Authority: 26 U.S.C. 7805 * * *

Section 1.937–1 also issued under 26 U.S.C. 937(a). * * *

■ **Par. 2.** Section 1.937–1 is amended as follows:

■ 1. Revise paragraph (c)(1) and (c)(5) introductory text.

■ 2. Amend paragraph (g) by redesignating *Examples 1* through *9* as *Examples 2* through *10* respectively, adding new *Example 1*, and revising newly designated *Example 2,* the last sentence; *Example 3*, the ninth sentence; and *Example 6*, the sixth sentence.

The revisions and addition read as follows:

§ 1.937–1 Bona fide residency in a possession.

* * * * *

(c) *Presence test*—(1) *In general.* A United States citizen or resident alien individual (as defined in section 7701(b)(1)(A)) satisfies the requirements of this paragraph (c) for a taxable year if that individual—

(i) Was present in the relevant possession for at least 183 days during the taxable year;

(ii) Was present in the relevant possession for at least 549 days during the three-year period consisting of the taxable year and the two immediately preceding taxable years, provided that the individual was also present in the relevant possession for at least 60 days during each taxable year of the period;

(iii) Was present in the United States for no more than 90 days during the taxable year;

(iv) During the taxable year had earned income (as defined in § 1.911–3(b)) in the United States, if any, not exceeding in the aggregate the amount specified in section 861(a)(3)(B) and was present for more days in the relevant possession than in the United States; or

(v) Had no significant connection to the United States during the taxable year. See paragraph (c)(5) of this section.

* * * * *

(5) *Significant connection.* For purposes of paragraph (c)(1)(v) of this section—

* * * * *

(g) Examples. * * *

Example 1. Presence test. H, a U.S. citizen, is engaged in a profession that requires frequent travel. H spends 195 days of each of the years 2005 and 2006 in Possession N. In 2007, H spends 160 days in Possession N. Under paragraph (c)(1)(ii), H satisfies the presence test of paragraph (c) of this section with respect to Possession N for taxable year 2007. Assuming that in 2007 H does not have a tax home outside of Possession N and does not have a closer connection to the United States or a foreign country under paragraphs (d) and (e) of this section respectively, then regardless of whether H was a bona fide resident of Possession N in 2005 and 2006, H is a bona fide resident of Possession N for taxable year 2007.

Example 2. Presence test. * * * However, under paragraph (c)(1)(iv) of this section, W still satisfies the presence test of paragraph (c) of this section with respect to Possession P because she has no earned income in the United States and is present for more days in Possession P than in the United States.

Example 3. Presence test. * * * Assuming that no other accommodations in the United States constitute a permanent home with respect to T, then under paragraphs (c)(1)(v) and (c)(5) of this section, T has no significant connection to the United States. * * *

* * * * *

Example 6. Seasonal workers—Tax home and closer connection. * * * P satisfies the presence test of paragraph (c) of this section with respect to both Possession Q and Possession I, because, among other reasons, under paragraph (c)(1)(iii) of this section she does not spend more than 90 days in the United States during the taxable year. * * *

* * * * *

Linda M. Kroening,

Acting Deputy Commissioner for Services and Enforcement.

Approved: November 3, 2006.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E6–19135 Filed 11–13–06; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 707 and 799

[EPA–HQ–OPPT–2005–0058; FRL–8101–3]

RIN 2070–AJ01

Export Notification; Change to Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating amendments to the Toxic Substances Control Act (TSCA) section 12(b) export notification regulations at subpart D of 40 CFR part 707. One amendment changes the current annual notification requirement to a one-time requirement for exporters of chemical substances or mixtures (hereinafter referred to as ''chemicals'') for which certain actions have been taken under TSCA. Relatedly, for the same TSCA actions, EPA is changing the current requirement that the Agency notify foreign governments annually after the Agency's receipt of export notifications from exporters to a requirement that the Agency notify foreign governments once after it receives the first export notification from an exporter. EPA is also promulgating *de minimis* concentration levels below which notification will not be required for the export of any chemical for which export notification under TSCA section 12(b) is otherwise required, promulgating other minor amendments (to update the EPA addresses to which export notifications must be sent, to indicate that a single export notification may refer to more than one section of TSCA where the exported chemical is the subject of multiple TSCA actions, and to correct an error in 40 CFR 799.19 that currently omits mentioning multi-chemical test rules as being among those final TSCA section 4 actions that trigger export notification), and clarifying exporters' and EPA's obligations where an export notification-triggering action is taken with respect to a chemical previously or currently subject to export notification due to the existence of a previous triggering action.

DATES: This rule is effective January 16, 2007. In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern daylight/standard time on November 28, 2006.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2005–0058. All documents in the docket are listed on the regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. The EPA Docket Center (EPA/DC) suffered structural damage due to flooding in June 2006. Although the EPA/DC is continuing operations, there will be temporary changes to the EPA/DC during the clean-up. The EPA/DC Public Reading Room, which was temporarily closed due to flooding, has been relocated in the EPA Headquarters Library, Infoterra Room (Room Number 3334) in EPA West, located at 1301 Constitution Ave., NW., Washington, DC. The EPA/DC 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 EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. EPA visitors are required to show

photographic identification and sign the EPA visitor log. Visitors to the EPA/DC Public Reading Room will be provided with an EPA/DC badge that must be visible at all times while in the EPA Building and returned to the guard upon departure. In addition, security personnel will escort visitors to and from the new EPA/DC Public Reading Room location. Up-to-date information about the EPA/DC is on the EPA website at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; e-mail address: *moss.kenneth@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

You may be potentially affected by this action if you export or intend to export any chemical substance or mixture for which any of the following actions have been taken under TSCA with respect to that chemical substance or mixture: Data are required under TSCA section 4 or 5(b), an order has been issued under TSCA section 5, a rule has been proposed or promulgated under TSCA section 5 or 6, or an action is pending, or relief has been granted under section 5 or 7. Potentially affected entities, identified using the North American Industrial Classification System (NAICS) codes, may include, but are not limited to:

• Exporters of chemical substances or mixtures (NAICS codes 325 and 324110; e.g. chemical manufacturing and processing, and petroleum refineries).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. 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 applicability provisions at 40 CFR 707.60 for TSCA section 12(b)-related obligations. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**. You may obtain a copy of both the U.S. Department of Health and Human Services National Toxicology Program (NTP) Report on Carcinogens (latest edition) (Ref. 1) and the World Health Organization International Agency for Research on Cancer (IARC) Monographs on the Evaluation of Carcinogenic Risks to Humans and their Supplements (latest editions) (Ref. 2) on-line.

II. Background

A. What is the Agency's Authority for Taking this Action?

EPA is promulgating these amendments pursuant to TSCA section 12(b), 15 U.S.C. 2611(b). Section 12(b) of TSCA requires that any person who exports or intends to export to a foreign country a chemical for which the submission of data is required under TSCA section 4 or 5(b), an order has been issued under TSCA section 5, a rule has been proposed or promulgated under TSCA section 5 or 6, or with respect to which an action is pending or relief has been granted under TSCA section 5 or 7 must notify the Administrator of EPA of such exportation or intent to export. Upon receipt of such notification, EPA must furnish the government of the importing country with:

1. Notice of the availability of data received pursuant to an action under TSCA section 4 or 5(b), or

2. Notice of such rule, order, action, or relief under TSCA section 5, 6, or 7.

B. Currently Existing Regulations

Currently, the TSCA section 12(b) regulations require exporters of chemicals to notify EPA of the first export or intended export to a particular country in a calendar year when data are required under TSCA section 5(b), an order has been issued under TSCA section 5, a rule has been proposed or promulgated under TSCA section 5 or 6, or an action is pending, or relief has been granted under TSCA section 5 or 7. For chemicals subject to a final TSCA section 4 action, exporters are currently required to submit an export notification only for the first export or intended export to a particular country.

In the **Federal Register** of December 16, 1980, EPA promulgated rules at 40 CFR part 707, subpart D, implementing TSCA section 12(b) (Ref. 3). Under these rules, exporters were required to submit a written notification to EPA for the first export or intended export to a particular country in a calendar year for any chemical that was the subject of a TSCA section 12(b)-triggering TSCA action. Upon receipt of such notification from an exporter, the implementing rules required (and still require) that EPA provide the importing country with, among other things, a summary of the action taken or an indication of the availability of data received pursuant to action under TSCA section 4 or 5(b) (see 40 CFR 707.70(b)).

To facilitate foreign governments' consideration of export notices for chemicals exported from the United States and to reduce the burden on EPA and exporters, EPA published a rule in the **Federal Register** of July 27, 1993, that amended the regulations in 40 CFR part 707, subpart D (Ref. 4). The amendment limited the notification requirement for each exporter of chemicals subject to a final TSCA section 4 action to a one-time notification to EPA for the export of each such chemical to each particular country, instead of requiring annual notification to EPA for shipments of the chemical to that country. The amended rule also limited EPA's notice to foreign governments to one time for the export of each chemical subject to a final TSCA section 4 action. The 1993 amendment did not change the export notification requirements for chemicals that are the subject of an action under TSCA section 5, 6, or 7. The 1993 amendment also did not change the frequency of EPA's notice to foreign governments for chemicals subject to TSCA section 5, 6, or 7; EPA notice is provided upon receipt of the first annual export notification for each such chemical to each country.

C. What Action is the Agency Taking?

EPA is amending TSCA section 12(b) export notification regulations at subpart D of 40 CFR part 707. The first amendment changes the current annual notification requirement for exporters of chemicals for which certain actions have been taken under TSCA. Currently, the TSCA section 12(b) regulations require exporters of chemicals to notify EPA of the first export or intended export to a particular country in a calendar year when data are required under TSCA section 5(b), an order has been issued under TSCA section 5, a rule has been proposed or promulgated under TSCA section 5 or 6, or an action is pending, or relief has been granted under TSCA section 5 or 7. For chemicals subject to a final TSCA section 4 action, exporters are currently required to submit an export

notification only for the first export or intended export to a particular country.

This final rule changes the current annual export notification requirement to a one-time requirement for each of the following TSCA section 12(b)-triggering actions per each destination country for each exporter of a chemical:

- An order issued, an action pending, or an action granting relief under TSCA section 5(e),
- A proposed or promulgated rule under TSCA section 5(a)(2), or
- An action requiring the submission of data under TSCA section 5(b).

For exports of chemicals that are the subjects of TSCA 12(b)-triggering actions under TSCA section 5(f), 6, or 7, however, each exporter will continue to be required to submit annual export notifications to EPA.

EPA is also changing the frequency with which the Agency must notify foreign governments after the Agency's receipt of export notifications from exporters. Consistent with the current requirement that EPA notify foreign governments one time regarding the export of chemicals subject to final TSCA section 4 actions, EPA is requiring that the Agency provide a one-time (rather than the current annual) notice to each foreign government to which exported chemicals that are the subjects of any of the following actions are sent: An order issued, an action pending, or an action granting relief under TSCA section 5(e), a rule proposed or promulgated under TSCA section 5(a)(2), or an action requiring the submission of data under TSCA section 5(b). EPA will continue to notify each foreign government on an annual basis regarding the export of chemicals that are the subject of TSCA section 5(f), 6, or 7 actions, for which EPA has proposed to make or has made a finding under TSCA that a chemical substance or mixture ''presents or will present'' an unreasonable risk.

EPA believes this rule will further focus importing governments' resources and attention on chemicals for which EPA has proposed to make or has made a finding under TSCA that a chemical substance or mixture ''presents or will present'' an unreasonable risk, and to reduce overall burden on exporters and the Agency.

In addition, EPA is setting *de minimis* concentration levels below which notification would not be required for the export of any chemical substance or mixture for which export notification under TSCA section 12(b) is otherwise required. Specifically, EPA is finalizing the requirement that export notification will not be required for such chemical substances or mixtures if the chemical is being exported at a concentration of less than 1% (by weight or volume), unless that chemical substance or mixture is a known or potential human carcinogen. A chemical is considered to be a known or potential human carcinogen, for purposes of TSCA section 12(b) export notification, if that chemical is:

1. Listed as a ''known to be human carcinogen'' or ''reasonably anticipated to be human carcinogen'' in the Report on Carcinogens issued by the U.S. Department of Health and Human Services National Toxicology Program (NTP) (latest edition) (Ref. 1),

2. Classified as a Group 1, Group 2A, or Group 2B carcinogen by the World Health Organization International Agency for Research on Cancer (IARC) in the IARC Monographs on the Evaluation of Carcinogenic Risks to Humans and their Supplements (latest editions) (Ref. 2), or

3. Characterized as a carcinogen or potential carcinogen in the Occupational Safety and Health Administration's (OSHA's) regulations related to toxic and hazardous substances (29 CFR part 1910, subpart Z).

For such chemicals in paragraph 1., 2., or 3. of this unit, a *de minimis* concentration level of less than 0.1% (by weight or volume) will apply.

4. A polychlorinated biphenyl (PCB), for which notification will not be required if such PCBs are being exported at a concentration of less than or equal to 50 parts per million (ppm) (by weight or volume).

In this final rule, EPA is also updating the instructions for the submission of export notifications to the Agency (40 CFR 707.65(c)), clarifying exporters' and EPA's obligations when subsequent TSCA section 12(b)-triggering actions are taken with respect to a chemical previously or currently subject to export notification due to a separate triggering action, indicating in 40 CFR 707.67 that a single export notification may refer to more than one section of TSCA where the exported chemical is the subject of multiple TSCA actions, and correcting 40 CFR 799.19 to make it clear that final multi-chemical TSCA section 4 rules also trigger export notification.

D. Rotterdam Convention

EPA notes as further background the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention) (Ref. 5), a multi-lateral environmental agreement that the United States signed in September of 1998 but has not yet ratified (and thus is not a Party to). This Rotterdam Convention, which went into force in February of 2004, includes the following major obligations:

1. *Notification of control action and imposition of export notification requirement on exporters.* The Rotterdam Convention requires exporting parties to: Determine whether a pesticide or industrial chemical is ''banned'' or ''severely restricted'' (BSR); notify the Secretariat of that determination; and notify importing parties of the export of those chemicals from their country prior to their export after making the BSR determination and thereafter for the first export of every calendar year.

2. *Impose export restrictions consistent with importing parties response.* Once a BSR chemical (and its use category, i.e., use as a pesticide or industrial chemical) is, by consensus of the Parties, added to Annex III of the Rotterdam Convention, the Rotterdam Convention requires importing parties to identify any conditions/restrictions on the import of these substances and exporting parties to make sure exports occur consistent with conditions/restrictions identified by importing countries. Annex III of the Rotterdam Convention contains a list of chemicals that are subject to the Prior Informed Consent Procedures described by the Rotterdam Convention (Ref. 5).

3. *Label exported products.* For countries' domestic BSR chemicals and the Rotterdam Convention's Annex III chemicals, the Rotterdam Convention requires labeling to ''ensure adequate availability of information with regard to risks and/or hazards to human health or the environment.'' For the Rotterdam Convention's Annex III chemicals, labels must also include a Harmonized System Code if available (Ref. 6). The Harmonized Commodity Description and Coding System, generally referred to as ''Harmonized System'' or simply ''HS,'' is a multi-purpose international product nomenclature developed by the World Customs Organization. For an exporting country's BSR chemicals and the Rotterdam Convention's Annex III chemicals that are to be used in an occupational setting, the Rotterdam Convention requires that a safety data sheet setting out the most up-to-date information available be sent to each importer.

EPA believes the export notification mechanism in the Rotterdam Convention broadly reflects importing governments' interests and that this proposal to amend the TSCA section 12(b) export notification rule is not inconsistent with the export notification provisions of the Rotterdam Convention.

EPA wishes to note that the Administration is committed to the United States becoming a Party to the Rotterdam Convention, as well as two other chemicals-related multi-lateral environmental agreements: the Stockholm Convention on Persistent Organic Pollutants (POPs) (Stockholm Convention) (Ref. 7) and the POPs Protocol to the United Nations Economic Commission for Europe Convention on Long Range Transboundary Air Pollution (LRTAP) (Ref. 8). The Administration has been and intends to continue working with Congress to facilitate the development of legislation that would provide the authority needed for the United States to fully implement and become a Party to those agreements. If and when such legislation is enacted, and depending on the nature of the legislation, it may be appropriate or necessary to further amend the TSCA section 12(b) regulations.

III. Rationale for This Rule

EPA believes this rule is a reasonable supplement to the export notification regulations at 40 CFR parts 707 and 799 because it further reduces overall burden on exporters and the Agency and helps to further focus importing governments' resources and attention on chemicals for which EPA has proposed to make or has made a finding that a chemical ''presents or will present'' an unreasonable risk to human health or the environment.

A. This Rule

This rule treats actions under TSCA sections 5(a)(2) and 5(e) similarly to final actions under TSCA section 4 for purposes of export notification, such that a one time notice will be required. In the 1993 amendments, it was EPA's view that TSCA section 5(a)(2) and 5(e) actions, which are based on exposure or risk concerns for identified use scenarios, ''restrict'' in a limited sense, regulated uses. The amendments further stated that the Agency has authority to take follow-up action under TSCA section 5(a)(2) via TSCA section 5(e) and because there is no similar provision under TSCA section 4 (with the exception of a separate proceeding under TSCA section 6 or 7), there was a reasonable basis for treating the export notification requirement for chemicals regulated under TSCA sections 4 and 5 differently (Ref. 4, p. 40240).

Although TSCA sections 5(a)(2) and 5(e) restrict use in some sense, the statutory finding for such actions is based on consideration of ''factors'' relating to a ''significant new use'' determination under TSCA section 5(a)(2) or, for TSCA section 5(e), the same ''may present an unreasonable risk'' or ''substantial production/significant/substantial exposure'' findings required under TSCA section 4 rulemakings. EPA believes foreign governments will want to focus greater attention on chemicals for which the Agency has made a finding that a chemical ''presents or will present'' an unreasonable risk to human health or the environment (TSCA sections 5(f), 6, and 7). This finding represents a definitive determination and thus is different from a finding that a chemical ''may present'' an unreasonable risk (TSCA sections 4(a)(1)(A)(i) and 5(e)(1)(A)(ii)(I)), substantial production and substantial or significant exposure/release findings (''exposure-based'' findings; TSCA sections 4(a)(1)(B)(i), 5(b)(4)(A)(i), and 5(e)(1)(A)(ii)(II)), or factors determining a significant new use (TSCA section 5(a)(2)). Because ''presents or will present'' an unreasonable risk to human health or the environment is a definitive risk determination, EPA believes that it is reasonable to require more frequent notification for those chemicals that are the subject of each export notification-triggering action under TSCA sections 5(f), 6, and 7. Therefore, EPA is continuing to require annual export notification by exporters of chemicals that are the subject of each action under TSCA section 5(f), 6, or 7, and EPA is similarly amending the regulatory provision regarding EPA's notice to foreign governments to limit annual notices to these chemicals.

B. De Minimis Exemption

EPA is also promulgating *de minimis* concentration levels below which notification will not be required for the export of any chemical that is the subject of an action under TSCA section 4, 5, 6, or 7. This rule provides background on the use of *de minimis* concentration levels under an international chemical classification and labeling scheme as a basis for incorporation of a *de minimis* concentration level under TSCA section 12(b).

The 1992 United Nations Conference on Environment and Development (Ref. 9) provided the international mandate for development of the Globally Harmonized System of Classification and Labeling of Chemicals (Ref. 10). The GHS was adopted by the United Nations Economic and Social Council in July 2003 and is an internationally agreed upon tool for chemical hazard communication that incorporates a harmonized approach to hazard classification and provisions for standardized labels and safety data sheets. The GHS labeling is intended to provide a foundation for national programs to promote safer use, transport and disposal of chemicals, and to facilitate international trade in chemicals whose hazards have been properly assessed and identified based on internationally agreed upon criteria. As with TSCA section 12(b), one of the primary purposes of the GHS labeling scheme is to communicate information on chemicals to foreign governments. Accordingly, EPA believes it is appropriate to look to GHS for guidance on establishing a *de minimis* concentration exemption under TSCA section 12(b).

Classification of chemical mixtures under the GHS for several health and environmental hazard classes is triggered when generic cut-off values or concentration limits are exceeded, for example, >1.0% for target organ systemic toxicity, >0.1% for known or presumed human carcinogens, etc. (See Ref. 10, chapter 1.5, table 1.5.1; the cut-off levels for each hazard class are provided in chapters 3.1-3.10 (health hazards) and chapter 4.1 (environmental hazards) of Ref. 10.) When a chemical is present below these cut-off levels, the GHS does not require that the chemical appear on labeling or other information sources. The GHS reflects international consensus on appropriate *de minimis* concentrations below which governments do not find information useful for hazard communication on chemicals in international (or domestic) commerce. TSCA section 12(b) is primarily intended to alert and inform foreign governments, in a general manner, of hazards that may be associated with a chemical substance or mixture. As a result, EPA believes it is logical to refer to GHS as a guide to implementation of TSCA section 12(b). EPA believes the inclusion of *de minimis* concentration thresholds in GHS is indicative of foreign governments' likely preference not to be notified by the United States about its export of chemicals present in low concentrations.

In order to implement an exemption from export notification requirements for chemicals exported in *de minimis* concentrations, EPA is establishing *de minimis* concentration levels below which notification would not be required for the export of any chemical for which export notification under TSCA section 12(b) is otherwise required. Specifically, export notification will not be required for such chemicals if the chemical is being exported at a concentration of less than 1% (by weight or volume), with two

exceptions. The first exception would be made for chemicals treated for export notification purposes as known or potential human carcinogens. These chemicals are identified in the regulation based on the three sources referred to in OSHA's regulations related to hazard communication (29 CFR 1910.1200(d)(4)), i.e.:

1. Listed as a ''known to be human carcinogen'' or ''reasonably anticipated to be human carcinogen'' in the Report on Carcinogens issued by the U.S. Department of Health and Human Services National Toxicology Program (NTP) (latest edition) (Ref. 1),

2. Classified as a Group 1, Group 2A, or Group 2B carcinogen by the World Health Organization International Agency for Research on Cancer (IARC) in the IARC Monographs on the Evaluation of Carcinogenic Risks to Humans and their Supplements (latest editions) (Ref. 2), or

3. Characterized as a carcinogen or potential carcinogen in OSHA's regulations related to toxic and hazardous substances (29 CFR part 1910, subpart Z).

For paragraphs III.B.1., 2. and 3., a *de minimis* concentration level of less than 0.1% (by weight or volume) will apply, except for PCBs regarding which a *de minimis* concentration level of 50 ppm or less will apply, as in this unit. For purposes of monitoring compliance with notice requirements for chemical substances or mixtures subject to this rule as covered in 40 CFR 707.60(c)(2)(i) and (ii) of the regulatory text, EPA will consider the lists maintained by the World Health Organization, International Agency for Research on Cancer (IARC) and the US Department of Health and Human Services, Public Health Service, National Toxicology Program (NTP) as the definitive sources.

The NTP Report on Carcinogens is mandated by section 301(b)(4) of the Public Health Service Act, as amended (42 U.S.C. 201 *et seq.*), which stipulates that the Secretary of the Department of Health and Human Services shall publish an annual report which contains a list of all substances:

- Which either are known to be carcinogens in humans or may reasonably be anticipated to be human carcinogens
- To which a significant number of persons residing in the United States are exposed.

In 1993, the Public Health Service Act was amended by Public Law 95–622 to change the frequency of publication of the Report on Carcinogens from an annual to a biennial report.

The IARC Monographs on the Evaluation of Carcinogenic Risks to Humans are independent assessments prepared by international working groups of experts of the evidence on the carcinogenicity of a wide range of agents, mixtures and exposures. The evaluations of IARC Working Groups are scientific, qualitative judgments on the evidence for or against carcinogenicity provided by the available data. The Monographs are used by national and international authorities to make risk assessments, formulate decisions concerning preventive measures, provide effective cancer control programs and decide among alternative options for public health decisions.

The third source of carcinogens or potential carcinogens which is referred to in OSHA's regulations related to hazard communication (29 CFR 1910.1200(d)(4)) is the group of carcinogens or potential carcinogens in OSHA's toxic and hazardous substances regulations (29 CFR part 1910, subpart Z). In lieu of referencing OSHA's regulations directly in the regulatory text, this rule incorporates at 40 CFR 707.60(c)(2)(iii) the two chemicals characterized by OSHA as carcinogens or potential carcinogens that are not already included on either the NTP or IARC lists referenced. The rest of the chemicals characterized by OSHA as carcinogens or potential carcinogens are included on either or both the NTP Report on Carcinogens (latest edition) (Ref. 1) and/or IARC Monographs and their Supplements (latest editions) (Ref. 2).

Concentration threshold levels like those used in the GHS context are also generally accepted or recognized in other United States Federal regulatory contexts. The OSHA has established 1.0% and 0.1% concentration thresholds as a basis for requiring the development of Material Safety Data Sheets (MSDSs) and workplace labeling under the OSHA's Hazard Communication (HAZCOM) Standard (29 CFR 1910.1200) (Ref. 11). The Emergency Planning and Community Right-to-Know Act, section 313 (Toxic Release Inventory (TRI)) regulations use the OSHA HAZCOM Standard for purposes of establishing a chemical's *de minimis* concentration as either 0.1% or 1.0% for chemical substances when present in a mixture (40 CFR 372.38(a)). EPA's TSCA New Chemicals Program also uses concentration limits of 1.0% and 0.1% in TSCA section 5(e) consent orders as thresholds for hazard communication and personal protective equipment requirements (Ref. 12).

EPA believes that in the context of TSCA section 12(b) export notification, foreign governments will have little interest in notices regarding exports of chemicals present in *de minimis* concentrations, and that notices for such exports may divert attention from notices for exports of chemicals in higher concentrations that potentially may warrant more serious consideration. Thus, EPA believes that *de minimis* concentration thresholds are justified in the context of its TSCA section 12(b) regulations and is promulgating that the export of chemicals present at a concentration below the specified *de minimis* concentration levels be exempt from notification requirements.

As EPA has noted in the past, some chemicals retain their toxic properties at levels less than the general thresholds in this rule, so the *de minimis* concentration thresholds established in this TSCA section 12(b) context are not an indication that EPA has determined that chemicals are generally not toxic at lesser concentrations. The *de minimis* concentration exemption in this rule is only a reflection of the circumstances under which EPA believes foreign governments want to receive information regarding chemicals imported into their countries.

In addition to paragraphs III.B.1., 2, and 3., the second exception to the generally applicable *de minimis* concentration level of 1% is made for PCBs, which, when exported in a concentration of greater than 50 ppm, require the submission of an export notification. EPA believes it is appropriate to include a different *de minimis* concentration level for PCBs in its TSCA section 12(b) regulations (i.e., levels less than or equal to 50 ppm versus the general 1% and 0.1% for carcinogens levels) after considering the coverage of PCBs under certain international treaties and/or guidance materials developed thereunder, including the Stockholm Convention and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention) (Ref. 13). Note that the manufacture and distribution in commerce of PCBs for use within the United States or for export from the United States are generally prohibited, with certain exceptions (see, for example, 40 CFR 761.20(b) and (c)).

The Stockholm Convention, which entered into force on May 17, 2004, and for which there were 128 Parties and 151 Signatories as of August 2006 (the United States is a Signatory but not yet a Party), includes, among other things, provisions that require Parties to reduce and/or eliminate the production and use of listed intentionally produced chemicals or pesticides (Ref. 7). Annex A of the Stockholm Convention lists

chemicals subject to elimination, including PCBs which are listed with a specific exemption for ''articles in use in accordance with the provisions of Part II of this Annex.'' Part II of Annex A of the Stockholm Convention states, in part:

''Each Party shall: (a) With regard to the elimination of the use of polychlorinated biphenyls in equipment (e.g. transformers, capacitors or other receptacles containing liquid stocks) by 2025, subject to review by the Conference of the Parties, take action in accordance with the following priorities . . . (iii) Endeavour to identify and remove from use equipment containing greater than 0.005 percent [50 ppm] polychlorinated biphenyls and volumes greater than 0.05 litres . . . (d) Except for maintenance and servicing operations, not allow recovery for the purpose of reuse in other equipment of liquids with polychlorinated biphenyls content above 0.005 per cent; (e) Make determined efforts designed to lead to environmentally sound waste management of liquids containing polychlorinated biphenyls and equipment contaminated with polychlorinated biphenyls having a polychlorinated biphenyls content above 0.005 per cent, in accordance with paragraph 1 of Article 6, as soon as possible but no later than 2028, subject to review by the Conference of the Parties; (f) In lieu of note (ii) in Part I of this Annex, endeavour to identify other articles containing more than 0.005 per cent polychlorinated biphenyls (e.g., cable-sheaths, cured caulk and painted objects) and manage them in accordance with paragraph 1 of Article 6;''

Annex A of the Stockholm Convention thus focuses attention on PCBs in equipment or articles where the PCBs are at a concentration of more than 50 ppm.

In addition, the Basel Convention, which entered into force on May 5, 1992, and for which there were 166 governments that were Parties as of November 2005 (the United States is a Signatory but not yet a Party), stipulates that any transboundary movement of wastes (export, import, or transit) is permitted only when the movement itself and the disposal of the concerned hazardous or other wastes are environmentally sound. The Stockholm Convention directs close cooperation with the Basel Convention to define a ''low POPs content'' for purposes of safe disposal of wastes contaminated with POPs. Under the Basel Convention, ''General Technical Guidelines for the Environmentally Sound Management of Wastes Consisting of, Containing or Contaminated with Persistent Organic Pollutants'' (Basel POPs Guidelines) have been developed that provisionally identify the level of 50 milligrams/kilogram (mg/kg) (50 ppm) as ''low POPs content'' for PCBs. (Ref. 14).

Because the 50 ppm level is used in the Stockholm Convention as a cutoff level for purposes of obligations associated with PCB-containing equipment and has been further supported by the Basel POPs Guidelines as a low level not warranting the attention and control required for higher PCB levels, EPA believes it reasonable to use it as the basis of a *de minimis* concentration level for PCBs under TSCA section 12(b). Thus, at this time, EPA believes importing governments will not desire export notices from the United States for PCBs at levels of 50 ppm or less.

EPA believes that the most practical means of maintaining the quality of notification, of improving the scrutiny importing countries give to notices, and of reducing burden on both exporters and EPA, is to amend the TSCA section 12(b) regulations under 40 CFR part 707 to reduce the frequency of certain export notifications submitted by exporters to EPA as well as EPA notices sent to foreign governments. EPA's responsibility is both to alert and to make information and data available to the importing government. EPA believes that although the frequency of EPA's notices to foreign governments may be reduced by this rule, the quality of the information provided to them will not be substantially affected.

C. Additional Amendments and Clarifications

In addition to the amendments to the TSCA section 12(b) regulations regarding the scope of exporters' and EPA's responsibilities, the Agency is promulgating minor amendments to update the EPA addresses to which export notifications must be sent (40 CFR 707.65(c)), to indicate that a single export notification may refer to more than one section of TSCA where the exported chemical is the subject of multiple TSCA actions, and to correct an error in 40 CFR 799.19 that currently omits mentioning multi-chemical test rules as being among those final TSCA section 4 actions that trigger export notification.

EPA is also clarifying exporters' and EPA's obligations where a TSCA section 12(b)-triggering action is taken with respect to a chemical previously or currently subject to export notification due to the existence of a previous triggering action. EPA's intention is that exporters notify EPA with respect to each TSCA section 12(b)-triggering action to which the chemical becomes subject (as long as the exporter in fact still exports or intends to export the chemical to that country) even if they have previously notified EPA about the export of that chemical to that country as a result of an earlier TSCA section 12(b)-triggering action. Note that an export notification may indicate more than one triggering action, i.e., separate export notifications need not be submitted where the need for export notification as a result of more than one triggering action at the same time exists with respect to a given chemical. Similarly, EPA would notify a foreign government with respect to each TSCA section 12(b)-triggering action to which the chemical becomes subject (as long as the Agency continues to receive an export notification from any exporter for the export of the chemical to that country) even if it has previously notified that government about the export of the chemical as a result of an earlier TSCA section 12(b)-triggering action. In this rule, EPA is amending 40 CFR 707.65 and 707.70 in order to make these obligations clear.

IV. Response to Public Comments

The Agency received 48 comments on the proposed rule that was issued in the Federal Register of February 9, 2006 (71 FR 6733) (FRL–7752–2). Copies of all comments received are available in the public docket for this action. A discussion of the comments germane to the rulemaking and the Agency's response follows:

1. *Comment—Response to Four Questions Listed in Unit VI of the Proposed Rule.* Unit VI. of the proposed rule provided four issues on which the Agency was specifically requested public comment. These issues were:

- Whether the proposed reporting thresholds (1.0%, 0.1%, and 50 ppm) are set at a reasonable level for the purposes of TSCA section 12(b), and if not, what other, if any, level(s) may be appropriate and why?
- Whether it is appropriate to look to GHS for guidance on establishing a *de minimis* concentration exemption under TSCA section 12(b).
- Whether the Stockholm Convention is an appropriate basis for selecting a 50 ppm threshold for PCBs.
- EPA estimated that the *de minimis* concentration exemption would reduce the burden of TSCA section 12(b) reporting by 5%. EPA sought information that might further inform the Agency's burden estimate.

Response. Public comments received overwhelmingly supported the proposed *de minimis* reporting thresholds, the use of GHS as guidance for these thresholds, and the use of the Stockholm Convention as a basis for selecting a 50 ppm threshold for PCBs. All commenters agreed that there would be burden reduction, although

quantifying this was difficult and there were suggestions for other amendments that could result in further or ''more meaningful'' burden reduction. Estimates ranged from at least the 5% Agency estimate in the proposed rule to much greater than 50%. EPA is adjusting its burden reduction estimates in response to comments received. Following are more specific burden-related comments.

2. *Comment.* The concept of establishing three separate thresholds is cumbersome and likely more resource intensive than what is in place today. A more accurate estimate of cost or burden is needed. Commenters questioned the Agency's choice of 5% for its estimate of burden reduction or decrease in TSCA 12(b) reporting for an individual company resulting from the proposed rule, and EPA received a number of estimates, ranging from greater than the Agency's estimate of 5% up to one commenter stating that its TSCA section 12(b) reporting will decrease by 100% if the *de minimis* exemption is adopted. Some commenters noted that costs incurred in reprogramming computerized systems that ensure compliance with TSCA reporting may be such that several years will be required before a net burden reduction will be achieved for some business entities, and noted that these do not seem to have been recognized in the economic analysis. The point was also made that if industry does what is needed in order to not 'over-report' without the use of a consolidated EPA master list of chemicals subject to reporting requirements, then companies will likely add burden to their current operations, while EPA will see a reduction in notifications received.

Response. While the public responses to EPA's request to quantify the potential burden reduction as a result of the *de minimis* exemption varied greatly, the responses appear to assert that the reduction may be larger than the Agency's previously estimated 5%. Taking into account the range of comments, including seven firms that estimated a reduction of at least 50%, EPA is now estimating that the overall reduction will be 20%. EPA disagrees with the implication, by one commenter, that the addition of the new *de minimis* reporting thresholds will not achieve meaningful burden reduction, and points to the overwhelming support of the public comments received on the proposed rule, including support for the thresholds themselves as technically appropriate. With regards to potential computer reprogramming costs, EPA does not at this time have enough information, and the commenter did not provide specific estimates, to gauge such costs. Such costs are not part of the Agency's burden estimates because they are not imposed by EPA; they are activities that companies may engage in on their own.

3. *Comment— No expected burden reduction.* While supporting the expansion of one-time notification in this rule, one commenter did not think that the associated burden reduction will be significant. The commenter stated that the change may somewhat reduce the number of notification letters submitted, but it does not fundamentally affect the steps necessary for compliance and the burden associated with it.

Response. EPA agrees with this commenter that the fundamental steps necessary to comply with the regulations are not changed by the amendments to the rule. However, the reduction in the frequency and number of notification letters will lead to a reduction in the burden and costs associated with submitting those letters.

4. *Comment.* The proposed rule is silent as to the management costs that are incurred for compliance with TSCA section 12(b) reporting obligations. The coordination required to identify known and trace ingredients in various chemical products and mixtures, along with supervision of the complex processes required to communicate this information to the export administration and regulatory compliance personnel is not adequately presented in the proposed rule. The costs of compliance with TSCA section 12(b) reporting requirements for small and medium sized facilities are not sufficiently considered by the proposed rule. For substances such as pigments that are manufactured from complex intermediate ingredient products that may in turn be manufactured from many more ingredients, the proposed rule does not consider the cost of analyzing all of these sources for the possible substances present or known to be potentially present in finished products. As a result, the costs of compliance with the existing TSCA section 12(b) reporting rule is underestimated significantly by EPA. Therefore compliance with TSCA section 12(b) is not a simple exercise in collecting a list of products which might be exported, as the proposed rule indicates. Nor is the task complete when such a list of products is identified for TSCA section 12(b) compliance. Additionally, industry has been required to prepare clarification letters for EPA to provide to foreign governments when shipments subject to notification are received and the notification covers only trace contaminants in the product. Many foreign governments have, and continue to, request clarification, since the notice provided by EPA does not indicate that only trace *de minimis* amounts of regulated substances are present. In summary, the cost of compliance with the current regulatory scheme is extensive and underestimated by EPA in its proposed rule.

Response. EPA has presented the costs and burdens more fully in the Economic Analysis for the rule, including costs and burdens associated with anticipated activities involved in compliance determination. As the TSCA section 12(b) regulations apply identically regardless of company size, EPA assumes that small and medium-sized companies would go through the same process that larger companies would to comply with the TSCA section 12(b) regulations. Since the burden and cost figures presented by EPA represent an average, EPA also recognizes that certain companies, such as pigment manufacturers, may have higher-than-average burdens, and thus exceed the estimates in the Economic Analysis, while other companies may have lower than average burdens and thus experience lower costs than the EPA estimates. EPA never intended the estimates to represent a worst-case scenario as presented by the commenter. The clarification letters mentioned by the commenter are not required by the TSCA section 12(b) reporting regulations, and as such are not included in the estimated costs of the TSCA section 12(b) regulations. Further, because *de minimis* concentrations are not subject to export notification, future notices would all pertain to exports exceeding the *de minimis* concentrations, and it should also be noted that the requirement for notice covers only substances known to be in the exported material.

5. *Comment— Timing of export notification: Seven days is not a long enough time to develop and submit export notification to EPA.* Commenters noted that the ''within seven days of forming the intent to export'' timing in 40 CFR 707.65(a)(3) for submitting export notification to EPA does not originate in the TSCA section 12(b) statutory language. One commenter stated ''Compliance with this timeframe requires an ongoing system of identifying exports, checking them for potential 12(b) components, and generating letters almost immediately.'' One commenter requested that the phrase ''or on the date of export, whichever is earlier'' be removed from 40 CFR 707.65(a)(3), stating that many companies have automated systems

which track composition and distribution of products, integrated with regulatory data systems that address international regulatory elements. As to not interfere with systems running in multi-national environments, companies typically briefly suspend sytem operations to allow for data extracts and maintenance after normal business hours. The commenter stated that phrase in 40 CFR 707.65(a)(3) has the effect of requiring companies to implement separate processes, usually manual, to ''catch'' those samples/products that trigger an export notification where processing of an order after hours would not allow compliance with the ''postmarked on the date of export'' requirement for notification to EPA. This is especially relevant with overnight sample shipments. Other commenters suggested changing 7 days to 30 days (as is currently the case for TSCA section 8(e) reporting), quarterly, annually or some other reasonable timeframe.

Response. The proposed rule did not address timing of submission of export notification and the Agency may investigate this issue further. If EPA decides to initiate additional amendments to TSCA section 12(b) export notification requirements, it may consider further adjusting this timeframe.

6. *Comment— Allow Electronic Reporting Under TSCA Section 12(b)*. Commenters suggested adding ''either in written or electronic form'' at 40 CFR 707.65(a)(1), that such reporting would be easier, less time consuming than by letter, especially for non-CBI.

Response. EPA agrees with the commenter that there are technologies and solutions that can streamline the export notification submission process. In fact, EPA is putting in place such a process for the upcoming Inventory Update Reporting (*http://www.epa.gov/iur*) and hopes to use this type of technological solution for other TSCA data submissions, including TSCA section 12(b), in the future.

7. *Comment— EPA Should Maintain an Official List of Chemicals Subject to TSCA 12(b) Reporting*. Commenters requested that, to avoid confusion and possible over-reporting, EPA should maintain an official list of chemicals subject to TSCA section12(b) reporting, identifying which ones qualify for the various new *de minimis* thresholds.

Response. The Agency does make publicly available on the Internet the ''Current List of Chemical Substances Subject to TSCA Section 12(b) Export Notification Requirements,'' at *http://www.epa.gov/opptintr/chemtest/pubs/main12b.htm*. However, this listing is intended simply as an information resource to facilitate compliance with TSCA section 12(b). It does identify which chemicals are subject to TSCA section 4, section 5 generally, section 6, and section 7 actions. This list will be revised to distinguish chemicals subject to TSCA section 5(f) (annual export notification requirement) from the remainder of the section 5 chemicals (subject to actions under TSCA section 5(e), 5(a)(2), or 5(b), for which there is now a one-time TSCA section 12(b) export notification requirement). The list does not identify those substances considered to be known or potential human carcinogens for purposes of TSCA section 12(b) export notification (i.e., those substances for which reporting would be required at concentrations of 0.1% or more (by weight or volume)). That information is available from the IARC and NTP documents cited in the 40 CFR 707.60(c)(2)(i) and (ii), and from 40 CFR 707.60(c)(2)(iii), which lists the two chemicals characterized by OSHA as carcinogens or potential carcinogens and which are currently not included in either the NTP or IARC documents.

8. *Comment— Accept one-time reporting, per country, per chemical*. Comments requested that one notification for a particular chemical to a country suffice for subsequent notifications on that same chemical to the same country but from a different chemical exporter. This would avoid duplicative reporting.

Response. 40 CFR 707.60(a) and TSCA section 12(b) state that ''any person'' who exports or intends to export a chemical subject to TSCA section 12(b) triggering action must notify EPA. Thus, the statute specifies that the notification requirement pertains to each exporter. EPA believes the commenters' suggestion is not consistent with TSCA, or the intended function of this required notification in terms of the receiving countries.

9. *Comment— The proposed exemption should also include Research and Development samples, byproducts, and impurities*. Commenter claimed that domestic manufacturers, batch manufacturers of pigments in particular, are at disadvantage under the current and proposed reporting scheme. Exported samples for customer evaluation and testing represent small quantities and are sent to foreign manufacturers with expertise in evaluating products and as a result should not require formal TSCA export notification.

Response. EPA has not completely foreclosed the creation of some or all of these additional exemptions. EPA will consider this suggestion if it undertakes another, future amendment to the 12(b) regulations.

10. *Comment—Eligibility prior to effective date of final rule*. Allow TSCA section 5(e), 5(a)(2), or 5(b) notifications submitted prior to the effective date of the final rule to also be eligible to qualify for the new one-time notification.

Response. The Agency believes this suggestion is consistent with the Agency's goal of focusing foreign government attention on certain TSCA actions. Therefore, any export notice for a chemical subject to a TSCA section 5(e), 5(a)(2), or 5(b) action submitted prior to the effective date of this final rule would satisfy the one-time reporting requirement established in the new rule.

11. *Comment—Objection to a notification requirement for future, multiple TSCA actions*. Two commenters stated that companies should not have to re-notify EPA when a chemical already subject to a TSCA section 12(b) triggering action becomes subject to a new action.

Response. EPA's intention is to clarify that exporters need to notify EPA with respect to each TSCA section 12(b)-triggering action under TSCA to which the chemical becomes subject (as long as the exporter in fact still exports or intends to export the chemical to that country), even if they have previously notified EPA about the export of that chemical to that country as a result of an earlier 12(b)-triggering action. EPA will re-notify the receiving country. EPA has amended 40 CFR 707.65 and 707.70 in order to make these obligations clear.

12. *Comment— Notification on Class 2 substances*. One commenter requested that EPA state that export notifications are not required for Class 2 substances that contain TSCA section 12(b)-subject chemicals.

Response. It is EPA's position that the export of a Class 2 substance that contains a component that is subject to a TSCA section 12(b)-triggering action triggers export notification. Neither the statutory nor the regulatory language restricts the export notification requirement to exporters of chemical substances and mixtures in particular forms, but instead generally extends export notification requirements to exporters of chemical substances and mixtures without regard to the form in which the chemical substances and mixtures are being or will be exported. Accordingly, any person who exports, or who intends to export, one of the chemical substances contained in a TSCA 12(b)-triggering action in any form is subject to the export notification

requirements. This is consistent with the Agency's view regarding the scope of TSCA section 12(b) since the export notification regulations were initially published in the **Federal Register** of December 16, 1980 (Ref. 3).

13. *Comment— Exempt chemicals that are only subject to ''information collection rules.''* One commenter suggested an exemption for chemicals subject to ''information collection rules,'' such as TSCA section 4 actions or section 5 SNURs pending information collection—anything but established risk chemicals—TSCA section 5(f), 6, and 7 actions.

Response. The commenter's suggestion is inconsistent with TSCA section 12(b).

V. Economic Impact

EPA has evaluated the potential costs of these amendments. The Agency anticipates that these amendments will reduce the number of export notifications sent to EPA by exporters of chemicals that are the subject of actions under TSCA section 5(e), 5(a)(2), or 5(b), and also eliminate the submission of export notifications from exporters of chemicals otherwise subject to TSCA section 12(b) where they are present at a concentration below the relevant *de minimis* concentration threshold. The amendments will also reduce the number of export notices sent by EPA to foreign governments. These reductions will save both exporter and EPA resources.

For the period 1996–2004, EPA received an average of approximately 8,600 export notifications from exporters annually. On average, each year nearly 60% of those export notifications were for chemicals subject to final TSCA section 4 actions, 25% for chemicals that were the subject of actions under TSCA section 5, and the remainder were primarily for chemicals that were the subject of actions under TSCA section 6 and a very few for chemicals subject to actions under TSCA section 7. At this time, EPA is unable to predict with certainty the reduction in export notifications received by EPA from exporters due to the *de minimis* concentration exemption of this rule, but based on comments received on the proposed rule, EPA is estimating a 20% across-the-board reduction in TSCA section 12(b) notification burden to exporters due to the *de minimis* concentration exemption. Based on historical reporting, EPA is able to estimate, after the first year, a 50% reduction in export notifications triggered by TSCA section 5(e), 5(a)(2), or 5(b) actions as a result of the one-time-only provision. Thus, EPA expects to receive approximately 6,000 export notifications annually. These reductions are expected to save the regulated community over $75,000 per year, or over 20% of industry costs. Over 20 years, these amendments should save the regulated community approximately $800,000 at a 7% discount rate, and over $1.1 million at a 3% discount rate. See the Final Economic Analysis of the Amendments to TSCA Section 12(b) Export Notification Requirements (Ref. 15) for details on all cost and burden calculations. The costs to EPA should also be reduced based on these amendments, as EPA incurs costs for processing export notifications received, and for sending export notices to foreign governments. While EPA has been sending roughly 1,600 notices to foreign governments annually, that number is expected to drop as a result of these amendments to an estimated 824 yearly. These reductions are expected to save the Federal Government over $60,000 annually (34% of current costs). Over 20 years, these amendments should save the Federal Government approximately $650,000 at a 7% discount rate, and roughly $900,000 at a 3% discount rate. Over 20 years these amendments should yield a total cost savings to both EPA and industry of $1.46 million at a 7% discount rate and $2.05 million at 3% (Ref. 15).

VI. References

The official record for this rule has been established under docket ID number EPA–HQ–OPPT–2005–0058, and the public version of the official record is available for inspection as specified under **ADDRESSES**. The following is a listing of the documents referenced in this preamble that have been placed in the official docket for this rule (see *http://www.regulations.gov*, docket ID number EPA–HQ–OPPT–2005–0058):

1. United States Department of Health and Human Services, Public Health Service. National Toxicology Program. Report on Carcinogens (latest edition). Available on-line at *http://ntp.niehs.nih.gov/index.cfm?objectid=32BA9724-F1F6-975E-7FCE50709CB4C932*.

2. International Agency for Research on Cancer Monographs on the Evaluation of Carcinogenic Risks to Humans and their Supplements. Lists of All Agents Evaluated as Being in Group 1 (carcinogenic to humans), Group 2A (probably carcinogenic to humans), and Group 2B (possibly carcinogenic to humans) (latest editions). Available on-line at *http://www-cie.iarc.fr/monoeval/allmonos.html*.

3. EPA. Chemical Imports and Exports; Notification of Export. Final Rule. **Federal Register** (45 FR 82844, December 16, 1980). Available on-line at *http://www.regulations.gov*, docket ID number EPA–HQ–OPPT–2005–0058.

4. EPA. Export Notification Requirement; Change to Reporting Requirements. Final Rule. **Federal Register** (58 FR 40238, July 27, 1993) (FRL–4067–2). Available on-line at *http://www.regulations.gov*, docket ID number EPA–HQ–OPPT–2005–0058.

5. Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. September, 1998 (amended September, 2004). Available on-line at *http://www.pic.int/en/viewpage.asp?id_cat=0*. Annex III: Chemicals Subject to the Prior Informed Consent Procedure. Available on-line at *http://www.pic.int/en/ViewPage.asp?id=104#III%20Annex*.

6. Harmonized System Convention, World Customs Organization (WCO). Available on-line at *http://www.wcoomd.org/ie/En/Topics_Issues/topics_issues.html*. June 14, 1983.

7. Stockholm Convention on Persistent Organic Pollutants (POPs). May 22, 2001. Available on-line at *http://www.pops.int*.

8. United Nations Economic Commission for Europe Convention on Long Range Transboundary Air Pollution (LRTAP) Protocol on Persistent Organic Pollutants (POPs), June 24, 1998. Available on-line at *http://www.unece.org/env/lrtap/pops_h1.htm*.

9. United Nations Conference on Environment and Development (Earth Summit) Agenda 21; Chapter 19: Environmentally Sound Management of Toxic Chemicals, Including Prevention of Illegal International Traffic in Toxic and Dangerous Products. Rio de Janeiro, June 1992. Available on-line at *http://www.un.org/esa/sustdev/documents/agenda21/english/agenda21chapter19.htm*.

10. GHS. Globally Harmonized System of Classification and Labelling of Chemicals (GHS). United Nations. 2003. Available on-line at *http://www.unece.org/trans/danger/publi/ghs/ghs_rev00/00files_e.html*.

11. OSHA. Hazard Communication. Final Rule. **Federal Register** (48 FR 53280–53348, November 25, 1983). For discussion of 1% and 0.1% cut-off, see pp. 53290–53293.

12. EPA. New Chemicals Program Boilerplate TSCA Section 5(e) Consent Orders. Available on-line at *http://www.epa.gov/opptintr/newchems/boilerpl.htm*.

13. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. Adopted by the Conference of the Plenipotentiaries March 22, 1989. Entry into force May 1992. Available on-line at *http://www.basel.int/about.html*.

14. Basel Convention General Technical Guidelines for Environmentally Sound Management of wastes consisting of, containing or contaminated with Persistent Organic Pollutants (POPs). April 2005. Available on-line at *http://www.basel.int/techmatters/techguid/frsetmain.php*.

15. Economic and Policy Analysis Branch, Office of Pollution Prevention and Toxics, EPA. August 2006. Final Economic Analysis of the Amendments to TSCA Section 12(b) Export Notification Requirements.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this final rule is not a ''significant regulatory action'' subject to review by OMB, because it does not meet the criteria in section 3(f) of the Executive Order.

B. Paperwork Reduction Act

The information collection activities associated with export notification under TSCA section 12(b) are already approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*. That Information Collection Request (ICR) document has been assigned EPA ICR number 0795, and OMB control number 2070–0030. This final rule does not impose any new information collection burdens that would require additional approval by OMB under PRA, and is expected to reduce existing burden estimates.

The currently approved annual public burden for the collection of information covered by OMB Control No. 2070–0030 is estimated to be 0.878 hours per response. Under PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Under PRA, 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 codified in chapter 40 of the CFR, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9. For the ICR activity contained in this final rule, in addition to displaying the applicable OMB control number in this Unit, the Agency has also included it on the list in 40 CFR 9.1.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.), the Agency hereby certifies that promulgation of this rule will not have a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination is presented in the economic analysis prepared for this rule (Ref. 15), a copy of which is available in the docket for this rulemaking. The following is a brief summary of the factual basis for this certification.

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 Small Business Administration's (SBA) regulations at 13 CFR 121.201, which for the pesticide industry consists of businesses with fewer than 500 to 1,000 employees (range is based on NAICS sector variations).

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. Available information indicates that small governmental jurisdictions and small not-for-profit organizations would not generally engage in the activities regulated by this rule, i.e., the export of chemical substances or mixtures. As such, the Agency's expects that only small businesses will benefit from the burden reduction in this rule.

This final rule amends an existing requirement and result in a reduction of burden and costs for all chemical exporters, regardless of the size of the business. As such, these amendments will not have a significant adverse economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year.

Based on EPA's experience with the TSCA 12(b) reporting, State, local, and tribal governments have not been affected by this reporting requirement, and EPA does not have any reason to believe that any State, local, or tribal government will be affected by these amendments. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on such governments, nor will it have these impacts on the private sector. EPA has determined that this rule does not significantly or uniquely affect small governments. Accordingly, this rule is not subject to the requirements of sections 202, 203, 204, or 205 of UMRA.

E. Executive Order 13132

This rule does not have a federalism implications because it is not expected to have substantial direct effects on 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, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This rule does not have tribal implications because it is not expected to have substantial direct any affect 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 the Order. Thus, Executive Order 13175, entitled *Consultation and Coordination with*

Indian Tribal Governments (65 FR 67249, November 6, 2000), do not apply to this rule.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer Advancement Act

Since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898

This rule does not have an adverse impact on the environmental and health conditions in low-income and minority communities. Therefore, the Agency does not need to consider environmental justice-related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Parts 707 and 799

Environmental protection, Chemicals, Exports, Hazardous substances, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: November 2, 2006.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 707—[AMENDED]

■ 1. The authority citation for part 707 continues to read as follows:

Authority: 15 U.S.C. 2611(b) and 2612.

■ 2. In §707.60, redesignate paragraphs (c) through (e) as paragraphs (d) through (f), add a new paragraph (c), and revise newly redesignated paragraphs (d), (e), and (f) to read as follows:

§707.60 Applicability and compliance.

* * * * *

(c)(1) Except as provided in paragraphs (c)(2) and (3) of this section no notice of export is required for the export of a chemical substance or mixture for which export notification is otherwise required, where such chemical substance or mixture is present in a concentration of less than 1% (by weight or volume).

(2) No notice of export is required for the export of a chemical substance or mixture that is a known or potential human carcinogen. A chemical is considered to be a known or potential human carcinogen, for purposes of TSCA section 12(b) export notification, if that chemical is:

(i) A chemical substance or mixture listed as a ''known to be human carcinogen'' or ''reasonably anticipated to be human carcinogen'' in the Report on Carcinogens (latest edition) issued by the U.S. Department of Health and Human Services, Public Heath Service, National Toxicology Program,

(ii) A chemical substance or mixture is classified as ''carcinogenic to humans'' (Group 1), ''probably carcinogenic to humans'' (Group 2A), or ''probably carcinogenic to humans'' (Group 2B) in the Monographs and Supplements on the Evaluation of Carcinogenic Risks to Humans issued by the World Health Organization International Agency for Research on Cancer (IARC), Lyons, France (latest editions), or

(iii) Alpha-naphthylamine (Chemical Abstract Service Registry Number (CAS No.) 134–32–7) or 4–nitrobiphenyl (CAS No. 92–93–3).

(3) No notice of export is required for the export of polychlorinated biphenyl chemicals (PCBs) (see definition in 40 CFR 761.3), where such chemical substances are present in a concentration of less than or equal to 50 ppm (by weight or volume).

(d) Any person who exports or intends to export PCBs or PCB articles (see definition in 40 CFR 761.3), for any purpose other than disposal, shall notify EPA of such intent or exportation under TSCA section 12(b), except as specified in §707.60(c)(3). PCBs and PCB articles have the definitions published in 40 CFR 761.3.

(e) Any person who would be prohibited by a TSCA section 5 or 6 regulation from exporting a chemical substance or mixture, but who is granted an exemption by EPA to export that chemical substance or mixture, shall notify EPA under TSCA section 12(b) of such intent to export or exportation.

(f) Failure to comply with TSCA section 12(b) as set forth in this part will be considered a violation of TSCA section 15(3), and will subject the exporter to the penalty, enforcement, and seizure provisions of TSCA sections 16 and 17.

■ 3. In §707.65, revise paragraph (a) introductory text, (a)(2), and (c) to read as follows:

§707.65 Submission to agency.

(a) For each action under TSCA triggering export notification, exporters must notify EPA of their export or intended export of each subject chemical substance or mixture for which export notice is required under §707.60 in accordance with the following:

* * * * *

(2) (i) The notice must be for the first export or intended export by an exporter to a particular country in a calendar year when the chemical substance or mixture is the subject of an order issued, an action that is pending, or relief that has been granted under TSCA section 5(f), a rule that has been proposed or promulgated under TSCA section 6, or an action that is pending or relief that has been granted under TSCA section 7.

(ii) The notice must only be for the first export or intended export by an exporter to a particular country when the chemical substance or mixture is the subject of an order issued, an action that is pending, or relief that has been granted under TSCA section 5(e), a rule that has been proposed or promulgated under TSCA section 5(a)(2), or when the submission of data is required under

TSCA section 4 or 5(b). Under this paragraph, notice of export to a particular country is not required if an exporter previously submitted to EPA a notice of export to that country prior to January 16, 2007.

* * * * *

(c) Notices shall be marked ''TSCA Section 12(b) Notice'' and sent to EPA by mail or delivered by hand or courier. Send notices by mail to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 (Attention: TSCA Section 12(b) Notice). Hand delivery of TSCA section 12(b) notices should be made to: OPPT Document Control Office (DCO), EPA East., Rm. 6428, Environmental Protection Agency, 1201 Constitution Ave., NW., Washington, DC (Attention: TSCA Section 12(b) Notice). The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation.

§707.67 [Amended]

■ 4. In §707.67, add ''and/'' before ''or'' in the first sentence of paragraph (a) after ''6,'' and in the parenthetical in paragraph (e) after ''6,''.

■ 5. In §707.70, revise paragraph (a) to read as follows:

§707.70 EPA notice to foreign governments.

(a)(1) Notice by EPA to the importing country shall be sent no later than 5 working days after receipt by the TSCA Document Processing Center of the first annual notification from any exporter for each chemical substance or mixture that is the subject of an order issued, an action that is pending, or relief that has been granted under TSCA section 5(f), a rule that has been proposed or promulgated under TSCA section 6, or an action that is pending or relief that has been granted under TSCA section 7.

(2) Notice by EPA to the importing country shall be sent no later than 5 working days after receipt by the TSCA Document Processing Center of the first notification from any exporter for each chemical substance or mixture that is the subject of an order issued, an action that is pending, or relief that has been granted under TSCA section 5(e), a rule that has been proposed or promulgated under TSCA section 5(a)(2), or for which the submission of data is required under TSCA section 4 or 5(b).

* * * * *

PART 799—[AMENDED]

■ 6. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

■ 7. By revising §799.19 to read as follows:

§799.19 Chemical imports and exports.

Persons who export or who intend to export chemical substances or mixtures listed in subpart B, subpart C, or subpart D of this part are subject to the requirements of 40 CFR part 707.

[FR Doc. E6–19182 Filed 11–13–06; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7951]

Suspension of Community Eligibility

AGENCY: Mitigation Division, Federal Emergency Management Agency (FEMA), Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you want to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office.

FOR FURTHER INFORMATION CONTACT: David Stearrett, Mitigation Division, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer