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October 21, 2014

Via E-Mail

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Section 21 Petition for Section 8(a) Partial Exemption in Chemical
Data Reporting for Biodiesel Products

Dear Administrator McCarthy:

The Biobased and Renewable Products Advocacy Group (BRAG[®])¹ submits this petition under the authority of Section 21 of the Toxic Substances Control Act (TSCA) to initiate a rulemaking to amend the TSCA Section 8 Chemical Data Reporting (CDR) partially exempted chemical list set forth in the U.S. Environmental Protection Agency's (EPA) regulations at 40 C.F.R. Section 711.6(b)(1). Specifically, BRAG petitions EPA to add "biodiesel" as a chemical category for partial exemption with the following chemicals and associated Chemical Abstracts Service Registry Numbers (CASRN):

- Tallow, Methyl Ester: CASRN 61788-61-2;
- Soy Oil, Methyl Ester: CASRN 67784-80-9;
- Canola Oil, Methyl Ester: CASRN 129828-16-6;
- Fatty acids, corn-oil, Me esters: CASRN 515152-40-6;

¹ BRAG provides a platform for organizations engaged in biobased chemistries to identify regulatory barriers for their unique products and to work collectively to address them. BRAG tackles regulatory hindrances related to commercialization of biobased products and works to improve public awareness of the benefits of these products.

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- Fatty acids, C16-18 and C18-unsaturated, Me esters: CASRN 67762-38-3; and
- Fatty acids, C14-18 and C16-18-unsaturated, Me esters: CASRN 67762-26-9.

BRAG members represent manufacturers of biodiesel products and thus will be directly and materially impacted by the outcome of this petition.

TSCA Section 21 Provides EPA Authority to Amend the CDR Partially Exempt Chemical List

Under TSCA Section 21, any person may petition the EPA Administrator to “initiate a proceeding for the issuance, amendment, or repeal of a rule” under TSCA Sections 4, 6, or 8, or an order issued under TSCA Sections 5(e) or 6(b)(2).² A TSCA Section 21 petition must set forth facts that the petitioner believes “establish that it is necessary to issue, amend, or repeal a rule” subject to the petition.³

In prior decisions responding to Section 21 petitions, EPA has focused on different elements as to whether a petitioner has set forth sufficient facts demonstrating that it is “necessary” for EPA to act as requested. In denying a Section 21 petition seeking a Section 6 rule, for example, EPA stated that TSCA Section 21 implicitly incorporates the statutory standards that apply to the requested actions and the petitioner had not set forth sufficient facts to demonstrate the Section 6 standard could be satisfied.⁴ In another petition asking EPA to, in part, issue a TSCA Section 8(d) rule to obtain information on “exposure of consumers to air fresheners,” EPA found the broad scope of the proposal and the resources to be expended a factor in determining petitioners had not persuaded EPA that it is necessary or appropriate to issue the requested TSCA Section 8(d) rule.⁵ In this case, and as set forth below, BRAG has

² TSCA § 21(a), 15 U.S.C. § 2620(a).

³ TSCA § 21(b)(1), 15 U.S.C. § 2620(b)(1).

⁴ 73 Fed. Reg. 32573 (June 9, 2008).

⁵ 72 Fed. Reg. 72886 (Dec. 21, 2007). *See also* 79 Fed. Reg. 13968, 13970 (Mar. 12, 2014) (“Based on the expected limitations in the availability and utility of the records to EPA’s analysis of lead-based paint hazards created by renovations in P&CBs, EPA does



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identified sufficient facts demonstrating that biodiesel should be added to the TSCA Section 8 CDR partially exempt chemical list for the same reasons EPA listed those petroleum chemicals already included. Moreover, the rulemaking BRAG seeks is focused, not resource-intensive, and will ensure that EPA's regulations are equitable in their treatment of extremely similar substances.

**EPA Should Initiate a Rulemaking to Amend the (b)(2) List
to Include Substances Similar to Those Already Listed**

EPA maintains two lists of partially exempt chemicals for which manufacturers are exempt from reporting the CDR processing and use information required by 40 C.F.R. Section 711.15(b)(4).

One list of partially exempted chemicals is found at 40 C.F.R. Section 711.6(b)(2)(iv) (hereafter referred to as the (b)(2) List). EPA has stated that CDR processing and use information for chemicals on this list is of "low current interest" and has established a formal petition process for amending the (b)(2) List.⁶

The other list, found at 40 C.F.R. Section 711.6(b)(1) (hereafter referred to as the (b)(1) List), consists primarily of petroleum process streams that were exempted via a rulemaking process based on proposals submitted by the American Petroleum Institute (API). In the final rule adding the petroleum process exemption, EPA stated the following:

The basis for this exemption is not because these streams are of known low toxicity. EPA believes that the chemicals termed "petroleum process streams" for purposes of IURA are often toxicologically active. However, these chemicals are frequently processed at the site where they are produced in vessels which are designed to minimize losses and, coincidentally, the potential for releases and exposure. In many cases, the flammable nature of these products requires that they also be transported, processed, and stored in well controlled vessels. For these reasons, EPA

not believe that the expenditures of time and resources inherent in proposing and finalizing a TSCA section 8(d) rule are justified").

⁶ BRAG notes it is submitting a petition to amend the (b)(2) List in addition to this petition to amend the (b)(1) List.



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believes worker exposure to the chemicals termed “petroleum process streams” for purposes of IURA is diminished and thus full IURA exposure-related reporting is not warranted at this time.⁷

Unlike the process to amend the (b)(2) List, there is no specified petition process to amend the (b)(1) List, which is why BRAG is seeking a rulemaking under TSCA Section 21.⁸

The chemicals identified above in the “biodiesel” category are used in conjunction with or as a replacement for petroleum-derived diesel fuel (CASRN 68334-30-5) and diesel fuel number 2 (CASRN 68334-30-5), both of which are included on the (b)(1) List. Similar to the currently exempted products included on the (b)(1) List, the biodiesel products subject to this petition are not of known low toxicity and can be toxicologically active. That being said, biodiesel products are a very specific group of substances that are treated similarly to the petroleum products on the (b)(1) List due to the conditions of manufacture and the properties and uses of the substances. Like petroleum products, the biodiesel products subject to this petition are transported, processed, and maintained in vessels to minimize losses that result in a low potential for release and exposure. Similar to the conclusions reached by EPA for the currently exempt petroleum products on the (b)(1) List, worker exposure to the listed biodiesel products for purposes of CDR is diminished and full CDR reporting is not warranted. BRAG believes that adding biodiesels to the (b)(1) List is necessary to ensure equitable regulatory treatment of chemical substances of comparable release and exposure potential, and to avoid EPA providing regulatory relief to one subset of diesel products over another -- even though both meet the decision conditions identified by EPA in its final rulemaking to amend the (b)(1) List. Indeed, given EPA’s stated objectives and interest in sustainable technologies in general, and

⁷ 68 Fed. Reg. 848 (Jan. 7, 2003).

⁸ The approach of submitting a TSCA Section 21 petition was discussed with EPA on July 1, 2014, and EPA seemed to agree this was a viable approach. In a July 11, 2014, follow-up e-mail, Loraine Passe, Acting Chief, Existing Chemicals Branch, stated:

To follow up on one of your questions, it is okay to submit a petition to be added to the list of partially exempt chemicals at 40 CFR 711.6(b)(2)(iv) and simultaneously request to be added via rulemaking to the list at 40 CFR 711.6(b)(1). As we discussed at the meeting, we will consider hazard in making a determination on being added to the (b)(2) list; however, hazard is not a consideration in a rulemaking to be added to the (b)(1) list.



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ongoing programs that engage biodiesel producers in particular, the actions outlined in this petition are appropriate.

For the reasons outlined above, BRAG believes that EPA has the authority under TSCA Section 21 to issue a rulemaking to add a biodiesel category to the (b)(1) List. This petition sets forth sufficient facts demonstrating that it is “necessary” for EPA to act as requested, as the standard EPA set in deciding that exposure-related reporting is not warranted for certain petroleum products is equally applicable to biodiesel, and there are no significant expenditures of time and resources inherent in proposing to add to the (b)(1) List that could cause EPA to determine this rule is not justified.

BRAG members look forward to the opportunity to discuss with EPA any questions regarding this petition and to EPA’s response to the petition request. Please call me at 443-964-4653 or e-mail me at [kroberts@bc-cm.com](mailto: kroberts@bc-cm.com) for further information or to schedule a meeting.

Sincerely,

A handwritten signature in black ink that reads "Kathleen M. Roberts". The signature is written in a cursive, flowing style.

Kathleen M. Roberts
BRAG Executive Director