



MEMORANDUM

Via E-Mail

DATE: September 21, 2009

TO: Clients and Friends

FROM: The Acta Group, L.L.C.

RE: EPA Issues Direct Final SNURs for 12 Substances

On September 18, 2009, the United States Environmental Protection Agency (EPA) issued a *Federal Register* notice promulgating direct final significant new use rules (SNUR) for 12 chemical substances under Section 5(a)(2) of the Toxic Substances Control Act (TSCA).¹ For two of the 12 substances, EPA issued final SNURs that set forth the same exposure controls that were negotiated with the initial premanufacture notice (PMN) submitter through “risk-based” TSCA Section 5(e) consent orders. For the other ten substances, EPA determined that, although the manufacturing, processing, and use of the substance as set forth in each respective PMN did not present unreasonable risks to health and/or the environment, there were other potential uses that may cause significant adverse health and/or environmental effects for which SNURs are required.

The *Federal Register* notice is available on the Internet at <http://www.epa.gov/fedrgstr/EPA-TOX/2009/September/Day-18/t22533.htm>. The final rule will be effective **November 17, 2009**, unless EPA receives adverse comments or notice of intent to submit adverse comments before **October 19, 2009**. In that instance, EPA will withdraw the SNUR for the substance(s) for which adverse comments or notice of intent to submit adverse comments are received and will instead issue a proposed SNUR and provide a 30-day public comment period.

¹ 74 Fed. Reg. 47877 (Sept. 18, 2009).



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Below is a discussion of the final SNURs and next steps for companies to consider in response to this *Federal Register* notice.

Final SNURs

TSCA Section 5(a)(2) authorizes EPA to issue a SNUR after determining that a use of a chemical substance is a “significant new use.” Under SNURs, a manufacturer, importer, or processor is required to notify EPA at least 90 days before it manufactures, imports, or processes certain chemical substances for any use that EPA has designated as “significant” in the SNUR.

In its *Federal Register* notice, EPA provides, for each chemical substance subject to a SNUR: (1) its chemical name (or a generic name if the specific chemical name has been claimed as confidential business information (CBI)); (2) its PMN number; (3) its CAS number (if available); (4) a brief description of the basis for the action taken by EPA, including the intended use of the chemical substance and EPA’s toxicity concerns; (5) the testing recommended by EPA to “help to characterize” the environmental and/or health effects of the substance;² and (6) the citation to the Code of Federal Regulations (C.F.R.) where the regulation will be codified. The C.F.R. regulatory section for each SNUR describes the specific uses that are designated as significant new uses by EPA. EPA notes that certain significant new uses, including, potentially, production limits, can be claimed as CBI in the regulatory citations.

Below we list the chemical substances that are now subject to a SNUR, their PMN and CAS numbers, where available, how the chemical substances are expected to be used,

² EPA states the following regarding its “recommended testing”: “EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN, . . . [h]owever, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing.” 74 Fed. Reg. at 47884. EPA further states: “In the TSCA section 5(e) consent orders for several of the chemical substances regulated under this rule, EPA has established production volume limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances.” *Id.*



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and the C.F.R. citation. We also note the two substances that are subject to a SNUR because of an existing TSCA Section 5(e) consent order. The SNUR chemical substances are:

- **Benzeneethanol,halo-,halocycloalkyl-,hydrazinealkyl-(generic):** PMN Number P-05-775 (CAS No. not available) (will be used as an intermediate used in a closed process). Effective date of TSCA Section 5(e) consent order: May 8, 2008. To be codified at 40 C.F.R. § 721.10157.
- **2-Pentanone, 3,5-dichloro-:** PMN Number P-06-16 (CAS No. 58371-98-5) (will be used as an intermediate used in a closed process). Effective date of TSCA Section 5(e) consent order: May 8, 2008. To be codified at 40 C.F.R. § 721.10158.
- **1-Docosanamine, N,N-dimethyl-:** PMN Number P-07-587 (CAS No. 21542-96-1) (will be used as a chemical intermediate). To be codified at 40 C.F.R. § 721.10159.
- **Poly(oxy-1,2-ethanediyl),.alpha.-[(13Z)-1-oxo-13-docosen-1-yl]-.omega.-[[[(13Z)-1-oxo-13-docosen-1-yl]oxy]-:** PMN Number P-07-629 (CAS No. 56565-72-1) (will be used as a polymer additive). To be codified at 40 C.F.R. § 721.10160.
- **Substituted silyl methacrylate (generic):** PMN Number P-08-3 (CAS No. not available) (will be used as an intermediate for a paint binder). To be codified at 40 C.F.R. § 721.10161.
- **1,3 Dioxolane-4-butanol, 2-ethenyl-:** PMN Number P-08-24 (CAS No. 2421-08-1) (will be used as a crosslinking agent to be ultimately used in the manufacture of automotive and aircraft coating materials). To be codified at 40 C.F.R. § 721.10162.
- **Chloro fluoro alkane (generic):** PMN Number P-08-33 (CAS No. not available) (will be used as a chemical intermediate). To be codified at 40 C.F.R. § 721.10163.



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- **Benzenecarboximidamide, N-hydroxy-4-nitro-:** PMN Number P-08-36 (CAS No. 1613-86-1) (will be used as a chemical intermediate). To be codified at 40 C.F.R. § 721.10164.
- **Carbonotrithioic acid, bis(phenylmethyl) ester:** PMN Number P-08-138 (CAS No. 26504-29-0) (will be used as a chain transfer agent). To be codified at 40 C.F.R. § 721.10165.
- **1,3-Cyclohexanedione, 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-, ion(1-), potassium salt (1:1):** PMN Number P-08-180 (CAS No. 1121649-70-4) (will be used as a precursor to another chemical substance). To be codified at 40 C.F.R. § 721.10166.
- **Tetrafluoro nitrotoluene (generic):** PMN Number P-08-212 (CAS No. not available) (will be used as a chemical intermediate). To be codified at 40 C.F.R. § 721.10167.
- **Cesium tungsten oxide:** PMN Number P-08-275 (CAS No. 52350-17-1) (will be used as a component of infrared absorption material). To be codified at 40 C.F.R. § 721.10168.

Next Steps

The final rule will be effective **November 17, 2009**, unless EPA receives adverse comments or notice of intent to submit adverse comments before **October 19, 2009**. In that instance, EPA will withdraw the SNUR for the substance(s) for which adverse comments or notice of intent to submit adverse comments are received and will instead issue a proposed SNUR providing a 30-day public comment period.

Companies should determine whether they currently, or have plans to, manufacture, import, or process one or more of the chemical substances listed above and, if so, assess whether and how the SNURs will affect their business. We would be pleased upon request to assist in determining how any particular SNUR may change any regulatory or business requirements for a company.

We note that any company manufacturing, importing, or processing any of these SNUR chemicals would be subject to TSCA Section 12(b) export notification requirements, even



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if that company does not manufacture, import, or process that substance in a manner restricted by the SNUR. TSCA Section 12(b) requirements are triggered, in part, when a chemical is subject to a TSCA Section 5(a) SNUR.³ The export notification obligations apply regardless of whether a particular company is required to take any action for the underlying SNUR. So long as a SNUR applying to a particular chemical has been proposed or issued in final, EPA requires that notifications be submitted for that chemical when it is exported outside the United States. The following question and answer from an EPA document explain that Section 12(b) notification requirements are triggered by the chemical and not by the intended uses of that chemical:

- Q: Is § 12(b) notification required if the intended use of the chemical substance or mixture is not regulated in the respective rule?
- A: Yes. According to the December 16, 1980 rule, export notification must be made even though the chemical substance or mixture is exported “for a use, or in a manner, that is not regulated domestically under the relevant § 5, 6, or 7 action.”⁴

A company would thus be required to submit to EPA export notifications for its exports of any of the chemical substances referenced in the SNURs described above.

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We hope this information is helpful. As always, please call if you have any questions.

³ 15 U.S.C. § 2611(b)(1), (2).

⁴ EPA, *§12(b) Questions & Answers* (undated) at 2. On at least one occasion, EPA has issued a rule limiting the Section 12(b) notices that needed to be filed to the specific uses subject to a rule or order under TSCA. See 59 Fed. Reg. 42769 (Aug. 19, 1994) (Section 12(b) notices for hexavalent chromium need only be filed when specified uses of hexavalent chromium are at issue); 40 C.F.R. § 749.68. In this case, however, EPA has not issued a rule limiting the Section 12(b) notices required for any of the SNURs in this notice.