

comments from 22 companies and trade associations. The commenters generally agreed that the changes made by EPA addressed most of their major comments on the 1993 proposed guidance, and that the 1995 revised guidance was a significant improvement. For example, the Monsanto Company stated: "The repropoed guidance, as summarized in the draft policy text for public comment dated March 9, 1995, is a significant improvement over the guidance published July 13, 1993. The repropoed guidance significantly minimizes the duplicative over-reporting burden that characterized the earlier guidance document. We support the repropoed guidance document and believe it is generally consistent with the Congressional intent of the original drafters of TSCA, as well as current Agency and Congressional efforts to reform government reporting requirements to minimize duplicative and unneeded over-reporting. The repropoed guidance document on environmental release/contamination is a significant move in the direction of clarifying the Agency's need for information that reasonably supports a conclusion of substantial risk." (Ref. 1).

In addition to their statements of support for the proposed changes, the commenters requested a number of clarifications/definitions of terms, editorial rewordings, and other less substantive changes that are addressed in a "response-to-comments" document that can be found in the docket as described in Unit I.B.1. Commenters expressed strong support for making the new guidance prospective, ending the CAP at phase 1, and developing a Q. and A. document. As previously discussed, EPA is in agreement with those comments.

One major area where industry commenters requested further changes was the exemption from reporting under section 8(e) for data submitted to EPA or other agencies under other authorities. The commenters were concerned about the extent to which exemptions from reporting under section 8(e) would be granted for reporting under authorities other than EPA statutes administered either by the Agency or, where implementation of an EPA statute has been delegated to the States. EPA had proposed to reduce the potential for duplicative submission under TSCA section 8(e) authorities by allowing an exemption to reporting under section 8(e) for all information which is required to be reported under other EPA statutes including where implementation had been delegated to the States, and where such reporting was required to be submitted within 90

days of being obtained. Industry commenters also questioned the length of the time period for reporting proposed by EPA. Industry commenters requested that the exemption be expanded to: (1) Include any mandatory reporting requirement whether Federal, State, or local, and (2) allow reporting within the time frame provided by the individual reporting authorities.

Regarding expanding the section 8(e) policy statement list of reporting authorities that would fall under a reporting exemption in Part VII. of the policy statement, the July 1993 and March 1995 proposals included an exemption to reporting only if the information was to be submitted under EPA statutes, including statutes such as the Clean Air Act, where implementation has been delegated in large part to the States. Delegation of implementation allowed a clear "nexus" to be shown between a State reporting requirement and EPA, thus following the statutory language of section 8(e) which does not require reporting if a company has "actual knowledge that the Administrator has been adequately informed of such information." The commenters would have EPA expand the reporting exemption by including any Federal, State, or local reporting requirements.

The issue of expanding the reporting authorities is problematic because of the statutory language in section 8(e). However, it is also relevant to look to the purpose of TSCA, and section 8(e) in particular, in light of the legislative history concerning how TSCA should be implemented. TSCA was designed to fill a number of regulatory gaps. Those included review of "new" chemicals, collection of test data on new and existing chemicals, and regulation of chemicals to address risks associated with chemicals' production, use, or disposal. Specifically, regarding the submission of test data, Congress wanted to avoid the potential for industry to withhold "information which would have revealed hazards associated with these chemicals at a much earlier date" (Ref. 2). Thus, the reporting requirement of section 8(e) of TSCA was established so that the Agency would be "adequately informed" to enable it to take corrective action if necessary. While Congress envisioned TSCA as filling a major gap in the regulatory framework protecting human health and the environment, it also directed the Administrator to avoid duplicating existing (and future) regulatory and enforcement authorities.

Given the statutory language of section 8(e), it is hard to make a case that the Administrator is adequately

informed of reporting under State or local authorities, other than those reporting requirements that originate in laws administered by EPA in which the United States Congress has provided for delegation to the States, and such delegation has occurred. Except where such delegation of EPA authority has occurred, the Agency believes reporting to a state government may not result in EPA getting important information in a timely manner and, therefore, EPA does not believe it is appropriate to exempt from section 8(e), information that is reported to state governments.

However, at least some information reported under other Federal authorities could be viewed differently. While there is not a direct statutory "nexus," often there is a considerable amount of interagency cooperation in dealing with environmental contamination situations, e.g., the National Response Center. To the extent EPA Headquarters and the Regions become involved in joint cleanups, assessments, etc., or act in advisory roles with other Federal agencies, the Administrator could reasonably be considered to be adequately informed. The Agency believes that information reported under other Federal authorities for site-specific contamination within 90 calendar days or immediately pursuant to a mandatory reporting requirement qualifies for exemption from section 8(e) reporting.

While this approach reduces the role of section 8(e) in the reporting of site-specific release/contamination information, Congress' goal in passing TSCA to ensure that important health and environmental related information are reported in a timely fashion will still be met. Further, since there is now a considerable array of Federal health and environmental reporting requirements, including section 8(e), which provide such information and for which there is enhanced public access, Congress's goal is not considered to be compromised by some of the expanded exemptions.

However, product contamination information that could be required to be submitted to the Consumer Product Safety Commission (CPSC) under their regulations is not analogous. CPSC has a more narrow purview (i.e., consumer product safety) and could not adequately assess or address chemical contamination from a product that may also have industrial/commercial applications or may present potential environmental risks during its manufacture and processing. In such instances, reporting to EPA, as well as CPSC would allow EPA, consistent with the intent of TSCA, to address all the potential risks presented, where appropriate. Consequently, EPA has