

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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. 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 either electronically in <http://www.regulations.gov> or in hard copy at the USEPA Docket Center, Public Reading Room, Room 3334, EPA West Building, 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 EPA Docket Center is (202) 566-2426.

**FOR FURTHER INFORMATION CONTACT:** Janet Goodwin, USEPA Office of Water by phone at (202) 566-1060 or by e-mail at [goodwin.janet@epa.gov](mailto:goodwin.janet@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

*A. Does this action apply to me?*

Regulated Entities

Entities potentially regulated by this action include:

Category	Examples of regulated entities	North American industry classification system (NAICS) code
Industry .....	Construction activities required to obtain 236 NPDES permit coverage and performing the following activities: Construction of buildings, including building, developing and general contracting. Heavy and civil engineering construction, including land subdivision.	236 237

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR 450.10 (74 FR 62995) and the definition of "storm water discharges associated with industrial activity" and "storm water discharges associated with small construction activity" in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular site, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## **II. Discussion of Direct Final Rulemaking**

EPA is proposing to stay the provisions of 40 CFR 450.22(a) and (b) that contain the numeric limitation and associated monitoring requirements for the Construction and Development Point Source category. This stay is necessary to reconsider the record underlying the calculation of the 280 NTU numeric limitation. After the numeric limitation was promulgated, and based on EPA's examination of the dataset underlying the 280 NTU limit, EPA concluded that it improperly

interpreted the data and, as a result, the calculations in the existing administrative record are no longer adequate to support the 280 NTU effluent limitation. EPA intends to expeditiously conduct a separate rulemaking to correct the numeric effluent limitation. Until the new rulemaking is effective, it is proposed that the stay will remain in place. EPA expects to complete a notice and comment rulemaking to correct the data error by May 30, 2011 so that the revised numeric limitation will be effective by June 29, 2011. An effective date of June 29, 2011 for the corrected numeric limit will enable EPA to incorporate the revised numeric limit and associated monitoring requirements in EPA's Construction General Permit. In the "Rules and Regulations" section of today's Federal Register, we are issuing this stay as a direct final rule without prior proposal because we view this stay as noncontroversial and anticipate no adverse comment. We have described the justification for the stay in the direct final rule. If EPA receives no adverse comment on either of these two actions, the Agency will not take further action on this proposed rule. If EPA receives adverse comment on either of these two actions, the Agency will publish a timely withdrawal of the direct final rule in the **Federal Register**. We would then address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

For the various statutes and Executive Orders that require findings for each rulemaking, EPA incorporates the findings from the direct final rulemaking into this companion notice for the purpose of providing public notice and opportunity for comment.

#### **List of Subjects in 40 CFR Part 450**

Environmental protection, Construction industry, Land development, Erosion, Sediment, Stormwater, Water pollution control.

Dated: November 1, 2010.

**Lisa P. Jackson,**  
Administrator.

[FR Doc. 2010-28034 Filed 11-4-10; 8:45 am]

**BILLING CODE 6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 721**

[EPA-HQ-OPPT-2009-0669; FRL-8849-7]

RIN 2070-AB27

### **Modification of Significant New Uses of 2-Propen-1-one, 1-(4-morpholinyl)-**

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

**ACTION:** Proposed rule.

**SUMMARY:** Under the Toxic Substances Control Act (TSCA), EPA is proposing to amend the significant new use rule (SNUR) for 2-Propen-1-one, 1-(4-morpholinyl)- (CAS No. 5117-12-4) to allow certain uses without requiring a significant new use notice (SNUN). EPA

is proposing this amendment based on review of new toxicity test data and receipt of a SNUN for this chemical substance. The proposed amended SNUR would continue to require a SNUN for new uses that may involve significant changes in human exposure.

**DATES:** Comments must be received on or before December 6, 2010.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2009-0669, 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-2009-0669. 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-2009-0669. 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: Tracey Klosterman, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-2209; e-mail address: [klosterman.tracey@epa.gov](mailto:klosterman.tracey@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, import, process, or use 2-Propen-1-one, 1-(4-morpholinyl)- (CAS No. 5117-12-4). Potentially affected entities may include, but are not limited to:

- Manufacturers, importers, or processors of the subject chemical substance (NAICS codes 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 in § 721.5. 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. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127; *see also* 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to a final SNUR must certify their 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 proposed rule on or after December 6, 2010 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.

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

1. **Submitting CBI.** Do not submit this information to EPA through [www.regulations.gov](http://www.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:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. 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.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

## II. Background

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

Under section 5(a)(2) of the Toxic Substances Control Act (TSCA), EPA is proposing to modify the significant new use and recordkeeping requirements at § 721.5185, for the chemical substance 2-Propen-1-one, 1-(4-morpholinyl)- (CAS No. 5117-12-4). In this unit, EPA provides a brief description for the chemical substance, including the Premanufacture Notice (PMN) number, chemical name, CAS number, basis for modification of the TSCA section 5(e) consent order, and the CFR citation. The modified SNUR would require persons who intend to manufacture, import, or process the chemical substance for an activity designated as a significant new use to notify EPA at least 90 days before commencing that activity.

In the **Federal Register** of January 5, 2000 (65 FR 354) (FRL-6055-2), EPA issued a direct final SNUR for this chemical substance in accordance with the procedures at § 721.160. The record established for this proposed SNUR is available in the docket under docket ID number EPA-HQ-OPPT-2009-0669. That record includes all information considered by the Agency in developing the direct final rule, the modified TSCA section 5(e) consent order negotiated with the PMN submitter, and review of

a SNUN (S-08-07) submitted in 2008 by a person other than the PMN submitter.

PMN Number P-95-169

*Chemical name:* 2-Propen-1-one, 1-(4-morpholinyl)-.

*CAS number:* 5117-12-4.

*Effective date of modified TSCA section 5(e) consent order:* May 9, 2006.

*Federal Register publication date and reference:* January 5, 2000 (65 FR 354).

*Basis for modified TSCA section 5(e) consent order and SNUR:* The PMN substance will be used as a diluent for ultraviolet (UV) and electron beam (EB) curable resin for coatings, inks, and curable adhesives. The consent order was issued under sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) of TSCA based on a finding that the chemical substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Agency issued a TSCA 5(e) consent order which became effective on November 27, 1998. The order required the use of dermal personal protective equipment (including gloves demonstrated to be impervious) and respiratory personal protective equipment (including a National Institute of Occupational Safety and Health (NIOSH)-approved respirator); required establishment of a hazard communication program; prohibited domestic manufacturing; prohibited processing and use activities in non-enclosed processes; established maximum importation volume limits for submission of required testing; established waste disposal practices (including restrictions for no release to surface waters and requirement of disposal only in a RCRA hazardous waste landfill); and prohibited use of the chemical substance involving an application method that generates a vapor, mist, or aerosol. The proposed SNUR for this chemical substance is based on and consistent with the provisions of the modified consent order. The proposed SNUR designates as a "significant new use" the absence of the protective measures required in the corresponding consent order.

*Toxicity concern:* Under the terms of the TSCA section 5(e) consent order, the PMN submitter completed the following tiered studies: An *in vivo* mouse micronucleus test, a 90-day oral toxicity study in rats, and a reproductive toxicity screening study in rats. The results of the micronucleus test were negative. Based on the results of the 90-day study, the Agency established a no observed adverse effect level (NOAEL) of 20 mg/kg/day for neurotoxicity. Further, based on the results of the reproductive toxicity screening study, a NOAEL of 75 mg/kg/day (highest dose

tested) was established for reproductive effects. From these data, the Agency calculated Margins of Exposure (MOEs) for predicted workplace exposures. Based on these new data, concerns remain for possible effects to the liver, testes, kidney, and blood from dermal exposure. However, EPA no longer has substantial human health concerns for mutagenicity and neurotoxicity. In addition, Agency concerns for carcinogenicity by inhalation were reduced, but were further mitigated by retaining the original consent order prohibition of industrial processing and use in a non-enclosed process and any use application methods that generate a vapor, mist, or aerosol form of the PMN substance.

In addition, to address Agency environmental concerns, a re-review of the environmental toxicity profile for the PMN substance was conducted. The results of this evaluation indicated a low concern for chronic aquatic toxicity. Therefore, EPA could no longer make a "may present unreasonable risk" finding for releases of the PMN substance to surface waters. As a result of the aforementioned review, EPA issued a modified TSCA section 5(e) consent order which became effective on May 9, 2006. The modified order removed requirements for respiratory protection, waived further required trigger testing for mutagenicity and cancer (*i.e.*, required by a set production volume or time), removed the restriction on domestic manufacture, and removed waste disposal restrictions (*i.e.*, no longer prohibiting releases to surface waters or limiting disposal to incineration or landfill). Pursuant to § 721.185(a)(5), the Agency has examined new information and reexamined the test data and other information supporting its finding under section 5(e)(1)(A)(ii)(I) of TSCA, and has concluded that a rational basis no longer exists to support findings that certain activities involving the substance may present an unreasonable risk of injury to human health and the environment required under section 5(e)(1)(A) of TSCA. Therefore, the Agency is proposing to modify the SNUR based on and consistent with the provisions in the underlying modified consent order. To protect against the remaining potential risks, the modified consent order:

- Requires the use of dermal personal protective equipment (including gloves demonstrated to be impervious).
- Requires establishment of a hazard communication program.
- Prohibits processing and use activities in non-enclosed processes.

- Prohibits the use of the chemical substance involving an application method that generates a vapor, mist, or aerosol.

The proposed modified SNUR designates as a “significant new use” the absence of these protective measures. In addition, EPA has included, in the proposed regulatory text, clarifying language for those forms of the PMN substance which are exempt from the provisions of the proposed SNUR. These exemptions apply to quantities of the PMN substance after it has been completely reacted (cured).

On June 27, 2008, the Agency received a SNUN (S-08-07) for the subject chemical substance. The significant new use identified in the notice was release to water for the generic (non-confidential) use of “contained use in energy production”. The 90-day review period for the SNUN expired on October 2, 2008 with the Agency not taking action on the “significant new use” of release of the substance to water. The proposed modified SNUR would similarly no longer include release to water as a significant new use, along with the other changes noted.

*Recommended testing:* EPA has determined that the results of the combined repeated dose toxicity with the reproductive/developmental toxicity screening test (OPPTS Test Guideline 870.3650 or Organisation for Economic Co-operation and Development (OECD) Test Guideline 422) would help further characterize the human health effects of the PMN substance. The modified 5(e) consent order does not require submission of the aforementioned information at any specified time or production volume. However, the order’s restrictions on manufacturing, import, processing, distribution in commerce, use and disposal of the PMN substance will remain in effect until the order is modified or revoked by EPA based on submission of that or other relevant information.

*CFR citation:* 40 CFR 721.5185.

#### *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) (see Unit III.). 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 SNUN to EPA at least 90 days before they manufacture, import,

or process the chemical substance for that use. The mechanism for reporting under this requirement is established under § 721.5.

Section 5(a)(1) of TSCA (15 U.S.C. 2604(a)(1)) and its implementing regulations at 40 CFR parts 720 and 721 require that any person intending to manufacture a new chemical substance, or to manufacture or process any chemical substance for a significant new use, must give EPA 90-days advance written notice in the form of a PMN or SNUN, respectively.

Upon reviewing those notices, if EPA makes certain determinations regarding potential exposures and risks that may be presented by the activities associated with the chemical, EPA may regulate the chemical by issuing an order under TSCA section 5(e) and/or a significant new use rule (SNUR) under TSCA section 5(a)(2) and 40 CFR part 721. The TSCA section 5(e) order governs only the entity who submitted the PMN whereas the section 5(a)(2) SNUR applies to all manufacturers and processors of the chemical substance.

EPA may respond to SNUNs by issuing or modifying a TSCA section 5(e) consent order and/or amending the SNUR promulgated under TSCA section 5(a)(2). Amendment of the SNUR will often be necessary to allow companies other than the SNUN submitter to engage in the newly authorized use(s), because even after a manufacturer submits a SNUN and the review period expires, processors of the same substance still must submit a SNUN before engaging in the significant new use. Provisions regarding EPA’s authority to modify or revoke SNUR requirements appear at § 721.185.

#### *C. Applicability of General Provisions*

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the proposed rule, recordkeeping requirements, and exemptions to reporting requirements. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for 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.

Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements codified at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28 (the corresponding EPA policy appears at 40 CFR part 707, subpart B). Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemical substances subject to a final SNUR must certify their compliance with the SNUR requirements. In addition, any persons who export or intend to export a chemical substance identified in a proposed SNUR 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.

#### **III. Significant New Use Determination**

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, 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 to 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.
- 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 authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the chemical substance that is the subject of this proposed rule, EPA considered relevant information about the toxicity of the chemical substance, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this unit.

#### **IV. Rationale and Objectives of the Proposed Rule**

##### *A. Rationale*

During the review of test data submitted under the TSCA section 5(e)

consent order for 2-Propen-1-one, 1-(4-morpholinyl)-, EPA determined that the chemical substance still met one or more of the criteria of concern established at § 721.160. (see Unit II.)

#### B. Objectives

EPA is proposing this SNUR modification for the specific chemical substance because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this proposed rule:

- EPA would receive notice of any person's intent to manufacture, import, or process a listed chemical substance for the described significant new use before that activity begins.
- EPA would have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for the described significant new use.
- EPA would be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6 or 7.
- EPA would ensure that all manufacturers, importers, and processors of the chemical substance that is the subject of a TSCA section 5(e) consent order are subject to similar requirements.

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

To establish a significant "new" use, EPA must determine that the use is not ongoing. EPA solicits comments on whether any of the uses proposed as significant new uses are ongoing. 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 the 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 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, import, or processing activities with the chemical substances that would be regulated as a "significant new use" through this proposed rule,

must cease any such activity as of 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), the person would be considered to have met the requirements of the final SNUR for those activities.

#### VI. 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)).

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 TSCA section 4 test rule or a TSCA 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 (*see* § 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. In cases where EPA issued a TSCA section 5(e) consent order that requires or recommends certain testing, Unit II. lists those tests. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. To access the harmonized test guidelines referenced in this document electronically, please go to <http://www.epa.gov/ocspp> and select "Test Methods and Guidelines." The Organisation for Economic Co-operation and Development (OECD) test guidelines are available from the OECD Bookshop at <http://www.oecdbookshop.org> or SourceOECD at <http://www.sourceoecd.org>. The American Society for Testing and Materials (ASTM) standards are available at <http://www.astm.org/Standard/index.shtml>.

The modified TSCA section 5(e) consent order for the chemical substance that would be regulated under this proposed rule does not require submission of test data at any specified

time or volume. However, the restrictions on manufacture, import, processing, distribution in commerce, use and disposal of the PMN substance would remain in effect until the consent order is modified or revoked by EPA based on submission of that or other relevant information. These restricted activities cannot be commenced unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by this chemical substance. The test specified in the modified TSCA section 5(e) consent order is included in Unit II. The proposed SNUR would contain the same restrictions as the modified TSCA section 5(e) consent order. Persons who intend to commence non-exempt commercial manufacture, import, or processing for those activities proposed as significant new uses would be required to notify the Agency by submitting a SNUN at least 90 days in advance of commencement of those activities.

The recommended tests may not be the only means of addressing the potential risks of the chemical substance. However, SNUN submission for a significant new use without any test data may increase the likelihood that EPA will take action under TSCA section 5(e). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

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

- Human exposure and environmental release that may result from the significant new use of the chemical substance.
- Potential benefits of the chemical substance.
- Information on risks posed by the chemical substance compared to risks posed by potential substitutes.

#### VII. SNUN Submissions

As stated in Unit II.C., 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 submitted to EPA, on EPA Form No. 7710-25 in accordance with the procedures set forth in § 721.25 and § 720.40. This form is available from the Environmental Assistance Division (7408M), 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. Forms and information are also available

electronically at <http://www.epa.gov/opptintr/newchems/pubs/pmnforms.htm>.

### VIII. Economic Analysis

EPA evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substances during the development of the direct final rule. The Agency's complete economic analysis is available in the public docket under docket ID number EPA-HQ-OPPT-2009-0669.

### IX. Statutory and Executive Order Reviews

#### A. Executive Order 12866

This proposed rule would modify a SNUR for a chemical substance that is the subject of a PMN and TSCA section 5(e) consent order. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

#### 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. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this proposed rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control

number 2070-0012 (EPA ICR No. 574). This action would 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 would not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is discussed in this unit. The requirement to submit a SNUN 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." Because these uses are "new," based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use 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 1,400 SNURs, the Agency receives on average only 5 notices per year. Of those SNUNs submitted from 2006-2008, only one appears to be from a small entity. In addition, the estimated reporting cost for submission of a SNUN (see Unit VIII.) is minimal regardless of the size of the firm. Therefore, the potential economic impacts of complying with this SNUR would not be expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of

June 2, 1997 (62 FR 29684) (FRL-5597-1), the Agency presented its general determination that 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 would be impacted by this proposed rule. As such, EPA has determined that this proposed rule would 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) (Pub. L. 104-4).

#### E. Executive Order 13132

This action would 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

This proposed rule would not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This proposed rule would not significantly or uniquely affect the communities of Indian Tribal governments, nor would 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 9, 2000), do not apply to this proposed rule.

#### G. Executive Order 13045

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.

*H. Executive Order 13211*

This proposed 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 and this action is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and 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*

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).

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

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

Dated: November 1, 2010.

**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. Amend § 721.5185 as follows:

- a. Revise the section heading.
- b. Revise paragraphs (a)(1) and (a)(2)(i).
- c. Add paragraph (a)(2)(ii).
- d. Revise paragraph (a)(2)(iii).
- e. Remove paragraphs (a)(2)(iv), (a)(2)(v), and (a)(2)(vi).
- f. Revise paragraph (b)(1).

The revisions and addition read as follows:

**§ 721.5185 2-Propen-1-one, 1-(4-morpholinyl)-.**

(a) \* \* \*

(1) The chemical substance identified as 2-Propen-1-one, 1-(4-morpholinyl)- (PMN P–95–169; CAS No. 5117–12–4) is subject to reporting under this section

for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance after it has been completely reacted (cured).

(2) \* \* \*

(i) *Protection in the workplace.*

Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(2)(iv), (a)(3)(i), (a)(3)(ii), (a)(4), (a)(6)(v), (b) (concentration set at 1.0 percent), and (c). Safety 4/4H EVOH/PE laminate, Ansell Edmont Neoprene number 865, and Solvex Nitrile Rubber number 275 gloves have been tested in accordance with the American Society for Testing Materials (ASTM) F739 method and found by EPA to satisfy the consent orders and § 721.63(a)(2)(i) requirements for dermal protection to 100 percent PMN substance. Gloves and other dermal protection may not be used for a time period longer than they are actually tested and must be replaced at the end of each work shift. For additional dermal protection materials, a company must submit all test data to the Agency and must receive written Agency approval for each type of material tested prior to use of that material as worker dermal protection. However, for the purposes of determining the imperviousness of gloves, up to 1 year after the commencement of commercial manufacture or import, the employer may use the method described in § 721.63(a)(3)(ii), thereafter, they must use the method described in § 721.63(a)(3)(i).

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

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(a), (c), and (y)(1).

(b) \* \* \*

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this chemical substance as specified in § 721.125(a) through (i).

\* \* \* \* \*

[FR Doc. 2010–28006 Filed 11–4–10; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****49 CFR Parts 523, 534, and 535**

[Docket No. NHTSA–2010–0079]

**Notice of Availability of a Draft Environmental Impact Statement (DEIS) for New Medium- and Heavy-Duty Fuel Efficiency Improvement Program**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of availability of a Draft Environmental Impact Statement (DEIS).

**SUMMARY:** NHTSA has prepared a DEIS to disclose and analyze the potential environmental impacts of the agency's newly proposed fuel consumption standards for commercial medium- and heavy-duty on-highway vehicles and work trucks ("HD vehicles"), which NHTSA recently proposed pursuant to the Energy Independence and Security Act of 2007. NHTSA invites Federal, State, and local agencies, Indian tribes, and the public to submit written comments on the DEIS using the instructions set forth in this notice. To facilitate review of the DEIS, NHTSA has posted the DEIS on its Web site (<http://www.nhtsa.gov/fuel-economy>) and placed it in the agency's docket, identified by the docket number at the beginning of this notice. NHTSA will consider all public comments received on the DEIS in preparing final NEPA documents to support final fuel consumption standards, which NHTSA plans to issue next year.

**DATES:** To ensure that NHTSA has the opportunity to consider comments on the DEIS, NHTSA must receive written comments by January 3, 2011. NHTSA will try to consider comments received after that date to the extent the NEPA and rulemaking schedules allow, but NHTSA cannot ensure that it will be able to do so.

**FOR FURTHER INFORMATION CONTACT:**

Questions concerning the DEIS should be addressed to Ms. Angel Jackson, Telephone: 1–202–366–0154, Fuel Economy Division, Office of International Vehicle, Fuel Economy and Consumer Standards, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. E-mail: [nhtsa.nepa@dot.gov](mailto:nhtsa.nepa@dot.gov). Information about the HD vehicle rulemaking and the NEPA process is also available at <http://www.nhtsa.gov/fuel-economy>.