PRE-PUBLICATION NOTICE

On Tuesday, March 17, 2020, Alexandra Dapolito Dunn, the EPA Assistant Administrator for Chemical Safety and Pollution Prevention, signed the following document:

Action:	Final Rule.
Title:	TSCA Chemical Data Reporting Revisions under TSCA Section 8(a)
FRL #:	10005-56
Docket ID #:	EPA-HQ-OPPT-2018-0321

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Once the official version of this document is published in the *Federal Register*, this version will be removed from the Internet and replaced with a link to the official version. At that time, you will also be able to access the on-line docket for this *Federal Register* document at http://www.regulations.gov.

For further information about the docket and, if applicable, instructions for commenting, please consult the ADDRESSES section in the front of the Federal Register document.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 711

[EPA-HQ-OPPT-2018-0321; FRL-10005-56]

RIN 2070-AK33

TSCA Chemical Data Reporting Revisions under TSCA Section 8(a)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a rule under the Toxic Substances Control Act (TSCA) to amend the Chemical Data Reporting (CDR) requirements. The CDR rule requires manufacturers (including importers) of certain chemical substances listed on the TSCA Chemical Substance Inventory (TSCA Inventory) to report data on chemical manufacturing, processing, and use every four years. EPA is finalizing several changes to the CDR rule to make regulatory updates that align with new statutory requirements of TSCA, to improve the CDR data collected as necessary to support the implementation of TSCA, and potentially to reduce burden for certain CDR reporters. In addition, these regulatory modifications may result in additional information to EPA and the public that is currently not collected; improve the usability and reliability of the reported data; and ensure that data are available in a timely manner.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER 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 review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: *For technical information contact*: Susan Sharkey, Chemical Control Division, 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. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture (defined by statute at 15 U.S.C. 2602(9) to include import) chemical substances, including if you are a chemical user or processor who manufactures byproduct chemical substances. Any use of the term "manufacture" in this document will encompass "import," the term "manufacturer" will encompass "importer," and the term "chemical substance" will encompass "byproduct chemical substance," unless otherwise stated.

The potentially regulated community consists of entities that produce domestically or

import into the United States chemical substances listed on the TSCA Inventory. The Agency's previous experience with TSCA section 8(a) collections has shown that most respondents affected by this collection activity are from the following North American Industrial Classification System (NAICS) code categories:

• NAICS 325 – Chemical Manufacturing; and

• NAICS 324 – Petroleum and Coal Product Manufacturing.

In addition to the anticipated respondents from the NAICS listed previously, the potentially regulated community consists of manufacturers of byproducts that are required to report under certain TSCA section 8(a) rules, including CDR. Byproduct manufacturers may be listed under a different primary activity for a site, such as NAICS codes 22, 322, 327310, 331, and 3344, representing utilities, paper manufacturing, cement manufacturing, primary metal manufacturing, and semiconductor and other electronic component manufacturing, respectively.

The NAICS codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicable provisions at 40 CFR 711.8. If you have any questions regarding the applicability of this action to a particular entity, consult the technical contact person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

TSCA section 8(a)(1) authorizes the EPA Administrator to promulgate rules under which manufacturers and processors of chemical substances must maintain such records, and submit such information, as the EPA Administrator may reasonably require (15 U.S.C. 2607). TSCA section 8(a) generally excludes small manufacturers and processors of chemical substances from the reporting requirements established in TSCA section 8(a). However, EPA is authorized by

TSCA section 8(a)(3)(A)(ii) to require TSCA section 8(a) reporting from small manufacturers and processors with respect to any chemical substance that is the subject of a rule proposed or promulgated under TSCA sections 4, 5(b)(4), or 6; that is the subject of an order in effect under TSCA sections 4 or 5(e); that is subject to a consent agreement under TSCA section 4; or that is the subject of relief granted pursuant to a civil action under TSCA section 5 or 7.

TSCA section 8(a)(5) requires the EPA Administrator, to the extent feasible, not to require unnecessary or duplicative reporting, and to minimize the cost of compliance for small manufacturers.

TSCA section 14 imposes requirements for the assertion, substantiation, and Agency review of confidential business information (CBI) claims.

C. What action is the Agency taking?

In this action, EPA is promulgating several amendments to the CDR rule, taking into consideration comments received on the proposed rule (EPA-HQ-OPPT-2018-0321). Although included in the proposal, EPA is addressing the proposed amendment to update the size standards definition for small manufacturers for reporting and recordkeeping requirements under TSCA section 8(a) in a separate final rule (identified by RIN 2070-AK57), as discussed in the proposed rule (Ref. 1). The following is a brief listing of the primary amendments being finalized, some of which have been modified from the proposal, as described in this unit. EPA is finalizing these modifications based on comments received during the public comment period. These amendments are described in more detail in Unit III.

1. Changing requirements for making confidentiality claims, including to identify when upfront substantiation is required (which is being finalized as proposed), update the substantiation questions, and identify data elements that cannot be claimed as confidential

(which is being finalized as proposed), so as to align with the Frank R. Lautenberg Chemical Safety for the 21st Century Act (2016 Amendments). The substantiation questions have been modified from the proposal based on comments received during the public comment period;

2. Replacing certain processing and use codes (industrial function and commercial/consumer product use) with codes based on the Organisation for Economic Co-operation and Development's (OECD) functional use and product and article use codes. EPA is also adding the requirement to report the OECD-based functional use codes for consumer and commercial use information. This provision is being finalized as proposed with some modifications from the proposal: the new codes will be codified in the Code of Federal Regulations (CFR) rather than listed in guidance, codes associated with non-TSCA uses will be folded into the overarching non-TSCA use code, and reporting using the OECD-based codes will be required during the 2020 CDR submission period for the chemical substances designated in 2019 by EPA as a high priority for risk evaluation (84 FR 71924, December 30, 2019) (FRL-10003-15) and required for all chemical substances during the 2024 CDR submission (reporting using the OECD-based codes would be voluntary for all reporters during the 2020 CDR submission period);

3. Adding the requirement to report the NAICS code(s) for the site of manufacture, which is being finalized as proposed;

4. Modifying the requirement to indicate whether a chemical is removed from the waste stream and recycled, remanufactured, reprocessed, or reused, by changing the requirement to indicate whether a chemical is removed from the waste stream and recycled. This modification is being finalized as proposed;

5. Adding a voluntary data element to identify the percent total production volume of a

chemical substance that is a byproduct. This proposed requirement is being finalized with modification from the proposal, by including that percent byproduct reporting be in ranges and making the reporting of the data element voluntary;

6. Requiring that the secondary submitter of a joint submission report the specific function of the chemical along with the percentage of the chemical in the imported product. This requirement is being finalized as proposed;

7. Modifying the reporting of "parent company" to require the use of a naming convention; add the requirement to report a foreign parent company, when applicable; and codify reporting scenarios in a new definition for "highest-level parent company." These definitions, requirements, and reporting scenario codifications are being finalized with modification from the proposal;

8. Simplifying the reporting process by providing two reporting mechanisms for co-manufacturers by enabling a multi-reporter process for reporters to separately report directly to EPA within the e-CDRweb reporting tool. These changes are being finalized with minor modification from the proposal, with the finalization of two separate reporting methodologies;

9. Adding exemptions (1) for specifically identified byproducts that are recycled in a site-limited, enclosed system (which is being finalized as proposed with the addition of another chemical substance) and (2) for byproducts that are manufactured as part of non-integral pollution control and boiler equipment (which is being finalized as proposed); and

10. Clarifying regulatory text by removing outdated text and making other improvements. These changes are being finalized as proposed.

Some proposed provisions will not be finalized based on comments received during the public comment period. For a more detailed discussion of what was proposed but not finalized,

please see Unit II.C., *Public Comments and Other Public Input*.

As described in the proposal, EPA is taking other, non-regulatory steps to minimize the burden on reporters, by improving the reporting application and database to be user-friendly and dynamic, with straightforward questions that include fill-in-the-blank fields, check boxes, and drop-down menus. In addition, EPA is replacing the current pre-formatted Form U with a customized report that will be based on the actual information submitted by a site through e-CDRweb, the electronic reporting tool. This change will enable fields to expand or contract as needed to display the entered information in one spot, eliminating the need for continuation pages or for large empty spaces in the printed report. For example, some chemical names are very short and need only 10 or 20 characters, while other chemical names are very long and use multiple lines of text. Although these changes are not discussed further in this final rule, they are an important component of the effort to reduce burden and modernize the data collection system. EPA is making this update as a result of feedback received from reporters and other stakeholders following the 2016 submission period (Ref. 2) and during an extensive negotiated rulemaking effort, which included participation by all stakeholder groups, and subsequent public comment period from October 12, 2017 – December 11, 2017, at the conclusion of the negotiated rulemaking (Ref. 3 and Ref. 4). EPA is adding an addendum to the current CDR rule ICR (OMB Control Number 2070-0162) for the regulatory changes finalized in this document (Ref. 5). In addition to the changes outlined in this final rule, if needed, EPA will provide a second addendum to this ICR to address non-regulatory changes. As was done for previous CDR collections, EPA will provide reporters with the opportunity to test and comment on the updated e-CDRweb reporting tool prior to the 2020 CDR submission period. The testing, by a group of volunteer reporters, will be conducted under a generic ICR for EPA software testing (OMB

Control Number 2010-0042) (Ref. 6). EPA anticipates holding a webinar to introduce the revised e-CDRweb reporting tool to the regulated community directly following the publication of this rule. During the webinar, EPA will issue a general invitation to interested parties to participate in a short testing period of the revised e-CDRweb reporting tool. EPA will open the testing period shortly after publication of this rule. Because of resource constraints, the testing period will be limited to 25 participants. For additional information, contact the person under **FOR FURTHER INFORMATION CONTACT**. Also, information will be posted on the CDR website (*https://www.epa.gov/chemical-data-reporting*).

D. Why is the Agency taking this action?

EPA is revising the CDR rule for three primary reasons: first, aligning CDR reporting with the 2016 Amendments; second, improving the CDR data collected to support the implementation of TSCA; and third, potentially reducing burdens for certain CDR reporters pursuant to TSCA section 8(a)(5).

The 2016 Amendments to TSCA changed requirements associated with confidentiality claims, including identifying the data elements eligible for confidentiality claims and identifying the situations under which substantiation of claims is required. EPA is revising the CDR rule to address these changes.

As described in the proposed rule, EPA is also finalizing changes to CDR reporting so that the information collected is tailored to better meet the Agency's overall information needs and is aligned with specific needs for chemical substance prioritization and risk evaluation under TSCA section 6. TSCA section 2 specifies that "adequate information should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such information should be the responsibility of those who manufacture and

those who process such chemical substances and mixtures" (TSCA section 2(b)(1)). EPA's changes include the addition of data elements that must be reported, such as site-specific NAICS codes; modification to multi-reporter submission requirements, including adding a process for jointly reporting co-manufactured chemicals; and changes to current data elements, such as codes used for reporting processing and use information and the addition of the percentage of a chemical that is a byproduct (in ranges) as a data element that can be reported voluntarily. In addition, changes to the parent company reporting requirements will increase EPA's ability to protect confidential information while better enabling EPA to make information publicly available. As described in the proposed rule, these changes should help to meet the Agency's requirement under TSCA section 26(h), in carrying out TSCA sections 4, 5, and 6, to make scientific decisions consistent with the best available science; to improve the CDR data collected to support the implementation of TSCA; and to improve EPA's ability to provide public access to the information. Furthermore, these changes should aid in meeting the Agency's objective to obtain new and updated information relating to potential exposures to a major subset of chemical substances listed on the TSCA Inventory.

EPA is interested in streamlining reporting requirements and processes while maintaining the Agency's ability to receive the information it needs to understand exposure to these chemicals (TSCA section 8(a)(5)). As described in the proposed rule, EPA's proposed revisions were informed by information provided in 2016 and 2017 during the 2016 CDR submission period, public comment opportunities, and an extensive negotiated rulemaking effort, which included participation by all stakeholder groups, and subsequent public comment period from October 12, 2017, to December 1, 2017, at the conclusion of the negotiated rulemaking (Ref. 3 and Ref. 4).

This final rule takes into account comments received on the proposed rule, from April 25, 2019, to June 24, 2019. EPA received 24 comments from various stakeholders and the public that helped inform the finalization of this rule. In response to stakeholder input, EPA is finalizing the introduction of two new exemptions related to byproducts and a revised approach to reporting for co-manufactured chemicals. In addition, harmonizing the function and product codes with those used by OECD is expected to reduce potential confusion for those reporting under multiple country requirements.

Additionally, EPA has received comments that modernizing the CDR data collection and public access to the database may reduce reporting burden and facilitate ease of use by reporters and the public. These comments were used to develop this final rule and will be used to inform other non-regulatory changes that EPA plans to make to the reporting process, such as the reporting tool modernization described in Unit I.C.

E. What are the incremental costs of this action?

EPA has evaluated the potential costs and benefits of revising CDR reporting requirements as required by the rulemaking process. Some requirements in this rule increase burden and cost, while other requirements and flexibilities decrease burden and result in cost savings. Overall, EPA estimates that the combined impact of all the amendments would increase the total burden and result in a cost to industry and government reporters. This analysis, which is available in the docket (Ref. 7), is discussed in Unit III., and is briefly summarized here.

The finalized amendments are estimated to result in an overall net increase in burden and costs. The estimated increases in burden and costs include rule familiarization, increases in compliance determination, and the duration of time for form completion. The next future cycle burden and costs or cost savings are listed by type of change:

(1) For changes to claiming confidentiality (discussed in Unit III.A.), the incremental burden is expected to decrease by 14,000 hours with an associated cost savings of $1.1 million. The incremental burden and cost changed from the proposed rule due to a correction to a cell reference in the model used for the unit burden estimates (Ref. 8).

(2) For changes to modify or add reportable data elements (*e.g.*, processing and use codes, NAICS codes, byproduct percentage, chemical function, and parent company - discussed in Unit III.B.), the incremental burden is expected to increase by 188,000 hours with an associated cost increase of $14.5 million. The incremental burden and cost estimates changed from the proposed rule due to the elimination of the site public contact, the use of intelligent sorting and search functions in the reporting tool related to the reporting of processing and use information, and the addition of burden of the function category for consumer and commercial products (Table 4-13 in Ref. 7).

(3) For changes to add byproducts exemptions (discussed in Unit III.D.), the incremental burden is expected to decrease by 68,000 hours with an associated cost savings of $5.2 million.

In sum, the overall incremental impacts to industry and government reporters result in a net increase in burden and cost. Estimates include rule familiarization, compliance determination, and CDR form completion (Ref. 7). Estimated changes to recordkeeping burden and cost are negligible and estimated at zero. An estimated 5,660 sites are expected to report during the next CDR submission period in 2020. The total incremental burden and cost are estimated at 32,000 hours and $2.5 million for the CDR 2020 submission period (first cycle), 34,000 hours and $2.7 million for the 2024 CDR submission period (second cycle), and 27,000 hours and $2.1 million for the 2028 CDR submission period (future cycles). On an annualized basis, using a 3 percent and a 7 percent discount rate over a 10-year period, the annualized

incremental cost both round to an estimated $2.5 million per year (Ref. 7).

II. Background

A. What is the Chemical Data Reporting Rule?

As described in the proposed rule, the CDR rule requires U.S. manufacturers of certain chemicals listed on the TSCA Inventory to report to EPA every four years certain information about chemical substances manufactured for all years since the last principal reporting year. To minimize reporting burden, detailed information is required only for the principal reporting year (*i.e.*, 2019), including a breakout of the production volume to provide separate volumes for domestically manufactured and imported amounts. Generally, reporting is required for substances whose production volumes are 25,000 pounds or more at any single site during any of the calendar years since the last principal reporting year. However, a lower threshold applies for chemical substances that are the subject of certain TSCA actions (see 40 CFR 711.8(b)). The CDR rule generally excludes several groups of chemical substances from its reporting requirements, *e.g.*, polymers, microorganisms, naturally occurring chemical substances, certain forms of natural gas, and water (see 40 CFR 711.5 and 711.6). For the 2016 CDR cycle, EPA received CDR site reports (Form U's) from 5,660 sites with an associated 42,464 chemical reports, providing information on 8,717 unique chemicals.

Persons domestically manufacturing or importing chemical substances are required to report information such as company name, site location and other identifying information, production volume of the reportable chemical substance, and exposure-related information associated with the manufacture of each reportable chemical substance, including the physical form and maximum concentration of the chemical substance, the number of potentially exposed workers at the reporting site, and certain processing and use information (40 CFR 711.15). Under

CDR, submitters report information to the extent that it is "known to or reasonably ascertainable" (40 CFR 711.15), which means "all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know" (40 CFR 711.3, referencing 40 CFR 704.3). Reported information can be claimed as confidential, with certain exceptions (40 CFR 711.30).

B. EPA's Proposed Rule for Revisions to the CDR Rule

On April 25, 2019, EPA proposed the rule "TSCA Chemical Data Reporting Revisions and Small Manufacturer Definition Update for Reporting and Recordkeeping Requirements under TSCA section 8(a)" (Ref. 1). EPA proposed several changes to the CDR rule to make regulatory updates to align with new statutory requirements of TSCA and improve the CDR data collected as necessary to support the implementation of TSCA, which could have potentially reduced or increased burden for certain CDR reporters. In particular, EPA proposed to:

1. Harmonize the CDR processing and use codes with OECD codes;

2. Add the requirement to report the NAICS code(s) for the site of manufacture;

3. Modify the requirement to indicate whether a chemical is removed from the waste stream and recycled, remanufactured, reprocessed, or reused to instead require an indication of whether a chemical is removed from the waste stream and recycled;

4. Add a requirement to identify the percent total production volume of a chemical substance that is a byproduct; require that the secondary submitter of a joint submission report the chemical specific function along with the percentage of the chemical in the imported product;

5. Add a voluntary data element to provide a public contact;

6. Modify the definition of "parent company" to clarify the definition;

7. Add the requirement to report a foreign parent company, when applicable, and codify

reporting scenarios;

8. Simplify the reporting process for co-manufacturers by enabling a multi-reporter process for reporters to separately report directly to EPA within the e-CDRweb reporting tool;

9. Allow reporting in specified metal categories for inorganic byproducts;

10. Add exemptions for specifically identified byproducts that are recycled in a site-limited, enclosed system and for byproducts that are manufactured as part of non-integral pollution control and boiler equipment;

11. Clarify regulatory text by removing outdated text, consolidating exemptions, and making other improvements; and

12. Update the size standards definition for small manufacturers for reporting and recordkeeping requirements under TSCA section 8(a) (Ref. 1).[1]

C. Public Comments and Other Public Input

The proposed rule provided for a 60-day public comment period, ending on June 24, 2019. EPA received 24 comments. Commenters included industry trade associations (18 comments representing 23 organizations), government entities (one comment), the National Tribal Toxics Council (one comment), and non-governmental organizations (three comments representing six organizations). Comments addressed many provisions of EPA's proposed rule and generally supported EPA's proposal. Of the 24 comments received, 23 addressed provisions in this rule. Specifically, EPA received 13 comments regarding some proposed changes to

[1] While the CDR revisions and the updates to the small manufacturer definition were proposed together in the same document, EPA is addressing the proposed small manufacturer definition in a separate final rule, identified by RIN 2070-AK57.

reportable data elements that either supported EPA's proposal or raised issues that EPA intends to address in the Instructions for Reporting (Ref. 9).[2] Separately, EPA received 12 comments that provided information on the reporting burden related to these or similar data elements.

For the proposed co-manufacturing reporting mechanism, comments were generally supportive of the proposal but requested additional flexibility. EPA received 14 comments about the two proposed exemptions for byproducts, most of which were supportive. Commenters who were not supportive of the proposed exemptions for byproducts explained that the exemptions could increase the complexity of reporting and that the byproduct exemptions were not sufficiently expansive to meaningfully reduce reporting burden. EPA also received 12 comments on changes to existing exemptions and other potential future changes, all of which are outside of the scope of this action.

EPA received eight comments about changes to requirements for claiming confidentiality. Five commenters did not support EPA's proposal regarding which data elements could not be claimed as confidential, while other commenters suggested that additional data elements should not be able to be claimed as confidential. Following consideration of the comments received, EPA is finalizing as proposed the following: (1) barring certain processing and use data considered "general" from confidentiality claims, and (2) requiring upfront

[2] These proposed changes addressed by the commenters included harmonizing the CDR processing and use codes with OECD codes; adding the requirement to report the NAICs code(s) for the site of manufacture; requiring reporting of the chemical-specific function in a joint submission; modifying the definition of parent company and requiring reporting of a foreign parent company; modifying the requirement to indicate whether a chemical is recycled, remanufactured, reprocessed, or reused, by changing the requirement to indicate whether a chemical is removed from the waste stream and recycled; and adding a requirement to identify the percent total production volume of a chemical that is a byproduct.

substantiation for all CBI claims except for production volume. As described in Unit III., EPA is finalizing with some limited modifications the proposed substantiation questions for data elements requiring upfront substantiation. In consideration of comments received and with an interest in engaging with reporters' concerns about disclosure, EPA is modifying the proposed substantiation questions. An overview of the revisions to the substantiation questions in 40 CFR 711.30 is in Unit III.A.1.

Additionally, based on comments received, EPA is not finalizing the proposed voluntary public contact data element or the proposed alternative reporting in specified categories for inorganic byproducts.

In this preamble, EPA has responded to many of the comments relevant to the proposed revisions to CDR; EPA's comprehensive response to comments related to this final action is in the Response to Comments document (Ref. 10). EPA is finalizing in a separate action an amendment to update the size standards definition for small manufacturers for reporting and recordkeeping requirements under TSCA section 8(a), which includes a separate Response to Comment document addressing comments specific to the small manufacturing definition.

In addition to public comments received on the proposal, EPA solicited information through other mechanisms. Specifically, EPA conducted two identical sessions as part of tribal outreach on the proposed rule to provide background information on the proposed rule and to obtain feedback (Ref. 11). EPA received no follow-up comments from the tribal outreach. EPA also met with IPC (Association Connecting Electronics Industries) at EPA headquarters, toured a printed circuit board manufacturing site (TTM Technologies, Inc.), and, with Lehigh Hanson Cement, toured a Portland cement clinker manufacturing site. (Ref. 12, Ref. 13, and Ref. 14). In the meetings and on these tours, EPA received information on how byproducts and wastes are

stored and eventually transported offsite for recycling; this information was useful in the development of this final rule.

III. Detailed Discussion of the Modifications to the CDR Rule

EPA is making a number of revisions to the CDR rule, as described in this Unit. The regulatory text of this document describes the specific CDR reporting requirements being amended and includes both the modified and selected unmodified portions of the regulatory text (see 40 CFR part 711). EPA has also developed information for the public that includes specific reporting instructions, questions and answers, and case studies, and EPA intends to conduct webinars to help potential CDR submitters become familiar with the revised reporting processes and amended reporting requirements. The information sources and information on the webinars will be available on the CDR Web site (*http://www.epa.gov/cdr*).

A. What changes have been made to requirements for claiming confidentiality?

EPA is finalizing changes to requirements related to claiming CDR data as confidential, so as to be consistent with the new statutory requirements in TSCA section 14. The 2016 amendments to TSCA included mandated new procedural requirements for the submission and Agency management of CBI claims, including new substantiation requirements, a certification requirement, and a requirement for Agency review of specified CBI claims within 90 days after receipt of the claim. The revisions to this rule implement and facilitate the new TSCA requirements. Specific changes are discussed in this Unit and in Unit III.A. of the proposed rule (Ref. 1). EPA estimates that the changes to the CBI substantiation requirements will result in a decrease in burden, which is explained in detail in Chapter 4.3.2 in the Economic Analysis (Ref. 7). Public comments regarding claims of confidentiality generally addressed: data elements that are not eligible for confidentiality claims, data elements that are exempt from upfront

substantiation, and substantiation questions.

One commenter provided detailed comments on the proposed questions and additionally referenced a recent Supreme Court decision (*Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019)) addressing the test for determining whether commercial information qualifies as "confidential" for purposes of Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4). In that decision, the Court rejected the "substantial competitive harm" test that had long been applied by the U.S. Court of Appeals for the D.C. Circuit, under which certain commercial information could not be deemed "confidential" unless disclosure was likely to cause substantial harm to the competitive position of the person from whom the information was obtained. 139 S. Ct. at 2361, 2364-66. EPA also received a request to reopen the comment period to allow others to provide comment on this Court decision (Ref. 15).

EPA determined that the Supreme Court decision did not impact the finalization of the substantiation questions or CBI review criteria that were proposed in this TSCA rulemaking because Congress amended TSCA section 14 in 2016 to, among other things, specifically require any person asserting a CBI claim under TSCA to include a certified statement that the person has "a reasonable basis to conclude that disclosure of the information is likely to cause substantial harm to the competitive position of the person." TSCA section 14(c)(1)(B)(iii), (c)(5); see also TSCA section 14(c)(1)(C)(ii)(II) (referencing substantial competitive harm). Based on these requirements in TSCA section 14, EPA determined that neither the "substantial competitive harm" review criterion nor any related substantiation question for the TSCA CBI claims addressed in this rulemaking should be removed based on the Supreme Court's decision. EPA accordingly decided not to reopen the comment period. See the Response to Comments document for additional discussion. (Ref. 10).

1. Substantiations. EPA interprets TSCA section 14(c)(3) as requiring substantiation of any non-exempt CBI claim at the time the information claimed as CBI is submitted to EPA (Ref. 16). The Agency is finalizing the amendment of the CDR substantiation provisions to require substantiation for all confidentiality claims except for those types of information exempt from substantiation under TSCA section 14(c)(2), which are described later in this Unit. EPA modified the proposed regulatory text to remove references to data elements that were proposed and not finalized, such as the public contact information discussed in Unit III.F.1., to change text for clarity, and to correct cross-references.

EPA is finalizing revisions to the substantiation questions in 40 CFR 711.30, with some changes between the proposed changes and those that are being finalized. In consideration of comments received and with an interest in engaging with reporters' concerns about disclosure, EPA is modifying the proposed substantiation questions. An overview of the revisions to the substantiation questions in 40 CFR 711.30 is as follows.

A set of standard questions, set forth in 40 CFR 711.30(b), applies to all non-exempt CBI claims. In response to comments received, EPA modified the questions to facilitate clarity and understanding of the questions themselves and to help ensure that submitters are correctly and appropriately substantiating their confidentiality claims. For example, to the question about substantial competitive harm (40 CFR 711.30(b)(1)), EPA has expanded the proposed statement "If you answered yes, explain the substantial harm" to a clearer description: "If you answered yes, describe the substantial harmful effects that would likely result to your competitive position if the information is disclosed, including but not limited to how a competitor could use such information and the causal relationship between the disclosure and the harmful effects." Likewise, EPA added additional examples to the question about where the information may have

been publicly disclosed (40 CFR 711.30(b)(3)), and split the question into three parts so that the first part discusses disclosure required under other Federal law, the second part addresses more general public documents, and the third part is specific to patents.

EPA proposed additional questions that were targeted to specific data elements. An additional series of four questions for specific chemical identity CBI claims is set forth in 40 CFR 711.30(c). The first proposed question, at 40 CFR 711.30(c)(1), addresses whether the chemical substance is publicly known to be in commerce in the United States. EPA modified this question to remove language identified as confusing by a commenter and to clarify that the inquiry is intended to address knowledge by the public at large as well as by competitors within the industry. The second and third proposed questions, at 40 CFR 711.30(c)(2)-(3), address the ability for others to reverse engineer the chemical identity. The second question has been slightly modified to be worded in a consistent manner with other questions. The third question has been modified to clarify EPA's expectation that the response takes into account existing technologies, and that it addresses whether a chemical identity is "readily" discoverable. The fourth proposed question, at 40 CFR 711.30(c)(4), addresses the release of confidential process information and has been finalized as proposed.

Information about substantiating for company, site, and technical contact identity is finalized in 40 CFR 711.30(a)(6), proposed in 40 CFR 711.30(d). As proposed, there was one additional question at 40 CFR 711.30(d)(1) for the substantiation of these claims (Ref. 1). EPA did not finalize this question because it is substantially the same as the question finalized at 40 CFR 711.30(b)(3), which submitters must already answer for these data element claims. EPA is retaining the 40 CFR 711.30(d) paragraph, finalized in 40 CFR 711.30(a)(6), because it explains when the submitter may assert a claim for the linkage between the company, site, or technical

contact identity and the chemical substance.

Requirements to substantiate confidentiality claims for certain processing and use information are set forth in 40 CFR 711.30(a)(7). As proposed, there were two additional questions for these claims. EPA did not finalize either question because EPA determined that these questions solicited the same information that claimants would already be required to provide in their responses to the substantiation questions applicable to all CBI claims, and would not provide additional information that is uniquely necessary for adjudicating CBI claims for these data elements. The question proposed at 40 CFR 711.30(e)(1) is substantially the same as the question finalized at 40 CFR 711.30(b)(3), and the question proposed at 40 CFR 711.30(e)(2) is substantially the same as the question finalized at 40 CFR 711.30(b)(2), which submitters must already answer for these data element claims.

EPA is finalizing, with some changes from the proposal, 40 CFR 711.30(a)(3), which describes the data elements that are exempt from the requirement to provide substantiations at the time the data are submitted. EPA believes that the only data elements collected under CDR that may be subject to the TSCA section 14(c)(2) exemption from upfront substantiation requirements are (1) production volume (711.30(a)(3)(i)) and (2) supplier information associated with joint submissions, such as supplier identity and details of the full composition of a mixture (711.30(a)(3)(ii) and (iii)). In addition, EPA believes that a petition submitted under 40 CFR 711.6(b)(2)(iii) or 40 CFR 711.10(d)(1)(ii) may contain information that is described in TSCA section 14(c)(2) (711.30(a)(3)(iv)). However, the data elements that are exempted from upfront substantiation may still be subject to substantiation and CBI review under the circumstances described in TSCA section 14(f).

a. Regarding production volume. EPA is finalizing its proposal not to require

substantiation at the time the claim of confidentiality is made for five production volume data elements (so, for the 2020 reporting cycle, the volume domestically manufactured in 2019, the volume imported in 2019, and the total production volume for each of the three years 2016 through 2018). For each reported chemical, total production volume is reported for each of the years since the last principal reporting year -- except for the current principal reporting year, for which the production volume is reported as domestically manufactured and imported volumes.

While commenters in general agreed with the proposal, some commenters wanted EPA to expand the exemption from upfront substantiation to include all data elements that contain a volume (*i.e.*, volume used on site and volume directly exported) because such information relates to the production volume of a chemical substance. EPA disagrees with the suggestion that TSCA section 14(c)(2)(F), which exempts from upfront substantiation requirements "[s]pecific production or import volumes of the manufacturer or processor," is intended to exempt any data element referencing a volume. Because volume used on site and volume directly exported provide information about the disposition of the chemical after it is produced or imported, rather than information about the total amount originally produced or imported by the manufacturer, these data elements are not the "production or import volumes" listed in TSCA section 14(c)(2)(F). Therefore, EPA did not add these two data elements to the list at 40 CFR 711.30(a)(3) of data elements that do not require substantiation of confidentiality claims at the time of submission.

b. Regarding information associated with a joint submission. EPA is finalizing as proposed requirements associated with making confidentiality claims for joint submissions, described in 40 CFR 711.30(d)(1). This includes the requirement that in a joint submission, the primary submitter identify whether the supplier information, including the supplier identity and

chemical substance name (trade name), is confidential. Because EPA interprets these data elements as "[i]nformation identifying a supplier" under TSCA section 14(c)(2)(C), substantiation of the confidentiality claims for this information will not be required at the time of submission. The secondary submitter of the joint submission will provide its company name and location, a technical contact, trade name, chemical identity(ies), and percentage of each chemical substance in the composition of the substance or mixture represented by the trade name.

The secondary submitter is responsible for asserting all confidentiality claims for the data elements that it submits directly to EPA and for substantiating those claims not exempt under 40 CFR 711.30(a)(3)(iii). Secondary submitters should note that EPA is finalizing the requirement to collect the function of each chemical in the mixture in a joint submission, as described in Unit III.B.5. The function of the chemical is one of the processing and use data elements that are barred from claims of confidentiality by 40 CFR 711.30(a)(2)(ii). Other data elements, such as the chemical substance identity, can be claimed as confidential by the secondary submitter following the provisions in 40 CFR 711.30. Except for the percentage composition information, which is generally exempt from substantiation pursuant to TSCA section 14(c)(2)(D), all other reported data elements are subject to substantiation at the time the information is submitted.

2. Certification. The authorized official submitting confidentiality claims must certify that all claims for confidentiality are true and correct, and that all information submitted to substantiate such claims is true and correct. In addition, all persons asserting a confidentiality claim must include the statement described in TSCA section 14(c)(1)(B), and the authorized official must certify that this statement is true and correct. EPA previously combined these requirements into a single certification statement, which was implemented in the CDR electronic reporting tool in June 2016. EPA is finalizing as proposed the codification of the language of the

certification statement in the CDR rule (see the final regulatory text for 40 CFR 711.30(a)(5)).

3. Processing and use data not protected from disclosure: EPA is finalizing its proposal to bar confidentiality claims for certain data elements that are ineligible for confidential treatment pursuant to TSCA section 14(b)(3)(B). The finalized regulatory text includes a correction to the proposed regulatory text to match the Agency's intent as described in the preamble to the proposed rule.

a. Final requirements. EPA is finalizing the codification that the following data elements cannot be claimed as confidential because they constitute general descriptions of processes, functions, and uses, including information that customarily would be shared with the general public or within an industry or industry sector, under TSCA section 14(b)(3)(B):

• *Certain Industrial processing and use data elements*. The data elements directly related to how the chemical is used or processed, *i.e.*, the type of process or use; the industrial sector; and the industrial function (40 CFR 711.15(b)(4)(i)(A), (B), and (C)).

• *Certain Consumer and Commercial use data elements*. The data elements directly related to how the chemical is used, *i.e.*, the product category (40 CFR 711.15(b)(4)(ii)(A)); whether the chemical is used in commercial or consumer products (40 CFR 711.15(b)(4)(ii)(C)); whether the chemical is likely to be used in children's products (40 CFR 711.15(b)(4)(ii)(D)); and the function of the chemical in the consumer or commercial product (40 CFR 711.15(b)(4)(ii)(B)) (the function is a new data element – see Unit III.B.1.a. for additional information).

With the final regulatory text, EPA corrected the proposed regulatory text to include whether the chemical is likely to be used in children's products (40 CFR 711.15(b)(4)(ii)(D)) as a data element that is barred from confidentiality claims. The preamble to the proposed rule

described the Agency's intent to include this data element as a general description of the use of the chemical substance (Ref. 1).

Similarly, EPA is finalizing the proposal that submitters may continue to assert claims of confidentiality for the following processing and use data elements, because they do not offer a "general description" of a process or use and therefore do not fall within the limits of TSCA section 14(b)(3)(B):

• *Certain Industrial Processing and use data elements*. Percent production volume, number of sites, and number of workers (40 CFR 711.15(b)(4)(i)(D), (E), and (F)).

• *Certain Consumer and Commercial use data elements*. Percent production volume, maximum concentration, and number of commercial workers (40 CFR 711.15(b)(4)(ii)(E), (F), and (G)).

b. Discussion of TSCA section 14(b)(3)(B) and public comments received. TSCA section 14(b)(3)(B) limits protection from disclosure for general descriptions of process, function, and use information, including information that customarily would be shared with the general public or within an industry or industry sector. EPA proposed to codify in the regulatory text that several data elements could not be claimed as confidential because they constitute general descriptions of processes and uses that customarily would be shared with the general public or within an industry or industry sector. EPA received comments that supported and opposed the proposal to bar certain confidentiality claims.

Some commenters opposed to barring confidentiality claims disagreed with the Agency position that TSCA section 14(b)(3)(B) categorically prohibits protection from disclosure for any particular information such as certain processing and use data elements. EPA disagrees with those comments, and believes that the statutory text in TSCA section 14(b)(3) (entitled "Other

information not protected from disclosure") and (b)(5) is clear that the information described in section 14(b)(3)(B) is not eligible for the protections from disclosure afforded to businesses under TSCA section 14 or FOIA Exemption 4 (pertaining to confidential business information).

Other commenters opposed to barring these confidentiality claims agreed that these processing and use data elements do not typically require CBI claims, but asserted that with the proposed expansion to the more-specific OECD codes, there would be greater potential for some combinations of codes to reveal specific and unique use information that may be confidential. These commenters also asserted that in certain situations, chemicals can have unique functions in consumer/commercial products, and therefore CBI claims should be permitted. However, none of the commenters offered examples to illustrate situations in which the combinations of generic category codes would reveal specific information about a use or function, as opposed to a general description. Following careful consideration of these comments, EPA determined that, even in combinations with the newly-finalized OECD harmonized codes, the information remains general and therefore not eligible for CBI status under TSCA section 14(b)(3)(B).

Commenters that supported barring confidentiality claims for these data elements asserted that EPA needs to do more to prevent unjustified claims of confidentiality, advocated for increased transparency of CDR data, and asserted that other data elements also qualify as a "general description of a process used in the manufacture or processing and… functions and uses" under TSCA section 14(b)(3)(B) that should be barred from CBI status or alternatively are barred from CBI status because they are part of a health and safety study under TSCA section 14(b)(2). EPA recognizes the importance of transparency and the need to enable submitters to protect information that meets the standards for confidentiality. Concerning the TSCA section 14(b)(3)(B) assertion, the commenters provided no support for why other data elements might be

considered process information, a necessary part of the "general description of a process…" as described in TSCA section 14(b)(3)(B). Concerning the TSCA section 14(b)(2) assertion, EPA disagrees with the suggestion that data in a CDR submission could be characterized as a health and safety study or information from a health and safety study. See the Response to Comments for additional discussion (Ref. 10).

B. What changes have been made to the reportable data elements?

1. Processing and use codes. The CDR rule requires manufacturers to report industrial, consumer, and commercial processing and use information for chemical substances manufactured during the principal reporting year. EPA is finalizing, with modification from the proposal, changes to the data elements comprising this processing and use information. Specifically, EPA is finalizing the replacement of the CDR industrial function and commercial/consumer product use codes with codes based on OECD function, product, and article use categories and adding the requirement to report the function of the chemical in commercial/consumer products. As a result of public comments received, EPA is phasing-in the implementation of the OECD-based codes, such that reporting during the 2020 CDR submission period for the chemical substances designated by EPA as a high priority for risk evaluation (84 FR 71924, December 30, 2019) are required to use the OECD-based codes and reporters for all other chemical substances may report using either the OECD-based codes or the current CDR codes. Reporting using the OECD-based codes will be fully implemented and required for all chemical substances beginning with the 2024 CDR submission period. In addition, EPA proposed to list the updated codes in the instructions for CDR reporting. As a result of public comments received, EPA is codifying the updated codes in the CFR.

Some commenters expressed concern with the level of understanding that manufacturers

have for the downstream processing and use of chemicals. EPA recognizes that some manufacturers may have less knowledge than other manufacturers about the downstream processing and use of their reported chemical substances. As described in the Instructions for Reporting, submitters are to exercise certain levels of due diligence in gathering the information required by the CDR rule and, if the knowledge is *not known or reasonably ascertainable*, to indicate so on the reporting form by selecting "NKRA." See the Instructions for Reporting for examples (Ref. 9). EPA recognizes that downstream processors and users may have better knowledge of the functions and uses than the chemical manufactures, but the agency is balancing the need for reduced reporting burden with maintaining the ability to receive the information needed to understand potential chemical exposure.

Other public comments related to the proposed processing and use code amendments, and EPA's responses, can be found in the response to comment document (Ref. 10). These new codes can be found at 40 CFR 711.15 in Tables 8 and 11.

At the time of proposal, EPA did not develop burden estimates associated with replacing the current CDR codes with ones based on the OECD codes, because such estimates heavily rely on the e-CDRweb user interface that will feature burden-reducing guided data entry. EPA noted that the addition of the function categories for commercial/consumer products is a new data element whose addition could potentially result in an increase in burden. Ultimately, EPA did not foresee a substantial increase in burden due to the use of the new codes and is finalizing the use of these new codes as proposed. To manage the potential burden increase, EPA planned to take non-regulatory steps to reduce burden, including: (1) incorporating intelligent sorting and a smart search option into the reporting tool, (2) publishing cross references to current codes, and (3) publishing detailed definitions and examples for each code. EPA has incorporated these features

into the eCDRweb reporting tool and the Instructions for Reporting (Ref. 9). The intelligent sorting feature will be implemented into the eCDRweb reporting tool for 2024 reporting; the smart search option is implemented for the 2020 reporting. Although the number of codes has increased, the inclusion of these features results in a slight decrease in estimated burden once all features are fully implemented in the eCDRweb reporting tool (a decrease of 0.461 hours per report, see Appendix C of the Economic Analysis (Ref. 7) for further details).

Under CDR, there are two main categories of use codes: function codes and product codes. The function of a chemical, combined with the type of product that the chemical is used in, provides information about an exposure scenario with unique characteristics. Information about exposure scenarios is necessary for implementation of TSCA section 6 for prioritization and risk evaluations.

a. Function codes (industrial and consumer/commercial). EPA is finalizing the requirement to report function categories for both industrial applications and commercial/consumer products and to adopt categories based on the OECD functional use categories. Under this final rule, the current 35 function codes have been replaced by 117 OECD-based function codes. EPA finalized the function codes as proposed, with one modification. In response to a comment that there was not an appropriate code to report the function of a substrate metal in an alloy when the alloy is imported, EPA changed the definition for function code U040A from "Alloying Element – Chemical substances that are added to materials/metals formulated to modify properties such as strength, hardness, or to facilitate treatment" to "Alloys – Chemical substances that are a combination of materials/metals formulated for specific properties such as strength, hardness, or to facilitate treatment."

In this final rule, not all of the OECD harmonized codes are adopted as individual CDR

function codes because some are for functional uses not covered by TSCA (*e.g.*, in the circumstances where, because of a chemical's particular use, it is not a "chemical substance" under TSCA section 3(2)(B)(vi)). For the proposal, EPA requested comments on whether all of the OECD harmonized codes should be listed so that the codes are an exact match, even if the uses are not covered by TSCA. After consideration of the public comments received, EPA has finalized the list as proposed, which does not separately list the functional uses not covered by TSCA and continues to include a non-TSCA code as a blanket code for these applications, such as for a food or cosmetic (other than soap), when the chemical is reportable to CDR because the chemical is also used in a way that falls under the jurisdiction of TSCA.

EPA is listing these codes in the CFR at 40 CFR 711.15 Table 8. Additional details about the function categories, how they are related to the OECD functional use categories, and a crosswalk with the current CDR function codes are in the supplemental document *Technical Support Document: Harmonizing CDR Functional and Product codes with OECD Functional, Product, and Article Codes* (Ref. 17).

b. Commercial/consumer product codes. Under this final rule, the current 33 consumer/commercial product categories have been replaced by 96 OECD-based product categories. Under TSCA, the definition of "chemical substance" excludes certain products, including pesticides, tobacco, and food. Some of the OECD harmonized product categories cover the TSCA-excluded products; those particular codes were not adopted in CDR. The former CDR codes contained a catch-all "non-TSCA code" for products that are not covered under TSCA. Under this final rule, EPA will continue to provide the same "non-TSCA" code as a blanket code for these applications. EPA also agrees with one comment requesting "to exclude the use of the OECD code for articles intended for food contact" and, as a result, is consolidating both C206A

(Articles for food contact, including metal articles) and C301A (Articles intended for food contact including paper articles; plastic articles (soft); plastic articles (hard); rubber articles; metal articles; fabrics, textiles, and apparel) with CC990, the "Non-TSCA use" code (Ref. 10) For a more detailed discussion of these changes, see Unit III.B.1. of the proposed rule (Ref. 1).

c. Implementation of the OECD-based codes. Under this final rule, EPA is phasing in reporting of the OECD-based codes. For reporting during the 2020 CDR submission period, (from June 1, 2020, to September 30, 2020), submitters are required to use the OECD-based codes for the chemical substances designated by EPA as a high priority for risk evaluation and, for all other chemical substances, may use either the OECD-based codes or the CDR codes. The chemical substances designated by EPA as a high priority for risk evaluation are listed in 40 CFR 711.15, Table 9. For reporting during the 2024 and future submission periods, submitters are required to use the OECD-based codes for all chemical substances for which the submitter is reporting processing and use information.

2. NAICS codes for manufacturers. EPA is finalizing the requirement that submitters report the 6-digit NAICS code that best describes the manufacturing activities conducted at the reporting site. The NAICS was developed under the direction and guidance of the Office of Management and Budget (OMB) as the standard for use by Federal statistical agencies in classifying business establishments for the collection, tabulation, presentation, and analysis of statistical data. NAICS is based on a production-oriented concept, meaning that it groups establishments into industries according to similarity in the processes used to produce goods or services (Ref. 18). Use of the standard provides uniformity and comparability in the presentation and understanding of data. EPA estimates that this finalized change will result in a small increase in burden, which is explained in detail in Chapter 4.3.2 in the Economic Analysis (Ref. 7). For a

more detailed discussion of this change, see Unit III.B.2. of the proposed rule (Ref. 1).

EPA received comments on the proposed rule regarding the addition of the NAICS codes for manufacturing sites that supported and opposed the revision. Commenters that supported the addition agreed with EPA that including NAICS codes provides practical utility for the Agency because the use of NAICS codes will enable industry-specific analysis and increase the ability to combine CDR data with other sources (*e.g.*, TRI). Commenters that opposed the addition stated that identifying a single NAICS code for some reporters could be overly burdensome, especially for reporters that consolidate imports at the company headquarters, for which multiple NAICS codes could apply. In consideration of these comments, EPA is finalizing the requirement for reporting a 6-digit NAICS code, but will allow the reporter to indicate up to three NAICS codes to address the concerns expressed for some importers that identifying a single NAICS code would be difficult. Given that CDR data are higher-level data intended for screening purposes, EPA determined that three NAICS codes would be adequate. If more than three NAICS codes could apply, the reporter should identify and report the three more representative NAICS codes. EPA believes that the increase in burden caused by this change is minimal, compared to the increase in practical utility the information can provide to the Agency to better analyze the data by industry sector. In most situations, submitters will report the single NAICS code that best represents the activities associated with the site, to the extent that it is known or reasonably ascertainable. In situations where multiple NAICS could apply and the reporter is unable to identify a single NAICS, such as for reporters that consolidate imports for multiple sites, submitters will be allowed to report up to three NAICS codes that best represent the activities associated with the intended use of the imported chemical substances. See the Instructions for Reporting for examples (Ref. 9). For more information, see the EPA's *Response to Comment*

Document (Ref. 10).

3. Modifying recycled information. EPA is finalizing as proposed the requirement to report whether a reportable chemical substance is recycled or otherwise used for a commercial purpose, instead of being disposed of as a waste or included in a waste stream. In past CDR reporting periods, CDR submitters have identified whether their reportable chemical substance is recycled, remanufactured, reprocessed, reused, or otherwise used for a commercial purpose instead of being disposed of as a waste or included in a waste stream. EPA is finalizing the modification to this data element by removing the terms "remanufactured, reprocessed, reused," as these terms may be interpreted and applied too broadly to obtain the information of interest for this collection. These terms are also not necessarily synonymous with "recycle" in all scenarios. For a more detailed discussion of this changes, see Unit III.B.3. of the proposed rule (Ref. 1).

For the proposed rule, EPA solicited comment on whether submitters should identify the percentage of total production volume of their chemical substance that is recycled, instead of only designating whether recycling occurred. While one commenter stated that modifying the required recycling data element to include the percentage of total production volume would be overly burdensome and impractical, other commenters supported reporting recycling by percentage if it is useful to the Agency in prioritization of chemicals for risk evaluation. EPA has determined that knowing whether any amount of the chemical is recycled or otherwise used for a commercial purpose, instead of being disposed of as a waste, is currently sufficient for TSCA purposes, and that the increased specificity of this data element may not warrant the associated potential increase in reporting burden. As a result of these comments, EPA is retaining a "yes or no" style of response and is not finalizing a requirement for reporters to identify the percent recycled when reporting to CDR.

4. Percent byproduct. EPA is finalizing as a voluntary reporting element the reporting of the percent total production volume (by weight) for a chemical substance that is a byproduct within four ranges: 0 percent, greater than 0 but less than 50 percent, greater than or equal to 50 percent but less than 100 percent, or 100 percent. This is a modification from the proposal, which proposed to require that the data element be reported and that the percentages for the percent byproduct be rounded to the nearest 10 percent, unless the percentage is less than 5 percent, rather than as a larger range. EPA received comments that both supported and opposed the addition of reporting the percent byproduct. Those who supported the addition stated that knowing the percent byproduct was useful for the Agency in order to provide future exemptions for those who recycle their byproducts, as it will enable the identification of manufacturers, such as the printed circuit board fabricators, who report to CDR solely due to their byproduct production. Other commenters stated that it is well-known that byproducts (organic and inorganic) can be important sources of exposure and risk and should be reported under the CDR rule so EPA can have information to aid with assessment of their health and environmental impact and be better able to "understand a larger spectrum of potential exposure scenarios, by improving understanding of the connection between manufacturing and downstream activities for the purposes of substance life cycle assessments and risk evaluation" (Ref. 10 and Ref. 19). Commenters who opposed the addition stated that this data element is unnecessary and could add complexity rather than reducing it.

Due to the comments received on this proposed data element and the concern that determining the specific percent byproduct (to the nearest 10 percent or more precisely if less than 5 percent) would be unnecessarily burdensome, EPA is finalizing the addition of this data element as a voluntary data element and to allow for reporting in ranges to reduce submitter

burden. Rather than reporters providing the specific percent byproduct as proposed, EPA is finalizing a requirement that reporters provide information about the percent byproduct by selecting one of four ranges.

A byproduct is a chemical substance that is produced without a separate commercial intent during the manufacture, processing, use, or disposal of another chemical substance(s) or mixture(s); because it is part of the manufacture of a chemical product for a commercial purpose, it is considered to be produced for the purpose of obtaining a commercial advantage and is therefore itself considered manufactured for a commercial purpose (40 CFR 704.3, definitions for *byproduct* and *manufacture for commercial purposes*). EPA is adding this voluntary data element to become more aware of which industries primarily manufacture byproducts and to be better able to understand a larger spectrum of potential exposure scenarios, for the purposes of chemical substance life cycle assessments and risk evaluation. In addition, EPA will use this information to inform future decisions about potential changes to CDR requirements.

Some commenters who opposed this data element appeared to mistakenly interpret that the percent byproduct meant what percentage of the reported chemical substance, which was not itself a byproduct, had some percentage of a byproduct remaining with the reported chemical substance. EPA is not requesting the reporting of the byproducts within the intended product, which frequently are referred to by industry as contaminants, but rather the byproducts that are manufactured and then separated from the intended product; these byproducts are required to be reported separately unless the production volume is under the reporting threshold or another exemption identified in applies. EPA will clarify how to report the percent byproduct in the Instructions for Reporting (Ref. 9). EPA believes that additional clarification in the guidance will improve understanding reporting this data element and minimize associated reporting burden.

For a more detailed discussion of this change, see Unit III.B.4. of the proposed rule (Ref. 1). Public comments related to the voluntary reporting of percent byproduct and EPA's responses can be found in the response to comment document (Ref. 10).

5. Chemical-specific function for imported mixtures. EPA is finalizing as proposed the requirement that the secondary submitter of a joint submission, typically the foreign supplier, report the chemical-specific function along with the already-required information on chemical composition of the imported product or mixture. A joint submission is most typically used when a substance or a mixture is imported and the supplier does not provide to the importer the specific chemical identity of the substance or substances that comprise the mixture. See Unit III.A. of the proposed rule for additional information about joint submissions (Ref. 1).

EPA received a comment that supported requiring the secondary submitter of a joint submission to report the chemical-specific function along with information on chemical composition of the imported product or mixture. Another commenter stated that providing this information on each joint submission may require a significant time to complete. EPA recognizes that providing this information may require some burden. EPA had already accounted for the associated burden, because the rule requires the function be provided on a chemical-specific basis but did not enable the appropriate party to provide such information. For example, for past submissions the primary submitter would report the function of the overall imported mixture, and that function would be applied to each chemical in the mixture. The comments suggested and our analysis supported having the primary or secondary submitter determine the function for each chemical in the mixture. Due to the suggestions received in public comments, EPA has sufficient support to justify support the secondary submitter determining the function for each chemical in the mixture. EPA's burden analysis for the final rule assumes that there is no difference in

burden regardless of whether the primary submitter or the secondary submitter determines the function for each chemical in the mixture. Therefore, there is no increase in burden for the secondary reporter to determine the function for each chemical in the mixture. See footnote 14 in section 4.1.3 of the Economic Analysis for additional information (Ref. 7).

A commenter stated that EPA should not require information on the chemical composition of the imported product or mixture. EPA notes that this is not a new requirement. The composition information, which is reported by the secondary submitter of a joint submission, is necessary to identify the chemicals that are included in the imported product and how much of the imported volume to attribute to each component chemical substance. EPA clarified the requirement to report the percentage of formulation for a chemical substance in an imported product in the regulatory text at 40 CFR 711.15(b)(3)(i)(A).

6. Parent Company identity. EPA is finalizing as proposed two changes and finalizing with modifications one change associated with reporting the parent company under CDR: (1) to add the requirement to report a foreign parent company in addition to reporting the highest-level U.S. parent company, when the ultimate parent company is located outside of the United States; (2) to remove the definition of U.S. parent company from 40 CFR 711.3 and replace it with a new definition for highest-level parent company; and (3) to add a requirement for reporters to report legal name(s) and to follow a naming convention for providing the parent company name(s), the details of which will be provided in the CDR Instructions for Reporting (Ref. 9; see 40 CFR 711.35).

EPA received one comment that supported the proposed changes to the parent company identity and another comment that expressed concern over the use of a naming convention and complications that will increase the burden. The naming convention is primarily a tool to

streamline the processes of capitalization, punctuation, and so on when identifying a parent company, and does not significantly impact burden. EPA believes that the use of the naming convention will not significantly impact the burden because the reporter does not have to do anything to collect or generate this information, and is finalizing as proposed. EPA was interested in receiving comments on whether the guidelines and these examples encompass the representative range of scenarios for reporting under CDR, and whether the guidelines included in the proposed definition are sufficient; EPA did not receive any comment on this aspect of the proposal.

EPA estimates that the addition of a foreign parent company will slightly increase the burden, which is explained in detail in Chapter 4.3.2 in the Economic Analysis (Ref. 7). EPA did not estimate the burden reduction associated with the reduced need to contact companies for quality control purposes after data submission.

a. Finalized changes to the definition of U.S. parent company. EPA is finalizing with modification from the proposal the replacement of the definition of U.S. parent company from 40 CFR 711.3 with a new definition for highest-level parent company that includes both U.S. and foreign parent companies and provides guidelines for different company structures. Under the new definition, *highest-level parent company* means the highest-level company(s) of the site's ownership hierarchy as of the date of the submission during which data are being reported according to specified instructions. The highest-level U.S. parent company is located within the United States, while the highest-level foreign parent company is located outside the United States. EPA modified the descriptions of site ownership scenarios contained in the new definition to enhance understanding of the scenarios.

b. Finalized reporting of foreign parent company. In some situations, the highest-level

parent company is outside of the United States. EPA is finalizing with modifications from the proposed the requirement that sites also identify the highest-level worldwide parent company, when applicable, and therefore is also finalizing the requirement to report the foreign parent company under 40 CFR 711.15. Under this final rule, reporters will continue to report their highest-level U.S. parent company, but will also report their highest-level foreign parent company if applicable. EPA recognizes that there are a variety of ownership situations for manufacturers reporting under CDR. In Unit III.B.7. of the proposed rule (Ref. 1), EPA listed the scenario-specific guidelines. EPA is finalizing the guidelines as part of the finalized definition of highest-level parent company in 40 CFR 711.3 with modifications to make the ownership situations easier to understand. The guidelines include how to populate the highest-level U.S. and foreign parent company data elements.

c. Finalizing use of naming convention. EPA is also finalizing the requirement for sites to follow the CDR instructions regarding standardized conventions for the naming of a parent company. These naming conventions address common formatting discrepancies, such as punctuation, capitalization, and abbreviations (*e.g.*, "Corp" for "Corporation"). The use of these naming conventions will reduce the number of inconsistencies with the Parent Company Name data field, and thus will increase the reliability and usability of the data and reduce the associated reporting burden due to the Agency's need to request corrections from reporting companies.

C. How has the reporting process for co-manufactured chemicals changed?

EPA is finalizing two new methodologies for manufacturers to report co-manufactured chemicals. Although these finalized methodologies reduce co-manufacturer confusion and address other industry concerns, EPA estimates that it will have a minimal impact on the burden and therefore did not include an estimate in the analysis. See section 4.1.3.2 in the Economic

Analysis for additional information (Ref. 7). As discussed in the proposed rule, EPA is avoiding the use of the term toll manufacturer for this final rule, so as to add clarity for the co-manufacturing situation. For a more detailed discussion of this change and additional background on co-manufacturing, see Unit III.C. of the proposed rule (Ref. 1).

In the proposed rule, EPA proposed a primary solution to the co-manufacturing mechanism, and requested comment on two potential alternatives to the reporting scenario. Commenters were supportive of EPA's approach to updating the mechanism that co-manufacturers report, but also requested more flexibility to enable the producing company to submit the CDR report on behalf of both companies. EPA agrees that additional flexibility is necessary and has chosen to finalize two different reporting methodologies for a co-manufacturing situation. The two following methodologies for reporting are based on the desire to reduce reporting burden and maintain flexibility for both the contracting and producing company. Contracting and producing companies must work together to select between the two following reporting methodologies for preparing their CDR submission.

1. First reporting procedure. Under the first reporting methodology, the contracting company (as the primary submitter) has the responsibility to initiate a co-manufacturer report that will prompt the reporting requirements for the producing company (as the secondary submitter). The contracting company will start the chemical report for the co-manufactured chemical, identifying the chemical substance and the producing company. The contracting company will then initiate the co-manufacturer report using e-CDRweb reporting tool to send a notification to the producing company. Additionally, the contracting company is responsible for completing the volume manufactured (40 CFR 711.15(b)(3)) and the processing and use-related section (40 CFR 711.15(b)(4)). Upon receipt of the email, the producing company will have the

information needed to begin its portion of the co-manufacturer report, which will include the manufacturing-related data elements from 40 CFR 711.15(b)(3), including the production volume. Each party will complete its part of the co-manufacturer joint report as part of its overall CDR submission and will not have access to the information submitted by the other party. For example, the processing and use information submitted by the contracting company will not be viewable by the producing company.

2. Second reporting procedure. To create more flexibility for reporters, EPA is also finalizing the alternative reporting methodology proposed for the co-manufacturing situation. This reporting methodology requires the contracting and producing company, upon written agreement, to work together to complete the reporting. For this second methodology, the producing company (instead of the contracting company) initiates and completes the reporting in e-CDR Web. The producing company would provide the exposure information from the manufacturing site. The producing company would then coordinate with the contracting company to obtain the additional information needed to complete the submission. For example, in a co-manufacturing situation, the producing company is not likely to know the processing and use information associated with the co-manufactured chemical, and therefore works with the contracting company to complete Part III of the CDR Form U. Therefore, any "not known or reasonably ascertainable" (referred to as "NKRA" when reporting to CDR) responses in Part III would refer to the knowledge of the contracting company and not the knowledge of the producing company. This coordination of information between the two parties must be done outside of e-CDRweb. Although the producing company would be submitting the report, both parties are responsible for the report. Therefore, if no report is filed, both the contracting company and the producing company can be held liable. This reporting mechanism would be

most appropriate in a scenario in which the producing company has the majority of the information regarding the production of a specific chemical.

3. Definition of site. EPA is finalizing an amendment to the definition of site by replacing the term *toll manufacturer* with the term *producing company*. This change makes terminology consistent between the CDR definitions of site and manufacture.

4. Relationship of co-manufacturing to imports. Consistent with the past CDR rule, only a domestically produced chemical substance can be the subject of a co-manufacturing report; an imported chemical substance cannot be. Rather, a chemical substance manufactured via an arrangement with a foreign supplier will be considered an imported chemical substance, and the U.S. importer alone, as the reporting manufacturer, is responsible for reporting that substance.

D. How has the reporting of byproducts changed?

EPA is finalizing two new exemptions associated with byproducts, the first finalized with a slight modification to add an additional substance and the second finalized as proposed. The finalized exemptions are (1) to exempt specifically-listed byproducts that are recycled in a site-limited, enclosed system and to provide for a petition process for the public to request additions to that list of exempted manufacturing processes and related byproduct substances; and (2) to exempt byproducts manufactured in pollution control and boiler equipment when that equipment is non-integral to the primary manufacturing process.

EPA also proposed, but is not finalizing, an alternative method of reporting by category for inorganic metal byproducts. Several commenters expressed concern that the proposal to allow for categorical inorganic metal byproduct reporting may actually increase as opposed to decrease reporting burden and/or add complexity for the regulated community. EPA has determined that the issues raised in the public comments associated with this optional reporting

method outweigh the potential benefits. More information is in Unit III.F.2.

Nine commenters supported to various degrees EPA's proposals specific to byproducts, though some asserted that additional clarification through guidance would be needed for reporters before finalization, and that there would be limited time (*i.e.*, less than a year) for familiarization with the changes before the next reporting cycle. Other commenters specifically opposed the proposed exemptions or changes for byproduct reporting, stating that these changes may constrain EPA's ability to obtain information it needs to carry out its duties under TSCA (*i.e.*, conducting chemical prioritization, risk evaluation, and risk management responsibilities). EPA disagrees with the notion that the new reporting exemptions hinder EPA's ability to carry out its obligations under TSCA and believes that the reasons for exempting these byproducts, laid out in the Response to Public Comments and in the proposed rule, are sufficient (Refs. 1 and 10). The Agency carefully considers its needs for the information collected under CDR and the burden associated with providing such information. Some commenters opposed the exemption by expressing that the byproduct exemptions were not extensive enough, claiming that all byproducts should be exempted or that beneficially used byproducts should be exempted.

1. Specific site-limited recycled byproducts. EPA is finalizing the proposal to exempt specifically identified byproducts that are recycled on-site from two particular industries, and is finalizing the petition process to make changes to this exemption list with some modifications to the proposal.

In the proposed exemption, Portland cement manufacturers that manufacture *Flue dust, portland cement* (CASRN 68475-76-3) (referred to as cement kiln dust), and manufacturers using the Kraft pulping process to manufacture *Sulfite liquors and Cooking liquors, spent* (CASRN 66071-92-9) (often comprised of what is referred to as black liquor) and *Carbonic acid*

calcium salt (1:1) (CASRN 471-34-1) (referred to as calcium carbonate) would be exempted from reporting these byproduct substances when (1) these substances are recycled or otherwise used to manufacture another chemical substance within an enclosed system, within the same overall manufacturing process, and on the same site where the byproduct was originally manufactured and (2) the non-exempted portion of the byproduct substance or a different chemical substance that was manufactured from the byproduct or manufactured in the same overall manufacturing process is still reported under CDR. For a more detailed discussion of the rationale for including these specific chemicals in this exemption, see Unit III.D.2. of the proposed rule (Ref. 1).

Four commenters were strongly supportive of this exemption, although some believe the exemption is too narrow. One commenter indicated that instead of listing processes and substances, the exemption should be self-determining, when the site documents in its own records that its self-identified process meets the exemption conditions for its manufactured byproducts. EPA disagrees with this comment, concluding that self-determination, as this commenter describes it, is not appropriate for this exemption, which is based on a thorough understanding of the engineering processes and controls of the operation that EPA would need to review (*i.e.*, via the described petition process) prior to allowing the exemption. However, for manufacturers that have evaluated EPA's detailed criteria for this exemption and have determined that their site meets these conditions, this exemption is in effect self-executing for the substances already listed at 40 CFR 711.10(d)(1)(i). For additional discussion, see the response to comments (Ref. 10).

Another commenter requested that EPA provide a non-isolated intermediate exemption determination for five chemicals that they manufacture related to the two original chemicals

listed from the Kraft pulping process. Because EPA did not propose changes to the non-isolated intermediate exemption, this comment is largely out of scope for this rulemaking. However, EPA is taking this opportunity to address this comment because of its connection with the new byproduct exemption in an effort to help the commenter apply the updated CDR reporting requirements in its 2020 reporting. EPA concluded that two of these five chemicals (Green liquor (CASRN 68131-30-6, S*ulfite liquors and Cooking liquors, green*)) and Lime (CASRN 1305-78-8, *Calcium oxide (CaO)* may be an intermediate and, depending on certain site-specific conditions, may qualify for the non-isolated intermediate exemption. EPA also determined that another of these five chemicals (Black liquor, oxidized (CASRN 68514-09-0, *Sulfite liquors and Cooking liquors, spent, oxidized*)) is a byproduct, is eligible for this new byproduct exemption, and has been added to the list of Kraft pulping process exempted substances. If, in the future, new information is provided to EPA to further inform EPA's understanding of the liquors and the Kraft pulping process, EPA can revisit its understanding. For additional discussion, see the response to comments (Ref. 10).

EPA also proposed a petition process to enable the public to request changes to the new list of specific exempted byproduct substances as produced in certain manufacturing processes. Because there may be other manufacturing processes and related byproduct substances that meet the criteria for this exemption, and because EPA’s interest in these byproduct substances may change, EPA may amend the list of byproduct substances and processes that have been included in this exemption. The Agency may do this on its own initiative or in response to a request from the public, based on EPA's determination of whether the manufacturing process and related byproduct substance described meet the criteria explained in this Unit. Most commenters supported the proposed petition process for the exemption while also suggesting modifications

and guidance. Some argued that the proposed process is too burdensome; others requested that EPA clarify how this process will operate, including by clarifying the criteria for seeking an amendment, how potentially sensitive information can be claimed confidential, and additional explanation and examples of what constitutes Agency "interest" in a byproduct substance. EPA agrees that clarification is needed regarding how the byproduct exemption petition process will operate and therefore will be providing enhanced guidance that will include examples of the types of information that a petition should include to assist EPA in its determination. The guidance will also clarify the confidentiality available for potentially sensitive information provided through the petition process, as well as what constitutes EPA's current interest. This guidance will be published prior to the start of the 2024 submission period.

EPA intended the proposed regulatory text in 40 CFR 711.30(a)(1) to address confidentiality concerns; specifically, as proposed, "Any person submitting information under this part may assert a confidentiality claim for that information at the time it is submitted." To emphasize how confidentiality will be addressed, EPA has included additional references to this petition process in the CBI substantiation procedures described in Unit III.A., as listed in 40 CFR 711.30(a)(3) and 40 CFR 711.30(b), to further provide certainty that information submitted as part of any petition may be claimed as confidential, and to clarify that such confidentiality claims must be substantiated at the time of submission to the Agency, unless the information claimed as confidential is described in TSCA section 14(c)(2). Additionally, EPA is requiring that if confidential information is submitted in a petition, the petitioner must also provide a sanitized version of the petition with the confidential information redacted, so that it may be publicly posted by the Agency.

Another commenter emphasized that decisions to make any changes to the list of

exempted manufacturing processes and substances need to be subject to public notice and a public comment opportunity. Because rulemaking is required to change the list of manufacturing processes and chemicals eligible for the exemption in 40 CFR 711.10(d)(1)(i), the public will receive notice of the change and could comment.

This commenter also requested that the regulatory text clearly indicate that two of the listed considerations are requirements for the exemption. To better reflect the requirements of the exemption, EPA has revised the regulatory text at 40 CFR 711.10(d)(1)(ii)(B) to clearly indicate that two of the four listed considerations are requirements.

Other commenters requested that EPA eliminate the second factor and stated a belief that the factors will result in additional analysis, tracking, and reporting. EPA disagrees that the second petition factor would result in more analysis, tracking or reporting than is already required. The second factor is a requirement that the byproduct substance itself (*e.g.,* a portion of the byproduct is used for a different purpose and not recycled in an enclosed system) or another chemical substance from the same overall manufacturing process is being reported. If the site has previously reported under CDR, then the site will have the information needed to address this factor. Regarding the second factor specifically, EPA expects to be able to ascertain typical exposure scenarios for an exempted byproduct's manufacturing process based on information for other substances that are reported at the facility in the same manufacturing process. If no other substances are reported, EPA would not otherwise have any exposure-related information associated with the manufacturing site.

2. Byproducts generated by specified non-integral processes. EPA is finalizing as proposed the exemption for byproducts manufactured in certain equipment via processes that are not integral to the production process. An integral process is the portion of the manufacturing

process that is chemically necessary or provides primary operational support for the production of the intended product. For the purposes of this exemption, certain associated processes that are not chemically required to produce the intended product would be considered non-integral. These may be required due to other regulations or the need to generate heat or electricity on-site, but are not specifically necessary for the manufacture of the intended product. In this final rule, byproducts manufactured due to the use of pollution control equipment and boilers that generate heat or electricity on-site, when such equipment is not part of the main production process, are exempted from reporting under CDR. For a more detailed discussion of this exemption, see Unit III.D.3. of the proposed rule (Ref. 1).

Most commenters supported this proposed exemption; some commenters requested that EPA expand the exemption to include beneficially used byproducts (*i.e.*, coal combustion residuals from utilities). However, the production of coal combustion residuals from utilities specifically is integral to the generation of electricity (the utility's product) and therefore is not applicable for this exemption, which is specifically for byproducts from non-integral equipment exemption. EPA disagrees with the suggestion that a designation under another statute (*e.g.*, RCRA) of "beneficially used" should be an indication that the substance should be exempted under TSCA.

Other commenters requested that EPA provide additional examples (i.e., wastewater treatment processes) and explanation through enhanced guidance. EPA is finalizing this exemption as proposed and will be providing guidance for this byproduct exemption in the Instructions for Reporting that will include examples of specific scenarios that meet the criteria of this exemption, such as wastewater treatment, flue gas desulfurization, and catalytic reduction systems. This guidance will be finalized prior to the start of the next submission period.

E. What technical modifications have been made to the regulatory text?

1. Removing outdated regulatory text. EPA is finalizing the proposal to remove regulatory text specific to the 2012 CDR submission period. This text is no longer relevant because the submission period was completed more than five years ago, and all phased-in reporting requirements from the change from the IUR to CDR have been fully in effect since the 2016 reporting cycle. EPA did not receive any public comment on removing outdated regulatory text.

2. Simplifying and clarifying regulatory text. EPA is finalizing the proposal to change or add regulatory text to simplify or clarify regulatory requirements throughout 40 CFR part 711. These changes are in addition to the finalized changes discussed elsewhere in this notice, and include revisions to the following provisions:

• 40 CFR 711.1, to update the title to include "Enforcement", to more clearly identify that the section discusses the scope, compliance, and enforcement of the CDR rule.

• 40 CFR 711.1(a), to remove the discussion about compiling and keeping current the TSCA Inventory, including the discussion about adding new chemicals to the Inventory. This discussion is unnecessary for an understanding of the scope of the CDR rule.

• 40 CFR 711.1(c), to include a statement about TSCA section 11 subpoena authority, as a reminder that EPA has this authority for compliance purposes.

• 40 CFR 711.3, to modify definitions for *e-CDRweb*, *Manufacture*, and *Site* for clarification purposes.

• 40 CFR 711.6(a)(4), to reverse the order of "certain forms of natural gas" and "water" for clarification purposes.

• 40 CFR 711.10, to remove duplicative wording and add clarity to the requirements.

• 40 CFR 711.15(a), to add clarity to the reporting requirements.

• 40 CFR 711.35(c)(1), to update references.

F. What proposed provisions are not being finalized?

In consideration of the public comments received, EPA is not finalizing at this time the following proposed amendments to the current CDR rule.

1. Public contact. EPA is not finalizing the proposal to enable the reporting of a public contact for each CDR submission as a voluntary data element. The addition of a public contact to handle public inquiries was modeled after TRI's approach to the public contact, albeit on a voluntary basis. For a more detailed discussion of this proposal, see Unit III.B.6. of the proposed rule (Ref. 1). EPA solicited comment on whether it would be helpful to have a public contact available, and whether it should be voluntary or required. One commenter stated that a new field for public contact is "not necessary and could be misleading." The commenter explained that the reporter already provides a technical contact for each submission and that the purpose of CDR is not a "right-to-know" for the public which would necessitate a direct line of communication between individual companies and the public. EPA appreciates the feedback that the proposed field of a voluntary public contact may be misleading and, therefore, is not finalizing this proposed data element. See the response to comment document (Ref. 10).

2. Alternative reporting in metal compound categories for inorganic byproducts. EPA is not finalizing the proposal to allow, but not require, CDR reporting within defined metal compound categories for certain elemental metals and inorganic metal compounds that are produced as inorganic byproducts. Manufacturers of these inorganic byproducts would have had the option to combine and report multiple inorganic byproduct metal substances, which otherwise would be reported individually as listed on the TSCA Inventory, into one or more

specifically-listed categories (*e.g.*, Chromium & Chromium Compounds). For a more detailed discussion of this proposal, see Unit III.D.1. of the proposed rule. Public comments related to the reporting in metal compound categories for inorganic byproducts and EPA's responses are in the response to comment document (Ref. 10).

Three commenters supported the proposed optional method of reporting inorganic metal byproducts, while six commenters either stated that optional category reporting would add reporting complexity or expressed doubt that it would be used. Other commenters opposed the proposal outright, bringing a number of perspectives to EPA's attention. In consideration of the stakeholder comments, EPA has determined that the potential for additional complexity and burden associated with category reporting for inorganic metal byproducts outweighs the potential benefits. Accordingly, EPA is not finalizing the proposed provision for alternative reporting in metal compound categories for inorganic byproducts. Because this proposed reporting approach is not being finalized, EPA is also not finalizing a specific definition of "inorganic chemical substance" under CDR at 40 CFR 711.3.

3. Consolidating byproduct exemption regulatory text. EPA is not finalizing the proposal to consolidate regulations regarding byproduct exemptions that affect reporting under the CDR rule into 40 CFR 711.10, such that all the CDR reporting exemptions regarding manufacturer activities would be in one place. Specifically, EPA proposed that language from 40 CFR 720.30(g) and (h) that is currently incorporated by reference would be replicated in 40 CFR 711.10(c) without change.

Industry and environmental advocacy commenters opposed bringing over the exemptions from 40 CFR 720.30 (the Premanufacture Notice (PMN) program) without changes, suggesting that EPA review the current definitions against the current TSCA and EPA data needs, justify

exemptions that will continue, and provide an opportunity for public comment on the justification. If exemptions were retained, commenters suggested both regulatory and guidance changes (Ref. 10).

The Agency has determined that guidance is currently sufficient to address these concerns. While there appears to be confusion surrounding the exemptions, that confusion in itself does not justify altering or removing the exemptions at this time. Obtaining information on percent byproduct in the next reporting cycle will further EPA's understanding of byproducts in commerce and will help to inform any future determination as to whether alteration of the existing exemptions is warranted.

IV. 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. EPA. TSCA Chemical Data Reporting Revisions and Small Manufacturer Definition Updates for Reporting and Recordkeeping Requirements Under TSCA section 8(a); Proposed Rule, Federal Register, 84 FR 17692, April 25, 2019 (FRL-9982-16).

2. EPA. Public Webinar to Obtain Feedback on Improving CDR; Outreach meeting. Attended by public, reporters to CDR, and EPA. Washington, DC. May 1, 2017.

3. Amy D Kyle. “Issues Raised by the Regulatory Negotiation on Inorganic Byproducts in the Toxic Substances Control Act as amended.” December 13, 2017. (EPA Docket EPA-HQ-

OPPT-2016-0597-0087).

4. EPA. Chemical Data Reporting; Requirements for Inorganic Byproduct Chemical Substances; Notice of Public Meeting; Cancellation and Public Input Opportunity. Proposed Rule, Federal Register, 82 FR 47423, October 12, 2017 (FRL-9968-94).

5. EPA (2020). Supporting Statement for an Information Collection Request (ICR) Addendum Under the Paperwork Reduction Act (PRA) (EPA ICR No. 1884.11; OMB Control Number 2070-0162). March 2020.

6. EPA. Request for Approval under the "Generic Clearance for the Collection of Routine Customer Feedback." (OMB Control Number: 2010-0042). February 2020.

7. EPA. *Economic Analysis for the Final Rule on TSCA Chemical Data Reporting (CDR) Revisions - (RIN 2070-AK33)*. Office of Pollution, Prevention, and Toxics. Washington, DC. December 2019.

8. EPA. CBI Substantiation Estimator Correction September 17, 2019. Office of Pollution, Prevention, and Toxics. Washington, DC. December 2019.

9. EPA. TSCA CDR Instructions for Reporting. Office of Pollution Prevention and Toxics. Washington, DC. February 2020.

10. EPA. Response to Public Comments on the Final TSCA Chemical Data Reporting (CDR) Revisions Rule. Office of Pollution Prevention and Toxics. Washington, DC. February 2020.

11. EPA. Meeting Memo – Tribal Outreach Sessions. Office of Pollution Prevention and Toxics. Washington, DC. July 30, and August 1, 2019.

12. EPA. Meeting Memo – Meeting with IPC. Office of Pollution Prevention and Toxics. Washington, DC. June 13, 2019.

13. EPA. Meeting Memo – IPC/TTM Site Visit/Plant Tour. Office of Pollution Prevention and Toxics. Sterling, VA. July 10, 2019.

14. EPA. Meeting Memo – Lehigh Hanson Cement Site Visit/Plant Tour. Office of Pollution Prevention and Toxics. Union Bridge, MD. August 9, 2019.

15. Franz, Christina to Hartman, Mark, August 9, 2019. Letter to EPA: "Request of the American Chemistry Council for EPA to Reopen CDR and CBI Rulemaking Comment Periods in Light of Supreme Court Decision." (EPA Docket EPA-HQ-OPPT-2018-0320-0038). American Chemistry Council. Washington, DC.

16. EPA. Statutory Requirements for Substantiation of Confidential Business Information (CBI) Claims Under the Toxic Substances Control Act (TSCA) (82 FR 6522, January 19, 2017). Office of Pollution Prevention and Toxics. Washington, DC.

17. EPA (2018). OPPT. Technical Support Document: Harmonizing CDR Functional and Product codes with OECD Functional, Product, and Article Codes. August 2018.

18. EPA. 1997 North American Industry Classification System- 1987 Standard Industrial Classification Replacement. Notice, Federal Register, 62 FR 17288. April 9, 1997.

19. Environment Defense Fund. "Environmental Defense Fund Comments on TSCA Chemical Data Reporting Revisions and Small Manufacturer Definition Update for Reporting and Recordkeeping Requirements." June 24, 2019. (EPA Docket EPA-HQ-OPPT-2018-0321-0107).

20. EPA. *Economic Analysis for the Proposed Rule on TSCA Section 8(a) Small Manufacturer Definition Update (RIN 2070-AK33)*. Office of Pollution, Prevention, and Toxics. Washington, DC. August 2018.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations-and-executive-orders*.

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB recommendations have been documented in the docket for this action as required by section 6(a)(3)(E) of Executive Order 12866.

EPA prepared an economic analysis of the potential costs and benefits associated with this action. A copy of this economic analysis, entitled *Economic Analysis for the TSCA Chemical Data Reporting Revisions Final Rule* (Ref. 7) is in the docket and is briefly summarized in Unit I.E.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is considered a regulatory action under Executive Order 13771 (82 FR 9339, February 3, 2017). Details on the estimated costs of this final rule can be found in the Economic Analysis (Ref. 7) which is briefly summarized in Unit I.E.

C. Paperwork Reduction Act (PRA)

For CDR, the information collection requirements in 40 CFR part 711 related to the submission of Form Us are already approved by OMB under the PRA, 44 U.S.C. 3501 *et seq*. That Information Collection Request (ICR) has been assigned EPA ICR No. 1884 and OMB Control No. 2070-0162. Because this final rule involves new or revised information collection activities that require additional OMB approval, EPA has prepared an addendum to the currently

approved ICR (ICR addendum) (Ref. 5). You can find a copy of the ICR addendum in the docket for this rule (EPA-HQ-OPPT-2018-0321), and it is briefly summarized here.

Respondents/affected entities: Entities potentially affected by this ICR include companies manufacturing (including importing) chemical substances listed on the TSCA Inventory and regulated under TSCA section 8.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 5,660.

Frequency of response: The collection occurs every four years. The next CDR collection will occur in 2020.

Total estimated burden: 26,469 hours per year. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $2,053,700 per year, includes $0 annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR addendum, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 4 CFR part 9 to display the OMB control number for the approved information collection action contained in this final rule.

D. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the RFA, 5 U.S.C. 601 *et seq.*, I certify that this action will not have a significant economic impact on a substantial number of small entities. The Agency's basis is briefly summarized here and is detailed in the Economic Analysis (Ref. 7).

Under RFA, small entities include small businesses, small organizations, and small

governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as:

1. A small business, as defined by the SBA's regulations at 13 CFR 121.201.

2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000.

3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

For CDR, the regulated community does not include small not-for-profit organizations. Therefore, the focus of the RFA analysis for this rule is on small businesses and small governments.

The existing CDR requirements, at 40 CFR 711, generally exempt from reporting small businesses, defined at 40 CFR 704.3 as entities with annual sales of less than $40 million and less than 100,000 lb production of any given chemical at a site; or annual sales of less than $4 million. A small business would be required to report under the final rule, however, if it produces any chemical that is the subject of a regulation proposed or promulgated under TSCA sections 4, 5(b)(4), or 6, or that is the subject of an order under TSCA section 5(e), or that is the subject of relief that has been granted pursuant to a civil action under TSCA section 5 or 7. A small business may also report voluntarily. No exemption for small governments is provided in the existing CDR requirements.

EPA estimates that 733 small industry parent entities and four small governmental entities would potentially be affected by this rule. Based on estimated maximum compliance costs annualized over a ten-year period and revenue data for parent entities, EPA estimates that the cost-to-revenue ratio of the CDR Revisions rule would be less than 1% for 727 (99%) of

small industry parent entities subject to the rule. An additional two small industry parent entities are expected to incur cost impacts between 1 and 3%, and four small industry parent entities are expected to incur cost impacts above 3%. None of the small government parent entities are expected to incur cost impacts of greater than 1% of revenues. Therefore, EPA concludes that compliance costs associated with the CDR revisions final rule are not expected to have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531-1538, and would not significantly or uniquely affect small governments. According to the information derived using the 2016 CDR, there are government entities that report to CDR, including: seven municipalities, one county-level public utility district, and one tribal entity. Impacts would not exceed $100 million for all governments. The final rule is not expected to result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (when adjusted annually for inflation) in any one year. Accordingly, this final rule is not subject to the requirements of sections 202, 203, or 205 of UMRA.

F. Executive Order 13132: Federalism

This action does not have federalism implications because it is not expected to have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications because it is not expected to have substantial direct effects on tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this final rule. On July 30 and August 1, 2019, EPA conducted two presentations as part of tribal outreach to provide background information on the proposed rule and to obtain feedback. Two identical outreach sessions were conducted, and EPA received no follow-up comments.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern environmental health or safety risks, such that the analysis required under section 5-501 of Executive Order 13045 has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it would not establish an environmental standard intended to mitigate health or safety risks. Nevertheless, the information obtained by the reporting required by this final rule will be used to inform the Agency's decision-making process regarding chemical substances to which children may be disproportionately exposed. This information would also assist the Agency and others in determining whether the chemical substances covered in this final rule present potential risks, allowing the Agency and others to take appropriate action to investigate and mitigate those risks.

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

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the

supply, distribution, or use of energy.

J. National Technology Transfer and Advancement Act (NTTAA)

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

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

This action is not expected to have high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The Agency believes that the rule would improve the information collected under CDR and better assist EPA and others in determining the potential hazards and risks associated with the chemical substances covered by the CDR. Because the CDR is an information collection requirement, the information that would be improved through the final rule would enable the Agency to target educational, regulatory, or enforcement activities towards industries or chemical substances that pose the greatest risks and/or to target programs for geographic areas that are at the highest risk. Thus, the information to be gathered under this rule will help EPA make decisions that would benefit potentially at-risk communities, some of which may be disadvantaged.

The rule is directed at manufacturers (including importers) of chemical substances. All consumers of these chemical products and all workers who come into contact with these chemical substances could benefit if data regarding the chemical substances' health and environmental effects were developed. Therefore, it would not appear that the costs and the benefits of the final rule would be disproportionately distributed across different geographic regions or among different categories of individuals.

VI. 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

40 CFR Part 711

Environmental protection, Toxic substances control act, TSCA chemical data reporting and recordkeeping requirements.

Dated: March 17, 2020.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, 40 CFR part 711 is amended as follows:

PART 711--[AMENDED]

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

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

2. Amend § 711.1 by revising paragraph (a) and (c), and the title of the section to read as follows:

§ 711.1 Scope, compliance, and enforcement.

(a) This subpart specifies reporting and recordkeeping procedures under section 8(a) of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2607(a)) for certain manufacturers (including importers) of chemical substances. TSCA section 8(a) authorizes the EPA Administrator to require reporting of information necessary for the administration of TSCA.

* * * * *

(c) TSCA section 15(3) makes it unlawful for any person to fail or refuse to submit information required under this part. In addition, TSCA section 15(3) makes it unlawful for any person to fail to keep, and permit access to, records required by this part. Section 16 of TSCA provides that any person who violates a provision of TSCA section 15 is liable to the United States for a civil penalty and may be criminally prosecuted. Pursuant to TSCA section 17, the Federal Government may seek judicial relief to compel submission of TSCA section 8(a) information and to otherwise restrain any violation of TSCA section 15. (EPA does not intend to concentrate its enforcement efforts on insignificant clerical errors in reporting.) TSCA section 11 allows for inspections to assure compliance, and the Administrator may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the Administrator deems necessary.

* * * * *

3. In § 711.3:

a. Revise the definition for *e-CDRweb*;

b. Revise the definition for *Manufacture*;

c. Revise paragraph (1) of the definition for *Site;*

d. Remove the definition for *U.S. parent company.*

e. Add alphabetically the definition for *Highest-level parent company*.

The additions and revisions read as follows:

§ 711.3 Definitions.

* * * * *

e-CDRweb means the electronic, web-based tool provided by EPA for the completion of Form U and submission of the CDR data.

* * * * *

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. A chemical substance is co-manufactured by the person who physically performs the manufacturing and the person contracting for such production when that chemical substance, manufactured other than by import, is:

(1) Produced exclusively for another person who contracts for such production, and

(2) That other person dictates the specific chemical identity of the chemical substance and controls the total amount produced and the basic technology for the manufacturing process.

* * * * *

Highest-level parent company means the highest-level company of the site's ownership hierarchy as of the start of the submission period during which data are being reported according to the following instructions. The highest-level U.S. parent company is located within the United States while the highest-level foreign parent company is located outside the United States. The following rules govern how to identify the highest-level U.S. parent company and highest-level foreign parent company (if applicable):

(1) If the site is entirely owned by a single U.S. company that is not owned by another company, that single company is the U.S. parent company.

(2) If the site is entirely owned by a single U.S. company that is, itself, owned by another U.S.-based company (*e.g.*, it is a division or subsidiary of a higher-level company), the highest-level domestic company in the ownership hierarchy is the United States parent company. If there is a higher-level parent company that is outside of the United States, the highest-level foreign company in the ownership hierarchy is the foreign parent company.

(3) If the site is owned by more than one company (*e.g.*, company A owns 40 percent, company B owns 35 percent, and company C owns 25 percent), the company with the largest ownership interest in the site is the parent company. If a higher-level company in the ownership hierarchy owns more than one ownership company, then determine the entity with the largest ownership by considering the lower-level ownerships in combination (e.g., corporation x owns companies B and C, for a total ownership of 60 percent for the site).

(a) If the parent company is a U.S. company owned by another U.S. company, then the highest-level domestic company in the ownership hierarchy is the U.S. parent company. If the U.S. parent company has a higher-level foreign company in the ownership hierarchy, then the highest-level foreign company in the ownership hierarchy is the foreign parent company.

(b) If the parent company is a foreign company, then the site is its own U.S. parent company and the foreign parent company is the highest-level foreign company in the ownership hierarchy.

(4) If the site is owned by a 50:50 joint venture or a cooperative, the joint venture or cooperative is its own parent company. If the site is owned by a U.S. joint venture or cooperative, the highest level of the joint venture or cooperative is the U.S. parent company. If the site is owned by a joint venture or cooperative outside the United States, the highest level of the joint venture or cooperative outside the United States is the foreign parent company.

(5) If the site is entirely owned by a foreign company (*i.e.*, without a U.S.-based subsidiary within the site's ownership hierarchy), the highest-level foreign company in the ownership hierarchy is the site's foreign parent company.

(6) If the site is federally owned, the highest-level federal agency or department is the U.S. parent company.

(7) If the site is owned by a non-federal public entity, that entity (such as a municipality, State, or tribe) is the U.S. parent company.

* * * * *

Sites * * *

(1) For chemical substances manufactured under contract, *i.e.*, by a co-manufacturer, the site is the location where the chemical substance is physically manufactured.

* * * * *

4. Amend § 711.6 by revising the section heading, the introduction paragraph and the first sentence in paragraph (a)(4) to read as follows.

§ 711.6 Chemical substances for which information is not required.

The following groups or categories of chemical substances are exempted from some or all of the reporting requirements of this part, with the following exception: A chemical substance described in paragraph (a)(1), (a)(2), or (a)(4), or (b) of this section is not exempted from any of the reporting requirements of this part if that chemical substance is the subject of a rule proposed or promulgated under TSCA sections 4, 5(a)(2), 5(b)(4), or 6, or is the subject of an enforceable consent agreement (ECA) developed under the procedures of 40 CFR part 790, or is the subject of an order issued under TSCA sections 4, 5(e), or 5(f), or is the subject of relief that has been granted under a civil action under TSCA sections 5 or 7.

* * * * *

(a) * * *

(4). *Water and certain forms of natural gas*.

* * * * *

5. Amend § 711.8 by revising paragraph (a) and (b) to read as follows:

§ 711.8 Persons who must report.

* * * * *

(a) *Persons subject to recurring reporting*—Any person who manufactured (including imported) for commercial purposes 25,000 lb (11,340 kg) or more of a chemical substance described in § 711.5 at any single site owned or controlled by that person during any calendar year since the last principal reporting year.

* * * * *

(b) *Exceptions*. Any person who manufactured (including imported) for commercial purposes any chemical substance that is the subject of a rule proposed or promulgated under TSCA sections 5(a)(2), 5(b)(4), or 6, or is the subject of an order in effect under TSCA sections

4, 5(e) or 5(f), or is the subject of relief that has been granted under a civil action under TSCA sections 5 or 7 is subject to reporting as described in § 711.8(a), except that the applicable production volume threshold is 2,500 lb (1,134 kg).

6. Amend § 711.9 to read as follows:

§ 711.9 Persons not subject to this part.

A person described in § 711.8 is not subject to the requirements of this part if that person qualifies as a small manufacturer or small government as those terms are defined in 40 CFR 704.3. Notwithstanding this exclusion, a person who qualifies as a small manufacturer or small government is subject to this part with respect to any chemical substance that is the subject of a rule proposed or promulgated under TSCA sections 4, 5(b)(4), or 6, or is the subject of an order in effect under TSCA sections 4 or 5(e), or is the subject of relief that has been granted under a civil action under TSCA sections 5 or 7.

7. Amend § 711.10 to read as follows:

§ 711.10 Activities for which reporting is not required.

A person described in § 711.8 is not subject to the requirements of this part with respect to any chemical substance described in § 711.5, when:

(a) The person manufactured or imported the chemical substance solely in small quantities for research and development.

(b) The person imported the chemical substance as part of an article.

(c) The person manufactured the chemical substance in a manner described in 40 CFR 720.30(g) or (h).

(d) The person manufactured the chemical substance in any of the following manners:

(1) Byproduct substances listed in subparagraph (i) for the following manufacturing

processes, when recycled or otherwise used within a site-limited, physically enclosed system that is part of the same overall manufacturing process from which the byproduct substance was generated, and when the site is reporting the byproduct or a different chemical substance that was manufactured from the recycled byproduct or manufactured in the same overall manufacturing process:

(i) *List of processes and certain related byproduct substances.*

(A) Portland Cement Manufacturing (*i.e.*, CASRN 68475-76-3, Flue dust, portland cement).

(B) Kraft Pulping Process (*i.e.*, CASRN 66071-92-9, Sulfite liquors and Cooking liquors, spent; CASRN 68514-09-0, Sulfite liquors and Cooking liquors, spent, oxidized; and CASRN 471-34-1, Carbonic acid calcium salt (1:1)).

(ii) *Amendments*. EPA may amend the exemptions list in paragraph (d)(1)(i) of this section on its own initiative or in response to a request from the public based on EPA's determination of whether the byproduct substance and process described meet the criteria explained in paragraph (d)(1) of this section, based on the requirements and considerations listed in paragraphs (d)(1)(ii)(B) and (d)(1)(ii)(C) of this section.

(A) Any person may request that EPA amend the chemical substance list in paragraph (d)(1)(i) of this section. Your request must be in writing and must be submitted to the address provided in 40 CFR 700.17(a). Please label your request as follows: Attention: TSCA Chemical Data Reporting—Byproduct Exemption Request. Requests must identify the manufacturing process and byproduct chemical substance in question, as well as its CASRN or other chemical identification number as identified in 40 CFR 711.15(b)(3)(i), and must contain a written rationale for the request that provides sufficient specific information, addressing the

requirements and considerations listed in (d)(1)(ii)(B) and (d)(1)(ii)(C) of this section, including citations and relevant documents, to demonstrate to EPA that the byproduct substance and process in question either does or does not meet the criteria explained in paragraph (d)(1) of this section. If a request related to a particular byproduct substance and process is resubmitted, any subsequent request must clearly identify new information contained in the request. EPA may request other information that it believes necessary to evaluate the request. EPA will issue a written response to each request within 120 days of receipt of the request and will maintain copies of these responses in a docket that will be established for each reporting cycle.

(B) In making its determination whether this exemption should apply to a particular manufacturing process and related byproduct substance, the following two requirements must be met:

(*1*) The byproduct substance is recycled or otherwise used to manufacture another chemical substance within an enclosed system, within the same overall manufacturing process, and on the same site as that byproduct was originally manufactured.

(*2*) The site is reporting under CDR other chemical substances, in particular a chemical substance other than the byproduct substance that was manufactured from the byproduct or manufactured in the same overall manufacturing process.

(C) In addition to the requirements in paragraph (d)(1)(ii)(B) of this section, EPA will consider the totality of information available for the process and related byproduct substance in question, including but not limited to, one or both of the following considerations:

(*1*) Whether EPA has a current interest in the byproduct substance.

(*2*) Whether the byproduct substance must have already been reported under CDR, or would be expected to be reported if not exempted by this exemption.

(D) After granting a petition, the Agency will initiate rulemaking to make revisions to the list of substances in paragraph (d)(1)(i) of this section.

(E) To assist EPA in reaching a decision regarding a particular request prior to a given principal reporting year, requests must be submitted to EPA no later than 12 months prior to the start of the next principal reporting year.

(2) A quantity of the byproduct that is manufactured solely in the following equipment when it is not integral to the chemical manufacturing processes of the site:

(i) Pollution control equipment.

(ii) Boilers used to generate heat or electricity for that site.

8. Amend § 711.15 to read as follows.

§ 711.15 Reporting information to EPA.

Any person who must report under this part, as described in § 711.8, must submit the information described in this section for each chemical substance described in § 711.5 that the person manufactured (including imported) for commercial purposes in an amount of 25,000 lb (11,340 kg) or more (or in an amount of 2,500 lb (1,134 kg) or more for chemical substances subject to the rules, orders, or actions described in § 711.8(b)) at any one site during any calendar year since the last principal reporting year (*e.g.*, for the 2020 submission period, consider calendar years 2016, 2017, 2018, and 2019, because 2015 was the last principal reporting year). The principal reporting year for each submission period is the previous calendar year (*e.g.*, the principal reporting year for the 2020 submission period is calendar year 2019). For all submission periods, a separate report must be submitted for each chemical substance at each site for which the submitter is required to report. A submitter of information under this part must report information as described in this section to the extent that such information is known to or

reasonably ascertainable by that person.

(a) *Reporting information to EPA.* Any person who reports information to EPA must complete a Form U using the e-CDRweb reporting tool provided by EPA at the address set forth in § 711.35. The submission must include all information described in paragraph (b) of this section. Persons must submit the chemical reports on a separate single Form U for each site for which the person is required to report. The e-CDRweb reporting tool is described in the instructions available from EPA at the Web site set forth in § 711.35.

(b) *Information to be reported.* The information described in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this section must be reported for each chemical substance manufactured (including imported) in an amount of 25,000 lb (11,340 kg) or more (or in an amount of 2,500 lb (1,134 kg) or more for chemical substances subject to the rules, orders, or actions described in § 711.8(b)) at any one site during any calendar year since the last principal reporting year. The requirement to report information described in paragraph (b)(4) of this section is subject to exemption as described in § 711.6.

(1) *A certification statement signed and dated by an authorized official of the submitter company.* The authorized official must certify that the submitted information has been completed in compliance with the requirements of this part and that the confidentiality claims made on the Form U are true and correct. The certification must be signed and dated by the authorized official for the submitter company, and provide that person's name, official title, and e-mail address.

(2) *Company and site information.* The following currently correct parent company and site information at the date of CDR submission must be reported for each site at which a reportable chemical substance is manufactured (including imported) above the applicable production volume threshold, as described in this section (see § 711.3 for the "site" for importers

and special situations).

(i) The legal name, address, and Dun and Bradstreet D-U-N-S® (D&B) number for the highest-level parent company located in the United States and, if one exists, for the highest-level foreign-based parent company. A submitter under this part must obtain a D&B number for the parent company if none exists and must report using the standardized conventions for the naming of a parent company as provided in the CDR Instructions for Reporting identified in § 711.35.

(ii) The name of a person who will serve as technical contact for the submitter company who will be able to answer questions about the information submitted by the company to EPA, and that technical contact person's full mailing address, telephone number, and e-mail address.

(iii) The legal name and full street address of each site. A submitter under this part must include the appropriate D&B number for each site reported, and the county or parish (or other jurisdictional indicator) in which the site is located. A submitter under this part must obtain a D&B number for the site reported if none exists. For a co-manufacturing situation in which the contracting company initiates the report, the contracting company must report both the site controlling the contract and the producing company's site information.

(iv) The six-digit NAICS code for the site. A submitter under this part must include the appropriate six-digit NAICS code for each site reported.

(3) *Chemical-specific information.* The following chemical-specific information must be reported for each reportable chemical substance manufactured (including imported) above the applicable production volume threshold, as described in paragraph (b) of this section:

(i) The specific, currently correct CA Index name as used to list the chemical substance on the TSCA Inventory and the correct corresponding CASRN for each reportable chemical substance at each site. Submitters who wish to report chemical substances listed on the

confidential portion of the TSCA Inventory will need to report the chemical substance using the corresponding TSCA Accession Number that is listed on the public portion of the Inventory. In addition to reporting the chemical identifying number itself, submitters must specify the type of number they are reporting by selecting from among the codes in Table 3 of this paragraph.

Table 3—Codes to Specify Type of Chemical Identifying Number

Code	Number type
A	TSCA Accession Number.
C	Chemical Abstracts Service Registry Number (CASRN).

(A) If an importer submitting a report cannot provide the information specified in § 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 use e-CDRweb to ask the supplier to provide the correct chemical identity and, in the case of a mixture, the percentage of formulation and chemical function information directly to EPA in a joint submission. Such request must include instructions for submitting chemical identity information electronically, using e-CDRweb and CDX (see § 711.35), and for clearly referencing the importer's 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.

(B) If a manufacturer submitting a report cannot provide the information specified in § 711.15(b)(3)(i) because the reportable chemical substance is manufactured using a reactant having a specific chemical identity that is unknown to the manufacturer and claimed as confidential by its supplier, the manufacturer must use e-CDRweb to ask the supplier of the confidential reactant to provide the correct chemical identity of the confidential reactant directly to EPA in a joint submission. Such request must include instructions for submitting chemical

identity information electronically using e-CDRweb and CDX (see § 711.35), and for clearly referencing the manufacturer's submission. Contact information for the supplier, a trade name or other designation for the chemical substance, and a copy of the request to the supplier must be included with the importer's submission.

(C) EPA will accept only joint submissions that are submitted electronically using e-CDRweb and CDX (see § 711.35) and that clearly reference the primary submission to which they refer.

(ii) For the principal reporting year only, a statement indicating, for each reportable chemical substance at each site, whether the chemical substance is manufactured in the United States, imported into the United States, or both manufactured in the United States and imported into the United States.

(iii) For the principal reporting year only, the total annual volume (in pounds) of each reportable chemical substance domestically manufactured or imported at each site. The total annual domestically manufactured volume (not including imported volume) and the total annual imported volume must be separately reported. These amounts must be reported to two significant figures of accuracy. In addition, the total annual volume (domestically manufactured plus imported volumes in pounds) of each reportable chemical substance at each site for each complete calendar year since the last principal reporting year.

(iv) For the principal reporting year only, the volume used on site and the volume directly exported of each reportable chemical substance domestically manufactured or imported at each site. These amounts must be reported to two significant figures of accuracy.

(v) For the principal reporting year only, a designation indicating, for each imported reportable chemical substance at each site, whether the imported chemical substance is

physically present at the reporting site.

(vi) For the principal reporting year only, a designation indicating, for each reportable chemical substance at each site, whether the chemical substance is being recycled or otherwise used for a commercial purpose instead of being disposed of as a waste or included in a waste stream.

(vii) For the principal reporting year only, the total number of workers reasonably likely to be exposed to each reportable chemical substance at each site. For each reportable chemical substance at each site, the submitter must select from among the ranges of workers listed in Table 4 of this paragraph and report the corresponding code (*i.e.,* W1 through W8):

Table 4—Codes for Reporting Number of Workers Reasonably Likely to be Exposed

Code	Range
W1	Fewer than 10 workers.
W2	At least 10 but fewer than 25 workers.
W3	At least 25 but fewer than 50 workers.
W4	At least 50 but fewer than 100 workers.
W5	At least 100 but fewer than 500 workers.
W6	At least 500 but fewer than 1,000 workers.
W7	At least 1,000 but fewer than 10,000 workers.
W8	At least 10,000 workers.

(viii) For the principal reporting year only, the maximum concentration, measured by percentage of weight, of each reportable chemical substance at the time it is sent off-site from each site. If the chemical substance is site-limited, you must report the maximum concentration, measured by percentage of weight of the reportable chemical substance at the time it is reacted on-site to produce a different chemical substance. This information must be reported regardless of the physical form(s) in which the chemical substance is sent off-site/reacted on-site. For each chemical substance at each site, select the maximum concentration of the chemical substance

from among the ranges listed in Table 5 of this paragraph and report the corresponding code (*i.e.,* M1 through M5):

Table 5—Codes for Reporting Maximum Concentration of Chemical Substance

Code	Concentration range (percent weight)
M1	Less than 1 percent by weight.
M2	At least 1 but less than 30 percent by weight.
M3	At least 30 but less than 60 percent by weight.
M4	At least 60 but less than 90 percent by weight.
M5	At least 90 percent by weight.

(ix) For the principal reporting year only, the physical form(s) of the reportable chemical substance as it is sent off-site from each site. If the chemical substance is site-limited, you must report the physical form(s) of the reportable chemical substance at the time it is reacted on-site to produce a different chemical substance. For each chemical substance at each site, the submitter must report as many physical forms as applicable from among the physical forms listed in this Unit:

(A) Dry powder.

(B) Pellets or large crystals.

(C) Water- or solvent-wet solid.

(D) Other solid.

(E) Gas or vapor.

(F) Liquid.

(x) For the principal reporting year only, submitters must report the percentage, rounded off to the closest 10 percent, of total production volume of the reportable chemical substance, reported in response to paragraph (b)(3)(iii) of this section, that is associated with each physical form reported under paragraph (b)(3)(ix) of this section.

(4) *Chemical-specific information related to processing and use.* The following chemical-specific information must be reported for each reportable chemical substance manufactured (including imported) above the applicable production volume threshold, as described in this section. Persons subject to paragraph (b)(4) of this section must report the information described in paragraphs (b)(4)(i) and (b)(4)(ii) of this section for each reportable chemical substance at sites under their control and at sites that receive a reportable chemical substance from the submitter directly or indirectly (including through a broker/distributor, from a customer of the submitter, *etc.*). Information reported in response to this paragraph must be reported for the principal reporting year only and only to the extent that it is known to or reasonably ascertainable by the submitter. Information required to be reported under this paragraph is limited to domestic (*i.e.,* within the customs territory of the United States) processing and use activities. If information responsive to a given data requirement under this paragraph, including information in the form of an estimate, is not known or reasonably ascertainable, the submitter is not required to respond to the requirement.

(i) *Industrial processing and use information*—(A) A designation indicating the type of industrial processing or use operation(s) at each site that receives a reportable chemical substance from the submitter site directly or indirectly (whether the recipient site(s) are controlled by the submitter site or not). For each chemical substance, report the letters which correspond to the appropriate processing or use operation(s) listed in Table 6 of this paragraph. A particular designation may need to be reported more than once, to the extent that a submitter reports more than one sector (under paragraph (b)(4)(i)(B) of this section) that applies to a given designation under this paragraph.

Table 6—Codes for Reporting Type of Industrial Processing or Use Operation

Designation	Operation

PC	Processing as a reactant.
PF	Processing—incorporation into formulation, mixture, or reaction product.
PA	Processing—incorporation into article.
PK	Processing—repackaging.
U	Use—non-incorporative activities.

(B) A code indicating the sector(s) that best describe the industrial activities associated with each industrial processing or use operation reported under paragraph (b)(4)(i)(A) of this section. For each chemical substance, report the code that corresponds to the appropriate sector(s) listed in Table 7 of this paragraph. A particular sector code may need to be reported more than once, to the extent that a submitter reports more than one function code (under paragraph (b)(4)(i)(C) of this section) that applies to a given sector code under this paragraph.

Table 7—Codes for Reporting Industrial Sectors

Code	Sector Description
IS1	Agriculture, forestry, fishing, and hunting.
IS2	Oil and gas drilling, extraction, and support activities.
IS3	Mining (except oil and gas) and support activities.
IS4	Utilities.
IS5	Construction.
IS6	Food, beverage, and tobacco product manufacturing.
IS7	Textiles, apparel, and leather manufacturing.
IS8	Wood product manufacturing.
IS9	Paper manufacturing.
IS10	Printing and related support activities.
IS11	Petroleum refineries.
IS12	Asphalt paving, roofing, and coating materials manufacturing.
IS13	Petroleum lubricating oil and grease manufacturing.
IS14	All other petroleum and coal products manufacturing.
IS15	Petrochemical manufacturing.
IS16	Industrial gas manufacturing.
IS17	Synthetic dye and pigment manufacturing.
IS18	Carbon black manufacturing.
IS19	All other basic inorganic chemical manufacturing.
IS20	Cyclic crude and intermediate manufacturing.

IS21	All other basic organic chemical manufacturing.
IS22	Plastics material and resin manufacturing.
IS23	Synthetic rubber manufacturing.
IS24	Organic fiber manufacturing.
IS25	Pesticide, fertilizer, and other agricultural chemical manufacturing.
IS26	Pharmaceutical and medicine manufacturing.
IS27	Paint and coating manufacturing.
IS28	Adhesive manufacturing.
IS29	Soap, cleaning compound, and toilet preparation manufacturing.
IS30	Printing ink manufacturing.
IS31	Explosives manufacturing.
IS32	Custom compounding of purchased resins.
IS33	Photographic film, paper, plate, and chemical manufacturing.
IS34	All other chemical product and preparation manufacturing.
IS35	Plastics product manufacturing.
IS36	Rubber product manufacturing.
IS37	Non-metallic mineral product manufacturing (includes cement, clay, concrete, glass, gypsum, lime, and other non-metallic mineral product manufacturing).
IS38	Primary metal manufacturing.
IS39	Fabricated metal product manufacturing.
IS40	Machinery manufacturing.
IS41	Computer and electronic product manufacturing.
IS42	Electrical equipment, appliance, and component manufacturing.
IS43	Transportation equipment manufacturing.
IS44	Furniture and related product manufacturing.
IS45	Miscellaneous manufacturing.
IS46	Wholesale and retail trade.
IS47	Services.
IS48	Other (requires additional information).

(C) For each sector reported under paragraph (b)(4)(i)(B) of this section, the applicable code(s) from Table 8 of this paragraph must be selected to designate the function category(ies) that best represents the specific manner in which the chemical substance is used. For the 2020 submission period: (1) use column A in Table 8 for chemical substances designated in 2019 as high priority for risk evaluation (those chemicals listed in Table 9) and (2) use either column A

or B in Table 8 for chemical substances not listed in Table 9. For the 2024 and future submission periods, use only column A in Table 8. A particular function category may need to be reported more than once, to the extent that a submitter reports more than one industrial processing or use operation/sector combination (under paragraphs (b)(4)(i)(A) and (b)(4)(i)(B) of this section) that applies to a given function category under this paragraph. If more than 10 unique combinations of industrial processing or use operations/sector/ function categories apply to a chemical substance, submitters need only report the 10 unique combinations for the chemical substance that cumulatively represent the largest percentage of the submitter's production volume for that chemical substance, measured by weight. If none of the listed function categories accurately describes a use of a chemical substance, the category "Other" may be used, and must include a description of the use.

Table 8—Codes for Reporting Function Categories

For the 2020 submission period: (1) use column A for chemical substances designated in 2019 as high priority for risk evaluation (those chemicals listed in Table 9) and (2) use either column A or B for chemical substances not listed in Table 9. For the 2024 and future submission periods, use only column A.			
Column A		**Column B**	
Code	**Category**	**Code**	**Category**
F001	Abrasives	U001	Abrasives.
F002	Etching agent		
F003	Adhesion/cohesion promoter	U002	Adhesives and sealant chemicals.
F004	Binder		
F005	Flux agent		
F006	Sealant (barrier)		
F007	Absorbent	U003	Adsorbents and absorbents.
F008	Adsorbent		
F009	Dehydrating agent (desiccant)		

F010	Drier		
F011	Humectant		
F012	Soil amendments (fertilizers)	U004	Agricultural chemicals (non-pesticidal).
F013	Anti-adhesive/cohesive	U005	Anti-adhesive agents.
F014	Dusting agent		
F015	Bleaching agent	U006	Bleaching agents.
F016	Brightener		
F017	Anti-scaling agent	U007	Corrosion inhibitors and anti-scaling agents.
F018	Corrosion inhibitor		
F019	Dye	U008	Dyes.
F020	Fixing agent (mordant)		
F021	Hardener	U009	Fillers.
F022	Filler		
F023	Anti-static agent	U010	Finishing agents.
F024	Softener and conditioner		
F025	Swelling agent		
F026	Tanning agents not otherwise specified		
F027	Waterproofing agent		
F028	Wrinkle resisting agent		
F029	Flame retardant	U011	Flame retardants.
F030	Fuel agents	U012	Fuels and fuel additives.
F031	Fuel		
F032	Heat transferring agent	U013	Functional fluids (closed systems).
F033	Hydraulic fluids		
F034	Insulators		
F035	Refrigerants		
F036	Anti-freeze agent	U014	Functional fluids (open systems).
F037	Intermediate	U015	Intermediates.
F038	Monomers		

F039	Ion exchange agent	U016	Ion exchange agents.
F040	Anti-slip agent	U017	Lubricants and lubricant additives.
F041	Lubricating agent		
F042	Deodorizer	U018	Odor agents.
F043	Fragrance		
F044	Oxidizing agent	U019	Oxidizing/reducing agents.
F045	Reducing agent		
F046	Photosensitive agent	U020	Photosensitive chemicals.
F047	Photosensitizers		
F048	Semiconductor and photovoltaic agent		
F049	UV stabilizer		
F050	Opacifer	U021	Pigments.
F051	Pigment		
F052	Plasticizer	U022	Plasticizers.
F053	Plating agent	U023	Plating agents and surface treating agents.
F054	Catalyst	U024	Process regulators.
F055	Chain transfer agent		
F056	Chemical reaction regulator		
F057	Crystal growth modifiers (nucleating agents)		
F058	Polymerization promoter		
F059	Terminator/Blocker		
F060	Processing aids, specific to petroleum production	U025	Processing aids, specific to petroleum production.
F061	Antioxidant	U026	Processing aids, not otherwise listed.
F062	Chelating agent		
F063	Defoamer		
F064	pH regulating agent		
F065	Processing aids not otherwise specified		

F066	Energy Releasers (explosives, motive propellant)	U027	Propellants and blowing agents.
F067	Foamant		
F068	Propellants, non-motive (blowing agents)		
F069	Cloud-point depressant	U028	Solids separation agents.
F070	Flocculating agent		
F071	Flotation agent		
F072	Solids separation (precipitating) agent, not otherwise specified		
F073	Cleaning agent	U029	Solvents (for cleaning or degreasing).
F074	Diluent	U030	Solvents (which become part of product formulation or mixture).
F075	Solvent		
F076	Surfactant (surface active agent)	U031	Surface active agents.
F077	Emulsifier		
F078	Thickening agent	U032	Viscosity adjustors.
F079	Viscosity modifiers		
F080	Laboratory chemicals	U033	Laboratory chemicals.
F081	Dispersing agent	U034	Paint additives and coating additives not described by other categories.
F082	Freeze-thaw additive		
F083	Surface modifier		
F084	Wetting agent (non-aqueous)		
F085	Aerating and deaerating agents	U999	Other (specify).
F086	Explosion inhibitor		
F087	Fire extinguishing agent		
F088	Flavoring and nutrient		
F089	Anti-redeposition agent		
F090	Anti-stain agent		
F091	Anti-streaking agent		
F092	Conductive agent		

F093	Incandescent agent		
F094	Magnetic element		
F095	Anti-condensation agent		
F096	Coalescing agent		
F097	Film former		
F098	Demulsifier		
F099	Stabilizing agent		
F100	Alloys		
F101	Density modifier		
F102	Elasticizer		
F103	Flow promoter		
F104	Sizing agent		
F105	Solubility enhancer		
F106	Vapor pressure modifiers		
F107	Embalming agent		
F108	Heat stabilizer		
F109	Preservative		
F110	Anti-caking agent		
F111	Deflocculant		
F112	Dust suppressant		
F113	Impregnation agent		
F114	Leaching agent		
F115	Tracer		
F116	X-ray absorber		
F999	Other		

Table 9—CASRNs of Chemical Substances Designated as High Priority for Risk Evaluation under TSCA section 6(b) on December 30,2019

CASRN	Chemical Substance
106-46-7	p-Dichlorobenzene
107-06-2	1,2-Dichloroethane
156-60-5	trans-1,2- Dichloroethylene

95-50-1	o-Dichlorobenzene
79-00-5	1,1,2-Trichloroethane
78-87-5	1,2-Dichloropropane
75-34-3	1,1-Dichloroethane
84-74-2	Dibutyl phthalate (DBP) (1,2-Benzene- dicarboxylic acid, 1,2- dibutyl ester)
85-68-7	Butyl benzyl phthalate (BBP) - 1,2-Benzene- dicarboxylic acid, 1- butyl 2(phenylmethyl) ester
117-81-7	Di-ethylhexyl phthalate (DEHP) - (1,2-Benzene- dicarboxylic acid, 1,2- bis(2-ethylhexyl) ester)
84-69-5	Di-isobutyl phthalate (DIBP) - (1,2-Benzene- dicarboxylic acid, 1,2- bis-(2methylpropyl) ester)
84-61-7	Dicyclohexyl phthalate
79-94-7	4,4'-(1-Methylethylidene)bis[2, 6-dibromophenol] (TBBPA)
115-96-8	Tris(2-chloroethyl) phosphate (TCEP)
115-86-6	Phosphoric acid, triphenyl ester (TPP)
106-93-4	Ethylene dibromide
106-99-0	1,3-Butadiene
1222-05-5	1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8-hexamethylcyclopenta [g]-2-benzopyran (HHCB)
50-00-0	Formaldehyde
85-44-9	Phthalic anhydride

(D) The estimated percentage, rounded off to the closest 10 percent, of total production volume of the reportable chemical substance associated with each combination of industrial processing or use operation, sector, and function category. Where a particular combination of industrial processing or use operation, sector, and function category accounts for less than 5 percent of the submitter's site's total production volume of a reportable chemical substance, the percentage must not be rounded off to 0 percent if the production volume attributable to that industrial processing or use operation, sector, and function category combination is 25,000 lb (11,340 kg) or more during the reporting year. Instead, in such a case, submitters must report the percentage, rounded off to the closest 1 percent, of the submitter's site's total production volume of the reportable chemical substance associated with the particular combination of industrial processing or use operation, sector, and function category.

(E) For each combination of industrial processing or use operation, sector, and function

category, the submitter must estimate the number of sites at which each reportable chemical substance is processed or used. For each combination associated with each chemical substance, the submitter must select from among the ranges of sites listed in Table 10 of this paragraph and report the corresponding code (*i.e.,* S1 through S7):

Table 10—Codes for Reporting Numbers of Sites

Code	Range
S1	Fewer than 10 sites.
S2	At least 10 but fewer than 25 sites.
S3	At least 25 but fewer than 100 sites.
S4	At least 100 but fewer than 250 sites.
S5	At least 250 but fewer than 1,000 sites.
S6	At least 1,000 but fewer than 10,000 sites.
S7	At least 10,000 sites.

(F) For each combination of industrial processing or use operation, sector, and function category, the submitter must estimate the number of workers reasonably likely to be exposed to each reportable chemical substance. For each combination associated with each chemical substance, the submitter must select from among the worker ranges listed in paragraph (b)(3)(vii) of this section and report the corresponding code (*i.e.,* W1 though W8).

(ii) *Consumer and commercial use information*—(A) Using the applicable codes listed in Table 11 of this paragraph, submitters must designate the consumer and commercial product category(ies) that best describe the consumer and commercial products in which each reportable chemical substance is used (whether the recipient site(s) are controlled by the submitter site or not). For the 2020 submission period: (1) use column A in Table 11 for chemical substances designated in 2019 as high priority for risk evaluation (those chemicals listed in Table 9) and (2) use either column A or B in Table 11 for chemical substances not listed in Table 9. For the 2024 and future submission periods, use only column A in Table 11. If more than 10 codes apply to a

chemical substance, submitters need only report the 10 codes for the chemical substance that cumulatively represent the largest percentage of the submitter's production volume for that chemical, measured by weight. If none of the listed consumer and commercial product categories accurately describes the consumer and commercial products in which each reportable chemical substance is used, the category "Other" may be used, and must include a description of the use.

Table 11—Codes for Reporting Consumer and Commercial Product Categories

For the 2020 submission period: (1) use column A for chemical substances designated in 2019 as high priority for risk evaluation (those chemicals listed in Table 9) and (2) use either column A or B for chemical substances not listed in Table 9. For the 2024 and future submission periods, use only column A.			
Column A		**Column B**	
Code	**Category**	**Code**	**Category**
Chemical Substances in Furnishing, Cleaning, Treatment Care Products			
CC101	Construction and building materials covering large surface areas including stone, plaster, cement, glass and ceramic articles; fabrics, textiles, and apparel	C101	Floor coverings.
CC102	Furniture & furnishings including plastic articles (soft); leather articles	C102	Foam seating and bedding products.
CC103	Furniture & furnishings including stone, plaster, cement, glass and ceramic articles; metal articles; or rubber articles	C103	Furniture and furnishings not covered elsewhere.
CC104	Leather conditioner	C104	Fabric, textile, and leather products not covered elsewhere.
CC105	Leather tanning, dye, finishing, impregnation and care products		
CC106	Textile (fabric) dyes		
CC107	Textile finishing and impregnating/surface treatment products		
CC108	All-purpose foam spray cleaner	C105	Cleaning and furnishing care products.
CC109	All-purpose liquid cleaner/polish		
CC110	All-purpose liquid spray cleaner		
CC111	All-purpose waxes and polishes		
CC112	Appliance cleaners		
CC113	Drain and toilet cleaners (liquid)		
CC114	Powder cleaners (floors)		
CC115	Powder cleaners (porcelain)		
CC116	Dishwashing detergent (liquid/gel)	C106	Laundry and dishwashing products.
CC117	Dishwashing detergent (unit dose/granule)		
CC118	Dishwashing detergent liquid (hand-wash)		
CC119	Dry cleaning and associated products		
CC120	Fabric enhancers		
CC121	Laundry detergent (unit-dose/granule)		
CC122	Laundry detergent (liquid)		

CC123	Stain removers		
CC124	Ion exchangers	C107	Water treatment products.
CC125	Liquid water treatment products		
CC126	Solid/Powder water treatment products		
CC127	Liquid body soap	C108	Personal care products.
CC128	Liquid hand soap		
CC129	Solid bar soap		
CC130	Air fresheners for motor vehicles	C109	Air care products.
CC131	Continuous action air fresheners		
CC132	Instant action air fresheners		
CC133	Anti-static spray	C110	Apparel and footwear care products.
CC134	Apparel finishing, and impregnating/surface treatment products		
CC135	Insect repellent treatment		
CC136	Pre-market waxes, stains, and polishes applied to footwear		
CC137	Post-market waxes, and polishes applied to footwear (shoe polish)		
CC138	Waterproofing and water-resistant sprays		
Chemical Substances in Construction, Paint, Electrical, and Metal Products			
CC201	Fillers and putties	C201	Adhesives and sealants.
CC202	Hot-melt adhesives		
CC203	One-component caulks		
CC204	Solder		
CC205	Single-component glues and adhesives		
CC206	Two-component caulks		
CC207	Two-component glues and adhesives		
CC208	Adhesive/Caulk removers	C202	Paints and coatings.
CC209	Aerosol spray paints		
CC210	Lacquers, stains, varnishes and floor finishes		
CC211	Paint strippers/removers		
CC212	Powder coatings		
CC213	Radiation curable coatings		
CC214	Solvent-based paint		
CC215	Thinners		
CC216	Water-based paint		
CC217	Construction and building materials covering large surface areas, including wood articles	C203	Building/construction materials—wood and engineered wood products.

CC218	Construction and building materials covering large surface areas, including paper articles; metal articles; stone, plaster, cement, glass and ceramic articles	C204	Building/construction materials not covered elsewhere.
CC219	Machinery, mechanical appliances, electrical/electronic articles	C205	Electrical and electronic products.
CC220	Other machinery, mechanical appliances, electronic/electronic articles		
CC221	Construction and building materials covering large surface areas, including metal articles	C206	Metal products not covered elsewhere.
CC222	Electrical batteries and accumulators	C207	Batteries.
Chemical Substances in Packaging, Paper, Plastic, Toys, Hobby Products			
CC301	Packaging (excluding food packaging), including paper articles	C301	Food packaging.
CC302	Other articles with routine direct contact during normal use, including paper articles	C302	Paper products.
CC303	Packaging (excluding food packaging), including rubber articles; plastic articles (hard); plastic articles (soft)	C303	Plastic and rubber products not covered elsewhere.
CC304	Other articles with routine direct contact during normal use including rubber articles; plastic articles (hard)		
CC305	Toys intended for children's use (and child dedicated articles), including fabrics, textiles, and apparel; or plastic articles (hard)	C304	Toys, playground, and sporting equipment.
CC306	Adhesives applied at elevated temperatures	C305	Arts, crafts, and hobby materials.
CC307	Cement/concrete		
CC308	Crafting glue		
CC309	Crafting paint (applied to body)		
CC310	Crafting paint (applied to craft)		
CC311	Fixatives and finishing spray coatings		
CC312	Modelling clay		
CC313	Correction fluid/tape	C306	Ink, toner, and colorant products.
CC314	Inks in writing equipment (liquid)		

CC315	Inks used for stamps		
CC316	Toner/Printer cartridge		
CC317	Liquid photographic processing solutions	C307	Photographic supplies, film, and photochemicals.
Chemical Substances in Automotive, Fuel, Agriculture, Outdoor Use Products			
CC401	Exterior car washes and soaps	C401	Automotive care products.
CC402	Exterior car waxes, polishes, and coatings		
CC403	Interior car care		
CC404	Touch up auto paint		
CC405	Degreasers	C402	Lubricants and greases.
CC406	Liquid lubricants and greases		
CC407	Paste lubricants and greases		
CC408	Spray lubricants and greases		
CC409	Anti-freeze liquids	C403	Anti-freeze and de-icing products.
CC410	De-icing liquids		
CC411	De-icing solids		
CC412	Lock de-icers/releasers		
CC413	Cooking and heating fuels	C404	Fuels and related products.
CC414	Fuel additives		
CC415	Vehicular or appliance fuels		
CC416	Explosive materials	C405	Explosive materials.
CC417	Agricultural non-pesticidal products	C406	Agricultural products (non-pesticidal).
CC418	Lawn and garden care products	C407	Lawn and garden care products.
Chemical Substances in Products not Described by Other Codes			
CC980	Other (specify)	C909	Other (specify).
CC990	Non-TSCA use	C980	Non-TSCA use.

(B) For each consumer and commercial product category reported under paragraph (b)(4)(ii)(A) of this section, the applicable code(s) described in paragraph (b)(4)(i)(C) of this section must be selected to designate the function category(ies) that best represents the specific manner in which the chemical substance is used. For the 2020 submission period: (1) use column A in Table 8 for chemical substances designated in 2019 as high priority for risk evaluation (those chemicals listed in Table 9) and (2) use either column A or B in Table 8 for chemical substances not listed in Table 9. For the 2024 and future submission periods, use only column A in Table 8. A particular function category may need to be reported more than once, to the extent

that a submitter reports more than one consumer or commercial product category (under paragraphs (b)(4)(ii)(A) of this section) that applies to a given function category under this paragraph. If none of the listed function categories accurately describes a use of a chemical substance, the category "Other" may be used, and must include a description of the use.

(C) An indication, within each consumer and commercial product category reported under paragraph (b)(4)(ii)(A) of this section, whether the use is a consumer or a commercial use.

(D) Submitters must determine, within each consumer and commercial product category reported under paragraph (b)(4)(ii)(A) of this section, whether any amount of each reportable chemical substance manufactured (including imported) by the submitter is present in (for example, a plasticizer chemical substance used to make pacifiers) or on (for example, as a component in the paint on a toy) any consumer products intended for use by children age 14 or younger, regardless of the concentration of the chemical substance remaining in or on the product. Submitters must select from the following options: The chemical substance is used in or on any consumer products intended for use by children; the chemical substance is not used in or on any consumer products intended for use by children; or information as to whether the chemical substance is used in or on any consumer products intended for use by children is not known to or reasonably ascertainable by the submitter.

(E) The estimated percentage, rounded off to the closest 10 percent, of the submitter's site's total production volume of the reportable chemical substance associated with each consumer and commercial product category. Where a particular consumer and commercial product category accounts for less than 5 percent of the total production volume of a reportable chemical substance, the percentage must not be rounded off to 0 percent if the production volume attributable to that commercial and consumer product category is 25,000 lb (11,340 kg)

or more during the reporting year. Instead, in such a case, submitters must report the percentage, rounded off to the closest 1 percent, of the submitter's site's total production volume of the reportable chemical substance associated with the particular consumer and commercial product category.

(F) Where the reportable chemical substance is used in consumer or commercial products, the estimated typical maximum concentration, measured by weight, of the chemical substance in each consumer and commercial product category reported under paragraph (b)(4)(ii)(A) of this section. For each chemical substance in each commercial and consumer product category reported under paragraph (b)(4)(ii)(A) of this section, submitters must select from among the ranges of concentrations listed in Table 5 in paragraph (b)(3)(viii) of this section and report the corresponding code (*i.e.,* M1 through M5).

(G) Where the reportable chemical substance is used in a commercial product, the submitter must estimate the number of commercial workers reasonably likely to be exposed to each reportable chemical substance. For each combination associated with each substance, the submitter must select from among the worker ranges listed in Table 4 in paragraph (b)(3)(vii) of this section and report the corresponding code (*i.e.,* W1 though W8).

9. Amend § 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, which runs from June 1 to September 30 at 4-year intervals, beginning in 2020. In each submission period, any person described in § 711.8 must report as described in this part.

10. Amend § 711.22 by revising paragraph (c) to read as follows:

§ 711.22 Duplicative reporting.

* * * * *

(c) *Co-manufactured chemicals.* This part requires that only one report per site be submitted on each chemical substance described in §711.5. However, both the contracting company and producing company are liable if no report is made. When a company contracts with a producing company to manufacture a chemical substance, and each party meets the definition of "manufacturer" as set forth in §711.3, reporting of the co-manufactured chemical can be performed by one of the following methods:

(1) The contracting company initiates the required report for that site as the primary submitter. The contracting company must indicate on the report that this is a co-manufacturing situation, notify the producing company, and record the production volume domestically co-manufactured as set forth in §711.15(b)(3) and processing and use information set forth in §711.15(b)(4). Upon notification by the contracting company, the producing company must also record the production volume domestically co-manufactured and complete the rest of the report as prompted by e-CDRweb.

(2) Upon written agreement between the contracting company and the producing company, the producing company completes the full report for the co-manufactured chemical. The contracting company supplies the information not otherwise known to or reasonably ascertainable by the producing company.

* * * * *

11. Amend § 711.30 to read as follows.

§ 711.30 Confidentiality claims.

(a) *Generally.* (1) Any person submitting information under this part may assert a

confidentiality claim for that information at the time it is submitted, except for information described in paragraph (2). Any such confidentiality claims must be asserted at the time the information is submitted. These claims will apply only to the information submitted with the claim. Instructions for asserting confidentiality claims are provided in the document identified in § 711.35. Information claimed as confidential in accordance with this section will be treated and disclosed in accordance with the procedures in 40 CFR part 2 and section 14 of TSCA.

(2) *Exceptions*. Confidentiality claims cannot be asserted:

(i) For chemical identities listed on the public portion of the TSCA Inventory;

(ii) For processing and use data elements required by § 711.15(b)(4)(i)(A), (B), and (C) and § 711.15(b)(4)(ii)(A), (B), (C), and (D); or

(iii) When a response is left blank or designated as "not known or reasonably ascertainable."

(3) All confidentiality claims must be substantiated at time of submission, in accordance with the requirements in subsections (b), (c), and (d)(1) of this section, and must be signed and dated by an authorized official. Confidentiality claims for the following data elements are exempt from this substantiation requirement:

(i) Production volume information required pursuant to § 711.15(b)(3)(iii).

(ii) Joint submission information from the primary submitter, consisting of trade name and supplier identification required pursuant to § 711.15(b)(3)(i)(A) and (B).

(iii) Joint submission information from the secondary submitter, consisting of the percentage of formulation required pursuant to § 711.15(b)(3)(i)(A) and (B).

(iv) Information that is supplied in a petition submitted under § 711.6(b)(2)(iii) or § 711.10(d)(1)(ii) and that is described in section 14(c)(2) of TSCA.

(4) *Marking information claimed as confidential in confidentiality substantiation documentation.* If any of the information contained in the answers to the questions listed in subsections (b) and (c) of this section is asserted to contain information that itself is considered to be confidential, you must clearly identify the information that is claimed confidential.

(5) *Certification statement for claims.* An authorized official representing a person asserting a claim of confidentiality must certify that the submission complies with the requirements of this part by signing and dating the following certification statement:

> "I certify that all claims for confidentiality asserted with this submission are true and correct, and all information submitted herein to substantiate such claims is true and correct. Any knowing and willful misrepresentation is subject to criminal penalty pursuant to 18 U.S.C. 1001. I further certify that: (1) I have taken reasonable measures to protect the confidentiality of the information; (2) I have determined that the information is not required to be disclosed or otherwise made available to the public under any other Federal law; (3) I have a reasonable basis to conclude that disclosure of the information is likely to cause substantial harm to the competitive position of my company; and (4) I have a reasonable basis to believe that the information is not readily discoverable through reverse engineering."

(6) *Company, site, and technical contact identity information.* A submitter may assert a claim of confidentiality for a site, company, or technical contact identity to protect the link between that information and the reported chemical substance. Such claim may be asserted only when the linkage of that information to a reportable chemical substance is confidential and not publicly available.

(7) *Processing and use information.* A submitter may assert a claim of confidentiality for each data element required by § 711.15(b)(4)(i)(D), (E) and (F) and § 711.15(b)(4)(ii)(E), (F), and (G) to protect the link between that information and the reported chemical substance. Such claim may be asserted only when the linkage of that information to a reportable chemical substance is confidential and not publicly available.

(b) *All confidentiality claims requiring substantiation at time of submission.* For each

data element (or information supplied in a petition submitted under § 711.6(b)(2)(iii)(A) or § 711.10(d)(1)(ii)(A)) that is claimed as confidential, you must submit with your report detailed written answers to the following questions:

(1) Will disclosure of the information claimed as confidential likely cause substantial harm to your business's competitive position? If you answered yes, describe the substantial harmful effects that would likely result to your competitive position if the information is disclosed, including but not limited to how a competitor could use such information, and the causal relationship between the disclosure and the harmful effects.

(2) To the extent your business has disclosed the information to others (both internally and externally), has your business taken precautions to protect the confidentiality of the disclosed information? If yes, please explain and identify the specific measures, including but not limited to internal controls, that your business has taken to protect the information claimed as confidential.

(3)(i) Is any of the information claimed as confidential required to be publicly disclosed under any other Federal law? If yes, please explain.

(ii) Does any of the information claimed as confidential otherwise appear in any public documents, including (but not limited to) safety data sheets; advertising or promotional material; professional or trade publications; state, local, or Federal agency files; or any other media or publications available to the general public? If yes, please explain why the information should be treated as confidential.

(iii) Does any of the information claimed as confidential appear in one or more patents or patent applications? If yes, please provide the associated patent number or patent application number (or numbers) and explain why the information should be treated as confidential.

(4) Does any of the information that you are claiming as confidential constitute a trade secret? If yes, please explain how the information you are claiming as confidential constitutes a trade secret.

(5) Is the claim of confidentiality intended to last less than 10 years (see TSCA section 14(e)(1)(B))? If yes, please indicate the number of years (between 1–10 years) or the specific date after which the claim is withdrawn.

(6) Has EPA, another federal agency, or court made any confidentiality determination regarding information associated with this chemical substance? If yes, please provide the circumstances associated with the prior determination, whether the information was found to be entitled to confidential treatment, the entity that made the decision, and the date of the determination.

(c) *Additional requirements for specific chemical identity.* A person may assert a claim of confidentiality for the specific chemical identity of a chemical substance as described in § 711.15(b)(3) of this part only if the identity of that chemical substance is treated as confidential in the Master Inventory File as of the time the report is submitted for that chemical substance. Generic chemical identities and accession numbers may not be claimed as confidential. To assert a claim of confidentiality for the identity of a reportable chemical substance, you must submit with the report detailed written answers to the questions from subsection (b) and to the following questions.

(1) Is this chemical substance publicly known (including by your competitors) to be in U.S. commerce? If yes, please explain why the specific chemical identity should still be afforded confidential status (*e.g.,* the chemical substance is publicly known only as being distributed in commerce for research and development purposes, but no other information about the current

commercial distribution of the chemical substance in the United States is publicly available). If no, please complete the certification statement:

> I certify that on the date referenced, I searched the internet for the chemical substance identity (*i.e.*, by both chemical substance name and CASRN). I did not find a reference to this chemical substance that would indicate that the chemical is being manufactured or imported by anyone for a commercial purpose in the United States. [provide date].

(2) Does this particular chemical substance leave the site of manufacture (including import) in any form, *e.g.*, as a product, effluent, emission? If yes, please explain what measures have been taken to guard against the discovery of its identity.

(3) If the chemical substance leaves the site in a form that is available to the public or your competitors, can the chemical identity be readily discovered by analysis of the substance (*e.g.*, product, effluent, emission), in light of existing technologies and any costs, difficulties, or limitations associated with such technologies? Please explain why or why not.

(4) Would disclosure of the specific chemical name release confidential process information? If yes, please explain.

(d) *Special Situations.* (1) *Joint Submissions.* If a primary submitter asks a secondary submitter to provide information directly to EPA in a joint submission under § 711.15(b)(3)(i)(A) and (B), only the primary submitter may assert a confidentiality claim for the data elements that it directly submits to EPA. The primary submitter must substantiate those claims that are not exempt under subparagraph (a)(3)(ii) of this section. The secondary submitter is responsible for asserting all confidentiality claims for the data elements that it submits directly to EPA and for substantiating those claims that are not exempt under subparagraph (a)(3)(iii) of this section.

(2) *Petitions.* If a petition submitted under § 711.6(b)(2)(iii)(A) or § 711.10(d)(1)(ii)(A) includes any information claimed as confidential, the petitioner must provide a version of the

petition that redacts the information claimed as confidential.

(e) *No claim of confidentiality.* Information not claimed as confidential in accordance with the requirements of this section may be made public without further notice to the submitter.

12. Amend § 711.35 by revising paragraph (c)(1) to read as follows:

§ 711.35 Electronic filing.

* * * * *

(c) * * *

(1) *By Website*. Go to the EPA Chemical Data Reporting Internet homepage at *http://www.epa.gov/cdr* and follow the appropriate links.

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