

Small Entity Compliance Guidance for the Regulation of Methylene Chloride

Paint and Coating Removal for Consumer Use

September 2019
EPA-740-B-19-009





This guide was prepared pursuant to section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121 as amended by Pub. L. Number 110-28. THIS DOCUMENT IS NOT INTENDED, NOR CAN IT BE RELIED UPON, TO CREATE ANY RIGHTS ENFORCEABLE BY ANY PARTY IN LITIGATION WITH THE UNITED STATES. The statements in this document are intended solely as guidance to aid you in complying with the EPA regulation “Methylene Chloride; Regulation of Paint and Coating Removal for Consumer Use under TSCA Section 6(a)” and the implementing regulations in 40 CFR part 751. EPA may decide to revise this guide without public notice to reflect changes in EPA’s approach to regulating methylene chloride for painting and coating removers under TSCA or to clarify information and update text.

To determine whether EPA has revised this guide and/or to obtain copies, contact EPA’s Small Business Ombudsman Hotline at (800) 368-5888 or (202) 566-1970 in DC, or consult the EPA’s methylene chloride website at <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-methylene-chloride>. The full text of the implementing regulation can be found at 40 CFR Part 751 and also in the Federal Register (59 FR 11435, March 27, 2019) and at docket EPA-HQ-OPPT-2016-0231 at <https://www.regulations.gov>.

Introduction

This document is published by EPA as the official compliance guide for small entities, as required by the Small Business Regulatory Enforcement Fairness Act of 1996. Before you begin using the guide, you should know that the information in this guide was compiled and based on the EPA regulation entitled, “Methylene Chloride; Paint and Coating Removal for Consumer Use Under TSCA Section 6(a),” published on March 27, 2019. EPA is continually improving and updating its rules, policies, compliance programs, and outreach efforts. You can determine whether EPA has revised or supplemented the information in this guide by consulting EPA’s methylene chloride website at <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-methylene-chloride>.

Contents

This guide is organized as follows:

- [Introduction](#)
- [Regulation Summary and Compliance Timetable](#)
- [Who Must Comply](#)
- [How to Comply](#)
- [For More Information](#)
- [Appendix: Acronym List and Glossary of Terms](#)

Terminology

Throughout this guide, the term “paint and coating removal” refers to the application of a chemical or other method to remove, loosen, or deteriorate any paint, varnish, lacquer, graffiti, surface protectants, or other coating from a substrate, including objects, vehicles, architectural features, or structures. Paint and coating removal is also frequently known as “paint stripping.” Other key terms are in the [Appendix: Glossary of Terms](#).

Who Should Use This Guide?

You should use this guide if you manufacture (including import), process, or distribute methylene chloride or paint or coating removers containing methylene chloride. Many of the following types of businesses are likely covered by this guide:

- Chemical and Allied Products Manufacturers (NAICS code 32411)
- Chemical and Allied Products and Merchants Wholesalers (NAICS code 4246), and
- Building Materials and Supplies Dealers (NAICS code 4441).

Commercial users of methylene chloride in paint and coating removal are not covered by this compliance guide.

How Do I Obtain a Copy of the Rule?

A complete copy of the final rule is in the Federal Register (Vol. 84, p. 11420) and in docket EPA-HQ-OPPT-2016-0231 at <https://www.regulations.gov/>, which also includes supporting documents. See the section entitled [For More Information](#) for additional resources.

Regulation Summary and Compliance Timetable

Regulation Summary

On March 27, 2019, EPA published a final determination 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 (84 FR 11420). Accordingly, EPA issued a final rule under section 6(a) of TSCA to prohibit the manufacture (including import), processing, and distribution in commerce of methylene chloride for consumer paint and coating removal (including distribution to and by retailers).

The final rule also requires manufacturers (including importers), processors, and distributors of methylene chloride for any use to provide downstream notification of the prohibitions throughout the supply chain; and requires limited recordkeeping. The downstream notification and recordkeeping requirements do not apply to retailers.

However, all retailers (including e-commerce retailers) are prohibited from distributing in commerce methylene chloride for paint and coating removal, including any methylene-chloride containing paint and coating removal products.

Compliance Timetable

EPA's regulation became effective on May 28, 2019. Regulatory requirements of the final rule go into effect either 90 or 180 days after that effective date. Table 1 summarizes the regulatory requirements and compliance dates. The compliance date is the date after which compliance obligations apply.

The [How to Comply](#) section of this guide provides more detail on what you must do if you are a manufacturer, processor, or distributor of methylene chloride or paint and coating removers containing methylene chloride.

Requirement		Compliance Date
Downstream Notification		
Who	Each person who manufactures (including imports), processes, or distributes in commerce methylene chloride for any use. This requirement does not apply to retailers.	Starting on August 26, 2019
What	You must notify companies to whom methylene chloride is shipped, in writing, of the restrictions on methylene chloride in paint and coating removal described in 40 CFR part 751, subpart B.	
When	Prior to or concurrent with the shipment of the methylene chloride or product containing methylene chloride, starting on August 26, 2019.	
How	Notification must occur by inserting required language into the Safety Data Sheet (SDS) provided with the methylene chloride or with any methylene chloride containing product. Specific language requirements for SDS are in the final rule and the section of this guidance entitled How to Comply: Downstream Notification .	

Compliance Timetable (cont.)

Requirement		Compliance Date
Recordkeeping		
Who	Each person who manufactures (including imports), processes, or distributes in commerce methylene chloride. This requirement does not apply to retailers.	Starting on August 26, 2019
What	You must retain documentation of: <ul style="list-style-type: none"> • the companies to whom methylene chloride was shipped; • a copy of the downstream notification provided; and • the amount of methylene chloride shipped. 	
When	Beginning August 26, 2019, this documentation must be retained for 3 years from the date of shipment.	
How	This information must be retained at the company headquarters or at the facility for which the records were generated. Requirements on what these records must include are in the final rule and the section of this guidance entitled How to Comply: Recordkeeping .	
Prohibition on Manufacture (including Import), Processing, and Distribution in Commerce		
Who/What/When	Beginning on November 22, 2019, all persons are prohibited from manufacturing (including importing), processing and distributing in commerce methylene chloride for consumer paint and coating removal.	November 22, 2019
Prohibition on Distribution to Retailers		
Who/What/When	Beginning on November 22, 2019, all persons are prohibited from distributing to retailers any methylene chloride for paint and coating removal, including any products containing methylene chloride for paint and coating removal.	November 22, 2019
Retailer Prohibition		
Who/What/When	Beginning on November 22, 2019, all retailers, including e-commerce retailers, are prohibited from distributing in commerce methylene chloride for paint and coating removal, including any products containing methylene chloride for paint and coating removal.	November 22, 2019

Who Must Comply

How Can I Tell If I Am Subject to This Rule?

You are subject to 40 CFR part 751, subpart B if you manufacture (including import), process, or distribute in commerce methylene chloride (CASRN 75-09-2) or methylene chloride-containing paint and coating removal products.

This rule prohibits the manufacture (including import), processing, or distribution in commerce of methylene chloride for consumer paint and coating removal. The details of those prohibitions are in the next section, [How to Comply: Prohibitions](#).

The small entities directly regulated by this rule include processors (since they formulate paint and coating removers containing methylene chloride), distributors of methylene chloride and paint and coating removers containing methylene chloride, and retailers.

What Is a Paint and Coating Remover?

A “paint and coating remover” removes, loosens, or deteriorates any paint, varnish, lacquer, graffiti, surface protectants, or other coating from a substrate, including objects, vehicles, architectural features, or structures. These products are also known as “paint strippers.”

What Small Entities Are Regulated as Processors (or Formulators) of Methylene Chloride or Methylene Chloride-Containing Products?

Small entities that make paint and coating removers containing methylene chloride are also known as formulators or processors of paint and coating removers containing methylene chloride. After the compliance dates noted above, formulators and processors are prohibited from making paint and coating removers with methylene chloride for consumer use. These products must be discontinued or reformulated.

What Small Entities Are Regulated as Retailers?

A retailer is a person or entity who distributes in commerce or makes available a chemical substance or mixture to consumer end users, including by e-commerce internet sales or distribution (see definitions at [40 CFR 751.105](#)). Any distributor with at least one consumer end user customer is considered a retailer. A person or entity who distributes in commerce or makes available a chemical substance or mixture solely to commercial or industrial end users or solely to commercial or industrial businesses is not considered a retailer.

After November 22, 2019, distribution of methylene chloride for paint and coating removal to or by retailers is prohibited.

Are Any Formulators or Distributors of Paint and Coating Removers Exempted or Not Covered?

If you formulate paint and coating removers containing methylene chloride solely for commercial or industrial users, then you are not subject to the processing prohibitions in the final rule. All formulators, regardless of their customers, are subject to the downstream reporting and recordkeeping requirements of this rule.

If you distribute or make available paint and coating removers containing methylene chloride solely to commercial or industrial end users or businesses, you are not a retailer and are regulated as a distributor. All distributors who are not retailers are subject to the downstream reporting and recordkeeping requirements of the final rule. As noted above, any distributor with at least one consumer end user customer is considered a retailer.

How to Comply

What Must I Do to Comply?

This section provides guidance on the requirements that EPA has put into place to address unreasonable risks from the use of methylene chloride in consumer paint and coating removal. This includes prohibitions on manufacturing, processing, or distributing methylene chloride for consumer paint and coating removal and requirements for downstream notification and record keeping.

The requirements for small entities are the same as for other entities.

Prohibitions

The prohibitions on manufacturing, processing, and distribution in commerce of methylene chloride for consumer paint and coating removal, including distribution to and by retailers, take effect on November 22, 2019. If you are a manufacturer, processor, or distributor of methylene chloride or methylene chloride-containing paint and coating removal products, you must ensure compliance with these prohibitions; for example, by discontinuing or reformulating any such methylene chloride or methylene chloride-containing products intended for consumers or ceasing to make them available to consumers. You also may not distribute methylene chloride or methylene chloride-containing products for paint and coating removal to retailers.

If you are a manufacturer, processor, or distributor of methylene chloride or methylene chloride-containing products for paint and coating removal for commercial or industrial use, you should be aware of the prohibitions on distribution to retailers and to consumers.

You should also be aware of the downstream notification and recordkeeping requirements that may apply to you.

If you are a retailer, after November 22, 2019, you are not allowed to sell methylene chloride for paint and coating removal to any user. EPA recognizes that this requirement could result in stranded products and some additional cost for disposal of such products.

Downstream Notification

The requirement to provide downstream notification of the restrictions in the final rule takes effect on August 26, 2019. Downstream notification by manufacturers and others in the supply chain ensures that processors and distributors are aware of the restrictions on methylene chloride in paint and coating removal; enhances the likelihood that the risks from consumer use of methylene chloride for paint and coating removal are addressed throughout the supply chain; streamlines compliance; and enhances enforcement, since compliance is improved when rules are clearly and simply communicated.

If you manufacture, process, or distribute in commerce methylene chloride, for any use, and you are not a retailer, you must comply with the downstream notification requirement in the final rule starting on August 26, 2019, the compliance date. The downstream notification describes the restrictions in the rule and must be provided in writing with the shipment of the methylene chloride, or in advance of it. This notification must occur by inserting the following text in the SDS provided with the methylene chloride or any product containing methylene chloride:

(a) SDS Section 1(c): “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.”

(b) SDS Section 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.”

This notification must be carried out for methylene chloride for all uses, not just paint and coating removal. The final rule does not set any minimum amount of methylene chloride required to provide downstream notification.

Recordkeeping

The recordkeeping requirement in the final rule takes effect on August 26, 2019. If you manufacture, process, or distribute in commerce methylene chloride, for any use, and you are not a retailer, you must retain:

- documentation of the companies to whom methylene chloride was shipped;
- 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. The required records can be kept either at the company’s headquarters or at the facility for which the records were generated.

Labeling

There are no labeling requirements for this rule.

Import Certification and Export Notification

Persons who import methylene chloride are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements and the corresponding regulations at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28.

To comply with the import certification requirements, importers (or their agents) will be required to certify that the shipment of methylene chloride complies with all applicable rules and orders under TSCA. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B.

In addition, any persons who export or intend to export methylene chloride are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

What Happens if the Agency Discovers a Violation?

Section 15 of TSCA makes it unlawful to fail or refuse to comply with any provision of a rule promulgated under TSCA section 6. Therefore, any failure to comply with the final rule would be a violation of section 15 of TSCA. In addition, section 15 of TSCA makes it unlawful for any person to: (1) Fail or refuse to establish or maintain records as required by the final rule; (2) fail or refuse to permit access to or copying of records, as required by TSCA; or (3) fail or refuse to permit entry or inspection as required by section 11 of TSCA.

Violators may be subject to both civil and criminal liability. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty for each violation. Each day in violation of the final rule could constitute a separate violation. Knowing or willful violations could lead to the imposition of criminal penalties for each day of violation and imprisonment. In addition, other remedies are available to EPA under TSCA.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to “any person” who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies. In particular, EPA may proceed against individuals who report false information or cause it to be reported.

For More Information

Additional information is available at <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-methylene-chloride>. The regulations can be found in the Federal Register (84 FR 11420, March 27, 2019) at https://www.regulations.gov/document?D=EPA_FRDOC_0001-23648 or at docket EPA-HQ-OPPT-2016-0231 at <https://www.regulations.gov>.

Where Can I Go If I Have Questions or Need Further Assistance?

Please contact EPA’s TSCA Hotline with questions by telephone at (202) 554-1404, by fax at (585) 232-3111 or by email at tsca-hotline@epa.gov or McConsumerPr@epa.gov.

Appendix

Acronym List

CFR	Code of Federal Regulations
FR	Federal Register
TSCA	Toxic Substances Control Act
CASRN	Chemical Abstracts Service Registry Number
EPA	U.S. Environmental Protection Agency
NAICS	North American Industrial Classification System
SDS	Safety Data Sheet
U.S.C.	U.S. Code

Glossary of Terms

Consumer paint and coating removal means 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.

Distribute in commerce has the same meaning as in section 3 of TSCA, except that the term does not include retailers for purposes of 40 CFR parts 751.107 and 751.109. The definition in TSCA section 3 of distribute in commerce or distribution in commerce is: “to sell, or the sale of, the substance, mixture, or article in commerce; to introduce or deliver for introduction in commerce, or the introduction or delivery for introduction into commerce of the substance, mixture or article; or to hold, or the holding of, the substance, mixture, or article after its introduction into commerce.”

Paint and coating removal means application of a chemical or use of another method to remove, loosen, or deteriorate any paint, varnish, lacquer, graffiti, surface protectants, or other coating from a substrate, including objects, vehicles, architectural features, or structures.

Person means any natural person, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof; any municipality; any interstate body; and any department, agency, or instrumentality of the Federal government.

Retailer means a person who distributes in commerce or makes available a chemical substance or mixture to consumer end users, including e-commerce internet sales or distribution. Any distributor with at least one consumer end user customer is considered a retailer. A person who distributes in commerce or makes available a chemical substance or mixture solely to commercial or industrial end users or solely to commercial or industrial businesses is not considered a retailer.