

US EPA Issues Significant New Use Rule for TCE (trichloroethylene) in Consumer Products

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On April 8, 2016, US EPA issued a [final significant new use rule](#) (“SNUR”) for trichloroethylene (“TCE”). The TCE SNUR requires anyone manufacturing, importing or processing TCE for use in a consumer product to notify EPA at least 90 days before commencing any such manufacturing, importation or processing. The SNUR expressly exempts the use of TCE in cleaners and solvent degreasers, film cleaners, hoof polishes, lubricants, mirror edge sealants, and pepper spray, however, since EPA determined that these are current ongoing uses and by definition cannot be subject to a SNUR.

TCE is a volatile organic compound (“VOC”) that is classified as a human carcinogen. EPA estimates that [250 million pounds](#) of TCE are either produced or imported into the US annually. TCE is used as a solvent, a refrigerant and in dry cleaning fluid. According to EPA, the vast majority of TCE (approximately 84%) is used in closed systems as an intermediate chemical for manufacturing refrigerant chemicals, with most of the remainder (15%) used as a solvent for metals degreasing. Only a very small percentage of TCE actually ends up in consumer products. [EPA's Work Plan Chemical Risk Assessment for TCE](#) identified degreasers found in some household cleaning products and arts and crafts aerosol sprays as consumer products that contain TCE.

The Toxic Substances Control Act (“TSCA”) authorizes EPA to determine whether the use of a chemical substance is a “significant new use” triggering notification is required. 15 U.S.C. § 2604(a)(2). If EPA determines that the use of a chemical qualifies as a “significant new use” and issues a SNUR, anyone manufacturing, importing or processing the chemical for a commercial purpose must submit a significant new use notice (“SNUN”) to EPA 90 days before they manufacture, import or process the chemical substance for that use. 15 U.S.C. § 2604(a)(1)(B). Comparable to the Pre-Manufacture Notice (“PMN”) requirement under TSCA for new chemicals, the SNUN process gives EPA the opportunity to evaluate a significant new use of an existing chemical (as designated in the SNUR) on a case-by-case basis before the manufacturing, importing or processing of the chemical for the new use begins.

The TCE SNUR is designed to ensure that consumer products with TCE do not enter the marketplace before EPA has an opportunity to review them (except for those uses exempted in the

SNUR). The term “consumer product” is defined as “a chemical substance that is directly, or as part of a mixture, sold or made available to consumers for their use in or around a permanent or temporary household or residence, in or around a school, or in recreation.” 40 C.F.R. 721.3. Therefore, except for the uses of TCE expressly excluded from the definition of “significant new use” in the SNUR, all persons involved with the manufacture, importation or processing of consumer products containing TCE must comply with the 90-day notice requirement before commencing any manufacturing, importation or processing.

As a result of the SNUR, except for the uses exempted in the SNUR, persons who import consumer products containing TCE must also comply with TSCA’s certification requirements, which mandate that importers certify that the chemical substance complies with TSCA — including the new TCE SNUR requirements. Likewise, exporters of TCE are now subject to TSCA’s export notification requirements.

The final TCE SNUR will become effective 60 days after the date of publication in the Federal Register. However, the significant new uses of TCE covered by the SNUR are designated *as of the date of publication of the proposed rule* (August 7, 2015), rather than as of the effective date of the final rule. Consequently, anyone who began commercial manufacture, importation or processing of TCE after August 7, 2015 must cease such activity before the effective date of the final SNUR. To resume their activities, these persons would have to comply with the SNUN requirement. EPA considers any uses that began after the publication of the proposed rule to be new uses. Additionally, EPA has stated that it is initiating rulemakings under TSCA section 6 focused on the current ongoing use of TCE in aerosol degreasers and as a spotting agent at dry cleaning facilities, as well as in vapor degreasing operations. Under TSCA section 6, EPA can take a range of actions if it determines that the use of a chemical substance presents an unreasonable risk to human health and the environment, including significantly restricting or banning it. EPA has not issued a TSCA section 6 rule since the decision 25 years ago by the Fifth Circuit Court of Appeals in [Corrosion Proof Fittings v. EPA](#), 947 F.2d 1201 (5th Cir. 1991) that overturned EPA’s TSCA section 6 rule banning most uses of asbestos.

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