

the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: March 31, 2011.

**Jared Blumenfeld**,

*Regional Administrator, Region IX.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 721

[EPA-HQ-OPPT-2010-0630; FRL-8871-7]

RIN 2070-AJ71

#### Elemental Mercury Used in Barometers, Manometers, Hygrometers/Psychrometers; 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 elemental mercury for use in barometers, manometers, and hygrometers/psychrometers. This action would require persons who intend to manufacture (including import) or process elemental mercury for an activity that is designated as a significant new use by this proposed rule to notify EPA at least 90 days before commencing that activity. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs. Not included in this proposed SNUR is mercury use in barometers, manometers, and hygrometers/psychrometers when

they are in service as of the publication date of this proposed rule and mercury use in portable battery-powered motor-aspirated psychrometers that contain fewer than seven grams of elemental mercury because they are currently manufactured. For this proposed rule, the general SNUR exemption for persons that import or process chemical substances as part of an article at § 721.45(f) would not apply.

**DATES:** Comments must be received on or before July 5, 2011.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2010-0630, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA-HQ-OPPT-2010-0630. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to docket ID number EPA-HQ-OPPT-2010-0630. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other

contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

**FOR FURTHER INFORMATION CONTACT:** For technical information contact: Sue Slotnick, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-1973; e-mail address: [slotnick.sue@epa.gov](mailto:slotnick.sue@epa.gov).

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

You may be potentially affected by this action if you manufacture (defined by statute to include import) or process elemental mercury used in barometers, manometers, or hygrometers/

psychrometers. Potentially affected entities may include, but are not limited to:

- Manufacturers of instruments and related products for measuring, displaying, and controlling industrial process variables (NAICS code 334513).

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. 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**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Persons who 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 the corresponding regulations at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Those persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any 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 proposed rule on or after June 6, 2011 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D. Note that as of January 1, 2013, the Mercury Export Ban Act of 2008 prohibits the export of elemental mercury from the United States (see TSCA section 12(c) (15 U.S.C. 2611(c))).

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a

copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

## II. Background

### A. What action is the agency taking?

This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of elemental mercury for any of the following significant new uses: Barometers, manometers, and hygrometers/psychrometers. Not included in this proposed rule are barometers, manometers, and hygrometers/psychrometers when they are in service as of the publication date of this proposed rule. Also not included in this proposal is the ongoing use of mercury in the manufacture, import, or processing of portable battery-powered motor-aspirated psychrometers that contain fewer than seven grams of elemental mercury because they are currently manufactured. Sphygmomanometers and other “devices” as defined under section 201 of the Federal Food, Drug, and Cosmetics Act (FFDCA) would not be affected by this proposed rule when manufactured, imported, or processed for use as a device (see TSCA

3(2)(B)(vi)). Finally, manometers used in the natural gas industry would not be affected by this proposed rule because they were included in a previous SNUR (75 FR 42330, July 21, 2010) (FRL–8832–2).

*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:

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

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorizes EPA to consider any other relevant factors.

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 significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)). As described in Unit II.C., the general SNUR provisions are found at 40 CFR part 721, subpart A.

### C. Applicability of General Provisions

General provisions for SNURs appear under 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. However, 40 CFR 721.45(f) would not apply to this proposed SNUR. As a result, persons subject to the provisions of this proposed rule would not be exempt from significant new use reporting if they import or process elemental mercury as part of an article (see § 721.5). Conversely, the exemption from notification requirements for exported articles (see § 707.60(b)) would remain in force. Thus, persons who export elemental mercury as part of an

article would not be required to provide export notification.

Provisions relating to user fees appear at 40 CFR part 700. According to 40 CFR 721.1(c), persons subject to SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of Premanufacture Notices (PMNs) under TSCA section 5(a)(1)(A). 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 SNUN, the Agency 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, the Agency is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who export or 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 interpret TSCA section 12(b) appear at 40 CFR part 707, subpart D. Persons who import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, codified at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Such persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B.

### III. Summary of Proposed Rule

#### A. Overview of Mercury and Mercury Uses

1. *Mercury.* This proposed rule applies to elemental mercury (CAS No. 7439-97-6), which is a naturally occurring element. Because of its unique properties (*e.g.*, exists as a liquid at room temperature and forms amalgams with many metals), elemental mercury has been used in many industrial processes and consumer products. In addition to its useful characteristics, mercury also is known to cause adverse health effects in humans and wildlife. These effects can vary depending on the form of mercury to which a person or animal is exposed, as well as the magnitude, duration, and frequency of exposure.

The most prevalent human and wildlife exposure to mercury results from ingesting fish contaminated with methylmercury. Methylmercury is an

organo-metallic compound that is formed via the conversion of elemental or inorganic mercury compounds by certain microorganisms and other natural processes. For example, elemental mercury may evaporate and be emitted into the atmosphere. Atmospheric mercury can then be deposited directly into water bodies or watersheds, where it can be washed into surface waters via overland run-off. Once deposited in sediments, certain microorganisms and other natural processes can convert elemental mercury into methylmercury. Methylmercury bioaccumulates, which means that it is taken up and concentrated in the tissues of aquatic, mammalian, avian, and other wildlife. Methylmercury is a highly toxic substance; a number of adverse health effects associated with exposure to it have been identified in humans and in animal studies. Most extensive are the data on neurotoxicity, particularly in developing organisms. Fetuses, infants, and young children generally are more sensitive to methylmercury's neurological effects than adults.

In 2004, EPA and the Food and Drug Administration (FDA) issued a national consumption advisory concerning mercury in fish. The advisory contains recommended limits on the amount of certain types of fish and shellfish that pregnant women and young children can safely consume. By 2005, all fifty states had issued fish consumption advisories for fish from certain water bodies known to be contaminated by methylmercury <http://www.epa.gov/mercury/advisories.htm>.

In addition to methylmercury, exposure to elemental mercury can also pose health risks. Elemental mercury primarily causes health effects when it is breathed as a vapor that can be absorbed through the lungs. These exposures can occur when elemental mercury is spilled or products that contain elemental mercury break, resulting in release of mercury to the air, particularly in warm or poorly-ventilated indoor spaces.

For a more detailed summary of background information (*e.g.*, chemistry, environmental fate, exposure pathways, and health and environmental effects), as well as references pertaining to elemental mercury that EPA considered before proposing this rule, please refer to EPA's proposed SNUR for mercury switches in motor vehicles, issued in the **Federal Register** of July 11, 2006 (71 FR 39035) (FRL-7733-9), or in the docket for the 2006 proposal under docket identification number EPA-HQ-OPPT-2005-0036. All documents in the docket are listed in the docket's index,

which is available at <http://www.regulations.gov>.

2. *Mercury uses.* Elemental mercury has been used in thousands of products and applications. Over the past two decades, there has been a dramatic drop in elemental mercury use by industries in the United States. In response to increased concerns about exposure to anthropogenic sources of mercury in the environment and also because of the availability of suitable mercury-free products, Federal and State governments have made efforts to limit the use of elemental mercury in certain products. Various states have banned or restricted the manufacture or sale of products containing mercury. While this is not the rationale for this proposed rule, it does indicate that the transition to cost-effective non-mercury containing alternatives is already established (see <http://www.epa.gov/epawaste/hazard/tsd/mercury/laws.htm>).

On October 5, 2007, EPA issued a final SNUR for elemental mercury used in convenience light switches, anti-lock braking system switches, and active ride control system switches in certain motor vehicles (72 FR 56903, October 5, 2007) (FRL-8110-5). EPA promulgated another SNUR for flow meters, natural gas manometers, and pyrometers on July 21, 2010 (75 FR 42330). For more information on EPA activities on mercury in products and other areas, see <http://www.epa.gov/hg>.

In the past, elemental mercury was used in the manufacture of barometers, manometers, and hygrometers/psychrometers. The latest information available to EPA indicates that the manufacture (including import) of these mercury-containing articles has ceased (with the exception of one psychrometer as described at Unit III.A.5.). EPA also has found that all three products subject to the proposed SNUR currently have effective and economically feasible substitutes (Ref. 1). EPA requests comments on whether elemental mercury continues to be used in manufacturing (including importing into the U.S.) barometers, manometers, or hygrometers/psychrometers. EPA also requests comment on whether elemental mercury is being used in the remanufacturing of any of these articles that remain in use.

3. *Barometers containing elemental mercury.* Barometers are instruments which measure atmospheric pressure. Mercury barometers were manufactured as a long cylindrical tube, typically closed at one end, with a mercury-filled reservoir at the base. The weight of mercury created a vacuum at the top of the tube, and the mercury adjusted until the pressure inside the reservoir equaled

the atmospheric pressure. Rising mercury indicated increasing air pressure while dropping mercury indicated decreasing air pressure. Historically, mercury barometers were used in applications where measuring and monitoring changes in air pressure are important, such as weather stations, airports, and ships. Additional uses include scientific demonstration in schools and non-mercury device calibration. A mercury barometer contains between 400 and 620 grams of mercury (Ref. 1).

Alternatives to mercury-containing barometers include aneroid, electronic, and other liquid-based (water or eco-celli) barometers. At least eight states have banned the sale of mercury-containing barometers. EPA found sufficient information to conclude that mercury-containing barometers are no longer manufactured in or imported into the U.S. (Ref. 1).

4. *Manometers containing elemental mercury.* A manometer is an instrument used to measure pressure of gases or liquids. Mercury-containing manometers were manufactured for use in sectors such as dairy farms, heating ventilation and air conditioning/plumbing installation and repair, auto/motorcycle industry, laboratories; and in general industrial uses. The amount of mercury used in a single manometer ranged between approximately 30 grams and 525 grams (Ref. 1).

Alternatives to mercury manometers include hydrostatic gauges using mercury-free liquid, aneroid manometers, needle-bourdon gauges, and digital manometers. At least five states have banned the sale of mercury-containing manometers, and four additional states have banned the sale of mercury-containing dairy manometers (Ref. 1). EPA found sufficient information to conclude that mercury-containing manometers are no longer manufactured in or imported into the U.S. (Ref. 1).

5. *Hygrometers/psychrometers containing elemental mercury.* Hygrometers are instruments used to measure relative humidity (*i.e.*, the moisture content of the air). Psychrometers, which are the most common type of hygrometer, use two mercury-added thermometers, one with a wetted base, and one with a dry base. Hygrometers and psychrometers function similarly; however, they are used in different applications. Historically, mercury-containing hygrometers were used for cigar and tobacco humidors, or in residential settings, while mercury-containing psychrometers were used by atmospheric scientists and weather

enthusiasts. The amount of mercury in a single hygrometer or psychrometer was between three and seven grams.

There are two types of alternatives to mercury-added hygrometers that are readily available and widely used: Spirit-filled devices, which use methyl alcohol or citrus oil thermometers and provide results with comparable accuracy to mercury-added thermometers; and digital devices, which use electronic sensors to measure humidity changes and, when calibrated properly, provide results that are as accurate as mercury devices.

Seven states have banned the sale and distribution of mercury-containing hygrometers and psychrometers and three additional states have general phase-outs of mercury-added products. EPA found sufficient information to conclude that only one type of mercury-containing hygrometer/psychrometer is manufactured in or imported into the U.S. That one type is a portable battery-powered motor-aspirated psychrometer containing fewer than seven grams of elemental mercury (Ref. 1).

6. *Potential exposure and release.* The typical lifecycle of barometers, manometers, and hygrometers/psychrometers includes several stages: Manufacture, distribution in commerce, use, and waste management (landfilling or recycling). At any point in the lifecycle, there is potential for mercury to be released as liquid or vapor. Workers and others can be exposed to the mercury and it can be released into water, air, or onto land as the mercury is transported, stored, and handled during manufacturing. While the barometers, manometers, and hygrometers/psychrometers are in use, the mercury can vaporize or spill due to breakage during transport, installation, maintenance, refilling, or repair. Other opportunities for release can occur at the end of the lifecycle of barometers, manometers, and hygrometers/psychrometers as these devices are removed from equipment and facilities and handled during waste management.

#### *B. Proposed Action*

EPA is proposing to designate as significant new uses the use of elemental mercury in barometers, manometers, and hygrometers/psychrometers. However, use of elemental mercury in these articles when they are in service as of the publication date of this proposed rule would not be covered as a significant new use under this proposed SNUR. Also, use of mercury in portable battery-powered motor-aspirated psychrometers that contain fewer than seven grams of mercury is an ongoing use and therefore

would not be covered by this SNUR. Due to EPA's concern about use of mercury in products, the Agency may take other action to facilitate the evaluation or control of ongoing uses, as appropriate. For the portable battery-powered motor-aspirated psychrometers that contain fewer than seven grams of mercury, EPA is considering whether risk management or other actions would be appropriate. Use of mercury in manometers used in the natural gas industry would not be affected by this proposed SNUR because they are included in a previous SNUR (75 FR 42330, July 21, 2010). Proposed definitions of barometer, manometer, hygrometer and psychrometer can be found in § 721.10068 of the regulatory text in this proposed rule.

This action would amend § 721.10068 and require persons who intend to manufacture or process elemental mercury for a use designated by this proposed rule as a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of elemental mercury for such significant new use. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

For this SNUR, EPA is proposing not to include the general "article" exemption at § 721.45(f). Thus, persons importing or processing elemental mercury (including when part of an article) for a significant new use would be subject to the notification requirements of § 721.25. EPA proposes not to include this exemption because barometers, manometers, and hygrometers/psychrometers are articles, and a primary concern associated with this SNUR is potential exposures associated with the lifecycle of these uses. Further, it is possible to reclaim elemental mercury from certain articles, which could be used to produce barometers, manometers, or hygrometers/psychrometers. EPA notes that, in accordance with TSCA section 12(a) and § 721.45(g), persons who manufacture or process elemental mercury solely for export would be exempt from the notification requirements of § 721.25, if when distributing the substance in commerce, it is labeled in accordance with TSCA section 12(a)(1)(B). Further, EPA notes that the exemption from the TSCA section 12(b) notification requirements for exported articles (see § 707.60(b)) would remain in force. Thus, persons who export elemental mercury as part of an article would not be required to provide export notification.

EPA believes elemental mercury is no longer used to manufacture barometers, manometers, and hygrometers/psychrometers (with one exception as discussed), but some of these articles may remain in service in the U.S. The ongoing use of such articles, including some maintenance and servicing activities, falls outside of the scope of this significant new use rule. Thus, the manufacturing and processing of elemental mercury for use in these articles, provided they are in service as of the publication date of this proposed rule, would not be covered by the rule. For example, if an article that is in service as of the publication date of this proposed rule is removed from service for maintenance or servicing, including the addition of new mercury, and then placed back into service, any manufacturing or processing of mercury associated with that maintenance or servicing would not be covered by the rule. Otherwise, the addition of new mercury to these existing articles after the effective date of this proposed rule could potentially trigger a significant new use notice under this proposed rule (e.g., if it involved processing of the mercury), which is not EPA's intent.

#### IV. Significant New Use Determination

##### A. Rationale

As summarized in Unit III.A., EPA has concerns regarding the environmental fate and the exposure pathways of elemental mercury that lead to the presence of methylmercury in fish and the consumption of mercury-contaminated fish by humans and wildlife. EPA is encouraged by the general discontinuation of the use of elemental mercury in the manufacturing of barometers, manometers, and hygrometers/psychrometers. However, EPA is concerned that the manufacturing or processing of elemental mercury for the proposed significant new uses could be reinitiated in the future. Accordingly, EPA wants the opportunity to evaluate and control, where appropriate, activities associated with those uses, if such manufacturing or remanufacturing were to occur again. The required notification provided by a SNUN would 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 mercury.

Consistent with EPA's past practice for issuing SNURs under TSCA section 5(a)(2), EPA's decision to propose a SNUR for a particular chemical use need not be based on an extensive evaluation of the hazard, exposure, or

potential risk associated with that use. Rather, the Agency's action is based on EPA's determination that if the use begins or resumes, it may present a risk that EPA should evaluate under TSCA before the manufacturing or processing for that use begins. Since the new use does not currently exist, deferring a detailed consideration of potential risks or hazards related to that use is an effective use of resources. If a person decides to begin manufacturing or processing the chemical for the use, the notice to EPA allows EPA to evaluate the use according to the specific parameters and circumstances surrounding that intended use.

##### B. Objectives

Based on the considerations in Unit IV.A., EPA has the following objectives with regard to the significant new uses that are designated in this proposed rule:

1. EPA would receive notice of any person's intent to manufacture or process elemental mercury for any of the described significant new uses before that activity begins.
2. EPA would have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing of elemental mercury for any of the described significant new uses.
3. EPA would be able to regulate prospective manufacturers or processors of elemental mercury before the described significant new uses of the chemical substance occur, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6 or 7.

##### C. Relevant Factors Considered for This SNUR

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors (see further detail at Unit II.B.).

EPA has preliminarily determined that manufacturing or processing of elemental mercury for use in barometers, manometers, or hygrometers/psychrometers is a significant new use. This determination is based on the following factor in TSCA section 5(a)(2): "The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance." Increased exposure to mercury is significant because of the adverse health effects described at Unit III.A.1. The latest information available to EPA indicates that there is no ongoing use of elemental mercury in the manufacture or remanufacture of

barometers, manometers, hygrometers, and all but one type of psychrometer. Resumption of these uses of elemental mercury could increase the magnitude and duration of exposure to workers and the surrounding environment at facilities of all types involved in the lifecycle of the products, as described in greater detail in Unit III.A.6. Increase in releases could contribute additional mercury to the atmosphere for long-range transport. Resumption of these uses could also result in exposures to workers who had not previously worked in these facilities when elemental mercury was commonly used, as well as exposures to workers who are not currently being exposed to mercury in the manufacture of barometers, manometers, or hygrometers/psychrometers. Increases in mercury releases could lead to increases in mercury concentrations in the environment and reduction in overall ecosystem and human health from consumption of mercury-contaminated fish.

EPA believes that any of these renewed uses of elemental mercury would increase the magnitude and duration of exposure to humans and the environment over that which would otherwise exist. Thus, EPA has preliminarily determined that any manufacturing or processing of elemental mercury for use in barometers, manometers, or hygrometers/psychrometers is a significant new use, except for mercury use in barometers, manometers, and hygrometers/psychrometers when they are in service as of the effective date of this proposed rule; and in portable battery-powered motor-aspirated psychrometers that contain less than seven grams of elemental mercury.

##### D. Request for Comment

EPA welcomes comment on all aspects of this proposed rule, including comments on the basis for the significant new use determinations presented for this proposed rule.

#### V. Alternatives

Before proposing this SNUR, EPA considered the following alternative regulatory actions.

##### A. Promulgate a TSCA Section 8(a) Reporting Rule

Under a TSCA section 8(a) rule, EPA could, among other things, generally require persons to report information to the Agency when they intend to manufacture or process a listed chemical for a specific use or any use. However, for elemental mercury used in barometers, manometers, and

hygrometers/psychrometers, the use of TSCA section 8(a) rather than SNUR authority would have several limitations. First, if EPA were to require reporting under TSCA section 8(a) instead of TSCA section 5(a), EPA would not have the opportunity to review human and environmental hazards and exposures associated with the proposed significant new use and, if necessary, take immediate follow-up regulatory action under TSCA sections 5(e) or 5(f) to prohibit or limit the activity before it begins. In addition, EPA may not receive important information from small businesses, because such firms generally are exempt from TSCA section 8(a) reporting requirements. In view of the level of health and environmental concerns about elemental mercury, if used for the proposed significant new uses, EPA believes that a TSCA section 8(a) rule for this substance would not meet EPA's regulatory objectives.

*B. Regulate Elemental Mercury for Use in Barometers, Manometers, and Hygrometers/Psychrometers Under TSCA Section 6*

EPA may regulate under TSCA section 6 if "the Administrator finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture \* \* \* presents or will present an unreasonable risk of injury to health or the environment" (TSCA section 6(a)). Given that elemental mercury is no longer being used in the manufacture of barometers, manometers, or hygrometers/psychrometers (with the exception of one psychrometer), EPA concluded that risk management action under TSCA section 6 is not necessary at this time. This proposed SNUR would allow the Agency to address the potential risks associated with the proposed significant new use. Note that EPA is also considering whether risk management or other regulatory action may be appropriate for the one remaining psychrometer use.

*C. Allow the Exemption for Persons That Import or Process Elemental Mercury as Part of Articles That Could Be Subject to the SNUR*

Under the SNUR exemption provision at § 721.45(f), a person who imports or processes a substance covered by a SNUR identified in subpart E of part 721 as part of an article is not generally subject to the notification requirements of § 721.25 for that substance. However, EPA is concerned that exempting articles would render the SNUR less effective because of the possibility that

barometers, manometers, and hygrometers/psychrometers containing elemental mercury could be imported or processed for uses subject to this proposed SNUR without the submission of a SNUN. Because mercury-containing barometers, manometers, and hygrometers/psychrometers are the primary concerns in this SNUR, EPA wishes to include not only bulk elemental mercury but also these and other articles when they contain elemental mercury imported or processed for a significant new use. Thus, EPA is proposing to promulgate this rule without the exemption generally provided for in § 721.45(f).

**VI. 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 has decided 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 date of publication of this proposed rule rather than as of the effective date of the final rule. If uses begun after publication of the proposed rule were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements, because a person could defeat the SNUR by initiating the proposed significant new use before the rule became final, and then argue that the use was ongoing as of the effective date of the final rule. Thus, persons who begin commercial manufacture or processing of the chemical substance for a use that would be regulated through this proposed rule, if finalized, would have to cease any such activity before the effective date of the rule if and when finalized. 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. EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), that person would be considered to have met the requirements of the final SNUR for those activities.

**VII. Test Data and Other Information**

EPA recognizes that TSCA section 5 does not require the development of any particular test data before submission of a SNUN. There are two exceptions: (1) Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)); and (2) development of

test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)). In the absence of a section 4 test rule or a section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (TSCA section 5(d); § 721.25 and § 720.50). However, as a general matter, EPA recommends that SNUN submitters include data that would permit a reasoned evaluation of risks posed by the chemical substance during its manufacture, processing, use, distribution in commerce, or disposal. EPA encourages persons to consult with the Agency before submitting a SNUN. As part of this optional pre-notice consultation, EPA would discuss specific data it believes may be useful in evaluating a significant new use. SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e) to prohibit or limit activities associated with this chemical.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs that provide detailed information on:

1. Human exposure and environmental releases that may result from the significant new uses of the chemical substance.
2. Potential benefits of the chemical substance.
3. Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

**VIII. SNUN Submissions**

According to § 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in § 720.50. SNUNs must be on EPA Form No. 7710-25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in §§ 721.25 and 720.40. E-PMN software is available electronically at <http://www.epa.gov/optintr/newchems>.

**IX. Economic Analysis**

EPA has evaluated the potential costs of establishing SNUR reporting requirements for potential manufacturers and processors of the chemical substance included in this proposed rule. EPA's economic analysis (Ref. 1), which is briefly summarized

here, is available in the docket for this proposed rule.

Because the use of elemental mercury for manufacturing the specified mercury-containing products in the U.S. appears to have ceased, EPA expects very few, if any, entities will submit a SNUN. As a result, the economic impact of this rule is anticipated to be either zero or very low.

The costs of submission of a SNUN would not be incurred by any company until a company decides to pursue a significant new use as defined in this proposed SNUR. In the event that a SNUN is submitted, costs are estimated at approximately \$8,100 per SNUN submission, and include the cost to prepare and submit the SNUN, and the payment of a user fee. Businesses that submit a SNUN would be subject to either a \$2,500 user fee required by § 700.45(b)(2)(iii), or, if they are a small business with annual sales of less than \$40 million when combined with those of the parent company (if any), a reduced user fee of \$100 (§ 700.45(b)(1)). In its evaluation of this rule, EPA also considered the potential costs a company might incur by avoiding or delaying the significant new use in the future, but these costs have not been quantified.

## X. References

The following document is specifically referenced in the preamble for this rulemaking. In addition to this document, other materials may be available in the docket established for this rulemaking under docket ID number EPA-HQ-OPPT-2010-0630, which you can access through <http://www.regulations.gov>. Those interested in the information considered by EPA in developing this proposed rule, should also consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether the other documents are physically located in the docket.

1. EPA, 2010. Economic Analysis of the Proposed Significant New Use Rule for Mercury-Containing Barometers, Manometers, Hygrometers, and Psychrometers, Washington, DC OPPT/EETD/EPAB, July 16, 2010.

## XI. Statutory and Executive Order Reviews

### A. 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 action is a “significant regulatory action.” Accordingly, EPA submitted this action

to OMB for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action as required by section 6(a)(3)(E) 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 certain EPA 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 97 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 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. Small Entity Impacts

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 would not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows.

Under the RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. Small entity is defined in accordance with section 601 of the RFA as: A small business as defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201; A small

governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. For purposes of assessing the impacts of this proposed rule on small entities, EPA has determined that this proposed rule is not expected to impact any small not-for-profit organizations or small governmental jurisdictions. As such, the Agency estimated potential impacts on small business.

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 presently engage in such activity. Since this proposed SNUR would require a person who intends to engage in such activity in the future to first notify EPA by submitting a SNUN, no economic impact will occur unless someone files a SNUN to pursue a significant new use in the future or forgoes profits by avoiding or delaying the significant new use. 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 five notices per year. Of those SNUNs submitted, only one appears to be from a small entity in response to any SNUR. Therefore, EPA believes that the potential economic impact of complying with a SNUR is not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published as a final rule on August 8, 1997 (62 FR 42690) (FRL-5735-4), 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

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 reason to believe that any State, local, or Tribal government would be impacted by this rulemaking. As such, EPA has determined that this regulatory action

would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538).

#### E. Federalism

This action would not have federalism implications because it is not expected to 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. Indian Tribal Governments

This action would not have tribal implications as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000). This action is not expected to have substantial direct effects on Indian Tribes, would not significantly or uniquely affect the communities of Indian Tribal governments, and would not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this action.

#### G. Protection of Children

EPA interprets Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it would not establish an environmental standard intended to mitigate health or safety risks.

#### H. Effect on Energy Supply, Distribution, or Use

This action is not a “significant energy action” as defined in 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 likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### I. Technical Standards

Because this action would 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. Environmental Justice

This action would 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).

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

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 29, 2011.

**Wendy C. Hamnett,**

*Director, 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 continues to read as follows:

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

2. In § 721.10068, add the following definitions in alphabetical order to paragraph (a) and add a new paragraph (b)(2)(viii) to read as follows:

#### § 721.10068 Elemental mercury.

(a) \* \* \*

*Barometer* means an instrument used in various applications to measure atmospheric pressure.

*Hygrometer* or *psychrometer* means an instrument used in various applications to measure humidity of gases.

*Manometer* means an instrument used in various applications to measure pressure of gases or liquids.

(b) \* \* \*

(2) \* \* \*

(viii) Manufacturing or processing of elemental mercury for use in barometers, manometers, hygrometers, and psychrometers except for: Natural gas manometers covered by paragraph (b)(2)(vii) of this section; barometers, manometers, hygrometers, and psychrometers when these articles are in service as of May 6, 2011; and portable battery powered and motor-aspirated psychrometers that contain fewer than seven grams of elemental mercury.

[FR Doc. 2011–11025 Filed 5–5–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 48 CFR Part 1511

[EPA–HQ–OARM–2010–0273; FRL–9288–3]

#### EPAAR Prescription for Work Assignments

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) amends the EPA Acquisition Regulation (EPAAR) to update policy, procedures, and contract clauses. The proposed rule provides revised language to the prescription for the work assignment clause, incorporating prescriptive language that provides further instructions on use of the related clause.

**DATES:** Comments must be received on or before June 6, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OARM–2010–0273, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [docket.oei@epa.gov](mailto:docket.oei@epa.gov).

- *Fax:* (202) 566–1753.

- *Mail:* EPA–HQ–OARM–2010–0273, OEI Docket, Environmental Protection Agency, 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of three (3) copies.

- *Hand Delivery:* EPA Docket Center—Attention OEI Docket, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket’s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA–HQ–OARM–2010–0273. EPA’s policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment.