

**Before the United States  
Environmental Protection Agency  
Significant New Use Rules on Certain Chemical Substances  
83 Fed. Reg. 40,986 (August 17, 2018); Docket EPA-HQ-OPPT-2017-0414**

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**Comments of the Chemical Users Coalition**

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The Chemical Users Coalition (“CUC”) appreciates the opportunity to provide these comments regarding the U.S. Environmental Protection Agency’s (“EPA”) Significant New Use Rules (“SNURs”) for 27 chemical substances, including certain chlorinated paraffins and a chlorofluorocarbon.<sup>1</sup>

CUC is an association of companies from diverse industries interested in chemical regulatory policy from the perspective of entities that typically acquire and use, rather than manufacture or import, chemical substances.<sup>2</sup> CUC encourages regulators seeking to develop and implement requirements to protect health and the environment to do so in a manner that enables the regulated community to pursue technological innovation simultaneously with sustainable economic development in the United States. This is particularly important in the area of chemical regulatory policy, which necessarily addresses how core technologies and products can be adapted to address emerging information about health and environmental risk.

In sum, CUC’s comments regarding the SNURs focus on the proposed time-based SNUR “triggers” for certain chlorinated paraffins and a chlorofluorocarbon, and the potential negative impacts of such time-based triggers on the regulated community, including downstream processors and users of substances subject to such reporting triggers.<sup>3</sup> CUC encourages EPA to clarify the obligations of manufacturers and processors of these substances under the SNURs, and the timeline for those obligations. CUC also encourages EPA to consider whether the SNURs could be revised to mitigate uncertainty for downstream users, like CUC’s members.

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<sup>1</sup> Significant New Use Rules on Certain Chemical Substances, 83 Fed. Reg. 40,986 (Aug. 17, 2018). CUC’s comments relate specifically to the following chemical substances: Alkanes, C20–28, chloro (P–12–277); Slack waxes (petroleum), chloro (P–12–278); Hexacosane, chloro derivs. and octacosane, chloro derivs. (P–12–280); Alkanes, C20–24, chloro (P–12–281); Alkanes, C14–16, chloro (P–12–282); Tetradecane, chloro derivs. (P–12–283); Octadecane, chloro derivs. (P–12–284); Alkanes, C18–20, chloro (P–12–433); Alkanes, C14–17, chloro (P–12–453); Alkanes, C22–30, chloro (P–12–505); Tetradecane, chloro derivs. (P–14–683); Alkanes, C14–16, chloro (P–14–684); and chlorofluorocarbon (P–16–150).

<sup>2</sup> The members of CUC are Airbus S.A.S., The Boeing Company, General Electric Company, HP Incorporated, IBM Company, Intel Corporation, Lockheed Martin Corporation, and United Technologies Corporation.

<sup>3</sup> The substance of CUC’s comments focuses on chlorinated paraffins. However, CUC notes that many of its comments requesting clarifications in the regulatory language, specifically those relating to the time-based trigger for the submission of a significant new use notice, apply equally to EPA’s SNUR for chlorofluorocarbon. *See* 83 Fed. Reg. at 41,000.

## **I. Clarification of Trigger Terms and Obligations for Manufacturers & Processors of Chlorinated Paraffins and Chlorofluorocarbon under the SNURs**

CUC recognizes that EPA's SNURs for chlorinated paraffins reflect the Agency's efforts to codify the requirements of the Toxic Substances Control Act ("TSCA") Section 5(e) Consent Orders previously issued for these substances,<sup>4</sup> and that EPA is required to issue these SNURs (or explain its reasoning for not doing so) pursuant to Section 5(f)(4) of TSCA.<sup>5</sup> However, CUC believes that the SNURs could be revised to provide additional clarity to enable potential manufacturers, processors, and users of these chemical substances to understand and interpret EPA's objectives, and to foresee the consequences of submitting Significant New Use Notices (SNUNs) and the consequences of being a current or future processor or user of such substances.

First, CUC requests that EPA clarify the Agency's interpretation and the applicability of the five-year time-trigger ("it is a significant new use to manufacture the chemical substance more than 5 years") to both current and potential new manufacturers of the chlorinated paraffins. CUC understands that the original PMN submitters who are subject to existing Consent Orders for the specified chlorinated paraffins, and who are abiding by the terms of such Orders, are generally exempt from the SNUR notification requirement.<sup>6</sup> However, it is not clear when or how the SNUR would apply to manufacturers (including importers) of affected substances who have not signed the Consent Orders, nor whether *downstream processors and users* of materials produced by the PMN submitters or other manufacturers (including importers) should expect that their suppliers will need to discontinue manufacturing (or importing) the affected substances. Among issues that EPA should clarify is when the five-year period commences. For example, is it five years after the effective date of the SNUR, or five years after an individual entity begins manufacturing (including importing) an affected substance? Furthermore, it also is not clear whether an entity that might newly-commence manufacture (including import) of one or more of the affected substances, and that intends to engage solely in those uses that are consistent with the terms of existing Consent Orders, nevertheless would be expected to *discontinue* its manufacturing (or import) activities five years thereafter -- even if the uses are consistent with the other limitations in the Consent Order. Moreover, if such an entity *does* decide to discontinue manufacturing in fewer than five years from the date of its commencement of manufacture (or import), would that entity be expected to nevertheless notify EPA of its intentions in this regard?

Second, CUC would like EPA to clarify what, if any, requirements in the chlorinated paraffin SNURs with time triggers would be applicable to processors. SNURs frequently apply to processors. However, the specified time trigger ("...*manufacture* the chemical substance more than 5 years") would appear to exempt processors of the affected substances from the

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<sup>4</sup> See Consent Order & Determinations Supporting Consent Order, *In re Dover Chemical Corp.* (EPA May 25, 2017); Consent Order & Determinations Supporting Consent Order, *In re Inovyn Americas* (EPA June 1, 2017); Consent Order & Determinations Supporting Consent Order, *In re Qualice, LLC* (EPA May 17, 2017).

<sup>5</sup> 15 U.S.C. § 2604(f)(4).

<sup>6</sup> See, e.g., 83 Fed. Reg. at 40,998 (amending 40 C.F.R. Part 721 to include §721.11068(a)(2): "The significant new uses are: (i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(k)") (citing 40 C.F.R. § 721.80 ("Whenever a substance is identified in subpart E of this part as being subject to this section, a significant new use of the substance is...(k) Use other than allowed by the section 5(e) consent order referenced in subpart E of this part for the substance.)).

SNURs' requirements. If so, this could and should be clearly stated in the final Rule, and EPA should clearly state what, if any, obligations a processor or downstream user has with respect to the use of an affected substance before the expiration of the five-year period applicable to its manufacturer (or importer). EPA also should clarify what a *processor's* obligations would be should the processor elect to acquire and use an affected substance for uses other than those identified in the Consent Orders.<sup>7</sup> If processors and users of chlorinated paraffins who wish to use these substances in ways that are not covered by TSCA Section 5(e) consent orders must submit significant new use notices ("SNUNs"), EPA also should clarify whether the manufacturer or the processor has the legal obligation to submit such a Notification.

Third, EPA should clarify *when* Notifications should be submitted. It is not clear from the SNUR language or the rule's preamble when a SNUN must be submitted by an entity that intends to commence manufacture (or import) of an affected substance if that entity also intends to manufacture (or import) for a period to exceed five years. The regulatory language appears to suggest that manufacturers (or importers) are not required to submit a SNUN until five years after they have begun manufacturing (or importing) the chlorinated paraffins covered by these SNURs.<sup>8</sup> Moreover, EPA should clarify what the effect will be of a timely SNUN to EPA announcing an intent to manufacture (or import) an affected substance for more than five years. For example, if such a Notice is timely submitted 90 days prior to the conclusion of the fifth year, may such an entity continue to lawfully manufacture (or import) the substance following submission of the SNUN?<sup>9</sup> Must such an entity provide notice to its downstream customers and processors of the existence of the SNUR pursuant to §721.5 prior to the expiration of the five year period or only after submission of the SNUN?

Fourth, EPA should justify the legal basis for the actions it has proposed. Specifically, CUC is not aware of any legal authority for issuing a SNUR that has a time-trigger like that in the chlorinated paraffin SNURs, especially when one or more companies are known to be engaged in an ongoing use of the substance and to have the intention already to manufacture, import, and/or use the substance for a period extending more than five years into the future.<sup>10</sup> It has been EPA's long-standing interpretation of Section 5(a)(2), which comports with the plain terms of the statute, that an on-going use cannot be defined to be a significant "new" use.<sup>11</sup> TSCA Section 5(a) requires submitters of SNUNs not to commence manufacturing or processing

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<sup>7</sup> See, e.g., 83 Fed. Reg. at 40,998 (amending 40 C.F.R. Part 721 to include §721.11068(a)(2): "The significant new uses are: (i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(k)") (citing 40 C.F.R. § 721.80 ("Whenever a substance is identified in subpart E of this part as being subject to this section, a significant new use of the substance is...(k) Use other than allowed by the section 5(e) consent order referenced in subpart E of this part for the substance.)).

<sup>8</sup> See, e.g., 83 Fed. Reg. at 40,998 ("It is a significant use to manufacture [Alkanes, C20–28, chloro (P–12–277)] more than 5 years.").

<sup>9</sup> *Id.*; see also 15 U.S.C. § 2604(a)(1)(B).

<sup>10</sup> EPA has taken an unusual approach to regulation of the substances proposed for inclusion in the chlorinated paraffin SNURs. This approach makes it difficult for processors and downstream users to determine whether they may be subject to a rule, as these substance historically have been and continue to be distributed in complex supply chains with reference only to generic CAS numbers. Nevertheless, ongoing and continuing use of chlorinated paraffins covered by the specific CAS numbers referenced in the proposed SNUR has been documented to EPA by numerous parties. See, e.g., Comments from The Boeing Company Concerning EPA's Chlorinated Paraffins; Request for Available Information on PMN Risk Assessments (Docket ID number: EPA-HQ-OPPT-2015-0798).

<sup>11</sup> 83 Fed. Reg. at 40,995 ("To establish a significant new use, EPA must determine that the use is not ongoing.").

of a chemical substance until after EPA has reviewed and, if appropriate, responded to a SNUN;<sup>12</sup> CUC must question whether Section 5 provides the requisite statutory basis to enable EPA to define as “significant” and “new” a use which is ongoing, and which EPA has already authorized pursuant to Section 5(e) Orders. Such a requirement suggests EPA is attempting to phase down or out uses of these chlorinated paraffins; this is a regulatory objective better addressed using the appropriate authority provided by Congress in the original and amended Section 6 of TSCA.<sup>13</sup>

Finally, CUC requests that EPA clarify the obligations of processors of chlorinated paraffins covered by these SNURs. Specifically, CUC requests clarification concerning whether processors of chlorinated paraffins who intend to undertake uses of these chemical substances that are not covered in previous TSCA Section 5(e) Consent Orders are obliged to submit SNUNs prior to commencing these uses.<sup>14</sup> Does the SNUR impose such an obligation to report also on the manufacturer who is the processor’s supplier?

## **II. Impact of Time-Trigger SNURs on Downstream Processors and Users of Chemical Substances**

CUC acknowledges EPA’s statutory authority and its regulatory objective to receive notice of significant new uses of chemical substances and be provided the opportunity to review such uses and take action to restrict them, if necessary, before they are commenced. However, prior to finalizing the language for these SNURs, CUC requests that EPA consider the impact of the time-based trigger provisions in these rules on downstream users and processors of chemical substances.

From a business perspective, it is difficult for downstream processors and users to develop plans for the acquisition and use of chemical substances when, at any given time, the use or conditions of use of those chemical substances may be regulated or restricted. This concern is exacerbated by the imposition of “time-based triggers.” Generally, when a party submits a SNUN, the use of the chemical substance at issue is not yet underway. Thus, the fact that the party may not commence the use of the chemical substance until after EPA has reviewed and responded to the SNUN does not threaten to disrupt existing operations, especially those of downstream processors and users of the affected manufacturers. However, in this case, the manufacturers of a chlorinated paraffin are not required to submit the SNUN until five years after the manufacturing of the chemical substance began. A chlorinated paraffin that has been manufactured for five years is likely being used or processed by multiple downstream entities and for numerous uses (some of which may be unknown to the current manufacturers). If a manufacturer is required to pause manufacturing of a specified chlorinated paraffin after five years, this is likely to disrupt not only the operations of the manufacturer, but also the operations of downstream processors and users of these substances. CUC requests that EPA consider whether more suitable regulatory alternatives under TSCA are available that could accomplish

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<sup>12</sup> *Id.*

<sup>13</sup> Additionally, as these substances may have been distributed in commerce under a variety of CAS numbers prior to the Consent Order agreement, CUC encourages EPA to clarify how the Agency will interpret the CAS numbers in the SNUR in relation to the numbers that may currently appear on SDSs. In addition, EPA should explain whether the new CAS numbers replace the previous ones for these substances or encompass them.

<sup>14</sup> 15 U.S.C. § 2604(a)(1)(B).

EPA's objectives in issuing these SNURs while also providing greater certainty for downstream users and processors of the chemical substances covered by these SNURs.

### **Conclusion**

CUC appreciates the opportunity to comment on these SNURs and would be pleased to meet with EPA personnel to discuss these comments and related issues if doing so would assist the Agency in finalizing these rules.