

Regulatory History of the Byproducts Exemption in 40 CFR §§ 711.10(c) & 720.30(g)

Presented by

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TSCA Enacted in 1976

- Section 8(a)(2) allows EPA to require manufacturers to maintain records and report chemical substances and byproducts to EPA
 - Authority is not tied to chemicals as named on the inventory in section 8(b)
- Legislative History – Senate Report
 - Certain mixtures that change on end use are not covered “because they are not manufactured for commercial purposes, *per se*”
 - “Such chemical substances arising during the formulation, store, or use of such mixture should be considered as byproducts of the precursor substance or substances. The responsibility for reporting and testing such byproducts under the provisions of this legislation would then fall upon the manufacturer of the precursor substance.”

Regulatory Development – Byproducts in TSCA Inventory

- Spring/Summer 1977: Proposed inventory rules
 - March proposal
 - August re-proposal due to comments
 - Introduces byproducts definition: “A chemical substance produced without separate commercial intent during the manufacture or processing of another chemical substance(s) or mixture(s).”
 - Introduces first byproducts exemption, generally excluding byproducts from the inventory but giving manufacturers the option to report on the inventory byproducts used as:
 - Burning as a fuel
 - Disposing as a waste/enriching soil
 - Extracting component chemical substances
 - “EPA intends to encourage conservation and recycling of the energy and resources contained in the waste material that might otherwise be discarded because of reporting burdens under TSCA.” EPA was also considering reporting for byproducts that are hazardous wastes under RCRA regulations.

Regulatory Development – Byproducts in TSCA Inventory

- Spring/Summer 1977: Proposed inventory rules

- December 1977: Final inventory rule

- Finalized the August proposed rule under the authority of TSCA section 8(a) with a few changes
- Explanation of extraction of component chemical reporting in comment 55

Regulatory Development – Byproducts under TSCA PMN

- Spring/Summer 1977: Proposed inventory rules
- December 1977: Final inventory rule
- 1979: Proposed PMN rules

Regulatory Development – Byproducts under TSCA PMN

● Spring/Summer 1977: Proposed inventory rules

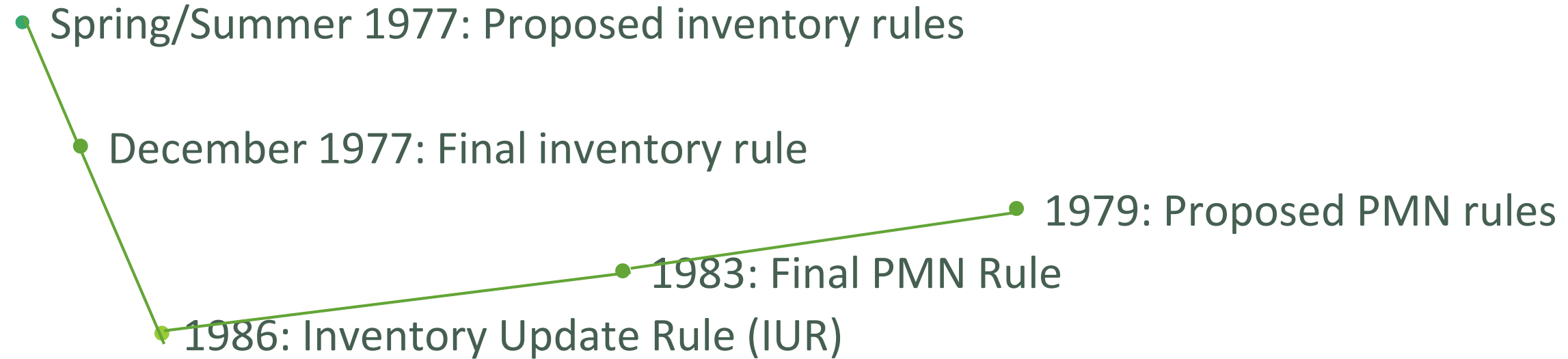
● December 1977: Final inventory rule

● 1979: Proposed PMN rules

● 1983: Final PMN Rule

- Final PMN rule expanded the definition of byproducts to include use and disposal
- Created 40 CFR 720.30(g) as it stands now as a corollary to the inventory rule, except that those activities are always excluded from PMN
- “[T]he manufacturer of a byproduct is expected to know of any nonexempt uses planned by its customer. In such cases, the byproduct would then be manufactured for a commercial purpose and the manufacturer would be required to submit a notice.”

Regulatory Development – Byproducts in TSCA Inventory



- In an update of the inventory, EPA added Subpart B to Part 710, and exempted from reporting “person[s] manufactur[ing] the chemical substance ... in a manner described in §720.30(g) or (h) of this chapter.”
- PMN exemption specifically mentioned in the preamble

Regulatory Development – Byproducts in TSCA Inventory

● Spring/Summer 1977: Proposed inventory rules

● December 1977: Final inventory rule

● 1979: Proposed PMN rules

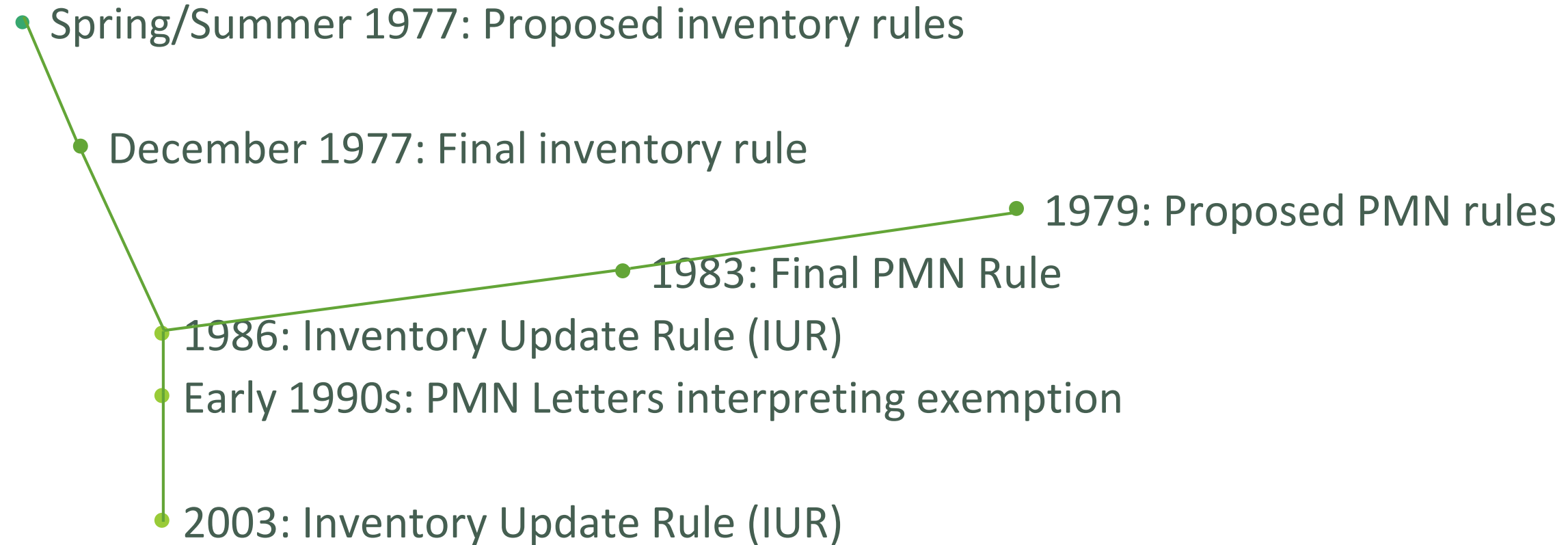
● 1983: Final PMN Rule

● 1986: Inventory Update Rule (IUR)

● Early 1990s: PMN Letters interpreting exemption

- 1991 Letter: 720.30(g)(3) requires that “the component to be extracted must be already existing as a distinct chemical substance in the waste stream” to be exempted.
- 1993 Letter: Extended the interpretation to certain activities associated with production, processing, or use wastes (e.g. recovery/reuse)

Regulatory Development – Byproducts in TSCA Inventory



- Included inorganic chemicals for the 2006 reporting cycle and thereafter
- Carried over the exemptions in 720.30(g) and (h) for 2006 and thereafter

Regulatory Development – Byproducts in TSCA CDR

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- A green line connects the following milestones in chronological order:
- Spring/Summer 1977: Proposed inventory rules
 - December 1977: Final inventory rule
 - 1979: Proposed PMN rules
 - 1983: Final PMN Rule
 - 1986: Inventory Update Rule (IUR)
 - Early 1990s: PMN Letters interpreting exemption
 - 2003: Inventory Update Rule (IUR)
 - 2011: Chemical Data Reporting (CDR)
- Renumbered Part 710 into Part 711, retaining exemptions in 720.30(g) & (h) in 711.10(c)
 - “EPA is clarifying, not enlarging, the reporting requirements for byproducts which have been in place for decades.”

Regulatory Development – Byproducts in TSCA

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- Spring/Summer 1977: Proposed inventory rules
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- 1983: Final PMN Rule
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- 2003: Inventory Update Rule (IUR)
- 2011: Chemical Data Reporting (CDR)

Questions?

References for Regulatory History of the Byproducts Exemption in
40 CFR §§ 711.10(c) & 720.30(g)

Statute

15 U.S.C. § 2607(a)(2).

Legislative History

Senate Report No. 94-698 at 19, 22 (1976).

Federal Register Notices

Original Inventory Rule

March 1977 Inventory Rule Proposal: 42 Fed. Reg. 13130, at 13134-35.

August 1977 Inventory Rule Re-Proposal: 42 Fed. Reg. 39181, at 39186, 39190, & 39192.

December 1977 Final Inventory Rule: 42 Fed. Reg. 64572, at 64577, 64587.

Original PMN Rule

January 1979 PMN Proposed Rule: 44 Fed. Reg. 2242, at 2248, 2264.

October 1979 PMN Re-Proposed Rule: 44 Fed. Reg. 59764, at 59772.

May 1983 Final PMN Rule: 48 Fed. Reg. 21722, at 21727, 21729, 21743, & 21745-46.

Inventory Update Rules

1986 Final Inventory Update Rule (IUR): 51 Fed. Reg. 21438, at 21440, 21448.

2003 Final IUR Amendments: 68 Fed. Reg. 848, at 873, 876, & 902.

CDR Rule

2011 CDR Final Rule: 76 Fed. Reg. 50816, at 50818, 50832-33, 50849-51, & 50872.

Library of Congress Federal Register Collection

<https://www.loc.gov/collections/federal-register/?loclr=bloglaw>

1936-1993

Federal Digital System (FDsys)

<https://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR&browsePath=1990&isCollapsed=false&leafLevelBrowse=false&ycord=307>

1990-present

CDR Website

<https://www.epa.gov/chemical-data-reporting/legislative-and-regulatory-authority-chemical-data-reporting>

TSCA - Full Law as Amended

<http://uscode.house.gov/view.xhtml?path=/prelim@title15/chapter53&edition=prelim>