

# Client Alert

Environmental, Health & Safety Practice

January 13, 2017

## **EPA Proposes Toxic Substances Control Act Inventory "Reset" Rule**

### ***Pragmatic Proposal Reflects Stakeholder Suggestions***

The United States Environmental Protection Agency (EPA) published in today's *Federal Register* its proposed approach to updating the list of chemical substances manufactured or processed in the United States, commonly known as the TSCA Inventory.<sup>1</sup> This proposed rule advances another piece of EPA's new "framework" for assessing chemical risk mandated under the Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA).<sup>2</sup>

#### **Background**

The LCSA requires EPA to designate all chemicals on the TSCA Inventory of chemicals in commerce as either active or inactive. Within one year, EPA must issue a rule requiring manufacturers (including importers) and processors to identify all Inventory substances that they have manufactured, imported, or processed in the past ten years. EPA will then designate all such identified chemicals as "active" and deem all other substances on the Inventory as "inactive".<sup>3</sup>

#### **The Proposal**

The proposed rule outlines the process under which manufacturers and importers will report their "active" chemicals. It also provides processors with a later opportunity to supplement the new Inventory if their suppliers did not report the chemicals processors use. Lastly, the proposed rule describes the mechanism by which companies may move an inactive chemical to active status.

#### **Reporting by Manufacturers and Importers**

A central element of the proposed rule accepts stakeholder recommendations that chemicals reported to EPA in 2012 or 2016 under the Chemical Data Reporting (CDR) rule are inherently an identification of chemicals manufactured or processed in the past ten years. Accordingly, companies will not need to report any substance that appears on both the non-confidential portion of the existing Inventory and either the 2012 or 2016 CDR list.<sup>4</sup> Companies will need to report substances that are on the confidential portion

For more information, contact:

**Cynthia AM Stroman**

+1 202 626 2381

+1 713 276 7364

cstroman@kslaw.com

**King & Spalding  
Washington, D.C.**

1700 Pennsylvania Avenue, NW  
Washington, D.C. 20006-4707

Tel: +1 202 737 0500

Fax: +1 202 626 3737

**Houston**

1100 Louisiana Street  
Suite 4000

Houston, Texas 77002-5213

Tel: +1 713 751 3200

Fax: +1 713 751 3290

[www.kslaw.com](http://www.kslaw.com)

of the existing Inventory, regardless of whether they were submitted in the 2012 or 2016 CDR.<sup>5</sup>

For chemicals subject to reporting, manufacturers and importers must provide specific information in the CDX submissions:<sup>6</sup>

- Chemical identity;
- Whether chemical is manufactured, imported, or both;
- When the chemical was manufactured or imported during the 10-year look-back period; and
- Whether the submitter seeks to keep an existing claim of confidentiality for a chemical's identity.<sup>7</sup>

### Supplementation by Processors

Consistent with both the LCSA and stakeholder suggestion, the proposed rule allows, but does not require, processors to file reports in the initial phase of the Inventory reset process. Instead, processors may review the draft list of active substances and then submit additional reports in the 180 days following the close of the first phase.<sup>8</sup>

### Moving a Chemical from Inactive to Active Status

In the future, no one may manufacture or process an inactive substance without first submitting a notice of such intent to EPA. The proposed rule specifies that such a notice may not be submitted any earlier than 30 days before the manufacturing or processing actually starts. EPA proposes this limitation to maximize the reliability of such notices.<sup>9</sup>

Other key aspects of the proposal:

- Submitters will be required to report electronically through EPA's Central Data Exchange (CDX), the same system used for the CDR.
- Exemptions – In addition to deeming chemicals on the 2012 and 2016 CDR lists as active substances, the proposed rule includes other exemptions, including naturally occurring substances,<sup>10</sup> new chemicals submitted to EPA and added to the Inventory after June 22, 2016, and chemicals imported as part of articles, and substances manufactured for research and development.
- New confidentiality claims will require substantiation at the time of submittal in the first phase, and within 30 days after submittal of a notice to manufacture or process an inactive substance.
- Companies that co-manufacture or co-process a chemical substance can submit joint reports where one of the companies claims confidential status for the chemical's identity.

Comments on the proposed rule are due no later than March 14, 2017. EPA must issue a final rule no later than June 22, 2017. Consequently, companies should expect initial reports to be due in the fourth quarter of 2017.

*Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 900 lawyers in 19 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality and dedication to understanding the business and culture of its clients. More information is available at [www.kslaw.com](http://www.kslaw.com).*

*This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising."*

---

<sup>1</sup> 82 Fed. Reg. 4255 (Jan. 13, 2017).

<sup>2</sup> EPA has already issued proposals or notices on other actions mandated under the LCSEA, including the list of the first ten chemicals to be reviewed and the candidates for a new Science Advisory Committee on Chemicals.

<sup>3</sup> 15 U.S.C. § 2607(b).

<sup>4</sup> 82 Fed. Reg. at 4259; *see also* proposed 40 C.F.R. § 710.23.

<sup>5</sup> EPA considers that the reporting of substances on the confidential portion of the Inventory "still serves a statutory function." 82 Fed. Reg. at 4259.

<sup>6</sup> EPA has developed reporting forms for the information requirements in the proposed rule.

<sup>7</sup> Contrary to certain stakeholder requests, a manufacturer or processor may seek to maintain confidentiality of a chemical identity even if it was not the original submitter of the confidentiality claim.

<sup>8</sup> 82 Fed. Reg. at 4257-4258; *see also* proposed 40 C.F.R. § 710.30(a)(2).

<sup>9</sup> 82 Fed. Reg. at 4260.

<sup>10</sup> EPA proposes to designate the category of naturally occurring substances (qualifying under 40 C.F.R. § 710.27(b)) as active substances.