

CLIENT ALERT

Foam and Polyurethane Manufacturers and Importers Take Note: EPA Proposes SNUR for Seven TDIs

January 20, 2015

On January 15, 2015, the Environmental Protection Agency (EPA) published a proposed Significant New Use Rule (SNUR) under the Toxic Substances Control Act (TSCA) to restrict the use of seven toluene diisocyanates (TDIs) in consumer products. TDIs are commonly used in the production of polyurethanes found in foams, coatings, elastomers, adhesives, and sealants used in consumer products. Flexible foams (used for cushioning) and rigid foams (used for insulation) are the predominant uses for TDI.

If adopted, the rule would apply to all consumer products containing any of the seven TDIs. In most instances, consumer products will be covered by the rule if they contain these chemicals at any level of concentration. For a subset of these chemicals the rule would exempt products that contain the TDIs at levels of 0.1 percent or less. The proposed rule would require those who manufacture, import, or process products containing these chemicals to notify EPA at least 90 days before such activity commences or resumes. This would give EPA an opportunity to examine the intended use of products containing TDIs. After evaluating the risks and potential hazards, EPA would have the authority to take action to restrict or prohibit the activity.

The proposed SNUR is particularly notable because it reflects a recent trend by EPA to apply its TSCA regulatory tools—especially significant new use rules—to manufactured articles containing a chemical of concern, not just the chemical substances themselves.

The specific TDIs covered by the proposed SNUR include:

- Toluene diisocyanate trimer
- Poly(toluene diisocyanate)
- Toluene diisocyanate dimer
- Toluene diisocyanate "cyclic" trimer

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- 2,6-Toluene diisocyanate
- 2,4-Toluene diisocyanate
- Toluene diisocyanate unspecified isomer

EPA is requesting public comment on the proposed SNUR. The comment period ends on March 16, 2015. EPA is specifically seeking comments on whether there are current uses of these chemicals in consumer products of which it is unaware. Companies that manufacture, import or process products containing TDIs or polyurethanes should seriously consider submitting comments on the proposed SNUR to ensure that those activities can continue uninterrupted.

Attorneys from Crowell & Moring are monitoring the development of this proposed rule, and are available to provide legal guidance on its possible impacts and solutions for your business.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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