



S.697 Weakens EPA's Ability to Stop Imports of Products with Dangerous Chemicals

Supporters of S.697 claim that it will "*protect America's families, especially children, from harmful chemicals that are present in everyday consumer products.*" But one key provision of the bill will actually make it *harder* for EPA to identify uses of chemicals of concern in everyday products, and to stop import of those chemicals. It's because EPA is finally starting to act to protect the public against imported products containing toxic chemicals that the chemical industry is pushing this provision.

When the EPW committee marked up S. 697, language that would have weakened EPA's current import authority was removed from the bill -- an important improvement. But new language was added that weakens EPA's current authority under a different part of the law, and will have a similar, and arguably worse, effect.¹

The new provision creates additional legal hurdles before EPA can require notification about potential new uses of chemicals in products that the agency believes could harm public health or the environment. The new provision is directed at EPA's authority to issue Significant New Use Rules (or "SNURs").

What's a SNUR? Significant New Use Rules (or "SNURs") are rules EPA issues when the agency wants advance notice about the new use of a chemical that could have potential to harm human health or the environment.

In recent years, it has become clearer that we are frequently exposed to chemicals of concern from many types of products (or "articles"), including those that we have in our homes, workplaces, schools, and in modes of transportation. Human and/or environmental exposures to one or more problematic chemicals, including brominated flame retardants, formaldehyde, phthalates, non-stick and non-stain chemicals (perfluorinated), mercury, cadmium and a host of other substances, come from consumer products like toys, carpets, clothes, seat cushions, furniture, cleaning supplies, computers, building materials and auto parts.

How does the SNUR process work and how would it change under S. 697? *A SNUR requires EPA to be notified at least 90 days before a significant new use of the identified chemical (or group of chemicals) begins.* This gives EPA an opportunity to obtain more information if necessary and to decide whether limitations should be imposed on the production or use of the chemical to protect public health or the environment. This kind of assessment cannot typically be done up-front, because EPA does not at that point have the information about the potential use, or the full universe of potential uses, to sufficiently analyze the hazards and exposures attendant to that new use. If EPA does not act within 90 days of receiving the notice, then the entity that submitted the notice is free to use the chemical as proposed. If EPA has a concern about the toxicity (health or environmental effects) of a chemical, and therefore a generalized concern about increased

¹ Section 7 (5)(C)(3) ARTICLE CONSIDERATION.—The Administrator may require the notification for the import or processing of a chemical substance as part of an article or category of articles under paragraph (1)(B) if the Administrator makes an affirmative finding in a rule under paragraph (2) that the reasonable potential for exposure to the chemical substance through the article or category of articles subject to the rule warrants notification."

human or environmental exposure, it can adopt a new use notice requirement, including for new use in an article to be imported into the U.S.

Under current law, EPA is authorized to designate a use of a chemical as a significant new use requiring notification after it has considered all relevant factors including:

- The projected volume of manufacturing and processing of the chemical;
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical;
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical;
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of chemical.

The provision in S.697 goes well beyond these general factors for consideration, and imposes a new limitation on EPA - that it *cannot impose a significant new use reporting requirement on an article being imported or processed in the U.S. unless the Administrator makes "an affirmative finding" that "the reasonable potential for exposure to the chemical substance through the article or category of articles subject to the rule warrants notification."*

EPA would then have to clear new legal hurdles before obtaining notice about a potential new use of a chemical in an article. The new language gives the industry a stronger legal basis to challenge a significant new use requirement in court and raises the bar for what the agency would have to show about the potential for exposure to a substance, prior to having any concrete information about the potential new use. In essence, the provision requires EPA to evaluate something before even knowing what it is.

EPA is currently working on several Significant New Use Rules, for which it has proposed to lift a default regulatory exemption for new uses of the chemical in articles to be imported into the U.S. These include new use notice requirements for:

- ***Long-Chain Perfluoroalkyl Carboxylate and Perfluoroalkyl Sulfonate Chemical Substances (LCPFACs)*** - a group of substances that are persistent, bioaccumulative and toxic (PBTs);
- ***Toluene Diisocyanates (TDI) and related compounds*** - that are dermal and inhalation sensitizers that can cause asthma and lung damage;
- ***Hexabromocyclododecane (HBCD)*** - a flame retardant ingredient linked to hormone disruption and aquatic toxicity and a possible reproductive toxin that is already subject to authorization (meaning likely phase out) under the European Union's REACH regulation and a global phase-out under the Persistent Organic Pollutants (POPs) treaty;
- ***Polybrominated Diphenyl Ethers (PBDEs)*** - another group of flame retardants that are persistent, bioaccumulative and toxic.

In short, EPA is proposing to be notified before new uses of these chemicals - some of the "worst of the worst" that the agency has identified through its existing prioritization process - are introduced into the U.S., including in articles imported from China and other countries, to *prevent* people or the environment from being harmed by these toxic substances -- *exactly what the agency should be doing under TSCA.*

EPA's existing authority to obtain information about potential new uses of chemicals of concern before they are imported into the U.S. in products is a modest and effective method of ensuring some degree of protection for the public, and should not be rolled back.

FOR MORE INFORMATION: <http://on.nrdc.org/1L0Jrw9>