

USEPA BANS CONSUMER USE OF METHYLENE CHLORIDE

A final rule banning the consumer use of methylene chloride for paint stripping was promulgated on March 27, 2019 (84 FR 11420). Specifically, the regulation, issued pursuant to the Toxic Substances Control Act (TSCA), prohibits the manufacture, processing, and distribution in commerce of methylene chloride for consumer paint and coating removal, including distribution to and by retailers. The term “consumer paint and coating removal” is defined at 40 CFR 751.103 as “paint and coating removal performed by any natural person who uses a paint and coating removal product for any personal use without receiving remuneration or other form of payment.” The rule takes effect on May 28, 2019.

USEPA is not finalizing the portion of the proposed rule relating to commercial paint and coating removal but is proposing requirements in a separate rule-making. The agency also is not finalizing the proposed alternative requirement of distribution of methylene chloride in containers of at least 55 gallons.

Importantly, Section 26(l)(4) of TSCA [15 U.S.C. 2625(l)(4)] provides that, for a chemical listed in the 2014 update to the TSCA Work Plan for Chemical Assessments for which a completed risk assessment was published prior to the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, i.e., the 2016 TSCA Amendments), EPA “may publish proposed and final rules” under Section 6(a) of TSCA that are consistent with the scope of the completed risk assessment and with other applicable requirements of Section 6. Methylene chloride was listed in the 2014 update to the TSCA Work Plan and the completed risk assessment was published in 2014. Therefore, EPA adroitly dodged the constraints of Frank R. Lautenberg and published the final rule under Section 6(a) of TSCA in accordance with that discretionary authority.

EPA has determined that the use of methylene chloride in consumer paint and coating removal presents “an unreasonable risk of injury to health due to acute human lethality.” Effects from acute exposure during use of methylene chloride in paint and coating removal may include neurological impacts such as dizziness, incapacitation, loss of consciousness, coma, and death. The primary target organ of methylene chloride is the brain, and neurological effects can result from either direct narcosis or through the formation of carbon monoxide. Since the publication of the proposed rule in January 2017, there have been at least four deaths attributable to the use of methylene chloride for paint stripping. EPA notes that exposure to methylene chloride, considered a likely human carcinogen by the agency, can occur in locations after completion of paint removal because it can remain in the air where spaces are enclosed, confined, or lack ventilation.

EPA’s final action is two-pronged. Firstly, and significantly, distribution in commerce of methylene chloride for paint and coating removal to and by retailers is prohibited by 40 CFR 751.105. It should be emphasized that if a person or business distributes or makes available methylene chloride-containing paint or coating removal product to at least one consumer, then it is considered a retailer. This applies to internet sales as well. Thus, in order for a “distributor not to be considered a retailer, he/she must distribute or make available methylene chloride-containing paint and coating removal products solely to commercial or industrial end users or businesses.” (84 FR 11429)

Secondly, downstream notification of the consumer must be done by manufacturers, processors, and distributors of methylene chloride for any use after 90 days of the effective date, viz., August 26, 2019. (However, the prohibition on manufacturing, processing, and distribution in commerce of methylene chloride for consumer paint and coating removal, including distribution to and by retailers, will take effect 180 days after the effective date of the rule, viz., November 22, 2019.) 40 CFR 751.107 requires notification to be done through the SDS by adding the following language to sections 1(c) and 15: “This chemical/product is not and cannot be distributed in commerce (as defined in TSCA section 3(5)) or processed (as defined in TSCA section 3(13)) for consumer paint or coating removal.” The SDS must be provided prior to or concurrent with the shipment.

Finally, EPA is requiring records to be kept per 40 CFR 751.109. After 90 days following the effective date, viz., August 26, 2019, each person who manufactures, processes, or distributes in commerce methylene chloride must retain documentation of the entities to whom methylene chloride was shipped (name, address, contact, phone number), a copy of the downstream notification provided, and the amount of methylene chloride shipped. The documentation must be retained for 3 years from the date of shipment, and be kept either at the company’s headquarters or the facility for which the records were generated.

The fact that the applicability of the notification and record-keeping requirements of this rule, titled “Methylene Chloride; Regulation of Paint and Coating Removal for Consumer Use Under TSCA Section 6(a), extends far beyond methylene chloride used for paint and coating removal cannot be overemphasized. Indeed, these requirements apply to any and all manufacturers, processors, and distributors of methylene chloride-containing products-period! Only a semi-colon provides any clue from the title that the scope of this rule is broader than methylene chloride used for paint and coating removal. The agency is apparently concerned that methylene chloride in other products could be used by consumers for stripping paint.