Chemical Data Reporting Rule: The Time Is Now

Every four years, domestic manufacturers and importers of chemicals must report to the Environmental Protection Agency under the Chemical Data Reporting rule (CDR). The next reports are due in three months, on September 30, 2016. CDR reporting can be time-consuming and complex, involving different parties within a manufacturer’s supply chain. Manufacturers who have not yet begun their reporting efforts for the 2016 submission period should begin now.

Background on CDR

CDR reporting requires domestic manufacturers and importers (manufacturers) to report information regarding the production and use of the chemical substances they manufactured or imported above specified thresholds. The CDR rule is authorized under section 8(a) of the Toxic Substances Control Act (TSCA). EPA uses the information submitted to evaluate chemicals under other provisions of TSCA. EPA regulations on how to comply with CDR appear in 40 C.F.R. Part 711.

Who Must Report

Generally, manufacturers who manufacture domestically or import a threshold quantity or more of a chemical that is on the TSCA Inventory at a particular site for non-exempt commercial purposes must submit information regarding that chemical to EPA.1 Small manufacturers (those whose total annual revenue does not exceed $40 million, and who do not manufacture more than 100,000 pounds of any given chemical substance) are exempt from complying with the CDR rule.2

Where a chemical is toll manufactured, who must report? Toll manufacturing occurs where one company contracts to produce domestically a particular chemical for another company.3 Only one of the companies needs to submit a report to EPA. However, both will be found non-compliant if neither company submits the report. Therefore, the contracting companies must coordinate to ensure that one company does submit the necessary reports.

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1 40 C.F.R. § 711.8.
2 40 C.F.R. § 704.3.
3 See Fact Sheet: Toll Manufacturing.
There is an exception for small manufacturers that are involved in toll manufacturing. Where there is one manufacturer that qualifies for the small manufacturer exception under TSCA and one manufacturer that does not, both companies can decide who submits the requisite report to EPA. However, if neither manufacturer submits the report, the non-exempt manufacturer ultimately bears the liability for non-compliance.4

**Thresholds for Reporting**

For most chemicals, the threshold for reporting is 25,000 pounds of a chemical at a particular site during the calendar year for which reporting is being made. For some chemicals, however, a lower threshold applies, 2,500 pounds.5 These are chemicals for which EPA has taken action under sections 5, 6, or 7 of TSCA. See the [EPA’s document](#) outlining such chemicals.

**When Reports Are Due**

The 2016 reporting period began on June 1. Some manufacturers have already submitted their CDR forms. All report forms are due by September 30, 2016.

**What Manufacturers Must Report**

Manufacturers must report the total annual production volume for each chemical for each year at a given site since the last principal reporting year. The last principal reporting year was 2011. The principal reporting year for this submission period is 2015.

For years 2012-2014, only the name and volume of each chemical that meets the threshold must be reported to EPA. In contrast, a manufacturer must report more detailed information for chemical substances that were manufactured domestically or imported during 2015. Information that must be reported for 2015 includes company and site information at each site; industrial processing and use; chemical identification; information relating to the manufacturing; as well as consumer and commercial uses for each chemical substance that meets its given threshold at each site.6

EPA excludes some kinds of substances from CDR reporting. These include polymers, microorganisms, and naturally occurring substances.7 Other chemicals are excluded if they qualify as research and development substances, impurities, nonisolated intermediates, or byproducts used for non-commercial purposes.8 In addition, a byproduct is exempt if its only commercial purpose is for use by public or private organizations that (1) burn it as a fuel, (2) dispose of it as waste, including in a landfill or for enriching soil, or (3) extract components chemical substances from it for commercial purposes.9 Imported articles also are exempt from CDR reporting.

**Confidentiality**

A manufacturer may request protection from public disclosure for some information if it qualifies as confidential business information (CBI). However, a manufacturer that wants to claim CBI must meet all of requirements in 40 C.F.R. § 2.208, as well as submit claims of substantiation, which means that the manufacturers must show that there is a likelihood of competitive harm if that information is disclosed.10

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4 Id.
5 40 C.F.R. § 711.8.
6 40 C.F.R. § 711.20.
7 40 C.F.R. § 711.6.
8 40 C.F.R. § 704.5.
9 40 C.F.R. § 720.30(g).
10 40 C.F.R. § 711.3.
EPA has indicated that it considers the enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act on June 22, 2016 to affect CBI claims for CDR reporting. That statute substantially overhauled TSCA, including its confidentiality provisions. The CBI certification statement on the Form U already reflects changes from past years, and EPA plans to update its CDR guidance, instructions, and other information documents to be consistent with the new certification language. See EPA’s frequent questions on the new TSCA amendments.

**How to Report**

Manufacturers must report by submitting the CDR Form U by accessing EPA’s e-CDRweb through its Central Data Exchange (CDX). CDX is EPA’s centralized electronic document receiving system. The e-CDRweb is EPA’s web-based reporting tool where manufacturers complete and submit their Form U’s. Each manufacturer may submit only one Form U where there is information regarding multiple chemicals at one site, but a manufacturer must have a separate Form U for each site that is subject to chemical reporting.

An authorized official is the only individual who can create a Form U. This individual must register to use CDX in order to sign and submit the completed form using the e-CDRweb reporting tool. A designated authorized official may be the designated authorized official for multiple reporting sites. For more details and guidance on how to use EPA’s e-CDRweb, see the CDX Registration Guide.

**Potential Problems for Manufacturers**

There are various complexities associated with CDR that can lead to problems for manufacturers. Submitters should plan ahead, review EPA’s guidance documents, and seek legal help as needed during this process to ensure accurate and thorough reporting.

**TSCA Inventory Compliance**

Inventory issues can arise where a particular chemical identified as subject to CDR reporting is not listed on the TSCA Inventory. Where this issue arises, companies may want to consider reporting the Inventory issue under EPA’s Audit Policy.

**Access to Information**

Manufacturers must report information that is “known to or reasonably ascertainable by means all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know.” A domestic manufacturer may have few issues about access to information other than information about use and processing by downstream customers. An importer may have more challenges accessing reportable information where that information is held by its foreign suppliers.

**Byproducts**

A byproduct is a chemical substance produced without a separate commercial intent during the manufacture, processing, use, or disposal of another chemical substance or mixture. Sometimes byproducts are recycled. EPA has identified a number of complicated scenarios as to whether those recycled byproducts are subject to CDR reporting. Those that are subject to CDR reporting may also raise the question of whether or not they are on the TSCA Inventory.

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11 40 C.F.R. § 711.3.
12 40 C.F.R § 704.3.
13 40 C.F.R. § 704.3.
14 See Chemical Data Reporting Byproduct and Recycling Scenarios.
EPA Guidance

EPA has made available on its website resources and tools that provide guidance in the reporting process to assist manufacturers, including the following:

- Basic Information for Chemical Data Reporting
- June 2016 Chemical Data Reporting Requirements & eCDRweb Reporting Tool
- May 2016 Chemical Data Reporting Requirements & eCDRweb Reporting Tool
- April 2016 CDR Reporting Requirements & eCDRweb Reporting Tool
- February 2016 CDR Reporting Application Presentation
- e-CDRweb 2016: EPA Overview and Demonstration
- Instructions for Reporting 2016 TSCA Chemical Data Reporting
- Sample Form U for 2016 Chemical Data Reporting Submissions
- Chemical Data Reporting Facts Sheet: Chemicals Snapshot
- TSCA Chemical Data Reporting Facts Sheet: Reporting Thresholds for 2016
- TSCA Chemical Data Reporting Fact Sheet: Chemical Substances which are the Subject of Certain TSCA Actions
- TSCA Chemical Data Reporting Fact Sheet: Reporting After Changes to Company Ownership or Legal Identity
- TSCA Chemical Data Reporting Fact Sheet: Importers
- TSCA Chemical Data Reporting Fact Sheet: Imported Articles
- TSCA Chemical Data Reporting Fact Sheet: Toll Manufacturing
- TSCA Chemical Data Reporting Fact Sheet: Byproducts Reporting for the Printed Circuit Board Industry
- TSCA Chemical Data Reporting Fact Sheet: Non-Isolated Intermediates
- TSCA Chemical Data Reporting Fact Sheet: Reporting for Electricity Generating Sites
- TSCA Chemical Data Reporting Fact Sheet: Reporting Manufactured Chemical Substances from Metal Mining and Related Activities
- Chemical Data Reporting Byproduct and Recycling Scenarios

Beveridge & Diamond’s Chemicals, Products & Nanotechnology practice group provides strategic, business-focused advice to the global chemicals industry. We work with large and small chemical companies from industries including basic and specialty chemicals, pharmaceuticals, electronics, crop protection, food contact materials and additives, and consumer products, and have substantial experience representing clients whose products and activities are subject to EPA’s broad chemical regulatory authority under the Toxic Substances Control Act. For more information, please contact Mark Duvall.

The author gratefully acknowledges the assistance of Lynne Howard.