

Dated: May 14, 2012.

Susan Hedman,

Regional Administrator, Region 5.

## PART 52—[AMENDED]

■ Accordingly, the amendment to 40 CFR 52.720 published in the **Federal Register** on April 16, 2012 (77 FR 22497) on page 22500 is withdrawn as of May 30, 2012.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 721

[EPA-HQ-OPPT-2010-0630; FRL-9345-9]

RIN 2070-AJ71

### Elemental Mercury Used in Barometers, Manometers, Hygrometers, and Psychrometers; Significant New Use Rule

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

**ACTION:** Final rule.

**SUMMARY:** EPA is promulgating a significant new use rule (SNUR) under the Toxic Substances Control Act (TSCA) for elemental mercury use in barometers, manometers, hygrometers, and psychrometers. This action will 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 final rule to notify EPA at least 90 days before commencing that activity. The required notification will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

**DATES:** This final rule is effective June 29, 2012.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPPT-2010-0630. 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., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket 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; email 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; email address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

## SUPPLEMENTARY INFORMATION:

### I. 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 or 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 (North American Industrial Classification System 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. Chemical importers must certify that shipments of the chemical substance comply with all applicable rules and orders under TSCA, including any SNURs. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, TSCA section 12(b) (15 U.S.C. 2611(b)) export notification requirements are triggered by publication of a proposed SNUR. Therefore, on or after June 6, 2011, any persons who export or intend to export elemental mercury are subject to the export notification provisions of TSCA section 12(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))).

## II. Background

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

EPA proposed a SNUR for elemental mercury used in barometers, manometers, hygrometers, and pyrometers in the **Federal Register** of May 6, 2011 (Ref. 1). EPA's response to the public comment received on the proposed rule appears in Unit III.C.

This final SNUR will 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: Use in barometers, manometers, hygrometers, and psychrometers, except for use in barometers, manometers, hygrometers, and psychrometers that were in service prior to May 6, 2011, the publication date of the proposed rule (Ref. 1). Also not included, because the activity is ongoing, is the use of elemental mercury in portable battery-powered motor-aspirated psychrometers that contain fewer than seven grams of elemental mercury.

Sphygmomanometers, a type of manometer, as well as other "devices" as defined under section 201 of the Federal Food, Drug, and Cosmetics Act (FFDCA), will not be affected by this final rule when manufactured, imported, or processed for use as a device, per TSCA section 3(2)(B)(vi). Finally, manometers used in the natural

gas industry will not be affected by this final rule because they are included in a previous SNUR (Ref. 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.
  - 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, import, 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, § 721.45(f) does not apply to this SNUR. As a result, persons subject to the provisions of this final rule are not 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 40 CFR 707.60(b)) remains in force. Thus, persons who export elemental mercury as part of an article are not required to provide export notification.

Provisions relating to user fees appear at 40 CFR part 700. According to § 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, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in a **Federal Register** document 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 SNURs. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B.

### III. Summary of Final Rule

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

1. *Mercury.* This final rule applies to elemental mercury (CAS No. 7439-97-6). Mercury 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 than adults to the neurological effects of methylmercury.

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 50 States had issued fish consumption advisories for fish from certain water bodies known to be contaminated by methylmercury. See <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 releases 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 promulgating this final rule, please refer to EPA's proposed SNUR for mercury switches in motor vehicles (Ref. 3), or see the docket for that proposed rule under docket ID 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 2 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 final rule, it does indicate that the transition to cost-effective non-mercury alternatives is already established. See <http://www.epa.gov/mercury/regs.htm#states>.

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 (Ref. 4). EPA promulgated another SNUR for flow meters, natural gas manometers, and pyrometers on July 21, 2010 (Ref. 2). 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, hygrometers, and 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 four products subject to this SNUR currently have effective and economically feasible substitutes (Ref. 5).

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. 5).

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. Three additional States have general phase-outs of mercury-added products. EPA found sufficient information to conclude that mercury-containing barometers are no longer manufactured in or imported into the United States (Ref. 5).

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 (HVAC) 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. 5).

Alternatives to mercury-containing 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. The general phase-outs of mercury products in three States apply to manometers. EPA found sufficient information to conclude that mercury-containing manometers are no longer manufactured in or imported into the United States (Ref. 5).

5. *Hygrometers and 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 (Ref. 5).

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 (Ref. 5).

Seven States have banned the sale and distribution of mercury-containing hygrometers and psychrometers and the devices are subject to the general phase-outs of mercury products in three States. EPA found sufficient information to conclude that only one type of mercury-containing psychrometer is manufactured in or imported into the United States. That one type is a portable, battery-powered, motor-aspirated psychrometer containing less than seven grams of elemental mercury (Ref. 5).

6. *Potential exposure and release.* The typical lifecycle of barometers, manometers, hygrometers, and 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, hygrometers, and 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, hygrometers, and psychrometers as these devices are removed from equipment and facilities, and handled during waste management.

#### B. This Action

EPA is designating as significant new uses the use of elemental mercury in barometers, manometers, hygrometers, and psychrometers. However, use of elemental mercury in these articles that were in service prior to May 6, 2011, will not be covered as a significant new use under this 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 will 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 may consider whether risk management or other actions will be appropriate. Use of mercury in manometers used in the natural gas industry will not be affected by this SNUR because they are included in a

previous SNUR (Ref 2). Definitions of “barometer,” “manometer,” “hygrometer” and “psychrometer” can be found at § 721.10068 of the regulatory text.

This action will amend § 721.10068 and require persons who intend to manufacture or process elemental mercury for a use designated by this final 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 will 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 not including 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 will be subject to the notification requirements of § 721.25. EPA is not including this exemption because barometers, manometers, hygrometers, and psychrometers are articles, and a primary concern associated with this SNUR is potential exposures associated with the lifecycle of these uses. EPA notes that, in accordance with TSCA section 12(a) and § 721.45(g), persons who manufacture or process elemental mercury solely for export will 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* 40 CFR 707.60(b)) will remain in force. Thus, persons who export elemental mercury as part of an article will not be required to provide export notification.

EPA believes elemental mercury is no longer used to manufacture barometers, manometers, hygrometers, and psychrometers (with one exception as discussed), but some of these articles may remain in service in the United States. The ongoing use of such articles, including some maintenance and servicing activities, falls outside of the scope of this SNUR. Thus, the manufacturing and processing of elemental mercury for use in these articles, provided that they were in service prior to the May 6, 2011 proposed rule (Ref. 1), will not be covered by the final rule. For example, if an article that was in service prior to May 6, 2011, 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 is not covered by the final rule. Otherwise, the addition of mercury to these existing articles could potentially trigger a SNUN under this final rule (i.e., if it involved processing of the mercury), which is not EPA’s intent.

#### *C. Response to Public Comment*

EPA received one comment on the May 6, 2011 proposed rule (Ref. 1). A copy of the comment is in the docket for this final rule. The comment did not provide any data or make any assertions that manufacture, import, processing, distribution, or use of elemental mercury in barometers, manometers, or hygrometers, and pyrometers is ongoing. A summary of the comment and EPA’s response follow.

The commenter suggested that the Federal Government take some form of regulatory action to address the mercury products excluded from the final rule. The products are portable, battery-powered, motor-aspirated psychrometers that contain fewer than seven grams of elemental mercury. The comment also expressed concern that issuance of the SNUR would still allow for future production of mercury-containing barometers, manometers, hygrometers, and psychrometers, which could lead to “detrimental environmental impact and exposure.” The comment continues: “If any resurgence in interest in the production of such products occurs, the EPA should consider regulation under TSCA Section 6.” EPA’s response is that the psychrometers were excluded because the use of mercury in such articles is an ongoing use and therefore not a new use that can be subject to a SNUR. As stated in Unit III.B., the Agency may take other action to facilitate the evaluation or control of ongoing uses of mercury, and may consider risk management actions for them, as appropriate. Second, the purpose of the SNUR is to provide an opportunity for EPA to evaluate and control, where appropriate, use of mercury in the four types of mercury products, if needed, before any of those uses occurs. The SNUR provides this opportunity by requiring that manufacturers and importers notify EPA 90 days before commencing use of mercury in the products.

### **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, hygrometers, and psychrometers. However, EPA is concerned that the manufacturing or processing of elemental mercury for these 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 processing were to occur again. The required notification provided by a SNUN will provide EPA with the opportunity to evaluate activities associated with a significant new use and an opportunity to protect against unreasonable risks, if any, from exposure to mercury.

Consistent with EPA’s past practice for issuing SNURs under TSCA section 5(a)(2), EPA’s decision to issue 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 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 the Agency 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 final rule:

1. EPA will 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 will 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 will 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 determined that manufacturing or processing of elemental mercury for use in barometers, manometers, or hygrometers or 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, hygrometers, or psychrometers. Increases in mercury releases could lead to increases in mercury concentrations in the environment and reduction in overall human health from consumption of mercury-contaminated fish.

EPA believes that any of these renewed uses of elemental mercury will increase the magnitude and duration of exposure to humans and the environment over that which will otherwise exist. Thus, EPA has determined that any manufacturing or processing of elemental mercury for use in barometers, manometers, or hygrometers or psychrometers is a significant new use, except for mercury use in barometers, manometers, hygrometers, and psychrometers that were in service prior to May 6, 2011; and in portable, battery-powered, motor-

aspirated psychrometers that contain less than seven grams of elemental mercury.

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

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of TSCA section 5(a)(1)(B) 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 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 began or begin commercial manufacture or processing of the elemental mercury for a significant new use designated in this rule must cease any such activity before the effective date of the final rule. To resume their activities, these persons must 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 meets the conditions of advance compliance under § 721.45(h), that person is 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 (15 U.S.C. 2604(d); § 721.25, and 40 CFR 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:

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

#### **VII. 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 40 CFR 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 40 CFR 720.40 and 721.25. The e-PMN software is available electronically at <http://www.epa.gov/opptintr/newchems>.

#### **VIII. 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 final rule. EPA's economic analysis (Ref. 5), which is briefly summarized here, is available in the docket for this final rule.

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

In the event that a SNUN is submitted, costs are estimated at approximately \$8,300 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 are subject to either a \$2,500 user fee required by 40 CFR 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 (40 CFR 700.45(b)(1)). In its evaluation of this final 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.

## IX. References

The following documents are specifically referenced in the preamble for this final rule. In addition to these documents, other materials may be available in the docket established for this final rule 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 final 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. Elemental Mercury Used in Barometers, Manometers, Hygrometers/Psychrometers; Significant New Use Rule; Proposed Rule. **Federal Register** (76 FR 26225, May 6, 2011) (FRL-8871-7).
2. EPA. Elemental Mercury Used in Flow Meters, Natural Gas Manometers, and Pyrometers; Significant New Use Rule; Final Rule. **Federal Register** (75 FR 42330, July 21, 2010) (FRL-8832-2).
3. EPA. Mercury Switches in Motor Vehicles; Proposed Significant New Use Rule; Proposed Rule. **Federal Register** (71 FR 39035, July 11, 2006) (FRL-7733-9).
4. EPA. Mercury Switches in Motor Vehicles; Significant New Use Rule; Final Rule. **Federal Register** (72 FR 56903, October 5, 2007) (FRL-8110-5).
5. EPA. 2012. Economic Analysis of the Final Significant New Use Rule for Mercury-Containing Barometers, Manometers, Hygrometers, and Psychrometers. Washington, DC. OPPT/Economics, Exposure and Technology Division (EETD)/Economic and Policy Analysis Branch (EPAB). March 26, 2012.

## X. Statutory and Executive Order Reviews

### A. Regulatory Planning and Review

Under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51783, October 4, 1993), this action is not a "significant regulatory action," and was not reviewed by the Office of Management and Budget (OMB) under Executive

Orders 12866 and 13563, entitled "Improving Regulation and Regulatory Review" (76 FR 3821, January 21, 2011).

### 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 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 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.

### C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the Agency hereby certifies that promulgation of this SNUR will not have a significant economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows.

Under RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. Small entity is defined in accordance with section 601 of RFA as: A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; a small governmental jurisdiction 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 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 rule on small entities, EPA has determined that this final rule is not expected to impact any small not-for-profit organizations or small governmental jurisdictions. As such, the Agency estimated potential impacts are focused on small business.

A SNUR applies to any person (including small or large entities) who intends to manufacture, import, or process a chemical substance for a use the EPA has designated as a "significant new use." By definition of the word "new," and based on information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since this SNUR will 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 SNURs covering over 1,000 chemical substances, the Agency receives only a handful of notices per year. For example, the number of SNUNs was four in Federal fiscal year (FY) 2005, eight in FY2006, six in FY2007, eight in FY2008, and seven in FY2009. During this 5-year period, three small entities submitted a SNUN. 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 in the **Federal Register** of 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.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of SNUR rulemakings on small entities. Businesses that submit a SNUN are subject to either a \$2,500 user fee required by 40 CFR 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 (40 CFR 700.45(b)(1)).

### 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 reason to believe that any State, local, or Tribal

government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action will not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on these governments or small governments such that it is subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1531–1538.

#### *E. Federalism*

This action will not have federalism implications as specified in Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) 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.

#### *F. Indian Tribal Governments*

This action will 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, will not significantly or uniquely affect the communities of Indian Tribal governments, and will not involve or impose any requirements that affect Indian Tribes.

#### *G. Protection of Children*

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. 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 will not involve any technical standards, section 12(d) of the National Technology Transfer and

Advancement Act (NTTAA), 15 U.S.C. 272 note, does not apply to this action.

#### *J. Environmental Justice*

This action will 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).

### **XI. Congressional Review Act**

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.*, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

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

Environmental protection, Barometers, Chemicals, Elemental mercury, Hazardous substances, Hygrometers, Manometers, Psychrometers, Reporting and recordkeeping requirements.

Dated: May 3, 2012.

**Wendy C. Hamnett,**

*Director, Office of Pollution Prevention and Toxics.*

Therefore, 40 CFR chapter I is amended as follows:

#### **PART 721—[AMENDED]**

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

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

■ 2. In § 721.10068:

■ a. Add the following definitions in alphabetical order to paragraph (a).

■ b. Add paragraph (b)(2)(viii).

The additions read as follows:

#### **§ 721.10068 Elemental mercury.**

(a) \* \* \*

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

\* \* \* \* \*

*Hygrometer* 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.

\* \* \* \* \*

*Psychrometer* means an instrument used in various applications to measure humidity of gases.

\* \* \* \* \*

(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 that were in service prior to May 6, 2011; and portable battery powered and motor-aspirated psychrometers that contain fewer than seven grams of elemental mercury.

\* \* \* \* \*

[FR Doc. 2012–13071 Filed 5–29–12; 8:45 am]

**BILLING CODE 6560–50–P**

### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 622**

[Docket No. 120213124–1066–02]

**RIN 0648–BB91**

#### **Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement management measures described in a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This rule increases the commercial and recreational quotas for red snapper in the Gulf of Mexico (Gulf) reef fish fishery for the 2012 fishing year, and for the 2013 fishing year if NMFS determines the acceptable biological catch (ABC) is not exceeded in the 2012 fishing year; eliminates the October 1 closure date of the recreational fishing season; and announces the quota closure date of the 2012 recreational fishing season. This final rule is intended to provide more flexibility in managing recreational red snapper and to help achieve optimum yield (OY) for the Gulf red snapper resource without increasing the risk of red snapper experiencing overfishing.