

EPA Releases Final Amendments to CDR Rule, Extends Reporting Period

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Government Regulation

On March 17, 2020, the U.S. Environmental Protection Agency (EPA) [announced](#) the availability of a final rule amending the Chemical Data Reporting (CDR) rule. According to EPA, the amendments are intended to reduce the burden for certain CDR reporters, improve the quality of CDR data collected, and align reporting requirements with the Frank R. Lautenberg Chemical Safety for the 21st Century Act's (Lautenberg Act) amendments to the Toxic Substances Control Act (TSCA). EPA states that some of the key revisions include simplifying reporting, including allowing manufacturers to use certain processing and use data codes already in use by many chemical manufacturers as part of international codes developed through the Organization for Economic Cooperation and Development (OECD); updating requirements for asserting confidentiality claims to align with the requirements in amended TSCA; and adding reporting exemptions for specific types of byproducts manufactured in certain equipment. Additionally, EPA is extending the reporting period for CDR data submitters from **September 30, 2020**, to **November 30, 2020**, to provide additional time for the regulated community to familiarize themselves with the amendments and to allow time for reporters to familiarize themselves with an updated public version of the reporting tool. EPA will host a webinar on **Tuesday, March 31, 2020**, to discuss the revised reporting requirements, provide an overview of the 2020 CDR submission period, and to give an introduction to the updated e-CDRweb reporting tool.

Amendments to the CDR Rule

EPA posted a [pre-publication version](#) of the final rule amending the CDR rule. The CDR rule requires manufacturers (including importers) of certain chemical substances listed on the TSCA Chemical Substance Inventory (TSCA Inventory) to report data on chemical manufacturing, processing, and use every four years. The final rule makes several changes to the CDR rule to make regulatory updates that align with new statutory requirements of TSCA, to improve the CDR data collected as necessary to support the implementation of TSCA, and potentially to reduce burden for certain CDR reporters. In addition, according to EPA, these regulatory modifications may result in additional information being made available to EPA and the public that is currently not collected; improve the usability and reliability of the reported data; and ensure that data are available in a timely manner.

The amendments to the CDR rule include changing the requirements for making confidentiality claims, including to identify when upfront substantiation is required (which is being promulgated as

proposed), update the substantiation questions, and identify data elements that cannot be claimed as confidential (which is being implemented as proposed), so as to align with the Lautenberg Act. EPA notes that the substantiation questions have been modified from the proposal based on comments received during the public comment period.

The final rule replaces certain processing and use codes (industrial function and commercial/consumer product use) with codes based on the OECD's functional use and product and article use codes. EPA states that it is also adding the requirement to report the OECD-based functional use codes for consumer and commercial use information. This provision is being adopted as proposed with some modifications from the proposal: the new codes will be codified in the Code of Federal Regulations (CFR) rather than listed in guidance, codes associated with non-TSCA uses will be folded into the overarching non-TSCA use code, and reporting using the OECD-based codes will be required during the 2020 CDR submission period for the chemical substances designated in 2019 by EPA as a high priority for risk evaluation and required for all chemical substances during the **2024** CDR submission (reporting using the OECD-based codes would be voluntary for all reporters, other than for the chemical substances designated in 2019 by EPA as a high priority for risk evaluation, during the 2020 CDR submission period).

The final rule adds the requirement to report the North American Industrial Classification System (NAICS) code(s) for the site of manufacture. The final rule modifies the requirement to indicate whether a chemical is removed from the waste stream and recycled, remanufactured, reprocessed, or reused, by changing the requirement to indicate whether a chemical is removed from the waste stream and recycled. Both of these revisions are being promulgated as proposed.

The final rule adds a voluntary data element to identify the percent total production volume of a chemical substance that is a byproduct. EPA modified the proposed requirement by including that percent byproduct reporting be in ranges and making the reporting of the data element voluntary. The final rule implements the proposed requirement that the secondary submitter of a joint submission report the specific function of the chemical along with the percentage of the chemical in the imported product.

The final rule modifies the reporting of "parent company" to require the use of a naming convention; add the requirement to report a foreign parent company, when applicable; and codify reporting scenarios in a new definition for "highest-level parent company." EPA notes that these definitions, requirements, and reporting scenario codifications are modified from the proposed rule. The final rule simplifies the reporting process by providing two reporting mechanisms for co-manufacturers by enabling a multi-reporter process for reporters separately to report directly to EPA within the e-CDRweb reporting tool. EPA states that these changes are being adopted with minor modification from the proposal, with the promulgation of two separate reporting methodologies.

The final rule adds the following exemptions: (1) for specifically identified byproducts that are recycled in a site-limited, enclosed system (which is being adopted as proposed with the addition of another chemical substance); and (2) for byproducts that are manufactured as part of non-integral pollution control and boiler equipment (which is implemented as proposed).

According to EPA, the final rule clarifies the regulatory text by removing outdated text and making other improvements. These changes are being promulgated as proposed. EPA notes that it is not adopting some proposed provisions based on comments received during the public comment period.

As described in the proposed rule, EPA states that it is taking other, non-regulatory steps to minimize

the burden on reporters, “by improving the reporting application and database to be user-friendly and dynamic, with straightforward questions that include fill-in-the-blank fields, check boxes, and drop-down menus.” In addition, EPA notes that it is replacing the current pre-formatted Form U with a customized report that will be based on the actual information submitted by a site through e-CDRweb, the electronic reporting tool. According to EPA, this change will enable fields to expand or contract as needed to display the entered information in one spot, eliminating the need for continuation pages or for large empty spaces in the printed report. For example, EPA states, some chemical names are very short and need only ten or 20 characters, while other chemical names are very long and use multiple lines of text. Although the final rule does not discuss these changes further, EPA states that “they are an important component of the effort to reduce burden and modernize the data collection system.”

According to the final rule, as was done for previous CDR collections, EPA will provide reporters with the opportunity to test and comment on the updated e-CDRweb reporting tool prior to the 2020 CDR submission period. The testing, by a group of volunteer reporters, will be conducted under a generic Information Collection Request (ICR) for EPA software testing.

On **March 31, 2020**, EPA will host a webinar to provide an overview of the 2020 CDR requirements and introduce the revised e-CDRweb reporting tool to the regulated community. According to the final rule, during the webinar, EPA will issue a general invitation to interested parties to participate in a short testing period of the revised e-CDRweb reporting tool. EPA will open the testing period shortly after publication of the rule. Because of resource constraints, the testing period will be limited to 25 participants.

Extension of 2020 Submission Period

EPA posted a [pre-publication](#) version of a final rule amending the CDR regulations by extending the submission deadline for 2020 reports from **September 30, 2020**, to **November 30, 2020**. EPA states that “[t]his is a one-time extension for the 2020 submission period only.” According to EPA, it is extending the submission period to provide additional time for the regulated community to familiarize themselves with the amendments to the CDR reporting requirements and to allow time for reporters to familiarize themselves with an updated public version of the reporting tool. EPA states that it believes it is appropriate to extend the reporting period to allow the regulated community additional time to submit their reports. EPA notes that with respect to the timing of this action, the need to extend the deadline arose, in part, as a result of the time needed to develop a final rule while addressing public comments received, to incorporate broader EPA policy decisions relevant to data reporting, and to carry out interagency review of the final rule amending the CDR rule.

Update to the Small Manufacturer Definition under TSCA Section 8(a)

In its March 17, 2020, [press release](#), EPA states that in a separate but related action, it is working to update the size standards definition for small manufacturers for reporting and recordkeeping requirements under TSCA Section 8(a). According to EPA, the extended CDR reporting period should allow companies reporting under CDR time to comply with any amendments to the definition of a small manufacturer. EPA submitted a final rule regarding the small manufacturer definition to the Office of Management and Budget (OMB) on March 6, 2020, for review.

Commentary

The final CDR rule does not hold any surprises for the regulated community, with the exception of certain new reporting provisions being voluntary for the next reporting cycle and the indication of an extension to the reporting period -- both of which we view as positive outcomes. EPA is to be commended for recognizing that certain changes, such as the adoption of the OECD function codes, could result in additional burden for companies hoping to rely on codes used during the last reporting cycle. Requiring the new OECD codes for the 20 high-priority chemicals and allowing voluntary reporting with those codes for other chemicals is a reasonable and pragmatic approach.

In our view, the adjustments in the CBI substantiation requirements will likely be the biggest change from 2016 to 2020 and one that is required to comply with the Lautenberg Act. Changes are largely focused on providing clarity to submitters on what is eligible to protect as CBI and what is required to substantiate claims.

The largest potential concern at this point is the anticipated changes in the e-CDR reporting system, which has not yet been beta-tested. We remain hopeful that the beta-testing shows that changes being implemented within the reporting software, including adding the Agent/Consultant role parallel with the new chemical notice tool, will not adversely affect the overall process and there will be no problems when reporting begins on **June 1, 2020**.

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National Law Review, Volume X, Number 79

Source URL: <https://natlawreview.com/article/epa-releases-final-amendments-to-cdr-rule-extends-reporting-period>