

Sunrise Acres. Based on November 1996 to March 1997 CO data, EPA staff determined that there was a strong correlation of peak 1- and 8-hour average CO levels at East Charleston and Sunrise Acres. A comparison of peak 8-hour CO concentrations at Sunrise Acres and the East Charleston site showed that Sunrise Acres values consistently exceeded East Charleston levels. With the continued operation of Sunrise Acres and MGM replacement sites, and the value-added Crestwood site, Region 9 supported Clark County's shutdown of the East Charleston site. It is implicit that in showing that Sunrise Acres closely tracked East Charleston CO levels, that previous East Charleston data were valid. Previous Clark County assertions that the configuration of the East Charleston siting positively biased previously collected CO data are inconsistent with EPA findings. Thus EPA considers data from the East Charleston station collected in 1995-96 to be valid for regulatory purposes. EPA is relying on this data in the proposed finding that Clark County failed to attain the Federal CO standard on December 31, 1996.

#### *B. SIP Requirements for Serious CO Areas*

CO nonattainment areas reclassified as serious under section 186(b)(2) of the CAA are required to submit, within 18 months of the area's reclassification, SIP revisions demonstrating attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000. The serious CO area planning requirements are set forth in section 187(b) of the CAA. EPA has issued two general guidance documents related to the planning requirements for CO SIPs. The first is the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" that sets forth EPA's preliminary views on how the Agency intends to act on SIPs submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The second general guidance document for CO SIPs issued by EPA is the "Technical Support Document to Aid the States with the Development of Carbon Monoxide State Implementation Plans," July 1992.

If the Clark County area is reclassified to serious, the State would have to submit a SIP revision to EPA within 18 months of the final reclassification that, in addition to the attainment demonstration, includes: (1) Any new measures necessary to attain the standard; (2) a forecast of vehicle miles traveled (VMT) for each year before the attainment year and provisions for

annual updates of these forecasts; (3) adopted contingency measures; and (4) adopted transportation control measures and strategies to offset any growth in CO emissions from growth in VMT or number of vehicle trips. See CAA sections 187(a)(7), 187(a)(2)(A), 187(a)(3), 187(b)(2), and 187(b)(1). Upon reclassification, contingency measures in the moderate area plan for the Clark County area must be implemented.

#### **III. Executive Order (EO) 12866**

Under E.O. 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities".

The Agency has determined that the finding of failure to attain proposed today would result in none of the effects identified in section 3(f). Under section 186(b)(2) of the CAA, findings of failure to attain and reclassification of nonattainment areas are based upon air quality considerations and must occur by operation of law in light of certain air quality conditions. They do not, in-and-of-themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities.

#### **IV. Regulatory Flexibility**

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government

entities with jurisdiction over populations of less than 50,000.

As discussed in section III of this notice, findings of failure to attain and reclassification of nonattainment areas under section 186(b)(2) of the CAA do not in-and-of-themselves create any new requirements. Therefore, I certify that today's proposed action does not have a significant impact on small entities.

#### **V. Unfunded Mandates**

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local or tribal governments in the aggregate. EPA believes, as discussed above, that the proposed finding of failure to attain and reclassification of the Clark County nonattainment area are factual determinations based upon air quality considerations and must occur by operation of law and, hence, do not impose any Federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

#### **List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: June 16, 1997.

**Felicia Marcus,**

*Regional Administrator.*

[FR Doc. 97-16754 Filed 6-25-97; 8:45 am]

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#### **ENVIRONMENTAL PROTECTION AGENCY**

##### **40 CFR Part 721**

[OPPTS-50623C; FRL-5726-3]

RIN 2070-AB27

##### **Significant New Uses of Certain Chemical Substances; Proposed Significant New Use Rule**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for certain chemical substances which were the subject of premanufacture notices (PMNs). This proposal would require certain persons

who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing any manufacturing, importing, or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

**DATES:** Written comments must be received by EPA by July 28, 1997.

**ADDRESSES:** Each comment must bear the docket control number OPPTS-50623C. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. ET-G099, 401 M St., SW., Washington, DC 20460.

Comments and data may also be submitted electronically by following the instructions under Unit VIII of this document. No confidential business information (CBI) should be submitted through e-mail.

All comments which are claimed confidential must be clearly marked as such. Three additional sanitized copies of any comments containing CBI must also be submitted. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection. See Unit VII for further information.

**FOR FURTHER INFORMATION CONTACT:** Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, telephone: (202) 554-1404, TDD: (202) 554-0551; e-mail: TSCA-Hotline@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of substituted phenol for the significant new uses designated herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

### I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires

persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26 of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

### II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354) and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the general provisions which apply to this SNUR. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a "User Fee Rule" (40 CFR part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting SNUR notices to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to these documents for further information.

### III. Background

EPA published a direct final SNUR for these chemical substances in the **Federal Register** of December 2, 1996 (61 FR 63726) (FRL-4964-3). EPA received notice of intent to submit adverse comments following publication for these chemical substances. Therefore, as required by § 721.160, the final SNUR for these substances is being withdrawn elsewhere in this issue of the **Federal Register** and this proposed rule on the substances is being issued.

### IV. Substance Subject to This Rule

EPA is proposing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721, subpart E.

#### PMN Numbers P-91-1299 and P-95-1667, P-91-1298 and P-91-1297

*Chemical name:* L-Aspartic acid, homopolymer and ammonium and potassium salts.

*CAS number:* 25608-40-6 (P-91-1299 and P-95-1667) and 64723-18-8 (P-91-1298).

*Effective date of section 5(e) consent order:* March 29, 1993.

*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i), (e)(1)(A)(ii)(I), and (e)(1)(A)(ii)(II), of TSCA based on findings that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure to the substances.

*Recommended testing:* EPA has determined that a 28-day oral study (OECD 407), an acute oral study (OPPTS 870.1100 test guideline (public draft)), an ames assay (40 CFR 798.5265), a mouse micronucleus assay by the intraperitoneal route (40 CFR 798.5395), and a developmental toxicity study in one species by the oral route (40 CFR 798.4900) would help characterize possible environmental effects of the substance. The PMN submitter of P-91-1297, P-91-1298, and P-91-1299 has agreed not to exceed the production volume limit without performing these tests on one of the PMN substances. *CFR citation:* 40 CFR 721.979.

#### PMN Numbers P-95-116/96-1250 and P-96-117/96-1251

*Chemical name:* (generic)

Isothiazolinone derivatives.

*CAS number:* Not available.

*Basis for action:* The PMN substances will be used as preservatives. Based on analogy of the substances to isothiazolones, EPA is concerned that toxicity to aquatic organisms may occur at concentrations as low as 10 parts per billion (ppb) of the PMN substances in surface waters. Based on analogy of the substances to similar substances, EPA is concerned for acute lethality, corrosion, developmental toxicity, liver toxicity, sensitization, and cancer to exposed workers. EPA determined that use of the substances as described in the PMN did not present an unreasonable risk because the substances would not be released to surface waters above a concentration of 10 ppb and significant worker exposure would not occur because the substance was not

manufactured domestically. EPA has determined that other uses of the substances may result in releases to surface waters which exceed the concern concentration and significant worker exposure. Based on this information the PMN substances meet the concern criteria at § 721.170 (b)(4)(ii) and (b)(3)(ii).

**Recommended testing:** EPA has determined that a fish acute toxicity study (40 CFR 797.1400), a daphnid acute toxicity study (40 CFR 797.1300), and an algal toxicity study (40 CFR 797.1050) would help characterize the environmental effects of the PMN substances. EPA has determined that a developmental toxicity study (40 CFR 798.4900) and a 90-day subchronic study (40 CFR 798.2650) would help characterize the health effects of the PMN substances.

*CFR citation:* 40 CFR 721.4525.

#### **V. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR**

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rule. Because this SNUR was first published on December 2, 1996, as a direct final rule, that date will serve as the date after which uses would be considered to be new uses. If uses which had commenced between that date and the effective date of this rulemaking were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substances for uses that would be regulated through this SNUR after December 2, 1996, would have to cease any such activity before the effective date of this rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person would be considered to have met the

requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substances between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

#### **VI. Economic Analysis**

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substances at the time of the direct final rule. The analysis is unchanged for the substances in this proposed rule. The Agency's complete economic analysis is available in the public record for this proposed rule (OPPTS-50623C).

#### **VII. Comments Containing Confidential Business Information**

Any person who submits comments containing information claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file without further notice to the submitter. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a nonconfidential public version in triplicate of the comments that EPA can place in the public file.

#### **VIII. Rulemaking Record**

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket number OPPTS-50623C (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS-50623C. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

The OPPTS harmonized test guidelines referenced in this document are available on EPA's World Wide Web site under "Researchers and Scientists," "Environmental Test Methods & Guidelines" (<http://www.epa.gov/epahome/research.htm>).

#### **IX. Regulatory Assessment Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB). In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special considerations of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid OMB control number. The information collection requirements related to this action have already been approved by OMB pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, under OMB control number 2070-0012 (EPA ICR No. 574). This action does not impose any burdens requiring additional OMB approval. The public reporting burden for this collection of information is estimated to average 100 hours per response. The burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined that the promulgation of a SNUR does not have a significant adverse economic impact on a

substantial number of small entities. The Agency's generic certification for promulgation of new SNURs appears on June 2, 1997 (62 FR 29684) (FRL-5597-1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

#### X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a major rule as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements.

Dated: June 18, 1997.

#### Ward Penberthy,

Acting Director, Chemical Control Division,  
Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

#### PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.979 to subpart E to read as follows:

##### § 721.979 l-Aspartic acid, homopolymer and ammonium and potassium salts.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substances l-Aspartic acid, homopolymer and ammonium and potassium salts (PMNs P-91-1299 and P-95-1667, P-91-1298 and P-91-1297; CAS nos. 25608-40-6 and 64723-18-8) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* A significant new use of these substances is any manner or method of manufacture, import, or processing associated with any use of these substances without providing risk notification as follows:

(A) If as a result of the test data required under the section 5(e) consent order for these substances, the employer becomes aware that these substances

may present a risk of injury to human health or the environment the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If these substances are not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substances are reintroduced into the workplace.

(B) The employer must ensure that persons who will receive, or who have received their substances from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A), are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (h), and (i) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

3. By adding new § 721.4525 to subpart E to read as follows:

##### § 721.4525 Isothiazolinone derivatives.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substances identified generically as isothiazolinone derivatives (PMNs P-95-116/96-1250 and P-95-117/96-1251) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 10).

(b) *Specific requirements.* The provisions of subpart A of this part

apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

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#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 721

[OPPTS-50620B; FRL-5723-4]

RIN 2070-AB27

##### Butanamide, 2,2'-[3'dichloro[1,1'-biphenyl]-4,4'-diyl] bisazobis N-2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)-3-oxo-; Proposed Significant New Use Rule

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described as butanamide, 2,2'-[3'dichloro[1,1'-biphenyl]-4,4'-diyl]bisazobis N-2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)-3-oxo- which is the subject of premanufacture notice (PMN) P-93-1111. This proposal would require certain persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing, importing, or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

**DATES:** Written comments must be received by EPA by July 28, 1997.

**ADDRESSES:** Each comment must bear the docket control number OPPTS-50620B. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. ET-G099, 401 M St., SW., Washington, DC 20460.

Comments and data may also be submitted electronically by following the instructions under Unit VIII of this