
❖ SPC&B Safety News ❖

A Newsletter for Clients of Sharretts, Paley, Carter & Blauvelt, P.C.

April 4, 2012

I. Washington State's Reporting Requirements Under Children's Safe Product Act

II. Rules Proposed by EPA Could Affect a Variety of Imports



I. As previously reported, the *State of Washington* published a final rule effective August 21, 2011, providing the requirements for reporting the presence of any of 66 suspected “chemicals of concern” in children’s products sold in the state. “Children’s products” are defined as toys, cosmetics, jewelry, childcare articles, clothing, and car seats for children under 12.

The largest “manufacturers” (defined as producers, importers and domestic distributors) of children’s products with the highest exposures are the first to be required to begin reporting, starting on August 21, 2012. Additional reporting deadlines will be implemented on a rolling basis, extending from 12 to 84 months for smaller manufacturers and for products with lower exposures. Products are classified into four tiers — Tier 1 are products intended to be put in the mouth or applied to a child’s body; Tier 2 are those intended to be in prolonged contact with the skin; Tier 3 are those intended to be in short contact with the skin; and Tier 4 are those with no skin contact. Companies are classified in six different categories depending on the dollar value of global sales.

“Manufacturers” are expected to report all chemicals of high concern intentionally added to their products and, for non-intentional chemical additions, report any above 100 ppm OR rely on the quality of their manufacturing control program to eliminate the need to report. Washington State advises that actions demonstrating due diligence on the part of the “manufacturers” include:

- Use and enforcement of contract specifications
- Procedures to ensure the quality/purity of feedstock (whether raw or recycled)
- Use and enforcement of contract specifications for manufacturing process parameters
- Periodic testing for the presence and amount of CHCCs
- Auditing of contractor or supplier manufacturing processes
- Use of a chemical educational outreach program for members of supply chain
- Other practices reasonably designed to ensure the manufacturer’s knowledge of the presence, use, and amount of CHCCs in its children’s product components

If you would like to discuss the appropriate methods for your company to ensure compliance with the Washington State reporting requirements, please contact Gail Cumins at gcumins@spcblaw.com or

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II. The Environmental Protection Agency (EPA) recently published three proposed rules in the Federal Register which could affect a diversified range of imported products, including apparel, home furnishings, furniture, electronics, and paper products, among others. Each proposed rule would amend and/or create a new Significant New Use Rule (SNUR) under the Toxic Substances Control Act (TSCA).

Under section 5(a) of the TSCA, the EPA may determine that a use of a chemical substance is a “significant new use” by promulgating a Significant New Use Rule (SNUR). When a SNUR is adopted, parties wishing to engage in that use must submit a Significant New Use Notice (SNUN) to the EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. During that 90-day period, the EPA considers whether to prohibit, restrict, or otherwise regulate the new use before it occurs.

HBCD RULE

One of the EPA’s proposed rules involves two chemical substances – hexabromocyclododecane (CAS No. 25637-99-4) and 1,2,5,6,9,10-hexabromocyclododecane (CAS No. 3194-55-6) (collectively referred to as “HBCD”). According to information available to the EPA, in textiles, HBCD is used as a backcoating to function as a flame retardant. However, the EPA believes that HBCD is not used in consumer textiles other than those used in motor vehicles. Thus, under the proposed rule, a new SNUR would designate “use in consumer textiles, other than for use in motor vehicles,” as a significant new use for HBCD. Although there is a general exemption from the SNUN notification requirements for persons who import or process a chemical substance as part of an article, the proposed rule provides that that general exemption would not apply to this SNUR. **The EPA advises that entities involved with textiles, fabrics, home furnishings, or upholstered furniture, among other products, may be affected by this proposed rule. The EPA is accepting comments on this proposal through May 25, 2012.**

BENZIDINE-BASED CHEMICAL SUBSTANCES, DnPP, AND SCPP RULE

A second proposed rule would add nine benzidine-based chemical substances, as described below, to 24 others covered by an existing SNUR on benzidine-based chemical substances:

CAS or Accession No.	C.I. name	C.I. No.	Chemical name
117-33-9	Not available	Not available	1,3-Naphthalenedisulfonic acid, 7-hydroxy-8-[2-[4'-[2-(4-hydroxyphenyl)diazenyl][1,1'-biphenyl]-4-yl]diazenyl]-
65150-87-0	Not available	Not available	1,3,6-Naphthalenetrisulfonic acid, 8-hydroxy-7-[2-[4'-[2-(2-hydroxy-1-naphthalenyl)diazenyl][1,1'-biphenyl]-4-yl]diazenyl]-, lithium salt (1:3)
68214-82-4	Direct Navy BH	Not available	2,7-Naphthalenedisulfonic acid, 5-amino-3-[2-[4'-[2-(7-amino-1-hydroxy-3-sulfo-2-naphthalenyl)diazenyl][1,1'-biphenyl]-4-yl]diazenyl]-4-hydroxy-, sodium salt (1:2)
72379-45-4	Not available	Not available	2,7-Naphthalenedisulfonic acid, 4-amino-5-hydroxy-3-[2-[4'-[2-[2-hydroxy-4-[(2-methylphenyl)amino]phenyl]diazenyl][1,1'-biphenyl]-4-yl]diazenyl]-6-(2-phenyldiazenyl)-
Accession No. 21808 CAS No. CBI (NA)	CBI	CBI	2,7-Naphthalenedisulfonic acid, 4-amino-5-hydroxy [[(substituted phenylamino) substituted phenylazo] diphenyl]azo-, phenylazo-, disodium salt. (generic name)
Accession No. 24921 CAS No. CBI (NA)	CBI	CBI	4-(Substituted naphthalenyl)azo diphenyl azo-substituted carbopolycycle azo benzenesulfonic acid, sodium salt. (generic name)
Accession No. 26256 CAS No. CBI (NA)	CBI	CBI	4-(Substituted phenyl)azo biphenyl azo-substituted carbopolycycloazo benzenesulfonic acid, sodium salt. (generic name)
Accession No. 26267 CAS No. CBI (NA)	CBI	CBI	4-(Substituted phenyl)azo biphenyl azo—substituted carbopolycycle azo benzenesulfonic acid, sodium salt. (generic name)
Accession No. 26701 CAS No. CBI (NA)	CBI	CBI	Phenylazoaminohydroxynaphthalenylazobiphenylazo substituted benzene sodium sulfonate. (generic name)

It would also add a new SNUR for di-*n*-pentyl phthalate (DnPP) (1,2-benzenedicarboxylic acid, 1,2-

dipentyl ester) (CAS No. 131-18-0) and a new SNUR for alkanes, C₁₂₋₁₃, chloro (CAS No. 71011-12-6). **The EPA is accepting comments on this proposed rule, covering all three SNURs, through June 26, 2012.**

According to the notice, EPA believes that the nine new benzidine-based chemical substances have been used in the past in the production of textiles, paints, printing inks paper, and pharmaceuticals, but if they are used at all today, they are used in small volumes. The proposed rule would designate any use of the nine benzidine-based chemical substances as a significant new use. However, the EPA states that it does not intend to subject ongoing uses of those substances to the requirements of a SNUR, so if the agency is informed of such ongoing uses before it issues a final rule, it will exclude those uses from the final SNUR. For the nine benzidine-based chemical substances, the general exemption from the SNUN notification requirements for persons who import or process a chemical substance as part of an article would not apply. **The EPA advises that entities involved with apparel and other products of fabric or leather, paper products, and printing inks, among other products, may be affected by the SNUR covering benzidine-based chemical substances.**

DnPP is a type of phthalate, but EPA believes that DnPP is not in general use in the United States, and only has a limited application as a chemical standard for laboratory use. The proposed SNUR for this substance would designate any use of DnPP, other than as a chemical standard for laboratory use, as a significant new use. **The EPA states that entities involved with plastic material and resins, among other products, may be affected by the SNUR regarding DnPP.**

Alkanes, C₁₂₋₁₃, chloro is a Short-Chain Chlorinated Paraffin (SCCP) which EPA believes is not in use in the United States, nor has EPA found information indicating that it has ever been used. The proposed SNUR would designate any use of this substance as a significant new use. **The EPA indicates that entities involved with chemical manufacturing or processors of SCCPs, among others, may be affected by this SNUR.**

PBDE RULE

The third rule proposed by the EPA concerns seven polybrominated diphenylethers (PBDEs). It would amend an existing SNUR which currently requires any person who intends to manufacture or import (1) tetrabromodiphenyl ether (tetraBDE), (2) pentabromodiphenyl ether (pentaBDE), (3) hexabromodiphenyl ether (hexaBDE), (4) heptabromodiphenyl ether (heptaBDE), (5) octabromodiphenyl ether (octaBDE), or (6) nonabromodiphenyl ether (nonaBDE), or any combination of those substances that results from a chemical reaction, for any use on or after January 1, 2005, to notify FDA at least 90 days in advance. The proposed rule would designate processing any of those six PBDEs after December 31, 2013, for any use which is not ongoing as a significant new use. It would also designate manufacturing, importing, and processing of a seventh PBDE – decabromodiphenyl ether (decaBDE) – for any use which is not ongoing after December 31, 2013, as a significant new use. (For these purposes, the use must be ongoing as of April 2, 2012, the date on which the proposed rule was published in the Federal Register, in order to be excluded from the SNUR.) In addition, the general exemption from the SNUN notification requirements for persons who import or process a chemical substance as part of an article would not apply. The EPA also proposes a “test rule” that would take effect after December 31, 2013, which would require any person who manufactures, imports, or processes (1) commercial pentabromodiphenyl ether (“c-pentaBDE”), commercial octabromodiphenyl ether (“c-octaBDE”), or (3) commercial decabromodiphenyl ether (“c-decaBDE”), including in articles for any use after December 31, 2013, to conduct testing of those mixtures to obtain data on health effects, environmental effects, and chemical fate in accordance with the test rule. **Comments on the proposed SNUR and test rule will be accepted through June 1, 2012. Among the entities that may be affected by this proposal are those involved with textiles, furniture, and electronics equipment.**

Anyone wishing additional information regarding the above should contact Gail Cumins at gcumins@spcblaw.com, Donna Shira at dshira@spcblaw.com, or Kenneth Paley at kpaley@spcblaw.com, or call us at 212-425-0055.
