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THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
NOTICE OF PUBLIC HEARING

Notice is hereby given that the Massachusetts Executive Office of Energy and Environmental Affairs (EOEEA), under its authority pursuant to M.G.L. Chapter 21I, Sections 4, 9 in conformance with M.G.L. 30A, will hold a public hearing on a proposed amendment to 301 CMR 41.00 *Toxic or Hazardous Substance List*. These regulations implement changes to the list of chemicals made by the Administrative Council on Toxics Use Reduction during calendar year 2014, pursuant to the statutory amendments to the Toxics Use Reduction Act (TURA, Chapter 21I) made in 2006. Specifically, EOEEA is seeking comments on the designation of Toluene Diisocyanate (TDI) (listed as CAS: 2,4-TDI [584-84-9]; 2,6-TDI [91-08-7]; and TDI mixed isomers [26471-62-5]), as a Higher Hazard Substance.

Written comments on the proposed regulations will be accepted until 4 p.m. on February 23, 2015. A public hearing will be conducted on the following date at the following location to receive comments on the proposed amendments. Testimony may be presented orally or in writing at the hearing.

February 3, 2015 1:00 p.m. to 2:00 p.m.
Leverett Saltonstall Building
100 Cambridge Street, 2nd floor, Conference Room A
Boston, MA 02114

Following the hearing, written testimony on TDI will be accepted until 4 p.m. on Monday, February 23, 2015. Written testimony should be submitted via email to rich.bizzozero@state.ma.us or via mail to: Rich Bizzozero, Executive Director TUR Administrative Council, Executive Office of Energy and Environmental Affairs, 100 Cambridge Street, suite 900, Boston, MA 02114. Copies of the proposed regulations are available on the Executive Office of Energy and Environmental Affairs web site at www.mass.gov/eea or www.mass.gov/eea/waste-mgmt-recycling/toxics/toxic-use-reduction/tura-program-regulations.html or may be obtained by sending an email or calling Rich Bizzozero at 617-626-1080.

For special accommodations for these events or to obtain this information in alternative format, you may contact Barbara Nobles Crawford; Executive Office of Energy and Environmental Affairs, ADA coordinator, at 617-626-1161, 100 Cambridge Street, suite 900, Boston, MA 02114.

By order of the Executive Office of Energy and Environmental Affairs
Maeva Vallely Bartlett, Secretary

SMALL BUSINESS IMPACT STATEMENT

In order to accurately predict the impact the adoption, amendment, or repeal of a regulation will have on small businesses, the promulgating authority must conduct a thorough analysis that not only considers the potential effects of the action but also quantifies the costs, if any, associated with each. The questions below are designed to aid promulgating authorities in conducting their analysis.

Agency Submitting Regulation: Energy and Environmental Affairs

Subject Matter of Regulation: List of reportable chemicals for the Toxics Use Reduction Act (TURA)

Regulation No: 301 CMR 41.00

Statutory Authority: M.G.L. Chapter 21I, §§ 4 and 9

Other Agencies Affected: Massachusetts Department of Environmental Protection

Other Regulations That May Duplicate or Conflict with the Regulation: None

Describe the Scope and Objectives of the Regulation: These regulations implement actions taken by the Administrative Council on Toxic Use Reduction during fiscal year 2014, pursuant to the 2006 statutory amendments to TURA. These changes specifically reclassify toluene diisocyanate (TDI, listed as three separate CAS numbers) as a Higher Hazard Substance.

Business Industry(ies) Affected by the Regulation: Any facility in a TURA-covered sector with 10 or more full-time employee equivalents (FTEs) using at least 1,000 pounds per year of TDI would be subject to the regulation. Industry sectors that are most likely affected include plastics materials and resins, paints and allied products, adhesives and sealants, plastics foam products, and wholesale trade - chemicals and allied products.

Types of Businesses Included in the Industry(ies): To develop an accurate estimate of the number and type of manufacturing companies likely to be affected by a 1,000 lb reporting threshold, the TURA program consulted a number of databases including the TURA reporter data; facilities required to report under EPCRA Tier II; and RCRA hazardous waste data. In addition, TURA program staff members supplemented this data with estimates based on their real-world experience working with industry. Information obtained from business databases on Massachusetts industry was also incorporated. In 2012, the most recent year for which data available, five companies reported the use of TDI under TURA: two in "plastics materials and resins," and one each in "paints and allied products," "adhesives and sealants," and "plastic foam products." All reported processing TDI. Some additional information on TDI use can be obtained from the EPCRA Tier II data on hazardous chemical storage, as well as the RCRA data on hazardous waste shipments. The Tier II data for 2012 show a total of seven facilities reporting TDI storage. The

RCRA data for 2012 show that ten facilities reported hazardous waste shipments of TDI (mixed isomers).

Number of Small Businesses Potentially Subject to the Proposed Regulation: Of the facilities reporting TDI in hazardous waste (RCRA data), two of the facilities reporting shipment of hazardous waste currently report TDI use under TURA and one has filed in the past. Of the Tier II filers, four also filed under TURA. Based on employment data and maximum amount codes, it is reasonable to expect that either one or two of these facilities would be brought into TURA by the HHS designation. The TURA program estimates that approximately 2 to 9 new filers would be brought in by the HHS designation.

Effective Date Used In Cost Estimate: December 2014

Yes	No	<i>*Note: For each question, please answer "yes" or "no" and offer a brief explanation. Please describe any facts, data, views, arguments, or other input from small businesses, organizations or any other sources that were used to quantify the impacts outlined below.</i>
<p>Yes <input checked="" type="checkbox"/></p>	<p>No <input type="checkbox"/></p>	<p>Will small businesses have to create, file, or issue additional reports? A principal reason for TURA's success is that companies covered by the program are required to develop and use a chemical tracking system. The tracking system helps companies understand their use of chemicals and where losses occur in the manufacturing process. Companies annually report their chemical use and the waste generation from that use to the Massachusetts Department of Environmental Protection (MassDEP). These same companies develop plans that identify options and evaluate alternatives that would <u>reduce or eliminate</u> the use of these hazardous chemicals and the waste they generate. Companies are not required to adopt the toxics use reduction techniques they identify, but when alternatives that make good business sense are available, companies will frequently adopt these cost effective strategies, which leads to more efficient chemical use and a reduction in waste generation. Companies provide the MassDEP with a progress update on their planning activity every other year.</p>
<p>Yes <input checked="" type="checkbox"/></p>	<p>No <input type="checkbox"/></p>	<p>Will small businesses have to implement additional recordkeeping procedures? The companies are required to develop and use a chemical tracking system. They will need to keep track of the amount of TDI purchased and used on site; the amount released to the workplace and environment, or generated as waste during manufacturing operations; and the amount of the chemical incorporated into products and sold in commerce.</p>
<p>Yes <input checked="" type="checkbox"/></p>	<p>No <input type="checkbox"/></p>	<p>Will small businesses have to provide additional administrative oversight? The annual reports, and plan updates that are submitted to the MassDEP are</p>

		reviewed and signed by a senior management official at the company.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Will small businesses have to hire additional employees in order to comply with the proposed regulation?</p> <p>Most businesses prepare the annual report and toxics plan using in-house expertise and staff. About half the companies use an outside consultant to certify their toxics use reduction plan. Existing staff in the environment, health and safety; process engineering; or facilities management categories are most commonly responsible for preparing toxics reports and plans.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)?</p> <p>A toxics use reduction plan must be certified by a MassDEP certified toxics use reduction planner (TURP). Most businesses prepare the chemical evaluation plan using in-house expertise and staff (in-house planner) and some choose to use/hire a general practice TURP (outside the company consultant).</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation?</p> <p>Businesses subject to TURA are not required to make any capital investment to comply with the regulation. Program evaluation has shown that businesses are likely to adopt and implement many chemical options evaluated in the planning process that have a positive economic benefit (companies adopt alternatives when they make good business sense). The 1997 TURA program evaluation found that in the first five years of TURA, the program produced a net economic benefit for the regulated community and the Commonwealth as a whole. Compliance costs for all firms totaled \$67.4 million; as a result of planning, companies chose to make capital investments totaling \$37 million; and savings in operating costs totaled \$120.3 million (all figures in 2007 dollars). The 2009 program evaluation estimated net operating cost savings of \$43 to \$50 million over the period 2000 to 2009, and found that 51% of TURA filers surveyed experienced improved worker health and safety; 41% experienced financial savings from TUR; 21% experienced improved product marketing; and 33% experienced improved compliance with other state or federal regulations, among other findings. It is anticipated that these economic benefits would be realized by new companies to the TURA program.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Are performance standards more appropriate than design standards?</p> <p>TURA is neither a performance nor a design standard, but employs right to know disclosure and what has been termed a "management" standard. It leaves the decision of whether to switch chemicals or make manufacturing process changes up to the company based on the self-evaluation of their business needs. This approach ensures that companies subject to TURA only undertake changes that are</p>

		technically and financially feasible and make good business sense.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities? Massachusetts companies that are toxics users are already subject to inspections from the MassDEP, Mass Department of Fire Services, USEPA and local boards of health. This regulation only applies to MassDEP, expanding what a MassDEP inspector may examine at a facility which is already subject to inspection.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Will the regulation have the effect of creating additional taxes and/or fees for small businesses? The reports that are submitted to the MassDEP and signed by a senior management official are accompanied by an annual reporting fee. If a facility reduces use below threshold, the fee no longer applies.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? There are continuing education requirements for the Toxics Use Reduction Planner - the individual who certifies that the toxics use reduction plan conforms with the MassDEP regulations. Many of these educational services are provided at little or no cost by the TURA program and are not required to be provided by the company. A company that hires an outside consultant to certify its plan does not bear the costs of this education.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts? No, the regulation is not likely to deter the formation of small businesses in Massachusetts. The regulation supports the formation and maintenance of responsible businesses. For those businesses that use toxic chemicals, complying with TURA provides a way to structure and organize responsible chemical management. There are also important business opportunities associated with adoption of safer alternatives. The regulation could conceivably deter the formation of small businesses that are not prepared to properly manage toxic chemicals.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts? The regulation will likely encourage the formation or location in Massachusetts of companies providing safe alternatives to the relevant toxic chemicals.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Can the regulation provide for less stringent compliance or reporting requirements for small businesses? All large quantity toxics users are subject to the same reporting and compliance

		requirements, but the fee varies by the size of the business, with smaller businesses paying significantly less than larger businesses. TURA specifically exempts very small companies from the program - those companies with fewer than ten full-time employees. The law also allows companies to remove themselves from the regulatory requirements by reducing use below threshold amounts.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Can the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses? All large quantity toxics users are subject to the same reporting and compliance requirements. The statute requires they be treated equally and does not allow for less stringent schedules or deadlines for compliance. However, reporting and compliance assistance is offered to small companies at no charge. The TURA program also provides business assistance grants, educational events, research assistance, and on-site technical assistance, helping both small and large businesses to overcome barriers to toxics use reduction and identify opportunities for financial savings.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Can the compliance or reporting requirements be consolidated or simplified for small businesses? All large quantity toxics users are subject to the same reporting and compliance requirements. The statute requires they be treated equally and does not allow for consolidation or simplified reporting. However, the assistance efforts of the state have helped to simplify the effort of compliance for many small companies covered by the Act by targeting assistance services, outreach, research, and grant programs to users of Higher Hazard Substances.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Can performance standards for small businesses replace design or operational standards? Setting either performance, design or operational standards (for example, where the Commonwealth phases out the use of a chemical or sets strict reductions in its use, or requires specific processing changes), would be more burdensome than what the law currently requires, which is characterized as a "management" standard. TURA's reporting requirements are not burdensome and are considered good chemical management practices. TURA's planning standard is regarded as "business friendly" in that it requires the company, not the state, to identify its options and evaluate alternatives. TURA leaves the responsibility for making the decision to make changes or switch to an alternative chemical, or to do nothing at all, up to the company.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses?

		None have been identified by the program that are within its statutory discretion.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	<p>Were any small businesses or small business organizations contacted during the preparation of this document? If so, please describe.</p> <p>Yes, there was significant small business and stakeholder involvement in the development of this regulation. Input was provided at the many public meetings and deliberations of the Science Advisory Board, the Advisory Committee to the Administrative Council, and the Administrative Council on Toxics Use Reduction.</p> <p>Announcement of the public meetings with an agenda was sent to the list of TURA program stakeholders that are notified of each Administrative Council and Advisory Committee meeting – which are open to the public. Those contacted included trade associations such as the American Chemistry Council (ACC), Halogenated Solvents Industry Alliance (HSIA), Associated Industries of Massachusetts (AIM), Massachusetts Chemistry and Technology Alliance (MCTA), and companies that distribute products that contain these chemicals.</p> <p>The Advisory Committee to the Administrative Council provided a forum for discussing the merits of designating these chemicals as Higher Hazard Substances. Extensive discussion with this 15-member stakeholder group served to inform a network of businesses using the chemicals, environmental advocacy and public health groups, labor, and the general public about the proposal. The chemicals were selected from a larger list of candidates based on input from the Advisory Committee members and their associated networks. They were chosen based on a number of criteria recommended by Advisory Committee members, including small business representatives. These criteria included likelihood of use as an alternative to an existing Higher Hazard Substance; high acute toxicity; and prioritization for regulatory action in Europe, among others. The majority of the Advisory Committee members and their associated networks are solidly supportive of the scientific basis and the recommendation to regulate these chemicals as Higher Hazard Substances under the Act.</p> <p>EOEEA held a 21-day public comment period and a public hearing on November 20, 2014. Announcement of the public comment period and public hearing was sent to the list of TURA program stakeholders that are notified of each Administrative Council and Advisory Committee meetings – which are open to the public. Those contacted included trade associations such as the American Chemistry Council (ACC), Halogenated Solvents Industry Alliance (HSIA), Associated Industries of Massachusetts (AIM), Massachusetts Chemistry and Technology Alliance (MCTA), and companies that distribute products that contain these chemicals. Additionally, members of TUR Advisory Committee and</p>

	<p>Administrative Council and their associated networks were notified of the public comment period. Attendees to the Toxics Use Reduction Planners Continuing Education Conference and the National Association of Metal Finishers - New England Chapter Annual Conference in November were notified and encouraged to provide comments. A letter announcing the public comment period was sent to each of the facilities most likely to be subject to the lower reporting threshold. TURA filers were notified twice via the Toxic Use Reduction Institute electronic newsletter about the public comment period. In the end, EOEEA received several comments from Massachusetts individuals and organizations supporting the designation and no comments from Massachusetts business opposing the designation as Higher Hazard Substances.</p>
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