

## **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 September 22, 2023 (88 FR 65390), 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 November 21, 2023. The Agency received a comment 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1:* API commented that the information collection under the TSCA section 12(b) export notification requirement is an outdated paperwork requirement and has no practical utility for foreign countries. The information provided to EPA in a notice from an exporter is available to foreign governments on the Internet, including EPA's databases, such as ChemView. API also commented that the export notification requirements should be retired permanently because they are obsolete, redundant, and impose a burden while providing no benefit to human health and the environment. 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:* While EPA disagrees with the commenter as to the utility of TSCA section 12(b) requirements, the fact remains that 12(b) notice of export is and remains a statutory requirement. 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 in 2016 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.

In theory, EPA could propose to exempt by rule duplicative export reports (e.g., for the same chemical to the same country in the same year) from 12(b) reporting requirements, but EPA is often not able to make 12(b) data publicly available due to CBI claims for country of export or other information. No system or practice of publishing non-CBI 12(b) export data is currently in place, as there has historically been little demand for such data. EPA would have to develop a new system or expand existing public databases in order to make non-CBI 12(b) data available for lookup on a given chemical, and it is not clear that 12(b) exporters would be likely to find such a system less burdensome to use than simply filing a 12(b) report, even if the resources did exist for EPA to build such a system.

*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 such TSCA regulatory actions should have an awareness of those regulatory actions. To assist the regulated community, EPA maintains a list of chemical substances and mixtures subject to export notification requirements under 12(b). Furthermore, as indicated by the commenter, EPA has reduced the number and frequency of required notices since the TSCA section 12(b) regulations were first promulgated in 1980. For example, depending on the type of underlying regulation, the current 12(b) regulations require a notice only for either the first export or intended export to a particular country, or for the first export or intended export to a particular country in a calendar year. Under this ICR renewal, EPA is continuing to implement OMB's prior approval of electronic submission requirements for 12(b) notices, further reducing exporters' and EPA's burden hours associated with TSCA section 12(b) requirements.

The commenter overestimates the number of 12(b) export notices EPA receives, at least in any given year, and understandably misunderstands EPA's internal process for handling the notice and forwarding notice to other countries. For example, this process is now almost entirely electronic, virtually eliminating the need for handling physical documents, and utilizes an electronic workflow and templates that help automate the process of generating and sending notices from EPA to the pertinent foreign governments.

*Comment 3:* API notes that although TSCA section 12(b) is mandated under the statute it does not mandate that the Agency conduct these obligations in a particular manner. The Agency should consider revising its regulations under 40 CFR part 707 subpart D. For instance, API suggests that the 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. EPA could also require or request information on exports under TSCA section 4, TSCA section 5 for premanufacture notices or significant new use notifications, or information could be gathered under TSCA section 6 rules. Finally, EPA could use enforcement discretion under a No Action Assurance to stop implementing TSCA section 12(b).

*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 also 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.

This information collection is necessary to implement statutory requirements of export notification pursuant to section 12(b) of TSCA and is consistent with the requirements of 5 CFR 1320.6. TSCA section 12(b) requires exporters to submit a notice to EPA for each country to which a chemical subject to TSCA section 12(b) requirements is exported. Specifically, TSCA section 12(b) states, in part, that any person who exports or intends to export to a foreign country a chemical substance or mixture for which submission of information is required under TSCA section 4 or 5(b), or for which a rule, action or order has been proposed or promulgated under TSCA section 5, 6, or 7, shall notify the EPA Administrator of such export or intent to export. The Administrator in turn will notify the government of the importing country of the notice and of EPA's regulatory action with respect to the substance.

While some information pertinent to carrying out EPA's responsibilities under section 12(b) could be collected alongside the collection of information under other information collection authorities, existing rules do not presently collect all of the same information at a similar frequency or duration, and new rules could be expected to more or less duplicate the existing 12(b) rule in substance, just placing the requirements in a different location in the CFR.

Enforcement discretion may not be used to nullify a statutory reporting requirement. Additionally, a categorical use of enforcement discretion may constitute rulemaking. Making 12(b) enforcement a low priority would not relieve companies of their 12(b) obligations or EPA of its own statutory obligation to provide notice of export to other countries.