



EPA Amends TSCA Definition of "Small Manufacturer"

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EPA recently issued a final rule amending Toxic Substances Control Act (TSCA) regulations concerning "small manufacturers" of chemical substances. Companies that meet the regulatory definition of a "small manufacturer" of chemical substances are exempt from certain reporting and recordkeeping obligations under TSCA. The amendment, which became effective on June 29, 2020, increased total annual sale thresholds in the definition, which in turn increased the number of companies eligible for the exemption.

Generally, TSCA requires companies manufacturing 25,000 pounds or more of a chemical substance at any site in a calendar year to report to EPA certain details regarding the company and the chemicals manufactured (known as "Chemical Data Reporting" or CDR). Reported information includes such details as chemical identities of all substances produced above the reporting threshold, total annual production (or import) volume, volumes used onsite and volumes exported, and information related to exposure risks to onsite workers. One significant exemption from CDR requirements is for "small manufacturers."

Prior to the amendment, a chemical manufacturer that did not manufacture in excess of 100,000 pounds of any one chemical at any one site in a calendar year qualified as a "small manufacturer" and was exempt from CDR if their total annual sales were less than \$40 million. If the company exceeded the 100,000 pound production threshold for a particular chemical, it was not considered "small" for purposes of reporting on that chemical, unless the company had less than \$4 million in total annual sales. Any company whose total annual sales were less than \$4 million was "small" and exempt, regardless of production volume.

The recent amendment to the definition of "small manufacturer" adjusts this two-part standard for inflation. The new definition includes those companies with (i) total annual sales (combined with those of any parent company) of less than \$120 million (increased from \$40 million), unless the company manufactures more than 100,000 pounds of any one chemical at a site; or (ii) total annual sales of less than \$12 million (increased from \$4 million), regardless of production volume.

For companies considered "small" under the first part of the standard (\$120 million total annual sales

and less than 100,000 pounds), the company may be considered "small" and exempt for some chemical substances but not "small" for others, triggering limited CDR requirements. Such a company would continue to report only for those chemical substances produced in excess of 100,000 pounds annually. Companies qualifying as "small" based on the second part of the standard (\$12 million total annual sales) and those qualifying as "small" for all chemical substances under the first part of the standard will be exempt entirely from reporting.

In the preamble to the amendment, EPA estimates the new definition of "small manufacturer" will result in the complete elimination of CDR reporting for 127 industry sites and will reduce CDR requirements for 173 industry sites, significantly reducing regulatory compliance costs for many companies. The small manufacturer exemption from CDR is self-implementing, meaning EPA does not make a determination as to whether a company is "small" prior to CDR reporting. Chemical manufacturers should carefully review annual sales and production volumes to determine if they may be exempt from some or all CDR reporting obligations under the new rule.

Small Manufacturer Definition Update for Reporting and Recordkeeping Requirements Under the Toxic Substances Control Act (TSCA) Section 8(a), 85 Fed. Reg. 31986 (May 28, 2020).

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