

the applicability of section 8(e) to certain information is welcome to contact EPA. In responding to such person, the Agency will consider the guidance contained in this document, but the guidance will not be determinative. It is also important to point out that the guidance provided will not be unalterable, and that the Agency may revise this guidance without notice or an opportunity to comment. EPA has sought public comment on this guidance so that it can ensure the utility of the guidance for the intended audience. If it becomes necessary, the Agency will revise this guidance.

C. What is the Agency's Current Policy on and Interpretation of the TSCA Section 8(e) Reporting Requirements?

The section 8(e) reporting requirements became effective on January 1, 1977, the effective date of TSCA. The statutory language of section 8(e) requires the exercise of a certain degree of judgment in determining what information must be reported. Although section 8(e) is self-implementing, EPA issued a proposed policy statement in the **Federal Register** of September 9, 1977 (42 FR 45362), and sought public comment with regard to the Agency's interpretation and implementation of section 8(e). Following receipt and consideration of public comments, on March 16, 1978 (43 FR 11110) (FRL-849-2), EPA issued a final TSCA section 8(e) policy statement hereinafter cited as the "1978 Policy Statement." The 1978 Policy Statement described the types of information that EPA considers reportable under section 8(e) and described the procedures for reporting such information to EPA.

In the **Federal Register** of February 1, 1991 (56 FR 4128), the Agency announced a one-time voluntary TSCA section 8(e) CAP. The CAP was designed primarily to: (1) Obtain any section 8(e) information that was required to have been submitted to EPA before the CAP, and (2) encourage companies to voluntarily search ("audit") their files for data reportable under section 8(e). The TSCA section 8(e) CAP established a schedule of monetary penalties for failure to submit section 8(e) data before the CAP, and also established a ceiling on penalties that would be collected from any single company.

D. The Reason for Issuing Revised Guidance

Companies considering whether to participate in the CAP had raised questions about Parts V.(b)(1) and V.(c) of the 1978 Policy Statement. Those

sections outlined the reportability of data on "widespread and previously unsuspected distribution in environmental media" and "emergency incidents of environmental contamination," respectively. In order to answer the questions raised by the companies, the Agency reviewed existing section 8(e) guidance and determined that Parts V.(b)(1) and V.(c) of the 1978 Policy Statement needed clarification and refinement. Therefore, in the **Federal Register** of June 20, 1991 (56 FR 28458), EPA announced that the Agency was suspending application of Parts V.(b)(1) and V.(c) of the 1978 Policy Statement.

That **Federal Register** document also stated that EPA was going to provide more specific guidance about the types of information on environmental releases and detection of environmental contamination that should be submitted under section 8(e). Phase 2 of the CAP, which was to deal with data on environmental contamination, would be triggered by publication of that revised guidance (phase 1 of the CAP had dealt with studies of "effects" of toxic substances on health or the environment.). On July 13, 1993, EPA issued a **Federal Register** document (58 FR 37735) that proposed changes to the 1978 Policy Statement, clarifying the types of environmental contamination data that EPA believes are subject to section 8(e) reporting.

Comments received on the proposed changes took issue with a number of the revisions proposed by the Agency as well as with the original guidance. Based on the comments received, it became apparent that any final guidance would likely be significantly different from previous guidance and should therefore be applied prospectively. Since the CAP was essentially a retrospective exercise, the decision to make substantial revisions in the guidance for reporting on environmental contamination called into question the utility of carrying out phase 2. Consequently, the Agency, in consultation with CAP participants, decided to conclude the CAP after phase 1 "effects" reporting. Letters were sent to CAP participants announcing the change in the program, and the CAP was terminated on May 15, 1996. EPA reached final settlements with CAP participants, announced those settlements on October 15, 1996, and collected payment for stipulated penalties.

III. Section 8(e) Policy Clarifications and Revisions

EPA's interpretation of section 8(e) is that it requires the reporting of certain

"substantial risk" information concerning the release of chemical substances to, and the detection of chemical substances in, any environmental medium. In order to enhance implementation of TSCA section 8(e), EPA is, in this **Federal Register** document, publishing a complete version of the policy statement which reflects comments received on proposed refinements to the policy statement published on July 13, 1993 (58 FR 37735), and March 20, 1995 (60 FR 14756). EPA has also decided to reinstate application of Part V.(c) relating to "emergency incidents of environmental contamination," which was suspended on June 20, 1991 (56 FR 28458).

A. What Changes were Proposed in 1993?

In a notice published in the **Federal Register** on July 13, 1993 (58 FR 37735), EPA proposed the following changes to the 1978 Policy Statement:

1. Revise the 1978 reporting guidance as to when the discovery of "widespread and previously unsuspected [chemical] distribution in environmental media" would trigger a substantial risk notice under section 8(e). EPA indicated that the key elements to consider would be the known hazard potential of the contaminant, how "widespread" the substance is in the environment, and the potential for actual human or environmental exposure. EPA further stated that the weight to be given exposure considerations would be judged in light of hazard potential, i.e., the more hazardous the chemical the less one would weigh exposure considerations.

2. Expand the categories of information cited in the 1978 reporting guidance that EPA believed no longer need to be reported to under section 8(e). The major change proposed was intended to reduce the potential for TSCA section 8(e) submissions to be duplicative of reporting under other mandates, by allowing an exemption for information reported under other EPA reporting requirements (including those delegated to the states). Also, a clarification of what would constitute "corroborative" data not subject to reporting was proposed.

3. Change the interpretation that section 8(e) notices for information other than "emergency incidents of environmental contamination" should be submitted within 15 working days by lengthening the reporting period to 30 calendar days.