



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

October 2, 2000

Dr. Judith M. Hushon
ERM-Southwest, Inc.
16300 Katy Freeway
Suite 300
Houston, TX 77094-1611

Dear Dr. Hushon:

I am writing in response to your inquiries of September 17, 1998 to David Williams and Scott M. Sherlock, also of EPA's Office of Pollution Prevention and Toxics. Your questions concerned the applicability of Toxic Substances Control Act (TSCA) section 5 premanufacture notification (PMN), section 12(b), and section 8(a) Inventory Update Rule (IUR) requirements to foreign trade zones (FTZs). I apologize for the delay in our response.

You first asked whether, when a company operating within an FTZ brings materials (presumably chemicals) into the FTZ from abroad, the company must comply with TSCA section 5 PMN requirements at the time the chemicals are brought into the U.S. (brought into the FTZ) or at the time the products manufactured in the FTZ, using the chemicals, are sent outside the FTZ to U.S. destinations. EPA's view is that the former is correct, i.e. a PMN is required at the time new chemicals are imported into the customs territory of the U.S. as defined by general headnote 2 of the Tariff Schedules of the U.S., whether into an FTZ or otherwise. See TSCA section 3(7) and 40 CFR part 720 (the regulations associated with TSCA section 5 PMN requirements). This position is consistent with the Agency's mission under TSCA to protect human health and the environment in the U.S. from risks associated with chemical substances and mixtures. It is also consistent with the FTZ Act, which indicates that FTZs are exempt from Customs laws (19 U.S.C. Sec. 81c.), but that other Federal agencies retain their jurisdiction over these areas (19 U.S.C. Sec. 81i.) (see also the FTZ regulations at 15 CFR 400.41). The FTZ Manual more specifically indicates that the admission of chemical substances subject to TSCA into FTZs is conditioned upon EPA's approval for use in the U.S. (FTZ Manual Chapter 2, 2.2G; see also Chapter 6, 6.3).

You also asked whether an export notification under TSCA section 12(b) must be submitted for a shipment of chemicals from a company within the U.S. to a company within a U.S. FTZ. TSCA section 12(b) applies to shipments that are exported "to a foreign country."

The shipment referenced in your question is not considered an export under TSCA section 12(b) because the shipment does not leave the U.S. As a result, neither company would be required to submit an export notification to the Agency. See 40 CFR part 707, subpart D for the regulations associated with TSCA section 12(b).

You then asked whether a company operating within a U.S. FTZ must submit an export notification under TSCA section 12(b) if it sends chemicals from the FTZ to a foreign country. In such a case, an export does occur because the shipment is exported "to a foreign country." If the shipment contains chemicals covered by TSCA section 12(b), then the company must submit an export notification (40 CFR 707.60).

Finally, you asked whether a company operating within a U.S. FTZ must comply with the Inventory Update Rule under TSCA section 8(a). If such a company manufactures a chemical substance subject to IUR reporting in a quantity large enough to trigger reporting (see 40 CFR 710.28), the company would be responsible for complying with the IUR regulations at 40 CFR part 710. When a company operating within a U.S. FTZ imports chemical substances into its facility from overseas, it must include the imported quantities in its IUR report.

If you have further questions, please contact Laura L. Bunte of my staff at 202-260-1105.

Sincerely,



Frank Kover
Chief, Chemical Information and Testing Branch

cc: Flora Chow
Robert Esworthy
Scott Sherlock

Enclosures