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May 8, 2020

Document Control Office
Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Agency Information Collection Activities; Proposed Renewal of an Existing Collection (EPA ICR No. 0795.16 and OMB Control No. 2070– 0030); Comment Request, EPA–HQ–OPPT–2015–0435

Dear Sir or Madam:

The American Petroleum Institute (API) respectfully submits these comments in response to the U.S. Environmental Protection Agency's (EPA's) request for comments on the planned submission of an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for ''Notification of Chemical Exports—TSCA Section 12(b).'' [85 *Federal Register* 14478 - 14480, March 12, 2020] API has submitted comments on the ICR for Toxic Substances Control Act (TSCA) section 12(b) export notification requirements many times over the years, including during the last ICR review period.[1]

API member companies are leaders of a technology-driven industry that supplies most of America's energy, supports more than 10.3 million jobs and nearly 8 percent of the U.S. economy, and since 2000, has invested more than $3 trillion in U.S. capital projects. API's members are involved in all major points of the chemical supply chain—from natural gas and crude oil production, to refinery production of fuels and other products, to service companies using chemicals. Our members are affected by all of EPA's activities under TSCA, both directly as companies subject to regulation and indirectly as customers of regulated companies. Many of our member companies export a variety of chemical-containing products and other materials, and these companies for years have implemented systems to comply with TSCA section 12(b) export notification requirements.

API requests that EPA and OMB use the opportunity of the current ICR review to seriously consider retiring the TSCA export notification requirements. The export notification regulations at 40 CFR part 707 subpart D are a prime example of an unnecessary "paperwork" requirement. They are obsolete, redundant, and impose burden while providing no benefit to human health or the environment. In the terminology of the Paperwork Reduction Act (PRA), the requirements are not necessary for the proper performance of the functions of the Agency and the information collected does not have any practical utility. EPA and OMB have an opportunity to advance the

[1] See docket documents EPA-HQ-OPPT-2015-0435-0014 and EPA-HQ-OPPT-2015-0435-0007.

core purpose of the PRA by carefully scrutinizing and then eliminating the TSCA export notification requirements.

API appreciates the actions that EPA has taken over the years to attempt to reduce the burden of these requirements, including amending the regulations in 2006.[2] However, at this point in time, burden is on the increase because the number of chemicals on the TSCA section 12(b) list is growing.[3] EPA should no longer require TSCA export notification, for the reasons discussed below. If the requirement continues in any form, EPA should make adjustments to the required timing of notifications in order to reduce burden.

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

The TSCA section 12(b) export notification requirement is an outdated paperwork requirement that now has 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.[4] Then EPA informs importing country governments of the U.S. regulatory action that triggered the notification with respect to that substance.

API is not aware of any information that shows 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 subject to a proposed or final rule or order under TSCA section 4, 5, 6, and/or 7 is information that is readily accessible to any foreign government (or member of the public). The information is available on the Internet, including in searchable EPA databases such as Chemview, and has been exchanged in multinational forums over the years. Foreign governments can easily know the TSCA regulations in place and what chemicals are subject to them. Notices to foreign countries may have had some value in the 1970s when TSCA was enacted, but no longer have value given over 40 years of progress in information and communications technologies.

Even assuming that EPA's notification to a foreign country could be useful to that country, no benefit accrues 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 submit are extraneous.

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

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

[2] 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.

[3] In recent years and ongoing, EPA has promulgated numerous proposed and final TSCA significant new use rules (SNURs), which automatically add chemicals to the 12(b) list.

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

submit notifications 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 notifications 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 and checking them for potential 12(b) components.

In addition to company resources, implementation of the TSCA export notification program at the EPA involves a complex handling and tracking process that includes receiving and processing the notices, as well as maintaining a system to house hundreds of thousands of records. Continued operation of this program is not necessary for the proper performance of EPA functions.

3. EPA should no longer compel export notification.

Since the TSCA export notification requirement is a burdensome and outmoded "paperwork" requirement, 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 alternative to the current regulations would be for EPA to rely on information collected under the TSCA Chemical Data Reporting (CDR) rule. The CDR includes 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 provide EPA with notice of the fact of export from the companies subject to CDR reporting. These manufacturer companies 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.

Another alternative would be for EPA to utilize its No Action Assurances policy.

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

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

[7] 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), 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, or is the subject of an order in effect under TSCA sections 4, 5(e) or 5(f), or is the subject of relief that has been granted under a civil action under TSCA sections 5 or 7. Also, reporting is triggered if the annual reporting threshold is met during **any** of the calendar years since the last principal reporting year.

4. Timing requirements should change if the export notification requirements remain.

The current regulations require that export notifications be submitted to EPA within seven days of forming the intent to export or on the date of export, whichever is earlier.[8] Compliance with this timeframe essentially requires an ongoing system of identifying exports, checking them for potential 12(b) components, and generating export notification (if required) almost immediately. If the export notification requirements continue, burden could be reduced by changing the timing requirement. At a minimum, companies should have more time to submit the notification—at least up to 30 days from the date of export. The best alternative would be to establish an annual submission deadline (e.g., July 31, which is the deadline for Toxics Release Inventory (TRI) reporting). Companies would submit any required notifications for exports that occurred in the previous year. This would allow companies and EPA to consolidate effort into a shorter time period, improving efficiency.

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 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,

cc
Harlan Weir, EPA, Chemical Control Division, Office of Pollution Prevention and Toxics, Office of Chemical Safety and Pollution Prevention

[8] 40 CFR 707.65(a)(3).