

Updated TSCA Inventory: What You Need to Know Now to Avoid Business Disruption



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In 2016, after decades without any changes, Congress amended the Toxic Substances Control Act (the “TSCA”) with an eye towards updating and modernizing the regulatory regime for chemical substances. One of the elements of the amendments was to require the Environmental Protection Agency (“EPA”) to update the TSCA Inventory List, which is the list of all chemical substances that are manufactured, processed¹ or imported into the United States. Part of the update requirement was to identify which chemical substances are active in commerce or are “commercialized”. In order to facilitate updating the TSCA Inventory, EPA required manufacturers and importers to report those chemicals manufactured or imported into the United States for 10-years prior to June 21, 2016. EPA also allowed processors of chemicals to report on the same lookback period. Submissions were due from parties in 2018, and EPA used the submissions to prepare and publish the initial list of “active” chemical substances on February 19, 2019. The updated TSCA Inventory includes approximately 40,665 active chemical substances, as well as approximately 45,573 inactive chemical substances. These numbers include the approximately 7,757 active and approximately 10,463 inactive chemical substances designated as confidential business information and therefore not specifically identified on the publicly-available TSCA Inventory.

The TSCA Inventory designations are significant because certain reporting requirements apply under the TSCA Inventory Notification (Active-Inactive) Rule once a chemical substance is listed as “inactive” on the TSCA Inventory. Under the Active-Inactive Rule, EPA publication of the initial TSCA inventory triggered a 90-day window of review of those chemicals listed as “inactive” chemical substances because identifications do not become effective or “designated” until 90 days after the inventory is published. This 90-day period allows industry time to respond to the new inactive designations, and gives industry 90 days to file a Notice of Activity Form B (“NOA Form B”)² before the inactive chemical substance designation becomes final. Note that the TSCA Inventory only publishes non-confidential chemical substances. If a manufacturer, importer or processor has reason to believe that a substance may have been reported as active, but may have been reported as confidential business information, it may ask EPA to search the Confidential Inventory for a specific chemical substance by submitting a bona fide intent request (“BFI Request”).

EPA’s February 19, 2019, publication of the initial Active TSCA Inventory is available through [EPA’s website here](#). The 90-day clock for industry to submit an NOA Form B to continue manufacturing, processing or importing an initially-listed inactive chemical substance is currently running and expires on **Monday, May 20, 2019**³. If a company is currently manufacturing, importing or processing, or anticipates that before May 20, 2019, it will manufacture, import or process a chemical substance listed as inactive on the February 2019 initial TSCA Inventory, it must submit an NOA Form B to EPA before May 20, 2019 in order to continue that activity without disruption. If a manufacturer, importer or processor waits until after May 20, 2019, it must stop the manufacturing, importing and processing the designated inactive chemical substance until the NOA Form B is properly filed. Such forms are required to be filed with EPA not more than 90 days prior to its planned manufacture, importation or processing.

EPA has provided the following guidance as to when filing an NOA Form B would be required:

- **Manufacturers/Importers:**

- “I did not file a Form A during the retrospective reporting period because I was not commercializing that chemical substance during the reporting period, but now I have started commercializing that chemical substance, or I plan to commercialize that chemical substance before May 20, 2019.”

- **Processors:**

- “I did not file a Form A during the retrospective reporting period because I chose not to voluntarily report. Now the chemical substance is identified as inactive, and I want to keep processing the substance, or I want to process the substance before May 20, 2019.”

Information about how to prepare and submit the NOA Form B is available on EPA’s website. In order to ensure that there is no disruption to manufacturing, processing or importing of a chemical substance, it is prudent to confirm that any chemical substances being or expected to be manufactured, processed or imported by May 20,

2019 are not listed as inactive. If they are, the appropriate filing of an NOA Form B prior to May 20, 2019, will prevent business disruption.

¹ TSCA defines processing as: “the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce (1) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or (2) as part of a mixture or article containing the chemical substance or mixture.” 40 C.F.R. § 720.2(aa).

² The NOA Form B can found in EPA’s Central Data Exchange (“CDX”), available through: <https://cdx.epa.gov/>

³ When filing the NOA Form B, industry may protect the chemical substance information as Confidential Business Information (“CBI”). However, this must be substantiated either at the time of the NOA Form B application, or within 30 days after application submittal. 40 C.F.R. § 710.37.

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