

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 710

[EPA-HQ-OPPT-2009-0187; FRL-8874-2]

RIN 2070-AJ43

TSCA Inventory Update Reporting Modifications; Submission Period Suspension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the Toxic Substances Control Act (TSCA) section 8(a) Inventory Update Reporting (IUR) regulations by suspending the next IUR submission period. The IUR requires manufacturers (including importers) of certain chemical substances included on the TSCA Chemical Substance Inventory (TSCA Inventory) to report current data on the manufacturing, processing, and use of the chemical substances. In the **Federal Register** of August 13, 2010, EPA published proposed modifications to the IUR regulations. EPA is suspending the next submission period to allow additional time to finalize the proposed modifications to the IUR regulations, and to avoid finalizing changes to the reporting requirements in the midst of the 2011 submission period. EPA expects to finalize, in the near future, changes to the IUR reporting requirements which will supersede this action.

DATES: This final rule is effective [*insert date of publication in the Federal Register*].

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPPT-2009-0187. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some

information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket.

The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280.

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FOR FURTHER INFORMATION CONTACT: *For technical information contact:*

Chenise Farquharson, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-7768; e-mail address: farquharson.chenise@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture (including manufacture as a byproduct) or import chemical substances listed on the TSCA Inventory. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers and importers (NAICS codes 325 and 324110; e.g., chemical manufacturing and processing and petroleum refineries).
- Chemical users and processors who may manufacture a byproduct chemical substance (NAICS codes 22, 322, 331, and 3344; e.g., utilities, paper manufacturing, primary metal manufacturing, and semiconductor and other electronic component manufacturing).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. What Action is the Agency Taking?

EPA is amending 40 CFR 710.53 to suspend the next submission period within which manufacturers and importers must report IUR data to EPA. The IUR final rule, published in the **Federal Register** issue of December 19, 2005 (70 FR 75059) (FRL-

7743-9), established June 1, 2011 to September 30, 2011, as the second of a series of recurring submission periods for the IUR.

In the **Federal Register** issue of August 13, 2010 (75 FR 49656) (FRL-8833-5), EPA published proposed modifications to the IUR regulations. This action suspends the second IUR submission period, which is the next IUR submission period. Thus, the submission of IUR data for the next submission period will be neither required nor accepted until the suspension has been lifted or superseded by subsequent EPA action. This action to suspend the next submission period is needed due to the length of time which has been necessary to complete work on the proposed modifications and to avoid finalizing changes to the reporting requirements in the midst of the 2011 submission period. This is a one-time suspension of the next submission period only, and it does not alter the timing of subsequent submission periods (e.g., the submission period from June 1, 2016 to September 30, 2016).

This action also addresses, in part, concerns raised by the regulated community (in their comments on the August 13, 2010 proposed rule) about the span of time between the issuance of a final rule modifying the IUR and the close of the next submission period. EPA received numerous comments requesting that the span be sufficient to accommodate the commenters' adjustments to their internal information collection procedures. At the same time, EPA acknowledges the comments it received on behalf of numerous environmental and public health advocates, emphasizing the criticality of the information to be collected under a modified IUR, for purposes of informing future risk-based decisionmaking. While EPA cannot fully respond to comments about the appropriate timing for implementing IUR modifications until those modifications have

been finalized, EPA believes that a suspension of the next submission period is necessary at this time given the pending proposed changes. When EPA completes its work to modify the IUR, the Agency expects, in a final rule, to establish the next applicable submission period and supersede the suspension that this action puts in place.

B. What is the Agency's Authority for Taking this Action?

The IUR rule is issued pursuant to the authority of section 8(a) of TSCA, 15 U.S.C. 2607(a).

Consistent with section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, EPA is finalizing this action based on public notice and opportunity to comment afforded with respect to the August 13, 2010 proposed rule. See the August 13, 2010 proposed rule (soliciting comment on the transition to new IUR requirements).

Alternatively, under section 553(b)(3)(B) of the APA, the Agency may issue a final rule without providing for notice and comment if it demonstrates that it has good cause to do so by finding that notice and comment are impracticable, unnecessary, or contrary to the public interest. For this final rule suspending the next submission period, the Agency finds that the opportunity for notice and comment already afforded on the August 13, 2010 proposed rule met the APA requirement for notice and comment. However, even if it had not, notice and comments on this specific suspension would be impracticable.

The Agency believes that it would be impracticable to afford further opportunity for public comment respecting the suspension of the next submission period, because doing so would defeat the two chief purposes of the action:

1. To address, before the current submission period begins to run, the concerns of regulated industry respecting the span of time that will be available between the expected

finalization of the proposed modifications of the IUR and the close of the currently applicable submission period.

2. To accommodate the promulgation of a final rule which EPA expects will modify the IUR reporting requirements in the near future, without having such finalization occur in the midst of an active submission period. The next applicable reporting period would run from June 1, 2011 to September 30, 2011 if not suspended.

If EPA were to delay this action pending further opportunity for public comment, the action to suspend the next submission period would itself be postponed, and likely could not be finalized until the latter part of the submission period, by which point it would be too late to avoid the confusion and duplication of effort that EPA anticipates would likely occur if this submission period were to open prior to the completion of work on the proposed modifications of the submission requirements.

Similarly, under section 553(d) of the APA, 5 U.S.C. 553(d), the Agency may make a rule immediately effective “which grants or recognizes an exemption or relieves a restriction,” or otherwise “for good cause found and published with the rule.” For the following reasons, EPA has determined that this action “relieves a restriction,” that there is also “good cause” to make this amendment effective upon publication in the **Federal Register**, and that this action will be effective immediately upon publication in the **Federal Register**.

Without immediate amendment, 40 CFR 710.53 would provide that the next submission period for the IUR would run from June 1, 2011 to September 30, 2011. The immediately effective upon publication in the **Federal Register** amendment to 40 CFR 710.53 suspends the upcoming submission period. The Agency has determined that an

immediate suspension of the next submission period is warranted because it gives affected parties additional time to adjust their behavior in response to other portions of the proposed rule that EPA expects will soon be finalized and because it averts potential confusion and duplication of effort, which could occur if other portions of the proposed rule, substantively affecting the submission requirements of the IUR, become effective in the midst of the IUR submission period itself.

C. What is the Status of the Proposed IUR Modifications Rule?

EPA proposed to amend the TSCA section 8(a) IUR rule in the **Federal Register** issue of August 13, 2010. The IUR enables EPA to collect and publish information on the manufacturing, processing, and use of commercial chemical substances on the TSCA Inventory. This includes current information on chemical production volumes, manufacturing sites, and how the chemical substances are used. This information helps the Agency determine whether people or the environment are potentially exposed to reported chemical substances. In the August 13, 2010 document EPA proposed to amend the IUR rule to require submission of information that will better address Agency and public information needs, improve the usability and reliability of the reported data, and ensure that data are available in a timely manner. EPA also proposed to require electronic reporting of IUR information and to modify IUR reporting requirements, including certain circumstances that trigger reporting, the specific data to be reported, the reporting standard for processing and use information, and CBI reporting procedures. The public comment period for the August 13, 2010 proposed rule closed on October 12, 2010. EPA is completing work on the August 13, 2010 proposed rule and expects to promulgate, in the near future, a final rule addressing IUR modifications.

III. Statutory and Executive Order Reviews

A. Executive Order 12866

This action is classified as a final rule because it makes an amendment to the Code of Federal Regulations (CFR). The amendment to the CFR is necessary to allow for a one-time postponement to the 2011 reporting IUR period. This action does not impose any new requirements or amend substantive requirements. This action is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, November 4, 1993).

B. Paperwork Reduction Act

This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

Because this action does not impose any new requirements or amend substantive requirements, EPA certifies this action will not have a significant economic impact on a substantial number of small entities and there will be no adverse impact on small entities resulting from this action under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*)

D. Unfunded Mandates Reform Act

This action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

E. Executive Order 13132

The Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This action does not alter the relationships or distribution of power and responsibilities established by Congress.

F. Executive Order 13175

The Agency has determined that this rule does not have any “tribal implications” as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 22951, November 9, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This final rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045

This action does not require OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

H. Executive Order 13211

Because this final rule is exempt from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

I. National Technology Transfer Advancement Act

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

J. Executive Order 12898

This action does not involve special considerations of environmental justice related issues as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report

to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S.

Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 710

Environmental protection, Chemicals, Hazardous materials, Inventory Update Reporting, IUR, Reporting and recordkeeping requirements, TSCA.

Dated: May 2, 2011.

Stephen A. Owens,
Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, 40 CFR chapter I is amended as follows:

PART 710--[AMENDED]

1. The authority citation for part 710 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

2. Add the following sentence to the end of § 710.53 to read as follows:

§ 710.53 When to report.

* * * Notwithstanding the foregoing, and without any alteration of the status or timing of any subsequent submission period, the second submission period (which would otherwise be from June 1, 2011 to September 30, 2011) is suspended.