

Commodity	Parts per million
Poultry, fat .....	0.10
Poultry, meat .....	0.10
Poultry, meat by-products .....	0.10
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 721**

[EPA-HQ-OPPT-2008-0483; FRL-8832-2]

RIN 2070-AJ36

**Elemental Mercury Used in Flow Meters, Natural Gas Manometers, and Pyrometers; Significant New Use Rule**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for elemental mercury (CAS No. 7439-97-6) for use in flow meters, natural gas manometers, and pyrometers, except for use in these articles when they are in service as of September 11, 2009. 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 rule to notify EPA at least 90 days before commencing that activity. Persons subject to the provisions of this rule will not be exempt from significant new use reporting if they import into the United States or process elemental mercury as part of an article. 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 August 20, 2010.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPPT-2008-0483. 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:* Peter Gimlin, 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) 566-0515; e-mail address: [gimlin.peter@epa.gov](mailto:gimlin.peter@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. 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 flow meters, natural gas manometers, or pyrometers. 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 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 40 CFR 721.5 for SNUR-related obligations. 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 and 19 CFR 127.28. Those persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, 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 October 11, 2009, any persons who export or intend to export elemental mercury are subject to the export notification provisions of TSCA section 12(b) (see 40 CFR 721.20) and must comply with the export notification requirements in 40 CFR part 707, subpart D. EPA also notes that, pursuant to the Mercury Export Ban Act of 2008 (Pub. L. 110-414), the export of elemental mercury from the United States will be prohibited as of January 1, 2013, unless an exemption is obtained under TSCA section 12(c)(4).

**II. Background**

*A. What Action is the Agency Taking?*

EPA proposed this SNUR for elemental mercury used in flow meters, natural gas manometers, and pyrometers on September 11, 2009 (74 FR 46707) (FRL-8432-3). EPA's response to public comments received on the proposed rule appear in Unit III.C. Please consult the September 11, 2009, **Federal Register** document for further background information for this final rule.

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: Flow meters, natural gas manometers, or pyrometers. This rule does not affect the manufacturing and processing of elemental mercury for use in these articles when they are in service as of September 11, 2009. EPA

believes this SNUR is necessary because manufacturing, processing, use, or disposal of mercury associated with these uses may produce significant changes in human and environmental exposures. The rationale and objectives for this SNUR are explained in Unit IV.

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

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)). As described in Unit II.C., the general SNUR provisions are found at 40 CFR part 721, subpart A.

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

General provisions for SNURs appear under 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. However, 40 CFR 721.45(f) does not apply to this SNUR.

As a result, persons subject to the provisions of this rule are not exempt from significant new use reporting if they import or process elemental mercury as part of an article (see 40 CFR 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 40 CFR 721.1(c), persons subject to SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of Premanufacture Notices (PMNs) under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities

on which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who 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 and 19 CFR 127.28. Such persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B.

### **III. Summary of Rule**

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

1. *Mercury.* This rule applies to elemental mercury (CAS No. 7439–97–6), which is a naturally occurring element. Because of its unique properties (e.g., exists as a liquid at room temperature and forms amalgams with many metals), elemental mercury has been used in many industrial processes and consumer products. In addition to its useful characteristics, mercury also is known to cause adverse health effects in humans and wildlife. These effects can vary depending on the form of mercury to which a person or animal is exposed, as well as the magnitude, length, 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 be deposited directly into water bodies or watersheds, where it can be washed into surface waters via overland run-off. Once deposited in sediments, certain microorganisms and other natural processes can convert elemental mercury into methylmercury. Methylmercury bioaccumulates, which means that it is taken up and concentrated in the tissues of aquatic, mammalian, avian, and other wildlife.

Methylmercury is a highly toxic substance; a number of adverse health effects associated with exposure to it have been identified in humans and in animal studies. Most extensive are the data on neurotoxicity, particularly in developing organisms. Fetuses, infants, and young children generally are more sensitive to methylmercury's neurological effects than adults.

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

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

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

2. *Mercury uses.* Elemental mercury has been used in thousands of products and applications. Over the past two decades, there has been a dramatic drop in elemental mercury use by industries in the United States. In response to increased concerns about exposure to anthropogenic sources of mercury in the environment and also because of the availability of suitable mercury-free products, Federal and State governments have made efforts to limit the use of elemental mercury in certain products. Various states have banned or restricted the manufacture or sale of products containing mercury (see <http://www.epa.gov/epawaste/hazard/tsd/>

*mercury/laws.htm*). On October 5, 2007, EPA issued a final SNUR for elemental mercury used in convenience light switches, anti-lock braking system switches, and active ride control system switches in certain motor vehicles (72 FR 56903) (FRL-8110-5).

In the past, elemental mercury was used in the manufacture of flow meters, natural gas manometers, and pyrometers. The latest information available to EPA indicates that the manufacture of these mercury-containing articles has ceased (Ref. 1). In proposing this rule, EPA asked for public comment on ongoing processing or availability of these articles and received no comments indicating that the manufacturing, import, processing, sale, or use of these articles occurs.

i. *Flow meters containing elemental mercury.* Flow meters are instruments which measure the flow rate of liquids or gases. Historically, they have been used in civil engineering applications, e.g., water treatment plants, sewage plants, and power stations. Flow meters contained up to 5 kilograms (kg) of elemental mercury. At present, the sale of mercury-containing flow meters is banned in six states: California, Maine, Massachusetts, New Hampshire, New York, and Vermont (Ref. 4). Many mercury-free alternatives exist, including differential pressure meters, positive displacement meters, velocity meters, and mass meters. EPA found sufficient information to conclude that mercury-containing flow meters are no longer manufactured in or imported into the United States (Ref. 1).

ii. *Natural gas manometers containing elemental mercury.* A manometer is an instrument used to measure the pressure of gases or liquids. For purposes of this rule, a natural gas manometer means a mercury-containing instrument used in the natural gas industry to measure the pressure differential of natural gas in a pipeline. Mercury manometers have been used in the natural gas industry on individual wells, pipeline junctions, pipeline manifolds, compressor stations, and distribution points. The manometers contain between 3.2 and 54.5 kg of mercury. A common design for manometers is a U-shaped tube with one end opened to the atmosphere and the other connected to a process. Contained in the tube is a liquid (mercury, in the past). Pressure differential is measured by comparing the liquid levels in each of the two vertical sections of the tube. Seven states have enacted broad bans on the sale of mercury manometers (Ref. 4), and Louisiana prohibits the sale of mercury-containing natural gas manometers (Ref. 2). Available

information indicates that bellows orifice meters have replaced mercury meters in the natural gas industry. EPA found sufficient information to conclude that mercury-containing manometers are no longer manufactured in or imported into the United States (Ref. 1).

iii. *Pyrometers containing elemental mercury.* A pyrometer is an instrument that is similar to a thermometer but is typically used to measure extremely high temperatures in industrial processes such as in foundries, for pottery and ceramic kiln work, and in automotive applications. Historically, pyrometers contained mercury in sensing units in amounts ranging between 5 and 10 grams of mercury. In recent years, California, Maine, Massachusetts, New Hampshire, New York, and Vermont have banned the sale of mercury-containing pyrometers (Ref. 4). EPA found sufficient information to conclude that mercury-containing pyrometers are no longer manufactured, or imported into the United States (Ref. 1).

3. *Potential exposure and release from these uses.* The typical lifecycle of flow meters, natural gas manometers, and pyrometers 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 flow meters, manometers, and pyrometers are in use, the mercury can vaporize or spill due to breakage during transport, installation, maintenance, refilling, or repair. For example, beginning in the 1920s, mercury-containing manometers were used in the Louisiana natural gas industry, and mercury releases to the environment have been attributed to these manometers. (Ref. 3). Other opportunities for release can occur at the end of the lifecycle of flow meters, manometers, and pyrometers, as the devices are removed from equipment and facilities and handled during waste management.

#### B. Today's Action

EPA is designating as significant new uses, use of elemental mercury in flow meters, natural gas manometers, or pyrometers. However, use of elemental mercury in these articles when they are in service as of September 11, 2009, will not be covered as a significant new use under this SNUR. Definitions of "flow meter," "natural gas manometer," and

"pyrometer" can be found at 40 CFR 721.10068 of the regulatory text for this final rule.

This action will amend 40 CFR 721.10068 and require persons who intend to manufacture or process elemental mercury for a use designated by this 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 40 CFR 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 40 CFR 721.25. EPA is not including this exemption because flow meters, natural gas manometers, and pyrometers are articles, and a primary concern associated with this SNUR is potential exposures associated with the lifecycle of these uses. Further, it is possible to reclaim elemental mercury from certain articles, which could be used to produce flow meters, natural gas manometers, and pyrometers. EPA notes that, in accordance with TSCA section 12(a) and 40 CFR 721.45(g), persons who manufacture or process elemental mercury solely for export will be exempt from the notification requirements of 40 CFR 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)) remains 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 flow meters, natural gas manometers, or pyrometers, but some of these articles may remain in service in the United States (no public comments were received in response to the proposed rule indicating the ongoing use of such articles). The ongoing use of such articles, including maintenance and servicing activities, falls outside the scope of this significant new use rule. Thus, the manufacturing and processing of elemental mercury for use in these articles, provided they are in service as of September 11, 2009, will not be covered by the rule. For example, if an article that is in service as of September 11, 2009, 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 will not be covered by the rule. Otherwise, the addition of new mercury to these existing articles after September 11, 2009, could potentially trigger a significant new use notice under this rule (e.g., if it involved processing of the mercury), which is not EPA's intent.

### C. Response to Public Comments

EPA received three comments on the proposed rule that was issued in the **Federal Register** of September 11, 2009 (74 FR 46707). Copies of all comments received are in the public docket for this rule. All three commenters expressed general support for the proposed rule. No comments provided any data or made any assertions that manufacture, import, processing, distribution, or use of elemental mercury in these articles is ongoing. A discussion of specific comments suggesting changes to the proposal and EPA's response follows:

1. *Comment.* One commenter believed the language on the requirement to notify EPA "at least 90 days" before commencing a subject activity created ambiguities, and should be changed to "within 90 days." The commenter also thought the factors used to determine a significant new use should be more specific, perhaps by establishing a quantity determination. Finally, the commenter thought the proposed SNUR should be expanded to include mercury-containing products currently in use.

*Response.* The requirement to notify EPA at least 90 days before ( $\geq 90$  days) commencement is specified by TSCA section 5(a)(1); EPA does not see any ambiguity. Similarly, the factors used to determine a significant new use noted by the commenter are those specified by TSCA section 5(a)(2). EPA notes these are the factors EPA uses when it makes a determination on a significant new use; chemical manufacturers and processors are subject to the new regulations at 40 CFR 721.10068. The commenter's recommended regulation of current uses (if any) of these mercury-containing articles is outside the scope of this TSCA section 5(a) regulation. As discussed in the proposed rule, EPA considered and rejected regulating elemental mercury in these articles under TSCA section 6(a).

2. *Comment.* Another commenter recommended that EPA use this rule to mandate all states to develop a mercury reduction plan. The commenter also asked EPA to work with the FDA to ban the use of mercury in all vaccines.

*Response.* The actions recommended by the commenter are outside the scope of this regulation.

3. *Comment.* The third commenter proposed EPA take three additional steps in this rulemaking: (1) Require that current owners of manometers and flowmeters disclose the number of meters and their location to EPA; (2) classify the sale of replacement parts as a significant new use; and (3) phase out the use of old manometers through an incentive program for removal.

*Response.* The disclosure requirement proposed by the commenter is outside the scope of this regulation. As noted previously, EPA considered and rejected regulating elemental mercury in these articles under TSCA section 6(a). The disclosure requirement proposed by the commenter would require a separate rulemaking by EPA under TSCA section 6(a) authority. EPA believes inventories of these articles in use are minimal or non-existent. Regarding the second recommendation, EPA is not aware of any large inventories of either mercury-containing replacement parts or existing equipment that would be kept in service for prolonged periods by their use. EPA wishes to clarify that depending on the exact nature of these replacement parts, if any exist, and the circumstances of their eventual end use, they may or may not fall under the scope of this regulation. Only flow meters, natural gas manometers and pyrometers in service as of September 11, 2009, are specifically exempt. The commenter's third proposal for a phase-out and waste recovery program is outside the scope of this significant new use regulation.

## IV. Rationale and Objectives

### A. Rationale

As summarized in Unit III.A, EPA has concerns regarding the adverse health effects presented by mercury in humans and wildlife, as well as its environmental fate and the exposure pathways. EPA is encouraged by the discontinuation of the use of elemental mercury in the manufacturing of flow meters, natural gas manometers, and pyrometers. However, EPA is concerned that the manufacturing or processing of elemental mercury for use in flow meters, natural gas manometers, or pyrometers could be reinitiated in the future. Accordingly, EPA wants the opportunity to evaluate and control, where appropriate, activities associated with those uses, if such manufacturing or remanufacturing were to occur again. The required notification provided by a SNUN 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.

### 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 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.

## V. 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 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.

To determine what would constitute a significant new use of elemental mercury, EPA considered the four factors listed in section 5(a)(2) of TSCA. The latest information available to EPA indicates that there is no ongoing use of elemental mercury in the manufacture or remanufacture of flow meters, natural gas manometers, or pyrometers. Resumption of these uses of elemental mercury could result in a significant increase in the magnitude and duration of exposure to workers and the surrounding environment at facilities of all types in the lifecycle, as well as an increase in releases which 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 flow meters, natural gas manometers, or pyrometers. Increases in mercury releases could lead to increases in mercury concentrations in the environment, resulting in overall ecosystem degradation, as well as a deleterious effect on human health from consumption of mercury-contaminated fish.

EPA believes that any of these renewed uses of elemental mercury would increase the magnitude and duration of exposure to humans and the environment over that which would otherwise exist. Based upon the relevant factors as discussed in this unit, EPA has determined that any manufacturing or processing of elemental mercury for use in flow meters, natural gas manometers, or pyrometers is a significant new use.

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

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the date of publication of 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 will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), that person would be considered to have met

the requirements of the final SNUR for those activities.

Accordingly, this final rule specifies that uses after the date of publication of the proposed rule, September 11, 2009, are subject to this rule. Although the September 11, 2009, date was correctly specified in the regulatory text of the proposed rule document, in several instances in the preamble text to the proposed rule document, the effective date of the final rule was incorrectly given as the applicable date of the SNUR provisions of this rule. No comment was received on the issue.

#### VII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. 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); 40 CFR 721.25). However, as a general matter, EPA recommends that SNUN submitters include data that would permit a reasoned evaluation of risks posed by the chemical substance during its manufacture, processing, use, distribution in commerce, or disposal. EPA encourages persons to consult with the Agency before submitting a SNUN. As part of this optional pre-notice consultation, EPA would discuss specific data it believes may be useful in evaluating a significant new use. SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e) to prohibit or limit activities associated with this chemical.

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

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

#### VIII. SNUN Submissions

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>.

#### IX. Economic Analysis

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

The costs of submission of a SNUN will not be incurred by any company until a company decides to pursue a significant new use as defined in this SNUR. In the event that a SNUN is submitted, costs are estimated at approximately \$8,000 per SNUN submission, and includes the cost for preparing and submitting the SNUN, and the payment of a user fee. Businesses that submit a SNUN are either subject to 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 rule, EPA also considered the potential costs a company might incur by avoiding or delaying the significant new use in the future, but these costs have not been quantified.

#### X. References

The following documents are specifically referenced in the preamble for this rulemaking. In addition to these documents, other materials may be available in the docket established for this rulemaking under Docket ID No. EPA-HQ-OPPT-2008-0483, which you can access through <http://www.regulations.gov>. Those interested in the information considered by EPA in developing this 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, 2009. Economic Analysis for the Proposed Significant New Use Rule for Mercury-Containing Flow Meters, Nanometers, and Pyrometers. Washington, D.C. OPPT/EETD/EPAB, July 21, 2009.

2. La. Rev. Stat. Ann. section 2575 (2006).

3. State of Louisiana Mercury Risk Reduction Plan, prepared by the Louisiana Department of Environmental Quality, 2007. Available as of May 13, 2010 at <http://www.ldeq.org/portal/Portals/0/organization/MercuryReportforweb.pdf>.

4. Mercury Reduction and Education Legislation in the IMERC-Member States, prepared by Terri Goldberg and Adam Wienert, NEWMOA, June 2008. Available as of May 13, 2010 at <http://www.newmoa.org/prevention/mercury/imercl/legislation-2008.htm>.

## XI. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this final SNUR is not a “significant regulatory action,” because it does not meet the criteria in section 3(f) of the Executive Order. Accordingly, this action was not submitted to OMB for review under Executive Order 12866.

### B. Paperwork Reduction Act

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

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0038 (EPA ICR No. 1188). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average 110 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 adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a “significant new use.” By definition of the word “new,” and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR requires a person who intends to engage in such activity in the future to first notify EPA by submitting a SNUN, no economic impact will occur unless someone files a SNUN to pursue a significant new use in the future or forgoes profits by avoiding or delaying the significant new use. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA’s experience to date is that, in response to the promulgation of over 1,000 SNURs, the Agency receives on average only 5 notices per year. Of those SNUNs submitted, only one appears to be from a small entity in response to any SNUR. Therefore, EPA believes that the potential economic impact of complying with a SNUR is not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published as a final rule on August 8, 1997 (62 FR 42690) (FRL–5735–4), the Agency presented its general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

### D. Unfunded Mandates 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 small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538).

### E. Executive Order 13132: Federalism

This action will not have a substantial direct effect on States, on the

relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

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

This final rule will not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This rule will not significantly or uniquely affect the communities of Indian Tribal governments, nor will 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 final rule.

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

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

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

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

### I. National Technology Transfer Advancement Act

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

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

This action does not entail special considerations of environmental justice related issues as delineated by

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

## XII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 721

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

Dated: July 12, 2010.

**Wendy C. Hamnett,**

*Director, Office of Pollution Prevention and Toxics.*

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

### PART 721—[AMENDED]

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

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

■ 2. In § 721.10068, revise paragraph (a) and add a new paragraph (b)(2)(vii) to read as follows:

#### § 721.10068 Elemental mercury.

(a) *Definitions.* The definitions in § 721.3 apply to this section. In addition, the following definitions apply:

*Flow meter* means an instrument used in various applications to measure the flow rate of liquids or gases.

*Motor vehicle* has the meaning found at 40 CFR 85.1703.

*Natural gas manometer* means an instrument used in the natural gas industry to measure gas pressure.

*Pyrometer* means an instrument used in various applications to measure extremely high temperatures.

(b) \* \* \*

(2) \* \* \*

(vii) Manufacturing or processing of elemental mercury for use in flow meters, natural gas manometers, and pyrometers except for use in these

articles when they are in service as of September 11, 2009.

\* \* \* \* \*

[FR Doc. 2010-17718 Filed 7-20-10; 8:45 am]

**BILLING CODE 6560-50-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 0910131362-0087-02]

RIN 0648-XX68

#### Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish for Catcher/Processors Participating in the Rockfish Limited Access Fishery in the Central Regulatory Area of the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for northern rockfish by catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2010 total allowable catch (TAC) of northern rockfish allocated to catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 16, 2010, through 2400 hrs, A.l.t., December 31, 2010.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907-586-7269.

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

The 2010 TAC of northern rockfish allocated to catcher/processors participating in the rockfish limited access fishery in the Central GOA is 152 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010), and as

posted as the 2010 Rockfish Program Allocations at <http://alaskafisheries.noaa.gov/sustainablefisheries/goarat/default.htm>.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2010 TAC of northern rockfish allocated to catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 102 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish by catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA.

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

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of northern rockfish for catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 15, 2010.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*