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Mr. Mike Mattheisen
Chemical Control Division
Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: Agency Information Collection Activities; Proposed Renewal of the Collection Under OMB Control No. 2070–0030, EPA ICR No. 0795.15; EPA–HQ–OPPT–2015–0435

Dear Mr. Mattheisen:

The American Petroleum Institute (API) respectfully submits these comments on the U.S. Environmental Protection Agency (EPA) Information Collection Request (ICR) "Notification of Chemical Exports—TSCA Section 12(b)," EPA ICR No. 0795.15 and OMB Control No. 2070–0030 [80 *Federal Register* 66000 – 66001, October 28, 2015]. API represents over 630 oil and natural gas companies, leaders of a technology-driven industry that supplies most of America's energy and supports more than 9.8 million jobs and eight percent of the U.S. economy. API members include producers, refiners, suppliers, pipeline operators, and marine transporters of oil and natural gas, as well as service and supply companies that support all segments of the industry. Our member companies have been stakeholders in numerous Toxic Substances Control Act (TSCA) rulemakings and have submitted many export notifications to EPA over the past 35 years in which the requirement has been in effect.

API asks EPA and the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs (OIRA) to use this ICR review to assess thoroughly and objectively the practical utility of the TSCA section 12(b) export notification requirement and then to reduce or eliminate any associated unnecessary paperwork bureaucracy and burden. API views the TSCA export notification requirement as a prime example of a regulation with little or no value and urges EPA and OMB to take this opportunity to eliminate or mitigate the burden associated with this paperwork requirement.

1. The information collected has little or no practical utility.

EPA solicits comments and information to enable it to evaluate whether this collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility. The TSCA section 12(b) export notification requirement is an outdated paperwork requirement that now has little or no practical utility. Under the requirement, any person who exports or intends to export a chemical substance or mixture that is regulated (and in some cases merely proposed to be regulated) under TSCA section 4, 5, 6 and/or 7 must notify EPA of such export or intent to export.[1] Then EPA advises governments of importing countries of the U.S. regulatory action that triggered the notification with respect to that substance.

EPA says the following in the Supporting Statement for the ICR under "Use/Users of the Data."

> As required by TSCA section 12(b), the Administrator will use the information collected under this ICR to furnish the required notice to the government of the importing country. The importing country typically uses the information provided to ensure that chemicals imported into their country comply with their laws and regulations.[2]

This is the entirety of the supporting explanation of the practical utility of the information collected, and it is nonsensical. The notice from EPA simply informs the country of the existence of a U.S. regulatory action for a chemical and has nothing to do with the receiving country's regulations. It does not contribute to a foreign country ensuring that chemicals imported into that country comply with local laws and regulations.

EPA has not provided any current information to show any usefulness to receiving countries of the information EPA provides, and there are no benefits to the U.S. public interest. The simple fact that a chemical substance is regulated under TSCA section 4, 5, 6, and/or 7 is information that is readily accessible to any foreign government. The information is available on the Internet and has been exchanged in multinational forums over the years.

Even assuming that EPA's communication could be of use to a receiving foreign country, no benefit is derived when multiple companies submit export notifications for a given chemical/country combination to EPA on an ongoing and repetitive basis. The export notifications that EPA receives from companies are many times greater than the notices it sends to foreign countries; thus, many of the export notifications companies send to EPA are completely extraneous.

EPA and OMB need to directly address the reality that this program is entirely obsolete. When TSCA was enacted in 1976, it would have been difficult for foreign governments

[1] There are certain exemptions as found in the rules at 40 CFR Part 707 Subpart D.

[2] U.S. EPA, *Supporting Statement for a Request for OMB Review Under the Paperwork Reduction Act*, EPA ICR No. 0795.15, OMB Control No. 2070-0030, 2015, p. 3.

to know what chemicals EPA regulated under TSCA. Now this information is readily available globally on the Internet. Foreign governments can easily know the TSCA regulations in place and what chemicals are subject to them. EPA has not articulated any real practical utility for the information collection, and it does not appear that there is any.

2. The requirements are burdensome for companies and for EPA.

EPA asks for comments on the accuracy of the Agency's estimates of burden, including the validity of the methodology and assumptions used. The current regulations are burdensome on businesses that export chemical substances, including any non-article products containing chemicals. To comply with TSCA export notification requirements, businesses must develop and maintain compliance systems to track all chemical substance exports, check chemicals (including product ingredients) against the continually changing 12(b) list, determine if annual or one-time notification is required, and submit letters to EPA. It is necessary to continuously track the release of new TSCA section 4, 5, 6, and 6 actions that trigger additions to the 12(b) list. The current regulations require that export notification letters be sent to EPA within seven days of forming the intent to export or on the date of export, whichever is earlier. Compliance with this timeframe essentially requires an ongoing system of identifying exports, checking them for potential 12(b) components, and generating letters almost immediately.

Burden has increased in recent years because EPA has promulgated numerous proposed and final TSCA significant new use rules (SNURs), which automatically add chemicals to the 12(b) list. EPA has published proposed and/or final SNURs for approximately 200 chemical substances so far in 2015 alone. The Supporting Statement makes no mention of this increasing burden.

Businesses affected by the TSCA section 12(b) export notification requirement are of all sizes and are in many different industry sectors. Chemical exporting is common in various forms, and is a vital part of the U.S. economy.

In addition to company resources, as EPA describes in its *Supporting Statement*, implementation of the TSCA export notification program at the EPA involves a complex "handling and tracking" process that includes receiving documents in a Confidential Business Information Center and maintaining an Export Notification Tracking System (ENTS) which houses 162,000 records dating back to 1989.[3] API does not think continued operation of this program is warranted given the minimal value of what is achieved.

3. EPA needs to take action to further minimize burden—EPA should no longer compel export notification in its current form.

[3] *Supporting Statement*, 2015, p. 5. Note that the 2012 *Supporting Statement* contained this same 162,000 figure, so it is reasonable to assume that this number is now higher.

EPA seeks comments on how to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. API very much appreciates the actions that EPA has taken over the years to streamline TSCA section 12(b) export notification requirements, in particular the final rule amending export notification regulations in a manner that reduced burden.[4] Since the TSCA export notification requirement is a burdensome paperwork requirement with no identified utility that has become increasingly outmoded, EPA and OMB now should find a way to eliminate the requirement in its current form.

API understands that EPA has an obligation under the statutory language of TSCA section 12(b), which states that a person who exports or intends to export to a foreign country a subject chemical substance or mixture shall notify EPA of the export or intent to export, and EPA shall then notify the foreign government. API strongly urges EPA to consider how the statute could be implemented without requiring the ongoing notifications that the regulations at 40 CFR Part 707 Subpart D currently mandate. While TSCA section 12(b) does mandate that exporters notify EPA of exports and that EPA provide receiving countries with notices, it does not specifically mandate that EPA carry out its statutory obligation in the manner that it currently does. EPA contended when promulgating the original export notification regulations that it has the authority to issue procedural and interpretative rules to implement the statute.[5]

One idea for an alternative to the current regulations is to rely on information collected under the TSCA Chemical Data Reporting (CDR) rule. In the most 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.[6] Indication of export of a chemical in a CDR report could serve as the notification of export to EPA, and no additional notices need be required. The data collected under the existing CDR provides EPA with notice of the fact of export from the companies subject to CDR reporting, which as manufacturers and importers constitute the main parties likely to export bulk quantities or significant quantities in mixtures.[7] The current CDR reporting provides EPA with sufficient information to make the notices to foreign governments in order to fulfill its statutory obligations and would not need to be adjusted in any way to serve that purpose.

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[4] 71 *FR* 66244, November 24, 2006. The amendments included changing the export notification requirement from annual to one time (per country) for some chemicals. The rule also established a *de minimis* concentration level for export notification, and contained several other changes and clarifications.

[5] 45 *FR* 82844, December 16, 1980.

[6] 76 *FR* 50816 - 50879, August 16, 2011. Regulations at 711.15(b)(3)(iv).

[7] As of the 2016 reporting period, CDR reports are required for chemicals manufactured or imported above CDR reporting thresholds, which are the special lower thresholds for most of the chemicals on the 12(b) list. Under 40 CFR 711.8(b) and 40 CFR 711.15, the reporting threshold is 2,500 lb for any person who manufactured (including imported) a chemical substance that is the subject of a rule proposed or promulgated under TSCA section 5(a)(2), 5(b)(4) or 6; an order issued under TSCA section 5(e) or 5(f); or for which relief that has been granted under a civil action under TSCA section 5 or 7. Also, starting with the 2016 reporting period, reporting is triggered if the annual reporting threshold is met during **any** of the calendar years since the last principal reporting year.

If the export notification requirement remains in place, EPA needs to implement an electronic reporting option for submissions. Although EPA has implemented electronic reporting for most information submitted under TSCA sections 4, 5, and 8, there is still no electronic reporting options for TSCA section 12(b) export notices. EPA states in its Supporting Statement that:

> EPA is continuing to explore the feasibility of developing and implementing an optional electronic data reporting system for the ease of respondents, which could result in a significant burden reduction. The projected reporting system is designed to be a user-friendly interface for parties engaged in reporting under TSCA sections 4, 5, 8, and 12(b). Thus, the submission of information to EPA will be less expensive, faster, and more efficient once this technology is fully applied.[8]

This is word-for-word the same statement that EPA made in its 2012 Supporting Statement during the previous ICR review.[9] The review of the current ICR should address this long delay in implementing electronic reporting for export notification. The effort and resources associated with developing an electronic export notification system could be spared if EPA eliminates the export notification requirement in its current form. If submission of export notifications is to continue, then EPA would need to implement electronic submission for TSCA export notification with care. Electronic reporting would need to accommodate the timeframes associated with submission—under the current regulations, export notifications must be postmarked within seven days of forming the intent to export or on the date of export, whichever is earlier. It is important that any electronic reporting for TSCA section 12(b) be optional and not mandatory.

In summary, API appreciates EPA's past efforts to reduce the burden of TSCA section 12(b) export notification requirements. Careful review under the ICR process should lead to the conclusion that further changes are now warranted to minimize and hopefully virtually eliminate the burden of this low-value information collection.

API thanks EPA and OMB for its attention to these comments. Feel free to contact me with any questions or should you require additional information from API.

Sincerely,

[8] *Supporting Statement*, 2015, page 6.

[9] U.S. EPA, *Supporting Statement for a Request for OMB Review Under the Paperwork Reduction Act*, EPA ICR No. 0795.14, OMB Control No. 2070-0030, 2012, p. 6.