

## PRE-PUBLICATION NOTICE

On March 21, 2025, Lee Zeldin, the EPA Administrator, signed the following document:

Action: **Notice**

Title: **Postponement of Effective Date for Certain Provisions of Trichloroethylene (TCE); Regulation under the Toxic Substances Control Act (TSCA)**

FRL #: **8317.1-01-OCSP**

Docket ID #: **EPA-HQ-OPPT-2020-0642**

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 751**

**[EPA-HQ-OPPT-2020-0642; FRL 8317.1-01-OCSP]**

**RIN 2070-AK83**

**Postponement of Effective Date for Certain Provisions of Trichloroethylene (TCE);**

**Regulation under the Toxic Substances Control Act (TSCA)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notification; postponement of effective date.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) is postponing the effective date of certain regulatory provisions of the final rule entitled “Trichloroethylene (TCE); Regulation Under the Toxic Substances Control Act (TSCA)” for 90 days pending judicial review (i.e., until June 20, 2025). Specifically, this postponement applies to the conditions imposed on the uses with TSCA exemptions.

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2020-0642, is available online at <https://www.regulations.gov>. Additional information about dockets generally, along with instructions for visiting the docket in-person, is available at <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:**

*For technical information:* Gabriela Rossner, Existing Chemicals Risk Management Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 565-2426; email address: [TCE.TSCA@epa.gov](mailto:TCE.TSCA@epa.gov).

*For general information:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave.,

Rochester, NY 14620; telephone number: (202) 554-1404; email address: *TSCA-Hotline@epa.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On December 17, 2024, EPA issued a final risk-management rule under TSCA section 6(a) prohibiting all uses of trichloroethylene (TCE), most of which would be prohibited within one year, including TCE manufacture and processing for most commercial and all consumer products. (89 FR 102568, December 17, 2024 (FRL-8317-02-OCSPP)). That final rule included extended phaseouts or TSCA section 6(g) exemptions to permit several uses to continue under workplace restrictions for longer periods, including an interim exposure level (ECEL) of 0.2 ppm.

The final rule was originally scheduled to become effective on January 16, 2025. EPA received petitions for an administrative stay of the effective date on behalf of Microporous, LLC (Microporous), which also separately sought partial reconsideration of the final rule, and Alliance for a Strong U.S. Battery Sector (Alliance) on January 10, 2025. EPA denied these requests on January 15, 2025. Microporous and Alliance submitted renewed petitions to the Agency to stay the effective date of the rule, or, in the alternative, for an administrative stay of the final rule's workplace conditions for battery separator manufacturers, on January 20, 2025. PPG Industries, Inc. (PPG) also submitted a request for an administrative stay on January 21, 2025.

EPA also received thirteen petitions for review of the final rule in various circuits of the U.S. Courts of Appeals. On January 13, 2025, petitioners Microporous and Alliance filed emergency motions for stay in the Fifth and Sixth Circuit Courts of Appeals of the final rule's effective date and workplace conditions for battery-separator manufacturers, as well as a

temporary administrative stay of the final rule pending consideration of the emergency stay motion. The same day, the Fifth Circuit granted the motion for a temporary administrative stay of the final rule's effective date while the court considered the emergency stay motion.

Shortly thereafter, the petitions for review were consolidated in the U.S. Court of Appeals for the Third Circuit as *USW v. U.S. EPA*, Case No. 25-1055. On January 16, 2025, the Third Circuit issued an order leaving the temporary administrative stay of the effective date of the final rule in place pending briefing on whether the temporary stay should be lifted or converted to a permanent stay. On January 21, 2025, petitioner PPG filed a new stay motion with the court, and Alliance and Microporous refiled their existing motions to stay the effective date. On January 24, 2025, EPA filed a motion requesting that the court extend all deadlines in the case for sixty days, including with respect to further stay briefing, which the court granted.

EPA temporarily delayed the effective date of the final rule until March 21, 2025. (90 FR 8254, January 28, 2025 (FRL-12583-01-OA)). Although the final rule has yet to go into effect, it was incorporated into the Code of Federal Regulations (CFR) on January 16, 2025. *See* 40 CFR part 751, Subpart D.

## **II. Statutory Authority**

Section 705 of the Administrative Procedure Act (APA) authorizes an agency to postpone the effective date of an agency action pending judicial review when the agency finds “that justice so requires.” 5 U.S.C. 705. In determining whether justice requires staying an action, the agency should weigh the equities and consider the underlying litigation to assess whether a stay is necessary to “afford parties an adequate judicial remedy.” *Bauer v. DeVos*, 325 F. Supp. 3d 74, 106 (D.D.C. 2018) (citing APA, Pub. L. 1944-46, S. Doc. No. 248, at 277 (1946)). This analysis includes “balancing the competing claims of injury, considering the effect on each party of granting a stay, and paying particular regard for the public consequences.” *Id.* at 107. An agency

need only provide a “reasoned explanation” that is sufficient to allow a reviewing court to evaluate whether an administrative stay was appropriate. *Id.* at 106.

In deciding whether to grant a stay under APA section 705, EPA has occasionally employed the four-factor test for a judicial stay that courts typically use in determining whether to issue a preliminary injunction. *See, e.g., Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008). The EPA did not use the four-factor test for a judicial stay in the Agency’s review of Microporous’ and Alliance’s January 10, 2025, request for an administrative stay and is not employing it in this administrative stay. Nothing in APA section 705 requires that agencies apply the four-factor test for preliminary judicial relief. Rather, the APA simply requires that the agency find “that justice so requires” a stay pending judicial review. EPA’s approach of weighing equitable concerns and assessing whether a stay is required to ensure that parties may obtain an adequate judicial remedy is consistent with APA section 705.

Notice and comment is not required when an agency delays the effective date of a rule under APA section 705 because such a stay pending judicial review is not substantive rulemaking subject to APA section 553; it merely maintains the status quo to allow for judicial review. *See Bauer*, 325 F. Supp. 3d at 106-07; *Sierra Club v. Jackson*, 833 F. Supp. 2d 11, 28 (D.D.C. 2012).

### **III. Postponement of Effective Date**

In light of the pending litigation, and for the following reasons, EPA has reconsidered its position from its earlier denial of an administrative stay pending judicial review and determined that justice requires a 90-day postponement of the effective date (*i.e.*, until June 20, 2025) of the conditions for each of the TSCA section 6(g) exemptions. *See* 40 CFR 751.325(a)(2). The postponement applies, for example, to the conditions imposed under the TSCA section 6(g) exemption for the use of TCE as a processing aid for specialty polymeric microporous sheet

material manufacturing. 40 CFR 751.325(b)(6)(i)-(iv).

The postponement will temporarily preserve the status quo while the Third Circuit litigation is pending. Several petitioners have raised serious questions concerning the validity of the workplace conditions imposed by the final rule's TSCA section 6(g) exemptions for lead-acid battery separator manufacturing and specialty polymeric microporous sheet materials. Petitioners argue that the interim workplace conditions are impracticable and function as a total ban, which was not the EPA's intention in providing for the TSCA section 6(g) exemptions. Specifically, petitioners allege that because the interim workplace conditions would require petitioners to reduce TCE exposure levels to the interim ECEL of 0.2 ppm, the final rule effectively requires the use of personal protective equipment that cannot feasibly be worn all day, and therefore could cause petitioners to cease operations. Although EPA does not concede these allegations, petitioners have raised significant legal challenges and allege significant harms as a result of the workplace conditions required by the final rule's TSCA section 6(g) exemptions.

In the final rule, EPA determined that the petitioners' uses, along with several other uses, would be given exemptions under TSCA section 6(g). 89 FR at 102610. Specifically, EPA determined that banning the use of TCE as a processing aid for lead acid battery separator manufacturing would significantly disrupt the national economy, national security, or critical infrastructure under TSCA section 6(g)(1)(B), and that the use of TCE as a processing aid for specialty polymeric microporous sheet material manufacturing is a critical or essential use for which no technically and economically feasible safer alternative is available, taking into consideration hazard and exposure under TSCA section 6(g)(1)(A). EPA similarly found that several other uses met the criteria at either TSCA section 6(g)(1)(B) or 6(g)(1)(A). EPA placed conditions on these uses that protect workers while achieving the purposes of the exemptions. 89

FR at 102633-35. EPA finalized these exemptions after careful consideration of the comments submitted by petitioners, and others, and the exemptions are intended to permit these critical activities to continue. EPA has reconsidered its position regarding the interim workplace conditions since its January 15, 2025, denial in light of the petitions for review and is concerned that critical uses may be disrupted if the identified portions of the final rule go into effect. That would be contrary to the purpose of the exemptions, and the EPA believes a limited postponement of the effective date for these aspects of the final rule to preserve the status quo for those uses with TSCA section 6(g) exemptions is warranted in light of the pending judicial review.

Moreover, a limited postponement that maintains the status quo for these uses appropriately balances the alleged harm to petitioners and other entities with critical uses against the public interest in the health protections that will be afforded by the broader TCE prohibitions and workplace protections going into effect. Because this action will not delay the implementation of other requirements that bear no impact on the specific activities of the administrative petitioners and of persons who conduct other critical uses, the EPA has determined that the balance of harms weighs in favor of a narrowly tailored postponement. This limited postponement of the effective date is required to ensure that the parties can ultimately obtain an adequate judicial remedy.

**Authority:** 5 U.S.C. 705 and 15 U.S.C. 2605(a).

**Lee Zeldin**

*Administrator.*