

Memorandum of Understanding
Between
The Office of Chemical Safety and Pollution Prevention,
U.S. Environmental Protection Agency
and
The Occupational Safety and Health Administration,
U.S. Department of Labor
for Implementation of TSCA Section 5 and Sharing of Confidential
Business Information

A. Purpose

This Memorandum of Understanding (MOU) is intended to govern implementation of the authority and responsibilities under Section 5 of the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act (15 U.S.C. § 2604), by the United States Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) of the United States Department of Labor (hereinafter, “the agencies”). The MOU will aid OSHA in implementing its responsibilities under TSCA Section 5(f)(5), and will aid EPA in implementing its responsibilities under TSCA Section 5. The goal of the MOU is to improve the combined efforts of the agencies to achieve protection of workers who may be exposed to a new chemical substance, as defined in Section 3(11) of TSCA, 15 U.S.C. § 2602(11), by providing guidelines for coordination of interface activities between the two agencies, specifically communication as it relates to TSCA Section 5, with the common goal of minimizing workplace exposures.

B. Background and Statutory Framework

Authority for this MOU lies in TSCA Section 5(f)(5). Under amended TSCA, when a person submits a new chemical notice under Section 5(a)(1), EPA must make a determination under 5(a)(3) pertaining to: (1) the likelihood that a new chemical substance or significant new use of a chemical substance presents an unreasonable risk of injury to health or the environment or (2) the available data on releases and exposures. At the conclusion of the applicable review

period, TSCA requires EPA to make one of the following five determinations for each chemical substance or significant new use:

- Presents Unreasonable Risk – TSCA Section 5(a)(3)(A)
- Insufficient Information to Permit a Reasoned Evaluation – TSCA Section 5(a)(3)(B)(i)
- Insufficient Information to Permit a Reasoned Evaluation and May Present Unreasonable Risk - TSCA Section 5(a)(3)(B)(ii)(I)
- Produced in Substantial Quantities; and May Reasonably be Anticipated to Enter the Environment in Substantial Quantities or May be Significant or Substantial Human Exposure - TSCA Section 5(a)(3)(B)(ii)(II)
- Not Likely to Present Unreasonable Risk – TSCA Section 5(a)(3)(C)

While EPA, not OSHA, bears the responsibility for making each TSCA Section 5 determination, EPA seeks OSHA input on workplace exposures through regular communication. EPA's TSCA Section 5 communications with OSHA may involve any of the determination types above in addition to any exemption application made pursuant generally to TSCA Section 5(h). TSCA Section 5 communication includes, but is not limited to, consultation with OSHA pursuant to TSCA Section 5(f)(5), which requires that, to the extent practicable, EPA consult with OSHA prior to adopting any prohibition or other restriction relating to a chemical substance with respect to which EPA has made a determination under TSCA Section 5(a)(3)(A) or (B) to address workplace exposures.

As part of EPA's implementation of TSCA, EPA may, pursuant to TSCA section 14(d)(1), and as consistent with the 40 CFR 2.209(c) and other applicable federal laws, share information and grant access to TSCA Confidential Business Information (CBI) with another Federal agency such as OSHA, provided that the TSCA CBI is required by that Federal agency in connection with its official duties to protect health or the environment.

C. Coordination

As agreed in this MOU, EPA and OSHA will coordinate on TSCA Section 5 activities relating to TSCA Section 5(a)(3) determinations and exemptions under TSCA Section 5(h). Coordination will be led or initiated by EPA and may include general communications/activities, recurring updates, and/or formal consultation pursuant to TSCA Section 5(f)(5). EPA and OSHA agree that the procedures for performing activities covered by the MOU will be established through a collaborative process that meets each agency's respective needs and resources.

- General communications/activities: Designated staff and management points of contact from each agency will discuss and resolve issues and participate in joint activities related to workplace exposures identified during TSCA Section 5 reviews.
- EPA recurring updates: The EPA point of contact will provide to the OSHA point of contact regularly scheduled updates on EPA's activities related to workplace exposures identified during TSCA Section 5 reviews. The frequency, format, and content of these recurring updates will be established through an iterative process.

- TSCA Section 5(f)(5) consultation: As follow-on to consultations initiated in 2016, this MOU formalizes continued engagement by EPA and OSHA in consultation activities pursuant to TSCA Section 5(f)(5). It remains incumbent upon EPA to identify and notify OSHA of the need for formal consultation. EPA intends to make strategic consultation efforts with OSHA pursuant to TSCA Section 5, recognizing the limited resources of OSHA and that EPA bears sole responsibility to make determinations. EPA and OSHA recognize that consultation will not always be practicable.

D. Initial Coordination Commitments

It is the goal of EPA and OSHA to follow the requirements in TSCA Section 5. To that end each agency agrees to:

1. Establish points of contact within each agency, each with a common and thorough understanding of this MOU, worker protection measures with regard to TSCA, and procedures needed to complete the consultation process.
2. Educate appropriate OSHA and EPA employees on applicable standards and regulations that may be implicated by communication under TSCA Section 5 including: 29 CFR 1910.1200 (Hazard Communication), 29 CFR 1910.132 (Personal Protective Equipment – General), 29 CFR 1910.133 (Eye and Face Protection), 1910.138 (Hand Protection), 29 CFR 1910.134 (Respiratory Protection), 40 CFR 721.63 (Significant New Use Rules (SNURs); Protection in the Workplace), and 40 CFR 721.72 (SNURs; Hazard Communication Program).
3. Subject to any confidentiality or privilege concerns, OSHA and EPA agree to exchange information necessary to the consultation process established in this MOU, in accordance with procedures to be established to protect TSCA CBI.

E. Confidential Business Information

1. Pursuant to TSCA section 14(d)(1), EPA regulations at 40 CFR 2.209(c) and 2.306(h), and EPA's TSCA Confidential Business Information Protection Manual, EPA may share information and grant access to TSCA CBI with OSHA. OSHA may require access to TSCA CBI in order to coordinate with EPA as described in paragraph C of this MOU.
2. Transfer of specific TSCA CBI will be handled through the EPA/OPPT Document Control Officer (DCO) according to established procedures. OSHA will protect TSCA CBI received from EPA according to the procedures set forth in the TSCA CBI

Protection Manual. EPA will provide initial and yearly CBI training to appropriate OSHA staff.

3. OSHA will share TSCA CBI provided by EPA only with those OSHA personnel who have been authorized to have access to the TSCA CBI as required by EPA's TSCA CBI Protection Manual.
4. OSHA staff will manage and protect all TSCA CBI provided by EPA in accordance with 40 CFR 2.209(c)(5) and the TSCA CBI Protection Manual. The TSCA CBI Protection Manual will provide the protocols for the access, use and storage of TSCA CBI accessed pursuant to this agreement unless alternative arrangements are made consistent with the TSCA CBI Protection Manual. Unauthorized disclosure of any shared information may be a violation of TSCA Section 14(h) and 40 CFR 2.209(c)(5).
5. For documents identified as TSCA CBI, materials no longer needed shall be destroyed or returned to EPA by OSHA consistent with the provisions of the TSCA CBI Protection Manual.

F. Period of Agreement

This MOU does not preclude the parties from entering into separate agreements setting forth procedures for special programs which can be handled more efficiently and expeditiously by such separate agreement.

This MOU will become effective on the date of the last signature. The MOU will remain in effect for a period of 3 years from the effective date. This MOU may be extended or modified at any time through the mutual written consent of the parties. Additionally, a party may terminate its participation in this MOU at any time by providing written notice to the other party, at least 30 days in advance of the desired termination date.

The obligations the parties agree to in paragraphs E.1 through E.5 will continue after other provisions of this MOU have been terminated.

G. Nature of this Interagency MOU

Nothing in this MOU, or in any consultation undertaken pursuant to TSCA Section 5, is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory and/or regulatory functions. This MOU is not a rule, regulation, or contract. The MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity by persons who are not party to this MOU, against OSHA or EPA, their employees, or any other person. This MOU neither directs or applies to any person outside OSHA or EPA, nor provides or creates defenses for any third party to use in any litigation or arbitration.

All commitments made by the EPA and OSHA in this MOU are subject to the availability of appropriated funds and budget priorities. Nothing in this MOU, in and of itself, obligates EPA or OSHA to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations. Any transaction involving transfers of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

LOREN SWEATT Digitally signed by LOREN SWEATT
Date: 2021.01.08 13:25:44 -05'00'

Loren Sweatt
Principal Deputy Assistant Secretary
Occupational Safety and Health Administration

Date

ALEXANDRA DAPOLITO DUNN Digitally signed by ALEXANDRA DAPOLITO DUNN
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Alexandra Dapolito Dunn
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
Environmental Protection Agency

Date