

## **TSCA Chemical Data Reporting**

### **Fact Sheet: Chemical Substances which are the Subject of Certain TSCA Actions**

This fact sheet provides information for people who may be subject to the Chemical Data Reporting (CDR) rule on how their requirements for reporting for 2016 may be affected when chemical substances are the subject of certain TSCA actions. For 2016, manufacturers must consider the effect of certain TSCA actions on reporting thresholds when determining whether they need to report. And as in 2012, manufacturers of chemicals subject to certain TSCA actions may not be eligible for some of the exemptions which reduce or eliminate reporting requirements.

The primary goal of this document is to help the regulated community comply with the requirements of the CDR rule. This document does not substitute for that rule, nor is it a rule itself. It does not impose legally binding requirements on the regulated community or on the U.S. Environmental Protection Agency (EPA).

The CDR rule, issued under the Toxic Substances Control Act (TSCA), requires manufacturers (including importers) to give EPA information on the chemicals they manufacture domestically or import into the United States. EPA uses the data, which provides important screening-level exposure related information, to help assess the potential human health and environmental effects of these chemicals and makes the non-confidential business information it receives available to the public.

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For the 2016 CDR, certain TSCA actions may have one or more of the following effects for specific chemical substances:

1. Reduction in the threshold production volume that triggers reporting requirements
2. Limitation on certain full or partial exemptions from reporting requirements
3. Limitation on use of the small manufacturer exemption

It is important to note that not all TSCA actions have the same effect.

#### **Reduced reporting threshold**

- This requirement is new for 2016.
- Under 40 CFR 711.8(b) and 40 CFR 711.15, the reporting threshold is 2,500 lb (1,134 kg) for any person who manufactured a chemical substance that is the subject of any of the following TSCA actions:
  - A rule proposed or promulgated under TSCA section 5(a)(2), 5(b)(4) or 6
  - An order issued under TSCA section 5(e) or 5(f)
  - Relief that has been granted under a civil action under TSCA section 5 or 7

### **Limitation on certain exemptions from CDR reporting**

- The exemptions that are affected are described under the following paragraphs of 40 CFR 711.6:
  - (a)(1) Full exemptions for polymers.
  - (a)(2) Full exemptions for microorganisms.
  - (a)(4) Full exemptions for certain forms of natural gas or water.
  - (b) Partial exemptions.
- Certain exemptions are unavailable for any chemical substance that is also the subject of the following TSCA actions:
  - A rule proposed or promulgated under TSCA section 4, 5(a)(2), 5(b)(4) or 6
  - An enforceable consent agreement (ECA) developed under 40 CFR part 790
  - An order issued under TSCA section 5(e) or 5(f)
  - Relief that has been granted under a civil action under TSCA section 5 or 7
- Note that the existence of these TSCA actions does not affect the full exemption at 711.6(a)(3) for naturally occurring chemical substances.

### **Limitation on use of the small manufacturer exemption**

- Under 40 CFR 711.9, a person does not qualify for the small manufacturer exemption with respect to any chemical substance that is the subject of any of the following TSCA actions:
  - A rule proposed or promulgated under TSCA section 4, 5(b)(4) or 6
  - An order issued under TSCA section 5(e)
  - Relief that has been granted under a civil action under TSCA section 5 or 7
- Under 40 CFR 704.3, a *small manufacturer or importer* means a manufacturer or importer that meets either of the following standards:
  - (1) A manufacturer or importer of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than \$40 million.  
  
However, if the annual production or importation volume of a particular substance at any individual site owned or controlled by the manufacturer or importer is greater than 45,400 kilograms (100,000 lb), the manufacturer or importer shall not qualify as small for purposes of reporting on the production at that site, unless the manufacturer or importer qualifies as small under standard (2) of this definition.
  - (2) A manufacturer or importer of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than \$4 million, regardless of the quantity of substances produced or imported by that manufacturer or importer.

### **Reporting on substances that have undergone a change in TSCA regulatory status between 2012 and June 1, 2016**

- The effects of the above TSCA actions on CDR reporting are assessed based on the status of the chemical substance as of the beginning of the submission period, when the reporting obligation becomes current.
  - Reporting obligations in 2016 depend on whether a chemical substance “is the subject of” a listed action. (40 CFR 711.8(b), 40 CFR 711.6, 40 CFR 711.9.)
  - Assessing reporting thresholds and exemptions in this fashion is consistent with 40 CFR 711.5. (Whether a chemical substance is subject to CDR depends on its presence on the Master Inventory File “at the beginning of a submission period.”)
- Thus, for the 2016 CDR, consider the status of a chemical substance as of June 1, 2016.
- Thus, a change in TSCA regulatory status does not mean that submitters should apply different reporting thresholds to manufacture occurring before and after the effective date of the action. Only one reporting threshold applies to a chemical substance for the 2016 CDR. The correct reporting threshold is determined based on the chemical substance’s status as of June 1, 2016.

### **Comparison of the effects of TSCA actions on different CDR requirements or exemptions**

TSCA action	CDR requirement		
	Subject to 2,500 lb Reporting threshold	Not eligible for certain full or partial exemptions from reporting	Not eligible for small manufacturer exemption
TSCA section 4 rules (proposed or promulgated)		✓	✓
Enforceable Consent Agreements (ECAs)		✓	
TSCA section 5(a)(2) SNURs (proposed or promulgated)	✓	✓	
TSCA section 5(b)(4) rules (proposed or promulgated)	✓	✓	✓
TSCA section 6 rules (proposed or promulgated)	✓	✓	✓
TSCA section 5(e) orders	✓	✓	✓
TSCA section 5(f) orders	✓	✓	
TSCA section 5 civil actions	✓	✓	✓
TSCA section 7 civil actions	✓	✓	✓

### **Application of the effects of certain TSCA actions in different scenarios**

- 1. Company ABC, whose total annual sales is \$3 million in the principal reporting year, i.e. 2015, manufactures Chemical Q, which is the subject of a TSCA section 4 test rule and Chemical X, which is the subject of a TSCA section 5(a)(2) SNUR. What are Company ABC's potential reporting obligations for these chemicals?**

Based on its sales of less than \$4 million in 2015, Company ABC would qualify as a small manufacturer. However, the small manufacturer exemption does not apply to Company ABC with respect to its manufacture of Chemical Q, because the substance is subject to a TSCA section 4 test rule. Chemical X being the subject of a SNUR does not result in the loss of the small manufacturer exemption for Company ABC with respect to its manufacture of Chemical X.

Thus, Company ABC would be required to report for Chemical Q if it manufactured Chemical Q in amounts of 25,000 lb or greater at any site in any year between 2012 and 2015. However, Company ABC would not be required to report its manufacture of Chemical X, because the small manufacturer exemption would apply with respect to the manufacture of Chemical X.

- 2. Company XYZ, whose total annual sales is \$30 million, manufactures Chemical S, which is the subject of a TSCA section 5(e) consent order and a TSCA section 5(a)(2) SNUR. The annual production volume of Chemical S ranges between 3,000 and 5,000 lb from 2012-2015. What are the reporting obligations?**

Based on the sales of less than \$40 million and production volume below 100,000 lb, Company XYZ would qualify as a small manufacturer. Chemical S being the subject of a SNUR does not affect the small manufacturer exemption. However, Chemical S being the subject of a 5(e) consent order does affect the exemption. In this case, the small manufacturer exemption does not apply to Company XYZ with respect to its manufacture of Chemical S.

Both the SNUR and the 5(e) consent order trigger the reduced reporting threshold of 2,500 lb. Therefore, because Chemical S is subject to a SNUR and a section 5(e) consent order and because Company XYZ has produced Chemical S in amounts above 2,500 lb in at least one year between 2012 and 2015 (in this case all four years), Company XYZ would be required to report total annual production volume for Chemical S from 2012 through 2015.

For its 2015 production of Chemical S, Company XYZ would also need to submit additional manufacturing information as well as processing and use information because its production volume that year is greater than zero.

- 3. Company EFG manufactures Chemical Z. As manufactured, Chemical Z qualifies as a "naturally occurring chemical substance" under 40 CFR 711.6(a)(3). However, Chemical Z is subject to an Enforceable Consent Agreement (ECA). The annual production volume of Chemical Z ranges between 30,000 and 50,000 lb from 2012 to 2015. Is Company EFG's manufacture of Chemical Z subject to reporting for the 2016 CDR?**

No. Company EFG is not required to report its manufacture of Chemical Z, because

Chemical Z meets the requirements for a full exemption from the CDR rule at 40 CFR 711.6(a)(3) for naturally occurring chemical substances. Under 40 CFR 710.4(b) a naturally occurring substance is one “(1) which is (i) unprocessed or (ii) processed only by manual, mechanical, or gravitational means; by dissolution in water; by flotation; or by heating solely to remove water; or (2) which is extracted from air by any means”. Examples of naturally occurring chemical substances included at 40 CFR 710.4(b) include: raw agricultural commodities; water, air, natural gas, and crude oil; and rocks, ores, and minerals. Although Chemical Z is subject to an ECA, that does not negate the full exemption from reporting for naturally occurring chemical substances already in place for 2016 CDR reporting. Note that use of the naturally occurring chemical substance exemption at 40 CFR 711.6(a)(3) is not limited by certain TSCA actions as are the other exemptions in 711.6(a).

- 4. A TSCA section 5(a)(2) significant new use rule (SNUR) is issued for Chemical X in 2014. Company ABC’s annual production volumes for Chemical X are 1,000 lb in 2012, 10,000 lb in 2013, 5,000 lb in 2014, and 2,000 lb in 2015. Are there multiple reporting thresholds for Chemical X? What threshold value is applicable?**

For purposes of 2016 CDR reporting, there is just one reporting threshold for Company ABC to apply to its manufacture of Chemical X. The correct reporting threshold to apply is determined based on Chemical X’s status at the beginning of the submission period. On June 1, 2016, Chemical X is a chemical substance that is the subject of a TSCA section 5(a)(2) SNUR. Therefore, a reduced reporting threshold of 2,500 lb would apply to Chemical X for 2016 reporting.

When determining its reporting obligations in 2016, Company ABC would compare this one reduced reporting threshold (2,500 lb) to its annual production volume in each of the years since the last principal reporting year (2011) (i.e., annual production volumes for 2012, 2013, 2014, and 2015). Because the 2,500 lb reporting threshold was exceeded at least once between 2012 and 2015 (in this case both 2013 and 2014), Company ABC would report total annual production volume for each year from 2012 through 2015 and would report additional manufacturing and processing and use data based on the 2,000 lb manufactured for the principal reporting year 2015.

- 5. Company DEF’s total annual income was the following: \$1 million in 2012, \$2 million in 2013, \$3 million in 2014, and \$5 million in 2015. In 2012 and 2013, Company DEF manufactured Chemical G, which was the subject of a TSCA section 4 test rule promulgated in 2015. In 2016, when determining how to report for the 2012 and 2013 production of Chemical G, is Company DEF eligible to use the small manufacturer exemption?**

No. On June 1, 2016, Chemical G is subject to a TSCA section 4 test rule, which means that Company DEF cannot apply the small manufacturer exemption to its manufacture of this substance.

If annual production volume of Chemical G was 25,000 lb or greater in either 2012 or 2013, Company DEF would report the annual production volumes for 2012 and 2013 and would report zero production volume for 2014 and 2015. Company DEF would not report the additional manufacturing, processing and use information relating to 2015, since Company DEF did not manufacture Chemical G in 2015.

- 6. Chemical S has been subject for several years to a TSCA section 4 test rule which sunsets on May 1, 2016. Company NOP, whose total annual sales run between \$2 million and \$3 million, has manufactured Chemical S in annual amounts above 25,000 lb from 2012-2015. In 2016, when determining how to report for the 2012-2015 production of Chemical S, is Company NOP eligible to use the small manufacturer exemption?**

Yes. Although Chemical S was the subject of a TSCA section 4 test rule (which could have eliminated the ability to apply the small manufacturer exemption to manufacture of Chemical S), June 1, 2016 is after the sunset date. As of June 1, 2016, Chemical S is no longer the subject of a TSCA section 4 test rule. Therefore, Company NOP, with total annual sales less than \$4 million, would be eligible to apply the small manufacturer exemption to its manufacture of Chemical S and would not be required to report Chemical S for the 2016 CDR.

**For further information:**

To access copies of additional fact sheets and other CDR information, log onto [www.epa.gov/cdr](http://www.epa.gov/cdr).

If you have questions about CDR, you can contact the TSCA Hotline by phone at 202-554-1404 or e-mail your question to [eCDRweb@epa.gov](mailto:eCDRweb@epa.gov).