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July 12, 2019

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, 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 proposed amendments 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, pursuant to the statutory amendments to the Toxics Use Reduction Act (TURA, Chapter 21I) made in 2006.

The proposed amendment is mandated by the Toxics Use Reduction Act (TURA, MGL Chapter 21I), which requires that changes made by the United States Environmental Protection Agency (USEPA) to the EPCRA Section 313 Toxic Chemical List be mirrored in the TURA Toxic or Hazardous Substance List. Specifically, on September 25, 2018, the Administrative Council voted to list the nonylphenol ethoxylates (NPE) category, added by USEPA to the EPCRA Section 313 Toxic Chemical List on June 7, 2018.

Written comments on the proposed regulations will be accepted until 4 p.m. on August 16, 2019. 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.

August 15, 2019, 1 p.m. – 3 p.m.  
Leverett Saltonstall Building  
100 Cambridge Street, 2<sup>nd</sup> floor, Conference Room B  
Boston, MA 02114

Following the hearing, written testimony will be accepted until 4 p.m. on August 16, 2019. Written testimony should be submitted via email to [rich.bizzozero@mass.gov](mailto:rich.bizzozero@mass.gov) 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 <https://www.mass.gov/orgs/administrative-council-on-toxics-use-reduction> or may be obtained by sending an email or calling Rich Bizzozero 617-626-1080.

For special accommodations for these events or to obtain this information in alternative format, you may contact Laura-Jean Canducci, Executive Office of Energy and Environmental Affairs, ADA coordinator, at 617-626-1654, 100 Cambridge Street, Suite 900, Boston, MA 02114.

By order of the Executive Office of Energy and Environmental Affairs  
Kathleen A. Theoharides, Secretary

**Small Business Impact Statement**  
*(As required by M.G.L. c. 30A §§ 2, 3 & 5)*

**CMR No: 301 CMR 41:00 Toxic or Hazardous Substance List**

**Estimate of the Number of Small Businesses Impacted by the Regulation: Less than 10**

**Select Yes or No and Briefly Explain**

Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	<p><b>Will small businesses have to create, file, or issue additional reports?</b></p> <p>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).</p> <p>These same companies develop plans that identify options and evaluate alternatives that would reduce or eliminate 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>All small businesses with less than 10 full-time equivalents (FTEs) are exempt from the proposed regulation; however, facilities that use toxic chemicals are still entitled and encouraged to utilize the free and confidential environmental compliance and chemical assistance services provided by the TURA program.</p>
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	<p><b>Will small businesses have to implement additional recordkeeping procedures?</b></p> <p>The companies are required to develop and use a chemical tracking system. They will need to keep track of the amount of the reportable chemical 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. For the nonylphenol ethoxylates (NPE) category and other substances on the EPA EPCRA 313 list, companies already must track chemical use for federal annual waste and emissions reporting.</p>
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	<p><b>Will small businesses have to provide additional administrative oversight?</b></p> <p>The annual reports and plan update summaries that are submitted to the MassDEP are reviewed and signed by a senior management official at the company.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p><b>Will small businesses have to hire additional employees in order to comply with the proposed regulation?</b></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>

<p>Yes <input type="checkbox"/></p>	<p>No <input checked="" type="checkbox"/></p>	<p><b>Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)?</b> 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 (a consultant from outside the company).</p>
<p>Yes <input type="checkbox"/></p>	<p>No <input checked="" type="checkbox"/></p>	<p><b>Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation?</b> 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 options evaluated in the planning process that have a positive economic benefit (companies adopt alternatives when they make good business sense). A recent program evaluation estimated net operating cost savings to business 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 companies that are new to the TURA program. The 2014 TURA plan summaries, submitted in July 2015, show that 72% of the facilities that completed a TUR plan in 2014 found and intended to implement changes to their production processes that would reduce toxics use and waste. In addition, preliminary analysis of the most recent data shows that between 2007 and 2016 those facilities that reported in 2007 and were still manufacturing in Massachusetts in 2016 experienced a 29% increase in production and, taking that increase into account, reduced:</p> <ul style="list-style-type: none"> <li>• toxic chemical use by 26%;</li> <li>• toxic byproducts (waste) by 19%;</li> <li>• toxics shipped in product by 22%; and,</li> <li>• on-site releases of toxics to the environment by 36%.</li> </ul>
<p>Yes <input type="checkbox"/></p>	<p>No <input checked="" type="checkbox"/></p>	<p><b>Are performance standards more appropriate than design standards?</b> 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 technically and financially feasible and make good business sense.</p>
<p>Yes <input checked="" type="checkbox"/></p>	<p>No <input type="checkbox"/></p>	<p><b>Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities?</b> 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.</p>
<p>Yes <input checked="" type="checkbox"/></p>	<p>No <input type="checkbox"/></p>	<p><b>Will the regulation have the effect of creating additional taxes and/or fees for small businesses?</b> 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.</p>

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p><b>Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements?</b></p> <p>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.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p><b>Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts?</b></p> <p>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.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p><b>Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts?</b></p> <p>The regulation may encourage the formation or location in Massachusetts of companies providing safer alternatives to the relevant toxic chemicals.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p><b>Can the regulation provide for less stringent compliance or reporting requirements for small businesses?</b></p> <p>All large quantity toxics users are subject to the same reporting and compliance requirements, but the fee varies by the size of the business (number of employees), 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 equivalent employees. The law also allows companies to remove themselves from the regulatory requirements by reducing use below threshold amounts.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p><b>Can the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses?</b></p> <p>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.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p><b>Can the compliance or reporting requirements be consolidated or simplified for small businesses?</b></p> <p>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 substances on the TURA List.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p><b>Can performance standards for small businesses replace design or operational standards?</b></p> <p>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</p>

		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"/>	<p><b>Are there alternative regulatory methods that would minimize the adverse impact on small businesses?</b></p> <p>None have been identified by the program that are within its statutory discretion.</p>
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	<p><b>Were any small businesses or small business organizations contacted during the preparation of this document? If so, please describe</b></p> <p>The NPE category was added by the USEPA and the TURA program is adding them to the list consistent with statutory requirements under TURA, chapter 21I: Section 9(A). Members of the regulated community were sent the September 25, 2018 meeting agenda in advance that clearly indicated the Administrative Council would be deliberating on and voting on changes made by the USEPA to the list of reportable substances under EPCRA Section 313.</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. Those contacted included stakeholders and 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>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p><b>Are there regulations of the promulgating agency, or of another agency or department of the commonwealth, which may duplicate or conflict with the proposed regulation?</b></p> <p>There are no state level regulations that duplicate or conflict with the proposed regulation, which focuses on creating opportunities to reduce the use of toxic chemicals or find safer alternatives.</p>