

Questions for EPA Interpretive Guidance

1. What does EPA consider a consumer product?

For purposes of significant new use rules (SNURs) issued pursuant to TSCA, consumer product is defined at 40 CFR 721.3 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.”

2. Does EPA consider any product a consumer may buy a TSCA consumer product?

No, to meet the definition at 40 CFR 721.3, a consumer product must be a chemical substance “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.” EPA provided examples in the Ethylene Glycol Ethers SNUR’s (79 FR 74639) Response to Comment document (<http://www.regulations.gov/#!searchResults;rpp=25;po=0;s=EPA-HQ-OPPT2009-0767-0035;fp=true;ns=true>):

“However, EPA would not consider ethylene glycol ethers to have been ‘sold or made available to consumers for their use’ merely because they have been sold or made available to automobile manufacturers or commercial auto service establishments (for their use in manufacturing or maintaining customers’ motor vehicles). By contrast, ethylene glycol ethers that are sold or made available to a consumer, for the consumer’s own use in maintaining his or her own motor vehicle (e.g., as part of an aftermarket brake fluid) would fall within the definition of ‘consumer product.’”

“For purposes of defining the scope of the significant new use, EPA has determined that the use of ethylene glycol ethers in sealed lithium batteries (whether primary or secondary) is not use in a consumer product. An ethylene glycol ether is not being ‘sold or made available to consumers for their use,’ 40 CFR 721.3, merely because it is contained in the electrolyte of sealed lithium batteries, which are themselves used by consumers. With this clarification, EPA is finalizing the significant new use for monoethylene glycol dimethyl ether as “any use in a consumer product.”

3. Do commercial products fall within the definition of a consumer product?

A chemical substance which is a consumer product can also be a commercial product.

4. Does the consumer product definition take into account bystander or incidental exposures during commercial applications?

The consumer product definition is not based on exposure, but takes into account location, and the entity to whom the chemical substance/mixture is made available for use.

5. Where the significant new use for a SNUR chemical is use in a consumer product, and a consumer product containing the SNUR chemical is manufactured in multiple steps by different producers, at what point in the supply chain does the product become subject to the SNUR?

The fact that the chemical substance is in a consumer product does not limit the downstream notification at 40 CFR 721.5. The Significant New Use Notice (SNUN) submission requirement applies at the earliest point where a person intends to manufacture (including import), or process for commercial purposes the chemical substances for a significant new use (e.g., use in a consumer product). In addition, a person who intends to manufacture (including import) or process the chemical substance for commercial purposes and intends to distribute the substance in commerce must submit a SNUN unless they follow one of the alternatives described at 40 CFR 721.5(a)(2) (e.g., downstream notifications).

6. Where EPA has recognized a particular use of a SNUR chemical in a product as ongoing, and therefore has not made the use subject to the SNUR, is a reformulation of that product for the same general use considered a new use of the SNUR chemical?

If a significant new use contains a maximum content threshold (e.g., use at greater than a given level in a mixture), any reformulations that would cause that subject chemical substance to be greater than the specified level would be subject to the SNUR.

A specific example is the SNUR for dipropylene glycol dimethyl ether at 40 § CFR 721.3550 that states that “Formulations or mixtures containing the PMN substance in concentrations at or below 10 percent by weight or volume are exempt from the provisions of this rule.” Reformulations that meet the definition of the significant new use and increase the concentration above ten percent by weight or volume would require a SNUN. Reformulations that do not increase the concentration above ten percent by weight or volume would not require a SNUN.

If 1) the significant new use identified in the SNUR is not concentration limited, 2) the reformulation is not associated with a different use, and 3) the use is an ongoing use, then

the reformulation in itself would not be subject to the SNUR because it would not be considered a significant new use.

- 2 -

04/20/15