

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this final rule to approve revisions that clarify the definition of "interruptible gas service" must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter,

Reporting and recordkeeping requirements.

Dated: June 1, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by revising the entry for COMAR 26.11.09.01 to read as follows:

§ 52.1070 Identification of plan.

*	*	*	*	*
(c)	*	*	*	*

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
*	*	*	*	*
COMAR 26.11.09 Control of Fuel Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations				
COMAR 26.11.09.01	Definitions	9/12/05	6/13/06 [Insert page number where the document begins].	Revised definition of "interruptible gas service" in 26.11.09.01(4)
*	*	*	*	*

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[FR Doc. 06-5297 Filed 6-12-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 721**

[EPA-HQ-OPPT-2004-0085; FRL-7743-2]

RIN 2070-AJ02

Certain Polybrominated Diphenylethers; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for tetrabromodiphenyl ether (CAS No. 40088-47-9; Benzene, 1,1'-oxybis-, tetrabromo deriv.), pentabromodiphenyl ether (CAS No. 32534-81-9; Benzene, 1,1'-oxybis-, pentabromo deriv.), hexabromodiphenyl ether (CAS No.

36483-60-0; Benzene, 1,1'-oxybis-, hexabromo deriv.), heptabromodiphenyl ether (CAS No. 68928-80-3; Benzene, 1,1'-oxybis-, heptabromo deriv.), octabromodiphenyl ether (CAS No. 32536-52-0; Benzene, 1,1'-oxybis-, octabromo deriv.), and nonabromodiphenyl ether (CAS No. 63936-56-1; Benzene, pentabromo(tetrabromophenoxy)-), or any combination of these substances resulting from a chemical reaction. This rule requires manufacturers and importers to notify EPA at least 90 days before commencing the manufacture or import of any one or more of these chemical substances on or after January 1, 2005 for any use. EPA believes that this action is necessary because these chemical substances may be hazardous to human health and the environment. The required notice will provide EPA with the opportunity to evaluate an intended new use and associated activities and, if necessary, to prohibit or limit that activity before it occurs.

DATES: This final rule is effective on August 14, 2006.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPPT-2004-0085. All documents in the docket are listed on the regulations.gov Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the OPPT Docket, EPA Docket Center (EPA/DC), EPA West, Rm. B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744

and the telephone number for the OPPT Docket is (202) 566-0280.

FOR FURTHER INFORMATION CONTACT: For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-9232; e-mail address: moss.kenneth@epa.gov.

SUPPLEMENTARY INFORMATION: EPA proposed this SNUR on certain polybrominated diphenylethers on December 6, 2004 (69 FR 70404) (FRL-7688-1). The Agency's responses to public comments received on the proposed rule are in Unit VI. Please consult the December 6, 2004 **Federal Register** document for further background information for this final rule.

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or import one or more of the following polybrominated diphenyl ethers (PBDEs): tetrabromodiphenyl ether ("tetraBDE") (CAS No. 40088-47-9; Benzene, 1,1'-oxybis-, tetrabromo deriv.), pentabromodiphenyl ether ("pentaBDE") (CAS No. 32534-81-9; Benzene, 1,1'-oxybis-, pentabromo deriv.), hexabromodiphenyl ether ("hexaBDE") (CAS No. 36483-60-0; Benzene, 1,1'-oxybis-, hexabromo deriv.), heptabromodiphenyl ether ("heptaBDE") (CAS No. 68928-80-3; Benzene, 1,1'-oxybis-, heptabromo deriv.), octabromodiphenyl ether ("octaBDE") (CAS No. 32536-52-0; Benzene, 1,1'-oxybis-, octabromo deriv.), and nonabromodiphenyl ether ("nonaBDE") (CAS No. 63936-56-1; Benzene, pentabromo(tetrabromophenoxy)-), or any combination of these substances resulting from a chemical reaction. Persons who intend to import any chemical substance governed by a final SNUR are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements, and to the regulations codified at 19 CFR 12.118 through 12.127, and 127.28. Those persons must certify that they are in compliance with

the SNUR requirements. 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 a chemical substance that is the subject of this final rule 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 (see 40 CFR 721.20). Potentially affected entities may include, but are not limited to:

- Manufacturers (defined by statute to include importers) of PBDEs (NAICS 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions at 40 CFR 721.5 for SNUR-related obligations. Note that for this action, 40 CFR 721.5(a)(2) does not apply. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of 40 CFR part 721 through the Government Printing Office's pilot e-CFR site at <http://www.gpoaccess.gov/ecfr>.

II. Background

A. What Action is the Agency Taking?

This rule requires persons to notify EPA at least 90 days before commencing the manufacture (including importation) of tetrabromodiphenyl ether ("tetraBDE") (CAS No. 40088-47-9; Benzene, 1,1'-oxybis-, tetrabromo deriv.), pentabromodiphenyl ether ("pentaBDE") (CAS No. 32534-81-9; Benzene, 1,1'-oxybis-, pentabromo deriv.), hexabromodiphenyl ether

("hexaBDE") (CAS No. 36483-60-0; Benzene, 1,1'-oxybis-, hexabromo deriv.), heptabromodiphenyl ether ("heptaBDE") (CAS No. 68928-80-3; Benzene, 1,1'-oxybis-, heptabromo deriv.), octabromodiphenyl ether ("octaBDE") (CAS No. 32536-52-0; Benzene, 1,1'-oxybis-, octabromo deriv.), and nonabromodiphenyl ether ("nonaBDE") (CAS No. 63936-56-1; Benzene, pentabromo(tetrabromophenoxy)-), or any combination of these substances resulting from a chemical reaction, for any use on or after January 1, 2005.

B. What is the Agency's Authority for Taking this Action?

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 TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)).

C. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, and exemptions to reporting requirements. Note that for this action, 40 CFR 721.5(a)(2) does not apply. Provisions relating to user fees appear at 40 CFR part 700. Persons that are subject to this SNUR will need to comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a significant new use notice (SNUN), EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of

TSCA section 12(b). The regulations that implement TSCA section 12(b) appear at 40 CFR part 707, subpart D. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707, subpart B.

III. Objectives and Rationale of the Rule

As summarized in Unit IV. of the proposed rule, EPA has concerns regarding the environmental fate and the exposure pathways that lead to PBDE presence in wildlife and people, and the persistence, bioaccumulation, and toxicity (PBT) potential of pentaBDE and octaBDE, and the other PBDE congeners that comprise these products and are also subject to this rule. Great Lakes Chemical Corporation, formerly the sole manufacturer of the commercial pentaBDE and octaBDE products in the United States, voluntarily discontinued their manufacture for all uses by December 31, 2004. With Great Lakes Chemical Corporation's exit from the market, EPA believes that all production in and import into the United States of these chemicals has ceased. However, EPA is concerned that manufacture or import could be reinitiated in the future, and wants the opportunity to evaluate and control, if appropriate, exposures associated with those activities. Based on the situation prior to January 1, 2005, including substantial production volume, number of uses, potential for widespread release and exposure, as well as the PBT nature of the chemical substances, any new manufacture or import after that date is expected to significantly increase exposures now that manufacture and import have been discontinued, over that which could otherwise exist. The notice required by this SNUR will provide EPA with the opportunity to evaluate activities associated with a significant new use and an opportunity to protect against unreasonable risks, if any, from exposure to the substances.

Based on these considerations, EPA wants to achieve the following objectives with regard to the significant new uses that are designated in this rule. The Agency wants to ensure that:

- It will receive notice of any person's intent to manufacture or import the chemical substances subject to this rule for a designated significant new use before that activity begins.

- It will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or importing these chemical substances for a significant new use.

- It will be able to regulate prospective manufacturers and importers of these chemical substances before a significant new use occurs, provided such regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6 or 7.

The mechanisms or pathways by which the PBDEs move into and through the environment and humans are not fully understood, but are likely to include releases from manufacturing of the chemicals, manufacturing of products like plastics or textiles, aging and wear of products like sofas and electronics, and releases at the end of product life (disposal, recycling). EPA believes that information provided in SNUNs will help the Agency review any new uses and take action, as needed, to regulate releases of PBDEs into the environment.

IV. Significant New Use Determination

In making a determination that a use of a chemical substance is a significant new use, the Agency must consider all relevant factors, including those listed in section 5(a)(2) of TSCA. Those factors are:

- The projected volume of manufacturing and processing of the chemical substance.
- The extent to which the use changes the type or form of exposure to human beings or the environment to a chemical substance.
- The extent to which the use changes the magnitude and duration of exposure to human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

Given that no companies are currently manufacturing or importing commercial pentaBDE or octaBDE in the United States, the negative commercial and regulatory environment associated with these chemicals (including the EU ban on marketing and use of pentaBDE and octaBDE (see Ref. 27 of the proposed rule) and similar restrictions enacted by certain states in the United States (see Ref. 28 of the proposed rule), and the expectation that viable substitutes will be available including those being considered in the Design for Environment Furniture Flame Retardancy Partnership (see Ref. 29 of the proposed rule), EPA believes it is unlikely that companies would incur

the costs associated with establishing new manufacturing capacity for these chemicals in order to enter this market. With Great Lakes Chemical Corporation's exit from the market, EPA believes that all United States manufacture and import of these chemicals have ceased and that any new manufacture or import, for any use, subsequent to Great Lakes Chemical Corporation's December 31, 2004 phase-out date would result in a significant increase in the magnitude and duration of exposures to humans and the environment over that which would otherwise exist. Based on these considerations, EPA has determined that any manufacture or import of the chemical substances listed in Unit II.A. for any use on or after January 1, 2005 is a significant new use.

V. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA believes that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the proposal date of the SNUR, rather than as of the effective date of the final rule. If uses begun after publication of the proposed SNUR were considered to be ongoing, rather than new, it would be difficult for EPA to establish notification requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the proposed rule became final, and then argue that the use was ongoing as of the effective date of the final rule.

Any person who, after publication of the proposed SNUR, begins commercial manufacture or import of the chemical substances listed in Unit II.A. must stop such activity before the effective date of the final rule. Those persons will have to meet all SNUR notice requirements and wait until the end of the notice review period, including all extensions, before engaging in any activities designated as significant new uses. If, however, persons who begin commercial manufacture or import of the chemical substances listed in Unit II.A. between the proposal and the effective date of the final SNUR meet the conditions of advance compliance as codified at 40 CFR 721.45(h), those persons would be considered to have met the requirements of the final SNUR for those activities.

VI. Discussion of the Final Significant New Use Rule and Response to Comments

This action finalizes the SNUR proposed in the **Federal Register** of December 6, 2004 (69 FR 70404). This final rule requires persons who intend to manufacture or import the chemical substances listed in Unit II.A. to submit a SNUN at least 90 days before commencing the manufacture or importation of any of these chemicals, for any use, on or after January 1, 2005. The Agency reviewed and considered all comments received during the comment period (December 6, 2004 through February 4, 2005) for the proposed rule. Copies of all comments received are available in the public docket for this action. A discussion of the comments germane to the rulemaking and the Agency's response follows.

A. TSCA Section 12(b) Applicability

Comment 1—Clarify the TSCA section 12(b) consequences of the proposed rule. One commenter requested clarification of TSCA section 12(b) export notification requirements, especially as they relate to decaBDE under the proposed rule, or that EPA issue a technical correction notice that explicitly excludes those requirements for exported decaBDE.

Response. DecaBDE itself is not subject to TSCA section 12(b) export notification requirements as a result of this action as it is not covered by this rulemaking. However, anyone who exports one of the PBDEs subject to this rule, on or after 30 days after the December 6, 2004 date of publication of the proposed rule in the **Federal Register** (January 5, 2005), was and is subject to the export notification provisions of TSCA section 12(b). TSCA section 12(b) export notification requirements apply to chemical substances for which a proposed or final rule has been issued under TSCA section 5 (in this case, a TSCA section 5(a)(2) SNUR). Chemical substances exported as impurities are not exempt from this requirement, and in addition there is no *de minimis* level below which TSCA section 12(b) notification is not required (See 45 FR 82844, 82845; December 16, 1980). Therefore, any amount of the PBDEs subject to this SNUR that are contained in exported decaBDE, other than when exported as part of an article, will trigger TSCA section 12(b) reporting for those subject PBDEs. A notice of export is required for the first export or intended export to a particular country in a calendar year.

See 40 CFR part 707, subpart D (45 FR 82850; December 16, 1980).

B. Importation of PBDEs

Comment 2—Import of a formulation containing subject PBDEs. One commenter asked if a company were to import a formulated liquid resin (such as an epoxy for use in engineering adhesives or molding compounds) containing one or more of the subject PBDEs, would that company be required to submit a notice under the SNUR?

Response. Yes, a chemical substance that is manufactured or imported as part of a mixture is subject to SNUR notification requirements. See footnote for 40 CFR 720.30(b), which would be relevant per 40 CFR 721.1(c).

Comment 3—Import of articles. Commenters questioned the Agency's rationale for not having the SNUR apply to the import of articles containing the PBDEs subject to this rule, especially since they are both inexpensive and effective to use, and because the Agency acknowledged in the proposal that the quantity of imported articles containing these PBDEs is unknown. They suggested that with the cessation of octaBDE and pentaBDE production in the United States, suppliers outside of the United States, specifically in China or India, will seize the opportunity to continue supplying these chemicals to companies who will use them in articles that will then be shipped into the United States. This potential practice, the commenters continue, could have a negative impact on EPA's ability to prevent these chemicals from being introduced in the United States without its knowledge or oversight. Furthermore, commenters argue, overseas manufacturers may increase export of such articles to the United States, either to unload existing stock of products no longer acceptable to the European Union as of August 15, 2004, or to avoid the need for conversion of existing production capacity away from these substances. That is, by failing to adopt a SNUR that captures the subject PBDEs when imported as part of articles, EPA could inadvertently make the United States the market of choice for producers of these articles.

Response. In the proposed SNUR, EPA specifically asked for comment on whether the subject substances when imported as part of articles should be included in the SNUR. While the Agency acknowledged in the proposal that the quantity of imported articles containing these PBDEs is unknown, there were factors weighing in favor of continuing to exempt these articles. First, the only known manufacturer or importer of those chemical substances

in the United States had announced its intention to discontinue production and/or import of the chemical substances themselves. Second, there is a clear negative commercial and regulatory environment associated with these chemicals, worldwide. Third, there is an expectation that viable substitutes will be available. Based on these reasons, EPA proposed exempting from the reporting requirements of the SNUR the subject substances when imported as a part of articles.

In consideration of the public comments received, however, EPA has re-evaluated this exemption. EPA agrees with commenters that if the subject substances when imported as a part of articles are not subject to the SNUR, EPA could miss the opportunity to obtain notifications that would provide information of potential regulatory and assessment value. In particular, the Agency recognizes that the low cost and effectiveness of the subject PBDEs, combined with the negative commercial and regulatory environment in certain parts of the world, could actually lead to continued or increasing use of the subject PBDEs in those countries where these chemicals are not controlled, and subsequent export of articles containing those chemicals to the United States. However, EPA has decided to promulgate the PBDE SNUR as initially proposed, with an exemption for imported articles that may contain the subject PBDEs. EPA may not issue a SNUR covering as a significant new use import of the subject PBDEs as a part of articles for any use if that activity is ongoing. EPA received no comments on the proposed rule suggesting import of the subject PBDEs as a part of articles was ongoing. However, comments received from the Polyurethane Foam Association (PFA) after the close of the comment period for the proposed rule indicate the potential for presence of the subject PBDEs in imported articles. In particular, PFA referred to Department of Commerce trend data that "the U.S. imports a significant amount of products that contain flexible polyurethane foam, some of which are likely to contain pentaBDE." (see the PFA comment in the public docket for this rule at EPA-HQ-OPPT-2004-0085). While the Agency is not obligated to respond to a late comment, EPA intends to investigate this issue further and seeks further information on the presence of the subject PBDEs in imported articles. Such information can be submitted to the docket to this rule.

C. DecaBDE

Comment 4—Rulemaking or other action is needed on decaBDE.

Comments dealt with the need for regulatory controls on decaBDE and concern about Federal inaction on decaBDE.

Response. This SNUR follows up Great Lakes Chemical Corporation's voluntary phase out of production of pentaBDE and octaBDE, which are comprised of the other PBDE congeners subject to this rule. DecaBDE remains in commerce and it is not subject to this rule. However, EPA recognizes that there is extensive, ongoing research on decaBDE. Under the Agency's Voluntary Children's Chemical Evaluation Program (VCCEP), industry sponsored an assessment and data needs analysis for decaBDE. Sponsorship includes an assessment of the potential hazards, exposures, and risks to children and prospective parents and a data needs analysis to evaluate the need for additional toxicity and exposure information. Further, EPA is developing a proposed SNUR for 16 chemical substances/categories, including decaBDE, which have been identified by the Consumer Product Safety Commission (CPSC) and evaluated by the National Academy of Sciences as candidates for use to meet the residential upholstered furniture (RUF) flammability standards under consideration by the state of California and the CPSC.

Other comments were also submitted that related to research or potential environmental concerns associated with decaBDE. These comments were not considered germane to this rulemaking.

D. Ensuring All Potential Manufacturers are Accounted For

Comment 5—Sources to determine potential manufacturers. One commenter asked that EPA confirm the accuracy of the assumption that Great Lakes is the sole domestic manufacturer and importer of pentaBDE and octaBDE.

Response. EPA's conclusion that Great Lakes was the sole domestic manufacturer of both these chemical substances was based on the best available information. In order to identify current domestic manufacturers and importers of pentaBDE and octaBDE, EPA consulted several market buyers guides and proprietary reports, including Specialty Chemicals (SRI International, Specialty Chemicals: Flame Retardants, November 2002) and the Chemical Economics Handbook (SRI International: Bromine, 2003). The Agency reviewed each company's online product list (where available) or directly contacted the companies to determine if they currently sold pentaBDE or octaBDE and if so where the chemicals were produced. EPA also

consulted information submitted under the Agency's TSCA section 8(a) Inventory Update Rule (IUR), which requires manufacturers and importers of certain chemical substances included on the TSCA Chemical Substances Inventory to report current data on the production volume, plant site, and site-limited status of these substances. Reporting under the IUR began in 1986 and takes place at four-year intervals. The most recent reporting year ended December 31, 2002. EPA reviewed IUR submissions for pentaBDE or octaBDE that were made up to the date of the proposed SNUR in order to help support the conclusion that there are no manufacturers or importers of the chemicals. Finally, the Agency received no public comments that suggested ongoing import or manufacture of the PBDEs subject to this rule.

E. True Cost of Compliance with this Rule

Comment 6—Taking all costs into account. One commenter suggested that certain costs were not taken into account when estimating the burden to industry of complying with the rule, including identifying alternatives, finding a supplier, developing new shipping procedures, and making potential equipment changes.

Response. EPA did not include the additional cost items noted by the commenter in estimating the burden to industry of complying with the rule. The economic analysis for a SNUR estimates the cost of complying with the SNUR only. The SNUR requires that those companies intending to manufacture or import any of the subject chemicals for the specified new use submit a SNUN. A SNUR does not prevent persons from manufacturing or importing a substance, nor stipulate a switch to an alternative.

VII. Economic Considerations

EPA has evaluated the potential costs of establishing a SNUR for the chemical substances listed in Unit II.A. These potential costs are related to the submission of SNUNs and the export notification requirements of TSCA section 12(b). EPA notes that, with the possible exception of export notification requirements, the costs of submission of SNUNs will not be incurred by any company unless that company decides to pursue a significant new use as defined in this SNUR. The Agency's economic analysis is available in the public docket for this rule.

A. SNUNs

The Agency has analyzed the potential costs of compliance with this

rule. EPA's complete economic analysis is available in the public docket. The Agency has estimated the average cost of compliance with the SNUR per chemical (e.g., cost of submitting a SNUN) to be \$6,956 based on 105 burden hours or a total cost of \$13,912 or 210 hours for both chemicals. These estimates do not include the costs of testing or submission of other information to permit a reasoned evaluation of potential risks.

B. Export Notification

As noted in Unit II.C. of this final rule, persons who intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)). These provisions require that, for chemicals subject to a proposed or final SNUR, a company notify EPA of the first shipment to a particular country in a calendar year of an affected chemical substance. EPA estimated that the one-time cost of preparing and submitting an export notification to be \$89.29. The total costs of export notification will vary per chemical, depending on the number of required notifications (i.e., number of countries to which the chemical is exported).

EPA is unable to estimate the total number of TSCA section 12(b) notifications that will be received as a result of this SNUR, or the total number of companies that will file these notices. However, EPA expects that the total cost of complying with the export notification provisions of TSCA section 12(b) will be limited based on historical experience with TSCA section 12(b) notifications and the fact that no companies have currently been identified that currently market any of the chemical substances that are the subject of this rule commercially. If companies were to manufacture for export only any of the chemical substances covered by this SNUR, such companies would incur the minimal costs associated with export notification despite the fact they would not be subject to the SNUR notification requirements. See TSCA section 12(a) and 40 CFR 721.45(g). EPA is not aware of any companies in this situation.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this final

SNUR is are not a “significant regulatory action” subject to review by OMB, because it does not meet the criteria in section 3(f) of the Executive Order.

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0038 (EPA ICR No. 1188). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a “significant new use.” By definition of the word “new,” and based on all information currently available to EPA, it appears

that no small or large entities were engaged in such activity as of January 1, 2005. Since a SNUR only requires that any person who intends to engage in a significant new use must first notify EPA by submitting a SNUN, no economic impact will even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA’s experience to date is that, in response to the promulgation of over 1,000 SNURs, the Agency receives on average only about 10 notices per year. Of those SNUNs submitted, none appear to be from small entities in response to any SNUR. In addition, the estimated reporting cost for submission of a SNUN (see Unit X. of the proposed rule), are minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published on June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act

Based on EPA’s experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

E. Executive Order 13132: Federalism

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This rule does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This rule does not significantly or uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), do not apply to this rule.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children. Although the chemicals that are addressed in this SNUR might present such risks to children, SNURs are administrative actions that require chemical manufacturers to submit a SNUN to EPA before a chemical may be made available for sale. Therefore, this action does not in and of itself affect children’s health.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer Advancement Act

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice

related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

K. Executive Order 12988: Civil Justice Reform

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. 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 United States prior to publication of the rule in the **Federal Register**. This rule 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 substances, Reporting and recordkeeping requirements.

Dated: June 5, 2006.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

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

■ 2. By adding new § 721.10000 to subpart E to read as follows:

§ 721.10000 Certain polybrominated diphenylethers.

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

(1) The chemical substances identified as tetrabromodiphenyl ether (CAS No. 40088–47–9; Benzene, 1,1'-oxybis-, tetrabromo deriv.), pentabromodiphenyl ether (CAS No. 32534–81–9; Benzene, 1,1'-oxybis-, pentabromo deriv.),

hexabromodiphenyl ether (CAS No. 36483–60–0; Benzene, 1,1'-oxybis-, hexabromo deriv.), heptabromodiphenyl ether (CAS No. 68928–80–3; Benzene, 1,1'-oxybis-, heptabromo deriv.), octabromodiphenyl ether (CAS No. 32536–52–0; Benzene, 1,1'-oxybis-, octabromo deriv.), and nonabromodiphenyl ether (CAS No. 63936–56–1; Benzene, pentabromo(tetrabromophenoxy)-), or any combination of these substances resulting from a chemical reaction are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new use is manufacture or import for any use on or after January 1, 2005.

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

(1) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture or import for commercial purposes a substance identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved]

[FR Doc. E6–9207 Filed 6–12–06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D 060806A]

Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second seasonal apportionment of the 2006 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 10, 2006, through 1200 hrs, A.l.t., July 1, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The second seasonal apportionment of the 2006 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA is 100 metric tons as established by the 2006 and 2007 harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006), for the period 1200 hrs, A.l.t., April 1, 2006, through 1200 hrs, A.l.t., July 1, 2006.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the 2006 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA.

The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates and "other species."

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the shallow-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to