



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 711

[EPA-HQ-OPPT-2018-0321; FRL-10016-96]

RIN 2070-AK33

Chemical Data Reporting; Final Extension of the 2020 Submission Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the Toxic Substances Control Act (TSCA) Chemical Data Reporting (CDR) regulations by extending the submission deadline for 2020 reports to January 29, 2021. This is the final extension for the 2020 submission period only. The CDR regulations require manufacturers (including importers) of certain chemical substances included on the TSCA Chemical Substance Inventory (TSCA Inventory) to report data on the manufacturing, processing, and use of the chemical substances.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2018-0321, is available at <http://www.regulations.gov> or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280.

Please note that due to the public health emergency the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on

EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Susan Sharkey, Data Gathering and Analysis Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8789; email address: sharkey.susan@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture (including import) chemical substances listed on the TSCA Inventory. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include but are not limited to:

- Chemical manufacturers (including importers) (NAICS codes 325 and 324110, e.g., chemical manufacturing and processing and petroleum refineries).
- Chemical users and processors who may manufacture a byproduct chemical substance (NAICS codes 22, 322, 331, and 3344, e.g., utilities, paper manufacturing, primary metal manufacturing, and semiconductor and other electronic component manufacturing).

B. What Action is the Agency Taking?

The current 2020 CDR submission period is from June 1 to November 30, 2020 (on April 9, 2020, EPA extended the September 30, 2020 deadline to November 30, 2020 (see 85 FR 19890)). EPA is issuing this amendment to extend the deadline for 2020 CDR submission reports

until January 29, 2021. This is an extension for the 2020 submission period only: subsequent submission periods (recurring every four years, next in 2024) are not being amended.

The Agency is taking this action in response to concerns raised by the regulated community about their ability to submit the required information within the prescribed period. Written requests to extend the CDR submission period have been received by the Agency starting in late-September. Copies of these letters are included in the docket (see ADDRESSES), and, at the time of drafting this document, include the following specific communications:

- Air Products and Chemicals, Inc. 2020 CDR 90-day Extension Request [Letter]. September 25, 2020. Certain information needed to inform submissions is stored off-site and reviewing in-person presents a logistical challenge because of the COVID-19 pandemic (administrative staff is currently on business-critical or work from home status). (Ref. 1.)

- American Chemistry Council (ACC). Request for an Extension to the TSCA Chemical Data Reporting (CDR) 2020 Submission Period [Letter]. October 26, 2020. ACC members reported a wide variety of technical issues that have impeded their ability to upload, validate, and submit electronic data submissions (including a Central Data Exchange (CDX) system crash for approximately two weeks on or about September 29, 2020, Confidential Business Information (CBI) substantiation issues, Authorized Official/Facility/Sites/Parent Company inaccuracies, Issues with inexact entries, and General form completion issues). (Ref. 2.)

- Household & Commercial Products Association (HCPA). Request for an Extension to the TSCA Chemical Data Reporting (CDR) 2020 Submission Period [Letter]. October 27, 2020. The pandemic has required the dedication of significant resources that would normally be compiling and developing the data for CDR and additional time is necessary to complete submissions. HCPA member companies are also reporting a number of significant issues with accessing and using the CDX system that has further impeded the submission process. (Ref. 3.)

- National Association of Chemical Distributors (NACD). Request for an Extension to the TSCA CDR 2020 Submission Period [Letter]. October 30, 2020. NACD members have

reported ongoing problems within CDX, including system crashes, freezes, and sluggishness, difficulty loading pages, and an inability to display a preview of the final data before submission. There is also concern that the reported issues will continue and worsen as more users are logged into CDX and attempting to submit information. (Ref. 4.)

- Society of Chemical Manufacturers & Affiliates (SOCMA). Extension Request for the 2020 TSCA CDR Submission Period [Letter]. October 30, 2020. SOCMA members have reported a wide variety of technical problems with EPA's Chemical Data Exchange (CDX) system that have negatively impacted their ability to complete data submissions. This includes system-wide outages, slowdowns, inability to access and validate forms, and practical difficulties with completing joint co-manufacturing submissions. With only a month remaining before the submission deadline, the CDR reporting system continues to experience significant technical problems impeding the timely and thorough reporting of information on the production and use of chemicals in U.S. commerce. (Ref. 5.)

- American Coatings Association (ACA). Request for an Extension to the TSCA Chemical Data Reporting (CDR) 2020 Submission Period [Letter]. November 13, 2020. ACA member companies cited significant problems with bulk uploads under the CDX system in stating that an extension would ease difficulty in reporting while improving overall accuracy and quality of information submitted. In particular, ACA members have noted difficulties with bulk uploads under the CDX system, whereby system errors have not allowed members to submit files or the system improperly aligns data upon submission. ACA members also note that uploaded information fails to save, thereby requiring submitters to resubmit all information. Problems with bulk uploads have also extended to data required for CBI substantiation, where the CDX systems fails to capture all data submitted, jeopardizing claims of CBI. ACA recognizes that EPA and its contractor CGI have been working diligently to resolve these issues. (Ref. 6.)

The compelling concerns raised by industry involve restrictions on their ability to report

as a result of issues with several aspects of electronic reporting. The issues are experienced by a number of submitters and have not been limited to any specific submitter or type of submitter. Using the test application, EPA confirmed the existence of these problems and the impact they had on the ability to report. Specifically, these issues include difficulties with making bulk uploads (i.e., batch submissions), lack of access to the reporting tool due to a CDX system crash, and issues with certain reporting tool features associated with previewing the submissions, copying and pasting text information (such as for substantiating confidentiality claims), making claims of confidentiality, and data validations.

The Agency has worked to resolve reporting issues since learning of these issues. On November 6, 2020, EPA made the following updates to CDX: updated validations to correct functionality, updated the functionality for co-manufactured chemicals, and updated the ability to preview the submission before submitting the report. On November 13, 2020, EPA made the following updates to CDX: enabling reporting zero for the 2019 Production Volume when the chemical is reported as co-manufactured, and updating validations associated with not needing to report processing and use information when all of the 2019 volume is directly exported. EPA plans to deploy additional updates on November 20, 2020, including updated CBI substantiation validation and processes for co-manufactured chemicals. EPA is monitoring the implementation of these updates and will, if necessary, deploy additional updates to ensure full functionality of the reporting tool. The Agency continues to assist CDR reporters encountering issues and has been and will continue to develop rapid solutions to such issues via weekly patches to the eCDRweb reporting tool.

Because the electronic issues have been widespread, have prevented access to the reporting tool, have restricted the ability for companies to identify information that the company considers confidential, and have ultimately resulted in a reduction in the amount of time the Agency had allotted for the completion and submission of the report, EPA believes it is appropriate to extend the reporting period to provide the regulated community the time needed to

complete and submit their reports. With respect to the timing of this action, the need for the Agency to extend the deadline arose as a result of issues experienced by the regulated community with several aspects of electronic reporting that were brought to the Agency's attention recently. The collective significance of these issues was not apparent until the Agency completed review of letters from Air Products and Chemicals, Inc.; the American Chemistry Council; the Household & Commercial Products Association; the National Association of Chemical Distributors; the Society of Chemical Manufacturers & Affiliates; and the American Coatings Association; dated September 25, 2020, October 26, 2020, October 27, 2020, October 30, 2020, October 30, 2020, and November 13, 2020 respectively (Refs. 1, 2, 3, 4, 5 and 6).

The Agency has quickly responded to reporting issues as they have arisen and has gained experience with the reporting tool and troubleshooting that will enable EPA to quickly and effectively respond to any additional problems that may arise following full implementation of the reporting tool fixes. While the Agency endeavors to ensure full functionality of the tool, glitches may arise, including in response to reporting tool patches or updates. EPA believes that the additional two-month extension period will help provide a buffer for any additional updates to the tool that may be needed. This extension will also provide reporters with sufficient time to carefully review and submit information through CDX, especially following any prior problems using the reporting tool. As a result, EPA believes that extending the reporting period to January 29, 2021 will provide sufficient time for reporting problems to be addressed and for reporters to timely submit information.

C. What is the Agency's Authority for Taking this Action?

The CDR rule was issued pursuant to the authority of TSCA section 8(a), 15 U.S.C. 2607(a). In addition, section 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that

there is good cause for making this rule final, extending the reporting period, without prior proposal and opportunity for comment because such notice and opportunity for comment is impracticable and unnecessary for the reasons explained in this section.

As explained in the prior section, the extent of the electronic reporting issues has unexpectedly resulted in a reduction in the amount of time the Agency had allotted under the regulations for the completion and submission of the report. The extent of the electronic reporting issues was unforeseen, given that EPA conducted a beta test with expected users of the reporting tool prior to the beginning of the submission period. Further, most sites submit CDR data during the final month of the reporting period, having collected and prepared data earlier in the submission period. Thus, the extent and magnitude of these reporting issues did not become fully manifest prior to the close of October. Given that the current reporting deadline is November 30, 2020, notice and comment procedures are impracticable to extend that deadline to address these unforeseen circumstances because the typical notice and comment rulemaking process would not allow a rule to be finalized before the current reporting deadline. Additionally, notice and comment procedures are unnecessary because this extension of the deadline merely provides the time and opportunity to submit the report as was intended under the current regulations, absent these unforeseen circumstances, and does not impact the substance of the collection or other regulatory requirements.

As indicated above, the Agency recently learned that the regulated community was having difficulty related to the required electronic reporting mechanism. Individual entities provided information about technical issues, reporting difficulties, and complications resulting from the COVID-19 pandemic. EPA is including requests for extension in the docket. Given ongoing improvements to the functionality of the electronic reporting application, EPA is extending the reporting period until January 29, 2021.

This action does not alter the substantive CDR reporting requirements in any way. The Agency also believes this extension will not result in a significant delay in the processing and

availability of CDR information to potential users. This extension will not significantly impact the Agency's ability to carry out actions and activities that rely upon CDR, including work on the TSCA risk evaluations. EPA will consider CDR information as soon as it becomes available and work on risk evaluations remains ongoing. Further, this action is consistent with the public interest because it is designed to facilitate compliance with the CDR rule and to ensure that the 2020 collection includes accurate data on chemical manufacturing, processing, and use in the United States. Any impact on the regulated community is expected to be beneficial given that the extension provides additional time to submit accurate CDR reports to EPA.

Finally, section 553(d)(3) of the APA, 5 U.S.C. 553(d), provides that final rules shall not become effective until 30 days after publication in the Federal Register "except [. . .] as otherwise provided by the agency for good cause." The purpose of this provision is to "give affected parties a reasonable time to adjust their behavior before the final rule takes effect." *Omnipoint Corp. v. Fed. Comm'n Comm'n*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should "balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling." *Gavrilovic*, 551 F.2d at 1105. EPA has determined that there is good cause for making this final rule effective immediately because the current deadline for reporting is imminent and the regulated community does not need time to prepare for this change in the reporting deadline; rather, the reporting deadline extension provides the needed time for the regulated community to meet the existing requirements.

For these reasons, the agency finds that good cause exists under APA section 553(d)(3) to make this rule effective immediately upon publication in the **Federal Register**.

II. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. Air Products and Chemicals, Inc. 2020 CDR 90-day Extension Request [Letter]. September 25, 2020.
2. American Chemistry Council. Request for an Extension to the TSCA Chemical Data Reporting (CDR) 2020 Submission Period [Letter]. October 26, 2020.
3. Household & Commercial Products Association. Request for an Extension to the TSCA Chemical Data Reporting (CDR) 2020 Submission Period [Letter]. October 27, 2020.
4. National Association of Chemical Distributors. Request for an Extension to the TSCA CDR 2020 Submission Period [Letter]. October 30, 2020.
5. Society of Chemical Manufacturers & Affiliates (SOCMA). Extension Request for the 2020 TSCA CDR Submission Period [Letter]. October 30, 2020.
6. American Coatings Association (ACA). Request for an Extension to the TSCA Chemical Data Reporting (CDR) 2020 Submission Period [Letter]. November 13, 2020.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is classified as a final rule because it makes an amendment to the Code of Federal Regulations (CFR). The amendment to the CFR is necessary to allow for an extension to the 2020 CDR reporting period. This action does not impose any new requirements or amend

substantive requirements. As such, this action is not a “significant regulatory action” under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not contain any new or revised information collections subject to OMB approval under the PRA, 44 U.S.C. 3501 *et seq.* Information collection activities contained in CDR are already approved by the Office of Management and Budget (OMB) under OMB Control No. 2070-0162 (EPA ICR No. 1884).

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA, 5 U.S.C. 601 *et seq.* The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements under the APA because the Agency has invoked the APA “good cause” exemption.

D. Unfunded Mandates Reform Act (UMRA)

This action will not impose any enforceable duty or contain any unfunded mandate as described under Title II of UMRA, 2 U.S.C. 1531-1538 *et seq.*

E. Executive Order 13132: Federalism

This action will not have federalism impacts as defined in Executive Order 13132 (64 FR 43255, August 10, 1999) because this action will not have substantial direct effects on States, on the relationship between the Federal Government and States, or on the distribution of power and responsibilities between the Federal Government and States.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action will not have tribal implications as defined in Executive Order 13175 (65 FR 67249, November 9, 2000) because this action will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined under Executive Order 12866, and it does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Since this action does not involve any technical standards, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.*, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 711

Environmental protection, Chemicals, Confidential Business Information (CBI), Hazardous materials, Importer, Manufacturer, Reporting and recordkeeping requirements.

Dated: November 17, 2020.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, for the reasons stated in the preamble, EPA amends 40 CFR chapter I as follows:

PART 711—TSCA CHEMICAL DATA REPORTING REQUIREMENTS

1. The authority citation for part 711 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

2. Revise § 711.20 to read as follows:

§ 711.20 When to report.

All information reported to EPA in response to the requirements of this part must be submitted during an applicable submission period. The 2020 CDR submission period is from June 1, 2020, to January 29, 2021. Subsequent recurring submission periods are from June 1 to September 30 at 4-year intervals, beginning in 2024. In each submission period, any person described in § 711.8 must report as described in this part.

[FR Doc. 2020-25824 Filed: 11/24/2020 8:45 am; Publication Date: 11/25/2020]