

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 721**

[OPPTS-50631A, etc; FRL-6019-2]

RIN 2070-AB27

Modification of Significant New Use Rules for Certain Substances**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is modifying significant new use rules (SNURs) for five substances promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) based on new data. Based on the new data, the Agency finds that activities not described in the corresponding TSCA section 5(e) consent order or the significant new use notice (SNUN) for these chemical substances may result in significant changes in human or environmental exposure.

DATES: This rule is effective September 28, 1998.

FOR FURTHER INFORMATION CONTACT:

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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/>).

In the **Federal Register** referenced for each substance, OPPTS-50591, April 25, 1991 (56 FR 19235 and 19241); OPPTS-50537A, January 26, 1987 (52 FR 2703); OPPTS-50583, August 9, 1990 (55 FR 32419); and OPPTS-50582, August 15, 1990 (55 FR 33296), EPA issued a SNUR establishing significant new uses for the substances. In the **Federal Register** of February 24, 1998 (63 FR 9169) (FRL-5767-2), EPA

proposed a modification to the SNURs for five chemical substances based on additional data received for those substances. For three of these substances, the Agency is issuing the modification as proposed. For the remaining two substances, EPA is issuing a modification with revisions based on public comments received for the proposal.

I. Background

The Agency proposed the modification of the SNURs for these substances in the **Federal Register** of February 24, 1998 (63 FR 9169) (FRL-5767-2). The background and reasons for the modification of the SNURs are set forth in the preamble to the proposed modifications. For three of the substances, (40 CFR 721.1790, 40 CFR 721.5740, and 40 CFR 721.9800), the Agency received no public comment concerning the proposed modification. As a result, EPA is modifying these three SNURs as proposed. For the other two substances (40 CFR 721.1765 and 721.8450), EPA will issue a final modification based on public comments as described in this unit.

The commenter agreed with EPA's proposed modification, but also stated that several labeling and protective equipment requirements in the SNURs were not consistent with requirements in the corresponding consent order and requested that EPA also modify the SNUR to reconcile these differences. Based on these comments and the Agency's review of the TSCA section 5(e) consent order and proposed SNUR requirements, EPA is making the following additional modifications to the SNUR.

The SNURs at 40 CFR 721.1765 and 40 CFR 721.8450 designate § 721.72(g)(2)(iii), which requires notification if the statement "When using this substance avoid ingestion" does not appear on the Material Safety Data Sheet (MSDS). This designation is being eliminated from these rules as use of this statement is not required in the corresponding TSCA 5(e) consent order.

The SNURs at 40 CFR 721.1765 and 40 CFR 721.8450 do not designate § 721.72(g)(2)(v), which requires notification if the statement "When

using this substance use skin protection" does not appear on the MSDS. These designations are now being added to these rules as use of this statement is required in the corresponding TSCA section 5(e) consent order.

The SNUR at 40 CFR 721.1765 designates § 721.63 (a)(2)(i) and (a)(2)(iii), and the SNUR at 40 CFR 721.8450 designates § 721.63(a)(2)(i) and (a)(2)(iv), requiring notification unless impervious gloves and eye protection or protective clothing are used by potentially exposed workers. These specific designations are eliminated from these rules as this specific protective equipment is not required in the corresponding TSCA section 5(e) consent order. However, the TSCA section 5(e) consent order and SNURs will continue to require impervious "personal protective equipment that provides a barrier to prevent dermal exposure" for persons reasonable likely to be exposed to these substances, as per § 721.63(a)(1). The difference between § 721.63(a)(1) and § 721.63(a)(2) is that § 721.63(a)(1) allows subject manufacturers and processors to decide which dermal protective equipment is needed, whereas § 721.63(a)(2) specifies in greater detail which equipment is required.

The commenter also noted that the respirator requirements designated in the SNUR, reference numerous National Institute for Occupational Safety and Health (NIOSH) regulations that will change, requiring a change in the TSCA section 5(e) consent order and the SNUR. The Agency is in the process of making these changes for all TSCA section 5(e) consent orders, SNURs, and the references in 40 CFR 721.63. When completed the changes will also be made to these substances.

II. Rationale for Modification of the Rules

During review of the chemical substances that are the subject of these modifications, EPA concluded that regulation was warranted based on the fact that activities not described in the TSCA section 5(e) consent order or the PMN may result in significant changes in human or environmental exposure. In

the specific case of polybrominated biphenyls, § 721.1790, EPA concluded that any use may result in significant changes in human or environmental exposure. The basis for such findings is described in the rulemaking record referenced in Unit III. of this preamble. Based on these findings, a TSCA section 5(e) consent order was negotiated with the PMN submitter and/or a SNUR was promulgated.

In light of the modification to a consent order, toxicity data submitted for another PMN, or the data submitted in a SNUN or a PMN, as the case may be, the Agency has determined that modifying these SNURs will not result in significant changes in human or environmental exposure. The modification of SNUR provisions for the substances designated herein is consistent with the provisions of the TSCA section 5(e) consent order or data submitted in the SNUN or PMN.

III. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS-50631A (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as 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.

IV. Regulatory Assessment Requirements

Under Executive Order 12866, entitled *Regulatory Planning and Review* (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 also specified in Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993). Nor does it involve special considerations of environmental justice related issues as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income*

Populations (59 FR 7629, February 16, 1994), or additional OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

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, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070-0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval.

If an entity were to submit a significant new use notice 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 significant new use notice.

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, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (Mail Code 2137), 401 M St., SW., Washington, DC 20460, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked Attention: Desk Officer for EPA. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to these addresses.

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has previously certified, as a generic matter, 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.

V. 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 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: August 17, 1998.

Charles M. Auer,

Director, Chemical Control Division, 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. Section 721.1765 is amended by revising paragraphs (a)(2)(i) and (a)(2)(ii) to read as follows:

§ 721.1765 2-Substituted benzotriazole.

(a) * * *

(2) * * *

(i) *Protection in the workplace.*

Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(1)(iv), (g)(1)(vi), (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), and (g)(5).

* * * * *

3. Section 721.1790 is revised to read as follows:

§ 721.1790 Polybrominated biphenyls.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified as 1,1'-(Biphenyl, 4,4'-dibromo- (CAS No. 92-86-4); 1,1'-(Biphenyl, 2-bromo-

(CAS No. 2052-07-5); 1,1'-(Biphenyl, 3-bromo- (CAS No. 2113-57-7); 1,1'-(Biphenyl, 2,2', 3,3', 4,4', 5,5', 6,6'-decabromo- (CAS No. 13654-09-6); Nonabromobiphenyl (CAS No. 27753-52-2); Octabromobiphenyl (CAS No. 27858-07-7); and Hexabromobiphenyl (CAS No. 36355-01-8) are subject to reporting under this section for the significant new uses described in paragraph (a)(1)(i) of this section.

(i) The significant new use is: Any use.

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

(A) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture, import, or process 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.

(B) [Reserved]

(2) The chemical substance identified as 1,1'-(Biphenyl, 4-bromo- (CAS No. 92-66-0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2)(i) of this section.

(i) The significant new uses are:

(A) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f), (j), and (s) (10,000 kilograms).

(B) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

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

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

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

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

(b) [Reserved]

4. Section 721.5740 is amended by revising paragraphs (a) and (b)(1) as follows:

§ 721.5740 Phenol, 4,4'-methylenebis (2,6-dimethyl-

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as Phenol, 4,4'-methylenebis (2,6-

dimethyl- (PMNs P-88-864, P-90-211, and P-94-921; CAS No. 5384-21-4) is 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) *Protection in the workplace.*

Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), (a)(6)(i), (b) (concentration set at 1 percent), and (c).

(ii) *Hazard communication program.*

Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1 percent), (f), (g)(1)(iv), (g)(2)(iv), (g)(2)(v), (g)(3)(ii), (g)(4)(iii), and (g)(5). The label and MSDS as required by this paragraph shall also include the following statements: This substance may cause blood effects. This substance may cause chronic effects.

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

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) * * *

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

* * * * *

5. Section 721.8450 is amended by revising paragraphs (a)(2)(i) and (a)(2)(ii) to read as follows:

§ 721.8450 2-Propenoic acid, 2-methyl-, 2-[3-(2H-benzotriazol-2-yl)-4-hydroxyphenyl]ethyl ester.

(a) * * *

(2) * * *

(i) *Protection in the workplace.*

Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.*

Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(i), (g)(1)(ii), (g)(1)(iv), (g)(1)(vi), (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), and (g)(5).

* * * * *

6. Section 721.9800 is amended by revising paragraph (a)(2)(i) to read as follows:

§ 721.9800 Poly(substituted triazinyl) piperazine (generic name).

(a) * * *

(2) * * *

(i) *Hazard communication program.*

Requirements as specified in § 721.72 (b)(2), (c), (e) (concentration set at 1.0 percent), (f), (g)(1) (statement-health

effects not fully determined), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), and (g)(5). The requirements of this paragraph shall not apply when the PMN substance is encapsulated in a polymeric matrix.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 91-141; FCC 98-199]

Expanded Interconnection With Local Telephone Company Facilities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Order on Reconsideration (Order) released August 18, 1998 denies Association for Local Telecommunications Services and WilTel, Inc. Petitions for Reconsideration of the *Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, Third Report and Order, Transport Phase, II (*Tandem Switching Order*), and grants the motion to withdraw filed by Southwestern Bell Telephone Company.

EFFECTIVE DATE: September 28, 1998.

FOR FURTHER INFORMATION CONTACT: Jason Oxman, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418-1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order On Reconsideration adopted August 12, 1998, and released August 18, 1998. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., N.W., Room 239, Washington, D.C. The complete text also may be obtained through the World Wide Web, at <http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc98-199.wp>, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th St., N.W., Washington, D.C. 20036.

Regulatory Flexibility Certification

In the *Tandem Switching Order*, the Commission noted that it certified in the *Second Notice of Proposed Rulemaking*, 57 FR 56888, December 1, 1992, that the conclusions it proposed to adopt would not have a significant economic impact on a substantial number of small business entities. No comments were