

Chemical Data Reporting Is Due to EPA on November 30

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Every four years, manufacturers and importers of chemicals must report to the U.S. Environmental Protection Agency (EPA) under its [Chemical Data Reporting](#) (CDR) rule, 40 C.F.R. Part 711. The CDR rule, issued under the Toxic Substances Control Act (TSCA), requires manufacturers or importers to file reports for all chemical substances they manufacture or import over certain volume thresholds — subject to some exemptions. The CDR rule is not limited to companies that sell chemicals; it applies to any entity that manufactures or imports chemical substances in commerce in the United States (that is, listed on the [TSCA Chemical Substance Inventory](#)).

The CDR rule applies to a broad range of industries including biotechnology companies, paper and metal manufacturers, and electric utilities. Many manufacturers and importers may be unaware of this obligation, especially start-up companies and fast-growing midsize companies. CDR reports for 2020, which cover calendar years 2016 through 2019, are due to EPA by November 30. Required information includes chemical identities of substances, total annual production or import volume, volumes used onsite and exported, and risks to onsite workers. Below we outline five key elements of the CDR rule.

Key Elements

Covered Chemical Substances. Unless the chemical substance is specifically excluded by 40 CFR § 711.6, an entity must report its manufacture or import of any chemical substance listed on the TSCA Inventory. Any entity that manufactures or imported 25,000 pounds or more of a listed chemical substance at a single site for nonexempt commercial purposes during any single year over the reporting period must file a CDR report. 40 C.F.R. § 711.8. There is a lower threshold of 2,500 pounds or more for certain other chemical substances, including those subject to a Significant New Use Rule (issued by EPA) or a civil action or seizure.

Small Manufacturer Exemption. EPA's 2020 final rule expanded the self-implementing small manufacturer exemption. Manufacturers and importers are exempted from certain CDR reporting requirements if either of the following standards is met.

- Total annual sales, combined with those of any parent company, are less than \$120 million, unless the company manufactures more than 100,000 pounds of any one chemical at a site.
- Total annual sales of the site are less than \$12 million, regardless of production volume.

However, reporting may still be required if the applicable substance is subject to separate rules or orders under TSCA sections 4, 5, or 6.

Confidential Business Information (CBI) Substantiation Requirements. Unless EPA approves CBI claims, the data reported to EPA are publicly accessible. If reporting entities claim that the reported data contains CBI, the entity must substantiate claims at the time of submission. A set of standard questions is set forth in 40 CFR 711.30(b), and CBI substantiation requirements for certain processing and use information are set forth in 40 CFR 711.30(a)(7).

Code Requirements. For the 2020 reporting period, companies are required to use Organization for Economic Cooperation and Development (OECD) codes for reporting on certain chemicals recognized as high priority for risk evaluation. These high-priority chemicals include formaldehyde, phthalates, and certain chlorinated solvents. For the 2024 reporting period, the OECD code requirement will apply to all chemical substances. Additionally, companies must now use North American Industrial Classification System (NAICS) to specify the site of manufacture.

Addressing Potential Noncompliance. While compiling and reviewing their records, some manufacturers or importers may identify a chemical subject to CDR reporting but not listed on the TSCA Inventory. This could indicate potential noncompliance with other TSCA provisions, such as the pre-manufacture notice requirements under TSCA section 5. In this case, companies should evaluate a voluntary disclosure under EPA's audit policy in tandem with preparing their CDR reporting.

As the November deadline is quickly approaching, any company that has manufactured or imported chemicals since 2016 should review its records to determine whether its manufactures or imports require CDR reporting.

CONTACTS

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