



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 751

[EPA-HQ-OPPT-2020-0642; FRL-8317.1-07-OCSP]

RIN 2070-AK83

### Extension of Postponement of Effectiveness for Certain Provisions of Trichloroethylene (TCE); Regulation Under the Toxic Substances Control Act (TSCA)

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

**ACTION:** Notification; extension of postponement of effectiveness.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) is extending the postponement of the effectiveness of certain regulatory provisions of the final rule entitled “Trichloroethylene (TCE); Regulation Under the Toxic Substances Control Act (TSCA)” until the conclusion of judicial review. Specifically, this postponement applies to the conditions imposed on the uses with TSCA section 6(g) exemptions.

**DATES:** As of May 18, 2026, the conditions imposed on each of the TSCA section 6(g) exemptions, as described in this document, in the final rule published on December 17, 2024, at 89 FR 102568 are postponed until the conclusion of judicial review.

**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 contact:* 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 Assistance Information Service Hotline, Goodwill

Vision Enterprises, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (800) 471-7127 or (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-OCSP). The final rule included extended phaseouts or TSCA section 6(g) exemptions to permit several uses to continue under workplace restrictions for longer periods.

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 the 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 U.S. Court of Appeals for the Fifth and Sixth Circuits 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 60 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 had 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.

On March 21, 2025, EPA signed a notice pursuant to section 705 of the Administrative Procedure Act (APA), 5 U.S.C. 705, further postponing the effective date of the provisions applicable to the conditions of use subject to TSCA section 6(g) exemptions until June 20, 2025. Postponement of Effectiveness for Certain Provisions of Trichloroethylene (TCE); Regulation under the Toxic Substances Control Act (TSCA), 90 FR 14415, April 2, 2025 (FRL-8317.1-01-OCSPP) (“Initial Notice”). In that notice, EPA explained that Petitioners Alliance, Microporous, and PPG (“Industry Petitioners”) raised serious questions regarding the Workplace Chemical Protection Program that warranted a delay of the effective date of those provisions.

On March 28, 2025, the U.S. Court of Appeals for the Third Circuit lifted the administrative stay except as to the provisions that are subject to EPA’s Initial Notice. The court also ordered EPA to file any response to the pending stay motions by May 27, 2025. On May 27, 2025, the Agency filed a response to Industry Petitioners’ motions for stay stating it did not oppose a judicial stay of the provisions subject to EPA’s Initial Notice for the same reasons EPA requested an abeyance. Industry Petitioners later replied in support of their stay motions. Also on

May 27, 2025, EPA moved to hold the case in abeyance because it intends to reconsider the final rule, including provisions subject to EPA's Initial Notice, through notice-and-comment rulemaking. Industry Petitioners later responded that they would prefer the court decide the stay motions before deciding EPA's abeyance motion; otherwise, they would oppose the abeyance. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America; United Steel, Paper, and Forestry, Rubber Manufacturing, Energy, Allied Industrial Workers International Union; Center for Environmental Health; and Environmental Defense Fund ("Environmental and Labor Petitioners") later opposed EPA's motion for abeyance. On June 18, 2025, EPA replied in support of its abeyance motion that the majority of petitioners did not oppose EPA's request.

One day earlier, on June 17, 2025, EPA signed a notice pursuant to section 705 of the APA, 5 U.S.C. 705, further postponing the effective date of the provisions applicable to the conditions of use subject to TSCA section 6(g) exemptions until August 19, 2025. Extension of Postponement of Effectiveness for Certain Provisions of Trichloroethylene (TCE); Regulation Under the Toxic Substances Control Act (TSCA), 90 FR 26453, June 23, 2025 (FRL-8317.1-03-OCSPP) ("Second Notice"). Both Environmental and Labor Petitioners and EPA notified the court of this postponement. Industry and Environmental and Labor Petitioners reiterated their prior positions in response to those filings.

On August 16, 2025, with judicial proceedings ongoing, EPA signed a notice pursuant to section 705 of the APA, 5 U.S.C. 705, further postponing the effective date of the provisions applicable to the conditions of use subject to TSCA section 6(g) exemptions until November 17, 2025. Extension of Postponement of Effectiveness for Certain Provisions of Trichloroethylene (TCE); Regulation Under the Toxic Substances Control Act (TSCA), 90 FR 40534, August 20, 2025 (FRL-8317.1-04-OCSPP) ("Third Notice"). In September 2025, EPA notified the court that it had taken interim final action to revise certain compliance deadlines finalized in the challenged rule.

On November 7, 2025, the court requested supplemental letter briefs from the parties asking about ripeness, hardship, and the scope of the stay motions in light of EPA's stated intention to reconsider and modify the December 2024 TCE Rule and multiple postponements of the Rule's effective date.

On November 10, 2025, EPA signed a notice pursuant to section 705 of the APA, 5 U.S.C. 705, further postponing the effective date of the provisions applicable to the conditions of use subject to TSCA section 6(g) exemptions until February 17, 2026. Extension of Postponement of Effectiveness for Certain Provisions of Trichloroethylene (TCE); Regulation Under the Toxic Substances Control Act (TSCA), 90 FR 51027, November 14, 2025 (FRL-8317.1-05-OCSP) ("Fourth Notice").

The parties responded to the court's request for supplemental letter briefs on November 20, 2025. On December 23, 2025, EPA requested briefing on an issue newly raised by Petitioners' filings. Petitioners opposed EPA's request.

On February 11, 2026, the court dismissed the stay motions filed by the Industry Petitioners without prejudice as unripe, denied EPA's abeyance motion, lifted the court's March 28, 2025, partial administrative stay, and directed the clerk to issue a briefing schedule for the petitions for review.

On February 12, 2026, EPA signed a notice pursuant to section 705 of the APA, 5 U.S.C. 705, further postponing the effective date of the provisions applicable to the conditions of use subject to TSCA section 6(g) exemptions until May 18, 2026. Extension of Postponement of Effectiveness for Certain Provisions of Trichloroethylene (TCE); Regulation Under the Toxic Substances Control Act (TSCA), 91 FR 7401, February 18, 2026 (FRL-8317.1-06-OCSP) ("Fifth Notice").

On March 30, 2026, the several parties filed a joint motion to establish briefing format and modify schedule. Industry parties included Alliance for a Strong U.S. Battery Sector, Microporous, LLC, PPG Industries, Inc., American Chemistry Council, Georgia Chemistry

Council, Texas Chemistry Council, Missouri Alliance for a Strong U.S. Battery Sector, Trent Capital Partners, Ohio Chemistry Technology Council, Vinyl Institute, Inc., and Olin Corporation. These industry parties joined this motion along with EPA and Environmental Petitioners. The court issued a modified briefing schedule on April 13, 2026. Judicial proceedings are ongoing.

## **II. Statutory Authority**

As discussed in the Initial Notice, section 705 of the 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. 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 v. DeVos*, 325 F. Supp. 3d 74, 106-07 (D.D.C. 2018); *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 same reasons as set forth in the Initial Notice, EPA has determined that justice requires an extension, until the conclusion of judicial review, of the postponement of the effective date of the conditions for each of the TSCA section 6(g) exemptions. *See* 40 CFR 751.325(a)(2). The extension of 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) through (iv).

The postponement will temporarily preserve the status quo while the Third Circuit litigation is pending. Nothing has materially changed since the Initial Notice and the subsequent extensions of that notice that affects EPA’s analysis of whether justice requires a stay of these provisions, except for the procedural posture of the case. The court dismissed without prejudice Industry Petitioners’ stay motions, lifted the court’s partial administrative stay, and directed the

clerk to issue a briefing schedule on the petitions for review in its February 11, 2026, order. In light of this active and ongoing judicial review of the 2024 TCE Final Rule and per the reasons discussed in the Initial Notice, EPA has concluded that justice requires extending the postponement of the effective date for the conditions imposed on each of the TSCA section 6(g) exemptions until the judicial challenges to the 2024 TCE Final Rule are resolved. EPA intends to publish a document in a future edition of the *Federal Register* announcing the new effective date or other dates the public may need to know.

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

**Lee Zeldin,**

*Administrator.*

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