

EPA Proposes Narrowing TSCA 12(b) Notification Requirements; API Opposes Proposal As Not Going Far Enough

On February 9, 2006, EPA proposed amendments to the Toxic Substances Control Act (TSCA) Section 12(b) export notification regulations that would narrow the notification obligations, thereby reducing the number of notifications that must be filed and relieving EPA of some of the processing burden associated with such notifications. 71 Fed. Reg. 6,733. The notification requirements would be eased for chemicals subject to regulation or proposed regulation under TSCA Section 5 and would be eliminated entirely for chemicals present only at de minimis concentrations in exported mixtures.

Under the current regulations (40 C.F.R. § 707), exporters must submit notification to EPA prior to the first export in each year to each country for any chemical that is subject to an order, action, or action pending under Section 5(e), a proposed or final rule under Section 5(a)(2) (such as a significant new use rule), or an action requiring submission of data under Section 5(b). EPA's proposal would reduce the notification requirements on such chemicals from an annual report to a one-time-per-country notification. Annual notification would still be required for chemicals subject to triggering actions (rules, proposed rules, or orders) under Sections 5(f), 6 or 7.

EPA also is proposing to eliminate entirely the current notification requirements for 12(b) chemicals that are present at less than 1 percent (by weight or volume) in an exported mixture, unless the chemical in question is: (1) listed as a "known to be human carcinogen" or "reasonably anticipated to be a human carcinogen" by the National Toxicology Program (NTP); (2) classified as a Group 1, Group 2A, or Group 2B carcinogen by the World Health Organization International Agency for Research or Cancer (IARC); or (3) characterized as a carcinogen or potential carcinogen in the Occupational Safety and Health Administration's regulations related to toxic and hazardous substances (29 C.F.R. § 1910, subpart Z). For such chemicals, exportation notification would be required unless the concentration was less than 0.1% by weight or volume. PCBs present at concentrations of less than 50 ppm also would no longer be subject to export notification requirements.

Comments on EPA's proposal must be received by EPA on or before April 10, 2006. According to reports in the March 1, 2006 issue of *Environmental Policy Alert*, The American Petroleum Institute (API) has urged the Office of Management and Budget not to approve EPA's current proposal unless the Agency amends it to go further. API asserts that export notification requirements should be limited to bulk chemicals, eliminating byproducts, impurities, naturally occurring substances and chemicals exported solely for research and development. API also favors eliminating export notification requirements after three years, and allowing companies more time to submit export notifications than currently allowed under the regulations.

EPA's proposal to reduce export notification requirements and API's push for more reductions follows in the wake of an EPA test rule (40 C.F.R. § 799.5115), effective May 26, 2004, that triggered TSCA Section 12(b) export notification requirements on 34 chemicals, including such common petroleum products as naphthalene, pentane, and p-xylene. See McKenna Long & Aldridge [TSCA Advisory 04-1](#).

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