means that 44,036 previously listed chemicals are currently marked "Inactive" and it will be illegal to manufacture, import, or process them starting in 2019 without first notifying EPA.

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In addition, since 13,250 of the 42,037 Active chemicals in commerce were reported during the 2012/2106 CDR reporting period or were the subject of a notice of commencement (NOC) since June 2006, EPA's announcement yesterday means that NOA reports for 28,787 chemicals have been filed by US companies under Reset as of the end of March. However, because more than one company could have reported a chemical, it is likely that the number of NOA Form A's EPA received exceeds this number.

EPA is required by the 2016 changes to section 8 of TSCA to administer this reporting program and designate chemicals on the Inventory as Active or Inactive. While Active listings are now available, EPA will publish designations for *Inactive* chemical substances (i.e., not reported nor exempt) in future publications of the TSCA Inventory only once Reset reporting is over.

Processors – companies that formulate products with industrial chemicals – still can make sure the TSCA Inventory is up-to-date by submitting electronic reports to voluntarily identify their ingredients as Active in commerce. Ingredients that are not listed as Active on the TSCA Inventory may disrupt your business, so it is important for processors to have verification that their ingredients are Active. During Wiley Rein's webinar, we discussed questions and issues such as:

- How did the mandatory part of Reset Reporting go?
- How can you tell if your ingredients were reported as Active?
- Can reports already filed be corrected? What can you do if you should have reported a chemical but did not?
- The ins and outs of CBI claims, and how a pending lawsuit may affect Reset CBI information.
- Joint submissions and how to approach them.
- What are transition filings, and when do you need to file mandatory, forward-looking reports.

Again, the deadline for voluntary submission of NOA Form A's by processors is October 5, 2018. Please contact Hannah Smythe to receive a link to the audio portion of Wiley Rein's April 11, 2018 Webinar, *TSCA Inventory Reset, Don't Let EPA Inactivate Your Business – Next Steps for TSCA Inventory Reset Reporting*. **Questions about TSCA Inventory Reset Reporting can be directed to Tracy Heinzman, Co-Chair of Wiley Rein's Environmental Practice, or Martha Marrapese.**