

TSCA Inventory Notification (Active-Inactive) Rule

Questions and Answers

Updated 2/1/2018

1. What is the EPA's position on submissions provided after the 180-day timeframe? Will the Agency extend the deadline? How should late submitters file? Is a submitter in violation of TSCA if it files late?

The 180-day submission period for manufacturers and importers is a statute based requirement and the Agency cannot extend a statutory deadline. While late submissions are potential violations of TSCA, EPA's primary objective is accurate and complete reporting. Therefore, the Agency urges persons to file as soon as they are able, even if the submission is potentially late, so that the Agency can accurately designate substances as "active" or "inactive" on the TSCA Inventory at the close of the retrospective submission period. The CDX system will allow for late submissions. Persons who file late should adhere to the provisions to EPA's Self-Disclosure policies.

See: <https://www.epa.gov/compliance/epas-edisclosure>.

2. If a domestic manufacturer or importer properly initiated a joint submission by the required deadline (February 7, 2018), and its supplier fails to respond to the joint submission request (by the deadline or at all), has the domestic manufacturer or importer met its retrospective reporting obligation?

Yes. Unit I.B. of the TSCA Inventory Notification (Active-Inactive) Requirements final rule states that if a manufacturer or processor cannot provide the specific chemical identity of a reportable chemical substance to EPA because the information is claimed CBI by a supplier, and therefore is unknown to the importer, the submitter will be required to ask the supplier to provide the CBI chemical identity information directly to the Agency in a joint submission. This requirement is similar to CDR rule requirements (40 CFR 711.15) and will allow EPA to obtain the information necessary to identify the specific chemical identity of a reportable substance and designate it as active on the Inventory. Unit V.D.3. of the TSCA Inventory Update Reporting Modifications; Chemical Data Reporting final rule [76 FR 50816, 50842 (Aug. 16, 2011)] states that the Agency has modified the requirements at 40 CFR 711.15(b)(3)(i) to reflect the primary submitter's underlying obligation to provide what it knows or can reasonably ascertain respecting the identity of a chemical substance subject to reporting. The joint submission requirement is no longer to ensure that suppliers provide secondary submissions to EPA, but to properly ask that they do so. Therefore, a domestic manufacturer or importer has met its retrospective reporting obligation under the TSCA Inventory Notification (Active-Inactive) Requirements rule by asking that a supplier provide a secondary submission (by properly initiating a joint submission) by the required deadline (February 7, 2018).

3. EPA hosted three webinars on the rule and reporting application. Will additional webinars be scheduled?

EPA expects to schedule webinar(s) during the extended processor submission period, which ends in October 2018.

4. If a substance was manufactured or imported under a TSCA section 5(h)(4) exemption (e.g., polymer or Low Volume Exemption), and the substance is not on the TSCA Inventory due to the TSCA section 5(h)(4) exemption, is the substance required to be reported under the retrospective reporting requirements of the rule if the substance was manufactured or imported during the retrospective reporting period?

Chemical substances that are not on the TSCA Inventory are not subject to reporting. Substances that are not on the TSCA Inventory are not included in the electronic application pick list. Persons therefore will be unable to report substances that are not on the TSCA Inventory. See response to comment 1 in the Response to Comments document for more information (<https://www.regulations.gov/document?D=EPA-HQ-OPPT-2016-0426-0086>).

5. If a substance was manufactured or imported under a TSCA section 5(h)(4) exemption (e.g., polymer or Low Volume Exemption), and the substance is on the TSCA Inventory because it was submitted by another person in a Premanufacture Notice and commenced, is the substance required to be reported under the retrospective reporting requirements by the person that manufactured or imported the substance under a TSCA section 5(h)(4) exemption if his or her activity occurred during the retrospective reporting period?

EPA does not believe that manufacturing or processing under a low volume, low releases/low exposures, or polymer exemption (1984 or 1995 polymer exemption) qualify as exempt commercial purposes under TSCA section 8(b), despite the exemptions from reporting under TSCA section 5(h)(4) for such substances. Please be advised that EPA revised 40 CFR 710.25(a) and (c) to clarify that reporting is not required where it is not “known to or reasonably ascertainable by” a company that it manufactured a chemical substance subject to commercial activity designation during the retrospective reporting period. EPA anticipates that the presence of a substance on the confidential portion of the Inventory may be information that is not “known to or reasonably ascertainable by” a person who was operating under a TSCA section 5(h)(4) exemption and who did not submit the confidentiality claim for the specific chemical identity of that substance. EPA anticipates that the presence of a substance on the public portion of the Inventory may be information that is “known to or reasonably ascertainable by” a person who was operating under a TSCA section 5(h)(4) exemption. See response to comment 1 in the Response to Comments document for more information (<https://www.regulations.gov/document?D=EPA-HQ-OPPT-2016-0426-0086>).

6. If a chemical substance is not included on the TSCA Inventory, the List of Exempt Substances, or the Interim List of Active Substances, and a person believes that the substance should be included on one or more of these lists, what is the process for requesting that the status of the substance be addressed?

Persons should contact EPA at tscainventory@epa.gov if there is no CBI in the communication. Communications with CBI content should be mailed to the Document

Control Officer in EPA's Office of Pollution Prevention and Toxics. EPA will address the TSCA Inventory and exemption status of a chemical substance and make any necessary corrections.

7. If I search for a chemical substance in the electronic reporting application and receive an error message that the substance is not found, what should I do? If I upload more than one substance for a batch submission and the electronic reporting application indicates an error for one or more of the substances, what should I do?

Persons should contact EPA at tscainventory@epa.gov if there is no CBI in the communication. Communications with CBI content should be mailed to the Document Control Officer in EPA's Office of Pollution Prevention and Toxics. EPA will address the status of a chemical substance in the electronic reporting application pick list and make any corrections necessary.

8. Will EPA be removing chemical substances from the pick list in the electronic reporting application as they are reported?

EPA will not be removing non-CBI substances from the pick list in the electronic reporting application until after the close of the required 180-day retrospective submission period for manufacturers and importers. Persons are exempt from reporting substances that are already reported only if they have a CDX receipt. Persons who do not wish to take advantage of the CDX receipt exemption therefore still may have an obligation to report, and substances need to be available in the application pick list in order for them to be able to do so.

CBI substances will not be removed from the pick list until after the close of the 420-day submission period for processors in order to afford processors the opportunity to request that EPA maintain the existing confidentiality claim.

9. What is the limit for uploading more than one chemical substance in a batch submission?

The electronic reporting application has not limited the number of substances that can be uploaded in a batch submission. Submitters should be advised, however, that they may experience "time-outs" when uploading large batches due to the capacity of the browser that they are using.

10. Can an authorized agent (e.g., consultant) submit a Notice of Activity for a company?

An authorized agent can submit a Notice of Activity for a company, based on the agreement between the two parties. The electronic reporting application was updated to allow an authorized agent to submit a Notices of Activity on behalf of a company.

11. Joint Submissions.

- a. Is a batch submission possible for a joint submission?

No, the batch submission function is not available for joint submissions.

- b. Can a secondary authorized official or an authorized agent submit a secondary Notice of Activity in response to a joint submission request?

Yes, the electronic reporting application was updated to allow a secondary authorized official or an authorized agent to submit a secondary Notice of Activity in response to a joint submission request.

- c. How are multi-party supply chain scenarios reported in a joint submission?

As a multi-party scenario example, Company A manufactures a substance for Company B who processes the substance for Company C who is the importer of the substance; Company B and C do not know the chemical identity of the substance, and Company C does not know the identity of Company A. In such a scenario, Company C initiates a joint submission which involves sending an email with the unique ID to Company B. Company B should then forward the email with the unique ID to Company A, and Company A responds to the joint submission.

- d. If a supplier receives a joint submission request where some or all the chemical substances are on the List of Exempt Substances, how does the supplier report?

In response to a joint submission request, a supplier should check the “Contains Non- Reportable Substances” box in the application in order to document that some substances that they are being asked to report are not reportable. If all substances that a supplier is being asked to report are not reportable, the supplier should communicate such to the person that initiated the joint submission and request that the joint submission be withdrawn by that person.

- e. Does the person that initiates a joint submission request receive an email or other communication when their supplier submits the secondary form in response to the joint submission request, either from EPA or their supplier?

No, the person that initiated a joint submission request will not receive an email or other communication if and when their supplier submits the secondary form in response to the joint submission request.

- f. Will EPA allow a person who initiates a joint submission to rely on a letter from their supplier certifying that all chemical substances in a joint submission request (e.g., for a formulation or mixture of substances) are active/exempt?

A letter or email confirmation would be acceptable for a substance that is already designated as “active” on the TSCA Inventory and that is exempt from reporting based on the CDR or NOC equivalent notice exemption. Reportable substances that have already been submitted in a Notice of Activity are exempt from reporting by other persons if such persons have confirmation of the submission in the form of a CDX receipt.

- g. If a chemical substance in a mixture is not notified as active as the result of an omission or oversight of a supplier when responding to a joint submission, and the substance is identified as inactive, can a Notice of Activity Form B be filed immediately after learning of the inactive identification with no supply chain interruption?

EPA's final rule clarifies that manufacturers and processors are permitted to submit a NOA Form B for a chemical substance that EPA has identified for inactive designation, even though the effective date of such designation has not yet arrived, and thus the substance does not yet have the legal status of being inactive. EPA's final rule established that an inactive designation only becomes effective 90 days after EPA identifies the substance for such designation. The obligation to submit an NOA Form B, therefore, does not begin until the effective date of an inactive substance designation. Because EPA's final rule established that an inactive substance designation is not effective until 90 days after the date that EPA identifies a substance for inactive designation, manufacturers and processors are afforded time to react to an inactive substance identification. Persons who are already manufacturing or processing a substance for nonexempt commercial purposes (e.g., during the transitional period), and wish to continue doing so without interruption after EPA's designation of such substance as inactive, are permitted to submit a NOA Form B for such substance prior to the effective date of the inactive designation, which is the date that the substance attains the legal status of being inactive. Manufacturers should be aware that the timely filing of a NOA Form B does not remedy an earlier failure to comply with the retrospective reporting requirement; it merely ensures that the manufacturer will not also be in violation of the forward-looking reporting requirement.