

Issue Update: TOXIC SUBSTANCES CONTROL ACT CHEMICAL DATA REPORTING REGULATIONS

Date: October 1, 2020 (supersedes July 14, 2017 Issue Update)

Note: This Issue Update includes recent changes to the Reporting Deadline (2020 only) and Small Manufacturer/Government Exemption (revised regulation), as well as minor updates (e.g., URLs).

SUMMARY

ISRI members with facilities that import at least 25,000 pounds of scrap annually during 2016, 2017, 2018, or 2019 may be subject to the TSCA Chemical Data Reporting (CDR) regulations in 2020. This pattern repeats every 4 years and necessitates ongoing recordkeeping of annual importing activity. This Issue Update summarizes key points of the current CDR regulations ([40 CFR Part 711](#)) as they apply to imports of scrap metal during calendar years 2016–2019. Other “manufacturing” activities (e.g., converting metal oxides to metal) may also trigger CDR obligations. EPA’s CDR instructions can be found [here](#), with more information at <http://epa.gov/cdr>. If you have any questions about CDR, contact David Wagger at 202-662-8533, 240-479-1911, or DWagger@isri.org.

KEY DATES

- June 1 through November 30, 2020¹: The window of time for submitting CDR reports (Form U).

APPLICABILITY: ARE YOU SUBJECT TO CDR?

Any U.S. facility that:

- imported or manufactured
- 25,000 pounds or more of a “reportable chemical substance” (including metals, as well as steel)
- during calendar year 2016, 2017, 2018, OR 2019 is subject to CDR. Therefore, any facility that imported at least 25,000 pounds of scrap metal during any of these 4 years should be evaluated to determine if it has a CDR obligation in 2020.

CDR Compliance Tips

- Processing domestically sourced scrap to separate out commodity-grade materials is not manufacturing for CDR purposes. Therefore, a facility that processed both imported and domestic scrap during 2016 and later should report only the imported scrap, and only the imported scrap should be counted for purposes of determining whether reporting is necessary.
- Metals, including copper, steel, iron and aluminum, etc., are reportable. Each metal compound typically has its own entry on the TSCA Inventory. (See <https://www.epa.gov/tsc-inventory>.)
- Metal alloys are “mixtures” of individual substances (i.e., metals). Each component of the alloy or mixture must be evaluated separately, except for steel.
- This is a facility-by-facility analysis. If you have four facilities, and only two imported at least 25,000 pounds of scrap metal during any of the years 2016–2019, only those two facilities have a reporting obligation in 2020.
- This is a substance-by-substance analysis. If a facility imported 60,000 pounds of scrap metal in 2017, consisting of 10,000 pounds of aluminum, 20,000 pounds of copper, and 30,000 pounds of steel, then steel would be reportable in 2020 for all years 2016–2019 at that facility. While aluminum and copper would not be reportable based on 2017 importing activity, either or both could be reportable in 2020 based on importing activity in 2016, 2018, or 2019.
- For imports of scrap and alloys, it is acceptable to use industry knowledge, material specifications, safety data sheets, or other “known or reasonably ascertainable information” to estimate percentages for individual metal components of the scrap or alloy, and then multiply the total amount by these percentages to determine CDR applicability for individual metals. If there are significant differences in the sources of particular shipments, that should be taken into account. The bases for such estimates should be documented.

¹ EPA granted via this [final rule](#) ISRI’s request during [Regulatory Review](#) for a 2-month reporting extension.

STATE OF KNOWLEDGE: “KNOWN OR REASONABLY ASCERTAINABLE”

You must use “known to or reasonably ascertainable” information to comply with CDR. This means information in your possession or control (meaning the full scope of the organization) plus “all information that a reasonable person similarly situated might be expected to possess, control, or know.” This may include information that is customarily known in the business, marketing data, information from symposia, conferences or similar sources, and information in standard reference sources and safety data sheets. For example, a scrap importer might rely on historical data/knowledge on the metals content of scrap from different sources, or the recognized ISRI Scrap Specifications, both for determining whether a facility is subject to CDR and for collecting the information necessary for submitting the report. This may require that you look outside of the organization to fill gaps in the information you possess, but it does not require chemical testing of materials. If specific information is not known or reasonably ascertainable, a company subject to CDR may use the designation “NKRA” (not known or reasonably ascertainable) when submitting the report.

EXEMPTIONS

Exemptions from the CDR reporting requirements include:

- To be exempt as a small manufacturer, you must have annual company-wide (including parent company) 2019 sales below one of the following thresholds^{2,3}:
 - \$12 million, with no limit on imported (or manufactured) volumes; or
 - \$120 million, limited to each chemical substance imported to (or manufactured at) a facility in a volume up to and including 100,000 pounds in each of 2016, 2017, 2018, and 2019.
- Certain organic chemical substances (e.g., gasoline, polymers, natural gas, naturally occurring (not processed) substances such as ores and minerals) are exempt.
- Substances imported for disposal are not counted for determining applicability of the CDR.
- Imported “articles” are not subject to the CDR reporting requirements. Generally speaking, “articles” are finished (sometimes semi-finished) products with a designed shape, and a function related to that shape (see *CDR Compliance Tips* regarding end-of-life or obsolete products).

CDR Compliance Tips

- *The “small business” exemption does not apply to chemical substances that are subject to TSCA §4 test rules, §5 consent orders or Significant New Use Rules, or restrictions under §§ 6 and 7 of TSCA. Guidance on EPA’s CDR website identifies these chemicals.*
- *Scrap metal is not an “article,” nor are products at the end-of-life intended for recycling (e.g., if electronics or cars are imported for recycling to recover metals, the metals would be “counted”).*
- *Waste generated by recycling imported scrap is not subject to the CDR (e.g., landfilled “shredder fluff” would not have to be evaluated for CDR).*
- *Plastics imported for purposes of recycling (e.g., in feedstock for shredder operations) will generally be exempt from CDR because of the polymers exemption.*

HOW AND WHAT TO REPORT

The reporting must be through EPA’s e-CDRweb electronic reporting system. Paper or electronic media (e.g., CDs) reports will not be accepted. To access e-CDRweb, you must first register with EPA’s Central Data Exchange (CDX) at https://cdx.epa.gov/epa_home.asp. EPA’s CDR website includes CDX instructions [here](#). The electronic reporting is done through what is known as “Form U”. The data elements of Form U are presented in [this “paper” 2020 Form U](#), to be used for planning your data collection and reporting.

² These monetary thresholds reflect the three-fold increase provided by [this final rule](#) in 2020.

³ See Table 2-4 of [EPA’s CDR instructions](#) for Small Manufacturer or Small Government Exemption scenarios.

Facilities that imported to (or manufactured at) a facility at least 25,000 pounds annually of a reportable substance in 2016, 2017, 2018, or 2019 must complete (as may be required) [Form U](#) and submit it electronically during the 2020 reporting period.

[Form U](#) consists of Part I (facility information), Part II (importing/manufacturing information, on a substance-facility basis), and Part III (processing and use information). For reportable importing activity during 2016–2018, Part I and only total quantities imported under Part II need to be completed. For reportable importing activity during 2019 (the principal year for 2020 reporting), all of Parts I, II, and III need to be completed.

Data reported in Part III include information on how the commodity-grade metals derived from imported scrap are used by downstream customers, and what industrial sector(s) those customers belong to. The available reporting options in the electronic Form U may not easily fit the scrap metal recycling business, sometimes requiring selection of the “other” option and providing case-specific details.

EPA’s CDR instructions can be found [here](#).

WHAT HAPPENS AFTER THE 2020 REPORTING PERIOD?

CDR compliance does not end after the reporting period. CDR reporting, as may be necessary, is required every four years. Any company that imports scrap metal should keep track of imported quantities received at each domestic facility and the composition of the imported materials. Collecting this information over time will greatly ease the burden of determining whether reporting is required and knowing what data to report years later. Following the 2020 reporting period for 2016–2019 importing activity, the subsequent reporting period is June 1 – September 30, 2024 for 2020–2023 importing activity. Under the current CDR, this 4-year reporting cycle repeats without end into the future.

CDR Compliance Tips

- *The 2020 report seeks information from 2016, 2017, and 2018 (only imported quantity data by facility) and 2019 (imported quantity data by facility, other chemical-specific information, and processing and use information).*
- *Chemicals identified as substances of “low current interest” are subject to only Parts I and II reporting, regardless of quantity (see [40 CFR Part 711.6\(b\)\(2\)](#)). These do not currently include the basic metals typically found in scrap metal.*
- *While some inquiry outside the organization may be necessary to report the downstream information, customer surveys are not required.*
- *Any CBI claims require up-front substantiation.*
- *For facilities that imported scrap metal through a broker, both the broker and the importing facility (i.e., the “importer of record”) might be legally responsible for CDR reporting, but only one report can be filed. Keep in mind that EPA may focus its attention on the facility, not the broker.*
- *Concerning Part III of Form U, the available “process or use” codes (P) most likely applicable to the industry’s downstream are “PF”, “PA”, and “U”. Because the available “sector(s)” codes (IS1-IS48) and “industrial function category” codes (U001–U999) are not applicable to the scrap industry’s downstream customers, use of both “IS48” (“other”), with a notation for “secondary metal production”, and “U999” (“other”), with a notation for “ingredient”, is recommended.*