

New Inventory Update Rule Reporting Heads Our Way

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By Lynn L. Bergeson

Proposed rule will significantly impact reporting functions.

The U.S. Environmental Protection Agency (EPA) proposed important revisions to the Toxic Substances Control Act (TSCA) Inventory Update Rule (IUR). This column explains why chemical manufacturers and other stakeholders must be aware of the proposal and prepare now for its implications.

Background

The IUR requires manufacturers (including importers) of certain chemicals listed on the TSCA Inventory to report site and manufacturing information for chemicals produced in amounts of 25,000 lb or more at a site during a reporting year. Additional information on domestic processing and use must be reported for chemicals manufactured in amounts of 300,000 lb or more at a single site. The next reporting cycle will end September 30, 2011, for chemicals manufactured in calendar year 2010.

Since 1986, the IUR has required chemical manufacturers to report to the EPA every four years basic manufacturing information for organic chemical substances manufactured in quantities of 10,000 lb or more each year at each plant site. Over the years, EPA revised the rule to expand its coverage to include inorganic substances, raised the reporting threshold to 25,000 lb, changed the reporting cycle to every five years beginning in 2006, and made other adjustments.

EPA, states, and other entities have expressed concern with the relative lack of chemical processing, use and exposure information, which, they claim, has hampered regulators' ability to assess risks from chemicals. Others question the utility of IUR data and the absence of a uniform IUR electronic reporting format. Public health and environmental activists claim that TSCA's information gathering authorities are limited and procedurally challenging to implement. Changes to the IUR are in response to these and other concerns.

Key Provisions to Proposed Rule

Reporting information to EPA — Require use of electronic reporting software to submit all IUR information; and must report if production volume of a chemical substance met or exceeded the 25,000 lb threshold in any calendar year since the last principal reporting year.

Manufacturing-related information — Require reporting of certain manufacturing data, including: whether an imported chemical is physically at the reporting site; the volume of the chemical substance exported and not domestically processed or used; whether a manufactured chemical, such as a byproduct, is being recycled, remanufactured, reprocessed, reused or reworked; and reporting of production volume for all years since the previous principal reporting year (2005).

Processing and use-related information — Eliminate the 300,000 lb threshold for processing and use information, requiring all reporters of non-excluded substances to report; revise the list of industrial function categories for the reporting of processing-and-use information and replacing the five-digit North American Industry Classification System (NAICS) codes with 48 Industrial Sectors (IS); revise consumer/commercial product categories for the reporting of consumer and commercial use information; and require upfront substantiation for information claimed as confidential business information (CBI).

Concerns with the Proposal

Five proposed revisions are frequently cited as troubling by covered industries.

First, byproduct reporting will be especially difficult. Most byproducts are mixtures and reporting components by their unique Chemical Abstract Services registration number isn't feasible even if all components were known, which they typically are not.

Second, the deadline for 2011 IUR reporting is fast approaching. EPA has stated its intent to issue a final rule in the spring. Because the reporting deadline is September 30, 2011, reporting entities will have little time to implement reporting strategies and complete reporting timely.

Third, EPA's proposal to require production volume information from 2006 through 2010 will be difficult to satisfy. It is likely many entities don't have the means to collect this information retroactively.

Fourth, lowering the 300,000 lb processing and use information threshold to 25,000 lb is of significant concern. This requirement would be especially burdensome for reporters of inorganic substances, who weren't required to submit processing or use information during the last reporting cycle in 2006, as they were newly added to the IUR reporting scheme at that time.

Fifth, requiring upfront substantiation of CBI claims will be challenging. Some believe this requirement could adversely impact a commercial interest's competitive standing.

Conclusion

The proposal is complicated, with important potential changes too numerous to discuss here. Its issuance in final, even if modified, will significantly impact chemical manufacturers. Careful review of the proposal now is essential, as there will be little time after the rule is issued to conform reporting strategies to meet the September 30, 2011, deadline.

Lynn L. Bergeson is Chemical Processing's Regulatory Editor. You can e-mail her at lbergeson@lawbc.com.

Lynn is managing director of Bergeson & Campbell, P.C., a Washington, D.C.-based law firm that concentrates on chemical industry issues. The views expressed herein are solely those of the author. This column is not intended to provide, nor should be construed as, legal advice.