



Kelly Johnson

Partner
 202.654.6933
 Washington, DC
 kajohnson@hollandhart.com

2016 Toxic Substances Control Act Chemical Data Reporting

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Manufacturers and importers of chemicals listed on the Toxic Substances Control Act (“TSCA”) Chemical Substances Inventory are required to report information about such chemicals to the Environmental Protection Agency (“EPA”) pursuant to the TSCA Chemical Data Reporting (“CDR”) rule.¹ As a result of EPA changes to the CDR rule, the next set of these reports, due between June 1 and September 30, 2016, will require companies to report more information and follow more complicated requirements than the most recent CDR reports from 2012.

Because preparing and submitting CDR reports is a complex and time-consuming process, early planning is key, including information gathering and applicability determinations. Taking these initial steps is important to ease the reporting burden and ensure compliant CDR reporting.

Who must report? Manufacturers and importers of listed chemicals must report under the CDR rule if they manufactured or imported 25,000 pounds or more of any chemical listed in the TSCA Chemical Substances Inventory at any one site during any single calendar year between 2012-2015.² Additionally, a lower threshold of 2,500 pounds applies to the manufacture or import of chemicals subject to section 5 of TSCA, which pertains to new chemical substances or chemical substances for which there is a significant new use.³

What information must be reported? Manufacturers are required to report information on reportable chemicals for calendar years of 2012-2015, including:

- Company and plant site information where the chemical or chemicals are produced or imported,
- Identifying name and number for each reportable chemical,
- Description of whether the chemical is manufactured in the United States, imported, or both,
- Total annual volumes of manufactured or imported chemicals, as well as the volumes of chemicals used at a site and exported, and
- Total number of workers likely to be exposed to each reportable chemical at each site.⁴

Companies are also required to report “processing and use information” that is known or reasonably ascertainable for sites under the control of the manufacturer or importer as well as downstream sites that receive a reportable chemical directly or indirectly. This information includes:

- Industrial processing and use information such as information

regarding the industrial operation, sector, and function categories and the number of sites where processing and use takes place, and

- Consumer and commercial use information such as the category of commercial or consumer use, whether the reportable chemical is present in products intended for use by children under 14, and the “estimated typical maximum concentration” of the reportable chemical in a consumer product.⁵

In 2012, there was a higher threshold for reporting processing and use information – companies that manufactured or imported reportable chemicals in quantities greater than 100,000 pounds had to report.⁶ For the 2016 reporting cycle, that threshold has been eliminated and processing and use information must be submitted for all reportable chemicals that meet the thresholds described above, unless specifically exempted.⁷

How do we report? Information must be reported using a “Form U.” A sample 2012 Form U is available here. All information must be reported using e-CDRweb tool and the EPA’s Central Data Exchange system. Registration and EPA approval is required for electronic filing.

Are reporting exemptions granted? The EPA grants exemptions for small manufacturers under certain circumstances.⁸ A small manufacturer is a company that either (a) has annual sales of less than \$40 million when combined with its parent company and handles less than 100,000 total pounds of a particular chemical per year, or (b) has annual sales of less than \$4 million, when combined with its parent company, regardless of the quantity of chemicals handled.⁹

What are the consequences for failing to report? The EPA has the authority to impose civil and criminal penalties against those who fail to maintain and report information under the CDR rule. The EPA can assess a civil penalty of up to \$25,000 for each day the violation continues.¹⁰ In addition, if a person knowingly or willingly fails to report, they may be subject to a criminal penalty of up to \$25,000 for each day of the violation, a year in prison, or both.¹¹

Compiling and submitting a CDR report can be a time-intensive and complicated process. This makes early information gathering and preparation essential. If you have more questions on what information must be reported, how the reporting process works, or would like assistance in satisfying reporting requirements, please contact Kelly Johnson, Ben Machlis, or Bailey Schreiber.

¹ 15 U.S.C. § 2607; 40 C.F.R. § 711.

² 40 C.F.R. § 711.1.

³ *Id.*; 15 U.S.C. § 2604.

⁴ 40 C.F.R. § 711.15(b)(3).

⁵ *Id.* § 711.15(b)(4).

⁶ *Id.* § 711.15(b).

⁷ *Id.* § 711.6 (providing list of exempt chemicals).

⁸ Reporting exemptions are not granted if the chemical is the “subject of a rule proposed or promulgated under TSCA section 4, 5(b)(4), or 6, or is the subject of an order in effect under TSCA section 5(e), or is the subject of relief that has been granted under a civil action under TSCA section 5 or 7.” *Id.* § 711.9.

⁹ 40 C.F.R. §§ 704.3, 711.9.

¹⁰ 40 U.S.C. § 2615(a).

¹¹ *Id.* § 2615(b).

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