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ATTACHMENT 3 - B

EPA Response to Public Comment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY


WASHINGTON, D.C. 20460

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

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MEMORANDUM

SUBJECT: American Petroleum Institute's comments on TSCA section 12(b)
ICR Supporting Statement

FROM: Maria J. Doa, Director 
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Overview

EPA published a proposed information collection request (ICR) renewal for public notice and comment for section 12(b) of TSCA in the Federal Register in May 2012 (77 FR 26750, May 7, 2012). One public comment was received from the American Petroleum Institute (API). This memorandum describes the public comment, the statutory and regulatory requirements related to the comment, and our planned response to the comment.

API made two general points. First, API asked that EPA consider retiring its TSCA export notification requirements because, according to API, "they are obsolete, have no practical utility, and are burdensome and costly to industry and EPA." Second, API conditionally supported the suggestion in EPA's Federal Register notice "of establishing an optional electronic reporting system for export notification," if EPA's TSCA export notification requirements "continue[d] for any significant time."

With respect to retiring the TSCA export notification requirements, API stated that: "The only purpose of TSCA export notification is to enable EPA to notify a receiving country that a chemical being exported to the country from the U.S. is subject to a TSCA action" and EPA did not have "any current information on the usefulness to receiving countries of the information EPA provides them" and there were "no apparent benefits to the U.S. public interest."

API also stated that: “The current state of communication and technology has made EPA’s notices to foreign countries obsolete,” because, “through websites and other communication forums, there is an extensive framework through which foreign governments can easily know the regulatory actions of the U.S. government in general, and its TSCA regulations for specific chemicals in particular.”

API acknowledged, however, that TSCA section 12(b) “does mandate that exporters notify EPA of exports and that EPA provide receiving countries with notices,” but argued that TSCA section 12(b) “does not specifically mandate that EPA carry out its statutory obligation in the manner that it currently does.” APA noted, in particular, that TSCA section 12(b) had no timing, or timeliness, requirement.

Alternatively, API suggested that EPA “rely on information collected under the new Chemical Data Reporting (CDR) rule,” because, “in the recent final rule for CDR, EPA added a field for reporting the volume directly exported of each reportable chemical substance domestically manufactured or imported at each site;” which “could serve as the notification of export from companies.”

With respect to establishing an optional electronic reporting system for export notification, API stated that EPA “would need to implement electronic submission for TSCA export notification with care, considering the short timeframes associated with submission under the current regulations, which require that export notifications to EPA must be postmarked within seven days of forming the intent to export or on the date of export, whichever is earlier.” According to API, “a new user of the system (e.g., a company exporting a 12(b) chemical for the first time) might not have a time to register and learn the system in time to notify in the required timeframe” and “some companies that routinely export have programmed internal systems to automatically generate export notification letters to EPA if and when the requirements are triggered.”

TSCA Section 12(b) (15 USC 2611)

Export notification is required by TSCA section 12(b) (15 USC 2611), which provides that:

- (1) If any person exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under section 4 or 5(b), such person shall notify the Administrator of such exportation or intent to export and the Administrator shall furnish to the government of such country notice of the availability of the data submitted to the Administrator under such section for such substance or mixture.
- (2) If any person exports or intends to export to a foreign country a chemical substance or mixture for which an order has been issued under section 5 or a rule has been proposed or promulgated under section 5 or 6, or with respect to which an action is pending, or relief has been granted under section 5 or 7, such person shall notify the Administrator of such exportation or intent to export and the Administrator shall furnish to the government of such country notice of such rule, order, action, or relief.

EPA TSCA Section 12(b) Implementing Regulations (40 CFR Part 707)

EPA's implementing regulations at 40 CFR Part 707 provide that:

- For TSCA Section 5(f), 6, or 7 actions, the exporter must submit a notice to EPA for the first export of each chemical to a particular country each calendar year.
- For TSCA Section 4, 5(a)(2), 5(b) or 5(e) actions, the exporter must submit a notice to EPA only for the first export to a particular country.
- The notice must be postmarked within seven days of forming the intent to export (based on a definite contractual obligation or an equivalent intra-company agreement) or on the date of export, whichever is earlier.
- The notice must be submitted by letter to EPA and include the name and address of the exporter, the name of the chemical substance or mixture, the date(s) of export or intended export, the country or countries of import, and the section of TSCA under which EPA has taken action.
- EPA must send a notice to the government of the importing country no later than five working days after receipt of the notification.
- Export notification is not generally required for articles (40 CFR 707.60(b)) or for specified *de minimis* concentrations (40 CFR 707.60(c)).

Discussion and EPA's Planned Response to the Comment

EPA does not have discretion to retire or eliminate the export notification requirements, as API suggests, because the notification requirements are statutorily mandated. TSCA requires anyone who exports a chemical that is subject to a TSCA section 4 or 5(b) rule, or a section 5 or 7 order, or a proposed or final section 5 or 6 rule to notify EPA, and EPA is required to notify the government of the country to which the chemical is being exported.

EPA's TSCA section 12(b) regulations were promulgated in 1980 and have operated successfully for over thirty years. Moreover, EPA already amended the regulations in July 1993 and November 2006 to reduce the overall burden of the statutory mandate on exporters. 58 FR 40242, July 27, 1993; 71 FR 66324, Nov. 14, 2006. Among other things, the amendments reduced the notification requirement for exporters of chemicals subject to an action under TSCA sections 4 and 5 from an annual notification to a one time notification for the first export to a particular country. The 2006 amendments also set *de minimus* concentration levels below which notification would not be required and clarified that a single export notification may refer to more than one section of TSCA where the exported chemical is the subject of multiple TSCA actions.

Additionally, the changes that API suggests with respect to relying on information collected under the Chemical Data Reporting (CDR) rule in lieu of the current export notification framework are not short-term changes; rather, they are substantial changes that would require substantial analysis and public consultation before the Agency could implement an alternate system. Moreover, the CDR does not meet the requirements of the statute. TSCA section 12(b) requires anyone who exports a subject chemical to notify EPA, and requires that EPA notify the receiving country of relevant actions under TSCA sections 4, 5, 6 or 7 and the availability of the data submitted to EPA for such chemical substance or mixture. Implicit in the statute is the

requirement that notice be timely. The CDR reporting requirement occurs only once every four years, a period of time that would not permit timely notification under TSCA section 12(b). API also suggests that such notice is obsolete because foreign governments can know what chemicals EPA has regulated under TSCA through Websites and “other communication forums.” This would require foreign governments to monitor EPA and industry actions by means of the Internet rather than receive the notice as prescribed by the statute. Even if this suggestion were practicable, EPA cannot disregard the statutory requirements. In addition, it is not clear that the chemical information collected by the CDR would meet the export notification requirements of the statute. For example, the CDR has *de minimus* reporting thresholds; TSCA section 12(b) does not. The CDR only requires manufacturers (including importers) to report the unprocessed volume they directly exported, but does not require reporting of the export destination. The volume exported by others, such as distributors and processors, is not reported as part of the CDR. For these reasons, the CDR does not at this time present a viable alternative to the current notice procedures.

EPA will take into consideration API’s second suggestion that EPA should utilize the Internet and electronic reporting to simplify section 12(b) notifications and, thereby, make the process more efficient and economical. In particular, EPA is exploring the use of the Internet and electronic reporting, which were not available in 1980 when EPA’s section 12(b) regulations were promulgated, in order to make section 12(b) reporting as efficient and effective as possible. The Office of Pollution Prevention and Toxics (OPPT) is already expanding the use of electronic reporting in its programs. For example, in April 2012, OPPT proposed requiring electronic reporting for certain information that must be submitted under TSCA sections 4, 5, 8(a), and 8(d). This requirement is expected to be promulgated this year, and is part of EPA’s continuing efforts to streamline the reporting process and reduce the administrative costs associated with information submission and recordkeeping under TSCA (74 FR 22707, Apr. 17, 1012), as well as part of EPA’s efforts to increase access to, and transparency in, TSCA-related chemical information held by EPA and industry (<http://www.epa.gov/oppt/existingchemicals/pubs/transparency.html>).

API’s comments do not warrant revisions to the section 12(b) ICR supporting statement at this time.