Comments on
Proposed Rule, TSCA Inventory Update Reporting Revisions
(70 Fed. Reg. 3658, 26 January 2005)

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The undersigned organizations and individuals submit the following comments regarding certain of the proposed revisions to the reporting requirements under the Toxic Substances Control Act (TSCA) Inventory Update Reporting (IUR) regulations, (70 Fed. Reg. 3658, 26 January 2005[1]**).** Currently, the IUR requires certain manufacturers (including importers) of certain chemical substances on the TSCA Chemical Substances Inventory to report data on chemical manufacturing, processing, and use every four years.

Among the changes EPA is now proposing are: (1) to lengthen the reporting cycle from four years to five, (2) to modify the timing of the submission period, and (3) to amend the list of consumer and commercial product categories. As discussed below:

- Given the enormous fluctuation in production volumes over time, we strongly oppose any further lengthening of the reporting period and believe that annual data should be provided even if reporting is required less than annually.
- We support EPA's proposal to require that reporting occur earlier in the calendar year.
- We strongly oppose EPA's proposal to combine or eliminate certain use categories, given the already meager number of such categories.

1. Reporting frequency

We consider it especially ironic that at a time when the public, consumers, workers and other stakeholders are demanding more information about chemicals and their associated use and exposures, EPA is proposing to reduce the frequency – from every four to every five years – of the already infrequent reporting of production volume, use and exposure information required of chemicals producers and importers. Despite EPA's unsupported assertion that the reduced frequency "would still meet EPA's most critical data needs" (p. 3660), the fact is that the actual extent of fluctuation in production and import levels for individual industrial chemicals is so large that more frequent, not less frequent, reporting is needed to adequately characterize the actual levels of these chemical substances in production and use in the U.S. And such information is in turn essential to understanding the potential for releases of and exposures to, and hence risks from, chemical substances.[2]

Consider the change in the number of so-called high production volume (HPV) chemicals[3] produced in the U.S. between subsequent four-year reporting cycles under current IUR

[1] Available online at www.epa.gov/fedrgstr/EPA-TOX/2005/January/Day-26/t1380.htm/.
[2] Consistent with TSCA, the focus here is on industrial chemicals other than pesticides, food additives, drugs, and cosmetics, and a few other specific categories of materials excluded from TSCA's definition of "chemical substance." See 15 U.S.C. Sec. 2602 (2) (B).
[3] HPV chemicals are those produced and imported in aggregate quantities exceeding one million pounds annually.

requirements. Under the U.S. HPV Challenge, some 2,800 chemicals were identified as being produced at HPV levels based on data reported for the 1990 IUR reporting cycle. Based on data received in the last two reporting cycles, for 1998 and 2002, EPA has determined that production/import levels for about 300 of these chemicals dropped to levels below one million pounds annually. But during the same period (1990-2002), EPA estimates that more than 1,100 chemicals may have become HPV chemicals – that is, their production/import levels have risen to above one million pounds annually.[4]

Because of the infrequent reporting, the uncertainty associated with EPA's determination of whether a given chemical is produced at HPV levels plagues the HPV Challenge Program, invites endless challenges, wastes EPA resources, and undermines public confidence that data needs for all HPV chemicals are in fact being addressed.

An even greater degree of fluctuation in production levels is found among all chemicals reported on the TSCA Inventory. To illustrate this, we examined those that are included in the publicly available database of TSCA inventory chemicals subject to reporting requirements under the IUR.[5] This database provides non-confidential annual production volume ranges for approximately 14,000 chemicals for each of the last five IUR reporting cycles: 1986, 1990, 1994, 1998 and 2002. The ranges, which are quite broad, are as follows:

10,000 pounds - 500,000 lbs.
>500,000 - 1 million lbs.
>1 million - 10 million lbs.
>10 million - 50 million lbs.
>50 million - 100 million lbs.
>100 million - 500 million lbs.
>500 million - 1 billion l lbs.
>1 billion lbs.

If one asks for how many of these chemicals did the chemical's reported production volume change from one reporting cycle to the next, the answer is remarkable: Of the approximately 10-11,000 chemicals reporting a range for at least one of the two successive cycles being compared, the reporting range changed for more than 50% of the chemicals in each pair of reporting cycles: 1986-1990, 1990-1994, 1994-1998 and 1998-2002. Just looking at the changes from 1998 to 2002:[6]

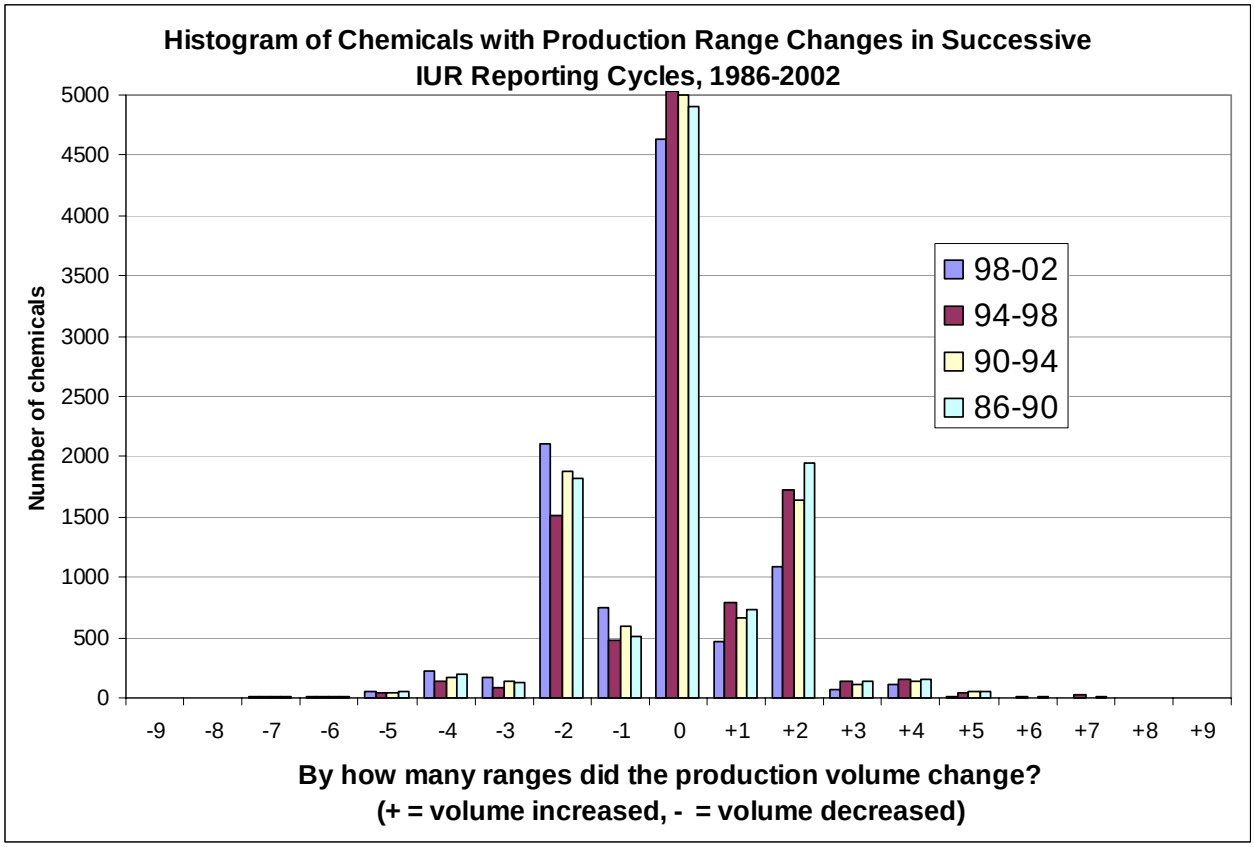
- the reporting range changed for 52% of chemicals;
- the reporting range increased for 18% of the chemicals and decreased for 34%;
- for 40% of the chemicals, the reporting range changed by more than one range (13% increased by two or more ranges, while 27% decreased by two or more ranges).

[4] See USEPA, "Status and Future Directions of the High Production Volume (HPV) Challenge Program," Office of Pollution Prevention and Toxics, December 2004, p. 98.

[5] See "Non-confidential Production Volume Information Submitted by Companies for Chemicals Under the 1986-2002 Inventory Update Rule," available for download at www.epa.gov/oppt/iur/iur02/search03.htm. Only those chemicals produced/imported in quantities exceeding 10,000 pounds annually (to rise to 25,000 pounds starting in 2006) are subject to the reporting requirement and hence included in the database.

[6] The data for the other pairs of successive reporting periods are similar; see histogram. The full analysis is available on request.

The histogram below illustrates these findings.



Given how large the individual reporting ranges are, a change of even a single range can represent, and changes of two or more ranges certainly do represent, enormous changes in actual production volume. *Hence, these data reveal that – for thousands of industrial chemicals – there are dramatic fluctuations in the amount of a given chemical produced over a few years.* And while the absence of a requirement (to date) to report use information for these chemicals precludes a definitive statement, it seems likely that there are also comparably dramatic changes occurring in use patterns for chemicals exhibiting such large changes in production level.

The magnitude of the fluctuations seen on a quadrennial basis demonstrates that more – not less – frequent reporting is needed to adequately characterize production and use of industrial chemicals in the U.S. Moving to a five-year reporting cycle simply exacerbates this problem. In our view, EPA should ideally be requiring annual reporting. At the very least, EPA should require that reports include annual quantities for each year of the reporting interval, or annualized data averaged over the reporting period, even if actual submission is not required annually.

Given that, by law, EPA has to base many of its rules and negotiated agreements on estimated production volumes as well as associated release and exposure estimates, moving to even less frequent reporting of these data will only increase the likelihood that EPA will be relying on outdated data in making its decisions. This in turn means that EPA will be more likely to

erroneously include or exclude chemicals from actions it takes, yielding bureaucratic inefficiencies, added costs to industry and potentially increased impacts to human health and the environment.

2. Timing of reporting

Ironically, in another section of this same proposed rule, EPA proposes to require reporting earlier in the calendar year, acknowledging the need for more timely information given the constantly changing nature of chemical production and use: "As the chemical industry is dynamic, information which is more timely is likely to better describe the industry than information which is less timely." (p. 3660) We couldn't agree more, and support this modest proposal; unfortunately, EPA's more damaging proposal to extend the reporting interval from four to five years flies in the face of its own logic.

3. Combining certain use categories

Another component of the proposal would alter various use-reporting categories. First, it would combine the "Soaps and Detergents" category and the "Polishes and Sanitation Goods" category into a single category, to be known as "Cleaning Products (non-pesticidal)." (p. 3662) EPA provides no documentation or even rationale for why it has decided that "manufacturers might have difficulty differentiating between downstream categories which are so similar," stating only that "both categories relate to cleaning goods." In fact, the two categories have distinct six-digit North American Industry Classification System (NAICS) codes, the index listings for which are readily distinguishable from each other. The two categories and their corresponding index listings are below:

325611: Soap and Other Detergent Manufacturing

Bar soaps manufacturing
Dentifrices manufacturing
Detergents (e.g., dishwashing, industrial, laundry) manufacturing
Dishwasher detergents manufacturing
Glycerin (i.e., glycerol), natural, manufacturing
Hand soaps (e.g., hard, liquid, soft) manufacturing
Laundry soap, chips, and powder manufacturing
Mechanic's hand soaps and pastes manufacturing
Presoaks manufacturing
Scouring cleansers (e.g., pastes, powders) manufacturing
Soaps (e.g., bar, chip, powder) manufacturing
Toilet soaps manufacturing
Toothpastes, gels, and tooth powders manufacturing
Waterless hand soaps manufacturing

325612: Polish and Other Sanitation Good Manufacturing

Air fresheners manufacturing
Ammonia, household-type, manufacturing
Automobile polishes and cleaners manufacturing
Beeswax polishes and waxes manufacturing
Bleaches, formulated for household use, manufacturing
Brass polishes manufacturing
Buffing compounds manufacturing

Cloths, dusting and polishing, chemically treated, manufacturing
Copper cleaners manufacturing
Degreasing preparations, household-type, manufacturing
Deodorants (except personal) manufacturing
Disinfectants, household-type and industrial, manufacturing
Drain pipe cleaners manufacturing
Drycleaning preparations manufacturing
Fabric softeners manufacturing
Floor polishes and waxes manufacturing
Furniture polishes and waxes manufacturing
Glass and tile cleaning preparations manufacturing
Ink eradicators manufacturing
Kitchen degreasing and cleaning preparations manufacturing
Lye, household-type, manufacturing
Metal polishes (i.e., tarnish removers) manufacturing
Oven cleaners manufacturing
Polishes (e.g., automobile, furniture, metal, shoe) manufacturing
Polishing preparations manufacturing
Recycling drycleaning fluids
Rug cleaning preparations manufacturing
Rust removers manufacturing
Saddle soaps manufacturing
Shoe polishes and cleaners manufacturing
Silver polishes manufacturing
Soot removing chemicals manufacturing
Spot removers (except laundry presoaks) manufacturing
Starches, laundry, manufacturing
Sweeping compounds, absorbent, manufacturing
Toilet bowl cleaners manufacturing
Tub and tile cleaning preparations manufacturing
Wallpaper cleaners manufacturing
Wax removers manufacturing
Waxes, polishing (e.g., floor, furniture), manufacturing
Window cleaning preparations manufacturing

Perusal of these two lists of products demonstrates that they are readily distinguished even by a lay consumer, let alone by chemical manufacturers.

More troublingly, EPA provides no support for its claim that erasing the distinction between these two already-broad categories "does not reduce the utility of the information to EPA." Indeed, this assertion is incomprehensible: the two different types of uses may have significant implications for exposure patterns. For example, the former category primarily includes products that many people would use several times a day, while the latter includes products that most consumers would use considerably less frequently. Moreover, the distinction is critical to maintain if the data are to be of use to members of the public: Consumers wishing to have information regarding to which chemicals they may be exposed through products they purchase and use clearly can and need to be able to distinguish between chemicals reported to be used in basic soaps and detergents, on the one hand, and in various polishes and cleaning products, on the other.

Finally, EPA proposes to eliminate altogether one of the only 17 remaining commercial and consumer product categories, photographic chemicals, on the basis of the declining use of such

chemicals as digital photography gains market share. We do not see this justification as compelling, for several reasons. First, any burden associated with reporting under this category ought to be declining concomitant with the volume reduction. Second, there are some indications of a relatively stable remaining core use of film and hence of such chemicals. Kodak, for example, continues to invest in film technology, and many professional photographers continue to choose to use film over digital technology.[7] Third, and most importantly, the toxic or otherwise environmentally damaging properties of many such photographic chemicals demand more, not less, information about their production and use.

Thank you for this opportunity to comment on the proposed rule.

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[7] "Film Still Bucks the Digital Trend," *Digit*, 29 October 2004, available at www.digitmag.co.uk/features/index.cfm?featureID=1157&page=1&pagepos=2.

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