

IV. 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, EPA 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 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 21, 1998.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.381 [Amended]

2. In § 180.381, by amending paragraph (b) in the table, for the commodity "strawberries" by removing the date "April 15, 1998" and by adding in its place "4/15/99".

[FR Doc. 98-2612 Filed 2-3-98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 244 and 245

[FRL-5957-2]

Clarification to Technical Amendments to Solid Waste Programs; Management Guidelines for Beverage Containers and Resource Recovery Facilities Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; clarification of technical amendment.

SUMMARY: On January 7, 1998 (63 FR 683), the Environmental Protection Agency (EPA) published in the **Federal Register** a technical amendment correcting the effective date of a direct final rule published on December 31, 1996 (61 FR 69032) that concerned the

removal of obsolete solid waste guidelines (40 CFR parts 244 and 245). The amendment corrected the effective date of the direct final rule to December 30, 1997 in order to be consistent with sections 801 and 808 of the Congressional Review Act, enacted as part of the Small Business Regulatory Enforcement Fairness Act. This document clarifies that the January 7, 1998 technical amendment established a new effective date of December 30, 1997 for the removal of 40 CFR part 245 but had no effect on the status of 40 CFR part 244 because of a prior notice that was published on May 2, 1997 (62 FR 24051) that announced the withdrawal, effective March 3, 1997, of the portion of the December 31, 1996 direct final rule which affected 40 CFR part 244.

EFFECTIVE DATE: January 22, 1998.

FOR FURTHER INFORMATION CONTACT: Deborah Gallman, 703-308-8600. U.S. EPA, Office of Solid Waste, 401 M Street, SW (5306W), Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The December 31, 1996 action was a direct final rule that concerned the removal of obsolete solid waste management guidelines for beverage containers (40 CFR part 244) and guidelines for resource recovery facilities (40 CFR part 245). In the final rule, EPA stated that the rule would become effective March 3, 1997 unless adverse public comments were received on the accompanying proposal that was published the same day (61 FR 69059). The rule also stated that if adverse public comments were received then the final rule would be withdrawn.

Adverse public comments were received with regard to the removal of part 244 only. Therefore, on May 2, 1997, EPA published a partial withdrawal notice announcing that part 244 was not removed from the Code of Federal Regulations. The withdrawal notice also stated that the removal of 40 CFR part 245 was not affected and that part 245 was removed effective March 3, 1997.

Section 801 of the Congressional Review Act (CRA) precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). As stated in the January 7, 1998 technical amendment, EPA inadvertently failed to submit the December 31, 1996 direct final rule to Congress and to GAO as required by the CRA. After EPA discovered the error, the rule was submitted to both Houses of Congress

and GAO on December 11, 1997. Subsequently, EPA issued the technical amendment to correct the March 3, 1997 effective date to December 30, 1997. However, the technical amendment did not clarify that the new effective date applied to the removal of 40 CFR part 245 only and had no effect on 40 CFR part 244 because of the prior partial withdrawal notice that was published on May 2, 1997. The proposal to remove part 244 from the CFR is pending further evaluation by EPA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is clarifying the effect of the January 7, 1998 technical amendment in light of the May 2, 1997 partial withdrawal notice. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements or change the legal status of the May 2, 1997, and January 7, 1998 actions, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. 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 consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the December 31, 1996 **Federal Register** notice.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory

Enforcement Fairness Act of 1996, EPA will submit 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; however, in accordance with 5 U.S.C. 808(2), this rule is effective on January 22, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

Dated: January 22, 1998.

Matthew Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 98-2721 Filed 2-3-98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS-50620D; FRL-5757-3]

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-; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing 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 rule would require 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: This rule is effective March 6, 1998.

FOR FURTHER INFORMATION CONTACT:

Susan B. 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:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register-Environmental Documents** entry for this document under "Laws and Regulations" (<http://www.epa.gov/fedrgstr/>).

This final SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of P-93-1111 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(c) 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 and Response to Comments

EPA published a direct final SNUR for the chemical substance, which was the subject of PMN P-93-1111 and a TSCA section 5(e) consent order issued by EPA in the **Federal Register** of March 1, 1995 (60 FR 11033) (FRL-4868-4). EPA received a notice of intent to submit adverse comments for this chemical substance following publication. Therefore, as required by § 721.160, the final SNUR for P-93-1111 was withdrawn on June 26, 1997 (62 FR 34413) (FRL-5723-3) and a proposed rule on the substance was issued on June 26, 1997 (62 FR 34424) (FRL-5723-4).

The background and reasons for the SNUR are set forth in the preamble to the proposed rule. EPA received one comment concerning the category of substances which is the basis of this rule but not on the issuance of this specific rule. EPA's response to the comment is discussed in this document and EPA is issuing the final rule.

The commenter agreed with hazard and risk concerns for release of 3,3'-dichlorobenzidine (DCB) from processing or use of DCB pigments at high temperatures (greater than 200 degrees centigrade) as described in the category statement for "Dichlorobenzidine-based Pigments," found in the document "TSCA New Chemicals Program (NCP) Chemical Categories" (<http://www.epa.gov/opptintr/chemcat>). The commenter disagreed with EPA's category statement that pigments containing DCB may biodegrade in the environment over a period of months. The commenter stated that diarylide pigments containing DCB have been extensively tested for breakdown in living organisms and found to remain intact, that diarylide pigments do not bioaccumulate or bioconcentrate in organisms, and that there is no evidence for the biodegradation of diarylide pigments over a period of months. However, the commenter submitted no data to support the contention concerning the biodegradation of diaryl pigments.

EPA is neither disputing that DCB pigments are relatively stable nor