

ARTICLE

As 2020 Ends, the Chemical Data Reporting (CDR) Deadline Nears – Can You Avoid These Problems?

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Every four years, the U.S. Environmental Protection Agency's (EPA) CDR rule, under the agency's Toxic Substances Control Act (TSCA) authority, requires manufacturers (and importers) to report chemical production volumes and manufacturing, processing, and use information. CDR provides EPA with basic exposure-related information on the types, quantities, and uses of many (but not all) chemical substances manufactured domestically or imported into the United States. For example, certain classes of chemicals, such as polymers, are exempt. The reporting threshold for SNUR'd chemicals is only 2,500 pounds per year. Otherwise, the threshold for reporting is 25,000 pounds per year. In 2016, about 5,660 sites reported approximately 8,700 chemicals, and there were about 42,500 chemical reports.

The 2020 CDR reporting deadline has been extended a couple of times, initially due to the COVID-19 pandemic, but more recently due to operational issues industry has encountered with the CDX system. The new deadline is about one month from now - January 29, 2021. Here is a short list of items to check for and consider before hitting the submit key:

- Inconsistent manufacture and import volume tracking and reporting issues, like reporting in kilograms not pounds or the failure to report production volume to the required two significant figures of accuracy.

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Practice Areas

Environment & Product Regulation
Toxic Substances Control Act (TSCA)

- Failure to report a reportable substance, or discovery of the failure to report the same or a different chemical substance on your 2016 report.
- Reporting a chemical that is not listed on the TSCA Inventory.
- Using the wrong name and CASRN.
- Misinterpretation of exemptions, especially failure to account for reportable "byproducts" and fractionation.

If you think you may have any of these issues – and we've seen them all – connect with your in-house counsel immediately. EPA considers most CDR violations to be "significant" in extent, with potential penalties for not reporting of \$22,260 per chemical per site.

Having a secure grip on your confidential business information (CBI) protection is another reason to connect with trusted legal advisors. CBI substantiation always has been needed up front for CDR, yet the 2016 changes to TSCA place new limits on the ability of companies to claim certain CDR information as CBI.

CDR information is not put on a shelf. It has real world implications for how EPA is assessing and regulating chemicals: CDR data were used to help prioritize the 30 substances that are currently undergoing risk evaluations under section 6 of TSCA.

Happy New Year!