
EPA PROPOSES SNUR FOR NONYLPHENOLS AND NONYLPHENOL ETHOXYLATES

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On October 1, 2014, the U.S. Environmental Protection Agency (EPA) proposed a Significant New Use Rule (SNUR) for 15 related chemical substances commonly known as nonylphenols (NP) and nonylphenol ethoxylates (NPE). For 13 NPs and NPEs, EPA would designate any use as a “significant new use,” and for two additional NPs, EPA would designate that any use other than use as an intermediate or use as an epoxy cure catalyst would constitute a “significant new use.” Persons subject to the SNURs would be required to notify EPA at least 90 days before they manufacture (including import) or process any of these 15 chemical substances for a significant new use. More information is available at <http://www.epa.gov/oppt/existingchemicals/pubs/actionplans/np-npe.html>.

EPA is proposing to designate any use of certain listed NPs and NPEs as a significant new use, and any use other than use as an intermediate or use as an epoxy cure catalyst as a significant new use of two additional NPs identified in the proposed rule.

The proposed SNUR would apply to the uses that are not ongoing at the time of the proposed rule. Uses not ongoing at the time of the proposal would be designated significant new uses in the final SNUR. EPA states that it is specifically requesting comment on whether it has correctly identified the current and ongoing uses of the 15 NPs and NPEs covered by this proposed rule. According to the *Federal Register* notice, EPA is particularly interested in whether anyone is currently using these chemicals in a manner that is not described in this proposal.

Of the 13 linear NPs and NPEs identified in the proposal, EPA states that 12 of the chemical substances were not reported to the 2012 Chemical Data Reporting (CDR) rule. One of the 13 substances was reported to the 2012 CDR, but, according to EPA, “the available information

indicates that the chemical substance is not currently being manufactured or is otherwise used or distributed in commerce.” The two branched NPs listed in table 2 included in the proposal are not in use except as intermediates and epoxy cure catalysts. EPA states that, based on the “reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of these chemical substances,” it is concerned that future manufacturing or processing could have the potential to increase significantly the magnitude and duration of environmental exposures. EPA determined that “individual evaluation of the activities associated with those new uses is warranted to allow the Agency to determine whether any controls are necessary before such manufacturing (including importing) or processing starts or resumes.” EPA specifically requests comment “on all aspects of this proposed rule, including the commercial production of linear forms of NPs and NPEs, as well as any ongoing uses of the subject chemical substances.”

Discussion

Although the NPs and NPEs are a class of chemicals known to be persistent and toxic in the environment, what may be new about the proposal is the way that EPA apparently relied exclusively upon a narrow data set—the 2012 CDR and two databases (Household Products Database and Consumer Products Information Database)—as the basis for determining that 13 of the chemicals are not in production. Accordingly, EPA has proposed an “any use” SNUR for each identified chemical. There is no indication in the record that suggests EPA conducted other Internet searches, e.g., using the Chemical Abstracts Service Registry Number (CASRN) to search for commercial availability information, Material Safety Data Sheets (MSDS), or other information that might indicate continued commercial availability. A quick CASRN search of 4-nonylphenol (CASRN 104-40-5) showed a number of hits, including, among others, on the chemicalbook.com website, which reported 70 global suppliers with 15 located in the United States. On the other hand, the chemical identified

as CASRN 7311-27-5 showed only one global supplier (from China) on this site. The search for the chemical CASRN 9016-45-9 showed MSDSs from a number of well-known domestic chemical companies and many other hits that seemed indicative of continued commercialization. Similar searches were conducted for other chemicals in the proposal with similar results for all but one of the chemicals, which had no hits.

EPA's confidence in concluding 13 chemicals are commercially dead, based on the limited due diligence revealed in the record, is puzzling. While EPA appears to have a basis for concluding that production or importation in excess of the CDR trigger for 2012 (25,000 lbs at a site) is known not to have occurred in the CDR reporting year, the leap to a proposed conclusion that the 13 chemicals are no longer in commerce—and thus justifying an “any use” SNUR—is questionable. Further, there is no discussion in the notice of the limitations in the 2012 CDR (site-specific volume trigger with no reporting required if trigger is not met) and no background discussion of reporting under other earlier inventory update rule (IUR) cycles. Additional reporting data points (e.g., reporting under the IUR, results of contemporaneous Internet searches for indicators of commercial availability) could provide potentially relevant information given that the 2012 CDR reporting only covered the year 2011. Also, in the case of other proposed SNURs (e.g., perfluorooctane sulfonate (PFOS), long chain perfluorinated chemicals (PFC), polybrominated diphenylethers (PBDE), among others), EPA cited industry commitments to phase out certain chemicals/uses, or statements indicating that production or a use has ceased, as a basis for the proposal. No such commitments or statements appear in the proposed SNUR.

While EPA has developed a number of innovative ways to use its SNUR authority to regulate problematic existing chemicals over past years, it is surprising that EPA in this case has proceeded with such limited review of the market. EPA's approach has shifted the burden on industry to disprove its contentions.

These deficits make it all the more important for companies with interest in NPs and NPEs at issue to review the proposal carefully. It will be essential to consider their commercial status and, as appropriate, comment on the proposal and ensure EPA is aware of any ongoing production, processing, or uses. Processors and users of such surfactant chemicals should be especially careful to review the proposal, given that they are not otherwise required to consider the specific chemicals and volumes they obtain and use for purposes of reporting under the CDR, as is the case for manufacturers and importers.

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