

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 711

[EPA-HQ-OPPT-2014-0826; FRL-9921-57]

TSCA Section 8(a) Partial Exemption in Chemical Data Reporting; TSCA Section 21 Petition; Reasons for Agency Response

AGENCY: Environmental Protection Agency (EPA).

ACTION: Petition; reasons for Agency response.

SUMMARY: This document announces the availability of EPA's response to a petition received under the Toxic Substances Control Act (TSCA). The TSCA section 21 petition was received from the Biobased and Renewable Products Advocacy Group on October 21, 2014. The petitioner requested EPA initiate a rulemaking to amend the TSCA section 8 Chemical Data Reporting (CDR) partially exempted chemical list as cited in Unit III.B. of this document. After careful consideration, EPA denied the TSCA section 21 petition for the reasons discussed in this document.

DATES: EPA's response to this TSCA section 21 petition was signed January 16, 2015.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Niva Kramek, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (202) 564-2897; email address: kramek.niva@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. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to those persons who manufacture (defined by statute at 15 U.S.C. 2602(7) to include import) the fatty acids of vegetable oil methyl esters. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I access information about this petition?

The docket for this TSCA section 21 petition, identified by docket identification (ID) number EPA-HQ-OPPT-2014-0826, 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>.

II. TSCA Section 21

A. What is a TSCA Section 21 petition?

Under TSCA section 21 (15 U.S.C. 2620), any person can petition EPA to initiate a rulemaking proceeding for the issuance, amendment, or repeal of a rule under TSCA section 4, 6, or 8 or an order under TSCA section 5(e) or 6(b)(2). A TSCA section 21 petition must set forth the facts that are claimed to establish the necessity for the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register**. A petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking proceeding within 60 days of either a denial or the expiration of the 90-day period.

B. What criteria apply to a decision on a TSCA Section 21 petition?

Section 21(b)(1) of TSCA requires that the petition "set forth the facts which it is claimed establish that it is necessary" to issue the rule or order requested. 15 U.S.C. 2620(b)(1). Thus, TSCA section 21 implicitly incorporates the statutory standards that apply to the requested actions. In addition, TSCA section 21 establishes standards a court must use to decide whether to order EPA to initiate rulemaking in the event of a lawsuit filed by the petitioner after denial of a TSCA section 21 petition. 15 U.S.C. 2620(b)(4)(B). Accordingly, EPA has relied on the standards in TSCA section 21 and in the provisions under

which actions have been requested to evaluate this TSCA section 21 petition.

III. Summary of the TSCA Section 21 Petition

A. What action was requested?

On October 21, 2014, the Biobased and Renewable Products Advocacy Group petitioned EPA to initiate a rulemaking to add six chemical substances to the list of "[p]etroleum process streams" at 40 CFR 711.6(b)(1) (Ref. 1). This list affords a partial exemption from reporting under CDR. The partial exemption provides that processing and use information (defined in 40 CFR 711.15(b)(4)) generally would not need to be reported for such chemical substances under CDR. 40 CFR 711.6. Specifically, the petition asks EPA to add "'biodiesel' as a chemical category for partial exemption with the following chemicals and associated Chemical Abstracts Service Registry Numbers (CASRN): Tallow, Methyl Ester: CASRN 61788-61-2; Soy Oil, Methyl Ester: CASRN 67784-80-9; Canola Oil, Methyl Ester: CASRN 129828-16-6; Fatty acids, corn oil, Me esters: CASRN 515152-40-6; Fatty acids, C16-18 and C-18-unsaturated, Me esters: CASRN 67762-38-3; and Fatty acids, C14-18 and C16-18 unsaturated, Me esters: CASRN 67762-26-9." Where the CASRN supplied by the petitioner did not exactly match the chemical substance's name supplied by the petitioner, EPA construed the CASRN supplied by the petitioner as the most accurate reflection of the petitioner's intent to identify particular chemical substances.

Concurrently with the submission of this petition, the petitioner filed a separate petition, under 40 CFR 711.6(b)(2)(iii)(A), to have the same six chemical substances receive a partial exemption from CDR reporting by means of a different kind of listing under CDR. In that separate petition, the petitioner requested that these six chemical substances be placed on a list of chemical substances at 40 CFR 711.6(b)(2)(iv) for which EPA has determined that processing and use information is of "low current interest" (Refs. 2 and 3).

The consequence of placing a chemical substance on the low current interest list at 40 CFR 711.6(b)(2)(iv) is identical to the consequence of amending the regulations to add a chemical substance to the petroleum process stream list at 40 CFR 711.6(b)(1). In either instance, processing and use information (defined in 40 CFR 711.15(b)(4)) generally would not need to be reported for the

substance under CDR. See 40 CFR 711.6(b).

Similarly, the range of factors that EPA would take into account if it were to consider amending the regulations to add a chemical substance to the petroleum process stream list at 40 CFR 711.6(b)(1) would be equivalent to the range of factors that EPA takes into account when deciding whether to place a chemical substance on the low current interest list at 40 CFR 711.6(b)(2)(iv). In either case, EPA would consider the totality of the information available. Relatedly, EPA notes that the petitioners did not fully characterize EPA's July 11, 2014 communication to petitioners in this respect. Though the partial exemption at 40 CFR 711.6(b) does not specify the criteria EPA would consider in evaluating a request to amend the regulations to add to the chemical substances listed in 40 CFR 711.6(b)(1), EPA would consider the totality of available information as well as every important aspect of whether an exemption is warranted if it were to consider adding chemical substances to that list.

EPA has separately evaluated the petitioner's request to add these six chemical substances to the list of chemical substances at 40 CFR 711.6(b)(2)(iv). The Agency agrees that there is low current interest in the processing and use information for these chemical substances and has accordingly granted the petitioner's separate request that these six chemical substances be placed on the low current interest list at 40 CFR 711.6(b)(2)(iv). By a direct final rule published elsewhere in this **Federal Register**, EPA has added the chemical substances to the list at 40 CFR 711.6(b)(2)(iv), contingent on the absence of adverse comment. EPA decided to issue that direct final rule following an analysis of the totality of the information available on the six chemical substances, including information about the chemical substances relevant to the considerations defined at 40 CFR 711.6(b)(2)(ii).

B. What support does the petitioner offer?

The petitioner states that the six chemical substances that it identified as a "biodiesel" category are similar in toxicity and use to the chemical substances already on the petroleum process stream list. The petitioner also states that these six chemical substances are transported, processed, and maintained in vessels similarly to the chemical substances already on the petroleum process stream list.

IV. Disposition of TSCA Section 21 Petition

A. What is EPA's response?

After careful consideration, EPA denied the petition. A copy of the Agency's response, which consists of a letter to the petitioner, is available in the docket for this TSCA section 21 petition and is briefly summarized in this document.

B. What is EPA's reason for this response?

EPA has issued a direct final rule to place the six chemical substances identified in this petition on the low current interest list at 40 CFR 711.6(b)(2)(iv). If the direct final rule becomes effective, these six chemical substances will generally be partially exempt from reporting under CDR. The partial exemption afforded by the low current interest list is identical to that which would be afforded by the petroleum process stream list. Therefore, an additional decision to place these six chemical substances on the petroleum process stream list at 40 CFR 711.6(b)(1), either individually or as a "biodiesel" category, would afford no further relief to the petitioner. Because no further relief is available to the petitioner, EPA is denying this petition as moot.

Several of the issues the petitioner raised in their section 21 petition are duplicated in their petition filed by the petition under 40 CFR 711.6(b)(2)(iii)(A). EPA's analysis

conducted in response to that petition is available in the docket identified by docket ID number EPA-HQ-OPPT-2014-0809. For assistance in locating this docket, see Unit I.B.

V. 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. Letter from Biobased and Renewable Products Advocacy Group, to EPA, Administrator, received October 21, 2014. Docket ID number EPA-HQ-OPPT-2014-0826.
2. Letter from Biobased and Renewable Products Advocacy Group, to EPA, OPPT CDR Submission Coordinator, received October 21, 2014. Docket ID number EPA-HQ-OPPT-2014-0809.
3. Letter from Biobased and Renewable Products Advocacy Group, to EPA, OPPT CDR Submission Coordinator, received November 5, 2014. Docket ID number EPA-HQ-OPPT-2014-0809.

List of Subjects in 40 CFR Part 711

Environmental protection, Biodiesel, Canola oil, Chemicals, Corn oil, Fatty acids, Hazardous substances, Reporting and recordkeeping requirements, Soybean oil, Tallow.

Dated: January 16, 2015.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

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