

## EPA encourages adoption of HPV chemicals

Voluntary action might head off additional regulatory measures

**THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S** (EPA) Interagency Testing Committee (ITC) recently urged EPA to require chemical manufacturers (including importers) and processors of 276 high production volume (HPV) chemicals to submit to EPA production and exposure information, as well as unpublished health and safety studies.

Hundreds of chemicals eligible for sponsorship under the HPV Challenge Program remain "orphaned," as EPA refers to them. According to EPA, there is little or no publicly available information regarding the potential hazards associated with these chemicals, which, given their HPV status, is not a desirable state of affairs.

The ITC was established pursuant to Section 4 of the Toxic Substances Control Act (TSCA). It makes recommendations to EPA regarding chemical substances and the

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priority EPA should give these chemicals for purposes of issuing TSCA Section 4 test rules. The ITC is required to report to the EPA administrator every six months about chemical testing priorities. In the ITC's 55th report to the administrator, issued in November, the ITC recommended that the 276 orphaned HPV chemicals be added to the TSCA Section 8(a) Preliminary Assessment Information Reporting (PAIR) rule and the TSCA Section 8(d) Health and Safety Data Reporting (HaSDR) rule.

The PAIR rule requires producers and importers of chemicals added to the Priority Testing List (which would now include these orphaned chemicals) to submit production and exposure reports to EPA. Whereas EPA has authority to subject chemical processors to Section 8(a) rules, processors are only subject to PAIR rules that explicitly require processors to report data and/or maintain records. See [www.epa.gov/opptintr/chemtest/pairform.pdf](http://www.epa.gov/opptintr/chemtest/pairform.pdf) for more information. The HaSDR rule requires producers, importers and processors of chemicals included on

the Priority Testing List to submit unpublished health and safety studies to EPA within 90 days of the publication of a notice requiring the submission of these studies.

ITC recommendations are the first step in a regulatory process that could result in the issuance of the PAIR and HaSDR rules as described. Regardless of whether these rules are issued, the ITC requests chemical manufacturers and processors to sponsor as many of the orphaned chemicals as possible. A sponsored chemical is not subject to further rulemaking as outlined above.

For chemicals that remain unsponsored, EPA will consider issuing PAIR and HaSDR rules that will require manufacturers, importers and processors to submit data to EPA. Once EPA reviews any resulting data, EPA will consider the need to issue TSCA Section 4 test rules for those chemicals that EPA believes meet the testing criteria.

For readers who make, import or use any of the orphaned chemicals, these developments mean several things. First, EPA has essentially concluded that it is unaware of public information about these chemicals. This absence of information suggests uncertainty regarding the health and environmental effects of these chemicals, which might be construed as being against those who make or use them.

Second, it means EPA might be requiring the submission of information about these chemicals to fill these perceived data gaps. If the available information is deemed inadequate, and these chemicals remain orphaned, EPA could issue a TSCA test rule on one or more of them. Doing so would require EPA to make preliminary TSCA findings regarding these chemicals, which also can be used against the chemical manufacturer and/or user in tort, product liability and related contexts. Finally, TSCA test rules are costly to comply with, and every effort should be made to avoid their issuance.

Readers who make, import or use these HPV chemicals should consider their options now, before EPA takes additional regulatory action. This will increase the likelihood that the chemical is removed from the Priority Testing List, is sponsored or is otherwise addressed without further regulatory action. **CP**

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