

February 2, 2006

Manufacturers and Importers Face More Extensive Chemical Reporting This Year

Beginning in 2006, chemical manufacturers and importers will have to meet significantly more extensive and detailed chemical reporting requirements to comply with the Toxic Substances Control Act (TSCA). For the first time, they will be expected to submit information regarding worker exposure to reportable chemicals and downstream commercial and consumer uses of the substances. To describe these new requirements, on December 5, 2005, the U.S. Environmental Protection Agency (EPA) hosted a workshop in Washington, D.C., on the expanded chemical reporting requirements under the TSCA Inventory Update Reporting (IUR) rule.¹ On December 19, 2005, EPA finalized a rule making further slight modifications to these reporting requirements.²

IUR Background and Amendments

Under TSCA, EPA must compile and update an inventory of chemical substances manufactured in, or imported into, the U.S. Under the TSCA IUR, as amended, manufacturers and importers of chemicals on the TSCA Inventory are required to report to EPA information about these chemicals every five years. The 2006 reporting period, for chemicals manufactured or imported in calendar year 2005, will begin on August 25, 2006, and end on December 23, 2006. Beginning in 2010, and for all subsequent submission periods, the submission period will begin on June 1 and end on September 30.³

EPA significantly increased the amount of information required to be reported when it amended the IUR in 2003. This additional information must be submitted starting with the 2006 submission period. The most expansive changes apply to companies that produce or import large volumes of chemicals. The amendments increased the minimum reporting threshold from 10,000 pounds of reportable chemicals per year at a single site to 25,000 pounds, and eliminated the reporting exemption for inorganic chemicals. On December 19, 2005, EPA also changed the

¹ Another workshop was held in Anaheim, California, on December 12, 2005, and one will be held in Raleigh-Durham, North Carolina on May 2, 2006. Registration for the North Carolina workshop is available at <http://www.epa.gov/region4/air/tsca/conference.htm>. More workshops will be held in Spring 2006 and registration for these workshops will be available at <http://www.epa.gov/oppt/iur/>.

² 70 Fed. Reg. 75059.

³ *Id.* at 75060.

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timeframe for TSCA reporting from once every four years to once every five years, and made other small modifications to the IUR as described below.⁴ More information is available at EPA's IUR website at: <http://www.epa.gov/oppt/iur>.

What Companies Will Be Affected?

The IUR applies to chemical manufacturers or importers that, at a single site, manufacture or import a chemical on the TSCA Inventory in annual volumes of 25,000 pounds or more.⁵ Small manufacturers, those with annual sales less than \$4 million, or annual sales totaling less than \$40 million and annual volumes of less than 100,000 pounds of reportable chemicals at each site, are exempt from IUR requirements.⁶

What Chemicals Must Be Reported?

Chemicals on the TSCA Inventory must be reported when manufactured or imported above specific threshold volumes, although several chemicals are exempt from IUR requirements, including: (1) certain natural gas streams; (2) microorganisms; (3) many polymers; and (4) naturally occurring substances.⁷ Chemicals imported as part of an article or those manufactured or imported as impurities, byproducts, or "non-isolated intermediates" may also be exempt.⁸ Chemical mixtures are exempt, but reportable chemicals comprising the mixtures must be reported.⁹ Similarly, metal alloys are exempt unless a company manufactures or imports a reportable chemical in the alloy.¹⁰

There are also several partial exemptions for specific chemicals. There is a partial exemption for chemicals in which EPA currently has a "low interest." Under this provision, companies may petition EPA to partially exempt a chemical of "low interest" by providing a written rationale for the exemption.¹¹ A "partially exempt" chemical is typically exempt from

⁴ *See id.* at 75059.

⁵ 40 C.F.R. § 710.52.

⁶ *Id.* §§ 704.3, 710.49.

⁷ *Id.* § 710.46(a).

⁸ *Id.* §§ 710.3-4, 710.30(b).

⁹ *Id.* § 710.3.

¹⁰ *Id.* § 710.4.

¹¹ 70 Fed. Reg. at 75060.

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the more burdensome reporting requirements applicable to chemicals produced or imported in volumes of 300,000 pounds or more in a year, but not from the basic requirements applicable to all chemicals at or above the 25,000-pound threshold. Several chemicals are partially exempt for the 2006 reporting period only. Companies manufacturing or importing an annual volume of 300,000 pounds of certain petroleum process streams as well as other, specific chemicals identified by EPA will not have to submit the more detailed “downstream” information now normally required for chemicals produced in those volumes.¹² Inorganic chemicals, which were, with limited exceptions, previously completely exempt from IUR reporting requirements, are now only partially exempt for the 2006 submission period. After the 2006 submission period, inorganics will no longer be exempt from any IUR requirements.

What Are the New Reporting Requirements?

Prior to the 2003 IUR amendments, companies that manufactured or imported an annual volume of 10,000 pounds or more of a reportable chemical at a single site were required to report basic chemical information under the IUR. Companies submitting information under the IUR were required to retain this information for four years. Inorganic chemicals were generally exempt from reporting. The information required to be submitted was limited to basic site and chemical identity information, and production volume for the reportable chemicals.

Under the 2003 amendments, chemical manufacturers or importers must now report significantly more information, and retain records for five years. Manufacturers or importers of reportable chemicals in quantities of 25,000 pounds or more annually at a single site must now provide worker exposure information in addition to the information previously required.¹³ Companies must submit the number of workers at company sites that are reasonably likely to be exposed to a reportable chemical.¹⁴ All “reasonably ascertainable” information must be submitted.¹⁵

Manufacturers or importers of reportable chemicals of 300,000 pounds or more annually at a single site must report a wide range of additional information if it is “readily obtainable,” which EPA views as a less demanding standard than the “reasonably ascertainable” standard.¹⁶ The additional information consists of various downstream processing and use information,

¹² 40 C.F.R. § 710.46(b).

¹³ *Id.* § 710.52.

¹⁴ *Id.* § 710.52(c)(4).

¹⁵ *Id.*

¹⁶ *Id.*

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including the number of workers exposed to reportable chemicals at downstream sites not under company control, and a designation of whether the chemical will be incorporated into a product that is intended for use by children.¹⁷ If some of the reportable information is not “readily obtainable,” the reporting facility must so indicate on the reporting forms.¹⁸

At the December 2005 TSCA IUR workshop, participants repeatedly asked EPA staff for additional guidance on the meaning of “readily ascertainable” and “readily obtainable.” For example, participants inquired as to what minimum steps a company must take to meet these standards. EPA staff did not provide satisfactory answers to workshop participants, stating that “readily obtainable” information is information that is easily accessible to the company, or that the company can estimate using its best professional judgment. If, in its best professional judgment, a company believes that information is “not readily obtainable,” EPA stated that it would be appropriate to enter this designation on the reporting form. EPA stated that most information falling under the “readily ascertainable” standard will be information the submitting company already has at its fingertips, concluding that this standard should not be hard to meet.

In its December 19, 2005 rule, EPA further narrowed some aspects of the IUR, while expanding other requirements. EPA clarified some partial exemptions, required separate reporting of manufacture and import volumes, and limited the reporting of process and use information to domestic activities.¹⁹ EPA removed the provision allowing companies to make confidentiality claims for chemical production volumes within specified ranges, but retained the opportunity to claim confidentiality for actual production volume and site identity if confidentiality claims are substantiated.²⁰

Finally, beginning with the 2006 submission period, chemical manufacturers and importers will be able to submit their IUR reports electronically. The eIUR program will allow data submitters to fill out reports electronically and then submit them to EPA in one of three ways: (1) via an electronic file uploaded to EPA via the Central Data Exchange; (2) by mailing the completed electronic file on a floppy disk or CD; or (3) by mailing a hardcopy of the completed form to EPA.

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¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 70 Fed. Reg. at 75060.

²⁰ *Id.* at 75063.

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For more information on TSCA IUR requirements, please contact Cindi Lewis (202-789-6018, clewis@bdlaw.com), or Ami Grace-Tardy (202-789-6076, agrace@bdlaw.com) at Beveridge & Diamond, P.C.