



North American Metals Council
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June 24, 2019

Via Docket Submission

Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Re: Proposed Rule under the Toxic Substances Control Act Section
8(a) Chemical Data Reporting Revisions and Small Manufacturer
Definition Update; Docket Number EPA-HQ-OPPT-2018-0321

Dear Sir or Madam:

The North American Metals Council (NAMC)¹ is pleased to submit these comments in response to the U.S. Environmental Protection Agency's (EPA) proposal to amend the Toxic Substances Control Act (TSCA) Section 8(a) Chemical Data Reporting (CDR) requirements and the size standards for small manufacturers. NAMC's comments focus on the proposed changes related to inorganic byproducts reporting. While NAMC is not opposed to the proposed changes, we believe that they will not achieve a significant reduction in the reporting burden and may, in some cases, increase the burden -- at least for the next CDR reporting cycle in 2020. Additional details are noted below.

Background

In the *Federal Register* notice for this proposal, EPA states that one of the primary reasons for the proposed revisions is to reduce the burden for CDR reporters. EPA further states that, as part of the Negotiated Rulemaking Committee for manufacturers of inorganic byproducts (in which NAMC participated), EPA identified approaches to reduce the reporting burden for that particular sector.

¹ NAMC is an unincorporated, not-for-profit organization serving as a collective voice for North American metals producers and users. NAMC is a leader for the metals industry on science- and policy-based issues affecting metals.



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NAMC fully supports changes that would reduce the reporting burden for inorganic byproducts. This aligns with Congress' intent to identify ways to limit reporting burdens associated with inorganic byproduct reporting under the CDR, as articulated in Section 8(a)(6)(A) of the Frank R. Lautenberg Chemical Safety for the 21st Century Act:

The [U.S. Environmental Protection Agency (EPA)] Administrator shall enter into a negotiated rulemaking ... to develop and publish ... a proposed rule providing for *limiting the reporting requirements*, under this subsection, for manufacturers of any inorganic byproducts, when such byproducts, whether by the byproduct manufacturer or by any other person, are subsequently recycled, reused, or reprocessed.²

NAMC acknowledges EPA's efforts to identify approaches to achieve reduced reporting for inorganic byproducts under the CDR. NAMC believes, however, that the approaches related to byproduct reporting in the proposed rule will not achieve significant reporting reduction and, in some cases, may increase the reporting burden.

Reporting Production Volumes for Byproducts May Increase the Reporting Burden

EPA is also proposing that submitters identify the percentage of total production volume of their chemical substance that is recycled instead of only designating whether recycling occurred. NAMC questions whether this proposal might raise additional reporting challenges for those companies that both manufacture and recycle the reported chemical. While NAMC understands that EPA would like to meet its overall information needs and align them with TSCA, certain chemical substances can be manufactured as both a primary chemical and as a byproduct. NAMC anticipates that EPA's proposal to require total percentage of product volume of a reported chemical from byproduct recycling processing could be of concern to this particular segment of the reporting community.

² TSCA § 8(a)(6)(A), 15 U.S.C. § 2607(a)(6)(A) (emphasis added).



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NAMC Supports the Proposed Petition Process to Exempt Certain Byproduct Recycling Processes

NAMC applauds EPA's proposal for a petition process to exempt certain byproduct recycling processes that occur within enclosed systems or otherwise have reduced exposure potential. As previously noted, the recycling of inorganic byproducts that would otherwise be disposed of as waste is complicated and evolving. By establishing a petition process for exemptions, EPA allows impacted stakeholders to evaluate their own unique processes to determine if an exemption is reasonable and appropriate. We support fully the concept of a petition process to request consideration of other exemptions in the future.

Reporting for Metals as a Category May Not Achieve Reduced Reporting

EPA's proposal to reduce burden by reporting via specified metal categories versus specific metal forms (*e.g.*, nickel and nickel compounds, versus the exact form of nickel) could be helpful. NAMC is concerned, however, that the additional stipulations included in the EPA proposal, such as reporting in weight versus volume and noted exclusions from category listing, may affect stakeholders' interest in using the voluntary category reporting option. NAMC is not sure how many industry stakeholders will actually take advantage of the metal categories reporting due to its additional stipulations.

Revising Reporting Codes to Harmonize with OECD Will Increase Reporting Burdens

While we recognize EPA's general desire to harmonize reporting codes within the Organization for Economic Cooperation and Development (OECD), we note that this change will certainly increase burden for the next reporting cycle as companies would not be able to rely on code combinations reported in past submissions. Beyond the 2020 reporting cycle, it is unclear whether the specificity of the OECD codes will reduce or increase industry's reporting burden.

Conclusion

As outlined above, NAMC has concerns about several of the proposed CDR revisions as they apply to recycled inorganics. We also note that this is the fifth set of CDR modifications in as many reporting cycles, and the final changes will be implemented less than a



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year before reporting is required in 2020. Therefore, while these proposed changes may ultimately prove helpful to the reporting community, the reality is that regulated stakeholders will bear an increased burden in the near future.

Given that the next CDR reporting cycle is coming up next year, we hope EPA staff can move quickly to issue a final rule and complete testing on the new electronic system. We also hope that this upcoming adjustment in CDR requirements will be the last for a while, so companies can set their internal processes with the confidence that no further changes are forthcoming in the short term.

We remain committed to continuing our dialogue with EPA staff on the particular issue of recycled byproducts and CDR reporting, and look forward to future opportunities for advocacy.

Thank you for the opportunity to submit these comments.

Sincerely,

Kathleen M. Roberts
NAMC Executive Director