Export Notification Requirement

**Summary of the Requirement:** Exporters of certain chemical substances or mixtures are required to notify the US EPA of exports, if any of those substances or mixtures are present in the export at concentrations above certain threshold levels. There are two types of export notification requirements: *annual* reporting requirements, and *one-time* reporting requirements. Whether an exporter has an annual or a one-time reporting obligation for a specific export depends upon: a) the nature of the chemical substance or mixture intended to be exported; and b) the US EPA regulatory action concerning the substance or mixture that gives rise to, or “triggers,” the export reporting obligation. In addition to the explanation below, the Table on page H5 summarizes whether annual or one-time reporting is required.

**A) Annual Reporting Requirements:**
Annual reporting requirements are triggered by proposed or final USEPA actions under TSCA Sections 5(f), 6 and/or 7.¹

1. **Known or Potential Human Carcinogens**² that are present at 0.1% or greater. Every exporter of a “known or potential human carcinogen” (in a concentration of 0.1% or greater in an exported material) that is the subject of a triggering USEPA action under TSCA Sections 5(f), 6 and/or 7, is required (for each such triggering action) to notify the USEPA of its first export, or intended export,³ of that carcinogen *in every calendar year* to every country of export or intended export. This *annual* requirement applies to “known or potential human carcinogens,” as defined in 40 CFR §707.60(c)(2), that are the subject of proposed or final USEPA actions under TSCA Sections 5(f), 6 and/or 7. If a “known or potential human carcinogen” is not the subject of such a “triggering” TSCA action, a TSCA notice of export regarding it is not required. However, if the “known or potential human carcinogen” is the subject of a USEPA action under TSCA Sections 4, 5(a)(2), 5(b), and/or 5(e), a *one-time* export notice – as distinguished from an *annual* export notice -- is required (see section “B)” and the Table on page H5 below).

2. **PCBs**⁴ that are present at greater than 50 parts per million (“ppm”). Every exporter of PCBs (in a concentration of greater than 50 ppm in an exported material) is required to notify the USEPA of its first export, or intended export, of PCBs *in every calendar year*, to every country of export or intended export.

3. **All other triggered chemical substances or mixtures that are present at 1% or greater.** Every exporter of any other chemical substance or mixture (in a concentration of 1% or greater in an exported material) that is the subject of a proposed or final USEPA action under TSCA Sections 5(f), 6 and/or 7, is required (for each such triggering action) to notify the USEPA of its first export, or intended export, of that substance or mixture *in every calendar year*, to every country of export or intended export. Export notification

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¹ Specifically, the annual export notification requirement is triggered by:
1. an order issued, an action that is pending, or relief that has been granted under TSCA Section 5(f);
2. a rule that has been proposed or promulgated under TSCA Section 6; or
3. an action that is pending or relief that has been granted under TSCA Section 7.

² For purposes of the TSCA export notification rule, a “known or potential human carcinogen” is defined in 40 CFR §707.60(c)(2).

³ A notice of intent to export must be based on a definite contractual obligation, or an equivalent intra-company agreement, to export the regulated chemical. 40 CFR §707.65(a)(3).

⁴ For purposes of the TSCA export notification rule, PCBs are defined in 40 CFR §761.3.
regarding such “other” triggered chemicals (chemical substances and mixtures other than PCBs and other than “known or potential human carcinogens”) is required only if the triggered chemical is present in an export at a concentration of 1% or greater.

**B) One-Time-Only Reporting Requirements:**

One-time reporting requirements are triggered by USEPA actions under TSCA Sections 4, 5(a)(2), 5(b), or 5(e).

1. **Known or Potential Human Carcinogens that are present at 0.1% or greater.**

   Every exporter of a “known or potential human carcinogen” (in a concentration of 0.1% or greater in an exported material), that is the subject of a triggering USEPA action under TSCA Section 4, 5(a)(2), 5(b), and/or 5(e), is required (for each such triggering action) to notify the USEPA of its first export, or intended export, of that carcinogen to every country of export or intended export. If a “known or potential human carcinogen” is not the subject of such a “triggering” TSCA action, a notice of export regarding it is not required.

2. **All other triggered chemical substances or mixtures that are present at 1% or greater.**

   Every exporter of any other chemical substance or mixture (in a concentration of 1% or greater in an exported material), that is the subject of a triggering USEPA action under TSCA Sections 4, 5(a)(2), 5(b), and/or 5(e), is required (for each such triggering action) to notify the USEPA of its first export, or intended export, of that substance or mixture to every country of export or intended export. Export notification regarding such “other” triggered chemicals (chemical substances and mixtures other than “known or potential human carcinogens” and other than PCBs) is required only if the triggered chemical is present in an export at a concentration of 1% or greater.

   The one-time-only reporting requirement differs from the requirement for chemicals described in “A)” above, in that notice is required only one time, for each triggering action, with respect to the first export or intended export of each triggered substance and mixture to each country of export or intended export. In contrast, all exports and intended exports addressed in “A)” above are subject to a requirement to submit a TSCA export notice, for each triggering action, with respect to the first export or intended export in every calendar year of each triggered substance and mixture to each country of export or intended export.

5. Specifically, the one-time-only export notification requirement is triggered:

   4. by an order issued, an action that is pending, or relief that has been granted under TSCA Section 5(e);
   5. by a rule that has been proposed or promulgated under TSCA Section 5(a)(2); or
   6. when the submission of data is required under TSCA Section 4 or 5(b).

6. A notice of intent to export must be based on a definite contractual obligation, or an equivalent intra-company agreement, to export the regulated chemical. 40 CFR §707.65(a)(3).

7. It is EPA's intention that exporters notify EPA with respect to each TSCA Section 12(b) triggering action to which the chemical substance or mixture becomes subject (as long as the exporter in fact still exports or intends to export the chemical to that country) even if the exporter has previously notified EPA about the export of that chemical to that country as a result of an earlier TSCA Section 12(b) triggering action. Similarly, EPA would notify a foreign government with respect to each TSCA Section 12(b) triggering action to which the chemical becomes subject (as long as the Agency continues to receive an export notification from any exporter for the export of the chemical to that country) even if it has previously notified that government about the export of the chemical as a result of an earlier TSCA Section 12(b) triggering action. An export notification may indicate more than one triggering action. Separate export notices need not be submitted where the need for export notification (as a result of more than one triggering action at the same time) exists with respect to a given chemical. 71 FR 66239, Nov. 14, 2006.
Who is Subject to the Requirement? Only exporters are subject to this requirement. An “exporter” is the person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the chemical substance or mixture to a destination out of the customs territory of the United States.\(^8\)

What Information must be Reported? The notice to EPA must include the name of the regulated chemical as it appears in the Section 4, 5, 6 or 7 EPA action; the name of the chemical as it appears in Volume 1 of the TSCA Chemical Substance Inventory or its supplements, if the chemical appears there; the name and address of the exporter; the country or countries of import; the date(s) of export or intended export; and the Section number of TSCA (4, 5, 6 and/or 7) under which EPA has proposed or taken action.\(^9\) There is no requirement to inform the Agency of the volume that is exported or the name of the product in which the regulated chemical is contained.

When Must the Report be Submitted? The TSCA export notification must be postmarked within 7 days of forming an intent to export or on the date of export, whichever is earlier.\(^10\) In cases where export occurs less than seven days after the intent to export is formed, the notice must be postmarked no later than the day of actual export. If a proposed rule triggers the export notification requirement, the obligation to submit export notices to EPA begins thirty days following the publication of the action in the Federal Register.\(^11\)

Special Notes: EPA sends notice to each importing country within 5 working days of receiving the first (and first annual) notification, from any exporter, pertaining to that country for each regulated chemical.\(^12\) The notice is sent to the importing country’s ambassador in Washington, D.C., or to another appropriate official designated by the foreign government, and consists of (1) the identity of the regulated chemical, (2) a summary of the regulatory action under Sections 4, 5, 6, or 7 of TSCA (and the availability of data under TSCA Section 4 or 5(b)), (3) the identity of an EPA official whom the foreign official can contact for further information, and (4) a copy of the pertinent Federal Register notice. The Agency sends the same information to the U.S. State Department.\(^13\)

The TSCA export notification requirement is considered by EPA to be self-implementing, i.e., the requirement that exporters notify EPA becomes effective for a chemical whenever the appropriate EPA action takes place under Sections 4, 5, 6 or 7 of the Act; the Agency usually does not publish a separate notice under TSCA Section 12(b) requiring

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10. A notice of intent to export must be based on a definite contractual obligation, or on an equivalent intra-company agreement, to export the regulated chemical. 40 CFR §707.65(a)(3).
11. 40 CFR §707.65(b). EPA has determined that in the case of a proposed rule, it is unrealistic to expect exporters to obtain copies of the proposal, understand it, and comply with the export notification requirement within seven days. Therefore, when a proposed rule triggers the notification requirement, notice of export will be required only for exports beginning thirty days following Federal Register publication of the proposal. 45 FR 82646, December 16, 1980.
12. 40 CFR §707.70.
13. Id.
reporting of exports. Thus, every exporter of chemicals must be vigilant to keep abreast of Agency actions under Sections 4, 5, 6 or 7 of TSCA that can automatically result in the export notification requirement.

Prior to January 1, 1994, any regulatory action under TSCA Sections 4, 5, 6, or 7 that triggered the export notification requirement resulted in an annual export notification reporting obligation. Commencing on January 1, 1994, a one-time-only export notification requirement took effect for chemicals that were subject to TSCA Section 4 data submission requirements.\(^\text{14}\) TSCA actions under Sections 5, 6, and 7 continued to trigger annual notification requirements. Also, there were no de minimis or threshold concentration levels that applied prior to 2007, i.e., the export notification requirement applied regardless of the concentration of the triggered chemical in the export. Effective on January 16, 2007 the USEPA adopted the current rule which applies threshold concentration levels, and also expands one-time-only reporting to chemicals that are triggered by a broader array of EPA actions.

An exporter who, prior to January 16, 2007, submitted an export notice with respect to a specific chemical substance or mixture, has satisfied the one-time-only reporting requirement that was established by the January 16, 2007 rule with respect to that chemical substance or mixture to that country, i.e., that exporter is not required to submit a new one-time-only notice if it exports the same chemical substance or mixture to the same country after January 16, 2007.\(^\text{15}\) However, if the export notification requirement for that chemical substance or mixture also is triggered by a TSCA Section 5(f), 6 and/or 7 action, then annual (rather than a one-time-only) export notification is required.

The export notification requirement applies only to chemical substances and mixtures, and does not apply to articles (except PCB articles) unless the EPA requires notification regarding exported articles in the context of specific TSCA triggering actions.\(^\text{16}\)

EPA's "A Guide for Chemical Importers/Exporters, Volume 1--Overview" is printed in this book commencing on page H6 following the text of the export notification requirement. The Agency periodically updates a guide to chemicals for which notification of export is required. That list is found commencing on page H47.

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16. 40 CFR §707.60(b); 45 FR 82846 (December 16, 1980).
### Major Categories of TSCA Export Notifications

<table>
<thead>
<tr>
<th>Types of substances or mixtures</th>
<th>Known or Potential Human Carcinogens&lt;sup&gt;c&lt;/sup&gt;</th>
<th>PCBs&lt;sup&gt;d&lt;/sup&gt;</th>
<th>Other&lt;sup&gt;e&lt;/sup&gt; chemical substances and mixtures</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>triggering USEPA action under TSCA section:</strong>&lt;sup&gt;a&lt;/sup&gt;</td>
<td>Annual notification, of the first export in every calendar year, of each triggered chemical to every country of export, if the <strong>0.1%</strong> threshold concentration is met or exceeded</td>
<td>Annual notification, of the first export in every calendar year, of PCBs to every country of export, if the <strong>50 ppm</strong> threshold concentration is exceeded</td>
<td>Annual notification, of the first export in every calendar year, of each triggered chemical to every country of export, if the <strong>1%</strong> threshold concentration is met or exceeded</td>
</tr>
<tr>
<td><strong>5(f), 6, and/or 7</strong></td>
<td></td>
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<tr>
<td>Triggers annual notifications</td>
<td></td>
<td>Does not apply (see the box to the left)</td>
<td></td>
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<tr>
<td><strong>4, 5(a)(2), 5(b), and/or 5(e)</strong>&lt;sup&gt;b&lt;/sup&gt;</td>
<td>One-time notification of the first export of each triggered chemical to every country of export, if the <strong>0.1%</strong> threshold concentration is met or exceeded</td>
<td></td>
<td>One-time notification of the first export of each triggered chemical to every country of export, if the <strong>1%</strong> threshold concentration is met or exceeded</td>
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</tbody>
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**a.** For both annual and one-time reporting obligations, it is EPA's intention that notification is required with respect to each TSCA §12(b) triggering action. See footnote 7 on page H2.

**b.** If the exported chemical substance or mixture also is the subject of a TSCA §5(f), 6, and/or 7 action, annual rather than one-time export notification is required.

**c.** See the definition in 40 CFR §707.60(c)(2).

**d.** See the definition in 40 CFR §761.3.

**e.** “Other chemical substances and mixtures” are chemical substances or mixtures that are neither “known or potential human carcinogens” nor PCBs, as those terms are defined in §707.60(c)(2) and §761.3, respectively.

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17. See also 40 CFR §707.60(d) and (e) regarding export notification requirements pertaining to: 1) exports of PCBs or PCB articles for any purpose other than disposal; and 2) exports by a person who would be prohibited by a TSCA Section 5 or 6 regulation from exporting a chemical substance or mixture but who is granted an exemption by EPA to export.