

## CLIENT ALERT

### Final TSCA Inventory Reset Rule Now Effective; Clock is Ticking for Companies to Report

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On August 11, 2017 EPA published in the [Federal Register](#) the final TSCA Inventory Notification (Active-Inactive) Rule — commonly referred to as the “Inventory Reset Rule.” The rule, which is effective immediately, creates new reporting obligations for companies that **manufacture** or **import** chemical products. Companies that **process** chemicals in order to manufacture articles or to create formulated chemical products are also affected by the rule.

#### Key Components of the Rule

In a previous [client alert](#) we provided a detailed discussion of the Inventory Reset Rule’s requirements, so we only briefly summarize them here. The primary objective of rule is to provide EPA with a clear picture of all chemical substances that are active in commerce in the United States. To accomplish this, the rule establishes both “retrospective” and “forward-looking” reporting requirements for any company that manufacturers or imports a chemical substance listed on the TSCA Inventory.

- **Retrospective Reporting** Any person who manufactured or imported an Inventory-listed substance for a non-exempt commercial purpose during the ten year period ending June 21, 2016 (referred to as the Reset “lookback period”) is required to report to EPA on those past activities. Substances that are reported in this manner will be designated as “active.” **Manufacturers** (including importers) of chemical substances must complete their retrospective reporting by **February 7, 2018**. In addition, the rule establishes a voluntary reporting period for processors of chemical substances (e.g., companies that incorporate chemical products such as paints or lubricants into manufactured articles). This voluntary reporting period for **processors** ends on **October 5, 2018**. Retrospective reports are filed electronically on a new “Notice of Activity Form A.”
- **Forward-looking reporting** commences once EPA completes its review of the retrospective reports submitted by manufacturers (including importers) and processors. Substances that were not reported to EPA during the retrospective reporting period will be designated as “inactive”; and any company that intends to manufacture, import or process a substance that has been designated as “inactive” must file a forward-looking report with EPA within 90 days of the intended date of initiating manufacture or processing of the “inactive” chemical. Forward-looking reports are filed electronically, on a new “Notice of Activity Form B.”

#### Practical Tips to Assure Compliance and Avoid Disruptions

In an earlier [client alert](#) we identified several potential pitfalls for companies to avoid as they seek to comply with the Reset rule. We are not repeating that discussion here, so we encourage readers to review that prior alert for more information about potential compliance pitfalls. What follows are some additional tips to help companies successfully navigate the new reporting requirements, starting with some basic first steps.

- **Register for CDX**

Reporting for the Reset must be done electronically, through EPA's CDX web portal. If your company is not already registered for CDX, start that process as soon as possible. The registration process is straightforward, but it can take several days or weeks to complete.

- **Compile A List of Chemicals**

Of course, companies will need to compile a complete list of chemical substances they manufactured or imported during the Reset "lookback period" (from June 21, 2006 to June 21, 2016). If your company imported formulated chemical products you will need to identify all of the component chemical substances in those products. For importers, this will require cooperation with overseas suppliers. The regulations include provisions to facilitate the submission of chemical identity information by overseas suppliers.

In addition, companies that *process* chemical products (e.g., using lubricants or adhesives to manufacture articles) should consider compiling a separate list of the substances contained in those chemical products so that if one of those substances is not reported by a manufacturer or importer, the processor can submit a retrospective report and avoid any disruption in its ability to utilize that substance.

- **Take Special Note of Chemicals Your Company Manufactured or Imported Pursuant to a TSCA Exemption**

The Reset regulations contain a number of reporting exemptions that parallel similar exemptions from the premanufacture notification (PMN) requirements (for example, for substances that are manufactured or processed only in small quantities and solely for research and development, and for certain byproducts and impurities). A company that manufactured or imported a substance for one of these exempt activities during the Reset lookback period would not be required to submit a retrospective report for the substance. But if no other company files a retrospective report for the substance, it will be designated as "inactive."

- **Protect Your Company's CBI**

Under the Reset Rule, submitters of retrospective reports have an opportunity to assert that the specific chemical identity of a substance listed on the confidential portion of the TSCA Inventory should remain protected against public disclosure, as Confidential Business Information (CBI). However, if, during the Reset, no company asserts CBI claims for the substance's identity, that chemical identity information will lose its CBI protection. This presents a trap for the unwary, especially for substances that were reported for the 2012 or 2016 Chemical Data Reporting (CDR) rule. This is because, under the Reset rule, substances that were reported for the 2012 or 2016 CDR are automatically included in an "interim list of active substances" and are exempt from retrospective reporting. Companies that take advantage of this exemption and decline to file retrospective reports for a substance listed on the confidential portion of the Inventory will forfeit the opportunity to assert CBI protection for the chemical identity of the substance.

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Now that the clock for Inventory Reset reporting is ticking, companies need to ensure that they have adequate processes in place to facilitate compliance while avoiding unexpected disruptions.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

**Warren Lehrenbaum**

Partner – Washington, D.C.

Phone: +1 202.624.2755

Email: [wlehrenbaum@crowell.com](mailto:wlehrenbaum@crowell.com)

**Preetha Chakrabarti**

Counsel – New York

Phone: +1 212.895.4327

Email: [pchakrabarti@crowell.com](mailto:pchakrabarti@crowell.com)

**Amy Symonds**

Counsel – Washington, D.C.

Phone: +1 202.624.2536

Email: [asymonds@crowell.com](mailto:asymonds@crowell.com)