

## **Responses to Comments Received on Proposed Renewal of the Information Collection Request (ICR) for the Toxic Substances Control Act (TSCA) Section 12(b) Export Notifications**

### **Background**

On March 12, 2020 (85 FR 14478), the U.S. Environmental Protection Agency (EPA) published a notice in the Federal Register and sent consultation emails to nine recipients announcing that it was planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for renewal of the collection of information under TSCA section 12(b). The public comment period closed on May 11, 2020. The Agency received comments from the American Petroleum Institute (API) in response to this notice.

### **Public Comments and EPA Responses**

*Comment 1:* API commented that the information collection under the TSCA section 12(b) export notification requirement is an outdated paperwork requirement and the information provided to EPA in a notice from an exporter is available to foreign governments on the Internet, including EPA’s databases. API commented that even if notification could be useful to the foreign country, there is no benefit in multiple companies providing export notifications to EPA for each chemical shipment to a particular country on an ongoing and repetitive basis.

*Response:* TSCA section 12(b), 15 U.S.C. 2611(b), requires that “[i]f any person exports or intends to export to a foreign country a chemical substance or mixture for which information is required under section 4 or 5(b) [of TSCA]” 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,” then such person must submit notification to EPA of such export or intent to export. TSCA was enacted in 1976 and significantly amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act on June 22, 2016. However, the export notification process under TSCA section 12(b) was not repealed or altered to indicate that the statutory requirements under section 12(b) should be ended or changed. Therefore, EPA is statutorily obligated to continue requiring export notifications from each exporter, as applicable.

*Comment 2:* API also commented that the current TSCA section 12(b) export notification regulations are burdensome on businesses because the exporter must develop and maintain compliance systems to track exports, continually track TSCA section 4, 5, 6 and [7] actions that trigger 12(b) requirements, determine whether chemical exports are subject to those actions and 12(b) requirements, determine if annual or one-time notification is required, and submit notifications to EPA within seven days of forming the intent to export or on the date of export, whichever is earlier. API also commented that implementation of the TSCA export notification program at EPA involves a complex process for routing notices and maintaining hundreds of thousands of records, a process the commenter claims is not necessary to carry out the proper performance of EPA functions.

*Response:* TSCA section 12(b) export notification requirements are triggered by underlying regulatory actions under TSCA. Persons exporting particular chemical substances or mixtures

that are subject to applicable underlying TSCA regulatory actions should have an awareness of those regulatory actions as they relate to the export of a chemical substance or mixture covered by such action, including 12(b) export notice requirements, which are also generally included in the particular TSCA triggering action. To assist the regulated community, EPA maintains a list of chemical substances and mixtures subject to applicable TSCA triggering actions and updates it regularly to aid exporters in making relevant compliance determinations. Furthermore, as indicated by the commenter, EPA has reduced the frequency of submitting notices for each exporter since the TSCA section 12(b) regulations were first promulgated in 1980. For example, the current regulations require a notice only for the first export or intended export by an exporter to a particular country for some underlying actions and for the first export or intended export by an exporter to a particular country in a calendar year for other triggering actions. Under this ICR renewal, EPA is also requesting OMB approval to make available the option of submitting export notices electronically in lieu of paper-based submissions, further reducing exporters' and EPA's burden hours associated with TSCA section 12(b) requirements, as indicated in the ICR supporting statement.

*Comment 3:* API also suggested that EPA rely on information collected under the TSCA Chemical Data Reporting (CDR) rule to serve as notice of export in lieu of collecting information under the current TSCA section 12(b) regulations because API commented that export information collected under the CDR rule provides EPA with sufficient information for the Agency to notify foreign governments to fulfill its statutory obligations and that the CDR rule would not need to be adjusted in any way to serve that purpose.

*Response:* The CDR rule, pursuant to the information collection authority under TSCA section 8 and codified at 40 CFR part 711, does not provide EPA with the relevant and necessary information to fulfill the exporter's or the Agency's statutory obligations under TSCA section 12(b). The CDR rule retroactively collects production volume and certain related information from manufacturers (including, statutorily, importers); the only export-related information collected is the volume of a chemical that is directly exported from the manufacturing site. The CDR rule does not collect export information from all potential exporters covered by TSCA section 12(b) and the CDR rule does not collect information about what foreign countries receive the exports, and therefore there is no way for EPA to notify the foreign country accordingly. Also, information about exports under the CDR rule relate to past export volumes. For example, under the current CDR regulations, manufacturers meeting production volume thresholds are required to submit information in 2020 on their production during the 2016-2019 calendar years. This means if we relied only on CDR then EPA may not receive notice about export volumes until a few years after export occurred.

*Comment 4:* API also commented that if the export notification requirements continue, then to reduce burden, EPA should either establish an annual submission deadline covering exports that occurred in the previous year or allow at least up to 30 days from the date of export to submit export notifications.

*Response:* Since the original TSCA section 12(b) regulations were promulgated, the Agency has viewed the exporter's notification obligations to be contemporaneous with the time of actual export, or soon after forming the intent to export. This is important so that the relevant foreign

countries receiving these exports are apprised of the shipments underlying the applicable export notices near the time the shipments are exported to the foreign country.