

## TSCA Chemical Data Reporting

### Fact Sheet: Importers

This fact sheet provides information and sample reporting scenarios on existing Chemical Data Reporting (CDR) regulations to persons who could be considered “importers” for purposes of the CDR rule.

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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#### **Importers are subject to the CDR rule**

##### **Under TSCA, manufacture includes import**

**Manufacture** means to manufacture, produce, or **import**, for commercial purposes. Manufacture includes the extraction, for commercial purposes, of a component chemical substance from a previously existing chemical substance or complex combination of chemical substances. (40 CFR 711.3)

##### **Who is an importer?**

**Importer** means

(1) any person who imports any chemical substance or any chemical substance as part of a mixture or article into the customs territory of the United States, and includes:

- (i) The person primarily liable for the payment of any duties on the merchandise, or
- (ii) An authorized agent acting on his behalf.

(2) Importer also includes, as appropriate:

- (i) The consignee.
- (ii) The importer of record.
- (iii) The actual owner if an actual owner's declaration and superseding bond have been filed in accordance with 19 CFR 141.20.
- (iv) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred in accordance with subpart C of 19 CFR part 144. (40 CFR 704.3, referenced by 40 CFR 711.3)

(3) For the purposes of this definition, the customs territory of the United States consists of the 50 States, Puerto Rico, and the District of Columbia.

**Import** means to import for commercial purposes. (40 CFR 704.3, referenced by 40 CFR 711.3)

**Import for commercial purposes** means to import with the purpose of obtaining an immediate or eventual commercial advantage for the importer, and includes the importation of any amount of a chemical substance or mixture. If a chemical substance or mixture containing impurities is imported for commercial purposes, then those impurities also are imported for commercial purposes. (40 CFR 704.3, referenced by 40 CFR 711.3)

## **Special CDR provisions for importers**

### **Site of import for importers under the CDR rule**

- A separate Form U must be submitted for each site controlled by a submitter.
- **Site of reporting:** The definition of “site” for importers is set forth in the CDR regulations at 40 CFR 711.3, which states that the site for an importer who imports a chemical substance is the “U.S. site of the operating unit within the person’s organization that is directly responsible for importing the chemical substance. The import site, in some cases, may be the organization’s headquarters in the United States.”
- **U.S. address:** For CDR, all importers must provide a U.S. address for the import site. If there is no pertinent operating unit or headquarters in the United States, then “the site address for the importer is the U.S. address of an agent acting on behalf of the importer who is authorized to accept service of process for the importer.” The EPA expects that all importers will have a U.S. site meeting the 40 CFR 711.3 definition, because under U.S. Customs and Border Protection (CBP) regulations at 19 CFR 141.18, a non-resident corporation is not permitted to enter merchandise for consumption unless it has a resident agent in the United States.

### **Avoid duplicative reporting**

- CDR requires that only one report be submitted on each import transaction involving a chemical substance described in § 711.5. (40 CFR 711.22(b))
- When two or more persons are involved in a particular import transaction and each person meets the Agency's definition of “importer” at 40 CFR 704.3, they may determine among themselves which one of them will submit the required report. However, if no report is submitted as required under this part, the EPA will hold each such person liable for failure to report.
- The importers may wish to make arrangements among themselves for the reporting party to verify to the other importers that it completed the CDR submission on behalf of all importers.

### **Reporting components of imported mixtures**

- If a mixture is imported, then the importer will need to report the individual component chemical substances of the mixture to the extent that the total volume for each individual chemical substance triggers reporting. The importer must determine whether the individual component chemical substances of a mixture are reportable by determining whether the

annual aggregated volume of a particular reportable chemical substance meets or exceeds the applicable reporting threshold for that chemical at the site that controls the importation.

- Assuming that none of the chemicals in the mixture are subject to certain TSCA actions, the 25,000 pound threshold is applicable for each CDR reportable chemical substance in a mixture. The production volume for each chemical substance in a mixture can be determined by using the weight of the mixture and percent composition of the chemical substance in the mixture. (See [Fact Sheet: Chemical Substances which are the Subject of Certain TSCA Actions](#) for additional information about CDR reporting.)
- For each imported chemical substance, the volume of the chemical substance in all annual imports associated with the reporting site is aggregated.
- If the chemical substance is also domestically manufactured at the same site, that amount must be added to the total imported to determine whether the total volume of the chemical manufactured (including imported) meets the 25,000 pound reporting threshold for that chemical, and if so, to determine the reportable volume.
- Note that a chemical substance that is imported in small quantities solely for research and development, as an impurity, as part of an article, or in a manner described in 40 CFR 720.30(g) and (h) is not subject to the CDR reporting requirements. (40 CFR 711.10)

#### **Exemption for imported articles**

- If a chemical substance is imported as part of an article, then the import is exempt from the CDR rule under 40 CFR 711.10(b). An article is defined in 40 CFR 704.3 (referenced by 40 CFR 711.3) as

“a manufactured item (1) which is formed to a specific shape or design during manufacture, (2) which has end-use function(s) dependent in whole or in part upon its shape or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article, and that result from a chemical reaction that occurs upon end use of other chemical substances, mixtures, or articles; except that fluids and particles are not considered articles regardless of shape or design.”
- See [Fact Sheet: Imported Articles](#) for more information about articles under the CDR rule, including when a chemical substance may be considered part of an article.

#### **Reporting whether an imported substance is physically present at importer’s site.**

- If a submitter indicates that a chemical substance is imported, the submitter must also indicate, for the principal reporting year only, whether each imported reportable chemical substance is physically present at the reporting site. (40 CFR 711.15(b)(3)(v))
- If the importer arranges for an imported chemical substance to be shipped directly from the port of entry to a customer’s site, the importer would report that the chemical substance was not physically present at the importer’s site.

**Joint submissions (between importers and foreign suppliers)**

- Certain chemical-specific information relating to chemical identity must be reported for each reportable chemical substance manufactured (including imported) above the applicable production volume threshold. (40 CFR 711.15(b)(3)(i))
- If an importer submitting a report cannot provide the information specified in 40 CFR 711.15(b)(3)(i) because it is unknown to the importer and claimed as confidential by the supplier of the chemical substance or mixture, the importer must ask the supplier to use the e-CDRweb electronic reporting tool to complete Part IV of Form U, providing the complete, currently correct chemical identity information directly to the EPA in a joint submission. Contact information for the supplier, a trade name or other designation for the chemical substance or mixture, and a copy of the request to the supplier must be included with the importer's submission for the chemical substance.
- For example, this may happen when a company is importing a mixture under a trade name and the foreign manufacturer refuses to reveal the specific chemical identity of a confidential component of the mixture. The importer must use e-CDRweb to ask the supplier of the confidential chemical substance to directly provide the EPA with the complete, currently correct chemical identity information. (40 CFR 711.15(b)(3)(i)(A))

**Application of reporting requirements for importers in different scenarios****1. Company A, operated from one office in New York City, imports several chemical substances and sends them directly to different customers. How does Company A comply with the CDR rule?**

CDR requires that one Form U be submitted for all chemicals manufactured (including imported) at a single site. Company A would create one Form U, listing its New York City office as the site of import and listing all the chemical substances it imports.

If all the chemical substances are sent directly to customers upon importation (without arriving first at an office or facility of Company A), Company A would report that each chemical substance was not physically present at the site of import.

Alternately, if Company A is importing and directly sending the same chemical substance to different customers, Company A would add together the import volumes for the subject chemical substance for each customer and report the total volume to the EPA.

**2. Company B is located in Canada and sends chemical substances directly to customers in the United States while acting as the importer of record for purposes of completing the necessary forms for U.S. Customs, including the payment of duties. Is Company B subject to the CDR rule?**

Yes, and Company B must give its U.S. site address. The definition of "site" at 40 CFR 711.3 indicates that if the importer has no operating unit within the United States, the U.S. address of an agent acting on behalf of the importer may be used.

CDR requires that one Form U be submitted for all chemicals manufactured (including imported) at a single site. Company B would create one Form U, listing the address of its applicable importing agent in the United States as the site of import and listing all the

chemical substances it imports. If all the chemical substances are sent directly from the port of entry to customers (without arriving at a U.S. office or facility of Company B or its importing agent), Company B would report that each chemical substance was not physically present at the site of import.

**3. Company C imports three different commercial products all comprised of the same reportable chemical substance from three different import brokers. Who is responsible for reporting?**

Company C is responsible for all the chemical substances that it imports. Each import broker is also responsible (along with Company C) for the particular import transactions for which the broker met the definition of “importer” under 40 CFR 704.3. The particular manner in which shared reporting obligations are divided up (e.g., all submissions done by Company C or all submissions divided among the import brokers) is for the parties to resolve among themselves. However, under 40 CFR 711.22(b), if no one reports an import transaction when required, all persons who qualify as importers of the chemical substance will be liable for the failure to report. If Company C does the reporting, it would prepare one Form U reporting the total amount of the chemical substance from all three brokers and would list the site of its directly responsible operating unit as the site of import.

**4. A company receives a chemical substance from a foreign source and uses it as a reactant. The reaction completely consumes the chemical substance. Is this chemical substance considered to be site-limited?**

No. For purposes of CDR, imported chemical substances are never site-limited (see definition of “Site-limited” at 40 CFR 711.3). A chemical substance is site-limited only if it is domestically produced and processed, or reacted only within a single site and is not distributed for commercial purposes as a chemical substance or as part of a mixture or article outside the site. Assuming the chemical substance is imported in quantities equal to or exceeding the applicable reporting threshold, the amount completely consumed in the reaction would be reported on Form U as “volume used at site.”

**5. A company transports a chemical substance via pipeline from Canada to one of its plant sites in the United States. Is the company subject to the CDR rule for this chemical substance?**

Yes. The company is importing a chemical substance into the United States, and, therefore, is potentially subject to CDR regulations. The mode of transporting the chemical substance to a company’s site is not relevant when determining CDR obligations.

**6. Company S, located in the United States, manufactures a reportable chemical substance and exports that substance to Company T, located in Canada. Company T blends the chemical substance with oil to make a mixture, and imports the mixture to the United States.**

- **Company S includes the manufacture of chemical substance on Form U.**

- **Company T imports the resulting mixture (which contains the chemical substance) into the United States via their U.S. agent.**

**The chemical substance was manufactured in the United States and will have thus been reported in the United States. Because of this, does Company T also have to report the chemical substance as a mixture component?**

Yes, providing that the other CDR reporting requirements are met. There is no CDR exemption for an imported chemical substance based on the fact that the same portion of the substance had previously been domestically manufactured and then exported. The company importing the mixture (i.e., Company T) would need to consider whether the components of the mixture, including chemical substance X, meet the other CDR reporting requirements (e.g., such as applicable production volume).

- 7. The record system that Company Q uses to prepare its CDR submission provides the exact date on which each imported chemical was received (i.e., the date when material was added to Company Q's inventory). When importing at the end of 2013, Company Q is aware that some material cleared U.S. Customs in late December 2013, but was not actually received until early January 2014. Can Company Q report the import as occurring in 2014, in line with its established record-keeping convention?**

CDR requirements do not specify which of the two dates (the date of customs clearance or the date of receipt) should be construed as the date of import. EPA therefore concludes that it is reasonable for an importer to report based on either of these two record-keeping conventions, so long as the importer prepares its Form U in a consistent fashion (i.e., construing import dates consistently, based on the one of these two conventions that it selected).

- 8. Company P's main office, located in California, imports and directly ships a chemical substance to four of its warehouses in different states. For example, Company P imports in a single year a total quantity of 40,000 lbs of a chemical substance, and ships it throughout the year to facilities in Arizona (15,000 lbs), Colorado (15,000 lbs), Missouri (9,000 lbs), and Indiana (1,000 lbs).**

- **In determining the import quantity and whether it exceeds the threshold and is thus subject to reporting, does Company P use the amount going to each location or the total amount that it imports?**
- **Is this chemical substance reportable?**
- **Does Company P need to complete four Form Us showing the actual quantity sent to each location even though each of the quantities is below the threshold?**

Based on total production volume, Company P is required to report the chemical substance for CDR. Company P's main office in California is the site directly responsible for the import, and therefore is the site reported under CDR. See the definition of "site" at 40 CFR 711.3. Because Company P imported over 25,000 lbs at that one site, Company P should submit one Form U for the imports, combining the volumes shipped throughout the year to the four locations. Because the chemical substance is sent directly from the port of entry to facilities

in different locations, Company P would indicate that the chemical substance was not physically present at the site of import.

- 9. Company Q imports 1 million lbs of a mixture, which contains 50% Chemical D, 25% Chemical E, 24% Chemical F, and 1% Chemical G. All of these chemicals are subject to the 25,000 lbs reporting threshold (i.e., they are not subject to the certain TSCA actions that trigger a 2,500 lbs reporting threshold). Company Q does not otherwise import Chemicals D, E, F, or G. How is the import reported?**

Reporting is on the basis of the chemical substances imported. Thus, Company Q would first determine the volume of each component chemical substance of the mixture and compare it to the reporting threshold. In 1 million lbs of the mixture, there are 500,000 lbs (50%) of Chemical D, 250,000 lbs (25%) of Chemical E, 240,000 lbs (24%) of Chemical F, and 10,000 lbs (1%) of Chemical G. The amount of Chemical G in the imported mixture is below the reporting threshold. Therefore, Company Q would be required to report the volumes of Chemicals D, E, and F. Company Q would not report the volume of Chemical G.

- 10. Company H, headquartered in New York City, has manufacturing facilities in Ohio and Ontario, Canada. The Ohio facility and the Ontario facility both manufacture Chemical D and the Ontario facility alone manufactures Chemical F. The Ontario facility sends to the Ohio facility 20,000 lbs of Chemical D and 10,000 lbs of Chemical F, where they are blended with 30,000 lbs of Chemical D manufactured at the Ohio facility and 30,000 lbs of Chemical E purchased from a Pennsylvania supplier. None of the chemicals are subject to TSCA regulatory actions. How is this reported for CDR?**

The amount of Chemical D brought into the United States from the Ontario facility would be considered imported (and thus manufactured). The reporting of Chemical D depends on whether it was Company H headquarters in New York or the facility in Ohio that was directly responsible for the importing.

If Company H's headquarters site in New York was directly responsible for the import, then the potential reporting is associated with that site. But that site would not actually be subject to reporting for Chemical D because that chemical substance was imported below the 25,000 lbs reporting threshold. Company H's Ohio site would report the 30,000 lbs of Chemical D it produced domestically.

If Company H's Ohio site was directly responsible for the import, then Company H would report 50,000 lbs of Chemical D (30,000 lbs manufactured by domestic production + 20,000 lbs manufactured by import).

Neither site needs to report Chemical E because Company H domestically purchased this chemical substance. Company H neither imported nor domestically manufactured this chemical substance at either site.

Chemical F is not subject to reporting, because it is imported below the reporting threshold, regardless of whether the importation is associated with the New York site or the Ohio site.

**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).