




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

January 19, 2016

**MEMORANDUM**

**SUBJECT:** Response to Comment Received on Proposed Renewal of Information Collection Request for Toxic Substances Control Act Section 12(b) Export Notifications

**FROM:** Maria J. Doa, Director   
Chemical Control Division

**TO:** Angela Hofmann, Director  
Regulatory Coordination Staff

**Background**

In October 2015, EPA published a notice in the Federal Register announcing that it was planning to submit an Information Collection Request (ICR) for export notifications required by section 12(b) of the Toxic Substances Control Act (TSCA) to the Office of Management and Budget (OMB) for renewal, and requesting public comment. 80 FR 66000, Oct. 28, 2015. The public comment period closed on December 28, 2015. One comment was received.

**Public Comment**

EPA received one public comment in response to its proposed renewal of this ICR. The comment, from the American Petroleum Institute (API) in Washington, D.C., asks EPA to “assess thoroughly and objectively the practical utility of the TSCA [Toxic Substances Control Act] section 12(b) export notification requirement and then to reduce or eliminate any associated unnecessary paperwork bureaucracy and burden.” The comment notes, however, 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.”

Under the statute, the phrase “subject chemical” means chemicals “for which the submission of data is required under section 4 or 5(b)” or “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.” 15 U.S.C. 2611. In addition to notifying the foreign government of the export, the statute requires EPA to “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” or “notice of such rule, order, action, or relief,” respectively.

API suggests that EPA alternatively “rely on information collected under the TSCA Chemical Data Reporting (CDR) rule,” which requires “reporting the volume directly exported of each reportable chemical substance domestically manufactured or imported at each site,” or “implement an electronic reporting option for submissions.”

#### Response to Comments

The CDR rule is not a suitable alternative for export notification. Among other things, only manufacturers (including importers) are subject to the CDR rule, not all exporters, and the CDR rule includes certain production volume thresholds, meaning that exports of less than the threshold amount would not be reported under the CDR rule. In addition, the CDR rule does not include either chemicals granted PMN exemptions (including Low Volume, Low Releases and Low Exposures, R&D, Test Marketing, and Polymer exemptions) or biotech materials (including chemicals with Microbial Commercial Activity Notices). Reporting under the CDR rule also only requires annual data to be reported once every four years, which would result in an unreasonably long delay in notifying foreign governments.

EPA’s regulations implementing TSCA section 12(b) were issued in December 1980. 40 CFR Part 707, subpart D; 45 FR 82850, Dec. 16, 1980. In pertinent part, the regulations require subject exporters to send written notice to EPA within seven days of either the first export to a particular country in a calendar year or only for the first export to a particular country, depending on what kind of TSCA rule or action made the export notice necessary. 40 CFR section 707.65. The export notice must include minimal, basic information; specifically, the name of the chemical, the name and address of the exporter, the name of the country of import, the date of export, and the TSCA section under which the export requirement is necessary (so that the foreign government can ascertain its significance). 40 CFR section 707.67. EPA has only five working days from receipt of the export notice to notify the foreign government and provide it with the required information. 40 CFR section 707.70.

EPA proposed to implement electronic reporting for TSCA sections 4 (test rules), 5 (pre-manufacture notices), 8(a) PAIR (Preliminary Assessment Information Rule) and 8(d) (health and safety studies reporting rules) in April 2012 (77 FR 22707, Apr. 17, 2012) and issued a final rule requiring electronic reporting in December 2013. (Electronic Reporting Under the Toxic Substances Control Act, 78 FR 72818, Dec. 4, 2013) The final rule went into effect on March 4, 2014. According to the Federal Register notice for the final rule, one public comment on the proposed rule asked EPA to “explain its plans for electronic reporting under TSCA section 8(e) [substantial risk notifications] and 12(b) [export notification].” In response, EPA stated that it was “also considering extending electronic reporting for TSCA section 12(b) export notifications,” but was not “announcing the availability of such a reporting method at this time.” The first part of this statement was included in this and the last ICR renewal.

Electronic reporting is a viable and reasonable improvement to export notification; the recent implementation of electronic reporting for TSCA sections 4, 5 and 8 has worked well. EPA has, therefore, begun preliminary requirements development for electronic reporting for TSCA section 12(b), which includes the incorporation of all office functions of the Office of Pollution Prevention and Toxics, i.e., policy (Chemical Control Division), chemical reviews (Chemistry, Economics and Sustainable Strategies Division), and workflow and reporting (Information Management Division). EPA is committed to providing electronic reporting for TSCA section 12(b) export notices as soon as technical requirements can be met given budgeting and priority considerations.