EPA Finalizes New Chemical Data Reporting Rule Under TSCA

*IUR is replaced by the new CDR - Initial Reporting Period Runs from February 1, 2012 to June 30, 2012*

*Keller and Heckman Webinar August 9, 2011*

On August 2, 2011, the U.S. Environmental Protection Agency (EPA) issued the long-awaited amendments to the Toxic Substances Control Act (TSCA) Inventory Update Reporting (IUR) rule. EPA has termed the new version of the IUR as the Chemical Data Reporting (CDR) rule. The CDR will, with certain limited exceptions, initially affect companies that manufactured or imported for commercial purposes 25,000 pounds or more of a chemical substance on the TSCA Inventory at a single site during calendar year 2011. The first CDR reporting period runs from February 1, 2012 to June 30, 2012. A copy of the signed final rule is available at: http://www.epa.gov/oppt/iur/pubs/Prepublication_IUR%20Mods_FRM_SIGNED_2011-08-01.pdf.

**Key Changes for 2012 Reporting (from 2006 IUR)**

1. **Mandatory Electronic Reporting.** Reports must be submitted electronically using e-CDRweb, EPA's free electronic reporting tool, to EPA's Central Data Exchange (CDX).

2. **Upfront CBI Substantiation.** Upfront substantiation is now being required for processing and use information that is claimed as confidential business information (CBI). Also, EPA will not extend CBI protection to data elements identified as “not known to or reasonably ascertainable by” the manufacturer or importer.

3. **Manufacturing Activity Information.** Entities must report on production volume during 2010, as well as the following additional information on manufacturing activities during 2011, which is the “principal reporting year” (i.e., calendar year preceding the submission period):
   - The volume of a chemical substance manufactured or imported at a reporting site.
   - The volume of a substance that is directly exported and not domestically processed or used.
   - Whether an imported substance is physically at the reporting site.
   - Whether a substance is being recycled, remanufactured, reprocessed, or reused.

4. **Processing and Use Information.** The reporting threshold has been reduced from 300,000 to 100,000 pounds per chemical substance, and the reporting standard has been lowered to require reporting of information “known to or reasonably ascertainable by” the manufacturer or importer (under the 2006 IUR, parties only had to report information that was “readily obtainable”). Entities must classify their activities using a revised list of industrial function categories and a list of 48 Industrial Sectors (IS) (rather than NAICS codes). Entities must also report separately on consumer versus commercial activities and on the number of workers reasonably likely to be exposed...
to the subject chemical substance.

5. **ECA Substances Ineligible for Exemptions from CDR Reporting.** Chemical substances that are the subject of an enforceable consent agreement (ECA) are not eligible for any of the exemptions from reporting.

6. **Clarification on Byproducts.** In the preamble to the final rule, EPA includes a discussion of the applicability of the CDR to byproducts (chemicals produced without separate commercial intent during the manufacture, process, or use or disposal of another chemical substance or mixture), emphasizing that byproducts are potentially subject to reporting. Manufacturers and importers are not required to report on the manufacture/import of a byproduct if the byproduct is not used for a commercial purpose. If the byproduct's only commercial purpose is for use by parties that burn it as fuel, dispose of it as a waste or extract component chemical substances from it for commercial purposes, then the byproduct is excluded from the CDR. However, component chemical substances that are extracted from the byproduct must be considered for reporting. EPA has indicated that it plans to provide a decision tree for use in determining whether a byproduct is subject to reporting and to continue to work with industry and the public on this issue.

**Requirements Phased-In Beginning with 2016 CDR**

1. **Four Year Cycle.** CDR will occur every four years, beginning in 2016, with the submission period being between June 1 and September 30.

2. **Applicability Determination.** Beginning with the 2016 submission period, an entity must report if the 25,000 pound threshold is exceeded during *any calendar year since the last reporting period* (not just in the principal reporting year).

3. **Reporting Production Volume for Multiple Years.** Starting with the 2016 submission period, manufacturers and importers must report on the production volume for a chemical substance in each year since the last principal reporting period (i.e., for the 2016 submission period, entities must report on production volume in each of 2012, 2013, 2014, and 2015.)

4. **Threshold for Reporting Processing and Use Information is Reduced Further.** Beginning with the 2016 submission period, the threshold for reporting processing and use information is further reduced to 25,000 pounds.

5. **Reduced Reporting Threshold for Substances Subject to Certain TSCA actions.** For substances subject to certain regulatory actions, the reporting threshold will be lowered from 25,000 to 2,500 pounds. Information on manufacturing activities must be submitted, as well as information on processing and use. This lower reporting threshold applies to substances subject to the following actions, whether proposed or final:

   - TSCA section 5(a)(2) Significant New Use Rules (SNURs).
   - TSCA section 5(b)(4) Chemical of Concern List rules.
   - TSCA section 6 rules containing prohibitions/restrictions arising from unreasonable risk findings.
• An order in effect under TSCA section 5(e) or 5(f).

• Relief granted under a civil action under TSCA section 5 or 7.

Keller and Heckman will discuss the CDR Rule during its webinar on August 9th and during its Chemical Control Law Seminar on October 24-26, 2011 in Washington, D.C.

**Webinar (August 9):** For further information, and to register please click [here](#).

**Chemical Control Law Seminar (October 24-26):** For further information and to register, please click [here](#).